



House Journal

ACAIE

ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES



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Editorial



Dear Members,

Sincere Greetings to all!

“Perfection is not attainable, but if we chase perfection, we can catch excellence.” – Vince Lombardi.

This journal strives to cater professional development and upgradation of professional expertise through publication of articles covering important topics on recent amendments such as Goods & service Tax, Corporate laws and income tax.

I'm filled with absolute appreciation and it gives me enormous joy to share the 4th issue of ACAE House Journal.

I express my heartiest congratulations to CA Shivani Shah, Co-Chairman of ACAE House Journal Sub-Committee for her once again phenomenal achievement in winning double gold medals at The Kettlebell World Championship 2022. We are all very proud of her and wish her to achieve greater heights in the days to come.

I would like to thank my kindred members for their commitment in making this issue a successful one.

I look forward your significant comments and thoughts which will helps us for further improvement of the House Journal.

With Best regards

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President Speaks

Dear ACAIE Family,

I wish you all a healthy life.

We all are busy in completing the audit and return filling of 2022. There is a need to introspect as all the individual non audit returns were filled on time without extension and we congratulate all professionals for same.

On the economic front there has been an increase in the repo rate by 90 basis points to 4.90%. Subsequent to the rate hike, things are brightening a bit with prices of staples and edible oil moderating and accordingly supply side shocks are receding to a certain extent.

Let me now update you all with the initiatives at ACAIE. We have commenced July with GST completing 5 years and have organised Workshop on GST with best of the speakers across India. We also had ACAIE GST conclave with best of the speakers.

During the quarter we also have organised, IBC Conclave, Corporate law conclave and several sessions on audit and taxation including CARO, Schedule III etc.

ACAIE is regularly organizing its well conceptualized event of "Group Discussion" to promote knowledge and interactive skills amongst its members more particularly younger ones.

My sincere thanks go to the Editorial Board under the Chairmanship of **CA Anup Kumar Banka** for the Fourth House Journal of ACAIE during the year 2021-22 under my tenure as President.

All the members of Editorial Board deserve accolades and I thank them for their sincerity and dedication in bringing out this journal before you in such a short span of time.

Let us all welcome challenges, by aiming to make this year as the best year of our life.

Stay Safe and Healthy

With Warm Regards

CA Vivek Agarwal
President



CA (Adv.) Sikander
Sachdeva
Business Consultant
.....

Detailed Analysis of Summons including Tax Payer Rights and Duties

Introduction

With passage of time the complexities of GST have only increased and so has the aggression of the **tax** authorities to recover taxes from the taxpayers. Lately, many companies, their employees and key managerial persons have been receiving summons for some or the other matter.

Under GST Law, section 70 of the CGST Act, 2017 empowers the GST officers to summon any person to appear before them, if the same is necessary in the course of an inquiry to record statements or produce any documents. **Such persons summoned by the GST officers are duty bound to appear before the officers.** It is worth noting that the summons and information gathered thereafter is the first step towards proceedings under GST law. Therefore, it becomes Necessary for the taxpayers to know how to deal with such summons and be aware of their rights and duties.

This section has vital role in investigations and non-compliance to summons could lead to penalty and arrest provisions. Therefore, it is advised to the comply with summon proceedings with utmost care. As an honest citizen of this country it is our duty also to support Department in their investigations.

The entire community is aggrieved if the economic offenders, who ruin the economy of the State are not brought to book. A murder may be committed in the hit of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only

at the cost of forfeiting the trust and faith of the community in the system to administer *justice* in an even handed manner without fear of criticism from the quarters which view **white collar crimes** with a permissive eye unmindful of the damage done to the National Economy and National Interest.

Know your officers

Most importantly the taxpayers should know if the officers issuing such summons is a proper officer (PO) or not as per the GST law. The officers of audit wing do not have powers to issue the summons but Director General of GST (Intelligence) DGGI has been given very wide powers in the form of *all India jurisdiction to exercise this power*. Any summon issued by the officers not empowered under the law can be challenged by the taxpayers.

Duties of a taxpayer

Summon proceedings are equivalent to 'judicial proceedings' as under the Indian Panel Code. Hence, the taxpayers should be cautious while dealing with the tax officers. During the summons proceedings, GST officers may call upon the documents and record statements of the employees / directors / key managerial persons of the Company. **Firstly**, while making any statements or submitting any documents, the taxpayers should know the consequences of such submissions. Unlike in case of police officers, the statements made before the GST officers are admissible as evidence against the taxpayer. The issue is no more *res integra* as this position has been addressed by the Supreme Court in case of the customs officers wherein it was held that **customs officers do not constitute police officers even if they may have specific powers and hence any statement made before the customs**

officers will be admissible as evidence.

The issue also came up under GST law before the **Telangana High Court** wherein it has been held that GST officers are **not police officers for the purpose of Indian Evidence Act** and thus, any statements made before them would **have evidentiary value**. Therefore, the taxpayers need to be conscious while making any statements before the GST officers as these can form the basis for issuing notices or taking any action punitive against them.

Secondly, it is important that taxpayers give their answers in the truest manner and to the best of their knowledge. Providing false statements tantamount to an offence under the Indian Penal Code. Thus, in order to safeguard themselves from such eventualities, it will be in the best interest of the taxpayers to provide all the information/replies asked by the tax officers accurately without any deliberate suppression on their end.

As we discussed duties in case of summon proceedings, the taxpayers should also be aware of their rights which will protect the interest at various stages of such proceedings.

Rights available to a taxpayer

Most of the time, it has been seen that the department causes undue harassment to the bona fide taxpayers. Hence, it is of utmost importance that the taxpayers must be aware of their rights that can be exercised by them to safeguard themselves from any unilateral action on part of the tax authorities.

To begin with, the taxpayers must be aware that **Central Board of Indirect Taxes & Customs (CBIC)** has issued detailed guidelines for regulating summon proceedings which inter-alia provides that summons should only be used as a **last resort** where taxpayer is not cooperating, should only be issued against senior management if investigation indicates their involvement and not at first instance, should not be issued for appearance at odd hours, statements must be recorded during official hours etc. These guidelines clearly provide that language used in summons should not be unnecessarily harsh to cause stress or embarrassment to the taxpayer and should provide the justification of its issuance.

SUMMON TO PRESENT AT ODD HOURS NOT PERMISSIBLE

Although there is no express provision in the law which bars proper officer to require the presence of the person at odd hours, it was held in the case of **Agarwal Foundries Vrs UOI 121 taxmann.com 134 (Telengana HC)** as follows:

“In our opinion, the respondents cannot contend that they will interrogate the persons suspected of committing any tax evasion as per their sweet will forcibly keeping them in their custody for indefinite period. If it is done, it has to be

construed as informal custody and the law relating to an accused in custody has to be expressly or impliedly applied.

If accused can get all the benefits under Art.22 of the Constitution, a person in such informal custody can say that he is also entitled to get relief under Art.21 of the Constitution of India.

This view has been taken by the Gujarat High Court in **Jignesh Kishorbhai MSR,J & TA,J ::31:: wp_28268_2019 Bhajiwala v. State of Gujarat** while dealing with similar actions of authorities under the Prevention of Money Laundering Act, 2002.”

SUMMON TO MANAGING DIRECTOR/GENERAL MANAGER

CGST Act does not bar proper officer to issue summon to Managing Director or General Manager of a company. It has evolved through jurisprudence that the proper officer must be reasonable and must not act in an arbitrary manner.

Honble Jharkhand High Court while dealing with similar case has held in the case of **Sudhir Deora Vrs CCE** that although the officer has legal right to summon any person including Managing Director or General Manager, but he should not summon them unless it is required for the purpose of an inquiry.

Similar view was also express by **Honble Delhi High Court in the case of Gail Gas Ltd Vrs DGGI (2018) 100 taxmann.com 242.**

Apart from knowing these guidelines, taxpayers should also be aware of the following rights which can be exercised by them during the summon proceedings:

- **Right of retraction:** Tax officers often put undue pressure on taxpayers as a result of which they are forced to make inaccurate statements. In such a situation, taxpayers have the right to retract the earlier incorrect statement recorded during the summon proceedings and substitute the same with the correct statement. This will safeguard the taxpayers from any adverse action being taken by the tax authorities based on such incorrect statements.
- If the statement has been retracted, the same may **not be admitted as evidence** in case such retraction is not seen as after-thought and there was no long gap between the date of tendering the statement and retraction of the same.
- A question arises whether a person is required to answer all questions when summoned by a revenue officer during the proceedings, investigation etc. While a person is necessarily required to attend and speak the truth when he answers the questions, he may refuse answer questions on the ground that it would incriminate him.

- *The revenue officer is not a police officer and hence the bar under Section 25 Indian Evidence Act, 1872 on confessions made to a police officer being inadmissible may not apply.*
- **Right to remain silent:** In case, a taxpayer does not know the answer to any question posed or is not sure of the answer, he may exercise this right and remain silent. It is to be noted that the said right is a **constitutional right** available to the taxpayer and will not be considered as an offence or causing obstruction to the proceedings as affirmed by the Supreme Court and High Courts in various judgments.
- Article 20(3) of Constitution of India guarantees fundamental right against self incrimination. It says – No person accused of any offence shall be compelled to be a witness against himself. Further, section 161 of CrPC provides that no person is bound to answer any question which exposes him to a criminal charge.

In the case of **NSR Krishna Prasad (1992) 57 ELT 568 AP** it was held that right to silence is not an offence and cannot be said to be an obstruction to a proceeding.

Further in case of **Padam Narain Agarwal AIR 2009 SC 254** it was held that a person is not absolved/free from speaking the truth on the ground that such statement could be used against him.
- **Right to cross-examine:** Tax authorities sometimes tend to manipulate the summoned person by giving reference to the adverse statement given by any third person who can be his colleague, vendor/dealers of the company, etc. In such a situation, the taxpayer need not concede to such statements made by any third person and can exercise his right of cross-examining the other person to verify the adverse statements made by him.
- **Refreshing Memory:** It is advisable to take time rather than giving incorrect statement. Section 159 of Indian Evidence Act allows it.
- **Refer Books of Accounts:-** While recording statement, he is allowed to refer Books of Accounts and other documents before giving statement. He is not expected to remember everything (Chelapati Ganeswar Rao SC).

By appreciating the duties and recognizing the rights, a taxpayer can mitigate any adversities which may be caused to them by issuance of summons and not succumb to any pressure imposed by the authorities. Thus, it is imperative that a taxpayer is diligent and mindful of the foregoing rights and duties.

Brief about Summons

In day to day life we always hear the word 'Summon', like ED

summoned to this person, court summoned to this celebrity etc. A Summon is a call by court or any administrative body of government in written to an individual to appear in court or concerned office in person at a specified time and place regarding any investigation or enquiry on any matter or case.

A summon may be issued in both criminal and in civil cases.

Summon

to order a person to come to a place.

What is a summon example?

To summon is to order to meet, to bring together or to order to come. An example of to summon is **to ask for someone to come to your room**. An example of to summon is to call for a meeting. An example of to summon is to send a legal order

What is known as summon?

summons, also called Citation, in law, **document issued by a court ordering a specific person to appear at a specific time for some specific purpose**. It is issued either directly to the person or to a law officer who must carry out the instructions

A summon, in simple words, is an order to appear or mark your presence before a judge or a magistrate for any enquiry or against wrongdoing which could be civil, criminal or both. It is also known as CAN in a few parts of the world, i.e. Court Attendance Notice. In legal terms, a summons is also known as a citation, requiring an under-mentioned person to be present at a notified place, at the advised time and for the announced purpose.

What is a synonym for a Summon?

Some common synonyms of summon are **call, cite, convene, convoke, and muster**. While all these words mean "to demand the presence of," summon implies the exercise of authority. was summoned to answer charges.

Summons

A summon is a document issued either for the appearance or for producing a document or an item which may be issued to an accused person or witness.

Section 61 of the Criminal Procedure Court states that every summons issued by the Court shall be in writing, in duplicate along with the signature of the Presiding Officer of such Court or by such an officer as is authorised by the High Court and shall bear the seal of the High Court. The summons should be specific and clear in its terms regarding information such as the title of the Court, the place at which, the day and time of the day when the attendance of the person summoned are required.

What is summons in Indian court?

A summons is an **officially issued document that is released by any Court on an individual or an entity who may be involved in a legal proceeding**. A summon is usually served when legal action is taken against an individual, or a person is required to appear before a court as a witness in a proceeding.

Why is a summons issued?

A summon is usually served **when legal action is taken against an individual, or a person is required to appear before a court as a witness in a proceeding**. This document ensures that the person is called upon and his presence on the given date of the hearing.

Types of Summons:

Civil Summons

A civil Summons is a judicial summons given by one private person or entity to another private person or entity to appear in court and respond to a petition filed in court.

A civil summons is a more specific description of a type of court summons.

This type of summons informs the defendant that there is a civil action taken against it and they must show up in court to respond to the allegations.

Typically, a civil action involves a lawsuit claiming damages, compensation for a loss or injury or injunction to force someone to do or not to do something.

Some examples of a civil lawsuit are:

1. Breach of contract lawsuits
2. Injunction
3. Claim for money owned
4. Intellectual property infringement

Criminal Summons

A criminal summons is a type of judicial summons notifying someone to appear in a criminal court.

Depending on your jurisdiction, there may be different types of summons a criminal court can issue.

There are different types of summons issued in the context of criminal proceedings, some are issued by police and others by the prosecutor.

For example –

1. a citation,
2. traffic summons
3. notice to appear

These all are different types of summons in law related to a criminal-type of proceedings.

Citation Summons

A citation is a notice to appear before a criminal court for a relatively minor charge.

Typically, a citation is delivered by the police officer directly on the spot.

For example, if someone was not allowed to drink alcohol in the park, they may get a citation of such violation.

The police officers will issue the citation directly to the person spotted drinking in the park.

Traffic summons

A traffic summons is issued by the police for traffic violations.

Traffic laws establish rules intended to protect us and keep us safe on the roads.

Breaking traffic laws in some cases will lead to the issuance of a traffic summons.

For example, if you are caught for reckless driving, driving under the influence of alcohol or drugs, you will receive a traffic summons which in reality is a criminal summons as these violations are often criminal in nature.

A traffic summons may not necessarily be for a severe criminal violation but a violation requiring you to appear in court and respond to the allegations against you.

Some other traffic violations do not lead to the issuance of a traffic summons such as parking tickets.

In these cases, you get a ticket without being called to the court.

Notice to appear

An appearance notice or notice to appear is a type of summons informing you that you must respond to criminal charges.

A notice to appear in some cases is issued before you are formally charged for a crime.

For example, if someone is caught shoplifting, the police will provide the person a notice to appear on the spot.

Later on, the police will present the shoplifting evidence to a prosecutor who will confirm the criminal charges.

In some jurisdictions, a criminal proceeding may proceed by summary conviction, indictable offense or dual offenses.

Criminal summons can be issue in cases like:

1. Trespassing
2. Armed robbery
3. Assault
4. Murder
5. Driving under the influence of alcohol (DUI)

Administrative Summons

Administrative summons is another type of **judicial summons issued by an administrative body** authorized in law to handle a specific type of investigation or legal matters.

For example, every jurisdiction will have a tax authority in charge of handling all matters related to taxes.

Your tax authority may have the power to issue a summons for you to appear and provide information related to your taxes.

Administrative summons can be issued by different types of administrative courts such as:

1. Tax court
2. Immigration court
3. Labour courts
4. Professional code

Sections of Summons:

Section 61 in The Code of Criminal Procedure, 1973

Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court,

Section 62 in The Code of Criminal Procedure, 1973

Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Every person on whom a summons is so served shall, if so, required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Section 63 in The Code of Criminal Procedure, 1973

Service of summons on corporate bodies and societies. Service of a summons on a corporation may be affected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been affected when the letter would arrive in ordinary course of post.

Explanation. – In this section “corporation” means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860).

Section 64 in The Code of Criminal Procedure, 1973

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some **adult male member** of his family residing with him, and the person with whom the summons is so left shall, if so, required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Explanation. – A servant is not a member of the family within the meaning of this section.

Section 65 in The Code of Criminal Procedure, 1973

If service cannot by the exercise of due diligence be affected as provided in section 62, section 63 or section 64, the serving officer **shall affix** one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

Section 66 in The Code of Criminal Procedure, 1973

Where the person summoned is in the active service of the Government the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section.

Such signature shall be evidence of due service.

Section 67 in The Code of Criminal Procedure, 1973

When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served.

Section 68 in The Code of Criminal Procedure, 1973

When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

Section 69 in The Code of Criminal Procedure, 1973

Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served.

What is summon in CPC?

The intimation which is sent to the other party (defendant) is called summons. The provision related to summons are given in Section 27-32 and Order V of CPC. Summons is an authoritative call from the court to attend the court at a specified place and at a specified time

What is summons in court?

summons, also called Citation, in law, document issued by a court ordering a specific person to appear at a specific time for some specific purpose. It is issued either directly to the person or to a law officer who must carry out the instructions.

What happens when you receive summons?

A summons is the first process for a legal claim where a Plaintiff has instituted an action against a Defendant. Once the summons is served via Sheriff, you will have 10 days to respond with a Notice of Intention to Defend or attempt to negotiate a settlement with the Plaintiff.

How are summons served?

Every summon shall be served by a police officer, or by an officer of the court issuing it or any other public servant. The summon shall if practical, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons

What happens if unresponsive to summons

If anyone is unresponsive to a summons also known as legal notice the court would respond by or the course of action of the court would be initiating ex parte legal proceedings which would entail the plaintiff proving his claim through the legal procedure as well as by evidencing supporting his claim

Can summons be Cancelled?

Yes, the summons can be cancelled or quashed as appropriately required by law dependent on the facts of

settlement and the terms and conditions determined therein between the parties. The legal procedure has to be followed for the same.

Does a summons expire?

Under the Rules of the Superior Courts, a Summons (the document that initiates legal proceedings) remains in force for a 12-month period from the day it is issued¹. If the Summons is not served on the defendant(s) within that 12-month period, it expires and cannot then be validly served

What happens if a court summons is ignored?

If you are given a summons in a civil lawsuit and you don't reply or go to the court on the assigned day the other person points out to the court that you are not interested in the case. The jury will have to take a default judgement against you.

What is the object of summons?

The objects of the summons are to:

Providing the information to the defendant that a suit has been instituted against him. For the principle of natural justice. The court may direct the defendant to file the written statement in his defence.

What happens after court summons?

Once a Summon is signed by the Presiding Officer/Judge and seal of the Court is affixed, the Summon is then given to a Police Officer to serve the same on the person summoned to the Court, ideally the summon should be served personally on the person who is summoned by tendering the duplicate copy of the summon

How many times can a summons be issued?

Only one summon issued is enough to issue bailable warrant of the accused in cheque bounce case, subject to the condition that the summon should be delivered to the accused and it's report is in file before the date of hearing.

COMPLIANCE WITH SUMMONS

The assessee is expected to comply with summons which are issued by the GST officer. This would be regardless of the plea of innocence, hardship etc. and even if the adjudication proceedings are ultimately dropped, non-compliance with summons would

be separate punishable offence

Broadly there are four types of summoning listed below;

- Judicial Summon
- Citation
- Administrative summons
- Civil Summon

The summons issued under the GST ACT is a type of Administrative summon. As per the case, the officer in charge can call any registered person to appear before and produce evidence or document.

How summon is different from a notice?

All summons are notices, but all notices are not summons.

As discussed above, a summon is an official call upon or invitation to mark your presence at the court or before an officer. However, notice is general information from the court/authority. Notice may or may not result in a summon.

As per GST ACT, a summon shall be deemed to be a “legal proceeding” under provisions of section 193 and the section 228 of the Indian Penal Code (45 of 1860).

On the contrary, the same doesn't apply to the notice.

What is summons in GST?

When the proper officer can issue summon.

Summon can be issued by duly authorized CGST/SGST officer to call upon a person to present himself before the officer to.

- Either give evidence or produce a document or.
- Any other thing in any inquiry which an officer is making

When can I expect a summon?

Under Sec 70 of C.G.S.T. Act, summon can be issued when a taxpayer is undergoing any inquiry proceedings. Wherein *inquiry could be initiated on non-satisfaction of any ground related to compliance, a requirement of law or the notice issued.*

As per the latest judgment in the case of **G.K. Trading Company Vs Union Of India And 4 Others (Allahabad High Court)** wherein it was held that G.S.T. authorities are allowed to initiate inquiry proceedings under Section 70 of C.G.S.T. Act, 2017 combined with the proceedings under section 6(2)(b) as the prohibition of Section 6(2)(b) of the C.G.S.T. Act shall come into play only when any proceeding on the same subject-matter has already been initiated by a proper officer under the U.P.G.S.T. Act and therefore, an adequate officer under the U.P.G.S.T. Act or the C.G.S.T. The Act may invoke the power under Section 70 in any inquiry.

Therefore, by the above judgment, it's pretty clear that you can expect a summon collaterally with the other proceedings under the Act, be it an investigation, search, seizure either to give any evidence or produce a document or anything.

Below are the few listed matters on which inquiry could be initiated if considered necessary by the proper officer;

- The Input tax credit taken is wrongly availed or utilized.

- G.S.T. Refund is wrongly made with or without the intent to defraud.
- Non-payment of G.S.T. liability (tax) or the short payment of the tax with or without the intent to defraud.
- Differences in Input tax credit claims made in GSTR-3B vis-a-vis GSTR-2A/2B.
- Delay in filing of GSTR-1 and GSTR-3B consecutively for more than six months.
- Inconsistent declaration in GSTR-1 and e-way bill portal etc.

Who could be G.S.T. summon consultant?

A Practising Chartered Accountant, an Advocate, Cost and Management Accountant or any other professional possessing such knowledge and experience as would be considered sufficient to handle the complexity of the case.

Procedure for replying GST summon?

Any taxpayer who receives the summon shall first consult a GST Summon Consultant. Who, could be a legal practitioner, be it a Chartered Accountant in practice or an Advocate, to know the reason and justification behind such summon?

As per law, the power to call can be exercised only when there is a need for the appearance of the assessee.

A taxpayer should be mindful that summons is a legal proceeding, which cannot be ignored. Once the taxpayer and the practitioner are satisfied with the justification and purpose of the summon, the taxpayer shall appear on the specified date.

The taxpayer shall state the facts and figures to the practitioner to accumulate and produce objective evidence and statements before the authority. Before the call upon date, he shall be handful with all the required evidence, documents and statements before the authority.

Under the rigorous inquiry from the authority, the taxpayer shall not testify and sign any documents before reading and understanding the same.

How to deal with GST summon?

GST Summon Consultant – Assessee shall consult the practitioner to know the reason and justification of the summon.

Block your calendar for Appearance– Assessee shall block his calendar for the specified dates.

Produce – Assessee shall produce before the practitioner all the facts, figures, evidence and state the absolute truth.

Be handful – Assessee shall be a handful with all the required documents and information.

Be mindful – You should be cognizant while recording your statement; this could be used against you.

Don't promise – During the summon inquiry, do not explicitly promise to pay any taxes or penalties; always consult with your practitioner about this.

Have your words ready – As we emphasize from the beginning, consult exclusively and be prepared with your comments and performance and disclaim wisely when you are not sure about the same.

Be confident – Don't panic in any situation and act wisely and confidently with a fearless attitude

What is summon under Section 70 of CGST?

Section 70 of the CGST Act empowers the proper officer (PO) to **summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry**. The foremost condition before issuing the summon is that the inquiry has already been initiated.

Who is proper officer under GST?

As per section 2(91) of the CGST Act, 2017, “proper officer” in relation to any function to be performed under this Act, means **the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board**.

Vide Entry 4 of **Circular 3/3/2017 dated 05.07.2017**, CBIC assigns ‘Superintendent of Central Tax’ as the proper officer for the purpose of section 70. CBIC vide entry 8 of **Notification 14/2017 Central Tax dated 01.07.2017** appoints Senior Intelligence Officer, GST Intelligence or Superintendent, GST Audit and invests them with power that of a Superintendent.

Further **CGST Act** in section 70 has used the word ‘**The**’ before the words ‘proper officer’. It gives meaning that it is the specific officer who has been assigned jurisdiction either on the basis of territory, function or category, has the authority to issue summon under the said section.

Section 70 of the CGST Act empowers the proper officer (PO) to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry.

The word summon is not defined in GST as well as in any other law. **The meaning as per Oxford Dictionary means “summon somebody (to do something)(formal) to order somebody to appear in court”**

The foremost condition before issuing the summon is that the inquiry has already been initiated. In relate to that inquiry the PO requires the person either to give evidence or to produce a document or any other thing. **The matter**

connecting to the inquiry shall have to be explained in the summon issued. If it is not explained, summon issued may be invalid. **The Circular No. 128/2019 dated 23-12-2019 provides the format of ‘Summon’**.

It is ample clear that provisions of section 70 have been enacted for collecting evidences and materials to frame or proceed the case against the person concern.

Before proceedings or framing a case, the PO shall have to compute the liability of tax, interest and penalty which is mandate under the GST Law. The same may be verified as under:

Section 73 and Section 74 require to issue a statement containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised through GST form DRC-01;

Section 69(2) requires to inform the grounds of arrest;

Offences under section 132 cannot be framed without available of materials and evidences;

The decision for Search and Seizure under section 67 may not be taken without reasons and Decision for Audit or Special Audit can also be taken after when the Authority find reasonable materials on hand.

Thus, it seems, inquiry is the only tool which can help the PO to proceed the case under proper provisions of the GST law.

The provisions under section 70 are analysed with judicial decisions as under:

1. SUMMON MAY BE ISSUED BY MULTIPLE AUTHORITIES

G.K.Trading Company v. Union of India reported as 2021-VIL-12-ALH – In this case the Hon’ble Court held that The word “inquiry” in Section 70 is not synonymous with the word “proceedings”, in Section 6(2)(b) of the CGST Act.

Section 6(2)(b) prohibits the proceedings if the proceedings had already been initiated on the same subject-matter.

Since inquire is not at par with the word proceedings, therefore, if the inquiry, is initiated on the matter by multiple authorities, cannot be prohibited by virtue of provisions contemplated under section 6(2)(b) of the CGST Act.

M/s SIDDHI VINAYAK TRADING COMPANY Vs UNION OF INDIA AND 2 OTHERS 2021-VIL-155-ALH

The opinion of the Court in this case is that the initiation of the proceeding for imposition of tax and penalty was with the issuance of the notice under Section 74 as contained in Chapter XV of UPGST Act and the inquiry under Section 70 of the Act was independent.

ANTICIPATORY BAIL

The question is that whether anticipatory bail may be granted or not before attending the inquiry proceedings under Section 70 of the CGST.

There are differ views explained as under:

Affirmative view in Anticipatory Bail

SH. HARDEEP SINGH BANGA AND 6 OTHERS Vs STATE OF U.P. AND 4 OTHERS – 2021-VIL-694-ALH

The court allowed the *anticipatory bail* while giving following judgment's:

- Petitioners are having a good business and social status in society;
- The petitioners have no prior criminal antecedents brought on record;
- The personal liberty guaranteed under Article 21 of the Constitution of India is a fundamental right and, in every case, arrest is not necessary;
- If the petitioners cooperate with the inquiry, there is no requirement of their arrest;
- The petitioners are having their own address of residence and business and they are having a good status in society;
- They can give surety ensuring their appearance;
- They do not appear to be habitual offender, prosecuted or convicted earlier.

Affirmative view in Anticipatory Bail

SRI HANUMANTHAPPA PATHRERA LAKSHMANA Vs STATE – 2020-VIL-249-KAR

The offences are not punishable with death or

imprisonment for life. There is no statutory bar in the CGST Act for granting anticipatory bail by exercising power under Section 438 of the Cr. P.C. Merely, there were number of notices/summons issued by the respondent during the lockdown for COVID-19 that itself is not a ground to reject the bail petition.

Considering the fact and circumstances of the case, if an anticipatory bail is granted, no prejudice would be caused to the respondent.

Dissenting view in Anticipatory Bail

DHIRENDRA SINGH Vs THE COMMISSIONER, CENTRAL GST COMMISSIONERATE – 2021-VIL-175-GUJ

The Hon'ble court views that if the writ applicants have an apprehension that they would be arrested any time, it is open for them to take recourse available to them in accordance with law to take care of such a situation. The application for anticipatory bail was rejected.

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“Faith is seeing light with your heart when all your eyes see is darkness.”

– Barbara Johnson



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Analysis of the Indicative list of Parameters as per the Standard Operating Procedure (SOP) for Scrutiny of returns issued by CBIC:

The Indicative list of Parameters introduced by CBIC vide Instruction No. 02/2022-GST dated 22.3.2022 in Standard Operating Procedure (SOP) for Scrutiny of returns u/s 61 of CGST Act read with Rule 99 of CGST Rules for F.Y. 2017-18 and F.Y. 2018-19 are enumerated hereunder:-

(The list is indicative and the proper officer may include additional risk parameters in selection of returns for Scrutiny.)

S. No.	Parameter	Description of Parameter	Remarks	Practical Case Studies
1	Tax Liability on Outward Supplies and short-payment of tax	Tax liability on account of "Outward taxable supplies (other than zero rated, nil rated and exempted)" and "Outward taxable supplies (zero rated)" as declared in table 3.1(a) and table 3.1(b) respectively of FORM GSTR-3B may be verified with corresponding tax liability in respect of outward taxable supplies declared in table 4 (other than table 4B), table 5, table 6, table 7A(1), table 7B(1), table 11A and table 11B (along with the net effect of amendments thereof in Table 9, 10 and 11(II)) of FORM GSTR-1.	<p>(1) Where the tax liability in respect of supplies declared in the aforementioned tables of FORM GSTR-1 exceeds the liability declared in FORM GSTR-3B, it may indicate short payment of tax. As per SOP, in all cases the Liability in GSTR-3B >= Liability in GSTR-1. However, such short-payment of tax may not be true in all cases as is illustrated in the adjacent case study.</p> <p>(2) Since the GST regime was at a nascent stage during FY 2017-18 and 2018-19, there could be genuine cases of mismatch in information of outward supplies and output tax reported in GSTR-1 and GSTR-3B. A lenient stance should be adopted by the Department.</p>	<p>(1) Mr. Aakash, a registered person has made outward supply of ₹ 15L in the month of December, 2021 to Mr. Prateek. A purchase return of an amount of Rs.3L was made by Mr. Prateek to Mr. Aakash in March 2022. Mr. Aakash could not report Credit note (CDN) of Rs. 3L in GSTR-3B of March 2022 since there were no outward supplies for the said month against which the CDN could be adjusted even though he has reported such CDN in GSTR-1 for March 2022. The said CDN may be reported in GSTR-3B of April 2022, provided there is enough outward supplies for April 2022. Therefore, for F.Y. 2022-23, the Liability in GSTR-3B < Liability in GSTR-1 and as per the SOP a scrutiny notice may be issued even though this is not a case of short payment of tax and an appropriate reply along with sales reconciliation has to be provided.</p> <p>(2) In case due to a clerical mistake in reporting outward supplies in Table 3.1(a) or Table 3.1(b) in GSTR-3B of March 2022 by mistakenly reporting Rs. 30,000 instead of the correct amount of Rs. 3,00,000 would create a difference of Rs. 2,70,000 against the correct amount of Rs. 3,00,000 reported in GSTR-1 in F.Y. 2021-22. Also, in case the difference of Rs. 2,70,000 of outward supplies is reported in GSTR-3B of April 2022, whereas no such amount shall be reported in GSTR-1 of April 2022, would again create a difference between outward supplies reported between GSTR-3B and GSTR-1 in F.Y. 2022-23. Therefore, as per the SOP, there may be a scrutiny notice issued for short payment of tax in GSTR-3B of March 2022 even though there may be an inadvertent clerical error.</p>

S. No.	Parameter	Description of Parameter	Remarks	Practical Case Studies
2	Tax Liability on Inward Supplies (RCM) and Input Tax Credit claimed under RCM	<p>a. ITC availed in Table 4(A)(2) and Table 4(A)(3) of Form GSTR-3B</p> <p>Note – ITC availed cannot exceed Cash paid under RCM in Table 3.1(d) of Form GSTR-3B</p> <p>b. ITC in respect of inward supplies attracting reverse charge as appearing in Table 3 and Table 5, net of amendments in Table 4 and Table 6, of FORM GSTR-2A</p> <p>Note – RCM paid as per GSTR 3B cannot be less than RCM populated in GSTR 2A</p> <p>c. Tax/Cess paid in cash as per column 8 of Table 6.1 of FORM GSTR-3B</p>	<p>Availment of ITC in excess of the liability discharged on account of reverse charge supplies may indicate either short payment of tax liability on account of RCM supplies or excess availment of input tax credit in respect of RCM supplies. Therefore, as per SOP, in all cases, Liability in 3.1(d) >= ITC in 4(A)(3). However, the same may not be true in all case as is illustrated in the adjacent case study.</p> <p>Details of such inward supplies from URD persons are not communicated in FORM GSTR-2A, as only registered persons furnish FORM GSTR-1. Moreover, details of ITC on account of import of services also are not communicated in FORM GSTR-2A. As such, the RCM supplies declared in table 3.1(d) of FORM GSTR-3B cannot be less than the inward supplies attracting RCM as available in FORM GSTR-2A. However, the same may not be true in all case as is illustrated in the adjacent case study.</p> <p>In respect of inward supplies liable to RCM, tax/cess is to be paid in cash.</p> <p>Besides such RCM payments in cash, there may also be other payments in cash by the registered person i.e. Cash payment as per Rule 86B. In any case, tax liability off-set in cash should not be less than the liability arising on account of reverse charge as per table 3.1(d) of FORM GSTR-3B.</p> <p>Where the tax liability off-set in cash is less than the liability arising on account of reverse charge, it may indicate short payment of tax.</p>	<p>(1) Mr. Bikash has paid tax under RCM of Rs. 50,000 and reported in table 3.1(d) of GSTR-3B of March, 2022 and since, he usually claims the corresponding ITC under RCM in Table 4(A)(3) in GSTR-3B of the next month, say, in the given case it shall be, GSTR-3B of April 2022. Therefore, he shall claim such ITC under RCM of Rs. 50,000 by reporting it in Table 4(A)(3) of GSTR-3B of April, 2022 and corresponding tax payment under RCM shall not be reported again in Table 3.1(d) of GSTR-3B of April, 2022. Therefore, for the month of April 2022 in F.Y. 2022-23, amount of ITC under RCM reported in Table 4(A)(3) shall be greater than tax paid under RCM in Table 3.1(d) of the same month. Therefore, as per the SOP, there may be a scrutiny notice issued for short payment of tax under RCM or excess claim on ITC under RCM for F.Y. 2022-23.</p> <p>(2) Ms. Shilpa has made taxable outward supplies of Rs. 1,00,000 to Ms. Ankita in March 2022. Ms. Shilpa has mistakenly reported such supplies in Table 4B instead of Table 4A of GSTR-1 of March 2022 and consequently column 14 of Table 3 of GSTR-2A of Ms. Ankita is updated with 'Yes' stating that such inward supplies attracted RCM whereas it should have been 'No'. As a result of this, the inward supplies attracting RCM as per GSTR-2A shall be greater than tax liability under RCM reported as per Table 3.1(d) of GSTR-3B of March 2022. Therefore, as per the SOP, there may be a scrutiny notice issued for short payment of tax under RCM for F.Y. 2021-22.</p>
3	ITC on Inward Supplies from ISD	ITC availed in respect of "Inward supplies from ISD" in Table 4(A)(4) of FORM GSTR-3B may be verified with Table 7 (along with the net effect of amendments thereof in Table 8) of FORM GSTR- 2A.	As per the SOP, in every case, the Input Tax Credit as per Table 4(A)(4) <= Input Tax Credit appearing in Table 7 of GSTR-2A.	

S. No.	Parameter	Description of Parameter	Remarks	Practical Case Studies
4	Excess Claim of ITC in GSTR3B V/s GSTR2A. (ITC on All other ITC)	ITC availed in respect of "All other ITC" in Table 4(A)(5) of FORM GSTR-3B may be verified with Table 3 and Table 5 (along with the net effect of amendments thereof in Table 4 and Table 6 respectively) of FORM GSTR-2A.	<p>Tables 3 and 5 in FORM GSTR-2A contain details of supplies attracting forward as well as reverse charge. Therefore, only the supplies against which there is "No" or "N" in column 14 of Table 3, column 16 of Table 4, column 15 of Table 5 and column 18 of Table 6 may be considered. Therefore, as per the SOP, ITC as per Table 3 and Table 5 of GSTR-2A should be greater than ITC claimed in Table 4(A)(5) of GSTR-3B. However, the same may not be true in all case as is illustrated in the adjacent case study.</p> <p>Such ITC appearing in GSTR-2A may be greater than ITC to be claimed in Table 4(A)(5) of GSTR-3B in usual situations, such as when ITC appearing in GSTR-2A may contain blocked Credit u/s 17(5), however, the ITC to be claimed in Table 4(A)(5) of GSTR-3B should not contain such a ITC.</p> <p>It may be noted that there was no requirement of matching ITC claimed in Table 4(A)(5) of GSTR-3B with GSTR-2A for FY 2017-18 and FY 2018-19.</p> <p>Reliance can be placed on the Press release dated 18.10.2018 and the judgment of Hon'ble Gujarat High Court in M/s. NEW NALBANDH TRADERS vs. STATE OF GUJARAT & 2 other(s).</p>	<p>(1) Mr. Raju Prasad has purchased some goods from Mr. Shankar having business in Bihar. Goods had been dispatched by Mr. Shankar as on 31-03-2022 and the tax invoice had been raised as on 31-03-2022. Mr. Shankar reports the tax invoice on this outward supply in his GSTR-1/IFF for the month of March 2022. Since the goods have been received by Mr. Raju Prasad as on 03-04-2022, he is bound to claim such ITC only in the month of April 2022 due to the condition of claiming ITC as per Sec 16(2)(b) of CGST Act. Therefore, in regard to F.Y. 2022-23, ITC claimed in Table 4(A)(5) All Other ITC > ITC as per Table 3 & 5 (GSTR-2A), even though it is not a case of excess claiming of ITC. Therefore, as per the SOP, there may be a scrutiny notice issued for excess claiming of ITC for F.Y. 2022-23.</p> <p>(2) M/s. Maa Kaali Transport, GTA, has provided Goods Transport Agency services of Rs. 1,50,000 to M/s. Rio Sales Pvt. Ltd. in December 2021 but mistakenly an invoice of Rs. 1,75,000 was issued and uploaded in his GSTR-1 then. Now, a downward amendment of Rs. 25,000 is required to be reported in Table 9A-Amended B2B invoices in March 2022 but mistakenly it has been reported incorrectly and consequently column 16 of Table 4 of GSTR-2A of M/s. Rio Sales Pvt. Ltd. is updated with "No" stating that such inward supplies of GTA did not attract RCM whereas it should have been "Yes". As a result of this, the inward supplies not attracting RCM as per Table 3, net of amendments in Table 4, of GSTR-2A shall be lower than the ITC claimed in Table 4(A)(5) of GSTR-3B of March 2022. Therefore, as per the SOP, there may be a scrutiny notice issued for excess claiming of ITC for F.Y. 2021-22.</p>
5	Short Payment of Tax in case of TDS/TCS Deduction. Outward supply in GSTR-3B vs. TDS and TCS Credit	The taxable value declared on account of "Outward taxable supplies in Table 3.1(a) of FORM GSTR-3B should not be less than the net amount liable for TCS and TDS credit as per Column 6 of Table 9 of FORM GSTR-2A.	<p>The details of TDS and TCS are furnished in their FORM GSTR-7 and FORM GSTR-8 respectively and communicated to the registered person in table 9 of FORM GSTR-2A.</p> <p>However, the taxable value declared on account of Outward taxable supplies in FORM GSTR-3B cannot be less than the net amount liable for TCS and TDS credit as per FORM GSTR-2A.</p> <p>A discrepancy on the aforementioned count may indicate short payment of tax.</p>	<p>(1) Mr. Mahesh is a Government supplier and making a supply of Rs. 2 Crore with 18% GST in the month of March 2022 under a contract with Government. Payment made by Government Department is Rs. 1.18 Cr. inclusive of GST to Mr. Mahesh for the month of March 2022. TDS has been deducted by Government department @ 2% i.e Rs. 4L on Rs. 2 Cr. supply for the month and the same has been shown in their GSTR-7. On the other hand Mr. Mahesh has shown outward supply of Rs. 1 Cr for the month of March 2022.</p> <p>In the above situation there is a short payment by Mr. Mahesh of 18% GST on Rs. 1 Cr since the TDS @ 2% was deducted on the entire contact value of Rs. 2 Cr by the Government and Mr. Mahesh shall have to pay an additional GST Rs. 18L out of his pocket.</p>

S. No.	Parameter	Description of Parameter	Remarks	Practical Case Studies
				<p>(2) Mr. Sanjeet issues a Tax Invoice of Rs. 10,00,000/- with GST of Rs. 1,80,000/- for supplies made to Government. The Govt. department should have deducted TDS on Rs. 10,00,000/- but mistakenly it was deducted on Rs. 11,80,000/- . In such a case difference in taxable value of outward supplies shall be present in GSTR-3B and GSTR-7. In such a case, scrutiny notice may be issued for mismatch and reply will have to be furnished for the same. In these cases, Mr. Sanjeet shall also have to follow up the Government Department for a rectification in GSTR-7.</p> <p>(3) Mr. Tapas, a contractor, has reported in GSTR-3B of March 2022, the outward supplies of Rs. 50L made to a Government Department in the same month. However, the Govt. Department doesn't deduct the TDS @ 2% on Rs. 50L at the time of credit of account in March, 2022 but deducts TDS in April 2022 when it makes the payment to the contractor and declares in GSTR-7. Therefore, assuming there is no outward supplies to be reported in GSTR-3B of April, 2022, the taxable outward supplies reported in GSTR-3B of April 2022 may be lower than the net amount liable for TDS as per Form GSTR-2A.</p>
6	Outward supply in GSTR-3B vs. Liability as per E-way bills.	Liability on account of outward supplies as per FORM GSTR-3B should be verified with the Tax liability as declared in e-way bills.	Short Payment of Tax in case of TDS/TCS Deduction. Outward supply in GSTR-3B vs. TDS and TCS Credit	<p>Taxpayer is required to generate e-way bill before commencement of movement of goods of consignment value exceeding fifty thousand rupees, (maybe Rs. 1L or a higher amount for certain states.) E-way bills capture a part of supplies made by the registered person. However, in FORM GSTR-3B, the registered person is required to declare details of all outward supplies. Accordingly, liability declared in FORM GSTR-3B should not be less than tax liability as declared in the e-way bills.</p> <p>It is to be noted that the E-way facility was introduced from 1.4.2018 and onwards. Therefore, for the F.Y. 2017-18 such reconciliation of outward supplies reported in GSTR-3B and liability declared in E-way bills may not be possible.</p> <p>Since, E-way bills are required to be generated in the cases where Delivery Challan is issued instead of Tax invoice such as for Job-work etc. and since it is not a supply, no such supply is reported in GSTR-3B, and this requires a thorough reconciliation.</p> <p>It is to be noted that there may be effect towards outward supplies reported in Table 3.1(a) and Table 3.1(b) due to Credit Notes and Debit notes issued due to rate differences, liquidated damages, discounts etc. which do not require movement of goods and no generation of E-way Bill thereon. During reconciliation, such effect has to be eliminated.</p>

S. No.	Parameter	Description of Parameter	Remarks	Practical Case Studies
7	ITC from suppliers whose registration is cancelled	Claim of ITC in respect of supplies from taxpayers whose registrations have been cancelled retrospectively	<p>In case of retrospective cancellation of registration of a supplier, the recipient is not entitled to claim ITC in respect of invoices or debit notes issued after the effective date of cancellation of the registration. Effective date of cancellation of registrations of the suppliers, if any, is made available in relevant tables of FORM GSTR-2A.</p> <p>Accordingly, it may be verified whether the registered person has availed ITC in respect of such invoices or debit notes issued by the suppliers after the effective date of cancellation of their registrations.</p> <p>However, in case the claim of genuineness of the purchase transactions in question can be proved and when payments on such purchase along with GST were actually paid and when such transactions were made before the cancellation of registration of the supplier and compliance of statutory obligation of verification of identity of the supplier had been done by the buyer, then reliance may be placed on several HC and SC judgments including that of Hon'ble Calcutta High Court judgment in the case of Sanchita Kundu & Anr. Vs. The Assistant Commissioner of State Tax, 2022.</p>	
8	ITC on filing of GSTR 1 but non-filing of GSTR 3B. Tax not paid to Government by the Supplier.	Ineligible ITC availed in respect of invoices / debit notes issued by the suppliers who have not filed their GSTR-3B returns for the relevant tax period	<p>In case where GSTR 3B is not filed, GSTR 2A shall contain status as "No", which indicates the supplier has furnished invoice details in his FORM GSTR-1, but has not furnished the return in FORM GSTR-3B for the corresponding tax period. The availment of ITC in respect of such invoices /debit notes may be checked.</p>	<p>1) Mr. Amreshwar has purchased some goods from Mr. Sarthak, GSTR-1/IFF has been filed by the Mr. Sarthak on the due date but he failed to file GSTR-3B for the said period. In such a case, Invoices will be reflected in GSTR-2A of Mr. Amreshwar, however he is not entitled to claim the ITC as condition laid down u/s 16(2)(c) is not fulfilled.</p> <p>However, this is a litigated area and there are several case judgments of high courts that are in favour of the assessee</p>

S. No.	Parameter	Description of Parameter	Remarks	Practical Case Studies
			<p>However, this is a litigated area and reliance can be placed on the grounds of violation of Article 14, Article 19(1)(g) and Article 300A of the Constitution of India and the Doctrine of Impossibility. Also, reliance may be placed on Press Release dated 4th May 2018 and the judgments of Hon'ble Madras High Court in case of M/s. D. Y. Beathel Enterprises vs. The State Tax Officer (Data Cell) and Hon'ble Chattisgarh High Court in Bharat Aluminium Company Limited V. Union of India and others amongst other High court judgments favouring the assessee.</p>	
9	ITC on returns filed post due date for filing of GST Returns	Whether GSTR-3B of a tax period is filed after the last date of availment of ITC in respect of any invoice / debit note as per section 16(4). In such cases, no ITC shall be availed in the return.	<p>Sec 16(4) of CGST Act provides for availment of ITC only till the due date of furnishing of FORM GSTR-3B for the month of September following the end of FY to which such ITC pertains or furnishing of relevant Annual Return, whichever is earlier. Accordingly, if any return in FORM GSTR-3B is furnished after such time by the registered person under scrutiny, any ITC availed therein is inadmissible.</p> <p>For FY 2017-18, availment of ITC was allowed till the due date of furnishing of the return in FORM GSTR-3B for the month of March, 2019 provided the suppliers have furnished details of such invoices/debit notes in GSTR-1 and filed within due date of March, 2019.</p>	
10	ITC on Import of Goods	ITC availed in respect of "Import of goods" in Table 4(A)(1) of FORM GSTR-3B may be verified with corresponding details in Table 10 and Table 11 of FORM GSTR-2A.	<p>The details of such imports may also be cross-verified from ICEGATE portal. Bill of Entry details appear on ICEGATE portal as well. However, there may be few cases in which the importer imports goods from foreign country and pays IGST at the time of filing of Bill of Entry for home consumption, but such ITC is not reflected in GSTR-2A due to certain error in Bill of Entry or any other reasons.</p>	

S. No.	Parameter	Description of Parameter	Remarks	Practical Case Studies
			<p>It is to be noted that for F.Y. 2017-18 and F.Y. 2018-19, the use of GSTR-2A was not made mandatory for claiming ITC. Also, in case details of IGST paid on import of goods doesn't appear in GSTR-2A, ITC may be claimed on the basis of copy of BOE, challan of IGST paid and other specified documents and the same has been specified in Internal Circular No. 02A of 2022 dated 25 February 2022 issued by Maharashtra Government.</p> <p>A facility of "Search BOE" on GST portal under "User Services" has been provided wherein details such as Port Code, BOE Number, BOE Date and Reference date are to be provided to view the details of Bill of Entry, shared from the ICEGATE portal.</p>	
11	Reversal of ITC as per Rule 42 and 43 (Common Credit)	Reversals of ITC in accordance with provisions of rule 42 and rule 43 of the CGST Rules	<p>The registered person avails ITC in table 4(A)(5) of FORM GSTR-3B and reverses in Table 4(B)(1). It may be verified whether requisite reversals have actually been made by the said registered person if any persons is engaged in both, exempt Supply and taxable supply.</p> <p>In such a case provisions of Rule 42 and rule 43 will be applicable.</p>	<p>1) Ripco Sales Pvt. Ltd. is engaged in magazine sale as well as pendrive sales. Magazine sale is exempt and pendrive sale is taxable. Ripco Sales purchased envelope of Rs. 50000/- with GST of Rs. 9000/- for packing the magazine and pendrive. In such a case if Ripco Sales has claimed the entire ITC of Rs. 9000/-, then Ripco Sales has to proportionately reverse the ITC on the supply of exempt goods as per Rule 42.</p> <p>Same will be applicable in case of Capital Goods i.e. computer, mobile phone, as per Rule 43.</p>
12	Payment of Interest as per Sec 50	Whether the registered person has paid interest liability in terms of section 50	<p>As per section 50 of the CGST Act a registered person is required to pay interest on delayed payment of tax. It may be verified whether interest payable as per the provisions of section 50 of the CGST Act has actually been paid by the registered person. Interest at the rate of 18% is applicable on tax paid in cash only and not on gross liability.</p> <p>Interest liability should be paid by the registered person in their GSTR-3B on regular basis, if he is liable to pay the same.</p>	<p>1) M/s. Anand Ltd. has no credit balance of ITC in their credit ledger for the month of May 2021, and forgot to report a sales Invoice of Rs. 1,00,000 and output tax of Rs. 18,000 dated 21/05/2021 and filed its GSTR-3B as on 20/06/2021. Now, such May dated sales invoice has been reported in GSTR-3B of January, 2022 and filed it as on 20/02/2022 and such liability of Rs. 18,000 has been paid in cash. In this case Interest u/s 50(1) shall be levied on such tax liability @ 18% for 9 months since such payment of tax has been made in cash.</p>

S. No.	Parameter	Description of Parameter	Remarks	Practical Case Studies
13	Payment of Late Fees as per Sec 47	Whether the registered person has paid late fee in terms of section 47 in respect of returns/ statements	<p>As per section 47 of the CGST Act a registered person is required to pay late fee for delayed filing of returns / statements under the Act. It may be verified whether late fee payable as per the provisions of section 47 of the CGST Act has actually been paid by the registered person.</p> <p>Sometimes, late fees may not be calculated by the portal according to section 47. In such a case registered person is liable to pay late Fees as per section 47.</p> <p>As per the announcement made in the 45th GST Council meeting, the Late fee for delayed filing of FORM GSTR-1 is to be auto-populated and collected in the next open return in FORM GSTR-3B and it is important to know the rationalized late fees on form GSTR-1 as per Notification No. 20/2021-Central Tax dated 1.06.2021.</p>	<p>1) M/s. Sharma Engineering having a turnover of Rs. 7 Cr. for the F.Y. 2020-21, and had filed his GSTR-9 on 7/3/2022 and filed his GSTR-9C as on 25/03/2022 i.e. after the due date of 28/02/2022. In such a case it is liable to pay late fee as per section 47, however the portal shall not calculate the same.</p> <p>So in such a case M/s. Sharma Engineering is liable to pay late fees as per section 47 during scrutiny of returns.</p>

Disclaimer: The content of this document is for general information purpose only. The author shall not accept any liability for any decision taken based on the advice. You should carefully study the situation before taking any decision.

* * * * *

“Life is like riding a bicycle. To keep your balance, you must keep moving.”

– Albert Einstein



A man once told the Buddha, “I want happiness”

The Buddha replied, “first remove ‘I’, that’s EGO. Then remove “want”, that’s desire. And now you are left with HAPPYNESS. “



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TDS sections amended yet again!

Amendment in TDS sections 194R and 194IA of the Income Tax Act, 1961 vide Finance Act, 2022:

Memorandum to Finance Bill 2022:-

Page 51 – Para 4 [Clause 58 of the Finance Bill]

As per clause (iv) of section 28 of the Act, the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of profession is to be charged as business income in the hands of the recipient of such benefit or perquisite.

However, in many cases, such recipient does not report the receipt of benefits in their return of income, leading to furnishing of incorrect particulars of income.

Section 194R - Applicability with effect from 1st July, 2022:

Any person responsible for providing to a resident, any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession, by such resident, before providing such benefit or perquisite, ensure that tax has been deducted @ 10% of the value or aggregate of value of such benefit or perquisite. The value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed Rs. 20,000.

'Person responsible for providing' means in case of a company, the company itself including the principal officer thereof and in all other cases the person providing such benefit or perquisite.

Section 194R - Implication where benefit is fully in money:

As articulated by Supreme Court in case of Mahindra & Mahindra Ltd. [2018]

93 taxmann.com 32 (SC), once the benefit itself is provided in the form of money then provision is not attracted. In order to invoke the provisions of section 28(iv) of the Income Tax Act, the benefit which is received has to be in some other form rather than in the shape of money.

Section 194R - Payer exclusion:

A person, being an individual/ HUF whose total sales, gross receipts or turnover does not exceed Rs. 1 crore in case of business or Rs. 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite, is provided by such person.

Section 194R- Mode of receipt:

The benefit/ perquisite may be received either wholly in cash or wholly in kind or partly in cash and partly in kind.

Clarifications vide circular no. 12/2022 dated 16th June, 2022 and related cases:

1. Should the benefit/ perquisite provided be taxable to income?

No. There is no such compulsion for the benefit/ perquisite being provided to be taxable to income as per the provisions of the Income Tax Act, 1961 or to check the nature of the benefit/ perquisite to be provided in order to invoke section 194R.

2. Will the tax be deducted if the benefit/ perquisite is in the nature of a capital asset?

Yes. As discussed, there is no need to check the nature of the benefit/ perquisite to be provided in order for this section to be applied. Hence, being all other conditions fulfilled, section 194R will apply irrespective of the fact that the

benefit/ perquisite being provided is a capital asset.

3. Will the section apply on sales discounts/ cash discounts/ rebates?

No. Even though any discount or rebate being provided establishes a benefit being provided, but for the sake of circumventing hardships on part of the seller/ provider, any cash/ sales discounts or rebates given to customers in relation to sales would not be chargeable to section 194R. Free samples provided to customers, which is not in relation to any sales, however will be covered in the purview of section 194R.

4. How will the value of benefit/ perquisite be determined?

If the benefit/ perquisite being provided is purchased by the provider then the price paid for such purchase would be considered as the value of the benefit/ perquisite provided. If it is manufactured in house by the provider, the price so charged normally from other customers shall be considered as the value on arm's length basis. In all the other cases, the value of benefit/ perquisite provided would be the fair market price.

5. TDS obligation wherein goods are returned:

Let's take an example of a social media influencer who receives a car from Hyundai to advertise it on social media through her reels and activities. Now if the social media influencer, after the purpose is served, returns the car to Hyundai, section 194R would not apply on Hyundai. But in case the social media influence retains the car to herself, section 194R shall apply and Hyundai would have to deduct TDS @10% of the sale price of the car.

6. Implication of section 194R on expenses incurred for a business/ dealers conference:

When any conference is organized for the purpose of educating the customers/ dealers about a new products or to enlighten them about the features of their product, any expenses borne on such conference would not attract the provisions of section 194R. However, if any expense is borne for persons accompanying the customer/ dealer or any expenses borne for the customer/ dealer beyond the days of the conference would be chargeable to section 194R. Also, if the conference is in relation to reward the customer/ dealer on achieving a benchmark, the expenses borne on such conferences would attract the provisions of section 194R.

7. Implication of section 194R on reimbursement of pocket expenses by recipient of service:

When the invoice for the expense is in the name of

the recipient of service and such expense borne by the provider is reimbursed to him by the recipient, then section 194R will not be applicable. However in this case, if the invoice is not in the name of the recipient, then such reimbursement will be chargeable to deduction under section 194R.

8. In who's name will the tax be deducted in the benefit/ perquisite received by a company is enjoyed its consultant?

Let us consider a situation wherein a manufacturer sells his products to a company. Now in relation to this sale, the manufacturer provides a trip to Maldives as a perquisite to the company. This trip is enjoyed by a consultant of the company. This trip is chargeable to the provisions of section 194R and TDS @ 10% has to be deducted by the manufacturer. The manufacturer has two options to deduct the tax- He can either deduct tax in the name of the company or in this case, the manufacturer can deduct tax directly in the name of the consultant who actually enjoyed the perquisite. In the former case, the company will in turn deduct tax in the name of the consultant.

9. How can a person be satisfied that the tax has been paid by the recipient?

The deductor may rely on a declaration received from the recipient that tax in form of advance tax has been paid by the recipient along with a challan of the tax payment. The deductor also has the alternative to collect the tax from the recipient and pay the tax in form of advance tax in nature of tax deducted under section 194R.

Amendment in Section 194-IA to provide TDS on immovable property on stamp duty value w.e.f. 1st April, 2022:

Hitherto, tax at source @ 1% of the consideration is deductible if consideration paid for purchase of immovable property is Rs. 50 lakhs or more. Now the TDS shall be deducted @ 1% of the stamp duty value or consideration paid, whichever is higher.

Take for example, Mr. A wants to sell an immovable property to Mr. B having, sale value Rs. 49,00,000 and Stamp Duty Value (SDV)- Rs. 52,00,000.

As per the previous provision, no TDS would have to be deducted as the sale consideration is < Rs. 50 Lakhs.

Now in the current case, SDV > Sale consideration.

According to the amended provision, TDS is to be deducted @ 1% of the SDV i.e., 1% of Rs. 52,00,000 amounting to Rs.52,000.



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Amendments to Schedule III : An Analysis

Ministry of Corporate Affairs (MCA) has recently revised the Schedule III to the Companies Act, 2013 vide ¹notification dated 24th March 2021 by introducing additional disclosure requirements in the financial statements. This has added to the ever-increasing stringency in the regulatory framework and disclosure requirements under various provisions of law. These amendments are effective from 1 April 2021 onwards. Companies need to gear up to provide significant information about the new clauses in financial statements.

Before going to amendments on Schedule III, first let's understand a little about Schedule III. Basically, in lay man language to make uniformity in financial statements, Schedule III provides a general reporting format of financial statements of Companies. It is divided into three parts, i.e., Division I, Division II, and Division III.

- **Division I** is applicable to entities preparing their financial statements as per the Companies (Accounting Standards) Rules, 2006;
- **Division II** is applicable to entities preparing their financial statements as per the Companies (Indian Accounting Standards) Rules, 2015; and
- **Division III** is applicable to Non-Banking Financial Companies preparing their financial statements as per Ind AS.

The major changes are related to mandatory rounding off, utilization of loans for the specific purpose, disclosures of promoter shareholding, re-classification of certain line items, introduction of Additional Regulatory Information etc. Additional Regulatory

Information requires disclosures such as disclosure of Title Deeds of Immovable Property that are not in the name of Company, Ageing of CWIP, Intangible Assets under development, Trade Payables and Trade Receivables, Revaluation, Loans repayable on demand, Disclosure of Ratios, Undisclosed Income, CSR, Details of proceedings under Benami Property, reconciliation of statements filed with banks for the purpose of working capital, relationship with strike off companies etc. and various other requirements.

A brief snapshot of the amendments in Schedule III:

1. Rounding Off

Earlier it was optional but now rounding off is mandatory for the figures appearing in the Financial Statements depending upon the Total Income of the company, as given below:

Total Income	Rounding off
less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
one hundred crore rupees or more	To the nearest lakhs, millions or crores, or decimals thereof.

2. Shareholding of Promoters

As compared to earlier version, the entities shall now disclose the shares held by the promoters at the end of the financial year and % change during the year in notes to accounts in tabular format as mentioned in the Schedule.

3. Re-classification of certain line items

- a. **Current maturities of long term borrowings** shall now be

- disclosed under Short-term borrowings which was disclosed under other current liabilities earlier.
- b. **Security Deposit** shall now be disclosed under other non-current assets which was disclosed under long-term loans and advances earlier.
4. **Ageing**
- a. **Trade Payables:**
Detailed year-wise ageing of Trade Payables is required starting from Less than 1 year to More than 3 years. Along with the ageing it must further be classified into payable to MSME or Others and whether it is disputed or undisputed. Unbilled dues shall be separately disclosed.
- b. **Trade Receivable:**
Gone are those days where ageing schedule for receivables were made just for less than 6 months. Now along with trade receivables less than 6 months, 6 months to 1 year, and so on up to more than 3 years need to be disclosed. Here also classification need to be done between disputed or undisputed and Receivables considered good or doubtful.
- c. **Capital-Work-in Progress (CWIP)**
For the first time ageing of CWIP is required to be disclosed. It requires disclosure of details in two tables. The first one requires the disclosure of year wise ageing along with classification of CWIP in project in progress and project temporarily suspended. The second table requires project wise ageing for CWIP, whose completion is overdue or has exceeded its cost compared to its original plan.
- d. **Intangible assets under development**
All disclosure similar to CWIP as explained above shall be required for Intangible assets under development.

It is pertinent to note that the Schedule III provides detailed tabular formats for all four ageing. The format of said tables is required to be followed.
5. **Borrowing from Banks and Financial Institutions**
If the company has not used the borrowings from banks and financial institutions for the specific purpose for which it was taken at the balance sheet date, the company shall disclose the details of where they have been used.
6. **Title deeds of Immovable Property**
The companies have to give the details of all those immovable properties whose title deeds are not in

the name of the company, except those immovable properties in which the company is lessee and lease agreement are executed. This requirement is similar to the requirement introduced in CARO 2016.

7. **Loans to Related Parties**

It was general practice that many company used to give loans without specifying any terms and conditions or loan repayable on demand. To assess the quantum of the same and take corrective measures MCA has mandated disclosure of all the loans and advances in the nature of loan granted to promoter director and KMPs and related parties, severally or jointly with any other person either repayable on demand or without specifying any terms or period of repayment.

8. **Benami Property**

Company shall disclose all the benami property in which proceedings have been initiated or pending against the company for holding any benami property under the Benami Transactions (Prohibition) Act, 1988.

9. **Borrowings on the basis of security of current assets**

This is one of the amendments which have far reaching impact. Many a time it was noticed that the borrowers disclose inflated figures to the bank or financial institutions in the monthly statements filled with them to maintain their Drawing Power. But now all such borrowers are required to disclose:

- whether quarterly returns or statements of current assets filed with banks or financial institutions are in agreement with the books of accounts.
- if not, summary of reconciliation and reasons of material discrepancies, if any to be adequately disclosed.

This will ensure that the borrowers will have to submit monthly statement with figures matching the books of accounts.

10. **Willful Defaulter**

If any company is declared as wilful defaulter by the bank or financial institution or any other lenders then disclosures shall be made by the company in the manner prescribed

11. **Relationship with Struck off Companies**

This is another amendment in schedule III which will have extensive impact. It requires that where the company has any transactions with companies struck off under section 248 of the Companies Act, 2013 or section 560 of Companies Act, 1956, the Company shall disclose the following details:

Name of struck off Company	Nature of transactions with struck-off Company	Balance outstanding	Relationship with the Struck off company, if any, to be disclosed
	Investments in securities		
	Receivables		
	Payables		
	Shares held by struck off company		
	Other outstanding balances (to be specified)		

In last couple of years MCA has strike off lacs and lacs of companies. Many a time during a transaction the companies does not check the master data of the vendors especially for the existing vendors. But now company has to regularly check whether the company is active or has been struck off.

12. Registration or satisfaction of charges

Where any charges or satisfaction yet to be registered with Registrar of Companies beyond the statutory period, details and reasons thereof shall be disclosed.

13. Compliance with number of layers of companies

Where the company has not complied with the number of layers prescribed under clause (87) of section 2 of the Act read with Companies (Restriction on number of Layers) Rules, 2017, the name and CIN of the companies beyond the specified layers and the relationship/extent of holding of the company in such downstream companies shall be disclosed.

14. Ratios

Companies shall disclose all those ratios which are prescribed and shall explain the items included in numerator and denominator for computing the above ratios. Moreover, if any change in the ratio is more than 25% as compared to the preceding year then explanation for the same shall be provided. Below are the ratios to be disclosed:

- a. Current Ratio
- b. Debt-Equity Ratio
- c. Debt Service Coverage Ratio
- d. Return on Equity Ratio
- e. Inventory turnover ratio
- f. Trade Receivables turnover ratio
- g. Trade payables turnover ratio
- h. Net capital turnover ratio
- i. Net profit ratio
- j. Return on Capital employed
- k. Return on investment

It is pertinent to note that schedule III does not prescribe any formulas for these ratios. In order to determine the items to be included in numerator and in denominator for any ratio, reference may be drawn from several sources e.g., ratio's usage in common parlance, investor reports, industry reports, market research reports, approach of credit rating agencies,

etc. There may be a need to factor in company-specific and sector-specific nuances that may require necessary modifications to the reference considered. One can also refer the illustrative formulas prescribed in ²GUIDANCE NOTE ON DIVISION I – NON IND AS SCHEDULE III TO THE COMPANIES ACT, 2013, issued by ICAI.

15. Compliance with approved Scheme(s) of Arrangements

Where any Scheme of Arrangements has been approved by the Competent Authority in terms of sections 230 to 237 of the Companies Act, 2013, the Company shall disclose that the effect of such Scheme of Arrangements have been accounted for in the books of account of the Company 'in accordance with the Scheme' and 'in accordance with accounting standards' and deviation in this regard shall be explained.

16. Undisclosed Income

Where a company has surrendered or disclosed any income under the relevant provisions of the Income Tax Act and which are not disclosed earlier shall be disclosed in the books of accounts, unless there is immune impact.

17. Corporate Social Responsibility (CSR)

CSR provisions has undergone sea change early last year whereby the expense for CSR is now mandatory to be spent or else need to be transferred to separate account. Where section 135 of the Companies Act, 2013, is applicable to the company, then disclosure shall be made in the manner prescribed in the Schedule III w.r.t. amount required to be spent, amount of expenditure incurred, shortfall, nature of CSR activity etc.

18. Crypto Currency or Virtual Currency

If the company has traded or invested in Crypto Currency or Virtual Currency, then following disclosures shall be made in the financial statements:

- Profit and loss made from crypto currencies.
- Amount of currency held at reporting date.
- Deposit or advance taken from any person for trading or investment in crypto.

Conclusion

On one hand government is claiming that all of the changes made to Schedule III are intended to increase transparency and reliability of financial statement users, which is critical because, as we can see in today's era, investor confidence in financial statements is dwindling due to an increase in instances of fraud and non-compliance, which has resulted in the collocation of funds.

1 https://www.mca.gov.in/Ministry/pdf/ScheduleIIIAmendmentNotification_24032021.pdf

2 <https://resource.cdn.icai.org/68981clcg55147-gnd1.pdf>

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Ignorance of law is no excuse

“Ignorance of the law is no excuse in any country.

*If it were, the laws would lose their effect,
because it can always be pretended.”*

– Thomas Jefferson

(American statesman, diplomat, lawyer)

In case a person commits a crime or does something that is forbidden in by a Law in force, even though he may not know about it, he will be held guilty and responsible. The legal maxim, ‘*ignorantia juris non excusat*’ means ignorance of law is no excuse. Had this legal maxim not been followed by Courts of Law, criminals would blatantly use the excuse of being unaware to escape any liability. Our actions are governed by Laws and we are bound by the Law of the Land. Not being aware of the Law does not give us the undue privilege of escaping any liability in case of contravention.

Example: Roshan was over-speeding and was also driving in the wrong direction. He overlooked the ‘one-way’ sign. He was caught by the Police and asked to pay a fine of Rs 1000/-. He gave a simple argument, “I’m sorry but I wasn’t aware that this was a one-way road. It is the first time I broke a rule. Please excuse me this time.” We all know very well that he would still be liable to penalty. No person can escape the liability of contravening a law by giving the excuse of being unaware.

In the case of ***Hemal Industries vs Collector of Customs, Bombay [1998 (100) E.L.T. 447 (Tribunal)]***, the CEGAT, Court No. II, New Delhi observed the pleadings of the Appellant seeking condonation of delay on the ground of being unaware about whether the matter was appealable was rejected on the basis of the principle *ignorantia juris non excusat*’.

Mistake of fact and mistake of law

Ignorance of fact is an excuse, but

ignorance of the law is no excuse [*“Ignorantia facti doth excusat”* and *“ignorantia juris non excusat”*]. The mistake of fact can be used as a defence during a trial. At this juncture, it is important to refer to Section 79 of the Indian Penal Code which states the provisions for ‘act done by a person justified, or by mistake of fact believing himself justified, by law’ as follows:

Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Illustration: A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

Ignorance of law is no excuse but it can be considered for deciding quantum of penalty

Although it is an established principle that ignorance of law is not an excuse however, it is an important decisive factor to determine the quantum of penalty. The High Court of Punjab & Haryana in the case of Kartar Singh vs Directorate of Enforcement, FERA [1984 (17) E.L.T. 229 (P.&H.)] has observed that the Appellant had violated of the provisions of Section 8(1) of the Foreign Exchange Regulation Act, and stated that he was unaware of

the Law. The Court held that ‘though ignorance of law is no excuse, but at the same time, it is a factor to be taken into consideration while imposing the penalty.’

The maxim cannot be invoked until the law is made public

The Delhi High Court in the case of Universal Cans & Containers Limited vs UOI [1993 (64) E.L.T. 23 (Del.)] has held that Office Memorandum dated 2-9-1985 incorporated various instructions regarding printing and distribution of the various parts of the Gazette of India. These instructions go to show that it is not the date which is printed on the Official Gazette which is relevant, but the date on which the Gazette is made available to the public that is relevant. What is the use of the Official Gazette which is lying in the printing press and is not made known to the public who are to be affected by such a Gazette. Principle ‘ignorance of law is no excuse’ cannot be invoked unless that law is made public. It is, therefore, the date on which the Official Gazette is made available to the public that matters, and not the date on which it is shown to have been printed.

Comparison of the statements ‘ignorance of law is no excuse’ vis-à-vis ‘everyone is presumed to know the law’



The aforesaid statements are frequently used interchangeably as if they mean one and the same thing. However, the Hon’ble Supreme Court in the case of Motilal Padampat Mills Limited vs State of Uttar Pradesh [1979 AIR 621] has observed that it must be remembered that there is no presumption that every person knows the law. It is often said that everyone is presumed to know

the law, but that is not a correct statement: there is no such maxim known to the law. Over a hundred and thirty years ago, Maule, J., pointed out in *Martindale v. Faulkner*: “There is no presumption in this country that every person knows the law: it would be contrary to common sense and reason if it were so”. But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in *Evans v.*

Bartlem: the fact is that there is not and never has been a presumption that everyone knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application.”

It is correct to say that everyone may not be aware of all the Laws and their requisite provisions. Hence, the aforesaid maxim has to be put to use very consciously and carefully. It is not possible to plead innocence merely on the ground of being unaware of a Law in force.

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“The difference between school and life? In school, you’re taught a lesson and then given a test. In life, you’re given a test that teaches you a lesson.”

– Tom Bodett



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Levy of IGST Quashed on Ocean Freight : Case Analysis

Introduction

The Hon'ble Supreme Court in one of its landmark judgments in the case of UOI v. Mohit Minerals Private Limited, quashed the levy of IGST on ocean freight in case of CIF contracts. It is a significant judgment covering important aspects of the role of GST council, binding nature of its recommendations and discussion on the vires of the levy of IGST on ocean freight.

Background

The case went up to the Apex Court by way of an appeal filed by the Revenue against the decision of the Hon'ble Gujarat High Court in the case of Mohit Minerals Private Limited v. UOI. Mohit Minerals Private Limited ('company') is an importer of non-coking coal from several countries on CIF basis. The company pays IGST on such imports at the rate of tax applicable on the principal supply, i.e., non-coking coal, considering the transaction to be a composite supply. The goods are imported by the company by sea.

Notification 10/2017 – Integrated Tax (Rate), imposes GST under RCM on *services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.*

Therefore, the freight component of such CIF contracts is taxed twice, once for import of goods and second, separately on ocean freight. The company filed a writ petition before the Gujarat High Court against such double taxation which was allowed by the High Court in their favour. It was held that the levy of IGST on ocean freight is unconstitutional, and that the importer is not a recipient of services of transportation in case of a CIF contract. Subsequently, an appeal was filed by

the Revenue against the decision.

Issues Involved

- Whether IGST should be leviable on the ocean freight transaction as a supply of services under Section 5(3) of the IGST Act.
- Whether the imported goods on a CIF basis constitute inter-state supply or is it extra-territorial in nature.
- Whether the importer can be considered a recipient of services under CIF contracts.
- Whether segregating the supply of service of transportation from the composite supply leads to double taxation.
- Whether the impugned Notifications result from excessive delegation.

Case Analysis

Composite Supply and Double Taxation

The most important issue in the case relates to the double taxation on the supply by an additional levy of IGST on the service component of the transaction. To elaborate, there are two transactions - one, CIF contract existing between Indian importer and foreign exporter and two, contract existing between foreign exporter and shipping company providing transport services.

As regards the first transaction, it shall be considered as a composite supply (consisting of cost, insurance and freight) under Section 8 of the CGST Act read with Section 20 of the IGST Act where IGST shall be leviable at the rate applicable on the principal supply. The issue pertained to the second leg of the transaction, i.e., ocean freight. Since GST was already being paid on the CIF value of the imported goods,

the levy of GST on ocean freight additionally would lead to double taxation.

The main purpose of introducing the concept of composite supply was to “ensure that various elements of a transaction are not dissected and the levy is imposed on the bundle of supplies altogether”. Further, it has not been the intention of the legislature to empower the Central Government to interpret a composite supply as two segregable supplies as has also been stated by the Supreme Court. Since the Indian importer is liable to pay IGST on the ‘composite supply’, comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the ‘supply of services’ by the shipping line would be in violation of Section 8 of the CGST Act.

Territorial Nexus

Secondly, another contention raised was whether the transportation services between two foreign entities for goods which were being imported into India, had any territorial nexus with India and whether it would be appropriate to consider it as a supply under the CGST Act and IGST Act. This issue was raised on the premise that the supply of service of shipping in a CIF contract from the foreign shipping line to the foreign exporter cannot be said to have territorial nexus to India and therefore, cannot constitute supply.

Placing reliance on the Supreme Court decision in **GVK Industries**, the Court held that the only requirement imposed to legislate over events occurring extraterritorially is that there should be some real connection to India which must be provided by the Parliament through some statute. Section 7 of the CGST Act which deals with supply, provides in its sub-section 1 clause b that import of services for consideration shall constitute supply. Additionally, Section 7(4) of the IGST Act treats imports of services into India as inter-state supply. Further, Section 13(9) creates a deeming fiction in law by considering the place of supply of services of transportation of goods to be the destination of such goods. Hence, though the services are availed by the foreign exporter, it shall be assumed that the place of supply is not the location of the foreign exporter but the destination of goods i.e., India.

It was held that impugned levy on the supply of transportation service by the shipping line to the foreign exporter to import goods into India has a two-fold connection: first, the destination of the goods is India and thus, a clear territorial nexus is established with the event

occurring outside the territory; and second, the services are rendered for the benefit of the Indian importer. Thus, the transaction does have a nexus with the territory of India.

Importer as Service Recipient

It was argued that specification of the Indian importer as the recipient of services of transportation was ultra vires the IGST Act inasmuch as the scheme of IGST Act does not envisage a person other than the supplier or the recipient as a person liable to pay tax. However, it was held that the specification of the recipient, i.e., the importer by Notification 10/2017 is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in Section 5(3) of the IGST Act for the purposes of reverse charge;

Further, Section 5(4) of the IGST Act enables the Central Government to specify a class of registered persons as the recipients, thereby conferring the power of creating a deeming fiction on the delegated legislation.

Nature of GST Council Recommendations - Binding or Persuasive?

Prevalence of Cooperative Federalism

Ever since the framing of the Indian Constitution, the states have been provided significant autonomy as reflected by the formation of the List-II (State List) in the Seventh Schedule which empowers the states to exclusively legislate on the enlisted matters. India, which is neither absolutely unitary nor absolutely federal, follows

cooperative federalism and encourages the Union and states to work in a harmonized manner. This cooperative federalism is also reflected in the current GST Model where the GST Council consists of representatives from both - the Union and the states and the same can be ascertained from the Statement of Object and Reasons of the Constitution (122nd Amendment) Bill, 2014.

Principle of Simultaneous Levy

As held by the Supreme Court in the case of **VKC Footsteps**, Article 246A embodies the constitutional principle of simultaneous levy as distinct from the principle of concurrence. This principle of simultaneous levy gives equivalent power to the Union and states to make laws on GST. This is different from the principle of concurrence, which though gives equivalent legislative power to the Union and states on certain matters, yet in a case of repugnancy, it is the law of the Union that prevails. No such repugnancy provision exists in the overall scheme of GST.



Pooled Sovereignty

A reference to Parliamentary Debates during the formation of the GST scheme reveals that the then Union Finance Minister informed the states that the Centre and all the states will have to interact with one another and pool their sovereignty rather than surrendering it, in order to collectively implement the scheme of GST. Further, the establishment of a GST Council is not to take away the fiscal autonomy of states, but rather to foster the cooperative federalism between the Union and states.

Hence, from the aforementioned discussion, it can be inferred that, though the recommendations of the GST Council are not binding, in order to successfully implement the law, the constitutional design is such that any recommendation cannot be made by the Centre or states alone. However, the non-binding nature of the recommendations does not take away the sanctity being accorded to the GST Council by the Constitution itself. In fact, the recommendations by the GST Council shall serve as a useful guide at all times in the GST regime.



Other Notable Aspects

Taxability of ocean freight in case of FOB contract

In case of an FOB contract, the insurance and freight are directly borne by the importer and the services are directly taken by the importer without any interference from the foreign exporter. In such cases, the impugned judgment would not squarely apply inasmuch as the judgment covers only the case of CIF contracts. However, it is pertinent to note that in case of FOB contracts, the assessable value as per Customs Act, 1962 is calculated by adding notional

value of freight to the value of goods imported in order to compute IGST. Therefore, litigation with respect to the vires of levy of IGST on such notional value under Customs may arise.

Cases relating to the Erstwhile Regime

In the service tax regime, the service tax on ocean freight was exempt but the same was withdrawn by the Central Government vide Notification No. 01/2017-ST dated January 12, 2017. The notification sought to levy service tax on the importer through the reverse charge mechanism. The notification was challenged before various courts contending the notifications to be ultra vires. It is important to understand that the present case cannot be made applicable to these cases in the service tax regime since there was no concept of composite supply then. It is noteworthy that the issue is presently under litigation and the matter is pending before the Supreme Court in the case of UOI v. M/s Raajratna Metal Industries Limited (Diary No. 27027/2020).

It is interesting to note that similar to the current case, the decision travelled to the Supreme Court by way of an appeal against the Gujarat High Court decision.

Retrospective Amendment superseding SC Judgment?

There has been hearsay that the Government has been exploring possible avenues against the judgment of the Apex Court in order to levy tax on the ocean freight component. The Government can possibly file a review petition or even bring about a retrospective amendment in the GST law as has been the past trend. Though nothing can be said with surety at the moment, it shall be interesting to see the fate of the issue in near future.

* * * * *

“Clouds come floating into my life, no longer to carry rain or usher storm, but to add colour to my sunset sky.”

– Rabindranath Tagore



CA Tarun Kr. Gupta
Chartered Accountant
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Synopsis of Circulars issued by CBIC on Aug 3, 2022 based on discussions in the 47th GST Council meeting w.r.t. services

Certain issues on taxability of services on which representations had been received were examined by the GST Council in its 47th meeting held on 28th and 29th June, 2022. Pursuant to the said meeting and discussions held, issue-wise clarifications as recommended by the GST Council has been issued. These are as follows:

1. Rate of GST applicable on supply of ice-cream by ice-cream parlors during the period from 01.07.2017 to 05.10.2021

It has been clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. With effect from 6.10.2021, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of 18% with ITC.

2. Applicability of GST on application fee charged for entrance or the fee charged for issuance of eligibility certificate for admission or for issuance of migration certificate by educational institutions

It has been clarified that the amount or fee charged from prospective students for entrance or admission, or for issuance of eligibility certificate to them in the process of their entrance/admission as well as the fee charged for issuance of migration certificates by educational institutions to the leaving or ex-students is exempt from GST.

3. Whether storage or warehousing of cotton in baled or ginned form is covered under entry 24B of Notification No. 12/2017-Central Tax (Rate) which exempted services by way of storage and warehousing of raw vegetable fibres such as cotton before 18.07.2022

It has been clarified that service by way of storage or warehousing of cotton in ginned and or baled form was covered under entry 24B of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f. 18.07.2022.

4. Whether exemption under Sl. No. 9B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 covers services associated with transit cargo both to and from Nepal and Bhutan

Representations had been received by the GST Council regarding applicability of GST on transportation of empty containers returning from Nepal and Bhutan after delivery of transit cargo, to India. It has been clarified that exemption under Sl. No. 9B of Notification 12/2017-Central Tax (Rate) covers services associated with transit cargo both to and from Nepal and Bhutan.

5. Applicability of GST on sanitation and conservancy services supplied to Army and other Central and State Government departments

It has been clarified that since the exemption is only for such services which are required to be carried out by a local authority under articles 243W & 243G of the Constitution (listed in the 11th and 12th Schedule), hence if such services are procured by Indian Army or any other Government Ministry/ Department which does not perform any functions as such, the same are not eligible for exemption.

6. Whether the activity of selling of space for advertisement in souvenirs is eligible for concessional rate of 5%

It has been clarified that sale of space for advertisement in souvenir book attracts GST @ 5%.

7. Taxability and applicable rate of GST on transport of minerals from mining pit head to railway siding, beneficiation plant etc., by vehicles deployed with driver for a specific duration of time

It has been clarified that such renting of trucks and other freight vehicles with driver for a period of time is a service of renting of transport vehicles with operator falling under Heading 9966 and not service of transportation of goods by road. This being so, it is not eligible for exemption. On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, GST rate has been reduced from 18% to 12% with effect from 18.07.2022. Prior to 18.07.2022, it attracted GST at the rate of 18%.

8. Whether location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land constitute part of the lease premium or of upfront amount charged for long term lease of land and are eligible for the same tax treatment

It has been clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitutes part of upfront amount charged for long term lease of land and is eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of notification no. 12/2017- Central Tax (Rate) dated 28.06.2017.

9. Applicability of GST on payment of honorarium to the Guest Anchors

It has been clarified that services provided by the guest anchors in lieu of honorarium attracts GST liability.

10. Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST

It has been clarified that additional fee collected

in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges.

11. Applicability of GST on services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF)

It has been clarified that services by way of IVF are also covered under the definition of health care services for the purpose of exemption notification.

12. Whether sale of land after levelling, laying down of drainage lines etc., is taxable under GST

It has been clarified that sale of developed land is also sale of land and accordingly does not attract GST.

13. Situations in which corporate recipients are liable to pay GST on renting of motor vehicles designed to carry passengers

It has been clarified that where the body corporate hires the motor vehicle (for transport of employees etc.) for a period of time, during which the motor vehicle shall be at the disposal of the body corporate, the service would fall under Heading 9966 (Renting of motor vehicle designed to carry passengers) and the body corporate shall be liable to pay GST on the same under RCM. However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take vehicle on rent for any particular period of time, the service would fall under Heading 9964 (Transportation of passengers) and the body corporate shall not be liable to pay GST on the same under RCM.

14. Whether hiring of vehicles by firms for transportation of their employees to and from work is exempt under Sr. No. 15(b) of Notification No. 12/2017-Central Tax (Rate) transport of passengers by non-air conditioned contract carriage

It has been clarified that the exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider. Thus the activity of hiring of vehicles by firms for transportation of their employees to and from work by non-air conditioned contract carriage shall be taxable.

15. Whether supply of service of construction, supply, installation and commissioning of dairy plant on turn-key basis constitutes a composite supply of works contract service and is eligible for concessional

rate of GST prior to 18.07.2022

It has been clarified that a contract for construction, installation and commissioning of a dairy plant constitutes supply of works contract. There is no doubt that dairy plant which comes into existence as a result of such contracts is an immovable property. It has also been clarified that such works contract services were eligible for concessional rate of 12% GST prior to 18.07.2022. With effect from 18.07.2022, such works contract services would attract GST at the rate of 18% in view of amendments carried out in GST rates.

16. Applicability of GST on tickets of private ferry used for passenger transportation

It has been clarified that the exemption in GST would apply to tickets purchased for transportation from one point to another irrespective of whether the ferry is owned or operated by a private sector enterprise or by a PSU/ government. It has been further clarified that, the expression 'public transport' used in the exemption notification only means that the transport should be open to public. It can be privately or publicly owned. Only exclusion is on transportation which is predominantly for tourism, such as services which may combine with transportation, sightseeing, food and beverages, music, accommodation such as in shikara, cruise etc.

The abovementioned clarifications have been covered in **Circular No. 177/09/2022-TRU dt. 3rd August, 2022.**

17. Applicability of GST on Liquidated damages

It has been clarified that where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach, hence such payments do not constitute consideration for a supply and are not taxable.

18. Applicability of GST on Compensation for cancellation of coal blocks

It has been clarified that the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court was not taxable.

19. Applicability of GST on Cheque dishonor fine/penalty

It has been clarified that cheque dishonor fine or penalty is not a consideration for any service and not

taxable.

20. Applicability of GST on penalty imposed for violation of laws

It has been clarified that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to GST.

21. Applicability of GST on forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period

It has been clarified that such amounts recovered by the employer are not taxable.

22. Applicability of GST on compensation for not collecting toll charges

During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users, the consideration being compensated later by the project authority. It has been clarified that for this period, for the same service, although consideration came from a person other than the actual user of service does not mean that the service has changed, hence there is no applicability of GST on such compensation.

23. Applicability of GST on late payment surcharge or fee

It has been clarified that even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply, hence should be assessed at the same rate as the principal supply.

24. Applicability of GST on Fixed Capacity charges for Power

It has been clarified that the minimum fixed charges/ capacity charges and the variable/energy charges are both charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

25. Applicability of GST on Cancellation charges

It has been clarified that allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit should be assessed at the same rate as applicable to the principal supply.

The abovementioned clarifications have been covered in **Circular No. 178/10/2022-GST dt. 3rd August, 2022.**

I sincerely hope that the above compilation will help you in your business and profession.

* * * * *

GST Compliance Calendar and High Court Judgement

Compiled by **CA Swapnil Jain**
FCA, RV(IBBI), IP (IBBI)
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GST Compliance Calendar

Due Date	Return/Form	Category of Persons	Period
10-Aug-2022	GSTR-7	TDS Deductors	July 2022
	GSTR-8	TCS Collectors	July 2022
11-Aug-2022	GSTR-1	Monthly Taxpayers (AT> 5cr or opted to file monthly returns)	July 2022
13-Aug-2022	GSTR-6	Input Service Distributors	July 2022
	IFF	QRMP Taxpayers	July 2022
20-Aug-2022	GSTR 3B	Monthly Taxpayers (AT> 5cr or opted to file monthly returns)	July 2022
	GSTR 5	Non Resident taxable Person	July 2022
	GSTR 5A	NRI, providing online information and database access or retrieval services to non-taxable person in India	July 2022
25-Aug-2022	PMT 06	Taxpayers under QRMP Scheme Category 1 States	July 2022

*AT= Aggregate Turnover

Category 1 States: 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

Category 2 States: 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

High Court Judgement

Citation:	2022 (5) TMI 237
In the matter of:	Micro Focus Software Solutions India Private Limited Versus Union of India & Anr.
Name of the Authority:	Delhi High Court
Relevant Section/ Rule:	Rule 25 of the CGST Rules
Matter in Dispute:	Physical verification of the taxpayer's premises in the absence of taxpayer
Judgement of the Authority:	The order whereby the application for revocation was rejected shows that an inspection was carried out on the premises of the petitioner. It is not in dispute that although, Rule 25 requires inspection to be done in the presence of the person whose property is being inspected, it was not done as the petitioner had no notice of the inspection. Besides the aforesaid, there is no tax outstanding qua the petitioner. Thus, for the foregoing reasons, as noticed above, the order of cancellation of registration is set aside.

* * * * *



Ms. Neha Jain

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Let go of 5 things and you will be happy

We always have a choice, to embrace life or to hide from it; to enjoy life or to disgust it. Life would become so much easier and happier if we just could stop complicating it and letting go of self-limiting thoughts and actions. But what do you need to let go to be happy?

Approval of Others

We don't need approval from others to know whether what we are doing is right or wrong. If you keep on thinking about what other people think and say about you, you will never live your life to the fullest.

Doing what other people expect from us, might make them like us, but will never make us happy. Eventually we will feel the disappointment of not following our goals and aspirations; we need to have courage to follow our passion!

"Your time is limited, don't waste it living someone else's life. Don't be trapped by dogma, which is living the result of other people's thinking. Don't let the noise of other opinions drown your own inner voice. And most important, have the courage to follow your heart and intuition, they somehow already know what you truly want to become. Everything else is secondary." – Steve jobs

Criticizing

You might be more experienced, more educated or more insightful, but it doesn't mean you have the right to criticize. If you put yourself in the other person's shoes maybe you won't criticize them anymore!

So it's much better if we can all focus on our own things! If we all could think about our own life, rather than others, our lives would be a lot more meaningful.

"Our souls may lose their peace and even disturb other people's, if we are always criticizing trivial actions – which often are not real defects at all, but we construe them wrongly through our ignorance of their motives." – Saint Teresa of Avila

Everyone is different. Everyone is evolving at his/her own pace. Let's appreciate the differences instead of the shortcomings and be happy.

Unrealistic Expectations

Most of the times the reason behind our unhappiness is an unexpected event. It can be a sudden change in our life, a break down, not getting what we think we should or not getting where we have planned to reach.

Some people think nothing in life will change. Unfortunately this is an unrealistic expectation. Our children one day will grow up, our relationships will change, our position, job or even social class can be changed in a blink of an eye! And if we are not prepared for it, we will suffer.

"He who would be serene and pure needs but one thing, detachment." – Meister Eckhart

Controlling Others

Sometimes we just need to let go and allow life to happen as it is meant to. We cannot control everyone and everything.

"Life is to be lived, not controlled; and humanity is won by continuing to play in face of certain defeat." – Ralph Ellison

When we become too bossy, not only we make our life bitter and stressful rather than fun and joyful, but also we will lose our friends and family. No one wants to be controlled all the time! Even our employees need their freedom and our trust!

Looking for Someone to Blame

No one wants to be at blame. Often we blame other people for our own problems. We blame our partner, our parents, our children, our employees, our neighbours, the traffic, the government and the world for our own mistakes, unhappiness and dissatisfactions.

It's time to take responsibility for our failures and do something about the things that make us unhappy.

Prana World

* * * * *

Activities at a Glance ...

Sl.No.	Date	Topics & Speakers
1.0	07.04.2022 (ACAIE, Emami Conference Hall)	Interactive Session on Finance Act 2022. Speakers : CA Sanjay Bhattacharya, Kolkata; CA S S Gupta, Kolkata; CA Ramesh Kr Patodia, Kolkata. CA Anup Kr Sanghai, Chairman – Direct Tax Sub-Committee.
2.0	22.04.2022 (Virtual)	VCM on CARO 2020 and Schedule III. Speaker : CA Ganesh Balakrishnan, Partner, Deloitte India, Hyderabad. CA Mohit Bhuteria, Chairman – Corporate Laws Sub-Committee.
3.0	30.04.2022 (Virtual)	CFO Leadership Conclave – Lessons for a Better Tomorrow. Panelists : Mr R Subramanyam, Ex CFO-Tata Power, Senior Vice President – Tata and Sons; Mr Nitin Parekh, CFO – Zyduz Group; Mr. Sandeep Batra, CFO – Crompton Greaves Electrical Limited, Ms. Subhra Gourisaria, CFO – Rallis India Limited. Moderator : CA P R Ramesh, Ex-Chairman, Deloitte India. CA Rishi Khator, Chairman – CFO Conclave Sub-Committee.
4.0	09.05.2022 to 20.05.2022 (Virtual)	Advanced GST Certificate Course in association with All India Federation of Tax Practitioners (EZ); Indirect Tax Professionals’ Forum, Kolkata and Society for Tax Analysis and Research. Constitutionality of tax, ingredients to tax and validity of taxation laws – Speaker : Senior Advocate V Raghuraman, Bengaluru; Importance of Fundamental Rights and other Constitutional aspects in GST - Speaker : Advocate Abhishek A Rastogi, Mumbai; Unresolved issues in Input Tax Credit – Speaker : Advocate Arpit Haldia, Jodhpur; GST and interplay with other taxation laws Evidence Act, IT Act, CPC, CrPC, etc. – Speaker : Advocate P K Das, Kolkata; Litigative issues in cancellation of registration and refunds – Speaker : Advocate Kartik Kurmy, Rourkela; Review of supply and taxability in special or complex transactions- Speaker : Advocate Shivam Mehta, Delhi; Department Audit, Inquiries and Summons (including cross empowerment and jurisdiction) – Speaker : Advocate Gaurav Gupta, Delhi; Departmental correspondence and proceedings under section 69 read with section 132 – Speaker : Advocate Sujit Ghosh, Delhi; Search and Seizure including detention/confiscation – Speaker : Senior Advocate Tarun Gulati, Delhi and Framing of replies for show cause notice including penalties – Speaker : Advocate Bharat Raichandani, Mumbai. CA Shivani Shah, Chairman – GST/Indirect Tax Sub-Committee.
5.0	13.05.2022 (Virtual)	Group Discussion on How to respond to CBDT Instruction No 01/2022 dated 11.05.2022 on Section 148/148A. Initiator : CA Ramesh Kr Patodia, Kolkata. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
6.0	19.05.2022 (Virtual)	VCM on LLP – Recent Developments. Speakers : CS (Dr.) S Dhanapal, Chennai and CS Thirupal Gorige, Bengaluru. CA Kamal Nayan Jain, Chairman – Allied Laws Sub-Committee.
7.0	25.05.2022 (Virtual)	VCM on LLP – Taxation Issues. Speakers : CA Anish M Thacker, Mumbai and CA Nikhil Tiwari, Mumbai. . CA Kamal Nayan Jain, Chairman – Allied Laws Sub-Committee.
8.0	27.05.2022 (Virtual) :	VCM on Valuation. Speakers : CA Rahul Saraf, Kolkata and CA Anurag Singal, Kolkata. CA Vivek Newatia, Chairman – Forensic Accounting & Auditing Sub-Committee.
9.0	04.06.2022 (The Lalit Great Eastern Kolkata)	Inter-Chamber Financial Literacy Quiz. Chief Guest : Shri Soma Sankara Prasad, Managing Director & CEO, UCO Bank. Quiz Master : CA Rishi Khator. Participating Teams : Calcutta Chamber of Commerce, Merchants’ Chamber of Commerce & Industry, Bengal National Chamber of Commerce & Industry. Courtesy : IICI Bank. CA Rishi Khator, Chairman – Financial Literacy Sub-Committee.
10.0	13.06.2022 (Virtual)	Group Discussion on New CARO and Audit Report. Initiator : CA Khushroo B Panthaky, Mumbai. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
11.0	22.06.2022 (Virtual)	Group Discussion on Untangling the Recent Controversies under the GST. Initiator : CA Surbhi Premi, Delhi. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.

Sl.No.	Date	Topics & Speakers
12.0	24.06.2022 (Virtual)	VCM on Schedule III and CARO. Speakers : CA Sanjay Sharma, Bengaluru; CA Priyanka Biswas, Bengaluru and CA Vivek Newatia, Kolkata. CA Mohit Bhuteria, Chairman – Corporate Laws Sub-Committee.
13.0	28.06.2022 (ACAE, Emami Conference Hall)	Lecture Meeting on Changes by Finance Act 2022 – TDS u/s 194IA and 194R. Speaker : CA Jayesh Gupta, Bengaluru. CA Anup Kr Sanghai, Chairman – Direct Tax Sub-Committee.
14.0	29.06.2022 (Virtual)	Group Discussion on Valuation in M&A Landscape. Initiator : CA Pramod Jain, Pune. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
15.0	02.07.2022 (Virtual)	VCM on Discussion Paper on Remuneration of IP and other current issues. Speaker : CA Anil Goel, New Delhi. CA R R Modi, Chairman – Insolvency & Bankruptcy Code Sub-Committee.
16.0	07.07.2022 (Virtual)	VCM on Clause-wise analysis of amendments in Schedule III with Case Studies of small and medium companies. Speaker : CA Mayur Agrawal, Kolkata. CA Mohit Bhuteria, Chairman – Corporate Laws Sub-Committee.
17.0	13.07.2022 (Virtual)	Day – 1 : Group Discussion on Key Checkpoints for Statutory Audit for FY 2021-2022. Initiator : CA Swati Tejawat, Guwahati. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
18.0	15.07.2022 (Virtual)	Day 2 : Group Discussion on Key Checkpoints for Statutory Audit for FY 2021-2022. Initiator : CA Swati Tejawat, Guwahati. CA Priyank Singhi, Chairman – Group Discussions Sub-Committee.
19.0	16.07.2022 (Virtual)	VCM on Goods and Services Tax (GST Conclave). Theme : 5 Years of GST – Hits and Misses. Recent Judgements re-defining GST - Speaker : Advocate Abhishek A Rastogi, Partner – Khaitan & Co.; Latest Issues in GST – Speaker : Senior Advocate V Raghuraman, Supreme Court of India. Panel Discussion on the Theme – 5 Years of GST – Hits and Misses. Panelists : Shri Khalid Aizaz Anwar, IAS, Commissioner, WBGST (Government Representative); Shri Mohan Krishna Nusetti, Senior Vice President and Head – Indirect Tax, Lupin Limited (Industry Representative); CA Pramod Gupta, Ex.CFO and Head of Supply Chain & IT, Arvind Fashions Ltd. (Retail & Logistics Representative) and Shri Sanjib Kothari, Chairman, MSME Committee, Merchants’ Chamber of Commerce & Industry (MSME Representative). Moderator : Advocate Abhishek A Rastogi, Partner – Khaitan & Co. CA Pulak Kr Saha, Chairman – GST Conclave Sub-Committee.
20.0	22.07.2022 & 23.07.2022 (Virtual)	2-Day Insolvency and Bankruptcy Code Conclave. Theme : Intricacies of IBC. Day 1 : Distributive justice between workmen’s dues and secured creditors rights, w.r.t sec. 52 and 53 of the Code – Speaker : CS Vinod Kothari, Principal Partner, Vinod Kothari & Co., Kolkata; Compliances pertaining to CIRP & Liquidation Process under CA 2013 and SEBI Laws – Speaker : IP Vineet Chaudhary, Partner, VKC Restructuring, New Delhi; Implications of Indirect Tax Laws on CIRP and Liquidation Process – Speaker : CA Harsh Gadodia, Partner, Sumit Binani & Associates, Kolkata. Day 2 : Learnings for IPs from Recent Disciplinary Orders of IBBI – Speaker : Advocate and IP G P Madaan, Managing Partner, Madaan Law Offices, New Delhi; Judicial Issues w.r.t. Personal Guarantee to CD – Speaker : Advocate Sandeep Bajaj, Managing Partner, PSL Chambers, New Delhi; Implications of Direct Tax Laws on CIRP and Liquidation Process - Speaker : CA Sandip Khemka, Consultant, Kolkata. CA Jitendra Lohia, Chairman – Insolvency & Bankruptcy Code Conclave Sub-Committee.
21.0	29.07.2022 & 30.07.2022 (Virtual)	2-Day Corporate Laws Conclave. Theme : Decoding Compliance and Complexities. Day 1 : Compromise and Arrangement under Companies Act 2013 - Speaker : Advocate (CS) Satwinder Singh, New Delhi. Managerial Appointment and Managerial Remuneration under Companies Act 2013 - Speaker : CS Gaurav Pingle, Pune. Day 2 : Compliances under Corporate Laws (CA and SEBI) while implementing Resolution Plans -Speaker : CS Prakul Thadi, Hyderabad. New LLP related provisions - Speaker : CS Divesh Goyal, New Delhi. Liabilities of Directors under Companies Act 2013 - Speaker : CS Ramaswami Kalidas, Mumbai. CA Mohit Bhuteria, Chairman – Corporate Laws Conclave Sub-Committee.

APPLICATION FORM FOR MEMBERSHIP



ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

(Registered under the Societies Registration Act, 1860)

An ISO 9001 : 2015 Certified Organisation

6, Lyons Range 3rd Floor, Unit - 2, Kolkata - 700 001
Phone : +91-33-2210-7724 • Telefax : +91-33-4060-8353

E-mail : info@acaekolkata.org • Website : www.acaeekolkata.org

GSTIN : 19AAATA7029F1ZV

2 pcs Pass Port Colour
Photograph

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**.



ACAE ALBUM ...

Interactive Session on Finance Act 2022 on Thursday, 7th April, 2022 at ACAE, Emami Conference Hall



(L-R) On dais, Chairman-Direct Tax Committee, CA Anup Kr Sanghai, Speaker-CA Sanjay Bhattacharya, President-ACAE, CA Vivek Agarwal, Speakers -CA S S Gupta and CA Ramesh Kr Patodia.



A cross-section of the participants.

ACAE Inter-Chamber Financial Literacy Quiz held on Saturday, 4th June, 2022 at The Lalit Great Eastern Kolkata



Chief Guest, Shri Soma Sankara Prasad, Managing Director & CEO, UCO Bank addressing the audience. CA Rishi Khator, Quiz Master and Chairman-Financial Literacy Awareness Committee along with President-ACAE, CA Vivek Agarwal on dais.



CA Vivek Agarwal, President-ACAE presenting a memento to Chief Guest, Shri Soma Sankara Prasad, Managing Director & CEO, UCO Bank.



Group Photograph (L-R) CA Swati Singhania, Co-Chairman, Financial Literacy Awareness Committee, Shri Koushik Ganguly, ICICI Bank Zonal Head, Past Presidents-ACAE, CA H K Agrawal, CA M P Sureka, CA Rishi Khator, Quiz Master and Chairman-Financial Literacy Awareness Committee, Chief Guest, Shri Soma Sankara Prasad, Managing Director & CEO, UCO Bank, CA Vivek Agarwal, President-ACAE, Past Presidents-ACAE, CA Santosh K Roongtaa, CA Indu Chatrath and CA Sushil Kr Pransukhka.

ACAIE Inter-Chamber Financial Literacy Quiz
held on Saturday, 4th June, 2022 at The Lalit Great Eastern Kolkata



Group Photograph with the participating teams - Calcutta Chamber of Commerce, Merchants' Chamber of Commerce & Industry and Bengal National Chamber of Commerce & Industry.



ACAIE Inter-Chamber Financial Literacy Quiz in progress.



Calculta Chamber of Commerce won "ACAIE Inter-Chamber Financial Literacy Quiz".

Lecture Meeting on Changes by Finance Act 2022 - TDS u/s 194IA and 194R
on Tuesday, 28th June, 2022 at ACAIE, Emami Conference Hall



Speaker, CA Jayesh Gupta, Bengaluru giving his deliberations.



Past President, CA R S Jhawar presenting a memento to Speaker, CA Jayesh Gupta.



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ASSOCIATION OF CORPORATE ADVISERS & EXECUTIVES

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