



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)



AMRITSAR BRANCH OF NIRC NEWSLETTER AUGUST - 2020

“GST- WAY FORWARD”.



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From the Desk of the President ICAI... 



Goods and Services Tax (GST) is a transformational change in indirect tax regime subsuming almost all indirect taxes at the Central and State levels. It is a comprehensive, multi-stage, destination-based tax that is levied on every value addition. It promotes the concept of common market with common tax rates and procedures, including the removal of various economic barriers, and eventually improves the ease of doing business in the country. For simplifying the implementation of GST across the country, the Government has brought various Notifications, Circulars, Press release, FAQs etc. from time to time. To face the challenges, it is imperative for our members to keep pace with the recent developments.

The Institute of Chartered Accountants of India (ICAI) has always endeavored to support the Government with all its resources, expertise and efforts to make the GST implementation a great success, particularly in our role as "Partner in GST Knowledge Dissemination". ICAI has been providing suggestions regularly, starting from Constitutional Amendment (GST) Bill, dispersing knowledge amongst all stakeholders through various publications, newsletters, e-learning, webcasts, certificate courses, programmes, conferences, workshops, training programmes for Government officials, survey on GST implementation etc.

At this backdrop, I am happy to note that the Amritsar branch of NIRC of ICAI is bringing out ENewsletter on GST- The Way Forward to further enrich the knowledge of our members and to keep them updated in these challenging times. I appreciate the efforts put in by the entire managing committee of Amritsar branch for bringing out this Newsletter.

I hope the Newsletter would be immensely useful to the members and other stakeholders in their professional endeavors and in disseminating information about the branch activities.

With Warm regards.
Sd/-

CA. Atul Kumar Gupta
President, ICAI

August, 2020

President



From the Desk of the Chairman.

“The Secret of Life is not Enjoyment but Education through Experience”

-Swami Vivekananda



Esteemed Professional Colleagues

I hope you, your family and all your nears and dears are keeping safe. This issue of E-Newsletter is based on “GST- Way Forward”. A perfect GST may be implemented In a Perfect World where there is equality in terms of willingness and ability to pay tax .Where these assumptions become false, a perfect element of GST starts shading away and poses difficulties in implementation. These factors lead to the birth of different tax rates and tax exemptions.

The new GST return system will be implementing from 1st October 2020. Challenges in transition from old Regime to the new Regime are anticipated and resolved in advance. Currently there is a gap of 1 to 3 months between the date of generation of invoice and reporting of the same in the GST returns. This leads to a situation where there is no mechanism to find out how many invoices of how much value have been issued. At the same time, ITC can be taken by the others in the GSTR-3B ,(No linkage with GSTR1 and GSTR2A). Accordingly GST Council has recently decided to introduce electronic invoicing system in a phased manner for B2B transactions from 1st October 2020 for the threshold having turnover above 500 crores. E-invoicing is a rapidly expanding technology which would help the tax payers in backward integration and automation of tax relevant processes. It would also helps the tax authorities in combating the menace of tax evasion.

I am happy to share that revamped website of Amritsar branch is relaunched by honorable President CA Atul Gupta Ji on August 8, 2020 with unique and user friendly features for members and students. I would like to thank honorable President who have been pillar of support in setting up the Amritsar Branch Building, selecting our branch for GST helpdesk to assist various stakeholders including trade, commerce and industry to the extent possible, and supporting us as always.

It is not doing the Best and Great things, it is all about doing better always & do small things that are great. I along with my entire team, shall put all the best possible efforts to ensure our standing with mother body ICAI, our nation and humanity. We seek your love, support for all future endeavors.

Stay Safe, Stay Healthy

With Warm regards.

CA SANJAY ARORA

Chairman, 2020-21

Amritsar Branch of NIRC of ICAI

August, 2020



Chairman



From the Desk of the Secretary...

Respected Members,

Warm Greetings,

First of all, I congratulate to all the members on Independence day and Krishna Janmashtmi. We with immense delight present our members a special edition of GST the way Ahead for the month of July 2020. In this edition we are specially thankful to our President ICAI CA Atul Kumar Gupta Sir for sharing their views in this edition of News letter. We are also thankful to NIRC Member CA Rajender Arora for sharing his knowledge through the article for Amritsar branch of NIRC for the Aug 2020.

GST was introduced on 1st July 2017 keeping in view the One Nation one Tax. GST can be said be a global platform for indirect taxes as GST has been implemented by about 164 countries in the world. GST is a consumption based tax providing the right of taxation to the state in which goods or services are actually consumed. The idea behind the GST is removal of economic barrier with common tax rates for ease of doing businesses in the country. This is the fourth year of GST and over the passage of time, GST has become more acceptable and smooth in the business environment. ICAI and members have played vital role in the implementation of GST in India. ICAI is still continuously making efforts for sharing the knowledge of GST among the members through Seminars and now through Virtual Meetings.

In the GST a way ahead, many challenges are still to come and we need to continuously update ourself for upliftment of profession.

I am pleased to inform you that We have updated website of Amritsar Branch. In the branch website, new features like Members Directory, Testimonials of Past chairpersons, Gallery, Past events, quick links of Tax sites etc have been added. I request each member to kindly register yourself in the branch directory to make our mission successful. Also give your suggestions and feedback for the website updation.

In this month also, we will continue our Virtual CPE meetings (Webinars) through online platform for the knowledge updation of members of Amritsar branch with best faculties and best topics as per the requirements specially on Income Tax topics and need of hour.

Dear Students,

ICAI is already taking many initiatives for the students to ensure that Nov. 2020 Exam may be conducted even in case covid continues till November. ICAI is making arrangements for exams following the criteria of Physical Distancing. Further ICAI has not left any stone unturned for the wellbeing of the students. Keeping in view the Covid situation, Orientation Programmes are being conducted through Virtual mode. ICAI has also given many relaxations to students for the time period for registration or joining Articleship training or attempt for exams etc. with the regulations. ICAI has also taken a very good initiative by providing revision classes for the students via virtual tools. Students can learn different subject/topics from best faculties of India. So you can revise or prepare your Exams without incurring any cost.

Every one of you is going through a challenge to crack this a very noble Professional CA course. Work hard, develop the habits of self motivate and set your goals for the future. Be dedicated and keep on doing working for exams. Don't panic, Nov. 20 exam surely will be won by you.

Keep yourself safe and stay healthy in the pandemic.

August, 2020

With Warm regards.

Sd/-

CA Shashi Pal

Editor in Chief

Secretary, ICAI Amritsar Branch





From the Desk of the Editor....

“Success seems to be connected with action. Successful people keep moving .They make mistakes,but they don’t quit”

-Conrad Hilton



Adorable Members,

This is the most difficult time which most of us have ever seen in our life. This is a time where many lives are full of fear due to COVID-19 as the impact of COVID 19 is no different than a chain reaction and it is such a vicious circle where we never know as to how many are going to be impacted if a single person gets affected .In this time, we can only take precautions and offer prayers for the well-being of the whole world.

This August issue of E-Newsletter is based on“GST-Way Forward”. GST was always projected as a Good and Simple Tax as taxes under different laws were subsumed to onebut in implementation it was never simple as it didn’t meet the expectations of the tax payers and stakeholders. A number of amendments have been made to GST law since its inception and a plethora of circulars and notifications have been issued till date which makes it further complex. To make GST really a “Good and Simple Tax” it is very important to make specific provision for each area of litigation so that litigation is reduced to minimal.Further, there are various judgements given by various Advance Ruling Authorities whereby a similar matter is decided differently which creates a lot of confusion in the minds of stakeholders.As such there is a need to create a Centralised System of Advance Rulings so that the stand of the Department on a particular matter is static.

There is also a need to enable certain features such as rectification, revision, consolidation of debit and credit notes and technological advancements and better grievance redressal by GSTN which should be taken care of in the new GST regime. Thus with the enhancement of certain features, specific provisions for litigative matters The GST council can really make GST a Good and Simple Tax which will further lead to ease of doing business.

I also congratulate the Amritsar Branch for the relaunch of the website of Amritsar Branch of NIRC of ICAI. The enhanced features of the new website will be definitely helpful to all the esteemed members and the students.

Praying for the good health of all.

August, 2020

With Warm regards.
CA MANISH MIDHA
Editor



Editor



GST Way Forward



CA. RAJENDER ARORA
NIRC Member



At this juncture of completion of three years of GST, when we look back into time, view is not the exactly same what it was visualized to be. This journey of three years has been much rocky in terms of various issues whether it is about the technological front or legal wisdom. Ours is an economy where focus is more on the tax on economic activities rather than to promote economic activities on which tax is levied. This makes gap between the actual potential of the system and productivity gained. GST, Way forward cannot merely talk about the improvements required into the entire value chain but also to appreciate purposes achieved with this historic tax change. In this article, author tries to highlight significant aspects relating to the subject ranging from hits and misses of this indirect tax law.

“HITS OF THE SYSTEM”

1. Ease of Doing Business :-

The Government is very much focusing on Ease of Doing Business. GST is one of its important pillars. This also helps with FDI Investment in India. This brings level playing field for international players in India.

2. One Nation One Tax :-

The GST Law has subsumed many central and states taxes. Now this is helping all business owners to comply with just one law, i.e. GST, barring a few which are either Non-GST supplies like alcoholic liquor for human consumption or taxes which are not yet subsumed into GST like tax on lottery, etc.

3. Uniformity of Taxes :-

GST is said to be One Nation One Tax. Although IGST is levied in case Inter-state supply and CGST & SGST is levied in case Intra-state supply. Any tax can be adjusted with another except CGST & SGST

with each other. It is not completely uniform yet much better than the previous complex multiple tax structures.

4. Inter-sectorial ITC :-

In earlier laws, the trader who was registered under value added tax, was not allowed to take benefit of claiming Input Tax Credit (ITC) of excise duty and service tax. The service provider was not allowed to claim the input of VAT and CST. In fact, the Trader was liable to pay the CST but was not allowed to claim the ITC of the CST. But GST Laws provide to take ITC of anything or everything used in the course or furtherance of business barring a few exceptions mentioned in law and in the manner specified in act and rules thereof.

5. All Compliances under one Roof :-

In earlier laws, every state vat laws used to have different return formats. Entry tax, VAT, and CST, all of them were having totally different forms and return formats. Excise and Service Tax has its own returns. In case of Centralized registration in Service Tax, all the data needs to be consolidated and then entered. But GST has removed all these troubles. Now there is one type of return for all, be it a manufacturer, service provider or trader and there is no difference whether he is working in Maharashtra or Assam or any other State, no difference in compliance in any state or sector.

6. Online Refunds :-

The GST Law, now provides for an online refund processing. This enables taxpayer to upload and attach the refund application online. This is environment friendly and removes the need of depositing papers again and again to department, if in case they lost it. Documents to be uploaded and timelines are defined in law for every process and if there is any discrepancy in the refund



application or documents, then the same can be communicated by way of deficiency memo. If timelines are not followed by the Proper Officer, the department shall be liable to pay the Interest also.

7. Simplified Return System :-

GSTN has provided the following simplified options to upload any number of invoices on portal within few seconds: -

- i. Manual filing, enter invoice wise
- ii. Directly Upload json File
- iii. From an excel file, convert json file and upload json file on portal
- iv. Import data from the e-way bill portal

This helps in time saving and in turn it checks the clerical error at the time of uploading returns like incorrect GSTIN, duplicate invoice no., charging IGST against Intra-state supplies, etc.

Kindly read all the points discussed below under the head “misses” in the light of data shared hereinafter.

On 1st July 2020, on the occasion of 3rd Anniversary of GST, GSTN released a document containing data relating to various aspects of the portal. Three astonishing facts out of them need your immediate attention.

I. Out of Total 1,23,11,104 registered taxpayers, 59,45,626 tax payers have turnover less than 1.5 Crore. This is 48.29% of the taxpayers having annual turnover of less than 1.5 crore. This figure in itself explains the type of taxpayers working in our economy. All the policies relating to compliances and administration should be made considering the preparedness of these taxpayers.

II. 70.15% of the revenue is collected from merely 17.27% of the taxpayers. And whopping 80.18% of taxpayers contribute meager amount 13.35% of tax. It is always easy to have tax administration on the organized taxpayers who are working under Corporate or partnership constitution. It gives the direction for the future

also to the administrators that not to incur much cost to administer individuals as they do not contribute much. They should have relaxed policies for individuals like frequency of filing returns and tax payments also. This would save the precious national resources to have optimum utilization. This would in real terms call the usage of data collection and data mining.

III. If we further narrow down our lenses to see only 6.49% of taxpayers contribute 62.80% of revenue. It is the high time for department to concentrate more on these small lots instead of hitting around bushes and troubling the nation as a whole.

All the policies relating to compliance and other issues should be formed considering this data so as not to burden the micro enterprises, which are 48% having turnover of less than 1.5 crore. MSME should not be over burdened with extra compliances leading to their natural deaths.

“MISSES OF THE SYSTEM”

1. Urgent need of Centralized Authority for Advance Ruling :-

Facility relating to Advance ruling was to address the potential litigation at the beginning level only. However, reality of this AAR has been different from the expected. Decisions of two different AARs on the similar issue have been contrary to each other. A tax payer working in more than two states in the country is into great fix, which decision to be implemented considering divergent views of two advance ruling authorities on the same issue. This has brought lesser clarity and more confusion. Today, the pressing need is to create a national authority for advance ruling to pronounce judgments which are applicable PAN India and saving the plight of the taxpayers having operations throughout the country. In order to bring uniformity in the decision making process of various advance ruling authorities, it is highly



recommended to bring out a standardized operating process to be followed by each authority to pronounce judgments.

2. Interest on Gross Tax or Net Tax- Dilemma Continues

At the advent of new law, judicial principals of the past do not rest in peace; rather they only lead the way in wake of newness of the law and absence of any parallel jurisprudence. In every fiscal law, it is never been the legal intent to disallow the deduction of input tax credit which is already accumulated while calculating net tax payable. Unlike, the present GST law, where Section 50 is claimed to be charging interest on gross tax without giving deduction of ITC. Much hue and cry made, law got amended but not made operational as yet. GST Council also discussed this as agenda and announced that this proviso shall be made effective retrospectively. But, still the department is taking coercive actions to recover interest on gross portion instead of net. This requires immediate correction by the law makers to install the confidence of tax payers into the system.

3. Restricting Input Tax Credit to 10% of GSTR-2A- Constitutional Validity Challenged-Taxmen Still Sleeping.

This provision made effective from 9th Oct, 2019 to restrict ITC subject to invoices appearing in GSTR-2A. Much debate is going on about the powers of the government to impose such a restriction. PIL in the apex court is also filed in addition of challenging the vires of this rule in various high courts of the country. On 9th Oct 2019, restriction was of 20% max and then wef 1st Jan 2020 reduced to 10% in spite of the fact that this provision is challenged in the courts. This depicts insensitive response of the government to the stakeholders, which in turn reducing the confidence of taxpayers in lawmakers.

4. Taxpayers Charter should also be introduced in the field of Indirect Taxes.

In the field of Direct Taxes, Taxpayers' Charter is released by the honorable Prime Minister of India. It is equally expected to have replica of the same charter for taxpayers under GST also.

5. Retrospective Amendments- Expression of Regressive image of Law Makers

More than 60 such retrospective amendments have been made in law since the inception of this statute. On the one Prime Minister says on international platform that no retrospective amendments shall take place and on the other, this repetitively done in his dream law of GST. This also needs to be given due consideration so to improve image in the international fraternity. India should not be considered to be a nation where tax collection has to happen by whatever means required to be adopted. This can be significant hurdle to make India as next manufacturing hub for the globe. Stable Policies and implementation of the same brings confidence in to the system and resultantly prosperity.

6. Rationalization of Tax Rates on many Goods

Rates of tax of GST on any good or service is largely dependent upon the usage or use of the same. If goods in question are more of necessities than anything else then rate would be in to lower bracket to make it affordable for the masses, such as butter, stationery or like. On the other hand if a pen is sold for five thousand rupees then the usage of pen is not primarily for writing purposes but for expression of social affluence also. In that situation rate of tax on such good shall be much higher. This appears to be logical and rational also. But at present, in the basket of 28% tax there are still few goods which have become sort of necessities only such as air conditioner. It would be regressive to charge 28% GST on this air conditioner. That is why it high time to rationalize rates of goods ranging from all types of products. It has been dream of lawmakers also to have only two tier rate structure in GST. This would enhance the number of economic transactions and taxes thereon.

7. Condition of 180 days payment is oppressive on the business

Provisions relating to eligibility of input tax credit place an embargo on the recipient to make payment to supplier compulsorily in 180 days from the date of invoice else ITC claimed by recipient is



required to be reversed as output tax. Without going into the legality of this provision, it is merely submitted that this provision is encroaching the valid legal rights of the buyer and seller to decide the terms of the contract. If this happens to be implemented then no recipient would be able to take ITC in case of those trades where retention money is inherent condition of the contract. For the simple objective of ease of doing business and facilitating business for the smooth conduct, this condition should be done away from Act.

8. Clarity required regarding availability of ITC on Covid Protection items and CSR expenses during Covid 19 time

As we are writing, 141 CGST circulars have already been published. When in last 36 months these many circulars clarifying various aspects could have been issued then in present times, need is utmost pressing for clarification regarding admissibility of input tax credit to business on inward supplies received for goods used in covid protection and goods or services distributed as CSR by corporates. If this clarification is issued at appropriate time then it would be boon for the business to spend more in this distress times. It is important to mention here is that Ministry of Corporate Affairs has already released a circular clarifying any expense incurred on Covid items shall be falling in discharge of CSR mandatory requirement.

9. ITC on lifts installed at industrial houses for carrying goods or motor vehicles?

Another urgent clarification required from the department is regarding admissibility of Input Tax Credit on lifts installed at industrial houses for carrying goods or motor vehicles. This would enhance the confidence of the tax payer and image of the government.

10. Constitution of appellate Tribunals

Appellate process of any legal system is the real soul of that system. It should be fair and free from any fear. In earlier excise and service tax regime, CESTAT has been the extremely significant pillar of

the entire justice system. Which is absent in the present structure as yet in spite of the well spelled provisions in the statute. As a matter of fact, for every fact finding exercise, matter has to go to High Courts of the country by way of filing writ under article 226 of the constitution. This can be very well be ensured by constitution of the tribunal benches in the country. If actually, lawmakers are concerned about the harmonious implementation of this law, then tribunals should be immediately constituted considering all the recommendations made by various high courts of the country.

11. Reverse Charge Mechanism (RCM)- a Reason of Cascading or A tool for revenue Collection?

RCM was introduced on Goods Transport Agent services under Service Tax Regime. Reason for this mechanism was to shift the burden of collection and payment of tax on the recipient of the services as providers of service was an unorganized sector and could not take up the compliance burden. This was the objective of bringing RCM and shifting burden of provider on recipient. Under GST, similar provisions were borrowed and a complete of list of goods and services were notified under sub-section 3 of sec 9 of CGST Act, 2017. Another general provision was brought in Sec 9(4) of the Act, wherein all registered recipients were required to pay tax under reverse charge on inward supplies received from unregistered suppliers. Now, on the one hand, when under sub section (3), supplies on which tax charged on reverse charge, many suppliers are registered and their supplies become exempt supplies by virtue of sec 17(3) resultantly requiring reversal of input tax credit under rule 42 and 43. This makes credit available to such suppliers whose supplies are taxable under reverse charge as reversible and becoming cost to them. Finally tax credit which was otherwise available for set off becoming cost and part of their selling price and tax is paid on this selling price, leading to tax on tax phenomena.



On the other hand, sub section (4) of Sec 9 of the Act can be used a very effective tool to increase revenue collection. If registered recipients are asked to provide permanent account numbers of unregistered suppliers to determine their aggregate turnover. Artificial intelligence can be used to determine the aggregate turnover clubbed together on PAN and when it exceeds the threshold as mentioned in the act, a communication can be sent to those unregistered suppliers to advise them to get themselves registered within the act. Resultantly bringing more distribution channel into the tax net, finally putting more economic transactions under the tax net and bringing more tax revenue. Although this type of RCM is suspended till next order of the GST council. But this can be a greater tool as explained above.

----- Happy GST -----





GST Way Forward



CA. HITESH GOYAL
(Secretary of Ludhiana Branch
of NIRC of ICAI) (2020-2021)



GST is the biggest tax reform in India. It is the single and biggest Tax reform which India has witnessed since the Independence. Slogan was given at the time of introduction of GST was “one nation, one market, one tax”. It has swallowed several taxes and levies, which included central excise duty, services tax, additional customs duty, surcharges, state-level value added tax (VAT), octroi etc.. Other levies which were applicable on inter-state transportation of goods have also been done away with in GST regime. Also, with the introduction of GST, internal tariff barriers have been done away. The GST rollout, with a single stroke, has converted India into a unified market of 1.3 billion citizens. At present, Indian economy is of US \$3.00-trillion and on the basis of this GST, one of strong pillar of Indian economy, Hon'ble Prime Minister Sh. Narendra Modi set a target to be US \$5.00 trillion economy by 2024.

Everybody was expecting that GST would be “Good and Simple Tax”. Businessmen (large or small) were expecting that multiple return fillings will not be there, everything will be transparent in GST, maintenance of accounts will be easy and above all there will not be cascading effect of any tax. Customers were expecting that cost of goods and inflation will reduce. Government was expecting that their revenue will increase as leakages in revenue would be plugged. The idea behind implementing GST across the country in all the states and all the Union Territories is that it would offer a win-win situation for everyone. Ground realities, as we all know, vary. So, to achieve all these things and to be GST a “Good and Simple Tax”, lot of amendments are required. Since inception, GST has been in problem. At present, main target of Government is to enhance GDP but as GST is one of the main pillars of GDP,

Government should relook at GST with new and different viewpoints. Government should think about:

- A. GST rates,
- B. Inclusion of left out items/ sectors into GST regime and
- C. Simplify processes

If Government considers above points, then it will be a win-win situation for everybody-Government, businessmen, consumers and professionals.

A. GST Rates

If, we talk about long term benefits of GST, then only lower rate of taxes would not be sufficient, tax slabs of GST should also be minimized. In developed countries, where GST has been implemented and playing a major role in boosting the economy, only 2-3 rates are there. First, lower rate for essential commodities, second being the mean rate and third one is higher tax rate for luxurious items. As against this, In India, we have 5 slabs. After these slabs, three rates are there i.e. Integrated Tax Rate, Central Tax Rate and State Tax Rate, in addition to these rates, cess is also there.

Behind all these slabs and tax rates, fear factor of Government is clearly visible. We expect that government should come out from its fear at the earliest and achieve its revenue neutrality so that all these slabs and tax rates should be done away with and as minimum as 2-3 rates be there in India.

Alternatively, step by step, we can move to lesser slabs structure. Firstly, we can move from a five slab structure to a four slab structure, then from four slab structure to three slab structure and after that to a two slab structure. Excess slabs result into blockage of working capital. Also, excess slabs enhance the compliances in the shape of 'Inverted Duty Structure Refunds'. Classification of disputes also arises due to multiplicity of slabs. All these can be avoided if we choose to move towards fewer slabs.



Reduction in slabs is a process of few years and we can easily set the goal of having a two slab structure by the end of fifth year from now.

B. Inclusion of left out items/ sectors into GST regime

Government should now seriously think of including:

- A. Petroleum Products,
- B. Electricity
- C. Real Estate and
- D. Alcoholic Liquor in GST Ambit.

If all these sectors would be subsumed then it would be indeed a great achievement.

Actually, exclusion of above items from GST results into cascading effect. Tax on tax also results into inflation as we cannot take ITC of above items thus ITC need to be reversed and becomes part of cost.

As we are discussing "GST - way forward". It is not a process of one day. It may take minimum three to five years. Government should take steps to include all the excluded items into GST one by one so that by the end of five years, from now, all the items come into the net of GST.

Very first, government should plan to bring Petroleum products into GST net. Amongst these five petroleum products one product which can immediately be brought to the net of GST is ATF (Aviation Turbine Fuel). If ATF is brought to the net of GST then it would also be a big relief for the Airline Industry. It is the need of the hour also. We know that it is not easy to bring these petroleum products into the net of GST because petroleum products are the biggest source of revenue for both i.e. Centre and State. But this problem can be overcome with proper tax structuring of petroleum products, divided between GST and cess. By bringing these products into GST net, the rate at which these items are sold to consumers will be common across states.

Secondly, electricity should also be brought into the GST net. At present, only states have the power to impose taxes on electricity and is non

creditable. If, electricity is brought into the net of GST then it will be both more efficient for industry and more affordable for consumers also, it will help to reduce input tax credit blockages.

Similarly, Real Estate and Alcoholic liquor should also be brought into the GST net. At present, these are primary sources of revenue for states. Taxes imposed by states are non-creditable under GST. For businessmen, investment in land is the first step towards the establishment of business and it is a very huge investment. In a state like Punjab, approx. 10% of the value of land is in the shape of taxes i.e. stamp duty. If, Real Estate is brought into the net of GST then it may result into the increase in entrepreneurs and help to set up new businesses. Proper tax structure can be framed within tax slabs so that there will not be any loss to the states on account of inclusion of these products into GST net.

In addition to above, there are certain sectors/ items on which input tax credit is not allowed thus breaks the chain. Examples are:

- A. Telecom Tower,
- B. Pipelines,
- C. Motor Vehicles,
- D. Restaurants (Rate of GST is 5% but without ITC) etc.

Exclusion of any item from GST net results into cascading effect and accumulation of ITC. Cascading effect and accumulation of ITC can only be avoided by keeping all the items into the GST net.

C. Simplify Processes

Next step towards "GST Way Forward" is to simplify the processes. There are lot of areas which can be simplified but in this article, I will be discussing about:

A. Removal of provision of capping of ITC i.e. Rule 36(4):

Rule 36(4) says that, "Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent of the eligible credit available in respect of invoices or



debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37”.

This Rule 36(4) is against the right to claim full ITC. It is nearly impossible to calculate claimable ITC till every 11th of next month. As per this rule, registered person cannot take ITC even if he is having invoice in his hands which is against section 16 of Goods and Services Tax Act 2017. We can say that this rule is ultra virus to section 16 of Goods and Services Tax Act 2017. In my opinion, this rule 36(4) should be removed to simplify the process.

B. Removal of Reverse Charge Mechanism : Reverse Charge Mechanism (RCM) is covered by sections 9(3) and 9(4) of Goods and Service Tax Act 2017. In most of the cases it is just a compliance as on one side registered person deposits tax under RCM and on the other side he takes the credit. Thus in my opinion, it should also be removed as it is a tax neutral and no loss to revenue.

C. Removal of provision of reversal of ITC in the case of non-payment of consideration: Rule 37, read with second proviso to section 16(2) of Goods and Services Tax Act 2017, says that “A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to subsection(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice”.

This provision is also a burden on the businessmen. In my opinion, this provision should also be deleted as it does not result into any loss to the revenue.

D. ITC of previous years: As per section 16(4), “A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due

date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier”.

Input Tax credit is equivalent to Cash. Also, it is a right ' of a registered person. In my opinion, this provision should be modified and credit should be allowed, minimum, up to the date of filing of Annual Return of that particular year. Because, at the time of filing of Annual Return, everything is checked in detail, reconciliation statements are made and if any ITC left out then that come in picture. If it will be allowed that the registered person can take ITC up to the date of filing of Annual Return then there will be no loss to the registered person.

Now, question arises that what will be the future of GST in India. Every person in India is looking towards the Government for a “Good and Simple Tax”. As GST has already been implemented in India after taking all the States and Union Territories into confidence, it is time to perfect the system gradually.

In order to move towards “Good and Simple Tax”, we must set an agenda for the next three to five years, as discussed above. Definitely, first attention of Government should be in the direction of stabilizing revenue both for States and Centre. At present, states are at par with old revenue along with increment per annum but Centre still needs to worry about its revenue.

Ways have to be found and necessary changes may have to be made for the “Good and Simple Tax”. GST will become good and simple, only when the entire country works as a whole towards making it successful.

In my above discussion, I have tried to suggest a road map for a “Good and Simple Tax”. Substantial overhauling of GST Act and Rules is required to make GST more taxpayer friendly. The speed of actual overhauling of GST will depend upon the decision of government.



Issues in GST



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Exordium

The advent of gst was an epoch changing moment in the history of economic and taxation ambience. Sincere effort was made by all the stake holders to bring together the best of both the worlds. But every piece of legislation has to undergo its testing times and it is no wonder that with in short span of three years gst has thrown large number of issues which have been subject of rumination before Indian Courts. The author has tried to pick a few matters of wider interest for large section of taxpayers and professionals.

1. Scope of Rule 89(5) examined by in VKC Footsteps India Private Limited (Gujrat High Court) 24-07-2020

Section 54(3) of the CGST Act allows registered person to claim refund of “any unutilized credit” at the end of any tax period, where “the” credit has accumulated on account of rate of tax on inputs being higher than rate of tax on output supplies.

One of the matter of challenges before the Court was that Section 54(3) does not require to 'prescribe' any rules regarding the quantum of refund. However Court rejected the claim of assessee on the grounds that section 164(1) of the CGST Act empowers the government to make rules for carrying out the provisions of this Act, hence there is nothing wrong in framing of Rule 89(5) to carry out the intent of section 54(3).

In this regard the decisions of **Gujrat High Court in Mahavir Enterprises [2020] 117 taxmann.com 471 (Gujarat) on 22-06-2020** may also be quoted which says that section 164(2) specifically required central government to frame rules on the matters “prescribed” but that does not preclude the general powers of the Central government to frame rules u/s 164(1).

The next challenge before the Court was that Rule 89(5), as originally envisaged provided refund of both inputs and input services. Then w.e.f. 18-04-2018, Rule 89(5) was amended vide Notification 21/2018 to provide that refund shall be allowed only in respect of inputs. This was followed by another notification 26/2018 dated 13-06-2018 to restrict the refund on inverted duty rate structure to inputs retrospectively w.e.f. 01-07-2017. Hence rule 89(5) has gone beyond its capacity of delegatee and restricted the refund to input while no such restrictions are imposed by section 54(3).

Gujrat High Court drawing support from **Supreme Court decision in Intercontinental consultants and Technocrats decided on 7-03-2018** said that in case of conflict between statute and subordinate legislation, statute shall prevail over subordinate legislation. In the above decision supreme court struck down Rule 5 of Determination of Value Rule 2006, which sought to tax reimbursable expenses, while section 67 provided that value of taxable service shall be the amount charged by service provider for “such” services and anything charged for not providing “such” service including reimbursement of expenses is outside the scope of service tax.

Gujrat High Court did not strike down the entire rule 89(5) but only struck down Explanation (a) to Rule 89(5) restricted definition of Net ITC to inputs.

Applicability of Gujrat High Court Judgment to other states

An issue may arise regarding the applicability of Gujrat High Court Judgment in other states. In this regard the Supreme Court decision in the case of Kusum Ingots and Alloys states that:



“..... An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.....”

It is therefore pleaded that the fact that Gujrat High Court Judgment shall apply to whole of India is not in doubt because of the imprimatur given by apex court.

Other Issues arising from VKC Footsteps

It may be noted that in this judgment the assessee only asked for refund on input service besides inputs. Other issues like refund of unutilized ITC on capital goods or transitional credit was not pleaded before the Court.

Hence the striking down of Explanation (a) shall open the Pandora box for other constituents of input tax credit also. Because accumulation of itc on account of inverted duty rate structure is just one of the situations and refund is for “any unutilized ITC” at the end of any tax period.

Impact on exports

Section 54 (3) also allows refund of any unutilized ITC in respect of zero rated supplies without payment of tax. However Rule 89(4) restricts the refund to inputs and input services. Hence no refund is allowed for itc on capital goods. On the contrary when zero rated supplies are made on payment of IGST, which consummates all components of ITC including ITC on capital goods, the assessee is allowed refund of ITC on capital goods also. There is no rationale behind this differential treatment. The decision in VKC Footsteps has opened the doors for zero rated supplies also.

What about past refund claims

Refund application for a tax period filed prior to the Judgment have claims for inputs only. Portal does not allow to file refund claim for any tax period for any module for which refund has already been filed. Hence say if refund for inverted duty has been filed

for 2017-18 the same refund module can not be used to apply for refunds. Hence the taxpayer may have to apply for refund under “Any other” option. In this case the refund claim is not debited to electronic credit ledger. Hence after the proper officer is satisfied with the refund application of the assessee, the refund may be debited to electronic credit ledger through DRC-03.

Application of Limitation provisions

Restriction to claim refund within two years from the relevant date i.e. due date for furnishing of return u/s 39 for the period in which refund claim arises in substitution of end of financial year as incorporated w.e.f. 01-02-2019, is part of procedural law and may apply retrospectively but the concept of relevant date is with reference to section 54(1) and not 54(3), which independently deals with refunds on unutilized input tax credit. Hence the limitations u/s 54(1) may not work for 54(3). Further relevant date being part of procedural law can not override the plain language of 54(3). It is trite that procedures are handmaid of justice. **[Kailash v Nankhu (2005) 4 SCC 480; State of Punjab v Shamlal Murari (1976) 1 SCC 719**

2. Reversal of ITC on fabrics not in stock from the date of removal of restrictions on refund claim i.e. 31-07-2018

Under clause (ii) of proviso to Section 54(3), read with notification 5/2017-CTR dated 28-06-2017, restriction were placed for claiming inverted duty rate refunds in respect of fabrics falling under certain Chapters. Notification 20/2018-CTR dated 26-07-2018 amended the principal notification 5/2017 to remove the restriction on grant of refunds on fabrics. However Notification 20/2018 read with Circular 56/30/2018-GST dated 24-08-2018, provided for lapse of input tax credit out of ITC lying in balance on 31-07-2018, except on stock in hand on the basis of formula provided in Rule 89(5).

Held by **Gujrat High Court in Shabnam Petrofils on 17-07-2019** that it has been held by Supreme Court in Eicher Motors Ltd. v. Union of India, 1999



taxmann.com 1769 that where Rule 57(4A) of the Modvat Credit Rules provided for lapse of modvat credit lying of 16-03-1995 in respect of tractors and parts except the credit represented by stock of tractor and parts lying on 16-03-1995, such rule was liable to be quashed. Supreme Court held that “..... a right accrued to the assessee on the date when they paid the tax on the raw materials or the inputs and that right would continue.....”

Court held that:

- a) There is no power under Section 54(3) of the CGST Act to lapse the accumulated ITC lying unutilised in balance on 31.07.2018.
- b) ITC once validly taken is indefeasible and vested right is accrued in favour of the registered person to utilize the same without any limitation.
- c) The CGST Act itself provides for the lapsing of the ITC at Sections 17(4) and 18(4) respectively of the CGST Act. Thus, where the legislature wanted the ITC to lapse, it has been expressly provided for in the Act itself. No such express provision has been made in Section 54(3) of the CGST Act.
- d) It is a well settled principle that the delegated legislation has to be in conformity with the provisions of the parent statute. By prescribing for lapsing of ITC, the Notification No.05/2017-C.T. (Rate) dated 28.06.2017, as amended by Notification No.20/2018-C.T. (Rate) dated 26.07.2018, has exceeded the power delegated under Section 54(3)(ii) of the CGST Act.

3. Restriction on refund of compensation cess under Inverted duty rate structure for Tobacco products

On 20-9-2019, GST Council in the 37th Meeting at Goa inter alia recommended restriction on refund of compensation cess on “Tobacco and manufactured tobacco substitutes” (in case of inverted duty structure). The Central Government in exercise of powers conferred by Clause (ii) of the proviso to sub-section (3) of Section 54 of the CGST Act read with sub-section (2) of Section 9 of the

Goods and Services Tax (Compensation to States) Act, 2017 published Notification No. 3/2019-Compensation Cess (Rate), dated 30-9-2019, thereby restricting the refund of unutilized input tax credit of compensation cess, where the credit was accumulated on account of rate of compensation cess on inputs being higher than the rate of compensation cess on the output supplies of tobacco and manufactured tobacco substitutes.

Held by Allahabad High Court in Ashish Katiyar vs UOI on 18-11-2019;

If any credit of input tax paid on the said specified inputs supplies is taken after this notification, i.e. after 30-9-2019, no refund of such input tax credit of compensation cess shall be allowed, even if the credit has accumulated on account of rate of compensation cess on such input supplies being higher than the rate of compensation cess on the output supplies. Plain reading of the notification thus shows a new disability attached to the eligibility for refund, but without any express intention to have retrospective application. We are of the view that in view of the doctrine of legitimate expectation, and the principle against retrospectivity, the Notification dated 30-9-2019, shall necessarily apply prospectively in respect of the goods notified on 30-9-2019 to restrict only those refund claims which are in respect of accumulated credit of excess tax paid on such notified input supplies after 30-9-2019.

4. Restriction on claim of refund of ITC on supply of goods or services where refund of IGST has been taken on such supplies

Constitutional validity of 3rd proviso to section 54(3) has been challenged before court. **Gujrat High Court in Shree Royal Plast Industries special civil application number 19386 of 2019 dated 25-10-2019** has said that Since the constitutional validity of the third proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017 has been challenged, Issue Notice to the Attorney General returnable on the same date. By way of ad-interim relief, the respondents are



restrained from making any coercive recovery pursuant to the impugned order dated 1.8.2019. Hence it is expected that inspite the refund IGST claimed on exports, the benefit of utilized ITC after meeting IGST obligation may also be available to the taxpayer.

5. Restriction on claim of refund where higher duty drawback has been claimed

Circular 37/2018-Customs-IGST provided that ITC/IGST refund is not admissible where higher rate of duty drawback has been claimed. The petitioner repaid the higher amount of duty drawback along with interest. Held by Gujrat High Court in Amit Cotton Industries on 27-06-2019 that ".....We are not impressed by the stance of the respondents that although the write-applicant might have returned the differential drawback amount, yet as there is no option available in the system to consider the claim, the write-applicant is not entitled to the refund of the IGST. First, the circular upon which reliance has been placed, in our opinion, cannot be said to have any legal force. The circular cannot run contrary to the statutory rules, more particularly, Rule 96 referred to above. In view of the same, the writ-applicant is entitled to claim the refund of the IGST. The respondents are directed to immediately sanction the refund of the IGST paid in regard to the goods exported, i.e. 'zero rated supplies', with 7% simple interest from the date of the shipping bills till the date of actual refund.

Similar decision was made by **Madurai Bench of Madras High Court in Precot Meridian Limited on 19-11-2019.**

G Nxt Power Corp. [2019] 109 taxmann.com 305 (Kerala)

Assessee was an exporter. It claimed refund of IGST in relation to goods exported Authorities were of view that petitioner had already drawn or availed higher rate of duty drawback and, therefore, while ordering refund of IGST, petitioner was required to refund higher rate of duty drawback with interest Held by Court that revenue

authorities were to be given liberty to adjust amount already availed by petitioner on account of higher rate of duty drawback and pay balance amount i.e. IGST minus higher rate of duty drawback, within time granted by Court

Hence rigorous of law imposing complete embargo on the refund where higher duty drawback has been claimed have been eased if not completely relaxed

6. Restriction on applying refunds financial year wise

Circular No. 37/11/2018-GST, dated 15-3-2018 and Circular No. 125/44/2019-GST, dated 18-11-2019 restricts to apply refund for each financial year separately. Hence a petition was filed before Delhi High Court in Pitambara Books Private Limited, where in petitioner pleaded that he has been deprived of the benefit on refund of 30 crores on account of exports during April 2018 to June 2018 out of purchases before March 2018. High Court in its pronouncement dated 21-01-2020 held that There is no rationale or justification for such a constraint. In the instant case, where exports are not made in the same financial year, question arises as to whether Respondents can restrict the filing of the refund for tax periods spread across two financial years and deprive the petitioner of its valuable right accrued in his favour. In exports, availability of the rotation of funds is essential for the business to thrive. Moreover, businesses do not run according to the whims of the executive authorities. The business world cannot be told when to place orders for exports; when to manufacture the goods for export; and; when to actually undertake the exports. Respondents' impugned circulars have thus blocked the capital of the petitioner and the unutilised ITC and it has accumulated huge amount of unutilised ITC to the tune of Rs. 30 crores. Merely because the petitioner made exports in the month of June, 2018, we do not see any justification to deny the refund of the ITC which have accumulated in the previous financial years. The entire concept of refund of ITC relating to zero-rated supply would



be obliterated in case the respondents are permitted to put any limitation and condition that takes away petitioner's right to claim refund of all the taxes paid on the domestic purchases used for the purpose of zero-rated supplies.

There after in **Circular 135/05/2020 dated 31-03-2020** Bunching of Financial years has been allowed for the purpose of claiming refunds. Circular has clarified that discipline of segregating refund for financial year was ultra vires the provisions of law and that Circular can't impose any restriction not contemplated by law. However no corresponding modifications have been made on the portal till day.

Therefore **Delhi High Court in another pronouncement in Pitambara Books in W.P.(C) 627/2020 dated 17-07-2020** directed to process manual refund application over two financial years with in 3 working days

7. Whether appeal/writ can be filed against the order of AAAR before High Court

It has been held by **Bombay High Court in JSW Energy Ltd. 07-06-2019** has held that there is no provision under gst law to file an appeal against the order of AAAR. In **Appropriate Authority v. Smt. Sudha Patil [1999] 235 ITR 118/[1998] 101 Taxman 286 (SC)**, the Supreme Court has held that merely because no appeal is provided for, against the order of appropriate authority directing compulsory acquisition by the Government, the supervisory power of the High Court does not get enlarged nor can the High Court exercise an appellate power. The principles of judicial review, normally do not concern themselves with the decision itself, but are mostly confined to the decision making process. Such proceedings are not an appeal against the decision in question, but a review of the manner in which such decision may have been made. In judicial review, the Court sits in judgment over correctness of the decision making process and not on the correctness of the decision itself. In exercise of powers of judicial review, the Court is

mainly concerned with issues like the decision making authority exceeding its jurisdictional limits, committing errors of law, acting in breach of principles of natural justice or otherwise arriving at a decision which is ex-facie unreasonable or vitiated by perversity. However, the Appellate Authority upheld the conclusion recorded by Advance Ruling Authority on the basis of 'new grounds', not confronted to the assessee and hence the order of AAAR was quashed on the principles of judicial review and not by way of appeal.

8. GST on services ancillary to transmission of power

Circular 34/8/2018 dated 01-03-2018 provided that services such as, -

- i. Application fee for releasing connection of electricity;
 - ii. Rental Charges against metering equipment;
 - iii. Testing fee for meters/transformers, capacitors etc.;
 - iv. Labour charges from customers for shifting of meters or shifting of service lines;
 - v. charges for duplicate bill;
- provided by DISCOMS to consumer are taxable

In the case of **Torrent Power Ltd. Vs. Union of India Gujarat High Court** has quashed the taxability of above 5 services by stating that it is being ultra vires the provisions of section 8 of the Central Goods and Services Tax Act, 2017 as well as Notification No.12/2017- CT (R) serial No.25.

Base taken for arriving at this decision was these services are ancillary to principal supply which is Transmission and distribution of electricity and such services are exempt under GST by virtue of notification No. 12/2017- CT (R), Sl. No. 25, therefore composite supply will also be exempt as per section 8(a) of CGST Act, 2017

Matter is now pending with Supreme Court.

9. RCM on Ocean Freight

Held by **Gujrat High Court in Mohit Minerals [2020] 113 taxmann.com 436** (Gujarat) 23-01-2020 that Where services were provided by a person located in a non-taxable territory by way



of transportation of goods by a vessel from a place outside India upto customs station of clearance in India, no tax is leviable under Act on ocean freight; relevant Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017 and Entry 10 of Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017 levying IGST on such service of transport, are unconstitutional.

A meaningful reading of the charging section would entail that the person who is neither the supplier nor the recipient of the supply cannot be made liable to pay tax under the IGST Act (except for the provisions under sub-section (5) of section 5 where the electronic commerce operator can be made liable to pay tax if the services are supplied through him)

In Sai Steel Limited Gujrat High Court in SCA 20785 of 2018 on 06-09-2019, has declared service tax on ocean freight also unconstitutional.

10. Restriction on rectification of GSTR 3B

Assessee claimed ITC on estimated basis during July to September 2017. Short claim of ITC is to the tune of 923 crores. The exact ITC available for the relevant period was discovered only later in the month October 2018, when the Government operationalized Form GSTR-2A for the past periods. In the upcoming months, the assessee is not able to adjust this shortfall of ITC against the taxes payable. Assessee is also not entitled to refund for the short ITC claimed, as it does not fall under the scheme of refund envisaged under the law.

Held by Delhi High Court **in Bharti Airtel Ltd. Vs UOI in its decision dated 05-05-2020**: Court held that Self Policing system of GST provided for the.

- a) Identification of ITC in the related month only but could not be operationalized due to technical glitches.
- b) The statutory provisions, provided not just for a procedure but a right and a facility to a registered person by which it can be ensured that the ITC availed and returns can be corrected in the very month to which they relate, and the registered

person is not visited with any adverse consequences for uploading incorrect data.

c) if the statutorily prescribed form i.e. GSTR-2 & 3 had been operationalized by the Government - as was envisaged under the scheme of the Act, the Petitioner with reasonable certainty would have known the correct ITC available to it in the relevant period, and could have discharged its liability through ITC, instead of cash.

Moreover, even if there is a possibility to adjust the accumulated ITC in future, that cannot be a ground to deprive the Petitioner the option to fully utilize the input tax credit which it is statutorily entitled to do so.

Assessee be allowed to file rectified GSTR 3B. Para 4 of Circular 26/26/2017 to the extent it requires adjustment in ITC and output in the month in which error is discovered should be read down.

11. MOV-07 addressed to person in charge of the conveyance

Where the proper officer is of the opinion that the goods and conveyance need to be detained under section 129 of the CGST Act, he shall issue a notice in FORM GST MOV-07 in accordance with the provisions of sub-section (3) of section 129 of the CGST Act, specifying the tax and penalty payable.

The said notice shall be served on the person in charge of the conveyance. [Para 2(g) of Circular 41/15/2018 dated 13-4-18]

Assessee, however pleaded in **Bansal Earthmovers (P.) Ltd. [2020] 114 taxmann.com 27 (Calcutta) on 5-12-2019** that Sub-section (3) of section 129 states that the proper officer detaining the goods shall issue a notice specifying the tax and penalty payable and thereafter pass an order for payment of tax and penalty under Clause (a) or clause (b) or clause (c) of section 129 (1). Sub-section (4) specifically states that no tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.



On an interpretation on first principles, it is clear that notice for imposition of penalty requires to be served upon the person on whom the penalty is to be imposed. Assessee submitted that notice of hearing of the penalty to be imposed has to be given to the petitioner and not to the driver of the vehicle who was not the employee of the petitioner..

Held by Court that Circular and the FORM GST MOV-07 wherein the service of the imposition of notice is required to be made upon either the driver or the person-in-charge of the conveyance, is not in consonance with Section 129.

12. Restriction on Transitional ITC on purchases beyond one year

Section 140(3)(iv) restricts claim of transitional ITC on stock beyond one year from 01-07-2017.

Gujrat High Court in Filco Trade Centre P Ltd [2018] 97 taxmann.com 314 (Gujarat) dated 05-09-2018 has stated that the benefit of credit of eligible duties on the purchases made by the first stage dealer as per the then existing CENVAT credit rules was a vested right. By virtue of clause (iv) of sub-section (3) of section 140 such right has been taken away with retrospective effect in relation to goods which were purchased prior to one year from the appointed day. This retrospectivity given to the provision has no rational or reasonable basis for imposition of the condition. The reasons cited in limiting the exercise of rights have no co-relation with the advent of GST regime. Same factors, parameters and considerations of 'in order to co-relate the goods or administrative convenience' prevailed even under the Central Excise Act and the CENVAT Credit Rules when no such restriction was imposed on enjoyment of CENVAT credit in relation to goods purchased prior to one year. [Para 30]

Supreme Court has held on 02-01-2019 that there is a difference of opinion between the High Courts. Bombay High Court had taken a different view but the same is not followed by the Gujarat High Court in the impugned judgment. In the

meantime, operation of the impugned judgment shall remain stayed.

13. Tax paid under the wrong head

Assessee whose goods were intercepted in transit paid the tax under head SGST instead of IGST. Hence goods were not released. Department in the court insisted for tax payment under correct head and seek refund for SGST. Department mentioned that inter head adjustment of tax shall take several months.

Ernakulam Bench of **Kerala High Court in Saji S. vs Commissioner, State held on 17-10-2018** that ".....Section 77 provides for the refund of the tax paid mistakenly under one head instead of another. But Rule 4 speaks of adjustment. Where the amount of refund is completely adjusted against any outstanding demand under the Act, an order giving details of the adjustment is to be issued in Part A of FORM GST RFD-07. The petitioner's counsel lays stress on this process of adjustment and asserts that the amount remitted under one head can be adjusted under another head, for the demand can be any amount under the Act.

10. Under these circumstances, I find no difficulty for the respondent officials to allow the petitioner's request and get the amount transferred from the head 'SGST' to 'IGST'. It may, as the Government Pleader has contended, take some time, but it is inequitable for the authorities to let the petitioner suffer on that count.

11. So I hold that the 2nd respondent will release the goods forthwith along with the vehicle and, then, ensure that the tax and penalty already stood remitted under the 'SGST' is transferred to the head 'IGST'.

14. ITC claimed inadvertently under Import of Goods

Andhra Pradesh High Court in Panduranga Stone Crushers [2019] 108 taxmann.com 511 (Andhra Pradesh) considered the issue where IGST was inadvertently reflected in GSTR 3B under Import of goods. Assessee pleaded that Section 39(9) of CGST Act referred to supra would cover other



contingencies like under declaration of tax etc., but does not cover rectification of clerical errors and in the case on hand, there is also no revenue implication.

Court held in interim order that petitioner is permitted to rectify GSTR-3B statements for the months of August and December, 2017 and January and February, 2018 manually.

15. Restriction to claim ITC in case of Restuarants

Hardcastle Restaurants Private Limited v. Union of India - 2020 (32) G.S.T.L. J184 (Guj.)

The aforesaid Special Civil Application has been filed challenging Notification dated 14-11-2017 whereby an Explanation has been inserted in Serial No. 7, Item No. (ix), Column (3) of Notification No. 11/2017-C.T. (Rate), dated 28-6-2017 providing levy of GST @ 2.5% with no Input Tax Credit (ITC) and withdrawing the option to pay higher GST @ 18% and to avail full ITC, in respect of supply of food or any other article for human consumption or drink against cash, deferred payment or other valuable consideration by a restaurant. The petitioner has contended that as per Section 16(1) of Central Goods and Services Tax Act, 2017, only a condition or restriction can be imposed for availment of ITC but it is not permissible to extinguish the right of the assessee to avail such ITC particularly by way of a Notification and not by Rules. Moreover, the aforesaid Explanation, as contended by the petitioner, is arbitrary inasmuch as in the case of other services, an option to pay a higher rate of tax and to avail ITC has been provided but in the case of Restaurant services such option has not been provided.

16. Blocking of ITC

In **ALFA ENTERPRISE 2019 (31) G.S.T.L. 592 (Guj.) on 01-10-2019** court held that insofar as blocking of the credit of Rs. 6,63,51,380/- available in the electronic credit ledger of the petitioner on 1-8-2019 by the respondent authorities by making computer entry is concerned, upon a query by the Court, the Learned Assistant

Government Pleader even with the assistance of the instructing officer is not in a position to point out any provision of law which empowers the respondent authorities to block the credit. Court directed to unblock the credit of Rs. 6,63,51,380/- available in the electronic credit ledger forthwith.

17. Delhi HC to hear challenge to Rule 36(4) making ITC availment contingent upon supplier's compliance

Delhi HC issues notice in a writ petition challenging Rule 36(4) which restricts ITC upto 20% of value of invoices in respect of invoices/debit notes whose details have not been uploaded by the supplier.

18. Non availment of ITC on Construction of Immovable Property

Orrissa high Court in Safari retreats on 17-04-2019 laid down that restriction u/s 17(5)(d) on goods or services received for construction of immovable property own account shall not apply to construction of immovable property for being let out, because construction of immovable property for being let out is not construction on own account.

Where property is sold after completion, there is no gst payable by the assessee and hence it is understandable that there should not be allowed any ITC because of break in chain of ITC. However when the property is sold before completion of construction there is no break in chain of ITC and hence ITC is allowed under the law. Similarly when property is let out, then again gst is payable and therefore there should not be any break in chain of input tax credit.

In that view of the matter, in our considered opinion the provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed, from reading of the provision by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in (1999) 2 SCC 361, the very purpose of the credit is to give benefit to the assessee. In that view of the matter, if 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 pay under Section.

The Supreme Court Bench comprising Hon'ble Mr. Justice Arun Mishra and Hon'ble Ms. Justice Indira Banerjee on 8-11-2019 after condoning the delay issued notice in Special Leave Petition (Civil) Diary No. 37367 of 2019 filed by Chief Commissioner of Central Goods and Services Tax against the Judgment and Order dated 17-4-2019 of Orissa High Court in Writ Petition (C) No. 20463 of 2018 as reported in 2019 (25) G.S.T.L. 341 (Ori.)

Punjab and Haryana High Court in DLF Cyber City CWP 34660-2019 dated 28-11-2019 has pronounced that in case above issue is decided in the favour of assessee by the Supreme Court, the assessee would be entitled to claim the credit even if the time limit for the same has lapsed.

19. Levy of Compensation Cess

Supreme Court in Mohit Minerals on 03-10-2018, examined the constitutional validity of levy of compensation cess. As per section 18 of the 101st Constitutional Amendment Act 2016, Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for such period which may extend to five years.

The assessee pleaded that section 18 only mandates to frame law to provide for compensation cess to the states for loss of revenue. It does not any way provide for levy of compensation cess and hence the levy of compensation cess is ultra vires the provisions of law.

Supreme Court examined the issue and held that:

- a) Word "Law" under section 18 includes power to make law for levy
- b) Compensation Cess is additional tax. So validity of original tax should be examined and not incremental tax.
- c) Article 270 also authorizes levy of compensation cess
- d) Same subject can be taxed on two different aspect. It is not overlapping. Article 265 does not spin out the vice called "Double Taxation" [Arwinder Singh (SC)]

Conclusion :

The above list of issues is definitely not an exhaustive list. However the above issues highlight an important point that gst law can not be read as stand alone entity. It has to be read with its scheme and objects, constitutional provisions, allied laws and landmark judgments on the subject. It appears that it shall take considerable long period of time still the law attains stability.



ITC Eligibility on Expenses incurred on activities related to Covid-19 & CSR Activities



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EXORDIUM:

For the past four decades, globalization and urbanization have been two of the world's most powerful drivers. COVID 19 has taken the entire world at storm. The COVID-19 pandemic is going to vastly effect the trends of globalization and urbanization, increasing the distance between countries and among people. **Less global, more isolated.** Declaration of COVID as pandemic by WHO has heightened the attention of the world on the serious implication of the disease. It has pressed "**RESET button**" of the entire World.

REGULATIONS CONCERNING COVID-19

- Union Government has invoked its powers under Epidemic Diseases Act, 1897 and Disaster Management Act 2005 and have been taking various measures timely and proactively to contain the spread of virus.
- Ministry of Home Affairs (MHA) have been issuing various orders with respect to activities permitted. The orders have specific mention that States/ UT Governments cannot dilute these guidelines, though may impose more stringent conditions. MHA has issued various guidelines from time to time, some of these, relevant to the topic under discussion are tabulated as follows:

Date	Description of guidelines	Remarks
24.03.2020	Consolidated MHA Guidelines for Containment of COVID 19 (NDMA under Disaster Management)	40-3/2020-DM-1 (A) (21 days)
15.04.2020	MHA Order Dt. 15.04.2020 Lockdown Guidelines	Order no. 40-3/2020-DM-I(A)
18.05.2020	MHA Order Dt. 17.5.2020 on extension of lockdown till 31.5.2020 with guidelines on lockdown measures	All previous orders shall cease to have effect.

- Ministry of Corporate Affairs issued clarification vide circular no. 10/2020 dated March 23, 2020, that spending of the Corporate Social Responsibility funds for COVID-19 is eligible CSR activity.

Ministry of Corporate affairs has also issued a notification dated 26th May, 2020 whereby donations made to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM-CARES Fund) form part of CSR activities.

- In addition, different States may have also issued various guidelines with respect to functioning of workplaces post opening after Lockdown due to Covid-19.

Whether the expenses related to preventive measures eligible for ITC?

Preventive Measures

Mask, sanitizer, Medical insurance of workers, Disinfection of Offices etc.



Relevant provision relating to eligibility of ITC are contained in Sec. 16 read with Section 17 of CGST Act, 2017 is as follows:-

Section 16 Eligibility and condition for taking input tax credit:-

Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be **entitled to take credit of input tax charged on any supply of goods or services or both to him** which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Section 17 Apportionment of credit and blocked credits

17(5):- Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely :-

(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;

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.]

ANALYSIS:

Now, on analysing the above provisions, it is clear that credit is eligible for those supplies which are used or intended to be used in the course or furtherance of business subject to provisions of Section 17(5). **Course or furtherance of business means for the purpose of business or for advancement of business.** The expenses incurred by a taxable person to run the business are business expenditure incurred in the course of business. To protect employees from the spread of COVID 19, employer incurs the subject expense so that business can run smoothly. Since all the above expenses are used in the course or furtherance of business, the above expenses are eligible as per section 16(1) subject to section 17(5). Even in case of CIT vs. Malayalam Plantations Ltd. (SC) 63. ITR 140and Caltech Polymers (P.) Ltd.[2018] 98 taxmann.com 355 (AAAR-KERALA, it is held that expenses incurred in ordinary day to day operations and related to Employees are held to be in course or furtherance of business. Bombay High Court in Coca Cola India Pvt. Ltd. has further extended the expression “business”, being not confined to confined or restricted to mere manufacture of products and it has wide importation that would include those activities that might have direct as well indirect significance and it can cover all the activities that are related to functioning of business.

POINTWISE ITC ELIGIBILITY ON EXPENSES

ITC on MEDICAL INSURANCE PREMIUM of EMPLOYEES/WORKERS

As per the provisions of Section 16 read with Section 17(5)(b)(i), Medical Insurance is in Negative List for ITC Eligibility unless **obligatory for an employer to provide the same to its employees under any law for the time being in force.** As regards, the medical Insurance premium of Employees/Workers met by employer and paid during or owing to Covid Situation, the following points are worth considering:



- The guidelines issued by the Ministry of Home Affairs (MHA) Government of India vide order no. 40-3/2020-DM-I(A) dated 15.04.2020, amongst other things specifies that all industrial and commercial establishments, work places, offices, etc. shall be required to obtain medical insurance for the workers mandatorily before starting their operations after the lockdown (refer para 21 read with sr. no. 5 of Annexure-II to the given order).
- Medical insurance would be part of the health insurance and hence ITC would be permitted only if obtaining such medical insurance is mandatory.
- However, as per MHA order dated 17.5.2020 all earlier MHA orders ceases to have effect from 18.05.2020 and there is no guideline for mandatory health insurance of workers from 18.05.2020
- Hence, the medical insurance was obligatory only from 15.4.2020 to 17.5.2020 for WORKERS. Premium paid otherwise than in this period would not be eligible. Therefore, the ITC shall be available on the expense incurred due to mandatory obligation in the above period whether half-yearly or annually.

NOTE: ITC to the extent of any recovery made from the employees towards such medical insurance coverage cost would not be admissible as the shared cost will be considered as a pass-through not paid and borne by the registered person. Employment contracts must however be amended to reflect the said understanding. Also, ITC for the individual policy taken for the family members of the employees would not be available as obtaining such coverage of family members is not mandatory under law.

ITC on OTHER Covid Related Expenses

Thus, in view of above legal provisions, post Covid, following Expenses ITC is allowed:

Nature of Expense	ITC Eligible or not
Mask, sanitizer, Thermometers, Temperature Screening Facilities, Gloves	Eligible
Medical insurance of workers	Not eligible (Eligible if done during mandatory period whether yearly or half yearly)
Disinfection of Offices	Eligible
Arrangement for Transportation of Employees (Hiring)	Eligible
Life Insurance of employees	Not eligible
Food & Beverages	Not Eligible
Group Medical /Health Policy	Eligible (Mandatory as per Sec 38 of ESI Act)

Donation or supply of free goods due to Covid-19

In this era of pandemic various organizations are coming forward to help the society and undertake various welfare measures. The question which arises whether such expenditure may be eligible for ITC. In this regard, it is important to note in light of section 17(5)(h). The Tribunal in the case of Northern Coalfields Limited has held that amounts spent under Corporate Social Responsibility is a statutory obligations as per Section 135 of

Companies Act, 2013 and hence is entitled to Credit in light of circular no. 10/2020 dated March 23, 2020 by Ministry of Corporate affairs, that spending of the Corporate Social Responsibility funds for COVID-19 is eligible CSR activity and notification dated 26th May, 2020

Given below are the scenarios for donations made by corporates and their treatment in light of legal provisions:



S.No.	Description of Donation	Eligibility Test as per Sec 16(1) of CGST	17(5) of CGST	ITC may be Claimed or Not?
1	Provision of Food to poor / Migrant labourers/ Shelters for underprivileged etc	Part of CSR as per Companies Act, 2013	Part of CSR, 17(5) will not apply	ITC may be claimed
2	Donation to PMCARES Fund	Part of CSR as per Companies Act, 2013 per FAQs, on (CSR) dated 10.04.2020. MCA	N.A. being monetary transaction	N. A
3	Sanitization of Colonies of Employees	Business Expenditure as undertaken for Employees	Sec 17(5)(h) refers to goods and this being services thus not Applicable	ITC may be claimed
4	Donation to any NGO etc	Part of CSR as per Schedule VII Companies Act, 2013	N.A. being monetary transaction	N. A
5	Chief Minister's Relief Fund or State Relief Fund for COVID -19	NOT included in Schedule VII of the Companies Act, 2013	N.A.	N. A
6	State Disaster Management Authority to combat COVID -19 Management Authority	Part of CSR as per Schedule VII Companies Act, 2013 per FAQs, on (CSR) dated 10.04.2020. MCA	N.A. being monetary transaction	N. A



7	Spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure and also various activities related to COVID-19 under <u>items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management. (Eradicating Hunger, Environmental Sustainability, Disaster Management including Relief rehabilitation & reconstruction activities)</u>	Qualify as CSR as per FAQs, on (CSR) – dated 10.04.2020. by MCA	Not applicable	ALLOWED
8	Payment of salary/wages to employees and workers during the lockdown period	Not part of CSR	N.A.	N. A
9	Payment of wages to temporary or casual or daily wage workers during the lockdown period is purely contractual obligations	Not part of CSR	N.A.	N. A
10	Any ex-gratia payment is made to temporary/casual workers/daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19	CSR expenditure as a onetime	N.A.	N. A

Way Forward

In light of the above discussion the Government must come forward with a positive clarification for eligibility of ITC with respect to various expenditures incurred on account of COVID -19.



AMRITSAR BRANCH OF NIRC OF ICAI (HELPDESK)

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MEMBER AT THE HELM OF AFFAIRS



CA. NEERAJ SHARMA

CA. Neeraj Sharma is a fellow member of the Institute of Chartered Accountants of India and an Associate Member of the Institute of Company Secretaries of India. Enrolled as a member of ICAI in 1987, he has been the Secretary of Amritsar Branch for the year 1991-92 and 1992-93 and the Chairman for the year 2012-13. He has been involved in the working of capital markets since 1990 and has been promoter of M/s Shubham Stock Broking Services Pvt. Ltd., a member of National Stock Exchange of India and depository participant of CDSL.

CA. Neeraj Sharma, is one of the few members, who had the courage to explore and establish into new challenging fields in their professional career. He got associated with Punjab Police in the year 2001 and was appointed as an Advisor to Punjab Police under the Punjab Police Act, 2007. He has contributed various publications for the department which include Personnel Management Compendium (Vol 1 & 2), Crime Wing Manual (Vol. 1 & 2), Handbook on the NDPS Act, Guidance Notes on different subjects under the Code of Criminal Procedure and other practical aspects related to digitization and modernization of police force.

In 2012, he was appointed as an Expert Advisor in the Ministry of Home Affairs, Government of India in the Arms Law matters. He was assigned to re-draft the arms licensing regime in India and was instrumental in re-drafting the Arms Rules, 2016 substituting the earlier rules of 1962. He was also instrumental in conceptualization and implementation of National Database of Arms Licences, connecting more than 700 districts with the central server in MHA. The project has been successfully implemented on pan India basis and has a database of more than 4 million records. For his immense contribution to the national cause, he was accorded a Commendation Certificate by the then Union Home Minister, Sh. Raj Nath Singh in August, 2016. Considered to be a domain expert, he has been instrumental in bringing laws for opening up of arms manufacturing sector for the private sector under the Make in India initiative of the Government of India. He has also assisted the Government of India in drafting papers under the UN Point of Action Programme on Small Arms. Currently, he is involved in various modernization efforts. Happily married, he is blessed with a son and a daughter.