



NAVIGATING GST 2.0

- THOUGHT LEADERSHIP
- THE BATTLE OF INPUT TAX CREDITS – AN INVESTIGATIVE ANALYSIS
- FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS
- EXPERT SPEAK
- LEGISLATURE AT WORK - RECENT AMENDMENTS
- ALLIED LAWS
- LEGAL CLASSICS
- QUOTABLE QUOTES

CONTENTS

THOUGHT LEADERSHIP	4
Considering that legislation has adopted the HSN system as formulated under the Customs Tariff Act, 1975, for classification of various items for the purpose of determining the rate of GST, authors in this section discuss the evolution of the HSN system and its use in India and the role of WTO believing that there is a need for authorities to review the product classification till single rate GST is implemented.	
THE BATTLE OF INPUT TAX CREDITS – AN INVESTIGATIVE ANALYSIS	7
Recently, Govt. amendment in the CGST Rules for 20% capping of ITC in an attempt to assist the matching concept provided in the GST Common portal. While discussing the history of tax credit mechanism, authors discuss upon having a more robust mechanism with reduced manual intervention and seamless flow of credits between the Centre and the States under the GST regime, believing the amendment to be a hazy decision without either expounding on its implementation mechanism nor on the matters connected therewith and incidental thereto.	
FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS	13
This section gets you key judicial pronouncements from various High Courts & AARs.	
EXPERT SPEAK	18
This section contains excerpts from Interview with Mr. Jayesh M. Trivedi, President – (Sec'l. & Legal) & Company Secretary, The Great Eastern Shipping Company Limited.	
LEGISLATURE AT WORK - RECENT AMENDMENTS	21
The 37th GST Council Meeting recommended changes in GST rates for various goods and services further making amendments to clarify position under GST. This section covers the modifications in the compliance procedure along with due dates extensions and relaxations also covering the FAQs for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019.	
ALLIED LAWS	33
The key amendments in the Customs Act have been captured which include IGST exemption, imposition of anti-dumping duty, revision in import tariff values etc.	
LEGAL CLASSICS	38
This section focuses on one of the classic judgments pronounced under the erstwhile Indirect Tax regime and highlights how principle enunciated therein can be interpreted and made applicable to GST law.	
QUOTABLE QUOTES	48
Highlights some interesting quotes from the who's who on GST.	



INTRODUCTION

Note from Editor

The Goods and Services Tax (GST), publicized as a 'Good & Simple Tax', brought with it expectations of a simple, stable and transparent tax regime, which would result in an overall reduction in the prices of goods and services and facilitate barrier-free movement of goods across India. While there is general consensus that GST has reduced the overall tax incidence and brought in efficiencies in supply chains, compliance related requirements and unprecedented litigation on several issues has consumed inordinate time & effort, which has kept everyone on tenterhooks! The Government has also walked a tight-rope in terms of its meeting the expectations of end consumers and industry as well as ensuring buoyancy in revenue collections and tax administration. Just like the last 2 years, the 3rd year of GST also promises to be nothing short of a roller coaster ride!

In this backdrop, we at Taxsutra kicked off a second series of our popular newsletter '**Navigating GST**' with respected law firm Economic Laws Practice (ELP) last month, encapsulating everything that you need to know from the world of GST, along with incisive analysis from the ELP team. We now bring to you the second edition of the newsletter for the month of November 2019.

In the **Thought Leadership** section, ELP Partner **Nishant Shah** explains how the adoption of HSN system under GST as formulated under the Customs Tariff Act, 1975 has created anomaly in case of variety of products which could have more than one use in varied industries and could be classified either on the basis of its generic use or as also used in a specific industry. He recommends that till a single rate GST is implemented, authorities should review the product classification so as to overcome such anomalies that may cause unwanted stress for businesses.

In the **Cover Story** for this edition, the ELP team delves deep into the concept of "ITC under GST" which continues to bother the industry with the introduction of 20% capping rule. While explaining the evolution of the said concept, the author laments that "*Capping the ITC to 20% by drafting the provisions in a very hazy manner without either*

expounding on its implementation mechanism nor on the matters connected therewith and incidental thereto, will make it difficult for businesses".

A new segment '**Expert Speak**' features an interview with **Mr. Jayesh M. Trivedi, President – (SecI. & Legal) & Company Secretary of The Great Eastern Shipping Company Limited**, who, discusses how the country's largest private sector shipping company sailed past every challenge w.r.t. GST compliance and why GST is an important decision making factor in their business. Highlighting that ITC is major concern as far as the shipping industry is concerned, he expresses that "*This is hampering the Indian shipping lines by making them less competitive when compared with foreign shipping lines who do not face any major bottleneck while servicing Indian cargo.*"

The Newsletter also gets you key judicial pronouncements from various High Courts & AARs in the section - '**From the Bench**'. The '**Legislature at Work**' section captures all the GST rate concessions and exemptions for goods/ services including the changes in GST compliance system. The newly introduced feature of "**Allied Laws**" captures all the latest affairs relating to Foreign Trade Policy, imposition of anti-dumping duty and more... In '**Legal Classics**' we decode a landmark judgment of Jharkhand HC under the service tax regime, recently upheld by the Larger Bench of the Hon'ble Supreme Court holding that "*no service tax liability shall arise on a club/association...in respect of the activities carried out for members applying the doctrine of mutuality*". We wind up the newsletter with some **Quotable quotes** from Policymakers & Parliamentarians.

We hope you enjoy reading our second series of 'Navigating GST'! And we shall be back with another issue, sooner than you think...





THOUGHT LEADERSHIP

The following chapter has been authored by Nishant Shah (Partner) - ELP

Harmonization of the HSN

The introduction of Goods and Services Tax (GST) in the country has among various other firsts, also brought about a uniform parameter connecting various legislations through the adoption of the Harmonized System of Nomenclature (HSN or HS) as the system of coding for classification of various goods. The use of the HSN system has resulted in businesses requiring to review their classification adopted in relation to various goods under different legislations in a manner such that it is consistent and not contradictory or divergent. This article delves into the evolution of the HSN system and its use in India.

WTO – The guardian of HSN

With the evolution of technology, the world is shrinking and countries are getting closer. One significant reason behind this is exchange of information. The economic development and stability of nations is correlated to the overall stability of the global economy, on account of the inter-dependency between nations. This brings us to the concept of global trade. One very important facet which has facilitated this global trade is, the manner of nomenclating various goods and



classifies more than five thousand products in a legal and a logical structure supported by well-defined rules for use thereof, with a view to achieve uniform classification. The WCO has been active in not just updating, but, also upgrading and evolving the HSN system to take into consideration the development of new products, either on account of inventions or technological evolutions. Governments, international organizations and

private sectors, have been extensively using HSN system for various purposes ranging from economic research and analysis to domestic taxes, trade policies control measures, etc.

India

India became a member of WCO in 1971, and adopted the HSN system in respect of its import and export transactions for the purpose of regulating the foreign trade under the Customs law. Accordingly, HSN formed the basis for the Schedule to the Customs Tariff Act, 1975.

The GST council has recommended, and the legislation has accordingly adopted the HSN system as formulated under the Customs Tariff Act, 1975, for classification of various items for the purpose of determining the rate of GST

services traded between nations. Unless there is a common understanding on this aspect, it would be very difficult for countries to freely engage in global trade. Today, with a view to facilitate this, most nations use the HSN system prescribed by the World Customs Organization (WCO), of which almost 200 nations are members. HSN is a six digit code that

Further as an added measure to regulate foreign trade, the foreign trade policy of India or the Export and Import Policy of India (as it was known then) was introduced in 1992, which was and continues to be monitored by the Directorate General of Foreign Trade. Under the Export and Import Policy, the Indian Trade Classification (Harmonised System) of Classification of Imports and Exports (ITC [HS]),

THOUGHT LEADERSHIP

was formulated in 1996, which was based on the HSN.

With the evolution of indirect taxes in India, there was levied a tax on the manufacture of goods, namely Central Excise duty, administered by the Central Government by virtue of Entry 84 of the Union List under the Seventh Schedule of the Constitution of India. With a view to align and provide a level playing field to the Indian manufacturers, there was levied on imported goods, a duty equivalent to the levy of the excise duty on goods manufactured in India. This in turn necessitated an appropriate basis of classification also for the purposed of levy of excise duty. Accordingly, the Schedule to the Central Excise Tariff Act, 1985 adopted the HSN system.

As part of the erstwhile framework of indirect taxation in India, transactions of purchase and sale, whether intra state or inter-state were liable to Sales Tax. This Sales Tax regime was replaced by the introduction of Value Added Tax (VAT) which adopted the HSN system for classification of goods, to determine the applicable rate of VAT. Thus most indirect tax legislation existing prior to the introduction of GST used the HSN system to classify goods for the purpose of levy of tax. The legal framework of these legislations however did not adopt the HSN system in a manner identical to that prescribed by the WCO or as implemented for the Indian Customs law.

Accordingly, there were certain disparities and therefore, it resulted in situations wherein the classification of the product adopted by a foreign exporter was different from that adopted for the (same product) by the Indian importer, and was also different from that adopted by an Indian manufacturer. This however, was not disputed by the authorities since it met with the requirement of

the legislation under which the classification was being made.

Adoption of HSN under the GST regime

Divergent from the above, under the GST regime, the GST council has recommended, and the legislation has accordingly adopted the HSN system as formulated under the Customs Tariff Act, 1975, for classification of various items for the purpose of determining the rate of GST. In fact, to make it amply clear, **Notification No. 1/ 2017 – Central Goods and Services Tax (Rate) dated 28th June, 2017**, which prescribes the rate of Central Good and Services Tax (CGST) that would be applicable on supply of goods, establishes a link between the Notification and Customs Tariff Act, 1975 (CTA), the First Schedule of which has been formulated on the basis of the HSN system. The relevant extract of the Notification is reproduced hereunder:

- “(iii) “Tariff item”, “sub-heading”, “heading” and “Chapter” shall mean respectively a tariff item, subheading, heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.”

HSN is a six digit code that classifies more than five thousand products in a legal and a logical structure supported by well-defined rules for use thereof, with a view to achieve uniform classification.



THOUGHT LEADERSHIP

Such adoption of the HSN would require companies to now ensure consistency from the perspective of Customs and GST for the purpose of classification of goods imported for trading purposes. Should similar goods also be manufactured in India, there will be a need for businesses to further realign the classification system to that extent. At this juncture, a concern arises especially in case of goods which could have more than one use in varied industries, and could be classified either on the basis of its generic use or as also used in a specific industry. To illustrate, certain plastic parts which while attracting BCD at a higher rate of 15% percent would be leviable to GST at the rate of 18%. Should these plastic parts have applicability in the automotive industry and were classified under chapter 87, these would attract a lower BCD of

10% with a comparatively higher GST of 28%. Such anomaly persists in case of variety of products which cater to dual purposes. Bearing in mind the bent of the revenue authorities administering under their specific legislations is towards garnering higher taxes, one only hopes that businesses are not faced with requiring to adopt different classification for the same product to discharge the highest tax liability under each of the applicable legislations.

India is contemplating and proceeding towards adopting a single rate GST. However, till such single rate GST is implemented, there is a need for authorities to review the product classification so as to overcome such anomalies that may cause unwanted stress for businesses.





The Battle of Input Tax Credits – An Investigative Analysis

The following chapter has been authored by **Rajat Chhabra (Partner)**, **Rahul Khurana (Associate Director)** and **Ashish Mitra (Associate Manager)** - ELP

The Government has recently come up with certain amendments in the CGST Rules capping the ITC at 20% to recompense the unmatched ITC, but the umpteen issues regarding the same continue to hound the industry at large, more particularly the law-abiding businesses who are facing the most deafening music of this amendment. This investigative analysis covers the story of ITC since the beginning of the implementation of GST law, the ever-oscillating stance of the Government throughout the last two tumultuous years, finally arriving at a stage where the whole purpose of this new law is on the brink of getting (woundedly) defeated by this amendment.

In the throes of History

Taxes being one of the significant sources of revenue for a country, its administration has always been recognised as one of the most important functions of a Government. Indirect taxes are one of such taxes significantly contributing to the sovereign revenue. As a reference point, in the Budget 2019, the total revenue from Indirect taxes came close to 31%¹, which is a significant chunk in comparison to 37%² in Direct Taxes. Needless to say, the administration of Indirect tax becomes an important area for the Government.

The system of CENVAT was not entirely able to solve the problem of cascading effect of taxes and the nation matured a great deal with these two Value Added Taxes and eventually paved way for introduction of GST, thus joining the developed economies of the world.

One of the important fruits hanging on the tree of Indirect Tax system is the tax set-off mechanism. Since essentially, indirect tax involves collection of taxes by a supplier of goods or services from the ultimate taxpayer on behalf of the government, such suppliers act as additional persons in the chain of people involved in the process of revenue

collection. More so, when the entire responsibility to collect such tax and deposit with the Government rests with the supplier. Therefore, a businessman (supplier) is not only doing his business, he also undertakes a part of job of the Government by collecting taxes on its behalf from the consumers and businesses alike.



The erstwhile Sales tax law was based on the system of cascading of taxes where taxes were applicable at every link in the value chain and the final consumer ended up paying a wholesome amount of 'tax on tax' owing to the nature of tax system structured by the Government.

However, it took some time for the government to understand the advantages of tax credit system which, amongst others, include better audit of transactions by controlling tax evasion, self-policing mechanism, flexibility in applying varying tax rates to different commodities, providing tax benefits to end users including exporters, common man, etc. In fact, most countries have adopted a similar 'tax credit' method for implementation of their indirect taxes.

Given the importance of input tax credit, this article traces the development of the input tax credit system right from the erstwhile regime and then from the time of implementation of GST law up till the recent 20% capping rule introduced in the GST law.

¹ Customs -4%; GST-19%; Excise duty-8%.

² Income tax -16%; Corporation Tax-21%.

The Battle of Input Tax Credits – An Investigative Analysis

Before the D-day arrived

The concept of tax credit was brought into the indirect tax administration in 1986 when Modified Value Added Tax ("MODVAT") was introduced for the first time under the excise law. Earlier, taxation of inputs, like raw materials, components and other intermediaries had numerous limitations, more specifically, cascading taxes, since at every stage, the duty was payable ad valorem which increased the cost of final product. This very often distorted the production structure and produced an incorrect assessment of indirect tax incidence. Therefore, the Government, in an attempt to eradicate these defects in the Central Excise System, evolved a new scheme of MODVAT.

MODVAT Scheme essentially follows VAT Scheme of taxation wherein a manufacturer can take credit of excise duty paid on raw materials and components consumed in his process of manufacture. This resulted in excise duty only being charged and collected on value addition by each manufacturer. This new scheme ensured same level of revenue at each stage and taxes only on value addition at each stage. It also brought certainty in the amount of indirect tax leviable on the final product and helped the consumer comprehend the impact of indirect taxation on the cost of the final product.

Subsequently, the MODVAT scheme was rationalised and replaced in the year 2002 as Central Value Added Tax ("CENVAT") which was introduced to make credit mechanism more relaxed, tightly knitted and more dynamic. This comparatively gave a free hand to the assesseees.

The system of CENVAT lived the test of times and for over a decade and a half, it has not only taught the systems and dynamics of having a good tax credit structure, it has also matured enough over the period to set the stage for a revolutionary Goods and Services Tax (GST) legislation.

The erstwhile Sales tax law was based on the system of cascading of taxes where taxes were applicable at every link in the value chain and the final consumer ended up paying a wholesome amount of 'tax on tax' owing to the nature of tax system structured by the Government.

Present – Not truly a Gift: Hail the GST!!

The concept of One-Nation-One-Tax was looming large in the minds of tax administrators for more than a decade, before the final efforts to introduce GST were re-initiated by the present Government. Until the GST came into being, the specs of tax credit mechanism could be seen in the tax structures of Value added tax at the State level and MODVAT/CENVAT at the Central level. However, the system of CENVAT was not entirely able to solve the problem of cascading effect of taxes and the nation matured a great deal with these two Value Added Taxes and eventually paved way for introduction of GST, thus joining the developed economies of the world.



The power to levy and collect taxes by the States as well as the Centre was defined in Schedule VII of the Constitution. Essentially, the tax credit mechanism went hand in hand, with the State as well as the Central Taxes. However, cross credit mechanism between State and Central tax was not available thus giving rise to the problem of cascading taxes, to the extent of State tax being levied on the tax component which was paid to the Centre. The problem used to magnify in case of imports which were subjected to a whole gamut of taxes³, leading to a significant amount directly going into the Government coffers, making them dearer with the passage of time.

This, apart from various other inefficacies of the present system, called for a more robust mechanism with reduced manual intervention and seamless flow of credits, more specifically between the Centre and the States.

³ CVD, Cess, SAD, AD, etc.

The Battle of Input Tax Credits – An Investigative Analysis

In an attempt to achieve these objectives, the CBIC (then CBEC), at the fag-end of the erstwhile regime (when GST was going to be implemented), issued numerous clarifications⁴ setting-forth the stated benefits of the GST in relation to the ITC, viz.,

“Electronic matching of input tax credits all-across India thus making the process more transparent and accountable.....”

Final price of goods is expected to be lower due to seamless flow of input tax credit between the manufacturer, retailer and service supplier”

With the failure of matching concept provided in the GST Common portal, it became difficult to claim refund pertaining to input invoices which were not appearing in GSTR-2A of the claimants.

Clearly, the (stated) idea was to provide seamless flow of credits to the businesses, and to ensure maximum reduction in compliance cost coupled with reduced complexity. The first sign of this was manifested in the Model GST Law (“MGL”) which gave a prelude to the probable set of provisions relating to ITC. As far as the ITC is concerned, except for a few changes, the MGL ended up gaining the

final shape in GST law that was finally passed by the Parliament.

At the time when GST was going to be implemented in India, it was already prevalent in many countries, and the Government never failed in eulogizing its simplicity (both in terms of its compliance as well as conceptual clarity). But as they say, the devil lies in the detail, which is true in case of legislations also, where the devil lies in its actual on-ground implementation.

While the ITC related provision, may appear sound, the Government faced the real challenge when it had to practically build the systems and technical infrastructure to implement its theoretical aspects which required businesses to upload a variety of data and information. Even the officials at higher echelons of authority would agree that it was a daunting task to make people and the consultant community believe (and also act) on the plausibility to implement this law.

The mirage of seamless credits flowing to the screen of the registered persons who will later smilingly approve it, soon vanished as soon as the IT ecosystem was rolled out. From the very first month itself, the invoice matching concept faced multiple issues in absence of a robust IT infrastructure. This amongst other things, resulted in, inter alia, (a) the extension of the due dates for filing the GST returns in the very first month; (b) releasing a new form GSTR-3B by the Government, admittedly, to start filling up its coffers, and (c) continuous extension of the time limit for filing GSTR-2 of July'17 eventually resulting in its dispensation (even till today, the filing of GSTR-2 is not mandatory).

Therefore, all that the taxpayer had to do was to fill in an amount in GSTR 3B and pay tax on the net amount. Although, a form of counter-check is available in Form GSTR 2A, till date, businesses are clueless how entries



⁴ Clarification issued by CBIC dated 03.06.2017

The Battle of Input Tax Credits – An Investigative Analysis

appear in the dynamic GSTR 2A which is nothing but the auto-populated purchase returns arising out of the filing of GSTR-1s (Form which records outward supply). It may also be that because of these issue and problems with the matching concept, the self-assessment based system of ITC was already ingrained in the GST vide Section 41.

The registered person will be entitled to claim ITC of only upto 20% of the value of invoices which have actually been uploaded by that vendor.

As the date of commencement of GST approached, and with the level of preparedness by the Government, the tone and tenor of the government began to change, resulting in recurrent tweaks in ITC related provisions. Even the fact that credit flows under GST are seamless is not entirely true because of, inter alia, a system of blocked credits under Section 17 where ITC is not available on certain inputs and input services, thereby breaking the credit value chain often in many cases.

Based on the experience of the first year of GST by the Government, there were many changes that were made in the GST law. Vide Amendment Act in 2018, amendments were also carried out in the provisions related to ITC, more specifically, related to blocked credits when, inter alia, ITC in relation to vehicles and conveyance were made more relaxed apart from other similar issues.

The taxpayers also faced challenges with the Annual GST Return which required input tax credit to be segregated into inputs/ capital goods and services, to match the ITC from the financial statement with GSTR 2A, etc. All these requirements, without the supporting IT ecosystem showed the lack of cooperation of the Government. Experiences from across the globe indicate that each time a new financial law is introduced, businesses, specifically the small and medium businesses are given enough leeway to adapt itself and become compliant. In this specific case, looking at the universality of the law, even the big corporations were left clueless with the numerous public notifications, circulars and press releases on a day-to-day basis, on multiple issues.

The businesses were already reeling under the inefficient and ever truant GST Common Portal which, with its limited bandwidth, was not functional around due dates. The occasion of filing the annual return marked a paradigm shift in the Government policy of availing ITC when in one of its Press Release, it was stated that appearing of invoices in GSTR 2A is not necessary to claim the ITC and registered persons in receipt of input invoices may continue to claim ITC based on such invoices^[1]. Further, it was also provided that ITC can be assessed by the officer based on the physical copies of invoices which are in possession of the registered person.

With the failure of matching concept provided in the GST Common portal, it became difficult to claim refund pertaining to input invoices which



were not appearing in GSTR-2A of the claimants. Such refunds were allowed based on manual filing and examination of purchase invoice copies in terms of Para 2.3 of Circular 59/33/2018 dated 04-09-2018.

The law also provided that the time limit to claim ITC by businesses shall be till September month of the following year to which the ITC pertains. Accordingly, the last date of claiming ITC for the FY 2017-18 was the due date for filing return for the month of September, 2018. However, this time limit was later extended to filing of return for the month of March, 2019.

^[1] Press release dated 18.10.2018

The Battle of Input Tax Credits – An Investigative Analysis

New Rule of 20%: Capping the taxpayers rights

In the year 2018, when various amendments in the CGST Act were undertaken, one interesting amendment was carried out by inserting Section 43A in the CGST Act. Briefly, Section 43A empowers the Government to prescribe the procedure for furnishing returns and to avail ITC by (apparently) overriding the existing provisions relating to the filing of returns (Sections 37, 38 and 39), availability of ITC (Section 16), and its availment procedure (Section 41, 42 and 4). On 09.10.2019, CGST Rules were amended vide **Notification No. 49/2019-CT** dated 09.10.2019 ("**NN 49/2019**") to introduce these amendments.

Presently, Rule 36 of the CGST Rules prescribed for the documentary requirements as well as other conditionalities for claiming ITC. Vide NN 49.2019, the following sub-rule (4) has been inserted in Rule 36, viz.,

"(4) 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 20 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."

By virtue of sub-rule (4) above, of all the invoices issued by the vendor to the registered person, those invoices which have not been uploaded thereof by the vendor (in its returns), the registered person will be entitled to claim ITC of only upto 20% of the value of invoices which have actually been uploaded by that vendor.

On 11.11.2019, CBIC has issued one **Circular No. 123/42/2019 – GST** with a view to clarify the aforesaid 20% rule. However, the Circular appears to complicate the matters more than providing a suitable clarity. One of the paras of the Circular expounds that, *"The restriction of 36(4) will be applicable only on the invoices / debit notes on which credit is availed after 09.10.2019"*. Going by this clarification, the situation may arise where a certain invoice of, say August, 2019, may be availed by the assessee in the GSTR-3B of November, 2019. This clarification seems to suggest that the 20% restriction shall be applicable to such invoice also as the credit is availed post 09.10.2019 – this essentially has the effect of the said amendment spilling over to even invoices of retrospective date.

Further, looking at the transient nature of GSTR-2A which appears to get updated every now and then (possibly due to filing of returns by suppliers

even after due date), the Circular says that for the purpose of comparing GSTR-2A values by the assessee from its own Purchase register, GSTR-2A as available on the due date of filing of GSTR-1 u/s 37(1) has to be considered. This puts a very onerous responsibility of the entire community of ITC takers to download the GSTR-2A as on the last date of filing of GSTR-1 which is not only a cumbersome task, but also very theoretical considering the ludicrous working of GST portal around the due dates. The moot issue that remains to be answered as to how such comparison shall be auditable at a later stage – both by the GST Auditor as well as by the Department itself given that every time a GSTR-2A is downloaded, it is an updated GSTR-2A and hence, in case where an assessee omits to download the GSTR-2A as on due date of GSTR-



1, it may not be possible to adhere to the said provisions in letter and spirit. Another question that remains is what shall happen in case the due date of GSTR-1 is extended for any particular tax period. Keeping control of these variables, is going to be a mammoth task and is bound to increase the workload.

In a nutshell, the provision requires each tax payer to match its entire purchase invoices before every GSTR-3B for subsequent period is filed. This is because every month GSTR-2A will keep on updating not only the invoices of subsequent period, but also of the past period which the suppliers omitted to report in their corresponding month's GSTR-1. Given this, the taxpayer has to refer to its GSTR-2A of earlier period too as it keeps on updating with the invoices earlier missed out to be reported by the suppliers which makes it very onerous for taxpayers to implement. To add to this is the fact that the said restriction of 20% shall not be system oriented and assessee has to compute and disclose it based on his own self-assessment which shall be subjected to audits and litigation arising therefrom.

The Battle of Input Tax Credits – An Investigative Analysis

Looking at the subject provisions, it can be seen that it single-handedly has the effect of defeating the very purpose of GST, which was to provide and allow seamless flow of credit across the value chain by putting an arbitrary restriction (as regards qualification and quantum of credit) on the allowable ITC. This is particularly disturbing given that such restrictions emanate from the actions/ inactions/ omissions/ independent of the registered person himself, and despite that leads to breaking the credit chain.

The wickedness of these provisions also lie in the fact that even if the taxes are deposited and paid by the vendors, the registered person shall not be able to take credit unless the said supply invoice is disclosed and filed⁵ in its outward supply return by such vendor. Coupled with this is the fact that taxpayer will have to make complex calculations



and reconciliations every month to arrive at the quantum of ITC which is in line with the manner of reconciliation procedure now clarified vide the above Circular. Procedural in nature, as it may appear at the first instance, this provision single-handedly holds the key to form the basis for denial of (legitimate) ITC to the registered person.

One of vices of this 20% rule will also manifest in the case where a certain vendor did not upload a single invoice/ uploaded very miniscule invoices out of the total invoices issued to a registered vendor. In this case, the registered recipient will not be able to take ITC or will be eligible to take negligible ITC only. This mounts a huge challenge on the registered persons who are actually in compliance with the law and unnecessarily punishes such law-compliant taxpayers for the non-compliance of others which is directly in conflict with the law of equity.

The new amendment also remains silent as to what will happen to the ITC relating to inward invoices from vendors who are required to file quarterly returns? This has the capability to keep businesses bereft of their valid claim of ITC for upto 4 months. Whether the businesses have to wait till the end of quarter for the vendor to upload its return. Not to mention that any delay in filing of return will lead to geometrically increase in the time gap for claiming ITC by the law-abiding taxpayer. Further, question remains as to the validity of GSTR-2A downloaded after the due date of filing GSTR-1 since the Circular mentions to use GSTR-2A for reconciliation of that date alone.

Concluding...

We are almost two and a half years through with the advent of GST and it is but pertinent for the Government to understand that it can no more continue to experiment with the law. It has to adopt a more sensible approach of involving industry members and effected groups while taking critical decisions who are more well versed with the ground realities and nearer victims of the Government's inefficiencies (than the bureaucracy). It has now become imperative for the Government to pull up its socks and undertake larger level calls, ranging from dispensing with the requirement of providing complex information in annual returns, to boosting its Technology infrastructure to allow seamless flow of credits.

Working of the helpdesk (both GST and CBIC Mitra) has also remained a questionable proposition, more so when many helpdesks are not updated amount of the procedural amendments undertaken from time to time and their responses to many queries also do not stand the test of legal provisions, leading them to simply push the grievance-holders to the doors of their Tax Officers for better clarity.

Not to mention, at this juncture when the businesses are having their both hands (and legs) drawn in the thick rut of tax compliances (including audits and direct tax returns). Capping the ITC to 20% by drafting the provisions in a very hazy manner without either expounding on its implementation mechanism nor on the matters connected therewith and incidental thereto, will make it difficult for businesses. Similar to the fact that mere extension of deadline in filing of annual returns and reconciliation statement is not going to bear any fruit unless few structural and informational changes re carried-out.

⁵Section 16(2)(d) of the CGST Act, 2017



FROM THE BENCH: KEY JUDICIAL PRONOUNCEMENTS

The following chapter has been authored by Darshan Bora (Director), Sweta Rajan (Associate Partner) and Suhasini Joshi (Associate Manager) - ELP

Madras HC: Declared composition of GST Appellate Tribunal as 'unconstitutional'

Revenue Bar Association and Other vs. Union of India

[TS-735-HC-2019(MAD)-NT]

The Revenue Bar Association filed a writ petition challenging the constitutional validity of Sections 109 and 110 of the CGST Act and Tamil Nadu Goods and Service Tax Act, 2017 (jointly 'GST Act') which provide for the constitution of GST Appellate Tribunal ('GSTAT') and the qualification, appointment and conditions of service of its members.

It was the Petitioner's contention that:

- Section 109, which prescribes that the GSTAT shall consist of one Judicial Member as against two Technical Members (one from the Centre and one from the State) is contrary to Article 50 of the Constitution of India and may potentially impact the independence of the judiciary significantly. Further, for independence, impartiality and to ensure public confidence in the justice delivery system, the administrative members should not be in majority on a Bench.
- The Petitioner also challenged Section 110 as ultra vires the constitution since it does not permit advocates to be members of the GSTAT.
- It was further contended that advocates practicing in a particular branch are experts in the field and therefore, their experience would be valued for selection as Judicial Members.

The Hon'ble High Court held as follows:

The challenge to the constitution of GSTAT was allowed and Section 109(3) and 109(9) of the GST Act was struck down for the following reasons:

- As per Section 109, the two technical members would ordinarily possess little knowledge in the legal field though they might be otherwise adept in understanding the taxing statute. Given the disparity in membership, there exists the possibility of the two technical members, arriving at a view, different from that of the Judicial Member.
- Since all GST related issues involve litigation between an assessee and the Government, the presence of two members from the Government creates an apprehension of bias leading to assessee's believing that no remedy exists. This assumes significance since the GSTAT is discharging a judicial function.
- The Parliament only has the power to set up an alternative institutional mechanism which offers a mechanism no less effective than a High Court. Being as effective as a High Court, would not be limited to having powers akin to a High Court, but would also include the ability to exercise judicial function akin to a High Court, in the sense of being impartial and independent.
- The objective behind the constitution of the GSTAT is to ensure that the legal principles and the decision-making processes applied to



FROM THE BENCH: KEY JUDICIAL PRONOUNCEMENTS

issues arising under CGST Act are just, fair and reasonable. This requires a Judicial member with a legally trained mind. The number of Members who do not possess the necessary legal expertise cannot be permitted to exceed the Judicial Members on the bench.

The Parliament was directed to reconsider the issue regarding the eligibility of lawyers to be appointed as Judicial Members in the GSTAT for the following reasons:

- It is a settled law that the right to be considered for an appointment to a specific post arises only when the rules provide for the same and in the absence of any such right, it cannot be contended that a person's right to be considered is taken away.
- Consideration of advocates for appointment to some tribunals does not mean that the advocates have been vested with a constitutional/ legal right to be considered for appointment as a member of any other tribunal.
- The observations made in R.K. Jain's case were made because the relevant Act provided that advocates will be eligible to be considered for appointment as tribunal members. In the present case, absent a constitutional right, the vires of Section 110(1)(b) cannot be struck down since the eligibility to be appointed as Judicial Members does not include advocates.

- Nevertheless, it was held that the Union of India must conduct an evaluation of its departure from the existing practice of appointing advocates to the position of Judicial members in ITAT and CESTAT, given the need for Judicial Members abreast with legal knowledge including taxation matters for deciding issues that are likely to arise while adjudicating disputes under the GST Act. Accordingly, it was recommended that the Parliament reconsider the issue.

Section 110(1)(b)(iii) of the CGST Act which provided for a member of the Indian Legal Services, who has held a post not less than Additional Secretary for three years, to be appointed as a Judicial Member in GSTAT was struck down on the following basis:

- The issue stands settled in the Hon'ble Supreme Court's judgement in ***Union of India v. R. Gandhi [2010 (11) SCC 1]***, wherein it was held that "a person who has held a position under the Indian Legal service cannot be considered for appointment as judicial members".
- Applying this dictum of the Hon'ble Supreme Court to the appointment of members of Indian legal Service to the GSTAT constituted under the CGST and TNGST, it was held that the Members of Indian Legal Service cannot be considered for appointment as Judicial Members.

Madras HC allows transition of credit of Education Cess, Secondary & Higher Education Cess and Kishi Kalyan Cess into GST absent express stipulation for lapse

Sutherland Global Services Pvt. Ltd. vs. Assistant Commissioner CGST and Central Excise [TS-938-HC-2019(MAD)-NT]

The Petitioner challenged a show cause notice requiring it to reverse credit of Education Cess (EC), Secondary & Higher Education Cess (SHEC) and Kishi Kalyan Cess (KKC) into the GST regime on the basis that such credit transition was not allowed under Section 140(1) of the CGST Act.

The Petitioner submitted that such reversal would take away a vested statutory right expressly conferred on



FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

the Petitioner under the CGST Act, which is illegal. The Petitioner submitted that Section 140(8) of the CGST Act which entitles an assessee to carry forward the entire CENVAT Credit appearing in returns filed under the existing law for the period ending on the appointed date, to the GST regime through Form TRAN-1 uses the term 'CENVAT credit' and not 'eligible duties and taxes'. Therefore, even though Rule 117 refers to Section 140 as a whole, a conjoint reading shows that restriction of credit carried forward pertaining to 'eligible duties and taxes' is applicable only to credit under Section 140(5) and not to other sub-sections.

The Petitioner contended that since the cesses were correctly availed and carried forward unutilized in the ST-3 returns, they are eligible credits which have not lapsed. Hence, even after the abolition of EC and SHEC from June 1, 2015, the Credit Rules pertaining to utilization of such credit continued to remain effective till July 1, 2017.

The Department heavily relied on the judgement in *Cellular Operators Association v. Union of India* [TS-44-HC-2018(DEL)-EXC] to argue that the credit of EC and SHEC had lapsed and hence could not be cross-utilized for payment of GST.

The Hon'ble Madras High Court allowed the transition of EC, SHEC and KKC into GST regime under Form TRAN-1 on the following basis:

- Credit once legally availed continues to accumulate in the books of the assessee till such credit lapses as per an express provision. Since no instructions / notification / circular has been issued till date by the CBEC, despite there having been several occasions to do so, the credit has not lapsed.
- The concerned cess credit has been carried forward and reflected in the ST-3 returns from time to time. The authorities cannot now take a stand that such credit is unavailable for use.
- Section 140(8)(1) read with the Explanation thereto suggests that all available credit as on the date of transition would be available to the Petitioner for set-off. This position has been settled by the Hon'ble Supreme Court in *Eicher Motors and another vs. Union of*

India and others [1999-VIL-04-SC-CE] wherein it was held that the credit lying in the assessee's balance represented an accrued vested right which had become absolute the moment the input was used in the manufacture of the final product.

- The Department's reliance on ***Cellular Operators Association v. Union of India* [TS-44-HC-2018(DEL)-EXC]** is misplaced and distinguishable since:
 - The premise on which the judgement in the *Cellular Operator's* case (*supra*) was passed was that the cross-utilization of accumulated credit of cesses against excise duty or service tax was impermissible under the extant provisions and rules, unlike in the present case where there is no prohibition to carry forward and utilize cess credit against GST.
 - Even in *Cellular Operator's* case (*supra*), it was held that the cesses were only phased out, and nowhere does it say that the underlying credit lapsed. Since no new liability arose, it was held that no vested right could be said to exist in relation to past accumulated credits absent an avenue to set-off / utilise.
 - Even post the decision in *Cellular Operator's* case (*supra*), no instructions or circulars were issued by CBEC to clarify that the accumulated credit had lapsed.



FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

- Importantly, it was observed that the retrospective amendment vide the Central Goods and Services Tax (Amendment) Act, 2018 which clarified that the expression 'eligible duties and taxes' excludes any cess not specified in Explanation (1) or (2) to Section 140(1), does not make any amendment to Section 140(8).

ELP Comment:

It is important to note that this judgement of the Hon'ble Madras High Court has been rendered in context of a challenge to the show cause notice issued to the assessee rejecting their claim of carry forward of cess credit into the GST regime. No challenge was made to the vires of the provision per se. Therefore, the issue as regards whether the retrospective amendment to Section 140(1) is ultra vires or intra vires remains undecided by the Hon'ble Madras High Court.

The Hon'ble Madras High Court's observation that the said retrospective amendment has not been made to Section 140(8) is relevant because if the retrospective amendment to Section 140(1) were to be given effect to, it would effectively result in differential treatment of service providers having centralized registrations, as against manufacturers and service providers having decentralized

registrations. Not only was there no concept of centralized registration under Excise law, but the manner of registration cannot also determine the ability to transition credit.

Noteworthy that challenges to the constitutional validity of the said amendment are pending before the Hon'ble High Courts in Gujarat, Odisha, Jharkhand, Telangana, Tamil Nadu and Karnataka.

Maharashtra AAR rules that material received by the contractor from the service recipient is includible in the taxable value of works contract

In Re: Tejas Constructions & Infrastructure Private Limited [TS-721-AAR-2019-NT]

The applicant is a contractor providing construction services to the recipient under a work order issued by the recipient and an agreement. The applicant approached the Maharashtra AAR seeking a ruling on: (a) whether the contractor can charge GST on the value of material supplied by the recipient of service, and (b) the mechanism to calculate the taxable value under Section 15 of the CGST Act.

It was observed that as per the Agreement and Work Order, the materials in question were supplied by the recipient for which no separate consideration was paid by the applicant to the recipient. The material was used in providing the works contract services.

The consideration for the works contract services was paid to the applicant subject to execution of stipulated conditions and completion of work as per the drawings, specifications and price schedule of quantities. GST was paid on the entire value of the contract (including the value of the materials) and pursuant to the GST payment, the value of the materials supplied by the recipient was deducted and balance amount was paid by the recipient to the applicant.



FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

Basis the above observations, the Maharashtra AAR held that:

- (a) In terms of Section 15(2) of the CGST Act, a supplier is liable to pay GST on the entire value of the contract including the cost of materials supplied by the recipient. However, since the applicant in the present case is not the supplier of goods / services (i.e. service recipient) but is the contractor, in terms of Section 95 of the CGST Act, the question raised by the applicant as to whether GST can be charged on the same cannot be answered.
- (b) As regards the mechanism to calculate the taxable value as per Section 15 of the CGST Act, the value of outward supply of construction services for payment of GST is the total value of contract, inclusive of material and labour. Further, the certificate issued by the architect (i.e. RA Bill) for the invoice to be issued contains total contract value less the value of material supplied by the recipient. Hence, in view of settled law [**N. M. Goel & Co. vs. Sales Tax Officer, Rajnandgaon & Ors, AIR 1989 SC 285**] that by the use or consumption of materials in

construction work there is passing of property in goods from the contractor to the recipient, there is a sale of material by the contractor to the recipient, which was liable to tax.

ELP Comment:

The issue as regards whether the supply of materials by the recipient of works contract service to the contractor remains unanswered. Given that the contractor was in fact the supplier of material, albeit such supply may have been free of consideration, the question raised may have been answered in the present case.

[Continued on Page 36](#)





EXPERT SPEAK

Interview of Mr. Jayesh M. Trivedi, President – (SecI. & Legal) & Company Secretary, The Great Eastern Shipping Company Limited
By Stella Joseph (Associate Partner) and Abhinay Kapoor (Senior Associate) - ELP

1. Has your company effectively geared up for the Goods and Services Tax ("GST") regime, especially from the perspective of upcoming annual return filing and audit enquiries?

We started preparing for the GST regime since the stage when the Model GST Law was released in the public domain. This equipped us to effectively transition into GST. Post the introduction of GST, we have been continuously monitoring and revisiting its implementation.

With the passage of time and evolution of the GST law, we, through our continuous monitoring efforts, have identified minor gaps, which our in-house team has immediately rectified with the assistance of our consultants.

2. In your view, has the orientation of tax authorities undergone a change with the introduction of GST regime?

So far, we have had limited interaction with the local tax authorities. However from the interaction that the company as well as the Association (Indian National Ship Owner's Association) had with tax authorities in New Delhi, they seemed to be quite receptive of the ideas put forth by us. They were ready to at least look at the suggestions put forth.

While we see a positive change in the thought process of tax authorities, especially in New Delhi, they have not been in a position to effectively grant us all the reliefs sought, which is perhaps on account of the across-industry impact of the suggestions made by us. Though, one must say that the tax authorities do not seem to be as aggressive or resistant to our suggestions, as they were at one point in time.

3. In the initial days of GST, various reliefs and facilitations were granted by the GST Council. Have these reliefs and facilitations impacted the over-all competitiveness of Indian shipping lines vis-a-vis foreign shipping lines?

The GST law created certain situations where the Indian shipping lines were at a disadvantage vis-à-vis, international shipping lines. Based on our representations, certain reliefs came through from the GST Council, which helped the competitiveness of the domestic shipping lines to some extent.

One such instance was in the case of export movement of cargo, wherein while an Indian shipping line would be required to pay GST on such movement, a foreign shipping line would not be liable for this transaction. Basis our representations, this has been remedied to some extent since this leg has been granted exemption, which has been extended from time to time.

Similarly, on the import movement of cargo, there arose a liability on an Indian shipping line but not on a foreign shipping line. This disparity has been addressed to some extent, since, now, in case services are taken from foreign shipping lines, the importer in India is made liable to discharge GST.

However, one major cause of disparity which remains unaddressed is in case of



EXPERT SPEAK

acquisition of a vessel. When a vessel enters India for the first time, IGST at the rate of 5 percent is required to be paid on the value of the vessel by an Indian shipping line. In comparison, foreign shipping lines do not have to discharge such IGST on the value of the vessel when they come and trade in India. This treatment has affected the competitiveness, cost and the associated profitability for Indian shipping lines vis-à-vis foreign shipping lines.

4. What are the key pain-points which are being faced by the manner in which GST has been implemented in India? What is your wish-list from the GST Council (other than specific exemptions)?

One pain point is as regards addition of the value of insurance and freight to the value of vessel while computing tax liability. The vessel comes to India on its own propulsion. Therefore, to ask for an addition of freight is illogical. Similarly, when the vessel is purchased and before it starts plying in water, India or anywhere, it must get itself insured. There is no specific insurance for the voyage that we take. The insurance is taken once every year and that is a requirement we cannot do without. When a cargo is loaded on a vessel, a cargo specific transportation insurance is taken, which is a different scenario. However, the same logic has been incorrectly applied to vessels, treating them at par with any other goods, which again is unreasonable.

Further, there are inconsistencies in the overall implementation of the law at various jurisdictions and ports and it gets interpreted differently by different officers. For instance, in relation to addition of freight and insurance, certain ports do add them to the value of the vessel, whereas authorities at other ports don't. Further, certain ports say that only last voyage cost is to be taken as freight. In this context, I am reminded of a funny and absurd incident in

the western part of country, where the authorities had insisted that value of all the voyages from the time when the vessel was acquired be taken. The vessel came here after two and a half years and we were required to determine the value of freight for all its voyage, which was perhaps higher than the value of the vessel itself. Wiser counsel prevailed and the contention was dropped.

Issues of this nature emerge since relevant authorities do not have a full and clear understanding of the nature of our business, especially at the field level. There should ideally be a comprehensive and clear standard operating procedure which should be consistently adopted by tax authorities at all ports and jurisdictions. Lack of consistency in approach and interpretation by the authorities is a major problem for companies like us which have pan-India operations.

Separately, given the peculiarity of our business which may involve both water and pan-India road transportation, the shipping industry, right from the inception of GST has been requesting for a centralized GST registration. While shipping lines conduct majority of their operations from coastal states, they do have operations in all States when it comes to road-transportation. Hence, a single centralized registration would definitely be



EXPERT SPEAK

a welcome relief for the industry. With sharing of resources between Centre and States, it may not be difficult for them to identify and quantify the GST earnings of each State. Once GST is quantified, the benefit thereof can definitely be passed on by the Centre to the relevant States.

Another major concern as far as shipping industry is concerned is in relation to input tax credit ("ITC"). Shipping lines are entitled to avail ITC of GST on inputs service and not of GST paid at the time of procurement of goods (other than vessels), even though such goods are procured for our business. GST was introduced with the specific objective to eradicate all out-of-pocket cost in case of B2B transactions by increasing fungibility of credit. Disallowance of ITC of GST paid on procurement of goods by shipping lines leads to a leakage of ITC, which, to my understanding, is against the basic tenet of indirect tax law, including GST. This is hampering the Indian shipping lines by making them less competitive when compared with foreign shipping lines who do not face any major bottleneck while servicing Indian cargo.

In addition to this, levy of 5 percent IGST at the time of import of vessel results in enormous accumulation of ITC which may take years to utilize. This upfront

payment in the form of GST on the total value of vessel results in a massive cash-flow impact on the shipping lines. This especially hurts smaller shipping lines which are already cash-constrained since 2009 on account of a downturn in the shipping industry.

Another issue is that petroleum products, which are major inputs for shipping lines, continue to be outside the ambit of GST. This is also creating an anomaly and will perhaps lead to pointless litigation. Majority of our customers of liquid cargo are Indian oil companies, and they are ineligible to avail ITC of the GST charged by us. Therefore, it would be a welcome move for both the shipping lines and the Indian oil companies, if petroleum products are brought within the GST ambit.

5. How much weightage do you give to tax and more so GST considerations while undertaking business decisions?

While the Government argues that GST is a pass-through, the challenges faced by the shipping lines, including in relation to ITC as discussed in my previous responses, make GST, especially when it is at the rate of 18%, an important decision-making factor for our business.





LEGISLATURE AT WORK - RECENT AMENDMENTS

The following chapter has been authored by **Abhinay Kapoor (Senior Associate)** and **Deepika Menon (Associate)** - ELP

GST revenue collection for August 2019 and September 2019 reported to be below Rs. 1 Lakh Crores

- The gross GST revenue collection for the month of August 2019 is reportedly Rs. 98,202 Crores which includes CGST revenue of Rs. 17,733 Crores, SGST revenue of Rs. 24,239 Crores, IGST revenue of Rs. 48,958 Crores and Cess revenue of Rs. 7,273 Crores.
- As regards the gross GST revenue collection for the month of September 2019, the same has been recorded to be Rs. 91,916 Crores, which includes CGST revenue of Rs. 16,630 Crores, SGST revenue of Rs. 22,598 Crores, IGST revenue of Rs. 45,069 Crores and Cess revenue of Rs. 7,620 Crores.
- While on one hand, a growth of 4.51% is apparent in the GST revenue collection upon comparison with the collections of August 2018 (which amounted to Rs. 93,960 Crores), on the other hand collections of September 2019 indicate a decline of 2.67% vis-à-vis those of September 2018 (which amounted to Rs. 94,442 Crores). Nevertheless, the GST revenue collected for September 2019 and August 2019 is below the Rs. 1 Lakh Crore mark, unlike that of July 2019 which was recorded to be around Rs. 1.02 Lakh Crores.
- The drop in the GST revenue collections may thrust the GST Department towards ensuring that all revenue due to it is collected, resulting in surge of enquiries and show cause notices.
- Therefore, businesses are now carefully revisiting their operations to ensure that the same are compliant with the various provisions of the GST law as applicable to them, so as to avoid any frivolous litigation.



LEGISLATURE AT WORK - RECENT AMENDMENTS

Amendments in GST law pursuant to the 37th GST Council Meeting

- Following are some of the amendments which have been introduced in the GST rates (w.e.f. 1st October, 2019) pursuant to the 37th GST Council Meeting:

Change in the rate of GST on Goods and Services

S. No.	Description of goods/service	Particulars of the notification	Previous Rate of GST	Amended rate of GST
1.	Marine Fuel 0.5% (FO)	Notification No. 14/2019 – Central Tax (Rate) dated 30th September, 2019	18%	5%
2.	Rail locomotives powered from an external source of electricity or by electric accumulators		5%	12%
3.	Other rail locomotives; locomotive tenders; such as Diesel-electric locomotives, Steam locomotives and tenders thereof		5%	12%
4.	Self-propelled railway or tramway coaches, vans and trucks, other than those of heading 8604		5%	12%
5.	Railway or tramway maintenance or service vehicles, whether or not self-propelled (for example, workshops, cranes, ballast tampers, track liners, testing coaches and track inspection vehicles)		5%	12%
6.	Railway or tramway passenger coaches, not self-propelled; luggage vans, post office coaches and other special purpose railway or tramway coaches, not self-propelled (excluding those of heading 8604)		5%	12%
7	Railway or tramway goods vans and wagons, not self-propelled		5%	12%

LEGISLATURE AT WORK - RECENT AMENDMENTS

8	Parts of railway or tramway locomotives or rolling-stock; such as Bogies, bissel-bogies, axles and wheels, and parts thereof		5%	12%
9	Railway or tramway track fixtures and fittings; mechanical (including electro-mechanical) signalling, safety or traffic control equipment for railways, tramways, roads, inland waterways, parking facilities, port installations or airfields; parts of the foregoing		5%	12%
10	Caffeinated Beverages		18%	28%
11	Precious stones (other than diamonds) and semi- precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport		3%	0.25%
12	Synthetic or reconstructed precious or semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded synthetic or reconstructed precious or semiprecious stones, temporarily strung for convenience of transport		3%	0.25%

LEGISLATURE AT WORK - RECENT AMENDMENTS

13	Supply of hotel accommodation ⁶ service	Notification No. 20/2019- Central Tax (Rate) dated 30th September, 2019	Transaction value per unit per day < Rs. 1000	Nil	Value of supply per unit per day <= Rs.1000 or equivalent	Nil
			Transaction value per unit per day >= Rs. 1000 and < Rs. 2500	12%		
			Transaction value per unit per day >= Rs. 2500 and < Rs. 7500	18%	Value of supply per unit per day >= Rs. 1001 and < = Rs. 7500 or equivalent	12%
			Transaction value per unit per day >= Rs. 7500	28%	Value of supply per unit per day >= Rs. 7501 or equivalent	18%
14	Supply of outdoor catering services ⁷ at specified premises ⁸ excluding services of outdoor catering provided by a person who supplies hotel accommodation service at specified premises, or a supplier located in specified premises		18%		5% (subject to the condition that Input tax credit ("ITC") in relation to goods and services used in supplying the service has not been taken)	
15	Composite supply of outdoor catering together with renting of premises at premises other than specified premises excluding the said supply of service provided by a person who supplies hotel accommodation service at specified premises, or a supplier located in specified premises.		18%		5% (subject to the condition that ITC in relation to goods and services used in supplying the service has not been taken)	

⁶In terms of Notification No. 11/2017 – Central Tax (Rate) dated 28th June, 2017 (as amended by Notification No. 20/2019 – Central Tax (Rate) dated 30th September, 2019), the term "Hotel accommodation" means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time share usage rights by way of accommodation

⁷The term "Outdoor catering" means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature; *ibid*.

⁸The term "specified premises" means premises providing 'hotel accommodation' services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent; *ibid*.

LEGISLATURE AT WORK - RECENT AMENDMENTS

16	Supply of job work service in relation to diamonds		5%	1.5%
17	Supply of machine job work in industries such as engineering industry, except in relation to bus body building		18%	12%

Change in rate of Compensation Cess on Goods

S. No.	Description of goods	Particulars of the notification	Previous Rate of Compensation Cess	Amended rate of Compensation Cess
1.	Caffeinated beverages	<i>Notification No. 2/2019-Compensation Cess (Rate) dated 30th September, 2019</i>	-	5%
2.	Petrol, Liquefied Petroleum Gas or Compressed Natural Gas driven vehicle with an engine capacity not exceeding 1200 cc and length not exceeding 4000mm designed for carrying up to 13 persons		15%	1%
3.	Diesel driven vehicle with an engine capacity not exceeding 1500 cc and length not exceeding 4000mm designed for carrying up to 13 persons		15%	3%

Specified Goods and Services declared to be exempt

- Further, the supply of the following goods and services were declared to be exempt from the levy of GST, w.e.f. 1st October, 2019:
 - **Goods**
 - All goods supplied to the Food and Agricultural Organisation of the United Nations (FAO) for execution of following projects, subject to compliance with the prescribed conditions thereto⁹:
 - i. Strengthening Capacities for Nutrition-sensitive Agriculture and Food systems
 - ii. Green Ag: Transforming Indian Agriculture for Global Environment benefits and the conservation of Critical Biodiversity and Forest landscape
 - Gold, silver or platinum falling under Chapter 71 of the First Schedule to the Customs Tariff Act, 1975, when supplied by Nominated Agency under the scheme 'Export Against Supply by Nominated Agency' as referred to in paragraph 4.41 of the Foreign Trade Policy 2015-2020, to a registered person, subject to fulfilment of the conditions prescribed thereto¹⁰
 - Dried tamarind¹¹
 - Plates and cups made up of all kinds of leaves/flowers/bark¹²

⁹ Refer Notification No.19/2019-Central Tax (Rate) dated 30th September, 2019 and corresponding integrated tax notification

¹⁰ Refer Notification No.17/2019-Central Tax (Rate) dated 30th September, 2019 and corresponding integrated tax notification

¹¹ Refer Notification No. 15/2019-Central Tax (Rate) dated 30th September, 2019 and corresponding integrated tax notification

¹² *ibid.*

LEGISLATURE AT WORK - RECENT AMENDMENTS

o Services

- Services provided by and to Fédération Internationale de Football Association (FIFA) and its subsidiaries, directly or indirectly in relation to any of the events under FIFA U-17 Women's World Cup 2020, including service by way of right of admission to the said events, subject to fulfilment of prescribed conditions¹³
- Storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, coffee and tea¹⁴
- Life insurance service provided or agreed to be provided by the Central Armed Police Forces (under Ministry of Home Affairs) Group Insurance Funds to their members under the respective Group Insurance Schemes of the concerned Central Armed Police Force¹⁵
- Service of general insurance under the Bangla Shasya Bima¹⁶
- Exemption on services of export freight by sea and air have been extended till September 2020¹⁷



¹³ Refer Notification No. 21/2019-Central Tax (Rate) dated 30th September, 2019 and corresponding integrated tax notification

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

LEGISLATURE AT WORK - RECENT AMENDMENTS

Other amendments to clarify position under GST

- Following amendments have now been implemented by issuance of suitable notifications:
 - Granting of liquor license by State governments against consideration in the form of licence fee or application fee, or any other name, does not constitute either a supply of goods or of service¹⁸
 - **Notification No. 4/2018 – Central Tax (Rate) dated 25th January, 2018**, which provides the time at which the liability to pay tax on supply of development rights arises, is inapplicable to development rights supplied on or after 1st April, 2019¹⁹
 - Permitting an author who is registered under GST law to discharge GST on royalty received from publishers under forward charge mechanism, subject to compliance with the prescribed conditions²⁰
 - Payment of applicable rate of GST under reverse charge mechanism by the recipient of service, in respect of the following services²¹:

Category of Service	Supplier of Service	Recipient of Service
Services provided by way of renting of a motor vehicle provided to a body corporate	Any person other than a body corporate, paying central tax at the rate of 2.5% on renting of motor vehicles with input tax credit only of input service in the same line of business	Any body corporate located in the taxable territory
Services of lending of securities under Securities Lending Scheme 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI")	Lender, i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI	Borrower i.e. a person who borrows the securities under the Scheme through an approved intermediary of SEBI

Concessional rate of GST, viz., 5%, has been extended to supply of specified goods required in connection with petroleum operations or coal bed methane operations undertaken under specified contracts under the Hydrocarbon Exploration Licensing Policy (HELP) or Open Acreage Licensing Policy (OALP), subject to fulfilment of the necessary conditions thereto²²

- Additionally, in the event the specified goods supplied in connection with specified petroleum operations are sought to be disposed of in non-serviceable form, an option to pay GST at the rate of 18% on the transaction value is now available, subject to compliance with the requisite conditions²³
- Manufacturers of aerated water have been made ineligible to opt for composition scheme²⁴

¹⁸ Refer Notification No. 25/2019-Central Tax (Rate) dated 30th September, 2019 and corresponding integrated tax notification

¹⁹ Refer Notification No. 23/2019-Central Tax (Rate) dated 30th September, 2019 and corresponding integrated tax notification

²⁰ Refer Notification No. 22/2019-Central Tax (Rate) dated 30th September, 2019 and corresponding integrated tax notification

²¹ Ibid.

²² Refer Notification No. 16/2019-Central Tax (Rate) dated 30th September, 2019 and corresponding integrated tax notification

²³ Ibid.

²⁴ Refer Notification No. 18/2019 – Central Tax (Rate) and Notification No. 43/2019-Central Tax, both dated 30th September, 2019

LEGISLATURE AT WORK - RECENT AMENDMENTS

Requirement of recording Unique Identification Number (UIN) on invoices pertaining to refund claims waived up to March 2020

- The requirement of recording UIN on invoices issued by the suppliers, has been waived off for the quarterly refund claims filed by UIN entities for period April 2018 to March 2020.²⁵
- Previously, the waiver in recording UIN had been granted till March 2019.²⁶

Furnishing of Annual Return made optional for FY 2017-18 and 2018-19

- Furnishing of Annual Return (in Form GSTR-9/Form GSTR-9A/Form GSTR-9B) and Reconciliation Statement (in Form GSTR-9C) under the GST law has been made optional in respect of FY 2017-18 and 2018-19, for those registered persons whose aggregate turnover in a financial year does not exceed Rs. 2 Crores and, those who have not filed the said returns before the due date.²⁷
- In the event, the said returns have not been furnished by the due date, they will be deemed to be furnished as on the due date.

Due Dates for implementation of certain compliances under the GST Law

- The due dates for furnishing of Form GSTR-1 and Form GSTR-3B for the period October 2019 to March 2020 has been notified as follows:

S. No.	Relevant Return	Particulars of the notification	Due Date
1.	Form GSTR-1: For registered persons having aggregate turnover of up to Rs. 1.5 Crores in the preceding financial year or current financial year	Notification No. 45/2019 – Central Tax dated 9 th October, 2019	October 2019 to December 2019: 31 st January, 2020
			January 2020 to March 2020: 30 th April, 2020
	Form GSTR-1: For registered persons having aggregate turnover of more than Rs. 1.5 Crores in the preceding financial year or current financial year	Notification No. 46/2019 – Central Tax dated 9 th October, 2019	Eleventh day of the month succeeding the month for which the return is being furnished
2.	Form GSTR-3B	Notification No. 44/2019 – Central Tax dated 9 th October, 2019	Twentieth day of the month succeeding the month for which the return is being furnished

²⁵ Refer Corrigendum to Circular No. 63/37/2018-GST dated 6th September, 2019.

²⁶ Refer Circular No. 63/37/2018-GST dated 14th September, 2018.

²⁷ Refer Notification No. 47/2019-Central Tax dated 9th October, 2019.

LEGISLATURE AT WORK - RECENT AMENDMENTS

Rescission of Circular No. 105/24/2019-GST

- Circular No. 105/24/2019-GST dated 28th June, 2019, which was issued to provide certain clarifications in relation to treatment of secondary or post-sales discounts under GST law, has been rescinded ab-initio.²⁸

Replacement of the term 'payment advice' with 'payment order' in Central Goods and Services Tax Rules, 2017

- Vide Notification No. 42/2019-Central Tax dated 24th September, 2019, Rules 10, 11, 12 and 26 of the Central Goods and Services Tax (Fourth Amendment) Rules, 2019²⁹, were made effective from 24th September, 2019.
- Rule 10, 11 and 12 of Central Goods and Services Tax (Fourth Amendment) Rules, 2019 provide for substitution of the term 'payment advice' with the term 'payment order' in Rule 91, 92 and 94 of Central Goods and Services Tax Rules, 2017, respectively. Rule 26 of Central Goods and Services Tax (Fourth Amendment) Rules, 2019 provides for substitution of the term 'advice' with the term 'order' in Form GST RFD-05.

Issuance of further clarifications in relation to Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

- The Central Board of Indirect Taxes and Customs released updated Frequently Asked Questions in September ("**September FAQs**") as well as October ("**October FAQs**") and Circular No. 1072/05/2019 – CX dated 25th September, 2019 ("**Circular 1072**") and Circular No. 1073/06/2019.CX dated 29th October, 2019 ("**Circular 1073**") to clarify certain ambiguous aspects of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 ("**Scheme**").
- Circular 1072, inter alia provides the following key clarifications:
 - Deemed withdrawal of appeal pending at an appellate forum other than the Supreme Court or the High Court, under Section 127(6) of the Finance (No.2) Act, 2019 ("the Act"), is applicable to appeals filed by the Department as well. Additionally, in circumstances where an appeal, reference or Writ Petition filed by the Department, is pending before the Supreme Court or the High Court, the Department representatives will file an application for withdrawal of the said appeal, reference or Writ Petition, after issuance of discharge certificate under the Scheme.



²⁸Refer Circular No. 112/31/2019 – GST dated 3rd October, 2019.

²⁹Refer Notification No. 31/2019-Central Tax dated 28th June, 2019

LEGISLATURE AT WORK - RECENT AMENDMENTS

- In the event, a taxpayer has filed the relevant return but has failed to deposit the corresponding duty liability, and such default pertains to multiple returns, a separate declaration is required to be filed for each of the return to avail the benefit under the Scheme.
 - Cases in respect of which the final hearing has taken place on or before 30th June, 2019 and the adjudication Order or the appellate Order, has been issued post 30th June, 2019, qualify to avail the benefit granted by the Scheme under the category of "amount in arrears", once the said Order has attained finality or the relevant appeal filing period has lapsed. A taxpayer who is not desirous of filing an appeal against such Orders may proceed to file a declaration under the Scheme even prior to the lapsing of the appeal filing period, provided his intention to abstain from preferring an appeal is intimated to the Department in writing.
 - In respect of a taxpayer who has filed a declaration under the Scheme under the category of "amount in arrears", the relief available under Section 124(1)(c) of the Act will be determined on the basis of the net outstanding amount against the taxpayer, i.e., net amount of outstanding duty against the taxpayer after deducting the dues that he has already paid (in the form of pre-deposits or other voluntary payment against the outstanding amount).
 - For categories other than "amount in arrears", the relief will be computed against the outstanding amount of duty against the taxpayer and only thereafter, the pre-deposit or any other money deposited by the taxpayer will be adjusted.
- **Clarifications provided vide Circular 1073 inter alia include the following:**
- While cases wherein an appeal has been filed post 30th June, 2019 are not covered under the Scheme per se, relief in respect of such cases can be claimed if the taxpayer withdraws the such appeal and furnishes an undertaking to the Department in terms of para 2(viii) of Circular 1072.
 - An audit is treated as pending till the time the same does not culminate in issuance of a show cause notice. Resultantly, benefit under the Scheme can be claimed in respect of cases where the Final Audit Report has been issued on or before 30th June, 2019, as the tax demand has been quantified.
 - Declaration under the voluntary disclosure category to be accepted by the Department without recourse to determination of eligibility of the declarant to file a declaration under this category, as sufficient safeguards have been prescribed under the Scheme for taking suitable action in the event of a false declaration in respect of any material particular.



LEGISLATURE AT WORK - RECENT AMENDMENTS

- Benefit of waiver of interest under the Scheme is also extended to situations where a person has filed the ST-3 Return and has also paid the requisite dues in full prior to filing a declaration under the Scheme, but has not paid the applicable interest thereto.
- In the interest of administrative convenience, a person is now permitted to file a single declaration in respect of multiple returns where duty has not been paid but furnishing of the returns has been done on or before 30th June, 2019.

▪ **The September FAQs *inter alia* clarify the following in relation to the Scheme:**



- Benefit under the Scheme can be availed in respect of periodical notices without availing the benefit for the main notice
- Declaration under the Scheme can be made in respect of cases where an application made to the Settlement Commission is rejected, i.e., for those cases which are no longer before the Settlement Commission, subject to fulfilment of the conditions under the Scheme.
- Duty/tax paid previously through input credit in relation to the case will be adjusted by the Designated Committee at the time of determination of the final amount payable under the Scheme by the taxpayer.

- In respect of show cause notices issued solely to recover penalty/late fees from a taxpayer, a declaration under the Scheme can be made irrespective of whether the said show cause notice is at the adjudication stage or the appellate stage.
- Date of personal hearing along with the estimate of the Designated Committee is intimated to the taxpayer vide Form SVLDRS2. A taxpayer can submit written submission, waive the opportunity of the personal hearing, or seek one-time adjournment of the personal hearing through Form SVLDRS 2A.

▪ **The October FAQs *inter alia* clarify the following:**

- Benefit under the Scheme is available in cases where a part of the demand raised by a show cause notice is confirmed and not contested before an appellate forum, but simultaneously another part of the demand, which is dropped at any stage of the litigation proceedings is being disputed before an appellate forum. In such circumstances, a person desirous of availing the benefit extended by the Scheme, will have to file a declaration covering both the instances. The relief available will be as follows:

LEGISLATURE AT WORK - RECENT AMENDMENTS

- i. As regards the confirmed and uncontested demand, the relief available under the “amount in arrears” category will be available
- ii. As regards the demand being disputed before the appellate forum, relief under the Scheme will be available under the “litigation” category
- The term “quantified” under the Scheme means a written communication of the amount of duty payable under an indirect tax enactment. Such written communication includes a letter intimating the duty demand, or admission of duty liability by a person during enquiry, investigation or audit, or an audit report, etc.
- Cases where the adjudication order determining the duty/tax liability is passed and received prior to 30th June, 2019, but an appeal against the said order is filed on or after 1st July, 2019, are not eligible for relief under the Scheme, under the Litigation category. However, such a person can file a declaration under the arrears category, provided he withdraws the appeal and furnishes to the Department an undertaking stating that he will not file any further appeal in the said matter.
- In cases where the final hearing in relation to a show cause notice has taken place on or before 30th June, 2019, a declaration under the Scheme can be filed under the arrears category, once the order confirming the demand raised by the show cause notice is issued.

[Continued on Page 41](#)





ALLIED LAWS

The following chapter has been authored by Adarsh Somani (Director), Vinitt Nagla (Associate Partner) and Hirak Shah (Associate) - ELP

Joint operation by Directorate General of GST Intelligence ("DGGI") and Department of Revenue Intelligence ("DRI") against exporters claiming fraudulent refund of Integrated Goods and Service Tax ("IGST")

- In the biggest ever joint operation conducted by DGGI and DRI, pan-India searches were carried out at 336 different locations against exporters claiming fraudulent refund of IGST.
- The searches were carried out based on data analyzed in close coordination by both the agencies. The analysis was conducted by applying 'red flag' indicators to customs' export data in conjunction with the corresponding GST data of the exporters.
- The data revealed that some exporters are exporting goods out of India on payment of IGST, which was being paid almost entirely out of the Input Tax Credit ("ITC") availed on the basis of ineligible/ fake supplies. In some cases it was noticed that tax (IGST) paid through ITC was more than the ITC availed by exporters.
- The preliminary examination of documents/ records revealed that ITC of more than Rs. 470 crores is bogus/fake which has been further utilized by the exporters for effecting exports on payment of IGST through ITC and claiming consequential cash refund of the same.

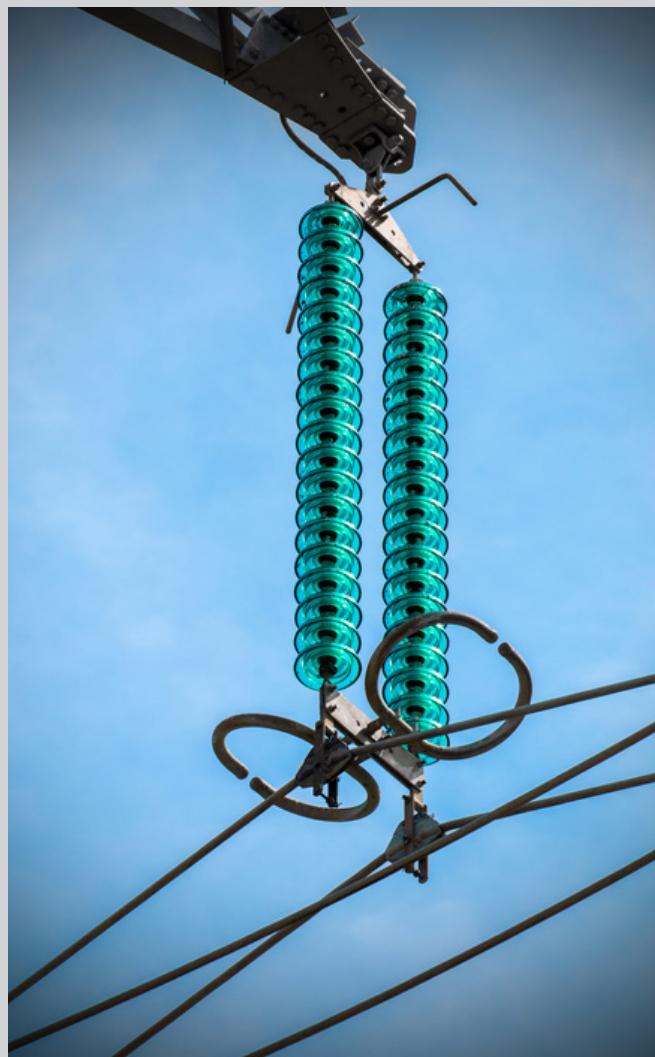
Exemption from payment of IGST on import of specified defence goods

- Central Board of Indirect Taxes and Customs ("CBIC") vide Notification No. 35/2019- Customs dated 30.09.2019 amends Notification No. 19/2019 dated

06.07.2019 so as to exempt payment of IGST on import of specified defence goods.

Imposition of anti-dumping duty on imports of Electrical Insulators of glass or ceramics/porcelain, whether assemble or unassembled

- CBIC has issued notification imposing anti-dumping duty on import of goods specified below, when imported from People's Republic of China. A brief summary of the same is enumerated as under:



ALLIED LAWS

Notification No.	Product	Country from which goods are imported/ manufactured	Anti-Dumping Duty	Effective period
37/2019 – Customs (ADD) dated 14.09.2019	Electrical Insulators of Glass, or Ceramics/ Porcelain, whether assembled or unassembled	Originating in, or exported from People's Republic of China	Amount of duty per MT as prescribed in the Notification.	Effective for a period of 5 years from 14.09.2019 and shall be paid in Indian currency.

Issuance of Project Import Module for Project Import Scheme

- Project Import Scheme is provided in relation to goods which are imported for the purpose of setting up of industrial project or for substantial expansion of existing industrial project. All procedures in relation to Project Import Scheme were being done manually.
- CBIC vide Circular No. 27/2019-Customs dated 03.09.2019 has stated that Project Imports module has been developed in the Indian Customs EDI Scheme ("ICES") which shall cover the following processes:
 - Registration of a Project and generation of Project number
 - Bond Registration for Project Imports
 - Filing of provisional Bills of Entry ("BEs") with project number and bond details. Items wise debits in the project/bond for every BE
 - Finalization of the Provisional BEs and re-crediting of Bond



The processes mentioned above will be carried out online on the ICES system. The circular also provides that all the live projects currently and hereafter be compulsorily registered in the system. All project registrations should be completed before 15th September, 2019 and filing of BEs under Project Import on ICES should be mandatory from 16th September, 2019. In this regard, ICES Advisory 13/2019 dated 29.05.2019 had also been issued earlier.

ALLIED LAWS

Import tariff value for specified items revised

- CBIC vide Notification No. 79/2019-Customs (NT) dated 31.10.2019 has revised import tariff value for items specified therein. Brief summary of some of the items in relation to which import tariff has been revised are specified hereunder:

Sr. No.	Chapter/heading/ sub-heading/tariff item	Description of goods	Tariff value (US \$)
1.	71 or 98	Gold, in any form, in respect of which the benefit of entries at serial number 356 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	480 per 10 grams
2.	71 or 98	Silver, in any form, in respect of which the benefit of entries at serial number 357 of the Notification No. 50/2017-Customs dated 30.06.2017 is availed	579 per kilogram
3.	71	<p>(i) Silver, in any form, other than medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under subheading 7106 92;</p> <p>(ii) Medallions and silver coins having silver content not below 99.9% or semi-manufactured forms of silver falling under sub-heading 7106 92, other than imports of such goods through post, courier or baggage.</p> <p>Explanation- For the purposes of this entry, silver in any form shall not include foreign currency coins, jewellery made of silver or articles made of silver.</p>	579 per kilogram
4.	71	<p>(i) Gold bars, other than tola bars, bearing manufacturer's or refiner's engraved serial number and weight expressed in metric units;</p> <p>(ii) Gold coins having gold content not below 99.5% and gold findings, other than imports of such goods through post, courier or baggage.</p> <p>Explanation. - For the purposes of this entry, "gold findings" means a small component such as hook, clasp, clamp, pin, catch, screw back used to hold the whole or a part of a piece of Jewellery in place.</p>	480 per 10 grams

FROM THE BENCH: KEY JUDICIAL PRONOUNCEMENTS

[Continued from Page 17](#)

Maharashtra AAR: Rules that back-end services to facilitate the business of foreign entity are taxable as 'Intermediary Service'

In re: MaansMarine Cargo International LLP [TS-744-AAR-2019-NT]

The applicant provides management consultancy services to ship owners and logistics services through water etc. to a shipping company MSS Marine Ltd. Located outside India, under a business process outsourcing assignment. The questions raised for ruling were:

- (a) Whether there is a need to obtain GST registration as the services provided are export of services?
- (b) Whether such supplies can be made under an LUT?
- (c) Whether GST is applicable on reimbursement of expenses such as salaries, rent, office expenses, travelling cost etc.?
- (d) Whether GST is applicable on the management fees charged by the applicant to the foreign company for managing the outsourced assignment?

The AAR observed that the applicant has proposed to enter into an outsourcing agreement through which they will provide backend services to a foreign business including handling of communication between vessel-owners, shippers, consignees, various port-agents, passing information, drafting contracts, preparing reports, preparing invoices and reconciling accounts. The AAR rules as follows:

- (a) Queries raised at (a) and (b) were withdrawn by the applicant and hence, not dealt with.
- (b) Reimbursements received towards employees' salary, office rent, other office expenses such as telephone, electricity, purchasing computers, internet, travel etc. are nothing but additional consideration charged for supply of services by the applicant and hence is liable to GST as per

Section 15 of the CGST Act, 2017. It was observed that the applicant was not a pure agent of the foreign company since the applicant is making payments to vendors for service rendered to them and not for services rendered to the foreign company; hence, payments are not made by the applicable to vendors as a pure agent of the foreign company.'

- (c) Applicant is facilitating the business of its foreign client by liaising with their customers for the purposes of commercial relationships between the service recipient and vessel owners, shippers, consignees and various port agents. As per Section 2(13) of the IGST Act, 2017, the nature of services supplied by the applicant in the present case constitute 'intermediary service', the place of supply of which is in India (location of the intermediary). Hence, the services are not exported and the management fees would be liable to GST.



ELP Comment:

The issue as regards who constitutes an intermediary has been the subject matter of extensive judicial deliberation. This ruling takes a wide interpretation of what constitutes 'facilitating' or 'arranging' supply of goods or services. The ruling further construes the meaning of the term 'pure agent' in a strict manner.

FROM THE BENCH: KEY JUDICIAL PRONOUNCEMENTS

Madhya Pradesh AAR: Rules that late-payment charges on brokerage are taxable as original/principal supply

In Re: Indo Thai Securities Ltd. [TS-745-AAR-2019-NT]

In the present case, the applicant is a registered broker dealing in purchase / sale of securities for and on behalf of its clients and charges brokerage for its activities. The applicant approached the Madhya Pradesh AAR seeking tax treatment on the interest charged from customers for delayed payment. The amount on which the interest is charged includes the cost of securities and brokerage.

The issue arose in the context of Notification No. 12/2017 Central tax (Rate) dated 28.06.2017 which exempts the interest charged on cost of brokerage from levy of GST.

The Madhya Pradesh AAR held as follows:

- (a) Stock broking service is the principal supply and all other ancillary supplies shall take colors from the principal supply itself and be classified as principal supplies i.e. Stock Broking Services
- (b) Referring to Circular No. 102/21/2019-GST, exemption given to services as mentioned in Entry 27 of Notification No. 12/2017- CT (Rate) dated 28 June 2017 cannot be extended to the present transaction as no deposits, loans or advances have been extended by stockbroker to its customers
- (c) Additional amount being charged in delay of payment should be classified as principal supply and the classification of the same cannot differ from the original supply. Hence additional amount charged on delayed payment shall be taxed as per original supply i.e. stock broking services

West Bengal AAR rules that arranging / booking hotel accommodation without providing any other tour planning, scheduling and organizing services is taxable as 'reservation services for accommodation' under SAC 998552, and not as accommodation services or tour operator service

In Re: Golden Vacations Tours and Travels [TS-747-AAR-2019-NT]

The applicant is a tour operator providing services in the nature of booking rooms in hotels. The applicant sought a ruling on: (a) classification of

the service provided and (b) whether GST charged by the hotels on the charges of such provision of such service by the applicant can be claimed as ITC.

The West Bengal AAR held that:

- (a) Services provided by the Applicant cannot be classified as tour operating services since although booking accommodation is a service provided by a tour operator, a tour operator typically carries out various other activities such as planning, scheduling and organizing travel, tours etc. Booking accommodation might be provided as add-ons by tour operators but cannot be said to be the essence of the tour operating service.
- (b) The service in question is also not the accommodation services classifiable under SAC 996311 since such entry is limited to services provided by the hotels and guest house.
- (c) The present services are covered under SAC 998552 which includes arranging reservations for accommodation services for domestic accommodation, accommodation abroad etc.

ELP Comment:

The ruling makes a distinction between tour operators who arrange only accommodation services as compared to those who provide travel and accommodation services along with some amount of planning and scheduling services.





LEGAL CLASSICS

The following chapter has been authored by Jitendra Motwani (Partner) and Rinkey Jassuja (Senior Associate) - ELP

Ranchi Club Ltd. Vs CCE & ST, Ranchi Zone [2012 (26) STR 401 (Jhar.)]

Introduction

The principle of mutuality rests on the theory that a person cannot profit from himself/herself. Levy of indirect tax on such transactions has been under litigation for long since, apart from a constitutive membership, there is no commercial motive to amass any profit from the said transaction. The judicial forums have supported the said concept and have favoured the non-taxability of the contributions made by the members to the clubs/associations formed. However, the indirect laws were amended to deem such transactions as transactions between different persons i.e. the clubs/associations and its members are to be construed as separate from each other.

A question that arose before the courts was whether service by an incorporated club/association to its members, formed on the principle of mutuality would be liable to service tax as a transaction between two separate parties.

On the said issue one such judgment was delivered by the High Court of Jharkhand in the case of **Ranchi Club Ltd. Vs CCE & ST, Ranchi Zone [2012(26) STR 401 (Jhar.)]**. The High Court analysed the provisions of the erstwhile service tax law as applicable prior to 01.07.2012 i.e. in the pre-negative list regime and held that in view of mutuality and in view of the activities of the club, if the club provides any service to its members which may be in any form, then it is not a service by one to another.

With effect from 01.07.2012 i.e. upon introduction of the negative list regime, to overcome the impact

of the said decision, vide explanation 3 to Section 65B(44) of the Finance Act, 1994 ('the Act') which defines the term 'service', it was provided that '*an unincorporated association or body of persons, as the case may be, and a member thereof shall be treated as distinct persons*'. However, the issue of whether this levy was constitutionally valid remained to be answered.

In the Goods and Services Tax ("GST") regime, while there is no deeming fiction, the term 'business' defined under the Central Goods and Service Tax Act, 2017 ("CGST Act") includes '*provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members*'.

Reading the bare provision of GST, it appears that the ratio laid down by the High Court would be relevant even under the GST regime to examine the applicability of doctrine of mutuality for determining the

taxability of the transaction between club and its members.

Decision in Ranchi Club Ltd.

A writ petition was filed by Ranchi Club Ltd. for declaration that Ranchi Club Limited is not covered under the Act and, therefore, is not liable to pay service tax under "Mandap Keeper's Services" or under the "Club or Association Services" categories. The petitioner is a club and also a company registered under the Companies Act, 1956. The petitioner is giving service to its members.

It was argued before the court that the petitioner is giving service to its members but the club is formed on the principle of mutuality and, therefore,



LEGAL CLASSICS

any transaction by the club with its member is not a transaction between two parties. Being a company, it may enter into a transaction with anybody, a third person, not a member, then in that situation, this club becomes a legal entity and can certainly enter into any transaction and such transactions are not on the principle of mutuality and, therefore, may be liable to any tax as a transaction between two parties. However, when the club is dealing with its members, it is not a separate and distinct individual. Reference was drawn to the decision of the Hon'ble Supreme Court, in the case of the *Joint Commercial Tax Officer v. The Young Mens' Indian Association* [1970 (1) SCC 462] wherein the issue under consideration before the court was whether a club rendering service or selling any commodity to its members for a consideration would amount to sale or not under the Madras General Sales Tax Act, 1959? The Court considered the definition of the term 'dealer' as given under the said Act of 1959 by which the club was declared to be "dealer" along with the definition of "sale" and Explanation-I appended to Section 2(n). On consideration of the same the court, specifically declared the "sale" or "supply or distribution of goods by a club" to its members, whether or not in the course of business, as deemed to be a "sale" for the purpose of the said Act. In that situation, the Hon'ble Supreme Court held that it is mutuality which constitutes the club and, therefore, sale by a club to its member and its services rendered to the members, is not a sale by club to the members.

The High Court of Jharkhand following the ratio of the decision of the Supreme Court in the case of *The Young Men's Indian Association (supra)* held that 'It is true that sale and service are two different and distinct transaction. The sale entails transfer of property whereas in service, there is no transfer of property. However, the basic feature common in both transactions requires existence of the two parties; in the matter of sale, the seller and buyer, and in the matter of service, service provider and service receiver. In view of the mutuality and in view of the activities of the club, if club provides any service to its members may be in any form including as mandap keeper, then it is not a service by one to another in the light of the decisions referred above as foundational facts of existence of two legal entities in such transaction is missing.'

Developments post the Decision

The judgment of the Jharkhand High Court was followed by Gujarat High Court in the case of **Sports Club of Gujarat Ltd. vs. UOI [2013 (31) STR 645]**. An appeal was filed by the Revenue before



the Supreme Court being aggrieved by the orders of the High Court.

While the above appeals were pending before Supreme Court, on 01.07.2012, negative list regime was introduced which changed the structure of the service tax law in India. Under the said amended law, the term 'service' was defined under Section 65B(44) of the Act. Explanation 3 to Section 65B(44) of the Act provided as under:

'an unincorporated association or body of persons, as the case may be, and a member thereof shall be treated as distinct persons'

Thus, to circumvent the decision of the High Courts, a deeming fiction was introduced in the definition of 'service' to treat the members and unincorporated association or body of persons as distinct entities to enable to levy service tax on the transactions between them.

Recently the Larger Bench of the Hon'ble Supreme Court in its judgment reported in **TS-779-SC-2019-VAT** upheld the decision of the High Court of Jharkhand. The Supreme Court delved in detail on the issue of Constitutional Amendment for insertion of Article 366(29A) and whether the intention of the parliament was to do away with the doctrine of mutuality. It was held by the Supreme Court

LEGAL CLASSICS

that prior to 2012 the definition of the term 'club or association' was provided under Section 65(25a) and 65(25aa) of the Act to mean any 'person' or 'body of persons' providing service. Body of persons would not include a body constituted under any law for the time being in force i.e. either an incorporated company or an incorporated co-operative society. Therefore, no service tax liability shall arise on a club/association being an incorporated company or incorporated co-operative society in respect of the activities carried out for members applying the doctrine of mutuality. Further, with respect to post 2012 amendment under service tax law, it was observed that the Explanation 3 to Section 65B(44) only refers to an unincorporated association therefore it does not apply to member clubs which are incorporated.

Thus, that the idea/the thought which emerges from the said decision is that the doctrine of mutuality applies in cases of incorporated clubs/associations. Any transaction based on the principle of mutuality is outside the purview of taxability under service tax.

Provisions under the GST law

Under the present GST regime, Section 7 of the CGST Act provides for 'Scope of supply' which includes:

*"(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person **in the course or furtherance of business**"*

The term business is defined under Section 2(17) of the CGST Act. Clause (e) of Section 2(17) reads as under:

*"(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the **facilities or benefits** to its members"*

On a harmonious reading of the above provisions, it can be said that, only those transactions being 'facilities' or 'benefits' which are given by the club/association to its members are considered as supply and liable to GST. The draftsmen have carefully chosen the words 'facilities or benefits' in the said provision. Thus, it may be interpreted that all activities carried out by the club/association for members may not be covered under the said clause and scope for applicability of 'doctrine

of mutuality' remains. The question of what shall constitute 'facilities or benefits' is subject to interpretation by the courts. The decision of the High Court of Jharkhand now upheld by Supreme Court however would come to the aid of the courts to determine the applicability of 'doctrine of mutuality' under GST and the extent to which it is applicable.

With the judgment of the Jharkhand High Court being upheld by the Supreme Court validating non levy on tax in transactions covered by the 'doctrine of mutuality', the possibility of challenge to the definition of 'business' under GST cannot be ruled out. With negative rulings already on the said issue from the Authority for Advance Rulings, it would be interesting to see how the courts will interpret the GST provisions in the light of decision of the High Court of Jharkhand.



LEGISLATURE AT WORK - RECENT AMENDMENTS

[Continued from Page 32](#)

Certain other key clarifications issued in the month of October 2019

- Following table summarily captures the key clarifications issued by the Central Board of Indirect Taxes and Customs ("CBIC") during the month of October 2019:

S. No.	Circular No.	Relevant clarification issued
1.	<i>Circular No. 110/29/2019 – GST dated 3rd October, 2019</i>	<ul style="list-style-type: none"> A registered person who had inadvertently filed a NIL refund claim in FORM GST RFD-01 A/RFD-01 for a specific period under a particular category, is now permitted to file a refund application for the said period under the same category, subject to the following conditions: <ol style="list-style-type: none"> The registered person must have filed a NIL refund claim in FORM GST RFD-01A/RFD-01 for a certain period under a particular category; and No refund claims in FORM GST RFD-01A/RFD-01 must have been filed by the registered person under the same category for any subsequent period. It is further clarified that fulfilment of condition (b) above will be <u>relevant only</u> for the following categories of refund claims: <ol style="list-style-type: none"> Refund of unutilized ITC on account of exports without payment of tax Refund of unutilized ITC on account of supplies made to an SEZ Unit/SEZ Developer without payment of tax Refund of unutilized ITC on account of accumulation due to inverted tax structure Registered persons fulfilling the above conditions should file the refund claim under the category "Any Other" instead of the category under which the NIL refund claim had been previously filed. Care must be taken to ensure that the refund application being filed again pertains to the same period as that of the NIL refund claim, and is accompanied by all the relevant documents that is generally required to be submitted with the refund claim. The Circular has also outlined the methodology to be followed by the proper officer and the registered person for processing the refund claim.

LEGISLATURE AT WORK - RECENT AMENDMENTS

2.	<p><i>Circular No. 111/30/2019 – GST dated 3rd October, 2019</i></p>	<ul style="list-style-type: none"> • A registered person who receives a favourable Order by an appellate authority, or by any other forum, in respect of a refund claim rejected vide an order in FORM GST RFD-06, is entitled to claim refund of the amount allowed by the appellate authority, or any other forum, by filing a fresh refund application under the category "Refund on account of assessment/provisional assessment/appeal/any other order". Debiting of such amount of refund allowed will not be required at the time of filing the fresh refund application. • Further, the registered person would be required to provide details of the favourable Order as well as upload a copy of the favourable Order, the previous Order against which the appeal was preferred and other related documents. • On receipt of such application, the proper officer shall sanction the amount of refund allowed vide the favourable Order, and shall make an order in FORM GST RFD-06 and issue payment order in FORM GST RFD-05. The proper officer is also required to ensure re-credit of any amount which remains rejected out of the total refund claim filed by the taxpayer through FORM GST RFD -01B under the original ARN, in line with the guideline laid down in para 4.2 of Circular No. 59/33/2018 – GST dated 4th September, 2018. • In the event, the proper officer who rejected the refund claim is not the same as the one disposing the application for refund in relation to the favourable Order, the latter shall communicate to the proper officer who rejected the refund claim to close the original ARN only post receipt of the undertaking referred to in para 4.2 of Circular No. 59/33/2018 – GST dated 4th September, 2018.
----	---	--



LEGISLATURE AT WORK - RECENT AMENDMENTS

3.	<i>Circular No. 119/38/2019-GST dated 11th October, 2019</i>	<ul style="list-style-type: none"> A transaction in securities which involves disposal of securities is not a supply under GST law and therefore not exigible to GST. Resultantly, as the activity of lending of securities does not involve disposal of securities (in terms of Clause 4 of para 4 of the Securities Lending Scheme, 1997), the same does not qualify as a transaction in securities, and therefore is not excluded from the definition of the term "Services" under the Central Goods and Services Tax Act, 2017 ("CGST Act"). The lending fee charged from the borrowers is akin to consideration, and the said activity of lending of securities is leviable to GST since 1st July, 2017. It is further clarified that insertion of the <i>Explanation</i> to the definition of the term "Services" (w.e.f 1st February, 2019) which provides "<i>For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;</i>", is only clarificatory in nature and does not have any bearing on the taxability of the service of lending of securities. The said supply of lending of securities under the Securities Lending Scheme, 1997, is classifiable under the HSN Code 997119 and is leviable to GST at the rate of 18%. GST in respect of the said activity will be payable as IGST. In case, any lender has treated the said supply as intra-state and paid GST under the heads CGST/SGST/UTGST, he will not be required to pay IGST again in lieu of such payments. For the period 1st July, 2017 to 30th September, 2019, GST is payable under the forward charge mechanism by the lender. However, w.e.f. 1st October, 2019, the borrower of securities will be liable to pay GST (IGST) under the reverse charge mechanism.
4.	<i>Circular No. 121/40/2019-GST dated 11th October, 2019</i>	<ul style="list-style-type: none"> It is clarified that only service by way of grant of alcoholic liquor licence by State Governments (as an agreement between the Centre and States), against consideration in the form of licence fee, or application fee, or any other name, does not constitute either a supply of goods or of service, under GST law. The same does not affect grant of other licenses and privileges for a fee, wherein GST is payable.
5.	<i>Circular No. 117/36/2019-GST dated 11th October, 2019</i>	<ul style="list-style-type: none"> Maritime Training Institutes approved by the Director General of Shipping, qualify as "education institutions" under GST law and resultantly, the courses conducted by them are exempt from levy of GST, in terms of Sl. No. 66 of Notification No. 12/2017- Central Tax (Rate) dated 28th June, 2017, subject to fulfilment of the conditions prescribed thereto.

LEGISLATURE AT WORK - RECENT AMENDMENTS

6.	<i>Circular No. 116/35/2019-GST dated 11th October, 2019</i>	<ul style="list-style-type: none"> • Display of name of individual donor by institutions such as religious institutions, charitable organizations, schools, orphanages, etc., in their premises as a token of gratitude, and without aiming to advertise or promote the donor's business, does not qualify as supply of service for a consideration (in the form of donation) under GST law. • In other words, GST is not leviable on such donations where: <ul style="list-style-type: none"> - The gift or donation is made to a charitable organization - The payment has the character of gift or donation - The purpose of donation is solely philanthropic and does not lead to advertisement / commercial gain of the donor
7.	<i>Circular No. 115/34/2019-GST dated 11th October, 2019</i>	<ul style="list-style-type: none"> • Services provided by an airport operator to passengers against consideration in the form of Passenger Service Fee ("PSF") and User Development Fee ("UDF") are exigible to GST. • It is further clarified that the airport operator will be liable to pay the GST on PSF and UDF, and not the airlines who collect the same as an agent of the airport operator, provided the airline fulfils the conditions to qualify as a "pure agent" under GST law. • The collection charges paid by the airport operator to airlines as consideration for services rendered by the latter, are exigible to GST, and the airlines will be liable to pay GST on the same under forward charge mechanism.
8.	<i>Circular No. 114/33/2019-GST dated 11th October, 2019</i>	<ul style="list-style-type: none"> • Scope of Sl. No. 24(ii) under heading 9986 of Notification No. 11/2017 – Central Tax (Rate) dated 28th June, 2017, which pertains to "services of exploration, mining or drilling of petroleum crude or natural gas or both", shall be governed by the explanatory notes to services codes 998621 and 998622 of the Scheme of Classification of Services. • Further, scope of Sl. No. 21 (ia) under heading 9983 of Notification No. 11/2017 – Central Tax (Rate) dated 28th June, 2017, which pertains to "Other professional, technical and business services relating to exploration, mining or drilling of petroleum crude or natural gas or both", shall be governed by the explanatory notes to service codes 998341 and 998343 of the Scheme of Classification of Services. • Additionally, it is also clarified that services associated with exploration, mining or drilling of petroleum crude or natural gas, which do not come within the ambit of the above mentioned entries of Notification No. 11/2017 – Central Tax (Rate) dated 28th June, 2017, shall merit classification under their respective headings.

LEGISLATURE AT WORK - RECENT AMENDMENTS

9.	Circular No. 113/32/2019-GST dated 11 th October, 2019	<ul style="list-style-type: none"> • Leguminous vegetables which are subjected to mere heat treatment for removing moisture, or for softening and puffing or removing the skin, and not subjected to any other processing or addition of any other ingredients such as salt and oil, merits classification under HSN Code 0713. In the event, the said goods are branded and packed in a unit container, GST would be leviable at the rate of 5% (in terms of Sl. No. 25 of Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017). Otherwise, the said goods are exempt from the levy of GST (in terms of Sl. No. 45 of Notification No. 2/2017-Central Tax (Rate) dated 28th June, 2017). Additionally, if such dried leguminous vegetable is mixed with other ingredients (such as oil, salt, etc.) or sold as namkeens, then the same would merit classification under sub heading 2106 90 as namkeens, bhujia, chabena and similar edible preparations, and would attract the rate of GST as applicable thereto. • Almond milk merits classification under the residual entry in the tariff item 2202 99 90, and attracts GST at the rate of 18%. • Mechanical sprayers of all types whether or not hand operated (like hand operated sprayer, power operated sprayers, battery operated sprayers, foot sprayer, rocker etc.) merit classification under Sl. No. 195B of Schedule II to Notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017 . • Solar Evacuated Tube and other parts falling under chapter 84, 85 and 94, used for the manufacture of solar water heater and system, will attract GST at the rate of 5%. • IGST at the rate of 12% would be leviable on import of parts and accessories suitable for use solely or principally with a medical device, falling under heading 9018, 9019, 9021 or 9022 ,in terms of Chapter Note 2 (b) of Chapter 90.
----	---	--

Amendment of the Central Goods and Services Tax Rules, 2017

- Vide Notification No. 49/2019-Central Tax dated 9th October, 2019, the Central Goods and Services Tax (Sixth Amendment) Rules, 2019 were issued by the CBIC, which inter alia provide for the following amendments to the Central Goods and Services Tax Rules, 2017 ("**CGST Rules**"):
 - Insertion of sub rule (4) to Rule 36 of CGST Rules which restricts availment of ITC by a registered person in respect of invoices or debit notes not reflected in Form GSTR-2A of the said registered person, to the extent of 20% of the eligible ITC available in respect of invoices or debit notes, the details of which are captured in Form GSTR-2A of the registered person.
 - Addition of Explanation to Rule 21A(3) to clarify that the expression "shall not make any taxable supply " in Rule 21A(3) means that a registered person whose registration has been suspended cannot issue a tax invoice and resultantly, not charge tax on supplies made by him during the period of suspension. Further, vide insertion of sub-rule (5) to Rule 21A, Section 31(3)(a) and Section 40 of CGST Act have been made applicable to supplies made during the period of suspension.

LEGISLATURE AT WORK - RECENT AMENDMENTS

- Substitution of Rule 61(5) [w.e.f. 1st July, 2017] to provide that return specified under Section 39(1) of CGST Act shall be furnished in Form GSTR-3B in cases where time limit for furnishing details in Form GSTR-1 (under Section 37 of CGST Act) or in Form GSTR-2 (under Section 38 of CGST Act) has been extended. In the event, a person is required to furnish Form GSTR-3B, then such person will not be required to furnish the return in Form GSTR-3.
- Amendment of Rule 117 of CGST Rules to extend the due date for furnishing of Form GST TRAN-1 and Form GST TRAN-2 to 31st December, 2019 and 31st January, 2020, respectively, for registered persons who could not submit the same by the previously prescribed due date on account of technical difficulties.
- Amendment of Rule 142 to provide that proper officer shall communicate details of any tax, interest and penalty ascertained by the proper officer in Part A of Form GST DRC-01 A, prior to issuance of show cause notice to a person under Section 73 (1) or Section 74(1) of CGST Act. In case such person is desirous of filing any submissions against the proposed liability, or intimate the payment (partial or complete) of the amount communicated to him, may do so through Part B of Form GST DRC-01 A.



Issuance of further guidelines on verification of TRAN-1 credits by Maharashtra Government

- The Maharashtra Government vide Internal Circular No. 35A of 2019 dated 19th October, 2019, issued further guidelines in relation to verification of TRAN-1 credits, which inter alia include the following:
 - In situations where the dealer has inadvertently mentioned excess MVAT credit desired to be carried forward as transitional credit under the under the field "excess credit claimed as refund in this return" in his original MVAT return for the period ending on 30th June, 2017, instead of mentioning the same under the field "excess credit carried forward to subsequent tax period", transitional credit in respect of the same will be allowed to the following extent:
 - i. When the dealer files a revised MVAT return and mentions the same amount under the field "excess credit carried forward to subsequent tax period", credit claimed in TRAN-1 may be allowed.
 - ii. When the dealer files a revised MVAT return and mentions a higher amount in the field "excess credit carried forward to subsequent tax period", the dealer may be allowed to claim credit equal to the amount of refund claimed as per the original return, in TRAN -1. The difference in amount of such credit (original return vis-à-vis the revised return) can be considered during the MVAT assessment proceedings of the said dealer.

LEGISLATURE AT WORK - RECENT AMENDMENTS

- iii. When the dealer files a revised MVAT return and mentions a lesser amount in the field "excess credit carried forward to subsequent tax period", the dealer may be allowed to claim credit equal to the amount specified in the revised return, in TRAN -1
- No dealer will be allowed to claim MVAT refund of excess credit and simultaneously carry the same forward as transitional credit, in respect of a particular credit
- Nodal authorities are required to verify CST declarations only for the years or periods, in respect of which the credit is being carried forward
- Mere availment of excess credit in TRAN-1, even without utilization of the same to discharge GST liability, is sufficient to attract interest under Section 50 of Maharashtra Goods and Services Tax Act, 2017 ("**MGST Act**"). Therefore, interest on such excess credit shall become payable from the date of filing of TRAN-1 till the date the dealer reversed such excess credit in Form GSTR-3B, or makes payment of the same and communicates the same either in DRC-03 or in Part B of DRC-01A
- In the event, the dealer has filed a revised TRAN-1, and has increased the amount of MVAT Credit, and the same is found to be inadmissible, interest in respect of such inadmissible credit, shall be payable under Section 50 of MGST Act, from the date of submission of such revised TRAN-1

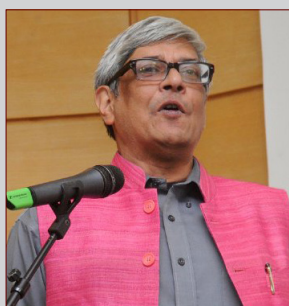




QUOTABLE QUOTES

Rajat Chhabra (Partner) and Vinitt Nagla (Associate Partner) - ELP have worked on this chapter.

- “GST is still a work-in-progress. Before implementing the tax, the government had two options — either to continue deliberating for years before arriving at a consensus or to get going and iterate. The government opted for the latter.”



- Bibek Debroy, Chairman of the Economic Advisory Council to the Prime Minister

- “We have decided to introduce stringent mechanism including linkage of Aadhaar to checkmate fake invoices and fraudulent refund claims. Shortfall of revenue (in August) is an exception possibly because of overall slowdown and stepping up of vigilance against frauds,”



- Bihar Deputy Chief Minister Sushil Kumar Modi and ex-officio member of the GST Council

- “We cannot damn it. It might have flaws, it might probably give you difficulties but I am sorry, it is the law of the land,”

- Finance Minister Nirmala Sitharaman



- “India has the potential to grow at a much faster rate, but the all-round mismanagement by the Modi government has resulted in this slowdown,”

- Manmohan Singh



- “Domestic demand is depressed and consumption growth is at an 18-month low. Nominal GDP growth is at a 15-year low. There is a gaping hole in tax revenues. Tax buoyancy remains elusive as businessmen, small and big, are hounded and tax terrorism continues unabated. Investor sentiments are in the doldrums. These are not the foundations for economic recovery,”

- Manmohan Singh

AUTHORS

Nishant Shah (Partner)
Jitendra Motwani (Partner)
Rajat Chhabra (Partner)
Adarsh Somani (Director)
Darshan Bora (Director)
Stella Joseph (Associate Partner)
Vinitt Nagla (Associate Partner)
Sweta Rajan (Associate Partner)
Rahul Khurana (Associate Director)
Abhinay Kapoor (Senior Associate)
Rinkey Jassuja (Senior Associate)
Suhasini Joshi (Associate Manager)
Ashish Mitra (Associate Manager)
Deepika Menon (Associate)
Hirak Shah (Associate)

KEY CONTACTS

ROHIT JAIN | PARTNER



T : + 91 22 6636 7000
M : + 91 90046 04350
E : RohitJain@elp-in.com

Tax

NISHANT SHAH | PARTNER



T : + 91 22 6636 7000
M : + 91 90046 04323
E : NishantShah@elp-in.com

Tax

About Taxsutra

Launched in 2011, India based B2B portal Taxsutra.com, <http://www.taxsutra.com> is a trusted online resource for corporate tax directors, policymakers and practitioners. Taxsutra's instant news alerts & incisive analysis on both domestic and international tax, coupled with unique features like tax ring, Taxsutra Insight, Litigation Tracker, Taxsutra TV and blogs make it a "must-have" for every tax professional.

Given the increasing focus of tax administrations on Transfer Pricing, <http://www.tp.taxsutra.com> was launched in October 2011, as India's first exclusive portal on TP. Apart from a comprehensive database of over 6000 Indian TP cases, the portal offers several new editorial features including Case Tracker, International Rulings, APA Space, TP Talk, Expert Corner, TP Personalities and 'Around the World.'

Taxsutra's thought leadership and continuous engagement with tax professionals has been on display through several unique initiatives/ microsites/ special coverage on burning tax issues, controversies and important developments, be it APA, the \$2bn Vodafone tax case, BEPS, our roadblocked coverage of Union Budget and even some light tax banter with our microsite on Soccer World Cup & tax!

Taxsutra has also championed various niche events and workshops.

Taxsutra also runs popular websites on GST (www.gststutra.com), launched in 2017 with a highly interactive Mobile App as well and portals on indirect taxes (www.idt.taxsutra.com), corporate law (www.lawstreetindia.com) and accounting (www.greentick.taxsutra.com).

About ELP

Since its inception 18 years ago, Economic Laws Practice (ELP) has continually evolved to optimally respond to changing market dynamics and emerging client requirements. The firm today boasts a strength of 54 partners and more than 200 professionals (who include chartered accountants, cost accountants, economists and company secretaries other than lawyers), across six (6) offices in the country and has been recognised as one of the fastest growing law firms in the country.

Today, ELP has an extensive client base across multiple industry sectors with clients from Fortune 500 Companies, Public Sector Undertakings, Multi Nationals, Indian Corporate power houses and start-ups. We work closely with leading global law firms in the UK, USA, Middle East and Asia Pacific region, giving us the ability to provide real-time support on cross-border concerns.

A full-service law firm, we actively seek to build, and nurture long-term relationships and our clients value us for providing practical, implementable and enforceable advice. Each project team is helmed by experienced professionals and partners with extensive domain knowledge and expertise, ably supported by some immensely talented and youthful professionals.

ELP has a unique positioning amongst law firms in India from the perspective of offering comprehensive services across the entire spectrum of transactional, advisory, litigation, regulatory, and tax matters. ELP's vision has always been people centric and this is primarily reflected in the firm's focus to develop and nurture long-term relationships with clients.