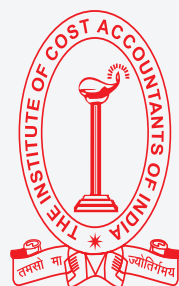


FEBRUARY, 2019

TAX Bulletin



VOLUME - 34



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)

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Objectives of Taxation Committee:

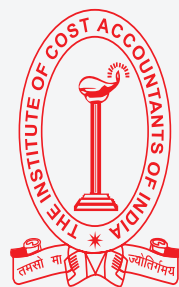
1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
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5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stakeholders.

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FROM THE DESK OF THE CHAIRMAN

Namaskar and Best wishes.

It has been an eventful fortnight at the Tax Research Department. The activities conducted may be enumerated as below:

Webinars:

- On 12.02.2019 - Advance Rulings under GST: Procedure & Important case Laws. (Emerging opportunities for CMAs & benefits for Industry) by CMA Navneet Kumar Jain
- On 14.02.2019 - Budget 2019 highlights under Income Tax Act 1961 by CMA Vishwanath Bhatt

Publications:

- Compilation of Notification & Circulars-1st July 2017 to 31st January 2019(Third Edition)
- Impact of GST on MSME (2nd Edition)

Course Launch:

- Advanced GST Certificate Course has commenced in the 1st week of February 2019
- 3rd batch of Certificate Course on GST is on the verge of completion
- Certificate Course on Return Filing & Filling and Certificate Course on TDS will commence very soon.

I am hopeful that these continuous and rigorous efforts of Team – Tax Research under the able guidance of the committed Resource Persons will bring in commendable amount of success in near future. I wish them all the luck.

Thank You.

A handwritten signature in blue ink, appearing to read 'Niranjana Mishra'.

CMA Niranjana Mishra
Chairman - Taxation Committee
18th February 2019

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SPECIAL ACKNOWLEDGEMENT

Mr. Dipayan Roy Chaudhuri	-	Graphics & Web Designer
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Articles on the Topics of Direct and Indirect Taxation are invited from readers and authors. Along with the article please share a recent passport-sized photograph, a brief profile and the contact details. The articles should be the author's own original.

Please send the articles to

trd@icmai.in / trd.ad1@icmai.in



SECTION WISE ANALYSIS OF THE CENTRAL GOODS AND SERVICES TAX (AMENDMENT) ACT, 2018 AND THE INTEGRATED GOODS AND SERVICES TAX (AMENDMENT) ACT, 2018

CMA SUSANTA KUMAR SAHA
GST Consultant

Background:

- Law Review Committee (LRC) was constituted after the 22nd meeting of GST Council held on 06.10.2017.
- LRC submitted its first draft report on 04.01.2018 and final report on 11.07.2018.
- GST Policy Wing submitted analysed various representations received and prepared a broadsheet containing the proposals for amending the law.
- Consolidated proposals for law amendment as finalised by Law Committee (LC) and LRC were discussed in the officers' meeting before the 25th meeting of GST Council held on 18.01.2018 and in-principle approval accorded by the GST Council.
- Four joint meetings of the LC & LRC were held to finalize the proposals & draft formulations.
- Draft proposals that were agreed upon after the said four meetings were further discussed by the LC on 06.07.2018.
- Finalized proposals for amending the law were collated in the broadsheet containing a total of 46 proposals for amending, details as follows:



- Broadsheet containing the 46 proposals was placed in the public domain (<https://www.mygov.in/>), for inviting comments from the trade and public.
- Approval of GST Council was sought in its 28th meeting for the following:
 - Amending the CGST Act, 2017, IGST Act, 2017, UTGST Act, 2017 and GST (Compensation to States) Act, 2017;
 - Placing the requisite law amendment Bills before the Parliament and the respective State/Union territory legislatures.
- The Bills were passed by Lok Sabha on the 10th April, 2017 and transmitted to Rajya Sabha for its concurrence. **Rajya Sabha passed the Bill with amendments** at its sitting held on **6th August, 2018** and returned it to Lok Sabha on 7th August, 2018. **Lok Sabha passed the Bill on 9th August, 2018**. The CGST (Amendment) Act, 2018 and The IGST (Amendment) Act, 2018, both the Acts, received the **assent** of the **President** on the **29th August, 2018**.
- Government of India, Ministry of Finance, Department of Revenue, vide **Notification No. 02/2019 – Central Tax** dated **29th January, 2019** hereby **appointed** the **1st day of February, 2019, as the date** on which the **provisions** of the **Central Goods and Services Tax (Amendment) Act, 2018** (31 of 2018), **except** clause (b) of section 8, section 17, section 18,

clause (a) of section 20, sub-clause (i) of clause (b) and sub-clause (i) of clause (c) of section 28, **shall come into force.**

- Similarly, Government of India, Ministry of Finance, Department of Revenue, vide **Notification No. 01/2019 – Integrated Tax dated 29th January, 2019** hereby **appointed the 1st day of February, 2019 as the date** on which the **provisions of the Integrated Goods and Services Tax (Amendment) Act, 2018 (32 of 2018), shall come into force.**

Definitions
Sl. No. 1 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause : section 2(4) of the CGST Act, 2017
As per CGST (Amendment) Act, 2018 (a) in clause (4),— (i) for the words “Central Board of Excise and Customs”, the words “Central Board of Indirect Taxes and Customs” shall be substituted ; (ii) for the words “the Appellate Authority and the Appellate Tribunal”, the words, brackets and figures “the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171” shall be substituted
CGST Act, 2017 (as amended) (a) in clause (4),— (i) for the words “ Central Board of Excise and Customs ”, the words “Central Board of Indirect Taxes and Customs” shall be substituted ; (ii) for the words “ the Appellate Authority and the Appellate Tribunal ”, the words, brackets and figures “the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171” shall be substituted
Observation: <i>This is in pursuance of the change in name of the Central Board of Excise and Customs to the Central Board of Indirect Taxes and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963). Further, the National Anti- Profiteering Authority constituted by the Central Government under section 171 of the CGST Act is also required to be excluded from the definition of ‘adjudicating authority’.</i>

Definitions
Sl. No. 2 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause : section 2(17)(h) of the CGST Act, 2017
As per CGST (Amendment) Act, 2018 (b) in clause (17), for sub-clause (h), the following sub-clause shall be substituted , namely: - “(h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and”;
CGST Act, 2017 (as amended) (h) services provided by a race club by way of totalisator or a licence to book maker in such club; and activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and”;
Observation: <i>Changes are being made to ensure that all activities related to a race club are included. The term “services” in this clause leads to ambiguity, as actionable claims have been defined as ‘goods’ in the CGST Act.</i>

Definitions
Sl. No. 3 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause : section 2(35) of the CGST Act, 2017
As per CGST (Amendment) Act, 2018 (d) in clause (35), for the word, brackets and letter “clause (c)”, the word, brackets and letter “clause (b)” shall be substituted ;
CGST Act, 2017 (as amended) (1) (35) “cost accountant” means a cost accountant as defined in clause (e) clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;
Observation: <i>Section 2(1) (b) of Cost and Works Accountants Act, 1959 stipulates that:</i>

(b) "cost accountant" means a person who is a member of the Institute;
(c) "Council" means the Council of the Institute;
Thus an inadvertent drafting error has been corrected.

Definitions

Sl. No. 4 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 2(18) of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

Clause (18) shall be omitted

CGST Act, 2017 (as amended):

~~(2) "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.~~

~~Explanation.—For the purposes of this clause, factors that should be considered in determining whether goods or services are related include—~~

~~(a) the nature of the goods or services~~

~~(b) the nature of the production processes;~~

~~(c) the type or class of customers for the goods or services;~~

~~(d) the methods used to distribute the goods or supply of services; and~~

~~(e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;~~

Observation:

- i. **Omission of 'business vertical'** was **not recommended** by the **GST Council** in its 28th meeting.
- ii. Concept of business vertical has been omitted, section 25 has been amended so that multiple business places in a State or Union Territory may be granted a separate registration for each such place of business.

Definitions

Sl. No. 5 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 2(69) of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In sub-clause (f), after the word and figures "article 371", the words, figures and letter "and article 371J" shall be **inserted**;

CGST Act, 2017 (as amended):

(69) "local authority" means—

(a)

(b)

(f) a Development Board constituted under article 371 **and article 371J** of the Constitution; or

Observation:

Article 371J of the Constitution grants special status to 6 backward districts of Karnataka-Hyderabad region. Under this article, the President is empowered to establish a separate Board to ensure equitable distribution of funds in the State's budget to meet the developmental needs of the region. It is being added now based on the request received from the State of Karnataka.

Definitions

Sl. No. 6 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 2(102) of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

the following *Explanation* shall be inserted, namely:—

'Explanation. – For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;'

CGST Act, 2017 (as amended):

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;

Observation:

Although '**securities**' has been **excluded** from the definition of 'goods' and 'services' in the CGST Act, **facilitating or arranging transactions in securities is liable to GST**. This has been clarified recently through a detailed FAQ on Banking and Insurance wherein it has been **clarified** that if some **service charges or service fees or documentation fees or broking charges or such like fees or charges** are charged in relation to transactions in securities, the same would be a consideration for provision of service and chargeable to GST.

Thus an "Explanation" was inserted in accordance with the recommendation of GST Council in order to remove any doubts.

Supply

Sl. No. 7 (has been made effective from 1st July, 2017, i.e, retrospective effect)

Section/Sub-section/ Clause: section 7 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 7 of the principal Act, with effect from the **1st day of July, 2017**,—

(a) in sub-section (1), —

- (i) in clause (b), after the words "or furtherance of business;", the word "and" shall be **inserted** and shall always be deemed to have been inserted;
- (ii) in clause (c), after the words "a consideration", the word "and" shall be **omitted** and shall always be deemed to have been omitted;
- (iii) clause (d) shall be **omitted** and shall always be deemed to have been omitted;

(b) after sub-section (1), the following sub-section shall be **inserted** and shall always be deemed to have been inserted, namely: -

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

(c) in sub-section (3), for the words, brackets and figures "sub-sections (1) and (2)", the words, brackets, figures and letter "sub-sections (1), (1A) and (2)" shall be **substituted**.

CGST Act, 2017 (as amended)

1. For the purposes of this Act, the expression "supply" includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business; **and**
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; **and**
- (d) ~~the activities to be treated as supply of goods or supply of services as referred to in Schedule II.~~

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

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

- (a) activities or transactions specified in Schedule III; or
- (b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

3. Subject to the provisions of ~~sub-sections (1) and (2)~~ **sub-sections (1), (1A) and (2)**, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

- (a) a supply of goods and not as a supply of services; or
- (b) supply of services and not as a supply of goods.

Observation:

i. Classification of certain specified activities or transactions (which qualify as a supply under the CGST Act) either as supply of goods or supply of services is supposed to be done in Schedule II, i.e, **it has to be construed as 'supply' first**.

ii. However, it was observed that **clause (d) being part of the sub-section defining the term 'supply' leads to a situation where an activity listed in Schedule II would be deemed to be a supply even if it does not constitute a supply as per clauses (a), (b) and (c) of sub-section**

- (1).
- iii. Hence, it was proposed to *insert a new sub-section (1A) in section 7 and omit clause (d) of sub-section (1).*

Levy and Collection

Sl. No. 8 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 9 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 9 of the principal Act, for sub-section (4), the following sub-section shall be **substituted**, namely:—

“(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”

CGST Act, 2017 (as amended):

~~The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.~~

The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

Observation:

- i. Section 9 (4), which mandates that all registered persons shall pay the tax on reverse charge basis on purchases made from unregistered persons, was under suspension. Omission of this sub-section may be construed as a trade friendly measure.
- ii. GST Council proposed and passed to take an enabling power for the **Government to notify a class of registered persons who would be liable to pay tax on reverse charge basis in case of receipt of goods from an unregistered supplier.**
- iii. It is worth mentioning here that Government of India, Ministry of Finance, Department of Revenue, vide Notification No. 01/2019 – Central Tax (Rate) dated 29th January, 2019 has **rescinded Notification No. 8/2017 – Central Tax (Rate) dated 28th June, 2017 with effect from 1st February, 2019.**

Composition levy

Sl. No: 8 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 10 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 10 of the principal Act, -

(a) In sub-section (1) –

(i) for the words “in lieu of the tax payable by him, an amount calculated at such rate”, the words, brackets and figures “in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate” shall be **substituted**;

(ii) in the proviso, for the words “one crore rupees”, the words “one crore and fifty lakh rupees” shall be **substituted**;

(iii) after the proviso, the following proviso shall be **inserted**, namely:—

“Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.”;

in sub-section (2), for clause (a), the following clause shall be **substituted**, namely:—

“(a) save as provided in sub-section (1), he is not engaged in the supply of services;”

CGST Act, 2017 (as amended):

Section 10: Composition levy

1. Notwithstanding anything to the contrary contained in this Act but subject to the provisions of

sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees may opt to pay, ~~in lieu of the tax payable by him, an amount calculated at such rate~~ in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding,—

(a) One per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,

(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and

(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding ~~one crore rupees~~ one crore and fifty lakh rupees, as may be recommended by the Council.

Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.

2. The registered person shall be eligible to opt under sub-section (1), if:—

(a) ~~he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;~~ save as provided in sub-section (1), he is not engaged in the supply of services;

Observation:

The amendments seek to remove any interpretational ambiguity to state that the composition tax payers shall, in lieu of the tax payable on the invoice value of the transactions under section 9(1) (applicable to regular taxpayers), pay tax as a percentage of their turnover.

The **limit is being raised from Rs. 1 crore to Rs. 1.5 crore** as a measure of trade facilitation, as already recommended by the GST Council.

At present, registered persons engaged in the supply of services (other than restaurant services) are not eligible for composition scheme. As a result, manufacturers and traders supplying services are unable to opt for the scheme even if its percentage is very small as compared to the supplies of goods. With a view to enable these taxpayers to avail of the benefit of composition scheme, a new proviso is being added in order to allow them to be eligible for the scheme even **if they supply services of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or Rs. 5 lakhs, whichever is higher.**

This is a taxpayer-friendly measure with a believe that small taxpayers would immensely benefit from this amendment.

Time and supply of goods

Sl. No: 9 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 12 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 12 of the principal Act, in sub-section (2), in clause (a), the words, brackets and figure "sub-section (1) of" shall be **omitted**.

CGST Act, 2017 (as amended):

Section 12: Time of supply of goods

1.....

2. The time of supply of goods shall be the earlier of the following dates, namely:—

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

Observation:

The amendment seeks to correct a drafting error in the earlier law, as the issuance of invoice/other documents are also contained in other sub-sections of section 31.

Time of supply of services

Sl. No: 10 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 13 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 13 of the principal Act, in sub-section (2), the words, brackets and figure "sub-section (2) of" occurring at both the places, shall be **omitted**.

CGST Act, 2017 (as amended):

Section 13: Time of supply of services

1.....

2. The time of supply of services shall be the earliest of the following dates, namely:—

- (a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under ~~sub-section (2) of~~ section 31 or the date of receipt of payment, whichever is earlier; or
(b) the date of provision of service, if the invoice is not issued within the period prescribed under ~~sub-section (2) of~~ section 31 or the date of receipt of payment, whichever is earlier; or

Observation:

The amendment seeks to correct a drafting error as the provisions for issuance of invoices/other documents are also contained in other sub-sections of section 31.

Eligibility and conditions for taking input tax credit

Sl. No: 11 (has been made effective from 1st February, 2019 except for clause (c))

Section/Sub-section/ Clause: section 16 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 16 of the principal Act, in sub-section (2),—

(a) in clause (b), for the *Explanation*, the following **Explanation** shall be substituted, namely:—

"*Explanation* - For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.";

(b) in clause (c), for the word and figures "section 41", the words, figures and letter "section 41 or section 43A" shall be **substituted**.

CGST Act, 2017 (as amended):

Section 16: Eligibility and conditions for taking input tax credit

1.

2.

(a)

(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;~~

For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services—

(i) 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;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.";

(c) subject to the provisions of ~~section 41~~ section 41 or section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

Observation:

i. One of the **conditions** for **availing of credit** by the registered person under the Act is the **receipt of goods or services or both** by him. In the case of "**bill-to-ship-to**" situations, for the purposes of availing of ITC on goods by the registered person, **a deeming provision is present** as an **Explanation to section 16(2)(b)** vide which the **registered person is deemed to have received the goods** where the **goods are delivered** by the **supplier to a recipient or any other person on the direction of the said registered person**.

ii. Sub-clause (c) is not in force.

iii. GST Council had proposed to **provide** this **deeming fiction** in case of **services** as well which will be taxpayer- friendly and accordingly the Act was amended.

iv. **GST Council recommended amendment to first proviso of clause (d) of section 16(2)** of the

CGST Act, 2017 as follows:

"Provided further that where a **recipient fails to pay** to the **supplier** of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the **amount towards the value of supply along with tax** payable thereon within a **period of one hundred and eighty days from the date of issue of invoice** by the supplier, an amount equal to the **input tax credit availed** by the recipient **shall be added** to his output tax liability, ~~along with interest thereon~~, in such manner as may be prescribed:"

However, the above recommendation didn't find a place in the CGST Amendment Bill, 2018.

Apportionment of credit and blocked credits

Sl. No. 12 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 17 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 17 of the principal Act,—

(a) in sub-section (3), the following *Explanation* shall be inserted, namely:—

'*Explanation.*— For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.');

(b) in sub-section (5), for clauses (a) and (b), the following clauses shall be **substituted**, namely:—

"(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used –

(i) for making the following taxable supplies, namely: -

- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged –

- (I) in the manufacture of such motor vehicles, vessels or aircraft; or
- (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

vessels or aircraft insured by him;

(b) the following supply of goods or services or both –

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force."

CGST Act, 2017 (as amended)

Section 17: Apportionment of credit and blocked credits

1.

2.

3. The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

Explanation.—For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule. ;

5. Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, **input tax credit shall not be available** in respect of the following, namely:—

~~(a) motor vehicles and other conveyances except when they are used—~~

~~(i) for making the following taxable supplies, namely:—~~

~~A. further supply of such vehicles or conveyances; or~~

~~B. transportation of passengers; or~~

~~C. imparting training on driving, flying, navigating such vehicles or conveyances;~~

~~(ii) for transportation of goods;~~

~~(b) the following supply of goods or services or both—~~

~~(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;~~

~~(ii) membership of a club, health and fitness centre;~~

~~(iii) rent a cab, life insurance and health insurance except where—~~

~~A. the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or~~

~~B. such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and~~

~~(iv) travel benefits extended to employees on vacation such as leave or home travel concession;~~

(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following **taxable** supplies, namely:—

(A) further supply of such motor vehicles; or

(B) transportation of passengers; or

(C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used—

(i) for making the following taxable supplies, namely:—

(A) further supply of such vessels or aircraft; or

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged—

(I) in the manufacture of such motor vehicles, vessels or aircraft; or

(II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both—

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

- (ii) membership of a club, health and fitness centre; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

Observation:

GST Council proposed to allow availment of ITC on activities or transactions specified in Schedule III (other than sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building) by excluding it from the ambit of 'exempt supply' on which ITC is blocked.

However, the amendment was made in the form of inserting an explanation.

In case of motor vehicles, having approved capacity of not more than 13 persons (including the driver), scope of input tax credit (ITC) has been expanded when it is used for specified purposes as stated above. On the strength of the amendment, input tax credit (ITC) would now be available in respect of dumpers, work-trucks, fork-lift trucks and other special purpose motor vehicles. Thus, it may be inferred that input tax credit (ITC) is admissible without any condition in case of motor vehicles with approved sitting capacity of more than 13 persons (including drivers).

There were two school of thoughts for availing input tax credit (ITC) for certain category of expenditures, viz, general insurance, servicing, repair and maintenance of motor vehicles, as the phrase 'in respect of' was stated and not 'in relation to'. However, with this amendment, all such different interpretations on eligibility of input tax credit (ITC) on these expenditures is put to rest.

Similarly different interpretations were made in case of leasing, renting and hiring motor vehicles. All such different interpretations are put to rest after this amendment.

Prior to the amendment, input tax credit was not available on food and beverages, health services and travel benefits. However after amendment, benefit of input tax credit (ITC) on food and beverages, health services and travel benefits are available to an employer where it is obligatory for an employer to provide the same to its employees under any law for the time being in force. Thus amendment is a taxpayer friendly amendment.

It may be recalled that Authority for Advance Ruling – Kerala u/s 98 of the GST Act, 2017 in the case of M/s. Caltech Polymers Pvt. Ltd. ordered vide order no. CT/531/18-C3 dated 26.03.2018 that recovery of food expenses from the employees for the canteen services provided by company would come under the definition of 'outward supply' as defined in section 2(83) of the Act, 2017, and therefore, taxable as a supply of service under GST. It was obligatory for M/s. Caltech Polymers Pvt. Ltd. to provide canteen services to the employees under the provisions of the Factories Act, 1948. After the amendment, benefit of input tax credit (ITC) will be available under similar situations. However, benefits of input tax credit (ITC) will not be available when food and beverages, health services and travel benefits are provided to the employees which is not obligatory.

Manner of distribution of credit by input service distributor

Sl. No: 13 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: clause (c) of section 20 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 20 of the principal Act, in the *Explanation*, in clause (c), for the words and figures "under entry 84," the words, figures and letter "under entries 84 and 92A" shall be substituted.

CGST Act, 2017 (as amended):

Section 20: Manner of distribution of credit by input service distributor

1.
2.

Explanation.—For the purposes of this section,—

- a)
- b)

(c) the term "turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied ~~under entry 84~~ under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Observation:

GST Council proposed to exclude the amount of tax levied under entry 92A of List I from the value of turnover for the purposes of distribution of credit. The same was inadvertently left out from clause (c) of Explanation to section 20.

Section 20 deals with the manner of distribution of credit by the Input Service Distributor. Section 20 (2)(d) provides that where the credit is attributable to more than one recipient, such credit shall be distributed amongst the recipient's pro rata on the basis of turnover in the State or Union territory.

As per clause (c) of Explanation to section 20, the expression "turnover" does not include any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.

Entry 54 of List II covers taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List I while Entry 92A of List I covers taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce.

Thus, it was proposed to correct this inadvertent omission.

Person liable for registration

Sl. No: 14 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 22 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 22 of the principal Act,—

(a) in sub-section (1), after the proviso, the following proviso shall be inserted, namely:-

"Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified.";

(b) in the Explanation, in clause (iii), after the words "State of Jammu and Kashmir", the words "and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand" shall be inserted."

CGST Act, 2017 (as amended):

Section 22: Person liable for registration

1. Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

Provided further that the Government may, at the request of a special category State and on the recommendations of the Council, enhance the aggregate turnover referred to in the first proviso from ten lakh rupees to such amount, not exceeding twenty lakh rupees and subject to such conditions and limitations, as may be so notified.;

2.

3.

4.

Explanation:

(i)

~~(ii)~~

~~(iii)~~

.....
the expression "special category States" shall mean the States as specified in sub clause (g) of clause (4) of article 279A of the Constitution **except the State of Jammu and Kashmir and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.**

Observation:

Consequent to this amendment, Act has now provided that threshold limit of a special category State may be increased from ten lakh rupees to twenty lakh rupees and accordingly threshold limit is raised from rupees ten lakh to rupees twenty lakhs for the States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

However, threshold limit remains unchanged at rupees ten lakh for the States of Manipur, Mizoram, Nagaland and Tripura.

Further, it may be noted that GST Council in it's 32nd Council meeting has proposed basic

exemption threshold limit for registration as under:

- supplier of Goods: Rs.20 lakhs or Rs. 40 lakhs as the states would decide;
- supplier of Services: Rs. 20 lakhs & 10 lakhs in case of special category States;

States were given an option to decide about one of the limits (i.e. between 40 lakhs or 20 lakhs) within a weeks' time. The Threshold for Registration for Service Providers would continue to be Rs 20 lakhs and in case of Special Category States at Rs 10 lakhs.

A differentiation between the Goods and services would arise and some of the issues in past to decide whether a transaction is that of Goods or service may again crop up for determination of registration requirement.

Compulsory registration in certain cases.

Sl. No: 15 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: clause (x) of section 24 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 24 of the principal Act, in clause (x), after the words "commerce operator", the words and figures "who is required to collect tax at source under section 52" shall be inserted.

CGST Act, 2017 (as amended):

(x) every electronic commerce operator **who is required to collect tax at source under section 52**

Observation:

An e-commerce operator is presently required to take compulsory registration in terms of section 24(x) even if his aggregate turnover in a financial year does not exceed Rs. 20 lakhs. Clause (x) of section 24 is being amended to provide that only those e-commerce operators who are required to collect tax at source under section 52 would be required to take compulsory registration. Other e-commerce operators who are not required to collect tax at source under section 52 would henceforth not be required to take registration if their aggregate turnover in a financial year did not exceed Rs.20 lakhs.

This is a taxpayer-friendly measure. Small e-commerce operators who are not required to collect tax at source under section 52 would now be eligible for availing the threshold exemption limit benefit for registration purposes.

Procedure for registration

Sl. No: 16 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 25 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 25 of the principal Act,—

(a) in sub-section (1), after the proviso and before the *Explanation*, the following proviso shall be inserted, namely:—

"Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.:"

(b) in sub-section (2), for the proviso, the following proviso shall be substituted, namely:—

"Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed."

CGST Act, 2017 (as amended):

Section 25: Procedure for registration

1. Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Provided further that a person having a unit, as defined in the Special Economic Zones Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory;

2. A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

~~Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be~~

~~prescribed~~. Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

Observation:

GST Council had proposed to insert the provisions of separate registration for a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer as a business vertical distinct from his other units located outside the Special Economic Zone. This provision is already contained in rule 8 of the CGST Rules.

In line with the amendment to allow a person having multiple places of business in a State or Union territory to obtain separate registration for each such place of business, a person having multiple units in an SEZ is also being allowed to take separate registration for each such unit.

It is proposed to allow persons having multiple places of business in a State or Union territory to obtain separate registrations for each such place of business.

As per the extant provisions, a person seeking registration under the Act shall be granted a single registration in a State or Union territory. However, if he has multiple business verticals in a State or Union territory, he may obtain separate registration for each business vertical. Certain PSUs have requested for separate registration for their individual units in a State, a facility which was available prior to 1st July 2017.

This amendment is a taxpayer- friendly measure.

Cancellation of registration

Sl. No: 17 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 29 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 29 of the principal Act,—

(a) in the marginal heading after the word "Cancellation", the words "or suspension" shall be inserted;

(b) in sub-section (1), after clause (c), the following proviso shall be inserted, namely:—

"Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.";

(c) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed."

CGST Act, 2017 (as amended):

Section 29: Cancellation or suspension of registration

c. the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.;

(a) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

Observation:

It was proposed to provide that once a registered person has applied for cancellation of registration, the proper officer may temporarily suspend its registration till the procedural formalities for cancellation are completed.

This measure would relieve the taxpayer of continued compliance burden under the law till such time as the process of allowing cancellation of registration is completed as there is a time gap between applying for a time gap and cancellation of registration. Amendment has done away the requirement of compliance during this intervening period.

The insertion of this proviso seeks to ensure that once it is sought to cancel the registration of a registered person, the proper officer may temporarily suspend the registration till the procedural formalities for cancellation are completed.

Credit and Debit notes
Sl. No: 18 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause: section 34 of the CGST Act, 2017
<p>As per CGST (Amendment) Act, 2018: In section 34 of the principal Act,—</p> <p>(a) in sub-section (1),—</p> <p>(i) for the words “Where a tax invoice has”, the words “Where one or more tax invoices have” shall be substituted;</p> <p>(ii) for the words “a credit note”, the words “one or more credit notes for supplies made in a financial year” shall be substituted;</p> <p>(b) in sub-section (3),—</p> <p>(i) for the words “Where a tax invoice has”, the words “Where one or more tax invoices have” shall be substituted;</p> <p>(ii) for the words “a debit note”, the words “one or more debit notes for supplies made in a financial year” shall be substituted.</p>
<p>CGST Act, 2017 (as amended):</p> <p>1. Where a tax invoice has Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.</p> <p>3. Where a tax invoice has Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note one or more debit notes for supplies made in a financial year containing such particulars as may be prescribed.</p>
<p>Observation: Prior to the amendment, a credit / debit note which is issued by the registered person is required to be issued invoice-wise. This causes avoidable compliance burden for tax payers. Thus, GST Council proposed to allow issuance of consolidated credit/debit notes which is in line with the best international practices. The amendment seeks to permit a registered person to issue consolidated credit / debit notes in respect of multiple invoices issued in a Financial Year without linking the same to individual invoices. This would simplify the compliance procedure.</p>

Accounts and other records
Sl. No: 19 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause: section 35 of the CGST Act, 2017
<p>As per CGST (Amendment) Act, 2018: In section 35 of the principal Act, in sub-section (5), the following proviso shall be inserted, namely:— “Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”.</p>
<p>CGST Act, 2017 (as amended):</p> <p>1. Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed. Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.</p>
<p>Observation: In terms of section 35 (5) of the CGST Act, every registered person whose turnover during a financial year exceeds the prescribed limit (presently, Rs. 2 crore) shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual</p>

accounts, the reconciliation statement under sub-section (2) of section 44 and other prescribed documents.

In this regard, Ministry of Defence has represented that the annual accounts of Canteen Stores Department (CSD) are internally audited by the Controller of Defence Accounts (CDA) and therefore, should not be subject to audit by a Chartered Accountant or a Cost Accountant.

Thus, GST Council proposed to provide that any department of the Central or State Government/local authority which is subject to audit by CAG need not get their books of account audited by any Chartered Accountant or Cost Accountant.

Furnishing of returns

Sl. No: 20 (not in force, yet to be notified)

Section/Sub-section/ Clause: section 39 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 39 of the principal Act,—

(a) in sub-section (1),—

- (i) for the words “in such form and manner as may be prescribed”, the words in such form, manner and within such time as may be prescribed” shall be substituted;
- (ii) the words “on or before the twentieth day of the month succeeding such calendar month or part thereof ” shall be omitted;
- (iii) the following proviso shall be inserted, namely:—

“Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.”;

(b) in sub-section (7), the following proviso shall be inserted, namely:—

“Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.”;

(c) in sub-section (9),—

- (i) for the words “in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed”, the words “in such form and manner as may be prescribed” shall be substituted;
- (ii) in the proviso, for the words “the end of the financial year”, the words “the end of the financial year to which such details pertain” shall be substituted.

CGST Act, 2017 (as amended):

Section 39: Furnishing of returns

1. Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, ~~in such form and manner as may be prescribed~~ in such form, manner and within such time as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, ~~on or before the twentieth day of the month succeeding such calendar month or part thereof.~~

Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein.

7. Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.

9. Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars ~~in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed~~ in such form and manner as may be prescribed,

subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following ~~the end of the financial year~~ the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.

Procedure for furnishing return and availing input tax credit

Sl. No: 21 (not in force, yet to be notified)

Section/Sub-section/ Clause: section 43A of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

After section 43 of the principal Act, the following **section** shall be **inserted**, namely:—

- “43A. (1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.
- (2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.
- (3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.
- (4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.
- (5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.
- (6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.
- (7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.
- (8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,—
- (i) within six months of taking registration;
- (ii) who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount,
- shall be such as may be prescribed.”.

CGST Act, 2017 (as amended):

43A. (1) Notwithstanding anything contained in sub-section (2) of section 16, section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.

(2) Notwithstanding anything contained in section 41, section 42 or section 43, the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.

(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.

(4) The procedure for availing input tax credit in respect of outward supplies not furnished under sub-section (3) shall be such as may be prescribed and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent. of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.

(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the

provisions of the Act.

(6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.

(7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.

(8) The procedure, safeguards and threshold of the tax amount in relation to outward supplies, the details of which can be furnished under sub-section (3) by a registered person,—

- (i) within six months of taking registration;
- (ii) who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount,

shall be such as may be prescribed

Observation:

A new section is being introduced in order to enable the new return filing procedure as proposed by the Returns Committee and duly approved by GST Council. However, it is not yet notified.

Goods and service tax practitioners

Sl. No: 22 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 48 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 48 of the principal Act, in sub-section (2), after the word and figures "section 45", the words "and to perform such other functions" shall be inserted.

CGST Act, 2017 (as amended)

2. A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 and to perform such other functions in such manner as may be prescribed.

Observation:

Prior to the amendment, GST practitioners were authorised to furnish the details of outward and inward supplies and various returns under sections 39, 44 or 45 on behalf of a registered person.

GST Council proposed to allow the GST practitioner to perform other functions such as, filing refund claim, filing application for cancellation of registration etc.

Payment of tax

Sl. No: 22 (has been made effective from 1st February, 2019 except clause (a))

Section/Sub-section/ Clause: section 49 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 49 of the principal Act,—

(a) in sub-section (2), for the word and figures "section 41", the words, figures and letter "section 41 or section 43A" shall be substituted;

(b) in sub-section (5),—

- (i) in clause (c), the following proviso shall be inserted, namely:— "Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;"
- (ii) in clause (d), the following proviso shall be inserted, namely:— "Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;"

CGST Act, 2017 (as amended):

Section 49: Payment of tax.

1. The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with ~~section 41~~ section 41 or section 43A, to be maintained in such manner as may be prescribed.

5.

(a)

(b)

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax

Provided that the input tax credit on account of State tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

Provided that the input tax credit on account of Union territory tax shall be utilised towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

Observation:

This sub-section deals with the order of utilization of input tax credit. Section 49(5)(c) provides that the amount of ITC available in the electronic credit ledger of the registered person on account of the State tax shall first be utilized towards payment of State tax and the amount remaining, if any, may be utilized towards payment of integrated tax.

GST Council proposed to amend clauses (c) and (d) to provide that the credit of State tax/ Union territory tax can be utilized for payment of integrated tax only when the balance of the input tax credit on account of central tax is not available for payment of integrated tax.

This amendment is required since the GST common portal has placed this restriction in the utilization of input tax credit of State tax/Union territory tax towards payment of integrated tax.

Let us take an example to explain the difference:

Particulars	IGST	CGST	SGST
Output liability	1,00,000	1,50,000	1,50,000
Input Tax Credit	2,00,000	1,00,000	1,00,000
Transitional Credit c/f		75,000	

A. Manner of utilisation of input tax credit before insertion of section 49A:

Description	Payable	ITC available	Paid through ITC			Cash outflow
			IGST	CGST	SGST	
IGST	1,00,000	2,00,000	1,00,000	-	-	-
CGST	1,50,000	1,75,000	-	1,50,000	-	-
SGST	1,50,000	1,00,000	1,00,000	-	50,000	-

- ❖ ITC available in IGST ledger : Nil (2,00,000 – 1,00,000 – 1,00,000)
- ❖ ITC available in CGST ledger : 25,000/- (1,75,000 – 1,50,000)
- ❖ ITC available in SGST ledger : 50,000/- (1,00,000 – 50,000)

B. Manner of utilisation of input tax credit after insertion of section 49A:

Description	Payable	ITC available	Paid through ITC			Cash outflow
			IGST	CGST	SGST	
IGST	1,00,000	2,00,000	1,00,000	-	-	-
CGST	1,50,000	1,75,000	1,00,000	50,000	-	-
SGST	1,50,000	1,00,000	-	-	1,00,000	50,000

- ❖ ITC available in IGST ledger : Nil (2,00,000 – 1,00,000 – 1,00,000)
- ❖ ITC available in CGST ledger : 1,25,000/- (1,75,000 – 50,000)
- ❖ ITC available in SGST ledger : Nil (1,00,000 – 1,00,000)
- ❖ Additional cash outflow: Rupees fifty thousand only

Payment of tax

Sl. No: 23 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 49A and 49B of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

After section 49 of the principal Act, the following sections shall be inserted, namely:—

“49A. Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on

account of integrated tax has first been utilised fully towards such payment.

49B. Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax."

CGST Act, 2017 (as amended):

49A. Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

49B. Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.

Observation:

It is proposed to take an enabling power for the Government to prescribe any specific order of utilization of input tax credit of any of the taxes viz., integrated tax, central tax, State tax or Union territory tax for the payment of the said taxes.

Collection of tax at source

Sl. No: 24 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 52 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 52 of the principal Act, in sub-section (9), for the word and figures "section 37", the words and figures "section 37 or section 39" shall be substituted.

CGST Act, 2017 (as amended):

9. Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under ~~section 37~~ Section 37 or Section 39, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

Observation:

Details of outward supplies are furnished under section 37 and total of supply figures are also stated in returns filed under section 39.

Refund of tax

Sl. No: 25 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 54 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 54 of the principal Act,—

(a) in sub-section (8), in clause (a), for the words "zero-rated supplies", the words "export" and "exports" shall respectively be substituted;

(b) in the Explanation, in clause (2),—

(i) in sub-clause (c), in item (i), after the words "foreign exchange", the words "or in Indian rupees wherever permitted by the Reserve Bank of India" shall be inserted;

(ii) for sub-clause (e), the following sub-clause shall be substituted, namely:—

"(e) in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;"

CGST Act, 2017 (as amended):

8. Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—

(a) refund of tax paid on ~~zero-rated supplies~~ export or exports of goods or services or both or on inputs or input services used in making such zero-rated supplies;

(i) receipt of payment in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, where the supply of services had been completed prior to the receipt of such payment; or

(e) ~~in the case of refund of unutilised input tax credit under sub-section (3), the end of the~~

~~financial year in which such claim for refund arises;~~ in the case of refund of unutilised input tax credit under clause (ii) of the first proviso to sub-section (3), the due date for furnishing of return under section 39 for the period in which such claim for refund arises;

Observation:

Section 54 (8) provides a list of situations where the principle of unjust enrichment does not apply for the purposes of payment of refund. One such situation is zero- rated supplies of goods or services.

Zero-rated supply under section 16(1) of the IGST Act includes physical exports of goods or services and supplies made to an SEZ unit/SEZ developer and the principle of unjust enrichment does not apply in such cases. Presently, under section 16 (3) of the IGST Act, only the supplier making supplies of goods or services to an SEZ unit/SEZ developer can claim refund. It is proposed to allow ITC to the SEZ developer or SEZ unit and the supplier in DTA may recover the tax amount from such SEZ unit, etc.

Thus, GST Council proposed to amend section 54(8)(a) in order to provide that the principle of unjust enrichment will apply in case of refund claim arising out of supplies of goods or services made to SEZ developer/unit.

GST Council proposed to allow receipt of payment in Indian rupees in case of export of services where permitted by the Reserve Bank of India since particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations.

In this respect, the provisions of section 2(6)(iv) of the IGST Act are also being amended to provide that services shall qualify as exports even if the payment for the services supplied is received in Indian rupees as per RBI regulations.

Recovery of tax

Sl. No: 26 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 79 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 79 of the principal Act, after sub-section (4), the following Explanation shall be inserted, namely:—

'Explanation.— For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25.'

CGST Act, 2017 (as amended):

4. Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.

Explanation.— For the purposes of this section, the word person shall include "distinct persons" as referred to in sub-section (4) or, as the case may be, sub-section (5) of section 25

Observation:

This is a taxpayer friendly amendment.

Appeals to Appellate Authority

Sl. No: 27 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 107 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 107 of the principal Act, in sub-section (6), in clause (b), after the words "arising from the said order," the words "subject to a maximum of twenty-five crore rupees," shall be inserted.

CGST Act, 2017 (as amended):

6.

(a)

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order **subject to a maximum of twenty-five crore rupees**, in relation to which the appeal has been filed.

Observation:

Presently, in terms of section 107(6), the appellant is required to pay a sum equal to 10% of the tax in dispute arising from the order being appealed against for filing an appeal before the Appellate Authority.

It is proposed to provide a ceiling of Rs. 25 crore for filing an appeal before the Appellate Authority. This is a taxpayer-friendly amendment especially in cases where the tax demand is of hundreds of crores of rupees.

Appeals to Appellate Tribunal**Sl. No: 28 (has been made effective from 1st February, 2019)****Section/Sub-section/ Clause: section 112 of the CGST Act, 2017****As per CGST (Amendment) Act, 2018:**

In section 112 of the principal Act, in sub-section (8), in clause (b), after the words "arising from the said order," the words "subject to a maximum of fifty crore rupees," shall be inserted.

CGST Act, 2017 (as amended):

(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order **subject to a maximum of fifty crore rupees**, in relation to which the appeal has been filed.

Observation:

In terms of section 112 (8), the appellant is required to pay a sum equal to 20% of the tax in dispute, in addition to the amount paid under section 107 (6), arising from the order of the Appellate Authority for filing an appeal before the Appellate Tribunal.

This section is being amended to provide a ceiling of Rs. 50 crores for filing an appeal before the Appellate Tribunal.

This is a taxpayer-friendly amendment especially in cases where the tax demand is of hundreds of crores of rupees.

Detention, seizure and release of goods and conveyances in transit**Sl. No: 29 (has been made effective from 1st February, 2019)****Section/Sub-section/ Clause: section 129 of the CGST Act, 2017****As per CGST (Amendment) Act, 2018:**

In section 129 of the principal Act, in sub-section (6), for the words "seven days", the words "fourteen days" shall be substituted.

CGST Act, 2017 (as amended):

Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within ~~seven days~~ **fourteen days** of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130.

Transitional arrangement for input tax credit**Sl. No: 30 (has been made effective from 1st February, 2019 except for sub-clause (i) of clause (b) and sub-clause (i) of clause (c))****Section/Sub-section/ Clause: section 140 of the CGST Act, 2017****As per CGST (Amendment) Act, 2018:**

In section 140 of the principal Act, with effect from the 1st day of July, 2017,—

(a) in sub-section (1), after the letters and word "CENVAT credit", the words "of eligible duties" shall be inserted and shall always be deemed to have been inserted;

(b) in the *Explanation 1*—

(i) for the word, brackets and figures "sub-sections (3), (4)", the word, brackets and figures "sub-sections (1), (3), (4)" shall be **substituted** and shall always be deemed to have been substituted;

(ii) clause (iv) shall be **omitted** and shall always be deemed to have been omitted;

(c) in the *Explanation 2*—

(i) for the word, brackets and figure "sub-section (5)", the words, brackets and figures "sub-sections (1) and (5)" shall be **substituted** and shall always be deemed to have been substituted;

(ii) clause (iv) shall be **omitted** and shall always be deemed to have been omitted;

(d) after *Explanation 2* as so amended, the following *Explanation* shall be inserted and shall always be deemed to have been inserted, namely:—

'Explanation 3.— For removal of doubts, it is hereby clarified that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.'

CGST Act, 2017 (as amended):

1. A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit **of eligible duties** carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed: Provided that the

registered person shall not be allowed to take credit in the following circumstances, namely:—

Explanation 1.— For the purposes of ~~sub-sections (3), (4)~~ sub-sections (1), (3), (4), the expression “eligible duties” means—

~~(iv) — the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;~~

Explanation 2.—For the purposes of ~~sub-section (5)~~ sub-sections (1) and (5) the expression “eligible duties and taxes” means—

~~(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;~~

Explanation 3.— For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

Observation:

GST Council deems it fit to clarify that only transitional credit of eligible duties can be carried forward in the return and not all credits. This provision is already contained in rule 117(1) of the CGST Rules.

The eligible duties do not include the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978.

For removal of doubts, GST Council proposed to clarify that the expression “eligible duties and taxes” excludes any cess which has not been specified in Explanation 1 or Explanation 2 above and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

Job work Procedure

Sl. No: 31 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 143 of the CGST Act, 2017

As per CGST (Amendment) Act, 2018:

In section 143 of the principal Act, in sub-section (1), in clause (b), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.”.

CGST Act, 2017 (as amended):

(b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

- (i) where the job worker is registered under section 25; or
- (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

Provided further that the period of one year and three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively

Observation:

In terms of section 143 of the CGST Act, a registered person (Principal) is allowed to send inputs or capital goods to a job worker for job work without payment of tax subject to the conditions inter-alia, that the inputs and capital goods are brought back within a period of one year and three years respectively.

It is proposed to insert a proviso in section 143 to provide that the period of one year or three years may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively.

This is a taxpayer-friendly amendment to cover situations where the period of one year specified is not adequate in respect of job works such as hull construction/fabrication of vessels (for defence purposes), since these processes complete in a period of around 14 to 16 months.

Supply
Sl. No: 32 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause: schedule I of the CGST Act, 2017
As per CGST (Amendment) Act, 2018: In Schedule I of the principal Act, in paragraph 4, for the words "taxable person", the word "person" shall be substituted.
CGST Act, 2017 (as amended): Import of services by a taxable person person from a related person or from any of his other establishments outside India, in the course or furtherance of business.
Observation: <i>This amendment is to ensure that import of services by entities which are not registered under GST (say, they are only making exempted supplies) but are otherwise engaged in business activities is taxed when received from a related person or from any of their establishments outside India.</i>

Supply
Sl. No: 33 (has been made effective with effect from 1st July, 2017, i.e, retrospective effect)
Section/Sub-section/ Clause: schedule II of the CGST Act, 2017
As per CGST (Amendment) Act, 2018: In Schedule II of the principal Act, in the heading, after the word "ACTIVITIES", the words "OR TRANSACTIONS" shall be inserted and shall always be deemed to have been inserted with effect from the 1st day of July, 2017.
CGST Act, 2017 (as amended): ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES
Observation: <i>This is a consequential amendment of section 7 of the CGST Act, 2017. Earlier reference of Schedule II was made in section 7(1) of the CGST Act, 2017 and accordingly certain transactions were coming within the ambit of "supply". Now in order to treat an activity or transaction as "supply", it has to satisfy the test of "supply" and thereafter only can be referred to Schedule II to determine whether the same is a "supply of goods" or "supply of services".</i>

Supply
Sl. No: 34 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause: schedule III of the CGST Act, 2017
As per CGST (Amendment) Act, 2018: In Schedule III of the principal Act, — (i) after paragraph 6, the following paragraphs shall be inserted, namely:— "7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. 8. (a) Supply of warehoused goods to any person before clearance for home consumption; (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption."; (ii) the Explanation shall be numbered as Explanation 1 and after Explanation 1 as so numbered, the following Explanation shall be inserted, namely:— 'Explanation 2.— For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.'
CGST Act, 2017 (as amended): 1. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. 2. (a) Supply of warehoused goods to any person before clearance for home consumption; (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.; <i>Explanation 2.— For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.</i>
Observation: <i>It is sought to exclude from the tax net such transactions which involve movement of goods,</i>

caused by a registered person, from one non- taxable territory to another non- taxable territory.

It is sought to ensure that there is no double taxation of transactions where supply of goods occurs in the course of high sea sales and sale of warehoused goods before clearance for home consumption.

It was observed that in case of supply of goods as high seas sales and sale of warehoused goods, before being cleared for home consumption, IGST was being levied twice, once under the Customs Tariff Act, 1975 (read with the IGST Act) and then for a second time, on clearance for home consumption under the IGST Act.

Since double taxation needs to be avoided, Circulars were issued to state that IGST would be payable only once at the time of clearance of goods for home consumption. However, it is imperative that such situations are squarely mentioned as 'no supply' in Schedule III.

Definitions

Sl. No: 35 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017

As per IGST (Amendment) Act, 2018:

In section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the principal Act),—

(i) in clause (6), in sub-clause (iv), after the words "foreign exchange", the words "or in Indian rupees wherever permitted by the Reserve Bank of India" shall be inserted;

IGST Act, 2017 (as amended):

6. "export of services" means the supply of any service when,—

- (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India;
- and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

Observation:

GST Council proposed to allow receipt of payment in Indian rupees in case of export of services where permitted by the Reserve Bank of India since particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations.

This is a taxpayer-friendly amendment.

Definitions

Sl. No: 36 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: clause (16) of section 2 of the IGST Act, 2017

As per IGST (Amendment) Act, 2018:

In section 2 of the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as the principal Act),—

(ii) in clause (16), in the Explanation, in the long line, after the words "function entrusted", the words, figures and letter "to a Panchayat under article 243G or" shall be inserted.

IGST Act, 2017 (as amended):

16. "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation.—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution;

Observation:

The reference to Panchayat under article 243G is sought to be added in the definition of Governmental authority which was left out inadvertently.

Levy and collection
Sl. No: 37 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause: section 5 of the IGST Act, 2017
As per IGST (Amendment) Act, 2018: In section 5 of the principal Act, for sub-section (4), the following sub-section shall be substituted, namely:— "(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both."
IGST Act, 2017 (as amended): 4. The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both
Observation: <i>Corresponding amendment on the lines of amendment made in section 9(4) of the CGST Act, 2017.</i>

Intra – State supply
Sl. No: 38 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause: section 8 of the IGST Act, 2017
As per IGST (Amendment) Act, 2018: In section 8 of the principal Act, in sub-section (2), in <i>Explanation 1</i> , in clause (iii), the words, "being a business vertical" shall be omitted.
IGST Act, 2017 (as amended): <i>Explanation 1.</i> — For the purposes of this Act, where a person has,— (i) an establishment in India and any other establishment outside India; (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.
Observation: <i>Corresponding amendment on the lines of amendment made in section 25 of the CGST Act.</i>

Place of supply of services where location of supplier and recipient is in India
Sl. No: 39 (has been made effective from 1st February, 2019)
Section/Sub-section/ Clause: section 12 of the IGST Act, 2017
As per IGST (Amendment) Act, 2018: In section 12 of the principal Act, in sub-section (8), the following proviso shall be inserted, namely:— "Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods."
IGST Act, 2017 (as amended): 8. The place of supply of services by way of transportation of goods, including by mail or courier to,— (a) a registered person, shall be the location of such person; (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation. Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods

Observation:

In order to provide a level playing field to the domestic transportation companies and promote export of goods, it is proposed that the transportation of goods from a place in India to a place outside India by a transporter located in India would not be chargeable to GST, as place of supply will be outside India.

This is a taxpayer-friendly amendment.

Place of supply of services where location of supplier or location of recipient is outside India

Sl. No: 40 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 13 of the IGST Act, 2017

As per IGST (Amendment) Act, 2018:

6. In section 13 of the principal Act, in sub-section (3), in clause (a), for the second proviso, the following proviso shall be substituted, namely:—

"Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;"

IGST Act, 2017 (as amended):

~~Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;~~

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;

Observation:

It is proposed to not tax job work of any treatment or process done on goods temporarily imported into India (e.g., gold, diamonds) which are then exported. This is a taxpayer-friendly amendment.

Apportionment of tax and settlement of fund

Sl. No: 41 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 17 of the IGST Act, 2017

As per IGST (Amendment) Act, 2018:

7. In section 17 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A). The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on *ad hoc* basis and shall be adjusted against the amount apportioned under the said sub-sections."

IGST Act, 2017 (as amended):

2. The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the,—

- (a) State where such supply takes place; and
- (b) Central Government where such supply takes place in a Union territory:

Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to,—

- (a) each of the States; and
- (b) Central Government in relation to Union territories, in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

(2A). The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council, be apportioned at the rate of fifty per cent. to the Central Government and fifty per cent. to the State Governments or the Union territories, as the case may be, on *ad hoc* basis and shall be adjusted against the amount apportioned under the said sub-sections.

Observation:

By virtue of the amendment, a provision is made for adhoc apportionment of fifty per cent to the Central Government and fifty percent to the State Government on the amount not apportioned.

Applications of provisions of Central Goods and Services Tax

Sl. No: 42 (has been made effective from 1st February, 2019)

Section/Sub-section/ Clause: section 20 of the IGST Act, 2017

As per IGST (Amendment) Act, 2018:

8. In section 20 of the principal Act, after the fourth proviso, the following proviso shall be inserted, namely:—

"Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively."

IGST Act, 2017 (as amended):

Section 20: Applications of provisions of Central Goods and Services Tax

Subject to the provisions of this Act and the rules made there under, the provisions of Central Goods and Services Tax Act relating to,—

- (i) scope of supply;
- (ii) composite supply and mixed supply;
- (iii) time and value of supply;
- (iv) input tax credit;
- (v) registration;
- (vi) tax invoice, credit and debit notes;
- (vii) accounts and records;
- (viii) returns, other than late fee;
- (ix) payment of tax;
- (x) tax deduction at source;
- (xi) collection of tax at source;
- (xii) assessment;
- (xiii) refunds;
- (xiv) audit;
- (xv) inspection, search, seizure and arrest;
- (xvi) demands and recovery;
- (xvii) liability to pay in certain cases;
- (xviii) advance ruling;
- (xix) appeals and revision;
- (xx) presumption as to documents;
- (xxi) offences and penalties;
- (xxii) job work;
- (xxiii) electronic commerce;
- (xxiv) transitional provisions; and
- (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

Provided also that where the appeal is to be filed before the Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.

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INPUT TAX CREDIT – GST LAW

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1. Introduction

W.e.f July 1, 2017, India's new Indirect tax regime in the form of GST laws on the track of "One Nation - One Tax with minimal diversions..!!". The new regime recently completed its 18 months (or 500 days) of implementation, no dispute that GST is a game changer as far as Indian economy concerned. As an evident, India has jumped to 77th rank in the 'Index of Ease of Doing Business after implementation of GST'. However, it is appropriate to admit that the country's economy has seen chaos all over such as reduction in domestic industrial output, fall in employment and exports during the transitional period. GSTN, a common portal provides return filing utility and online platform to comply due compliances under GST Laws by filing regular 'Returns'. In its pre-mature days, the compliance levels were very low due to confusion; lack of knowledge coupled with technical glitches, the said online platform crashed many times resulted in waiving of the late fee. Non-availability of 'Edit' function made issues even worsen. Later a facility to view and reset values has been provided. As a positive note and by end of December, 2018, the compliance rate increased gradually on account of various anti-evasion measures undertaken by the Central and State Governments. The idea of GST was first mooted by the then Union Finance Minister in his Union Budget for the financial year 2006-07, where it was proposed to be implemented from April 1, 2010. To carry forward, an Empowered Committee of State Finance Ministers was constituted to design a structure and a roadmap. One more Joint Working group was set up to examine various aspects of the GST laws such as exemptions, thresholds, etc. The Empowered Committee had come out with its First Discussion Paper on November 10th 2009. During February 2010 the Finance Ministry initiated the nationwide computerization of commercial tax departments in the states, to lay the foundation for GST rollout. The Union Government in March, 2011, tables 115th Constitution Amendment Bill in the Lok Sabha for bringing GST. However, GST Bill referred to Parliamentary Standing Committee

on Finance. The Standing Committee on Finance clears the GST Bills, however, due to the dissolution of the Lok Sabha, the said Bills have lapsed. The new Government on December, 19, 2014, introduces the 122nd Constitution Amendment Bill to GST. Except certain Provisions relating to new Registrations and migration of previous regime's registrants which were much before 'Appointed Date' to enable easy transition, other provisions were implemented with effect from July 1st 2017.

2. Constitutional amendment

Constitution of India is the foundation to legislate all laws and tax laws are no exception the said universal law. The authority to levy tax has been provided in Article 246. The said Article distributes the power to levy taxes between the Central Government and the State Governments. Prior to GST, the Central Government had the powers to levy a tax on the manufacture of goods while State Governments had the power to levy a tax on the sale of goods. In the case of Inter-State sales, the Centre had the power to levy Central Sales Tax. As far as services concerned the Central Government alone was empowered to levy a tax on services. To address the said issues and distribute concurrent power to levy between Central Government and States Governments, the Constitution (122nd Amendment) Bill was introduced in the 16th Lok Sabha on December 19, 2014, which provides concurrent power to levy taxes by the Central Government, the States and the Union Territories. The Lok Sabha passed the Constitutional Amendment Bill in May, 2015. The Bill was referred to the Select Committee of Rajya Sabha. Subsequently, the Bill with certain amendments as recommended by the Select Committee was passed in the Rajya Sabha and later by the Lok Sabha in August 2016. Thereafter, the Bill was ratified by the required number of States and finally received the Presidential Assent on September 8, 2016, and has since been enacted as Constitution (101st Amendment) Act, 2016 w.e.f. September 16, 2016.

There are four major Acts, besides GST Acts for each States, namely –

- a. The Central Goods and Services Tax Act, 2017
- b. The Integrated Goods and Services Tax Act, 2017
- c. The Union Territory Goods and Services Tax Act, 2017
- d. The Goods and Services Tax (Compensation to States) Act, 2017

The Central Goods and Services Tax Act, 2017 confers power upon the Central Government to levy a tax on supply of goods and/or services which takes place within the States. Likewise, the Integrated Goods and Services Tax Act, 2017 confers power upon the Central Government to levy a tax on supplying of goods and /or services which takes place between two states. The Union Territory GST Act, 2017 confer powers upon all Union Territories for levying a tax on supply of goods or services or both which takes place within the Union Territory. The Goods and Services Tax (Compensation to States) Act, 2017 confers power on the Central Government to levy compensation cess on certain items such as pan masala, coal, aerated drinks etc. subject to certain caps. The amount received by the said Cess is to be used for compensating the States for any loss in revenue following the implementation of GST for a period of five years.

3. Input Tax

Input Tax is one of the core concepts under GST Laws. Since GST is a 'Destination Based Tax' avoids erstwhile regime's cascading effect of taxes to a greater extent and also ensures that the tax is collected from the consumption of goods or services or both. Section 2(62) of the Central GST Act, 2017 defines the term as ' Central GST, State GST, Integrated GST or Union Territory GST charged on any supply of goods or services or both made to a registered person including Integrated GST on import of goods, tax payable under Reverse Charge Mechanism under all the three Laws. However, the Law exempted the tax paid under 'Composition Scheme'.

4. Input Tax Credit

A service provider or supplier of goods will be entitled to an Input tax credit. In other words, he will be eligible to get the credit of input services availed by him or tax on goods which he has purchased for resale or furtherance of his business. According to Section 2(56) of the Central GST Act, 2017, Input Tax Credit means the credit of 'Input tax'. Most importantly, the burden of proving such claim lies on such

registered person as provided under Section 155 of the Central GST Act, 2017. However, not all inputs available as a 'Credit' such as petroleum products, liquor, motor spirit, etc.

5. Salient features of Input Tax Mechanism

The key salient features are –

1. Supplier of goods and services can avail Input Tax Credit.
2. Instant availability of credit or no need to such service to be consumed or goods sold.
3. Input Tax Credit of State GST can be utilised for payment of Integrated GST and thereafter for payment of State GST on outward supply.
4. Input Tax Credit of Central GST can be utilised for payment of Integrated GST and thereafter for payment of Central GST on outward supply.
5. Similarly, Input Tax Credit of Integrated GST can be utilised for payment of Integrated GST, Central GST and State GST in that order.
6. However, under any circumstances, Input Tax Credit of Central GST and State GST or Union Territory GST is not interchangeable.
7. Input Tax credit of State GST and Union Territory GST can be utilised for payment of Integrated GST only in the case of non-availability of Central GST.
8. Input Tax Credit will be available only in the case of business transactions or occurred in the course of furtherance of business.

6. Procedure to claim Input Tax Credit

Every registered person including Input service distributor, subject to such conditions, will be allowed take the credit of Input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business by crediting such amount to the electronic credit ledger. Section 16(1) of the Central GST Act, 2017

7. Conditions and requisite documents to claim the Input Tax Credit

A Registered person including Input service distributor can avail the Input Tax on the basis of following documents –

- An Invoice issued by the supplier of goods or service or both. (Section 31 of the Central GST Act, 2017)

- An invoice issued under the Reverse charge mechanism. (Section 31 (3) (f) of the Central GST Act, 2017)
- A Debit Note issued by the supplier – Section 34 of the Central GST Act, 2017).
- A Bill of Entry or similar document under Integrated GST Act, Customs Act and Rules.
- A Credit Note issued by Input Service Distributor Rule 54(1) of Central GST Rules, 2017.
- Input goods and services used for the construction of office, motor vehicles related services, life including health Insurance, food, health services, beauty treatment, cosmetic & plastic surgery, rent-a-cab are not eligible to claim the credit.
- Such Supplier of goods and services shall pay the due tax amount fully.
- In any case, if payment is not made by the recipient to the supplier of goods and services or both within 180 days, the Input tax credit with due interest shall be reversed.
- Financial Institutions and Banks are allowed to claim only 50 per cent.
- Capital Goods - Since goods, the entire Input tax credit of GST paid on capital goods will be available in the first year itself. Capital Goods include plant and machinery.

8. Reversal of Input Tax Credit

Where a recipient fails to pay to the supplier of goods or services or both (excluding RCM supply), the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier including an equal amount of Input tax credit availed by him shall be reversed. Section 16(2) of the Central GST Act, 2017 In case of supply without consideration –The amount shall be deemed to have been paid Rule 37(1) of Central GST Rules. However, the credit of Input so reversed can be taken back after settling the dues. Further, the said time limit of 1 year will not apply to such re-credits.

Other Circumstances – In the case of

- Taxable person switched to Composition Scheme
- Goods or services wholly exempted
- GST registration cancelled
- Wrongly availed

In the first three said cases, the taxable person is required to reverse input tax credit of GST paid on stock, work-in-progress, finished goods and capital goods after availing 5 per cent

deduction per quarter. Section 18(4), Section 29(5) of the Central GST Act, 2017 read with Rule 44 of Central GST Rules, 2017 and respective State GST Rules, 2017. In the last case, such as, if the taxable person wrongly availed, the Department will demand back by issuing due showing cause notices under Section 73 and 74 of Central GST Act, 2017.

9. Input Service Distributor (ISD)

A supplier of goods and services may have a head office and regional offices at different locations. The service may be received at head office but these services will be indirectly used for manufacture or providing output services. Such head office can be registered under GST as 'Input Service Distributor' and can issue invoice on its branches, depots, factories, etc. Separate registration is required even if he is otherwise registered under GST.

Compliance – The Input Service Distributor has to file monthly Return in GSTR – 6 by 20th of the following month under Rule 65 of Central GST Rules, 2017. However, in the case of absence of a transaction, he needs not to file such return. An Input service distributor shall distribute input tax credit in the manner and subject to the conditions specified – Rule 39(1) of Central GST Rules & respective State GST Rules, 2017.

10. Few Interesting Judicial Pronouncements

- *Krishi Kalyan Cess not allowed - GST Appellate Authority for Advance Ruling, Maharashtra*
M/s. Kansai Nerolac Paints Ltd filed an application for Advance Ruling to avail erstwhile Krishi Kalyan Cess as an input tax credit. The said Authority for Advance Ruling held that the erstwhile cess could not be carried forward under GST Regime. Aggrieved by this Order, the applicant has approached the Appellate Authority. However, the Maharashtra Appellate Authority upheld that cess and duty are separate levies and cannot be equated. The credit of Krishi Kalyan Cess can only be utilised for payment of the same.
- *Clean Environment (Energy) Cess - GST Authority for Advance Ruling, Andhra Pradesh*

M/s. Sino Resources, an importer of coal and also dealt in trading of coal sought an advance ruling on the question whether input tax credit was available on 'Clean Environment (Energy) Cess

paid at the time of import of coal. The said Authority for Advance Ruling after relying on the definition of 'Input Tax' and disputed Cess paid under erstwhile Clean Energy Cess under the Finance Act, 2010, held that it was beyond the domain of Section 97(2) of the Central GST Act, 2017 i.e. admissibility of questions for Advance Ruling.

- *Penalty for not passing on the benefit of Input Tax Credit – National Anti-Profitteering Authority*

More than 100 home buyers had filed an application against M/s. Pyramid Infratech for not passing on the Input Tax Credit of the GST paid on construction services. The National Anti-profitteering Authority directed the company to refund or reduce Rs 8.22 crore from the buyers' last instalment along with 18% interest per annum. Currently, the issue is pending with the Delhi High Court.

- *Input Tax Credit cannot be denied merely on the ground of mismatch of annexures – Madras High Court*

The Hon'ble Madras High Court in M/s. Western Thomson India Limited quashed the Order of Tamil Nadu VAT Authorities denying the Input Tax Credit claim of the assessee solely on the ground of mismatch of annexures.

- *No Input Tax Credit for purchase of Motor vehicles used for Cash management business - GST Appellate Authority for Advance Ruling, Maharashtra*

The Maharashtra Appellate Authority ruled that the input tax credit cannot be allowed on the purchase of motor vehicles used for cash management business and supplied post usage as scrap.

- *Last Day of availing Input Tax Credit – Gujarat High Court*

The Hon'ble Gujarat High Court recently accepts application challenging the last day of availing Input Tax Credit for invoices pertaining to July 2017 to March 2018.

Conclusion

With effect from 1st February, 2019, number of amendments have been introduced to the Central GST Act, 2017, vide GST (Amendment) Act, 2018 vide Notification 2/2019 Central Tax Dated 29.01.2019 and to the Integrated GST Act, 2017, vide Integrated GST (Amendment) Act, 2018, vide Notification 1/2019 Integrated Tax Dated 29.01.2019. Further, it is very much necessary that all State Governments concerned shall bring in similar amendments to their respective State GST Acts either by passing such amendments through Legislative or through Ordinance route. Due to the said latest Amendments, Input Tax Credit will be available to –

- Most of the activities or transactions specified in Schedule III.
- Motor vehicles for transportation of persons having seating capacity of more than thirteen (including driver), vessels and aircraft;
- Services of general insurance, repair and maintenance in respect of motor vehicles,
- vessels and aircraft on which credit is available; and
- Goods or services which are obligatory for an employer to provide to its employees, under any law for the time being in force.

Due to fall in GST revenue, the tax officials are examining the input tax claimed by the trade and businesses. Recently, the Group of Ministers (GoM) had a detailed discussion on the said issue. According to GoM, about 80 per cent of the total GST liability is being settled by Input Tax Credit and remaining by depositing of the cash. Once, the proposed 'New Return Filing Mechanism' is in place, it will be easy to compare the Input Tax Credit claims and due taxes paid on a 'Real Time Basis'.

PROVISIONS OF PLACE OF SUPPLY OF GOODS IN GST

TEAM TRD

Place of Supply is very important to determine whether a transaction is an intra-state sale or inter-state sale and accordingly SGST, CGST & IGST is determined.

Situation for determining Place of Supply of Goods -

Where the supply involves movement of goods - Place of Supply is the Place where movement of Goods Terminates.

Where goods are delivered by the Supplier to a recipient or any other person on the direction of a third person by way of transfer of documents of title of goods - Principal place of business of third person (the place which is mentioned in the registration certificate)

Where the supply involves no movement of goods - Place of Supply shall be the location of such goods at the time of the delivery to the recipient.

Example - This will mainly cover over the counter sale. Like when you go to mall and purchase and take delivery there itself.

Where goods involve Installation / assembly at site - Place of Supply shall be the Place of such installation or assembly

Where the goods are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle - Place of supply shall be Location at which such goods are taken on board.

Example - Goods sold in Aircraft, Cruise, etc

Where supply involves export & import of goods.- Goods Imported or exported are always treated Inter-state supply and IGST will be Charged.

RECENT CHANGES IN GST PORTAL

TEAM TRD

1. Monthly Refund applications by Quarterly GSTR-1 filers

There was restriction for applying refund on quarterly basis for quarterly GSTR 1 filers.

This restriction has been removed now.

Change - The tax payer can now file refund application on monthly basis, if GSTR 1 for the quarter is filed.

2. Auto approval of Appeals filed by Taxpayer or Tax Department

Application for appeal has to be submitted by the Appellant (Tax payer or Tax Department) to the First Appellate Authority. The Appellant also needs to submit certified copies within 7 days from the date of application or within the time limit allowed. The Appellate Authority may either admit the appeal by issuing the final acknowledgement or reject the application.

Change - If Appellate Authority fails to issue final acknowledgement to the appellant within the stipulated time, then a system generated final acknowledgement will be issued to the appellant with a remark "subject to validation of certified copies"

3. List of Preferred Banks list while making Payment

When a taxpayer will make payment of GST using a bank, it will be updated in the Preferred Banks list for that taxpayer.

Up to 6 Preferred Banks will be shown to a taxpayer while making e-Payment on GST Portal.

When a Taxpayer already having 6 banks in its preferred bank's list, makes a payment with 7th bank, then that 7th bank will be added in the preferred banks and the least used bank will be removed from the list.

The taxpayer can delete any of the preferred banks at any point in time.

4. Release of API related to Assessment and adjudication

Following API released

- Assessment of non-filers of Returns
- Summary Assessment
- Rectification of mistakes

5. Removal of validation of 2% in Form GSTR-7

At the time of filing of Form GSTR-7, generally it is being checked automatically whether total amount deducted is 2% of the taxable value or not.

Change – Now this auto checking has been removed. TDS Deductor will be free to report any value under CGST, SGST or IGST columns.. Same is implemented in offline utility also.

6. Population of data from EWB system into Form GSTR-1

At the time of generating E-way bill for outward supply, taxpayers enter the details of outward supplies such as invoice number, date, quantity, value, Tax, HSN code and Consignee GSTIN etc.

Change – Taxpayers can now easily import these details of outward supply invoices, as indicated in the e-way bill, at the time of preparation of Form GSTR-1, by clicking the "import EWB Data" button, on the GST portal.

On the GST portal, the "Import EWB Data" button has been added in the following titles of the Form GSTR-1 page

- 4A, 4B, 4C, 6B, 6C – B2B invoices
- 5A, 5B – B2C (Large) invoices
- 12 – HSN wise summary of outward supplies

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GOODS AND SERVICES TAX

CENTRAL TAX

Notification No.07/2019 - Central Tax **Date – 31.01.2019**

Seeks to extend the due date for furnishing of FORM GSTR – 7 for the months of October, 2018 to December, 2018 till 28.02.2019

The Commissioner has made amendment in the Notification No. 66/2018-Central Tax, dated the 29th November, 2018.

As per amendment, the due date of furnishing of FORM GSTR-7 has been up to 28.02. 2019.

Notification No.08/2019 - Central Tax **Date – 08.02.2019**

Seeks to extend the due date for furnishing of FORM GSTR – 7 for the month of January, 2019 till 28.02.2019

The Commissioner has extended the time limit for furnishing the return by a registered person required to deduct TDS under the provisions of section 51 of the said Act in FORM GSTR-7 of the Central Goods and Services Tax Rules, 2017 for the month of January, 2019 till the 28th day of February, 2019.

INTEGRATED TAX (RATE)

Notification No.02/2019 - Integrated Tax (Rate) **Date – 31.01.2019**

Seeks to rescind Sl. No. 10D of Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017 in relation to exemption of IGST on supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

Central Government has made amendments in the Notification No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017.

According to amendment, in the Table, serial number 10D and the entries relating thereto, shall be omitted.

CIRCULARS - CGST

Circular No.88/2019 **Date – 01.02.2019**

Seeks to make amendments in the earlier issued circulars in wake of amendments in the CGST Act, 2017 (which shall come into force w.e.f. 01.02.2019)

Circular No. 8/8/2017 dated 04.10.2017

The circular is revised in view of the amendment carried out in section 2(6) of the IGST Act, 2017 vide section 2 of the IGST (Amendment) Act, 2018 allowing realization of export proceeds in INR, wherever allowed by the RBI.

Circular No. 38/12/2018 dated 26.03.2018

This circular is revised in view of the amendment carried out in section 143 of the CGST Act, 2017 vide section 29 of the CGST (Amendment) Act, 2018 empowering the Commissioner to extend the period for return of inputs and capital goods from the job worker. Further on account of amendment carried out in section 9(4) of the CGST Act, 2017 vide section 4 of the CGST (Amendment) Act, 2018 done in relation to reverse charge, certain amendments to the Circular are required.

Circular No. 41/15/2018 dated 13.04.2018

This circular is revised in view of the amendment carried out in section 129 of the CGST Act, 2017 vide section 27 of the CGST (Amendment) Act, 2018 allowing 14 days for owner/transporter to pay tax/penalty for seized goods.

FORM GST MOV-08 and FORM GST MOV-09 has been revised also.

FORM GST MOV-08

If all taxes, interest, penalty, fine and other lawful charges demanded by the proper officer are duly paid within 14 days of the date of detention being made in writing by the said proper officer, this obligation shall be void.

FORM GST MOV-09

It is directed to make the payment forthwith/not later than 14 days from the date of the issue of the order of detention in FORM GST MOV-06, failing which action under section 130 of the Central/State Goods and Services Tax Act /section 21 of the Union Territory Goods and Services Tax Act or section 20 of the Integrated Goods and Services Act shall be initiated.

Circular No. 58/32/2018 dated 04.09.2018

This circular is revised in order to streamline the modes of recovery.

Circular No. 69/43/2018 dated 26.10.2018

The circular is revised in view of the amendment carried out in section 29 of the CGST Act, 2017 vide section 14 of the CGST (Amendment) Act, 2018 allowing suspension of registration.

For more details, please follow –

<http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-88.pdf;jsessionid=A2DA024455E5DA28D7965768B88F583C>

CIRCULARS - IGST

Circular No.04/01/2019 - IGST
Date – 01.02.2019

Seeks to make amendments in the earlier issued circulars in wake of amendments in the CGST Act, 2017 (which shall come into force w.e.f. 01.02.2019).

The provisions of the CGST (Amendment) Act, 2018 and SGST Amendment Acts of the respective States have been brought into force w.e.f. 01.02.2019.

Schedule III of the CGST Act, 2017 has been amended vide section 32 of the CGST (Amendment) Act, 2018 so as to provide that the "supply of warehoused goods to any person before clearance for home consumption" shall be neither a supply of goods nor a supply of services.

Accordingly, Circular No. 03/01/2018-IGST dated 25th May, 2018 is hereby rescinded.

CUSTOMS - TARIFF

Notification No.4/2019
Date – 07.02.2019

Seeks to further amend Notification No. 08/2016- customs dated the 5th February 2016 to allow temporary importation of aircrafts, for the purposes of participation in Aero Show organised by the Central Government, without furnishing a bank guarantee or cash deposit

Central Government has made amendments in the Notification No.8/2016- customs dated the 5th February 2016.

Amendment- In the case of temporary importation of aircrafts, for the purposes of participation in Aero Show organised by the Central Government, the importer shall not be

required to furnish a bank guarantee or cash deposit.

CUSTOMS - NON TARIFF

Notification No.07/2019 -CUSTOMS (N.T.)
Date – 31.01.2019

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver- Reg

CBIC has made amendments in the Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001.

Chapter/ heading/ sub-heading/ tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
1511 10 00	Crude Palm Oil	552
1511 90 10	RBD Palm Oil	579
1511 90 90	Others – Palm Oil	566
1511 10 00	Crude Palmolein	580
1511 90 20	RBD Palmolein	583
1511 90 90	Others – Palmolein	582
1507 10 00	Crude Soya bean Oil	734
7404 00 22	Brass Scrap (all grades)	3577
1207 91 00	Poppy seeds	2576

Chapter/ heading/ sub- heading/ tariff item	Description of goods	Tariff value (US \$)
71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 and 358 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	422 per 10 grams
71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 and 359 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	514 per kilogram
080280	Areca nuts	3942

Notification No.09/2019 - CUSTOMS (N.T.)
Date – 07.02.2019

Exchange Rates Notification No.09/2019-Custom (NT) dated 07.02.2019

CBIC has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa, shall, with effect from 8th February, 2019 relating to imported and export goods.

For more details, please follow - <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csntf09-2019.pdf;jsessionid=D4D662721B9988A99C684C86B7E1602D>

Notification No.10/2019 - CUSTOMS (N.T.)
Date – 15.02.2019

Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Poppy Seeds, Areca Nut, Gold and Silver- Reg.

The Central Board of Indirect Taxes & Customs has made amendments in the Notification No. 36/2001-Customs (N.T.), dated the 3rd August, 2001.

For more details, please follow - <http://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-nt2019/csnt10-2019.pdf;jsessionid=EBCF6DB744AC650B0F0C998FA258A46E>

Notification No.11/2019 -CUSTOMS (N.T.)
Date – 15.02.2019

Exchange Rates Notification No.11/2019-Custom(NT) dated 15.02.2019.

The Central Board of Indirect Taxes and Customs has made amendments in the Notification No.09/2019-CUSTOMS (N.T.), dated 7th February, 2019 with effect from 16th February, 2019, namely: -

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	(For Imported Goods)	(For Exported Goods)
South African Rand	5.20	4.90

Notification No.12/2019 -CUSTOMS (N.T.)
Date – 15.02.2019

Seeks to insert tariff item 9806 00 00 in chapter 98 of the First schedule to Customs tariff act, 1975 to impose basic customs duty of 200% on all goods originating in or exported from Pakistan

Central Government has increased import duty leviable on all goods originating in or exported from the Islamic Republic of Pakistan, falling under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)

In the First Schedule to the Customs Tariff Act, in Section XXI, in Chapter 98, after tariff item 9805 90 00 and the entries relating thereto, the following tariff item and entries shall be inserted, namely: -

"9806 00 00	All goods originating in or exported from the Islamic Republic of Pakistan	-	200 %	-
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CUSTOMS - ANTI DUMPING DUTY

Notification No.07/2019 - -Customs (ADD)
Date – 07.02.2019

Seeks to impose definitive anti-dumping duty on imports of "Non-Plasticized Industrial Grade Nitrocellulose Damped in Isopropyl Alcohol having Nitrogen content in the range of 10.7% to 12.2%" originating in or exported from Brazil, Indonesia and Thailand.

In case of import of 'Non-Plasticized Industrial Grade Nitrocellulose Damped in Isopropyl Alcohol having Nitrogen content in the range of 10.7% to 12.2%' originating in, or exported from Brazil, Indonesia and Thailand and imported into India, the designated authority has come to the conclusion –

- 1) the product under consideration has been exported to India from the subject countries below normal values;
- 2) the domestic industry has suffered material injury on account of subject imports from subject countries;
- 3) the material injury has been caused by the dumped imports of subject goods from the subject countries;

and has recommended the imposition of definitive anti-dumping duty on the imports of subject goods, originating in or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

Central Government, after considering the aforesaid final findings of the designated authority, imposes on the subject goods an anti-dumping duty.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfn-2019/cs-add2019/csadd07-2019.pdf;jsessionid=F6ABF35D93F66D96969CE6540E3CF22E>

**Notification No.08/2019 - Customs (ADD)
Date – 12.02.2019**

Seeks to amend notification No. 61/2015-Customs (ADD) dated 11.12.2015

The Central Government has made following amendments in the Notification No. 61/2015-Customs (ADD), dated the 11th December, 2015.

Amendment - In the said notification, in the Table, against serial number 3, in column (8), for the words "Daewoo International Corporation", the words "POSCO Daewoo Corporation" shall be substituted.

**Notification No.09/2019 - -Customs (ADD)
Date – 12.02.2019**

Seeks to amend notification No. 52/2017-Customs (ADD) dated 24.10.2017

The Central Government has made amendments Notification No. 52/2017-Customs (ADD), dated the 24th October, 2017.

Amendments - In the said notification, in the Table, against serial number 3, in column (8), for the words "Daewoo International Corporation", the words "POSCO Daewoo Corporation" shall be substituted.

**Notification No.10/2019 - -Customs (ADD)
Date – 12.02.2019**

Seeks to amend notification No. 35/2018-Customs(ADD) dated 9th July, 2018 to amend the name of exporters at S. Nos. 1 and 2 of the duty table.

In case of 'High Tenacity Polyester Yarn (HTPY)' falling under tariff item 5402 20 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in, or exported from China PR and imported into India, the Designated Authority in its final findings, vide Notification No. 6/12/2017-DGAD, dated the 24th May, 2018 had come to the conclusion that –

- (i) the subject goods have been exported to India from the subject country below its normal value, resulting in dumping;
- (ii) the domestic industry had suffered material injury due to dumping of the product under consideration from the subject country;
- (iii) the material injury had been caused by the dumped imports of the subject goods from subject country, and had recommended imposition of definitive anti-dumping duty on imports of the subject goods, originating in, or exported from the subject country and imported into India, in order to remove injury to the domestic industry.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfn-2019/cs-add2019/csadd10-2019.pdf;jsessionid=A2B3624D14E6C96C2B4CE3AEEF343645>

**Notification No.11/2019 - -Customs (ADD)
Date – 12.02.2019**

Seeks to rescind notification No. 11/2013-Customs (ADD), dated the 16th May, 2013.

The Central Government has rescinds the Notification No. 11/2013-Customs (ADD), dated the 16th May, 2013 except as respects things done or omitted to be done before such recession.

CIRCULARS - CUSTOMS

**Circular No.03/2019 - CUSTOMS
Date – 31.01.2019**

Procedure to be followed in cases of manufacturing or other operations undertaken in bonded warehouses under section 65 of the Customs Act

CBIC has decided to allow labeling/ fixing RSP etc. to fulfill statutory compliance requirements in all customs bonded warehouse without the requirement of taking permission under section 65 of the Customs Act.

For more details, please follow - <http://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2019/Circular-03-2019-Customs.pdf;jsessionid=062E82C8BE94FBACB5D941F218175455>

Circular No.04/2019 - CUSTOMS

Date – 01.02.2019

Rescinding Board Circular No. 46/2017-
Customs dated 24th November, 2017-Reg

As per Circular No. 46/2017, dated 24th November 2017, the applicability of IGST/GST on goods transferred /sold while being deposited in a warehouse was clarified.

Circular No. 46/2017 was suppressed by Circular No. 03/01/2018-IGST, dated 25th May 2018.

Circular No. 03/01/2018-IGST has been rescinded with effect from 01.02.2019

DIRECT TAX

CIRCULARS

F. No. 275/19212018-IT (8)

Date – 8.02.2019

Income-Tax Deduction from Salaries during
the Financial Year 2018-19 under Section 192
of the Income-tax Act, 1961-regarding

In Circular NO.1/2019 dated 1st January, 2019 on the above-mentioned subject, the provisions of section 80TTB were inadvertently not correctly explained in para 5.5.12 of the circular. The correct position of the admissibility of deduction under section 80TTB is provided as under: -

"Section 80TTB introduced by Finance Act, 2018, w.e.f 01.04.2019, allows deduction to a senior citizen from his gross total income in respect of income by way of interest on deposits with-

- a banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies (including any bank or banking institution referred to in section 51 of that Act);
- a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
- a Post Office as defined in clause (k) of section 2 of the Indian Post Office Act, 1898 (6 of 1898),

The amount of deduction in respect of above interest on deposit is as under: -

- in a case where the amount of such income does not exceed in the aggregate fifty thousand rupees, the whole of such amount; and
- in any other case, fifty thousand rupees.

However, no deduction is allowed under section 80TTB to any partner of the firm or any member of the association or any individual of the body if said interest is derived from any deposit held by, or on behalf of, a firm, an association of persons or a body of individuals.

For this purpose, "senior citizen" means an individual resident in India who is of the age of sixty years or more at any time during the relevant previous year. However, taxpayers claiming deduction under section 80TTB shall not be eligible for deduction under section 80TTA". 2. In view of above, Circular NO.1/2019 may accordingly be treated as modified to this extent. The earlier corrigendum dated.01 .02.2019 stands withdrawn and cancelled.

PRESS RELEASE

DIRECT TAX

Note on Recovery of Tax in the case of Travel Khana

Date - 8.02.2019

It has come to the notice of CBDT, through some media reports that Rs. 36 lakh have been recovered from a startup, namely, Travel Khana as part of recovery of outstanding demand on account of Angel Tax. It has been alleged that this was in violation of the CBDT instructions dated 24th December, 2018 pertaining to recovery of dues in Angel Tax cases.

On ascertaining the facts it is seen that the additions in the case were made under section 68 of the Income-tax Act, 1961 on account of unexplained cash credits & not under section 56(2)(viib) on account of premium on shares, as has been alleged.

During the assessment proceedings, the assessing officer requested for confirmation of the persons from whom deposits had been received. Wherever confirmations were submitted, the same were accepted by the assessing officer and no addition was made. However, where no confirmations were furnished by the assessee, the assessing officer made the addition after issuing proper show-cause notice and obtaining reply in the matter. Thus, the addition was made only when the assessee failed to substantiate the source of the deposit resulting in demand of Rs. 2.22 crore approximately.

The assessee did not obtain any stay in respect of the demand raised. Had the stay been obtained, recovery proceedings would not have been instituted by the Department. Since there was no stay against recovery and the demand had become due, the Department recovered Rs. 36 lakh after attaching the bank accounts of the assessee. Thereafter, all the bank accounts were released.

It may also be noted that neither the assessee nor its Director submitted any certificate from DIPP to indicate its status of being a startup, either during the assessment proceedings or thereafter. Had such a certificate been furnished, this situation would not have arisen.

Thus, it is clear that the case of Travel Khana is not covered by the instruction issued by CBDT dated 24th December, 2018 prohibiting coercive measures for enforcing recovery of outstanding demand in Angel Tax cases, as the addition was made under section 68 of the IT Act and not under section 56(2)(viib). Therefore, the action of the assessing officer of enforcing recovery of demand is not in violation of CBDT's instructions.

Notwithstanding the above, the benefit of doubt should and must be given to our entrepreneurs. However, when after repeated reminders, records of funds received are not provided, the Department is unfortunately left with no other choice. It is also our duty to prevent and expose suspected evasion.

JUDGEMENTS

INDIRECT TAX

GST: SQUAD OFFICER CAN'T DETAIN GOODS FOR BONAFIDE MISCLASSIFICATION, SAYS MADRAS HC M/S JEYYAM GLOBAL FOODS PVT LTD VS. UNION OF INDIA & OTHERS

**CASE NO. – 764 & 765 OF 2019
DATE -23.01.2019**

Fact of the case

1. M/s Jeyyam Global Foods Pvt Ltd is the petitioner in the present case.
2. The petitioner, a manufacturer of dried chickpeas, gram flour, pulses, and grams, transported the dried chickpeas from Salem to Dindigul.
3. Since the product is exempted, the petitioner had not filed any E-Way bill.
4. The consignment was intercepted by the Squad Officers who detained the vehicle by holding that what was transported by the petitioner comes under the classification (fried or roasted grams) falling under Chapter 2106 of BBN. Accordingly, he levied the tax with an equal penalty.
5. Aggrieved by the order, the petitioner approached the High Court contending that it is only the jurisdictional assessing officer, who could have ruled on the classification and that the Squad Officer has no power to do the same.

Decision of the Case

The High Court observed the followings-

1. There cannot be any doubt that Assessing Officer is the notified Proper Officer in this case.
2. The squad officer can intercept the goods, detain them for the on the purpose of preparing the relevant papers for effective transmission to the jurisdictional assessing officer.
3. It is not open to the squad officer to detain the goods beyond a reasonable period. The process can at best take a few hours.
4. Of course, the person who is in charge of transportation will have to necessarily cooperate' with the squad officer for preparing the relevant papers. I hold that the final call will

have to be taken only by the jurisdictional assessing officer.

5. The Madras High Court has held that the Squad Officer cannot detain the goods and impose the penalty for a bonafide misclassification under the Goods and Services Tax (GST) regime.

ITC NOT AVAILABLE FOR GST PAID FOR HOTEL STAY ON RENT-FREE ACCOMMODATION PROVIDED TO COMPANY DIRECTOR AND MANAGER: MAHARASHTRA AAR POSCO INDIA PUNE PROCESSING CENTER PRIVATE LIMITED VS. MAHARASHTRA AAR

**CASE NO.- 36
DATE -12.06.2018**

Fact of the case

1. In the present case the company is the applicant.
2. The MD and the GM are provided accommodation in a hotel and the cost of the same is part of the cost to the Applicant and is included as perquisites in the salary as per the provisions of Income Tax Act, 1961.
3. The Applicant would like to know whether they can claim ITC in respect of the GST charged by the hotel on the stay expenses of the MD/GM as per the provisions of the GST Law.

Decision of the Case

1. It was observed that the MD/GM could have been provided with any other residential accommodation and still would have performed their duties for the applicant. In the case of residential accommodation, as per the provision of the GST laws, GST is not liable to be paid on the rent received.
2. It is the intention of the Govt. not to tax the rent paid by any person when the rent is paid for any place of residence. In this case, if the MD/GM were staying at any residential place or society, the applicant would have paid only rent without GST.
3. It is found that the Hotel Accommodation is being used by the applicant as a residential premises of their MD/GM which is for the personal comfort of both and therefore in view

of the provisions of Section 17(5)(g) we hold that they are not eligible to claim the ITC for the same.

4. The Authority for Advance Ruling (AAR), Maharashtra has held that the input tax credit not available for GST paid for the hotel stay in case of rent-free hotel accommodation provided to General Manager and Managing Director of the company.

**JUBILANT FOODWORKS SLAPPED WITH RS 41.42
CRORE DEMAND BY GST ANTI-PROFITEERING
AUTHORITY
JUBILANT FOODWORKS PVT. LTD. VS. DIRECTOR
GENERAL OF ANTI-PROFITEERING**

**CASE NO. -04/2019
DATE -31.01.2019**

Fact of the case

1. A customer is the applicant in the present situation & Jubilant Food-works is the respondent here.
2. A customer complained through e-mail that Jubilant Food-works had not reduced prices of Domino's stuffed Garlie Bread & Medium Veg Pizza despite of reducing the GST rate from 18% to 5%.
3. The authority found that Jubilant Food-Works has not passed on the benefit of reduction in the rate of tax to its customers during the period November 15, 2017, to May 31, 2018.
4. It found that quantum of denial of rate cut benefit or profiteered amount illegally earned by Jubilant Food-Works is over Rs 41.42 crore.

Decision of the Case

1. The Respondent (Jubilant Food-Works) is directed to refund to the applicant an amount of Rs 5.65 along with interest @18 percent from the date of charging the above amount from him till its refund.
 2. He is further directed to deposit the balance amount of Rs 41,42,97,629.25 in the ratio of 50:50 in the Central and the State Consumer Welfare Funds along with interest @18 percent till the same is deposited, within a period of 3 months.
-

**E-WAY BILL CONTAINS THREE GST INVOICES:
KERALA HIGH COURT RELEASES GOODS ON
FURNISHING SIMPLE BOND
STOVE KRAFT PVT LIMITED VS. THE ASSISTANT
STATE TAX OFFICER**

**CASE NO. -3957 OF 2019
DATE-11.02.2019**

Fact of the Case

1. In the present case petitioner is Stove Kraft Pvt Limited who is a dealer.
2. The goods and vehicle of the petitioner were detained by the GST department on the ground that in the e-way bill generated, the petitioner has shown three invoices.
3. Under the GST law, the separate e-way bill will have to be generated to each of the invoices, goods have been detained.

Decision of the Case

Justice A Muhamed Mustaque observed the followings-

1. There may be a practical difficulty for the Department in tracking the invoices when multiple numbers of invoices mentioned in the e-way bill generated in the present case.
2. In a case where the department detained the vehicle since dealer generated e-way bill showing three invoices, the Kerala High Court held that the goods can be released by furnishing simple bond.

**GST ADVANCE RULING CANNOT BE SOUGHT
ON ACTIVITY UNDERTAKEN IN PAST
SHYAM SINGH CHAMPAWAT, M/S LAXMI
MACHINERY STORE VS. RAJASTHAN AAR**

**CASE NO. - RAJ/AAR/2018-19/33
DATE - 31/01/2019**

Fact of the Case

1. As per GST Council meeting held in the month of November, 2017 it was proposed and published in the press release that upper limit of turnover until which a GST Composition dealer may remain into GST Composition Scheme is increased to Rs. 1.50 Crore.
2. Even there were many publications in newspaper and social media saying that the said limit of turnover for GST Composition dealer is increased to Rs. 1.50 Crore.

3. In the present case Shyam Singh Champawat has made sales as follows –

Period Date	Amount
01.04.2017 to 13.11.2017	84,88,256/-
01.04.2017 to 24.11.2017	87,17,826/-
01.04.2017 to 25.11.2017	1,09,92,785/-
01.04.2017 to 31.03.2018	1,39,45,318/-

4. Based on the decision of GST Council meeting and amount of sales, Shyam Singh Champawat had also filed return GSTR 4 since he made sales over and above Rs. 1.00 Crore in F.Y 2017-18.
5. But Shyam Singh Champawat was not aware that any amendment would come into force only after issuing notification from CBIC.
6. So he raised some queries-
- Whether he can convert into regular GST dealer w.e.f. 25.11.2017 since?
 - Whether he can avail credit of stock in hand as on 25.11.2017?
 - Whether at the time of assessment he will be allowed to claim credit of stock in hand as on 25.11.2017 and as well as whether he will be allowed to claim credit of input on goods purchased on or after 25.11.2017.

Decision of the Case

The questions sought by Shyam Singh Champawat are related to activity undertaken in past-period, so it is not eligible for advance ruling as per Section 95(a) of CGST/SGST Act, 2017 and hence no ruling is given.

DIRECT TAX

AMENDMENT TO S. 80A (5) DOES NOT BAR ASSESSEE FROM REVISING COMPUTATION FOR DEDUCTION: DELHI HIGH COURT M/S ORACLE (OFSS) BPO SERVICES LIMITED VS. PRINCIPAL COMMISSIONER OF INCOME TAX

**CASE NO. – ITA 593/2018
DATE -17.01.2019**

Fact of the case

1. The respondent-assessee (M/S Oracle (OFSS) BPO Services Limited) is engaged in providing 'Processing Outsourcing Services covered within Section 10A of the Act and filed NIL taxable income which was later revised. The Assessing Officer (AO) partly accepted the revised computation.
2. The Commissioner of Income Tax (Appeals) (CIT) held that this acceptance in part by the AO was contradictory since it was only accepted to the extent beneficial to Revenue.
3. The issue for determination before the Hon'ble Court was that whether the ITAT was right in revising the computation of deduction under Section 10A and 80(5) of the Income Tax Act.
4. It was contended by the revenue-appellant that the revised computation should not have been accepted since the lower authorities have failed to take into account the amendment to Section 80A (5) vide Finance Act 2009.

Decision of the Case

1. After considering the submissions of both the parties referred to the case of Nath Brothers Exim International.
2. It held that the object of the amendment was to defeat multiple claims of deduction and ensure better compliance.
3. The provision does not state that deduction once claimed cannot be corrected and modified before AO.
4. The Delhi High Court has held that the amended 80A (5) cannot be read as a stipulation barring and restricting the assessee from revising the computation/claim for deduction made in accordance with Section 80A (5) of the Act.

**PAN-AADHAAR LINKAGE MANDATORY FOR
FILING INCOME TAX RETURNS FROM AY 2019-
20: SC
UNION OF INDIA & OTHERS VS. SHREYA SEN &
OTHERS**

**CASE NO.-34292/2018
DATE -4.02.2019**

Fact of the case

1. Shreya Sen, a taxpayer is the assessee in the present case who submitted I.T Return for the assessment year 2018-19 without linking Aadhaar & PAN No.
2. The revenue department appealed to the high court regarding the aforesaid problem.
3. The High Court had permitted the respondents, Shreya Sen to file the Income Tax Return for the Assessment Year 2018-19 without linkage of their Aadhaar and PAN numbers and it was also directed that the Income Tax Department would not insist on production of their number of Aadhaar enrollment.
4. The revenue department again appealed to the Supreme Court against the order passed by High Court.

Decision of the Case

The Supreme Court observed the following-

1. The High Court passed the order when the aforesaid matter was pending consideration in the Supreme Court.
2. Thereafter the Supreme Court passed the order to linkage PAN with Aadhaar mandatory.
3. The respondents had already submitted I.T Return without linking Aadhaar as per direction of High Court and the assessment has also been completed. So it need not be implemented for the assessment year 2018-19.
4. As per section 139AA inserted in the financial act 2017 to the Income Tax Act mandating quoting of Aadhaar or enrollment of ID of Aadhaar application form for filling of I.T Return..
5. Two judges Bench of Supreme Court upheld the constitutional validity of the said provision & reversed the order of High Court allowing the tax payer to file I. T return without linking PAN with Aadhaar.

**COPARCENER CAN'T BE TAXED FOR CAPITAL
GAIN FROM PROPERTY PURCHASED IN HIS
NAME OUT OF INCOME OF HUF: ITAT CHENNAI
SHRI V. NAGAPRASD VS. SHRI AR. V.
SREENIVASAN, JCIT**

**CASE NO. -ITA NO. 736/CHNY/2018
DATE -22.01.2019**

Fact of the case

1. Assessee is one of the coparceners of a HUF.
2. Out of the income of the family, the father of the assessee purchased a property in the name of the assessee and his brother Shri B.S. Murugesan. On the date of purchase, the assessee and his brother were admittedly minors and they had no independent source of income.
3. The income generated out of family business was invested in the said property. The Assessing Officer levied Capital gain Tax on the assessee.
4. Before the Tribunal, the assessee contended that the property belongs to Hindu Undivided Family of Shri Sambanda Mudaliar even though the document was registered in the names of minor children of Shri Sambanda Mudaliar.

Decision of the Case

The Tribunal observed the followings-

1. The Tribunal noted that the property in question was mortgaged for borrowing loan for the family business and therefore, the property in question belongs to Hindu Undivided Family of Shri Sambanda Mudaliar.
2. Hindu Undivided Family is not a legal entity under the common law. Therefore, it cannot hold any property/title over the immovable property. Hence, the registered sale deed for the purchase of the property in question has to be in the individual name of the coparcener.
3. The property belongs to Hindu Undivided Family and the Hindu Undivided Family is an independent and separate assessable unit under the Income-tax Act.
4. The gain arising out of sale of property has to be assessed only in the hands of Hindu Undivided Family and definitely not in the hands of individual coparcener.

5. The assessee and his brother are individual coparceners. Therefore, there cannot be any capital gain assessment in respect of the property belonging to the Hindu Undivided Family in the hands of the assessee.

GIFT FROM BROTHER-IN-LAW EXEMPTED FROM TAX: ITAT DELETES ADDITION AGAINST NAROTAM SEKHSARIYA'S RELATIVE SHRI ARVIND N. NOPANY VS. DCIT, AHMEDABAD BENCH

**CASE NO. – 128 & 129/AHD/2016
DATE -24.01.2019**

Fact of the case

1. The assessee received a gift from his brother-in-law, Shri Narotam Sekhsariya, the founder of Ambuja Cements Ltd. while completing the assessment proceedings.
2. The Assessing Officer asked the assessee to prove the identity, creditworthiness, and genuineness of the above gift.
3. In reply, the assessee categorically mentioned that the said Shri Narotam Sekhsariya was the brother-in-law of the assessee being the founder of Ambuja Cements Ltd. and remained its Managing Director till recently.
4. The AO further directed to produce the donor before him to prove the genuineness of the transaction of 16 crores along with evidence of his identity, creditworthiness and genuineness of transaction & The assessee produced the relevant documents.
5. The Tribunal found that the details of the donor starting from PAN number, capital gain statement, bank statement, and others is annexed to the paper book, which was duly placed before the authorities below.

Decision of the Case

The ITAT observed the followings-

1. The Learned AO acted beyond his jurisdiction by raising doubts regarding the relationship of the assessee and the donor ignoring the statutory provision in this regard as already been highlighted by the assessee before him.
2. Without rebutting the submission made by the assessee the order of addition was made by the Learned AO.
3. The gift so received by the assessee from his brother-in-law is exempted from tax under section 56 of the Act has

been considered on a wrong notion by A.O.

4. The Income Tax Appellate Tribunal (ITAT) Ahmedabad bench has recently granted relief to one of the relatives of the Ambuja Cements Ltd, holding that the gift received from brother-in-law is exempted from income tax.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

Date	Return Type
20 th February, 2019	GSTR 3B for the Month of January, 2018
20 th February, 2019	GSTR-5. Monthly - Summary of outward taxable supplies and tax payable by Non Resident Taxable person.
20 th February, 2019	GSTR 5A. Monthly - Summary of outward taxable supplies and tax payable by OIDAR.
28 th February, 2019	GSTR-7. Summary of Tax Deducted at Source (TDS) and deposited under GST laws (October, 2018 – January, 2019)
7 th March, 2019	Depositing TDS/TCS liability under Income Tax Laws for the month of February.
10 th March, 2019	GSTR-8. Monthly - E-commerce operators who are required to deduct TCS (Tax collected at source) under GST.
11 th March, 2019	GSTR-1. Monthly - Summary of outward taxable supplies where Turnover exceeds ₹1.5 Crore.
13 th March, 2019	GSTR-6. Monthly – Details of ITC received and distributed by ISD.
20 th March, 2019	GSTR 3B for the Month of February, 2018
20 th March, 2019	GSTR-5. Monthly - Summary of outward taxable supplies and tax payable by Non Resident Taxable person.
20 th March, 2019	GSTR 5A. Monthly - Summary of outward taxable supplies and tax payable by OIDAR.
31 st March, 2019	Due date of TRAN-1 is extended for certain taxpayers who could not complete filing due to tech glitch.
31 st April, 2019	Due date of TRAN-2 is extended for certain taxpayers who could not complete filing due to tech glitch.

DIRECT TAX CALENDAR - FEBRUARY, 2019

07.02.2019

- Due date for deposit of Tax deducted/collected for the month of January, 2019. 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

14.02.2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IB in the month of December, 2018

15.02.2019

- Due date for furnishing of Form 24G by an office of the Government where TCS for the month of January, 2019 has been paid without the production of a challan
- Quarterly TDS certificate (in respect of tax deducted for payments other than salary) for the quarter ending December 31, 2018

DIRECT TAX CALENDAR - MARCH, 2019

02.03.2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of January, 2019

07.03.2019

- Due date for deposit of Tax deducted/collected for the month of February, 2019. 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

15.03.2019

- Due date for furnishing of Form 24G by an office of the Government where TDS/TCS for the month of February, 2019 has been paid without the production of a Challan
- Fourth instalment of advance tax for the assessment year 2019-20
- Due date for payment of whole amount of advance tax in respect of assessment year 2019-20 for assessee covered under presumptive scheme of section 44AD/ 44ADA

17.03.2019

- Due date for issue of TDS Certificate for tax deducted under section 194-IA & section 194-IB in the month of January, 2019

30.03.2019

- Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA & section 194-IB in the month of February, 2019

31.03.2019

- Due date for linking of Aadhaar number with PAN
- Country-By-Country Report in Form No. 3CEAD for the previous year 2017-18 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group
- Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2017 to March 31, 2018) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report u/s 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc.

SNAPSHOTS



Seminar on 'GST AUDIT AND COMPLIANCE: 360 DEGREE VIEWS', organized by TRD & Serampore Chapter on 2nd February, 2019

Lighting of the lamp ceremony graced by CMA Shyamal Kumar Bhattacharjee - Chairman, EIRC, CMA Asim Mukherjee - Past EIRC Chairman, CMA Niranjn Mishra - Chairman, Taxation Committee, Mr. Debojit Bose - IRS, Additional Commissioner, GST - Kolkata, CMA Prabir Kumar Dutta - Chairman - Serampore Chapter, Mr. V. Pandiyaraj - IRS, Assistant Commissioner, GST - Kolkata

Seminar on 'GST AUDIT AND COMPLIANCES' organized by TRD & Dhanbad Chapter on 3rd February, 2019

Deliberation by CMA Niranjn Mishra, Chairman, Taxation Committee in the presence of eminent speakers like CMA Susanta Kumar Saha, GST Consultant & Others



Seminar on 'GST AUDIT AND COMPLIANCES' organized by TRD & Dhanbad Chapter on 3rd February, 2019

CMA Raj Sekhar - Director Finance, BCCL, Dhanbad along with other dignitaries attending the seminar

TAXATION COMMITTEE - PLAN OF ACTION

Proposed Action Plan:

1. Successful conduct of Certificate Course on GST.
2. Publication and Circulation of Tax bulletin (both in electronic and printed formats) for the awareness and knowledge updation of stakeholders, members, traders, Chambers of Commerce, Universities.
3. Publication of Handbooks on Taxation related topics helping stakeholders in their job deliberations.
4. Carry out webinars for the Capacity building of Members - Trainers in the locality to facilitate the traders/ registered dealers.
5. Conducting Seminars and workshops on industry specific issues, in association with the Trade associations/ Traders/ Chamber of commerce in different location on practical issues/aspects associated with GST.
6. Tendering representation to the Government on practical difficulties faced by the stakeholders in Taxation related matters.
7. Updating Government about the steps taken by the Institute in removing the practical difficulties in implementing various Tax Laws including GST.
8. Facilitating general public other than members through GST Help-Desk opened at Head quarter of the Institute and other places of country.
9. Introducing advance level courses for the professionals on GST and Income Tax.
10. Extending Crash Courses on Taxation to Corporates, Universities, Trade Associations etc.

Disclaimer:

The Tax Bulletin is an informational document designed to provide general guidance in simplified language on a topic of interest to taxpayers. It is accurate as of the date issued. However, users should be aware that subsequent changes in the Tax Law or its interpretation may affect the accuracy of a Tax Bulletin. The information provided in these documents does not cover every situation and is not intended to replace the law or change its meaning.

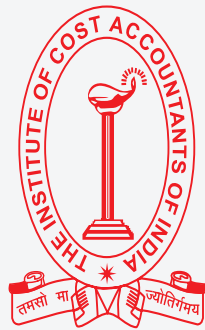
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