

# ACCOUNTANTS AND THEIR CHALLENGES UNDER GST

**A**n Accountant perhaps is the first professional or stakeholder who deals with any commercial laws. To execute the laws, he needs to be well aware of its provisions and mapping such provisions with business transactions is his expertise or skill. During the mapping process of transactions sometimes he adjudges wrong interpretation of the provisions and litigation emerged which takes its own time to resolve the issues. In case of litigation, an accountant takes various assumptions in his accounting till the matter is resolved.

Like other laws of the land i.e. Income Tax Act, 1961, Excise and Customs Act 1944 etc. Goods and Service Tax (GST) has been throwing different and new challenges to an accountant every day. Since it is introduced, it has been continuously being amended and its IT platform too put accountants under pressure. Due to new concepts and experiments under GST, an accountant professionals wasted lot of precious time for which they don't even get awarded rather it put them under depression. Many young accountants entered into the field of GST for their bread and butter but because of frequent changes and technical glitches at its portal, they were forced to leave its practice.

## Major Challenges under GST:

From an accountant's point of view, Sections 01 to section 66 are the main sections where their involvement is a must and an accountant directly deals with these sections in their day to day operations. So, any amendment in said sections, sub-sections, rules, notifications and circulars issued for clarification impact the accountant's work. He has to arrange data or information as per new amendment or change which becomes tedious and laborious job for him as many software don't support such requirements of law. Even where software is able to do so, needs a lot of changes, time and research to get the right information. **Though challenges are more but some of the major challenges being faced by the accounts on daily basis are as under:**

- ★ **Different dates for different Sections:** All Sections of CSGT, SGST and IGST Acts are not introduced w.e.f 01.07.2017.



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Proviso to Section 1(3) clearly mentions the same. Accordingly, Sections 51 and 52 were introduced later on w.e.f 01.10.2018.

Section 9(4) was introduced but later on put on hold w.e.f 13.10.2017 and again introduced for selective Industries.

e-way bill provisions were introduced subsequently after many revisions and announcements of dates.

Many amendments brought through financial budgets were introduced at different- dates and some of them were kept in abeyance. Such practices make the matter more and more complicated.

- ★ **Various new definitions under GST:** Section -2 of the CGST Act deals with 119 definitions which are drafted as per the concepts of GST Laws. Some are totally new and some are taken or referred from existing or old laws. Some of the definitions are contradictory or are redrafted or amended after the introduction of GST. Various sub-section under Section- 2 of CGST Act,2017 can be referred for such amendments.

Working with one concept and then latter on shifting to another one with change of scope of the definition put lot of pressure on the working of any organization, especially who actually deals with the situation.

- ★ **Change in the concept of Supply:** Goods and Service tax (GST) is purely based on the concept of Supply. So, more or less any supply with or without consideration is subject to GST. Supply and its scope are defined under Section 7 read with Schedules-I, II and III thereto.

Changes made in said schedules that too with retrospective effect have shattered the accountants and have thrown challenges to accountants to give effects to books of accounts and accordingly compliance under law and audit by paying more taxes, interest and even penalties.

- ★ **Input Tax Credit (ITC):** Provisions of Section 16 to Section 19 regarding ITC and amendments made there brought huge work pressure on accountants.

Reconciliation of GSTR-3B, GSTR-2A and 2B, identification of non-GST items, block credits etc. takes a lot of time for accountants as many organizations can't afford software to get it done. Many software doesn't have such features and accountants have to do it manually where in chances of mistake are numerous. Year-end reconciliations of such data for GSTR-9 and GSTR-9C make the life of an accountant hell.

- ★ **Monthly returns:** Monthly return is a regular phenomenon under any law. It's routine work for any accountant to file monthly and quarterly returns. But in GST acts, it became another challenge for accountants and even after a gap of six years we could not file the first GST return as proposed in the act. We were forced to shift to some interim arrangement of GSTR-3B with too many changes and still struggling with it.

- ★ **GSTR-9 and GST-9C:** Filing annual returns is another major challenge under GST even today after a gap of six years. GSTR-9 & GSTR-9C were introduced in 2018-19 after a gap of one and half years and got amended many times creating havoc for accountants and the industry. Information and /or data asked for in these forms were never asked in GSTR-1 and GSTR-3B and industry was also not used to capture such data. Still, we are struggling with the final format of GSTR-3B and in recent past authorities have asked stake holders' views on the said format.

- ★ **Refunds for Zero rated supplies or otherwise:** Refunds of ITC used for inputs used to supply Zero Rated supplies is fundamental right of assessee as exports are exempted from taxes. But the procedures and documentation involved in the whole process of refunds make the accountants exhausted.

So there are n-number of challenges for the accountants under GST and somehow this profession is struggling hard to help the government to get the GST implemented in the industry for a better future.

In recent past government has issued two circulars which gave some relief to accountants directly which have otherwise become annoyance for the accountants. These circulars are as under:



## 1. Circular No 177/03.08.2022- GST Rates and exemption clarifications:

### i) Whether the activity of selling space for advertisement in souvenirs is eligible for a concessional rate of 5%.

As per serial number (i) of entry 21 of notification No. 11/2017-Central Tax (Rate) dated 28.06.2017 selling of space for advertisement in print media attracts GST @ 5%.

The term 'print media' has been defined in clause (zt) of notification No.12/2017-Central Tax (Rate) dated 28.06.2017 as under: "print media" means, — i. 'book' as defined in sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 (25 of 1867), but does not include business directories, yellow pages and trade catalogues which are primarily meant for commercial purposes;

Further, sub-section (1) of section 1 of the Press and Registration of Books Act, 1867 defines 'book' as follows: "Book" includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed.

Accordingly, as recommended by the GST Council, it is clarified sale of space for advertisement in souvenir books is covered under serial number (i) of entry 21 of Notification No. 11/2017-Central Tax (Rate) and attracts GST @ 5%.

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

As per entry 41 of the notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 upfront amount, which is defined as "upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service by way of granting of long term lease (of thirty years, or more) of industrial plots or plots for development of infrastructure for financial

business, provided by the State Government Industrial Development Corporations or Undertakings or by any other entity having 20 percent or more ownership of Central Government, State Government, Union territory to the industrial units or the developers in any industrial or financial business area" - **exempted.**

### iii) Whether the additional toll fees collected in the form of higher toll charges from vehicles not having fastag is exempt from GST

Entry 23 of notification No.12/2017- Central Tax (Rate) dated 28th June 2017 **exempts service by way of access to a road or a bridge on payment of toll charges**

Therefore, it is 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.

### iv) Whether the sale of land after leveling, laying down of drainage lines etc., is taxable under GST

As per SI No. (5) of Schedule III of the Central Goods and Services Tax Act, 2017, the 'sale of land' is neither a supply of goods nor a supply of services, therefore, the sale of land does not attract GST.

Land may be sold either as it is or after some development such as leveling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that the sale of such developed land is also the sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly, does not attract GST.

However, it may be noted that any service provided for the development of land, like leveling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

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

Renting of a motor vehicle with an operator for the transport



of passengers falls under Heading 9966. According to the explanatory notes to heading 9966, the service covered here is renting of a motor vehicle for the transport of passengers for a period of time where the renter defines how and when the vehicles will be operated, determining schedules, routes and other operational considerations.

‘Passenger transport services’ on the other hand fall under Heading 9964. According to the explanatory notes Heading 9964 covers passenger transport services over pre-determined routes on pre-determined schedules

Accordingly, it is 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, and the body corporate shall be liable to pay GST on the same under RCM. It may be seen that reverse charge thus would apply to the act of renting of vehicles by body corporate and in such a case, it is for the body corporate to use in the manner as it likes subject to agreement with the person providing the vehicle on rent.

However, where the body corporate avails the passenger transport service for specific journeys or voyages and does not take a vehicle on rent for any particular period of time, the service would fall under Heading 9964 and the body corporate shall not be liable to pay GST on the same under RCM.

**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.**

Such services are nothing but “rental services of transport vehicles with operator” which fall under heading 9966 and attract GST @ 18% under Sr. No. 10 part (iii) of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017. The person who takes the vehicle on rent defines how and when the vehicles will be operated, and determines schedules, routes and other operational considerations. The person who gives

the vehicles on rent with an operator cannot be said to be supplying the service by way of transport of goods.

On such rental services of goods carriages where the cost of fuel is included in the consideration charged from the recipient of service, the 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%.

**vi) 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.**

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 the agreement entered into with the service provider.

**2.. Circular No 178/03.08.2022:**

**GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law.**

Para 5 (e) of Schedule II of CGST Act: “Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act”

The above statement in schedule-II carries three limbs/parts as under:

➤ **Agreeing to the obligation to refrain from an act:**

- **non-compete agreements**, where one party agrees **not to compete with the other party in a product, service or geographical area** against a consideration paid by the other party,
- a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing



project, which wants to protect its sunlight, or

- an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

➤ **Agreeing to the obligation to tolerate an act or a situation:**

- This would include activities such a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or
- an RWA tolerating the use of loudspeakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

➤ **Agreeing to the obligation to do an act:**

This would include the case where an industrial unit agrees to install equipment for zero-emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Unless there is an express or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him, it cannot be assumed that such payment was for doing an act or for refraining from an act or for tolerating an act or situation.

Payments such as:

- liquidated damages for breach of contract,
- penalties under the mining act for excess stock found with the mining company,

- forfeiture of salary or payment of the amount as per the employment bond for leaving the employment before the minimum agreed period,
- penalty for cheque dishonour etc.

are not a consideration for tolerating an act or situation. They are rather amounts recovered for not tolerating an act or situation and to deter such acts; such amounts are for preventing breach of contract or non-performance and are thus mere 'events' in a contract.

Such amounts do not constitute payment (or consideration) for tolerating an act, because there cannot be any contract: (a) for breach thereof, or (b) for holding more stock than permitted under the mining contract, or (c) for leaving the employment before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque.

As has already been stated, unless payment has been made for **an independent activity of tolerating an act under an independent arrangement entered into** for such activity of tolerating an act, such payments will not constitute 'consideration' and hence such activities will not constitute "supply" within the meaning of the Act

**Some of the important examples of such cases are Service Tax/GST demands on:**

**1. Liquidated damages paid for breach of contract;**

It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of the contract. They do not act as a remedy for the breach of contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfillment of the promise by



the other party. Such payments do not constitute consideration for a supply and are not taxable.

**Examples of such cases** are WHERE there is a mere flow of money:

- ☆ damages resulting from damage to property,
- ☆ negligence,
- ☆ piracy,
- ☆ unauthorized use of trade name, copyright, etc.
- ☆ the penalty stipulated in a contract for delayed construction of houses. It is a penalty paid by the builder to the buyers to compensate them for the loss that they suffer due to such delayed construction and not for getting anything in return from the buyers.
- ☆ forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid,
- ☆ for allotment of natural resources,

ii. **Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;**

There was no agreement between the prior allottees of coal blocks and the Government said that the previous allottees shall agree to or tolerate the cancellation of the coal blocks allocated to them if the Government pays compensation to them. No such promise or offer was made by the prior allottees to the Government. The allottees had no option but to accept the cancellation. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, it would be incorrect to say that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government for such cancellation in pursuance to the order of the Supreme Court was a consideration for such service. Therefore, the compensation paid for the

cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.

iii. **Cheque dishonour fine/penalty charged by a power distribution company from the customers;**

There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of a cheque dishonour fine or penalty. The fine or penalty that the supplier or a banker imposes, for the dishonor of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. **Therefore, a cheque dishonour fine or penalty is not a consideration for any service and not taxable.**

**Penalty imposed for violation of laws:** Such penalties imposed for violation of laws cannot be regarded as consideration charged by the Government or a Local Authority for tolerating violation of laws. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violations but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty.

It was also clarified vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016 that fines and penalties chargeable by the Government or a Local Authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to Service Tax. The same holds true for GST also.

iv. **Bond amount recovered from an employee leaving the employment before the agreed period;**

The said amounts are recovered by the employer not as consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the



employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation

vi. **Late payment charges collected by any service provider for late payment of bills;**

Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply

vii. **Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from the individual customer for the supply of electricity;**

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for the sale of electricity and are thus not taxable as electricity is exempt from GST

viii. **Cancellation charges recovered by railways for cancellation of tickets, etc**

Therefore, facilitation supply of 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 in such cases should be assessed as the principal supply. For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

Accordingly, the amount forfeited in the case of a non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing

to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

However, as discussed above, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by the Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable

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

On the recommendation of the GST Council in its 45th meeting, it was clarified vide circular 164/20/2021-GST dated 06.10.2021 that ice cream parlours sell already manufactured ice-cream and they do not have a character of a restaurant and hence, ice cream sold by a parlor or any similar outlet attracts standard rate of GST @ 18% with ITC.

So the above clarifications through Circulars have brought great relief to the accountants for their day-to-day operations and with the help of these clarifications on one side accountants will be able to write books of accounts in a better manner and also reduce unnecessary litigation, time, resources and will bring confidence among stakeholders.

