TAX Bulletin

May, 2018 Volume - 16

THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

www.icmai.in

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MISSION STATEMENT

"The CMA Professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting."

VISION STATEMENT

"The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally."

Objectives of Taxation Committee:

1. Preparation of Guidance Note and Analysis of various Tax matters for best Management Accounting Practices for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit suggestions to the Ministry from time to time for the betterment of Economic growth of the Country.
4. Evaluating opportunities for CMAs to make effective value addition to the tax-economy.
5. Designing of Certificate Course on Direct and Indirect Tax for members and stake holders.

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FROM THE DESK OF THE CHAIRMAN

Dear Colleagues,

Namaskar and Best wishes.

It is a matter of great pleasure to pen down the message for the 16th Tax Bulletin. My heart fills with immense joy as I perceive the progress being made by Tax Research Department with the incessant support, knowledge contribution and valuable feedback from our authors, members and Key Resource people.

We are positive that the knowledge inputs that we are providing through the bulletin in form of recent Tax Judgements, notifications, press release, circulars and articles of the eminent Tax experts are being beneficial to you.

We are proud of our past achievements and passionate about achieving our future assignments and look forward to continuing our success alongside each of our partners and well wishers.

CMA Niranjan Mishra

Chairman - Taxation Committee

17th May, 2018

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POOR PATIENTS, HEALTHY HOSPITALS WITH DR. GST?

CMA ANIL SHARMA
Practicing Cost Accountant

A contract for medical treatment, especially indoor treatment is a composite contract, necessarily involves supply of medicines, surgical items, stents, implants, valves etc. without which a medical procedure or medical treatment cannot be completed. The supply of these articles are integral to and essential for the treatment offered to patients by the hospitals through medical and para-medical services. By virtue of notification no 12/2017 (entry sr. no 74, SAC 9993) all such services of Health care by *clinical establishments, authorized medical practitioners or para-medics are exempted under Goods and Services Tax.*

In pre-GST regime also, though there was huge litigation on such contracts but various judgments hold such contracts are not sale, and thus not exigible to VAT. Some of such cases are narrated below for understanding the issue in a better way:

In very popular case of Fortis Health Care Ltd., And Another ("the Petitioners") filed an application before the Excise & Taxation Commissioner, Punjab, Patiala Division, Patiala ("the Commissioner"), sought advance determination of the issue if supply of medicines, drugs, stents etc., to patients during a medical procedure ("impugned goods") are a 'Sale', under the Punjab VAT Act, 2005("Punjab VAT Act").

The Commissioner *vide* Order dated August 10,2005 responded the aforesaid question in favour of Revenue and therefore the impugned goods are made exigible to VAT ("Order 1"). Thereafter, the Petitioner got registered as a dealer under the Punjab VAT Act and the Central Sales Tax Act, 1956 and started discharging their statutory obligations.

In another case, the Hon'ble High Court of Jharkhand in *Tata Main Hospital Vs. The State of Jharkhand and others [2008(2) JCR 174 (Jhr.)]* ("Tata Main Hospital Case") held that the impugned goods are not exigible to VAT as the same is not 'Sale'. Being aggrieved, the State of Jharkhand, filed a Special Leave Petition before the Hon'ble Supreme Court, which was dismissed Hon'ble Courts took the view that a medical procedure is a pure service with no part having the attributes or the elements set out in Article 366 (29A) of the Constitution or the definition of 'Sale' under the Punjab and Haryana statutes and, therefore, cannot be held to involve a 'Sale'. A contract for medical treatment involves supply of medicines, surgical items, stents, implants, valves etc., without which a medical procedure or medical treatment cannot be completed.

The situation would be different if, these articles are supplied from the pharmacy of a hospital to the patient.

Considering the seriousness and impact of the issue, GST policy and law makers has taken a call and came out with clear cut guidelines that all such contracts are exempt from Goods and Service tax (GST) through notification no 12/2017 under CGST Act, 2017 (Notification no 9/2017 dt 28.06.2017 IGST Act, 2017) as amended from time to time, except human health and social care services as covered at Sr No 31, (under Entry no.9993) of notification no 11/2017 dt 28.06.2017.

But said notifications do not cover services like:

- hair transplant or
- cosmetic or
- plastic surgery,

  except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Respective provisions of the said notification no 12/2017 are reproduced as under:

Entry at Sr. no 74: Services by way of -

(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;*
(b) *services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.*

**"clinical establishment" means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases*

If we go by the above mentioned clauses of said notification, it is clear that health care services by hospitals, services of doctors and para-medics i.e testing laboratories, nursing staff, physiotherapist etc. to the patients are totally exempted from GST.

Apart from health care services as provided by clinical establishments, the notification has also exempted the services related with **transportation of patients in ambulance** for their timely treatment.

Entry no 73 of said notification, Services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation is exempt from GST

Entry no 75 of above said notification specifies, *Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.*

It is input service to clinical establishments or hospitals, which has been kept outside the preview of the GST and is provided by other medical establishments like test laboratories to hospitals. By exempting these services from GST, would help the hospitals to provide cheap treatment to the patients.

Similarly, GST has taken care of health of Animals and Birds through entry no 46, Heading 9983 (Notification 12/2017) Services by a veterinary clinic in relation to health care of animals or birds which are exempted from GST.

The matter was further clarified by CBIT through its **circular no 32/06/2018-GST dt 12.02.2018.** The circular specified that:

- Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt.

- Healthcare services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India [para 2(zg) of notification No. 12/2017- CT(Rate)].

  Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors, nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc., is towards the healthcare services provided by the hospitals to the patients and are exempt

- The Circular further clarified that Food supplied to the in-patients as advised by the doctor/ nutritionists is a part of composite supply of healthcare and not separately taxable.

  Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors or its staff members are taxable under GST.

On the other side, input services to hospitals like *Housekeeping, Maintenance of equipments, Manpower Supply, Technical services, Professional services and Civil contracts* etc. are taxable and that too on higher side. Under pre-GST regime such services were charged at 15% and now under GST the rate of tax is 18% which will ultimately impact the health of patient.

Similarly Medical equipments used for medical treatments are subject to GST in all most all slabs namely 0%, 5%, 12%, 18% and 28%. **Only hearing aids are not taxable under GST.**

Medicines including their salts and other Pharmaceutical items are also subject to GST in different slabs such as 5%, 12% and 18% for which we need to their HSN code.

Items such as **artificial limbs** are subject to GST @5% and so on.

As services of clinical establishments i.e Health services, are exempted from GST but all of its input supplies of goods and services, except few as narrated above, are subject to GST. Clinical establishments are not in a position to avail input tax credit of GST paid on its input goods and services which will make their output services costly. It has direct impact on the health of patients and medical treatments get costly.

In the whole process of implementation of GST, especially in health sector, the health services have gone costlier and the patients are the overall sufferer. Their health is not good and clinical establishments or hospitals in corporate sector get benefited through overall improvement in logistics, supply chain management, subsuming of various taxes under GST, ITC credit on inter-state supplies etc.

To go by the true spirit of GST, where the consumer is suppose to be benefited, the inflationary impact of GST should be compensated through refund mechanism with stringent provisions under law or by exempting supply of inputs goods and services to clinical establishments. Otherwise the purpose of implementation of GST defeated.

Cost Records and Audit under Companies Act, 2013

Under Section 148 of the Companies Act, 2013 Cost Records and Audit has been introduced on corporate clinical establishments. Such establishments are mandatory to undergo Cost Audit of their Cost records maintained for their cost of services provided and expenses incurred on to provide such services.

With the help of cost data, one can establish actual cost and margin per patient by the clinical establishments and the benefits under GST can be transferred to the patients.

Such audits must be extended to other than corporate clinical establishments also, so that such benefits of cost reductions can be made available to the whole of the society.

Corporate Social Responsibility under Companies Act, 2013

The expenses made by the corporate sector hospitals for CSR under Companies Act would not benefit the society unless the patients are actually benefitted.

Conclusion

The main objective of hospitals, clinical establishments and medical professionals is to serve the man kind in general or otherwise during wars, accidents, natural disasters etc. irrespective of cast, creed, religion, area, society and country. Due to slowdown in policy making, depressions in economy, foreign body attacks, GST was injected in economy to fasten the recovery, treat the illness of the economical disasters i.e scams, NPAs and corruption to provide good economic health to country at large. It was a thought process that Dr. GST will treat all illness in the economy and will ensure good health and wealth to the country. Let us hope that Dr. GST will play its role for which it was brought out and policies will be framed accordingly.

BILL TO / SHIP TO IN GST

CMA BHOGAVALLI MALLIKARJUNA GUPTA
Corporate Trainer and Advisor on GST

In the normal course of business, when the supplier receives the order from his customers he will ship the goods from his place directly if he has the stock of the goods which are ordered by the customer. There can be cases where the supplier does not have the stock of the goods ordered or he does not deal with them. In such cases he will procure the goods from a third party and then deliver / supply to his customer or asks the third party to ship the goods directly to the customer. He may go for the latter option if the customer wants the goods on an urgent basis or if they feel the cost of transportation is more or there is a time lag for the goods to reach the customer's place. Such transactions are known as Bill To / Ship To transactions.In such cases, what are the tax implications under GST like place of supply, time of supply, issue of e-waybills etc.,

The law is very clear on such transactions and how the e-waybill has to be issued.

Let's understand Bill To / Ship To with a simple example

XYZ based in Mumbai places an order on ABC in Delhi for the supply of goods. ABC is not having the said goods in stock, ABC in turn places an order on PQR based in Delhi to supply the goods directly to XYZ. XYZ will receive the goods from PQR but the amount is to be paid to ABC.

In the above example, there are two supplies one is between ABC to XYZ and another between ABC and PQR but these two transactions results in a third transaction between PQR and XYZ. Though it is single transaction for purpose, these are three different transactions based on provisions of Schedule 1, clause 3, sub-clause (a), "*by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal*" it has to be treated a supply without consideration for the transaction between PQR and XYZ.

There are three transactions being impacted due to the Bill To / Ship To transactions and the areas are

- Tax Invoice
- Place of Supply
- E-waybills
- Input Tax Credit
- Returns

Tax Invoice

In the complete Bill To / Ship To flow, two different taxes invoice has to be issued. This is to ensure that the compliances under GST are met and all the parties who are eligible to claim ITC can avail it.

The relation between ABC and PQR is that of a principal and agent, based on the instructions of ABC, PQR ships the goods to XYZ, it will be treated as supply and tax invoice has to be issued with Bill To as ABC and Ship To as XYZ. This is to enable the movement of goods.

The second tax invoice will be issued ABC to XYZ to complete the commercial transaction and also enable XYZ to claim Input Tax Credit.

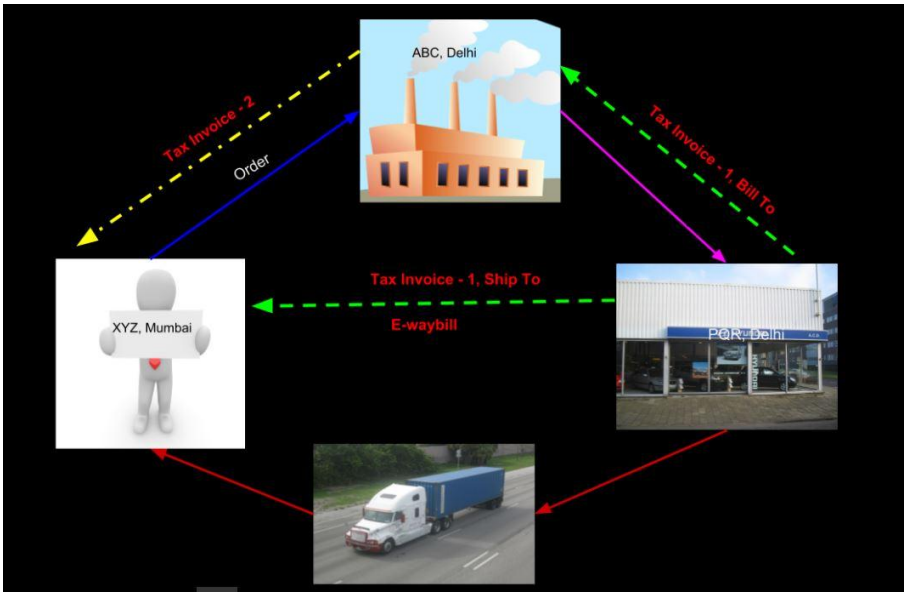
Place of Supply

The place of Supply on this tax Invoice will be determined based on the provisions of Section 10, Sub-section 1, clause (b) of the IGST Act, when it comes to the Bill To and Ship To transactions.

"where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;"

As per the provisions of Section 10, sub-section 1, clause (b) of the IGST Act, the place of supply will be the principal place of business of the principal supplier and not the recipient's place. In this case, the place of supply supplier is ABC of Delhi, so the place of supply will be Delhi for the tax invoice issued by PQR for delivery of goods to XYZ even though XYZ is located in Maharashtra.

For the second tax invoice, which is raised by ABC on XYZ will have the place of supply as Maharashtra.



E-waybill

There are two tax invoices being issued, then is it required to issue to two different E-waybills? In the first case only, there is movement of goods and in the second case there is no movement of goods. In such a case is it required to issue an e-waybill if the transaction value is more than Rs 50,000 and if it is an interstate transaction?It is not required as there is no movement of goods as per Rule 138 of the CGST Rules 2017.

Information to be furnished prior to commencement of movement of goods and generation of e-way bill. - (1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees -
(i) in relation to a supply; or
(ii) for reasons other than supply; or
(iii) due to inward supply from an unregistered person

In this case, ABC need not issue e-waybill, it has to issue only a tax invoice for enabling its customer XYZ to claim Input Tax Credit.

Now the next question is who will issue the e-way bill for the movement of goods between PQR to XYZ? In this case can PQR issue the same or ABC can issue it? To address this, the department has issued a press released on 23rd April 2018. It states the following

If PQR is issuing the e-waybills, then the following has to be filled in the e-waybill by PQR only

Sl. No	Fields in E-waybill form	Process
1	Bill From	PQR details are to be entered here
2	Dispatch From	Location from where the goods are being shipped, it can be any of the following locations of PQR a) Principal Place b) Additional Place
3	Bill To	ABC's address has to be entered here
4	Ship To	XYZ's address has to be entered here
5	Tax Invoice Details	Details of Tax invoice – 1 has to be entered here

If ABC is issuing the e-waybills, then the following has to be filled in the e-waybill by ABC only

Sl. No	Fields in E-waybill form	Process
1	Bill From	ABC details are to be entered here
2	Dispatch From	Location from where the goods are being shipped, it can be any of the following locations of PQR a) Principal Place b) Additional Place
3	Bill To	XYZ's address has to be entered here
4	Ship To	XYZ's address has to be entered here
5	Tax Invoice Details	Details of Tax invoice – 2 has to be entered here

Input Tax Credit

As per the provisions of GST input tax credit is available seamlessly across the supply chain cycle. In case of Bill To and Ship To cases who are eligible to take input tax credit and onbasis of which tax invoice the input tax can be claimed? This is the most common question which many are having in their minds.

As per provisions of Section 16, sub-section 2 of the CGST Act 2017, Input Tax Credit will be eligible to be claimed only when
(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other taxpaying documents as may be prescribed;
(b) he has received the goods or services or both.

Explanation - For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

The above two are the basic provisions for the availing input tax credit apart from the other provisions.

As we have two tax Invoices in case of Bill To Ship To transactions, now the question will be who will claim the Input Tax Credit based on two different invoices.

The first tax invoice is issued by PQR to XYZ for the movement of material, as the material is technically belonging to XYZ, can ABC claim ITC on basis on the tax invoice it has received? The tax invoice has Bill To as XYZ and Ship To as XYZ?

On the basis of Tax Invoice 1, ABC will claim the credit even though it has not received the goods based on the provisions of the CGST Act and its explanation.

XYZ will be eligible to claim the credit only on the basis of the Tax Invoice issued by ABC. In the erstwhile tax regimes, it was not required but under GST it is required and this means a change in the business process for XYZ and ABC under GST.

Returns

Return filing is also very important under GST and basis on this only the matching and compliance will be done in GST which are yet to be notified. Matching is being differed but it is recommended to match the Input Tax Credit claimed with the GSTR - 2A data. This will ensure that there will be no reversal of ITC when matching starts and also give statistical data for decision making from whom to purchase the goods or services or both. In case if your supplier of goods or services or both has not filed his return then the data will not be shown in GSTR -2A.

In Bill To / Ship To transactions, XYZ is the buyer and while data entry is being done in the system the Tax Invoice number of ABC should be entered while preparing the Goods Receipt Note or Material Receipt Note or by whatever name it is called, even though the material / goods are shipped by PQR. If the tax invoice issued by PQR is entered the matching will not take place and as per the provisions of the GST whenever notified.

The input tax credit claim has to be added in the GSTR – 3B of ABC based on the invoice of PQR and for XYZ based on the tax invoice of ABC.

The tax invoices have the reported in GSTR -1 by PQR and ABC accordingly in the B2B supplies if the supplies are to B2B and B2C if the supplies are to non-registered taxpayers.

The above is the process for Bill To / Ship To under GST to be followed while transacting in the day to day business. The above area mentioned ensures that scope for compliances are minimized and at the same time take benefit of the law to expand the business across India, as GST is dubbed to be One Nation, One Tax and One Market.

RETURN FILING UNDER GST – ISSUES AND CHALLENGES

TEAM TRD

The Institute of Cost Accountants of India
(Statutory Body under an Act of Parliament)

Annexure - A

Points of discussion with the Group of Ministers on 17th April 2018 on "Return filing under GST-Issues and Challenges"

A) Jurisdiction of Tax Payer.

1. Distribution of Taxpayers between Central and State is not being informed to many tax payers who migrated from Service Tax. The Website is not showing the correct Jurisdictional Authority.
2. Since there is a confusion about jurisdiction, neither Central nor State GST department accept any correspondence including Refund Claim of such Tax Payers who have claimed refund for excess cash balance available in Electronic Cash Ledger. Same is the case with Export Refund Claims and submission of Undertaking.

B) Payments

1. Debit Note/Credit Note for Unregistered Taxpayers (Box No. 7 of GSTR-1) is taking only for B2B Taxpayers. The 'Type of Supply" is confined to "Inter-state" supply only. Though a Tax Payer can adjust Credit Note by showing it as negative balance in B2C-Others, details of Debit Note/Credit Note are not captured in GSTR-1 for Unregistered Taxpayers which creates difficulty in reconciliation with accounts.
2. Though there is provision to pay tax by using Debit Card or Credit Card it is yet to be allowed.

C) Input Tax Credit Matching

1. Currently there are only two returns in place one is GSTR - 1 and another on self- assessment for payment of taxes and availing ITC on provisional basis- GSTR3B. Matching of ITC is on hold . Following are few suggestions in this regards.
2. The scope of Reverse Charge may be enhanced to services and goods covered in Sec 17 of the CGST Act 2017 (Blocked Credit) received from unregistered suppliers so that the registered tax payers will pay GST on the services availed from unregistered suppliers, shall not avail Input Tax Credit and Government revenue will be protected.
3. GSTR 2 may be modified to incorporate details of payment of GST under reverse charge and IGST on import of goods and services. This will help the revenue department to have complete details of GST paid by tax payers. Matching of ITC will be easier with minimum data uploading. This will certainly provide relief to tax payers.
4. As per Section 41 of the CGST Act 2017, the ITC taken is on provisional basis till matching is done, there should be a process for matching immediately or the relevant provisions should be changed accordingly. Else it will be a challenge for the taxpayers to furnish their financial statements for 31st March 2018.

D) Returns

1. Provision in GSTR 3B needs to be made for reversal of credit wrongly taken. Presently once an entry is made in the column of CGST, the Return format automatically displays SGST liability of the equal amount.
2. Some of the exporters carried forward unutilized balances of Cenvat Credit through TRANS 1but now they cannot claim the refund of old credit and also they cannot revise the TRANS -1 Hence it advisable to give some option. Suitable modifications are required in TRANS 1.
3. Even though Returns are filed in time, many taxpayers received notices for not filing Returns and invoking penal provisions. Proper training should be given to Tax Officers to co relate the Returns and avoid sending unwarranted notices to tax payers.

4. The GSTN system has by default considered quarterly filing of GSTR1 filing inspite of the Companies having turnover of more than 3-5 crores per month. Now the users are having no option to change the filing from Quarterly to Monthly even if request is made to GSTN. Immediate action is required to provide option to change from quarterly to monthly filing of returns where the turnover is more than Rs. 1.5 crores per annum.

   Three Instances which can only be made by revising 3B are:

   - ❖ Asseesee by mistake instead of availing the credit, deposited the tax under Reverse Charge Mechanism. In this case credit has been foregone, as it was not availed, also refund cannot be claimed, as there is no such provision.
   - ❖ Assessee claimed less credit in GSTR-3B, as invoices are received later on from different branches. The credit is showing under GSTR 2A, but it is not confirmed whether the balance credit will be accumulated in total Credit or not after filing of GSTR -2.
   - ❖ Certain amount as output tax has been shown under GSTR - 3B, but while filing GSTR-1, output tax liability increased. The assessee cannot adjust this liability from credit as it is not possible in GSTR -1. Only way is to pay the extra liability by cash to avoid interest & penalty. Even then any one cannot adjust it, only payment has been made, but the balance will remain in cash ledger and assessee have to keep account of it.

5. Interest is payable for delayed payment of taxes. Interest should be applicable only to the extent on which the taxpayer is paying taxes by cash and not on the utilization of the ITC for payment of cash. Due to this condition, the taxpayers are forced to pay tax on the ITC portion which can be used by them for payment of taxes. Suitable clarification may be issued in this regards.
6. IN case of delay in filing Returns the late fee amount is not being computed correctly. Late fee is being computed by the system and users do not have any control on it. Whatever is the amount computed, the same should be explained with breakup or assessee should be allowed to compute late fee and pay.
7. Filling of Trans-1 should be allowed once again for the assesses who has not filed it. Deemed credit was allowed to specified assesses, with certain conditions, only. There are cases where batch number, product code, packing date etc can be verified but no benefit of deemed credit is given. For instance: Fertilizer, Pharma etc. It is suggested to allow them also due credit based upon Credit Transfer Document (CTD) to do justice for such class in line with the spirit of the law.
8. If return for previous month is not filed then portal does not provide an option for filing the return of next month, it may so happen that the earlier period return could not be filed due to technical issues or otherwise but assesse should not be deprived from filing Returns for the subsequent months .
9. Return once submitted, then changes cannot be made to the same at a later point of time. Provision for filing revised returns may be made.

E) Construction related Services.

1. In the case of Transfer of Development rights and Redevelopment activities, the valuation of the reconstructed property is required to be done as per the open market rate or the selling price of the property in the same scheme. This does not seem to be proper because in the redevelopment activities the existing flat owner gets only construction services. He holds the portion of share of the undivided land, which is given for redevelopment. If the present provision continues, the existing flat-owners will have to pay exorbitant undue taxes on the value of the new flats.
2. The deduction of one third part from the rate of tax towards land cost seems to be incorrect as the land prices in the cities like Mumbai, Pune, Bangalore, Hyderabad, Ahmedabad etc the land prices are much more that construction cost. (on reconstructed property , GST is payable @ 12 % as per the explanation to Notification No. 11/2017- Central Tax (rate)). It is suggested that in the case of redevelopment activities, the GST should be charged only on the 110% of the cost of construction cost. A suitable clarification may be issued to this effect.

F) Refunds

1. Refund for excess Cash balance available in Electronic Cash Ledger should be made on- line and manual process to be avoided at least for this refund.

G) Others

1. To avail the concessional rate of tax (0.1 %) in the case of merchant exporter, exporter has to sell the goods within three months. The time period is appears to be less and may be extended upto 6 months.
2. There is considerable delay in updating of the details in the GSTN portal , even after entering the data in the GSTN portal either through manual entry or using the offline tools provided by GSTN. It is persistent problem that the details of HSN summary and Document details updated in the GSTN tool is not uploaded in the GSTN portal in majority of the cases.
3. If assesses have deposited cash in Electronic Cash ledger, he should be allowed to utilize the same for any purpose i.e CGST, SGST, IGST, Late fee, Penalty etc. No separate Electronic Cash ledger for each account should be maintained. Only one or common Electronic Cash ledger should be permitted.

The Institute of Cost Accountants of India
(Statutory Body under an Act of Parliament)

Points of discussion with the Group of Ministers on 24th April 2018 on "Return filing under GST-Issues and Challenges"

Sl No	Issues	Comments
1	Continuous facility to add invoice by Seller and Continuous viewing of invoices by Recipient who can lock the invoice after which seller can't edit/delete (it becomes confirmed liability of seller)	Import data based on Bill of Entry may be automatically moved from Customs Portal to the Taxpayer's Portal. B2C invoices may also be allowed to be uploaded by Supplier on regular basis. Batch wise processing through offline tools may be provided. Edit option may be given to Supplier/Recipient to deal with errors found before confirming and before filing the monthly return. Any changes in the details may be permitted by way of Debit / Credit Note in subsequent months.
2	Return design: System will draft Monthly return based on supply data uploaded and inward supply accepted. Annexures will contain these details along with data on B2C, CN/DN, Reverse Charge purchases etc. fed by taxpayer.	Clarification required on Credit and Debit note – Whether the CN/DN should be linked to respective invoice and at item level. In case of supplementary invoice/DN/CN for price revision at a later date will be very tedious to enter at item level. Similarly credit note issued for volume discounts will be difficult to link to item level matching. What happens in the current situation where the supplier does not file the return on time? Receiver should have option to upload the invoices of supplies received and payments made. Uploading of data should be may be made available to the extent of outward supplies, debit / credit notes and inward supplies to the extent of tax liability under reverse charge and import of goods / services.
3	Input tax credit: Input tax credit will be given on the basis of acceptance of invoice. However, Credit linkage to payment of tax by Supplier be retained.	Input credit should be allowed on provisional basis as proposed in Model A. The buyer in general will go as per his books of accounts to claim the input tax credit and hence the entry in books of accounts of the buyer should be the basis for claiming the provisional credit. If no accounting entry is found in buyers books of accounts and if notional credit is claimed, the buyer can be penalized. The buyer may be allowed to upload the details of invoices on which he his claiming the input tax credit provisionally. This will ensure that the seller is obligatory to upload the missing invoices and also safeguard the revenue interest. How come the recipient is penalised for non-payment of tax by the supplier? Let us continue to have the system of notices received by supplier and recipient to justify their

		individual stand and penalty and interest or reversal should be done based upon the justification. It was primary duty of the registered person to take the eligible input credit. The system Credit Linkage to payment is will create hardship to buyer. Once the supplier uploads the invoice, files monthly returns and accepts the liability, credit to the buyer should be allowed. It is the function of the revenue department to recover tax from the supplier. By linking credit with payment by supplier, the buyer should not be penalised. If linkage to payment is made, buyer will have double loss i.e. he pays the tax amount to supplier and once again the credit is denied. Therefore linkage to payment should not be kept. should be make a defaulter list of registered persons not filing of the return, so that the supplier/receiver will not make any transaction between the defaulter registered person to avoid the minimum loss of valid input credit.
4	A semi-automatic process of ITC reversal through administrative order: System will track and generate a list of supplier defaults. Cases from this list may be presented to assessing officer based on configurable rules (all or based on quantum of difference). System issues notice to the selected cases. If the rectification is not satisfactory, officer may issue a reversal order at the click of a button.	More details required on how the system is going to track the list of supplier defaults. It should not restrict to only to dealers who have uploaded the supply invoice and not paying the taxes. The system should also track the dealers who have not declared the actual outward supplies. This is acceptable based on justification for rectification or Non rectification of both suppliers or recipients. Principle of natural justice should be followed. Buyer should not be penalised for suppliers default.
5	Safeguards: Starting right from preventing fraudulent registrations to limiting the credit flow from defaulting suppliers after a certain threshold to making RC inactive for non-filing of return by defaulting sellers.	Registrations are now issued based on the data submitted in the online portal, but no physical verification of the premises is undertaken which has resulted in many fraudulent registrations. Inspection of the premises may be undertaken. The system reconciliation is the only safeguard in this regard along with other departmental coordination. Like exchange of information between various departments like Income Tax (For TDS and TCS aspects), Customs, STPI, Bank etc. Random and rigorous desk reviews by departments like Surveys, periodical audits etc. can to some extent mitigate the frauds. Actions and consequence of serious nature can be contemplated as per ACT. Surveys before registration like the way we used to have in Excise and VAT and asking the vendors (in case of suspicion) to provide surety or security in the form of FD will hamper to some extent the gullible registrations.
6	Any other issue (please add more rows, if required. Please write one issue in one row)	Clarification required on the invoice matching till the new system is in operation. Suggested system should be tested by the end users (Professionals, Domain Experts, Trade and Industry, Department Officers, Researchers etc.), before the software is released for general use. The time line for implementation of the new system should not be beyond 1.7.2018. Rather than having import of data only through Json file which is the main cause of all issues, assessee should be allowed to upload the data in xml, csv, xls files also. Provision for reversal of wrongly availed input tax credit should be made in the Return. Presently the systems should equal liability of CGST and SGST in the return even if taxpayer intends to reverse only CGST or SGST credit.

Decisions Taken at the 27th GST Council Meeting

RETURN SIMPLIFICATION:

Key principles of new return as approved by the Council are as under:

1. **One monthly Return:**

   All taxpayers excluding a few exceptions like composition dealer shall file one monthly return. Return filing dates shall be staggered based on the turnover of the registered person to manage load on the IT system. Composition dealers and dealers having nil transaction shall have facility to file quarterly return.

2. **Unidirectional Flow of invoices:**

   There shall be unidirectional flow of invoices uploaded by the seller on anytime basis during the month which would be the valid document to avail input tax credit by the buyer. Buyer would also be able to continuously see the uploaded invoices during the month. There shall not be any need to upload the purchase invoices also. Invoices for B2B transaction shall need to use HSN at four digit levels or more to achieve uniformity in the reporting system.

3. **Simple Return design and easy IT interface:**

   The B2Bdealers will have to fill invoice-wise details of the outward supply made by them, based on which the system will automatically calculate his tax liability. The input tax credit will be calculated automatically by the system based on invoices uploaded by his sellers. Taxpayer shall be also given user friendly IT interface and offline IT tool to upload the invoices.

4. **No automatic reversal of credit:**

   There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

5. **Due process for recovery and reversal:**

   Recovery of tax or reversal of input tax credit shall be through a due process of issuing notice and order. The process would be online and automated to reduce the human interface.

6. **Supplier side control:**

   Unloading of invoices by the seller to pass input tax credit who has defaulted in payment of tax above a threshold amount shall be blocked to control misuse of input tax credit facility. Similar safeguards would be built with regard to newly registered dealers also. Analytical tools would be used to identify such transactions at the earliest and prevent loss of revenue.

7. **Transition:**

   There will be a three stage transition to the new system. Stage I shall be the present system of filing of return GSTR 3B and GSTR 1. GSTR 2 and GSTR 3 shall continue to remain suspended. Stage I will continue for a period not exceeding 6 months by which time new return software would be ready. In stage 2, the new return will have facility for invoice-wise data upload and also facility for claiming input tax credit on self-declaration basis, as in case of GSTR 3B now.

   During this stage 2, the dealer will be constantly fed with information about gap between credit available to them as per invoices uploaded by their sellers and the provisional credit being claimed by them. After 6 months of this phase 2, the facility of provisional credit will get withdrawn and input tax credit will only be limited to the invoices uploaded by the sellers from whom the dealer has purchased goods.

8. **Content of the return and implementation:**

   Return shall be simplified also by reducing the content/information required to be filled in the return. The details of the design of the return form, business process and legal changes would be worked out by the law committee based on these principles. Government is keen to introduce the simplified return design at the earliest to reduce the compliance burden on the trade in keeping with the philosophy of ease of doing business.

TWO RECENT DECISIONS OF SUPREME COURT PROVIDING RELIEF TO TAXPAYERS

CA V. K. SUBRAMANI
Practicing Chartered Accountant

Decisions rendered by the Supreme Court become law of the land because of Article 141 of the Constitution of India. The decisions of the Supreme Court are binding on the tax department and all appellate authorities have to follow such decisions. However, occasionally the decision of the Supreme Court is also referred as deserving reconsideration by a larger Bench which is akin to observing the decision as not indicating the true purport of law. Example for this could be found in *Dilip N.Shroff v. Joint CIT (2007) 291 ITR 519 (SC)* referred to in *Union of India v. Dharmendra Textile Processors (2007) 295 ITR 244 (SC)* in page 251.

However, each of the apex court decision when it is applicable to the current provisions of law (i.e. a legal provision still in vogue), the tax counsels take a look at it with all reverence and treat it as, the law. Of course, it could be scuttled by the Legislature subsequently by bringing amendment to law either prospectively or retrospectively.

This write up discusses two recent decisions of Supreme Court which have practical relevance and application besides providing relief to the taxpayers.

CIT v. Mahindra & Mahindra Ltd (2018) 93 taxmann.com 32 (SC)

The decision of the apex court affirms the decision of the Bombay High Court reported in 261 ITR 501 in the year 2003. The assessee entered into an agreement whereby it took a loan for purchase of tools and equipments. After some years the lender waived the principal amount of loan of Rs. 57.74 lakhs.

The short question before the Apex Court was whether the amount written off / waived by the lender is chargeable to tax in the hands of the recipient-assessee. The argument of the Revenue was two-fold viz. (i) it is taxable under section 41(1); alternatively (ii) the waiver falls within the ambit of section 28(iv). One clear fact was that the amount was given previously as loan with interest and it was waived after some time. Prior to such write off it was shown as "loan-unsecured" in the balance sheet of the borrower-assessee.

Section 28(iv) provides for taxation of value of any benefit or perquisite, whether convertible in to money or not, arising from business or the exercise of profession.

Section 41(1) says any amount of loss or expenditure or trading liability incurred by the assessee and subsequently the assessee obtains some benefit in respect of such loss or expenditure or trading liability, by way of remission or cessation thereof, the amount of benefit so obtained shall be deemed to be the profits and gains of business or profession. This is regardless of whether the business is continued or existing at the time of receipt of such benefit or cessation or waiver.

Decision of the Apex Court

The Court held that to apply section 28(iv) the benefit must have been received in some other form other than in the shape of money. In this case, the assessee received waiver of Rs.57.74 lakhs which was received as cash receipt due to waiver of loan. The apex court held that the very first condition of section 28(iv) which says "any benefit or perquisite arising from the business shall be in the form of benefit or perquisite other than in the shape of money" and which is not satisfied in this case. Hence it held that the amount cannot be taxed under section 28(iv) of the Act.

As regards application of section 41(1), the apex court took note of legal provision and held that there should be an allowance or deduction claimed by the assessee for any year in respect of loss, expenditure or trading liability incurred and subsequently if the creditor remits or waives any such liability, the assessee is liable to pay tax under section 41 of the Act. The objective of the section is to ensure that **the assessee does not get away with double benefit once by way of deduction and another by not being taxed on the benefit received by him in the later year with reference to the deduction allowed earlier due to remission of such liability.**

The assessee in this case was paying interest but it was not claimed as deduction under section 36(1)(iii). The assessee had claimed only depreciation in respect of the asset and it has nothing to do with interest paid by it. The cost of machinery purchased by the assessee was not debited to trading account or profit and loss account in any of the years. It distinguished the difference between "trading liability" and "other liability". It held that section 41(1) is applicable only in respect of trading liability. Waiver of loan by the lender leads to cessation of liability other than trading liability. Accordingly, it held that the argument of the Revenue for taxing the waiver of loan taken for purchase of capital asset would not fall under section 41(1) of the Act.

This decision of the Apex Court would nullify the decision such as *CIT v. Ramaniyam Homes (P) Ltd (2016) 384 ITR 530 (Mad)* and uphold decisions such as *Logitronics (P) Ltd v. CIT (2011) 333 ITR 386 (Del); CIT v. Cochin Co (P) Ltd (1989) 184*

ITR 230 (Ker) and *CIT v. Chetan Chemicals (P) Ltd (2004) 267 ITR 770 (Guj)*.

CIT v Calcutta Export Company (2018) 93 taxmann.com 51 (SC)

This is yet another decision of the apex court which provides relief to the taxpayers. The assessee filed return of income for the assessment year 2005-06 declaring total income of Rs.418.18 lakhs. The case was selected for scrutiny and while completing the assessment, the Assessing Officer disallowed Rs.40.82 lakhs towards export commission which must have been deposited before the end of the previous year (as the law stood then). The amount of tax deducted at source was however remitted before the 'due date' for filing the return specified in section 139(1).

The Finance Act, 2008 extended the time for remittance of the tax deducted at source up to the due date for filing the return in the case of tax deducted in the last month of the previous year and any other case, on or before the last day of the previous year.

The apex court observed that the amendment was made with a purpose viz. ensure tax compliance. The intention of the legislature was not punish the assessee which is further reflected on reading of section 40(a)(ia). The expenditure which is not allowed gets shifted to the subsequent year in which the tax is deducted and remitted by the payer.

The Finance Act, 2008 thus classified in two categories viz. (i) those have deducted source during the last month of the previous year; and (ii) those who have deducted tax in the remaining 11 months of the previous year. In the case of former, the time limit was extended till the date of filing the return and for others before the end of the previous year.

The Finance Act, 2010 further relaxed the rigor of section 40(a)(ia) by providing the time limit for payment of the TDS amount up to the 'due date' for filing the return specified in section 139(1).

Reasoning and verdict:

1. The apex court had to decide whether the subsequent amendments which are curative in nature should be applied retrospectively i.e. from the date of insertion of the provisions of section 40(a)(ia) or be applicable from the date of enforcement.

2. The apex court went into the rationale of the introduction of disallowance of expenditure for non-deduction / remittance of amounts to the exchequer. It held that the purpose of the legal provision was to ensure compliance and not punish the taxpayer. It held that the legislature can and do experiment and intervene from time to time when it feels and notices that the existing provision cause unintended and excessive hardships to the citizens and the Subjects were put to great inconvenience and uncomfortable results.

3. It observed that obedience to law is mandatory and has to be enforced but the magnitude of punishment should not be disproportionate to what is required and necessary. The amendments made in the Finance Act, 2008 and Finance Act, 2010 were steps to mitigate the hardship caused to the taxpayers.

4. A proviso which is inserted to remedy unintended consequences and to make the provision workable must be read into the section to give the section a reasonable interpretation and requires to be treated as retrospective in operation so that a reasonable interpretation can be given to the section as of whole.

5. **It accordingly held that the amendment made by the Finance Act, 2010 by extending the time limit for remitting the TDS amount up to the 'due date' for filing the return specified in section 139(1) must be given retrospective operation. In effect, from the date of insertion of section 40(a)(ia).**

6. It adverted to its own precedence in the case of *Allied Motors (P) Ltd v. CIT (1997) 224 ITR 677 (SC)* where in the context of section 43B the amendment brought into remedy the unintended consequences and supply an obvious omission was held to be retrospectively applicable. Such rationale was followed in cases such as *Whirlpool of India Ltd v. CIT (2000) 245 ITR 3 (SC)*; *CIT v. Amrit Banaspati (2002) 255 ITR 117 (SC)* and *CIT v. Alom Enterprises (2009) 319 ITR 306 (SC)*.

7. Finally the Court held that the remittance of TDS amount by the assessee for the assessment year 2005-06 before the 'due date' for filing the return is not liable for disallowance as the subsequent amendment of law will have retrospective application.

Conclusion

The two apex court decisions referred above provide definite relief to the taxpayers.

- The waiver of loan is not chargeable to tax under section 41(1) nor under section 28(iv).However, readers may note that section 2(24) defining the term "income" w.e.f. 01.04.2016 includes assistance in the form of subsidy or grant or cash incentive or duty drawback or **waiver** or concession or reimbursement by the Central Government or State Government or any authority or body or agency in cash or kind to the assessee becomes chargeable to tax.

- The expression "waiver" needs to be kept in mind as the waiver of loan by the above mentioned viz. Central Government or State Government or any authority or body or agency could become income under section 2(24) in spite of the above said decision.

- The second proviso to section 40(a)(ia) inserted by the Finance Act, 2012 w.e.f. 01.04.2013 provides complete and lasting relief to the payers from disallowance if the payees have satisfied the conditions specified in the proviso to section 201(1). This amendment is also curative in nature and removes the hardship to the taxpayers. This amendment whether could be applied retrospectively right from the insertion of section 40(a)(ia) from the assessment year 2005-06 remains to be seen. If such interpretation is accepted by the CBDT, a Circular in this regard would provide great relief to the taxpayers besides saving in litigation cost.

FREQUENTLY ASKED QUESTIONS ON ADVANCE RULING

Q 1. What is the meaning of Advance Ruling?

Ans. As per section 95 of CGST/SGST Law and section 12 of UTGST law, 'advance ruling' means a decision provided by the authority or the Appellate Authority to an applicant on matters or on questions specified in section 97(2) or 100(1) of CGST/SGST Act as the case may be, in relation to the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant.

Q 2. Which are the questions for which advance ruling can be sought?

Ans. Advance Ruling can be sought for the following questions:

a) classification of any goods or services or both;
b) applicability of a notification issued under provisions of the GST Act(s);
c) determination of time and value of supply of goods or services or both;
d) admissibility of input tax credit of tax paid or deemed to have been paid;
e) determination of the liability to pay tax on any goods or services under the Act;
f) whether applicant i s required to be registered under the Act;
g) whether any particular thing done by the applicant with respect to any goods or services amounts to or results in a supply of goods or services, within the meaning of that term.

Q 3. What is the objective of having a mechanism of Advance Ruling?

Ans. The broad objective for setting up such an authority is to:

I. provide certainty in tax liability in advance in relation to an activity proposed to be undertaken by the applicant;
II. attract Foreign Direct Investment (FDI);
III. reduce litigation;
IV. pronounce ruling expeditiously in transparent and inexpensive manner.

Q 4. What will be the composition of Authority for advance rulings (AAR) under GST?

Ans. 'Authority for advance ruling' (AAR) shall comprise one member CGST and one member SGST/UTGST. They will be appointed by the Central and State government respectively.

Q 5. Is it necessary for a person seeking advance ruling to be registered?

Ans. No, any person registered under the GST Act(s) or desirous of obtaining registration can be an applicant. (Section 95(b)).

Q 6. At what time an application for advance ruling be made?

Ans. An applicant can apply for advance ruling even before taking up a transaction (proposed supply of goods or services) or in respect of a supply which is being undertaken. The only restriction is that the question being raised is already not pending or decided in any proceedings in the case of applicant.

Q 7. In how much time will the Authority for Advance Rulings have to pronounce its ruling?

Ans. As per Section 98(6) of CGST/SGST Act, the Authority shall pronounce its ruling in writing within ninety days from the date of receipt of application.

Q 8. What is the Appellate authority for advance ruling (AAAR)?

Ans. Appellate authority for advance ruling (AAAR), shall be constituted under the SGST Act or UTGST Act and such AAAR shall be deemed to be the Appellate Authority under the CGST Act in respect of the respective state or Union Territory. An applicant, or the jurisdictional officer, if aggrieved by any advance ruling, may appeal to the Appellate Authority.

Q 9. How many AAR and AAAR will be constituted under GST?

Ans. There will be one AAR and AAAR for each State.

Q 10. To whom will the Advance Ruling be applicable?

Ans. Section 103 provides that an advance ruling pronounced by AAR or AAAR shall be binding only on the applicant who sought it in respect of any matter referred to in 97 (2) and on the jurisdictional tax authority of the applicant. This clearly means that an advance ruling is not applicable to similarly placed taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Q 11. Whether the advance ruling have precedent value of a judgment of the High Court or the Supreme Court?

Ans. No, the advance ruling is binding only in respect of the matter referred. It has no precedent value. However, even for persons other than applicant, it does have persuasive value.

Q 12. What is the time period for applicability of Advance Ruling?

Ans. The law does not provide for a fixed time period for which the ruling shall apply. Instead, in section 1 0 3 (2), it is provided that advance ruling shall be binding till the period when the law, facts or circumstances supporting the original advance ruling have changed. Thus, a ruling shall

continue to be in force so long as the transaction continues and so long as there is no change in law, facts or circumstances.

Q 13. Can an advance ruling given be nullified?

Ans. Section 104(1) provides that an advance ruling shall be held to be ab initio void if the AAR or AAAR finds that the advance ruling was obtained by the applicant by fraud or suppression of material facts or misrepresentation of facts. In such a situation, all the provisions of the GST Act(s) shall apply to the applicant as if such advance ruling had never been made (but excluding the period when advance ruling was given and up to the period when the order declaring it to be void is issued). An order declaring advance ruling to be void can be passed only after hearing the applicant.

Q 14. What is the procedure for obtaining Advance Ruling?

Ans. Section 97 and 98 deals with procedure for obtaining advance ruling. Section 97 provides that the applicant desirous of obtaining advance ruling should make application to AAR in a prescribed form and manner. The format of the form and the detailed procedure for making application will be prescribed in the Rules.

Section 98 provides the procedure for dealing with the application for advance ruling. The AAR shall send a copy of application to the officer in whose jurisdiction the applicant falls and call for all relevant records. The AAR may then examine the application along with the records and may also hear the applicant. Thereafter AAR will pass an order either admitting or rejecting the application.

Q 15.Under what circumstances will the application for Advance Ruling be compulsorily rejected?

Ans. Application has to be rejected if the question raised in the application is already pending or decided in any proceedings in the case of applicant under any of the provisions of GST Act(s) If the application is rejected, it should be by way of a speaking order giving the reasons for rejection.

Q 16. What is the procedure to be followed by AAR once the application is admitted?

Ans. If the application is admitted, the AAR shall pronounce its ruling within ninety days of receipt of application. Before giving its ruling, it shall examine the application and any further material furnished by the applicant or by the concerned departmental officer.

Before giving the ruling, AAR must hear the applicant or his authorized representative as well as the jurisdictional officers of CGST/SGST/UTGST

Q 17. What happens if there is a difference of opinion amongst members of AAR?

Ans. If there is difference of opinion between the two members of AAR, they shall refer the point or points on which they differ to the AAAR for hearing the issue. If the members of AAAR are also unable to come to a common conclusion in regard to the point(s) referred to them by AAR, then it shall be deemed that no advance ruling can be given in respect of the question on which difference persists at the level of AAAR.

Q 18. What are the provisions for appeals against order of AAR?

Ans. The provisions of appeal before AAAR are dealt in section 100 and 101 of CGST/SGST Act or section 14 of the UTGST Act. If the applicantis aggrieved with the finding of the AAR, he can file an appeal with AAAR. Similarly, if the concerned or jurisdictional officer of CGST/SGST/UTGST does not agree with the finding of AAR, he can also file an appeal with AAAR. The word concerned officer of CGST/SGST means an officer who has been designated by the CGST/SGST administration in regard to an application for advance ruling. In normal circumstances, the concerned officer will be the officer in whose jurisdiction the applicant is located. In such cases the concerned officer will be the jurisdictional CGST/SGST officer.

Any appeal must be filed within thirty days from the receipt of the advance ruling. The appeal has to be in prescribed form and has to be verified in prescribed manner. This will be prescribed in the Model GST Rules. The Appellate Authority must pass an order after hearing the parties to the appeal within a period of ninety days of the filing of an appeal. If members of AAAR differ on any point referred to in appeal, it shall be deemed that no advance ruling is issued in respect of the question under appeal.

Q 19. Whether Appeal can be filed before High Court or Supreme Court against the ruling of Appellate Authority for Advance Rulings?

Ans The CGST /SGST Act do not provide for any appeal against the ruling of Appellate Authority for Advance Rulings. Thus no further appeals lie and the ruling shall be binding on the applicant as well as the jurisdictional officer in respect of applicant. However, Writ Jurisdiction may lie before Hon'ble High Court or the Supreme Court.

Q 20. Can the AAR & AAAR order for rectification of mistakes in the ruling?

Ans. Yes, AAR and AAAR h a v e p o w e r to amend their order to rectify any mistake apparent from the record within a period of six months from the date of the order. Such mistake may be noticed by the authority on its own accord or may be brought to its notice by the applicant or the concerned or the jurisdictional CGST/SGST officer. If a rectification has the effect of enhancing the tax liability or reducing the quantum of input tax credit, the applicant or the appellant must be heard before the order is passed. (Section 102)

Maharashtra AAR: Dug-up roads restoration by Municipal Authorities not 'sovereign' function; Reinstatement charges taxable*

AAR holds that reinstatement charges paid to Municipal authorities for restoring patches on street or pavement or road which have been dug-up by business entities such as the applicant, who is inter alia engaged in business of

generation, transmission and distribution of electricity, are liable to GST on reverse charge basis.

Rejects applicant's claim that such recovery of charges amounts to a service activity in relation to function entrusted to Municipality under Article 243W of Constitution and hence, exempt from GST.

Perusing Article 243W as well as definition of "Municipality" under the Constitution, AAR observes that function as entrusted in relation to 'Roads' is construction of roads for use by general public, and "The restoration work can be equated neither to construction work nor to maintenance work as suo-motu undertaken by the Municipal Authorities…".

In view thereof, AAR holds that GST would be applicable at 18% under residuary entry no. 35 of Notification No. 11/2017-Central Tax / State Tax (Rate). Also holds that access charges for right of way, in addition to reinstatement charges, are exigible to GST but abstains from determining whether it is composite supply by Municipal Authority absent complete details

On 27th GST council meeting, held on 4th May, 2018

It is proposed that there will be 2% GST concession (1% each act i.e. CGST & SGST) (where tax rate is 3% or more) on B2C supplies, if payment is made through cheque or digital mode, subject to celling of Rs 100/- per transaction.

Few Examples:

FAQ 1: Mr. A wants to purchase AC worth Rs 35,000/- plus 28% GST i.e. 9,800/-, what amount Mr. A will have to pay for this purchase if he use this AC in his home.

Solution: If Payment in cash: Rs 44,800/- but if payment is made through cheque or digital mode then 2% concession on GST will be allowed i.e. now he will have to pay Rs 44,100/- i.e. 35,000/- plus 26% GST, but one need not forgot celling limit of Rs. 100/-per transaction therefore in this case Mr. A must pay Rs. 44,700/- for AC.

FAQ 2: What happened to above transaction if Mr. A purchase AC for his proprietorship business?

Solution: in this case he must pay Rs 44,800/- whatever the mode of payment i.e. either in cash or online.

FAQ 3: Mr. B purchased unworked precious stone worth Rs. 2,00,000/- plus 0.25% GST i.e. Rs 500/- , what amount Mr. B will have to pay for this transaction if he purchased for personal use?

Solution: He must pay full amount i.e. Rs. 2,00,500/-, means without concession because rate of GST is less than 3% , which is basic requirement of availing concession.

FAQ 4: Mr. C purchased one pizza for Rs. 400/- plus 5% GST i.e. Rs. 20/-, what amount will he have to pay?

Solution: If payment made in cash then Rs. 420/- but if through online mode then Rs. 412 i.e. Rs 400/- plus 3%. This means Rs 8/- benefit will be there which is under celling limit of concession.

FAQ 5: How will pizza shop will create invoice in above case assuming there is online payment by Mr. C?

Solution: They will charge Rs 400/- plus 1.5% CGST and 1.5% SGST.

FAQ 6: Is there any concession if there is IGST involved?

Solution: Council clearly mention B to C sale, which means there will not be any scope of concession if sale is made interstate, because in most of the cases B To C sale attracts Place of supply which is generally place of seller.

Analysis why this concession is given:

There must be two parameters one is crystal clear that our officials want India as digital nation the another one is to provide benefits to end user who cannot take credit of their purchases and which leads extra burden on pocket of consumer, this 2% concession will reduce some amount of burden on the consumer.

Conclusion:

One must check all the aspects before allowing any concession i.e. mode of payment, nature of purchase, celling amount of concession and rate of GST on supply

Transgenders not Required to Submit supporting Documents to get PAN: Income Tax Dept

The Income Tax Department, on Thursday said that the transgenders need not submit any supporting documents specifying their gender to get PAN Card.

Supporting documents will not be needed in the filing of fresh application or for those wishing to change their sex in an existing card, the department said.

There is no requirement of depositing any supporting document for change of 'gender' to 'transgender' vide PAN Change request application made either through the portal of NSDL or portal of UTITSL.

Earlier, in view of representations from the transgender community, the CBDT had amended the Income-tax Rules,1962, in and Form number 49A and Form number 49AA, by providing option of transgender for individual applicants. Till now, PAN application forms only specified male and female categories.

"New PAN allotment and change request applications with gender as transgender is allowed without hassle. Also, there is no requirement of depositing any supporting document for change of gender to transgender," the department today said in an advisory.

PAN is a 10-digit unique alphanumeric number allotted by the I-T department to individuals and entities.

The Central Board of Direct Taxes (CBDT), in the notification issued in April, under sections 139A and 295 of the Income Tax Act, had specified the new application process for obtaining a PAN number by an individual.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

GOODS AND SERVICES TAX

CENTRAL TAX

Notification No. 22/2018 – Central Tax
Dated: 14.05.2018

Central Government decided to waive off the late fee payable on failure in furnishing the return in FORM GSTR-3B by the due date for each of the months from October, 2017 to April, 2018, for the class of registered persons whose declaration in FORM GST TRAN-1 was submitted but not filed on the common portal on or before the 27th day of December, 2017.

Provided that such registered persons have filed the declaration in FORM GST TRAN-1 on or before the 10th day of May, 2018 and the return in FORM GSTR-3B for each of such months, on or before the 31st day of May, 2018.

CUSTOMS

NON TARIFF

Notification No. 35/2018 - Customs (N.T.)
Dated: 03.05.2018

According to this Notification Central Board of Excise and Customs has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa, shall, with effect from 4th May 2018 be the rate mentioned in this Notification.

SCHEDULE-I

SL. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
1	Australian Dollar	51.10	49.35
2	Bahrain Dinar	182.60	171.05
3	Canadian Dollar	52.70	51.10
4	Chinese Yuan	10.65	10.30

For the entire table, please visit http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt35-2018.pdf

Notification No. 36/2018 - Customs (N.T.)
Dated: 11.05.2018

As per this Notification, the Central Government make the Bill of Entry Regulation, 2018. They shall apply to the import of goods through all customs stations where the Indian Customs Electronic Data Interchange System is in operation.

The authorised person shall enter the electronic integrated declaration and the supporting documents himself by affixing his digital signature and enter them on the Customs Automated System and he may also get the electronic integrated declaration made on the customs automated system along with the supporting documents by availing the services at the service centre.

For the detail Notification, please visit http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt36-2018.pdf

Notification No. 38/2018 - Customs (N.T.)
Dated: 11.05.2018

As per this Notification, the Central Government make regulations may be called the Sea Cargo Manifest and Transhipment Regulations, 2018.

These regulations shall come into force on 1st August, 2018.

Any person who is required to deliver arrival manifest or departure manifest shall apply to the jurisdictional Commissioner of Customs for registration in the Form- I.

An authorised sea carrier carrying imported goods, export goods or coastal goods, shall deliver the arrival manifest to the proper officer electronically: Provided that where it is not possible to deliver the arrival manifest electronically then the manifest shall be submitted manually in duplicate with the approval of the Commissioner of Customs.

For the detail Notification, please visit http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt38-2018_New.pdf

Notification No. 39/2018 - Customs (N.T.)
Dated: 11.05.2018

As per this Notification, the officers mentioned in column (2) of the table shall be the officers of Customs of the rank specified in the column (3) of the said Table, for the purpose of carrying out audit under section 99A of the Customs Act.

Sl. No.	Officers in Commissionerate of Customs (Audit)	Rank of Officer of Customs
(1)	(2)	(3)
1	Principal Commissioner or Commissioner	Principal Commissioner or Commissioner
2	Additional Commissioner	Additional Commissioner of Customs
3	Joint Commissioner	Joint Commissioner of Customs
4	Deputy Commissioner	Deputy Commissioner of Customs
5	Assistant Commissioner	Assistant Commissioner of Customs
6	Superintendent or Appraiser	Superintendent or Appraiser
7	Inspector or Examiner	Inspector or Examiner

Notification No. 40/2018 - Customs (N.T.)
Dated: 11.05.2018

The Central Board of Indirect Taxes and Customs hereby assigns the functions of the proper officer to the following officers mentioned in column (2) of the Table below, for the purposes of section 17 and section 28 of the said Customs Act.

Sl. No.	Designation of the officers
(1)	(2)
1	Principal Commissioners of Customs Audit or Commissioner of Customs Audit;
2	Additional Commissioners of Customs Audit or Joint Commissioners of Customs of Audit; and
3	Deputy Commissioners of Customs Audit or Assistant Commissioners of Customs of Audit.

Notification No. 41/2018 - Customs (N.T.)
Dated: 14.05.2018

As per this Notification, the Central Government make the Customs Brokers Licensing Regulations, 2018.

These regulations shall apply to, a Customs Broker who has been licensed and such other persons who have been employed or engaged by a licensed Customs Broker under these regulations or the Customs House Agents Licensing Regulations, 1984 or the Customs House Agents Licensing Regulations, 2004 or the Customs Brokers Licensing Regulations, 2013.

Every license granted or renewed under these regulations shall be deemed to have been granted or renewed in favour of the licensee, and no license shall be sold or otherwise transferred.

No person shall carry on business as a Customs Broker relating to the entry or departure of a conveyance or the import or export of goods including work relating to auditat any Customs Station unless such person holds a license granted under these regulations:

Provided that no license under these regulations shall be required by-
(a) an importer or exporter transacting any business at a Customs Station solely on his own account; (b) any employee of any person or a firm transacting business generally on behalf of such person or firm, and holding an identity card or a temporary pass issued by the Deputy Commissioner of Customs or Assistant Commissioner of Customs, as the case may be; and
(c) an agent employed for one or more vessels or aircrafts in order solely to enter or clear such vessels or aircrafts for work incidental to his employment as such agent.

For the detail Notification, please visit - http://www.cbec.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2018/cs-nt2018/csnt41-2018.pdf

ANTI DUMPING DUTY

Notification No.24/2018-Customs (ADD)
Dated: 07.05.2018

This Notification is regarding imposition of anti-dumping duty on imports of 'Jute Products' namely, Jute Yarn/Twine (multiple folded/cabled and single), Hessian fabric, and Jute sacking bags' originating in or exported from Bangladesh and Nepal.

The antidumping duty is imposed based on the following conclusion:

I. there is dumping of subject goods from the subject countries;
II. imports from subject countries are undercutting and suppressing the prices of the domestic industry;
III. performance of domestic industry has deteriorated in the terms of profitability return on investments and cash flow;
IV. injury to domestic industry has been caused by dumped imports;

Notification No.26/2018-Customs (ADD)
Dated: 14.05.2018

This Notification is regarding extension of levy of antidumping duty on imports of 'Peroxosulphates (Persulphate)' originating in or exported from China PR and imported to India. Unless revoked earlier, this duty shall remain in force upto and inclusive of the 14th day of May, 2019.

INCOME TAX

Notification No.21/2018
Dated: 04.05.2018

This Notification is regarding amendment in the Agreement between the Government of the Republic of India and the Government of the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at New Delhi on the 15th day of June 2006

The following amendment is done: "Article 26 - EXCHANGE OF INFORMATION

The competent authorities of the Contracting States shall exchange such information (including documents and certified copies thereof) as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement.

For detail, please visit - https://www.incometaxindia.gov.in/communications/notification/notification21_2018.pdf

Notification No.22/2018
Dated: 08.05.2018

The Central Government, having regard to the national interest, notifies the following foreign companies and agreement:

1. Abu Dhabi National Oil Company, ADNOC Marketing International Limited, and ADNOC Marketing International (India) RSC Limited, as the foreign companies; and
2. the Oil Storage and Management Agreement, dated the 25th of January, 2017, entered into by and between Indian Strategic Petroleum Reserves Limited and Abu Dhabi National Oil Company read with the Amended and Restated Oil Storage and Management Agreement, dated the 10th of February 2018, entered into by and between Indian Strategic Petroleum Reserves Limited, Abu Dhabi National Oil Company and ADNOC Marketing International (India) RSC Limited, as the agreements.

PRESS RELEASE

GOODS AND SERVICE TAX

04th May, 2018

PRESS RELEASE

PRESS NOTE IN RESPECT OF CHANGES IN GST RATE

[As per discussions in the 27th GST Council Meeting held on 4th May, 2018]

1. **Incentive to promote Digital Transactions:**
   a) Keeping in view the need to move towards a less cash economy, the Council has discussed in detail the proposal of a concession of 2% in GST rate [where the GST rate is 3% or more, 1% each from applicable CGST and SGST rates] on B2C supplies, for which payment is made through cheque or digital mode, subject to a ceiling of Rs. 100 per transaction, so as to incentivise promotion of digital payment.

   b) The council has recommended for setting up of a Group of Ministers from State Governments to look into the proposal and make recommendations, before the next Council meeting, keeping in mind the views expressed in GST Council.

2. **Imposition of Sugar Cess over and above 5% GST and reduction in GST rate on ethanol:**
   a) Keeping in view the record production of sugar in the current sugar season, and consequent depressed sugar prices and build-up of sugarcane arrears, the Council discussed the issue of imposition of sugar cess and reduction in GST rate on ethanol in great detail.
   b) The council has recommended for setting up of a Group of Ministers from State Governments to look into the proposal and make recommendations, within two weeks, keeping in mind the views expressed in GST Council in this regard.

04th May, 2018

CHANGE IN THE SHAREHOLDING PATTERN OF GSTN

The Goods and Services Tax Network - Special Purpose Vehicle (GSTN-SPV) was created as a private limited, not-for-profit company under Section 25 of the Companies Act, 1956 (Section 8 of the Companies Act, 2013) by Govt. of India on 28th March, 2013 with an objective to provide shared IT infrastructure and services to Centre and States Governments, tax payers and other stakeholders for implementation of Goods and Services Tax (GST) in the country.

Presently, the Central Government and State Government are holding 24.5% equity shares respectively and the remaining 51% are held by non-Governmental institutions and through various mechanisms, GSTN is under strategic control of government. Majority of the GST processes including registration, filing of returns, payment of taxes, processing of refunds is IT driven and GSTN is handling large-scale invoice level data of lakhs of business entities including data relating to exports and imports. Considering the nature of 'state' function performed by GSTN, Council felt that GSTN be converted into a fully owned government Company.

In view of the above, Council decided:

Acquisition of entire 51% of equity held by the Non-Governmental Institutions in GSTN amounting to Rs. 5.1 crore, equally by the Centre and the States governments and allow GSTN Board to initiate process for acquisition of equity held by the private Companies; and *GSTN Board shall be allowed to continue the existing staff at existing terms and conditions for the a period upto five years, and shall have the flexibility of hiring people through contract on the terms and conditions similar to those used by GSTN till now while hiring regular employees.*

The existing financial commitments given by Centre and States to GSTN to share the capital and O&M cost of the IT Systems shall continue.

04th May, 2018

RETURN SIMPLIFICATION

GST Council today (4th May, 2018) in its 27th meeting approved principles for filing of new return design based on the recommendations of the Group of Ministers on IT simplification. The key elements of the new return design are as follows –

i. **One monthly Return:** All taxpayers excluding a few exceptions like composition dealer shall file one monthly return. Return filing dates shall be staggered based on the turnover of the registered person to manage load on the IT system. Composition dealers and dealers having Nil transaction shall have facility to file quarterly return.

ii. **Unidirectional Flow of invoices**: There shall be unidirectional flow of invoices uploaded by the seller on anytime basis during the month which would be the valid document to avail input tax credit by the buyer. Buyer would also be able to continuously see the uploaded invoices during the month. There shall not be any need to upload the purchase invoices also. Invoices for B2B transaction shall need to use HSN at four digit level or more to achieve uniformity in the reporting system.

iii. **Simple Return design and easy IT interface:** The B2B dealers will have to fill invoice- wise details of the outward supply made by them, based on which the system will automatically calculate his tax liability. The input tax credit will be calculated automatically by the system based on invoices uploaded by his sellers. Taxpayer shall be also given

user friendly IT interface and offline IT tool to upload the invoices.

iv. **No automatic reversal of credit**: There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.

v. **Due process for recovery and reversal**: Recovery of tax or reversal of input tax credit shall be through a due process of issuing notice and order. The process would be online and automated to reduce the human interface.

vi. **Supplier side control:** Unloading of invoices by the seller to pass input tax credit who has defaulted in payment of tax above a threshold amount shall be blocked to control misuse of input tax credit facility. Similar safeguards would be built with regard to newly registered dealers also. Analytical tools would be used to identify such transactions at the earliest and prevent loss of revenue.

vii. **Transition:** There will be a three stage transition to the new system. Stage I shall be the present system of filing of return GSTR 3B and GSTR 1. GSTR 2 and GSTR 3 shall continue to remain suspended. Stage I will continue for a period not exceeding 6 months by which time new return software would be ready. In stage 2, the new return will have facility for invoice-wise data upload and also facility for claiming input tax credit on self declaration basis, as in case of GSTR 3B now.

During this stage 2, the dealer will be constantly fed with information about gap between credit available to them as per invoices uploaded by their sellers and the provisional credit being claimed by them. After 6 months of this phase 2, the facility of provisional credit will get withdrawn and input tax credit will only be limited to the invoices uploaded by the sellers from whom the dealer has purchased goods

2. Content of the return and implementation: Return shall be simplified also by reducing the content/information required to be filled in the return. The details of the design of the return form, business process and legal changes would be worked out by the law committee based on these principles. Government is keen to introduce the simplified return design at the earliest to reduce the compliance burden on the trade in keeping with the philosophy of ease of doing business.

04th May, 2018

ROLL OUT OF E-WAY BILL SYSTEM FOR INTRA-STATE MOVEMENT OF GOODS IN THE STATES OF ASSAM & RAJASTHAN

As per the decision of the GST Council, e-Way Bill system for inter-State movement of goods has been rolled out from 01st April, 2018. As on 13th May, 2018, e-Way Bill system for intra-State movement of goods has been rolled out in the States/ Union Territory of Andhra Pradesh, Arunachal Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Meghalaya, Nagaland, Sikkim, Telangana, Tripura, Uttarakhand, Uttar Pradesh and Puducherry. E-Way Bills are getting generated successfully and till 13th May, 2018 more than four crore and fifteen lakh e-Way Bills have been successfully generated which includes more than one crore e-Way Bills for intra-State movement of goods.

It is hereby informed that e-Way Bill system for intra-State movement of goods would be implemented in **Assam from 16th May, 2018 & Rajasthan from 20th May, 2018.**

With the roll-out of e-Way Bill system in these States/ Union Territory, it is expected that trade and industry will be further facilitated insofar as the transport of goods is concerned, thereby eventually paving the way for a nation-wide single e-Way Bill system. Trade and industry and transporters located in these States/ Union Territory may obtain registration/ enrolment on e-Way Bill portal namely https://www.ewaybillgst.gov.in at the earliest without waiting for the last date.

INCOME TAX

PRESS RELEASE

New Delhi, 7th May, 2018

CBDT NOTIFIES THE PROTOCOL AMENDING THE DOUBLE TAXATION AVOIDANCE AGREEMENT (DTAA) BETWEEN INDIA AND KUWAIT

A Protocol to amend the existing Double Taxation Avoidance Agreement (DTAA) between India and Kuwait signed on 15.06.2006 for the avoidance of double taxation and for the prevention of fiscal evasion with respect to taxes on income was signed on 15.01.2017. The said Protocol has entered into force on 26.03.2018 and is notified in Official Gazette on 04.05.2018.

The Protocol updates the provisions in the DTAA for exchange of information as per international standards. Further, the Protocol enables sharing of the information received from Kuwait for tax purposes with other law enforcement agencies with authorisation of the competent authority of Kuwait and vice versa.

JUDGEMENTS

INDIRECT TAX

E-Rickshaw tyres is liable to GST @ 18%

CEAT Limited vs. The Authority for Advance Ruling (Mumbai)

Case No.- GST-ARA-07/2017/B-10

Order Date:- 09.03.2018

Fact of the Case

1) In the present case the applicant is the producer of E-Rickshaw Tyres.
2) Before enactment of GST Act, as per Customs Tariff Act 1975 attracts Central Govt. sale tax at both 2.5% & 14%.The applicant raised the issue regarding ambiguity in the classification of the product. The question is raised which rate is applicable i.e 2.5% or 14%.

Decision of the Case

1) The Authority composing of two learned members distinguished between powered cycle rickshaw & E-Rickshaw.
2) E-Rickshaw is not Power Cycle Rickshaw because it does not have padel. It is a Motor Vehicle under Motor Vehicle Act.
3) The Authority noted that the product of the appellant is with electronic batteries & fully different from Power Cycle Rickshaw.
4) The Authority for Advance Ruling (AAR) Mumbai held that the Rickshaw Tyres is classified under Tariff heading 4011 & the rate of tax shall be @ 14% each in CGST & SGST.
5) So in the present case the applicable rate will be 14% for CGST & 14% for SGST in the case of appellant producing E-Rickshaw Tyres.

Increase in MRP of "India Gate Basmati Rice", not Anti-Profiteering

Sh. Kumar Gandharv vs. KRBL Limited

Case No.- 3/2018

Order Date -4.05.2018

Fact of the Case

1) Before implementation of GST there was no tax imposed upon "India Gate Basmati Rice". From September 2017 GST @5% has been imposed upon "India Gate Basmati Rice". Naturally the rate of tax has been increased from 0% to 5%.
2) NAA also notes that the purchase price of Paddy had increased in 2017 as compared to 2016.As a result the MRP of Basmati Rice is increased by 8% in MRP.

Decision of the Case

Based on the above two points .NAA finds no violation of section 171 of CGST Act by producer exporter of "India Gate Basmati Rice" and dismissed application alleged against above producer-exporter.

GST Registration Mandatory If a Person is liable to pay Tax under Reverse Charge Mechanism

Sonka Publications (India) Private Limited vs. The Authority For Advance Rulings (AAR), Delhi

Advance Ruling No.05/DAAR/2018

Dated:-06.04.2018

Fact of the Case

1) Sonka Publications (India) Private Limited is applicant here.The Applicant is engaged in the publication of Children's Books.
2) The book contains printed text as well as blank spaces for the children to manually copy the words into the blank spaces provided. The applicant claims that the books gives children a foundation in Hindi writing.
3) The First Question is whether the books published by the applicant are classifiable as 'Printed Books' falling under HSN 4901 or as children's 'Drawing Books' under HSN 4903 or as 'Exercise Books' under HSN 4820
4) The Second Question is whether persons engaged exclusively in the business of supplying goods or service or both not liable to tax or wholly exempt from tax are liable to register under GST or not.

Decision of the Case

1) The Authority comprising of Two Members observed that most of the pages are printed texts & only very few pages had printed questions given. So it held that presence of printed text does not affect their classification as exercise books.
6) The Authority found that Section 24 Central Goods and Services Tax, (CGST) 2017 requires a person liable to pay tax under reverse charge to register compulsorily. Reading Section 22,23 & 24 of the CGST Act together, the authority held that the applicant is required to take registration if it has GST liability under reverse charge mechanism.

Services provided by Entrance Coaching Centres liable to GST @ 18%

Simple Rajendra Shukla vs. The Authority for Advance Ruling (Mumbai)

Case No.- GST-ARA-06/2017/B-09

Order Date:- 09.03.2018

Fact of the Case

1) In the present Case Simple Rajendra Shukla is the applicant.
2) The applicant runs a private institution for providing the service of teaching to the students of

class XI & XII in science Stream for appearing in Joint Entrance Exam.

3) The applicant claims Nil Rate of tax for providing services by an educational institution to the student as per notification issued by Central Government.
4) The applicant argued that the word "Education" and "Institution" has not been defined in the GST Act.As per dictionary meaning Educational Institution means an organization formed to impart educational services.
5) He further contends that rendering of Educational Services falls under the chapter heading of 9992.

Decision of the Case

1) The Authority comprising of two learned Counsel found that the Private Institution does not have any specific curriculum & does not conduct any examination or award any qualification recognized by any law which would be covered in the above notification.
2) The activity of the appellant is not covered under by the specific definition provided for interpretation of exemption notification
7) It is decided that education service provided in the case is taxable @ 9% under CGST Act & @ 9% under SGST Act.

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GST Applicable on supply of Motor Vehicles as Scrap after its usage in Business

CMS Info Systems Limited vs. The Authority for Advance Ruling (Mumbai)

Case No.- GST-ARA-08/2017/B-11

Order Date:- 19.03.2018

Fact of the Case

1) The applicant has argued that permanent transfer or disposal of business assets is also treated as supply but such transfer or disposal will be deemed to be supply only where input tax credit has been availed on such assets.
2) In this case, there is a supply of cash vans, which are 'goods', for a consideration and the transaction is in the natural course of business. The transaction and the provisions are obvious.

Decision of the Case

1) Supply of such motor vehicles as scrap after its usage is an activity of 'supply' in the course or furtherance of business and such transaction would attract GST.
2) The applicant would also be entitled to the ITC on the purchase of the cash carry vans i.e motor vehicles used for transportation of goods.

DIRECT TAX

ITAT asks Google to pay Tax on Adwords Payments

M/s. Google India Private Limited vs. Income Tax Appellate Tribunal (ITAT Bangalore)

IT (TP) A No. 387/Bang/2017

Date of Pronouncement: - 11.05.2018

Fact of the Case

1) Google India was granted with the marketing and distribution rights of the Adwords programme to advertisers in India .This program enables advertisers to provide a relevant keyword. When this term is searched on the Google search engine, the ad also gets displayed. The advertiser pays if the surfers click on their ads.
2) Before the Tribunal, the Company contended that as the reseller of ad space, it only performs market-related activities to promote ad space sales. No rights in the intellectual property are transferred to it by Google Ireland.
3) Rejecting the above contentions, the Tribunal held that the advertising module works only with the help of various patented tools and software.

Decision of the Case

1) The bench held that "the agreement between the assessee and GIL is not only in the nature of providing the space for advertisement and display the advertisement to the consumers. If we look into the advertisement module of the AdWord Program, we will come to an irresistible conclusion that it is not merely an agreement to provide advertisement space but it is an agreement for facilitating the display and publishing of an advertisement to the targeted customers.
2) The ITAT has held that payments aggregating to Rs 1,457 crore made by Google India to Google Ireland between 2007-08 and 2012-13 are taxable as royalty.
3) The Bench held that the payments relating to Adwords made by the Company to its parent firm Google Ireland is subject to TDS provisions in India as the same constitute 'royalty' under the Income Tax Act as well as the Double Tax Avoidance Treaty (DTAA) between India and Ireland.

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Life Time Tax on Vehicles should be levied on Invoice Price: (Hyderabad HC)

Car Purchaser vs. Income Tax Department

Writ Petition No. – 5286 of 2018

Date: - 02.05.2018

Fact of the Case

1) In the instant case, an advocate had bought a Volvo XC 60 D5 model car of Rs. 51,000 in excess towards life tax for registering his vehicle. He paid the amount under protest.
2) In a writ petition filed before the High Court, the Counsel for the petitioner argued that a Circular Memo issued by the Road Transport Authority

(RTA) stated life tax is to be collected from a vehicle produced for registration upon the sale based on the net invoice price of the vehicle.

3) The Ex-Showroom price of the vehicle was Rs.55,90,000. The Sale invoice issued to the petitioner by the Dealer after giving a discount of Rs.3 Lacs was Rs.52,90,000.
4) The Counsel further argued that the RTA had illegally levied life tax on the ex-showroom price. He submitted that the demand of excess amount of Rs. 51,000/- paid by petitioner was under coercion/economic duress since the petitioner had to get the vehicle registered within 15 days of reserving the number. He contended that the action of respondents in insisting that the petitioner to pay life tax on ex-showroom price and not on the net invoice price is illegal and arbitrary and violates Articles 14 and 300-A of the Constitution of India, and that the petitioner is entitled to seek refund of the same.
5) The Counsel for the Revenue argued that the discount offered by the dealer to the petitioner was not mentioned in the invoice and that the petitioner paid lesser amount of tax on the discounted invoice price and he ought to have paid life tax on the ex-showroom price.
6) According to him, this amounts to under-invoicing and is not to be permitted.

Decision of the Case

1) The Bench observed that the life tax on vehicles is levied under the A.P. Motor Vehicles Taxation Act, 1963 and that Section 3 of the Act states that the State Government, by a notification, directs that a tax to be levied on every motor vehicle used or kept for use, in a public place in the State.
2) The Judge also noted that the Sixth Schedule to the Act which provides rates of taxation of new vehicles clearly state that the life tax is to be calculated on the cost of the vehicle. He observed that there was no law prohibiting a dealer from giving discounts to their customers and that such practice cannot be said to be unethical or immoral.
3) Allowing the Writ Petition, the Court directed the respondents to refund the excess amount collected from the petitioner within 4 weeks from the date of the order.
4) Finally it was held that the Life Time Tax charged on a vehicle should be levied on the actual cost of the vehicle i.e. the invoice price and not on the ex-showroom price.

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Treatment of Tax-Free Income on Investment
Lally Motors India (P) Ltd. vs. The Principal Commissioner of Income Tax
Case No. - ITA No. 218(Asr)/2017
Date of Pronouncement: - 12.04.2018

Fact of the Case

1) In the present Case Lally Motors India (P) Ltd. is the appellant.
2) The Assessee invests in share of Goutam Iron Mills Pvt Ltd. at Rs. 3.02 Crore. But the assessee had not earned any income by way of dividend to the said shares.
3) The A.O completed the assessment accepting the assessee's contention.
4) Later on the Learned Principal Commissioner of Income Tax subsequently observed the following:-
   a) The Assessee invested in shares from borrowed capital.
   b) Administrative expenditure of Rs. 2.36 crore had been incurred by the assessee & debited to P/L A/C
   c) The borrowed funds of the assessee as on 310.03.2012 is roughly Rs. 11 crores on which interest of Rs. 3.59 crores has been debited in the P/L A/C.
5) Based on the above observations the learned Principal Commissioner of I.T contended that expenditure incurred for investment purpose not acceptable as allowable expenditure. So, the order passed by A.O has been set aside the assessment.

Decision of the Case

1) In view of the I.T Commissioner, The Income Tax Officer is not only an adjudicator but also an investigator. he cannot remain passive in the face of the return which is apparently in order but calls for further enquiry. It is his duty to ascertain the truth of the facts stated in the return.
2) As per section 14A, expenditute incurred by tax payer in relation to income which does not form part of total income at all as per provisions of the Act should not be allowed as deduction while computing total income of taxpayer.
3) As a result the assessee's appeal was dismissed.

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TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
20th May, 2018	GSTR 3B for April, 2018
20th May, 2018	GSTR 5, for the month of April, 2018 (for Non Resident taxable person)
20th May, 2018	GSTR 5A, for the month of April, 2018 (for OIDAR)
31st May, 2018	GSTR 1 for the month of April, 2018 (for persons with Turnover above 1.5 Crore)
31st May, 2018	GSTR 6 (Input Service Distributor) for the months of July, 2017 to April, 2018
10th June, 2018	GSTR 1 for the month of May, 2018 (for persons with Turnover above 1.5 Crore)
20th June, 2018	GSTR 3B for May, 2018
20th June, 2018	GSTR 5, for the month of May, 2018 (for Non Resident taxable person)
20th June, 2018	GSTR 5A, for the month of May, 2018 (for OIDAR)
30th June, 2018	GST TRAN-2

DIRECT TAX CALENDAR - MAY, 2018

07.05.2018:

→ Due date for deposit of Tax deducted/collected for the month of April, 2018. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

15.05.2018:

→ Due date for issue of TDS Certificate for tax deducted under Section 194-IA & Section 194-IBin the month of March, 2018

→ Due date for furnishing of Form 24G by an office of the Government where TDS for the month of April, 2018 has been paid without the production of a challan

→ Quarterly statement of TCS deposited for the quarter ending March 31, 2018

30.05.2018:

→ Submission of a statement (in Form No. 49C) by non-resident having a liaison office in India for the financial year 2017-18

→ Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA and Section 194-IB in the month of April, 2018

31.05.2018:

→ Quarterly statement of TDS deposited for the quarter ending March 31, 2018.

→ Return of tax deduction from contributions paid by the trustees of an approved superannuation fund.

→ Due date for furnishing of statement of financial transaction (in Form No. 61A) as required to be furnished under sub-section (1) of section 285BA of the Act respect of a financial year 2017-18.

→ Due date for e-filing of annual statement of reportable accounts as required to be furnished under section 285BA (1) (k) (in Form No. 61B) for calendar year 2017 by reporting financial institutions.

DIRECT TAX CALENDAR - JUNE, 2018

07.06.2018:

→ Due date for deposit of Tax deducted/collected for the month of May, 2018. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan

14.06.2018:

→ Due date for issue of TDS Certificate for tax deducted under Section 194-IA & section 194-I Bin the month of April, 2018

15.06.2018:

→ Due date for furnishing of Form 24G by an office of the Government where TDS for the month of May, 2018 has been paid without the production of a challan

→ Quarterly TDS certificates (in respect of tax deducted for payments other than salary) for the quarter ending March 31, 2018

→ First instalment of advance tax for the assessment year 2019-20

→ Certificate of tax deducted at source to employees in respect of salary paid and tax

29.06.2018:

→ Due date for issue of TDS Certificate for tax deducted under Section 194-IA & section 194-IBin the month of April, 2018Due date for e-filing of a statement (in Form No. 3CEK) by an eligible investment fund under section 9A in respect of its activities in financial year 2017-18.

30.06.2018:

→ Due date for furnishing of challan-cum-statement in respect of tax deducted under Section 194-IA & Section 194-IB in the month of May, 2018

→ Return in respect of securities transaction tax for the financial year 2017-18

→ Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending March 31, 2018

→ Statement to be furnished (in Form No. 64C) by Alternative Investment Fund (AIF) to units holders in respect of income distributed during the previous year 2017-18

→ Report by an approved institution/public sector company under Section 35AC(4)/(5) for the year ending March 31, 2018

→ Due date for furnishing of statement of income distributed by business trust to its unit holders during the financial year 2017-18. This statement is required to be furnished to the unit holders in form No. 64B [As prescribed under Rule 12CA inserted by the Income-tax (First Amendment) Rules, 2015, w.e.f. 19-1-2015.]

WEBINAR CALENDAR FROM 16th – 31st MAY, 2018

Sl. No	Date	Time	Topic of the Webinar	Name of the Faculty
1.	22.05.2018 (Tuesday)	4:00 - 5:00 PM	Advance Ruling in GST	CMA B Mallikarjuna Gupta
2.	31.05.2018 (Thursday)	4:00 - 5:00 PM	Refunds against Exports under GST	CMA Anil Sharma

Please note: One CEP hour awarded for attending each webinar

GST CERTIFICATE COURSE

Course Eligibility

- **Qualified Cost & Management Accountants**
- **Other Professionals (CS,CA, MBA, M.Com, Engineers, Lawyers, etc)**
- **Executives from Industries**
- **GST Practitioners**
- **Students who are either CMA qualified or final pursuing**

Course Duration, Fees, Examination and other Modalities

Details	Classroom Learning/Offline Mode	Online Classes
Course Duration	72 hours (to be conducted on Quarterly basis)	72 Hours
Classes	Class room sessions on Saturday - 2 Hrs & Sunday - 4 Hrs	Internet Connection is required and classes can be attended from your place.
Assessment	Online mode (Assessment to be conducted in the last week of the following month of every quarter)	Online mode (Assessment to be conducted in the last week of the following month of every quarter)
Course Fee	Rs. 10,000 + GST *	Rs. 10,000 + GST *
Examination Fee	Rs. 1,000 + GST	Rs. 1,000 + GST
Award of Certificate	Candidates with at least 70% attendance in the classes and also passing the online examination with at least 50% Marks will be awarded a Certificate by the Institute	Candidates with at least 70% attendance in the classes and also passing the online examination with at least 50% Marks will be awarded a Certificate by the Institute
Date of Registration	23.04.2018 – 31.05.2018	23.04.2018 – 31.05.2018
Study Materials & Model Question Bank to be provided to all participants. Experienced faculties from Industry and practice.		

Places

Locations	Classroom Learning	Online Classes
North	✓ Delhi ✓ Faridabad ✓ Gurgaon ✓ Udaipur ✓ Noida ✓ Chandigarh ✓ Jammu ✓ Jaipur ✓ Lucknow ✓ Dehradun	**From anywhere in India**
South	✓ Hyderabad ✓ Chennai ✓ Cochin ✓ Visakhapatnam ✓ Vijayawada ✓ Mysore ✓ Bangalore ✓ Thiruvananthapuram ✓ Hyderabad ✓ Madurai ✓ Coimbator	**From anywhere in India**

East	✓ Kolkata ✓ Durgapur ✓ Asansol ✓ Berhampur ✓ Rourkela ✓ Patna ✓ Ranchi ✓ Bhubaneswar ✓ Agartala ✓ Guwahati	**From anywhere in India**
West	✓ Mumbai ✓ Pune ✓ Navi Mumbai ✓ Surat ✓ Nagpur ✓ Nasik ✓ Raipur ✓ Bhopal ✓ Ahmedabad ✓ Panaji ✓ Vapi	**From anywhere in India**

** For Commencement of Classroom learning minimum batch size has to be reached.*

* Other Criteria

- Minimum batch size: 20; Maximum 40; - Per Location for Classroom Session
- Classroom Batches will be started subject to fulfilling the minimum batch size
- **20% discount for the Members and Students of the Institute**
- Special Discount for Corporates:-

  - **If Number of employees registered for the course are between 5 to 10 - 15%**
  - **If Number of employees registered for the course are more than 10 - 20%**

Course Contents

1. Constitutional Background of GST, Concepts of GST & Definitions in GST.
2. Taxable Event, Time of Supply and Place of Supply, Composite & Mixed Supply, Non Taxable Supply, Exempt Supply, Works Contract, Exempted Supply.
3. Classification, HSN, SAC
4. Valuation under GST, Valuation rule
5. Input Tax Credit
6. Basic Procedures - Registration, Invoice, Bill of supply, E way Bills etc.
7. Records and Returns
8. Zero Rated Supplies, Imports and Exports
9. Payment and Refunds
10. Assessment
11. Audit
12. Demands
13. Adjudication and appeal
14. Penalties and Prosecutions
15. Advance Ruling
16. Job Work
17. Anti profiteering
18. Miscellaneous Provisions
19. Case studies on specific Chapters involving real life scenarios

Special Crash Course for the Corporates - For details contact: *trd@icmai.in*

TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Train the trainers' program - capacity building of the practicing members of the Institute and others on PAN India basis to equip them on Registration, record maintenance, Filing of different returns and other matters.

2. Carry out webinars for the Capacity Building of Members of the Institute - Trainers in the locality to facilitate the traders/ registered dealers on various practical aspects.

3. Conducting Seminars in association with the Trade associations/ Traders/ Chambers of Commerce at different locations on practical issues/aspects associated with GST.

4. Conducting workshop on industry specific issues with Chambers of Commerce, CREDAI, Jewellers Association, Hotel and Restaurant Association, Bankers' Association and other agencies to resolve their issues instantly.

5. Forwarding suggestions and issues on GST to the Government after getting feedback from various stake holders.

6. Extending Certificate Course on GST for corporate and Trade Bodies.

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Ph: 091-11-24666100

Behind every successful business decision, there is always a CMA