

JULY, 2021

TAX Bulletin

★ ★ VOLUME - 92 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

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MISSION STATEMENT

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

VISION STATEMENT

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

Objectives of Taxation Committees:

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.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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निर्मला सीतारामन
वित्त एवं कार्पोरेट कार्य मंत्री
भारत सरकार



Nirmala Sitharaman
Minister of Finance and Corporate Affairs
Government of India

Dy. No. **1733199** FM/FMP/2021
01 JUL 2021

MESSAGE

Happy to note that the Institute of Cost Accountants of India is commemorating the "GST Day" on 1st July 2021 by organising **National Webinar** on the theme "THE JOURNEY OF GST AND WAY FORWARD - AATMANIRBHAR BHARAT".

Today CMAs are contributing extensively towards nation building, especially the Aatma Nirbhar Bharat by way of continuous programmes on various topics, including GST, the biggest indirect tax reform in the country. GST is founded on the notion of "One Nation, One Market, One Tax" which has helped and will be helpful to trade and industry there by putting the Indian economy on a trajectory path to attain a \$5 trillion economy by 2025 despite the prevailing pandemic situation.

The Institute of Cost Accountants of India has been contributing positively in the field of taxation. The activities undertaken by the Institute like conducting regular webinars, seminars, various courses are helping different stakeholders including the Members, Tax Professionals throughout the Country to unlearn and relearn new subjects which are need of the hour to survive in the New Normal. Such initiatives also help the industries to adapt to the new processes and technologies to make the goods and services more competitive in the international market. The Institute continues to provide support to the Government on various reforms by submitting recommendations / suggestions for effective implementation and rollout.

Glad to know that the Institute has released 11 handbooks on GST till date and published 91 fortnightly Tax Bulletins since 2017.

Best wishes for future endeavours of the Institute.

Nirmala Sitharaman

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CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department!!!

The month of July had been full of activities for the Tax Research Department. The month started with a bang, as the department on behalf of the Institute celebrated the 4th Anniversary of implementation of GST in India. The day was observed with the conduct of a daylong seminar on the theme “The Journey of GST and way forward – Aatmanirbhar Bharat”.

The GST Day Celebration was a grand success for the gracious presence of stalwarts like Shri Nitin Jairam Gadkari, Hon’ble Union Minister for Road Transport & Highways, Govt. of India who expressed his immense happiness that professionals like CMAs are playing the role of a catalyst for successful execution of GST. He also mentioned that with the help of GST in very near future Indian Economy will reach the mark of a 5 Trillion-dollar economy. He also emphasized and appreciated this effort of the Institute amidst this pandemic situation in disseminating knowledge. He also mentioned that CMAs and other professionals are doing a good job throughout the world. Suggestions on GST of CMAs are well taken by the Ministry also.

It was surely an honour for us to receive an appreciation mail from **Smt Nirmala Sitharaman**, Hon’ble Finance Minister, Government of India. In her letter to the Institute stated that she is happy that “the Institute of Cost Accountants of India is commemorating the “GST Day” on 1st July, 2021 by organising National Webinar”. She is of the opinion that, “Today CMAs are contributing extensively towards nation building, especially the Aatma Nirbhar Bharat”.

Dr. Subhas Sarkar, Member of Parliament and Minister of State for Education also graced the occasion in the Inaugural session. He spoke about the history of GST and the impact of GST during the pandemic and how GST has brought in transparency in the Taxation system in India.

Many learned and important government officials also had their deliberations during the webint sessions. CMA Devendra Nagvenkar, Commissioner, CGST & CX, South Kolkata, Dr B V Murali Krishna, Addl Commissioner, Commercial Taxes, Bangalore, Govt of Karnataka and Shri S V Kasi Vishweshwara Rao, Additional Commissioner Commercial Taxes, Govt of Telengana had their participation in the webinar.

CMA A K Tiwari, Director Finance, GAIL, CMA B B Goyal, Former Addl Chief Advisor (Cost), Ministry of Finance, CMA Rahul Renavirkar, Managing Director, Acuris Advisors Private Limited, CMA Waman Parkhi, Partner Indirect Tax – KPMG India, CMA Suraj Prakash, Former Director Finance (BEML) and CMA M S Mani, Deloitte India, Tax Practice also joined the webinar.

We at the Taxation Committee are grateful to all the participants and knowledge contributors for their endless support, motivation and guidance. A big ‘Thank You’ to all.

The departmental activities of the Tax Research Department are being carried out seamlessly by the members of the department. We congratulate them on their tireless efforts. The department has submitted representations requesting for:

- Suggestions for MOOWR Scheme, 2019 to Shri Sandeep Mohan Bhatnagar, Member (Customs), Central Board of Indirect Taxes and Customs (CBIC)

On the Direct Tax front an 8 Hour workshop is being organized this month end on the topic “FILING OF RETURN OF INCOME - PROVISIONS, PROCEDURES AND HOW TO ADDRESS ISSUES” by CMA Niranjana Swain. We solicit the participation of our members and stakeholders to make this workshop a grand success.

We urge you to stay at home, stay safe and follow the Government Covid protocols.

Feedback is solicited from our readers for any improvement that may be made in the Bulletin.

Jai Hind.

Warm Regards



(Rakesh Bhalla)

CMA Rakesh Bhalla
20th July 2021



CMA Chittaranjan Chattopadhyay
20th July 2021

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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



CMA (Dr.) Ashish P Thatte
Practicing Cost Accountant

GST-ON BEAT, OFF-BEAT AND BACK BEAT INPUT TAX CREDIT: DEFAULT BY SUPPLIER

Lot has been written about how to face the issues related to non-payment of GST by supplier as Purchaser has no fault but may land into trouble. In this article we will discuss some of the latest case laws on the same to give some support to only genuine purchaser. Before we move to case laws, let's see legal position on the issue of Non Payment of GST by seller.

Since GST is already collected by Seller, it is supposed to be paid by furnishing proper returns by Seller. Usually we see 2A wherein GSTR 1 filed by Seller is reflected and we are convinced that Seller is about to pay GST collected from us. In reality the taxes are paid while submitting GSTR 3B and the cycle of collection from Buyer and depositing the same to Government is completed. See the following provision of Section 16 on Input Tax Credit

'16. Eligibility and conditions for taking input tax credit.

- (1) *Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
- (2) *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,--*
 - (a) *he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
 - (b) *he has received the goods or services or both.*

Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
 - (c) ***subject to the provisions of section 41, 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***
 - (d) ***he has furnished the return under section 39:***

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

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:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon'

With plain reading of the Section 16 clarifies that Input Tax Credit (ITC) cannot be taken if Supplier has not paid GST in cash or through ITC and supplier has also furnished the returns. There are plenty of arguments in favour of this section by Department and against by assesses. Let the court decide between the arguments. As many as 3 cases are pending before various High Courts challenging section 16(2)(c). Meanwhile few judgements we must consider here for our reference. These judgements are purely individual case to case basis but the intention of court is very clear.

The main in the list is in the High Court of Madras D Y Beathel Enterprises vs State Tax Officer (Data Cell), Tirunelveli. In this case Purchasers were traders in Raw Rubber Sheets they purchased goods from Charles and his wife by paying proper taxes. Later based on returns filed by seller they took Input Tax Credit but during inspection it was found that Charles and his wife did not pay tax and as per section 16(2)(c) department started their recovery from purchaser i.e. D Y Beathel Enterprises. A very important Para 9 in the said order says " At this stage, the learned counsel brought to my notice that the press release issued by the Central Board of GST council on 4-5-2018. In the said press release, it has been mentioned that there shall not be any automatic reversal of input tax credit from the buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller. However, reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by the supplier or the supplier not having adequate assets etc." So despite of above press release court ordered for enquiry of Charles and his Wife in the said case as enquiry cannot be completed unless they are called as witness. This may be the individual relief granted to petitioner but still section 16(2) is definitely vulnerable to many such cases in future. All assesses can take advantage of this case wherein Witness of Supplier is mandatory in case of such findings of enquiry are recorded.

In another case of Bharat Aluminium vs UOI at Chattisgarh High Court wherein court has refused to give any relief to UOI on recovery except for payment of 5% of total demand made of about 14 Cr. The case is still at nascent stage and next hearing is scheduled in August 2021. These 2 cases are very critical for survival of Section 16 (2) for conditions laid down for taking ITC. Like the Case of Surat Mercantile Association pending before Hon. Gujarat High Court, another similar case challenging validity of Section 16(2) before Hon. Delhi High Court will decide the future of this section. Until then assessee can take credit and ensure that suppliers pay taxes in GSTR 3B. Following steps can be taken by Purchasers;

1. Supply Agreement for indemnification:
2. No Purchases policy until taxes are paid:
3. Compliance Software/ Consultants services:
4. Holding back Taxes Payments:
5. Reward system to Supplier:

The above steps are just indicative and self-explanatory also.

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Practicing Cost Accountant, Guwahati

SEC 16(4) OF CGST ACT, 2017 - IS THE HON'BLE APEX COURT'S DECISION IN THE CASE OF ALD AUTOMOTIVE (P) LTD. EQUALLY RELEVANT IN GST REGIME?

GST was introduced in India with a promise of a seamless flow of credit. Dreams were sold that cascading effect of taxes will vanish in thin air once GST is introduced and double taxation would be a story of the past.

GST is structured on a mechanism which facilitates a continuous chain of set off of credit. One can call it the edifice, the core provision or the basic premise. It is the base on which the principle of value added tax is founded. There were imperfections in the earlier Vat and Cenvat regimes so far as these set offs were concerned. There were no cross set off between Vat and Cenvat. In addition some of the taxes paid formed part of the cost. Domain experts and the Government visualised and conceptualised that to eliminate these imperfections as well as to remove the undesirable cascading effects of several taxes levied at multiple points in the manufacturing and distribution chain, GST was the panacea. GST was perceived to help integrate the taxes on a pan India basis through an uninterrupted chain of set off from the level of manufacturers and service providers till the retailers. Naturally hopes swelled up that there would be unbroken and unrestricted flow of credit.

So a day came when the much vaunted, much touted landmark reform in the history of indirect taxation of India was introduced in the form of GST with abundant hope and dream of good days. However, with the honeymoon period being over, the hopes and aspirations started to recede. Dissatisfactions crept in gradually.

The most important area which is arguably the perceived backbone of GST contributed most to this dissatisfaction. The provisions on input tax credit (ITC) somewhat betrayed the high expectations that people had before the introduction of GST. A comparison between the words used in the model GST law and the final statute clearly indicate a shift. The Model GST Laws had titled the section on ITC as 'Manner of taking input tax credit' whereas the CGST Act titled this section as 'eligibility and conditions for taking the input tax credit'. The subsequent change in the title and insertion of the word 'conditions' probably point to the shift in the approach of the lawmakers so far as ITC is concerned.

After four years since introduction of GST, seamless flow of input tax credit still remains a dream. The first compromise was the non-inclusion of petroleum products in GST which continues still now. There

might be some reservations by the States in bringing some of the petro products under GST. Whatever be the reasons, it is definitely one of the stumbling blocks on the smooth flow of credit which gives rise to cascading effect. The same can be said for electricity also. However, the compromise in respect of ITC does not end here. To top it, there are apportioned credits, restricted credits and blocked credits. Some of them are arguably excessive going against ease of doing business.

The last nail in the coffin, so to say, was put through section 16(4) of the Act which seems to be one of the scariest provisions of GST laws and has the potential of putting death knell on many a MSME. It says that the ITC for a particular year is to be claimed by the due date of filing of the return for the month of September of the subsequent year or the filing of Annual Return whichever is earlier. In the event of failure to do this, such ITC is no more claimable which literally means a taxpayer will again have to pay the tax which he had already paid. As expected, this provision has already been challenged in the courts of law.

Whenever the issue is discussed whether section 16(4) would stand the scrutiny of law, invariably the judgement delivered by the Hon'ble Supreme Court in the case of ALD Automotive Pvt. Ltd. vs. The Commercial Tax Officer and others finds a place in this discussion. In this particular case [Civil Appeal Nos. 10412-10413 of 2018] which related to the State Vat regime, the issues before the Hon'ble Supreme Court were the following –

- Whether Section 19(11) of Tamil Nadu Value Added Tax (TNVAT) Act, 2006 violates Articles 14 and 19(1)(g) of the Constitution of India ?
- Whether Section 19(11) is inconsistent to Section 3(3) of the Act ?
- Whether Section 19(11) is directory provision, noncompliance of which cannot be a ground for denial of input tax credit to the appellants?
- Whether denial of input tax credit to the appellants is contrary to the scheme of VAT Act, 2006?
- Whether Assessing Authorities could have extended the period for claiming Input Tax Credit beyond the period as provided in Section 19(11) of TNVAT Act, 2006?

Section 3(3) of Tamil Nadu Value Added Tax Act, 2006 states that the tax payable by a registered dealer shall be reduced by the tax paid on intra state purchases from registered dealers. It thus means that output tax liability will be reduced by input tax credit. Section 19(11) of the Act puts a time limit on availment of such ITC and states that in case any registered dealer fails to claim input tax credit in respect of any transaction of taxable purchase in any month, he shall make the claim before the end of the financial year or before ninety days from the date of purchase, whichever is later.

While delivering the judgement on the above case, the Hon'ble Supreme Court held the following-

- The input tax credit is in nature of benefit/concession extended to dealer under the statutory scheme. The concession can be received by the beneficiary only as per the scheme of the Statute.
- The Statutory scheme delineated by Section 19(11) can neither be said to be arbitrary nor can be said to violate the right guaranteed to the dealer under Article 19(1) (g) of the Constitution.
- In the event it is accepted that there is no time period for claiming Input Tax Credit as contained in Section 19(11), the provision becomes too flexible and can give rise to large number of difficulties including difficulty in verification of claim of Input Credit.
- In the scheme of Tamil Nadu Value Added Tax Act, 2006, there is no power conferred on any authority under the Act to dilute the mandatory requirement under Section 19(11).

Let us now humbly analyse the above judgement and try to form an opinion whether the judgement delivered under the TNVAT Act is still relevant in the GST regime or not.

The Hon'ble Court was of the opinion that ITC is not a 'right' and is in the nature of benefit/concession. The judgement in reference also referred to the case of Jayam & Co. vs Assistant Commissioner & another [(2016) 15 SCC 125] wherein the same stand was taken. This particular case came to the Apex Court as Jayam & Co. had challenged the decision of the Madras High Court. In their judgment, the Hon'ble Madras High court had even went to the extent to say that the Input Tax Credit provided under section 3(3) of TNVAT Act was really an 'indulgence'. The Hon'ble High court was of the opinion that the entitlement to 'Input Tax Credit' is created by statute and can be claimed only in terms of the statute.

When we think about the words 'concession' or 'benefit' from a layman's viewpoint, the first thought that comes to our mind is that somebody has been obliged with some sort of allowances, indulgence, help, assistance or special consideration which he is not entitled to and it has been provided to him out of generosity. The poor fellow does not have any claim on it and he is being bestowed with something which is gratuitous. Going by the plain meaning of the words what a layman can make out is that benefit or concession and more specifically 'indulgence' is not a right or entitlement on anything at all and does not automatically become due to anybody. If somebody does not get a benefit or a concession, he does not stand to lose anything because neither he has any right to it nor has he any pecuniary interest on that.

Use of these words in legal terminology might have different meaning and implication. However, the judiciary in their pronouncements, more often than not, emphasizes that literal meaning is to be given to the provisions of law without reading too much into it. If that is so, should we conclude that a benefit/concession or an indulgence would forever remain so with a perception that the statute has provided us the same gratuitously and this would never become an entitlement or right despite fulfilling all the conditions attached to it? Should we presume that deprivation of the same would not result into pecuniary loss to anybody since it is just a benefit or a concession? In reality, the case seems to be the opposite. Deprivation from input tax credit results into pecuniary loss to a taxpayer since the same tax is to be paid twice and adds to the cost of products which cannot be recovered. Such loss arises not out of any poor business judgment but because of operation of a harsh provision of a law.

There is no arguing the fact that any 'benefit' or 'concession' is to be taken as per the scheme of the statute. Because statute is the medium through which the taxation policy of a country is given the required shape. Taxation policy of a country does not work in vacuum. It needs statutes for its manifestation and administration.

Now the moot question remain – whether ITC in GST is still a benefit/concession or some kind of a deemed entitlement? Have the reasons compelling the introduction of GST been able to change the scheme of the statute?

When Vat was introduced, removal of cascading effect, facilitating interrupted flow of credit and abolition of double taxation were not the decisive factors. Stakeholders were aware that with parallel functioning of Cenvat, State Vat, CST and many other taxing statutes with no cross adjustment of taxes, these imperfections will remain and some of the taxes would form part of the cost. Allowing a portion of such costs as ITC could, for arguments sake, be treated as concession or benefit. However, it is an established fact that GST in India was introduced mainly to achieve a continuous flow of ITC. Domain experts and Governments emphasized time and again that introduction of GST would bring an end to existing imperfections in ITC. Eminent Economists, indirect taxation experts, NCAER, Task force on GST, empowered group of State Finance Ministers and finally the Statement of Objects and Reasons

accompanying The Constitution (One Hundred and Twenty-Second) Amendment Bill, 2014 had a unanimous convergence of opinion that GST is being introduced to remove the cascading effect of taxes.

The Statement of Objects and Reasons accompanying the 122nd Constitution Amendment Bill clearly stated that the Constitution is proposed to be amended for conferring concurrent taxing powers to the Union and the States. Had the scheme of things to end there that would have been sufficient. Rather, the statement went one step ahead and emphasised that GST is intended to remove cascading effects of taxes and provide a common national market. Cascading effect of taxes can be removed as well as common national market can be provided only with an uninterrupted flow of credit across all economic activities.

With this background, nobody had any doubts why GST was being brought. Had seamless flow of ITC not been visualised as the backbone of GST, the purpose of GST would have been lost and there was no necessity to bring in GST. Neither the dream of 'One Nation, One Tax' would have a chance to be materialised. Everybody was assured that in such a scheme of things an interrupted flow of credit was guaranteed under GST and the scheme of the statute would just follow suit and the law would just require formalising and giving a proper shape to the provisions relating to ITC for proper administration. It is therefore clear that for all practical purposes GST statute has not created ITC. It is the other way round. ITC was the need of the day and one of the main purposes for which GST was implemented. The law had just to give the shape to an otherwise decided principle. The background for introduction of GST literally assured that taxpayers that they would be entitled to ITC provided the bona fides of a particular transaction are beyond question and the procedures of such entitlement would be just given a shape through the laws. The duty of the statute was just to facilitate what the country had already decided by not creating any arbitrary provision restricting free flow of ITC if the bonafide of a transaction are not under question. There should not have been any contradiction whatsoever. On the one hand, when the government says that the taxpayers would be entitled to 'A', the lawmaking arm of the government cannot say that 'A' is a concession and will be allowed depending on the sweet will of the statute. Judiciary may say that statute is sacrosanct, but statutes cannot defy the decision of the country which has already been given a shape through an amendment of the Constitution.

Therefore, in the humble opinion of the author, ITC was more of a 'deemed entitlement' even before the statute was created because necessity of a free flow of the same on a pan India basis covering both goods and services resulted in the birth of GST. This was not a concession or benefit since denial of the same would result into a double payment of tax for the taxpayer which would add to his cost. GST was introduced not to facilitate this but to avoid this. In value added tax mechanism, tax does not and should not form part of cost. Moreover, this is also not how the principle of indirect taxation works. This would simultaneously result into unjust enrichment for the government which is unethical, if not illegal. Denial of credit and forcing a payment twice was obviously not in the scheme of things when GST was conceptualised and ideally should not have been in the scheme of statute also.

In the case of **Siddharth Enterprise vs. the Nodal Officer** [Special Civil Application No. 5758 of 2019], Hon'ble Gujarat High Court in the matter of transitional credit held that CENVAT credit earned under the erstwhile Central Excise Law is the property of the writ-applicants and it cannot be appropriated for merely failing to file a declaration in the absence of Law in this respect. The Hon'ble Court is very clear here that Cenvat credit earned under the erstwhile Central Excise Law is a 'property' and right to it is a Constitutional right.

As already stated, the subject judgement of ALD Automotive delivered under the Vat regime did not recognise ITC as a right. Under the changed scenario and the context in which GST was introduced, the question can easily be repeated whether ITC is still a concession or a right?

It appears from a perusal of section 16 of CGST Act which covers eligibility and conditions for taking input tax credit that a right on input tax is created when a taxpayer fulfils all the conditions specified in section 16(2) which has been drafted as a non-obstante provision. And to use the words of the Hon'ble Apex Court, this right can be earned by the beneficiary only as per scheme of the statute. However, imposition of a time limit through section 16(4) would supersede or override this scheme of the statute since operation of section 16(4) makes the non-obstante section 16(2) meaningless. Section 16(2) has overriding effect on section 16(4) and section 16(2) has been drafted in a manner which shows clear legislative intent that it is not subject to section 16(4).

Section 16(1) and section 16(4) both use the words 'entitled to take credit whereas section 16(2) uses the word 'entitled to credit'. Entitlement to a particular right after fulfilling the prescribed and specified conditions results into a right. 'Taking' or availing or utilising that right through procedural formalities of furnishing a return by the person who is entitled to that right is a matter of his choice. The right of entitlement to input tax credit provided through section 16(2) is supreme and sacrosanct in the sense that section 16(2) overrides other sub-sections of section 16 and does not make the entitlement subject to any other sub-sections particularly sub-section (4). Thus entitlement under section 16(2) does not have a time limit and gives a right.

A reading of section 16(4) vis-a-vis section 16(1), which can be said to be the operative provision, reveals two issues. First, section 16(1) has not mentioned any 'time limit' or 'time element' in the section. Nowhere does it mention phrases like 'subject to time limit' or 'within such time limit'. Reference for the same can be drawn to the decision of the Apex Court in the case of Sales Tax Officer, Ponkunnam and another vs. K. I. Abraham [AIR (1967) SC 1823]. Moreover, there is no visible linkage of this sub-section with sub-section (4) also. Nowhere does it mention 'subject to sub-section (4)' or any such words. Sub-section (1) has left section (4) to be standalone and forceful creation of a relation between the two is stretched interpretation. Similarly, based on the provisions of a non-obstante sub-section (2), entitlement of input tax credit and getting a vested right there on after having fulfilled all the conditions mentioned therein is also not subject to operations of other sub-sections particularly sub-section (4). Accordingly, where there is an entitlement under sub-section (2) and such entitlement has been duly earned and converted into a vested right after fulfilment of the required conditions, the same cannot be restricted putting a forcible time limit as the law has not made such entitlement and subsequent right subject to provisions of some other sub-sections particularly sub-section (4). The way provisions of sub-sections (1), (2) and (4) have been drafted, encroachment of provisions of sub-section (4) into an otherwise valid and legal entitlement of ITC under the provisions of a non-obstante sub-section (2) should be bad in law as sub-section (4) cannot limit the scope of sub-section (2). The final words therefore can be put in this way that section 16(4) does not prevail over section 16(2) and sub-section 16(2) is not subject to sub-section 16(4). And with this changed scheme of statute and in the context and the background in GST was introduced in India, ITC should be no more a benefit or a concession or an 'indulgence'. Withdrawal of an 'indulgence' which is obviously not a right does not result into pecuniary loss but denial of 'input tax credit' which is a right results into pecuniary loss and financial stress on a taxpayer.

In the case of **Eicher Motors Limited and another vs. Union of India and others** the Court observed that Modvat credit is in the nature of a facility of credit which is as good as tax paid till tax is adjusted on future goods. It was further observed that the right to the credit has become absolute at any rate when the input is used in the manufacture of the final product. The Court said that a credit under the MODVAT scheme was "as good as tax paid". It is as good as saying that ITC is a vested right.

The Hon'ble Court also held in the ALD Automotive case that the statutory scheme delineated by Section 19(11) of TNVAT Act neither can be said to be arbitrary nor can be said to violate the right guaranteed to the dealer under Article 19(1) (g) of the Constitution.

While the merit of section 16(4) probably is not going to be challenged under Article 19(1)(g) of the Constitution which gives a fundamental right to practice any profession or to carry on any occupation, trade or business, this might be challenged under Article 300A which gives a right on property. Section 16(4) can be challenged on the ground of its being arbitrary for reasons already discussed. It can be challenged under Article 14 also.

What basically makes a provision of a law arbitrary? When enunciating the doctrine in **Sharaya Bano v Union of India**, Nariman J. said that a provision of law would be manifestly arbitrary if it lacked a clear determinative principle or encapsulated a capricious or irrational measure (Para 55). A non-obstante provision similar to section 16(2) was not there in sec 19 of TNVAT. Accordingly, section 3(3) and section 19(11) could be interpreted harmoniously as nothing superseded anything neither was there any contradiction. However, section 16(4) of CGST Act seems arbitrary in the sense that it is making a non-obstante clause toothless, meaningless and helpless. If this is not irrational, what else is?

In the case of **Siddharth Enterprise vs. the Nodal Officer** already mentioned above the Hon'ble Court also held that the liability to pay GST on sale of stock carried forward from the previous tax regime without corresponding input tax credit would lead to double taxation on the same subject matter and, therefore, it is arbitrary and irrational. This write up is also trying to drive home the point that double taxation on same subject matter and transaction because of application of provision of section 16(4) is arbitrary and irrational.

As stated, the basic difference between section 19(11) of TNVAT Act and section 16(4) of CGST Act is that while section 19(11) was not superseded or challenged by any non-obstante provision, section 16(4) is superseded by an overriding section 16(2) which provides the entitlement and right over ITC and the operation of section 16(2) is not subject to some other provisions.

The subject judgement of ALD Automotive also stated that provision of a statute is not to be read in isolation. Indeed, provisions are to be read and interpreted harmoniously if there are no conflicts between such provisions. Section 19(11) could be read harmoniously along with charging section 3(3) as there were no conflicts between them. However, even if the four sub-sections of section 16 are read harmoniously, the dominant non-obstante sub-section (2) needs to be in the forefront. If that is not so, the statute should not use a non-obstante clause at all while drafting a law because presence of a toothless non-obstante clauses does not speak high about a law.

The subject judgement also said that it is in the domain of the legislature as to how much tax credit is to be given under what circumstances. Fair enough. But in doing so, can the legislature draft such provisions which breaks the edifice or purpose of such legislation or go against a decision which a country had already made?

The judgement also mentioned that law related to economic activities should be viewed with latitude. Having agreed to this viewpoint, in taxpayers and common citizens' defence it can also be said a fiscal law should be concerned more with its economic impact than the legal aspect. A legal loophole can be repaired but it is difficult to undo an undesirable economic effect.

Many a times, the lawmakers, the Hon'ble courts and the professionals tend to only look at the legal angle of a particular law or a particular provision of a law. So far as judiciary is concerned, there is no arguing the fact that one of the major functions of the judiciary is to interpret and apply laws. Judiciary also carries on their shoulders the responsibility of providing justice to a common citizen and protect his rights given by the Constitution. However, prima facie the courts are under no obligation to measure or quantify the possible impact of a particular provision of law on the economy of the country. Nor is the judiciary supposed to be excessively concerned about the economic impact of the decisions made by them. They are supposed to act as guardian of the constitution, protector of fundamental rights of the citizens and provide administration of justice.

However, one would still be inclined to say that the impact of taxation laws is farfetched. Taxation laws are not merely a set of sections, sub-sections, clauses, rules and sub-rules. It is not about some conditions, restrictions and procedures. It probably would not be an overstatement if it is said that taxation laws are one of the vision documents of economic prosperity of a country. It is not a merely revenue generation tool.

Taxation laws should be equitable and of course, it should not be violative of constitutional rights of the citizens. A taxation law is not a good law if it proves to be burdensome on the common citizen, if it stifles economic activity, if it creates roadblocks in ease of doing business. A law, particularly the one that guides the economy of a country and which claims to be a big reform, should not be measured only on the criteria whether some provisions of it would stand the legal scrutiny or not but on equally important criteria whether it is contributing to the ease of doing business, to the growth of the country and whether it is causing undue hardship on taxpayers and common citizen alike.

The Hon'ble Apex Court in the subject judgement further stated that if it is accepted that there is no time period for claiming Input Tax Credit as contained in Section 19(11), the provision become too flexible and give rise to large number of difficulties including difficulty in verification of claim of Input Credit.

During the Vat regime, none of the states had a robust back end IT infrastructure. Data mining and fruitful MIS was not easy to be performed. Neither was there any Artificial Intelligence (AI). In those circumstances, a lot depended on manual operations and therefore reconciliation or data matching was not an easy task to perform. Accordingly, a shorter time limit under such circumstances was probably warranted. However, it is also to be noted that barring Tamil Nadu no other state had any time limit restriction on availment of input tax credit. At that time, most of the States did not have strong IT backup either. This restriction of ITC was a unique case with Tamil Nadu only. It would be illogical or would possibly be bereft of fact to assume that other States had lesser legal or practical knowledge not to include this provision into their statute and ultimately faced humongous problems in completing their assessments. Since a particular state had only used this provision and no other states resorted to this, it gives enough scope to believe that no other States felt any necessity to burden the taxpayers with such a harsh provision. Neither did it come to notice that any of the States faced huge problems in data matching and assessments.

GST regime fortunately has the potential to create a robust IT back end infrastructure. Initial hiccups or continued shortcomings of GST common portal notwithstanding, the IT infrastructure of GST have the potential to handle verification of ITC and related issues for a comparatively longer period of time and with more precision. Data in the form of GSTR-1, 2A are already available with the government. Therefore, restricting the time to avail ITC for such reasons is not perceived to be a wise decision at all under the GST regime. In fact, if the Govt. has resolutely followed the GSTR 1-2-3 scheme, such issues would not probably have arisen. Late fees and interest are already there as deterrent for the taxpayers forcing them to be disciplined. Punishing them with double payment of tax through section 16(4) is nothing but arbitrary and capricious.

The Court also stated that in the scheme of Tamil Nadu Value Added Tax Act, 2006, there is no power conferred on any authority under the Act to dilute the mandatory requirement under Section 19(11).

That could be the case with TNVAT Act but the GST laws clearly give this power to the lawmakers by virtue of section 174 and in fact the time limit stated under section 16(4) was extended for the year 2017-18 by inserting a proviso to section 16(4) by the Central Goods and Services Act (Second Difficulties of Removal) Order 2018 w.e.f. 31-12-2018. If there is a precedent, there could be a subsequent also.

In the humble opinion of the author, it therefore appears, that the legal grounds or the scheme of the statute on which the above judgement was delivered, have definitely not been the same under the GST regime and this subject decision may not still remain overwhelmingly relevant considering the compelling background for introduction of GST and a changed legal scenario as well as the scheme of the statute.

The purpose of this write up was to highlight the salient features of the judgement delivered by the Hon'ble Apex Court in the case of ALD Automotives (P) Ltd. vs. Commercial Tax Officer and whether the stand taken by the Court would still hold its ground under the GST regime. Section 16(4) may or may not pass the legal scrutiny but as of now one thing can definitely be pronounced in the court of taxpayers and professionals that its negative impact on small and medium businesses would be far reaching. It has all the potential to destroy a lot of them resulting into unpalatable effect on the economy. GST was visualised, planned, drafted and implemented with a promise of continuous chain of set-off and free flow of credit. Legal merits or demerits of Sec 16(4) notwithstanding, the very existence of section 16(4) are a betrayal of that promise. This provision is not less than a nightmare for the taxpayers migrated from State Vat because apart from Tamilnadu, no other state had this dreaded provision. This provision has its genesis to Cenvat rules and in terms of sheer numbers Cenvat taxpayers would not form even a tiny portion of Vat taxpayers.

From the taxpayers' point of view, the time to write an obituary for the much hyped 'seamless flow of credit' has probably not yet come but the way things are moving, a long 'pause' button should definitely be pressed in its glorification. It is very disheartening to note that ITC in its present form was never visualised under GST or at least the taxpayers were never made to believe that it would take such an unfriendly form. Lawmakers must realise that no taxation laws can bring economic prosperity by putting unbearable financial and compliance stress on small and medium taxpayers. Yet, there is a smokescreen that GST Amnesty scheme has been announced which would benefit non-filers, however, any such scheme without simultaneous relaxation in section 16(4), to put it mildly, is a death trap. ITC has no more remained Input Tax Credit, it has now become Incredibly Tough Compliance.

BRIEF OF GST DAY OBSERVATION 2021

BY TAX RESEARCH DEPARTMENT

Tax Research Department organized a virtual program to observe 4th Anniversary of GST Implementation on 1st July 2021 throughout the day. Shri. Nitin Gadkari- Hon'ble Union Minister for Road Transport & Highways and Micro, Small and Medium Enterprises, Govt. of India, Dr. Subhas Sarkar, Member of Parliament and several eminent speakers, dignitaries graced the occasion.

Dr. Subhas Sarkar, Member of the Lok Sabha informed that the GST collection for the month of May recorded more than Rs. 1 lakh crores for 8 months in a row which indicated a lower than expected impact of lockdown in the 2nd wave of Covid-19 pandemic. He also briefed the 4 years journey of GST and benefits of GST.

Shri Nitin Gadkari appreciated this virtual program amidst this pandemic situation. He also acknowledged the effort of the Tax Research Department for publishing 6 Indirect Tax Books as well as 91st Tax Bulletin on the red letter day of 1st July. All these books were released by the Minister on this occasion. He also recapitulated the 4 years of journey of GST and mentioned that *One Nation, One Tax, One Market is the main theme behind the implementation of GST.* He expressed that *with the help of GST in very near future Indian Economy will reach 5 Trillion economy. He stressed upon the facts like GST has removed the so long years cascading effect of tax mechanism, GST mechanism is being developed in such a digitized way so that there would be Maximum Governance and Minimum Government, Petroleum Products are still out of GST and in near future it might be included under GST after consultation with State Govt. Etc.* However there are lot of obstacles and he urged to all types of taxpayers to comply with due dates. He mentioned about the requirement of detailed performance audit rather than financial audit. Apart from above, he also informed that as of there are 22 Green Expressway like Chennai to Bangalore green highway, 38 Green Highways are in pipeline, introduction of Electric Public Transport for pollution control, India becoming a manufacturing hub of automobile industry etc. Mr. Gadkari has also encouraged to use alternative resources of Petrol and Diesel and also encouraged for proper utilization of Manpower, for skill development, lowering of dependency on import and manufacturing itself, for conversion of knowledge into wealth, for enhancement of innovative skill to be self reliant Indian Economy. He acknowledged the contribution of the CMAs in Nation Building.

Hon'ble Minister of Finance and Corporate Affairs, Smt. Nirmala Sitharaman, blessed the occasion of Observance of GST Day with her message where she acknowledged the Institute's contribution to the Country as whole and wished success of the Institute for all future endeavour.

There were total 4 sessions on 4 different topics such as (i) *Challenges during Pandemics – Trade, Industry & Govt* (ii) *One-Nation, One-Tax* as against Problems faced by Trade & Industry and Resolutions by the GST Council (iii) *Way Forward – GST towards AATmirbhar* (iv) *Digital Audit and Assessment Procedure.* At the end, valedictory session was chaired by **Shri Devendra V Nagvenkar - Commissioner CGST & CX, Kolkata South Commissionerate.**

Panel Discussion 1- Challenges during Pandemics – Trade, Industry & Govt



CMA B. B. Goyal – Moderator
Former Addl. Chief Adviser
Ministry of Finance, and
Head of Indian Cost Accounts Service

Mr. Goyal mentioned the following :

1. Most affected industry is healthcare. Other than that hospitality, travel and airlines are also badly affected.
2. Education system is hampered most affecting students worldwide.
3. Govt is taking remedial steps.
4. Trust in Govt should be maintained.



CMA V. S Datey –Speaker
Author – Indirect Taxation

1. He mentioned that the effect of Pandemic on GST is indirect.
2. He presented with a presentation highlighting achievements and failures of GST.
3. He also highlighted the relief packages introduced by Govt.
4. He mentioned some litigation prone issues in his presentation



CMA Mrityunjay Acharjee –Speaker
Balmer Lawrie Ltd-Vice President (A&F - Taxation)

1. He mentioned that trade and industry stepped back in last one and half years.
2. He also mentioned about the infrastructural benefit to the trade and industry in respect of GST given by the Govt.
3. He pointed out that digitisation is the main challenge of industry, especially for small and medium sized trade association/ organisation.
4. He expresses his concern regarding the security of data being uploaded and suggested a data security audit as a solution.
5. He explained that data sanitization as the biggest challenge of the present era.



CMA Amit Sarker –Speaker
Partner - Deloitte Haskins & Sells LLP
Taxation

1. He mentioned about the transformation of tax administration & compliance.
2. He also mentioned about the digitisation of tax administration.
3. He discussed several requirements of digitised tax

administration system.

4. He suggested to bring clarity on certain issues of rate of taxes on infrastructural projects.

Panel Discussion 2-Journey of GST – “One-Nation, One-Tax” as against Problems faced by Trade & Industry and Resolutions by the GST Council



Dr. B. V. Murali Krishna – Chairperson
Additional Commissioner of Commercial Taxes

1. He shared some data relating to collection of GST in last 4 years.
2. He discussed about the importance of ITC and advanced ruling in GST.



CMA Rahul Renavikar– Moderator
Managing Director of Acuris Advisors Pvt. Ltd

1. He welcomed all the panelists of the session and smoothly moderated the session.



CMA Ashok Nawal –Speaker
Practicing Cost Accountant

1. He presented a ppt on Journey of GST.
2. He explained the difficulties of achieving the target of One Nation One Tax.
3. He discussed some case studies on various aspects of GST.
4. He spoke about some other important issues of GST.



CMA Debasis Ghosh –Speaker
Vice President-Group of Indirect Tax in the Peerless General Finance & Investment Co

- Mr. Ghosh mentioned the following :
1. Transaction in GST comprising goods and services.
 2. Also described concept of Composite supply
 3. Related Person and Distinct Person are also other important concept.



CMA B.M Gupta –Speaker
Senior Vice President – Taxation Practices @ ArBhar Consulting Pvt Ltd

1. He showed a presentation on the technical challenges faced by the taxpayers.
2. He suggested some changes in the GST Portal to ease the challenges.

Panel Discussion 3- Way Forward – GST towards Aatmanirbhar



CMA A K Tiwari –Chairperson
Director (Finance) of GAIL (India) Limited

Mr. Tiwari mentioned the following :

1. GST has made business system user friendly and transparent.
2. It has boosted the export as well as manufacturing activities and reduced the compliance costs of many Industries.



CMA Waman Parkhi –Moderator
Partner, Indirect Tax-KPMG India

Mr. Parkhi mentioned the following :

1. CMAs should concentrate for Value Creation instead of checking arithmetical accuracy in Audit.
2. Instead of Audit, health check and due diligence in GST by a team of experts might be there to reduce litigation and cost in long run.



CMA Sanjay Bhargave –Speaker
Practicing Cost Accountant

Mr. Bhargave mentioned the following :

1. Suggested Govt. to include Petroleum and Gas products in GST to reduce price of the petroleum by 4% to 5%
2. Industries as well as General Public will be benefited if Petroleum and Gas products would be included under GST



CMA Viswanath Bhat–Speaker
Practicing Cost Accountant

Mr. Bhat. mentioned the following :

1. GST was introduced to remove the cascading effect.
2. After introduction GST Govt. has eliminated so many import exemption to protect local manufacturers and there is also less compliance burden to industry.
3. Advance Ruling Mechanism is minimizing the litigation.



CMA Shiba Prasad Padhi –Speaker
Practicing Cost Accountant

Mr. Padhi mentioned the following :

1. GST is a catalyst to Aatmanirbhar Bharat.

2. Stakeholders participation is required to make Aatmanirbhar Bharat
3. GST Grievance Redressal system should be active.

Panel Discussion 4- Digital Audit and Assessment Procedure



MR. S.V KASI–Chairperson
Authority for Advance Rulings in State of
Telangana

1. He pointed that the concept of Audit and Assessment is for ensuring the collection of intimated tax.
2. He also mentioned that the Audit should be conducted in scientific and objective manner so that tax administration becomes cost effective and ensures higher possible compliance.



CMA M.S Mani–Moderator
Partner in the Deloitte India Tax practice

- CMA M S Mani spoke about
1. Digitization in taxation being an interactive interface between taxpayer and consultant.
 2. The Govt has collected the highest amount of data through implementation of GST and everything can be traced out digitally.
 3. Using this data Govt. can do data analysis and statistical survey for future betterment of Indian Indirect Tax Structure
 4. CMAs can help in better utilisation of this data and maintenance of data secrecy from misuse



CMA Shailendra Saxena–Speaker
Practicing Chartered Accountant

- CMA Shailendra Saxena spoke about
1. The inter relationship between sec 35 and sec 57
 2. Digitisation would be a fruitful exercise since both the department officials and the professionals dealing in GST are qualified hence exchange of knowledge being easy it would be a win win situation.



CMA Anil Sharma–Speaker
Practicing Cost Accountant

- CMA Anil Sharma Spoke about
1. Digitization needs properly skilled through management of people and proper knowledge support
 2. Huge Large amount of Investment, high speed internet connectivity everywhere, technologically and professionally literate professionals etc are required for implementation of a digitised environment.
 3. Complete digitalization for Audit and Assessments under law as systems requires more refinement. At present resolution of any litigation on a digital platform would not be fruitful.



CMA Navneet Jain–Speaker
Practicing Cost Accountant

- CMA Navneet Jain spoke about
1. Digital audit is beneficial as all the data are available on the digital platform of GST.
 2. By doing away GST audit 30,000 crore rupees annually for industries
 3. GST consultation by professionals would be more beneficial since they will look into all aspects of the organisation rather than merely looking into from an audit perspective.
 4. Even receiving of ITC has also become easier

VALEDICTORY SESSION



**CMA Devendra V. Nagvenkar–
Chairperson**
Commissioner CGST & CX, Kolkata South
Commissionerate

- CMA Devender Nagvenkar spoke about
1. Though the main focus of the Government is securing the but it is not blind folded towards the concerns of the assesseees rather the Government is concerned.
 2. Amendments made the Govt on GST laws are based on three pillars - (i) Beneficial (ii) Revenue Safeguarding & (iii) Court Judgements
 3. He has urged Professionals like CMAs to come up with their views and hindrances they are facing while working, which would help the Govt to understand the scenario better and also cater to the needs of the assesseees hence help in nation building
 4. The GST audit is expected to be fully digitized and be rolled out afresh



CMA Suraj Prakash –Speaker
Former Director (Finance) of BEML
Limited

- CMA Suraj Prakash spoke about
1. He spoke about the different advantages that the implementation of GST has brought to our country across all sectors and industries.

At the end , CMA Chittaranjan Chattopadhyay summed up this session with Vote of Thanks. We look forward for another successful year of GST

For the full program please go to the below youtube link :
<https://www.youtube.com/watch?v=HDzINfAkzAo>

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

GST NOTIFICATIONS AND CIRCULARS

Central Tax

Notification No. 28/2021 – Central Tax

Dated – 30th June, 2021

Seeks to waive penalty payable for non-compliance of provisions of Notification No. 14/2020 dated 21st March 2020

CBIC by issuing the Notification, has extended the applicability of B2C dynamic QR code provisions to 30.09.2021 instead of from 1st July, 2021.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-28-central-tax-english-2021.pdf;jsessionid=A778117A602E3BC2ED481380D8A367F9>

CUSTOMS NOTIFICATIONS AND CIRCULARS

Tariff Notification

Notification No. 34/2021- Customs

Dated – 29th June, 2021

Seeks to reduce the basic custom duty

CBIC has reduced the basic custom duty on Crude Palm Oil [1511 10] and Palm Oil other than Crude Palm Oil [1511 90] till 30th September 2021.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs34-2021new.pdf>

Notification No. 35/2021- Customs

Dated – 12th July, 2021

Seeks to exempt basic customs duty on imports

CBIC has exempted basic customs duty on imports of specified API/ excipients for Amphotericin B and raw materials for manufacturing COVID test kits, till specified period when imported into India, from the whole of the duty of customs leviable thereon under the First Schedule, subject to the conditions specified in the Annexure to this notification.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-tarr2021/cs35-2021.pdf>

Non Tariff Notification

Notification No. 55/2021-Customs (NT)

Dated - 30th June, 2021

Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver

CBIC has made the following amendments in the notification No. 36/2001-Customs (N.T.) which was issued on 3rd August, 2001. In this notification the following shall be substituted in TABLE-1 and TABLE-2 and TABLE-3

TABLE - 1

Sl. No	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$ Per Metric Tonne)
(1)	(2)	(3)	(4)
1	1511 10 00	Crude Palm Oil	1036
2	1511 90 10	RBD Palm Oil	1059
3	1511 90 90	Others - Palm Oil	1048
4	1511 10 00	Crude Palmolein	1065
5	1511 90 20	RBD Palmolein	1068
6	1511 90 90	Others - Palmolein	1067
7	1507 10 00	Crude Soya bean Oil	1246
8	7404 00 22	Brass Scrap (all grades)	5549

TABLE - 2

Sl No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	566 per 10 grams
2	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50	836 per kilogram

3	71	<p>(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92;</p> <p>(ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.</p>	836 per kilogram
4	71	<p>(i) Gold bars, other than tola bars, bearing manufacturers or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.</p>	566 per 10 grams

TABLE - 3

Sl No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
(1)	(2)	(3)	(4)
1	080280	Areca nuts	4904

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt55-2021.pdf>

Notification No. 56/2021-Customs (NT)

Dated - 30th June, 2021

Seeks to amend Sea Cargo Manifest and Transshipment Regulations 2018

CBDT has made the following regulations to amend the Sea Cargo Manifest and Transshipment Regulations, 2018. It may be called as Sea Cargo Manifest and Transshipment (Fourth Amendment) Regulations, 2021.

2. In the said regulations, in regulation 15, -

(a) in sub-regulation (2), for the words, figures and letters, "till 30th June, 2021", the words, figures and letters, "till 31st July, 2021" shall be substituted.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt56-2021.pdf>

Notification No. 57/2021-Customs (NT)

Dated - 1st July, 2021

Exchange rate Notification

CBIC has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa which is specified in Schedule I and Schedule II and has effected from 2nd July, 2021.

SCHEDULE-I

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	For Imported Goods	For Exported Goods
Australian Dollar	57.00	54.65
Bahraini Dinar	203.85	191.35
Canadian Dollar	61.20	59.00
Chinese Yuan	11.70	11.35
EURO	89.80	86.65
US Dollar	75.30	73.60

SCHEDULE-II

Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
	For Imported Goods	For Exported Goods
Japanese Yen	68.25	65.80
Korean Won	6.80	6.35

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt57-2021.pdf>

Notification No. 58/2021-Customs (NT)

Dated - 1st July, 2021

Exchange rate Notification

Notification under sub-section (2) of Section 151B of the Customs Act, 1962 to notify Agreements or Arrangements on 'Cooperation and Mutual Administrative Assistance (CMAA) in Customs matters' of India with other countries.

Central Government has directed that provisions of the section 151B of Customs Act, 1962 shall apply to the Agreement or Arrangement on Cooperation and Mutual Administrative Assistance (CMAA) in Customs

matters entered with the 32 contracting State specified below subject to the conditions, exceptions or qualifications specified in the said agreement or arrangement.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt58-2021.pdf>

Anti-Dumping Tax

Notification No. 34/2021-Customs (ADD)

Dated – 28th June, 2021

Seeks to further amend notification No. 29/2017-Customs (ADD), dated the 14th June, 2017 to extend the levy of Anti-Dumping duty on 'Glazed/Unglazed Porcelain/Vitrified tiles' originating in or exported from China PR, up to and inclusive of 31st December, 2021

Central Government has made the further amendment in the notification No. 29/2017-Customs (ADD), dated the 14th June, 2017, and extended the anti-dumping duty till 31st December, 2021 on the subject goods, originating in or exported from the subject countries.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd34-2021.pdf>

Notification No. 34/2021-Customs (ADD)

Dated – 29th June, 2021

Seeks to further amend notification No. 11/2016-Customs (ADD), dated the 29th March, 2016 to extend the levy of Anti-Dumping duty

Central Government has extended the levy of Anti-Dumping duty till 30th November 2021 on 'Tyre Curing Presses also known as Tyre Vulcanisers or Rubber Processing Machineries for tyres, excluding Six Day Light Curing Press for curing bi-cycle tyres' originating in or exported from China PR.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd35-2021.pdf>

Notification No. 36/2021-Customs (ADD)

Dated – 29th June, 2021

Seeks to amend notification No. 17/2017-Customs (ADD), dated 11th May, 2017 to extend the levy of Anti-Dumping duty

Central Government has extended the levy of Anti-Dumping duty till 15th December 2021 on 'Hot-Rolled flat products of alloy or non-alloy steel' originating in or exported from China PR, Japan, Korea RP, Russia, Brazil or Indonesia.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd36-2021.pdf>

Notification No. 37/2021-Customs (ADD)

Dated – 29th June, 2021

Seeks to amend notification No. 18/2017-Customs (ADD), dated the 12th May, 2017 to extend the levy of Anti-Dumping duty

Central Government has extended the levy of Anti-Dumping duty till 15th December, 2021 on 'Cold-Rolled flat products of alloy or non-alloy steel' originating in or exported from China PR, Japan, Korea RP or Ukraine.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd37-2021.pdf>

Notification No. 38/2021-Customs (ADD)

Dated – 29th June, 2021

Seeks to amend notification No. 42/2016-Customs (ADD) dated 8th August, 2016 to extend the levy of Anti-Dumping duty

Central Government has extended the levy of Anti-Dumping duty on PVC Flex Film originating in or exported from China PR, till 31st January, 2022.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd38-2021.pdf>

Notification No. 39/2021-Customs (ADD)

Dated – 30th June, 2021

Seeks to amend notification No. 43/2016-Customs (ADD) dated 8th August, 2016, to extend levy of ADD imposed on “Viscose Staple Fibre (VSF) excluding Bamboo Fibre, Dyed Fibre, Modal Fibre & Fire-retardant Fibre “ originating in or exported from China PR and Indonesia

Central Government has extended levy of ADD imposed on “Viscose Staple Fibre (VSF) excluding Bamboo Fibre, Dyed Fibre, Modal Fibre & Fire-retardant Fibre “ originating in or exported from China PR and Indonesia.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd39-2021.pdf>

Notification No. 40/2021-Customs (ADD)

Dated – 30th June, 2021

Seeks to amend notification No. 34/2016 - Customs (ADD), dated 14th July 2016 to extend the levy of Anti-Dumping duty

Central Government has extended the levy of Anti-Dumping duty on 'Plain Medium Density Fibre Board (MDF) having thickness of 6mm and above' originating in or exported from Vietnam, till 13th March, 2022.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd40-2021.pdf>

CIRCULARS

Circular No. 12/2021-Customs

Dated – 30th June, 2021

Implementation of the Sea Cargo Manifest and Transshipment Regulations

Principal Chief/Chief Commissioners of Customs are requested to issue Public Notices and guide the trade suitably to ensure smooth implementation of the Sea Cargo Manifest and Transshipment Regulations.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-12-2021.pdf>

Circular No. 13/2021-Customs

Dated – 1st July, 2021

Online filing of AEO T2 & T3 application - Circular 13/2021 customs dt 01.07.2021

Board has decided to launch a new version (V 2.0) for on-boarding of AEO T2 and AEO T3 applicants by way of online filing, real-time monitoring, and digital certification to ensure smooth roll-out, from 31.07.2021, the AEO T2 & AEO T3 applicants would be allowed to physically file AEO application without registering on the AEO portal as a transition measure. However, from 01.08.2021, it will be mandatory for AEO T2 and AEO T3 applicants to register on the portal for AEO certification. The AEO T2 and AEO T3 application filed at the office of the jurisdictional Principal Chief Commissioner/ Chief Commissioner before 07.07.2021 are not required to be filed online and may continue to be processed manually, except where migration on web-application is requested by the existing AEO T2 and AEO T3 applicants, while ensuring that the AEO certification process is not delayed.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-13-2021-2.pdf;jsessionid=A31F47FB637815A0B621C2FABAF24541>

Circular No. 14/2021-Customs

Dated – 7th July, 2021

Improvements in Faceless Assessment - Measures for expediting Customs clearances

Board has decided to implement the following measures in the Customs Faceless Assessment and clearance processes:

1. Enhancement of facilitation levels
2. Expediting assessment process
3. Re-organisation of FAGs – Specialization
4. Re-organisation of FAGs - Optimisation of workload
5. Enhancing Direct Port Delivery (DPD)
6. Automated generation of examination orders
7. Anonymised escalation

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-circulars/cs-circulars-2021/Circular-No-14-2021.pdf;jsessionid=77BDB9897DEB71BE63C286C8D71BF051>

DIRECT TAX

Notification No. 76/2021

Income Tax (18th Amendment), Rules, 2021

Dated – 2nd July, 2021

CBDT has amended the rule 8AA which relates to Method of determination of period of holding of capital assets in certain cases and added rules related to amount which is chargeable to income-tax as income of specified entity under subsection (4) of section 45 under the head Capital gains.

Further inserted a new Income Tax Rule 8AB related to Attribution of income taxable under subsection (4) of section 45 to the capital assets remaining with the specified entity, under section 48 along with form namely 'Details of amount attributed to capital asset remaining with the specified entity.

For more details, please follow: https://www.incometaxindia.gov.in/communications/notification/notification_76_2021.pdf

Notification No. 77/2021

Income Tax Amendment (19th Amendment), Rules, 2021

Dated – 7th July, 2021

CBDT inserted new Income Tax Rule 8AC -Computation of short term capital gains and written down value under section 50 where depreciation on goodwill has been obtained.

For more details, please follow: https://www.incometaxindia.gov.in/communications/notification/notification_77_2021.pdf

Notification No. 78/2021

Haryana Building and Other Construction Workers Welfare Board

Dated – 9th July, 2021

Central Government has notified 'Haryana Building and Other Construction Workers Welfare Board' as Board constituted by the State Government of Haryana, in respect of the following specified income arising to that Board:

- (a) Registration fees and yearly subscription collected from Construction Workers registered with the Haryana Building and Other Construction Workers Welfare Board as beneficiaries.
- (b) (b) Proceeds of the cess collected under the Building & Other Construction Workers Welfare Cess Act, 1996 (28 of 1996) and rules there under.
- (c) Interest income received from investment.

This notification shall be effective subject to the conditions that Haryana Building and Other Construction Workers Welfare Board.

For more details, please follow: https://www.incometaxindia.gov.in/communications/notification/notification_78_2021.pdf

Notification No. 79/2021

M/s Patanjali Research Foundation Trust

Dated – 12th July, 2021

CBDT by Notification No. 79/2021-Income Tax approved M/s Patanjali Research Foundation Trust, Haridwar under the category Research Association for Scientific Research for the purposes of section 35(1)(ii) of Income-tax Act, 1961 read with rules 5C and 5D of the Income-tax Rules, 1962.

For more details, please follow: https://www.incometaxindia.gov.in/communications/notification/notification_79_2021.pdf

CIRCULARS

Circular No. 13/2021

Guidelines under section 194Q of the Income-tax Act, 1961

Dated – 30th June, 2021

CBDT has released Guidelines under section 194Q of Income-tax Act, as per this Circular of the Finance Act, 2021. A new section 194Q in the Income-tax Act 1961 (hereinafter referred to as “the Act”) has been inserted which has been effective from 1st July, 2021. It applies to any buyer who is responsible for paying any sum to any resident seller for purchase of any goods of the value or aggregate of value exceeding Rs. 50 lakhs in any previous year. The buyer, at the time of credit of such sum to the account of the seller or at the time of payment, whichever is earlier, is required to deduct an amount equal to 0.1 % of such sum exceeding Rs. 50 lakhs as income tax.

For more details, please follow: https://www.incometaxindia.gov.in/communications/circular/circular_13_2021.pdf

Circular No. 14/2021

Guidelines under section 9B and sub-section (4) of section 45 of the Income-tax act, 1961

Dated – 2nd July, 2021

Finance Act, 2021 inserted a new section 98 in the Income-tax Act 1961. This section mandates that whenever a specified person receives any capital asset or stock in trade or both from a specified entity, during the previous year, in connection with the dissolution or reconstitution of such specified entity, then it shall be deemed that the specified entity have transferred such capital asset or stock in trade or both, as the case may be, to the specified person. This deemed transfer would be in the year in which such capital asset or stock in trade or both are received by the specified person. Any profits and gains arising from such deemed transfer is deemed to be the income of such specified entity of the previous year in which such capital asset or stock in trade or both were received by the specified person. Further, it is chargeable to income-tax as income of such specified entity under the head “ Profits and gains of business or profession” or under the head “Capital gains”, in accordance with the provisions of this Act. It has also been provided that the fair market value of the capital asset or stock in trade or both, on the date of its receipt by the specified person, shall be deemed to be the full value of the consideration received or accruing as a result of such deemed transfer. The definitions of terms “ reconstitution of the specified entity”, “specified entity” and “specified person” are provided in section 98 of the Act.

For more details, please follow: https://www.incometaxindia.gov.in/communications/circular/circular_14_2021.pdf

PRESS RELEASE

DIRECT TAX

CBDT grants further relaxation in electronic filing of Income Tax Forms 15CA/15CB

5th July, 2021

As per the Income-tax Act, 1961, there is a requirement to furnish Form 15CA/15CB electronically. Presently, taxpayers upload the Form 15CA, along with the Chartered Accountant Certificate in Form 15CB, wherever applicable, on the e-filing portal, before submitting the copy to the authorized dealer for any foreign remittance.

In view of the difficulties reported by taxpayers in electronic filing of Income Tax Forms 15CA/15CB on the portal www.incometax.gov.in, it had earlier been decided by CBDT that taxpayers could submit Forms 15CA/15CB in manual format to the authorized dealer till 30th June, 2021.

It has now been decided to extend the aforesaid date to 15th July, 2021. In view thereof, taxpayers can now submit the said Forms in manual format to the authorized dealers till 15th July, 2021. Authorized dealers are advised to accept such Forms till 15th July, 2021 for the purpose of foreign remittances. A facility will be provided on the new e-filing portal to upload these forms at a later date for the purpose of generation of the Document Identification Number.

Income Tax Department conducts searches in Hyderabad

9th July, 2021

Income Tax Department carried out a search and seizure operation on 06.07.2021 on a group based in Hyderabad. The group is engaged in real estate, construction, waste management and infrastructure. The activities of waste management are spread across India while real estate activities are mainly concentrated in Hyderabad.

During the course of search and seizure operation many incriminating documents, loose sheets etc were seized indicating involvement of the group in unaccounted transactions. It was found that the group had sold majority stake, to a Non-resident entity based in Singapore, in one of its group concerns during FY 2018-19 and had earned huge capital gains. The group subsequently devised various colourable schemes by means of entering into a series of share purchase/sale/Non arm's length valued subscription and subsequent bonus issuance etc with related parties, creating a loss which was set off against the capital gains earned. Incriminating evidence/documents have been recovered, which indicate that the loss was artificially created to set off the respective capital gains. **The search operation led to detection of artificial loss of approximately Rs. 1200 crore, which is to be taxed in the hands of the respective assessee.**

Further, during the course of the search, it was found that the assessee had incorrectly claimed bad debts to the tune of Rs. 288 crores on account of related party transactions, which was set off against the aforementioned profits earned. During search proceedings, incriminating documents relating to this artificial/incorrect claim were found. Unaccounted cash transactions with the associates of the group have also been detected during the search, and the quantum and modus of the same is under examination.

As a result of the search & seizure operation, and on the basis of various incriminating documents found, the entities and associates have admitted to having unaccounted income of Rs. 300 crore and have also agreed to pay due taxes.

Further investigations are in progress.

Income Tax Department conducts surveys in Bengaluru

13th July, 2021

Income Tax Department carried out a survey operation on 08.07.2021 on two business premises in Bengaluru on one of India's leading manpower services provider. The assessee has been claiming huge deduction u/s 80JJAA of Income-tax Act, 1961 which incentivises new employment generation, subject to fulfilment of certain conditions such as emoluments paid to the employee (which should be less than Rs. 25,000 per month) and number of days of employment etc.

During the course of the survey operation, evidences of tax evasion have been gathered regarding wrongful claims of deduction u/s 80JJAA of Income-tax Act, 1961. The investigations further revealed, that, even though the emoluments of new employees added were more than Rs. 25,000 per month, the assessee has been wrongfully claiming deduction u/s 80JJAA by excluding certain components of emoluments of such employees to fit into the eligible emoluments limit of Rs. 25,000 per month.

Further, it has been found that deduction u/s 80JJAA has been claimed in subsequent years, even though certain eligible employees were no longer on the payroll of the assessee.

Overall, the survey has resulted in detection of concealment of income to the tune of Rs. 880 crores spread over various assessment years.

Further investigations are in progress.

JUDGEMENTS

INDIRECT TAX

Recovery Order of ITC due to mis-match in Form GSTR-3B and GSTR-2A stayed: The Hon'ble Chhattisgarh High Court

Fact of the Case

This writ petition has been filed by Bharat Aluminium Company ("BALCO"/"the Petitioner") against a notice dated July 1, 2020 and Recovery Order dated January 22, 2021 passed by the Revenue Department ("the Respondent") denying ITC to the Petitioner, on the basis of mis-matching of ITC availed in Form GSTR-3B with the details furnished by suppliers in Form GSTR-2A for the period 2018-19.

The Petitioner has contended that, there shall not be any automatic reversal of ITC of buyer on non-payment of tax by the seller and in case the seller has not paid the tax, a recovery has to be made from the seller. The Petitioner has come out with the purchases made, but did not tally/match with Form GSTR-2A ITC shown by the seller meaning there by the seller may not have filed return. When the physical verification was offered to be made by the Petitioner it was not accepted.

Issue:

Whether the ITC was correctly denied to the Petitioner on the basis of mis-matching of ITC availed in Form GSTR-3B with the details furnished by suppliers in Form GSTR-2A?

Decision of the Case

The Hon'ble Chhattisgarh High Court decided as under:

- ❖ Observed that, a perusal of the notice and Recovery Order would show that the issue raised by the Petitioner needs consideration.
- ❖ Directed the Respondent not to take any coercive steps pursuant to the Recovery Order passed, on depositing 5% of demand within 15 days by the Petitioner.
- ❖ Further directed the Respondent to file a reply within 4 weeks.
- ❖ Listed the matter on August 2, 2021.

The Hon'ble Chhattisgarh High Court has granted stay on Recovery Order passed by the Revenue Department, denying Input Tax Credit ("ITC") to the Company due to mis-match in two return forms i.e. Form GSTR-2A and Form GSTR-3B, on a condition of deposit of 5% of the demand by the Company.

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ITC cannot be claimed on debit notes issued in FY 2020-21 pertaining to the transactions made in FY 2018-19: The AAR, Gujarat

Fact of the Case

M/S I-Tech Plast India Pvt. Ltd. ("the Applicant") is engaged in manufacturing and supply of toys made of plastic and/or rubber or both wherein essentially plastic is the main component. The supplier of the Applicant seeks to issue debit notes in respect of transactions entered into during FY 2018-19, which represents price variation, as the supplier had mistakenly charged lower price and on noticing the error, the supplier desires to rectify the same by issue of debit notes in FY 2020-21, and proposes to issue debit notes to the Applicant whereby CGST and SGST reflected separately.

Issue:

1. *What is the appropriate classification and rate of GST applicable on supply of the Plastic Toys?*
2. *Whether the Applicant can claim ITC of GST charged on debit notes issued by the supplier in current FY 2020-21, pertaining to the original transaction took place in FY 2018-19?*

Decision of the Case

The AAR, Gujarat in Advance Ruling decided as under:

- ❖ the toys are made of plastic meant for children and are not electronic toys, and concluded that the plastic toys manufactured and supplied by the Applicant are correctly

classifiable under heading 95030030 of Chapter 95 of First Schedule to CTA and taxable at 6% CGST (total @ 12%) under Serial No. 228 of the Notification No. 01/2017-Central Tax (Rate) dated June 28, 2017 (“Goods Rate Notification”).

- ❖ Further observed that, the intention of the Government, by amending Section 16(4) of the CGST Act, was not to disconnect DN from the original invoice so as to give an independent existence to DN and to allow taxpayer claim of ITC of GST charged separately in debit notes issued in FY 2020-21, relating to the transaction of FY 2018-19.
- ❖ the Applicant shall be entitled to claim ITC only in respect of debit notes issued by supplier in respect of goods supplied to the Applicant during the FY 2018-19, on or before due date of furnishing of return under Section 39 (GSTR-3B) for month of September (FY 2018-19) or date of furnishing of annual return, whichever is earlier.
- ❖ the Applicant cannot claim ITC of CGST/SGST charged separately in debit notes issued by supplier in current FY i.e. 2020-21 towards the transactions for the FY 2018-19 on account of price variation.

The AAR, Gujarat decided that, Input Tax Credit (“ITC”) in relation to Central Goods and Services Tax (“CGST”) and State Goods and Services Tax (“SGST”) charged separately, cannot be claimed on Debit Notes issued by the supplier in current Financial Year (“FY”) i.e. 2020-21, towards the transactions for the period 2018-19.

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Whether GST leviable on services provided by Liaison Office as an ‘intermediary’: The AAR, Maharashtra

Fact of the Case

Dubai Chamber of Commerce and Industry, Maharashtra (“the Applicant”) is the Liaison Office of Dubai Chamber of Commerce and Industry, UAE (“DCCI UAE”/“Head Office”) that provides services of connecting business partners in Dubai with businesses in India for a consideration from the Head Office.

The Applicant is a non-profit organization, formed to represent, support and protect the interests of the Dubai business community in India, by creating favorable environment, promoting Dubai businesses and by supporting development of business in India. Under the ambit of Reserve bank of India (“RBI”) norms, the Applicant shall undertake below liaison/representation activities in India:

1. Liaison between India office and Dubai office.
2. Attending and representing DCCI in various seminars, conferences and trade fairs.
3. Connecting businesses in India with business partners in UAE and vice-versa.
4. Organizing events and interactions with Indian stakeholders for sharing information about Dubai.
5. Apart from above, no other activity is to be performed by the Applicant in India whether with or without any consideration.

Issue:

1. *Whether activities performed by the Applicant will be treated as supply under the GST Act?*
2. *Whether the Applicant is liable to pay GST?*

Decision of the Case

The Hon’ble AAR, Maharashtra decided as under:

- ❖ The Applicant connects business in India with businesses in Dubai, which is supply of services, and stated that the Applicant acts as a conduit between some business partners in Dubai and certain businesses in India. Therefore, the Applicant acts as an ‘Intermediary’ as defined under Section 2(13) of Integrated Goods and Service Tax Act, 2017 (“the IGST Act”), as, the Applicant satisfies all the conditions of an intermediary.
- ❖ Analyzed Section 13(8) of the IGST Act, and held that the place of supply for an intermediary would be the location of the supplier of services i.e. the location of the Applicant which is located in the State of Maharashtra, India.
- ❖ Noted that, from the website, it can be seen that DCCI, UAE, is providing various services

for which fees are charged. Thus it is clear that the Applicant's Head Office appears to be a profit making organization, and the activities under taken are covered under the scope of "Commerce", "Business" and "Supply".

- ❖ the Applicant cannot be considered as non-profit making organization, effecting supply of services for a consideration for which it has to obtain GST Registration and pay applicable GST on its transactions.

The AAR, Maharashtra held that a liaison office of the DCCI to be an 'intermediary' who is providing services. The liaison office cannot be considered as non-profit making organization, and the activities undertaken are covered under the scope of "Commerce", "Business" and "Supply". Hence, liable to pay GST and take registration under the Central Goods and Services Tax Act, 2017 ("the CGST Act").

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12% GST on Brush Holder Assembly, Parts, Lead Wires for Locomotives when manufactured as per drawings of Indian Railways: The AAR, Maharashtra

Fact of the Case

The Applicant, M/s. Arco Electro Technologies Pvt. Ltd. is manufacturing and supplying Brush Holder Assembly and Parts, Lead Wires and Insulating Rods for locomotives. The application is with regard to classification of these items and applicable GST rate thereon. Subject goods are supplied to Indian Railways (IR) and other customers who ultimately supply to Indian Railways after assembly of their products.

The subject goods are manufactured as per specification and drawings of Indian Railways. Currently, Brush Holder Assembly (made of non-ferrous castings and are assembled with springs, axles etc) and Lead Wires with fittings (made of specialized Fluonlex Cables designed for Rolling stock and fitted with Terminal Lugs, Tubes) are being classified under HSN Heading 8503 and 8544 respectively and Brush Holder Support Pin / Terminal Support / Brush Holder Arm for Locomotives (Glass Bonded Mica Insulators with

steel inserts & machined for fitment in Railway machines) are classified under HSN Heading 8547.

The applicant sought the advance ruling in respect of classification of the Railway parts such as Brush Holder Assembly and parts, Lead Wires for locomotives and Insulating Rods Locomotives manufactured as per the specification and drawings of Indian Railways.

Decision of the Case

The Coram ruled that the products Brush Holder Assembly and parts, Lead Wires and Insulating Rods are to be classified under heading 8607 only when they are manufactured as per the drawings and specifications given to the applicant by the Indian Railways and only when the said goods are used in traction motors meant for Railway locomotives.

The Maharashtra Authority of Advance Ruling (AAR) ruled that 12% GST on Brush Holder Assembly, parts, Lead Wires for locomotives, Insulating Rods Locomotives only when manufactured as per drawings of Indian Railways.

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Housing Society to pay GST on Maintenance Charges if Members' monthly contribution exceeds Rs.7,500: The AAR, Maharashtra

Fact of the Case

The applicant, Emerald Court Co-op Housing Society Ltd. is a Co-operative Housing Society (CHS). It looks after the upkeep of the society and its members. The CHS provides services to its members in the form of facilities or benefits like security, cleaning, repairs, water, common electricity, etc. It also arranges to pay for the ancillary services like accounting, auditing, caretaker, etc.

Presently, the CHS is raising monthly bills on its members which consist of 2 parts, one is the property tax on which GST is not being charged and another is 'Maintenance charges' on which GST is being charged. The applicant has sought the advance ruling on the issue of chargeability of GST on such transactions since there could be

no sale by the Co-operative Housing Societies to their own permanent members, for the doctrine of mutuality would come into play. To elaborate, CHS treated itself as the agent of the permanent members entirely and advanced the stand that no consideration passed for the services rendered by the society to its members and there was the only reimbursement of the amount by the members and therefore no GST could be levied.

Decision of the Case

The Coram ruled that the applicant is liable to pay GST on maintenance charges (by whatever name called) collected from its members if the monthly subscription or contribution charged from the members is more than Rs. 7,500/- per month.

“In view of the amended Section 7 of the CGST Act, 2017, we find that the applicant society and

its members are distinct persons and the amounts received by the applicant, against maintenance charges, from its members are nothing but consideration received for supply of goods/ services as a separate entity. The principles of mutuality which has been cited by the applicant to support its contention that GST is not leviable on the maintenance charges collected by them from its members, is not applicable in view of the amended Section 7 of the CGST Act. 2017 and therefore, the applicant has to pay GST on the said amounts received against maintenance charges, from its members,”.

The Maharashtra Authority of Advance Ruling (AAR) ruled that housing societies should pay Good and Service Tax (GST) on Maintenance Charges if Members’ monthly contribution exceeds Rs.7,500.

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DIRECT TAX

Section 10A deductions to be made from Gross Total Income and not from Total Income: ITAT

Fact of the Case

- The assessee, Ocwen Financial Solutions Pvt. Ltd. is engaged in the business of providing IT-enabled services
- The assessee herein is a wholly-owned subsidiary of M/s Ocwen Asia Holdings Limited, Mauritius.
- The AO noticed that the interest income has accrued/received to/by the assessee from the deposits kept with the bank for availing bank guarantees and those bank guarantees have been given in favor of the Income-tax department towards the income tax liability of the assessee. Accordingly, the AO took the view that the interest income is not related to any particular undertaking and hence it cannot be considered as income derived from “anyone undertaking”.
- The assessee has challenged the action of the AO in setting off of brought forward losses prior to computing deduction under section 10AA of the Act.

Decision of the Case

- The coram headed by the Vice-President, N.V. Vasudevan, and Accountant Member, B.R. Baskaran relied on the decision of the Supreme Court in the case of Yokogawa India Ltd wherein it was held that the deduction under section 10A has to be made independently and immediately after the stage of determination of its profits and gains.
- The Supreme Court held that the deductions under Section 10A therefore would be prior to the commencement of the exercise to be undertaken under Chapter VI of the Act for arriving at the total income of the assessee from the gross total income.
- In the present case, the deduction claimed by the assessee is under section 10AA, which is akin to the deduction allowed u/s 10A of the Act.
- The ITAT directed the AO to allow deduction u/s 10AA without setting off or bringing forward losses.

***Consultant Doctors are not 'Employees':
Hospitals need to deduct TDS on payment of
Professional Fee, rules ITAT***

Fact of the Case

- The assessee hospital paid an aggregate amount of Rs.11.17 Crores to full time consultant doctors as professional fee. According to the TDS Officer, as this was on the premise that there was no employer-employee relationship between the assessee and full-time consultant doctors, such payments are subject to deduction of applicable tax at source in terms of requirements of section 194J.
- The consultant doctors were paid based on the services rendered by them and on the basis of doctors' fees collected by the hospital from the patients. The same is evident from the fact that the payment made to these doctors vary significantly in each month. This was so because fees payable to them was linked to services rendered and patients attended to by them during the relevant period.

Decision of the Case

- Upholding the order Justice P.P. Bhatt and Accountant Member Manoj Kumar Aggarwal held that "it is also a fact that there was no specific timing and attendance record maintained by hospital with respect to such doctors and this category of doctors was not be eligible for any leave, provident fund, gratuity, bonus etc. and were not subject to admission or retirement from services.
- They were not entitled to several benefits as allowed to regular employees such as medical reimbursement. Insurance, leave encashment etc. All these facts and features would bolster assessee's claim that there was no employer-employee relationship between the assessee and consultant doctors. Therefore, the tax was rightfully deducted u/s 194J.
- In a significant ruling for the doctors and the hospitals, the Mumbai bench of the Income Tax Appellate Tribunal (ITAT) held that

the payment made by assessee hospital to certain consultant doctors would require deduction of tax at source under section 194J of the Income Tax as applicable to professional payments and not under section 192 as applicable to salaried employees.

Notional Rent not applicable on a flat which is inhabitable and in a ruinous condition: ITAT

Fact of the Case

- In the present problem the assessee is an inhabitant of Navi Mumbai and is flat owner of Navi Mumbai.
- The Assessing Officer while concluding the assessment proceedings against the assessee applied municipal ratable value on the annual letting value of the flat. However, the assessee argued that there was material filed to demonstrate that the flat was not fit for occupation and certificates from authorities were filed for evidence of the same.
- On first appeal, the Commissioner of Income Tax (Appeals) held that when the concerned house property was not in a position to be let out there cannot be any deemed notional rent for the same.

Decision of the Case

- The bench comprising Judicial Member Pavan Kumar Gadale and Accountant Member Shamim Yahya observed that "it is amply clear that the order of Ld.CIT(A) is without any application of mind. There is no discussion whatsoever as to where the act mandates that if a flat is inhabitable and in a ruinous condition notional rent should be computed thereon and imposed upon the assessee."
- Relying on the decision of Bombay High Court, the bench allowed the plea of the assessee and held that "we fail to understand as to why the Ld.CIT(A) has chosen again to exhibit his scant regard to the judicial discipline and not follow the Hon'ble Bombay High Court decision in the case of Tiptop topography.

- It is again anguished and wonder why the Ld.CIT(A) chose to ignore the Hon'ble Bombay High Court decision. Be as it may, we direct that following the precedent from Hon'ble Bombay High Court as above the rental value should be limited to the municipal ratable value in this regard.”
- The Income Tax Appellate Tribunal (ITAT), Mumbai bench has held that notional rent shall not be applicable on a flat, which is inhabitable and in a ruinous condition following the Bombay High Court judgment in the case of Tiptop typography.

Interest earned on FD maintained with Bank for availing Credit Facility couldn't be treated as Business Income, not entitled to Deduction

Fact of the Case

- In the present case Brahma centre development pvt. Ltd. is the assessee. The assessee earned interest on fixed deposit maintained with the Bank for availing credit facility for business purpose. The question is whether the interest earned is entitled to deduction or not.
- The PCIT noted that the tax auditor, in the report filed in Form 3CD, had observed that interest earned on fixed deposits pertained to “other income” and had not been credited to the P&L account.
- Advocate Vibhooti Malhotra on behalf of the appellant revenue urged that the Tribunal failed to appreciate the judgements in which Courts have held that, interest earned from fixed deposits, inter alia, kept as margin money or security for a bank guarantee to avail credit facility for export business, had to be treated as income from other sources and not business income since it did not have any nexus with business.
- On the other hand, Ms. Jha on behalf of the assessee contended that Clause (a) and (b) of Explanation 2 appended to Section 263 of the Act could not have been invoked by the PCIT to interfere with the assessment orders, as said provisions did not have retrospective effect.

Decision of the Case

- The division bench of Justice Rajiv Shakhder and Justice Talwant Singh opined that since the Tribunal has returned a finding of fact that there was indeed an enquiry carried out by the so as to the nexus between the funds invested in fixed deposits (on which interest was earned) and the real estate project undertaken by the assessee, no interference is called for by the Court.
- The Delhi High Court ruled that the interest earned on Fixed Deposits maintained with a bank for availing credit facility could not be treated as business income and is not entitled to deduction.

No addition of Share Application Money be made if enquiries conducted have not been confronted to Assessee: ITAT deletes addition of Rs. 36 Cr against Bhushan Group

Fact of the Case

- In the instant case Sur Buildcon, BBN Transportation, and Goldstar Cement is the assessee who filed their objections against the issuance of notice u/s 148 of the Act by citing the non-existence of any live link or causal nexus between the information on record and the reason to believe that the income of the assessee had escaped assessment
- The objections of the assessee were, however, rejected by the AO. During the course of reassessment proceedings, certain documents evidencing the identity, genuineness, and creditworthiness of the share capital and share premium received were furnished before the AO by the assessee in response to the notice(s) issued under section 142(1) of the Act.
- The A.O., thereafter, identically observed in the cases of all three assessee that “the creditworthiness of the investors is not established as all the investors are showing nominal income. Neither the investor company and nor the assessee company has produced any proof to substantiate

the creditworthiness of the investors (for the example balance sheet of the investor company). The genuineness of the transaction is also in doubt.”

- The assessee submitted that all the documents establishing the identity, genuineness, and creditworthiness of the transactions had been submitted before the A.O. who has failed to refute them in any manner.
- On the other hand, the department contended that the assessee must prove the ingredients of identity, genuineness, and creditworthiness of the credit entries to the satisfaction of the A.O. and, where, if any doubt on the genuineness of the investor companies exists in the mind of the A.O., then even the source of the source must be established,

Decision of the Case

- The coram of Accountant Member Prashant Maharishi and Judicial Member Sudhanshu

Shrivastava observed that the identity, genuineness of the transaction and the credit worthiness of the investor companies have been proved by the

- The A.O. has nowhere, in the Assessment Orders, disputed this information/material submitted by the assessee and has merely sought to rely on the Reports prepared by the Inspectors.
- The ITAT deleted the addition of Rs.9,40,00,000; Rs. 9,10,00,000; and 18,00,00,000 against the BBN Transportation Pvt. Ltd, Goldstar Cement Pvt. Ltd., and Sur Buildcon Pvt. Ltd. respectively as it was against the principle of natural justice.
- In a major relief to Sur Buildcon, BBN Transportation, and Goldstar Cement, the Income Tax Appellate Tribunal (ITAT), Delhi bench while deleting the addition of Rs. 36 Crores ruled that the no addition of share application money be made if inquiries conducted have not been confronted to assessee.

TAX COMPLIANCE CALENDER AT A GLANCE

GOODS AND SERVICES TAX CALENDAR

Relaxation to Normal Taxpayers in Filing of Monthly Return in Form GSTR-3B						
Tax Period	Class of Taxpayer (Based on AATO)	Due date of filing	Reduced Rate of Interest			Waiver of late fee till
			First 15 days from Due date	Next 15 days	From 31 st day onwards	
May, 2021	> Rs. 5 Cr.	20th June	9%	18%	18%	5 th July, 2021
	Up to Rs. 5 Cr	20th June	Nil	9%	18%	20 th July, 2021
June, 2021	> Rs. 5 Cr.	20th July	-	-	-	-

Relaxation in filing of Form GSTR-3B (Quarterly) by Taxpayers under QRMP Scheme		
Tax Period		Due date of filing
June, 2021	Category A	22 nd July, 2021
	Category B	24 th July, 2021

Relaxations in filing Form CMP-08 for Composition Taxpayers	
Tax Period	Due date of filing
April - June 2021	18 th July, 2021

Due Date		
Form	For month/Quarter	Due Date
GSTR-1	Monthly	
	June, 2021	11th July, 2021
	QRMP	
	April to June, 2021	13th July, 2021

Others Returns		
From	Description	Due Date
GSRT- 5 & 5A	Filed by Non-resident taxable person and OIDAR respectively	
	June, 2021	20th July, 2021
GSTR - 6	For input Services Distributor who are required to furnish details of invoice on which credit has been received	
	June, 2021	13th July, 2021
GSTR - 7	Filed by person required to deduct TDS under GST	
	June, 2021	10th July, 2021
GSTR - 8	E-commerce operator who are required to deduct TDS	
	June, 2021	10th July, 2021

DIRECT TAX CALENDAR - JULY, 2021

Important Due Dates for the Income Tax		
Section	Compliance	Extended Date
203	Form No. 16 – Certificate of tax deducted at source in Form No.16, required to be furnished to employee by 15.6.2021 under Rule 31, may be furnished on or before	15.7.2021
115UB (7)	Form No. 64C - Statement of income paid or credited by an investment fund to its unit holder in Form No. 64C for the previous year 2020-21, required to be furnished on or before 30.6.2021 under Rule 12CB, may be furnished on or before	15.7.2021
139(1)	The due date of furnishing return of income for the assessment year 2021-22, which is 31.7.2021 u/s 139(1), is extended to	30.9.2021
44AB etc.	The due date of furnishing report of audit under any provision of the Act for the previous year 2020-21, which is 30.9.2021, is extended to	31.10.2021
92E	The due date of furnishing report from an Accountant by persons entering into international transactions or specified domestic transaction under section 92E for the previous year 2020-21, which is 31.10.2021, is extended to	30.11.2021
139(1)	The due date of furnishing return of income for the assessment year 2021-22, which is 31.10.2021 u/s 139(1), is extended to	30.11.2021
139(1)	The due date of furnishing return of income for the assessment year 2021-22, which is 30.11.2021 u/s 139(1), is extended to	31.12.2021
139(4)	The due date of furnishing of belated return of income for the assessment year 2021-22, which is 31.12.2021 u/s 139(4), extended to	31.1.2022
139(5)	The due date of furnishing of revised return of income for the assessment year 2021-22, which is 31.12.2021 u/s 139(5), is extended to	31.1.2022

249	For the purpose of counting the period(s) of limitation for filing of appeals before the CIT (Appeal) under the Act, the tax payer is entitled to relaxation which is more beneficial to him and hence the said limitation is extended stands extended till further orders as ordered by the Hon'ble Supreme Court in <i>Suo Motu</i> Writ Petition (Civil) No. 3 of 2020 <i>vide</i> order dated 27.4.2021.	Till further Order
144C	Filing of objection to DRP for which the last date of filing under that section is 1.6.2021 of thereafter.	Within the time provided under that section Or 31.8.202

COURSES OFFERED BY TAX RESEARCH DEPARTMENT

Eligibility criterion for admission in TRD Courses

- The members of the Institute of Cost Accountants of India
- Other Professionals (CS, CA, MBA, M.Com, Lawyers)
- Executives from Industries and Tax Practitioners
- Students who are either CMA qualified or CMA pursuing

EXISTING COURSES

CERTIFICATE COURSE ON TDS

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1,000 + 18% GST

Duration – 30 Hours

Mode of Class – Online

CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1,000 + 18% GST

Duration – 30 Hours

Mode of Class – Online

CERTIFICATE COURSE ON GST

Course Fee - Rs. 10,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1,000 + 18% GST

Duration – 72 Hours

Mode of Class – Online

** Special Discount for Corporate*

ADVANCED CERTIFICATE COURSE ON GST

Course Fee - Rs. 14,000 + 18% GST
20% Discount for Members, CMA Final Passed Candidates and CMA Final pursuing Students

Exam Fees - Rs. 1,000 + 18% GST

Duration – 40 Hours

Mode of Class – Online

CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

Batch Size – 50 (Minimum)

Eligibility criterion - B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

Course Fee - Rs. 1,000 + 18% GST

Exam Fees - Rs. 200 + 18% GST

Course Duration - 32 Hours

CRASH COURSE ON INCOME TAX FOR COLLEGE AND UNIVERSITY

Batch Size – 50 (Minimum)

Eligibility criterion - B.COM/B.B.A pursuing or completed
M.COM/M.B.A pursuing or completed

Course Fee - Rs. 1,500 + 18% GST

Exam Fees - Rs. 500 + 18% GST

Course Duration - 32 Hours

Admissions open for the courses - <https://eicmai.in/advsec/DelegatesApplicationForm-new.aspx>

NEW COURSES

ADVANCED COURSE ON GST AUDIT AND ASSESSMENT PROCEDURE

Course Fee - Rs. 12,000 + 18% GST [Including Exam Fee]

Duration – 30 Hours

Mode of Class – Online

ADVANCED COURSE ON INCOME TAX ASSESSMENT AND APPEAL

Course Fee - Rs. 12,000 + 18% GST [Including Exam Fee]

Duration – 30 Hours

Mode of Class – Online

For enquiry about courses, mail at – trd@icmai.in

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

Impact of GST on Real Estate	Handbook on GST on Service Sector
Insight into Customs - Procedure & Practice	Handbook on Works Contract
Input Tax Credit & In depth Discussion	Handbook on Impact of GST on MSME Sector
Exemptions under the Income Tax Act, 1961	Insight into Assessment including E-Assessment
Taxation on Co-operative Sector	Impact on GST on Education Sector
Guidance Note on GST Annual Return & Audit	Addendum_Guidance Note on GST Annual Return & Audit
Sabka Vishwas-Legacy Dispute Resolution Scheme 2019	An insight to the Direct Tax- Vivad se Vishwas Scheme 2020
Guidance Note on Anti Profiteering	International Taxation and Transfer Pricing
Advance Rulings in GST	Handbook on E-Way Bill
Handbook on Special Economic Zone and Export Oriented Units	Taxation on Works Contract

For E-Publications, Please visit Taxation Portal -
<https://icmai.in/TaxationPortal/>

TAXATION COMMITTEES - 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:

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