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ACAE

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

Goods & Services Tax

Highlights

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CONTENTS

Editorial

Dear Members,

Greetings to all for the New Year 2021!! With the administration of vaccine, stock market at all-time high, expectation of one-in-a-100-years budget, return to normalcy, amongst other things, indeed makes this new year a happy one for all.

We are showing a more than welcoming attitude to the idea of returning normalcy. However, we should not forget the learnings taught to us by the year gone by. The lockdown made us understand the power of united action that helped in curbing down the spread of corona virus. The widespread acceptance of digital/cloud technology made us understand the importance of adaptation and change. The uncertainty of life posed to us made us realise that we should cherish each moment we have. Above all the most important thing taught to us is that with great determination and will power we can overcome any situation.

In March 2020, we saw the stock market plummet to continuous lows leading to the biggest weekly loss since October 2008 and also saw the implementation of a nation-wide lockdown. There were huge concerns with respect to the recovery of Indian economy. There were anticipation of a recessionary scenario wherein people expected rise in NPAs, falling Production levels, decline in GDP, shutting down of businesses, etc. However, to everyone's surprise the stock market witnessed a steep recovery rising to feats that surpassed the pre-covid level. This recovery was led by increased FDI, Foreign & Domestic liquidity, outstanding performance by IT/Software sector, increased global reliance on the Indian Pharma industry, etc. The recovery seen was not just a stock market bubble but the businesses were also growing which was evident from the fact that the Goods and Service Tax collection for December 2020 touched a record high of Rs 1.15 lakh crore being the highest ever collection since the implementation in July 2017.

GST implementation was a huge step for the Indian economy and the Act has ever since been under constant transformation. Various measures/reforms are being brought into the Act some which safeguard the interests of the taxpayer while some safeguarding that of the Government. With immense pleasure, we are bringing this issue of the journal on "Goods & Services Tax". Our primary focus has been kept on the latest developments, amendments, updates, etc. under the Goods & Services Tax Act covering topics like Input Tax Credit, E-invoicing, Fake Invoicing, Audit by Department, etc. The journal will help in better understanding of the concepts covered. We hope you will find this issue informative.

Thanking You,

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EDITORIAL BOARD

President Speaks

Dear Professional Colleagues,

My warmest greetings to you all for the New Year 2021!!

Wishing every day of the New Year to be filled with success, happiness, and prosperity for you all.

It gives me pleasure to inform you that the new team is working with full vigour to take our esteemed organisation to new heights. Since my last address to you all, several Group Discussion sessions (GDs), Virtual CPE Meetings (VCMs), Technical Discussions and other such events were organised to keep our members at par with the new updates and amendments.

In the current economic scenario issues related to fiscal and monetary policies are of primary focus, one such issue being related to Goods & Services Tax (GST). Approximately 45% of the government's revenue from tax collection is contributed by indirect taxes majorly GST. GST Act took 17 years into making before being introduced, however, even after its implementation the Act is undergoing constant changes. We, as professionals, have the responsibility to update ourselves and gain expertise in order to abreast our clients with the regular changes so as to remain compliant with the law.

With the passage of time, we have gotten hold of the teething issues of GST. However, still there are various issues and concepts that require attention. Moreover, due to different interpretation there arises situations which calls for litigation. To deal with the same ACAE now presents before you this E-journal on "Goods & Services Tax", wherein our Editorial Board has taken the initiative to cater to all such issues which require professional attention.

Stay Safe and Healthy

With Warm Regards

CA Anup Kr Sanghai
President

E-Invoicing

CA Ashok Batra
B. Com (Hons), LL.B, FCA

(A) INTRODUCTION

GST Law is still evolving with the passage of time and the same has been substantiated with the implementation of provisions of "e-invoicing" **with effect from 01.10.2020.** In terms of Rule 48(4) of the CGST Rules, notified class of registered persons namely registered persons having aggregate turnover of more than the amount exhibited in the following year in any previous year from 2017-18 onwards have to prepare an e- invoice **:**

For 01.10.2020 to 31.12.2020	Rs. 500 Crore
With effect from 01.01.2021	Rs. 100 Crore

Further, an e-invoice shall be prepared by uploading specified particulars of invoice in **FORM GST INV-01** on common GST Electronic Portal and obtain an Invoice Reference Number (IRN). However, **'e-invoice' doesn't mean generation of invoice by the Invoice Reference Portal (IRP).** Registered suppliers shall continue to generate their GST invoices on their own Accounting/Billing/ERP Systems. However, necessary amendments on account of e-invoicing requirement shall be made by ERP/Accounting and Billing Software Suppliers in their respective software. Aforesaid suppliers shall happily supply their updated software for agreed consideration to their clients who are required to comply with e-invoicing provisions. Thus, the business of such suppliers shall grow on account of e-invoicing requirement. Besides "invoices", **"credit notes" and "debit notes"** when issued by the aforesaid notified class of registered persons shall also fall within the ambit of "e-invoicing" provisions. Thus, although different documents are subject to e-invoicing provisions, for the sake of convenience and quick reference, the provisions are being widely termed as 'e-invoicing'.

Abbreviations and Acronyms	
API	Application Programming Interface
ASP	Application Service Provider
B2B	Business to Business
B2C	Business to Customer/ From Registered Person to Unregistered Person
DSC	Digital Signature Certificate
DTA	Domestic Tariff Area
E-invoicing	Electronic Invoicing
ERP	Enterprise Resource Planning
GSP	GST Suvidha Provider
GTA	Goods Transport Agency
GST	Goods and Services Tax
IRN	Invoice Reference Number
IRP	Invoice Reference Portal
JSON	Java Script Object Notation
NBFC	Non-Banking Financial Company
NTOR	Non-Taxable Online Recipient
OIDAR	Online Information and Data Access and Retrieval
PDF	Portable Document Format
QR Code	Quick Reference Code
SEZ	Special Economic Zone

Consequences of issuing an invoice without IRN

In terms of **Rule 48(5),** where a registered supplier who is required to issue an e-invoice but does not issue such e-invoice, then invoice issued by him shall not be treated as an "invoice" and resultantly shall not be legally valid. Therefore, the recipient shall not be able to avail the eligible

input tax credit on the basis of the said document. Looking from another perspective, the recipient has to suffer due to non-availment of ITC if the supplier issues an invoice without IRN. On the other hand, the supplier shall be liable to a penalty under **Section 122(1)** for issuing an incorrect invoice i.e. invoice without IRN. Section 122(1) provides for following penalty:

Higher of the following amounts:	
(i)	Rs. 20,000 [Rs. 10,000 each under the CGST Act and the respective SGST Act]
(ii)	An amount equivalent to the tax evaded

Supplies falling within the purview of e-invoicing

Supplies to registered persons (B2B), Supplies to SEZs (with/without payment of GST), **Exports** (with/without payment of GST), Deemed Exports, by notified class of taxpayers are currently covered under e-invoice. However, B2C invoices and import Bills of Entry are not subject to e-invoicing provisions.

Special procedure for taxpayers for issuance of e-Invoices in the period 01.10.2020 to 31.10.2020

Above-mentioned registered persons shall obtain an **IRN** for e-invoice by uploading specified particulars in **FORM GST INV01** on the Common GST Electronic Portal, within 30 days from the date of invoice. **For example**, a registered person has issued an invoice dated 11.10.2020 without obtaining IRN but uploads the details of such invoice to IRP and obtains the IRN of the invoice on or before 10.11.2020, then it shall be deemed that e-invoicing provisions of Rule 48(4) have been properly complied with.

Persons exempted from complying with e-invoicing provisions at the entity level

S. No.	Persons	N. No.	Date
(a)	Insurance company/ banking company/ financial institution including a NBFC-**Rule 54(2)**	13/2020-CT	21.03.2020
(b)	Goods transport agency- **Rule 54(3)**		
(c)	Person supplying passenger transport service- **Rule 54(4)**		
(d)	Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens- **Rule 54(4A)**		
(e)	A SEZ unit	61/2020-CT	30.07.2020

Persons not exempted from complying with e-invoicing provisions at the entity level

(a)	An Input Service Distributor
(b)	A Special Economic Zone developer
(c)	A Domestic Tariff Area (DTA) unit even though SEZ Unit of the same entity is exempt.

(B) INVOICE REGISTRATION PORTAL

IRP is the website for uploading/reporting of invoices by above-mentioned notified registered persons. 10 GST Electronic common portals have been notified for preparation of the e-invoices. IRP has been active since January, 2020 and can be accessed at www.einvoice1.gst.gov.in. Furthermore, DSC of the supplier is not mandatory while reporting an e-invoice to IRP. IRN cannot be generated by the supplier directly because the same shall be provided by IRP.

Multiple modes for generation of e-invoice

(a)	API based (integration with Taxpayer's System directly)
(b)	API based (integration with Taxpayer's System through GSP/ ASP)
(c)	Free Offline Utility ('Bulk Generation Tool', downloadable from IRP)

In addition, web-based / mobile app-based modes are also expected to be provided in future.

Bulk uploading of invoices to IRP

Bulk uploading of invoices to IRP is possible. The offline utility ('**bulk generation tool'**) serves this purpose. Further, **ERP or** accounting systems used by large taxpayers can be designed in such a way that they can report invoices in bulk to IRP.

IRP will generate IRN instantly irrespective of simultaneous uploading of invoices by various registered persons

IRP is only a pass through validation portal. Certain key fields will be validated on IRP. So, IRN will be generated instantly. Further, IRN will not store or archive e-invoice data. IRP has healthy capacity to handle simultaneous uploading of invoices by various notified registered persons. Further, multiple IRPs will be made available to distribute the load of invoice registration.

(C) MEANING AND NEED FOR "E-INVOICE SCHEMA"

'The Greek word "schema" means "form, shape, appearance". Thus, 'e-invoice' schema is the standard format for electronic invoice. It is notified as **'Form GST INV-1'.** Further, it is a single standard applicable to all businesses in the country. Many optional fields are available in the schema to cater to the requirements of specific businesses and practices followed by industry and trade in India.

Need for "e-invoice schema"	
(a)	Presently, businesses are preparing/generating invoices in their respective ERPs/Accounting/Billing Software. All software have their own format of storing the data of invoice. Thus, the e-invoice generated by one system may not be understood by the other, thereby necessitating data entry efforts and consequent errors and reconciliation problems.
(b)	It acts as uniform standard for ERP/ Billing/ Accounting software suppliers to build utility in their solution/package to prepare e-invoice in notified standard. Resultantly, Schema ensures that e-invoice generated by any ERP/Accounting and Billing Software is correctly understood by another ERP/ Accounting software. Besides, it is also required for ensuring uniformity in reporting to IRP.
(c)	It ensures that e-invoice is **'machine-readable'** and **'inter-operable'** i.e. the invoice/format can be readily 'picked up', 'read', 'understood' and further processed by different systems like Oracle, Tally, SAP etc.

Maximum 1000 number of line items can be reported in an invoice

At present, 1000 number of line items can be reported in an invoice. However, registered persons who are required to report more than 1000 line items may contact NIC (support.einv.api@gov.in) with a few sample invoices having more than 1000 line items, so that necessary enablement can be made.

Issue of separate invoice for items outside the scope of GST

In current schema, there is no provision to report details of supplies not covered under GST. For example alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (common known as petrol), natural gas and aviation turbine fuel. Consequently, in respect of supply of any of the foregoing items, separate invoice may be issued by such businesses.

Generation/cancellation of IRN by IRP

IRN is a unique reference number (hash) generated and returned by IRP, on successful registration of e-invoice. A typical IRN is a **unique 64-character hash.** Contrarily, **Invoice Number**, for instance, Kirti Ltd./606/2020-21, is assigned by supplier and is internal to business. Its format can differ from business to business.

IRN can be cancelled through 'Cancel API' within 24 hours from the time of reporting invoice to IRP. However, if the **connected e-way bill is active or verified** by officer during transit, cancellation of IRN shall not be permitted. In case of cancellation of IRN, **FORM GSTR-1** also will be updated with such 'cancelled' status.

Rejection of invoices by IRP under certain circumstances

IRP can reject an invoice. IRP will check whether the invoice was already reported and existing in the GST System. This validation is based on the combination of supplier's GSTIN, invoice number, type of document, financial year, which is also used for generation of IRN. In case the same invoice (document) has already been reported earlier, it will be rejected by IRP. Certain other key validations will also be performed on IRP. In case of failure, registration of the invoice won't be successful, IRN won't be generated and invoice will be rejected along with relevant error codes. In case of rejection, error code will be generated which will give idea about reason for rejection.

Return of signed JSON by IRP

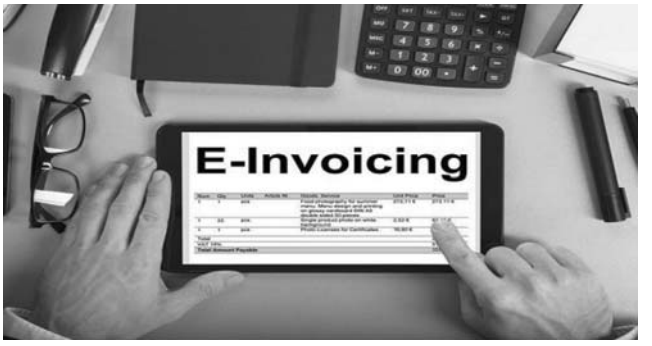
Upon successful registration of invoice on IRP, it will return a signed e-invoice in JSON to the supplier with IRN and QR Code. No PDF will be returned. On receipt of signed JSON, it is for the respective ERP or Accounting & Billing software system to generate PDF, if needed.

Printing of e-Invoice / IRN / QR Code

Once the IRP returns the signed **JSON,** it can be converted into PDF and printed, if required. However, printing of IRN on the e-invoice is optional. The QR code shall be part of signed JSON, returned by the IRP. QR Code will be a string (not image), which the ERP/accounting/billing software shall read and convert into QR Code image for placing on the invoice. However, printing of QR code on separate paper is not allowed. Furthermore, while the printed QR code shall be clear enough to be readable by a QR Code reader, the size and its placing on invoice is upto the preference of the businesses. It is also to be borne in mind that while returning IRN, the IRP also gives an **"acknowledgement no." and "date"** which is not required to be printed on the e-invoice. However, the supplier has option to print the same because being a 15-digit number, the acknowledgement number will also come handy for printing e-invoice or for generating e-way bill instead of keying in the 64-character long IRN.

No need to issue e-invoice in triplicate or duplicate

In terms of Rule 48(6) there is no need of issuing e-invoice copies in triplicate in case of supply of goods or in duplicate



in case of supply of services. However, e-invoices can be downloaded and saved on handheld devices, depending on the ERP/Accounting/Billing Software, being used by the supplier and recipient.

IRP shall not send e-invoices to the recipient of supplies

On generation of IRN, the IRP will not send or e-mail the e-invoice to the receiver. Inversely, the supplier shall share the PDF of the JSON (including signed QR code) received from IRP with the receiver. Alternatively, the supplier can convert the signed e-invoice JSON into PDF and share the copy by e-mail or send printed copy by post, courier etc. However, a mechanism to enable system-to-system exchange of e-invoices is expected to be made available in due course of time.

Amendment of e-invoices

Amendments in the details of a reported invoice for which IRN has already been generated are not feasible on IRP. However, such amendment may be made while furnishing **FORM GSTR-1.**

(D) QR CODE TO BE CAPTURED ON B2C INVOICE WITH EFFECT FROM 01.12.2020

A registered person whose aggregate turnover exceeds Rs. 500 crores in any preceding financial year from 2017-18 onwards shall have a QR Code **on B2C Invoice** with effect from 01.12.2020. However, Insurance Company, Banking Company, Financial Institution, NBFC, GTA, Person supplying passenger transport service, Multiplex and a person located in a non-taxable territory and supplying OIDAR services to **NTOR** have been exempted from complying with aforesaid QR Code provisions. NTOR means any Government, local authority, governmental authority, an individual or any other person not registered and receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory. However, where such registered person makes a QR **code available to the recipient through a digital display**, such B2C invoice issued by such registered person containing cross-reference of the payment using a QR code, shall be deemed to be having QR code.

Contents of the QR Code

(a)	GSTIN of Supplier
(b)	GSTIN of Recipient
(c)	Invoice number, as given by the supplier
(d)	Date of generation of invoice
(e)	Invoice value (taxable value and gross tax)
(f)	Number of line items
(g)	HSN Code of main item (line item having highest taxable value)
(h)	Unique IRN
(i)	IRN Generation Date

Placing of more than QR Codes on e-invoice

In addition to the QR code relating to IRN, the supplier is free to place any other QR Code which is necessitated either for complying with any other statutory requirement or business requirement. However, proper distinction must be maintained between different QR Codes.

Electronic production of QR Code for verification

In terms of substituted Rule 138A (2), in case of issue of e-invoice, QR Code having an embedded IRN may be produced electronically, for verification by the proper officer in lieu of physical copy of such tax invoice.

(E) CONCLUSION

E-invoicing is a new concept in India but the same has been successfully followed in different countries for arresting evasion of GST and discouraging subsequent fraudulent amendments. The compliance burden of the registered persons as well as those of Chartered Accountants shall increase slightly due to e-invoicing provisions. At the same time, in the initial phase of implementation of e-invoicing, Government may face certain difficulties. Nevertheless, the concept of e-invoicing is bound to reap rich dividends in the form of substantial growth in collection of GST and better compliance in the long run

* * * * *

The first state which implemented the GST was Assam.

GST and Litigation

CA Jatin Christopher

Introduction

Litigation by revenue, is motivated by a responsibility towards society not to permit a single taxpayer to get away with an adventurous yet unjust interpretation of this tax law. And litigation by taxpayer, is motivated by the despair over the egregious attempt to take a *"second bite at the same cherry"* after having complied with the law, by a simpleton's understanding of this new law. After all, that's how tax laws have been interpreted for decades. One of the two must be wrong but then, with high rates of tax and low amounts to be deposited to litigate, there's enough to inspire litigation in GST. Question that begs consideration is whether GST promised 'no litigation' or 'more litigation'.

What 'promise'?

There's no such promise in GST; clarity in the law is the premise to expect minimal litigation, that's all. But then, there is an entire society of taxpayers that are looking to see if the Government will do them injustice by omitting to pursue mischievous interpretations taken by some taxpayer's that yields that windfall gains. To do them justice, Government is duty-bound to leave no stone unturned in the pursuit of mischief in interpreting this law.

Scope for mischief exists because every tariff entry is riddled with more than one sub-entry with vastly differing rates of tax. For example, HSN 9985 in the case of 'tour operators' states the tariff rates at entry 23(i) v. 23(iii) that is compelling enough for bypassing the credit restrictions and offer to pay higher tariff where tax in the entire chain is creditable by Customer. And then there are scores of other examples that only make the case for multiplicity of plausible rates, stronger.

Without any pre-emptive power to confirm which entry applies so that litigation is avoided even if taxpayer is disheartened. And Advance Rulings have proved to be a bargain between taxpayer and revenue that delivers on the promise of certainty about the quantum of liability, but not on the hope of harmony and uniformity in interpretation of this new law, across the country.

'Power and perils' of self-assessment

Power to self-assess tax liability carries with itself perils of misinterpretation, that is, any error in determining tax liability rests on the shoulders of taxpayer to suffer the demand of differential tax with interest and penalty, depending on whether the error is ascertained by self or by revenue authorities. Admitted errors should generally not result in litigation as the liability is anyway admitted. Cumulative period over which the liability relates may compel taxpayer to avoid voluntary discharge of dues, even admitted ones.

Some taxpayers have been lethargic in understanding the strides made in this law in overcoming limitations in the earlier tax regime and to make deep inroads into territory that was unreachable earlier. Tax on immovable property transactions, is one example and treatment of transactions involving 'goods' to be taxed as if they were involving 'services'. Some even said *"its basically old wine in a brand-new bottle"* and gave little credit to the Constitutional amendment that was necessary to introduce this new law.

Encouraged by Government to 'contend'

There are a number of instances where the possibility to contend with the liability is 'high'. Having passed the

point of issuing tax invoice and passing on the incidence, process of demanding additional tax from not palatable to Customer. And possibility to 'contend' with the liability is welcomed with enthusiasm as there is always someone willing to litigate because they can.

Taxpayer's moral rectitude is not on trial in tax litigation. In fact, taxpayer's capacity to resist any demand is richly rewarded with impoverished demands by revenue. Government's own admission in the speech of Hon'ble FM while introducing the Bill leading to Finance (No.2) Act, 2019 that:

> *"141. GST has just completed two years. An area that concerns me is that **we have huge pending litigations** from pre-GST regime. More than Rs. 3.75 lakh crore is blocked in litigations in service tax and excise. **There is a need to unload this baggage and allow business to move on.** I, therefore, propose, a Legacy Dispute Resolution Scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations."*

This erosion of enthusiasm to pursue litigation on the part of the Government either points to a lack of confidence about demands raised or but also emboldens taxpayers to attempt mischievous new ways to interpret this law.

If one were concerned that this SVLDRS Scheme was not about GST, consider that the Government has extended its own power to relieve taxpayer difficulties under section 172 by two more years. When power is assumed, it will surely be exercised. This power has been exercised once before when Second Removal of Difficulty Order was passed by extending time-barred credits under section 16(4). And when taxpayer's difficulties can be removed, taxpayers with difficult surely exist.

Burden of 'newness' of this law

Well-settled is only after the law has received careful consideration of the Courts that have laid down the interpretation that the law ought to have always received. This process is not one that can be concluded in haste. Writ Courts are loath to admit petitions challenging vires of this law when there is either a mere apprehension of an unlawful demand being foisted on taxpayer or when an efficacious remedy being anyway available in the law, accessing Courts of Equity is premature.

Given this (rightful) degree of loathness, revenue is emboldened to canvass (every possible) alternate interpretation to give this law a *"day in the field"* to test its elasticity and see if any higher amount of revenue may be recovered or any lesser amount of credit may be admitted. There is no gainsaying that there is anything amiss in this endeavour because 3 years of history is witness that such interpretations have managed to find favour with Courts.

Not only revenue but taxpayers too have shown affinity to test its elasticity but with the opposite end in mind. And when the transactions are either B2C and the price is peaked out in the market or B2B but credit is inadmissible for any reason, taxpayers are all too happy to attempt yet another interpretation that the language can be compelled to render.

In between these two adventurers lie, lethargic taxpayers who have woken up 3 years too late and are shaming the law, blaming the bureaucracy, claiming 'another last chance' to start afresh.

Procedure 'precedes' revenue

Delivery of justice was viewed as 'arresting revenue leakage'. Tax administration has pursued this path to justice with great resolve. But in this new law, 'procedure established by law' takes precedence. If the procedure is lawful, justice cannot be too far. Provisions like section 75 laying down taxpayer safeguards makes it takes justice delivery to great heights. It only requires taxpayers to pay attention to their own safeguards. Taxpayers, blinded by their innocence, have been used to deny themselves the safeguards present in the 'procedures established by law'.

Privy Council has laid down these instructive words in Nazir Ahmad v. King Emperor AIR 1936 PC 253 that:

*"When a statute requires a thing to be done in a particular manner, **it must be done in that manner or not at all**."*

These words have received unquestioned approval from both sides and the words of Apex Court in State of Orissa v. Dr. (Mrs.) Binapani Dei & Ors AIR 1967 SC 1269 makes the relevant of 'procedures established by law' to be the salutary means to deliver justice beyond the conscience of any tax administrator. And these words merit repetition:

*"The rule that a party whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. **It is one of the fundamental rules of our constitutional set-up that every citizen is protected against exercise of arbitrary authority by the State or its officers.** Duty to act judicially would, therefore arise from the very nature of the function intended to be performed, it need not be shown to be super-added. **If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power.** If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."*

Adjudicating Authorities are barred from travelling beyond the scope of cause notice in section 75(7) and First Appellate Authorities are barred from confirming demands on matters that come to light in *second proviso* to section 107(11), during the course of disposal of an appeal. Confident that such procedures will be overlooked in the notice or during adjudication, taxpayers are leaning on the adherence to these procedures that even genuine tax liabilities are bound to be dismissed later in appellate proceedings.

Constructing notice, now 'an art'

Over and above the statutory safeguards in section 75, Apex Court has cautioned that 'principles of natural justice' must be followed, even if they are not expressly stated in the law. And these are found in the celebrated decision of Apex Court in the case of Menaka Gandhi v. UoI AIR 1978 SC 597 that:

"The court must make every effort to salvage this cardinal rule to the maximum extent permissible in a given case. It must not be forgotten that "natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances". The audi alteram partem rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. ***The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being hear and the hearing must be a genuine hearing and not an empty public relations exercise.*** *That is why Tucker L.J., emphasised in Russel v. Duke of Norfolk [1971] I WLR 728 that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation."*

Taxpayers are not required to familiarize themselves with their rights and remedies in law and not frustrate those rights by failing to object to the validity of any notice because section 160(2) procures legitimacy to any otherwise illegitimate proceeding by deriving authority by taxpayer's own acquiescence in omitting to question its validity or proceeding to attend to notices on merits.

Taxpayers will now be careful in guarding their rights and not give them away, not only when they are confident about their tax positions but especially when they are doubtful about it.

Tribunals 'galore'

National Tribunal in New Delhi and Regional Benches in Mumbai, Chennai and Kolkata, every State with its State Tribunal and Area Benches besides Single Member Benches, will be GSTAT when finally rolled out. When the law makes room for more than 150 Tribunal benches, it is no surprise that there will be that much litigation. Its only when turbulence is expected will the Captain announce, *"please return to your seats and fasten your seatbelts"*. But passengers are still moving about, because they didn't hear anything about 'turbulence'.

After all, Tribunal is the Second Appellate Authority. It is anyone's guess how many First Appellate Authorities may be established once transactions come under close scrutiny of administration. It is nevertheless that when the top of this pyramid is 150 strong, the bottom would be exponentially broader. Message conveyed (and not even complaining) about potential for litigation in this new law truly deserves careful consideration by taxpayer and professionals alike.

Unconscionable 'SMR' proceedings

Any student of Administrative Law will balk at this provision in section 108 where an Executive Officer is empowered to not only sit in judgement to pass revisionary orders based on the propriety of a quasi-judicial order of Adjudicating Authority but also the order of the First Appellate Authority. This provision is alarming when department appeal is permitted under section 107(2) before the First Appellate Authority against orders of Adjudicating Authorities and under section 112(3) before the Second Appellate Authority.

Revisionary Authorities operate under a limitation of 3 years whereas after 6 months, remedy of departmental appeal will be lost. It's explicitly clear that taxpayers are not entitled to celebrate favourable orders until 3 years pass.

It is the acrimony of these revisionary proceedings that taxpayers must tread carefully not to disclose all their defences by furnishing extensive rebuttal evidence because a demand that would fail for defects in the grounds could be indirectly cured in revisionary proceedings. That is, Revisionary Authorities, after staying the operation of a favourable order on the grounds that it is *"prejudicial to*

the interest of revenue" are empowered to pass revisionary orders enhancing or modifying or annulling the said decision or order *"after making such further inquiry as may be necessary"*.

It is therefore awful that an innocent taxpayer may enthusiastically make such elaborate rebuttal submissions before Adjudicating Authorities or even before First Appellate Authorities, which ought to have been the outcome of a well-rounded investigation before issuance of show cause notice, that becomes available in the hands of Revisionary Authority to 'peruse and adopt' these submissions 'as if' they were discovered in revisionary inquiry to now more properly do to support the demand that the original proceedings failed to do. Taxpayers are now rendered stingy in making rebuttal submissions to avoid the perils of section 108 that their own replies will procure adverse orders until matters are forced to reach Tribunal – Second Appellate Authority. Now that explains why there will be 150 Tribunal benches.

Conclusion

Avoidance of litigation cannot be anyone's responsibility except the Legislature. But a law that enjoyed the benefit of a Constitutional amendment where whole new articles and even a brand-new Constitutional GST Council was put in place, that it could have pursued these goals – simple, seamless and sensitive – approach that reposed trust and confident in the taxpayer who has shown during these unprecedent times by shoring revenues in excess of Rs.1 lakh crore and making real contribution to Nation building. And time will tell if fears about imminent explosion in litigation is entirely misplaced anxiety of a simpleton!

* * * * *

The GST was launched at midnight on 1 July 2017 by the President of India, and the Government of India. The launch was marked by a historic midnight (30 June – 1 July) session of both the houses of parliament convened at the Central Hall of the Parliament. Second anniversary of implementation of historic tax reform of Goods & Services Tax as 1st July is celebrated as the "GST DAY".

Circular Trading and Fake Invoices has become Buzzword in GST – another Prospective for Introspection

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Any new law replacing the earlier laws in taxation essentially should have two unique features namely (1) to reduce litigations; (2) to plug the loopholes for evasion of taxes thereby enhance the tax buoyancy. On 1st July 2017, the day when the GST was introduced by replacing the various indirect taxes, now, with the experience of more than 3 years, it can be said that it has neither reduced litigations and not plug the loopholes for evasion of taxes. In fact, there is a surge in litigations across country many on account of problem faced by the taxpayers due to poor performance of GSTN network/GSTN portal and many others on account of repetitive amendments by the delegated legislation, making law more complex and denying the input tax credits and other benefit under GST.

GST litigation is getting momentum. Under GST, Circular trading and fake invoices has become buzzword. GST Department across country have booked large number of cases on the allegation of circular trading and fake invoices and large number of people have been arrested which includes many professionals also in the alleged racket of fake invoices. In the process, the Department also alleged that there was no supply of goods in these transactions and therefore input tax credit has been wrongly availed.

The litigation on account of alleged circular trading and fake invoices was unheard before the introduction of GST. Now, therefore, the question arises - whether with the introduction of the GST, there is an impetus to the alleged transactions of circular trading or fake invoices? And if such kind of transaction were already in place then - why the GST has not taken care to curb on such transaction? On the contrary, it appears that with the introduction of GST, there is surge in such kind of transactions, which has led to the booking of thousands of cases across country by the GST Department on alleged transaction of circular trading and fake invoices. Analogous question may arise - are these cases have been booked on false allegations of transactions of circular trading or fake invoices? Which are most likely to be, as per factual matrix and the legal provisions under GST, as discussed hereunder.

Let's understand what is "circular trading" and what is "fake invoices" as alleged by the GST Department, before to draw any inference and conclusion about such allegation.

"Circular Trading": In simplest way it can be defined as when supply of goods or transaction of goods, take place among the few taxpayers, it is called as circular trading. For instance, firm A supply the goods to firm B, and firm B supply goods to firm C, and firm C supply goods to firm D, and so on…. and by the last transactions, goods is supplied to firm A. Now the question arises, even if such transactions take place, is it illegal? Or is it banned under the law? All such transactions by itself lead to any evasion of tax? If answer to these questions is in negative then how the taxpayer could be booked for alleged circular trading. The circular trading referred by the Department is the term coined by themselves, it could have relevancy only if transactions are made without payment of GST to evade taxes.

Let's see how these transaction take place and reported and then judge the questionability of these transactions.

When firm A supply the goods to firm B, a raises an invoice on the firm B with GST, and such GST are paid to the government and proper return (GSTR-1/GSRT-3B) is filed. Similarly, firm B supply goods to firm C, and firm C supply goods to firm D, and so on…. And it is told that in most of the cases GST so levied, collected and paid are also reflected in GSTR-2A. There are possibility, in some case, selling dealer, would not have deposited GST, which is discussed in later hereinafter. However, despite all this compliance of the law and there are no apparent irregularities, the departmental officer found fishy and book the cases on the grounds that these are the circular trading. Over and above, the Department officers also alleged that in these transactions, there is no supply of goods.

In case, it is assumed that the allegation of the Department is correct that there is no supply of goods in this so-called alleged circular trading, then the pertinent question arises – do the Department has any legal right to collect even the GST on such transactions? Are such transactions covered within the ambit of GST law? As per section 9 of the CGST Act, 2017, GST is levied on the supply of goods. Therefore, if the Department stand is accepted that there is no supply of goods than there is no question of levy of GST. Thus, the collection of GST on such transactions, itself become illegal and the entire transactions will be out of the ambit of GST. However, while in this so-called circular trading when the tax is collected by the Department from firm A, it never alleged that there is no supply of goods but when on the invoice issued by the firm A, the firm B took input tax credit than in the hands of the firm B, it is alleged that they are not eligible for input tax credit as against that invoice there was no supply of goods. Therefore, when the Departments are collecting GST on each such transaction from firm A, by no stretch of imagination could be found fouled in law and it cannot deny the input tax credit in the hands of the firm B. The ratio laid down by Hon'ble Delhi High Court in the case ***C.W.T. v Inder Sharma (1997) VI AD (Delhi) 1029*** will squarely apply in the present case wherein while dealing in the wealth tax matter it was held that "if the dwelling unit belongs to the assesse then liable to be included in his net wealth and at the same time liable to taken into consideration for the purpose of exemption". Therefore, GST authority cannot take a plea while collecting the tax that there is a supply of goods and at the same time, while the input credit is taken, for the same very transaction, cannot alleged that there is no supply of goods. GST is collected only after giving input tax credit. Therefore, the Department wishes to levy and collect tax by denying the input tax credit, which is against the very basic concept of GST, which is levy and collected on value addition, and moreover, that too by alleging that "no supply of goods", whereas the levy itself fails, if the Department itself take a stand that there is no supply of goods. Therefore, the entire allegations of the GST Departments are imaginary and even contrary to the legal provisions itself. Therefore, entire their allegations fall flat in law.

"Fake Invoices": While levelling the serious allegation and arresting the persons, GST Department also alleged that the input tax credit have been taken on the fake invoices. The term fake invoices have not been defined in the law. But by common sense one can understand what can construed as fake invoices. A fake invoice could be an invoice which generated & sign by the person other than the person from the invoice belongs to. For instant, if the invoice is of ABCD and company and if that invoices generated by firm X & sign by the person other than the person authorised by ABCD and company, in that case, such invoice would be termed as fake invoice. Whereas, in all such cases, the Department has no such allegation and as such invoices issued by ABCD and company and also signed by the person authorised by the ABCD and company. In such a case no invoice can be construed at fake invoices. It appears that the Department is crying more than the actuality and their entire their allegations fall flat in law.

"Reversal of input tax credit" and collection of GST multiple times on full value: Surprisingly, when the Department make an allegation against the persons so arrested, the prime objective of the Department appears to be to insist upon to pay the taxes equivalent to the amount of input tax credit availed by them on the transaction alleged to be circular trading by alleging that such input tax credit has been taken on the fake invoices. Therefore, essentially what the Department is putting their case in a manner that while the GST has already been collected from the firm A, while insisting to the firm B, to reverse the input tax credit on the same very invoices issued from the firm A on which the GST has already been collected. This essentially means the firm B has to pay GST on the entire value mentioned in the invoice issued to the firm C, without availing the input tax credit. This would be going against the very concept of the GST which is levied and collected on the

value addition. In fact, while issuing the press releases, GST officers cry high that they have unearth the tax evasion on the fake invoices which run into thousands of crores. While giving these figures, it appears that on the one hand they alleged that is no supply of goods and on the other hand they accounts the figure in the hands of each firm of their total turnover without allowing them the input tax credit. Whereas if there is no supply of goods, they cannot demand the GST from any of the firms, whereas they are demanding GST from each from without allowing them to take into tax credit. This stand of the Department itself is self-contradictory and against the legal provisions. If the Department is continuing to going to take such stand, the Department will not stand anywhere in the court of law and their entire their allegations fall flat in law.

Can input tax credit be denied on the grounds other than mention in the law?

The Department denied the input tax credit in all the cases where the allegations have been made of circular trading or fake invoices, on the grounds that there is no supply of goods, which has already been explained. However, the Department many a times, also add newer grounds that the selling dealers could not be found/ traced or not in existence at the address mentioned in the invoice even though selling dealer is the registered as per GST portal on that address only. Firstly, is any duty has been cast under the law on the buying dealer about all these things? Answer is no. Therefore, the second question arises whether the GST Department can book a case against the taxpayers on the grounds for denial of input tax credit which is not found in the law. Answer to this question is also in negative as eligibility and non-leviablity of the input tax credit is there in the section 16 whereas the blocked credit provisions are there in section 17. Therefore, the Department cannot make out a case against the assessee to deny the input tax credit on a ground unfounded in the law. As per section 16(1) of CGST Act, every registered person is entitled to take credit of input tax charged on any supply of goods to him which are used or intended to be used in the course or furtherance of his business. Therefore, when in so-called circular trading, firm A supply the goods to the firm B, and firm B supply to the goods to firm C and so on, in these cases each firm is entitled to take credit of the GST charged by the previous firm as these transactions are in the course or furtherance of business. Further, sections 16(2) of the CGST Act, spell out the certain conditions wherein the input tax credit is not allowed such as (a) when he is not in a possession of tax invoices issued by the registered supplier, whereas in such case allegations is not that there is no invoice, but allegations are invoice is fake, as already discussed hereinabove (b) he has received the goods. As per explanation attached to this section, it is not necessary goods has to be received physically by the dealer, even if goods is delivered to the 3rd party on his direction, it will be sufficient compliance of the requirement. However, as explained hereinabove, if the Department take a stand that there is no supply of goods than it will be out of ambit of the GST law. (c) GST has actually been paid to the Government. Most of the cases, even where GST has been paid, it has been alleged by the Department that there is no supply of goods hence input tax credit is denied. Moreover, once the buyer pays GST to the seller and if the seller does not pay to the government, this cannot be legal grounds to deny the input tax credit. In ***On Quest Merchandising India Pvt. Ltd. v Govt. of NCT of Delhi 2018 (10) G.S.T.L. 182 (Del.)***- the constitutional validity of Section 9(2)(g) of the Delhi Value Added Tax, 2004 ('DVAT Act') as being violative of Articles 14 and 19(1)(g) of the Constitution of India - "(g) to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period." The High Court held that "**54.** The result of such reading down would be that the Department is precluded from invoking Section 9(2)(g) of the DVAT to deny ITC to a purchasing dealer who has *bona fide* entered into a purchase transaction with a registered selling dealer who has issued a tax invoice reflecting the TIN number. In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the remedy for the Department would be to proceed against the defaulting selling dealer to recover such tax and not deny the purchasing dealer the ITC. Where, however, the Department is able to come across material to show that the purchasing dealer and the selling dealer acted in collusion then the Department can proceed under Section 40A of the DVAT Act." Similarly in the case of **Gheru Lal Bal Chand v State of Haryana and Anr. 2011 SCC OnLine P&H 13205** it is held that "33. To conclude,

no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered dealer in the treasury unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer is established. 34. In view of the above, it cannot be held that the provisions of section 8(3) of the Act and the sub-rules (1) and (4) of rule 20 of the Rules are ultra vires but the same shall be operative in the manner indicated above. Consequently, the writ petitions are partly allowed and assessment orders are set aside and cases are remanded to the assessing authority to pass fresh assessment order in accordance with law.

Whether a person can be arrested without adjudication of the show cause notice?

Yes. Under GST, the Commissioner has very vast power to order for an arrest of any person to whom he believed that he has committed any offence covered by the clause (a) to (d) of sub-section (1) of section 132 of CGST Act, 2017, where the amount of tax evaded or input tax credit wrongly availed or utilised exceed 5 crore rupees. In **Vimal Yashwantgiri Goswami v State of Gujarat in R/ Special Civil Application No. 13679 of 2019** judgment dated 20/10/2020, and in para 77 of the judgment has concluded that "we are of the opinion that the power to arrest as provided under section 69 of the CGST Act can be invoked ……..without there being any adjudication for the assessment as provided under the provisions of the Chapter VIII of the CGST Act."

Whereas number of petitions have been filed in the High Court's to challenge the constitutional validity of the provision of arrest and prosecution under the CGST Act 2017. In K.P. and Sons and Ors. v UOI and Ors. in W.P.(C) 10130/2020, the High Court in its interim order dated 08.01.2020 has recorded that "6. Mr. J.K. Mittal learned counsel for the Petitioners submitted that Sections 69 and 132 of the Central Goods and Services Tax Act, 2017 (for short 'CGST Act') are unconstitutional as being provisions of criminal nature, they could not have been enacted under Article 246A of the Constitution of India, 1950. They emphasized that the power to arrest and prosecute are not ancillary and/or incidental to the power to levy and collect goods and services tax." These petitioners are pending for final adjudication.

Conclusion:

The personal liberty of a person as ensured and granted under Article 21 of the Constitution should not be taken away merely on pretence, which as appears are happening on account of frequently arresting people by booking cases under the GST. The Government cannot be permitted to take dual stand, on the one hand levying and collecting GST on the same very transaction and while input tax credit is taken against the same making allegations that there is no supply of goods. At the same time the Government cannot be permitted to collect the tax (GST) on the same transaction without allowing the input tax credit as it goes against the very concept of GST which is a tax on value addition. In case the tax is permitted to be collected on the entire value of the transaction without allowing the input tax credit in that case it goes against the Article 265 of the Constitution of India, which provides that no tax shall be levied or collected except by authority of law. As of now no case has come to the notice of the general public where any person has been convicted by the court where the GST officers have arrested persons on the alleged circular trading of fake invoices for disallowing the input tax credit. Let us hope at some stage, the judicial scrutiny of such cases will be taken by the courts to its logical conclusion.

* * * * *

The concept of GST was first proposed under the Atal Bihari Vajpayee government. Convinced with the idea of GST, Atal Bihari Vajpayee government set up a committee in 2000 headed by CPM leader and the then Finance Minister of West Bengal, Asim Dasgupta to design a GST model.

Recent Changes in Registration Related Provisions in GST- Would it Really Curb Fake Invoicing??

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We have seen that a lot of amendments have been made over the last year in relation to the registration related provisions under GST. Media reports suggest that these amendments have been brought in by the government to curb the practice of fake invoicing which has become a great pain for government as it is leading to loss of revenue in crores. Also, over the last quarter, more than 100 arrests have been made all over the country to defy the fake invoicing racket operating in the system. Keeping the above challenges in mind, the government has brought in drastic changes in the registration related provisions in GST. The current article tries to capture some of the important changes brought in this regard-

Rule 21 of the CGST Rules 2017- Registration to be cancelled in certain cases –

The Registration granted to a person is liable to be cancelled, if the said person-

(a) *Does not conduct any business from the declared place of business, or*

(b) *Issues invoice or bill without supply of goods or services *OR BOTH in violation of the provisions of this Act, or the rules made thereunder, or*

(c) *Violates the provisions of section 171 of the Act or the rules made thereunder*

(d) *Violates the provisions of Rule 10A*

Now, **w.e.f. 22nd December, 2020**, three additional criteria has been introduced in Rule 21 of the CGST Rules 2017, i.e. Registration is liable to be cancelled if the Registered Person –

(e) *Avails ITC in violation of the provisions of Section 16 of the CGST Act, 2017 or the Rules made thereunder*

(f) *Furnishes details of outward supplies in Form GSTR-1 which is more than outward supplies declared by him in GSTR-3B for the same tax periods*

(g) *Violates provisions of Rule 86B of the CGST Rules 2017.*

Comments : Through this amendment, enormous powers have been vested with the Department officers regarding Suspension / Cancellation of GST registration. The newly inserted clauses are arbitrary as they do not lay down any standard operating procedure for the department to initiate such actions. There can be genuine reasons for differences in GSTR 1/GSTR 3B filed by the assesses, for which even issuing notice for cancellation of registration should not be resorted to and first clarification should be sort from the assesses by way of query and response thereto within a specified period of time. Further, violation of section 16 of CGST Act, 2017 should have to be proved by the department with cogent reasons and merely difference in GSTR 2A and GSTR 3B ITC should not be a criterion for such violation, in our humble view.

Further, In Rule 21A of the CGST Rules, 2017, i.e., **Suspension of Registration**, sub-rule 2A has been inserted. The gist of the same is produced below-

If there are **significant differences or anomalies** between-

- *Outward supplies furnished in GSTR-1 versus GSTR-3B*

- *Inward supplies furnished in GSTR-3B versus outward supplies furnished by the suppliers in their GSTR-1*
- *Or other such analysis recommended by the Council, indicating contravention of Act or Rules, leading to Cancellation of Registration,*

then Registration shall be suspended, and Intimation shall be sent to the said person.

Comments: Registration can be suspended if there are significant differences between GSTR-1 and GSTR-3B or GSTR-2A/2B and GSTR-3B. Significant differences is yet to be clarified by the Department. What is significant as per Department has to be notified vide SOP for the same. Seeing the amendments, it is a must to prepare a reconciliation of GSTR-1 and GSTR-3B. Also, GSTR-2A Reconciliation is an immediate need of the hour. However, in our view the provisions can be misused and thus appropriate instructions should be issued by CBIC on urgent basis.

Now, If the registration of a person is liable to be cancelled under Section 29 of the CGST Act, 2017 read with Rule 21 of the Rules, 2017, then NO OPPORTUNITY OF BEING HEARD shall be given before Suspension ***i.e., the Department can suspend the Registration and only after suspension, intimation shall be given to the Registered person, asking reasons that why his registration should not be cancelled for which a thirty day time period has been prescribed in the law***.

Intimation shall be sent to Registered Person in FORM GST REG-31 and asking him to explain (within 30 days) the reasons why his registration should not be cancelled.

During the period of suspension, the following cannot be undertaken -

a. **no taxable supply shall be made by the Registered Person**

b. **no refund shall be granted to the Registered Person**

Also, Important point to be noted here is, Proper Officer may revoke the suspension at any time during the pendency of cancellation proceedings if he deems fit.

Comments: Registration shall be suspended and post which Intimation shall be made is a major amendment. This would lead to non-payment of consideration by service recipients to the suppliers as their status in GSTN portal would be shown as suspended and hence the recipient may fear non availment of ITC on invoices issued by such suppliers and thereby lead to closure of such businesses. Also, the power given to Proper Officer regarding revoking of suspension can even lead to harassment of taxpayers in the hands of the department.

Thus, the above amendments show that the department is raring to cancel GST registrations obtained for defrauding the exchequer and the above measures is a steep step towards achieving the same.

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Presently, there are around 160 countries that have implemented the GST or VAT in some form or the other. France was the first country to have introduced GST.

India, being a federal country, has a dual-GST structure – Central GST and State GST. The only other country with a dual GST is Canada.

Impact of Recent Developments in GST

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There have been a spate of developments under GST by issuance of notifications. Also the past few weeks have witnessed various important High Court decisions which would help the taxpayers in the day to day operations. In this article, we will discuss and analyze impact of these notifications and judicial decisions on the businesses and how the Trade and Industry needs to prepare itself for the impact or take benefit of them.

Some of Important notifications and their Impact.

1. **GST registration can be cancelled or suspended under CGST Rule 21 or 21A at the discretion of the tax officer in the following cases -** Notification No 94/2020 – 14th Amendment Rules 2020 -

Rule 21 : Additional Grounds for Cancellation of Registration have been notified vide Rule 21(e to g) –

GST registration of the taxpayer can be cancelled by the officer in any of the following circumstances, when the taxpayer -

(a) does not conduct any business from the declared place of business;

(b) issues invoice or bill without supply of goods or services in violation of the provisions of the Act, or the rules made thereunder; or

(c) violates the provisions of section 171 of the Act or the rules made thereunder.

(d) violates the provision of rule 10A.

(e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or

(f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

(g) violates the provision of rule 86B.

Impact of amendment of Rule 21

Previously the Commissioner did not have a prescribed Rule for cancelling the registration incase of violation of Sec 16 or when there was a major difference between outward tax liability as per GSTR 3B and outward tax liability as per GSTR 1. Now with the insertion of clauses (e) & (f) in Rule 21, the Commisisoner shall also have the prescribed powers to cancel GST Registration incase there is a non compliance as per Sec 16.

In this regard it is pertinent to note Sec 16(2)(c) which requires that payment of tax must be made to The Government for a transaction, barring which ITC shall be disallowed to the recipient. Hence incase the amount of GST paid by the recipient to the supplier is ultimately not paid to the Govt., the dept. may invoke Rule 21. Herein, it is important to note that now the DGARM (Director General of Analytics and Risk Management) is even throwing up cases where L2/L3 supplier may have not paid their taxes. In certain of these cases Rule 86A is being invoked. With the amendment of Rule 21, it is to be seen whether the same would be invoked in such cases. As far as the judicial precedent is concerned, businesses may take shelter under the decision of the Apex Court in the case of Arise India Ltd & Others wherein the Apex Court has ruled that the recipient could not be made to do the impossible of running after suppliers and ensuring their compliance with the law. Also unequal innocent recipients and guilty recipients cannot be treated equally.

2. **No Natural Justice while Suspension of Registration.**

Suspension of registration

21A(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, ~~after affording the said person a reasonable opportunity of being heard~~, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

Impact of amendment of Rule 21A(2)

Rule 21A(2) provides that suspension of GST Registration may be done incase there is reason to believe that there is a violation of Rule 21 or Section 29. The suspension can now happen even without a hearing.

Reason to believe should ordinarily be strong enough and one expects that the department shall be careful in implementing suspension as invocation of this provision would result in a standstill of the business of the taxpayer whereby it would not be able to issue invoices or waybills till such suspension continues.

The vires of Rule 21A(2) with Article 14 of The Constitution may be tested in time to come.

3. **SCN incase of differences as per SOME ANALYSIS –**

Rule 21A (2A) Where, a comparison of the returns furnished by a registered person under section 39 with -

(a) the details of outward supplies furnished in FORM GSTR-1; or

(b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1, or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.

Impact of Rule 21A(2A)

Rule 21A(2A) is a stringent Rule whereby incase of significant differences between GSTR 2A & GSTR 3B or between GSTR 1 & GSTR 3B, suspension of GST Registration can be invoked immediately and in future cancellation of GST Registration too can be invoked. One expects here too, that the department shall be careful in implementing suspension as invocation of this provision would result in a standstill of the business of the taxpayer whereby it would not be able of issue invoices or waybills till such suspension continues.

4. **Addition of Rule 21A (3A)**

"(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.

Rule 138E

U/r 138E : Waybills will also be suspended for such Taxpayers.

Impact of amendment of Rule 21A(3A) & 138E

Rule 21A(3A) is in addition to earlier Rules whereby incase suspension of GST Registration refunds will be denied. Also under Rule 138E, waybills will be blocked.

5. **Rule 59 – No GSTR 1 incase Last Period's GSTR 3B has not been filed.**

"(5) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninetynine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period.

Impact of amendment of Rule 59(5)

Critical to note here that incase last periods' GSTR 3B is not filed, the current GSTR 1 cannot be filed. Hence only after tax payment of last period would the supplier be eligible to issue invoices. In this case it is important for recipients to

ensure that the GSTR 3B of their suppliers is filed and the amount of GST is reflecting in their GSTR 2A before they may payment of the GST amount to the suppliers.

6. **Changes Related to ITC**

Rule 86B – Restriction of ITC to 99%

86B. Restrictions on use of amount available in electronic credit ledger.-

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of 99% of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees

Provided that the said restriction shall not apply where –

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than one lakh rupees as income tax under the Income-tax Act, 1961 (43 of 1961) in each of the last two financial years for which the time limit to file return of income under sub-section (1) of section 139 of the said Act has expired;

(b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or

(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54;

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is –

  (i) Government Department; or

  (ii) a Public Sector Undertaking; or

  (iii) a local authority; or

  (iv) a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

Impact of Rule 86B

The said Rule has been invoked with the intention of dealing with unscrupulous and fly by night operators or circle traders who would now be required to pay some tax at least by cash. However, it remains to be seen how an increase in cost by 1% would be a deterrent to these parties.

For Honest Taxpayers clause (d) is important to note. It gives cumulation facility. However in the beginning of the financial year, Rule 86B would be a hardship for genuine Taxpayers. In this regard Section 21(g) requires invocation of cancellation incase of non-compliance with Rule 86B and to monitor compliance would be a challenge for professionals.

However, this Rule would not bother Large Taxpayers who would certainly have paid more than Rs.1 Lakh in Income tax in the earlier Financial Years.

7. **Rule 36(4) – Excess ITC restricted to 5%**

Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, shall not exceed 5 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility.

Impact of amendment of Rule 36(4) amendment

The restriction of ITC to 105% of GSTR 2A figure would be a hardship. However, it seems that the intention of the revenue in the time to come, is to just allow only the ITC of the GSTR 2A figure. With the inception of GSTR 2B, there would be another reconciliation requirement of GSTR 2A vis-à-vis GSTR 2B wherein there would be the following points of difference-

- 26/26/2017 Effect
- Amendments made in current period reflecting in 2A in the period of the invoice & 2B in the month of the amendment
- Timing differences

Registration Related Changes

8. **Rule 8**

- Introduction of Biometric based Aadhaar authentication and taking of Photograph for issue of new GST Registration
- Verification of original documents uploaded along

with the registration application.

9. **Rule 9**

Increase in time for grant of new Registration from 3 days to 7 days.

10. **Rule 138(10)**

Validity of e-way bill reduced. E-way Bill shall remain valid for 1 day for distance upto 200 Kms and additional 1 day for every 200Kms or part thereof; w.e.f 01.01.2021.

Impact – It is pertinent to note that the per day national average of distance covered by goods vehicles is around 450 kms. This may be the reason for amendment of this rule as still the provision of law is significantly lesser than the national average.

Introduction of Certain Section of Finance Act 2020 w.e.f. 1st January 2020- Notification 92/2020 –

11. In Section 16 of the Central Goods and Services Tax Act, in sub-section (4), the words "invoice relating to such" shall be omitted.

Impact - Section 16(4) of the CGST Act is amended to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. Hence input tax credit on debit notes will be available even if issued after 30th September of next Financial Year. This is a very welcome move wherein the ITC can be availed by the recipient incase of debit notes also on issuance of the same.

12. In Section 10 of the Central Goods and Services Tax Act, in subsection (2), in clauses (b), (c) and (d), after the words "of goods", the words "or services" shall be inserted.

Impact - Section 10 of the CGST Act is being amended, so as to exclude from the ambit of the Composition scheme certain categories of taxable persons, engaged in making-

(i) supply of services not leviable to tax under the CGST Act, or

(ii) inter-State outward supply of services, or

(iii) outward supply of services through an eCommerce operator.

13. In Section 29 of the Central Goods and Services Tax Act, in subsection (1), for clause (c), the following clause shall be substituted, namely:-

"(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25".

Impact - Section 29(1)(c) of the CGST Act is being amended to provide for cancellation of registration which has been obtained voluntarily under Section 25(3).

14. In Section 30 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:-

"Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,-

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a)."

Impact - A proviso to Section 30(1) of the CGST Act is being inserted to empower the jurisdictional tax authorities to extend the date for application of revocation of cancellation of registration in deserving cases.

15. In Section 31 of the Central Goods and Services Tax Act, in sub-section (2), for the proviso, the following proviso shall be substituted, namely:-

"Provided that the Government may, on the recommendations of the Council, by notification,-

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

(b) subject to the condition mentioned therein, specify the categories of services in respect of which-

(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or (ii) tax invoice may not be issued."

Impact - Section 31 of the CGST Act is being amended to provide enabling provision to prescribe that in certain cases in which tax invoice for services may not be issued or issued within a certain time period or some other document may be considered as tax invoice.

16. In Section 51 of the Central Goods and Services Tax Act, –

(a) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.";

(b) sub-section (4) shall be omitted.

Impact - Section 51 of the CGST Act is being amended to remove the requirement of issuance of TDS certificate by the deductor and to omit the corresponding provision of late fees for delay in issuance of TDS certificate. This is a welcome move as issuance of TDS certificates would further add on the compliance burden of taxpayers without

any significant benefit to the administration too.

17. In Section 122 of the Central Goods and Services Tax Act, after sub-section (1), the following sub-section shall be inserted, namely:-

"(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on."

Impact - Section 122 of the CGST Act is being amended by inserting a new sub-section to make the beneficiary of the transactions of passing on or availing fraudulent Input Tax Credit liable for penalty similar to the penalty leviable on the person who commits such specified offences. However It may be noted incase L2/L3 recipients are also penalized under these provisions, it can lead to disruption of businesses.

18. In Section 132 of the Central Goods and Services Tax Act, in sub-section (1),-

(i) for the words "Whoever commits any of the following offences", the words

"Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences'' shall be substituted;

(ii) for clause (c), the following clause shall be substituted, namely:-

"(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;"

(iii) in clause (e), the words, "fraudulently avails input tax credit" shall be omitted.

Impact - Section 132 of the CGST Act is being amended to make the offence of fraudulent availment of input tax credit without an invoice or bill a cognizable and non-bailable offence; and to make any person who commits, or causes the commission, or retains the benefit of transactions arising out of specified offences liable for punishment. However It may be noted incase L2/L3 recipients are also penalized under these provisions, it can lead to disruption of businesses.

19. In Schedule II to the Central Goods and Services Tax Act, in paragraph 4, the words "whether or not for a consideration," at both the places where they occur, shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017.

Impact - Entries at 4(a) & 4(b) in Schedule II of the CGST Act is being amended w.e.f. 01.07.2017 to make provision for omission of supplies relating to transfer of business assets made without any consideration from Schedule II of the said Act. This was a stringent provisions, the implementation of which could cause hardship and therefore the ab initio omission of these clauses is a welcome move.

Recent Beneficial Case Laws for Trade & Industry:

1. **E-Waybill is not extended but there is no evasion of Tax:** Not upgrading or amending the e-way bill when the regular e-way bill had expired in transit falls within the ambit of Section 122(xiv) of the CGST Act and as such the petitioner is liable to penalty. However, for the breach which falls under Section 122(xiv), the penalty is Rs.10,000/- only and not an amount equivalent to tax is leviable when the tax is sought to be evaded or not deducted under Section 51 etc.

   M/s SRI GOPIKRISHNA INFRASTRUCTURE PVT LTD Vs THE STATE OF TRIPURA AND ORS._TRIPURA HC :

2. **Transitional Credit taken in wrong column of the TRAN-1:** No merit in Special Leave Petition filed by the Department. SLP is dismissed on the ground of delay as well as on merits - Answered in favour of assessee.

   NODAL OFFICER DELHI STATE GST DEPARTMENT Vs AAGMAN SERVICES PRIVATE LIMITED & ORS._ SUPREME COURT

3. Amount recovered from the employees towards parental insurance premium payable to the insurance company would not be deemed as "Supply of Service" by the applicant to its employees.

   ION TRADING INDIA PRIVATE LIMITED

4. **No Denial of claim of input tax credit by an erroneous assessment on the ground that the petitioner has not maintained any books of accounts.** Challenge to assessment order passed based on statement made by the petitioner before the Inspecting Officials that they are not maintaining books of accounts.

   TVL. J.F. INTERNATIONAL Vs THE COMMISSIONER OF COMMERCIAL TAXES_MADRAS HC

5. COVID-19 pandemic situation cannot ipso facto be cited as a ground to insist that the tendering of statement be done through video conferencing.

   P.V. RAO Vs SENIOR INTELLIGENCE OFFICER, DIRECTORATE GENERAL OF GST INTELLIGENCE & ORS._DELHI HC

* * * * *

Insights into QRMP Scheme

CA Annapurna Srikanth

Introduction

Yet another jargon which has become quite popular recently in the context of the GST return filing saga is '*QRMP*' which stands for 'Quarterly Return Monthly Payment' Scheme. The scheme has been devised with multiple agenda out of which the primary one appears to be the integration and harmonization of data flowing through multiple forms GSTR-1: GSTR-3B: Corresponding GSTR-2A/2B.The other one of-course being reducing the filing frequency of GSTR-1 and GSTR-3B to quarterly for SME sector, but not to forget tax payments have to be monthly.The monthly tax payments come with a choice either to make payment of fixed sum for the first 2 months of the quarter based on the previous trend or the actual liability self-assessed for that month.However, the QRMP scheme per se is completely optional and by choice!!!

Eligibility and Migration

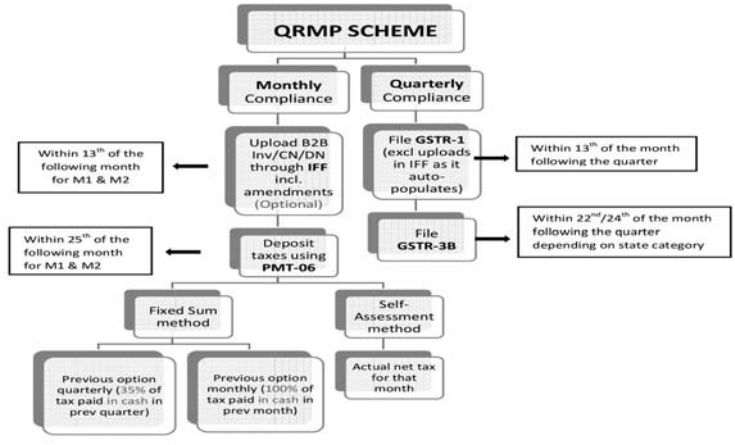
The SME sector whose aggregate turnover (**Same PAN multi GSTIN consolidated**) for the preceding FY as well as the current FY is within INR 5CR are eligible to opt for this scheme and also the last due GSTR-3B must have been filed. The system will auto-migrate based on the below criterion.

PY Turnover of RP	Earlier option for GSTR-1	New Scheme default option
Up to 1.5CR	Quarterly	Quarterly
Up to 1.5CR	Monthly	Monthly
More than 1.5CR and Up to 5CR **(System computes)**	Monthly	Quarterly

One must **be aware** of this auto-migration and **opt-out if one does not prefer** this scheme.Also, the option can be switched on-n-off at quarterly intervals. That doesn't mean one needs to opt in or out every quarter. Only in case of change in choice this could be done. And also, once eligibility is established QRMP or regular can be chosen GSTIN-wise. One may manually migrate by opting to the scheme **within 31st January 2021** for the quarter Jan to March 2021. Same is the deadline for opting out as well failing which the default option continues. Similar timelines for the ensuing quarters as well.

The mechanism

The following flowchart depicts the QRMP mechanism



Certain important concepts

Invoice Furnishing Facility (IFF)

This is an optional facility to enable the quarterly filers to upload invoices, credit notes and debit notes up to INR 50 lakhs per month including amendments if any, to enable corresponding reflection in GSTR-2B to facilitate hassle free credit claims by counter party recipients. The IFF facility is akin to GSTR-1 (few select tables are provided).The transactions that could be reported using IFF are enlisted below

- Table 4A – Taxable outward supplies to B2B
- Table 4B – RCM outward supplies to B2B
- Table 4C – Supplies through E-commerce operator
- Table 6B – Supplies made to SEZ unit or Developer
- Table 6C – Deemed Exports
- Table 9A – Amendments to B2B invoices
- Table 9B – Debit Notes and Credit Notes
- Table 9C – Amendments to Debit Notes and Credit Notes

Exports, B2C(Large and Small) including amendments thereof and Exempt, Nil Rated and Non-GSTsupplies must be reported in quarterly GSTR-1 apart from the HSN details and Document series.

Further, the facility will be available only till 13th of the following month for Month 1 after which the facility will be available for Month 2.

Methods for monthly tax deposit

Fixed Sum Method

A pre-filled challan facility would be made available either 35% (if previous option is quarterly) or 100% of previous month (if previous option is monthly). This option is suitable for businesses having uniform volume of sales throughout the year with the similar pattern on intra and inter-state transactions.

Self-Assessment Method

The taxes to be paid in cash must be manually computed after considering the eligible ITC for the months M1 and M2.

It is also possible to shift between the methods within the quarter. In both the cases the deposit of taxes is to be made by using '*PMT-06 challan'*by selecting the dropdown**"Monthly payment for quarterly taxpayer"**

No deposit of taxes

Irrespective of the method chosen, one need not deposit taxes in the following instances

- In case of Nil tax liability
- In first month, if balances in Electronic cash ledger & credit ledger is sufficient
- In second month,if balances in Electronic cash ledger & credit ledger is sufficient for the cumulative tax (M1+M2)

Restrictions on Electronic Cash ledger

The deposit of taxes made during M1 and M2 cannot be used by the taxpayer for any other purpose till the filing of return for the quarter. Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in FORM GSTR-3B for the said quarter has been furnished.

Interest and Late Fee Repercussions

Late Fee is applicable only for delayed filing of quarterly 3B but not for delayed deposit of taxes through PMT-06 challan.

However, interest is applicable in case of the following scenarios

- Late filing of quarterly GSTR-3B
- Late deposit of taxes after 25th for M1 and M2 either Fixed sum or self-assessment method
- Less deposit of taxes under Self-Assessment method

It may be worth noting that no interest would be applicable in case the taxes are deposited as per fixed sum method but at the time of quarterly 3B data preparation, the actual tax turned out to be more. Needless to say, interest and late fee must be discharged in cash.

Is the scheme beneficial at all?

It certainly is!! To a certain set of businesses as it reduces the compliance burden and the corresponding late fee by 2/3rd in case of belated compliance. Professionals indulged in compliance practice could also make an informed decision to manage their work-load accordingly.

The beneficial sector

- Stock intensive businesses having ITC carry forward (Not to forget Rule 86B compliance, if applicable)
- Predominantly B2C transactions
- Predominantly Exempt/Nil rated transactions
- Cases where no much ITC to reconcile
- Uniform business pattern across the year may opt for fixed sum method
- Seasonal businesses may opt for self-assessment method
- Small exports business not claiming refund of ITC or acceptable with the quarterly period refund.

Precautions

Care must be exercised not to use subsequent credits to prior liabilities. Let's take a scenario where the output tax for M1 is 100 and eligible ITC is 50, in M2 output tax is 200 and eligible ITC is 150 and in M3 output tax is 50 and eligible ITC is 200. On a cumulative computation it

might appear that there is no need to discharge taxes, (Cumulative output tax is 350 while Cumulative inputs is 400) but the actual tax outgo in cash would be as follows

Self -Assessment Method

M1 – 50; M2 – 50 and M3 – Nil (E Credit ledger balance would be 150)

Fixed Sum Method (**Previous quarter** tax discharged in cash is 100)

M1 – 35; M2 – 35 and M3 - 30 (E Credit ledger balance would be 150)

Fixed Sum Method (**Previous month** tax discharged in cash is 40)

M1 – 40; M2 – 40 and M3 - 20 (E Credit ledger balance would be 150)

Careful off-set is quintessential while filing quarterly 3B to retain 150 balance in E-Credit ledger.

The above proposition has been arrived based on the wordings used in the first proviso to sub-section 7 of Section 39 brought into force w.e.f. 10th November 2020 excerpted below-

'*Provided that every registered person furnishing return under the proviso to sub-section (1)* ***shall pay*** *to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars* ***during a month****, in such form and manner, and within such time, as may be prescribed*'

Selection of dropdown in PMT-06–Mindfulness to select the dropdown **"Monthly payment for quarterly taxpayer"** while making payment through PMT-06 challan during M1 and M2 cannot be overlooked.

Appropriate choice of payment method – Proper evaluation of the suitable method either fixed sum or self-assessment is critical as the refund of excess deposit in cash ledger would require efforts and entails a waiting period.

Although the QRMP scheme is beneficial to certain businesses, wrongful opting or wrong choice of method or even improper compliance may land one in trouble. Informed decision making by considering the minute intricacies would assist in reaping benefits peacefully.

* * * * *

FATHER OF ACCOUNTANCY: Shri Kalyan Subramani Aiyar (1859-1940), better known as K. S. Aiyar, was a pioneer of commercial and accounting education in India. He started and established educational courses and institutions dedicated to commerce and accounting. He also served as the headmaster of first commercial School in India started by the Pachiyappa College Charities at Madras from 1886 to 1889.

He got elected as an Associate of the Society of Incorporated Accountants & Auditors (SIAA) of the UK in 1890 and started his public practice. He set up his own firm, in 1900, probably the earliest accountants' firm in India established by an Indian. Starting his practice in Calicut in 1897, he shifted to Bombay in 1900. In fact, it was Sir Byramjee Jeejeebhoy, a 19th century philanthropist and a big land owner, who found several educational institutions in Bombay invited Shri Aiyar to Bombay in the first decade of the twentieth century and later appointed him the Principal of the Byramjee Jeejeebhoy Parsee Charitable Institution (B. J. P. C. I), Bombay. Shri Aiyar later converted that Institution into College of Commerce in 1900, which aimed at preparing students for the London Chamber of Commerce examinations. Within a couple of months, he also started the first Night School of Commerce in Bombay.

Input Tax Credit: Recent Developments and their business impact

CA M. S. Mani
&
CA Rajeev Pallath

The year 2020 has seen a series of changes in GST like E-Invoicing, proposed changes in GST Returns, GSTR-2B and auto-populated GSTR-3B etc. As the GST Department has come across large number of GST fraud cases involving the use of fake invoices for wrong availment of input tax credit (ITC), etc, the Central Board of Indirect Taxes and Customs (CBIC) under the Department of Revenue (DoR) made several changes to deal with the menace of fraudsters who avail and pass on ineligible ITC by fake or fly-by night firms.

The accrual and availment of ITC is governed by the provisions of Section 16 of the CGST Act, whereby ITC may be availed on procurements made in the course and furtherance of business. However, the availment of such eligible ITC is restricted to extent deposited to the Government exchequer. This has become a significant pain point for many businesses, as it makes the process for availment of credit cumbersome and onerous, with businesses having to verify the legitimacy of their ITC continuously based on vendor compliance.

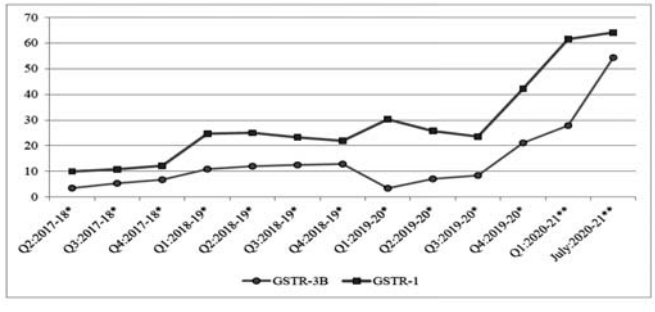
On the other hand, GST tax evasion and tax fraud has been leading to massive losses in revenue collections. The recent changes introduced in GST law has sought to address these issues as well as assist the Government in detecting tax evasion. The specific impact of these changes on the eligibility and availment by ITCis discussed below.

Compliance gap in filing of GST returns

The GST system mandates that all compliances be carried out electronically and therefore even the availment of ITC is contingent on it matching with the payments reported by the original supplier. Under this, GSTR 2A and GSTR 2B of the assesseer eflects the credit reported by the supplier in his GSTR 1. Here, it is important to note, that while the supplies are reported in GSTR 1, the actual disbursement of GST is done vide GSTR 3B, which is done subsequently.

As a consequence, while the assesses were availing ITC basis GSTR 2A and GSTR 2B, the supplier had failed to discharge his GST liability vide GSTR 3B and therefore the ITC availed by the assessee is treated as being ineligible for failing to satisfy the condition under Section 16. This has been a persistent issue since the onset of the GST regime and with the decision not to introduce GSTR 2 and GSTR 3, as was originally envisaged, it has provided an avenue for large-scale tax evasion.

Comparative Compliance Gap in Filing GSTR 3B and GSTR 1[1]



Notes: *-as on 30 June 2020. **-as on 31 August 2020.

[1] Source: NIPFP Working Paper Series No. 327 dated 22 December 2020 – Pandemic and GST Revenue: An Assessment for Union and States

It is expected that the recent change in the CGST Rules pertaining to furnishing details of outward returns by non-compliant tax payer is an attempt to arrest this issue. Under the newly inserted provision under Rule 59, any taxpayer who has not filed GSTR 3B for preceding two months (one tax period in case of quarterly filer) will be barred from furnishing details of their outward supplies in GSTR 1or use invoice furnishing facility ('IFF') for the succeeding month. Further, to ensure enforcement, the GST Authorities are also empowered under the new Rule 21A to cancel or temporarily suspend registration of taxpayers in cases where they notice significant difference between GSTR 1 and GSTR 3B indicating contravention of law.

Increased restriction on quantum of ITC eligible for availmentand use

The absence of swift reconciliation of data across tax returns, has also fueled the menace of tax evasion and tax fraud. The fraudulent claims of ITC are the result of such lack of reconciliation across tax returns. The Director General of Analytics and Risk Management estimates the ITC of about ₹ 1 lakh crores has been wrongly availed since the introduction of GST by 13,000 taxpayers alone.

Keeping in view such fraudulent availment of ITC, Rule 36 (4) was introduced in 2019 limiting the provisional credit (i.e. invoices not reflecting in GSTR 2A and GSTR 2B)to the extent of 20 percent of the eligible ITC based on invoices or debit notes reflecting in GSTR 1 of the supplier. As on 01 January 2021, this entitlement of provisional credit has been reduced to 5 percent of the such eligible ITC. Further, the determination of such eligible credit is not restricted to amounts reported in GSTR 1 and instead allows for calculation to be based on the invoice and debit note details furnished by the supplier using the IFFas well.

Apart from this, through a new Rule 86B, a limitation has been placed on the ITC that may be utilized for the discharge of output liability. This rule permits the use of ITC only towards the discharge of upto 99 percent of total liability only, with the balance 1% required to be discharged in cash. It is applicable only on certain category of taxpayers whose taxable supplies in a month (excluding exempt and zero-rated supplies) exceeds ₹ 50 lakhs.

Failure in compliance of either Rule 36(4) and Rule 86B may result blocking of ITC by GST Authorities under Rule 86A by alleging wrongful or fraudulent availment. In case of Rule 86B, the GST Authorities are even authorised to prohibit businesses from furnishing GSTR 1 for non-compliance.

Measures to be Enforced by Businesses

The introduction of GST has changed the landscape of indirect tax from an origin-based VAT system to a destination based system. It is for this reason that the burden of verifying the authenticity of vendors and sanitizing the ITC pool has been placed on the buyers.

While it is expected that the above changes will eventually help alleviate the burden placed on genuine taxpayer, it is recommended that businesses establish measures for the verification of the legitimacy of their ITC to ensure that there is no revenue loss for the Government and correspondingly no requirement for ITC reversal along with interest.

Such measures may include adoption of the following activities to verify the accurate availment and use of ITC:

- Identifying eligible and restricted ITC as per Section 16 and Section 17
- Identifying ITC eligible for availment based on details reflected in GSTR 2A and GSTR 2B
- Follow-up with vendors to ensure compliance - including obtaining proof of payment, where required.
- Conducting reconciliation based on declarations of suppliers, for determination of 105 percent of ITC, as per Rule 36(4).
- Computing the final ITC eligible for availment after accounting for any reversals in case of exempt, zero-rated, capital goods, etc. as per Rule 42 and Rule 43, as applicable.
- Restricting utilization of ITC to 99 percent of output tax liability, as per Rule 86B. In this case, the applicable categories of businesses, will need to first verify whether they are eligible to claim the benefit of exemption from its applicability. For example, this rule would not apply on businesses which have received refund of more than ₹ 1 lakh pertaining to unutilised ITC on account zero-rated supplies or inverted rate structure; or whose two partners or whole-time directors have paid more than ₹ 1 lakh as income tax in each of the last two financial years.

Here, it is important to note that exclusion from applicability of Rule 86B is also granted in cases where the taxpayer has discharged more than 1 percent of his total output tax liability, until the relevant month of filing, through cash. For availing this benefit, the businesses will also need to adopt a cumulation facility to keep track of the output tax discharged through cash in each month.

In conclusion, the prompt adoption of e-invoicing mechanism, soon after implementation of the GST regime, was on account of the rise in the non-compliance, tax evasion and tax fraud. While the Government is being lenient in the initial phase of E-invoicing, it is unlikely that it will continue to be considerate once the e-invoicing system is effectively rolled-out for businesses under the lower threshold. Thus, it is probably the right to time weed out the non-compliant vendorsand sanitise the process of ITC availment to ensure smooth flow of ITC under the new system.

(The authors are employed with Deloitte Haskins & Sells LLP, India. Views expressed above are personal)

Section 17(5)(d) of GST Act – Blocked Credit – How far is it Blocked?

Timir Baran Chatterjee
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Goods and Service Tax Act, 2017 (hereinafter called GST Act), which is popularly referred to as "blocked credits". In fact, in my humble view, neither in the previous regime i.e. Pre-GST regime nor in the GST regime, there is any embargo or prohibition as is sought to be canvassed in many quarters in the trade, industry and professional circle, which I will try to explain and submit with the help of various cases rendered by different Hon'ble High Courts. The relevant provisions of Section 16 and 17 of CGST Act, 2017 are reproduced herein-below:-

> **Section 16 Eligibility and conditions for taking Input TaxCredit** (1) Every registered person shall, subject to such conditions and restrictions, as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or service or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be entitled to the electronic credit ledger of such person.
>
> Section 17(5): Notwithstanding any-thing contained in subsection (1) of Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of the following namely:-
>
> (d): goods or service or both received by a taxable person for construction of an immoveable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
>
> Explanation: For the purposes of Clauses (c) and (d) the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immoveable property.

2: The Section 17(5)(d) GST Act in laymen's parlance is also called "blocked credit". Hence, the question, therefore, arises for consideration is as to whether, in all circumstances, wherever there is a emergence of "immoveable property", be it either at the "final stage" or at an "intermediate stage", no credit of (a) inputs (b) input service (c) or capital goods shall be allowed ?

3: Generally, it is commonly understood in the trade and professional circle, whenever there is a emergence of immoveable property, no ITC would be allowable by virtue of prohibition contained in Section 17(5)(d). First of all, let us understand, what is the meaning of word "immoveable property", which has not been defined in GST Act but in Section 3(26) of "General Clauses Act" in the following words. In fact, Transfer of Property Act, does not define exhaustively the expression "immoveable property". Hence, we have to fall back upon the definition as given in "General Clauses Act".

> **Section 3(26) of General Clauses Act:**
>
> "immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth".

4: Since I would be citing the cases dealing with the definition of (a) inputs and (b) input services and hence, let us understand the meaning of words

of "inputs" or "input service" as given in the Cenvat Credit Rules, 2004 (i.e. pre-GST regime). Rule 2(k) of Cenvat Credit Rules, 2004, define "input" – which is inclusive definition, inter-alia, reads as under:-

(k): "input" means:

(i) all goods used in the factory by the manufacturer of the final product; or

(ii) ……..

(iii) ……

(iv) all goods used for providing any output service but excludes:

(A): light diesel oil, high speed diesel oil etc.etc.

(B): all goods used for :-

(i) construction of a building or a civil structure or a part thereof; or

(ii) laying of foundation or making of structures for support of capital goods;

5: The above is position subsequent to 1.4.2011. A question then arises for consideration as to whether despite a bar and exclusion as contained in (B) (i)(ii), can the Cenvat Credit (now ITC) could be availed on (a) input and (b) input services (c) capital goods used in constructing building or civil structure or part thereof – which undoubtedly is a "immoveable property". Let us try to find answer with the help of many judgments of different Hon'ble High Courts and that of Hon'ble Custom Excise & Service Tax Appellate Tribunal.

5.1: The Hon'ble Supreme Court in the case CCE vs. Solid and Correct Engineering Works MANU/SC/0237/2010 has defined "immoveable property" and has observed as under:-

Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:

(i) The plants in question are not per se immovable property.

(ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.

(iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.

(iv) The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.

6: The Hon'ble High Court of Andhra Pradesh in the case of Commissioner of C. Excise, Visakhapatnam-II Vs. Sai Sahmita Storages (P) Ltd. MANU/AP/0510/2011 has held as under. In the present case, the company was engaged in providing taxable output service of " storage and logistic services" and Steel and Cement had been used for construction of warehouses and godowns.

9. There is no dispute, in these cases, that the assessee used cement and TMT bar for providing storage facility without which, storage and warehousing services could not have been provided. Therefore, the finding of the original authority as well as the appellate authority are clearly erroneous, which was correctly rectified by the CESTAT.

7: The Hon'ble High Court of Gujarat in the case of Mundra Ports & Special Economic Zone Limited Vs. CCE MANU/GJ/0260/2015 has held as under:-

The contention of Party/Assessee

According to him, either before the amendment made in the year 2009 or thereafter, the appellant was neither factory nor manufacturer and he has only constructed jetty by use of cement and steel for which he was entitled for input credit as jetty was constructed by the contractor, but the jetty is situated within the port area and the appellant is a service provider. According to the Appellant, his case is squarely covered by the judgment of DB of AP High Court in CCE Vs. Sai Sahmita Storages (P) Limited, MANU/AP/0510/201:2011 (270) ELT 33 (AP) wherein in paragraph 7, it has been clearly held that a plain reading of the definition of Rule 2 (k) would demonstrate that all the goods used in relation to manufacture of final product or for any other purpose used by a provider of taxable service for providing an output service are eligible for Cenvat Credit. It is not in dispute that the appellant is a taxable service provider of port under the category of port services. Therefore, the appellant was entitled for input credit and the decision of the Division Bench of the Andhra Pradesh High Court squarely applies to the facts of the case and answered the question on which the appeal has been admitted.

Contention of Department:

9. Mr. Ravani has also vehemently urged that since jetty was constructed by the appellant through the contractor and construction of jetty is exempted and, therefore, input credit would not be available to the appellant as construction of jetty is exempted service. The argument though attractive cannot be accepted. The jetty is constructed by the Appellant by purchasing

iron, cement, grid etc. which are used in construction of jetty. The contractor has constructed jetty. There are two methods, one is that the appellant would have given entire contract to the contractor for making jetty by giving material on his end and then make the payment, the other method was that the appellant would have provided material to the contract and labour contract would have been given. The appellant claims that he has provided cement, steel etc. for which he was entitled for input credit and, therefore, in our opinion, the appellant was entitled for input credit and it cannot be treated that since construction of jetty was exempted, the appellant would not be entitled for input credit. The view taken contrary by the Tribunal deserves to be set aside.

Findings/Ratio of Judgment

10. For the reasons given above, this Tax Appeal succeeds and is allowed. The denial of input credit to the appellant by the respondent is set aside. The appellant would be entitled for input credit.

8: The Hon'ble Supreme Court in the case of JayaswalNeco Ltd. Vs. CCE MANU/SC/0361/2015 has held as under:-

11. In the process, the court also explained that there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. In the opinion of the court, the expression "in the manufacture" takes within its compass, all processes which are directly related to the actual production. It noted that goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. The court further marked that drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods".

13. Applying the aforesaid test to the facts of this case, it is apparent that the use of "railway tracks" is related to the actual production of goods and without the use of the said railway track, commercial production would not be possible.

These railway tracks used in transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine for manufacture of pig iron. Secondly the system also helps in taking hot pigs from pig casting machine to pigs storage yard by the big wagon where hot pig iron are dumped for cooling and making ready for dispatchers. This Railway tracks are also used in handling of raw materials at wagon tippler to stacker reclaimer where stacking and reclaiming of raw material is taken place and required quantity is conveyed for further processing at stock house.

18. We find from the order of the Commissioner that in spite of taking note of the aforesaid use of the railway tracks and accepting the same as correct, the Commissioner denied the relief to the Appellant on an extraneous ground, i.e. railway tracks were used for other purposes as well, namely, apart from conveying hot metal and hot pigs, it was used for carrying raw materials and finished goods as well. This can hardly be a ground to deny the relief in as much as by incidental use of the railway tracks for some other innocuous purpose, it does not lose the character of being an integral part of the manufacturing process. The Commissioner has further observed in his order that the railway track is not utilized directly or indirectly for producing or processing of goods or bringing about any change for manufacture of final product. This conclusion, obviously, is completely erroneous and amounts to misreading of the process. Such an error has occurred because the Commissioner did not keep in mind the principle of law laid down by this Court in M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd.'s case.

The Supreme Court held that "Railway Track" meant for movement of materials raw materials can be said to be used in the "manufacturing process".

9: The Hon'ble High Court of Chhattisgarh in the case of C&ST. Vs. Vimla Infrastructure India Pvt. Ltd. MANU/CG/0185/2018 has held as under:-

7. In the case at hand, the respondent has constructed a Railway Siding which is a Low Speed Track distinct from a running line or through route such as a main line or branch line. It is used for marshaling, stabling, storing, loading and unloading vehicles and other goods. The Railway Siding of the respondent are located at Silyari Railway Station and Bhupdeopur Railway Station. In raising construction of the Railway Siding, the Respondent has used MBC Sleeper, which, in turn, has been constructed by using MBC Railway Sleepers and RLS Rails.

8. The Respondent was issued show cause notice by the Commissioner on the ground that it has wrongly availed and utilized Cenvat Credit and inadmissible Input Service Tax in Central Excise duty paid on Inputs and Capital Goods which have been used for construction of Railway Siding as the goods which were neither the Input Service nor the inputs and Capital Goods for providing "Cargo Handing Services". The Commissioner

eventually concluded that the Company cannot provide any 'logistic services' viz., "Cargo Handling Services" without the facility of "Private Railway Side.

9.1: The Hon'ble High Court dismissed the appeal of the Department while holding that the Respondent/assessee is entitled to Cenvat Credit for construction of "Railway Siding" which is admittedly immoveable property.

10: The Hon'ble CESTAT in the case of Milroc Good Earth Property & Developers Ltd. Vs. CCE & ST., Goa Manu/CM/0082/2019 has held as under:-

Appellant had availed credit in respect of input services primarily of advisory nature and of consultancy service other than the construction service and discharged the service tax on the services provided in the hotel like (i) accommodation in hotels (ii) restaurant service, (iii) health club and fitness centre service and (iv) other taxable service, other than the 119 listed services. He also filed the list of services along with the Appeal memo, on which the Appellant has availed the Cenvat Credit.

9. I have gone through the list of services on which the cenvat credit has been availed by the Appellant, the agreement as well as the invoices and I am of the view that none of these services are related to construction. These are the services which normally performed after the construction activity is over and therefore provisions of Section 65B ibid are not attracted in the facts of this case. The hotel construction is not the end activity of the appellants. Rather their end activities are providing various taxable services like accommodation, restaurant services, spa services and other related services in the said Hotel and they have availed credit in respect of these services which are other than construction service. They have, therefore, fulfilled the conditions specified in Rule 2 (1) ibid and thus the appellant is entitled to the credit of the same under the provision of Rule 3(1) ibid. The argument of Revenue that the services have been utilized for construction of the Hotel which is not excisable and therefore credit is not admissible, is unfounded. According to me, the credit in issue has been availed on input services which have been used for providing the output services i.e. the services mentioned above and hence I find that the reasoning by the lower Authorities is devoid of any merit.

11: The Hon'ble Division Bench of Delhi High Court in the case of Vodafone Mobile Services Limited and Ors. Vs. CCE MANU/DE/3088/2018 has held as under:-

Aditya Cements Ltd. Vs. Union of India 2008 (221) ELI 362, a decision of Rajasthan High Court, considered whether the asessee was entitled to avail the credit on materials used for laying railway track (which is an immovable property emerging at intermediate stage) that was used for transporting of coal to the factory. The coal so transported was used for the manufacture of dutiable final product. The High Court held that the assessee was entitled to avail credit on material used in laying railway track materials. Ispat Industries Limited Vs. Commissioner of Central Excise 2006 (195) ELT 164, was a case where the High Court allowed credit of duty paid on angles, channels, plates, etc. which were used in erection, installation and commissioning of the machinery (immovable). The Revenue's appeal against this judgment was rejected by order dated 19.07.2007 in Central Excise Appeal No.187 of 2006, by the Supreme Court, In Llyods Steel Industries v. Commissioner of Central Excise Manu/CM/0668/2004: 2004 (64) RLT 732, the High Court allowed credit of cement and steel used for construction of foundation that were not excisable goods. The Revenue's appeal against the judgment was dismissed. Commissioner of Central Excise Vs. ICL Sugars Limited MANU/KA/2891/2011 (Kar.) was a Karnataka High Court decision, rejecting the Revenue's appeal holding that plates, etc, used for fabrication and installation of a storage tank would be admissible for credit. The Revenue's sole contention to deny credit was that the storage tank was an immovable property and once erected to the earth becomes non-excisable. Negating this contention, the High Court allowed the credit.

68. On the basis of the above reasoning, the Tribunal had denied Cenvat Credit to the assessee on the premise that the towers erected result into an immovable property, which is erroneous and contrary to the judgment of the Supreme Court in the case of Solid and Correct Engineering (supra). The towers which are received in CKD condition, are assembled/erected at the site subsequently giving rise to a structure that remains immovable till its use because of safety, stability and commercial reasons of use. The entitlement of CENVAT credit is to be determined at the time of receipt of goods. The fact that such goods are later on fixed/fastened to the earth for use would not make them a non-excisable commodity when received. Therefore, this question is answered in favour of the assessee and against the Revenue.

72. In the present case, it is not in dispute that the appellant is a taxable service provider providing passive telecommunication service. Therefore, the assessee is entitled for input credit. It is also clear that several High Courts in different contexts have taken a view that credit

of excise duty and service tax paid would be available irrespective of the fact that inputs and input services were used for creation of an immovable property at the intermediate stage, if it was ultimately used in relation to provision of output service or manufacturing of final products.

73. The conclusion of CESTAT, denying the assessee Cenvat credit on the premise that the towers erected result in immovable property, is erroneous and plainly contrary to Solid and Correct Engineering (supra). The towers that are received in CKD condition, are erected at site, subsequently, giving rise to a structure that remains, safe and stable (commercial reasons of use). The fact that in the intermediate stage, an immovable structure emerged, is of no consequence, in the facts of the present case. It is a settled principle of law that entitlement of Cenvat Credit is to be determined at the time of receipt of the goods. If the goods that are received qualify as inputs or capital goods, the fact that they are later fixed/fastened to the earth for use would not make them a non-excisable commodity when received. The CESTAT failed to consider the fact in the event antennae and BTS are to be re-located, the assessee also has to relocate the tower and the pre-fabricated shelters, thereby, implying that the towers and the pre-fabricated shelters, are not immovable property.

POST GST REGIME:

12: The Orissa High Court in the case of Safari Retreats (P) Ltd Vs. Chief Commissioner of Central Goods & Service Tax, 2019TIOL-1088-HC-Orissa-GST, held on 17.4.2019 that if the assessee is required to pay GST on rental income arising out of investment (i.e. construction in the present case), he is eligible to have the ITC on the GST paid under Section 17(5)(d).

13: Even otherwise, there is no legal, valid and justifiable reason for not allowing the ITC of various (a) inputs, (b) input services and (c) capital goods which have gone into the construction of immoveable property which has been let out for providing output service on payment of rent or license fee and the GST is paid thereon.

14: In my humble view, Section 17(5)(d) of GST Act, prohibit the taking of ITC of various construction materials which have gone into construction of (i) Administrative Building (ii) Township for residence of Staff and Worker (iii) Shed and Rest Rooms for persons who brought raw materials to the factory except where it is mandatorily required viz. in Sugar Industry (iv) Civil Construction for parking of Vehicles and (v) other civil construction which is totally unrelated to the manufacturing process. In other cases, in view of various judgments of different Hon'ble High Court and that of CESTAT, the assessee shall be entitled to ITC. In one case only, the Department had filed an appeal before the Hon'ble Supreme Court but there is no stay.

15: Hence, I am of the firm view that that the assessee is entitled to ITC on various materials, input services and capital goods which had been used in emergence of immoveable property but said immoveable property had been used either (i) manufacture of goods and (ii) provision of output service which is taxable and tax has been paid thereon. Therefore, there is absolutely no reason as to why the assessee should not take credit of tax paid on (i) inputs (ii) input service and (iii) capital goods which had gone into construction, fabrication and erection of immoveable property.

* * * * *

Google was originally called BackRub.

"Yahoo" is an acronym for "Yet Another Hierarchical Officious Oracle."

The time in an official iPhone advert or press release is always 9.41am (or occasionally 9.42am). Why? Because Apple launch events start at 9.00 am and big products reveal generally happens just after 40 minutes into the presentation. If you don't believe me do an image search on BackRub. Er sorry, Google.

Audit under GST by the Department

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Tax Payers have started receiving Notice from their respective Range, especially Central GST, for initiation of audit under GST for the FY 2017-18. Before going into the basic requirements and how to prepare ourself for GST audit, let us see the provisions of audit as per the GST Act and Rules.

AUDIT AS PER GST ACT AND RULES

'Audit' as per section 2(13) of the GST Act is defined as *"means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder"*.

Chapter XIII deals with the respective sections on Audit in the GST Act. The same is as follows:

Section 65 – Audit by Tax Authorities:

65. *(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.*

(2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.

(3) The registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided *that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.*

Explanation— *For the purposes of this sub-section, the expression "commencement of audit" shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.*

(5) During the course of audit, the authorised officer may require the registered person,—

(i) to afford him the necessary facility to verify the books of account or other documents as he may require;

(ii) to furnish such information as he may require and render assistance for timely completion of the audit.

(6) On conclusion of audit, the proper officer shall, within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for such findings.

(7) Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under section 73 or section 74.

Section 66 covers the provisions regarding Special Audit. Since this article is covering only normal Departmental audit provisions, Special audit is not being covered here.

The other relevant sections for audit are as follows:

Section 71 - Access to business

premises.—

(*1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any* ***audit****, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.*

(2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013;

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961; and

(vi) any other relevant record, for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.

Chapter XI – Assessment and Audit in the GST Rules, specifies the following:

101. ***Audit.-(****1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or part thereof or multiples thereof.*

(2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in ***FORM GST ADT-01*** *in accordance with the provisions of sub-section (3) of the said section.*

(3) The proper officer authorised to conduct audit of the records and the books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the provisions of the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of the supply of goods or services or both, the input tax credit availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.

(4) The proper officer may inform the registered person of the discrepancies noticed, if any, as observed in the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

(5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in ***FORM GST ADT-02.***

On perusal of **Form ADT-01- Notice for conducting audit** (form not being reproduced here), the important contents thereof are as follows:

1. ADT-01 needs to have a Reference number and DIN;
2. The period of coverage of audit needs to be clearly mentioned in the Notice, it can't be an open-ended period;
3. A date has to be mentioned by the concerned Officer as to when he intends to initiate the audit; it cannot be open-ended;
4. It is important to note that the Department intends to have a timely completion of audit. In the past during Central Excise or Service Tax related audits, we have seen that in some cases, Departmental audits stretch over long periods and the audit party keeps asking for papers again and again. They do not complete the audit on a timely basis which keeps the Tax Payers engaged in audit for long periods. Hopefully, this should not be happen during GST audit;
5. A specific date for appearance before the GST audit party has to be mentioned in the Notice; audit not being a Search, adequate time is provided to the Tax Payer to prepare himself and present it to the Audit

party; and 6. It is mentioned *"In case of failure to comply with this notice, it would be presumed that you are not in possession of such books of account and proceedings as deemed fit may be initiated as per the provisions of the Act and the rules made thereunder against you without making any further correspondence in this regard"*. This is something, that even though not mentioned in the respective audit sections, is being mentioned in the Notice. I feel that this power of negative assumption and without giving any further chance to the Tax Payer, is not as per law and against the principles of natural justice. We have seen in many judicial pronouncements that if the Department alleges anything, the onus to prove the same is on them and just by assuming that if it has not been provided it means the tax payer is not in possession of the same, may not pass the legal test.

On perusal of **Form ADT-02** - **Audit Report under section 65(6)** (form not being reproduced here), the important contents thereof are as follows:

1. All Audit Reports needs to have a number and date;
2. The exact quantification of tax, interest and any other amount needs to be mentioned in the Report; and
3. The audit observations need to be attached with the Audit Report.

GST AUDIT MANUAL 2019

The Department has also issued the GST Audit Manual 2019 (GSTAM 2019) as a guidance for its Officers on how to conduct GST related audit. Some of the highlights of GSTAM 2019 are as follows:

1. Formation of Audit Commissionerates and Cadre Restructuring has brought new designations and roles of officers. Hence necessary changes have been carried out with regard to the designations like Principal Chief Commissioner and Principal Commissioner and the new roles and responsibilities of the officers of Executive Commissionerate and Audit Commissionerate.
2. The norms for selection of units for conducting audit were revised. The new norms include, selection of units based on risk parameters, days for audits and formation of audit parties. Role of DGARM in running the Risk Analysis Programme has been emphasised.
3. The audit process beginning from the Assessee Master File, desk review, revenue risk analysis, trend analysis, gathering of information, evaluation of internal controls, scrutiny of annual financial statement, audit plan, audit verification, working papers, apprising the Taxpayer about irregularities noticed and ending with suggestions for future compliance have been streamlined and brought under one chapter.
4. Separate Annexures have been prepared containing detailed verification checks pertaining to GST. The annexures have been developed in consultation with field formations which also include capturing the results of Desk Review. The annexures containing lengthy information to be filled in by taxpayers have been discontinued.

DUTY OF THE TAX PAYER

In a recent interaction with a senior officer of the Department, when time was being sought by the Tax Payer, he said a very good and pertinent thing. He said that getting audit completed successfully is as much my job as is your duty too. This I thought was a very important point. It is the Tax payers 'duty' also to get himself audited by the Department as he gets himself audited by a Chartered Accountant under the Companies Act or the Income Tax Act. The word 'Duty' means (i) a moral or legal obligation; (ii) a responsibility and (iii) a task or action that one is required to perform as part of one's job. So, if we receive a Notice for GST audit from the Department, it also becomes our duty to ensure that the audit is carried out successfully and to the satisfaction of the Department.

SELECTION OF TAX PAYERS FOR AUDIT

As per GSTAM 2019, The selection of registered persons would be done based on the risk evaluation method prescribed by the Directorate General of Audit in consultation with the Directorate General of Analytics and Risk Management.The risk evaluation method would be separately communicated to the Audit Commissionerates during the month of January/February of every year. The risk assessment function will be jointly handled by the Directorate General of Audit and the Risk Management section of GST Audit Commissionerates.The Audit Commissionerates may select the units to be audited in a particular year after reviewing the list received by, in the context of local risk perceptions and parameters. The Audit Commissionerate may also select a registered person with low risk score compared to another registered person with

relatively high-risk score, based on Local Risk Factors. It would be ensured that 20% of the taxpayers to be audited are selected based on local risk factors after obtaining the approval of the Chief Commissioner.

HOW TO HANDLE GST AUDIT

Let us see some important points that we should keep in mind which GST audit is being conducted:

1. **Submission of documents–** When the Notice for GST audit is received from the Department, the following documents are sought in the first instance (please see image below/ aside – actual extract from a GST Audit Notice in ADT-01):

1)	Copies of Gross Train Balance (showing Opening Debit, Credit & Closing balance for each entry of your Unit and Annual Financial Statement including Profit & Loss Account and Balance Sheet.
2)	Copies of Annual Report & Director's Report.
3)	Copies of Cost Audit Report (Forms 3CA and 3CD)
4)	Copies of deducted Source (Income Tax TDS) Certificate.
5)	Copies of TRAN-1. GSTR-1, GSTR-2, GSTR-3B, GSTR-4 & GSTR-9 Returns (whichever are applicable).
6)	Reconcilliation Statements between GSTR-9 returns and relevant entries of Gross Trails Balance.
7)	Copies of Input Tax Credit statement (Inputs, Capital Goods, Input Services) (preferable in excel soft forms) CENVAT Credit Account for the aforesaid period.
8)	Copy of Form 26AS
9)	Assessee profile in GSTM-1 duly filled up and signed as per format enclosed.
10)	ST-3/ER-1 for the period April 2017 - June 2017 (whichever are applicable)

   Generally a tight time schedule of only 7 days is given for submission of the above-mentioned documents. The Tax Payer is advised to submit the ready documents e.g. serial nos. 2, 3, 4, 5, 8 and 10 above. W.r.t. other documents which may require some time and effort to prepare and compile, some time may be sought from the Department for submission of the same.

2. **Submission of soft copy or hard copy** – We see from the list above that some documents like GST returns, reconciliations, TDS certificates, etc. may run into hundreds of pages and will be a big hassle if the same are sought in hard copy. The Tax payer should discuss this point with the Department Officers and may submit these documents in soft copy, maybe in CD/ Pen drive, after properly making a list of the same.

3. **Visit of Departmental Officers –** The Departmental Officers visit the premises of the Tax Payer, their Factory, Godown, etc. to see the size of operations and understand the true nature of business of the Tax Payer. The Officers may decide not to visit also, as now due to COVID, the Officers are asking the Tax Payer to come to their office with the details and documents. However if the Departmental Officer expresses his desire to visit the Office, Factory, etc., the same should be facilitated.

4. **Submission of further documents/ clarifications –** The Departmental Officers, after undertaking the desk study and field study, if any, may seek further documents or clarifications. This may seem as a burden on the Tax Payer and sometimes irritating, as the Departmental Officers may seek the same multiple times. It is however suggested that the Tax Payer may keep patience and co-operate with the Officer as non-submission of these documents may lead to the view that the same are not available with the Tax Payer (as per text in ADT-01, although subject to legal validity).

5. **Final Audit points –** The Departmental Officers may call for final discussion on the audit points observed by them. They would seek clarification from the Tax Payer. The final audit points will be issued to the Tax Payer in Form ADT-02, which will have the audit query and quantification of tax, interest and penalty demanded from the Tax Payer.

6. **Payment of Tax/ Reply to Audit points –** The Tax Payer may choose to pay the tax, interest and penalty as mentioned in the ADT-02 and duly intimate the Department to appropriate the same to Government account. In case the Tax Payer is not satisfied with the audit points, as per ADT-02, he may choose to make a Reply and submit to the Department.

7. **Issue of Show Cause Notice –** The Department on receiving the Reply and if not satisfied with the Reply, will issue a Notice under section 73 or 74 of the GST Act. The Tax Payer may pay the tax, interest and penalty (as per sections 73 or 74 of the GST Act) or may decide to contest the same and go for Adjudication process.

   The above-mentioned points are some guidance points for Tax Payers who are facing Departmental audit. I hope the article has been of use to the readers and will help them in facing GST Departmental audit in an enlightened manner.

* * * * *

Whether GST is Leviable on personal guarantee given by Director??

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In the pre-GST regime, the Service Tax was leviable on the "Personal Guarantee" issued by the Director unless where no commission has been paid by the company for the benefit of which, the said Personal Guarantee has been given by the Director. However, in those cases, where no commission was paid by the said company to the Director, no service tax was payable as has been held by various benches of the Hon'ble Tribunal – latest being Hon'ble Tribunal, Chandigarh Bench, in the case of DLF Home Developers Ltd.

Now question arise as to whether in post GST regime, any GST is payable on issuance of personal guarantee by (a) Managing Director/Whole Director (b) Non-Executive or Ordinary Director.

PERSONAL GUARANTEE GIVEN BY MANAGING DIRECTOR/WHOLE TIME DIRECTOR

In order to answer the above issue, we may have to understand the basic principle of taxability of goods or service.

The Managing Director or Whole Time Director is appointed in terms of Section 179,196 (2) and 197 of Companies Act, 2013 read with Schedule V to Companies Act, 2013, in full time employment of the company under the authority of a resolution of Board of Directors and under resolution passed by Shareholders. As per Section 197(6) of Companies Act,2013, remuneration payable to Whole Time Director could be by way of monthly payment or specified percentage of net profits or partly by one way and partly by other. In other words, it is not necessary that only monthly salary payable would make a person whole time employee of the company. It is on record that there are companies who pay remuneration to Directors based on profits, which is sometimes termed as 'commission'. Furthermore, Executive Director would also held to be Whole Time Director by virtue of Section 2(94) of Companies Act, 2013 read with Rule 2(1)(k) of Companies (Specification of Definitions Details) Rules, 2014.

The DB of Kerala High Court in CIT Vs. Travancore Chemical Mfg. Co. (18.12.1980 - KERHC) : MANU/KE/0078/1980, has observed as under:-

> 15. In our opinion, these provisions contained in the articles of association of the company clearly indicate that the relationship between the company and the managing directors is that of employer and employees.

The Supreme Court in Gestetner Duplicators P. Ltd, v. CIT MANU/SC/0218/1978 : [1979]117ITR1(SC) has held that where, under the terms of the contract of employment, remuneration for the services rendered by an employee is determined at a fixed percentage of the turnover achieved by him, then such remuneration will take the character of salary.

The Supreme Court in Dharangadhra Chemical Works Ltd. v. State of Saurashtra MANU/SC/0071/1956: Laxminarayan Ram Gopal and Son Ltd. v. Government of Hyderabad MANU/SC/0089/1954, Qamar Shaffi Tyabji v. CEPT [I960] 39 ITR 611 and Piyare Lal Adishwar Lal v. CIT MANU/SC/0184/1960, the legal position was summed up as follows:-

> The real question in this case is one of construction of the Articles of Association and the relevant agreement which was entered into between the company and the assessee. If the company is itself carrying on the business and the assessee is employed to manage its affairs in terms of its articles and the agreement, he could be dismissed or his employment can be terminated by the company if his work is not satisfactory, it could hardly be said that he is not

a servant of the company."

The Supreme Court in Director Central Plantation Crops Research Institute, Kesaragod and others v. M. Purushothaman and other, MANU/SC/1173/1994 : State Bank of India and others v. K.P. Subbaiah and others, MANU/SC/0465/2003, defined as what shape and colour "emoluments" can taken.

> "The dictionary meaning of the term 'emolument' is profit arising from employment, such as salary or fee advantage. In a way, the term is defined as an advantage arising out of employment. Apart from salary, house rent allowance and medical allowance are payable as advantage to an employee. This is paid on monthly basis. If we see the meaning of term 'remuneration', it would mean to compensate; to pay for services rendered; reward; pay. It cannot be said that house rent allowance or medical allowance is not being paid on account of service rendered or that it is not to recompense for the services rendered. In this background, it would be difficult to say that these remunerations or emoluments would not be part of salary as defined under the Common Cadre Rules."

In McDowell & C V. CIT (2002) 123 Taxman 911 (Mad HC DB), it was held that commission payable to Directors on turnover basis is' remuneration' for purpose of ceiling under Section 40(c) of Income Tax Act – following Metal Powder C. Vs. CIT (1999) 238 ITR 756 (Mad.) Such remuneration would be in the nature of salary.

The Hon'ble Tribunal in Allied Blenders & Distillers P. Ltd. v. CCE (2019) 101 Taxmann.com 462=24GSTL 207 (CESTAT), has held that where company paid remuneration to its four whole-time Directors for managing day-to-day affairs of Company and made necessary deductions on account of (i) Provident Fund, (ii) Professional Tax (iii) TDS as appropriate rate and held out these Directors to all statutory authorities as employees of company and, therefore, remuneration paid to directors was nothing but salary and company was not required to discharge service tax on remuneration paid to Directors.

In CBE & C circular No. 115/09/2009-ST, dated 31.07.2009, it was clarified that some Companies make payments to Managing Director/Directors (Whole-time) or Independent), terming the same as 'Commission'. The said amount paid by a company to their Managing Director/ Directors (Whole-time or Independent) even if termed as commission, is not the 'commission' that is within the scope of business auxiliary service and hence service tax would not be leviable on such amount.

The Tribunal in the case of PCM Cement Concrete Pvt. Ltd. vs. CCE, Siliguri MANU/CK/0096/2017 observed that consideration paid to whole time directors would be treated as payment of salaries inasmuch as there would be employer - employee relationships and in such cases, there cannot be any levy of service tax. The Tribunal in the case of Maithan Alloys Ltd. vs. CCE and ST, Bolpur (02.11.2018 - CESTAT - Kolkata) : MANU/CK/0094/2018 has held if the payments are in the nature of salary and is subject to TDS under Section 192 Income Tax, there would be relationship of employer and employee and consequently, no GST shall be payable on such payment.

SCOPE OF SUPPLY:

7(1) For the purpose of this Act, the expression "supply" includes -

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

(b): import of services for a consideration whether or not in the course or furtherance of business [and];

(c): the activities specified in Schedule I, made or agreed to be made without a consideration; [omitted]

(d): [omitted]

[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]

(2) Notwithstanding anything contained in sub-section (1),-

(a) <u>activities or transactions specified in Schedule III; or</u>

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

<u>shall be treated neither as a supply of goods nor a supply of services.</u>

That Clause 1 of the Schedule III reads as under:-

Clause 1: "Services" by an employee to the employer in the course of or in relation to his employment;

Therefore, by virtue of Section 7(2)(a) CGST Act, services rendered by an employee to the employer in the course of or in relation to his employment, shall neither be supply of goods nor supply of services.

In the corporate sector, there are situations, where a Managing Director or Whole time Director or Executive Director are appointed either under (i) Board Resolution passed by the Board of Directors of the company or (ii) under an Agreement executed between the Company and the incumbent or (iii) under the Article of Association of

the company. Although Section 166 of the Companies Act, 2013 speak of duties of a Director – but these are more in the nature of what a Director should not do while performing his duties as a Director and do not illustrate, define and elaborate the nature and scope of duties and responsibilities of a Director. Likewise, Companies Act, 1956 also did not specify duties, responsibilities and functions of Director. **The company in consultation with the incumbent may finalise the duties, responsibilities, functions, which may also include (a) execution and furnishing "Personal Guarantee" by Managing Director, Whole Time Director or Executive Director.**

The CBIC has issued Circular No: 140/10/2020, which, inter-alia, says once, it has been ascertained whether a director, irrespective of name and designation, is an employee, no GST shall be payable by the employer/company.

The Second limb of Section 7(1)(a) CGST speak of "Consideration" as one of the pre-requisite to be held to be supply. **Section 2(31) CGST Act, defines "Consideration"** in relation to the supply of goods or services or both. Any "transaction" would be treated as "taxable supply" only when the "consideration" within the meaning of Section 2(31) has passed on from recipient of supply to the supplier except cases covered under Schedule-I, as provided under Section 7(1)(c) of CGST Act.

Clause 2 of the Schedule-I reads as under-

2: Supply of goods or service or both between related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.

From perusal of the above, it is evident that if the supply of goods or services is either between "related person" (explanation below Section 15(5) or "distinct persons", the condition of passing off "consideration' is not necessary to be fulfilled. In other words, even without passing of consideration, the transaction would be taxable if otherwise two conditions of Section 7 of CGST are satisfied. The explanation attached to below Section 15(5) reads as under:-

Explanation: For the purposes of this Act, -

(a) persons shall be deemed to be "related persons" if -
   (i) such persons are officers or directors of one another's businesses;
   (ii) such persons are legally recognized partners in business;
   (iii) such persons are employer and employee;
   (iv) any person directly or indirectly owns, controls or holds twenty-five per cent, or more of the outstanding voting stock or shares of both of them;
   (v) one of them directly or indirectly controls the other;
   (vi) both of them are directly or indirectly controlled by a third person;
   (vii) together they directly or indirectly control a third person; or
   (viii) they are members of the same family;
(b) the term "person" also includes legal persons;
(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, however described, of the other, shall be deemed to be related.

The Managing Director or Whole Time Director or Executive Director shall fall in sub-clause (i) and/or (iii) above – leaving no manner doubt that any of the aforesaid person, being the employee of the company, shall fall (iii) "such persons are employer and employee" and shall be treated as "related person" within the meaning of explanation below sub-section (5) of Section 15 CGST Act and Clause 2 of the Schedule I attached to the CGST Act.

Therefore, even if a Managing Director, Whole Time Director or Executive Director (being employee of the company) is not paid any consideration generally in the form of guarantee commission by the company for whose benefit said personal guarantee has been given by any of the aforesaid person to either Bank or Financial Institutions or Body Corporate, for giving his "Personal Guarantee", yet second limb i.e. consideration" stood satisfied – as they are all related person.

In my firm but humble view, any personal guarantee given by Managing Director, Whole Time Director or Executive Director (all being employee of a company), in discharge of duties, functions and responsibilities, shall fall within the four corner of Clause 1 of Schedule-III. If it is in discharge of duties, responsibilities and function, it shall not be treated as "Supply" by virtue of Section 7(2)(a) of CGST Act. Consequently, act of furnishing 'Personal Guarantee", not being supply at all, shall not be at all taxable – whether guarantee commission has been paid or not. Therefore, the consideration of third limb i.e. in the course of or furtherance of business, is not necessary in respect of Managing Director, whole time Director or Executive Director.

Now let us consider the third limb of Section 7 CGST Act, "in the course of business or furtherance of business". In case a Managing Director, Whole Time Director or Executive Director (being employee of the company) is executing the personal guarantee, could the said act of giving personal guarantee, be called in the course of business or furtherance of business.

Now, the point to be considered where "Ordinary Director" (who are not Whole time Director) furnishes Personal Guarantee, question arises whether GST is payable in both

situations – (a) commission paid (b) commission not paid.

The shield and protection of Clause I of Schedule III, which is available to Managing Director, Whole-time Director or Executive Director, is not available to "Non-executive Director" or 'Ordinary Director' because he is not 'employee' of a company, and, therefore, Non-Executive Director or Ordinary Director is also a "related person' and will fall under Clause 2 of Schedule I even where he does not receive any guarantee commission. Therefore, the question to be considered is whether giving of " "Personal Guarantee" is in the course of or furtherance of business. The word "business" has been defined in Section 2(17) CGST Act.

Section 2(17) define "Business" to include –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d)……

(e) to (i)……..

The Supreme Court has, in a landmark case of State of Tamil Nadu and Ors. vs. Board of Trustee of the Port of Madras: MANU/SC/0211/1999 has defined "business' as general proposition of law and not in relation to any particular definition.

> Port Trust is not involved in any activity of 'carrying on business' as has been clearly held in Aminchand Pyarelal's, case (supra), and that unclaimed and unserviceable goods are sold in discharge of various statutory charges, items etc. and the sales of these items are also an infinitesimal part of the Port Trust's main activities or services. No doubt, the sales of goods are in connection with, or incidental or ancillary to the main "non-business" activities, but they cannot be treated as 'business' without any plea by the State of Tamil Nadu that the Port Trust had an independent intention to carry on business in the sale, of unserviceable/unclaimed goods.

The Supreme Court in Commissioner of Sales Tax vs. Sai Publication Fund (22.03.2002 - SC) : MANU/SC/0216/2002 has, in relation to activities of Shirdi Sai Baba Trust, has observed as under:-

> The Trust is not carrying on trade, commerce etc., in the sense of occupation to be a "dealer" as its main object is to spread message of Saibaba of Shridi as already noticed above.

The Hon'ble Supreme Court in Assistant Commissioner vs. Hindustan Urban Infrastructure Ltd. (13.01.2015 - SC) MANU/SC/0029/2015, while dealing with a case where Official Liquidator of a company in liquidation, sold some property and the SC held that OL is a dealer & is liable to tax in view of wide and expansive definition as given in Kerala General Sales Tax Act, 1963, which is, to a large extent, similar to the definition of Business as given in Section 2(17) CGST Act, 2017.

33. The expression "business" has been given a wide and inclusive definition, whereby 'any business, trade, commerce or manufacture or any activity of the said nature, whether or not it is carried on with a motive for profit' has been expressly included. It further includes any transaction in connection with such trade, commerce, etc. including within its purview, all ancillary or incidental activities in connection with any trade, commerce, etc.

34. Section 2(viii)(f) further expands the definition of "dealer" enabling a far wider class of persons to fall within its ambit. It includes any person who transfers any goods, transfers property in goods involved in the execution of a works contract, delivers any goods on hire purchase or any system of payment by instalments, transfers the right to use any goods for any purpose and lastly, any food or beverage supplier or service provider, fit for human consumption. The Explanation 1 to Sub-clause (f) includes a society, club, firm or an association or body of persons, whether incorporated or not. Explanation 2 includes the Central Government, State Government and any of its apparatus within the scope of this section.

35. Therefore, given the exceptionally wide scope of the definition, prima facie, it can be concluded that any person or entity that carries on any activity of selling goods, could be categorized as a "dealer" under the Act, 1963. To test the aforesaid conclusion in the context of the issue at hand, we would delve into the interpretation ascribed by this Court to the term "dealer". A careful reading of the definition of "dealer" under the Act, 1963, would make it evident that the legislature intended to provide for an inclusive criterion and broaden the ambit of the said classification. The legislature did not propose to restrict the scope of the term as perceived in common parlance.

The Supreme Court in G. Venkataswami Naidu & Co. v. CIT MANU/SC/0065/1958 : [1959]35ITR594(SC) has prescribed certain test, but has finally observed that none of the test is in itself conclusive. The cumulative effect of all the factors and arrive at a conclusion as to whether the transaction

was an instance of investment or an adventure in the nature of trade.

The Division Bench of Hon'ble Bombay High Court in the case of Asstt. Commissioner of Income Tax vs. Narendra I. Bhuva (12.05.2003 - BOMHC) : MANU/MH/1732/2003, has observed as under:-

> In the present case, there is an isolated transaction and there is no repetition. The assessee is also not trader or businessman rather he is holding important position in the State Government. Therefore, the purchase of car cannot be stated to be usual trade or business or even incidental thereto. Under the circumstances it will be difficult to accept the observation of the assessing officer that the transaction is an adventure in the nature of trade. Accordingly, we hold that the purchase and sale of antique car by the assessee is not an adventure in the nature of trade.

The Bombay High Court in the case of Bhogilal H. Patel v. CIT MANU/MH/0016/1969 : [1969]74ITR692(Bom) , held that the purchase of two plots of land by the assessee was only an investment of capital and the profits earned on resale were an accretion to capital and not profit from business or any adventure in the nature of trade. The court answered that it was not a venture in the nature of trade.

The Andhra Pradesh High Court in the case of P.J. Udani v. CIT MANU/AP/0207/1964 : [1967]63ITR766(AP) , held that although it is well-settled that an event of single transaction of purchase and sale may constitute an adventure in the nature of trade provided that the transactions bear the essential elements of trade, the onus is on the Department to prove the intention of assessee to make profit and on facts, there was no material to show that the transaction was an adventure in the nature of trade.

The Madras High Court in the case of Ajax Products Ltd. v. CIT MANU/TN/0431/1960 : [1961]43ITR297(Mad) , has dealt with a similar question. The court held that the existence of an intention to sell at a profit even at the time of the purchase may be a relevant factor in deciding whether the transaction of purchase and sale constituted an adventure in the nature of trade, but it is neither conclusive nor decisive in proving that the purchase and the subsequent sale together constituted an adventure in the nature of trade.

The Calcutta High Court in Jatia Investment Co. Vs. CIT: MANU/WB/0114/1992, after analyzing all the above judgments and also relying upon the judgment of the Hon'ble Supreme Court n G Venkataswami& Co, has observed as under;-

> In all these cases, the courts have observed that the intention of making profits must be there to turn a transaction into an adventure in the nature of trade and, while taxing the accretion to the investment made, there must be proof of such intention having been expressed. In the present case, the very objects of the firm as contained in the recital do not go beyond the acquisition of shares in any company or body corporate or acquiring and holding immovable properties. The acquisition itself, without any indication or manifestation of intention to dispose of , or dealing in the same for earning profits and actually having no disposal of the same during the previous year, cannot be interpreted that the intention of making profit was there. In the absence of a profit motive in the adventure, mere holding of shares or property cannot constitute a business.

In my view, the term "supply" is from the point of view of person who is supplying and not person who is receiving supply. Thus, if the supplier is not in the business of supplying goods or services, GST is not applicable. CBEC Press Release No.78/2017 dated 13.7.2017, it has been clarified that an individual selling old jewellery is not in the business of selling such jewellery. Hence, GST will not be payable by recipient under reverse charge. In my humble view, the principle is in respect of old jewellery, would equally apply (with same virulence) to all supplies made by individual in his individual capacity. There is, however, a caveat, if a registered dealer is incidentally selling used car, sale of scrap, sale of old machinery, sale of old furniture etc. would be subject to GST.

The common thread, as prevailing in all these judgments, is that there must be an intention to trade with a view to earning a profit so as to make it "adventure in the nature of trade" and consequently taxable. However, I find that in the definition of "business" as given in Section 2(17)(a) CGST Act, it is clearly mentioned that "any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for pecuniary benefits", the definition itself rules any pecuniary benefit out of transaction – thus leaving us to find out as to whether the transaction is in the nature of trade – minus profit. In my view, in furnishing personal guarantee by the Director in favour of Bank, FIS, the essential element of "in the nature of trade" on the part of Director, is missing. However, I am conscious of the fact that Section 2(17)(c) reads " any activity or transaction in the nature of sub-clause (a), whether or not there is a volume, frequency, continuity or regularity of such transaction". In any event, activity or transaction has to pass through two tests (i) the first test "in the nature of trade" and only thereafter (ii) second test of Section 2(17)(c) i.e. volume, frequency, continuity or regularity etc. etc, shall have to be satisfied. If the first test i.e it must be in the nature of trade is not satisfied, second test automatically fails even if there is no volume or continuity or frequency or not. Hence, in my humble view, execution and furnishing of personal guarantee by an Ordinary Director would also not be taxable as it fails the test "in the nature of trade". Obviously, therefore, condition precedent i.e. "in the course or furtherance of business" as envisaged in Section 17(1)(a) CGST, is not satisfied.

* * * * *

Levy of tax on Liquidated damages!!!

CA Harsh Gadodia
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As the world deals with the challenges posed by the COVID-19 pandemic, India Inc. struggles to overcome the economic slowdown triggered by the consequent lockdown. The shutdown of businesses, slowdown in demand, and complete disruption in the supply-chain have triggered a severe liquidity crisis in the economy and finding it difficult to meet their contractual obligations, which may result in non-performance of agreed obligations or delayed performances/deliveries. These defaults could cause a surge in claims for liquidated damages, especially in cases where the plea of force majeure is untenable.

Levying of taxes on 'Liquidated damages' remains one of the most debated issues in erstwhile regime as well as under the Goods and Services (GST) laws, and may soon become litigious, with an increase in claims for damages.

In erstwhile regime, there are many instances, where the demand on service tax has been made on liquidated damages on the principles that it falls under the purview of declared services i.e. "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;" under sec 66E of the Finance Act. The number of demands on the said matter has been increased exponentially when a clause has been inserted in a mega exemption notification no. 25/2012-ST dated 20.06.2012 which enumerates that "Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract;"thereby reflecting the intention of the Government. However, it is a settle law that exemption notifications is immaterial, and had to be disregarded when levy itself of Service Tax was non-existent. (Larsen & Toubro Ltd. [2015 (39) S.T.R. 913 (S.C.)])

Now in GST era, the same clause "agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act" is included in schedule II of the CGST Act under the head of activities or transaction to be treated as supply of goods or supply of services. With the amendment in sec 7 of CGST Act which defines scope of supply, a transaction or activities listed in schedule II, first needs to satisfy the expression "supply" as envisages in sec 7(1) of CGST Act.

Now the moot question arises whether liquidated damages for non-performance would be leviable to tax??

Generally, provision of liquidated damages contained in a contract is as per Section 74 of the Contract Act, 1872. The true terms, scope and effect of the said provision and the expression

"liquidated damages" contained therein has been laid down by the Apex Court and followed by other Courts in the country repeatedly. Inone of the decisions, the Apex Court in the case of Kailash Nath Associates Vs. Delhi Development Authority, (2015) 4 SCC 136 has observed that Section 74 of the Contract Act, 1872 (in short, "the Contract Act"), which is sandwiched between Sections 73 and 75 thereof which deal with compensation for loss or damage caused by breach of contract and compensation for damage which a party may sustain through non-fulfillment of a contract after such party rightfully rescinds such contract, is also a provision under which compensation is payable for breach of contract where damage or loss is caused by such breach. Relying upon a conspectus of various authorities on the said provision, the Supreme Court in the said decision summarised the law on compensation for breach of contract under Section 74 of the Contract Act as follows (para 43):

"Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the court cannot grant reasonable compensation.

Reasonable compensation will be fixed on well known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act. Since Section 74 awards reasonable compensation for damage or loss caused by a breach of contract, damage or loss caused is a sine qua non for the applicability of the section.

Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application."

On application of the law summarised as above by the Apex Court, it is ex-facie evident that the absurd theory of the contractee agreeing under the contract with the contractor to, in the event of breach or default specified in the agreement/ contract, "tolerate" the said acts/ situations in return for monetary recovery as specified "liquidated damages" is devoid of any merit or substance whatsoever. Such payments are clearly in the nature of compensation for damages and/or loss due to breach of contract. There is no issue of the contractee "tolerating or agreeing to tolerate" the breach of contract by the contractor. Hence, under no circumstances liquidated damages can come within the purview of "tolerating an act".

Recently, in case of**South Eastern Coalfields Ltd. (TS-1120-CESTAT-2020-ST)**, Hon'ble CESTAT quashes the demand and rejects the department contention that in breach of contract, compensation, forfeiture of earnest money deposit and liquidated damages received as 'consideration' for 'suffering' is synonymous with 'tolerating' taxable as 'declared service' u/s 66E(e). Marking the distinction between "condition" to a contract and "consideration" for a contract, it was held that on reading agreement as whole, the intention of the assessee and other parties was for supply of coal, for supply of goods and for availing various types of service but not to impose any penalty upon the other party to say that recovering sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration; Infers that activities contemplated u/s 66E (e) are only those activities where the agreement specifically mentions that one party agrees to refrain from an act or to tolerate an act or a situation, or to do an act. Hence service tax not leviable."

Larger Bench of Chennai CESTAT in case of **Repco Home Finance Ltd. (TS-506-CESTAT-2020-ST)** held that "foreclosure charges collected by the banks and nonbanking financial companies (NBFC's) on premature termination of loans are not leviable to service tax under 'banking and other financial services' as defined u/s 65 (12) of the Finance Act; Relies on the principle that consideration should flow at the desire of the promisor as mentioned in Service Tax Education Guide which examines the word 'consideration' in light of Indian Contract Act;"

Further, in case of **Amit Metaliks Limited [2020 (41) G.S.T.L. 325 (Tri. - Kolkata)]** it was held that compensation/ liquidated damages was debt in present and future, which

was actionable claim as per Transfer of Property Act, 1882 and not liable to Service Tax.

From the above recent judgments pronounced for service tax regime laid down the principle that amount collected as liquidated damages will not fall under the purview of "consideration" as intention of the parties is not to impose penalty or tolerate an act. The said principles shall be applicable in GST regime also.

However,the said matter has been examined in GST era alsowherein various advance ruling authority has come to the conclusion that liquidated damages is a consideration for tolerance and would be liable to GST.

AAR in case of **"RashtriyaIspat Nigam Ltd.(2020 (32) G.S.T.L. 492 (A.A.R. - GST - A.P.)** held that Liquidated damages and other penalties like "milestone penalties". Liability of payment of liquidated damages by contractor established, once the delay in successful execution of work is established on the part of the contractor - Thus, act of delayed supply happened and the same tolerated by an additional levy in the nature of liquidated damages which would be "supply of service".

Similar judgments has been pronounced in following cases –

- Dholera Industrial City Development Project Limited [2019 (29) G.S.T.L. 40 (A.A.R. - GST)]
- Maharashtra State Power Generation Co. Ltd. 2018 (13) G.S.T.L. 177 (A.A.R. - GST). Affirmed by AAAR
- North American Coal Corporation India Pvt. Ltd. 2018 (18) G.S.T.L. 525 (A.A.R. - GST)

But **Hon'bleBombay High Court differs from the AAR point of view mention supra and held in the case of *Bai Mumbai Trust* v. *Suchitra Wd/o Sadhu KoragaShetty* [2019 (31) G.S.T.L. 193 (Bom.)**] that a supply must involve reciprocal obligations, observed that there should be enforceable reciprocal obligations for supply and unilateral acts, or any resulting payment of damages cannot be encompassed into supply. Hence no GST shall be payable.

From the above discussion and pronouncement, it could be inferred that first it is essential to determine the intention of the parties to an agreement. The answer to these question would decide whether it satisfy the test of "consideration" or not. If the motive of an agreement is to tolerate an act, the amount received as damages would fall under the purview of "consideration" thereby exigible to GST otherwise not.

Further, approach of the revenue department would be required to be changed to avoid end number of litigation which can be done by providing clarity and guidance to the filed formation otherwise assessee would be left at the mercy of the higher authorities for positive light.

* * * * *

More than 80% of the online population has used the Internet to purchase goods and services. 44% of smartphone users admitted to "show-rooming" – They browsed products in brick-and-mortar stores, picked what they liked, then purchased online. 71% of shoppers believe they'll get a better deal online than in stores.

Though e-commerce now is the fastest growing business model across the globe, the first e-commerce website Amazon which was launched in 1995 did not make any profit for first seven years! Amazon recorded its first yearly profit in 2003. Rest they say is history.

No-Supply or Not so No-Supply : The Employer-Employee Conundrum

CA Aditya Dhanuka

&

CA Harsha Garg

The Goods and Services Tax Act, 2017 applies on all inter-state and intra-state supplies made in accordance with the provisions of the act.Section 7 of The Central Goods and Services Tax Act, 2017 ("CGST Act") elaborates the scope of supply which primarily includes transactions made for a consideration.

Schedule I to the CGST Act specifies activities which are to be treated as supplies even if made without consideration,one of which is, supplies between related persons when made in the course or furtherance of business.In this reference, it would be relevant to note that the explanation to Section 15 of the CGST Act provides that employer and employee will be deemed to be "related persons". Accordingly, supplies by employer to employees would be liable to GST even though these supplies are made without consideration since they are considered as related persons (Gifts not exceeding INR 50000 shall not be treated as supply).

Some common facilities provided by employer to employees may include:

i. Telephone /Internet Services

ii. Education reimbursement for employees' children

iii. Transport facilities

iv. Canteen facilities

v. Insurance facilities

vi. Coffee /tea and other beverages during office hours

Sometimes these facilities are obtained from an outside vendor by the employer on payment of tax and provided for use by the employees.Such facilities are usually provided free of charge, but in some cases, when an amount is recovered from the employees towards the said facilities, the question arises for their taxability.

The transaction between employer and employee is treated as related party transaction and so, transaction value will not be applicable for chargeability of tax. Valuation for such transactions shall be determined in accordance with Rule 28 of the Central Goods and Services Tax Rules, 2017. – "**Value of supply of goods or services or both between distinct or related persons, other than through an agent".**

According to Rule 28, the value of supply to be considered by the employer on recoveries made from employees shall be:

a. Open market value of such supplies

b. if Open market value is not available, the value of supply of supply of similar kind of goods or services

c. if value cannot be ascertained under clause a or clause b above, then value shall be cost plus 10% (Rule 30) or residual method of valuation (Rule 31) shall be adopted, in that order.

Several applicants had sought ruling on such activities from the Advance Ruling Authority to get aruling on the subject. However, with varied rulings on the same matter from different states, it has created more confusion.

Recent ruling by the Maharashtra Authority of Advance Ruling in case of *Tata Motors Ltd.* had provided that where the assessee was providing bus facility to the employees at a nominal price will not be a supply as the facility is provided only in the capacity of an employer and the transaction between the applicant and the employees is due to Employer-Employee relation. Therefore, the same shall be covered by clause 1 of Schedule III and by the virtue of the same the facility will not be a supply under Goods and Services Tax law.

Conversely a ruling by Haryana Authority of Advance Ruling in case of *Beumer India*held that free transport provided by an employer to ferry employees to work isnot covered under Schedule III, since the same is provided by employer to employee and not the other way around and hence is subject to GST.

Similarly, in case of *Caltech Polymers Pvt. Ltd.*,Kerala AAR had held that the recovery of amount from employees for the canteen services provided by the company is taxable under GST.

Where gifts are given by employers to their employees on certain occasions or festivals,if such gifts are provided in cash, then the same would not be subject to GST but would be liable to income tax (subject to the limit of INR 5,000) in the hands of the employee.

However, gifts other than cash would be treated as supply and would accordingly be chargeable to GST, subject to the limit in Schedule I.

A press release issued on the above stated matter had clarified that *"the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST."*

The Press release further provided that *"the same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C)."*

Services by employee to the employer in the course of or in relation to his employment will not be considered as supply of goods or services as the same is covered under Schedule III to the CGST Act which specifies activities to be considered neither as supply of goods nor supply of services. Therefore, any service by the employee to the employer which in in line with the contractual agreement of employment and consequent payment made by the employer to employee in terms of the above should be out of the scope of supply and thus no tax under Goods and Services Tax law shall be charged on it.

Another pertinent matter in this context which again is subject to lot of disputes is recovery of notice pay from employees. Initially when GST was introduced and Schedule II was covered within the scope of supply, this recovery was understood to fall under clause (e) of paragraph 5 of Schedule II "agreeing to the obligation to refrain from an act, or to tolerate an act or asituation, or to do an act;".

However, with the amendment of the Act enforced on 1st February 2019, w.e.f. 1st July 2017, the levy of GST would depend upon the test of supply. Recovery of notice pay could be classified as compensation from the employee made in accordance with the employment agreement on account of their failure to honour the terms and hence ideally GST should not be levied on the same.

Based on the above, we can observe that the transactions between employer and employee can be perceived distinctly and employers providing certain facilities may review their terms of employment to comply with the provisions of the Goods and Services Tax law.

* * * * *

Sachin Bansal and Binny Bansal (the founders of Flipkart) who are the youngest Indian billionaires have seen their wealth skyrocket within a few years. They were on 86th position in Forbes India Rich list in 2015 and climbed to 65th position in 2016 with an individual wealth of Rs. 1.24 billion each. They were recently overtaken as the youngest Indian billionaire by the founder of Ola Cabs.

Online sales from social media platforms have grown like clockwork in the past four years showing an average growth of 93% every year. Most first time millionaires in the past four years have emerged from e-commerce business sector. Twitter ads have the most conversion rate of any social media platform when it comes to converting online advertisement into genuine sales

Classification of Goods and Services under GST – A bird's eye view

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A. Introduction:

Once the taxability of 'supply' is ascertained, the next logical and equally significant step is to determine the correct and proper classification of goods and services which are being supplied. One should always bear in mind the importance of correct classification as the applicability of exemption or rates depends upon it. Even if the 'goods' or 'services' in question appear to fall under two competing tariff items/headings which may carry the same rate, the task of determination of the correct and proper classification should never be compromised or ignored. While the classification disputes stood drastically reduced under the erstwhile Central Excise and Service Tax regime with the adoption of HSN based Tariff classification of goods and the introduction of the Negative List-based levy of service tax, as the case may be, the GST regime poses different challenges on this front. The classification disputes may be reignited due to the absence of any dedicated tariff, multiple rates and grouping of too many non-notified items under the residual category attracting tax @ 18%.

B. Classification under GST – Design and Structure:

The salient features of the scheme of the classification of goods and services under GST are as under:

a. As stated above, there is no dedicated Tariff nor Tariff Legislation under GST, unlike the (erstwhile) Central Excise Tariff Act, 1985 or the Customs Tariff Act, 1975.

b. S.9 of the CGST Act, 2017, i.e. the charging provision, inter alia, provides that the Central Government ('CG') may notify, on the recommendations of the GST Council, the rates of GST to be levied on all intra-state supplies of goods or services, except on the supply of alcoholic liquor for human consumption. Interestingly, S. 9 itself caps the maximum rate at 20% for CGST [40% under corresponding S.5 of the IGST Act, 2017].

c. Thus, the all-important task of determining/prescribing the tariff rates is performed by the GST Council which would thenbe effectuated by the CG through notification.

C. Classification of Goods under GST:

The salient aspects of the 'scheme of classification of goods' under GST are as under:

a. Based on the recommendations of the GST Council, CG has issued notification no. 1/2017-CT (Rate dt. 28.06.2017 and corresponding notification no. 1/2017-IT (Rate) dt. 28.06.2017, both effective from 01.07.2017, under S.9 (1) of the CGST Act or S.5(1) of the IGST Act, as the case may be, prescribing the **tariff rates** for various items/ goods.

b. Notification no. 1/2017-CT (Rate) ibid contains six (6) Schedules prescribing different tariff rates of CGST as under:

i. Sch.I - 2.5%

ii. Sch.II - 6%

iii. Sch.III - 9%

iv. Sch.IV - 14%

v. Sch.V - 1.5%

vi. Sch.VI - 0.125%

[**Note**: The rate of SGST will be equal to the CGST rate. The rate of IGST will be the sum total of the rates of CGST and SGST rates].

c. Simultaneously, separate notification no. 2/2017-CT (Rate) with corresponding notification No. 2/2017-IT (Rate), both dt. 28.06.2017 effective from 01.07.2017, are issued under S.11 of the CGST Act/S.6 of the IGST Act providing for total exemption from payment of tax in respect of the goods specified therein.

d. Both these notifications i.e. 01/2017-CT(Rate) ibid and 2/2017-CT (Rate) ibid mention the description of goods, chapter/heading/sub-heading/tariff item and the prescribed rates. The last entry at Sr.No. 453 of List III of Notification No. 1/2017 CT (Rate)ibid is a '**Residual Entry**' and prescribes the rate of tax @ 9% (CGST) in respect of '**goods falling under any Chapter which are not specified in Schedule I, II, IV,V and VI'**.

e. All the aforesaid notifications carryan Explanation at the end that, inter alia, provides as under:

- "Tariff item", "sub-heading", "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.

f. Thus, the structure of Tariff in the form of Lists [can it be called Tariff at all?] notified through notifications is fundamentally based on the HSN Tariff which is followed by Customs and also internationally.

g. The roots of classification disputes may lie in the descriptive tariff with the mention of only 4 digits heading in respect of majority of the items. The conflicts may arise when the description of goods with the same 4 digit heading figure under different lists carrying different rates. Moreover, the shadow of the residual entry at the end of List III with rate of tax @ 9% (CGST) would also loom large over the classification of the goods sought to be classified under this entry. An established principle of law that 'the specific would prevail over general' may come under severe test in case the classification of a particular itemunder specific heading carrying rate of tax lower than 9% is disputed by the department. Also, the specific classification of any such item under Customs Tariff would only serve the purpose of mentioning HSN Code as there will not be any impact on rate of tax.

h. The challenge may also arise in respect of the classification of parts/ accessories /components due to this peculiar design and structure of Tariff under GST laws.

C. Classification of Services under GST:

Classification of services under GST is a bit complex subject. The methodology adopted for the purpose of providing the classification of services and the rates of tax is quite intricate and may even look clumsy at times.

A few salient aspects of the design/structure of the 'scheme of classification of services' are as under:

a. For the purpose of classification of services and the tax rates, a new **Chapter 99** with sections and Headings have been introduced describing the services which are taxable at the notified rates.

The structure consists of :

- Chapter (2 digit)
- Section (1 digit)
- Heading (4 digit)
- Group (5 digit)
- Service Accounting Code (SAC) (6 digit)

The relevant notification is notification no. 11/2017-CT (Rate) dt. 28.06.2017 effective from 01.07.2017 [Corresponding IGST notification no. 8/2017-IT (Rate)].

b. Notification No. 11/2017-CT (Rate) ibid also has an Annexure containing, what is described as '**Scheme of Classification of Services**'.

c. The significant aspect of notification no. 11/2017-CT (Rate) ibid is that it is issued under S.9 (1), S. 11(1), S.15(5) and S.16(1) of the CGST Act. (This is indeed a questionable practice !).

d. Simultaneously, the CBIC has also issued detailed **'Explanatory Notes for Classification of Services under GST (Chapter 99)'** on 12th June, 2018. These Explanatory Notes are based on the official guidelines regarding the scope and coverage of the headings, groups and services codes of the Scheme of Classification of Services. The Explanatory Notes are based on the Explanatory Notes to the UNCPC and as recommended by the Committee constituted for the purpose. These Explanatory Notes may serve as a useful guide to the taxpayer and also the tax administration in the matter of determination of taxability, classification and fixation of rates of tax for services.

e. A separate notification no. 12/2017-CT (Rate) dt. 28.06.2017 effective from 01.07.2017 has also been issued **under S.11(1) of the CGST Act** providing total exemption from payment of tax in respect of the supply of services specified therein.

D. 'NIL' tariff rate – Does it exist for any goods or services?

A question that may arise here in the minds of many is,**'Does there exist 'Nil' tariff rate for any 'goods' or 'services'?'**This question may crop up since the definition of '**exempt supply'**contained in S.2(47) of the CGST Act, inter alia, covers '*supply of any goods or services or both which attract Nil rate of tax' or 'which may be wholly exempt from tax under S.11'.*

It must be noted that a total exemption provided by a notification issued under S.11(1) of the CGST Act [for instance, notification no. 2/2017-CT (Rate) or 12/2017-CT (Rate)] is different than the 'nil rate' prescribed by a notification issued under S.9 (1) of the Act, though both relieves the notified goods/services of the total tax burden.

On careful study and examination of the relevant notifications issued under S.9(1) of the CGST Act concerning goods and services, it appears that :

- 'NIL' tariff rate is not prescribed for any goods whatsoever (though total exemption is separately granted by notification no. 12/2017-CT (Rate) ibid for the specified goods);
- On the other hand, 'Nil' tariff rate appears to have been **provided** in respect of the supply of services falling under the following heads viz:

  i. Heading 9972 [Sr. No.16 (i) and (ii) of Not. No. 11/2017-CT (Rate) **as substituted** by Not. No. 1/2018-CT (Rate) dt. 25.01.2018]

  ii. Heading 9986 [Sr. No. 24 of Not. No. 11/2017-CT (Rate) as amended by Not. No.20/2019-CT (Rate) dt. 30.09.2019].

It is interesting to note here that 'Nil rate' has been prescribed in respect of specified services falling under Heading 9986 at Sr. No. 24 of the parent Notification No. 11/2017-CT (Rate) ibid. However, this Notification has been issued, inter alia, under S. 9(1) and 11(1) of the CGST Act. The question then may arise whether the 'Nil rate' prescribed in respect of this Heading shall be considered as 'tariff rate' in terms of S. 9(1) or 'Nil rate' in terms of S.11(1) of the Act? In the author's opinion, the 'Nil rate' in respect of this entry has to be considered as 'tariff rate' only since the question of providing exemption by a notification under S.11(1) would not arise unless there exists a tariff rate for the particular goods or services. Having said that, this is a highly questionable and debatable manner of issuing a notification by simultaneously invoking, inter alia, the charging provisions of S.9 and the provisions of S.11 relating to the grant of exemption and can be a subject matter of serious legal challenge.

To sum up….

Under the erstwhile Central Excise Tariff, the 'classification of goods', had always remained the most litigated area for decades. It was only with the adoption of the HSN-based tariff and the introduction of the Central Excise Tariff Act, 1985 that the disputes over classification of goods reflected a declining trend. On the other hand, in the erstwhile Service Tax regime introduced in 1994, the classification disputes were frequently arising due to the 'scheme of the positive list-based levy of service tax' contained in S.65 (105) of the Finance Act, 1994 as amended from time to time. With the gradual expansion of the service tax net covering new services year after year and the loosely drafted definitions, the disputes over classification of services were mushrooming. This trend was halted with the introduction of the 'Negative List-based levy of service tax regime'in 2012. A uniform rate of 15% for majority of the services covered within the scope of the levy also helped in reducing the classification disputes.

However, considering the peculiar design and structure of the 'scheme of classification of goods and services under GST' briefly explained above, a question may arise: "**Will the classification disputes raise their ugly head once again?".**

* * * * *

Foreign Jurisprudence on Composite Supply

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As we may be aware that the Goods and Services Tax law contains in it various facets which are adopted (or adapted) from the erstwhile Services Tax Law (Finance Act, 1994) or 'foreign legislations & jurisprudence'. One such facet is the concept of 'Composite Supply'. Composite supply as a concept under GST law has been adapted from the erstwhile concept of Bundled Supply as defined in Explanation to Section 66F of Finance Act, 1994 and foreign jurisprudence.

Key Definitions under GST law:

As per Section 2(30) of CGST Act, "composite supply" means 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.

As per Section 2(90) of CGST Act, "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Keeping into background these definitions, provided below is relevant extracts from jurisprudence of various countries regarding the concept of Composite Supply which is very relevant to interpret Section 30 of CGST Act legitimately orwhilemaking submissions in the Court of Law or at the time of assessments.

Australia

In terms of Goods and Services Tax Ruling 2001/8 issued under Australia,**Composite Supply means a supply that contains a dominant part and includes something that is integral, ancillary or incidental to that part. Composite Supply is treated as supply of one thing.**

There have been various precedents in which the courts have defined a composite supply. Few are highlighted below:

- The Full Federal Court in the case of Luxottica found that while **'supply' is widely defined**,it is nevertheless invites a commonsense, practical approach to characterisation. An automobile has many parts which are fitted together to make a single vehicle. Although, for instance, the motor, or indeed the tyres, might be purchased separately there can be little doubt that the sale of completed vehicle is a single supply. Like a motor vehicle, spectacles are customarily bought as a completed article and in such circumstances are treated as such by the purchaser. **The fact that either the frame or the lenses may be purchased separately is not the point. Similarly the fact that one component, the lenses, is GST-free or that one component is subject to a discount does not alter the characterization.**
- In case of Saga Holidays, Stone J focused on the 'social and economic reality' of the supply and found that there was a single supply of accommodation and the adjuncts to the supply (including the use of the furniture and facilities within each room, cleaning and linen services, access to common areas and facilities such as pools and gymnasiums and various other hotel services such as porterage and concierge) were incidental and ancillary to the accommodation part of the supply.

European Union

As per the European Union Directive, a composite supply is a transaction where supplies with different VAT treatments are sold together as one. The supplies with a composite supply may consist of parts that, if assessed separately, have different tax rates. Some have standard rates, reduced rates or are exempt from VAT.

The European Court of Justice ('ECJ') has delivered several judgments on the aspect of composite supply under European Union Value Added Tax laws (EU-VAT)

In the landmark case of Card Protection Plan Ltd. v. C & E Commrs (1994) BVC 20, the ECJ held that 'a service must be regarded as ancillary to a principal service if it does not constitute for customer an aim in itself, but a means of better enjoying the principal service supplied'.

United Kingdom

Under the UK VAT laws, a multiple supply (also known as a combined or composite supply) involves the supply of a number of goods or services. The supplies may or may not be liable to the same VAT rate.

If a supply is seen as insignificant or incidental to the main supply, then for the purposes of VAT it is usually ignored – the liability is fixed by the VAT rate applicable to the main supply (or supplies).

In the case of Tumble tots (UK) Ltd. v. R & C Commrs (2007) BVC 179. Members of a playground received a T-shirt (children's clothing is potentially zero rated) and a magazine (potentially zero rated) as well as the right to attend classes which would be standard rated. The court decided that there was a single standard rated supply of the right to belong to the playground and the T-shirt and magazine were incidental to the main supply. No one who was not in the playground would have bought the T-shirt or magazine separately.

Concluding…

Per the above, it is clear that globally composite supply means a supply of more than one goods/services wherein one supply qualifies as principle supply. Therefore, taxes as applicable on the principal supply are applied on the whole of composite supply.

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Amitabh Bachchan has been made the brand ambassador of GST.

The Father of Commerce is Poseidon according to Greek mythology.

Reason: He is the god of the sea and used it for trading. Trading is significant to commerce and so he is regarded as the father of commerce.

India has had a maritime history dating back to around 4,500 years, since the Indus Valley Civilization. The impetus to later re-develop maritime links was trade (primarily in cotton, pepper and other spices), due to the monopoly of the Persians and later the Arabs over land-based caravan routes

With a market capitalization of 1.68 trillion U.S. dollars as of April 2020, Saudi Aramco was the world's largest company in 2020. Rounding out the top five were some of the world's most recognizable tech brands: Microsoft, Apple, Amazon, and Google's parent company Alphabet.

Recent Amendments in GST – A Snapshot

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The Government has via Notification no. 94/2020-Central tax dated 22nd December 2020 made the following changes in CGST Rules, 2017:

Restriction on use of amount available in Electronic Credit Ledger

New Rule 86B has been inserted which restricts use of credit available in Electronic Credit Ledger. The said rule restricts use of Input Tax Credit by more than 99% against output tax liability. This restriction is applicable for taxpayers whose taxable supply other than exempt supply and zero-rated supply exceeds Rs. 50 lakhs in a month.

Further, the said rule is not applicable in the following cases:-

a) The taxpayer (proprietor/ karta/ managing director/ partner/WTD Members of managing committee of Association/Board of Trustees) have paid income tax exceeding 1 lakh in each of the 2 preceding financial years or

b) Where taxpayers have received refund of unutilized input tax credit exceeding 1 lakh in the preceding financial year on account of exports or supplies to SEZ or

c) Where taxpayers have received refund of unutilized input tax credit exceeding 1 lakh in the preceding financial year on account of inverted duty structure or

d) The taxpayer has discharged his liability towards output tax through the Electronic Cash Ledger for an amount which is more than 1% of the total output liability, applied cumulatively, upto the said month in the current financial year or

e) The taxpayer is
   - Government Department
   - Public Sector Undertaking
   - Local authority
   - Statutory body

The Commissioner or any officer authorized by him in this behalf may remove the said restriction after such verification and safeguards as he may deem fit.

(effective from 1st January 2021)

Further, restriction in availment of Input Tax Credit under Rule 36(4)

Input tax credit to be availed by a registered person in respect of invoice or debit notes, the details of which have not been furnished in FORM GSTR-1 or using the invoice furnishing facility **shall not exceed 5 per cent of the eligible credit** available in respect of invoices or debit notes the details of which have been furnished in FORM GSTR-1 or using the invoice furnishing facility. Earlier, this limit was **10%.**

(effective from 1st January 2021)

Changes in GST Registration Procedure

Increase in time with respect to granting of GST Registration - Where a person applies for GST registration, the proper officer shall have **7 days' time** to either grant the registration in FORM GST REG-06 or issue a deficiency notice in FORM GST REG-03. Earlier this time limit was 3 days.

Biometric authentication for grant of GST registration – The authentication done until now while applying for GST registration was based on Aadhar number authentication. However, now the Individual/ Karta/Managing Director/WTD/Partner/Members of managing committee of Association/ Board of Trustees, Authorized

Representatives or Authorized Signatory will have to get biometric based Aadhar authentication and photograph submitted.

In case a person wishes not to opt for Aadhar authentication, biometric information along with photograph and other KYC documents are to be submitted. Only upon verification of such documents, the registration would be granted.

These activities would have to be physically carried out at one of the Facilitation centers as notified by the Commissioner.

(effective date to be notified)

Physical verification for grant of GST Registration - Where a person has not opted for Aadhar authentication or fails to undergo Aadhar authentication or where the proper officer deems it fit there shall be physical verification of the place of business of the person applying for GST registration. In such a case where physical verification has been carried out, one of the following steps will be carried out:

GST REGISTRATION

a) registration shall be granted in FORM GST REG-06 (where documents are in order) or

b) deficiency memo shall be issued (where further documents or clarifications are required) in FORM GST REG-03

Either one of the above activities needs to be carried out within 30 days of the submission of application.

Deemed Approval –

a) If no physical verification was carried out:- In such a case if registration is not granted within 7 days of receipt of application which is complete in all aspects or within 7 days of receipt of clarification to FORM GST REG-03 in FORM GST REG-04, the application for registration shall be deemed to have been approved.

b) Where physical verification was carried out:- In such a case if registration is not granted or a deficiency memo is not issued within 30 days of receipt of application, the application for registration shall be deemed to have been approved.

Cancellation of GST Registration

No opportunity of being heard - Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled, he may **without affording the said person a reasonable opportunity of being heard,** suspend the registration of such person with effect from a date to be determined by him.

Increase in reasons for cancellation of registration – Apart from the existing reasons, the government has allowed cancellation of registration in the following cases:

a) If a registered person avails input tax credit in violation of the provisions of section 16 of the Act or rules made thereunder or

b) If a registered person furnishes details of outward supplies in FORM GSTR-1 for one or more tax periods in excess of outward supplies declared in GSTR-3B

c) If a registered person violates provisions of newly inserted rule 86B (discussed above)

Suspension of Registration in special cases - Registration of a taxpayer can be suspended in the following cases:

a) where there is a significant difference or anomaly between outward supplies in GSTR 1 and GSTR 3B

b) where there is a significant difference or anomaly between GSTR2A and GSTR 3B

This should result in any contraventions to the provisions of the Act or the rules thereunder. Further to such suspension, an intimation shall be send to the taxpayer in his e-mail ID requiring him to explain within 30 days as to why his registration shall not be cancelled.

Restrictions in case of Suspension of GST registration - A registered person whose registration has been cancelled can neither make any taxable supplies nor shall be granted refund.

Removal of suspension before completion of proceeding- The proper officer shall now have the option to revoke the suspension of registration anytime during the pendency of proceedings for cancellation.

Restriction in filing of GST returns

a) For monthly filers- Such registered person shall not be allowed to file GSTR 1 in case he has not furnished his return in FORM GSTR 3B for the **preceding two months**.

b) For quarterly filers- Such registered person shall not be allowed to file GSTR-1 or use invoice furnishing facility in case he has not furnished return in FORM GSTR 3B for **preceding tax period**.

c) For monthly filers on whom there is a restriction on utilization of ITC- Such registered persons shall not be

allowed to file GSTR-1 or use invoice furnishing facility in case he has not furnished return in FORM GSTR 3B for **preceding tax period**.

E-way Bill

Validity of E-way bill - Earlier the validity of the e-waybill was 1 day for each 100 Km. Now this limit has been changed to 200 Km. This effectively means that e-waybill would expire faster than the time prescribed earlier.

Restriction on generation of E-way bill

Where the GST registration of a taxable person has been suspended neither the taxpayer/recipient nor the transporter will be able to generate E-way bill

Provisions notified through Finance Act 2020

Various provisions of the Finance Act 2020 have been notified to be effective from 1st January 2021 which are as follows:

a. Time limit for taking ITC for debit notes have been provided upto September return of next financial year if the debit note pertains to the current financial year. Earlier the date of original invoice corresponding to such debit note was the relevant document based on which the time limitation for availing ITC had to be calculated.

b. Composition taxable person for services have been barred from making supplies not leviable to tax, making interstate supply of services and supplies through E-commerce operator required to collect TCS

c. The provisions of late fees for late issuance of TDS certificates have been dropped.

d. Effective from 1st January 2021, a person opting for voluntary registration can also opt for cancellation of registration if he longer requires the registration. He was barred from doing so earlier.

e. The period of revocation of cancellation of registration can be extended by further 30 days if allowed by the Additional Commissioner or Joint Commissioner. Also, the Commissioner has been empowered to grant a further extension of 30 days beyond the period allowed by the Joint/Additional Commissioner.

f. Apart from the taxpayers involved in fake invoicing, even the beneficiaries of such fake invoicing have been made liable to penalty.

g. Availment of input tax credit on the basis of invoice not accompanied by supply or without invoice has been declared one of the offences u/s 132 for prosecution.

h. In certain supplies as may be notified, requirement to issue tax invoice may be done away with.

i. In Schedule II for classification between supply of goods and services, the portion which allowed transfer of business assets 'even without consideration' to be a supply has been omitted. This is because without availing input tax credit, transfer of business assets cannot be classified as a supply under Schedule I.

* * * * *

Often referred to as "The Father of Tax Reforms", Raja Jesudoss Chelliah (12 December 1922 – 7 April 2009) was an economist and founding chairman of the Madras School of Economics. He completed an MA in economics from the University of Madras and PhD in the United States. He worked as the chief of the Fiscal Analysis Division, Fiscal Affairs Department, International Monetary Fund between 1969 and 1975. He served as a consultant to the government of Papua New Guinea on Centre Provincial Financial Relations.

Attempt to Untangle the Web of GST : Writs Argued

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GST has taken India into a dynamic tax changing environment which was considered essential for the economy to be on the growth trajectory. There existsvarious questions in terms of both substantive law and procedural aspects.To seek redressal of the pressing issues, we have moved the writ court which has reaped results in an expedited manner. A brief snapshot of writs arguedby us is given below:

Denial of transitional credit on account of procedural lapses

We argued a writ petition before the Delhi High Court for denial of transitional credits due to non-filing/ delay in filing of Form GST TRAN-1. Delhi High Court read down the rules to prescribe the period as merely directory. This landmark decision provides three years to avail credit as per the limitation act and the benefit is not just qua the petitioners. Supreme Court has stayed the decision in the interim. Separately, we have challenged the retrospective amendment introduced in the transitional provisions which validated the time limit for filing TRAN-1.Similarly, we assisted clients before Bombay High Court to avail transitional credit under Form GSTR TRAN-3 on account of procedural glitches and the subsequent inaction on the part of the authorities where the respondents have been directed to respond to whether the GST Council has considered our client's issue.

Continuation of Export Benefits under GST

Multiple petitions challenging the notification which curtailed the benefits granted to exporters under the Advance Authorisation scheme (AAS) detailed in Foreign Trade Policy (FTP) were filed. We prayed for upfront exemption on Integrated Tax (IGST) in respect of the goods imported under the AAS. The petitioners were granted an interim relief followed by the final favourable order by the Delhi High Court. The Government later notified IGST exemption for all exporters. The tax authorities filed an SLP which we succeeded in getting dismissed.We have also prepared writ petition against denial CVD exemption under AAS for intervening period when exemption was not specifically incorporated under AAS.

Imposition of pre-import condition

Numerous notices were sent by the Department of Revenue Intelligence seeking details of compliance with the pre-import conditions introduced in October 2017 amending the AAS. The imposition of this vague pre-import condition was challenged by us before six High Courts. Gujarat High Court held that the pre-import condition was ultra vires the FTP. The other High Courts have directed that no coercive action should be taken and accordingly the DRI proceedings were stayed. As a result of our writ petitions, the Government rolled back the pre-import condition with effect from 10 January 2019 to provide relief prospectively. The Revenue has filed an SLP againstthe Gujarat High Court and we are arguing for various exporters before the Supreme Court.

In many cases, SCNs have been issued for the violation of pre-import condition despite pendency of the matter before the Supreme Court. We have challenged issuance of such noticesbefore Bombay High Court.

IGST on Ocean Freight

Multiple petitions are argued by us in various High Courts to challenge notifications through which Indian importers were made liable to discharge

service tax and IGST under the reverse charge mechanism, for the services of transportation of goods to India in case of CIF contracts. Gujarat High Court has struck down the relevant notifications by holding them to be unconstitutional and ultra vires the IGST Act.

Non issuance of C-Forms on petroleum products in the post-GST regime

A petition was argued to challenge non-issuance of C-Forms to power generation plants post introduction of GST. This petition was filed in light of the specific entry permitting issuance of C-Forms in case of petroleum products used in power generation. Punjab & Haryana High Court allowed the petition by directing the Haryana State authorities to issue C-Forms.

Recovery from Shareholder

A petition was filed against an order demanding duty, issued under the Maharashtra Entertainments Duty Act, 1923, from a Shareholder. The Bombay High Court on a plea made by the State for re-adjudication, was pleased to set aside the order and has now remanded the matter to the concerned jurisdictional authority for fresh adjudication.

Place of supply in case of 'intermediary' services

We argued before the Gujarat High Court for indenting agents wherein Section 13(8)(b) of the IGST Act was challenged, which deems the place of supply for "intermediary services" to be within India. Government has issued notifications and TRU Circulars to partly resolve the issue..The Bench has partially rejected constitutional challenge of section 13(8)(b) of the IGST act, however instructed government to consider arguments in writ petition as representation. A review petition has been accepted by the Gujarat high court which has constituted special bench to hear the arguments in detail. We have argueda similar petition before Bombay High Court where hearing has concluded.

ITC accumulation on account of restriction of rebate benefit and exclusion of transitional credits for computing "net ITC"

We assisted clients by arguing writ petitions challenging the arbitrary provisions that restrict rebate benefits in case an up-front exemption or benefit of reduced rate is taken on inputs (for merchant exports). We have also challenged the exclusion of "transitional credits" from the ambit of "net ITC" used for computing refund claim. The petition filed before the Delhi High Court has been disposed off with a direction to the Revenue authorities to consider the petition as a representation before the Government and to issue a clarification on the issues highlighted in the petition. Subsequently, the Government has permitted the rebate benefits to such exporters provided they only avail benefit of the BCD portion on imports and not IGST exemption. The Gujarat High Court has pronounced the order upholding constitutionality and incorrectly held that the amendment applies retrospectively. We have preferred a review petition against the judgment. Meanwhile, DGGSTI has issued several notices demanding IGST exemption availed under AAS where rebate benefits have been availed by assessees. DGGSTI has demanded payment with retrospective effect. We are currently assisting many such assessees in filing writ petition against the DGGSTI.

Forced recovery of GST for period prior to insolvency commencement date

Due to a design flaw in the GST Network, companies who are under insolvency proceedings and have not discharged old GST liabilities are forced to pay the past GST in spite of the moratorium provisions. As the Government did not file any claim before the IRP, we have challenged forced recovery before the Gujarat High Court.Consequential to our writ, provisions mandating separate registration for the entity undergoing insolvency proceedings have been introduced by which this issue has been resolved.

Differential rate of GST applicable on services of sub-contractor

A petition was argued before the Delhi High Court for a petitioner who was aggrieved by the GST rate of 18% percent imposed on works contract services provided by sub-contractors in case of government contracts. Sub-contractors had to discharge 18% GST on the services while the contractor only had to discharge 12% GST, which meted out differential treatment to the sub-contractors who were essentially doing the same work as the contractors. The GST Council revised the rate of GST subsequent to our petition.

Reverse charge on procurements from unregistered suppliers

Petitions were argued by us to challenge provisions when a registered person seeking supply from an unregistered service provider was liable to paytax on reverse charge

basis. Subsequently, the GST Council decided that reverse charge provisions under Section 9(4) of CGST ACT, 2017 and Section 5(4) of IGST Act, 2017 (which covered all purchases from unregistered suppliers) were to be suspended.

Double Taxation on Imported Goods stored in Customs Bonded Warehouse

We challenged the Government circular levying IGST on the in-bond transfer of ownership of imported goods stored in a Customs Bonded Warehouse before clearance of the goods. The petition has become infructuous after the amendments made to the circular subsequent to our writ.

Tax Cascading for Publishers

The output supplies of the publishing sector are exempt from GST. The sector pays royalty to authors on which GST was required to be discharged on reverse charge basis. The credit could not be availed resulting in accumulation leading to higher input costs. Refund of credit on account of inverted duty structure was also not an option for this sector. Subsequent to filing of our writ, an amendment was brought about where authors could exercise the option of paying GST under forward charge.

Exemption of GST on Domestic Procurements by R&D Centres

We argued a writ petition filed by an R&D centre challenging the notification curtailing the excise duty waiver on domestic procurement of goods guaranteed to institutions, recognized and certified by the Department of Scientific and Industrial Research (DSIR) after introduction of GST. After the writ petition, GST rates were reduced.

IGST levied on Services by Banks in India to Foreign Branches / Head Office

A Petition challenging the levy of IGST on services provided by Banks in India to their foreign counterparts / head office was argued before Delhi High Court. Since the Indian branches were providing services to its foreign counterparts / head office outside India, as per the GST provisions, the transactions were deemed as 'inter-state supply' attracting IGST. Such levy was challenged as the place of provision was outside India. Subsequently, on the recommendation of the GST Council, the levy of IGST on services provided by branches in India to the foreign counterparts has been exempted.

RBI Circular prohibiting provision of banking services and GST issues in relation to Virtual Currencies

A petition was argued to challenge the constitutional validity of RBI's circular dated 6 April 2018 directing all regulated entities by the RBI (commercial banks, NBFCs, etc.) for not providing any services in relation to 'virtual currencies'. We also sought relief for framing of GST regulations for cryptocurrencies. The Supreme Court finally struck down the RBI circular on the grounds that Circular was unreasonable.

Non availability of ITC on non-fulfilment of export obligations

We are arguing petitions before Delhi High Court on non-availability of credit on CVD and SAD paid under duress post 1 July 2017 for not fulfilling export obligations under Advance Authorisation Schemes.

Anti-Profiteering

The orders of the NAA for the real estate, food & beverages and FMCG sectors were challenged on the ground that the mechanism adopted by the NAA for computing anti-profiteering is arbitrary. The constitutional validity and vires of section 171 of the CGST Act 2017 and Rule 126 of the CGST Rules 2017 were challenged to the extent that they fail to prescribe a methodology to determine commensurate reduction in prices. Delhi High Court has stayed the operation of NAA orders in petitions argued by us for various companies. The levy of interest has also been stayed in the writ argued by us. Prior to the amendment of Section 171, we had also challenged levy of Penalty under Rule 133 of the CGST Rules pursuant to which penalty proceedings have been dropped by NAA. Delhi High Court will decide on the substantial questions on constitutionality in a batch of petitions where we are arguing majority of the matters.

Social Welfare Surcharge and cesses on imports made using scrips

We are arguing before courts against the collection and levy of Social Welfare Surcharge (SWS), Education Cess (EC) and Secondary and Higher Education Cess (SHEC) on imported goods when basic customs duty is paid using SEIS/MEIS scrips. Gujarat High Court has granted an interim relief restraining the respondents from taking any coercive action.

Transitional credit of cesses into the GST regime

We are assisting clients in seeking relief of transitional credit pertaining to Education cess, Krishi Kalyan cess & Secondary and Higher Education cess which was availed in the erstwhile regime and which was restricted due to the amendment effected in the CGST Act.

Transitional credit on pre-GST Stock beyond one year

Petitions were argued by us to challenge the provision in the CGST Act restricting transitional input tax credit on pre-GST stock up to one year. We argued that such restriction upon persons possessing invoice is arbitrary in as much

as proviso thereto allows deemed credit at prescribed percentage without any restriction to persons not possessing an invoice. The Delhi High Court permitted the Petitioner companies to avail the credit on the transitional stock subject to the final decision.

Arrest proceedings

We have challenged arrest provisions and proceedings initiated on account of alleged GST evasion. We have appeared before courts for bails, anticipatory bails and remand proceedings. We have successfully obtained interim reliefs stating that no arrest should be made during the investigation proceedings. We have obtained a landmark decision from the Apex Court in SLPs filed by the Department against the interim orders. While hearing the SLPs, the Apex Court directed the constitution of a three-judge bench to finally lay down the guidelines for commencing arrest proceedings and refused to interfere with the High Court order granting pre-arrest bail to the accused. Subsequent to such direction, we assisted in securing bail and anticipatory bail from Orissa, Uttarakhand, Delhi High Courts and Sessions Courts in circular trading proceedings. Delhi High Court issued orders directing that no coercive action be taken against the accused during investigation proceedings.

Entertainment Tax Benefits

Petitions challenged the withdrawal of benefit granted under a State Incentive Schemes in Uttar Pradesh and Rajasthan which incentivised multiplexes on entertainment tax front. Post GST, the schemes became infructuous after entertainment tax was subsumed in GST. Pursuant to our writ petitions, the State Governments have announced partial SGST exemption. We are also arguing a petition filed in the Bombay High Court on behalf of an amusement park challenging the scheme issued by Maharashtra Tourism Development Corporation. The Bombay High Court has directed to form a High-Level committee for examination of the issue. Subsequent, to our writ petition, the Maharashtra cabinet is also supposed to take a decision on this shortly.

Physical export on EPCG licenses

The Delhi High Court has issued notice in writs argued by us whereunder the insertion of the physical export condition to the EPCG licenses was challenged. As per the notification dated 13 October 2017, IGST exemption would be allowed only for EPCG licensees against physical exports. This limits the benefit of total duty exemption available for service providers who provide specified services which are not physically exported or earn consideration in foreign exchange which was previously considered as sufficient for fulfilment of export obligations. This is crucial for the investigations that have commenced against EPCG licensees like port operators and terminal handlers.

Restriction on ITC availment when making free supplies

We have assisted clients in challenging the restrictions placed on availment of ITC under Section 17(5)(h) of the CGST Act when making free supplies in the form of samples or offers run by the client. The petition has been filed before the Gujarat High Court and notice has been issued.

ITC restrictions on real estate sector

The restrictions placed under Section 17(5)(c) and (d) of the CGST Act on availment of ITC in relation to works contract services and all other inputs and services when used for construction of immovable property when put to its own use by the clients. The petitions have been filed before Uttarakhand, Delhi, Gujarat and Telangana High Courts.

GST on transfer of development rights

Petitions have been filed challenging the applicability of GST on transfer of development rights as envisaged under joint development agreements since they would amount to transfer of immovable property. Petitions have been filed before Telangana High Court and Bombay High Court

Reduction of electricity duty / stamp duty benefits

We are assisting clients in challenging the reduction of benefits extended to electricity duty and stamp duty under state incentive schemes before the Bombay High Court. This netting of the electricity duty and stamp duty payable from the refunds rightly allowed to the clients results in nil benefit and is highly prejudicial.

Denial of relief under SVLDRS

The claims filed by the client for waiver of interest and penalty under the Sabka Vishwas Legacy dispute Resolution Scheme were rejected. Such rejection orders have been challenged before Bombay, Madhya Pradesh and Calcutta High Courts.

Denial of benefit on interest of net liability

We are arguing a petitionchallenging the proviso to Section 50(1) of the CGST Act which calls for interest to be applicable only on liability paid in cash, provided the liability is declared in the relevant tax return for the corresponding tax period. The client discharged differential tax liability by debiting the credit ledger and could not revise the returns for the relevant period to avail the benefit of the proviso to Section 50(1).

Denial of transitional credit on capital goods procured by units in exempted zones

A petition has been argued before the Uttarakhand High Court for a petitioner which operates under the erstwhile area-based excise exemption notification. We have challenged the transitional provisions which do not enable such units to avail credit of duty paid on capital goods already procured. The petition is pending for final disposal.

Budgetary support schemes

We have argued wherein the eligibility criteria, reduction of the quantum of refunds and the arbitrariness in the procedure prescribed under the budgetary support schemes introduced in October 2017, were challenged before the Jammu and Kashmir High Court. Due to the retrospective cut-off date i.e. 1 July 2017, many units which were in the course of commencing commercial production were denied the benefit. The quantum of IGST refunds prescribed is substantially lower than the percentage of refunds of central excise that was prescribed under the erstwhile schemes. Revenue authorities have also rejected refund claims citing transitioning of PLA balance into GST ledgers. The Court has directed the authorities to grant the Unique ID applications and to process the refund applications. Separately such units holding advance authorisation licenses had paid IGST on imports which led to increase in the ITC credit. This resulted in reduction of cash refunds.

License fees paid by Casinos

A petition challenging the levy of service tax and GST on license fees levied by the Government of Goa for operation of casinos has been argued before the Bombay High Court, Goa bench. Specifically for service tax, the tax authorities issued a circular in 2016 which clarified that service tax is to be paid on license fees collected by the Government., The circular was challenged as being ultra vires the Finance Act, 1994 and the Constitution of India.

Target Plus Scheme

We are arguing against unlawful withholding of duty entitlement certificates under DEPB scheme, despite specific orders from the Supreme Court, corresponding Notifications and Trade Notices issued by the Central Government.Bombay High Court issued orders directing Department to take action within 8 weeks of issuance of order.

Restriction on export of non-woven fabrics

We filed writ petition to challenge Notification issued by the DGFT to prohibit export of “non-woven fabrics”. Subsequent to the filing, the prohibition has been removed.

Rejection of GST refund

Writ petition is preferred before Allahabad High Court against rejection of GST Refund without granting adequate opportunities for hearing. There was additional lapse on part of GST authorities in not allotting Order Number for e-filing as a result of which appeal before Appellate authority became time barred.

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There were an estimated 12 million – 24 million eCommerce sites across the entire globe in 2019, with more and more being created every single day. If these numbers make you think it’s a competitive market — don’t worry. Less than 1 million of these sites sell more than $1,000/year, so there’s tons of room for growth.

Education Cess under Income Tax: - Is it an Expense for the Business?

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The recent ruling by Hon'ble Bombay High court (**M/s Sesa Goa Ltd Vs JCIT [2020] 117 taxmann.com 96 (Bombay))** and previously by hon'ble Rajasthan High court (**M/s Chambal Fertilisers and Chemicals Limited vs. JCIT (ITA No. 52/2018)**), have opened a pandora box that whether "Cess as part of income tax" is an allowable expense for computing the income from business or profession under the Income Tax Act. Presently, as per Finance Act 2020, the Health and Education cess @ 4% is being collected over and above on the amount of income tax and surcharge. The author is trying to explain that whether this cess could be claimed as an allowable expense under section 37 read with the provisions of section 40 (a)(ii) of the Income tax Act, 1961.

Introduction of Cess

Article 246 of the Constitution of India allows Central and State Governments to formulate a law for the levy and collection of taxes. No tax could be collected without authority of Law.

The Cess is always collected to meet its specified objective by Central or State Government. While proceeds from collection of tax are used by the Government for general purposes and running of the state of affairs of the country, cess proceeds are collected and utilized separately with a specific purpose. Like in the case of education cess, the proceeds were not credited to Consolidated Fund but to a non-lapsable Fund for elementary education - "Prarambhik Shiksha Kosh" and used only for that purpose. While introducing Education Cess through the Finance Act 2004, then Hon'ble finance minister said during his budget speech that

"In my scheme of things, no issue enjoys a higher priority than providing basic education to all children. I propose to levy a cess of 2 per cent. The new cess will yield about Rs.4000- 5000 crore in a full year. The whole of the amount collected as cess will be earmarked for education, which will naturally include providing a nutritious cooked midday meal. If primary education and the nutritious cooked meals scheme can work hand-in-hand, I believe there will be a new dawn for the poor children of India"

Whether Cess is akin to Income Tax

Section 40(a)(ii) of the Income Tax Act, 1961, any sum paid on account of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or otherwise on the basis of, any such profits or gains, to be added back into the net profits from the said business or profession while computation such profits. As per said provisions, any tax levied on profits of any business or profession, is not an allowable expense. Now, question arise whether Cess is equivalent to Tax as mentioned in section 40 (a)(ii). And before that the question arises what is tax ?

As per section 2 (43) of the Income Tax Act, 1961, "tax" in relation to the assessment year commencing on the 1st day of April, 1965, and any subsequent assessment year means **income-tax chargeable under the provisions of this Act**, and in relation to any other assessment year income-tax and super-tax chargeable under the provisions of this Act prior to the aforesaid date and in relation to the assessment year commencing on the 1st day of April, 2006, and any subsequent assessment year includes the fringe benefit tax payable under section 115WA.

From said definition, tax means

Income-tax chargeable under the provisions of this Act. As per section 4(1) of the Income Tax Act which is charging section, says "where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person"

As per section 4, the levy of tax will be made under Central Act, which means "Finance Act" which are first introduced as Finance Bill in the Parliament. The Finance Act contains the rate of taxes, surcharge, and cess. Moreover, it is worthwhile to mention here that the cess is called as "**additional surcharge**" in the Finance Act. As per Finance Act, this is being collected as "additional surcharge" in the name of Health and Education cess on Income Tax. To levy the cess, the legislators have chosen the word "additional surcharge" in their wisdom.

In case of ***CIT* v. *K Srinivasan*** **[83 ITR 346],** the hon'ble Apex court held that "additional surcharge" is covered within the definition of term "tax" or say "income-tax".

As per above analysis, any tax levied on income under "any Central Act", will fall within ambit of section 4 of the Act and hence squarely get covered within the definition of "tax" under section 2(43) of the Act, whether the same is levied as base rate of tax or surcharge or as cess thereon.

Even otherwise whether it passes the litmus test of Section 37

As per section 37(1), any expense which is incurred wholly and exclusively for the purpose of Business or Profession, shall be allowed. The intent behind incurring any expense is always to get any benefit in the form of receipt of goods or services. The taxpayers are not getting any benefit or services, in return by making the payment towards the Cess. The cess is being paid as part of tax liability. The liability of education cess arises only when the said business is having income tax liability at first. This is paid or incurred only post calculation of income tax and surcharge thereon. If there is no income from business, no cess is payable. There is no direct link between liability of education cess and the purpose of incurring this for the business. Therefore, it would be highly difficult to contend that it is an expenditure incurred wholly and exclusively for the purpose of the business or profession.

In author's views, allowability of "Cess", will have challenges when it comes to validate its allowability under Section 37(1) of the Act.

Judicial Precedents

Recently, in the case of **M/s Sesa Goa Ltd Vs JCIT [2020] 117 taxmann.com 96 (Bombay)** Hon'ble Bombay High Court held that since the word " Cess " ought not to be read or included in expression 'any rate or tax levied' as appearing in section 40(a)(ii) and consequently, 'cess' whenever paid in relation to business, is allowable as deductible expenditure. The hon'ble court overruled the Tribunal's ruling. ITAT had not allowed while mentioning that the education cess and secondary higher education cess has been collected as part of the income-tax and the provisions of section 40(a)(ic) & (ii) are clearly applicable and the assessee is not entitled for the deduction. The said payment is not a fee but is a tax. In case of fees, payment is made against getting certain benefit or services while tax is imposed by the Government and is levied for which the person who pay the tax is not promised in return to get any benefit or service.

In another case of **M/s Chambal Fertilisers and Chemicals Limited vs. JCIT (ITA No. 52/2018)** Hon'ble Rajasthan High Court held that Education Cess is not a tax; therefore, the same is not required to be disallowed under section 40(a)(ii), in computing profits and gains from business as part of total income of the taxpayer. The Hon'ble High Court held that Education Cess cannot be treated at par with tax and hence, is an allowable expenditure. While deciding the issue, the High Court specifically referred to the CBDT Circular of the year 1967. It also held that CBDT Circulars are binding on the Department.

In case of **Dewan Chand Builders & Contractors –vs.- UOI (CA No. 1830 to 1832 of 2008),** Hon'ble Apex Court held that cess levied under BOCW Welfare Cess Act for ensuring sufficient funds to undertake social security schemes and welfare measures for building and other construction workers was considered as a "fee" and not a "tax". The cess collected did not become part of the consolidated fund and was not subject to an appropriation in that behalf.

Further, in case of **State of West Bengal vs. Kesoram Industries Limited (2004) 10 SCC 201,** Hon'ble Supreme Court held that cess with a specific purpose can be held to be a "fee" and not a "tax". Though both the rulings by Apex court are not referring cess on income tax but in reference of cess under other laws. But fundamental issue about whether cess is a fee or tax, Hon'ble Apex court held that cess is a fee not a tax.

But in case of **M/s Kalimati Investments Co. Ltd. vs. ITO (ITA No.4508/Mum/2010),** Mumbai bench of ITAT held that education cess is nothing but additional surcharge. Since such surcharge or education cess is part of tax, the same, cannot be allowed as deduction. Hon'ble bench referred section 2(11) of Finance (No.2) Act, 2004, which has reference to Educational Cess and said that education cess is nothing but an additional surcharge.

While delivering the judgement by both the Hon'ble High Courts, the decision of Hon'ble Apex Court in case of **M/s Japuria Samla Amalgamated Colleries Ltd** was referred. Even in case of Ms/ Chambal Fertilizer, Hon'ble Rajasthan High Court heavily relied on this judgement**.** However, the cess under consideration in case of before Hon'ble Supreme Court, was local levy under State Act and not cess on income-tax. Hon'ble Supreme Court was on local levy which has been interpreted as incurred for earning income and wholly and exclusively for the purpose of business and which was not levied basis or followed determination of income under the 1922 Act.

Other favourable arguments to taxpayers: In above said cases, taxpayers have taken following arguments before the Hon'ble Courts: -

- **Reference to Section 115JB:** While computing Book Profit under section 115JB of the Act (for MAT purpose), explanation 2 to section 115JB(2), specifically states that for adding income tax paid/payable, income tax shall include, inter alia, Education Cess and Secondary & Higher Education Cess, if any, as levied by the Central Act. Section 40(a)(ii) states only tax whereas section 115JB says that for computing book profit, tax includes cess as levied by the Central Act. Hence, it could be seen that where the legislature intends to disallow cess, it has provided specifically for the same. However, in case of computation under regular provisions, the same has not been mentioned in the section 40(a)(ii) of the Act.
- **Reference to Old Income Tax Act:** Section 10(4) of the Income Tax Act, 1922 said that any sum paid on account of any cess, rate or tax levied on the profits or gains of any business, profession or vocation or assessed at a proportion of or otherwise on the basis of any such profits or gains is not allowable expense. Legislators had specifically added the word "cess" in aforesaid provision of old law whereas same is missing the current law. It could be argued that there is a difference in cess and tax. Wherever legislators wanted to include cess, specifically mentioned in law.
- **Allowability of Cess paid under Indirect Taxes:** Another argument was raised with reference to deductibility of education cess on income-tax, with reference to deductibility of education cess on indirect taxes. But there is difference between "Cess" on Income-tax and "Cess" on indirect taxes. Cess on indirect tax will have similar nature to that of duties under indirect taxes which are proved to be "incurred for the purpose of earning the income as against Cess on income-tax which is levied on income-tax. This argument does not carry much weight in author views.

The flip side of Section 40(a)(ii); - Cess not included in the disallowable item

The section 10(4) of the Income Tax Act, 1922 has included the word "cess "while disallowing the tax, rates, or cess while computing income from business. During those days, the Tax Authorities in various parts of the country had disallowed such local levies of "Cess" like Coal Cess, Health Cess, Land Cess, etc. contending that the deduction is not permitted under provisions of section 10(4) of the 1922. These type of cess were charged by local authorities or State Governments.

Section 40(a)(ii) of the present law is replication of the section 10(4) of old Act. Interestingly, the word "cess" was part of clause 40(a)(ii) of the Income Tax Bill, 1961. The Select Committee of the parliament suggested to remove this word because of various representations were received from taxpayers having reference to actual practice of such expenses being revenue in nature and giving reference to cess charged by local authorities. Also, at the relevant time, there was no "Cess" on income-tax. Hence, entire discussion was in context of such cess which was levied under local laws and hence had nothing to do with deductibility of cess on income-tax. Finally, the word Cess has not found place while becoming it Law. The CBDT also clarified through its circular no. No. 91/58/66 - ITJ (19) dated 18th May 1967.

It could be said that when the Bill was enacted after incorporating various changes as suggested and accepted by the Parliament, relevant fact was that there was no "Cess" on "income-tax" at such time or even at the time when CBDT issued circular clarifying deductibility of "Cess".

Concluding remarks:

In case of **M/s Smith Kline & French (India) Ltd [1996] 219 ITR 581 (SC)** , Hon'ble Apex Court held that literal interpretation would not be sufficient but one has to look into contextual interpretation while interpreting provisions of Section 40(a)(ii) of the Act. The term "tax" as appearing in section 40(a)(ii) of the Act should have been interpreted having regards to provisions of section 2(43) of the Act. Having regard to the discussion above, the term "tax" includes "cess" as levied under Finance Act and hence it could be said that education cess is restricted by provisions of section 40(a)(ii) of the Act. Since matter did not reach Apex court, thus one view cannot be a final view. The contrary views also could be survived in view of strong footings by taxpayers on the arguments as mentioned above. Further, there will not be any surprise if we see the clarificatory amendment in the definition either of tax or adding separately education cess under section 40(a)(ii) in forthcoming Budgets.

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Income Tax Search and Seizure: Seizure of undisclosed jewellery and its assessment thereupon - Legal Treatise

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Introduction:

The Central Board of Direct Taxes vide **Instruction no. 1916 dated 11-05-1994**, clarified that no seizure should be made by the Search Party of the Jewellery and Ornaments found during the course of search proceedings under Section 132 of the Income Tax Act,1961 , where the same have been duly declared in the Wealth-tax Returns filed by the taxpayer or where such ornaments are within the prescribed limits of 100, 250 or 500 grams as stated in the said instruction. The aforesaid instruction is reproduced herein under:-

"Guidelines for seizure of jewellery and ornaments in course of search

Instances of seizure of jewellery of small quantity in course of operations under section 132 have come to the notice of the Board. The question of a common approach to situations where search parties come across items of jewellery, has been examined by the Board and following guidelines are issued for strict compliance.

(i) *In the case of a wealth-tax assessee, gold jewellery and ornaments found in excess of the gross weight declared in the wealth-tax return only need be seized.*

(ii) *In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100 gms per male member of the family need not be seized.*

(iii) *The authorised officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income-tax / Commissioner authorising the search at the time of furnishing the search report.*

(iv) *In all cases, a detailed inventory of the jewellery and ornaments found must be prepared to be used for assessment purposes.*

These guidelines may please be brought to the notice of the officers in your region.

***Instruction :** No. 1916, dated 11-5-1994."*

Even where no seizure is made during the Search, following the spirit of the aforesaid instructions of the CBDT, in several cases, Assessing Officers, while finalizing the post-search assessments, make additions treating such Jewellery and Ornaments as undisclosed investment, on the ground that the taxpayer does not possess adequate evidence for acquisition of the same.

Issue for Consideration:

Instruction No. 1916 (F.No. 286/63/93-IT(INV.II), dated 11-5-1994, issued by the Central Board of Direct Taxes ('CBDT') directs the income tax authorities, conducting a search, to not seize jewellery and ornaments found during the course of search of varying quantities specified in the instructions, depending upon the marital status and the gender of a person searched. The guidelines are issued to address the instances of seizure of jewellery of small quantity in the course of search operations u/s. 132 that have been noticed by the CBDT. A common approach is suggested in situations where search parties come across items of jewellery for strict compliance by the authorities. The CBDT directed that in the case of a person not assessed to wealth-tax, gold jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100 gms. per male member of the family, need not be seized.

The High Courts, under the circumstances, relying on the above referred instructions of the CBDT, has

consistently held that the possession of the jewellery and ornaments to the extent of the quantities specified in the instruction is to be treated as reasonable and therefore explained and should not be the subject matter of additions in assessment of the total income of a person.

In case of ***CIT v. Satya NarainPatni [2014] 46 taxmann.com 440 (Rajasthan)*** the Rajasthan High Court held that the CBDT had clearly provided that prescribed limit of jewellery will not be seized, it would mean that taxpayer, found with possession of such jewellery, will also not be questioned about its source and acquisition.

In case of ***CIT v. Ghanshyam Das Johri [2014] 41 taxmann.com 295 (Allahabad)*** the Allahabad High Court held that if one goes with CBDT's Instruction No. 1916, dated 11-5-1994 and ratio laid down in case of ***Smt. Pati Devi v. ITO [1999] 240 ITR 727 (Kar.)*** then a married lady of reputed family is expected to own 500 gms of ornaments. Therefore, jewellery found in possession to that extent could not be treated as undisclosed investment.

Reliance further placed on the decision of Hon'ble Gujarat High Court in the case of ***Ratanlal Vyaparilal Jain reported in 339 ITR 351.*** This decision was delivered on 19.07.2010, commenting about the CBDT Instruction No. 1916, the Hon'ble Court has observed as under:

"Thus, although Circular has been issued for the purpose of non- seizure of jewellery during the course of search, the basis for the same recognizes customs prevailing in Hindu Society. In the circumstances, unless the revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery as stated in the Circular stands explained.'

Similar view has been taken in the case of ***Smt. Neena Syal reported in 70 ITD 62*** by the Hon'ble ITAT Chandigarh Bench and ***Mrs. Nawaz Singhania Vs. DCIT (ITAT Mumbai).***

The jewellery of the assessee which is not seized in accordance with Instruction No. 1916 dated 11th May 1994, shall be treated as deemed explained gather further support from the decision of Special Bench of Ahmedabad ITAT in the case of ***Rameshchandra R. Patel reported in 89 ITD 203.***

Reliance can also be placed on the decision Delhi Bench of the Tribunal in the case of ***Mrs. Divya Devi v. ACIT in ITA No. 6397/Del/2012***, order dated 16-05-2014, wherein it is observed that it is true that the CBDT Instruction No. 1916, dt. 11th may, 1996 lays down guidelines for seizure of jewellery and ornaments. In the course of search, the same takes into account the quantity of jewellery which would generally be held by family members of an assessee belonging to an ordinary Hindu household. In the circumstances, unless the Revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery stated in the circular stands explained.

Furthermore reliance can also be placed on the decision of Hon'ble ITAT , Cuttack Branch in case of ***N. Roja v. Assistant Commissioner of Income-tax [2020] 117 taxmann.com 90 (Cuttack - Trib.)***.

However, the Chennai High Court has sounded a slightly discordant note to this otherwise rational view accepted by various high courts.

The Chennai High Court in the case of ***V.G.P. Ravidas vs. ACIT, 51 taxmann.com 16 (2014),*** offered certain observations that are found to be inconsistent with the near unanimous view of the High Court that the possession of the jewellery and ornaments, to the extent of the quantities specified by the CBDT, should be held to be explained.

In this case, the assessees filed the original return of income for the assessment year 2009-2010 on 30-09- 2009. The Assessing Officer, pursuant to a search u/s. 132, reopened the assessment and a reassessment was completed by him on 29-12-2010. The AO in so assessing the income, treated excess gold jewellery found and seized, of 242.200 gms. and 331.700 gms. respectively, as the unexplained income.

The assessees appeals before the Commissioner (Appeals), were dismissed. The Tribunal confirmed the order passed by the Commissioner (Appeals). In the appeal before the High Court, the short question that arose for consideration was whether the assessees in both the cases were entitled to plead that the quantum of excess gold jewellery seized did not warrant inclusion in the income of the assessees as unexplained investment in the light of the Board Instruction No.1916 F.No.286/63/93-IT (INV.II)], dated 11-05-1994.

The Chennai High Court while dismissing the appeals, on the facts of the case before it, inter alia observed in paragraph 10 of its order as under;

"10. The Board Instruction dated 11.5.1994 stipulates the circumstances under ***which excess gold jewellery or ornaments could be seized and where it need not be seized. It does not state that it should not be treated as unexplained investment in jewellery.*** *In this case, ...*

The High Court also approved the observations of the Commissioner(Appeals) in paragraph 8 of its order as follows;

"8. The Commissioner of Income Tax (Appeals) as well as the Tribunal came to hold that since there was no explanation offered by the assessees before the Assessing Officer or Commissioner of Income Tax (Appeals) or Tribunal, their mere placing reliance on the Board Instruction No. 1916 [F.No.286/63/93-IT (INV.II)], dated 11.5.1994 will be no avail. In fact, the Commissioner of Income Tax (Appeals) has correctly held that the Board Instruction does not make allowance in calculation of unexplained jewellery and it only states that in the case of a person not assessed to wealth tax, gold jewellery and ornaments to the extent

of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male member of the family, need not be seized. Whereas, ------"

The Hon'ble DELHI ITAT in case of ***Nem Chand Daga V ACIT [2005] 1 SOT 515 (DELHI),*** held as under:-

"The instruction No. 1916 of the CBDT also cannot come to the help of the assessee for the simple reason that the instruction nowhere states that such jewellery found should be treated as explained and no addition towards the same should be made. The instruction only speaks that ornaments to the extent of 250 gms. in the hands of an unmarried lady and 100 gms. in the case of male person should not be seized. We, therefore, hold that the assessee failed to explain the source of acquisition of the impugned jewellery."

The Hon'ble Chennai ITAT in case of ***Shri A. Ramalingam V ITO (ITA No.591/Mds/2016),*** held as under:-

"The exemption claimed by the assessee under CBDT circular is only for seizure of gold jewellery during the course of search operation. As rightly submitted by the Ld. Departmental Representative, it does not absolve the assessee from explaining the source for acquisition of such jewellery. Therefore, the CBDT circular would not come to the rescue of the assessee. The assessee is expected to explain the source for acquisition of jewellery found during the course of search operation"

The divergent view of the Chennai High Court and certain tribunals as afore stated, suggest that the Instruction No. 1916 has a limited application and should be applied by the search authorities in deciding whether the jewellery & ornaments found during the search to the extent of the specified quantities be seized or not. Such divergent view of the judiciary appears to be suggesting that the scope of the instructions is not extended to the assessment of income and an assessee therefore cannot simply rely on the said instructions to plead that the possession of the jewellery to the extent of the specified quantity be treated as explained. An outcome of the observations of the High Court, is that an assessee is required to explain the possession of the jewellery in assessment of the income to the satisfaction of the AO independent of the fact that the jewellery was not seized and has to lead evidences in support of its possession though for the purposes of seizure, its possession was found to be reasonable by the search authorities.

Nothing can highlight the conflict better than the interpretation sought to be placed by the two different authorities of the Income tax Department. One of them, the search authority, does not seize the jewellery on the understanding that the possession thereof within the specified quantities is reasonable in the context of customs and practises prevailing in India while the another of them, the assessing authority, does not accept the possession as reasonable and puts the assessee to the onus of explaining the possession of the jewellery found to his satisfaction and failing which he proceeds to add the value thereof to his total income.

Conclusion:

The conflicting stand of the authorities belonging to the different departments of the same set up also highlights the pursuit of petty aims ignoring the larger interest of administration of justice by adopting a highly technical approach, best avoided in implementing the revenue laws. The Gujarat High Court in CIT vs. Ratanlal Vyaparilal Jain, the Allahabad High Court in Ghanshyam Das Johri's case, 41 taxmann.com 295 and the Rajasthan High Court in yet another case, Kailash Chand Sharma 198 CTR 271 have consistently held that the possession of the jewellery of the quantities specified in the instruction issued by the CBDT is reasonable and therefore should be held to be explained in the hands of asesseee and should not be the subject matter of addition by the AO on the ground that the asseseee was unable to explain the possession thereof to his satisfaction.

The Rajasthan High Court in Patni's case and the other High Courts before it, rightly noted that considering the practices and the customs prevailing in India of gifting and acquisition of jewellery and ornaments since birth and even before birth, it is not only common but is reasonable for an Indian to possess the jewellery of the specified quantity. The question of applying another yardstick for determining the reasonability in assessment does not arise at all.

The CBDT in fact a goes a step further in its human approach to the issue under consideration, in paragraph (iii) of the said instructions, when it permits the search party to not seize even such jewellery that has been found to be excess of the specified quantities in paragraph(ii) where the search authorities are satisfied that depending upon the status of the family and community customs and practices, the possession of such jewellery was reasonable. The said paragraph reproduced here clearly settles the issue in favour of accepting what has not been seized as duly explained for the purposes of assessment as well.

"(iii) The authorized officer may, having regard to the status of the family, and the custom and practices of the community to which the family belongs and other circumstances of the case, decide to exclude a larger quantity of jewellery and ornaments from seizure. This should be reported to the Director of Income tax/Commissioner authorising the search at the time of furnishing the search report."

This grace of the CBDT clearly confirms that the search authorities do make a spot assessment of the reasonability of possession. It is therefore highly improper, on a later day, for the assessing authority, to take a dim view of the reasonability. It is befitting that the AO allows the grace to percolate downstream to the case of assessment, as well. It's high time that the CBDT should issue clear directions to Assessing Officers not to make any additions in such cases. It needs to be pointed out that several judicial pronouncements have also granted relief to taxpayers relying on the aforesaid instructions. As such the matter is still open to debate with both sides of arguments. To avoid further unwarranted litigation, clarity in this regard is also required by way of a necessary specific piece of legislation or otherwise.

* * * * *

Time to support your support system

CA Meetu Bansal

According to a 2015 McKinsey study, women make up 46% of new graduates, but only 29% comprise entry-level professionals. Of this, only 16% reach mid-management and 4% senior management roles. According to a study by the World Bank in collaboration with National Sample Survey Organisation, 20 million Indian Women quit jobs between 2004-12. Around 65-70% of women who quit never return to work at all !!! This is the plight of Indian women and this arises primarily due to reasons such as marriage, motherhood, family pressure etc. Women do take such forced career breaks but with a burning desire somewhere within to return to the mainstream work front at a later stage in life. But why such career breaks typically apply to Indian Women per se ? This query constantly haunts my mind. It is not that the women in other parts of the world do not marry or do not have family or do not have children. Its just that the women in other parts of the world have better support system which allows them to pursue their career without any glitches.

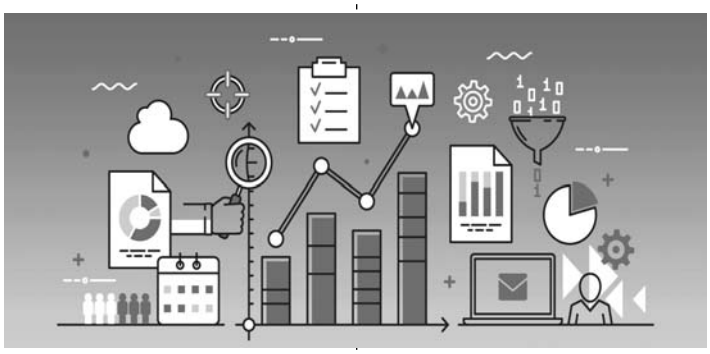
Ironically enough, despite clearing the same examination at the same point of time the advancement in career is not the same few years down the line. It is mainly due to the career breaks. There are not even handful of the ladies who lead the same life as their male counterparts.

However, hard she tries, it is extremely difficult and at times impossible to remain a dotting mother, a caring daughter in law, loving wife and above all an UPDATED professional. By the time she sets everything at pace and believes that she can return to work, she finds herself in a complete lacking state on the professional front.

Finding a suitable job after a sabbatical is a tough job in itself. I remember, when I went for interviews for couple of jobs, the very sight of vermillion on my head would seem to be a matter of deep concern for the prospective employers. My professional capabilities would be sidelined and the topic would suddenly bend towards my personal life, my home, my ability to travel, adaptability to flexible working hours, number of children and HOME AND WORK LIFE BALANCE etc. Needless to mention they would expect conflicting answers from me, because most of the times I found that the affirmative answer would rather put them into deeper questioning. Why we tend to forget that its only a woman who can maintain a perfect balance between home and profession because its in her naturally. But she is unable to do so only because of the societal set up which cannot bear the sight of a rising woman. A woman who rises a steep slope in her corporate career is seldom considered as his idol by any man, rather she becomes an object of hatred and jealousy. Nothing can be done until we change the outlook in the changing times, when women have greater and complex roles to play.

Women have been in the field of Chartered Accountancy since a long time almost more than 8 decades. But they have not been able to achieve what they deserve. ICAI has been helpful throughout and has even formed a special committee called the Women Member Empowerment Committee (WMEC) which looks forward to enhance the prospects of women members in ICAI. There are professional works which do not require going to a full fledged office and a woman can do the same from her home so that she can have FLEXIBLE working hours. Apart from mainstream pivotal roles, a woman can think over alternative options as well.

Own Practice: We must admit that all women are avid readers and can grasp more things in a much better way. Its simply due to the fact that things do not come so easy to a woman and she is more intrigued and impatient than men to learn and explore new avenues. Own practice can be commenced at any time of the career path. Be it after gaining some corporate experience, or after working in some professionally managed large CA firm. Once you start off your own firm, sky is the limit. Pursue what you excel in and achieve what you want.



Train others: A woman can be a best trainer. Remember during our school and college days almost all our mentors were females and they have left an indelible imprint on our lives, our career and our thoughts. Take a clue from this and revisit your potential. Train and teach others to become successful Finance professionals.

Accounting: Accounting was and shall always be the forte of every chartered accountant. Accounting is required in every organisation, however small may it be. But small organisations many a times do not hire professionals due to the cost element. Women CAs can offer cost effective solutions to them which will keep them active as well as be of immense help to society.

Specialisation: World is at finger tips in today's world of smart phones. These help us in remaining updated every moment. There are uncountable topics/subjects to choose from. Based on one's interest one can choose the topic/ subject and keep updates of the latest notifications, changes, regulations, events, occurrences etc. Any topic which is of interest can be the base of the own practice.

Due Diligence: Due Diligence plays a very important function in any organisation for many a crucial things. Be it for any decision as big as merger or other regular transactions as financial assistance, bidding in any project, or for purchase or sale of assets. Every due diligence has its own sets of requirements and pointers. Better the due diligence, easier is the entire end process. Due diligence means satisfying the queries of the interested party by way of valid concerned documents. A woman CA can conduct due diligence for an organisation. In case of due diligence, record keeping plays the most vital role, which can also be done under the guidance of a woman CA.

Its time to support your support system - give them what they rightly deserve and they shall return much more than what you deserve.

* * * * *

Warner Music owns the copyright to the song "Happy Birthday". That means technically you owe them royalties every time you sing it to someone.

Amazon employees spend two days every two years working at the customer service desk. Even the CEO does that. This is to help all workers understand the customer service process.

In 1974, FedEx was on the verge of bankruptcy. It was saved when the founder took the last US$ 5,000 of the company's assets and turned it into US$ 32,000 by gambling in Las Vegas. Today, FedEx is estimated to be worth US$ 73 billion.

Compliance Calendar

Due date	Particulars
Income Tax Act	
31st January, 2021	Last date for making declaration under Vivad se Vishwas Scheme, 2020
31st January, 2021	Quarterly Statement of TDS deposited for the Quarter Ending December, 2020
7th February, 2021	Deposit of Tax Deducted at Source & Tax Collected at Source for the Month of January, 2021
15th February, 2021	Extended Due Date for filing Return of Income for Assessment Year 2020-21 for all Assessees subject to Audit
15th February, 2021	Quarterly TDS Certificate (other than salary) for the Quarter Ending December 31, 2020
7th March, 2021	Deposit of Tax Deducted at Source & Tax Collected at Source for the Month of February, 2021
15th March, 2021	Fourth instalment of Advance Tax for Assessment Year 2021-22
31st March, 2021	Last date for filing belated or revised return of income for AY 2020-21
31st March, 2021	Last date for payment under Vivad se Vishwas Scheme, 2020 without any additional levy
31st March, 2021	Extended Last date for filing of Quarterly Statement of TDS/TCS deposited for Q1 and Q2 of FY 2020-21
30th April, 2021	Deposit of Tax Deducted at Source & Tax Collected at Source for the Month of March, 2021
Goods & Services Tax Act	
11th February, 2021	Monthly GSTR-1 for the Month of January, 2021
20th February, 2021	GSTR 3B for January, 2021 (AT more than 5 Cr in Previous FY)
20th February, 2021	GSTR 5/5A for January, 2021
22nd February, 2021	GSTR 3B for January, 2021 (AT upto 5 Cr in PY) - Not opting QRMP Scheme - (Group A: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep)
24th February, 2021	GSTR 3B for January, 2021 (AT upto 5 Cr in PY) - Not opting QRMP Scheme - (Group B: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi)
28th February, 2021	Annual GST Return (GSTR 9, GSTR 9A, GSTR 9B and GSTR 9C) for FY 2019-20
11th March, 2021	Monthly GSTR-1 for the Month of February, 2021
20th March, 2021	GSTR 3B for February, 2021 (AT more than 5 Cr in Previous FY)
20th March, 2021	GSTR 5/5A for February, 2021
22nd March, 2021	GSTR 3B for February, 2021 (AT upto 5 Cr in PY) - Not opting QRMP Scheme - (Group A: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep)

Due date	Particulars
24th March, 2021	GSTR 3B for February, 2021 (AT upto 5 Cr in PY) - Not opting QRMP Scheme - (Group B: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi)
11th April, 2021	Monthly GSTR-1 for the Month of March, 2021
13th April, 2021	Quarterly GSTR-1 for the Quarter January to March, 2021
18th April, 2021	GST CMP-08 for the Quarter January to March, 2021
20th April, 2021	GSTR 3B for March, 2021 (AT more than 5 Cr in Previous FY)
20th April, 2021	GSTR 5/5A for March, 2021
22nd April, 2021	GSTR 3B for March, 2021 (AT upto 5 Cr in PY) - Not opting QRMP Scheme - (Group A: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep)
22nd April, 2021	GSTR 3B for January to March, 2021 (AT upto 5 Cr in PY) - Opting QRMP Scheme - (Group A: Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep)
24th April, 2021	GSTR 3B for March, 2021 (AT upto 5 Cr in PY) - Not opting QRMP Scheme - (Group B: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi)
24th April, 2021	GSTR 3B for January to March, 2021 (AT upto 5 Cr in PY) - Opting QRMP Scheme - (Group B: Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi)
30th April, 2021	GSTR-4 for FY 2020-21

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ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

(Registered under the Societies Registration Act, 1860)

An ISO 9001 : 2015 Certified Organisation

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APPLICATION FORM FOR MEMBERSHIP

To
The General Secretary,
Association of Corporate Advisers & Executives
6, Lyons Range, 3rd Floor, Unit - 2
Kolkata – 700 001

FOR OFFICE USE ONLY

Date of Receipt _____
Membership Approved on _____
Membership No. Allotted _____

Chairperson
Membership Development Sub-Committee ***General Secretary***

Dear Sir,

Please **ENROL** me/us as a **LIFE/GENERAL MEMBER** of the Association. I/We agree to abide by the Memorandum and Rules & Regulations of the Association.

1. Name in Full (IN BLOCK LETTERS) : _____
2. Father's Name : _____
3. Date of Birth : _____
4. Academic and/or Professional Qualifications : _____
5. Occupation : _____
6. Name of the Concern with which associated : _____
7. GSTIN : _____
8. Designation : _____
9. CA/CS/ICWAI Membership No. : _____
10. Blood Group : _____ (Self) _____ (Spouse)
11. Date of Marriage : _____ Name of Spouse _____
12. Office Address : _____
13. Resident Address : _____
14. Telephone (Nos.) : (Off.) : _____ (Resi.) : _____ Fax : _____
    Mobile : _____ E-mail : _____
15. Address where Circular etc. should be sent : ☐ Office ☐ Residence

I am/We are sending herewith Rs. _____ (Rupees _____)
by Cash/Cheque No. _____ Dated _____ Drawn on _____
towards ☐ Life Membership ☐ General Membership.

Place : _____
Date : _____

Signature of the Applicant

Proposed By : Name : _____
ACAE Membership No. : _____ Signature : _____

Seconded By : Name : _____
ACAE Membership No. : _____ Signature : _____

NOTES :
1. *Fee for Life Membership Rs. 11,800/- (for individuals only) (inclusive of GST)*
2. *Fee for General Membership :*
   a) *Annual Subscription Rs. 8850/- and Admission fees Rs. 8850/- (For Firm and Body Corporate) (inclusive of GST)*
   b) *Annual Subscription Rs. 1770/- and Admission fees Rs. 1770/- (for individual) (inclusive of GST)*
   c) *Annual Subscription will be half, if Membership Commences after 30th September of the year in which the membership is approved.*
3. *Cheques should be drawn in favour of* ***Association of Corporate Advisers & Executives****.*

Activities at a Glance ...

Sl.No.	Date	Topics & Speaker
1.0	**25.11.2020 (Virtual)**	**Group Discussion on Income Tax : 3CD Clause by Clause.** Initiator : CA Pushp Deep Rungta. CA Vikash Kr Banka, Chairman – Group Discussions Sub-Committee.
2.0	**02.12.2020 (Virtual)**	**Group Discussion on Income Tax : 3CD Clause by Clause.** Initiator : CA Pushp Deep Rungta. CA Vikash Kr Banka, Chairman – Group Discussions Sub-Committee.
3.0	**04.12.2020 (Virtual)**	**VCM on NBFCs. (1) Recent Developments in NBFC Regulations.** Speaker : Shri A Majumdar, General Manager, Reserve Bank of India, DNBS, Kolkata. **(2) New Scheme of Filing Annual Returns by NBFCs and New Scheme of Registration of Auditors and Issuance of Statutory Audit Certificates for NBFCs.** Speaker : Shri S S Kachhap, Assistant General Manager, Reserve Bank of India, DNBS, Kolkata. **(3) Overview of NBFC Regulations.** Speaker : CA Mohit Bhuteria. CA Mohit Bhuteria, Chairman, Corporate Laws Sub-Committee.
4.0	**08.12.2020 (Virtual)**	**Virtual Interactive Session on Issues relating to (1) Direct Tax Vivad Se Viswas Act 2020 and (2) New Options in Corporate Tax for Existing Companies.** Session Moderator : CA Ram Ratan Modi, Kolkata. Speaker : CA Dev Kumar Kothari, Kolkata. CA Ram Ratan Modi, Chairman – Direct Tax Sub-Committee.
5.0	**09.12.2020 (Virtual)**	**Group Discussion on Issues and Challenges of GST Refund.** Initiator : CA Sneha Dudhawat, Kolkata. CA Vikash Kr Banka, Chairman – Group Discussions Sub-Committee.
6.0	**12.12.2020 (Virtual)**	**VCM on Forensic Accounting – The Future is here.** Keynote Address by CA Harish Dua, Advisor FAIS (DAAB) at ICAI, Delhi; **Use of Technology in Forensic Accounting –** Speaker : CA Anand Prakash Jangid, Partner AJA, Bengaluru; **Practical Approach to Forensic Accounting –** Speaker : CA Narasimhan Elangovan, Partner Ken & Co., Bengaluru; **Expectation from Forensic Accounting –** Speaker : CA Satish Shenoy, Sr. President, Corporate Management Audit at Aditya Birla Group, Mumbai. CA Pramod Kr Mundra, Chairman – Accounts & Audit Sub-Committee.
7.0	**15.12.2020 (Virtual)**	**Discussion Meeting on 'NIDHI Companies'.** Chief Guest : Shri D Bandopadhyay, Regional Director (East), Ministry of Corporate Affairs, Government of India. Speaker : Dr. P V S Jagan Mohan Rao, Past President ICSI and Immediate Past President SAFA. CA Mohit Bhuteria, Chairman – Corporate Laws Sub-Committee.
8.0	**20.12.2020 to 22.12.2020 (Virtual)**	**VCM on Standards of Auditing –** organized by EIRC-ICAI in collaboration with ACAE CA Study Circle. SA 200, SA 210, SA 220 and SQC 1 – Speaker : CA Lalit Kumar. SA 300, SA 315, SA 320 and SA 240 (Practical Considerations) – Speaker : CA Bhabani Balasubramaniam. SA 510, SA 520, SA 530, SA 540 – Speaker : CA Abhijit Bandyopadhyay, Past Council Member, ICAI. SA 701, SA 710 + 720 (Comparative & other information) – Speaker : CA Archana Bhutani. SA 700 + 705 + 706 : Unmodified, Modified, EOM/OM, SA 570 Going Concern – Speaker : CA Sanjay Vasudeva, Past Council Member, ICAI. SA 500/501 Audit Evidence and Specific Considerations for selected items. SA 505 External Confirmations, SA 550 Related Parties, SA 560 Subsequent Events and SA 580 Written Representations – Speaker : CA Khushroo Kanthaky.
9.0	**23.12.2020 (Virtual)**	**VCM on Decoding Practical Aspects of Ind AS.** Financial Instruments – Various Practical Aspects. Speaker : CA Kamal Garg, Delhi; Practical Intricacies of Consolidation under Ind AS. Speaker : CA Himanshu Kishnadwala, Mumbai. CA Pramod Kr Mundra, Chairman – Accounts & Audit Sub-Committee.
10.0	**16.01.2021 (Virtual)**	**Lecture Meeting on GST Amendments covering QRMP Scheme and Rule 86B.** Speaker : CA Aanchal Kapoor, Amritsar. CA Shivani Shah, Chairperson – GST/Indirect Tax Sub-Committee.
11.0	**22.01.2021 to 26.01.2021 (Residential)**	**Residential Tour at Nature Cure and Yoga Centre, Joka.** Detoxification & Rejuvenation of Body, Yogic Exercises, Interactive Session on Family Partition – Cum – Family Settlement on 24.01.2021 by CA Ram Ratan Modi. CA Vasudeo Agarwal, Chairman – Residential Seminar Committee.

ACAE at a Glance ...

Second Meeting of the Executive Committee of ACAE for 2020-2021 held on 19th December 2020

President Anup Kr Sanghai handing over the Photo Album Memento to Immediate Past President Jitendra Lohia at the Second Meeting of Executive Committee of ACAE for 2020-2021 held on 19th December 2020

EIRC, ICAI & ACAE CA Study Circle Co-hosted VCM Programme on Standards of Auditing on 21st December 2020

VCM on Decoding Practical Aspects of Ind AS held on 23rd December 2020

CA Anand Chopra presenting Memento to CA R R Modi for Interactive Session on Family Partition - Cum - Family Settlement on 24th January 2021

Members attending the Residential Tour Programme at Nature Cure and Yoga Centre, Joka organised by ACAE from 22nd January 2021 to 26th January 2021

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ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

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