

Celebrating 6<sup>th</sup> Year of Implementation of GST



OBSERVANCE OF GST DAY 2022

1<sup>st</sup> JULY 2022

# GST in India – Poised to deliver Sustainable Growth

SPECIAL EDITION

## TAX Bulletin

JULY, 2022



★ ★ VOLUME - 115 ★ ★



**THE INSTITUTE OF COST ACCOUNTANTS OF INDIA**

Statutory Body under an Act of Parliament

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

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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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# The Institute of Cost Accountants of India

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Course Fee* (₹)	10,000	14,000	12,000	10,000	10,000	12,000	10,000
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Behind every successful business decision, there is always a **CMA**





**CMA P. Raju Iyer**

President, The Institute of Cost Accountants of India

## MESSAGE FROM THE PRESIDENT

In the words of Prime Minister Narendra Modi, the Goods and Services Tax (GST) is “a path-breaking legislation for New India”. This revolutionary taxation system was rolled out on the midnight of 1<sup>st</sup> July, 2017 in a ceremony held in the Central Hall of Parliament. GST is not merely a tax reform but a milestone in realizing Sardar Vallabhbhai Patel’s dream of building ‘Ek Bharat – Sreshtha Bharat’. This year this path breaking implementation enters its 6<sup>th</sup> year of implementation. Over these years this law has gone through many changes and modifications, which has been brought to facilitate ease of doing business.

The Institute of Cost Accountants of India has always supported various initiatives of the Government and contributed constructively in the implementation of GST. Apart from the various other activities that are undertaken by the Tax Research Department of the Institute, one of the important annual activity is the observance of GST Day.

This day has been observed with much grandeur over the years by organising programs on various pertinent topics and themes such as Growing stronger with Times – Sums and Substance of Goods & Services Tax and Journey of GST and way Forward – Aatmanirbhar Bharat. The theme for this year’s GST Day celebration is “GST in India – Poised to deliver Sustainable Growth”.

I convey my best wishes to the department for all their efforts in spreading the knowledge of Taxation, which it has been tirelessly doing for the last 6 years and congratulate them on their endeavours and achievements.

Thank You

A handwritten signature in dark ink, appearing to read 'P. Raju Iyer', with a stylized flourish at the end.

**CMA P. Raju Iyer**

1<sup>st</sup> July 2022



**CMA Vijender Sharma**

Vice President, The Institute of Cost Accountants of India

## MESSAGE FROM THE VICE PRESIDENT

**G**oods and Services Tax (GST) has been an important milestone in the economic history of India. The salient changes that has been implemented through this has been: (i) It subsumed 17 large taxes and 13 cesses, (ii) With uniform tax on supplies of goods and services, India turned into one market, (iii) GST ensured compliance simplification like - Uniform processes across the country, Simple registration process - Single return - Minimal physical interface, Faster refunds, Fully IT driven system, Free flow of goods – check posts removed to state a few.

Just like the GST, The Institute of Cost Accountants of India, has always worked towards the aim of serving the stakeholders and the nation at large and bring about equity, transparency and fair-play. The Tax Research department has brought in many activities which serve the knowledge needs of the members and Tax practitioners.

One such important activity is the publication of the Tax Bulletin. The bulletin is being circulated to all our members, CBIC and CBDT members, Trade associations, corporate houses, GST Council Members, Union and State Ministers and MCA. This is one such publication which has wide acceptability and all pervasive appreciation. It includes articles, circulars, notifications, judgements, press releases and Tax Calendars, and is serving as one stop shop for the knowledge needs of the seekers.

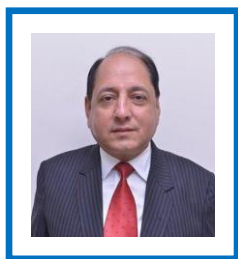
My best wishes to the endeavours of Tax Research Department.

Thank you

**CMA Vijender Sharma**

1<sup>st</sup> July 2022





**CMA Rakesh Bhalla**

Chairman, Direct Taxation Committee

## FROM THE DESK OF CHAIRMAN

Over the last two years... I have loved and appreciated the efforts that the Tax Research Department has put in to disseminate knowledge to the accountant fraternity. It makes me feel awesome to note that the various activities that are undertaken by the department, be it conduct of courses or publishing books and periodicals or conduct of webinars, workshops and seminars, all are being conducted so impeccably and seamlessly.

This thought brings me to the thought of the most important and periodic publication of the department, the 'Tax Bulletin'. The bulletin is published every fortnight and it contains articles, notifications, press releases which all are updated and are published in brief. The manner in which they are prepared and presented are attractive and would lure the reader to read more and gain knowledge.

The most important aspect of the Bulletin is its consistency. Over the last five years as India has seen major Tax Reforms being made, the bulletin has brought in every single little change to the platter of the readers with interpretations and references, so that it makes them easier to understand and help in furtherance of their knowledge.

I sincerely wish the members of the Tax Research Department, all the good wishes for their consistent efforts among all adversities.

Thank You



(Rakesh Bhalla)

**CMA Rakesh Bhalla**

1<sup>st</sup> July 2022



**CMA Chittaranjan Chattopadhyay**

Chairman, Indirect Taxation Committee

## FROM THE DESK OF CHAIRMAN

**I**n July 1<sup>st</sup>, 2022 implementation of GST marked its completion of 5 years, one of the most ambitious economic reforms of modern India. In the same week the 47<sup>th</sup> GST Council Meeting was conducted at Chandigarh which was chaired by the Hon'ble Finance Minister, Smt Nirmala Sitharaman. The major changes which were discussed and implemented are:

- GSTR-3B amendments to be allowed
- GSTR-9 to continue with some relaxations
- Relief to e-commerce suppliers
- Deadline extensions to composition taxpayers
- Pruning of GST Rate and Exemption List
- Correction of Inverted tax structure
- GST rate hikes and cuts
- Pruning of GST exemptions

GST, as always stated has been a game changer for the Indian Economy and this bold step taken by the current government has surely accelerated the growth of the economy. The Institute has always worked in line with the vision of the Government and has striven to deliver to the best of knowledge and advisory to the members and stakeholders.

The Tax bulletin is one such tool which always helps in the spread of knowledge and it has also been widely appreciated in different forums. I congratulate the team for their sincere efforts in all their deliverables.

Thank You

**CMA Chittaranjan Chattopadhyay**

1<sup>st</sup> July 2022

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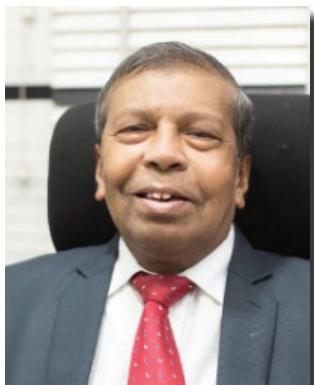
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# CONTENTS

ARTICLES		
01	<b>Decision on Ocean Freight &amp; Co-operative Federalism</b>	
	CMA Ashok Nawal	Page - 1
02	<b>ITC: SEAMLESS FLOW ENDLESS RESTRICTIONS</b>	
	CMA Anil Sharma	Page - 10
03	<b>THE ROLE OF CMAs IN VALUATION UNDER THE GOODS &amp; SERVICE TAX LAW</b>	
	CMA Debasis Ghosh	Page - 19
04	<b>ENTRIES IN GSTR 2A FOR THE YEARS 2017-18 AND 18-19 WHETHER MANDATORY OR OPTIONAL</b>	
	CMA Viswanath Bhat	Page - 20
05	<b>GST- ON BEAT, OFF-BEAT AND BACK BEAT</b>	
	CMA (Dr) Ashish Prakash Thatte & Ms Vijayalakshmi Pattar	Page - 23
TAX UPDATES, NOTIFICATIONS AND CIRCULARS		
	Indirect Tax	Page - 28
	Direct Tax	Page - 29
PRESS RELEASE		
		Page - 31
JUDGEMENTS		
	Indirect Tax	Page - 39
	Direct Tax	Page - 42
TAX COMPLIANCE CALENDAR AT A GLANCE		
	Direct Tax	Page - 45
	Indirect Tax	Page - 46
	E-Publications of Tax Research Department	Page - 47

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 Ashok Nawal**  
Cost Accountant

# Decision on Ocean Freight & Co-operative Federalism

This article has been dealt independently while understanding Hon. Supreme Court decision on ocean freight in the case of M/s Mohit Minerals.

Hon Supreme Court has not only dealt with the above issues, but it has gone in-depth on each argument of Union Govt, who had issued the Notification No. 8/2017-Integrated Tax (Rate) dated 28th June 2017 & rationale behind that as well as arguments of a number of Senior Counsels on behalf of respondents and the grounds taken by them including but not limiting to taxability on extra-territorial issues, the binding impact of recommendations of GST Council, issues of the recipient, issues of consideration, issues of taxable event and notifications issued under different sections / sub-sections etc. etc. and hence, understanding of Supreme Court decision needs to be done in three parts with the background of the circulation and interpretation in print and social media.

A. Background and preamble.

B. Whether this judgment will imbalance the basic foundation of One Nation, One Tax considering all the decisions of GST Council are not binding on State & Central.

C. Impact on Trade and Industry on reverse charge mechanism on account of ocean freight.

## A. Background and Preamble:

Hon. Gujarat High Court allowed the petition filed by M/s

Mohit Minerals Pvt. Ltd under Article 226 challenging the Constitutionality of two notifications: **Notification No. 8/2017- Integrated Tax (Rate) dated 28th June 2017 and Notification No. 10/2017 Integrated Tax (Rate) dated 28th June 2017.**

**The Division Bench of the Gujarat High Court held that the impugned notifications are unconstitutional for exceeding the powers conferred by the IGST Act and the CGST Act. The High Court held:**

- i. The importer of goods on a CIF basis is not the recipient of the transport services as Section 2(93) of the CGST Act defines a recipient of services to mean someone who pays consideration for the service, which is the foreign exporter in this case;
- ii. Section 5(3) of the IGST Act enables the Government to stipulate categories of supply, not specify the third party as a recipient of such supply;
- iii. There is no territorial nexus for taxation since the supply of service of transportation of goods is by a person in non-taxable territory to another person in a non-taxable territory from a place outside India up to the Indian customs clearance station, and this is neither an inter-state nor an intra-state supply;
- iv. Section 2(11) of the IGST Act defines “import of service” to mean the supply of service where the supplier of service is located outside India, the recipient of service is located in India, and the place

of supply of service is in India;

- v. In this case, since the goods are transported on a CIF basis, the recipient of service is the foreign exporter who is outside India;
- vi. Section 7(5)(c) of the IGST Act dealing with intra-state supply cannot be read so extensively that it conflates the “supply of goods or services or both in the taxable territory” to “place of supply”;
- vii. Sections 12 and 13 of the IGST Act deal with determining the place of supply. Neither of them will apply if both the supplier and recipient of service are based outside India. The mere fact that the service terminates in India does not make the service of supply of transportation to be taking place in India;
- viii. The provisions regarding the time of supply, as contemplated in Section 20 of the IGST Act and applicable to Section 13 of the IGST Act dealing with supply of services, are applicable only vis-à-vis the actual recipient of the supply of service, which is the foreign exporter in this case;
- ix. Section 15(1) of the CGST Act enables the determination of the value of the supply only between the actual supplier and actual recipient of the service;
- x. Since the importer is not the “recipient” of the service under Section 2(93) of the CGST Act, it will not be in a position to avail ITC under Section 16(1) of the CGST Act; and
- xi. Since the importer pays customs duties on the goods, which include the value of ocean freight, the impugned notifications impose double taxation through delegated legislation, which is impermissible.

## Provisions Deliberated:

### 1. Article 286(2) of the Constitution of India:

Parliament is empowered to formulate inter alia the principles for determining when a supply of goods or services takes place in any of the ways mentioned in Article 286(1), which includes imports;

### 2. Article 269A of the Constitution of India

Enables the Union Government to levy GST on inter-state supplies. The explanation to Article 269A(1) creates a deeming fiction that a supply of goods or services in the

course of imports is to be considered as a supply of goods or services or both in the course of interstate trade;

### 3. Article 269A(5) of the Constitution of India

Enables Parliament to formulate the principles for determining the place of supply and when a supply of goods and services or both takes place in the course of inter-State trade or commerce. This constitutional mandate finds legislative effect in the IGST Act; The Union of India has challenged the same.

● Section 5(1) Levy & Collection of IGST :

● Section 5(3) & (4) Levy & Collection of IGST :

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

● Section 2(5) of IGST Act 2017: Definition of Export of Goods

● Section 2(6) of IGST Act 2017: Definition of Export of Services

● Section 2(1) of IGST Act 2017: Definition of “Import of Goods.

● Section 2(11) of IGST Act 2017: Definition of Import of Services

● Section 2(14) of IGST Act 2017: Definition of Location of the recipient of services

● Section 2(15) of IGST Act 2017: Definition of Location of supplier of services

- Section 7 of IGST Act 2017: Determination of Nature of inter-State supply.
- Section 9 of IGST Act 2017: Supplies in Territorial Waters.
- Section 11 of IGST Act 2017: Place of supply of goods imported into or exported out of India.
- Section 12 of IGST Act 2017: Place of supply of services where the location of supplier and recipient is in India.
- Section 13 of IGST Act 2017: Place of supply of services where the location of supplier and recipient is outside India
- Section 2(98) of the CGST Act: Definition of Reverse Charge.
- Section 9(3) & (4) of CGST Act 2017:
  - (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
  - (4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of the supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both. All the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.
- Section 24(iii) of CGST Act 2017: Compulsory registration in certain cases
- Section 13 of CGST Act 2017: Time of Supply of Services
- Section 2(30) of CGST 2017: Definition of composite supply
- Section 2(93)(c) of CGST Act 2017: Definition of the recipient of supply of goods or services or both

- 2(31) of CGST Act 2017: Definition of consideration
- Section 2(107) of CGST Act 2017: Definition of the taxable person
- Sections 3(7) and 3(8) of Customs Tariff Act 1975: provision for charging IGST on import of goods and manner of calculation of IGST

The said decision is not only applicable for chargeability of reverse charge on ocean freight when imported on CIF basis or otherwise but will always be referred as a landmark judgment when other issues w.r.t. Powers & Role of GST Council, Powers of Central Govt & State Govt to make the provisions in the act & rules, Parliamentary / Legislative Powers as against recommendations of GST Council and contradiction therein between Central Govt & State Govt w.r.t. GST provisions. This judgment will have a far-reaching impact and almost will eliminate a number of disputes which otherwise might have arisen.

This judgment has to be understood by the depth, analysis & interpretation of all the provisions of the law, starting with the expert committee report, The Constitution (One Hundred and Fifteenth Amendment) 2011, Parliamentary Standing Committee, Report on the Constitution (One Hundred and Twenty-Second Amendment) Bill, 2014, The Constitution (One Hundred and First Amendment Act) 2016, Parliamentary Debates and various decisions of Hon Apex Court on importance of legislative history and spirit of the law rather than only strict wording while drafting the law. Therefore, it is important to understand various ratios laid down in different decisions; the same was the basis for deciding the issue by the Hon. Supreme Court.

## **B. Whether this judgment will imbalance the basic foundation of One Nation, One Tax considering all the decisions of GST Council are not binding on State & Central.**

### **1. Constitutional Architecture w.r.t. GST:**

- Article 246A stipulates that both the Parliament and the State legislatures have the power to legislate on GST.
- Article 279A constitutes the GST Council which shall make recommendations to the Union and the States on a wide range of subjects relating to GST
- Both articles are independent and don't have abstaining clause or overriding clause over each other.



- Article 269A provides that GST on supplies in the course of inter-state trade or commerce shall be levied and collected by the Union Government. The manner of apportionment between the Union and the States has to be provided by Parliament on the recommendations of the GST Council. The explanation of Article 269A(1) states that the supply of goods or services in the course of import shall be deemed to be supply in the course of inter-State trade or commerce. Clause (5) provides that Parliament may by law formulate principles for determining the place of supply and when the supply of goods or services takes place in the course of inter-state trade or commerce.
- Article 286 (1) stipulates that the State shall not levy tax when the supply of goods or services takes place outside the State or in the course of import or export of goods or services from the territory of India. Clause (2) of Article 286 states that Parliament may by law formulate principles for determining when there is a supply of goods or services as prescribed by clause (1).

## 2. Legislative History of the Constitution Amendment Act 2016:

The Statement of Objects and Reasons and the debates and speeches in the legislature indicate the intent behind the introduction of the Bill as held in the case of **Abhiram Singh v. CD Commachen, (2017) 2 SCC 629**. The legislative history, the statement of objects and reasons for the Bill and the speech made when the bill was introduced indicates the mischief that Articles 246A and 279A to the Constitution sought to remedy, which is to simplify the indirect tax regime to prevent the complexities inherent in and the cascading effect of a diversity of taxes.

## 3. Simultaneous Legislative Distribution & Repugnancy Issues & Disputes :

The distribution of legislative power between federating units- the Union and the States, is among the main features of a federal Constitution as referred in H.M Seervai, Constitutional Law of India, (NM Tripathi Private Limited, 4th Edition, vol 1) 289; SR Bommai v. Union of India, (1994) 3 SCC 1.

The Court noted that the special power introduced by Article 246A allows Parliament and the State legislatures to 'simultaneously' make laws. Subsequently, while explaining the 'simultaneous' nature of power held by Parliament and

State legislature, it was observed that the power under Article 246A can be exercised simultaneously by the State legislature and Parliament, and none hold any 'unilateral or exclusive legislative power in the decision of **Union of India v. Mohit Mineral Pvt. Ltd** [H.M Seervai, Constitutional Law of India, (NM Tripathi Private Limited, 4th Edition, vol 1) 289; SR Bommai v. Union of India, (1994) 3 SCC 1] and **Baiku v. State Tax Officer, GST [2019 SCC OnLine Ker 5362]**.

Hon. Supreme Court observed in the case of **VKC Footsteps** (supra) that

### Quote

*"52. Article 246-A has brought about several changes in the constitutional scheme:*

*52.1. Firstly, Article 246-A defines the source of power and the field of legislation (with respect to goods and services tax), obviating the need to travel to the Seventh Schedule.*

*52.2. Secondly, the provisions of Article 246-A are available both to Parliament and the State Legislatures, save and except for the exclusive power of Parliament to enact GST legislation where the supply of goods or services takes place in the course of inter-State trade or commerce.*

*52.3. Thirdly, Article 246-A embodies the constitutional principle of the simultaneous levy as distinct from the principle of concurrence. Concurrence, which operated within the fold of the Concurrent List, was regulated by Article 254."*

### Un-Quote

Further, Article 246-A needs to be appreciated differently from Articles 254, 248, and 353 since these articles provide a larger share of power to the central government as against the state government. Whereas Article 246-A provides simultaneous right to make the provisions in the law and share the equal power, and that is the reason Constitution does not envisage a repugnancy provision to resolve inconsistencies between the Central and State laws on GST, the GST Council must ideally function, as provided by Article 279A(6), in a harmonized manner to reach a workable fiscal model through cooperation and collaboration.

Further, Hon Supreme Court has implicitly explained the difference between un-cooperative federalism, competitive federalism, Dual Federalism, and cooperative federalism (marble cake federalism) and also made



observations derived from *State (NCT of Delhi) v. Union of India*<sup>75</sup> [(2018) 8 SCC 501] :

India follows the model of cooperative federalism where the Union and the State Governments need to iron out the differences that arise in the course of the path of development. Chief Justice Dipak Mishra elucidated the concept of cooperative federalism:

### Quote

*119. Thus, the idea behind the concept of collaborative federalism is negotiation and coordination so as to iron out the differences which may arise between the Union and the State Governments in their respective pursuits of development. The Union Government and the State Governments should endeavour to address the common problems with the intention to arrive at a solution by showing statesmanship, combined action and sincere cooperation. In collaborative federalism, the Union and the State Governments should express their readiness to achieve the common objective and work together for achieving it. In a functional Constitution, the authorities should exhibit sincere concern to avoid any conflict. This concept has to be borne in mind when both intend to rely on the constitutional provision as the source of authority. We are absolutely unequivocal that both the Centre and the States must work within their spheres and not think of any encroachment. But in the context of exercise of authority within their spheres, there should be perception of mature statesmanship so that the constitutionally bestowed responsibilities are shared by them. Such an approach requires continuous and seamless interaction between the Union and the State Governments.*

### Un-Quote

On the issues of conflict between state and central govt, the mechanism of resolving the disputes has been provided to consultative and collaborative approach in Article 279-A by way of providing constitutional status to GST council and therefore Hon Supreme Court observed in the aforesaid judgment that:

The States can use various forms of contestation if they disagree with the decision of the Centre. Such forms of contestation are also within the framework of Indian federalism. The GST Council is not merely a constitutional body restricted to the indirect tax system in India but is also an important focal point for fostering federalism and democracy.

One of the important features of Indian federalism is 'fiscal federalism. A reading of the Statement of Objects and Reasons of the 2014 Amendment Bill, the Parliamentary reports and speeches indicate that Articles 246A and 279A were introduced with the objective of enhancing cooperative federalism and harmony between the States and the Centre. However, the Centre has a one-third vote share in the GST Council. This, coupled with the absence of the repugnancy provision in Article 246A, indicates that recommendations of the GST Council cannot be binding. Such an interpretation would be contrary to the objective of introducing the GST regime and would also dislodge the fine balance on which Indian federalism rests. Therefore, the argument that if the recommendations of the GST Council are not binding, then the entire structure of GST would crumble does not hold water. Such a reading of the provisions of the Constitution will not diminish the role of the GST Council as a constitutional body formed to arrive at decisions by collaboration and contestation of ideas.

### 4. Parliamentary Debates & Indian Federalism: Dialogue of Cooperative Federalism

It is wrongly interpreted by some of the authors, broadcasters and esteemed lawyers that the GST council will have supremacy over state and central. The question was raised w.r.t. binding effect of recommendations of GST Council for making the rule. Therefore, issue of supremacy of parliamentary/legislative over GST Council is well-dealt in this decision by Hon Supreme Court, giving references of parliamentary debates, recommendation of the standing committee, recommendation of the select committee, reply by Hon Finance Minister Late Arun Jaitley and reference to Constitutional Amendment Bills. Some of the paras are very relevant and reproduced below:

*"The Constitution confers autonomy on the Parliament and the State Legislatures to legislate within the respective fields assigned to them and the fact that a statute enacted by a competent Legislative body can be called into question on grounds of deviations from the recommendations of an essentially executive body, albeit Constitutional, is being construed as undermining the supremacy of the Legislature. Keeping in view the concerns expressed by the States and the fact that the proposed provision of GST Dispute Settlement Authority will affect the fiscal autonomy of the Parliament and the State Legislatures, the proposed Article 279B providing for GST Dispute Settlement Authority, may be omitted. However, any dispensation involving multiple partners does require a mechanism to resolve disputes. A*

*provision can be made in Article 279A itself, empowering the GST Council to decide about the mechanism to resolve the disputes arising out of its recommendations.*

*Once you enter the GST pipeline, the States and the Centre will have to interact. Once they interact together, the State of Tamil Nadu will be involved in determining and making decisions relating to the state. So, none of us will surrender his or her authority or autonomy. We are both going to be pooling our sovereignty together so that we are able to create a new taxation mechanism.*

*Article 246A vests Parliament and the State Legislatures with a unique, simultaneous law-making power on GST. In this context, the GST Council's role gains significance. The recommendations of the GST Council are not based on a unanimous decision but on a three-fourth majority of the members present and voting, where the Union's vote counts as one-third. In contrast, the States' votes have a weightage of two-thirds of the total votes cast. There are two significant attributions of the voting system in the GST Council. First, the GST Council has an unequal voting structure, where the States collectively have a two-third voting share, and the Union has a one-third voting share. Second, since India has a multi-party system, it is possible that the party in power at the Centre may or may not be in power in various States. Therefore, the GST Council is not only an avenue for the exercise of cooperative federalism but also political contestation across party lines. Thus, the discussions in the GST Council impact both federalism and democracy. The constitutional design of the Constitution Amendment Act 2016 is sui generis since it introduces unique features of federalism. Article 246A treats the Centre and States as equal units by conferring a simultaneous power of enacting a law on GST. Article 279A in constituting the GST Council envisions that neither the Centre nor the States can act independently of the other."*

Even Hon Supreme Court has dealt with a different meaning of recommendation, ns and thereafter, it has been held all the recommendations of GST Council will not have a binding effect on State or Central Govt. However, both the govt have simultaneous power to make the provisions in law or enactment. Therefore, the foundation of the existing GST structure has been made stronger by this judgment, which will be appreciated from the various paragraphs of this order when dealing with Parliamentary Debates & Indian Federalism: Dialogue of Cooperative Federalism, Dispute Resolution, Recommendation etc. etc.

## 5. Role of the GST Council:

GST Council is the constitutional authority having a Chairman as Union Finance Minister and members consisting of Finance Ministers of all the States and Union Territories. The role of the GST Council has been well clarified as follows :

- a. Taxes, Cesses & Surcharges levied by Union, State, Local Bodies to be subsumed in the GST
- b. Goods and services that may be taxable or exempted
- c. Model GST Laws, principles of levy, apportionment of IGST and the principles that govern the place of supply
- d. Threshold limit of turnover for exemption
- e. rates including floor rates with bands of GST
- f. Special rate(s) for a specified period to raise additional resources during any natural calamity or disaster
- g. Special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur; Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- h. Any other matter relating to the goods and services tax, as the Council may decide.

The voting process has also been well designed so that there will be no supremacy either of States on Central or Central on States. Therefore, 1/3rd of voting right has been given to the Central Govt, and 2/3rd of voting right has been given to the State Govt. A resolution needs to be passed unanimously or min 3/4th majority on any recommendations given by GST Council. Further, in terms of CGST Act 2017 there are specific provisions in the CGST Act & SGST Act w.r.t. Administration, Levy & Collection, Exemption, Scope of Supply, Valuation of Supply, Registration, Returns, Input Tax Credit, Apportionment formula of IGST between Central & State and other provisions of GST as stipulated in Section 4, 5, 6, 17, 22 & 25 of IGST Act 2017 and Sections 6, 7, 9, 11, 15, 22, 23, 24, 25, 31A, 39, 44, 49B, 50, 51, 52, 54, 55, 56, 109, 110, 120, 128, 146, 147, 148, 150, 164, 168A, 172 of CGST Act 2017. No provision under the said sections and rules made thereunder can be made without the recommendations of the GST council. However, any recommendations other than as specified above will not be binding. It doesn't mean that it affects the foundation of the GST structure of One Nation, One Tax.

## 6. Statutory Provisions and Scheme of the IGST Act 84:

This judgement has opened the eyes of all the students of GST to appreciate rationale and pillars of GST, which are amendments made in The Constitution (One Hundred and First Amendment Act) 2016 read with aforesaid provisions of GST Act (CGST & IGST Act 2017).

The Pillars of GST can be elaborated as follows:

- Taxable event: There shall be levied a tax called integrated goods and services tax on all inter-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption.
- Taxable value: On the value determined under Section 15 of the CGST Act
- Taxable rate: At such rates not exceeding 40% as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed
- Taxable person: Shall be paid by the taxable person

Hon Supreme Court has dealt in detail on “reverse charge” as well as recipient.

### *C. Impact on Trade and Industry on reverse charge mechanism on account of ocean freight :*

**Let's understand what recipient means - ---**

Section 2(93) of the CGST Act defines the ‘recipient’ of supply of goods or services or both and provides:

“(93) “recipient” of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;.”

Thus, the language employed in Section 2(93)(a) of the CGST Act clearly stipulates that when consideration is payable for the supply of services, the recipient would mean the person who is liable to pay that consideration. However, when no consideration is payable for the supply of a service, Section 2(93)(c) states that the recipient shall be the person to whom the service is rendered. Further, Section 2(93) provides that “any reference to a person to whom supply is made shall be construed as a reference to the recipient”. Hence, where the statute refers to a person to whom a supply is made, it has to be construed as a reference to the recipient of service.

While referring to the definition of “Consideration” as well as provisions of Section 16, consideration can be paid / received on behalf of any person to the supplier. In the present case, even though the import in CIF contract is made by the exporter to a foreign shipping line, the importer pays the consideration, which is built up in the valuation of goods in terms of provisions of the Customs Act also.

Section 13(9) of the IGST Act appears to create a deeming fiction, where in case of a supply of services of transportation of goods by a supplier located outside India, the place of supply would be the place of destination of such goods. The supplier, the foreign shipping line, in this case, would be a non-taxable person. However, its services in a CIF contract for the transport of goods would enter Indian taxable territory as the destination of such goods. The place of supply of shipping service by a foreign shipping line would thus be India.

Hon Supreme Court also arrives to the conclusion based on the Act that the place of supply of transportation of goods by the ocean when imported is the final destination of the goods i.e., India and the beneficiary of such import is the importer. Therefore, the importer can be notified as person liable to pay the tax under reverse charge as the recipient. Interpreting the term “by the recipient” vis-à-vis the categories of goods and services identified in Section 5(3) of the IGST Act should necessarily be governed by the principles governing the definition of “recipient” under Section 2(93) of the CGST Act.

In such a scenario, when the place of supply of services is deemed to be the destination of goods under Section 13(9) of the IGST Act, the supply of services would necessarily be “made” to the Indian importer, who would then be considered as a “recipient” under the definition of Section 2(93)(c) of the CGST Act. The supply can thus be construed

as being “made” to the Indian importer who becomes the recipient under Section 2(93)(c) of the CGST Act.

Hon Supreme Court also clarified on the argument that in terms of Section 9 (3) of CGST Act 2017, Govt could specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both and in terms of Section 9(4) of CGST act 2017, Govt can specify a class of registered persons who shall, in respect of the supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both. All the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

It is settled law that non-reference of the source of power may not vitiate its exercise and application in given facts and circumstances of a case. In *Union of India v. Tulsi Ram Patel* [1985 3 SCC 398], a Constitution Bench held that when a source of power legally exists, a non-reference or an incorrect reference during its exercise does not vitiate the action.

Therefore, it has been held that as long as a source of power to legislate or issue a notification is available, the lack of a mention, an incorrect reference or a mistake does not vitiate the exercise of such power.

However, Hon Supreme Court, while accepting the powers of issuing notifications for notifying transportation of goods by ocean as a category of service and recipient was required to pay the reverse charge and importer is notified as recipient in the aforesaid impugned notifications as stated above. However, Supreme Court emphasis in case of contract of importation of goods on CIF basis is in the nature of composite supply, and principal supply is the goods and hence importer imports the goods on CIF basis and pay the customs duty on importation on the value which includes freight and insurance and therefore, it is the composite supply and therefore, no GST is payable on reverse charge basis when goods are imported on CIF basis.

The following points need to be considered as aftermath of this decision on account of the applicability of GST on a reverse charge basis on transportation of goods through sea or ocean.

- 1) Those taxpayers who have discharged the GST liability even if goods are imported on a CIF basis and availed the ITC thereon need not bother much since such persons are the recipient of such service, and hence no ITC will be disallowed. There may be a possibility that the department will take the stand seeking the reversal of ITC availed, since service has not been availed on composite supply of imported goods when imported on CIF basis considering tax paid is “deposit.” In such case, there will be a necessity to apply for the refund of such amount deposited in terms of Article 265 of the Constitution of India. Still, interest will be required to be paid on the ITC availed and reversed subsequently.
- 2) Those taxpayers, who have paid the GST on a reverse charge basis on ocean freight when goods are imported on a CIF basis, and they are supplying exempted goods and non-taxable goods, they are advised to file a refund claim of such amount paid within the period of limitation subject to fulfilment of condition of unjust enrichment.
- 3) Henceforth, no GST is payable on a reverse charge basis when goods are imported on CIF, C&F or door delivery basis, but in other cases like Ex-Works, FAS, C&I, FOB etc. in such case, GST is required to be paid on reverse charge basis.
- 4) There is a need to issue the clarificatory circular for field formation as well as trade and industries on the following transactions

#### a. When goods are imported and sold on a High Sea Sale basis:

In this case, in terms of the definition the of importer as per Section 2 (26) of Customs Act 1962 :

26) “importer,” in relation to any goods at any time between their importation and the time when they are cleared for home consumption, includes 22 [any owner, beneficial owner] or any person holding himself out to be the importer.

And in such cases, department may demand GST on a reverse charge basis if such imports are not on a CIF basis. It is advisable; while drafting the High Sea Sale Agreement, there should be a separate clause to mention the terms of pricing as



far as ocean freight, who is liable to pay any GST thereon, otherwise there is a possibility to collect the tax from the person who has availed the services from freight forwarder outside the territory of India as well as importer on high sea sale basis.

**b. When goods are imported and kept in warehouse and after that supplied to another person from warehouse itself:**

As stated above, the definition of “importer” who is filing the bill of entry for home consumption and in this scenario also the purchaser will be filing the bill of entry when goods are purchased from the warehouse. In this scenario also, the importer may be liable to pay GST on reverse charge basis if there is no clarity on the terms of purchase. It will be interesting to appreciate following definitions:

**Notification No. 10 of IGST Rate**

Sr	Category of Supply of Services:	Supplier of service	Recipient of Service
10	Services supplied by a person located in the non-taxable territory by way of <b>transportation of goods by a vessel</b> from a place outside India up to the customs station of clearance in India.	A person located in a non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

In the case above, the category of service is the transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. However, “Custom Station” means any customs port, customs airport, international courier terminal, foreign post office or land customs station; whereas “Warehouse” means a public warehouse licensed under section 57 or a

private warehouse licensed under Section 58 or a special warehouse licensed under section 58A and therefore, it is very important to draft agreement properly w.r.t. the terms of payment of ocean freight and applicability of GST thereof. In such scenario, it is preferable to mention CIF on the Bill of Entries to avoid any disputes in the future.



**CMA ANIL SHARMA**  
Practicing Cost Accountant

# ITC: SEAMLESS FLOW ENDLESS RESTRICTIONS

**T**he Task Force on Implementation of the Fiscal Responsibility and Budget Management Act, 2003 observed that “high import tariffs, excises and turnover tax on domestic goods and services have enormous cascading effects, leading to a distorted structure of production, consumption and exports. **This problem can be effectively addressed by shifting the tax burden from production and trade to final consumption, and from savings to consumption. Accordingly, the Task Force recommended that “a well-designed destination-based value added tax on all goods and services is the most elegant method of eliminating distortions and taxing consumption.**

**Report of The Empowered Committee of State Finance Ministers:** The first ever discussion paper on GST in India saw light of the day through the report of the Empowered Committee of State Finance Ministers which was submitted to the Government of India on 10<sup>th</sup> of November 2009. This report talked about GST and its benefits to trade, industry, agriculture and consumer. Some of the extracts of the report are as under:

*If the Value Added Tax (VAT) is considered to be a major improvement over the pre-existing Central excise duty at the national level and the sales tax system at the State level, then the Goods and Services Tax (GST) will be a further significant breakthrough - the next logical step towards a comprehensive indirect tax reform in the country.*

*Keeping this objective in view, an announcement was made by the then Union Finance Minister in the Central Budget (2007-08) to the effect that GST would be introduced with effect from April 1, 2010.*

*In the GST, both the cascading effects of CENVAT and service tax are removed with set-off, and a continuous chain of set-off from the original producer's point and service provider's point up to the retailer's level is established which reduces the burden of all cascading effects. This is the essence of GST, and this is why GST is not simply VAT plus service tax but an improvement over the previous system of VAT and disjointed service tax.*

*The GST at the Central and at the State level will thus give more relief to industry, trade, agriculture and consumers through a more comprehensive and wider coverage of input tax set-off and service tax setoff, subsuming of several taxes in the GST and phasing out of CST. With the GST being properly formulated by appropriate calibration of rates and adequate compensation where necessary, there may also be revenue/ resource gain for both the Centre and the States, primarily through widening of tax base and possibility of a significant improvement in tax-compliance. In other words, the GST may usher in the possibility of a collective gain for industry, trade, agriculture and common consumers as well as for the Central Government*

*and the State Governments. The GST may, indeed, lead to the possibility of collectively positive-sum game*

The Empowered Committee of State Finance Ministers report was followed by **13<sup>th</sup> Finance Commission Report** submitted on 15<sup>th</sup> December 2009 and the said report mentioned how GST will be regulated in India:

**The computation of the CGST and SGST liability should be based on the invoice credit method i.e., allow credit for tax paid on all intermediate goods or services on the basis of invoices issued by the supplier.** As a result, all different stages of production and distribution can be interpreted as a mere tax pass-through, and the tax will effectively 'stick' on final consumption within the taxing jurisdiction. **This will facilitate elimination of the cascading effect at various stages of production and distribution.** (Para-2.16).

**Full and immediate input credit should be allowed for tax paid (both CGST and SGST) on all purchases of capital goods** (including GST on capital goods) in the year in which the capital goods are acquired. (Para-2.18)

Under the present Indirect Tax regime at the State level, the lower rate is generally 4 per cent. However, **in the absence of a seamless flow of the input credit mechanism resulting in cascading of taxes and the CENVAT-inclusive tax base, the incidence on products liable to the lower rate of 4 per cent is substantially higher.** Since, we recommend in para 5.79 a single rate, which is extremely low in comparison to the existing standard rate of 12.5 per cent, there is little scope for providing a further lower rate. In addition, the proposed GST design structure envisages a comprehensive base with a seamless flow of the input credit mechanism. Consequently, the cascading effect would be negligible (Para 5.11).

All the above three documents emphasis improvement over the pre-GST tax structure if GST is introduced in the country. Goods and Service Tax was introduced in the country wef 01.07.2017 after having numerous rounds of debates among all political parties across India. Late Sh. Atal Bihari Vajpai, the then Prime Minister first talk about GST in FY 2001-2002 and we took seventeen years to introduced it finally. We discussed GST politically but not technically hence we have numerous amendments since it was introduced. Today, perhaps there is no section in GST

which has not been amended since it introduced.

Before GST and /or after GST, governments have been continuously claimed that it is industry and user friendly and is good and simple tax. No doubt, it has increase the revenue of exchequer but at the same time has enhance the confusion, litigation and compliances. It has also increased the unemployment. MSMEs are worst effected as has increased their input cost and has blocked their working capital at various stages. Provisions are such that one can't compliance within their frame work. Due to frequent amendments on one side, GSTN who is responsible for the smooth operations of GST Portal is unable to update the GST portal so frequently and on the other side professionals have wasted many working hours to study the provisions again and again.

All the above three reports on pre-GST tax structure talked about seamless flow of taxes and elimination of cascading effects of taxes in GST regime. Keeping major items i.e Petrol, Diesel, CNG, ATF and Liquor for human consumption out of GST purview has adversely effected the economy and the benefits of GST has not been derived fully. Apart, keeping Electricity, Education and Health in exemption list without setoff of taxes has further jeopardies the economy. So in over all, by keeping more than 40% of the total economy out of the GST purview, has not derived much, rather put the stake holders in doldrum.

Further, if we go by the provisions of existing GST laws, we found that more and more restrictions have been imposed to claim Input Tax Credit (ITC). Provisions are so stringent and confusing that sometimes it seems that how one can compliance it under the law and under given frame work. In GST laws, many restrictions have been imposed on taxable persons to avail ITC and the basic purpose and spirit of law have been defeated.

Under CGST Act, 2017 many sections and rules have been framed to avail and not to avail ITC. Let us talk about these sections and rules one by one:

### **Section 16: This section narrates the eligibility and conditions to avail the ITC and reproduced as under:**

- (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;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;(wef 01.01.2022)

(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 or, as the case may be, services—*

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

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

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

(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.*

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

*Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under subsection (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.*

\*Section 43A omitted through Budget-2022

## Our views on Section 16:

This section made taxable person eligible for ITC.





But it has imposed endless restrictions to avail the ITC. The basic and foremost condition to avail ITC is that Outward supplies must be taxable. Clause- 2, of the section put practically five conditions which must be fulfilled in- Toto to avail ITC. If any condition out of five is not met, ITC will be rejected. Having Invoices or Debit Notes in custody along with goods and or services is natural phenomena of any business. Filing of periodical returns also a regular exercise for any business entity. But clause (2)(c) seems to be impractical and illogical. **How a buyer can force a supplier to file his return and pay taxes to government account if not paid. If government laws can't force supplier to compliance under the law, how an innocent buyer can get it done who has no power under the law or otherwise.**

### Case Laws challenging the legality of Section 16:

In a case of **Arise India Ltd v/s Commissioner Of Trade & Taxes, ... on 26 October, 2017 Appeal Number : W.P.(C) 2106/2015 Date of Judgement/Order : 26.10.2017** before the Hon'ble Delhi high court, court held that:

This is violation of Article 14 of the Constitution in as much as it treats both the innocent **purchasers and the guilty purchasers alike**. In other words, it is submitted that by treating unequal's equally the legislative measure is violation of Article 14 of the Constitution. **There are other statutory avenues available to the State to collect tax from the defaulting dealer.**

Similarly, in another case before Kolkatta High Court, notice was issued to Centre and State Governments regarding Clause 2(4). **It was argued that ITC is not taken through return but instead it is taken through the books of accounts immediately on receipt of goods or services in terms of 1st proviso to Section 16(2) of the Act.** It was also argued that the provision of section 16(4) of the CGST Act, 2017/WBGST Act, 2017 is arbitrary and unreasonable and it was pleaded that they are also violative of Article 19(1)(g) and Article 300A of the Constitution. The denial of ITC would defeat the object of the 122 and Constitutional Amendment Bill, 2017.

As purchaser has paid and compliance was made on his part under the law how he can be denied for a fault of supplier not paying tax to government. Hence, grounds have not distinguished **guilty buyer and innocent buyer**

and kept them at par which is unconstitutional. Shifting the incidence of tax from the supplier to the buyer, over whom buyer has no control whatsoever, is arbitrary and irrational & therefore violative of the Article 14, Article 19(1)(g) and Article 300A of the Constitution of India

In another case of **Bharti Telemedia Ltd. Vs. Union Of India & Ors.** (Delhi High Court) W.P.(C) no 6293/2019. The Petitioner i.e. Bharti Telemedia Ltd. is engaged in providing Direct-To-Home satellite television broadcast services. Delhi HC issues notice in writ petition challenging Section 16(2)(c), second proviso to Section 16(2)(d) and proviso to Section 16(4) of Central Goods and Service Tax Act, 2017 (CGST Act). **In the case Petitioner's contention is that the Department has been vested with all the powers to recover any revenue lost owing to non-payment of taxes by erring suppliers and credit cannot be denied to recipient for default on part of the supplier;**

**Litigation to the facts is still going on which is just a wastage of time, money and energy of each stake holder.** Better if policy makers can draft the user-friendly and practical provisions.

### Section 17: Banned ITC on some of the transactions/businesses.

Section 17 of CGST Act, 2017 banned some of the transactions where ITC can't be claimed. Such transactions are narrated under sub-clause (5) of Section 17. In other words, there is list of blocked credits. The same is reproduced as under:

Section 17(5):

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

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

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

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

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

(B) transportation of passengers; or

(C) imparting training on navigating such vessels; or

(D) imparting training on flying such aircraft;

(ii) for transportation of goods;

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

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

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

(ii) where received by a taxable person engaged—

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

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

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

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

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

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

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

Provided that the input tax credit in respect of such goods or services or both shall

be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

*Explanation.*—For the purposes of clauses (c) and (d), the expression “construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalisation, to the said immovable property;

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

*Explanation.*— For the purposes of this Chapter and Chapter VI, the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes— (i) land, building or any other civil structures; (ii) telecommunication towers; and (iii) pipelines laid outside the factory premises.

## Our Views on Section 17:

As per section 17 clause (5)(a), (aa), (ab) and (b) ITC



on purchase/rent or lease of motor vehicles, vessels and aircraft if purchased for business purposes not available. However, if said vehicles purchased for following businesses/purposes ITC is allowed:

- (i) for trading of motor vehicles, vessels and aircraft
- (ii) for transportation of passengers by motor vehicle, vessels and aircraft;

(ii) for driving schools of such motor vehicles, vessels and aircraft

(vi) for transportation of goods;

**(v) In case of Motor vehicles having seating capacity more than thirteen persons**, including driver, ITC is available even if it is purchased for business other than above mentioned business.

**As per section 2(28) of Motor Vehicles Act, 1988, Motor vehicles exclude:**

- ❖ vehicle running upon fixed rails
- ❖ special purpose vehicles for being used in a factory or any enclosed premises like fork lifts, pay loaders, work lifts
- ❖ vehicle with less than 4 wheels fitted with engine capacity of up to 25cc
- ❖ tippers and dumpers

Also GST taxes paid on insurance premium, repair and maintenance etc for above said vehicles, ITC not available. However, ITC is available if these vehicles are purchased for above mentioned businesses and or purposes.

So, if bus or any motor vehicle having seating capacity more than 13 persons, is purchased for official use, ITC is available. But if car or vehicle having seating capacity less than 13 persons is purchased for official purposes, ITC is not allowed.

**In any business, without the use of motor vehicles, especially in administration, marketing and after sale services functions, business is not possible. So, we are of the view that some percentage of the taxes paid on such services, ITC must be allowed.**

**Also, in clause (b), ITC is available if made mandatory under any law for the time being in force. It creates confusion among stake holders as laws have their own interpretations. So, it's better if things can be made clear and specify the activities allowed for ITC.**

**In clause (c) and (d), ITC on taxes paid for the services of construction immovable property is not allowed. No business can be run in open space. Business need buildings for inventory, proper space for man power, and**

**equipment etc. Accordingly, GST paid on Construction material, fittings, Lifts, electrical etc ITC not allowed.**

*Explanation at the end of the section 17, does not include Land and building, pipelines laid down outside the factory premises, telecommunications towers as plant and machinery which is illogical view as in all such industries, operations are not possible.*

**We are of the view that based upon some technical estimates, certain percentage of taxes paid for such construction activities must be allowed to hotels and manufacturing sector.**

### **Cases challenging legality of Section 17: Block Credits**

In a case of **M/S Safari Retreats v/s Revenue Authorities** before Hon'ble Orissa HC, where in petitioner has constructed a big mall and has invested huge money. Out of that investment petitioner has an accumulated ITC of Rs. 35.00 Cr in his account. Hon'ble court held that:

- the court has accepted the submission of the petitioners that very object of enacting GST law is to obviate the cascading effect of various indirect taxes and reduce multiplicity of indirect taxes.

- If the benefit of input tax credit is denied by invoking Section 17(5)(d) of the CGST Act the said object will be frustrated, especially in view of the fact that the petitioner shall be required to pay GST on its rental income.
- The Hon'ble Court held that letting out the property cannot be said to be using the property "on his own account".
- The Hon'ble High Court has rejected the narrow interpretation of the section 17(5)(d) of the CGST Act done by the department and held that the benefit of credit would be available to assessee on goods or services used in construction of immovable property if the assessee is required to pay GST on the rental income arising out of the investment on which he paid the GST.
- The court duly noted the submission of the Petitioner that in case where immovable property is sold before issuance of completion certificate or first occupation (i.e. on payment of GST), the input tax credit is not denied u/s 17(5)(d). Whereas, in the current case when the petitioner has to pay GST on its rental income, the input tax credit is denied by invoking Section 17(5)(d).
- In such case the petitioner's prayer was that on this ground Section 17(5)(d) of the CGST Act and OGST Act has to be struck down as violative of Article 14 of the Constitution and if the said section is not read down by the court.
- The Hon'ble Court chose to read down Section 17(5)(d) of the CGST Act and OGST.

## Section 38: Newly drafted section in Budget-2022 imposed further restrictions on ITC:

Section 38 has been redrafted through Budget-2022. Though it is not notified yet, but has put more restrictions and conditions to avail ITC. Newly drafted section 38 is reproduced as under:

"38. (1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such

form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of—

- (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and
- (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—
  - (i) *by any registered person within such period of taking registration as may be prescribed; or*
  - (ii) *by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or*
  - (iii) *by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said sub-section during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or*
  - (iv) *by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or*
  - (v) *by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or*
  - (vi) *by such other class of persons as may be prescribed."*

## Our views for newly drafted Section:

Section 38 has been newly drafted and our understanding is that:

- GSTR-2B will be consisting of two parts i.e ITC available and ITC not available.
- The following may be the additional reasons for ITC



'Not available' as per GSTR-2B in the hands of the recipient:

- a. Inward supply is received from a supplier having new registration –conditions applied
- b. Supplier has defaulted in payment of tax and the default has continued for the prescribed time period – may be less than six/three months
- c. Tax paid in GSTR-3B is lower than the output tax shown in GSTR-1
- d. Inward supply is received from a supplier who has taken more ITC in GSTR-2B than in GSTR-3B by the prescribed limit
- e. Supplier has paid higher proportion of taxes from his electronic credit ledger than what is allowed as per law.
- f. Other Notified persons.

### Section 49, 49A: These sections stop to utilise ITC lying in Credit ledgers

Section 49 read with rule 86A, empowered the officers to block ITC ledgers of taxable person if they have reason to believe that ITC if availed based on invalid documents/invoices, supplier is not existing and so on.

#### Case LAW:

In case filed by MRS Realty Private Ltd in Kolkatta High Court, challenging the constitutional validity of rule 86A, Hon'ble court issued notices both to Centre and State governments.

In another case, where in Kalpsutra Gujarat v. Union of India (2020) 120 (Gujarat), the applicant, which is a partnership firm, through one of its partners, had asked the High Court to issue a writ of mandamus or any other appropriate writ, direction or order, striking down rule 86A in so far as it gives power to block ITC through no fault of the registered bona fide recipient, as ultra vires of section 16 of the CGST Act. The applicant further also asked for a direction allowing it to utilize the ITC till the time it is proved that the supplier did not honor his tax liability. The question that the Court put before the respondents in this case, is whether omission on part of the supplier will be sufficient to block the ITC of the applicant. The Court noted

the possible misuse of the Rule by the revenue authorities to harass the taxpayer and directed proper guidelines to be issued prescribing the procedure to be followed in order to invoke the said rule 86A.

**Section 49 read with Rule 86B** the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees. So, here taxable person is forced to pay cash even if has ITC in its credit ledgers.

#### Case LAW:

The constitutionality of Rule 86B, which was introduced w.e.f. 1st January 2021 vide Notification No. 94/2020, was challenged in Hon'ble Gujarat High Court where in Court issued notice to the government. Though government clarified that this provisions will impact only 0.5 percent taxable persons.

Further, **Section 49A, read with rule 88A** emphasis to use and exhaust IGST first and only than CGST/SGST can be used against out ward tax liability. Section 49A is reproduced as under:

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

In net shell section 49A forced taxable person to pay outward tax liability in cash though he has ITC in his ledgers.

Section 49(5) describe the order of adjustment of ITC available, but Section 49A forced to exhaust IGST -ITC first without using other ITC available. So by following the order described in section 45(5), one has to meet the liabilities. There are instances where ITC in CGST/SGST got accumulated and taxable person is forced to pay Taxes in cash. This can be understand with following example:

Taxes	Tax Lia	ITC Avl	ADJ/Setoff	ADJ2	BAL	CASH
IGST	500	700	500	200*		0
CGST	300	500	200*(IGST)	100 (CGST)	400	0
SGST	400	250	250	-150	-150	150*

\*To exhaust IGST first, CGST liability paid from IGST. Otherwise CGST liability could have been met from CGST-ITC and IGST-ITC could have been utilised for SGST where taxable person forced to pay cash. It has on one side blocked his money in ITC and on other side increased his working capital requirement.

## Our views on Section 49 and rule drafted there in:

So much restrictions and overlapping of provisions

causes unnecessary litigation, corruption, wastage of national resources and make the business unviable. On one side we talk about “Make in India” and on the other side making India tough to business. **Because of very few evaders of the taxes, other honest and genuine tax payers should not be penalised rather systems should be in place to curb the evasion.**



**CMA Debasis Ghosh**  
Cost Accountant

# THE ROLE OF CMAS IN VALUATION UNDER THE GOODS & SERVICE TAX LAW

In many respects, the Goods and Service Tax legislation (GST) marks a significant transition from the erstwhile indirect tax regime. The major transformation is in the form of having a combined indirect tax levy on goods as well as services. This has posed several challenges for the service sector of which one important aspect has been that of valuation of services when not supplied to independent recipients. In other words, the concept of “related persons” has been introduced for services also.

In the earlier indirect tax regime, the central excise law prescribed the following basis of valuation for sale to related persons.:

1. In terms of Rule 9 of the Central Excise Valuation Rules, 2000, where whole or part of the excisable goods are sold by a person to or through a related person as defined under the central excise law, it was specified that the value of such goods shall be the price at which these are sold by a related person to independent buyers or where such goods are not sold to such buyers, to buyers (being related person) who sells such goods in retail.
2. In the case where the related person does not sell the goods but uses or consumes such goods in the production or manufacture of other articles, the value shall be determined in terms of Rule 8 of the Central Excise Valuation Rules, 2000, that is to say, at one hundred and ten percent of the cost of production or manufacture of such goods.

Cost Accounting Standard 4 (CAS 4) was prescribed as the basis for determining the one hundred and ten percent of the cost of production or manufacture.

Under the GST law, in terms of the Valuation Rules, it

has been specified that the value of supply of goods or services or both between “related persons” or “distinct persons” shall be the open market value of such supply or if such open market value is not available, be the value of supply of goods or service of the like kind and quality and where such values are not determinable. The value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost or provision of such services.

The basis of valuation of supply to “related persons” or “distinct persons” under the GST law has therefore been adapted from the central excise law with the added significance of applicability to the valuation of service. The concept of service, by itself, being intangible, the valuation thereof poses a challenge in valuing a service at the cost of provision of service in as much what elements of costs would constitute the cost of provision of service require precise and appropriate determination.

In the interest of revenue, a model of valuation for the supply of goods or services or both between “related persons” or “distinct persons” similar to the one in the central excise law be also adopted in the GST law, particularly keeping in view the aspect that for transactions between “related persons” or “distinct persons,” GST is required to be discharged by the supplier even if no consideration is charged.

The Institute of Cost Accountants of India can play a significant role in determining an appropriate model for correct valuation in line with the general principles of costing, for the supply of goods or services or both between “related persons” or “distinct persons” to minimise the occurrence of undervaluation with the resultant loss of revenue to the exchequer.



**CMA Viswanath Bhat**  
*Practicing Cost Accountant*

# ENTRIES IN GSTR 2A FOR THE YEARS 2017-18 AND 18-19 WHETHER MANDATORY OR OPTIONAL

At the time of introduction of the GST Law for getting the Input tax credit, it has been prescribed for uploading of GSTR-I (Outward supply) & there was a downloading of GSTR-II (Inward supply). There was an idea to finalize the GST Return that is called GSTR-3 based on GSTR-I and GSTR-II. But due to practical difficulties these mechanism was not implemented, hence they have come with GSTR 3B (Summary Return). Whenever assessee upload the data, the invoices relating to supplier used to appear in GSTR 2A. Initially due to lack of knowledge and other practical difficulties GSTR-I had been uploaded wrongly by so many suppliers, ie, instead of uploading B to B they have uploaded in B to C, and also there was lot of clerical mistakes while uploading the outward supply. Hence so many assessee have been facing problem during the GST Audit (By Department) regarding availability of Input Tax Credit. Now it is a big question whether entries in GSTR 2A really mandatory or not?

Meanwhile, so many high courts gave decision in favor of assessee, even though the entry not available in the GSTR 2A they can take the credit. But still department officials are having contradictory views in this regard. Due to this contradictory views Assessing Authorities are used to issue the Show-Cause notice by disallowing Input tax Credit, if the entries are not available in GSTR 2A.

In our opinion & also legally during the period between July 2017 to September 2019, this GSTR 2A was just a facility to a tax payer for reconciliation of ITC, which is not mandatory as per law. However, sub rule (4) was inserted to rule 36 of CGST rule of 2017 w.e.f 9th October 2019 wherein availment of ITC on the basis of GSTR 2A was made mandatory. It is worth noting here that this provision was inserted with prospective effect & not retrospective effect. In spite of this prospective amendment it is observed that reversal of ITC is still demanded for the financial year 2017-18 & 2018-19.

## **As per section 16(2), taxpayers are required to satisfy the following conditions for availment of ITC:**

The registered person is in possession of a tax invoice or debit note issued by a supplier registered, or such other tax paying documents as may be prescribed;

He has received the goods or services or both.

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 utilization of input tax credit admissible in respect of the said supply; and

He has furnished the return under section 39 (i.e. GSTR-3B).





If the assessee satisfies above conditions, he is eligible to take the Input tax credit without satisfying the condition of entries to be appeared in GSTR 2A, but after October 2019 one has to satisfy the conditions of 2A while taking the Input tax credit.

Denying ITC to a buyer of goods or services on account of default of the supplier or services would be arbitrary and irrational and therefore violative of the Article 14, Article 19(1)(g) and Article 300A of the Constitution of India. In this connection, I would like to draw your attention to the judgement pronounced by the Hon'ble Madras High Court in case of M/s. D. Y. Beathel Enterprises vs. The State Tax Officer (Data Cell), wherein it has been mentioned that recovery action has to be first initiated against the seller.

Further, the Hon'ble Delhi, Rajasthan and Orissa High Courts have also issued Notices to the Centre questioning the validity of Section 16(2)(c) and Section 16(2)(d) of the CGST Act, 2017 with respect to the provision of ITC denial to the recipient on account of supplier's default. Apart from above discussion from legal perspective, one need to see practical angles also. It is seen that tax invoices are also not reflected in GSTR-2A due to below reasons:

Wrong GSTIN mentioned by the supplier while filing GSTR-1;

Transaction is reported in B2C instead of B2B;

Wrong invoice number is reported in GSTR-1.

In this regard Maharashtra State Government has issued the Internal circular for the year 2017-18 & 2018-19, which clearly states that,

1. In cases where the difference in ITC claim (CGST/SGST or IGST) per supplier is 2.5 lakh or more, ask the claimant to obtain certification from the Chartered Accountant of the said supplier certifying the output transactions and tax paid thereon so as to comply with the provisions of section 16.
2. In Case in difference in ITC claim (CGST/SGST or IGST) per supplier is below 2.5 lakh, ask the claimant to obtain ledger confirmation of the concerned supplier along with his/her certifications.
3. Difference in ITC claim may be allowed on the basis of the above.

And also SUPREME COURT CONFIRMED GSTR-2A IS ONLY A FACILITATOR: The Hon'ble Supreme Court of India in the case of Union Of India v. Bharti Airtel Ltd. [2021] 319/ 54

GSTL 257/ [2022] 89 GST 1, has categorically examined the self-assessed input tax credit and the validity of GSTR-2A in claiming Input tax credit by the buyer/recipient :-

#### *At point No 34 -*

Section 16 of the 2017 Act deals with eligibility of the registered person 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. The input tax credit is additionally recorded in the electronic credit ledger of such person under the Act. The "electronic credit ledger" is defined in Section 2(46) and is referred to in Section 49(2) of the 2017 Act, which provides for the manner in which ITC may be availed. Section 41(1) envisages that every registered person shall be entitled to take credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.

#### *At point No 35 -*

As aforesaid, every assessee is under obligation to self-assess the eligible ITC under Section 16(1) and 16(2) and "credit the same in the electronic credit ledger" defined in Section 2(46) read with Section 49(2) of the 2017 Act. Only thereafter, Section 59 steps in, where under the registered person is obliged to self-assess the taxes payable under the Act and furnish a return for each tax period as specified under Section 39 of the Act.

#### *At point No 36 -*

Section 59 does make reference to Section 39, which deals with furnishing of returns, but the fact remains that for furnishing of returns, preparatory work has to be done by the assessee himself and is not fully or wholly dependent on the common electronic portal for that purpose.

#### *At point No 46 -*

We need not multiply the authorities referred to in the concerned judgments, and cited before us, as in our opinion, these decisions have not dealt with the cardinal aspect of statutory obligation fastened upon the registered person to maintain books of accounts and record within the meaning of Chapter VII of the 2017 Rules, which are primary documents and source material on the basis of which self-assessment is done by the registered person including about his eligibility and entitlement to get ITC and of OTL. Form GSTR-2A is only a facilitator for taking an informed decision while doing such self-assessment,



based on self-assessment, subject to the provisions of GST Law. And the claim of Input tax credit based on the details auto-populated in GSTR- 2A under rule 36(4) was effective from 09-10-2019 only. So, in light of the above provisions and Judgements, the recovery of tax based on the differences between GSTR-3B and GSTR-2A is not permissible for the financial years 2017-2018, 2018-2019 and for the period from 01-04- 2019 to 09-10-2019.

As a whole, for the year 2017-18 and 2018-19 entries in 2A are not mandatory to take Input tax credit. But in this regard Assessing Authorities have been issuing the show-cause notice by disallowing input tax credit. If they issue the show cause notice it is advisable to reply by referring above decided cases. Still, if they finalize order by levying tax liability on assesseees, there will be no other alternative except Appeal. According to our opinion if you face these type of situation it is advisable to file an Appeal against the Order because the GST is still in implementation stage. In the long run we expect that the Hon'ble Supreme Court

shall analyze on these type of cases and shall pass the order in favor of assesseees on merits. However if the assesseees have any apprehension about the negative order they may discharge the tax liability under protest and file Appeal against the order, so that they can avoid the interest & penalty. We know very well there is no option of payment under protest under GST but 'Under protest' is an integral part of 'principles of natural justice'. Payment of tax under protest means challenging the issue on merits. Not accepting the decision or order or notification or circular for seeking natural justice and that too not at the cost of revenue. To contest is your fundamental right or constitutional right. Nobody can snatch this right. Hence some body want pay the tax under protest they can simply submit one letter to assessing authority after payment of tax. In this regard honorable madras high court decision is appropriate (Aditya Energy Holdings Vs Directorate General of GST Intelligence (Madras High Court))

TB



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# GST- ON BEAT, OFF-BEAT AND BACK BEAT

## **Notices under GST Article 5: FORM GST DRC-10, DRC-11 & 12**

This is the fifth article in the series of Notices under GST. This article covers about Form GST DRC- 10, DRC-11 & DRC-12.

These three forms are linked to each other hence I'll be covering all three in this very article.

To understand these forms, we'll have to go through their provisions:

### **Background and Legal Provision:**

#### **Rule 144(2) of CGST Rules 2017: DRC-10**

As per rule 144(2) of the Rules, this form is issued by the

proper officer to the defaulter (taxpayer) clearly indicating him the goods to be sold and the purpose of the sale along with a few other details.

#### **Rule 144(5) or Rule 147(12) of CGST Rules 2017: DRC-11 & DRC-12**

As per rule 144(5) or rule 147(12) of the Rules, directing the successful bidder to make the payment of the auction within a period of 15(fifteen) days from the date of auction.

As per the above same rule, DRC-12 (Sale Certificate) is issued by the proper officer to the successful bidder after receiving the payment of the successful bidder.

#### **Section 79 of CGST Act 2017:**

- This section pertains to Recovery of Tax. Section

79 contemplates that if any amount payable by a person to the Government under any of the provisions of the Act and Rules made there under is not paid then the proper officer could recover the amount by one or more modes.

## Form GST DRC-10:

- This form is covered under section 79(1) (b) of the Act as ***“Notice for Auction of Goods”***.
- 1. Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.
- 2. The said goods shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC 10 clearly indicating the goods to be sold and the purpose of sale.
  - The last day for submission of a bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):
  - Provided that where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.
- 3. The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

To summarise the above:

- The proper officer may recover by detaining or

selling any goods belonging to such person which are under his control.

- This is for the use of tax officials.

## Form GST DRC-11:

- This form is covered under rule 147(12) of the Act as ***“Notice to successful bidder”***.
- The proper officer shall issue a notice to the successful bidder in FORM GST DRC 11 requiring him to make the payment within fifteen days from the date of auction.
- After issuing DRC-10, the proper officer can also call for a public auction as per rule 147 of the Rule.
- The proper officer may specify the amount of pre-deposit to be submitted and the manner of submission to make the bidders eligible for participating in the auction.
- Among the eligible bidders one of the bidders will come to be the successful bidder.
- The proper officer can issue a notice to the successful bidder through this form as per Rule 144(5) or Rule 147(12) of the Rules.

## Form GST DRC-12:

- This form is also covered under rule 144(5) or rule 147(12) of the Act as ***“Sale Certificate”***.
- On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in FORM GST DRC 12.
- Where the defaulter pays the amount under recovery, including any expenses incurred in the process of recovery, before the issue of the notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.
- The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

## Form DRC-10:

**FORM GST DRC – 10***[See rule 144(2)]***Notice for Auction of Goods under section 79 (1) (b) of the Act**

Demand order no.:

Date:

Period:

Whereas an order has been made by me for sale of the attached or distrained goods specified in the Schedule below for recovery of Rs. .... and interest thereon and admissible expenditure incurred on the recovery process in accordance with the provisions of section 79.

The sale will be by public auction and the goods shall be put up for sale in the lots specified in the Schedule. The sale will be of the right, title and interests of the defaulter. And the liabilities and claims attached to the said properties, so far as they have been ascertained, are those specified in the Schedule against each lot.

The auction will be held on ..... at .... AM/PM. In the event the entire amount due is paid before the date of auction, the sale will be stopped.

The price of each lot shall be paid at the time of sale or as per the directions of the proper officer/ specified officer and in default of payment, the goods shall be again put up for auction and resold.

**Schedule**

Serial No.	Description of goods	Quantity
1	2	3

Signature  
Name  
Designation

Place:

Date:

## Form DRC-11:

**FORM GST DRC – 11**  
[See rule 144(5) & 147(12)]

**Notice to successful bidder**

To,  
\_\_\_\_\_

Please refer to Public Auction Reference no. \_\_\_\_\_ dated \_\_\_\_\_. On the basis of auction conducted on \_\_\_\_\_, you have been found to be a successful bidder in the instant case.

You are hereby, required to make payment of Rs. \_\_\_\_\_ within a period of 15 days from the date of auction.

The possession of the goods shall be transferred to you after you have made the full payment of the bid amount.

Signature  
Name  
Designation

Place:  
Date:

## Form DRC-12:

**FORM GST DRC – 12**  
[See rule 144(5) & 147(12)]

**Sale Certificate**

Demand order no.: \_\_\_\_\_ Date: \_\_\_\_\_  
Reference no. of recovery: \_\_\_\_\_ Date: \_\_\_\_\_  
Period: \_\_\_\_\_

This is to certify that the following goods:

**Schedule (Movable Goods)**

Sr. No.	Description of goods	Quantity
1	2	3

**Schedule (Immovable Goods)**

Building No./ Flat No.	Floor No.	Name of the Premises /Building	Road / Street	Localit y/ Village	District	Stat e	PIN Code	Latitude (optional)	Longitude (optional)
1	2	3	4	5	6	7	8	9	10

**Schedule (Shares)**

Sr. No.	Name of the Company	Quantity	Value
1	2	3	4

have been sold to .....at.....in public auction of the goods held for recovery of rupees ----- in accordance with the provisions of section 79(1)(b)/(d) of the <<SGST/UTGST/ CGST/ IGST/ CESS>> Act and rules made thereunder on ----- and the said..... (Purchaser) has been declared to be the purchaser of the said goods at the time of sale. The sale price of the said goods was received on..... The sale was confirmed on.....

Signature  
Name  
Designation

Place:  
Date:

371





### FAQs-

#### *When can the proper officer conduct an auction of taxpayer's goods/property?*

- When the taxpayer is unable to pay GST tax liability due to fund insufficiency then the tax officer can auction his goods or any property for recovery.

#### *When is the successful bidder liable to pay for the auctioned goods/property?*

- The successful bidder to make the payment of the auction within a period of 15(fifteen) days from the date of auction.

#### *When shall the proper officer cancel the process of auction and release the goods?*

- Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2).

### Rights of the Registered Person/Tax Payer:

- If the defaulter (taxpayer) repays the entire amount due before the date of the auction, the sale will be stopped.

### Duties of the Registered Person/Tax Payer:

- The price of each lot shall be paid by the defaulter (taxpayer) at the time of sale or as per the directions of the proper officer/ specified officer.
- If the defaulter (taxpayer) defaults in the above payment, the goods shall be again put up for auction and resold.

### Common Advice to all the Taxpayers:

- Taxpayers are always advised to keep track of the details posted on the GST portal as a good practice and timely response to the notice.
- If any irregularity or error is found, the taxpayer should, if possible, attempt to correct the same in the latest return.
- Taxpayers should also reconcile all returns with each other, such as the turnover recorded in GSTR 1 with GSTR 3B and the generated e-way bills.
- Also, ITC reconciliation with GSTR 2A or GSTR 2B was used in GSTR 3B.

# TAX UPDATES NOTIFICATIONS AND CIRCULARS

## INDIRECT TAX

### CUSTOMS-NON TARIFF

Notification No. 50/2022-CUSTOMS (N.T.)

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

Date – 15th June 2022

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

In the said notification, for TABLE-1, TABLE-2, and TABLE-3 the following Tables shall be substituted, namely: -

**“TABLE-1**

Sl. No.	Chapter/ heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$Per Metric Tonne)
1	1511 10 00	Crude Palm Oil	1620
2	1511 90 10	RBD Palm Oil	1757
3	1511 90 90	Others – Palm Oil	1689
4	1511 10 00	Crude Pal-molein	1764
5	1511 90 20	RBD Pal-molein	1767
6	1511 90 90	Others – Palmolein	1766
7	1507 10 00	Crude Soya bean Oil	1831
8	7404 00 22	Brass Scrap (all grades)	5574

For more details, please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009346/ENG/Notifications>

Notification No.51/2022 -Customs (N.T.)

Exchange rate Notification No.51/2022-Cus (NT) dated 16.06.2022-reg

Date – 16th June 2022

CBIC has determined the rate of exchange of conversion of the foreign currencies into Indian currency or vice versa, and it will be effective from 17th June, 2022, relating to imported and export goods

#### SCHEDULE-I

Sl. No	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
1	Australian Dollar	56.05	53.70
2	Bahraini Dinar	213.75	200.80
3	Canadian Dollar	61.70	59.60
4	Chinese Yuan	11.85	11.50

For more details , please follow -

<https://taxinformation.cbic.gov.in/view-pdf/1009347/ENG/Notifications>

## CUSTOMS-ANTI DUMPING DUTY

Notification No. 22/2022-Customs (ADD)

Seeks to levy anti-dumping duty on Fluoro Backsheet excluding transparent backsheet originating in or exported from China PR for a period of five years, 2022

Date – 15th June 2022

Whereas, in the matter of “Fluoro Backsheet excluding transparent backsheet” falling under tariff headings 3920 and 3921 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) originating in, or exported from the China



PR and imported into India, the Designated Authority in its final findings, vide, notification F. No. 6/3/2021-DGTR, dated the 29th March, 2022, has come to the conclusion that-

- (i) the product under consideration has been exported to India from the subject country at a price below normal value, thus resulting in dumping;
- (ii) the domestic industry has suffered material injury due to dumping in respect of the subject goods; and
- (iii) there is causal link between dumping of product under consideration and injury to the domestic industry,

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

**For more details , please follow -**

<https://taxinformation.cbic.gov.in/view-pdf/1009345/ENG/Notifications>

## DIRECT TAX

Notification No. 67/2022

Income-tax (19th Amendment) Rules, 2022

Date – 21st June 2022

In exercise of the powers conferred by section 295 read with sections 194B, 194-IA, 194R, 194S and section 206AB of the Income-tax Act, 1961, CBDT has further amended the Income-tax Rules, 1962, namely: -

1. Short title and commencement. ---

- (1) These rules may be called the Income-tax (19th Amendment) Rules, 2022.
- (2) Save as otherwise provided in these rules, they shall come into force from the date of their publication in the Official Gazette.

2. In the Income-tax Rules, 1962 (hereinafter referred to as the principal rules),

(a) in rule 30, with effect from the 1st July, 2022---

- (i) after sub-rule (2C), the following sub-rule shall be inserted, namely: ---

“(2D) Notwithstanding anything contained in sub-rule (1) or sub-rule (2), any sum deducted under

section 194S by a specified person referred to in that section shall be paid to the credit of the Central Government within a period of thirty days from the end of the month in which the deduction is made and shall be accompanied by a challan-cum-statement in Form No. 26QE.”;

- (ii) after sub-rule (6C), the following sub-rule shall be inserted, namely: --- “(6D) Where tax deducted is to be deposited accompanied by a challan-cum-statement in Form No.26QE, the amount of tax so deducted shall be deposited to the credit of the Central Government by remitting it electronically within the time specified in sub-rule (2D) into the Reserve Bank of India or the State Bank of India or any authorised bank.

**For further details , please follow –**

<https://incometaxindia.gov.in/communications/notification/notification-67-2022.pdf>

Notification No. 2 of 2022

Format, Procedure and Guidelines for submission of Form No. 1, Form No. 2 and Form No. 2A for Securities Transaction Tax (STT)

Date – 24th June 2022

As per Section 101 of the Securities Transaction Tax, every recognized stock exchange or the prescribed person in the case of every Mutual Fund [or insurance company] [or the lead merchant banker in the case of an initial public offer] [or an initial offer] shall, within the prescribed time after the end of each financial year, prepare and deliver or cause to be delivered a return to the Assessing Officer or to any other authority or agency authorized by the Board.

For the purposes of filing of Securities Transaction Tax return electronically, CBDT has issued Notification No. 9/2022 dated 18.01.2022. As per the notification, a new class of person i.e. Insurance Company has been made responsible for collection and payment of securities transaction tax. A new Form No. 2A has also been introduced as per the said notification, to be filed by Insurance Company for furnishing Securities Transaction Tax return. The new sub rule 2A of rule 7 empowers Director General of Income Tax (Systems) to specify the procedures, formats and standards for ensuring secure capture and transmission of data.

All eligible reporting institutions having obligation to

submit Securities Transaction Tax return are requested to submit the registration information as per Annexure A and send the signed copy in pdf format (size upto 1Mb) on ITD official email id at [stt.reporting@insight.gov.in](mailto:stt.reporting@insight.gov.in). The guidelines for preparation and submission of Securities Transaction Tax Return have been mentioned in the STT Rules 2004 amended via notification 9 of 2022. The format of return (Form No. 1, Form No. 2 and Form No. 2A) to be submitted is given in Annexure B. The data structure rules are enclosed in Annexure C. Notification of 2004, Securities Transaction Tax, Rules dated 29.09.2004 may be referred for class of persons responsible for filing Form No. 1 and Form No. 2. The new rule 5A inserted via Notification No. 9/2022 may be referred for class of persons responsible for filing Form No. 2A.

All the Reporting Institutions (class of person responsible) as defined in the Securities Transaction Rules 2004 and further modified by Securities Transaction Tax (1st Amendment), Rules, 2022 dated 18th January 2022 are required to prepare the data file in prescribed format from their internal system. Reporting Institutions are required to submit the data files using SFTP Server using the login credentials (To be communicated separately).

## DIRECT TAX CIRCULARS

Circular No. 13 of 2022

Guidelines for removal of difficulties under sub-section (6) of section 194S of the Income-tax Act, 1961

Date – 22nd June 2022

Finance Act 2022 inserted a new section 194S in the Income-tax Act, 1961 (hereinafter referred to as “the Act”) with effect from 1st July 2022.

The new section mandates a person, who is responsible for paying to any resident any sum by way of consideration for transfer of a virtual digital asset (VDA), to deduct an

amount equal to 1% of such sum as income tax thereon. The tax deduction is required to be made at the time of credit of such sum to the account of the resident or at the time of payment, whichever is earlier.

This deduction is not required to be made in the following cases: -

(i) the consideration is payable by a specified person and the value or aggregate value of such consideration does not exceed fifty thousand rupees during the financial year;

or

(ii) the consideration is payable by any person other than a specified person and the value or aggregate value of such consideration does not exceed ten thousand rupees during the financial year

(i) The following are defined as specified person for the purposes of this provision:

(ii) An individual or Hindu undivided family (HUF) who does not have any income under the head “profit and gains of business or profession”; and

An individual or HUF having income under the head “profits and gains of business or profession”, whose total sales/gross receipts/turnover from business carried on by him does not exceed one crore rupee or in case of profession exercised by him does not exceed fifty lakh rupee. This threshold is to be seen in the financial year immediately preceding the financial year in which the VDA is transferred.

Sub-section (6) of section 194S of the Act authorises Central Board of Direct Taxes (CBDT) to issue guidelines, for removal of difficulties, with the approval of the Central Government. These guidelines are required to be laid before each House of Parliament and are binding on the income-tax authorities and the person responsible for paying the consideration for transfer of VDA.

# PRESS RELEASE

## DIRECT TAX

**Date - 17th June, 2022**

Net Direct Tax collections for the Financial Year 2022-23 have grown at over 45%

Net Direct Tax collections for the F.Y. 2022-23 continue to grow at a robust pace further fortifying the economic revival

Gross Tax collections for the Financial Year 2022-23 have grown at about 40%

Advance Tax collections for F.Y. 2022-23 stand at ₹. 1,01,017 crore which shows a growth of more than 33%

Refunds amounting to ₹30,334 crore have been issued in the F.Y. 2022-23

The figures of Direct Tax collections for the Financial Year 2022-23, as on 16.06.2022 show that net collections are at ₹.3,39,225 crore compared to ₹ 2,33,651 crore over the corresponding period of the preceding year, representing an increase of 45% over the collections of the preceding year. The net collection (as on 16.06.2022) in F.Y. 2022-23 has registered a growth of 171% over the corresponding period of F.Y. 2020-21 when the net collection was ₹ 1,25,065 crore, and a growth of 103% over the corresponding period of F.Y. 2019-20 when the net collection was ₹ 1,67,432 crore.

The Net Direct Tax collection of ₹ 3,39,225 crore (as on 16.06.2022) include Corporation Tax (CIT) at ₹ 1,70,583 crore (net of refund) and Personal Income Tax (PIT) including Security Transaction Tax (STT) at ₹ 1,67,960 crore (net of refund).

The Gross collection of Direct Taxes (before adjusting for refunds) for the F.Y. 2022-23 stands at ₹ 3,69,559 crore compared to ₹ 2,64,382 crore in the corresponding period of the preceding year, representing an increase of almost 40% over the collections of the preceding year. This includes Corporation Tax (CIT) at ₹ 1,90,651 crore and Personal Income Tax (PIT) including Security Transaction Tax (STT) at ₹ 1,78,215 crore. Minor head wise collection comprises Advance Tax of ₹ 1,01,017 crore, Tax Deducted at Source of ₹ 2,29,676 crore, Self-Assessment Tax of ₹ 21,849 crore, Regular Assessment Tax of ₹ 10,773 crore,

Tax on Distributed Profits of ₹ 5,529 crore and Tax under other minor heads of ₹ 715 crore.

The Advance Tax collections for the first quarter of the F.Y. 2022-23 stand at ₹1,01,017 crore against Advance Tax collections of ₹75,783 crore for the corresponding period of the immediately preceding Financial Year, showing a growth of more than 33%. This comprises Corporation Tax (CIT) at ₹ 78,842 crore and Personal Income Tax (PIT) at ₹ 22,175 crore. This amount is expected to increase as further information is received from Banks.

The TDS collections for F.Y. 2022-23 (as on 16.06.2022) stand at ₹ 2,29,676 crore against TDS collections of ₹ 1,57,434 crore for the corresponding period of the immediately preceding Financial Year, showing a growth of nearly 46%.

The Self-Assessment Tax collections for F.Y. 2022-23 (as on 16.06.2022) stand at ₹21,849 crore against self-assessment tax collections of ₹15,483 crore for the corresponding period of the immediately preceding Financial Year, showing a growth of more than 41%.

Refunds amounting to ₹ 30,334 crore have also been issued in the F.Y.2022-23.

**Date – 21st June, 2022**

## Income Tax Department conducts searches in Rajasthan and Mumbai

Income Tax Department carried out search and seizure operations on 16.06.2022 on a business group involved in retail and export sale of handicrafts, cash financing, purchase and sale of land and buildings, along with some bullion traders. The search operation covered more than 25 premises spread across Rajasthan and Mumbai.

During the course of the search operation, several incriminating documents have been found and seized. The perusal of seized evidences indicates that the group has indulged in unaccounted cash transactions in real estate business as well as obtaining bogus purchase bills. The modus operandi of the group has been to suppress profits of the handicrafts business by inflating the purchases in the books of account, through bogus bills of gold and silver arranged from bullion traders. During the search, it has also

been seen that cash has been received back against the cheques issued to these bullion traders.

Cash was found to be utilised for investment in real estate as well as for obtaining cheques to be introduced as credits into the books of account. The seized evidence also revealed that the group recently acquired few shell companies through entry operators.

The search action has led to seizure of unaccounted cash exceeding ₹ 1.30 crore and unaccounted gold jewellery exceeding ₹ 7.90 crore. Prima facie, estimated unaccounted income in excess of ₹ 100 crore has been unearthed, so far.

Further investigations are in progress.

## 47th Meeting of the GST Council,

Chandigarh 28th and 29th June, 2022

The GST Council's 47th meeting was held in Chandigarh on 28th and 29th June, 2022 under the chairmanship of the Union Finance & Corporate Affairs Minister Smt. Nirmala Sitharaman. The GST Council has inter-alia made the following recommendations relating to changes in GST rates on supply of goods and services and changes related to GST law and procedure:

### 1. Recommendations relating to GST rates on goods and services

#### *A. Rate Rationalization to remove inverted duty structure [Approval of recommendations made by GoM on rate rationalization]*

S. No.	Description	From	To
<b>GOODS</b>			
1.	Printing, writing or drawing ink	12%	18%
2.	Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, Spoons, forks, ladles, skimmers, cake- servers etc	12%	18%
3.	Power driven pumps primarily designed for handling water such as centrifugal pumps, deep tube-well turbine pumps,submersible pumps; Bicycle pumps	12%	18%
4.	Machines for cleaning, sorting or grading, seed, grain pulses; Machinery used in milling industry or for the working of cereals etc; Pawan Chakki that is Air Based Atta Chakki; Wet grinder;	5%	18%
5.	Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, Milking machines and dairy machinery	12%	18%
6.	LED Lamps, lights and fixture, their metal printed circuits board;	12%	18%
7.	Drawing and marking out instruments	12%	18%
8.	Solar Water Heater and system;	5%	12%
9.	Prepared/finished leather/chamois leather /compositionleathers;	5%	12%
10.	Refund of accumulated ITC not to be allowed on flowing goods: (i) Edible oils (ii) Coal		
<b>Services</b>			
11.	Services supplied by foreman to chit fund	12%	18%



S. No.	Description	From	To
12.	Job work in relation to processing of hides, skins and leather	5%	12%
13.	Job work in relation to manufacture of leather goods and footwear	5%	12%
14.	Job work in relation to manufacture of clay bricks	5%	12%
15.	Works contract for roads, bridges, railways, metro, effluent treatment plant, crematorium etc.	12%	18%
16.	Works contract supplied to central and state governments, local authorities for historical monuments, canals, dams, pipelines, plants for water supply, educational institutions, hospitals etc. & sub-contractor thereof	12%	18%
17.	Works contract supplied to central and state governments, union territories & local authorities involving predominantly earthwork and sub-contracts thereof	5%	12%

### *B. Other GST rate changes recommended by the Council*

S. No.	Description	From	To
<b>Goods</b>			
1.	Ostomy Appliances	12%	5%
2.	Orthopedic appliance- Splints and other fracture appliances; artificial parts of the body; other appliances which are worn or carried, or implanted in the body, to compensate for a defect or disability; intraocular lens	12%	5%
3.	Tetra Pak (Aseptic Packaging Paper)	12%	18%
4.	Tar (whether from coal, coal gasification plants, producer Gas plants and Coke Oven Plants.	5%/18%	18%
5.	IGST on import of Diethylcarbamazine (DEC) tablets supplied free of cost for National Filariasis Elimination Programme	5%	Nil
6.	Cut and Polished diamonds	0.25%	1.5%
7.	IGST on specified defence items imported by private entities/vendors, when end-user is the Defence forces.	Applicable rate	Nil
<b>Services</b>			
1.	Transport of goods and passengers by ropeways.	18%	5% (with ITC of services)
2.	Renting of truck/goods carriage where cost of fuel is included	18%	12%

### **C. Withdrawal of exemptions [Approval of recommendations made by GoM on rate rationalization]**

C1. Hitherto, GST was exempted on specified food items, grains etc when not branded, or right on the brand has been foregone. It has been recommended to revise the scope of exemption to exclude from it prepackaged and pre-labelled retail pack in terms of Legal Metrology Act, including pre-packed, pre-labelled curd, lassi and butter milk.

***C2. In case of the following goods, exemption from GST will be withdrawn:***

S. No.	Description of goods	From	To
<b>GST rate changes</b>			
1.	Cheques, loose or in book form	Nil	18%
2.	Maps and hydrographic or similar charts of all kinds, including atlases, wall maps, topographical plans and globes, printed	Nil	12%
3.	Parts of goods of heading 8801	Nil	18%

***C3. In case of the following goods, the exemption in form of a concessional rate of GST is being rationalized:***

S.No.	Description of goods	From	To
<b>GST rate changes</b>			
1.	Petroleum/ Coal bed methane	5%	12%
2.	Scientific and technical instruments supplied to public funded research institutes	5%	Applicable rate
3.	E-waste	5%	18%

***C4. In case of Services, following exemptions are being rationalized:***

S. No.	Description
1.	Exemption on transport of passengers by air to and from NE states & Bagdogra is being restricted to economy class
2.	Exemption on following services is being withdrawn. (a) Transportation by rail or a vessel of railway equipment and material. (b) storage or warehousing of commodities which attract tax (nuts, spices, copra, jaggery, cotton etc.) (c) Fumigation in a warehouse of agricultural produce. (d) Services by RBI, IRDA, SEBI, FSSAI, (e) GSTN. (f) Renting of residential dwelling to business entities (registered persons). (g) Services provided by the cord blood banks by way of preservation of stem cells
3.	Like CETPs, common bio-medical waste treatment facilities for treatment or disposal of biomedical waste shall be taxed at 12% so as to allow them ITC
4.	Hotel accommodation priced upto Rs. 1000/day shall be taxed at 12%
5.	Room rent (excluding ICU) exceeding Rs 5000 per day per patient charged by a hospital shall be taxed to the extent of amount charged for the room at 5% without ITC.
6.	Tax exemption on training or coaching in recreational activities relating to arts or culture, or sports is being restricted to such services when supplied by an individual.

## **D. GST on casinos, race course and online gaming**

The Council directed that the Group of Ministers on Casino, Race Course and Online Gaming re-examine the issues in its terms of reference based on further inputs from States and submit its report within a short duration.



## E. Clarification on GST rate

### E1. Goods

1. Electric vehicles whether or not fitted with a battery pack, are eligible for the concessional GST rate of 5%.
2. All fly ash bricks attract same concessional rate irrespective of fly ash content
3. Stones covered in S. No.123 of Schedule-I (such as Napa stones), even if they are ready to use and polished in minor ways [not mirror polished], attract concessional GST rate of 5%.
4. The GST rate on all forms of mango under CTH 0804, including mango pulp (other than mangoes sliced, dried) attract GST at the 12%. Entry is also being amended to make this amply clear. Raw or fresh mangoes continue to be exempt.
5. Sewage treated water is exempted from GST and is not the same as purified water provided in S. No. 99 of notification 2/2017-CT(Rate). The word 'purified' is being omitted to make this amply clear.
6. Nicotine Polarilex Gum attracts a GST rate of 18%.
7. The condition of 90% fly ash content with respect to fly ash bricks applies only to fly ash aggregate, and not fly ash bricks. As a simplification measure, the condition of 90% content is being omitted.

### E2. Clarification in relation to GST rate on Services

1. Due to ambiguity in GST rates on supply of ice-cream by ice-cream parlours, GST charged @ 5% without ITC on the same during the period 1.07.2017 to 5.10.2021 shall be regularized to avoid unnecessary litigation.
2. Application fee charged for entrance or for issuance of eligibility certificate for admission or issuance of migration certificate by universities is exempt from GST.
3. Ginned or baled fibre is covered in entry 24B of notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 in the category of raw vegetable fibres. The exemption under this entry is being rationalized
4. Services associated with transit cargo both to and from Nepal and Bhutan are covered by exemption

under entry 9B of notification No. 12/2017-CT(R) dated 28.06.2017.

5. Activity of selling of space for advertisement in souvenirs published in the form of books is eligible for concessional GST at 5%.
6. Renting of vehicle with operator for transportation of goods on time basis is classifiable under Heading 9966 (rental services of transport vehicles with operators) and attracts GST at 18%. GST on such renting where cost of fuel is included in the consideration charged is being prescribed at 12%.
7. Allowing choice of location of a plot is part of supply of long term lease of plot of land. Therefore, location charge or preferential location charges (PLC) are part of consideration charged for long term lease of land and shall get the same treatment under GST.
8. Services provided by the guest anchors to TV channels in lieu of honorarium attract GST.
9. Additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and shall be given the same tax treatment as given to toll charges.
10. Services in form of Assisted Reproductive Technology (ART)/ In vitro fertilization (IVF) are covered under the definition of health care services for the purpose of exemption under GST.
11. Sale of land after leveling, laying down of drainage lines etc. is sale of land and does not attract GST.
12. Renting of motor vehicles for transport of passengers to a body corporate for a period (time) is taxable in the hands of body corporate under RCM.
13. The expression 'public transport' used in the exemption entry at SI No. 17(d) of notification No. 12/2017-CT(R), which exempts transport of passengers by public
14. transport other than predominantly for tourism purpose, in a vessel between places located in India, means that such transport should be open to public for point to point transport [e.g. such transport in Andaman and Nicobar islands].

### Other miscellaneous changes

1. All taxable service of Department of Posts would be

subject to forward charge. Hitherto certain taxable services of Department of post were taxed on reverse charge basis.

2. Goods transport agency (GTA) is being given option to pay GST at 5% or 12% under forward charge; option to be exercised at the beginning of Financial Year. RCM option to continue.
3. Service provided by Indian Tour operator to a foreign resident for a tour partially in India and partially outside India is to be subject to tax proportionate to the tour conducted in India for such foreign tourist subject to conditions that this concession does not exceed half of tour duration.

The rate changes recommended by the 47th GST Council will be made effective from **18th July, 2022**.

II. Further, the GST Council has inter-alia made the following recommendations relating to GST law and procedure:

### **A. Measures for Trade facilitation:**

- 1) In-principal approval for relaxation in the provisions for suppliers making supplies through E-Commerce Operators (ECOs)

**a) Waiver of requirement of mandatory registration under section 24(ix) of CGST Act for person supplying goods through ECOs, subject to certain conditions, such as-**

1. the aggregate turnover on all India basis does not exceed the turnover specified under sub-section (1) of section 22 of the CGST Act and notifications issued thereunder.
2. the person is not making any inter-State taxable supply

**2) Composition taxpayers would be allowed to make intra-State supply through e-commerce operators subject to certain conditions.**

The details of the scheme will be worked out by the Law Committee of the Council. The scheme would be tentatively implemented with effect from 01.01.2023, subject to preparedness on the portal as well as by ECOs.

- 2) **Amendment in formula prescribed in sub-rule (5) of rule 89 of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted rated structure**

- a. Change in formula for calculation of refund under rule 89(5) to take into account utilization of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period. This would help those taxpayers who are availing ITC on input services also.

3. **Amendment in CGST Rules for handling of pending IGST refund claims:** In some cases where the exporter is identified as risky exporter requiring verification by GST officers, or where there is a violation of provisions of Customs Act, the refund claims in respect of export of goods are suspended/withheld.

**Amendment in rule 96** of the CGST Rules has been recommended to provide for transmission of such IGST refund claims on the portal in a system generated **FORM GST RFD-01** to the jurisdictional GST authorities for processing. **This would result in expeditious disposal of such IGST refund claims, after due verification by GST officers, thus benefitting such exporters.**

- 4) **Re-credit of amount in electronic credit ledger** to be provided in those cases where erroneous refund amount sanctioned to a taxpayer on account of accumulated ITC or on account of IGST paid on zero rated supply of goods or services, in contravention of rule 96(10) of the CGST Rules, is deposited by him along with interest and penalty, wherever applicable. A new **FORM GST PMT-03A** is introduced for the same.

This will enable the taxpayers to get re-credit of the amount of erroneous refund, paid back by them, in their electronic credit ledger.

- 5) **Clause (c) of section 110 and section 111 of the Finance Act, 2022 to be notified by Central Government at the earliest.** These provisions relate to-

- a. retrospective amendment in section 50(3) of CGST Act, with effect from 01.07.2017, to provide that interest will be payable on the wrongly availed ITC only when the same is utilized;
- b. amendment in sub-section (10) of section 49 of CGST Act to provide for transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a

distinct person.

The rules providing for the manner of calculation of interest under section 50 of CGST Act have also been recommended for more clarity. This will remove ambiguities regarding manner of calculation of interest and will also provide for transfer of balance in CGST and IGST cash ledgers between distinct persons, thereby improving liquidity and cash flows of such taxpayers.

**6) Waiver of late fee for delay in filing FORM GSTR-4 for FY 2021-22 and extension of due date for filing FORM GST CMP-08 for Q1 of FY 2022-23:**

- a. To extend the waiver of late fee under section 47 for delay in filing FORM GSTR-4 for FY 2021-22 by approximately four more weeks, i.e. till 28.07.2022 (The existing waiver is for the period from 01.05.2022 till 30.06.2022)
- b. To extend the due date of filing of FORM GST CMP-08 for the 1st quarter of FY 2022-23 from 18.07.2022 to 31.07.2022.

GSTN has also been asked to expeditiously resolve the issue of negative balance in Electronic Cash Ledger being faced by some of the composition taxpayers.

**7. Present exemption of IGST on import of goods under AA/EPCG/EOU scheme to be continued and E-wallet scheme not to be pursued further.**

**8. Issuance of the following circulars in order to remove ambiguity and legal disputes on various issues, thus benefiting taxpayers at large:**

- a. Clarification on issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification.
- b. Clarification on various issues relating to applicability of demand and penalty provisions under the CGST Act in respect of transactions involving fake invoices.
- c. Clarification on mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B.
- d. **Clarification in respect of certain GST related issues:**
  1. Clarification on the issues pertaining to refund

claimed by the recipients of supplies regarded as deemed export;

2. Clarification on various issues relating to interpretation of section 17(5) of the CGST Act;
3. Clarification on the issue of perquisites provided by employer to the employees as per contractual agreement;
4. Clarification on utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.
9. Exemption from filing annual return in **FORM GSTR-9/9A** for FY 2021-22 to be provided to taxpayers having AATO upto Rs. 2 crores.
10. Explanation 1 after rule 43 of CGST Rules to be amended to provide that there is no requirement of reversal of input tax credit for exempted supply of Duty Credit Scrips by the exporters.
11. UPI & IMPS to be provided as an additional mode for payment of Goods and Services Tax to taxpayers under Rule 87(3) of CGST Rules.
12. In respect of refunds pertaining to supplies to SEZ Developer/Unit, an Explanation to be inserted in sub-rule (1) of rule 89 of CGST Rules to clarify that "specified officer" under the said sub-rule shall mean the "specified officer" or "authorized officer", as defined under SEZ Rules, 2006.
13. Amendment in CGST Rules to provide for refund of unutilized Input Tax Credit on account of Export of Electricity. This would facilitate the exporters of electricity in claiming refund of utilized ITC on zero rated supplies.
14. Supplies from Duty Free Shops (DFS) at international terminal to outgoing international passengers to be treated as exports by DFS and consequential refund benefit to be available to them on such supplies. Rule 95A of the CGST Rules, Circular No. 106/25/2019-GST dated 29.06.2019 and related notifications to be rescinded accordingly.

***Measures for streamlining compliances in GST***

1. Provision for automatic revocation of suspension of registration in cases where suspension of registration was done by the system under Rule

21A(2A) of CGST Rules, for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of section 29[continuous non-filing of specified number of returns], once all the pending returns are filed on the portal by the taxpayer. (Amendment in rule 21A)

2. Proposal for comprehensive changes in **FORM GSTR-3B** to be placed in public domain for seeking inputs/suggestions of the stakeholders.
3. **Time period from 01.03.2020 to 28.02.2022 to be excluded** from calculation of the limitation period **for filing refund claim** by an applicant under section 54 and 55 of CGST Act, as well as for **issuance of demand/ order** (by proper officer) in respect of erroneous refunds under section 73 of CGST Act. Further, limitation under section 73 for FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return, **to be extended till 30th September, 2023.**

*C. The Council has decided to constitute a Group of Ministers to address various concerns raised by the*

*States in relation to constitution of GST Appellate Tribunal and make recommendations for appropriate amendments in CGST Act.*

*D. The GST Council approved ad-hoc apportionment of IGST to the extent of Rs. 27,000 crores and release of 50% of this amount, i.e. Rs. 13,500 crores to the States.*

*E. The GoM on IT Reforms, inter alia, recommended that the GSTN should put in place the AI/ML based mechanism to verify the antecedents of the registration applicants and an improved risk-based monitoring of their behavior post registration so that non-compliant tax payers could be identified in their infancy and appropriate action be taken so as to minimize risk to exchequer.*

**Note:** The recommendations of the GST Council have been presented in this release containing major item of decisions in simple language for information of all stakeholders. The same would be given effect through relevant Circulars/ Notifications/ Law amendments which alone shall have the force of law.

# INDIRECT TAX JUDGEMENT

*Escalated value received under service contract to be considered for the payment of GST*  
Applicant - B P Sangle Constructions Pvt. Ltd.

AAR, Maharashtra

## FACT OF THE CASE :-

1. M/s. B P Sangle Constructions Pvt. Ltd. was awarded a contract by the National Highways Authority of India ("NHAI") for construction of road for an agreed consideration of INR 65,90,98,099/- which included VAT.
2. However, during the course of completion of service as per the contract, there was an escalation in the contract value against goods and services took place due to the introduction of the GST regime w.e.f. July 01, 2017.
3. As per the contract, in case of any change in the rates of labour, steel, cement, plant, machinery, spares, bitumen, spares, lubricants etc., the contract price shall increase or decrease as per the formula provided in the contract notice and in the event of such escalation of value, the same shall be recovered in addition to contract value from NHAI.
4. The Applicant went to the AAR to seek whether such escalated value shall be added to taxable value u/s 15 of the Central Goods and Services Tax Act, 2017 ("the CGST Act").

## DECISION OF THE CASE :-

The AAR, Maharashtra in Advance Ruling No. GST-ARA-44/2020-21/B-41 dated March 31, 2022 held as under:

1. Noted that, the contract for construction of roads was made during the pre-GST regime but the execution of the same took place after the introduction of GST.
2. Observed that, there was no supply of goods or services during the pre-GST regime and the execution of the contract entirely took place during the GST regime and in order to ascertain the value of service, time of supply during the GST regime shall be taken into consideration.
3. Analysed the provision of Section 15 of the CGST Act

and noted that the actual transaction value which includes the escalated value that is recovered from NHAI by the Applicant, should be considered for payment of tax.

4. Held that, the escalated value shall be added to the original value of the contract and the total of the escalated value plus the original value of the contract will be the transaction value on which GST must be discharged by the Applicant.

*Services rendered abroad amounts to Export of Services, No GST applicable: Bombay HC*  
Jar Productions Private Limited Versus The Union of India & Ors.

## FACT OF THE CASE :-

1. The petitioner/assessee is in the business of providing production services to "A Suitable Company Ltd." (ASCL) located in London.
2. The petitioner has entered into an agreement with ASCL for the purpose of providing the services.
3. The agreement provides that if any refund of tax component is received by the petitioner, the production expenses shall be reduced from the consideration while computing the consideration towards production services.
4. The amount of the tax component received as a refund will be deducted from the production expenses.
5. The petitioner received and used various input services for supplying production services to ASCL, on which applicable CGST/MGST/IGST services were paid as charged by the vendors. In cases where the services were received from a service provider/vendor located outside India, CGST or IGST on such supplies was paid by the petitioner.
6. The petitioner filed its first refund application for the period from April to July, 2019. The claim was allowed by the Assistant Commissioner.
7. The petitioner filed another refund claim for the subsequent period of August 2019 to October 2019.



The petitioner received a show cause notice (SCN). The petitioner replied to the notice.

8. The respondent rejected the claim for a refund of the GST of the petitioner on the ground that the incidence of tax has been passed on to the client, resulting in unjust enrichment of the petitioner.
9. The petitioner, being aggrieved by the order of the Assistant Commissioner, filed the appeal before the appellate authority. The appeal was dismissed, and it was held that if a refund were granted, it would amount to unjust enrichment.
10. The petitioner contended that the principle of unjust enrichment does not apply to export services.

## DECISION OF THE CASE :-

1. The court observed that the ASCL is located outside of India and the petitioner company is located in India. The production services are rendered by the petitioner in the U.K. It is, thus, clear that the services rendered by the petitioner fall within the expression "export of services".
2. The division bench has allowed the GST refund to the petitioner/assessee as the department has failed to establish that the incidence of tax was passed on to the client amounted to unjust enrichment.
3. The Bombay High Court has held that GST does not apply to the services rendered abroad as they amount to the export of services.

**18% GST payable on PV DC cables**  
**Applicant's Name: Leoni Cable Solutions**  
**(India) Pvt Ltd**  
**Maharashtra AAR**

## FACT OF THE CASE :-

1. The applicant is in the business of manufacturing and supplying solar cables, commonly known as photo-voltaic DC cables (PVDC cables) under various brand names.
2. The applicant supplies cables to its customers for the commissioning and stationing of solar power generating systems (SPGS).
3. The cables are exclusively used by manufacturers of SPGS, Procurement, Construction Company (EPC Company), for setting up a solar power plant

as inputs for transmitting direct current from a PV module in SPGS.

4. The cables are specifically designed and tailor-made for solar power projects. Thus, the cables have restricted application and are used in a photovoltaic system only for the generation and transmission of solar energy.
5. The applicant has sought an advance ruling on the issue in respect of GST rates on PV DC Cables manufactured and supplied by Leoni Cable Solutions (India) Pvt Ltd to its customers who are into the business of manufacturing solar power generating systems or EPC companies setting up a solar power plant.

## DECISION OF THE CASE :-

1. The AAR noted that the PV DC cables manufactured and supplied by the applicant to its customers would be classified under Entry number 395 of Schedule III of Notification No. 1/2017-Central Tax (Rate) (as amended) dated June 28, 2017 and liable to GST at 18%.
2. The Maharashtra Authority of Advance Ruling (AAR), consisting of Rajiv Magoo and T.R. Ramnani, has ruled that 18% GST is payable on PV DC cables.

**L'oreal profited ₹186 crore by not passing**  
**GST benefits to consumers**  
**Appellant's Name- L'oreal**

## FACT OF THE CASE :-

1. L'oreal manufactures and sells 12000 items called stock keeping units( SKUs) under 5 major categories- hair care, hair color, skin care, make up, luxury items.
2. Most goods supplied by L'oreal that were charged 28% GST between July 1, 2017 and November 14, 2017. The rates were reduced to 18% on these items, effective from November 15, 2017.
3. According to the complaint, the cosmetics giant did not reduce prices of its products sold under brands like Garnier, Maybelline, L'oreal Paris, Giorgio Armani, Diesel, etc.
4. L'oreal in its defense said that it reduced rates after the November 2017 decision of the GST Council by



way of increasing quantity in case of shampoos, conditioners, and color naturals. It also pointed out that there were no guidelines or methodology given by the government to pass on benefits to end consumers.

### DECISION OF THE CASE :-

1. The goods and services tax (GST) profiteering watchdog has held cosmetics and personal care giant L'oreal guilty of not passing on the rate reduction benefits to consumers to the tune of ₹186 crore.
2. Thereby, the national anti-profiteering authority has directed L'oreal to deposit the sum along with 18% interest in the consumer welfare fund. As per the 131-page order, half of the profiteered sum, amounting to ₹93.19 crore along with interest needs to be deposited in the Central Consumer Welfare Fund, and the other half in the and the State where the supply was made, as per the order.
3. "The Authority finds that commensurate reduction in the prices of goods has not been effected by the Respondent (L'oreal) after the GST rates were reduced...the Authority determines that the Respondent has profiteered the amount of ₹186.39 crore on account of denial of benefit to its customers due to reduction in the rate of taxes," the NAA led by chairman Amand Shah, said in its order dated 23 June.

***Turmeric in whole form is 'Agricultural Produce', attracts 5%***

**Appellant's Name: N. B. Patil**

**Maharashtra AAR**

### FACT OF THE CASE :-

1. The appellant, as a "commission agent", renders

his services to farmers in relation to the supply of turmeric (whole turmeric, not in powder form) to traders in APMC, Sangli.

2. Based on the tender/auction, if a farmer and a buyer mutually agree to a sale and purchase, the Appellant, being a commission agent, facilitates activities ancillary to the supply of turmeric in APMC Sangli.
3. The Appellant gets a fixed commission at the rate of 3% of the sale value of the turmeric as per APMC rules and bye-laws of the APMC Sangli. In a situation where the Appellant is selling the turmeric in the capacity of a "trader", there is no dispute regarding the applicability of GST on turmeric.
4. The appellant sought an advance ruling on the issue of whether the turmeric in whole form is covered under the definition of "Agricultural Produce" and exempted from GST.

### DECISION OF THE CASE :-

1. The two-member bench of Rajeev Kumar Mital and Ashok Kumar Mehta has observed that the first supply of turmeric in whole form by farmers, being supplied by a non-taxable person in the Agricultural Produce and Marketing Committee, is not liable to GST by virtue of the provisions of section 23 (1) (b) and 2 (107) of the CGST Act, 2017.
2. The Maharashtra Appellate Authority of Advance Ruling (AAAR) has ruled that 5% GST is payable on turmeric in its whole form, falling under the definition of "Agricultural Produce".

# DIRECT TAX JUDGEMENT

*Notice issued u/s 148 of the IT Act against a deceased assessee is invalid: Reiterates Delhi*

*HC*

**Case Title: Davinder Singh Thapar versus Assistant Commissioner of Income Tax & Anr.**

## FACT OF THE CASE :-

1. In the present case the assessee is a deceased person
2. A notice was issued by the Assistant Commissioner of Income Tax (ACIT) to the deceased assessee, Amrit Singh Thapar, on the ground that his income for the relevant assessment year had escaped assessment. The assessee was directed by the ACIT to file a return within a specified period. The revenue authorities were intimated regarding the death of the assessee and a Death Certificate was also furnished.
3. However, the revenue authorities issued further notices to the deceased assessee, including one under Section 148A(b) of the Income Tax Act, pursuant to an order passed by the Supreme Court. Against the notices issued by the revenue authorities, the petitioner Davinder Singh Thapar, i.e., the son of the deceased assessee, filed a writ petition before the Delhi High Court.
4. The petitioner Davinder Singh Thapar submitted before the High Court that the notices issued by the revenue department against the assessee were invalid in law since they were issued against a dead person.
5. The petitioner averred that under Section 148 of the Income Tax Act, there is a statutory requirement that the Assessing Officer shall serve a notice on the assessee. The petitioner contended that since the assessee had expired prior to the issuance of the first notice, the said statutory requirement was not fulfilled.

## DECISION OF THE CASE :-

1. The Delhi High Court has reiterated that a notice issued under Section 148 of the Income Tax Act, 1961, on the ground of escapement of income from

assessment, against a deceased assessee is invalid in law.

3. The Division Bench of Justices Jyoti Singh and Anoop Kumar Mendiratta observed that though the notices were issued by the revenue authorities pursuant to an order of the Supreme Court, however, the said order did not deal with the issue of whether the notices could be issued against the deceased assessee. Therefore, the Court quashed the notices issued by the revenue authorities against the deceased assessee.

*Notice for reopening of assessment against dead person is invalid: ITAT quashes re-assessment order*

**Case Title: Neelam Dhingra, (through husband and legal heir- Vinod Dhingra) Versus DCIT**

## FACT OF THE CASE :-

1. The assessee was a non-resident and she died on October 1, 2010. The information about her death, along with the death certificate, was submitted to the Assessing Officer. The Assessing Officer acknowledged the receipt of a letter.
2. However, despite the fact that the assessee was dead and brought to the notice of the Assessing Officer, no notice was issued to the legal heir. The AO has framed the assessment in the name of legal heirs. The notice under Section 143(2) was issued in the name of the deceased. A notice under Section 142(1) was similarly issued in the name of the deceased after her death.
3. The legal heir of the deceased assessee contended that the re-assessment order passed in the name of the deceased person cannot be protected under any circumstances and thus needs to be quashed.

## DECISION OF THE CASE :-

1. The Delhi Bench of the Income Tax Appellate Tribunal (ITAT) has ruled that the notice for reopening of the assessment against the dead person is invalid.
2. The two-member bench of Kul Bharat (Judicial

Member) and Pradeep Kumar (Accountant Member) has observed that the Assessing Officer has accentuated the legal fallacy by continuing to proceed against the dead person by issuing notice under Section 143 (2) and Section 142(1) of the Income Tax Act. The re-assessment order passed pursuant to invalid notices for the purposes of reopening the assessment and for the assumption of jurisdiction for carrying out the assessment is bad in law and has no legal sanctity.

***ITAT deletes additions as assessee proved genuineness of purchases by documentary evidence***  
**Case Title: Garg Acrylics Ltd Versus ACIT**

**FACT OF THE CASE :-**

1. The appellant/assessee is in the business of manufacturing and trading yarn and garments. The assessee filed its return of income for the Assessment Year 2015-16, declaring a total income of ₹ 9,98,57,170. In the course of scrutiny assessment, the Assessing Officer alleged purchases of ₹39,98,522 made by M/s. Rishabh Foods, controlled by Ram Prakash Bhatia, to be bogus.
2. The Assessing Officer added ₹ 7,99,704 to the total, estimating the profit embedded in the bogus purchase to be 20%.
3. The assessee preferred to appeal before the CIT (A). The CIT (A) endorsed the action of the Assessing Officer in principle. However, CIT (A) modified and scaled down the amount of disallowance to ₹ 6,50,160 by applying the average GP rate at the rate of 16.26% instead of the 20% estimated by the Assessing Officer.
4. The assessee contended that the purchases were genuine on the grounds that the payments to the suppliers were made through RTGS, banking channels; the goods so purchased were duly entered into the Stock Inward Register; and all purchases were duly supported by way bills, etc.

**DECISION OF THE CASE :-**

1. The Delhi Bench of the Income Tax Appellate Tribunal (ITAT) has deleted the additions on the grounds that the assessee proved the genuineness of the purchases through documentary evidence.
2. The two-member bench of Yogesh Kumar US

(Judicial Member) and Pradeep Kumar Khedia (Accountant Member) has excluded the statement of the witness of the department as no opportunity of cross-examination was accorded to the assessee.

***Depreciation to be carried forward for set off in succeeding Assessment Years: ITAT***  
**Case Title: ACIT Versus Nimit Kumar Aneja**

**FACT OF THE CASE :-**

1. The respondent/assessee for the AY 2016-17 e-filed the return of income, declaring nil income after adjusting for brought forward losses of Rs.7,37,804. In the course of assessment, the Assessing Officer noticed that the assessee had reported net income of ₹ 7,37,004 and it was set off against unabsorbed depreciation of the AY 2015-16.
2. The Assessing Officer noticed that the assessee has not claimed depreciation in respect of the project M/s Him Fresh Produce Company, though depreciation was claimed in the AY 2015-16 on the project. The Assessing Officer proposed to reduce the carry forward of written down value (WDV) of the assets of M/s Him Fresh Produce Company since there was no reply from the assessee.
3. The assessee appeal before CIT(A). The CIT(A) directed the AO to compute the depreciation and allow the depreciation to be carried forward. The department has appealed before the tribunal against the order of the CIT(A).
4. The assessee contended that if depreciation is not allowed, the WDV of the assets should be carried forward. There is no justification for reducing the WDV of the assets and for not allowing depreciation to the assessee.

**DECISION OF THE CASE :-**

1. The assessee filed an appeal with the CIT (A). The CIT (A) allowed the claim for depreciation and carry forward of WDV of assets in view of Explanation 5 of section 32(1), which was inserted w.e.f. April 01, 2002 and applicable from the AY 2002-03. The allowance for depreciation was made mandatory even if the assessee did not claim depreciation in the return of income.
2. The Tribunal upheld the order of the CIT (A) and directed the AO to compute the depreciation and

allow it to be carried forward.

***Order of ITAT is based on evidence, findings based on facts, Madras HC dismisses tax appeal***

**Case Title: M/s Ankit Ispat Private Limited v. The Assistant Commissioner of Income Tax (OSD)**

**FACT OF THE CASE :-**

1. In the present case, the appellant/assessee was engaged in the business of manufacturing mild steel ingots. They filed a return for the assessment year 2014-2015 declaring a total income of ₹ 14,21,370. The case was taken up for scrutiny and during the course of the assessment proceedings, the appellant was called upon to file necessary documents in support of purchase expenses of ₹ 35,55,74,723
2. Though the appellant/assessee furnished certain documents, they were unable to produce the purchase details since the relevant records for the assessment year 2014-2015 were destroyed during the 2015 Chennai floods.
3. The assessing officer passed the assessment order estimating disallowance at 10% on total purchases on Adhoc basis and added a sum of ₹ 3,55,57,472/- to the total income of the assessee.
4. Aggrieved, the appellant/assessee preferred an appeal before the Commissioner of Income

Tax (Appeals), who sustained an addition of ₹ 1,32,85,764/- under the purchase account, after adopting the gross profit rate at 2.5% on the sales turnover of ₹ 53,14,30,550/- and deleted the balance estimated disallowance of ₹ 2,22,71,708/- and accordingly, allowed the said appeal in part.

5. The appellant/assessee as well as the respondent/ Assessing Officer challenged this order before the Income Tax Appellate Tribunal which affirmed the finding of the CIT(A).

**DECISION OF THE CASE :-**

1. The counsel for the respondent submitted that in absence of any supporting evidence, the CIT(A) ought not to have restricted the Adhoc disallowance determined by the assessing officer to 2.5%. The tribunal, being a fact finding authority, has to decide an issue only after a careful examination of evidence and material produces before it. In the instant case, the tribunal failed to do so.
2. The bench of Justice R Mahadevan and Justice Sathya Narayana Prasad were of the opinion that the order passed by the Commissioner of Income Tax (Appeals) which was confirmed by the Income Tax Appellate Tribunal was based on the evidence adduced before the same. "Such well-considered findings of the appellate authorities do not warrant any interference at the hands of this court "it observed.

TB

# DIRECT TAX CALENDER – JULY, 2022

7 <sup>th</sup> July 2022	<ol style="list-style-type: none"> <li>1. Due date for deposit of Tax deducted/collected for the month of June, 2022. However, all sum deducted/collected by an office of the government shall be paid to the credit of the Central Government on the same day where tax is paid without production of an Income-tax Challan</li> <li>2. Due date for deposit of TDS for the period April 2022 to June 2022 when Assessing Officer has permitted quarterly deposit of TDS under section 192, 194A, 194D or 194H</li> </ol>
15 <sup>th</sup> July 2022	<ol style="list-style-type: none"> <li>1. Due date for issue of TDS Certificate for tax deducted under section 194-IA in the month of May, 2022</li> <li>2. Due date for issue of TDS Certificate for tax deducted under section 194-IB in the month of May, 2022</li> <li>3. Due date for issue of TDS Certificate for tax deducted under section 194M in the month of May, 2022</li> <li>4. Quarterly statement in respect of foreign remittances (to be furnished by authorized dealers) in Form No. 15CC for quarter ending June, 2022</li> <li>5. Quarterly statement of TCS deposited for the quarter ending 30 June, 2022</li> <li>6. Upload the declarations received from recipients in Form No. 15G/15H during the quarter ending June, 2022</li> <li>7. Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system for the month of June, 2022</li> </ol>
30 <sup>th</sup> July 2022	<ol style="list-style-type: none"> <li>1. Quarterly TCS certificate in respect of tax collected by any person for the quarter ending June 30, 2022</li> <li>2. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA for the month of June, 2022</li> <li>3. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IB for the month of June, 2022</li> <li>4. Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194M for the month of June, 2022</li> </ol>
31 <sup>st</sup> July 2022	<ol style="list-style-type: none"> <li>1. Quarterly statement of TDS deposited for the quarter ending June 30, 2022</li> <li>2. Return of income for the assessment year 2022-23 for all assessee other than (a) corporate-assessee or (b) non-corporate assessee (whose books of account are required to be audited) or (c) partner of a firm whose accounts are required to be audited or the spouse of such partner if the provisions of section 5A applies or (d) an assessee who is required to furnish a report under section 92E.</li> <li>3. Quarterly return of non-deduction of tax at source by a banking company from interest on time deposit in respect of the quarter ending June 30, 2022.</li> <li>4. Statement by scientific research association, university, college or other association or Indian scientific research company as required by rules 5D, 5E and 5F (if due date of submission of return of income is July 31, 2022)</li> <li>5. Application in Form 9A for exercising the option available under Explanation to section 11(1) to apply income of previous year in the next year or in future (if the assessee is required to submit return of income on or before July 31, 2022)</li> <li>6. Statement in Form no. 10 to be furnished to accumulate income for future application under section 10(21) or section 11(1) (if the assessee is required to submit return of income on or before July 31, 2022)</li> <li>7. Due date for claiming foreign tax credit, upload statement of foreign income offered for tax for the previous year 2021-22 and of foreign tax deducted or paid on such income in Form no. 67. (If the assessee is required to submit return of income on or before July 31, 2022.)</li> <li>8. Intimation in Form 10BBB by a pension fund in respect of each investment made in India for quarter ending June, 2022</li> <li>9. Intimation in Form II by Sovereign Wealth Fund in respect of investment made in India for quarter ending June, 2022</li> </ol>

# IMPORTANT RETURN DUE DATE – GST JUNE, 2022

GSTR 1		
Particulars	For the period	Due Date
Turnover More than INR 1.5 Crore	June 2022 (Monthly)	11th July 2022
Turnover Upto INR 1.5 Crore	April-June 2022 (Quarterly)	13th July 2022

GSTR 3B		
Particulars	For the period	Due Date
Annual Turnover more than INR 5 Crore in Previous FY	June 2022	20th July 2022
Annual Turnover Upto INR 5 Crore (for Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim,)	April-June 2022 (Quarterly)	24th July 2022
Turnover Upto INR 5 Crore (for Chandigarh, Delhi, Gujarat, Haryana, Jammu and Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttarakhand.)	April-June 2022 (Quarterly)	22nd July 2022

COMPOSITION DEALER		
Particulars	For the period	Due Date
GST CMP-08	April-June 2022 (Quarterly)	18th July 2022

Particulars	For the period	Due Date
GSTR 5 (Non- Resident Foreign Taxpayer)	June 2022 (Monthly)	20th July 2022
GSTR 5A (NRI OIDAR Service Provider)	June 2022 (Monthly)	20th July 2022
GSTR 6 (Input Service Distributor)	June 2022 (Monthly)	13th July 2022
GSTR 7 (TDS Deductor)	June 2022 (Monthly)	10th July 2022
GSTR 8 (TCS Collector)	June 2022 (Monthly)	10th July 2022



## 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/>

# ACTIVITIES OF THE TAX RESEARCH DEPARTMENT

The Institute of Cost Accountants of India has Indirect Taxation Committee and Direct Taxation Committee of the Council of the Institute. The Tax Research Department, which works on the guidance of both the Committees, is result oriented and consists of a dedicated team that works together to provide members, students, Governments and other stake-holders with the highest possible level of service, suggestions, training and advisory.

The “Fortnightly Tax Bulletin” commencing on October, 2017, is one of the important activities of the Department.

The Tax Bulletin contains articles informing about the recent developments in taxation, both direct and indirect taxes. It also contains the latest tax rulings, circulars, judgements, press releases, opinions and decisions from Government agencies such as CBEC, CBDT and GST Council. It is aimed at knowledge enhancement of the members and stakeholders.

The department also conducts various **Taxation courses** which are designed for the finance professionals, Tax Practitioners and officials from Industries. Details of the Courses are as follow

## Certificate Course on GST (Started on January, 2018):



This would be the basic course on GST which takes a person through the implementation and filing of various returns. It also addresses some crucial aspects in GST at the end of the session.

Details is available at the link <https://icmai.in/TaxationPortal/OnlineCourses/index.php>

## Advanced Certificate Course on GST (Started on October, 2018):



This is a further advanced course in GST. The main aim of this course is to brush up the basics and it introduce the participants to the critical issues that one may face while GST compliance. It is entirely case based and is specifically for practitioners and middle/top management professionals. Details is available at the link <https://icmai.in/TaxationPortal/OnlineCourses/index.php>

**Advance Course on GST Audit and Assessment (Started on October, 2020):**



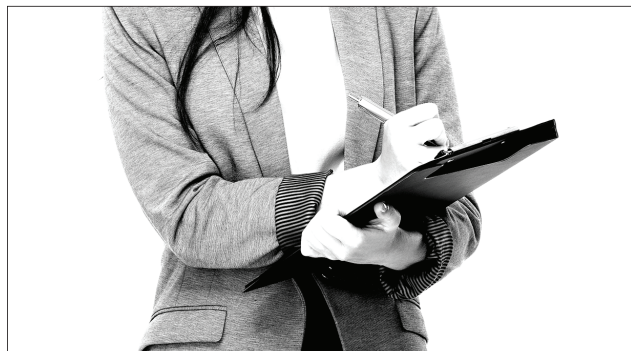
This is the most advanced course in Indirect Tax and it helps a participant to glide through the GST Audit and Assessment procedure and issues faced thereon. *Details is available at the link <https://icmai.in/TaxationPortal/OnlineCourses/index.php>*

**Certificate Course on Income Tax Return Filing (Started on April, 2019):**

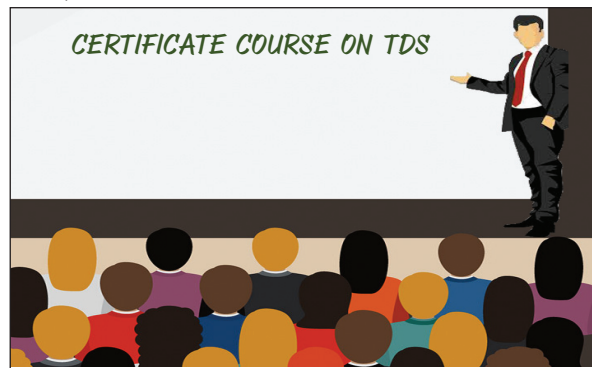


This is one of the most important courses in Direct Tax. The course takes us through all the forms that are to be filled by various assessee while filing Income Tax Returns and the glitches that one may face there on. It is entirely a practical session all through out. *Details is available at the link <https://icmai.in/TaxationPortal/OnlineCourses/index.php>*

**Certificate Course on International Trade (Started on October, 2020):**



**Certificate Course on TDS (Started on April, 2019):**



This course in Direct Tax was aimed to address the various provisions and implementation of TDS and how it is to be dealt with. *Details is available at the link <https://icmai.in/TaxationPortal/OnlineCourses/index.php>*

**Advance Course on Income Tax Appeals and Assessment (Started on October, 2020):**



This advanced level course aims to take one through the process of Appeals and Assessment and the ways to address the same. *Details is available at the link <https://icmai.in/TaxationPortal/OnlineCourses/index.php>*

This course specifically addresses the issues in export, import and International Trade being guided by our Foreign Trade Policy and the its necessary regulations.



# Other Activities

## *GST Course for College and University Students:*

*This course can be undertaken by colleges and universities for their students. This course aims at giving basic working knowledge of GST to the student community to develop a GST savvy future generation. Students can do basic jobs on GST after availing this course.*

## *Crash Course on Income Tax for College and University Students:*

*Similar to the GST Course, this course can be undertaken by colleges and universities for their students. This course aims at giving basic working knowledge of Income Tax to the student community to enable the students to do basic jobs on Income Tax. It was being conducted times in different colleges and universities and some are in pipeline as well.*

***Workshops** are the newest forms of dissemination of information on an online platform for our members and other stakeholders. Workshops concentrate on providing skill based training on practical issues including case studies on different aspects of taxation. 11 workshops have been conducted so far on various DT and IDT Topics.*

*The Tax Research Department also conducts **Webinars/ Webints** on different topics for upgradation of knowledge of Members and Stakeholders. 36 **webinars / webints** have been undertaken in the last 1 year.*

*The department has also come up with various **publications on both Direct and Indirect Tax**. The publications are a ready reckoner for the members addressing the practical issues in each field and ways to handle them. At present here are 18 such publications*

***Taxation Portal** is being updated with latest amendments, notifications, judgments, extension in due dates, GST Council meeting decisions etc on real time basis. One can get all the updates in taxation front of the country by going through the taxation portal.*

*A **Taxation Helpdesk** has also been set up to address the queries of the members and stakeholders.*

*The department submits representation/suggestions to CBIC and CBDT on various topics of Taxation as and when required including from Pre Budget Memorandum.*



## TAXATION COMMITTEES - PLAN OF ACTION

### Proposed Action Plan:

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

### Disclaimer:

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

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