

MARCH, 2021

TAX Bulletin

★ ★ VOLUME - 84 ★ ★



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100

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VISION STATEMENT

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

Objectives of Taxation Committees:

1. Preparation of Suggestions and Analysis of various Tax matters for best Management Practices and for the professional development of the members of the Institute in the field of Taxation.
2. Conducting webinars, seminars and conferences etc. on various taxation related matters as per relevance to the profession and use by various stakeholders.
3. Submit representations to the Ministry from time to time for the betterment and financial inclusion of the Economy.
4. Evaluating opportunities for CMAs to make way for further development and sustenance of the opportunities.
5. Conducting and monitoring of Certificate Courses on Direct and Indirect Tax for members, practitioners and stake holders and also Crash Courses on GST for Colleges and Universities.

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TAXATION COMMITTEES - PLAN OF ACTION

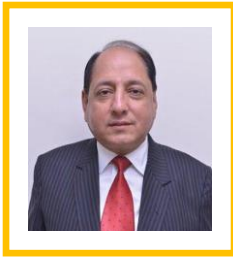
Proposed Action Plan:

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

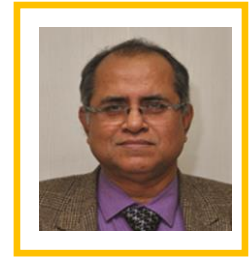
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CMA Rakesh Bhalla
Chairman, Direct Taxation Committee



CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation Committee

FROM THE DESK OF CHAIRMAN

Dear Friends and Professional Colleagues,

Greetings from the Tax Research Department!!!

Today we would start by bringing to you a few changes under GST law and their applicability:

1. **E-Invoicing** has been made applicable from **1st October 2020** to all businesses whose aggregate **turnover has exceeded Rs.500 crore** limit in any of the preceding financial years from 2017-18 to 2019-20.

Further, from 1st January 2021, E-Invoicing will be applicable to **businesses exceeding the Rs.100 crore turnover** limit in any of the financial years between 2017-18 to 2019-20, as intimated in Notification No.88/2020 – Central Tax.

On 8th March 2021, The Central Board of Indirect Taxes and Customs (CBIC) notified that e-Invoicing will be applicable from 1st April 2021 for businesses with a turnover of more than Rs. 50 crores (in any financial year from FY 2017-18 onwards, as intimated in Notification No. 5/2021 – Central Tax.

2. The followings are also available in GSTN Portal now:
 - FAQs and Manual for track Refund status
 - Selection of Core Business Activity for Registered Taxpayers
 - New option is active in Payment section i.e Grievance against payment (GST PMT – 07)
3. The Notification No. 12/2017- Central Tax dated June 28, 2017 was amended vide Notification No. 78/2020 - Central Tax, dated October 15, 2020 to mandate 4 or 6- digit HSN/SAC Code on supply of goods or services on the Tax Invoices w.e.f. April 1, 2021
Further, a proviso was inserted to provide that 4- digits of HSN Code is optional in respect of supplies made to unregistered persons i.e., B2C supplies for a registered person having aggregate turnover upto INR 5 crores in the previous financial year.

Speaking about the Tax Research Department, we would like to highlight that, the department is going to conduct a workshop on **“Foreign Trade Policy and Procedures, and role of DGFT (With Special Emphasis on Potential Areas for CMAs)”** from **24.3.2021 to 26.3.2021**. As we know foreign trade policies are the Government's actions, especially tariffs, import quotas, and export subsidies, designed to increase net exports by promoting exports or restricting imports. These in turn increase a country's balance of trade surplus. Again DGFT is responsible for Implementation of EXIM and foreign trade policy in our country. There is a huge scope for CMAs in Certification work under Foreign Trade Policy & Procedures as well as DGFT. The area of practice or service in “FTP & DGFT” is an opportunity that can be explored by CMAs. This workshop intends to enlighten the members in it.

In KCLAS College, Kerala, “GST Course for College & University students” was conducted and exam was also successfully held on 13.03.2021. This course has been highly appreciated by the students. A webinar has been conducted by Mr. Saim Aziz on 14.03.2021 on the topic ‘Ease of Handling Litigation in GST’ apart from the regular conduct of Taxation courses and dispersion of knowledge by the department for the benefit of the members.

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

Jai Hind.

Warm Regards

(Rakesh Bhalla)

CMA Rakesh Bhalla
17th March 2021

CMA Chittaranjan Chattopadhyay
17th March 2021

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

Please send the articles to

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



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TAX RESEARCH DEPARTMENT

WORKSHOP ON FOREIGN TRADE POLICY AND PROCEDURES, AND ROLE OF DGFT

(With Special Emphasis on Potential Areas
for CMAs)

24th to 26th March 2021 | 4:00 PM to 6:00 PM



CMA Biswarup Basu
President, ICAI



CMA P. Raju Iyer
Vice President, ICAI



CMA Chittaranjan Chattopadhyay
Chairman, Indirect Taxation & BFSI Committee
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Behind every successful business decision, there is always a **CMA**



GST IMPACT ON EXPORTERS

CMA Ashok Nawal
Founder-Bizsolindia Services Pvt. Ltd

India is the part of WTO agreement, wherein it was agreed by all the countries that taxes will not be exported. In other words, tax will not be part of value of cost & services which is getting exported. One of the objective as mentioned in Para 1.06 of Foreign Trade Policy 2015-19 on the heading of Trade Facilitation & Ease Of Doing business” that,

Quote:

“Trade facilitation is a priority of the Government for cutting down the transaction cost and time, thereby rendering Indian exports more competitive. The various provisions of FTP and measures taken by the Government in the direction of trade facilitation are consolidated under this chapter for the benefit of stakeholders of import and export trade.”

Un-quote

However, when we go through the provisions and frequent amendments made in GST Laws & Rules, policy makers have lost the sight of understanding the issues of exporters.

A. EXPORTERS WITHOUT AVAILING ANY SCHEME BENEFITS UNDER ADVANCE AUTHORISATION OR EOU OR SEZ:

1) Initial bottleneck due to system:

Number of exports refund were stuck up on account of interface of ICE Gate Site meant for export and import and GSTN, where payment of IGST on exports reflected in tax invoice was matched with shipping bill of ICE Gate. Since, there was no clarity amongst the exporters, EGM date and commercial invoice number for exports and tax invoice under GST were not matching. There was no provision of mentioning the EGM date in earlier returns and shipping bill reflects only commercial invoice number for exports and not the tax invoice number. Therefore, refunds were stuck up for long period of time and thereafter hue and cry of the exporters, department provided the solution to upload separate annexure and number of refund claims were released. But during the period exporters have suffered lot of liquidity crunch and orders were cancelled.

2) Latest Amendments in Section 16(4) of IGST Act 2017 announced in Budget 2021-22.

New Clause has been inserted as sub-section 4 of Section 16 of IGST Act 2017, which is reproduced below:

Quote:

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify

(i) a class of persons, who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Un-Quote:

All the exporters may not be permitted to claim refund of IGST paid on exports and only certain class of goods or services or certain class of exporters will be allowed to claim such refund. Further, proviso to Section 16(3) has been made which is reproduced below:

Quote

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

Un-Quote

It means, exporter who has not received the remittances in prescribed period as laid down under FEMA, such exporters will have to pay back the refund alongwith interest, which is absolutely unjustified. Exporters will pay the taxes by utilizing input tax credit accumulated on account of receipts of inputs and services which is used in export products. But still, it will have the additional cost impact and is against the principal accepted in WTO.

Further, definition of “exports of goods” very clearly specifies that “Export of goods - with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

When there is no specific provision like definition of export of services relating to receipt of foreign exchange against such goods, this provision is not in the good spirit. It is the dream of Hon Prime Minister to make Indian Economy stronger to the extent of USD 5 TN but, exporters will have to bear additional cost on free samples exported and they will have to reverse the ITC in terms of Section 17(5)(h) of CGST Act 2017. As such based on definition of exports when free samples are exported out of India, it is covered under the meaning of zero rated supply, but still exporters will suffer.

The IGST refund module has been designed in line with the above rule and has an in built mechanism to automatically grant refund after validating the Shipping Bill data with available in ICES against the GST Returns data transmitted by GSTN. The matching between the two data sources is done at Invoice level and any mis-match of the laid down parameters returns giving following error/response codes

| Code | Indicates |
|--------------|---------------------------------------|
| SB000 | Successfully validated |
| SB001 | Invalid SB details |
| SB002 | EGM not filed |
| SB003 | GSTIN mismatch |
| SB004 | Record already received and validated |
| SB005 | Invalid Invoice Number |
| SB006 | Gateway EGM not available |

If the said matching is successful, ICES shall process the claim for refund and the relevant amount of IGST paid with respect to each Shipping Bill or Bill of export shall be electronically credited to the exporter’s bank account as mentioned with the Customs authorities and not in any other account as mentioned on GST portal.

As mentioned above, process of granting of refund is very easy and automated, but one has to be very careful while understanding the error occurred and its meaning and what action to be taken for correcting the same.

1) Pre-Import Condition for claiming IGST Exemption:

Notification No. 79/2017 Cus dtd. 13th Oct 2017 specified that IGST is exempted against the advance authorization scheme if goods are imported prior to exports. Such type of provision has been worstly interpreted by Directorate of Revenue Intelligence of Customs and they have considered pre-import condition means all the goods mentioned in the advance authorization should be imported first and then only export should take place and any importer have imported the goods after the exports of even small quantity, still it was considered by them as violation of pre-import condition and IGST exemption claim sought to be denied to such exporters and number of Show Case Notices have been issued and matters are under adjudication process.

Huge demands are raised. This issue was brought before the law-making authorities and since the demand of the trade and industry was genuine this condition was removed vide Notification No. 01/2019 – Customs dtd. 10th Jan 2019. but this notification should have been effective retrospectively rather than prospectively.

2) Refund of IGST paid on exports under Rule 96(10) of CGST Rules 2017

Though GST Act and Rules were made effective from 1st July 2017, the first time the rules were made for refund of IGST paid on exports under Rule 96(10) or refund of input tax credit under Rule 89(4) accumulated on account of exports. Exporters were not having any issues of legal interpretation and refunds were blocked on account of technical glitches but not on account of legal glitches.

GST Council has framed the rules and notified the same for claiming the refund of IGST paid on exports under Rule 96(10) or refund of input tax credit under Rule 89(4) accumulated on account of exports vide Notification No. Notification No. 45/2017 – Central Tax dtd. 13.10.2017 and the same was amended retrospectively vide Notification No. Notification No 3 dtd. 23-01-2018. If both the notifications are read together, there will be clarity on understanding the confusion in the minds of law-making body. Meanwhile, without understanding the meaning of above notifications exporters have received the refund irrespective of any legal interpretation and understanding of these notifications. However, department might have understood their mistake and again issued the Notification No.53 dtd. 09-10-2018 and Notification No 54 dtd. 09-10-2018 clearly making their intend that

- 1) The person claiming the benefit under Notification No. 79/2017 Cus dtd. 13.10.2017, which has granted exemption of IGST to the advance authorization holders will not be entitled to claim refund of IGST paid on exports under Rule 96(10) CGST Rules 2017.
- 2) The person claiming the benefit under Notification No. 78/2017 Cus dtd. 13.10.2017, which has granted exemption of IGST to the EOU will not be entitled to claim refund of IGST paid on exports under Rule 96(10) CGST Rules 2017.
- 3) The Person receiving the goods from domestic supplier charging concessional IGST on such supplies, which is meant for export through Merchant Exporter will not be entitled to claim the benefit of IGST paid on Exports under Rule 96(10) of CGST Rules 2017

Hon Gujarat High Court have held in the case of M/s Cosmo Films Limited, wherein it has been held that

Quote

Recently, vide Notification No. 16/2020CT dated 23.03.2020 an amendment has been made by inserting following explanation to Rule 96(10) of CGST Rules, 2017 as amended (with retrospective effect from 23.10.2017)

“Explanation. For the purpose of this subrule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated

Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”

By virtue of the above amendment, the option of claiming refund under option as per clause (b) is not restricted to the Exporters who only avails BCD exemption and pays IGST on the raw materials thereby exporters who wants to claim refund under second option can switch over now.

Un-Quote

Thereafter, exporters i.e. Advance Authorization Holders and EOU where been issued the SCN to pay back the refund claimed by them under Rule 96(10) of CGST Rules 2017 w.e.f. 23.10.2017 alongwith interest thereon and there is no clarity whether department will issue PMT-03 and allow exporters to re-credit of such IGST paid at the time of exports and now demanded by department.

C. EXPORTERS OPERATING UNDER SEZ :

1) Mandatory Separate Registration Provision for SEZ Developer / Unit :

Supply to SEZ Developer and Unit is considered as zero-rated supply under Section 16 of IGST Act 2017 and Chapter VI of CGST Act 2017 provides the various provisions of registrations. There was mandatory provisions either specified in the Act and Rules for taking separate registration for SEZ. However, subsequently it was made mandatory to take subsequent registration for SEZ and therefore, during such period, supplies on which IGST was considered as zero rated supply without payment of duty or on payment of duty for the claim of refund are having the issues either of issuing the demands, when supply was made against LUT or refund when supply was made on payment of IGST.

2) Inter State Supply Vs Intra-State Supply :

Since, GST provisions were new to the trade and industry, suppliers to the SEZ Developer as well as Unit have not understood the implications of the provisions of Section 7(3)(5) of IGST Act 2017 that,

(5) Supply of goods or services or both,--

***(a) when the supplier is located in India and the place of supply is outside India;
(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.***

And therefore, number of suppliers have not considered such supplies as Inter-state supplies and charged CGST and SGST as against IGST and department have started demanding IGST on such supplies.

Unfortunately, those who have supplied prior to two years, may not be entitled to get the refund on account of limitation.

Further, those suppliers to SEZ Developer / Unit being much below of threshold limit have not taken the registration and claimed the threshold limit exemption. However, such exemption of threshold limit is not applicable for inter-state supplies and hence even the small service providers, who is not liable to take the registration being under threshold limit, but supplied to SEZ Developer / Unit will have to pay tax on each supplies made by him, department have started issuing the Show Cause Notices.

3) Wrong tax-payer type exists in GST portal

Many SEZ taxpayers selected as regular at the time of new registration / migrated as regular at the time of implementation of GST. Government has never issued any booklet / FAQ specifically on SEZ and therefore SEZ developers / units and suppliers thereof have faced the tremendous issues. During March' 2018, GSTN portal had issued an advisory for change in taxpayer type where it was suggested to send a mail to reset.sezflag@gst.gov.in along with scanned copy of LOA for obtaining as SEZ / SEZ developer units. Even though it worked for few months initially, it has been observed that there is no response / action for the e-mails sent for change of status. The possible solution could be raising a grievance in GST portal in addition to sending a mail and continuous follow up of the same.

4) Disclosure of DTA sale of goods in GSTR-1 and GSTR-3B

SEZ units can clear goods to DTA unit upon payment of applicable custom duties. GSTR-1 or GSTR-3B do not have any column to disclose such details. Due to this, many differences arise between GST returns and financial statements which resulted in many notices to SEZ units.

Reference can be made to instruction no. 9 of Form GSTR-1 which states that supply by SEZ unit to DTA has to be treated as an import in case goods are received under the cover of the bill of entry. As such there is no need to disclose the details of goods cleared to DTA units in GSTR-1 or GSTR-3B. However, it is suggested to maintain a reconciliation for the same and disclose the same while filing annual returns of the SEZ unit.

5) Reverse charge liability under Section 5(3) or 5(4) of IGST Act 2017

Across there is a confusion in the minds of SEZ Developers / SEZ Units whether reverse charge liability under section 5 (3) of IGST Act needs to be discharged upon receipt of services specified under notification no 10/2017 – IGST (eg. GTA services, legal services, services from Government, sponsorship services, etc)? Also, until 13.10.2017, in compliance with section 5 (4) of IGST, in case of procurement of goods / services from unregistered persons upon exceeding specified limit, the registered recipient had to discharge GST liability under reverse charge. Further, the same confusion lies in the minds of CGST Officers and they started issuing notices for demanding GST under reverse charge mechanism to the SEZ Developer / Unit without understanding the legal provisions that supply to SEZ Developer and Unit is considered as zero-rated supply. Therefore, wherever reverse charge mechanism is not prescribed, SEZ Developer and Units are not required to pay any GST on reverse charge mechanism, since such supply is considered as zero-rated supply under Section 16(1) of IGST Act 2017 and it can be referred clarification issued by Tax Research Unit of CBIC vide File No. 334/335/2017- TRU dated 18.12.2017

6) Refund of accumulated ITC on inputs and input services

Number of suppliers to the SEZ Developers & Units are not willing to execute the LUT on account of procedural matter and fear in the mind. Therefore, they preferred to charge IGST on supplies made to SEZ Developer & units. As such any clearances of the goods is considered as import when cleared in DTA considering SEZ as a port and applicable duties under Section 12 of Customs Act 1962 and payment of additional duties in terms of Section 3 of Customs Tariff Act 1975 is required to pay and in terms of Section 3(7) of Customs Tariff Act 1975, IGST is required to pay on such clearances to DTA and such payment to be made in cash and accumulated IGST cannot be adjusted. Therefore, there is a huge accumulation of IGST in the Electronic Credit Ledger of SEZ Developers and Units.

Even though, there is no restrictions to deny refund of accumulated input tax credit on account of exports in terms of Section 54 of CGST Act 2017 read with Rule 89(4) of CGST Rules 2017, departmental officers do not grant such refund on account of confusion or the reasons best known to them.

7) GST impact on goods or services received for non-authorised operations

Prior to the amendment of budget, supplies of goods or services to SEZ developer is considered as zero-rated supply in terms of Section 16(1) of IGST Act 2017. However, based on certain Advance Ruling Judgements supplies to SEZ Developer / unit which may not be used for Authorised operations or may be used for operation & maintenance of non-processing area IGST is demanded. Concept of Authorised operations was brought in Rule 89 of CGST Rules 2017 and the same was clarified by CBIC in June 2018 that zero-rated benefit will not be applicable for authorised operations. This is absolutely illegal provision and circular thereon, since Rules cannot override the provisions of Sections.

Perhaps, this mistake have been understood by the department and in the recent budget announced by Hon Finance Minister Smt Nirmala Sitharaman, Section 16 is amended and zero-rated supply will be supplies to the SEZ units / Developers for authorised operations. This will create lot of issue. How the suppliers are expected to know, whether supplies are for authorised operations or otherwise. It is advisable to obtain list of authorised operations and list of goods and services to be used for such authorised operations from SEZ Developers / Units and since it will not be believed by the department, it preferably needs to be endorsed by unit Approval Committee of such SEZ, This will create the chaos. To avoid such chaos, suppliers will not be ready to supply the goods treating as zero rated supply and will charge IGST and SEZ Developers and SEZ Units will have to obtain refund under Rule 89(4) of CGST Rules 2017.

8) GST impact on purchase returns made by SEZ units

It is common practice that supplies may be required to be returned for various issues including quality issues, damages, etc. Such supplies might have been received without payment of duty being zero-rated or payment of IGST under the claim of refund.

Rule 47 of SEZ Rules, 2006 is applicable only for sale of manufactured Goods by SEZ Unit. Rule 48 of SEZ Rules, specifies that where goods procured from Domestic Tariff Area by a Unit are supplied back to the Domestic Tariff Area, as it is or without substantial processing, such goods shall be treated as re-imported goods. Provided that in the case where such goods are supplied back to the Domestic Tariff Area, as it is, and where the import duty on such goods is 'Nil' and while procurement of such goods no export benefits were allowed against such goods, the Unit may be allowed to supply back such goods to Domestic Tariff Area based on invoice only and filing of Bill of Entry in such cases shall not be required. However, if the SEZ unit insists to file Bill of entry, then the DTA should inform the said rule then the rate of BCD would be Zero. DTA shall make sure that the bill of entry is obtained so that there is no disallowance of ITC by the GST authorities for IGST portion if paid.

9) Bill to SEZ units Ship to DTA units

When the goods are supplied to DTA unit on the instruction of SEZ unit (billed to SEZ unit), the transaction eligible to be treated as Zero-rated supply and the vendor is eligible to claim refund in either of two routes specified under Section 16 (3) of IGST Act. However, SEZ officers are not issuing endorsement form on the reason that goods are not admitted into SEZ unit. Due to lack of endorsement certificates, vendors refund applications being rejected.

As the goods are not getting admitted to the SEZ and it is suggested that IGST can be charged on sale of goods instead of considering the same as zero rated transaction. The Government should clarify that while processing refund in such cases that there is no need for endorsement certificate / specify a procedure to the officers to issue endorsement certificate in such cases after thorough verification.

10) Drawback benefit on supplies to SEZ units

SEZ Unit eligible to claim Drawback benefit (All Industrial Rate) on the goods procured from DTA unit. In case the SEZ unit does not intend to claim such benefit, a disclaimer to this effect shall be given to the Domestic Tariff Area supplier for claiming such benefits from their jurisdictional Goods and Services Tax or Central Excise Commissioner. However, payment has to be made for such supplies in foreign currency from their FC account. Therefore, majority of suppliers of SEZ Units cannot take the benefit and taxes are exported being such taxes are built up in the value of cost of goods or services, which are supplies to the SEZ.

11) Eligibility Zero-rated supplies benefit to Sub-contractors

Though SEZ Rules specifies to get duty free material by SEZ contractors / sub-contractors provided, such bill of entry is jointly signed or such bill of exports are jointly signed by the SEZ unit / developer alongwith contractor / sub-contractors, but, there is no such provision in the SEZ Act to consider supplies by sub-contractor to the main contractor of SEZ Developer / Unit is also to be considered as zero rated supply. Therefore, supplies to be received by the sub-contractor will have the input tax and such sub-contractor will have to avail input tax credit and utilise the same when raising the tax invoice on main contractor. Further, supplies by main contractor to the SEZ Developer / Unit will be considered as zero rated and main contractor will have to apply either refund of accumulated ITC under Rule 89(4) or charge the IGST to SEZ Developer / Unit and such SEZ Developer / Unit will have to obtain refund under Rule 89(4).

D. RODTEP SCHEME AS DECLARED - DISAPPOINTMENT OF EXPORTERS

RoDTEP (Remission of Duties or Taxes on Export Products) is a Scheme for the Exporters to make Indian products cost-competitive and create a level playing field for them in the Global Market. RoDTEP Scheme will replace the current MEIS scheme, which is not in compliance with WTO norms and rules. The new RoDTEP Scheme is fully WTO compliant scheme. It will reimburse all the taxes/duties/levies being charged at the Central/State/Local level **which are not currently refunded under any of the existing schemes but are incurred at the manufacturing and distribution process.**

MEIS was objected by USA before WTO. Therefore there was a need to introduce the scheme which will fall under the framework of WTO agreement and principle "Taxes are not to be exported". In view of the same Ministry of Commerce has introduced RoDTEP scheme with objective to refund of taxes which are not be refunded under any of the existing schemes but are incurred at the manufacturing and distribution process.

Some of the examples of some taxes are:

1. Central & state taxes on the fuel (Petrol, Diesel, CNG, PNG, and coal cess, etc.) used for transportation of export products.
2. The duty levied by the state on electricity used for manufacturing.
3. Mandi tax levied by APMCs.
4. Toll tax & stamp duty on the import-export documentation. Etc.
5. Ineligible ITC on GST
6. Tax involved on free samples and destruction

Number of companies have filled up very lengthy and clumsy form R1, R2 and R3 duly certified by Chartered Accountant and Cost Accountant and submitted through respective Export Promotion Council. Industry was expecting compensatory gift for new year 2021 since they were already suffering from stoppage and blockage MEIS.

Ministry of commerce have issued a press note declaration RoDTEP scheme was absolutely shocking and disappointing for following reasons:

- a. No rates have been declared
- b. The scheme creates more confusion about entitlement and eligibility
- c. MEIS has not yet withdrawn through Notification under Foreign Trade Policy.

Unfortunately, when Exporter do not know what is the scheme certain correction in the system has already made by Customs under Department of Revenue without issuing any circular for public, however, document Viz; **Implementation of RoDTEP Scheme in Customs Automated System – Declarations in Shipping Bill and further processing**, is posted on website of ICEGATE.

Such actions by Ministry of Commerce as well as Department of Revenue are absolutely beyond the law, but sufferer are the Exporters only.

Exporters needs to file the declaration as a part of shipping bill or Bill of Export under RoDTEP Scheme.

Though, neither provisions are notified nor rates are notified either in foreign trade policy or any of the government notifications under the applicable law, understanding of this scheme as announced is given below:

- a. The scheme is not available for exports under Advance Authorization scheme, EOU Scheme and perhaps may not be available for DFIA, SEZ, since procedure specifies “etc.. schemes”. However, subsequently Ministry of Commerce have issued the circular allowing SEZ also to claim the RoDTEP, but there is no reason as to why EOU & Advance Authorization Holders, DFIA Holders have been deprived of substantial benefit, which otherwise is required to be given in terms of WTO Agreement.
- b. Whether the scheme is available for Duty drawback and RoDTEP is not clear as the wording are made as drawback and / or RoDTEP.
- c. It is undoubted fact that following taxes are getting exported through value of goods which includes the portion of such taxes.
 - Central & state taxes on the fuel (Petrol, Diesel, CNG, PNG, and coal cess, etc.) used for transportation of export products.
 - The duty levied by the state on electricity used for manufacturing.
 - Mandi tax levied by APMCs.
 - Toll tax & stamp duty on the import-export documentation. Etc.
 - Ineligible ITC on GST
 - Tax involved on free samples and destruction
- d. RoDTEP scheme should have been in addition of exiting scheme
- e. Under RoDTEP scheme duty scrip of eligible amount will be credited to exporters ledger with Customs which can be used for payment of Customs duty on imports or can be transferred to any other importer. Further it has not been made clear whether portion of IGST debited in such scrip credit ledger w.r.t. payment of IGST ITC under CGST Act, 2017, will be eligible or otherwise since there is no amendment in the GST Act or Rules.

Normal exporter under Duty drawback scheme has no option but to give such declaration without knowing the rates and benefits and without amendment in law. Other exporter will adversely suffer since they will not be eligible for benefit for RoDTEP even though they were eligible for MEIS. Government should issue necessary notification and circular under Foreign Trade Policy and Customs Act and CGST Act. And also should appreciate that no taxes should be part of cost of export product. Hence such amount needs to be refunded in addition to existing scheme including duty drawback, Advance Authorization, EOU, SEZ, DFIA.

E. Conclusion of Article :

If India has to be USD 5 TN Economy and become superpower then policy makers need to understand the grievances of the exporters. They don't need any subsidiary nor any assistance but demand a system of ease of doing business and ensure taxes do not become the part of value of goods or services exported. Being a part of WTO agreement, India has committed that the taxes will be reimbursed to the exporters. Very simple mechanism without any restriction as mentioned above should be developed for granting such reimbursement of taxes.



NO GUARANTEE FOR CORPORATE GUARANTEE UNDER GST.....?

CMA Anil Sharma
Practicing Cost Accountant

“**C**orporate Guarantees” is very common term used in corporate world. It is a guaranty by one business house or by one Corporate House or by a Holding company for another group company or subsidiary company. Generally, guarantee by one entity for other entity is given at the time of loan being availed by other group company. In other words, when any subsidiary company availed any loan i.e Term Loan or Working capital loan from any Financial Institute (FI) than Holding company stands as guarantor for subsidiary company. Such understandings are covered or termed as *Corporate Guarantee*. Means one corporate entity stands as guarantor for another corporate entity.

These guarantees are mostly given by holding company/group companies without any charges or consideration. The objective of such guarantees is to felicitate the subsidiary company or group company for its smooth sailing. In open market no parallel or identical transactions happens except when Banks give guarantees for its customers for specific purposes i.e Financial Guarantees, Performance guarantees, Earnest money Deposit guarantee or Bid Bond Guarantee, Guarantee for Payment of Customs duty Advance Payment Guarantee (APG), Deferred Payment Guarantee (DPG), Shipping Guarantee etc. and charge commission for the same. Charges or commission charges vary from bank to bank. Under GST such services of bankers are treated as supply of services and subject to GST.

But in case of *Corporate Guarantees*, no charges are paid by the recipient for these services. Moreover, are unsecured in nature. No security is offered by the recipient to guarantor. In case such services are provided for fee or commission than it would be dealt accordingly and GST shall be charged like bank guarantee services as provided and are subject to GST.

Schedule-I of Section 7 of CGST Act, 2017 deals with the transactions or activities treated as supply even if made without consideration. As per clause-2 to the said schedule, supply of goods or services or both between related parties or distinct persons as specified in Section 25, which made in the course or furtherance of business are subject to GST even if made without consideration. So service like *corporate guarantee* or guarantee for subsidiary company is an activity agreed upon between two corporate entities without consideration and is in course or furtherance of business.

Is Corporate Guarantee a supply?

It's a big question if *Corporate Guarantee* is a supply. The meaning or scope of supply as per GST laws is as under:

Section 07 of CGST Act, defines scope of Supply as under:

- (1) *For the purposes of this Act, the expression –supply includes--*
- (a) *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
 - (b) *import of services for a consideration whether or not in the course or furtherance of business and*
 - (c) *the activities specified in Schedule I, made or agreed to be made without a consideration;*
 - (d) *omitted*

- (1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.
- (2) Notwithstanding anything contained in sub-section (1),
(a) activities or transactions specified in Schedule III; or
(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services

Providing bank guarantee by bankers is a business, where in bank charges for such service are being charged. Bank also keep some security at the time of providing such guarantees. More over bank is into that business and fee or commission charged by the bank is a value for the transaction on which GST is levied.

Whereas in case of *Corporate Guarantee* as provided by a holding company for subsidiary is a need base arrangements and that too free of any fee or charges. These guarantees are unsecured in nature. So in absence of any fee or commission, its valuation for levy of GST is another issue.

As per rules 27 to 35 of valuation under Section 15 of CGST Act, none of the rules talk about the valuation of such services. If we take identical services than again it may not be justified to consider bank services as identical services for corporate guarantee as these are not of similar in nature.

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent.-

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

| |
|--|
| <p><i>Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.</i></p> |
|--|

30. Value of supply of goods or services or both based on cost.-

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, 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 of provision of such services.

31. Residual method for determination of value of supply of goods or services or both.-

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

Is Corporate Guarantee an actionable Claims?

If we take *Corporate Guarantee* as actionable claims, then schedule-III to Section- 7 of CGST Act, deals it as neither supplies of goods nor of services.

Para 6 to schedule -III treat Actionable claims, other than *lottery, betting and gambling* as activities or transactions which are neither supply of goods nor supply of services or both.

Is Corporate Guarantee a “Business Auxiliary Services”?

In service tax there was levy of tax on Business Auxiliary services. In GST *Corporate Guarantee* can be covered under Services Auxiliary to financial services (other than to insurance and pensions) under SAC 99715. So services of “Corporate Guarantee” can be treated as Taxable services. But then the challenge of valuation of such services emerged as these are generally provided without fee or commission. If any holding company charges some fee or commission, which is quite possible in case of foreign company, then valuation of such transactions or *transaction value* can be questioned or challenged.

Conclusion:

From above paras it is clear that there can be different arguments for *corporate guarantee* to tax or not to tax under GST. But in our opinion, to bring some relief to business with a spirit of ease of doing business government should come out with some clarifications on *corporate guarantee* transactions in either way:

- Treat such transactions under Schedule-III of section 7 of CGST Act, and keep such transactions as neither supply of goods nor the supply of services,
- Issue some specific guidelines for the valuation as done in case of Air Tickets, sale/purchase of 2nd hand vehicles or foreign currency exchange and levy GST at some rate.



ACCOUNTING TREATMENT OF TCS U/S 206C (1H) OF INCOME TAX ACT ON SALE OF GOODS

CMA Sanjay Bharti
Dy Manager (Finance)
National Fertilizers Limited

Every person, being a seller, who receives any amount as consideration for sale of any goods of the value or aggregate of such value exceeding fifty lakh rupees in any previous year, other than the goods being exported out of India or goods covered in sub-section (1) or sub-section (1F) or sub-section (1G).

These provisions are applicable only in respect of transaction of sale of goods and do not apply to sale of services.

Sub-section (1H) of section 206C has been made effective from 1st October 2020 and state that:

- A Seller of Goods is liable to collect TCS from Buyer on Sale of any goods
- Seller means a person whose total sales, gross receipts or turnover from the business carried on by him exceed Rs.10 Crores during the previous year ended on 31st March.
- TCS to be collected if the Value/Aggregate Value received for Goods from a buyer is more than ₹ 50 Lakhs in a financial year.
- TCS to be collected on [Total Sale Value received – ₹ 50 Lakhs.
- Rate of TCS is 0.075% from 01.10.2020 to 31.03.2021 and thereafter the rate will be 0.1%.
- If the buyer does not provide PAN/Aadhar number then the TCS shall be collected at 1%, instead of 0.1%. In such situation, Covid-19 related concession is also not available.
- TCS would be charged on total invoice value inclusive of GST.

TCS is not applicable when the buyer is from the following category:-

Central Government
State Government
Embassy
Commission/High Commission
Legation
Consulate
Trade Representation of Foreign state
Local Authority

Some of the basic compliances that a business entity i.e. vendor selling the:-

- TAN number – Vendor needs to have Tax Deduction and Collection Account Number (“TAN”).
- Collecting the tax – Tax to be collected at the time of receipt of sale consideration.
- Issuance of certificate (Form no 27D) within 15 days from the due date for filing of filing of TCS Return.

Accounting entry for TCS on Sale (In the Books of sealer)

(i) **At the time of issuance of invoice:**

| Particulars | Debit | Credit |
|--------------------------------|---------|----------|
| Trade Receivables | 23623.6 | |
| To Sale | | 20000.00 |
| To Goods and Service Tax (GST) | | 3600.00 |
| To Tax Collected at Source | | 23.6 |

(ii) **At the time of receipt of sale consideration along with TCS:**

| Particulars | Debit | Credit |
|----------------------------|--------------|---------------|
| Bank | 23623.6 | |
| Trade Receivables | | 23623.6 |
| | | |
| Tax Collected at Source | 23.6 | |
| To Tax Collected at Source | | 23.6 |

Note: TCS is to be deposited only on receipt of sale consideration along with TCS.

(iii) **At the time of payment of TCS Liability:**

| Particulars | Debit | Credit |
|-------------------------|--------------|---------------|
| Tax Collected at Source | 23.6 | |
| To Bank | | 23.6 |

Accounting entry for TCS paid/payable on Purchase

At the time of booking of invoice

| Particulars | Debit | Credit |
|-----------------------------------|--------------|---------------|
| Purchase A/c | 200000.00 | |
| GST Input Tax Credit A/c | 3600.00 | |
| Tax Collected at Source by Others | 23.60 | |
| To Account Payable | | 23623.60 |

NEW FUNCTIONALITIES MADE AVAILABLE FOR TAXPAYERS ON GST PORTAL (FEBRUARY, 2021)

TEAM TRD

1 - REGISTRATION

| Sl No | Form/ Functionality | Functionality made available for Taxpayers |
|-------|---|--|
| 1 | Post TRN Login, Tracking of Registration Application Status | The Search ARN Functionality for Registration, post TRN Login (ie after TRN is generated by taxpayer/ applicant but has not completed the filing of registration application), has been enhanced for the taxpayers. They will now be displayed various stages of Registration, with the current status of their application in green colour and remaining pending stages being greyed out. |

2 - RETURNS

| Sl No | Form/ Functionality | Functionality made available for Taxpayers |
|-------|---|---|
| 1 | Issuance of Form GSTR 3A, for Non Filing of GSTR-3B Returns to taxpayers, under QRMP scheme | Functionality has been deployed on GST Portal for issuance of system generated notice in Form GSTR-3A, to the taxpayers who have opted for/ assigned to QRMP Scheme and fail to file their GSTR-3B return on quarterly frequency, by due date. |
| 2 | Discontinuation of filing of Form GSTR-9A, for FY 2019-20 & onwards | The facility of filing Annual Returns in Form GSTR-9A by taxpayers in Composition Scheme, as per proviso to sub-section (1) Section 44 has been done away with on GST Portal, from FY 2019-20 & onwards. Thus, now taxpayers will not be able to view/save/file Form GSTR-9A for FY 2019-20 & onwards. Filing of the said return for the FY 2017-18 and 2018-19 is available (& is optional). |
| 3 | Facility to file NIL Form GST ITC-03 by the taxpayers opting in to Composition scheme | Existing taxpayers while opting for composition scheme are required to file details of stock in Form GST ITC-03 and pay tax on the stock (on which ITC has been claimed by them). Now a facility has been provided on the GST Portal to such taxpayers to file NIL Form GST ITC-03. |
| 4 | Validation of date on entry of invoices of cancelled suppliers and date of registration, in Form GSTR-6 and showing of tax period and filing status in Excel download of Form GSTR 6A | An ISD distributes the credit availed on inward supplies, received from the suppliers, to its units through monthly return, filed in Form GSTR-6. ISDs would now, not be able to enter invoices/debit notes/credit notes of their suppliers having cancelled status in their Form GSTR 6, having date after their effective date of cancellation, or having date before the date of grant of registration to suppliers or that of ISD (itself). Following two columns have also been added in Form GSTR-6A excel, available for download to ISDs: <ul style="list-style-type: none"> ▪ In column 'GSTR 1/5 Period', System will populate the tax period of GSTR 1/5 return, from which record is auto-populated in "MM, YYYY" format against each record. ▪ In column 'GSTR 1/5 Filing Status', System will populate either "Yes" or "No", corresponding to the filing status of GSTR 1/5 return by the supplier for that particular period. |
| 5 | Implementation of 35% Challan in QRMP Scheme in Form GST PMT-06 for making payment | W.e.f. 1st January, 2021, following two options are made available to the Taxpayers, who are under Quarterly Returns and Monthly Payment of Tax (QRMP) Scheme, for tax payment for first 02 months of a quarter: <ul style="list-style-type: none"> ▪ Fixed Sum Method: Portal can generate a pre-filled challan in Form GST PMT-06, based on past record. ▪ Self-Assessment Method: The tax due is to be paid on actual supplies, after deducting the Input Tax Credit available. <p>In fixed sum method, the 35% Challan can be generated by selecting the Reason For Challan>Monthly Payment for Quarterly Return> 35% Challan which is in turn calculated as per following method:</p> <ul style="list-style-type: none"> ▪ 35% of amount paid as tax from Electronic Cash Ledger in their preceding quarter GSTR 3B return, if it was furnished on quarterly basis; or |

| | | |
|---|--|---|
| | | <ul style="list-style-type: none"> 100% of the amount paid as tax from Electronic Cash Ledger in their GSTR-3B return for the last month of the immediately preceding quarter, if it was furnished on monthly basis. For the months of Jan and Feb, 2021, in Q4 of 2020-21, the autopopulated challan generated under 35% Challan would contain 100% of the tax liability discharged from Electronic Cash Ledger for the month of December, 2020 (and not 35%). [Reason: Till December 2020, all taxpayers were filing GSTR-3B return on a monthly basis.] The major benefit for taxpayers opting for this payment method (as opposed to Self-Assessment Method) would be that no interest shall be levied, if the actual tax amount for this particular month later turns out to be more than the amount deposited using 35% challan option, provided the amount is deposited by 25th of the following month. <p>The taxpayers are not required to deposit any amount for the first 02 months of a quarter, if:</p> <ul style="list-style-type: none"> Balance in Electronic Cash Ledger / Electronic Credit Ledger is sufficient for tax due for the first/ second month of the quarter; or There is NIL tax liability |
| 6 | Editing the Auto-population of some data in Form GSTR-3B | <p>As per sub-rule (4) of Rule 36 of the CGST Rules, 2017, the availment of provisional ITC in Form GSTR-3B, has now been restricted to 5% in excess of eligible credit, as flowing from system generated Form GSTR 2B.</p> <p>Now, in case a taxpayer decreases the liability or increases the ITC availment by editing these values, beyond designated threshold of 5%, the system will show a warning message to the taxpayer. Similarly, if a taxpayer decreases the reverse charge liability in Table 3.1(d) and ITC reversal in Table 4B in Form GSTR-3B, auto-populated from system generated Form GSTR-2B, the system will show a warning message.</p> <p>The taxpayers however can edit these auto-populated values and file their returns</p> |

3 - REFUND

| Sl No | Form/ Functionality | Functionality made available for Taxpayers |
|-------|---|---|
| 1 | Pre login Tracking of Refund Application Status | Now taxpayers can navigate to Services > Track Application Status > Select the Refund option > Enter ARN to track their refund application, without logging into the GST Portal. This will display various stages of Refund application filed by them, with the current status of their application in green colour and remaining pending stages being greyed out. |
| 2 | Withdrawal of Refund Application by Taxpayer, in Form GST RFD-01W | Earlier the taxpayers had no option to withdraw their refund applications, if they have committed any mistakes, while filing the application. A functionality has now been implemented for the taxpayer, to withdraw an already filed refund application, by filing Form GST RFD-01W (until the Refund Processing Officer issues an acknowledgement in Form GST RFD-02 or a deficiency memo in Form GST RFD03). |
| 3 | Enabling taxpayers/ applicants with (only) TRN, to manually enter bank account details in Refund Application in Form GST RFD-01 | So far the taxpayers/applicants having (only) TRN were unable to file an application for refund, as they were not allowed to enter or add bank account details in the Registration Module. To enable filing of Refund Application by such taxpayers/applicants, a facility has been made available to them for manual entry of bank account details in Form GST RFD-01, while filing an application for refund. |

4 - ASSESSMENT AND ADJUDICATION

| Sl No | Form/ Functionality | Functionality made available for Taxpayers |
|-------|---|---|
| 1 | Pre login Tracking of Refund Application Status | Now taxpayers can navigate to Services > Track Application Status > Select the Refund option > Enter ARN to track their refund application, without logging into the GST Portal. This will display various stages of Refund application filed by them, with the current status of their |

| | | |
|---|---|---|
| | | application in green colour and remaining pending stages being greyed out. |
| 2 | Withdrawal of Refund Application by Taxpayer, in Form GST RFD-01W | Earlier the taxpayers had no option to withdraw their refund applications, if they have committed any mistakes, while filing the application. A functionality has now been implemented for the taxpayer, to withdraw an already filed refund application, by filing Form GST RFD-01W (until the Refund Processing Officer issues an acknowledgement in Form GST RFD-02 or a deficiency memo in Form GST RFD03). |
| 3 | Enabling taxpayers/ applicants with (only) TRN, to manually enter bank account details in Refund Application in Form GST RFD-01 | So far the taxpayers/applicants having (only) TRN were unable to file an application for refund, as they were not allowed to enter or add bank account details in the Registration Module. To enable filing of Refund Application by such taxpayers/applicants, a facility has been made available to them for manual entry of bank account details in Form GST RFD-01, while filing an application for refund. |

5 - ENFORCEMENT

| SI No | Form/ Functionality | Functionality made available for Taxpayers |
|-------|---|--|
| 1 | Auto-generation of Form GST DRC-01 and its availability to the taxpayer on the GST Portal | As per Rule 142(1) of the CGST/SGST Rules, summary in Form GST DRC-01, is required to be served to the taxpayer along with the notice issued by the tax official under Section 73, 74, 129, 130 etc. The auto-generation of Form GST DRC-01 (upon issuance of SCN/MOV-07/MOV-10 in Enforcement Module) has been enabled on the GST Portal and the same is now made available to the taxpayer under Additional Notices & Orders sub menu (Services> User Services > Additional Notices & Orders). |

6 - ADVANCE RULING

| SI No | Form/ Functionality | Functionality made available for Taxpayers |
|-------|--|---|
| 1 | Saving Advance Ruling/Advance Ruling Appeal applications by applicants | Applicants can now save Advance Ruling/Advance Ruling Appeal applications upto 15 days, before editing and filing it on GST Portal. These applications in saved stage will be automatically purged after 15 days. |

7 - FRONT OFFICE

| SI No | Form/ Functionality | Functionality made available for Taxpayers |
|-------|--|---|
| 1 | Additional information about taxpayers under Search Taxpayer functionality | In the "Search Taxpayer" functionality (Search Taxpayer> Search by GSTIN/UIN) available on the GST Portal, Post Login, users can now view certain additional details like Aadhar Authentication, e-KYC Verification, Compliance Rating, GSTIN/UIN status update, Annual Aggregate Turnover, Gross Taxable Income etc of the taxpayer. |

SELECTION OF CORE BUSINESS ACTIVITY ON GSTN PORTAL FOR REGISTERED TAXPAYERS

TEAM TRD

Recently GSTN has introduced a facility to identify core business activity from one of the below options

1. **Manufacturer**
2. **Trader**
3. **Service Provider and Others**

One may choose any **ONE** of the aforesaid activity based on below criterion -

| SL NO | CATEGORY | EXPLANATION AS PER PORTAL |
|-------|-----------------------------|---|
| 1. | Manufacturer | A manufacturer is a registered person produces new products from raw materials and components using tools, equipment's and machines and then sells them to the consumers, wholesalers, distributors, retailers or to the other manufacturers. A manufacturer may sell some more brought out items or may provide some ancillary services with his manufactured goods, but he would continue to be classified as manufacturer because it is the Primary Business Activity. |
| 2. | Trader | A trader is a registered person who engages in the buying and selling of goods. Traders have been further classified as - ➤ Wholesaler or Distributor ➤ Retailer Retailer includes a registered person selling goods through e-commerce operators. |
| 3. | Service Provider and Others | A service provider is a registered person who provides service to a recipient of service and is neither a manufacturer nor a trader. e.g. Banking service, IT service, works-contract service, agents, intermediaries, GTAs etc. |

Procedure to select Core Business Activity:

1. Login to the GSTN Portal.
2. On prompting to select the activity, please carefully assess your business activity based on aforesaid explanation
3. In case if business activity falls under more than one activity, select core activity which has highest turnover
4. Core Business activity can be changed later on.

Notes -

1. You can select only one core business activity.
2. In case all activities are applicable to you, kindly select your core business activity.
3. Others will include Work Contract and Other Miscellaneous items.
4. In order to understand the definitions of Manufacturer / Trader / Service Provider, you can click on "Information Button".
5. Further if you want to change it in future you can do it by navigating MY PROFILE>CORE BUSINESS ACTIVITY STATUS.

Update on GSTN Portal

Taxpayers are required to select their business activity only once, as - Manufacturer, Wholesaler/Distributor /Retailer, service providers & others post login based on highest turnover amongst them. You can change the same later.

TAX UPDATES, NOTIFICATIONS AND CIRCULARS

INDIRECT TAX

CENTRAL TAX

Notification No. 05/2021-Customs

Dated - 8th March, 2021

Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 50 Cr from 1st April 2021

Government, on the recommendations of the Council, has made the following further amendment in the notification No. 13/2020 – Central Tax, issued on 21st March, 2020.

E-Invoicing will be implemented for the taxpayers having aggregate turnover exceeding Rs. 50 crore (previously the limit of turnover was Rs. 100 crore) and this will be effective from 1st April 2021.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-05-central-tax-english-2021.pdf>

CIRCULARS - CENTRAL TAX

Circular No. 146/03/2021-GST

Dated - 23rd February, 2021

Seeks to clarify certain refund related issues

Notification has issued in respect of refund claim by recipient of Deemed Export Supply

For more details, please follow: https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular_Refund_147.pdf

NON-TARIFF NOTIFICATION

Notification No. 26/2021-Customs (NT)

Dated - 4th March, 2021

Exchange Rate Notification

CBIC has determined the rate of exchange of conversion of each of the foreign currencies into Indian currency or vice versa which is specified in Schedule I and Schedule II and has effected from 5th March, 2021.

SCHEDULE-I

| Foreign Currency | Rate of exchange of one unit of foreign currency equivalent to Indian rupees | |
|-------------------|--|--------------------|
| | For Imported Goods | For Exported Goods |
| Australian Dollar | 58.15 | 55.75 |
| Bahraini Dinar | 200.00 | 187.65 |
| Canadian Dollar | 58.75 | 56.65 |
| Chinese Yuan | 11.45 | 11.10 |
| EURO | 89.65 | 86.45 |
| US Dollar | 73.90 | 72.20 |

SCHEDULE-II

| Foreign Currency | Rate of exchange of one unit of foreign currency equivalent to Indian rupees | |
|------------------|--|--------------------|
| | For Imported Goods | For Exported Goods |
| Japanese Yen | 69.55 | 67.00 |
| Korean Won | 6.70 6.30 | 6.30 |

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfn-2021/cs-nt2021/csnt26-2021.pdf>

Notification No. 27/2021-Customs (NT)
Dated - 5th March, 2021
Exchange Rate Notification

Notification in relation to Land Customs Stations and routes "the river route as per the Protocol on Inland Water Transit and Trade between India and Bangladesh connecting Tribeni (Bandel) in India to Bangladesh" by amendment of Principal Notification No. 63/1994-Customs (N.T.) dated 21st November, 1994

CBIC has made the following further amendments in the notification No. 63/1994-Customs (N.T.) which has issued on 21st November, 1994. In this notification, in the TABLE, against serial number 2 relating to land frontier of Bangladesh, in column (3) after item (61) and the corresponding entry relating thereto in column (4), the following entries in columns (3) and (4) shall respectively be inserted

| (1) | (2) | (3) | (4) |
|-----|-----|---|---|
| | | “(62) Tribeni (Bandel) in Hoogly district West Bengal | The river route as per the Protocol on Inland Water Transit and Trade between India and Bangladesh connecting Tribeni (Bandel) in India to Bangladesh”. |

For more details, please follow: <https://taxguru.in/custom-duty/cbic-notifies-river-route-hoogly-trade-between-india-bangladesh.html>

Notification No. 28/2021-Customs (NT)
Dated - 9th March, 2021

Exchange Rate Notification
Tariff Notification in respect of Fixation of Tariff Value of Edible Oils, Brass Scrap, Areca Nut, Gold and Silver

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

TABLE - 2

| Sl No. | Chapter/ heading/ sub-heading/tariff item | Description of goods | Tariff value (US \$) |
|--------|---|--|----------------------|
| (1) | (2) | (3) | (4) |
| 1 | 71 or 98 | Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed | 543 per 10 grams |
| | | Silver, in any form, in respect of which the | |

| | | | |
|---|----------|--|--------------------------------------|
| 2 | 71 or 98 | benefit of entries at serial number 357 of the Notification No. 50 | 900 per kilogram (i.e. no change) |
| 3 | 71 | (i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92; (ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver. | 900 per kilogram (i.e. no change) |
| 4 | 71 | (i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units; (ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage. Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place. | 543 per 10 grams |

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-nt2021/csnt28-2021.pdf>

ANTI-DUMPING DUTY

Notification No. 11/2021-Customs (ADD)

Dated - 3rd March, 2021

Seeks to further amend notification No. 6/2016-Customs (ADD) dated 8th March, 2016 to extend the levy of Anti-Dumping duty on Phenol originating in or exported from European Union and Singapore, up to and inclusive of 7th June, 2021

Central Government made the amendments in the notification No. 6/2016- Customs (ADD), issued on 8th March, 2016. In this notification, in the TABLE, against Sl. No. 12 & 15, for the entry in column (4), the entry "Any country other than those attracting anti-dumping duty" shall be substituted and after paragraph 2 and before the Explanation the following paragraph shall be inserted:

3. Notwithstanding anything contained in paragraph 2, the anti-dumping duty imposed on the subject goods specified against serial numbers 8, 9, 10, 11, 12, 13, 14 and 15 of the Table above shall remain in force up to and inclusive of the 7th June, 2021, unless revoked, superseded or amended earlier.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd11-2021.pdf>

Notification No. 12/2021-Customs (ADD)

Dated – 5th March, 2021

Seeks to impose anti-dumping duty on imports of 'Black Toner in powder form' originating in or exported from China PR, Malaysia, and Chinese Taipei for a period of 5 years from the date of imposition of provisional ADD, i.e. from 10th August 2020.

Central Government, after considering with the designated authority, has imposed the anti-dumping duty on the subject goods, produced by the producers as specified and imported into India, an anti-dumping duty at the rate equal to the amount as specified and as per unit of measurement as specified.

The anti-dumping duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of imposition of the provisional anti-dumping duty, that is, the 10th August, 2020, and shall be payable in Indian currency:

Provided that the said anti-dumping duty shall not be levied for the period commencing from the date of the lapse of the provisional anti-dumping duty, that is, the 9th February, 2021 upto the preceding day of the publication of this notification in the Official Gazette.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd12-2021.pdf>

Notification No. 13/2021-Customs (ADD)

Dated – 11th March, 2021

Seeks to impose definitive anti-dumping duty on imports of Ciprofloxacin Hydrochloride originating in or exported from China PR for a period of five years from the date of levy of provisional anti-dumping duty, i.e. 2nd September, 2020

Central Government, after considering with the designated authority, has imposed the anti-dumping duty on the subject goods, produced by the producers as specified and imported into India, an anti-dumping duty at the rate equal to the amount as specified and as per unit of measurement as specified.

The anti-dumping duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of imposition of the provisional anti-dumping duty, that is, the 2nd September, 2020, and shall be payable in Indian currency

Provided that the said anti-dumping duty shall not be levied for the period commencing from the date of the lapse of the provisional anti-dumping duty, that is, the 2nd March, 2021 upto the preceding day of the publication of this notification in the Official Gazette.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-add2021/csadd13-2021.pdf>

COUNTERVAILING DUTY

Notification No. 3/2021-Customs (CVD)

Dated – 9th March, 2021

Seeks to impose definitive Countervailing/anti-subsidy duty on imports of “Textured Tempered Glass” originating in or exported from Malaysia

Central Government, after considering with Designated Authority, has imposed on the subject goods, falling under tariff item of the First Schedule to the Customs Tariff Act as specified and originating in the countries as specified and exported from the countries as specified, produced by the producers as specified and imported into India, countervailing duty of an amount equivalent to the difference between the quantum calculated. The countervailing duty imposed under this notification shall be levied for a period of five years (unless revoked, superseded or amended earlier) from the date of publication of this notification in the Official Gazette and shall be payable in Indian currency.

For more details, please follow: <https://www.cbic.gov.in/resources//htdocs-cbec/customs/cs-act/notifications/notfns-2021/cs-others2021/csot03-2021.pdf>

DIRECT TAX

Notification No. 10/2021

Notification on Extension of Time Limit of Assessment or reassessment under the Income-tax Act & Benami Property Transaction Act, 1988 **Dated – 27th February, 2021**

Central Government has specified the Act, for the purpose of sub-section (1) of section 3 that,

- (i) where the specified Act is the Income-tax Act, 1961 (43 of 1961) and the completion of any action, as referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order

Imposition of penalty under Chapter XXI of the Income-tax Act:

- (i) the 29th June, 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Income-tax Act falls, for the completion of such action; and
- (ii) the 30th June, 2021 shall be the end date to which the time limit for completion of such action shall stand extended;

Assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof:

- (i) expires on the 31st March, 2021 due to its extension by the said notification, such time limit shall stand extended to the 30th April, 2021;
- (ii) is not covered under (i) and expires on 31st March, 2021, such time limit shall stand extended to the 30th September, 2021

where the specified Act is the Prohibition of Benami Property Transaction Act, 1988:

- (i) the 30th June, 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Benami Act falls, for the completion of such action; and
- (ii) the 30th September, 2021 shall be the end date to which the time limit for completion of such action shall stand extended.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification_10_2021.pdf

Notification No. 11/2021

Income-tax (1st Amendment) Rules, 2021 **Dated – 5th March, 2021**

CBDT has made the rules to amend the Income-tax Rules, 1962. In the Income-tax Rules, 1962, after the rule 3A, the rule shall be inserted as “**3B. Annual accretion referred to in the sub-clause (viia) of clause (2) of section 17 of the Act**”

It shall come into force from the 1st April, 2021.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification_no_11_2021.pdf

Notification No. 12/2021

Approval for Scientific Research and Research in Social Science and Statistical Research to M/s Bennett University **Dated – 9th March, 2021**

Central Government has approved **M/s Bennett University**, Greater Noida, Uttar Pradesh under the category of ‘**University, College or other institution**’ for **Scientific Research** and **Research in Social Science** and **Statistical Research**. This Notification deemed to be applied for the assessment year 2020-2021 and shall apply with respect to the assessment years 2021-2022, 2022-2023, 2023-2024, 2024-2025.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification_12_2021.pdf

Notification No. 13/2021

Income-tax (2nd Amendment) Rules, 2021 **Dated – 9th March, 2021**

CBDT has made the following rules further to amend the Income-tax Rules, 1962. These rules may be called the Income Tax (2nd Amendment) Rules, 2021.

In rule 10V of sub-rule (12) of in the Income-tax Rules, 1962, after the second proviso and before the Explanation, the following provisos shall be inserted:

Provided also that the provisions of sub-rules (3) to (12) of rule 10VA shall, mutatis mutandis, apply to the application made under the second proviso as they apply to application made under sub rule (2) of the said rule.

Provided also that the provisions of sub-rule (3) of rule 10VA shall not apply to an application made under the second proviso, if it is for the previous year beginning on the 1st day of April, 2021, and made on or before the 1st day of February, 2021.

For more details, please follow:

https://incometaxindia.gov.in/communications/notification/notification_no_13.pdf

Circular No. 2/2021
Dated – 3rd March, 2021

Residential status of certain individuals under Income-tax Act, 1961

Section 6 of the Income-tax Act, 1961 (the Act) contains provisions relating to determination of residency of a person. The status of an individual, as to whether he is resident in India or a nonresident or not ordinarily resident, is dependent, inter-alia, on the period for which the person is in India during a previous year or years preceding the previous year.

Relaxation for Previous Year 2019-20

Considering the COVID-19 pandemic and the resultant overstay of an individual who had come to India on a visit before 22nd March 2020, circular no II of 2020 dated 8th May 2020 was issued by the Central Board of Direct Taxes (the Board) under section 119 of the Act to avoid genuine hardship in such cases. It was clarified that for the purpose of determining the residential status under section 6 of the Act during the previous year 2019-20 in respect of an individual who has come to India on a visit before 22nd March 2020 and:

- (a) has been unable to leave India on or before 31st March 2020, his period of stay in India from 22nd March 2020 to 31st March, 2020 shall not be taken into account; or
- (b) has been quarantined in India on account of Novel Corona Virus (Covid-19) on or after 1st March, 2020 and has departed on an evacuation flight before 31st March 2020 or has been unable to leave India on or before 31st March 2020, his period of stay from the beginning of his quarantine to his date of departure or 31st March, 2020, as the case may be, shall not be taken into account; or
- (c) has departed on an evacuation flight before 31st March 2020, his period of stay in India from 22nd March 2020 to his date of departure shall not be taken into account.

Residential Status for Previous year 2020-21

The Board has received various representations requesting for relaxation in determination of residential status for previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to suspension of international flights. The matter has been examined by the Board

For more details, please follow: <https://incometaxindia.gov.in/communications/circular/residency-circular-02-of-2021.pdf>

Circular No. 3/2021
Dated – 4th March, 2021

Circular under section 10 of the Direct Tax Vivad se Vishwas Act, 2020

Representations have been received from the field authorities that under the Income-tax Act, 1961 there is no provision available to the Assessing Officer to give effect to the order passed by the DA under sub-section (1) of section 5 and under sub-section (2) of section 5 of the Vivad se Vishwas in the case of a declarant. Since orders passed by the DA have a consequential effect under the Act, it has been requested that suitable clarifications may be issued to enable the AO to pass consequential orders under the Act.

In view of the foregoing, and in exercise of the powers conferred on the Board under section 10 of Vivad se Vishwas, it is hereby clarified that where the DA has passed orders under sub-sections (1) and (2) of section 5 of Vivad se Vishwas, the Assessing Officer shall pass consequential order under the Act.

For more details, please follow: https://incometaxindia.gov.in/communications/circular/circular_3_2021.pdf

PRESS RELEASE

DIRECT TAX

Income Tax Department conducts searches in Hyderabad

1st March, 2021

The Income Tax Department carried out search & seizure operations on 24.02.2021 on a major Pharmaceutical group based out of Hyderabad. This Pharmaceutical group is engaged in the business of manufacturing of intermediates, Active Pharmaceutical Ingredients (APIs) and formulations. Majority of the total manufactured products are exported to various countries i.e. USA / Europe. The search operation was carried out at about 20 locations in 5 States.

Searches have resulted in seizure of cash amounting to Rs. 1.66 crore. During the search action incriminating evidence in the form of digital media, pen drives, documents, etc. have been found and seized. Incriminating digital evidences were gathered from SAP @ ERP software maintained by the assessee group.

During these searches, issues relating to purchases made from bogus and non-existent entities, artificial inflation of certain heads of expenditure, alongwith suppression of receipts relating to by-product sale were detected. Further, evidence of on-money payment for purchase of lands was also found. Multiple other legal issues were also identified such as personal expenses being booked in the company's books and land purchased by related concerns / individuals below govt. SRO value.

The search has led to unearthing of evidence relating to unaccounted income of around Rs.400 crore out of which the assessee group has admitted an additional income of Rs.350 crore.

Further investigations are in progress.

Clarification in respect of residency under Income-tax Act, 1961

3rd March, 2021

The Central Board of Direct taxes (CBDT) has received various representations requesting for relaxation in determination of residential status for previous year 2020-21 from individuals who had come on a visit to India during the previous year 2019-20 and intended to leave India but could not do so due to suspension of international flights. The matter has since been examined by CBDT

In this context, Circular No. 2 of 2021 has been issued by CBDT today. Vide the said Circular, it has been provided that if any individual is facing double taxation even after taking into account the relief provided by the relevant Double Taxation Avoidance Agreement (DTAA), he/she may furnish the specified information by 31st March, 2021 in Form -NR annexed to the said Circular. This form is to be submitted electronically to the Principal Chief Commissioner of Income-tax (International Taxation). Circular No.2/2021 can be accessed on www.incometaxindia.gov.in

Income Tax Department conducts searches in Mumbai

4th March, 2021

The Income Tax Department is carrying out search and survey operations which started on 03.03.2021 on two leading film production companies, a leading actress and two Talent Management companies in Mumbai. Search operation is being carried out at Mumbai, Pune, Delhi and Hyderabad. The group is mainly engaged in the business of Production of Motion Pictures, Web Series, acting, direction and talent Management of celebrities and other artists. A total of 28 premises are being covered in different locations which includes residences and offices.

During the search, evidence of huge suppression of income by the leading Film Production house compared to the actual box office collections has been unearthed. The company officials have not been able to explain discrepancy of around Rs. 300 crore.

Evidence related to manipulation and under-valuation of share transactions of the production house amongst the film directors and shareholders, having tax implication of about Rs. 350 crore has been found and is being further investigated.

Evidence of cash receipts by the leading actress amounting to Rs 5 crore has been recovered. Further investigation is going on.

Apart from this, non-genuine/bogus expenditure to related concerns by the leading producers/director having tax implication of about Rs. 20 crore has been detected. Similar findings have been made in the case of the leading actress also.

At the office premises of the two talent management companies, huge amount of digital data has been seized in the form of emails, whatsapp chats, hard disk etc which are under investigation.

During the search, 7 bank lockers have been found which have been placed under restraint. Search is continuing in all the premises.

Income Tax Department conducts searches in Tamil Nadu

4th March, 2021

The Income Tax Department carried out search and seizure operations on 03-03- 2021 on two groups of civil contractors in Southern Tamil Nadu. Searches and surveys were conducted in 18 premises mainly in Madurai and Ramnad districts.

Based on intelligence inputs about the existence of cash, which is likely to be distributed for election purposes, searches were mounted on the business groups. The action resulted in the finding of unaccounted cash of Rs. 3 crore which was seized.

Other findings include the identification of the fact that the assessee is booking bogus expenses under various heads to reduce the profits. The declared profits were less than 2% of the turnover, when in actual accounts the profits exceeded 20%. Similarly, more than 100 subcontractors were introduced to book expenses to meet illegal payments, and on-money payments for property purchases. These subcontractors introduced, had filed returns of income from the same IP address, and for the first time ever, showing only this receipt as their sole income.

As a result of the search, unaccounted income of Rs. 175 crore has been detected and unaccounted cash of Rs. 3 crore has been seized. Further investigations are in progress.

Income Tax Department conducts searches in Tamil Nadu

7th March, 2021

The Income Tax Department carried out searches on 04.03.2021 in the case of two Chennai based groups, one of which is a leading bullion trader in Tamil Nadu and the other is one of the biggest jewellery retailers in South India. The search operation was carried out at 27 premises located in Chennai, Mumbai, Coimbatore, Madurai, Trichy, Trissur, Nellore, Jaipur and Indore.

The evidences found in the premises of the bullion trader revealed that there were unaccounted cash sales; bogus cash credits from its branches; cash credits in dummy accounts in the guise of advance for purchases; unexplained cash deposits during the demonetization period; bogus outstanding sundry creditors; and huge unexplained stock variations.

The evidences found in the premises of the jewellery retailer revealed that the taxpayer received and repaid cash loans from local financiers; had given cash loans to builders and made cash investments in real estate properties; made unaccounted gold bullion purchases; claimed wrongful bad debts; inflated wastages in conversion of old gold to fine gold and jewellery making, etc.

The searches, so far, have resulted in the detection of undisclosed income of more than Rs. 1000 crore. Unaccounted cash of Rs. 1.2 crore has been seized so far.

Further investigations are in progress.

JUDGEMENTS

INDIRECT TAX

E-Way Bill not required if Value of Goods less than Rs.50,000.00 : Kerala High Court

Fact of the Case

- The petitioner, M/s Best Sellers (Cochin) Pvt. Ltd. was aggrieved by detention notice issued to him in Form GST MOV-7. It is the case of the petitioner that the transportation was of a consignment of watches that had been supplied to him by the seller in Delhi at a discounted rate of Rs.8.99.
- It is seen that the transportation of the goods was accompanied by tax invoice, where the supplier in Delhi had shown the actual price of the consignment of watches, which was Rs.4,49,550/- and had given a discount of almost the entire amount save to the extent of Rs.8.99, and had paid IGST at the rate of 18% on the actual value of the watches.
- The consignment was detained by the respondent, on the ground that, although the consignment was covered by a valid invoice, it was not accompanied by a valid e-way bill.

Decision of the Case

- The learned counsel for the petitioner would point that inasmuch as the discounted value of the goods was less than Rs.50,000/-, there was no requirement for the consignment to be accompanied by an e-way bill.
- The single-judge bench of Justice A.K. Jayasankaran Nambiar while upholding the contention of the petitioner directed the respondent authority to forthwith release the goods and the vehicle to the petitioner on the petitioner producing a copy of this judgment before the authorities.

The Kerala High Court while ordering the release of goods and vehicles ruled that E-Way Bill is not required if the value of goods is less than Rs.50,000.

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18% GST applicable on Hand Sanitizer: AAR

Fact of the Case

- The applicant, M/s Wipro Enterprises Private Limited, is engaged in the manufacture of toilet soaps, LED bulbs and fittings, other toiletries, and other consumer products at their various factories. In relation to the said business, the Applicant has obtained registration under various laws and is in strict compliance of all such laws. The applicant herein is manufacturing and marketing Hand Sanitizer at a large scale primarily to combat the situation arising on account of pandemic COVID-19.
- Section 16 of the Drugs and Cosmetics Act, 1940 provides that 'standard quality' of drug would mean a drug which complies with standard set forth in Schedule II and the said schedule provides for Drugs included in the 'Indian Pharmacopoeia'. The Hand Sanitizer manufactured by the Applicant contains 95% v/v of ethyl alcohol, which is within the standard prescribed by the Indian Pharmacopoeia, the Applicant has rightfully obtained a drug license under the provisions of the Drugs and Cosmetics Act, 1940.

The applicant has sought advance ruling on the issue in respect of the appropriate classification of Hand Sanitizer for the purpose of GST and applicable rate of GST.

Decision of the Case

- The Coram clarified that the alcohol-based hand sanitizers, as the name itself suggests, are to sanitize the hands and disinfect them and hence cannot be covered under Medicaments.
- Therefore, the AAR concluded that the impugned goods are covered under heading 3808, which in turn is covered under entry no. 87 of Schedule III of Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017 and hence are taxable at the rate of 9% under the CGST Act. Similarly, the goods are taxable at the rate of 9% under the KGST Act.

The Karnataka Authority of Advance Ruling (AAR) ruled that 18% GST is applicable on Hand Sanitizer.

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5% GST on Supply of Food inside the Restaurant (branch) situated in Zoological Garden: AAR

Fact of the Case

- The applicant, M/s Hotel Sandesh Private Limited is a registered private limited company engaged in providing accommodation, food, and beverages service, under SAC 9963, at the business premises. The applicant proposes to open a stand-alone Restaurant at Sri Chamarajendra Zoological Gardens, a unit of Zoo Authority of Karnataka, Mysore which is a government body. The Zoo authorities insisted the applicant charge 5% GST, on the supplies made from the Zoo premises, on treating the said service as deemed canteen service.
- The applicant sought advance ruling with regard to the applicable rate on the supply of food from the premises situated at Zoological garden. The applicant, as admitted, is already registered under GST, providing accommodation, food & beverage services, falling under SAC 9963, and is discharging GST @ 18% on the said services, in terms of entry number 7(vi) of the Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017, as amended.

The applicant has sought the advance ruling in respect of the applicable Rate of GST for the supply of food inside the restaurant (branch) situated in a zoological garden.

Decision of the Case

- The Coram held that the applicable Rate of GST for the supply of food inside the restaurant (branch) situated in a zoological garden, Mysore is 5% (CGST-2.5% & KGST-2.5%), in terms of entry number 7(ii) of the Notification No. 11/2017-Central Tax (Rate) dated June 28, 2017, as amended, if separate registration is obtained for the premises or separate account is maintained in respect of the premises.
- The AAR further said, “alternately, if the applicant maintains a common account in respect of both the premises, they need to

discharge GST at the rate of 5% (CGST 2.5% & KGST 2.5%) in respect of the supply made at the premises situated at Zoological garden, Mysuru and invariably need to reverse the input tax credit in terms of Section 17 of the CGST Act 2017 read with Rule 42 & 43 of CGST Rules 2017.”

The Karnataka Authority of Advance Ruling (AAR) ruled that 5% GST is applicable to the supply of food inside the restaurant (branch) situated in a zoological garden.

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18% GST on Isopropyl rubbing alcohol IP & Chlorhexidine Gluconate & Isopropyl Alcohol solution: AAR

Fact of the Case

- The Applicant, Ce-Chem Pharmaceuticals is a private limited company manufacturing and selling different pharmaceutical formulations comprising Tablets, Capsules, Oral Liquids and Dry Syrups in India and also exporting to various countries across the globe. The Applicant ensures that all its products meet the quality standards as specified by WHO-GMP and ISO certifications. The Applicant is also functioning under licenses issued by the Office of the Drugs Controller for the State of Karnataka.

The applicant has sought advance ruling on the issue Whether Isopropyl rubbing alcohol IP and Chlorhexidine Gluconate and Isopropyl Alcohol solution are to be classified under Chapter Heading 3004 attracting 12% GST, and if not, what would be the appropriate classification and justification for such classification.

Decision of the Case

- The Coram observed that people buy hand sanitizers as an alternative to soap and for disinfecting purposes. In the present case, it is seen that the alcohol-based hand sanitizers, as the name itself suggests is to sanitize the hands and disinfect them and hence cannot be covered under Medicaments.
- The AAR held that the goods covered under heading 3808 are covered entry no. 87 of Schedule III of Notification No.01/2017 Central Tax (Rate) dated June 28, 2017 and are taxable at the rate of 9%

under the CGST Act. Similarly, the goods are taxable at the rate of 9% under the KGST Act.

The Karnataka Authority of Advance Ruling (AAR) ruled that 18% GST is applicable on Isopropyl rubbing alcohol IP and Chlorhexidine Gluconate and Isopropyl Alcohol solutions..

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12% GST applicable on Printing of Content on the PVC Materials, Supply of Printed Trade Advertising Material: AAAR

Fact of the Case

- The applicant, M/s Macro Media Digital Imaging Private Limited is engaged in the printing of billboards, Building Wraps, Fleet Graphics, Window Graphics, Trade Show Graphics, Office Branding; In-store Branding; Banners; Free Standing Display Units and Signage Graphics, which are referred to as trade advertisement material.
- The AAR ruled that the primary part is the printed matter on Vinyl (Self Adhesive) when they serve as advertisement materials, the adhesive part is incidental to the primary use of the said goods and therefore in this case the outputs are classifiable under HSN 4911 as 'Trade Advertisements'. It was further held that the goods on which the applicant provides the printing activities 'Trade advertisements' are classifiable under Chapter 49 attracting GST at the rate of 12%.

The applicant has sought Advance Ruling on various issues that whether the transaction of printing of content provided by the customer, on polyvinyl chloride banners and supply of such printed trade advertisement material is the supply of goods. The other issue raised by the applicant was that what is the classification of such trade advertisement material if the transaction is a supply of goods.

Decision of the Case

- The advance ruling was sought on the question of what is the classification and applicable rate of Central Goods and Services Tax on the supply of such trade advertisement material if the transaction is that of supply of services.

- The AAR ruled that the primary part is the printed matter on Vinyl (Self Adhesive) when they serve as advertisement materials, the adhesive part is incidental to the primary use of the said goods and therefore in this case the outputs are classifiable under HSN 4911 as 'Trade Advertisements'. It was further held that the goods on which the applicant provides the printing activities 'Trade advertisements' are classifiable under Chapter 49 attracting GST at the rate of 12%.

While upholding the AAR's ruling, the Coram observed that the activity of Printing of the content is the principal supply during which the property held by the appellant in the media of such print gets transferred to their client incidentally. The AAAR disagreed with the contention of the appellant that the supply of Trade advertisement material is the principal supply and therefore, even if the supply is considered as a composite supply, the Principal supply' is 'supply of goods, i.e., Trade advertising material and did not find any reason to deviate from the findings of the Lower Authority in this context.

The Tamil Nadu Appellate Authority of Advance Ruling (AAAR) while upholding the AAR's ruling held that 12% GST applicable on Printing of content on the PVC materials, supply of printed trade advertising material.

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DIRECT TAX

ITAT deletes Addition on account of Deemed Dividend

Fact of the Case

1. The assessee firm, Herbert Brown Pharmaceuticals & Research Laboratories is engaged in the business of manufacturing and trading of chemicals and drugs and intermediates.
2. The assessee filed its return of income on 29th September 2015 declaring total income of Rs.26,55,170 and the A.O observed that the assessee has borrowed loans from private limited companies wherein common shareholders held over 10% of the voting rights.
3. The Assessing Officer was of the view that the amount of loans to the extent of the reserves and surplus available with M/s. Shiridi Chemicals Pvt. Ltd., falls within the

ambit of provisions of section 2(22)(e) of the Act and, hence, liable to be taxed in the hands of the assessee under the head "Income From Other Sources".

4. The AO observed that the assessee's contention that the provisions of section 2(22)(e) of the Act are not application to trade advances, the same was not found acceptable to the Assessing Officer
5. The Commissioner (Appeals), considering the submissions of the assessee deleted the addition made by the Assessing Officer under section 2(22)(e) of the Act.
6. The Revenue being aggrieved by this order of the Commissioner (Appeals), preferred appeal before the Tribunal

Decision of the Case

1. The coram of Saktijit Dey and S. Rifaur Rahman while dismissing the revenue's appeal found that the issue on applicability of provisions of section 2(22)(e) of the Act is squarely covered in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal
2. The Income Tax Appellate Tribunal (ITAT), Mumbai Bench deleted the addition on account of deemed dividend under section 2(22)(e) of the Income Tax Act, 1961.

Addition for Unexplained Cash Credit justified in respect of Unexplained Creditors shown as Bogus: ITAT

Fact of the Case

1. In the present case Mr. Malay Prasad is the assessee
2. The assessee did not submit bank statements or any other original records regarding financial transactions with the creditors. The assessee did not produce any transaction record of creditors for examination by the AO. The assessee also did not explain the details of the purposes of transactions.
3. Mr. Anuj Sonkar appeared before the AO and denied having any financial transactions with the assessee.
4. The statement of Shri Anuj Sonkar is reproduced by AO in his assessment order.
5. The AO held that the two creditors namely Anuj Sonkar and Siddharth Agarwal are bogus. The AO observed that Mr. Anuj Sonkar has himself denied to have any financial transactions with the

assessee. So far as Mr. Siddharth Agarwal is concerned

6. The AO made additions of sum of Rs. 3,22,68,500 under section 68 read with Section 115BBE of the 1961 Act, vide assessment order dated 23.12.2017 passed under section 143(3) of the 1961 Act.

Decision of the Case

1. The coram consisting of Vijay Pal Rao and Ramit Kochar held that the authorities below have rightly invoked provisions of Section 68 and held that cash deposits in the assessee's ICICI Bank account to the tune of Rs. 3,22,68,500 was the money of the assessee which was deposited by the assessee in his bank accounts
2. These two creditors namely Mr. Anuj Sonkar and Mr. Siddharth Agarwal in whose name the assessee has allegedly shown to have credited these amounts are bogus creditors.

Interest not Leviable if TDS is paid before Completion of Proceedings: ITAT

Fact of the Case

1. The assessee, Srabani Constructions Pvt Ltd. was engaged in the real estate business and had paid a sum of Rs.41,84,879 to contractors on which TDS along with interest was deposited with the Government.
2. The assessee urged that the TDS amount was not deposited to the Government due to financial stringency and later on deposited before the completion of the assessment.
3. On the other hand, the department submitted that when the assessee had not deducted the TDS under section 194C of the Act on the payments to the contractors of Rs.41,84,879, the AO had no option but to disallow the entire amount.
4. Section 194C of the Income Tax Act provides that any individual making a fee to a residential individual, who carries out 'work' as a contract between the 'specified individual' and the 'resident contractor,' is obliged and required to deduct tax at source.

Decision of the Case

1. The ITAT noted that a person is liable to pay interest under section 201(1A) for

failure to deduct tax at source or delay in payment of tax deducted at source and interest under section 206C(7) is levied for failure to collect tax at source or delay in payment of tax collected at source.

2. However, the ITAT held that in this case, the assessee has already deposited the TDS along with interest to the Government exchequer, as is evident from the challan, placed before the Tribunal.

ITAT allows Deduction u/s 80IA to a Developer paid by Government

Fact of the Case

1. In the present case M/s Simplex Infrastructures Ltd is the assessee
2. The assessee company has claimed deduction under section 80IA(4) of the Act for the profit from development of infrastructure projects amounting to Rs. 27,31,67,167/-.
3. According to AO since the assessee has been executing the business of civil construction in the nature of works contract awarded by the State Government / Central Government, the assessee is not entitled to claim deduction under section 80IA of Rs.27,31,67,167

Decision of the Case

1. The coram consists of J.S. Reddy and A. T. Varkey noted that in a development contract, responsibility is fully assigned to the developer for execution and completion of work.
2. It is evident that the assessee, vide the agreements, has clearly demonstrated the various risks undertaken by it. In all the agreements, relevant portions of which are reproduced supra, the assessee has undertaken huge risks in terms of deployment of technical personnel, plant and machinery, technical knowhow, expertise and financial resources.
3. Therefore, the ITAT held that undoubtedly entering into lawful agreements and thereby becoming a contractor should, in no way, be a bar to the one being a developer since the role of a developer is larger than that of a contractor. The assessee, who is engaged in developing the infrastructural facility, is rightfully entitled to the benefits of deduction under section 80IA(4) of the Act.

Relief to Shilpa Medicare: ITAT allows Deduction for Expenditure incurred on Research and Development

Fact of the Case

1. In the present case Shilpa Medicare is the applicant
2. The Assessee, Shilpa Medicare has filed the appeal against the order relating to AY 2011-12. The issue that arose for consideration in the appeal by the assessee for AY 2011-12 was with regard to the allowability of the assessee for weighted deduction u/s 35(2AB) of the Income Tax Act 1961 (the Act).
3. Similar issues arose for consideration in the Assessee's appeal for AY 2010-11 also in ITA No.1351/Bang/2015. The appeals for AY 2010-11 and 2011-12 were heard together and a common order was passed by the Tribunal.

Decision of the Case

1. The coram headed by the Vice President, N.V. Vasudevan clarified that in order to claim the benefit of weighted deduction u/s 35(2AB) of the Act, the assessee should fulfil two conditions.
2. Firstly, there should be an in-house research and development facility and such facilities should be recognized / approved by the competent authority.
3. Secondly, the competent authority for this purpose has been defined as the secretary, DSIR, Ministry of Science and Technology, Govt. of India, who has approved the facility by his recognition dated January 19, 2011.
4. The ITAT noted that the assessee was granted recognition of Assessee's in house R&D unit granted by the Government of India, Ministry of Science and Technology on 19th January, 2011.
5. Therefore, the ITAT held that for AY 2011-12, the Assessee was entitled to deduction under section 35(2AB) of the Act.
6. "The assessee has to make an application for approval in prescribed form 3CK for issue of Form No.3CM and also filed necessary evidence including details of expenditure. Therefore the date of application for approval does not assume any significance as admittedly, the Assessee has obtained approval u/s. 35(2AB) of the Act and in any case for AY 2011-12, there was in fact an approval dated 19.1.2011. The Assessee is therefore entitled to deduction u/s.35(2AB) of the Act," the ITAT said.

TAX COMPLIANCE CALENDAR AT A GLANCE

GST CALENDAR

| Due Date for GSTR-3B | | | |
|---|-----------------------------------|--------------------|------------------------------|
| States | Turnover in Preceding F.Y. | Month | Due Date |
| For All States | Turnover is more than Rs. 5 Crore | February, 2021 | 20 th March, 2021 |
| Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, Daman & Diu and Dadra & Nagar Haveli, Puducherry, Andaman and Nicobar Islands, Lakshadweep | Not Opting for the QRMP Scheme | | |
| | Turnover is upto Rs. 5 Crore | February, 2021 | 22 nd March, 2021 |
| | Opting for the QRMP Scheme | | |
| | Turnover is upto Rs. 5 Crore | Jan to March, 2021 | 22 nd April, 2021 |
| Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, Jammu and Kashmir, Ladakh, Chandigarh, Delhi | Not Opting for the QRMP Scheme | | |
| | Turnover is upto Rs. 5 Crore | February, 2021 | 24 th March, 2021 |
| | Opting for the QRMP Scheme | | |
| | Turnover is upto Rs. 5 Crore | Jan to March, 2021 | 24 th April, 2021 |

| Due Date | | |
|----------|-------------------|------------------------------|
| Form | For month/Quarter | Date |
| GSTR-1 | Monthly | |
| | February 2021 | 11 th March, 2021 |
| | Quarterly | |
| | January to March | 13 th April, 2021 |

| Composition Scheme Due Dates | | |
|------------------------------|-------------------------------|------------------------------|
| From | Description | Date |
| CMP - 08 | Return for Composite Supplier | |
| | January to March 2021 | 18 th April, 2021 |

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

| Annual Return | | |
|---------------|--|------------------------------|
| From | Description | Due Date for F.Y. 2019-20 |
| GSRT-9 | Annual Return | 31 st March, 2021 |
| GSTR - 9C | Reconciliation Statement & Certificate | 31 st March, 2021 |

DIRECT TAX CALENDAR

| Important Due Dates for the Income Tax | | | |
|---|--|------------|--|
| 17.03.2021 | Due date for issue of TDS Certificate for tax deducted under section 194-IA, 194-IB & 194M in the month of January, 2021 | | |
| 30.03.2021 | Due date for furnishing of challan-cum-statement in respect of tax deducted under section 194-IA, 194-IB & 194M in the month of February, 2021 | | |
| 31.03.2021 | Country-By-Country Report in Form No. 3CEAD for the previous year 2019-20 by a parent entity or the alternate reporting entity, resident in India, in respect of the international group of which it is a constituent of such group | | |
| 31.03.2021 | Country-By-Country Report in Form No. 3CEAD for a reporting accounting year (assuming reporting accounting year is April 1, 2019 to March 31, 2020) by a constituent entity, resident in India, in respect of the international group of which it is a constituent if the parent entity is not obliged to file report under section 286(2) or the parent entity is resident of a country with which India does not have an agreement for exchange of the report etc. | | |
| 31.03.2021 | Last date to link Aadhaar with PAN | | |
| 31.03.2021 | Payment of Tax under Vivad se Vishwas act, 2020 | | |
| 31.03.2021 | Form- 26Q | Quarterly | Extended due date to file TDS return for AY 2020-21 (Extended due date) |
| 31.03.2021 | Form- 1 to 7 | FY 2019-20 | Filing ITR for AY 2020-2021 with penalty for both audit and non-audit cases. |
| 31.03.2021 | Form- 1 to 7 | FY 2019-20 | Last date to revise ITR for the financial year 2019-20 |

COURSES OFFERED BY TAX RESEARCH DEPARTMENT

Eligibility criterion for admission in TRD Courses

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

EXISTING COURSES

CERTIFICATE COURSE ON TDS

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

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

Duration - 30 Hours

Mode of Class - Online

CERTIFICATE COURSE ON INCOME TAX RETURN FILLING

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

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

Duration - 30 Hours

Mode of Class - Online

CERTIFICATE COURSE ON GST

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

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

Duration - 72 Hours

Mode of Class - Online

** Special Discount for Corporate*

ADVANCED CERTIFICATE COURSE ON GST

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

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

Duration - 40 Hours

Mode of Class - Online

CRASH COURSE ON GST FOR COLLEGE AND UNIVERSITY

Batch Size - 50 (Minimum)

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

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

Exam Fees - Rs. 200 + 18% GST

Course Duration - 32 Hours

CRASH COURSE ON INCOME TAX FOR COLLEGE AND UNIVERSITY

Batch Size - 50 (Minimum)

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

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

Exam Fees - Rs. 500 + 18% GST

Course Duration - 32 Hours

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

NEW COURSES

ADVANCED COURSE ON GST AUDIT AND ASSESSMENT PROCEDURE

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

Duration - 30 Hours

Mode of Class - Online

ADVANCED COURSE ON INCOME TAX ASSESSMENT AND APPEAL

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

Duration - 30 Hours

Mode of Class - Online

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

E-PUBLICATIONS OF TAX RESEARCH DEPARTMENT

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

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

TAXATION COMMITTEES - PLAN OF ACTION

Proposed Action Plan:

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

Disclaimer:

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Contact Details:

Tax Research Department
12, Sudder Street, Kolkata - 700016

Phone: +91 33 40364747/ +91 33 40364798/ +91 33 40364711

E-mail: trd@icmai.in



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

Statutory Body under an Act of Parliament

www.icmai.in

Headquarters: CMA Bhawan, 12 Sudder Street, Kolkata - 700016

Ph: 091-33-2252 1031/34/35/1602/1492

Delhi Office: CMA Bhawan, 3 Institutional Area, Lodhi Road, New Delhi - 110003

Ph: 091-11-24666100