

The Institute of Chartered Accountants of India

Two Day National Conference on GST

Organised by: **Indirect Taxes Committee of ICAI**

Hosted by : **Ernakulam Branch of SIRC of ICAI**

on 31st May & 1st June 2019

(Friday & Saturday)

31st May 2019 (Friday)

Day 1

08.45 am – 10.45 am Technical Session 1

Practical issues in GST Annual Return, Maintenance of Records and Finalisation of Accounts

CA. Shaikh Abdul Samad Ahmad, Chennai

10.45 am – 11.15 am Inaugural Session

11.15 am -11.30 am Tea Break

11.30 am – 01.30 pm Technical Session 2

Taxability of receipts of Charitable Institutions under GST

CA. Rajendra Kumar P, Chennai

01.30 pm - 02.15 pm Lunch

02.15 pm - 02.30 pm Transform your practice with the cloud – a session by Intuit

02.30 pm – 04.30 pm Technical Session 3

GST Audit process, Checklist, Reconciliation and Documentation

CA. Bimal Jain, New Delhi

1st June 2019 (Saturday)

Day 2

09.30 am – 11.00 am Technical Session 4

GST on real Estate and Works Contract

CA Ashok Batra, New Delhi

11.00 am – 11.15 am Tea Break

11.15 am – 12.45 pm Technical Session 4 continues

12.45 pm – 01.30 pm Lunch

01.30 pm - 04.30 pm Technical Session 5

Latest amendments in GST- law, notifications, circulars and orders

Adv, G,Shivadass, Bengaluru

Shri Pullela Nageswara Rao, IRS

Chief Commissioner of Central Tax, Central Excise & Customs,
Thiruvananthapuram Zone

**1985 Batch INDIAN REVENUE SERVICE (Customs & Central Excise)
Chief Commissioner of Customs, Central Excise and Service Tax
Kerala Zone**

Educational Qualifications: B.E (ECE), PGDM (IIMC)

**Awarded Certificate of Merit in 2012 by
World Customs Organization (WCO)**

Previous Postings:

1. Assistant Commissioner:

- i) Mumbai Custom House (1987-1993): Bonds, Appraising Groups, Docks, Special Intelligence and Investigation Branch (SIIB), CIU and Customs Preventive.
- ii) Hyderabad Commissionerate (1993-1998): Central Excise-Div-II, Air Cargo Complex, Inland Container Depot (ICD), Airport, Special Intelligence and Investigation Branch (SIIB), Customs Preventive, Customs Audit.

2. Deputy Commissioner: (On Deputation to Andhra Pradesh State Government) (1998-2005)

- i. AP Industrial Development Corporation (APIDC), Hyderabad
 - Executive Director (1998-2005)
 - Vice-Chairman and Managing Director (FAC), APIDC (2004-2005)
- ii. AP Handicrafts Development Corporation (Full Addl. Charge)-Managing Director
- iii. Allwyn Watches, Hyderabad (FAC) (2000-2005)-Managing Director

3. Addl. Commissioner: Visakhapatnam-I Commissionerate (2005-2006)

4. Commissioner:

- i) Visakhapatnam-(Appeals) (2006-2007)
- ii) Tirupathi Commissionerate (2007-2009)
- iii) Visakhapatnam-II Commissionerate (Addl. Charge) (2007-2008)
- iv) Hyderabad Commissionerate (2009p-2012)
- v) Kolkata (2012 -2013)-(Appeals)
- vi) Additional Director General-(2013-15)-National Academy of Customs Excise and Narcotics (NACEN), Regional Training Institute (RTI), Hyderabad.

5. Principal Commissioner:

Principal Additional Director General-(2015-16)-National Academy of Customs Excise and Narcotics (NACEN), Regional Training Institutes (RTIs), Hyderabad, Chennai, Bangalore and Cochin.

6. Hobbies and extra-curricular activities: Cricket-Represented Osmania University; Tennis; Shuttle Badminton; Swimming.

Profile

CA. Shaikh Abdul Samad. A

Native: Virudachalam, Tamilnadu.

Brought up: Mumbai, Maharashtra

Qualification:

Commerce Graduate: 2002-2005 Jamal Mohamed College, Trichy

Chartered Accountant: July 2011.

Currently Working as: Partner in M/s. Sanjiv Shah & Associates, Chartered Accountants, Chennai.

Articleship Training:

M/s. Sanjiv Shah & Associates, Chartered Accountants, Chennai under CA. Rajendra Kumar P.

Work Experience:

Handled various types of Central Excise and Service Tax matters.

presently - Goods and Services Tax matters.

Director in:

International Chamber of Indirect Tax Professionals.

Member in:

Fellow of Chartered Accountant

Presentation:

- Central Excise, Commissionerate III.
- National Academy of Customs, Excise & Narcotics, Chennai
- Various Branches of SIRC.

Practical issues in GST annual return, maintenance of records and finalisation of accounts

CA. Shaikh Abdul Samad. A

ACCOUNTS AND RECORDS

Who all are required to maintain accounts & Records?

- Every registered person
- Every owner or operator of warehouse or godown
- Every transporter

STATUTORY PREREQUISITE:

35. (1) **Every registered person** shall keep and maintain, **at his principal place of business**, as mentioned in the certificate of registration, a true and correct account of—

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, **the accounts relating to each place of business** shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

56. (1) Every registered person shall keep and maintain, **in addition** to the particulars mentioned in sub-section (1) of section 35, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.

Sr. No.	Section No.	Nature of Document	Who has to raise	When to Issue
1	31 (1)	Tax Invoice	Registered person supplying taxable goods.	a. Movement of Goods - before or at the time of removal
				b. Others - delivery of Goods
2	31 (2)	Tax Invoice	Registered person Supplying taxable services.	30 days from the date of supply of Services (Proposed Rules)
3	31 (3) (c)	Bill of Supply	Registered person supplying exempted Goods or Services or both or availed person under composite levy.	a. Supply of exempted Goods or Services or Both
				b. Paying Tax under section 10 of CGST Act, 2017
4	31 (3) (d)	Receipt Voucher	Registered person on receipt of advances.	On receipt of advance Payment with respect to any supply of Goods or Services or both
5	31 (3) (e)	Refund Voucher	Registered person on repayment of advances.	When no supply is made or no tax invoice is issued against the receipt voucher
6	31 (3) (f)	Self-Generated Invoice	Registered person liable to pay tax under reverse charge	When Goods or Service or both received from the supplier who is not registered under GST
7	31 (3) (g)	Payment Voucher	Registered person liable to pay tax under reverse charge	When PAYMENT IS MADE for the Goods or Service or both received from the supplier who is not registered under GST
8	Rule 10	Delivery Challan		Before or at the time of removal - When the Goods are removed without Taxable Invoice/ Bill of Supply
			c. Transportation of Goods other than by way of sales	
			d. supply notified by board	
9	34 (1)	Credit Note	Registered person, who had issued Tax Invoice	a. when the taxable value or tax charged in tax invoice exceeds the taxable value or tax payable.
				b. when the goods supplied are returned by the recipient.
				c. Goods or Services or both supplied are found to be deficient.
10	34 (3)	Debit Note	Registered person, who had issued Tax Invoice	d. when the taxable value or tax charged in tax invoice less than the taxable value or tax payable.

STATUTORY PREREQUISITE:

35 (2) Every **owner or operator of warehouse** or godown or any other place used for storage of goods and **every transporter**, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

58. Records to be maintained by owner or operator of godown or warehouse and transporters

(4) Subject to the provisions of rule 56,—

(a) any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with the Goods and Services Tax Identification Number of the registered consigner and consignee for each of his branches.

(b) every owner or operator of a warehouse or godown shall maintain books of account with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt and disposal of such goods.

(5) The owner or the operator of the godown shall store the goods in such manner that they can be identified item-wise and owner-wise and shall facilitate any physical verification or inspection by the proper officer on demand.

STATUTORY PREREQUISITE:

(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

(4) Where the Commissioner considers that any class of taxable persons is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(5) Every registered person whose turnover **during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant** and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed:

Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, *mutatis mutandis*, apply for determination of such tax.

FORM GSTR 9

STATUTORY PREREQUISITE:

→ Sec. 44 of the CGST/K SGST Act, 2017 read with rule 80 of the CGST/K SGST Act, 2017

44. Annual return.

(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

(2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

*Explanation.—For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the **30th June, 2019**.*

Rule 80:

- a. Every Regular Registered Person : Form GSTR 9
- b. A person paying tax under section 10 : Form GSTR 9A
- c. Every electronic commerce operator required to collect tax at source under section 52 : Form GSTR 9B
- d. Regular Registered Person - Turnover > 2Cr. : Form GSTR 9C

Content of the Form

- Pt. - I
 - Basic Details
- Pt. II
 - Details of Outward and inward supplies declared made during the financial year
- Pt. III
 - Details of ITC as declared in returns filed during for the financial year
- Pt. IV
 - Details of tax paid as declared in returns filed during the financial year
- Pt. V
 - Particulars of the transactions for the previous FY declared in returns of April to September of current FY or upto date of filing of annual return of previous FY whichever is earlier
- Pt. VI
 - Other Information

Two Day National Conference on GST

Pt. I	Basic Details	
1	Financial Year	
2	GSTIN	
3A	Legal Name	
3B	Trade Name (if any)	

→ It is mandatory to file all your **FORM GSTR-1** and **FORM GSTR-3B** for the FY 2017-18 before filing this return.

→ The details for the period between July 2017 to March 2018 are to be provided in this return.

→ It may be noted that additional liability for the FY 2017-18 not declared in **FORM GSTR-1** and **FORM GSTR-3B** may be declared in this return. However, taxpayers cannot claim input tax credit unclaimed during FY 2017-18 through this return.

Pt. II	Details of Outward and inward supplies made during the financial year					
(Amount in Rs. in all tables)						
	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
4	Details of advances, inward and outward supplies made during the financial year on which tax is payable					
A	Supplies made to un-registered persons (B2C)					
B	Supplies made to registered persons (B2B)					
C	Zero rated supply (Export) on payment of tax (except supplies to SEZs)					
D	Supply to SEZs on payment of tax					
E	Deemed Exports					
F	Advances on which tax has been paid but invoice has not been issued (not covered under (A) to (E) above)					
G	Inward supplies on which tax is to be paid on reverse charge basis					
H	Sub-total (A to G above)	-	-	-	-	-

→ Sale of Capital Assets – Valuation – Section 18 (6).

→ Circular No. 26/26/2017 – GST dated 29.12.2017 – Omissions and amendment in any subsequent month – prior to filing of

- ▶ Sep months return for the subsequent year.
- ▶ annual return (WIE).

- Refund of accumulation of ITC.
- Supply is for authorised operation (in SEZ transaction).
- Sec. 147 of the CGST Act, 2017 - Notification No. 48/2017 C.T. dated 18.10.2017 – Deemed Export – No Refund.
- Advances – Notification No. 40/2017 C.T. dated 13.10.2017 – further amended vide. Notification No. 66/2017 C.T. dated 15.11.2017.
- RCM – Notification No. 08/2017 C.T. (R) dated 28.06.2017 – further amended vide Notification No. 38/2017 C.T. (R) dated 13.10.2017.
- RCM – Notification No. 32/2017 I.T. (R) dated 13.10.2017.

	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
4	Details of advances, inward and outward supplies made during the financial year on which tax is payable					
I	Credit Notes issued in respect of transactions specified in (B) to (E) above (-)					
J	Debit Notes issued in respect of transactions specified in (B) to (E) above (+)					
K	Supplies / tax declared through Amendments (+)					
L	Supplies / tax reduced through Amendments (-)					
M	Sub-total (I to L above)	-	-	-	-	-
N	Supplies and advances on which tax is to be paid (H + M) above	-	-	-	-	-

- Sec. 34 of the CGST Act, 2017 – reporting timing.
- Interest payable on Debit Note – confirmed by Apex Court LB
- Closing balance of advance register

	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
5	Details of Outward supplies on which tax is not payable as declared in returns filed during the financial year					

A	Zero rated supply (Export) without payment of tax					
B	Supply to SEZs without payment of tax					
C	Supplies on which tax is to be paid by the recipient on reverse charge basis					
D	Exempted					
E	Nil Rated					
F	Non-GST supply					
G	Sub-total (A to F above)	-	-	-	-	-

- Rul. 96A of the CGST Rules, 2017
- Execution of LUT
- Circular No. 37/11/2018 – GST dated 15.03.2018
- Sec. 17 (5) – Exempt supply – RCM
- Notification No. 40/2017 & No. 45/2017

	Nature of Supplies	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
5	Details of Outward supplies on which tax is not payable as declared in returns filed during the financial year					
H	Credit Notes issued in respect of transactions specified in A to F above (-)					
I	Debit Notes issued in respect of transactions specified in A to F above (+)					
J	Supplies declared through Amendments (+)					
K	Supplies reduced through Amendments (-)					
L	Sub-Total (H to K above)	-	-	-	-	-
M	Turnover on which tax is not to be paid (G + L above)	-	-	-	-	-
N	Total Turnover (including advances) (4N + 5M - 4G above)	-	-	-	-	-

6 Details of ITC availed as declared in returns filed during the financial year					
A	Total amount of input tax credit availed through FORM GSTR-3B (sum total of Table 4A of FORM GSTR-3B)	<Auto>	<Auto>	<Auto>	<Auto>
B	Inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs)	Inputs			
		Capital Goods			
		Input Services			
C	Inward supplies received from unregistered persons liable to reverse charge (other than B above) on which tax is paid & ITC availed	Inputs			
		Capital Goods			
		Input Services			
D	Inward supplies received from registered persons liable to reverse charge (other than B above) on which tax is paid and ITC availed	Inputs			
		Capital Goods			
		Input Services			
E	Import of goods (including supplies from SEZs)	Inputs			
		Capital Goods			
F	Import of services (excluding inward supplies from SEZs)				
G	Input Tax credit received from ISD				
H	Amount of ITC reclaimed (other than B above) under the provisions of the Act				
I	Sub-total (B to H above)	-	-	-	-
J	Difference (I - A above)				

6 Details of ITC availed as declared in returns filed during the financial year					
K	Transition Credit through TRAN-I (including revisions if any)				
L	Transition Credit through TRAN-II				
M	Any other ITC availed but not specified above				
N	Sub-total (K to M above)	-	-	-	-
O	Total ITC availed (I + N above)	-	-	-	-

Description		Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1		2 →	3	4	5

7	Details of ITC Reversed and Ineligible ITC as declared in returns filed during the financial year				
A	As per Rule 37				
B	As per Rule 39				
C	As per Rule 42				
D	As per Rule 43				
E	As per section 17(5)				
F	Reversal of TRAN-I credit				
G	Reversal of TRAN-II credit				
H	Other reversals (pl. specify)				
I	Total ITC Reversed (A to H above)	-	-	-	-
J	Net ITC Available for Utilization (6O - 7I)	-	-	-	-

→ Reversal will be subject to interest as per sub section (1) of section 50

8	Other ITC related information				
A	ITC as per GSTR-2A (Table 3 & 5 thereof)	<Auto>	<Auto>	<Auto>	<Auto>
B	ITC as per sum total of 6(B) and 6(H) above	<Auto>			
C	ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 but availed during April to September, 2018				
D	Difference [A-(B+C)]				
E	ITC available but not availed (out of D)				
F	ITC available but ineligible (out of D)				
G	IGST paid on import of goods (including supplies from SEZ)				
H	IGST credit availed on import of goods (as per 6(E) above)	0			
I	Difference (G-H)				
J	ITC available but not availed on import of goods (Equal to I)				
K	Total ITC to be lapsed in current financial year (E + F + J)	<Auto>	<Auto>	<Auto>	<Auto>

→ it is important to note that through twitter on 18th oct, 2018 it was clarified that furnishing of outward

details in FORM GSTR -1 by the corresponding supplier (s) and facility to view the same in FORM GSTR -2A by the recipient is in nature of taxpayer facilitation and does not impact the ability of taxpayer to avail ITC on self-assessment basis.

Pt. IV Details of tax paid as declared in returns filed during the financial year							
9	Description	Tax Payable	Paid through cash	Paid through ITC			
				Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6	7
	Integrated Tax						
	Central Tax						
	State/UT Tax						
	Cess						
	Interest						
	Late fee						
	Penalty						
	Other						

Pt. V Particulars of the transactions for the previous FY declared in returns of April to September of current FY or upto date of filing of annual return of previous FY whichever is earlier						
	Description	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
10	Supplies / tax declared through Amendments (+) (net of debit notes)					
11	Supplies / tax reduced through Amendments (-) (net of credit notes)					
12	Reversal of ITC availed during previous financial year					
13	ITC availed for the previous financial year					
14	Differential tax paid on account of declaration in 10 & 11 above					
	Description	Payable		Paid		

	1	2	3
Integrated Tax			
Central Tax			
State/UT Tax			
Cess			
Interest			

Pt. VI Other Information

15 Particulars of Demands and Refunds

	Details	Central Tax	State Tax / UT Tax	Integrated Tax	Cess	Interest	Penalty	Late Fee / Others
	1	2	3	4	5	6	7	8
A	Total Refund claimed							
B	Total Refund sanctioned							
C	Total Refund Rejected							
D	Total Refund Pending							
E	Total demand of taxes							
F	Total taxes paid in respect of E above							
G	Total demands pending out of E above							

16 Information on supplies received from composition taxpayers, deemed supply under section 143 and goods sent on approval basis

	Details	Taxable Value	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
	1	2	3	4	5	6
A	Supplies received from Composition taxpayers					
B	Deemed supply under Section 143					
C	Goods sent on approval basis but not returned					

17 HSN Wise Summary of outward supplies

HSN Code	UQC	Total Quantity	Taxable Value	Rate of Tax	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9
18	HSN Wise Summary of Inward supplies							
HSN Code	UQC	Total Quantity	Taxable Value	Rate of Tax	Central Tax	State Tax / UT Tax	Integrated Tax	Cess
1	2	3	4	5	6	7	8	9
19	Late fee payable and paid							
	Description				Payable		Paid	
	1				2		3	
A	Central Tax							
B	State Tax							

Profile

CA. Rajendra Kumar P, Chennai

The only Indian on the “Technical Advisory Group” to the Working Party 9 on Consumption Taxes (VAT / GST), OECD, Head Quartered in Paris, France, CA Rajendra Kumar has many feathers to his cap including the highest score in IDT ever scored by any student. He is the First Elected President of International Chamber of Indirect Tax Professionals, headquartered at Chennai.

He is currently serving his second tenure in the central council. He was the President of the Prestigious Hindustan Chamber of Commerce for the year 2018-19. He is the founder member of Chamber of Indirect Tax Professionals, Chennai and has written and presented over 800 papers both in India and outside India. He has authored the books namely ‘Guide to Service Tax’ and ‘Value Added Tax – Concept & Indian Perspective’

CA. RAJENDRA KUMAR P is a recipient of many awards including “Sir Theagaraya Award”, “Royal Excellence Award” etc

As the 34th President at the age of 31 he was the youngest President of the Lions Club of Madras East during the year 2001-02 He is the founder Secretary of the Association of Chartered Accountants, Chennai. The logo of the Association was designed by him and his slogan “Share Knowledge, Spread Light” was adopted by the Association of Chartered Accountants, Chennai as their official slogan.

Technical Session

Taxability of receipts of Charitable Institutions under GST

CA. Rajendra Kumar P, Chennai

Profile

CA. Bimal Jain, New Delhi

- FCA, FCS, LLB with 21 Yrs. of Experience in Indirect Taxation – GST, Service Tax, Excise, Customs, VAT/CST, FTP, DGFT matters etc.
- Chairman of Indirect Tax Committee of PHD Chamber of Commerce
- Author of a book on Goods and Services Tax, titled, “GST LAW AND ANALYSIS (With Conceptual Procedures)” [5th Edition – February 2019]

Professional Experience:

He is a Member of Institute of Chartered Accountants of India since May 1994 and Member of Institute of Company Secretaries of India since December 2006 along with a Bachelor's degree in Law. Also, he is a Qualified SAP – FI/CO Consultant and has more than 21 years of experience in Indirect Taxation and specializes in all aspects of Goods and Services tax (GST), Service Tax, Value Added Tax (VAT)/ Central Sales Tax (CST), Central Excise, Customs, Foreign Trade Policy (FTP), Special Economic Zone (SEZ), Export Oriented Unit (EOU), Export- Import Laws.

He has working experience of more than 18 years in renowned Companies viz. LG Electronics India Pvt. Ltd, Honda Motorcycle & Scooters India Pvt. Ltd, Hindustan Development Corporation Ltd, Khaitan & Company and presently he is the Executive Director of A2Z Taxcorp LLP - a boutique Indirect Tax firm.

Significant Transactions:

He has hands on experience in providing opinion & advisory services, carrying out diagnostic review of business operations, process review, structuring of business model, undertaking litigation services at all appropriate forum including CESTAT, representation before the TRU/ CBEC/ DGFT, etc. for various matters concerning to trade, industry and commerce.

Professional Membership:

- Chairman of Indirect Tax Committee of PHD Chamber of Commerce
- Chairman of the Corporate Advisory Committee of IPEM Group of Institutions
- Member of Indirect Tax Committee of ASSOCHAM/ FICCI
- Special invitee of Indirect Tax Committee of ICAI/ ICSI
- Member of eminent faculties in Indirect Tax Committee of ICAI/ ICSI/ ICMA

Awards & Recognitions:

- Keynote Speaker at Guinness World Record made by ICSI in “Largest Taxation Lesson” on GST, attended by 4500+ Participants, breaking earlier record of Japan
- Business Leader Award from Amity School, Noida
- Best Speaker Award from NIRC- ICAI/ ICWAI
- Young Achievers Award at Igniting Minds, 2015
- Best Participant Award in MSOP- 117th Batch by ICSI

GST Audit process, Checklist, Reconciliation and Documentation

CA. Bimal Jain, New Delhi

Audit under GST (Form-9C)

General Meaning of Audit

“An audit is an independent examination of financial information of any entity, whether profit oriented or not, and irrespective of its size or legal form, when such an examination is conducted with a view to expressing an opinion thereon.”

The Audit of accounts in corporate sector has been made compulsory by legislation over decades. This compulsory audit is intended to ensure proper maintenance of books of account and other records, in order to reflect the true turnover and purchase of a dealer and also to reflect the correctness of input tax claimed and output tax paid, to facilitate the administration of tax laws for his further assessment.

In addition to the above, the specific legislations governing different types of entities also mandates audit under the respective statutes.

For example:-

- i) **Audit under Income Tax Act:** The Income-tax Act introduced audit of businesses that have crossed the turnover limit provided in Section 44AB of the Income-tax Act.
- ii) **Special Audit under the Central Excise Act:** Special audit was prescribed under Section 14A and 14AA of Central Excise Act, 1944.
 - a. **U/s 14A:** Where the commissioner of Central Excise is of the *“opinion that the value has not been correctly declared or determined by a manufacturer or any person”*
 - b. **U/s 14AA:** Where the commissioner has reason has reason to believe that the credit of duty availed of or utilised under the rules made under this Act by a manufacturer of any excisable goods:
 - is not within the limits,
 - has been availed or utilised by reason of fraud, collusion or any wilful mis-statement or suppression of facts
- iii) **Special Audit under the Service Tax Law:** As per section 72A of Finance Act, 1994, where the commissioner of Central Excise has reason to believe that any person liable to service tax:
 - a. has failed to declare or determine the value of a taxable service correctly; or
 - b. has availed and utilised credit of duty or tax paid-
 - which is not within the limits
 - by means of fraud, collusion or any wilful mis-statement or suppression of facts

Need of Audit under GST:

The term 'Audit' has been defined under section 2(13) of the CGST Act, 2017 to mean audit as *"the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder"*

The objective of getting audit done under GST can be identified from the definition itself and they are as under:

- A. Examination of records, returns and other documents;
- B. Verify the correctness of:
 - a. turnover declared
 - b. taxes paid
 - c. refund claimed
 - d. Input tax credit availed
- C. Examination of compliances being followed

Legal provisions governing audit under GST:

Two important provision which are relevant and important in this context are sec 35(5) and sec 44(2) of the CGST Act.

As per sec 35(5) of the CGST Act, *"every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sec 44(2) and such other documents in such form and manner as may be prescribed"*.

Further, as per sec 44(2) every registered person who is required to get his accounts audited in accordance with the provisions of sec 35(5) shall furnish, electronically, the annual return under sub-sec (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the Audited Annual Financial Statement ("**AAFS**"), and such other particulars as may be prescribed.

In this regard, rule 80(3) of the CGST Rules states that, *"every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sec 35(5) and he shall furnish a copy of the audited annual accounts and a reconciliation statement, duly certified, in GSTR- 9C, electronically through the common portal either directly or through a facilitation centre notified by the commissioner"*.

To whom Audit under GST applicable; Analysis of Legal provision:

Audit under GST is applicable on:

- i) every **registered person**
- ii) whose **turnover/ aggregate turnover** exceeds two crores during a financial year

Now two terms that comes into picture are discussed below:

Meaning of registered person [Sec 2(94)]: *“Registered person means a person who is registered under section 25 but does not include a person having a Unique Identification Number”*

Turnover vs. Aggregate turnover: Sec 35(5) of the CGST Act commences with the expression “every registered person whose **turnover during a financial year** exceeds the prescribed limit”, whereas the relevant rule 80(3) uses the expression “every registered person whose **aggregate turnover during a financial year** exceeds two crore rupees”. It must be noted that the word turnover has not been defined in the GST law, whereas the expressions aggregate turnover has been defined under sec 2(6) of the CGST Act in the following manner:

“(6) “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess”

One may also further note that the expression “turnover in State” or “turnover in Union territory (“UT”)” as defined in sec 2(112) of CGST Act to mean, *“the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess”*. In this backdrop, the following understanding is relevant:

- a) Aggregate turnover is PAN based while “turnover in a State / UT” is similarly worded except to the extent that turnover in a State / UT is limited to a State/UT;
- b) It is therefore, reasonable to interpret that the word turnover used in sec 35(5) of the CGST Act, ought to be understood as aggregate turnover.
- c) For the financial year 2017-18, the GST period comprises of 9 months, whereas the relevant sec 35(5) uses the expression financial year; Therefore, in the absence of clarification from government, also to avoid any cases of default, it is reasonable to understand that to reckon the turnover limits prescribed for audit i.e., INR 2 crores, one has to reckon the turnovers for the whole of the financial year which would also include the first quarter of the financial year 2017-18.

Is Audit under GST applicable to all the entities registered under same PAN even on few registrations, turnover is less than 2 crores?

Please understand this through this illustration. If any registered person is having 4 registration in 4 different states and having turnover of INR 2.05 Crore in State A and turnover of INR 50,000/- each in other 3 states, then, GST Audit in Form GSTR-9C would be required for all 4 states in terms of definition of aggregate turnover, which is calculated PAN based on all India basis.

Further, as per the proviso to section 35(5), GST audit is not applicable to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

Information to be furnished under Form GSTR-9C:

The Form GSTR-9C is broadly divided into 2 Parts i.e. Part A – Reconciliation Statement; and Part B – Certification by the Auditor. Part A is further sub-divided in 5 parts, which contains 16 tables.

Two Day National Conference on GST

Pt. I		Basic Details	
1	Financial Year		
2	GSTIN		
3A	Legal Name		
3B	Trade Name (if any)		
4	Are you liable to audit under any law <<Please Specify>>		
		(Amount in Rs. in all the tables)	
Pt. II		Reconciliation of turnover declared in audited Annual Financial Statement with turnover declared in Annual Return (GSTR9)	
5		Reconciliation of Gross Turnover	
A	Turnover (including exports) as per audited financial statements for the State/UT (For multi-GSTIN units under same PAN the turnover shall be derived from the audited annual financial statement)		
B	Unbilled revenue at the beginning of Financial Year	(+)	
C	Unadjusted advances at the end of the Financial Year	(+)	
D	Deemed supply under Schedule I	(+)	
E	Credit Notes issued after the end of the financial year but reflected in the annual return	(-)	
F	Trade Discounts accounted for in the audited Annual Financial Statement but are not permissible under GST	(+)	
G	Turnover from April 2017 to June 2017	(-)	
H	Unbilled revenue at the end of Financial Year	(-)	
I	Unadjusted Advances at the beginning of the Financial Year	(-)	
J	Credit notes accounted for in the audited Annual Financial Statement but are not permissible under GST	(+)	
K	Adjustments on account of supply of goods by SEZ units to DTA Units	(-)	
L	Turnover for the period under composition scheme	(-)	
M	Adjustments in turnover under section 15 and rules thereunder	(+/-)	
N	Adjustments in turnover due to foreign exchange fluctuations	(+/-)	
O	Adjustments in turnover due to reasons not listed above	(+/-)	

P	Annual turnover after adjustments as above	<Auto>
Q	Turnover as declared in Annual Return (GSTR-9)	
R	Un-Reconciled turnover (Q -P)	ATI
6	Reason for Un-reconciled differences in Annual Gross Turnover	
A	Reason 1	
B	Reason 2	
C	Reason 3	
7	Reconciliation of Taxable Turnover	
A	Annual turnover after adjustments (from 5P above)	<Auto>
B	Value of Exempted, Nil Rated, Non-GST Supplies, No-Supply turnover	
C	Zero rated supplies without payment of tax	
D	Supplies on which tax is to be paid by the recipient on reverse charge basis	
E	Taxable Turnover as per adjustments above(A-B-C-D)	<Auto>
F	Taxable turnover as per liability declared in Annual Return (GSTR-9)	
G	Unreconciled Taxable Turnover(F-E)	AT 2
8	Reasons for Un-reconciled difference in Annual Gross Turnover	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

PT. III	RECONCILIATION OF TAX PAID
9	RECONCILIATION OF RATE WISE LIABILITY AND AMOUNT PAYABLE THEREON

	Description	Taxable Value	Tax Payable			
			CGST	SGST/UTGST	IGST	Cess
A	5%					
B	5%(RC)					
C	12%					
D	12%(RC)					
E	18%					
F	18%(RC)					
G	28%					
H	28% (RC)					
I	3%					
J	0.25%					
K	0.10%					
L	Interest					

Two Day National Conference on GST

M	Late Fee					
N	Penalty					
O	Others (please specify)					
P	Total Amount to be paid as per tables above		<Auto>	<Auto>	<Auto>	<Auto>
Q	Total amount declared in Annual Return (GSTR-9)					
R	Unreconciled payment of amount (PT1)					

10	Reasons for unreconciled payment of amount	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

11	Additional amount payable but not paid (due to reasons specified under Tables 6,8 and 10 above)
	To be paid through Cash

Description	Taxable Value	Tax Payable		
		IGST	Cess	
CGST	SGST/UTGST			
5%				
12%				
18%				
28%				
3%				
0.25%				
0.10%				
Interest				
Late Fee				
Penalty				
Others (please specify)				

Pt. IV	Reconciliation of Input Tax Credit (ITC)		
12	Reconciliation of Net Input Tax Credit (ITC)		
A	ITC availed as per audited Annual Financial Statement for the State/UT (For multi-GSTIN units under same PAN this should be derived from books of account)		
B	ITC booked in earlier FY's claimed in Current FY	(+)	

C	ITC booked in Current FY to be claimed in Subsequent FY's	(-)	
D	ITC availed as per Audited Financial Statements or Books of Accounts		<Auto>
E	ITC Claimed in Annual Return (GSTR-9)		
F	Unreconciled ITC		ITC 1

13 Reasons for un-reconciled difference in ITC		
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

14 Reconciliation of ITC declared in Annual Return (GSTR-9) with ITC availed on expenses as per audited Annual Financial Statement or books of account				
	Description	Value	Amount of Total ITC	Amount of eligible ITC availed
A	Purchases			
B	Freight/Carriage			
C	Power and Fuel			
D	Imported goods (including received from SEZs)			
E	Rent and Insurance			
F	Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples			
G	Royalties			
H	Employees' Cost (Salaries, wages, Bonus etc.)			
I	Conveyance charges			
J	Bank Charges			
K	Entertainment charges			
L	Stationery Expenses (including postage etc.)			
M	Repair and Maintenance			
N	Other Miscellaneous expenses			
O	Capital goods			
P	Any other expense 1			
Q	Any other expense 2			
R	Total amount of eligible ITC availed			<<Auto>>
S	ITC claimed in Annual Return (GSTR-9)			
T	Un-reconciled ITC (ITC 2)			

15	Reasons for unreconciled difference in ITC	
A	Reason 1	<<Text>>
B	Reason 2	<<Text>>
C	Reason 3	<<Text>>

16	Tax Payable on un-reconciled difference in ITC (due to reasons specifies in 13 and 15 above)	
	Description	Amount Payable
	Central Tax	
	State/UT Tax	
	Integrated Tax	
	Cess	
	Interest	
	Penalty	

Part-V: Auditor's recommendation on additional liability due to non-reconciliation

→Part V consists of the auditor's recommendation on the additional liability to be discharged by the taxpayer due to non-reconciliation of turnover or non-reconciliation of input tax credit. The auditor shall also recommend if there is any other amount to be paid for supplies not included in the Annual Return. Any refund which has been erroneously taken and shall be paid back to the Government shall also be declared in this table. Lastly, any other outstanding demands which is recommended to be settled by the auditor shall be declared in this Table.

→After the form is filled verification shall be done and Part-B shall be filled, which pertains to certification.

Conclusion:

For determination of additional tax liability, the Auditor needs to review all the transactions, since, the Auditor is also required to check such cases relating to supplies which are not reported in Annual Return. Performing this reconciliation accurately and analysing the reasons for the differences, falls within the domain of his responsibility. Making disclosures in respect of the differences which are accurate, exhaustive and understandable forms an intrinsic part of his duty.

For any un-reconciled difference between the data reported in GSTR-9 and GSTR-9C, reason for such differences are required to be reported in Table 6, Table 8, Table 10, Table 13 and Table 15 along with quantification of additional liability to be paid.

Profile

CA Ashok Batra, New Delhi

ASHOK BATRA became a qualified Chartered Accountant in 1981. Subsequently, he became Law Graduate in 2009. Besides, he is an alumnus of Shri Ram College of Commerce, Delhi. He completed his graduation from the aforesaid college in 1977.

Presently, he is a senior partner in M/s A.K. Batra & Associates, a Chartered Accountancy Firm which he established in 1982. He has excellent academic credentials and vast exposure in the field of Taxation with specialization in Service Tax and GST. He possesses rich and varied experience of more than 35 years in Business and Taxation Consultancy.

His deep desire to share his painstakingly built pool of knowledge with others has inspired him to write articles and books for professionals such as Chartered Accountants and Advocates. He has so far written the following books on GST for the professionals:-

1. GST Acts, Rules & Forms with Referencer [5th Edition]
2. GST Law and Procedure
3. Concise Commentary on GST

He has addressed many seminars and conferences organized by Professional Bodies/Institutes, Chamber of Commerce, Trade Associations, National Academy of Customs, Excise and Narcotics [NACEN] at several places in India. He has also delivered numerous talks on Service Tax, VAT and more recently on GST at various forums. He is also a faculty of "Certificate Course on Indirect Taxes" of ICAI at all leading centres spread across the length and breadth of the country. Furthermore, he is invited to deliver [Union] Budget Talk in respect of Service Tax /GST Proposals & Amendments by many Study Circles, Branches and/ or Regional Councils of ICAI as well as by leading Chambers of Commerce and Industry and Media Channels. He also has the privilege of being a special invitee to the Indirect Taxes Committee of ICAI.

Some of the PSUs with which Mr. Batra is associated are as under:

- Mahanagar Telephone Nigam Limited (MTNL)
- Public Health Foundation of India (PHFI)
- Employees Provident Fund Organization (EPFO)
- Punjab National Bank (PNB)
- National Informatics Centre Services Inc. (NICSI)
- Delhi Metro Rail Corporation Ltd. (DMRC)
- Lucknow Metro Rail Corporation Ltd. (LMRC)
- HSCC (India) Ltd.
- NBCC (India) Ltd.
- Delhi Development Authority (DDA)
- Rail Land Development Authority (RLDA)

Technical Session

GST on real Estate and Works Contract

CA Ashok Batra, New Delhi

Profile

Adv. G.Shivadass, Bengaluru

Mr. G Shivadass is a Senior Advocate (designated by the Karnataka High Court in 2018) with more than 25 years of standing at the bar. He is well respected at various legal forums, and primarily appears in High Courts including High Court at Karnataka, Andhra Pradesh, Kerala, Kolkata, Delhi and the Supreme Court of India.

His specializations include Central Excise, Customs, EXIM policy, Anti-Dumping Issues, Service Tax, Value Added Tax and WTO Laws. He also an expert in issues relating to Direct Tax, Corporate and Commercial Laws and Intellectual Property Rights.

Before entering private practice, Shivadass held various positions in the Department of Revenue for a period of 12 years. In all he has experience of over 35 years in the field of taxation.

Prior to being designated by the Karnataka High Court, he was the Principal Partner of Lakshmi Kumaran & Sridharan and lead the firm's Bangalore office.

Shivadass delivers lectures on indirect tax issues, patent laws and international trade laws at various forums including ICAI and ICSI Chapters, CII Chapters at Bangalore, Mysore, New Delhi, Pune, Hyderabad, Kochi, Thrissur, Thiruvananthapuram, and Coimbatore, ASSOCHAM and also, Chamber of Industry and Commerce, Bangalore.

Shivadass has been consistently ranked in the top 10 Indirect Tax Practitioners in India. He has also been to the Paris Air show to be a part of a panel discussion on the Taxation System in India.

He is a graduate in commerce, a post graduate in political science and holds a degree in law.

Latest amendments in GST- law, notifications, circulars and orders

Adv. G.Shivadass, Bengaluru

- GST AMENDMENT ACT, 2018
- KERALA FLOOD CESS
- RECENT CIRCULARS
- RECENT JUDICIAL PRONOUNCEMENTS/ AAR's UNDER GST

GST Amendment Act, 2018

- Section 7 – “Supply” definition amended-
- “(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.”

Activities should first satisfy the definition of Supply, for the purpose of classifying as ‘supply of goods’ or ‘supply of services’ in terms of Schedule II

- Following transactions/ supplies included in Schedule-III
- “7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
- 8. (a) Supply of warehoused goods to any person before clearance for home consumption;
- (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.”

Drop Shipment and High-Sea sales included under Schedule-III, making it not liable to GST

- Section 9(4) mandating registered person to discharge GST under RCM for the purchases made from a unregistered person amended (the said provision had been kept in abeyance after considering the difficulties faced by trade)
- “(4) The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.”.

Government shall now notify a class of persons and specific transactions which would be taxable under RCM, when reconceived from unregistered person

- Section -10 providing for Composition Scheme Amended-
- In proviso to Section for the words “one crore rupees”, the words “one crore and fifty lakh rupees” shall be substituted;
- “Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.”;

1. Limit for composition scheme has been increased from Rs. 1 crores to Rs. 1.5 Crores
2. Composition dealers may now supply services of value not exceeding- 10% of turnover in a State or Union territory in the preceding financial year or 5 Lakhs, whichever is higher

- Explanation to Section 16(b) has been inserted

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

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

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

Impact

- A bill to - ship to for a service is possible.
- The person eligible to avail credit in a bill to ship transaction would be the 'Bill to party'.
- Insertion of Explanation in Section 17(3)- providing for reversal of credit on common inputs/ input services-
- “For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.”

To determine the value of ‘Exempt Supply’, the activities in Schedule-III shall not be considered, except a transaction of sale of constructed building after receipt of completion certificate

Schedule-III

- Para-5

“Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”

- Para 5(b) of Schedule II-

“5. Supply of services

The following shall be treated as supply of services, namely :—

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation. — For the purposes of this clause —

(1) the expression “competent authority” means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure;”

GST Amendment Act

- Amendment to Section 17(5) providing for restriction in availing credit-
- “ Input tax credit shall not be available in respect of-
- (a) motor vehicles for transportation of persons having approved seating capacity of not more than

thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or (C)
- (C) imparting training on driving such motor vehicles;
- (aa) vessels and aircraft except when they are used—
 - (i) for making the following taxable supplies, namely:—
 - (A) further supply of such vessels or aircraft; or
 - (B) transportation of passengers; or
 - (C) imparting training on navigating such vessels; or
 - (D) imparting training on flying such aircraft;
 - (ii) for transportation of goods;

Credit in respect of motor vehicles having seating capacity of not more than 13 persons shall be ineligible, until they are used for specific purposes as mentioned.

Credit in respect of vessels and aircrafts is also not eligible, subject to certain restrictions.

- Amendment to Section 17(5) providing for restriction in availing credit-
(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

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

- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
- (ii) where received by a taxable person engaged—
 - (I) in the manufacture of such motor vehicles, vessels or aircraft; or
 - (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

Credit pertaining to general insurance service, repair and maintenance, etc. in respect of motor vehicles, vessels and aircrafts is also restricted

Amendment to Section 17(5)- credit shall not be eligible in respect of =

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

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance: Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or *as an element of a taxable composite or mixed supply*;
- (ii) membership of a club, health and fitness centre; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession: Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.”

Businesses can avail ITC benefit in respect of such input services when the same is mandatory to be provided as per regulations.

- Section 34 of Act providing for issuance for one credit note for one invoice has been amended to enable issuance of a credit note for multiple tax invoices

The requirement for issuance of invoice wise debit/credit note is removed, and the facility of consolidated credit/debit notes for multiple invoices is to be allowed.

This should especially help such businesses where year-end discounts are provided on the basis of the value of transactions undertaken during the year and one to one nexus with invoices is not possible.

- Amendment to Section 49-
- “49A. Notwithstanding anything contained in section 49, the input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.
- 49B. Notwithstanding anything contained in this Chapter and subject to the provisions of clause (e) and clause (f) of sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, State tax or Union territory tax, as the case may be, towards payment of any such tax.”

Insertion of Rule 88A

- 88A- Order of utilization of input tax credit.- Input tax credit on account of integrated tax shall first be utilized towards payment of integrated tax, and the amount remaining, if any, may be utilized towards the payment of ***central tax and State tax or Union territory tax***, as the case may be, in any order:
- Provided that the input tax credit on account of central tax, State tax or Union territory tax shall be utilized towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilized fully.

IMPACT OF SECTION 49A AND RULE 88A

- Section 49A prescribed that IGST should be utilized against IGST, CGST and SGST, in that order. This led to a situation where credit pertaining CGST would be accumulated and payment towards SGST may have to be made in cash.
- Rule 88A of the CGST Rules however allows the assessee to use the IGST credit available (after discharging IGST liability) against CGST or SGST(UTGST) in any proportion

Position prior to 01.02.2019 restored with a condition that ITC relating to IGST must be completely exhausted first.

KERALA FLOOD CESS



CLAUSE 14 OF THE KERALA FINANCE BILL, 2019

- 14. Kerala Flood Cess.- (1) There shall be levied a cess called the Kerala Flood Cess on such **intra-State** supplies of goods or services or both made by a taxable person as provided for in section 9 of the Kerala State Goods and Services Tax Act, 2017 and collected in such manner, as may be prescribed, for the purposes of providing **reconstruction, rehabilitation and compensation needs** which had arisen due to the massive flood which occurred in the State of Kerala in the month of August, 2018 **for a period of two years**, with effect from the date notified by the Government in the Official Gazette
- Provided that no such cess shall be leviable on,-
 - supplies made by a taxable person who has decided to opt for composition levy under section 10 of the KGST Act, 2017 ;
 - supplies of goods and services or both exempted by notifications issued under section 11 of the KGST Act, 2017; and
 - supplies of goods and services or both made by a registered taxable person to another registered taxable person.

In the 32nd GST Council Meeting held on 10.01.2019, the Council approved levy of 1% calamity cess on intra State supply of goods and services within the State of Kerala for a period of 2 years.

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CLAUSE 14 OF THE KERALA FINANCE BILL, 2019

- (2) The cess shall be levied on such supplies of goods and services as are specified in column (2) of the table below, on

- Notification G.O.(P) No. 79/2019/ Taxes dt 25.05.2019 -
The Government of Kerala has appointed the 1st day of June, 2019 as the date with effect from which the cess shall be levied and collected.
- Subsequently, another Notification has been issued, prescribing 1st day of July as the date of implementation

TABLE

Sl.No	Description of goods or services or both	Rate of cess
(1)	(2)	(3)
1.	Supplies of goods for which tax rate is fixed at 0.125 % by notification issued under sub-section(1) of section 9 of the Kerala State Goods and Services Tax Act, 2017 (20 of 2017).	Nil
2.	Supplies of goods for which tax rate is fixed at 1.5 % by notification issued under sub-section(1) of section 9 of the Kerala State Goods and Services Tax Act, 2017 (20 of 2017).	0.25%
3.	Supplies of goods for which tax rate is fixed at 2.5 % by notification issued under sub-section(1) of section 9 of the Kerala State Goods and Services Tax Act, 2017 (20 of 2017).	Nil
4.	Supplies of services for which tax rate is fixed at 2.5 % by notification issued under sub-section(1) of section 9 of the Kerala State Goods and Services Tax Act, 2017 (20 of 2017).	1%
5.	Supplies of goods and services or both for which tax rate is fixed at 6%, 9% and 14% by notifications issued under sub-section(1) of section 9 of the Kerala State Goods and Services Tax Act, 2017 (20 of 2017).	1%

Section 15 of KGST ACT

- 15 Value of taxable supply.
- (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- **(2) The value of supply shall include:-**
 - **(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the Central Goods and Services Tax Act, 2017 and the Goods and Services Tax (Compensation to States) Act, 2017 if charged separately by the supplier;**
 - (b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;
 - (c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;
 - (d) interest or late fee or penalty for delayed payment of any consideration for any supply; and
 - (e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation.-For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

CLAUSE 14 OF THE KERALA FINANCE BILL, 2019

(3) Every taxable person, making a taxable supply of goods or services or both, shall,-

(a) pay the amount of cess as payable under this section in such manner and

(b) furnish such returns in such format along with the returns to be filed under the KGST Act, 2017 and in such manner, as may be prescribed.

(4) The provisions of the KGST Act, 2017 and CGST Act, 2017 and the rules made thereunder, including those relating to definitions, authorities, assessment, audits, non-levy, short-levy, interest, appeals, recovery of tax, offences and penalties, shall, as far as may be, mutatis mutandis, apply in relation to the levy and collection of the cess leviable under section 9 on the intra-State supply of goods and services, as they apply in relation to the levy and collection of tax on such intra-State supplies under the said Act or the rules made there under

IMPLICATIONS

Cess shall be levied on intra-state supplies of goods and services.

It shall be levied only on supplies undertaken from a registered person to a unregistered person, i.e. on a B to C transaction.

The value shall be determined in terms of Section 15, i.e. CGST and KGST shall not be included in the value of the supply.

It shall be levied for a period of 2 years starting from 01.06.2019.

The rate of cess shall be as per the table contained under clause 14(2)

SCENARIOS

SCENARIO-1			SCENARIO-2		
Particulars	Amount	Comment	Particulars	Amount	Comment
Value	1000		Value	1000	
CESS	10	(1% on 1000)	CESS	10	(1% on 1000)
GST	180	(18% on 1000)	GST	181.8	(18% on 1010)
Total	1190		Total	1191.8	

Is cess levied under the provision of KGST Act/ CGST Act?

RECENT NOTIFICATIONS/ CIRCULARS

Circular No. 72/46/2018-GST dated 26.10.2018

Activity	Value of the Goods	Input Tax Credit	Document
Fresh Supply	The purchase price of the goods <u>may be</u> taken as the value of such return supply	<ul style="list-style-type: none"> Eligible subject to conditions in Section 16. In case of destruction, reversal required in terms of Section 17(5)(h). The value of reversal is the ITC availed on the returned goods and not ITC attributable to manufacture of such goods 	Invoice
Supply Return	Original Purchase Price	<ul style="list-style-type: none"> Tax can be adjusted only if credit note issued within the time limit prescribed under Section 34(2) of the CGST Act. In case of destruction, ITC attributable to the manufacture of such goods to be reversed in terms of the provisions of Section 17(5)(h) of the CGST Act. 	Credit Note and Delivery Challan

The Circular also provides an option to the retailers/ wholesaler to return the goods by issuing a commercial credit note along with delivery challan if the time period mentioned in Section 34(2) has elapsed. In such cases, there is no GST adjustment allowed.

EXPIRED GOODS RETURN



CIRCULAR 92/2019 dated 07.03.2019

Free samples and gifts:

Section 7(1)(a) of the GST Act provides the expression “supply” includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

- Goods or services or both which are supplied free of cost (without any consideration) shall not be treated as “supply” under GST (except in case of activities mentioned in Schedule I of the said Act).
- Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as „supply“ under GST, except where the activity falls within the ambit of Schedule I of the said Act.
- Further, Section 17(5)(h) of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.
- It is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration.
- However, where the activity of distribution of gifts or free samples falls within the scope of “supply” on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC.

FREE SAMPLES



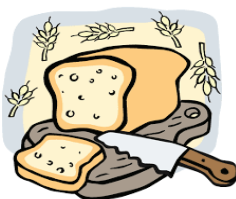
CIRCULAR 92/2019 dated 07.03.2019

Contradictions in the Circular?

BUY ONE GET ONE FREE



Buy Jam



Get Bread Free.



CAN WE SAY IT'S FREE CONSIDERING DEFINITION OF CONSIDERATION?

CAN WE SAY FREE GOODS IS FOR FURTHERANCE OF BUSSINESS?

BUY ONE GET ONE FREE



- This would constitute two supplies for a single consideration.
- Rate of tax to be determined based on whether it would be a mixed or a composite supply.
- No requirement to reverse ITC.

Buy Shampoo get conditioner free



- Discount can be excluded from the value of supply.
- Recipient should reverse the credit attributable to such discount.
- No impact on the credit availed by the supplier.

CIRCULAR 92/2019 dated 07.03.2019

- Whether credit notes(s) Section 34(1) of the CGST Act can be issued in such cases even if the conditions laid down in clause Section 15(3)(b) of the GST Act are not satisfied?
- Clarification-
 - financial / commercial credit note(s) can be issued by the supplier even if the conditions mentioned Section 15(3)(b) of GST Act are not satisfied. In other words, credit note(s) can be issued as a commercial transaction between the two contracting parties.

Section 15(3)-

The value of the supply shall not include any discount which is given —

- before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- after the supply has been effected, if —
 - such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

SECONDARY DISCOUNTS

- Commercial/ Financial credit note can be issued.
- No impact on valuation, i.e. discount cannot be reduced from the value of supply.
 - No impact on ITC in the hands of the supplier.

- Manufacturer

- Distributor

- Retailer
- 

RECENT JUDICIAL PRONOUNCEMENTS/ AAR's UNDER GST

HIGH COURT OF KARNATAKA

WRIT PETITION No.12812/2019 (T - RES)

M/s Kongovi Private Limited

Vs.

Union of India & Service Tax & Others.

Whether an assessee can transition Cenvat credit, inadvertently not recorded in ER-1 and consequently not carried forward in GST TRAN-1?



FACTS AND ISSUES

FACTS

- The assessee had filed TRAN-1 and amended the TRAN-1 within the statutory due date.
- Subsequently, during internal audit, it was observed that CVD and other certain other eligible credit was missed out inadvertently

ISSUE

- Whether an assessee can be allowed to revise the TRAN-1 for the second time, due to technical glitch in the ERP software of the assessee.

RELEVANT PROVISION

140. Transitional arrangements for input tax credit.

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

Rule 117. Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day

- [1] Every registered person entitled to take credit of input tax under section 140 shall, within ninety days of the appointed day, submit a declaration electronically in FORM GST TRAN-1, duly signed, on the common portal specifying therein, separately, the amount of input tax credit [of eligible duties and taxes, as defined in Explanation 2 to section 140] to which he is entitled under the provisions of the said section.

"120A. Revision of declaration in FORM GST TRAN-1.

- Every registered person who has submitted a declaration electronically in FORM GST TRAN-1 within the time period specified in rule 117, rule 118, rule 119 and rule 120 may revise such declaration once and submit the revised declaration in FORM GST TRAN-1 electronically on the common portal within the time period specified in the said rules or such further period as may be extended by the Commissioner in this behalf."

172. Removal of difficulties

- [1] If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder; as may be necessary or expedient for the purpose of removing the said difficulty:
- PROVIDED that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.
- [2] Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament."

HELD

- Section 172 encompasses wide range of powers and the same can be invoked for any difficulty faced by the assessee on introduction of GST.
- The technical glitches arising out of the petitioner / assessee's inadvertence also requires to be addressed by the Nodal Officers appointed in terms of Circular instructions dated 03.04.2018.
- The object and purpose of the transitional arrangements made under Section 140 of the Act requires to be achieved to its logical end and hence the credit allowed to be transition after due verification of the documents.

HIGH COURT OF ORISSA

W. P. (C) No. 20463 of 2018.

**M/s Safari Retreats Private Limited &
Another****Vs.****Chief Commissioner of Central Goods &
Service Tax & Others.**Input tax credit on inputs and input services used for
undertaking construction activity**RELEVANT PROVISION****SCHEDULE II- Activities to be treated as supply of goods or supply of services****5. Supply of services**

The following shall be treated as supply of services, namely:—

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.—For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or (ii) a chartered engineer registered with the Institution of Engineers (India); or (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;

RELEVANT PROVISION

- **Section 17: Apportionment of credit and blocked credits.**

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

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

IMPACT OF SECTION 17(5) R/W SCHEDULE-II



- Sold Before Construction Certificate.
- Credit Available.

Under Construction



- Sold After Construction Certificate.
- Credit Not Available.

Constructed

RENTED AFTER CONSTRUCTION ?

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RELEVANT FACTS

Shopping Mall Constructed

With Cement, Sand, Steel, Aluminium, Wires, Plywood, Paint, Lifts, Escalators, Air-Conditioning Plant, Chillers, Electrical Equipment, etc.

and also Services in form of Consultancy, Architectural, Legal, Professional, and Engineering Service etc.

For the purpose of renting out units to persons.

CONTENTION OF THE PARTIES

Petitioner	Respondent
Section 17(5)(d) of the CGST Act is to be read down for the purpose of interpretation in continuance to give benefit to the assessee or to the person who has/is required to pay output GST liability.	Interpretation of Section 17(5)(d) of the CGST Act is to be made as per the language used.

HELD

The very purpose of the Act is to make Uniform Provisions for levy collection of tax, intra state supply of goods and services both Central or State and to prevent multi taxation.

Section 17(5)(d) of the CGST Act, if interpreted narrowly it frustrates the very Objective of the Act

The Assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST, which is required to be paid under Section 17(5)(d) of the CGST Act.

HIGH COURT OF ORISSA

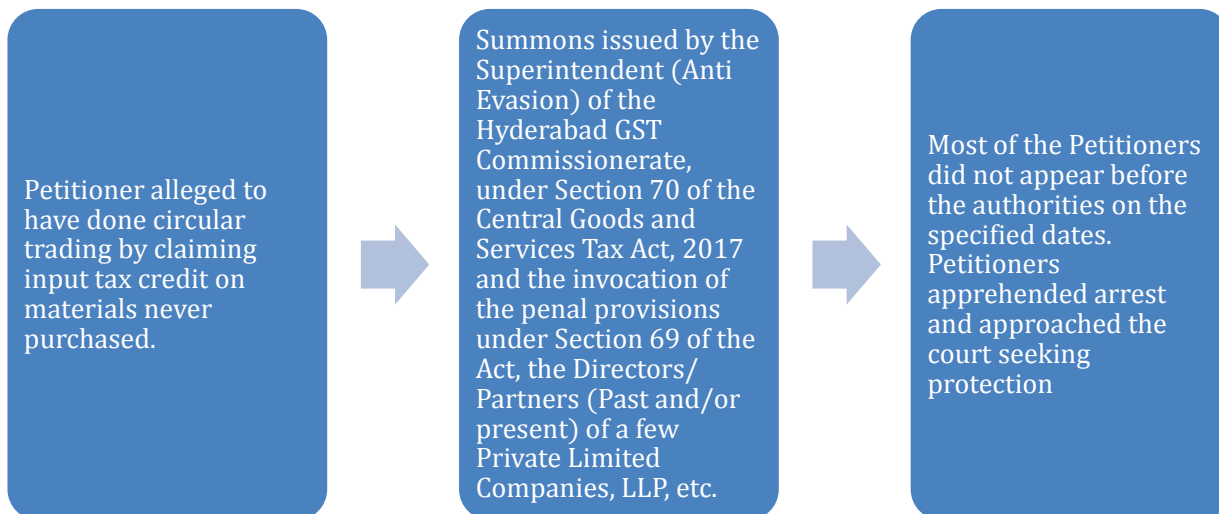
W. P. (C) No. 4764 of 2019

P. V. Ramana Reddy
Vs.
Union of India & Others.

Power to arrest under GST



RELEVANT FACTS



RELEVANT PROVISION

69. Power to arrest.

- (1) Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or sub-section (2) of the said section, he may, by order, authorize any officer of central tax to arrest such person.
- (2) Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within twenty-four hours.
- (3) Subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974),--
 - (a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;
 - (b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

70. Power to summon persons to give evidence and produce documents.

- (1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).
- (2) Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

RELEVANT PROVISION

- **132. Punishment for certain offences-** (1) Whoever commits any of the following offences, namely:-
 - (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - (c) avails input tax credit using such invoice or bill referred to in clause (b);
- shall be punishable--
 - (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
 - (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- (3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.

- **(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.**
- **(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (f) of that sub-section shall be cognizable and non-bailable.**
- (6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.
 - *Explanation.-* For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

~~Section 41A - Notice of appearance before police officer~~
~~Section 41A - Notice of appearance before police officer~~

RELEVANT PROVISION- CrPC

Section 41A - Notice of appearance before police officer

(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.

HELD

- Since no first information report gets registered before the power of arrest under Section 69(1) of the CGST Act, 2017 is invoked, the petitioners cannot invoke Section 438 of the Code of Criminal Procedure for anticipatory bail. Therefore, the only way they can seek protection against pre-trial arrest (actually pre-prosecution arrest) is to invoke the jurisdiction of this Court under Article 226 of the Constitution of India.
- The enquiry by the officers of the GST Commissionerate is not a criminal proceeding, it is nevertheless a judicial proceeding.
- Even though Section 69(1) of the CGST Act, 2017 does not confer any power upon the Commissioner to order the arrest of a person, who has committed an offence which is non-cognizable and bailable, sub-Section (3) of Section 69 of the CGST Act, 2017 deals with the grant of bail, remand to custody and the procedure for grant of bail to a person accused of the commission of non-cognizable and bailable offences. Thus, there is some incongruity between sub-Sections (1) and (3) of Section 69 read with section 132 of the CGST Act, 2017.
- The duty imposed upon a Police Officer under Section 41A(1) Cr. P.C., to summon a person for enquiry in relation to a cognizable offence, is what is substantially ingrained in Section 70(1) of the CGST Act. Though Section 69(1) which confers powers upon the Commissioner to order the arrest of a person does not contain the safeguards that are incorporated in Section 41 and 41A of Cr. P.C., we think Section 70(1) of the CGST Act takes care of the contingency.

HELD

Under Section 41A(3) of Cr. P.C., "reasons are to be recorded", once the Police Officer is of the opinion that the persons concerned ought to be arrested. In contrast, Section 69(1) uses the phrase "reasons to believe". There is a vast difference between "reasons to be recorded" and "reasons to believe."

The duty imposed upon a Police Officer under Section 41A(1) Cr. P.C., to summon a person for enquiry in relation to a cognizable offence, is what is substantially ingrained in Section 70(1) of the CGST Act

If reasons to believe are recorded in the files, we do not think it is necessary to record those reasons in the authorization for arrest under Section 69(1) of the CGST Act.

The petitioners have allegedly involved in circular trading with a turnover on paper to the tune of about Rs.1,289.00 crores and a benefit of ITC to the tune of Rs.225.00 crores and despite the finding that the writ petitions are maintainable and that the protection under Sections 41 and 41-A of Cr. P.C., may be available to persons said to have committed cognizable and non-bailable offences under this Act and despite that there are incongruities within Section 69 and between Sections 69 and 132 of the CGST Act, 2017, we do not wish to grant relief to the petitioners against arrest, in view of the special circumstances.

- An appeal against this order has been dismissed by Supreme Court (reported at 2019-VIL-22-SC).
 - The SC has thereafter has agreed to re-examine power.

OTHER DECISIONS

M/s JAYACHANDRAN ALLOYS (P) LTD Vs THE SUPERINTENDENT OF GST AND CENTRAL EXCISE & ORS.

- The High Court of Madras has held -
- While the activities of an assessee contrary to the scheme of the Act are liable to be addressed swiftly and effectively by the Department, (the statute in question being a revenue statute where strict interpretation is the norm), officials cannot be seen to be acting in excess of the authority vested in them under the statute. ***I am of the considered view that the power to punish set out in Section 132 of the Act would stand triggered only once it is established that an assessee has 'committed' an offence that has to necessarily be post-determination of the demand due from an assessee,*** that itself has to necessarily follow the process of an assessment.

HIGH COURT FOR THE STATE OF TELANGANA

W. P. No. 44517 of 2018.

2019-VIL-175-TEL

M/s Megha Engineering & Infrastructures Ltd. Vs.

In case of delay in filing of returns, whether interest payable on Net Liability (after deduction of ITC) or on Gross Liability?

Ot



RELEVANT PROVISION

Section 50 - Interest on delayed payment of tax.

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

INTEREST COMPUTATION

GSTR 3B for the Month of April, 2019 filed on June 10th instead of 20th May, 2019.

	Scenario 1	Scenario 2
GST Liability	30,000	30,000
Input Tax Credit	10,000	10,000
Liability	20,000	20,000
Interest [18%]	Payable on Net Liability - Rs. 197.26/-	Payable on Gross Liability - Rs.295.89/-

Which one is Right?

QUESTION RAISED

Whether the Liability to pay interest under Section 50 of the CGST Act, 2017 is confined only to the net tax liability or whether interest is payable on the total tax liability including a portion of which is liable to be set off against ITC ?

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HELD

1. Until a return is filed as self assessed, no entitlement to credit and no actual entry of credit in the electronic ledger takes place.

2. No payment can be made from such a Credit Entry.

3. The Tax already paid on the inputs of supplies of goods and services, available somewhere in the air, should be tapped and brought in form of a Credit Entry into the Electronic Credit Ledger and payment has to be made from out of the same.

4. If no payment is made, the mere availability of the same, there in the cloud, will not tantamount to actual payment.

5. Petitioner filed returns Belatedly. As a consequence, the payment of the tax liability, partly in cash and partly in form of Claim for ITC was made beyond the period prescribed.

6. Liability to pay Interest under Section 50 (1) arises automatically. Claim made by Department for interest on the ITC portion of the Tax cannot be faulted.

The Delhi HC in the case of M/s. Lifestyle v. UOI [WP (C) No.6055/2019], on similar question of law has admitted the matter and directed the department to not take any coercive actions.

CASE LAWS UNDER ERSTWHILE LAW

COMMISSIONER OF C. EX., S.T. & CUS., COCHIN v. FACT LTD.

reported at 2017 (355) E.L.T. 55 (Ker.)

- The Hon'ble High Court while remanding the matter has held as follows-" if after such enquiry it is found **that the input credit was available, the respondent will not be liable to pay interest for the reason that it is only a question of belated adjustment of duty credit** of the input credit available. If on the other hand after such enquiry it is found that there is short fall or deficit in the input credit available, the respondent will necessarily be liable to pay interest for the period of default."

DEPUTY COMM. OF C. EX., THRISSUR-1 v. APOLLO TYRES LTD

reported at 2012 (281) E.L.T. 370 (Ker.)

- The Hon'ble High Court in this case held that- "We however hold that if duty is paid against demand with delay other than through adjustment of credit available, interest is automatic and it is a matter of voluntary payment of interest by the assessee or payment on demand by the adjudicating officer which does not require any adjudication except the arithmetical calculation for which no adjudication is called for."

HIGH COURT FOR THE STATE OF TELANGANA

W. P. No. 44517 of 2018.

2019-VIL-175-TEL

M/s Maxim Tubes Company Pvt. Ltd.

Vs.

Union of India



RELEVANT FACTS

Petitioner is a manufacturer of goods like Stainless Steel Seamless & Welded Pipes, Tubes, etc. and has been exporting substantial quantities of such goods

Under FTP, Advance Authorization is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage).

Considering the peculiarities of export business in the international trade, the facility of exports in anticipation of license has also been allowed by the respondents to the exporters.

Goods imported against an Advance Authorization, i.e. Notification No.18/2015- Cus., allowed exemption from various duties which were leviable till then; but the new levies of IGST and GST compensation cess were not referred to at paragraph 1 of the notification; and therefore the custom authorities all over the country started levying and collecting these new levies even for the goods imported into India against an Advance Authorization.

- The Central Government subsequently has issued an amending Notification No.79/2017-Customs dated 13.10.2017, whereby six existing notifications have been amended, including Notification No.18/2015-Customs for imports made against Advance Authorization
- However, the said Notification added a condition (xii), prescribed a pre-import condition, i.e. it mandated the petitioners to showcase records indicating one-to-one co-relation of the imported inputs (under advance authorization) with the finished products.
- Pre-import condition would also mean that the exemption of the notification would not be admissible when goods manufactured were exported in anticipation of License/Authorization, because such would be a case of export having been made first and duty free import against the Authorization having been made subsequently.

The "pre-import" condition was challenged by the Petitioner in the present case

HELD

- The "pre-import condition" contained in paragraph 4.14 of the Foreign Trade Policy, 2015-2020 inserted vide Notification No.33/2015-2020 dated 13.10.2017 and inserted vide clause (xii) in Notification No.18/2015-Cus vide Notification No.79/2017-Cus dated 13.10.2017, are hereby struck down as being *ultra vires* the Advance Authorization Scheme as contained in the Foreign Trade Policy, 2015-2020 as well as the provisions of the Handbook of Procedures.

ADVANCED AUTHORITY RULINGS

Citation	Issue	Held
M/s COLUMBIA ASIA HOSPITALS PVT LTD 2018-VIL-30-AAAR	Whether the activities performed by the employees at the Corporate Office in the course of or in relation to employment, such as accounting, other administrative and IT System Maintenance for the units located in the other states as well i.e. distinct persons as per Section 25(4) of the CGST Act shall be treated as supply is per Entry 2 of Schedule I of the CGST Act or it shall not be treated as supply of Service as per Entry I of Schedule III of the CGST Act?	<p>The Corporate Office of the Appellant is providing a service to its other distinct units by way of carrying out activities such as accounting, administrative work, etc. with the use of the services of the employees working in the Corporate, the outcome of which benefits all the other units and such activity is to be treated as a taxable supply in terms of the entry 2 of Schedule I read with Section 7 of the CGST Act.</p> <p>The services of the employees at the Corporate Office in so far as they are benefitting the other registered units of the Appellant, will not be termed as 'employee-employer relationship' and will therefore not fall within the purview of entry 1 to Schedule III.</p>

Citation	Issue	Held
SARJ EDUCATIONAL CENTRE 2019-VIL-54-AAR	Whether the service to students for lodging along with food is a composite supply within the meaning of section 2(30) of the GST Act, and whether supply of such service is eligible for exemption applicable rate of tax for the combination of services	The Applicant is offering several individual services in two different combinations to the recipients, depending upon their need for lodging facility. None of the combinations of services being offered is a composite supply, as defined under section 2(30) of the GST Act. They are mixed supplies within the meaning of section 2(74) and taxable in accordance with section 8(b) of the GST Act. Being mixed supply, value of the entire combination of services offered is taxable at the applicable rate

Ar	Issue	Held
BENGAL PEERLESS HOUSING DEVELOPMENT COMPANY LIMITED 2019-VIL-130-AAR	In addition to the construction service, the applicant provides services like preferential location service, which includes services of floor rise and directional advantage. Whether the supply of these services constitutes a composite supply with construction service as the principal supply?	The Applicant is providing service of construction of a dwelling unit in a residential complex, bundled with services relating to the preferential location of the unit and right to use car parking space and common areas and facilities. It is a composite supply, construction service being the principal supply. Entire value of the composite supply is, therefore, to be treated, for the purpose of taxation, as supply of construction service, taxable.

Citation	Issue	Held
SESCO GOLD LTD. 2019-VIL-133-AAR	Whether the input tax credit is admissible when he settles through book adjustment the debt created on inward supplies from the Franchisee.?	The Applicant can pay the consideration for inward supplies by way of setting off book debt. The GST Act and rules made there under does not restrict the recipient from claiming the input tax credit when consideration is paid through book adjustment, subject to the conditions and restrictions as may be prescribed and in the manner specified in Sections 16 and 49 of the GST Act.

Citation	Issue	Held
E-SQUARE LEISURE PVT LTD 2019-VIL-114-AAR	Whether GST would be applicable on interest free security deposit and notional interest if any? In case GST is applicable what would be value of notional interest for levy of GST?	Proviso to Section 2(31) defining 'Consideration' reads as <i>"Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;"</i> Therefore, if the entire security deposit is returned by the Applicant, no GST is payable.

Citation	Issue	Held
MRF LIMITED 2019-VIL-71-AAR	Whether the applicant can avail the ITC of the full GST charged on the supply of invoice or a proportionate reversal of the same is required in case of post purchase discount given by the supplier of the goods or services?	As per proviso to Section 16, the recipient is entitled to avail the credit of input tax on the payment made by him alone and if any amount is not paid as per the value of supply and the recipient has availed full input tax credit, the same would be added to his output tax liability. Therefore, in the instant case, the Applicant can avail Input Tax Credit only to the extent of the invoice value less the discounts

Citation	Issue	Held
ABBOTT HEALTHCARE PRIVATE LIMITED 2019-VIL-13-AAAR	whether the placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without any consideration, for a specific period constitute supply?	The placement of specified medical instruments to unrelated customers like hospitals, labs etc., for their use without any consideration, against an agreement containing minimum purchase obligation of products like reagents, calibrators, disposals etc., for a specific period constitute composite supply, the principal supply being the transfer of right to use any goods for any purpose is liable to GST - the ruling of the original authority that the placement of the specified medical instruments constitutes a composite supply is legally correct and proper.

Citation	Issue	Held
Famous Studios Ltd- 2019-VIL-109-AAR (Mah AAR)	Whether the exemption from payment of GST on reverse charge basis under section 9(4) of the CGST Act/SGST Act for receipt of supply of goods and / or services by us from an unregistered person is applicable irrespective of any threshold limit right from 01-07-2017 vide Notification No.8/2017 dated 28.06.2017 read with Notification 38/2017 dated 13-10-2017?	There is no clear stipulation that the amendment is retrospective or prospective. Hence, RCM is applicable on the transactions effected from 1.7.2017 to 12.10.2017.

