



NAVIGATING GST 2.0

- THOUGHT LEADERSHIP
- ANTI-PROFITEERING – WHETHER THE LEGISLATION HAS BEEN FOLLOWED IN LETTER AND SPIRIT?
- FROM THE BENCH – KEY JUDICIAL RONOUNCEMENTS
- EXPERT SPEAK
- LEGISLATURE AT WORK – RECENT AMENDMENTS
- ALLIED LAWS
- LEGAL CLASSICS
- QUOTABLE QUOTES

CONTENTS

THOUGHT LEADERSHIP	04
With the rise in litigation under GST, the author envisages about the judicial mechanism and role and responsibilities of Administrative Authorities, Adjudicating Authorities and Appellate Authorities as also the working of Tax Tribunals.	
ANTI-PROFITEERING – WHETHER THE LEGISLATION HAS BEEN FOLLOWED IN LETTER AND SPIRIT?	07
Anti-Profiteering measures were introduced to pass the benefit of tax reduction to customers of businesses. The author explains the anti-profiteering provisions under the GST act and enlightens about the need of such a law to protect the consumers.	
FROM THE BENCH – KEY JUDICIAL PRONOUNCEMENTS	13
This module pertains to the notable judgments and verdicts of Supreme Court, High Courts, Authority for Advance Ruling and Appellate Authority for Advance Ruling.	
EXPERT SPEAK	18
This section contains excerpts from the Interview of Mr. Rakesh Bhanushali, Director & Financial Controller of Commscope India Private Limited.	
LEGISLATURE AT WORK – RECENT AMENDMENTS	21
This chapter includes all the amendments, clarifications, notifications or circulars which have been issued in relation to indirect taxes, policies and other measures of the Government.	
ALLIED LAWS	33
This section lists the recent developments, in foreign exchange, Import & Export policies, restrictions on foreign trade, tax rates, clearance procedures, etc.	
LEGAL CLASSICS	38
Highlighting one of the Landmark judgments pronounced in the erstwhile regime of indirect tax, this module depicts how the judgment can be co-related and the provisions underlying therein can be made applicable in GST era.	
QUOTABLE QUOTES	40
Throws light upon some interesting quotes from Experts of GST.	



INTRODUCTION

Note from Editor:

As the GST regime enters its fourth year, it faces its toughest test yet! The upcoming challenge to GST, however, does not stem from its design or structure or the way it has been run. It is up against a pandemic that has wrecked havoc on the global economy and the Indian economy as well. There is a pressing need for measures, which will not only define the future of GST but also the course of the unique cooperative federalism that it has ushered in the country. While the journey so far has been a mixed bag, only time will tell what the future of GST would really look like!

In the 7th edition of our popular newsletter '**Navigating GST**' with respected law firm Economic Laws Practice (ELP), we encapsulate everything that you need to know from the world of GST, along with incisive analysis from the ELP team. The **Thought Leadership** section penned by ELP Partner **Nishant Shah** analyzes the judicial mechanism under GST and reflects on the working of Administrative Authorities, Adjudicating Authorities and Appellate Authorities. Discussing the problems faced by assesseees as Tribunals such as GSTAT are yet to be constituted due to which they are forced to approach the High Courts via the writ route, the author urges the Government to *"constitute the Tribunals at the earliest, as every delay is not just delaying certainty in tax positions but is also hampering growth of economic operations and investment opportunities."*

In the **Cover Story** i.e. **Anti-Profitteering – Whether the Legislation has been followed in letter and spirit?** the ELP team elaborates on the need for anti-profitteering authorities and how these authorities are successfully checking upon the unfair profiteering activities by the registered suppliers. Stating that the profiteering provisions in India were adopted from the methodology followed in Australia and Malaysia, the author discusses the legislative framework of anti-profitteering under the GST laws. The author also lays down the methodologies adopted by the National Anti-Profitteering Authority in sectors such as real estate, FMCG, Restaurant services, etc.

Moving further, the Newsletter, in its Chapter titled **From the Bench- Key Judicial Pronouncements**, deciphers notable verdicts, orders and recent rulings from the Supreme Court, High Courts, AARs and the Appellate Authorities. The **Expert Speak** section, showcases an interview with **Mr. Rakesh Bhanushali (Director & Controller, Commscope India Private Limited)** who expresses how refunds under GST have enhanced liquidity in the business industry and in the long run, GST will play a crucial role in not only formalizing the economic activity in the country but also in improving India's GDP.

The section **Legislature at work – Recent Amendments** subsumes all the amendments, updation, clarifications and legislative modifications, which have been implemented by the Government and also the revamp and relaxation measures announced to boost the economy. The Chapter titled **Allied Laws** focuses on the export policies on various items such as Personal Protection Equipment, extension of time limit for compliance under Excise & Customs law and any other alterations made thereunder.

The **Legal Classics** section illuminates a judgment from erstwhile Indirect Tax Regime which is relevant in the GST era too and can be made applicable in the current times being a valued precedent. We wind-up the Newsletter with some notable quotes from stalwarts extra-ordinaire in the section **Quotable Quotes**.

We are sure the 7th issue of 'Navigating GST' would be an interesting read and we promise to be back with next edition soon.





THOUGHT LEADERSHIP

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

Judicial mechanism under GST – Justice delayed, if not denied

Generally, legislations, more specifically tax legislations, provide for various authorities inter alia to oversee the furtherance of the intents and objectives that the legislation seeks to achieve, including compliance required under the said law. The authorities, in the course of execution of their responsibilities pass orders adjudicating the level of compliance followed by the tax payers. The various authorities under a tax legislation can be broadly classified as follows:

- Administrative authorities
- Adjudicating authorities
- Appellate authorities



Administrative authorities are typically tasked with responsibilities such as scrutiny of returns, selection of taxpayers for audit, onsite auditing, etc. and other activities in the nature of collection of intelligence, etc. Under GST, the attempt has been to minimize human interaction and digitize such administrative role by setting up of Goods and Services Tax Network (GSTN). GSTN is responsible for the functioning of the IT system of the GST portal, which is the medium through which taxpayers furnish the prescribed

returns under GST, and carry out other mandated compliances. The GST database and its associated infrastructure dependencies installed at GSTN have been declared to be a “protected system” under the Information Technology Act, 2000, to ensure confidentiality of the sensitive data stored therein. Information provided by the taxpayers on GSTN system is thereon scrutinized by the administrative authorities to identify non-compliance or evasion of tax, if any.

Adjudicating authority takes cognizance of the issues flagged by the administrative authorities by adjudicating the issue raised through the show cause notices sent to the taxpayers. At times, such adjudicating authorities may also be entrusted with the task of issuing show cause notices to the taxpayers based on the intelligence collected by the administrative authorities. Adjudicating authorities are generally Department officers like Commissioners and their subordinates who scrutinize the returns filed by the taxpayers and issue show cause notices, in case of any inconsistency between the actions of the taxpayer and the extant law.

Appellate authorities are established to adjudicate and conduct hearings in relation to appeals preferred against orders issued by the adjudicating authorities. Appellate authorities are largely Department officers like Commissioner (Appeals) and Tribunal.

It is clear that each of the above 3 categories of authorities are all revenue authorities. Thus, in the conduct of their individual roles, one often experiences a revenue bent in the decisions made.

In the GST regime, with a view to bring about certainty and prior understanding of the tax implications on a transaction and to reduce litigation, another authority in the nature of Authority for Advance Ruling (AAR) was constituted.

THOUGHT LEADERSHIP

Authority for Advance Ruling under GST

AARs are established in each state and comprise of two Departmental officers, one of them is from the Central administration, and the other one is from the respective State / Union Territory administration. Taxpayers can file applications before the AAR to understand the tax implications of current and proposed transactions. However, AAR has its own constraints in as much as they are empowered to address issues only in relation to the following aspects in terms of Section 97(1) of Central Goods and Services Tax Act, 2017 (CGST Act):

- classification of any goods or services or both;
- applicability of a notification issued under the provisions of this Act;
- determination of time and value of supply of goods or services or both;
- admissibility of input tax credit of tax paid or deemed to have been paid;
- determination of the liability to pay tax on any goods or services or both;
- whether applicant is required to be registered;
- whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

AAR is not authorized to rule in respect of issues pertaining to place of supply, refund claims, reversal of input tax credit, etc., which is effectively a constraint imposed on the AAR. It becomes relevant to deliberate whether the GST legislation was right in restricting the powers of the AAR to certain categories of issues, or whether it should have afforded AAR a wider reach to rule upon any and all issues that taxpayers may face.

AARs in all states consist only of members who are essentially officers of the Revenue Department. There is no appointment of any judicial member in the AARs. This again leads to creation of a pro-revenue bias which is apparent in the ruling pronounced by the AARs.

Appellate Mechanism under GST

Be it the Order issued by the Adjudicating Authority,

or the Advance Ruling pronounced by the AAR, the appellate authorities [Commissioner (Appeals) and his subordinates, and Appellate Authority for Advance Ruling (AAAR), respectively], designated to conduct the appellate proceedings against their Orders essentially comprise of officers of the Revenue Department. Thus, considering the fact that up to this level, all authorities involved are from the Department of Revenue in determining the correct tax position or interpretations, the outcome of the proceedings is observed to be revenue oriented, rather than being in favour of the taxpayers.

The AAAR has a quorum consisting of officers from the Revenue Department, an appeal before the same primarily results in strengthening the case in favour of the revenue. GST law does not prescribe an opportunity to prefer an appeal against the Order of the AAAR. Therefore, taxpayers have no option but to move the Writ Courts. The Writ Courts have been remanding the matter back to the AARs in such instances. This can be seen in the case of **Abbott Healthcare Pvt Ltd., CMS Infosystems, JSW Energy Ltd.**

Therefore, mostly all tax legislations require and always provide for constitution of tribunals, which is a quasi-judicial authority.



Tax Tribunals

Tribunals under the indirect tax arena were set up as independent of the executive machinery charged with the responsibility of day-to-day administration of revenue laws. It was based on the dictum that justice should not only be done but should also

THOUGHT LEADERSHIP

be seen to be done. Tribunals are essentially, the last fact-finding authority and helps in reducing the burden of other higher judicial forums like High Courts and Supreme Courts. Typically, this is stage where taxpayers expect reasonable decisions which are seldom against them. A fair percentage of appeals filed before the Tribunal either by Taxpayers or by Department are decided in favour of taxpayers. As on 31st March, 2017, Department had filed 88% of the tax appeals pending at ITAT / CESTAT, as the case maybe. However, in FY 18, the success rate of the Department's Appeals before CESTAT was very low in comparison to the taxpayer's appeal, viz. 27.66% as against 47.70%.

Tribunals under GST

Similar to CESTAT and ITAT, GST laws provides for the establishment of two tribunals, namely, Goods and Services Tax Appellate Tribunal (GSTAT) and National Appellate Tribunal for Advance Ruling (NAAAR).

Almost three years have passed since the introduction of GST, but the abovementioned tribunals are yet to commence operations. Thus, leaving taxpayers without any appropriate forum to address their grievances.

GSTAT

The GSTAT consists of two technical members and one judicial member. GSTAT is required to hear and decide every appeal within a period of one year from the date on which it is filed, as far as possible.

Considering that GSTAT is yet to start functioning, CBIC recently issued a clarification extending the time limit to file appeals before the GSTAT. In terms of the clarification, the period of limitation of three months to file appeals before the GSTAT would commence from the date the President or the State President, as the case may be, enters into office. However, in the interim, taxpayers will have to face hardships like blockage of disputed tax amount, mounting sum of interest in case of adverse decisions, and uncertainty regarding the tax position to be adopted in relation to ongoing transactions.

NAAAR

The composition of NAAAR includes a President who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is

or has been a Judge of a High Court for a period not less than five years, a technical member each from the Centre and the State. NAAAR is required to issue an Order within a period of 90 days from the date of filing of the appeal.

As regards, NAAAR, the institution of the same was welcomed, as it was a measure to provide certainty in cases of conflicting decisions of different AARs on the same issue. However, all categories of taxpayers are not authorized to file appeals before the NAAAR. The benefit has been given only to the Department and distinct persons of the taxpayers in case of conflicting decisions. Furthermore, the composition of 3 member NAAAR continues to include 2 officers from the Revenue Department.

Conclusion

Due to the non-existence of the Tribunals, businesses / taxpayers have been required to approach the Hon'ble High Courts under the Writ route against adverse Orders passed by the first appellate authorities or the AAAR.

However, the Writ approach is not the normal remedial route to be adopted by the taxpayers, and has to be resorted to only in cases of exceptions. The Tribunals plays an important role in addressing these lacunae.

Therefore, it is urged that the Government constitute the Tribunals at the earliest, as every delay is not just delaying certainty in tax positions but is also hampering growth of economic operations and investment opportunities.





ANTI-PROFITEERING – WHETHER THE LEGISLATION HAS BEEN FOLLOWED IN LETTER AND SPIRIT?

The following chapter has been authored by Vinitt Nagla (Associate Partner)

Need for Anti-profiteering provision:

The introduction of GST led to a unified system of tax for goods and services, resulting in a reduction in overall tax rate and availability of higher tax credit for businesses. With a view to prevent companies from taking undue benefit of either reduced rate of tax or higher tax credit available under GST regime, and to ensure that benefit arising thereof is effectively passed on to the customer, the anti-profiteering provisions were incorporated under the GST laws. The National Anti-Profiteering Authority ('NAA') has been set-up and empowered to check unfair profiteering activities by the registered suppliers. The e-flier issued on NAA by the Central Board of Indirect Taxes & Customs ('CBIC') states the objective for bringing in anti-profiteering provisions under the GST and quoted that, "It has been the

reduced the final prices. This was obviously happening because the supplier was not passing on the benefit to the consumer and thereby indulging in illegal profiteering."

The aforesaid rationale is flawed as it presumes that supplier has nothing else to consider except the tax rate and tax credit while deciding the price of its supplies. In this context, the author believes that it is essential to understand the key difference between 'profit' and 'profiteering'. 'Profit' is essentially the difference between expenses incurred and revenue generated. Whereas to determine 'profiteering', there is a need to carry out a cost analysis of each line of supply and determine whether there is benefit accruing on account of reduced tax rate or enhanced tax credit. Accordingly, the supplier needs to reduce his prices to ensure that the benefit arisen on account of reduced tax / enhanced credit is passed on to his customers. The wilful action of not passing of the said benefits to the recipient amounts to "profiteering".

International experiences:

Australia, Malaysia, Canada, New Zealand are some of the countries where similar provisions of profiteering were put in place. India has drawn reference from the mechanism that Malaysia and Australia adopted as part of their framework, which was essentially as stated below:



experience of many countries that when GST was introduced there has been a marked increase in inflation and the prices of the commodities. This happened in spite of the availability of the tax credit right from the production stage to the final consumption stage which should have actually

- Methodology adopted: Australia and Malaysia fundamentally followed "net dollar profit" rule i.e. determine net dollar profit on individual product, class of product prior to GST, and apply same net dollar profit to post GST "cost base" of the supplier

ANTI-PROFITEERING – WHETHER THE LEGISLATION HAS BEEN FOLLOWED IN LETTER AND SPIRIT?

- *By undertaking such methodology, it effectively considers any reduction /increase in cost price of the supplier, thereby able to calculate enhanced tax credit if any.*
- Monitoring authority: The authorities responsible to monitor profiteering were the 'Department of Consumer Affairs' in Malaysia and the 'Australian Competition and Consumer Commission' in Australia.
 - Before implementation of GST, both the authorities were entrusted with task to frame guidelines for what constituted price exploitation, conducting surveys to analyze the effects of price increase, and consulting businesses to understand reasons for price changes. Resultantly, the authorities had adequate data.
- Number of profiteering cases: As per media reports and news articles, in Australia only 14 cases where penal action was carried out (*though authorities investigated 7000 matters and obtain refund of \$21 million*). In Malaysia 640 cases were investigated in first month of GST regime.

Legislative framework of Anti-Profiteering under Indian GST Laws:

Section 171 of the Central Goods and Services Tax Act, 2017 ("CGST Act") mandates that any reduction in rate of tax on any supply of goods or services or benefit of Input Tax Credit ("ITC") is required to be passed on to the recipient by way of commensurate reduction in prices. It is pertinent to note that Section 171 of the CGST Act uses the expression 'commensurate reduction in price' and does not use the expression 'equivalent reduction in price'. The use of the term, '**commensurate**' makes it clear that the intent is to take overall facts and circumstances into consideration.

There are three broad scenarios wherein companies can resort to profiteering and NAA needs to take corrective action.

➤ Benefit of enhanced ITC:

The first scenario arises in case of accrual of additional benefit of ITC to an assessee. For e.g.: Pre-GST regime, construction services were leviable to service tax @ 4.5% [i.e. 15%*30%] and VAT @ 1% (in Maharashtra). Under Service Tax, ITC was available of only input services and capital goods, not inputs and under VAT, as the builders were mostly under composition scheme, ITC was restricted. With the advent of GST, builders/developers are now entitled to avail ITC paid on goods/services used in construction of a project (where the project has started before 01.04.2019). Thus, builders have arisen enhanced ITC arising due to advent of GST.

➤ Reduction in rate of tax:

The second scenario arises in case of reduction in the rate of tax. Illustratively, in the FMCG sector, consumer goods which were taxed @ 28% and



18% GST were after a notified date taxed @ 18% and 12% GST respectively.

➤ Reduction in rate of tax with denial of ITC:

The third scenario arises in cases wherein there has been a reduction in rate of tax with denial of ITC. This scenario is visible in restaurant services, where w.e.f. 15.11.2017, GST on restaurant services was reduced from 18% to 5% (without ITC).

ANTI-PROFITEERING – WHETHER THE LEGISLATION HAS BEEN FOLLOWED IN LETTER AND SPIRIT?

Methodology adopted by NAA & the Infirmities involved:

The predominant sectors for which NAA rulings are pronounced are Real Estate, FMCG and Restaurant services.¹ The NAA while analysing the issue of profiteering, failed to consider the factors like, rise in cost, business nuances, benefits already passed on to the customers, etc. The sector-specific infirmities in NAA's findings are elucidated hereunder:

➤ Real Estate Sector:

As mentioned above, profiteering has been alleged to have arisen due to enhanced ITC available to builders. The NAA methodology to compute profiteering in this sector suffers from several infirmities, which are analysed as follows:

- NAA has essentially compared ITC available Pre-GST with ITC available Post-GST, however, to compute "Benefit of enhanced ITC" one needs to consider ITC that was not available in Pre-GST regime but eligible now under GST regime. Illustration:

Pre - GST Regime		
Sr. No.	Particulars	Amount
1	Base Cost (excluding taxes)	100.00
2	Estimated erstwhile total tax on base cost (Service tax, Excise Duty, VAT / CST, Octroi, Entry tax)	15.00
3	Erstwhile Input tax credit available	6.00
4	Erstwhile Cost (1+2-3)	109.00
Erstwhile net cost on account of non-availability of Input tax credit [2-3]		9.00

Pro - GST Regime		
Sr. No.	Particulars	Amount
1	Base Cost (excluding taxes)	100.00
2	Estimated GST on base cost	22.00
3	Input tax credit available	22.00
4	Net Cost under GST (1+2-3)	100.00
GST net cost on account of non-availability of Input tax credit [2-3]		0.00

- Comparing ITC available Pre & Post GST (i.e. Rs 6 - Rs 22 = Rs. 16) is wrong, as builder is not getting enhanced ITC of Rs. 16 as alleged by NAA, rather Rs. 9 is the enhanced ITC i.e. ITC which was not eligible under erstwhile regime but now available.
- It is pertinent to note that ITC is a Balance Sheet item, it does not form part of Profit and Loss. To arrive at 'profiteering', one should be able to establish that amount has been recovered from customer. In present illustration ITC available under Pre & Post GST (i.e. Rs. 6 and Rs. 22), is never recovered from customer (as these are accounted in Balance Sheet and not Profit & Loss). However, what is recovered from the customer is unavailable ITC i.e. Rs. 9 under Pre-GST, which is now no longer recovered under GST regime.
- NAA ignored the benefits already passed by builders to its customers, by stating that providing discounts are regular trade practice and cannot be considered as passing of benefit on account of anti-profiteering.
- NAA has failed to consider the following crucial aspects:
 - To arrive at tax cost (qua ineligible ITC under Pre-GST regime), NAA should have considered (a) stage of construction; (b) class / types of vendors of builder; (c) ratio of material & labour in the construction cost etc;
 - Escalation in construction cost;
 - Change in rate of tax on procurements in pre-GST and post GST regime;
 - Reversal of ITC arising on account of post O.C sale and cancellation of flats.

➤ FMCG sector:

For the captioned sector, NAA has passed orders wherein majority rate reductions have happened in the post GST era. NAA has predominantly alleged companies to have committed profiteering by comparing 'Base price of product pre rate reduction' with 'Base price of product post rate reduction'. The infirmities associated with the methodology so adopted by NAA can be analyzed and understood as follows:

¹ As on May 2020, out of the total 123 orders passed by NAA, 75 cases involve profiteering, and out of 75 cases, 68 cases pertain to Real estate, FMCG and Restaurant services.

ANTI-PROFITEERING – WHETHER THE LEGISLATION HAS BEEN FOLLOWED IN LETTER AND SPIRIT?

- Class of registration of assessee Pre-GST: NAA failed to appreciate the type of registration an assessee enjoyed Pre-GST and Post-GST. Illustratively, company availing SSI exemption were paying VAT @12.5% (no Excise Duty @ 12%) on certain product. However, under GST the initial rate of tax for the product was 28% and thereafter reduced to 18%. Upon transition to GST, the Company did not increase the price to customer and absorbed increased burden of tax from 12.5% to 28%. However, when the rate of tax reduced from 28% to 18% the same was not passed on to customers. The Company's decision of not to increase MRP (during transition to GST) has been held to be business call and not passing the benefit of reduction in tax rate (from 28% to 18%) held to be 'profiteering';
- Nature of business: NAA in its orders has held 'retailers' to be engaged in profiteering. It is apposite to note that 'retailer' generally operates on 'net realization' basis and entitled for margin derived by back working the MRP. They do not affix MRP (done by Brand owner), therefore reduction in price is not in their hands. Also, discounts offered by retailers to pass on benefit has been ignored by NAA.
- To arrive at Base price, supply chain model qua each product needs to be ascertained, as the price of product may vary depending upon the supply chain model followed i.e. Principal-Agent model, Distributor model, Stock & Sale model.
- Location of sale needs to be considered. Price at mall will be different then price at warehouse.
- Terms of sale/ payment like cash, credit or card ought to be seen.
- Whether the sale of goods is from Pre-GST stock or otherwise, should have been considered;
- Increase in operational cost has been ignored.
- NAA has also failed to observe practical

challenges that business face to change the rate of tax, especially on MRP based product. The rate of tax changes overnight, however the MRP on inventory lying in factory, distribution centres and in transit cannot be changed overnight. Depending on distribution mechanism it requires sometime (60 - 90 days) to pass on benefit of tax rate reduction. Considering Base Price for a period just after rate change does not give true picture.



➤ Restaurant Services:

With effect from 15.11.2017, GST on restaurant services was reduced from 18% to 5% (without ITC). It was alleged that companies resorted to profiteering as the sale price remained unchanged. Following methodologies were adopted by NAA in order to compute profiteering:

- To arrive at ratio of ITC blocked post rate reduction, DGAP considered ITC as a percentage of the total outward taxable turnover for the period prior to 15.11.2017. It was agreed that base price could increase only to the extent of such ITC denial.
- DGAP compared the base prices pre and post 15.11.2017, and concluded that companies have increased base prices much more than what was required to offset the denial of ITC. Therefore, commensurate benefit of reduction in tax rate has not been passed on to the customers.

ANTI-PROFITEERING – WHETHER THE LEGISLATION HAS BEEN FOLLOWED IN LETTER AND SPIRIT?

- **NAA has failed to consider the following crucial aspects:**

- Certain expenses are incurred at year end, considering ITC for a specific period may not give true picture;
- At what level price change should be reflected entity, state, location, product, category or SKU, each will show different result in pricing;
- Increase in royalty amounts, cost of raw material;
- Life cycle of products;
- Increase in payments to various service providers;
- Competition pricing and market conditions.

Order of NAA and imposition of Penalty:

In most of its orders, beside holding the supplier guilty of profiteering, NAA has directed Director General of Anti-profiteering ('DGAP') to investigate into other goods / services provided by the supplier (which

approached jurisdictional High Courts on grounds that NAA is not empowered to direct further investigation in absence of a complaint or a report submitted by DGAP. The Hon'ble Delhi High Court in the case of *Reckitt Benckiser India Private Limited vs Union of India & Ors* passed an order dated 19.07.2019 that the Company is not liable to furnish information re products other than those covered by DGAP's investigation report. However, the Ministry of Finance vide Notification No. 31/2019 dated 28.06.2019 inserted sub-rule (5) to Rule 133 empowering the NAA, to cause investigation or enquiry *qua* products other than those covered in the investigation report. It is apposite to mention here that, in terms of Rule 133(5) of the CGST Rules, NAA is empowered to cause further investigation or enquiry only upon receipt of a report from DGAP. The unfettered power vested on NAA to broaden the investigation, is arbitrary. One may argue that NAA exceeds its jurisdiction by ordering investigation into other goods / services (not subject matter of initial investigation / complaint filed by customer), as it cannot be an authority being a judge in its own case and prejudging the issue.

Further, by virtue of Section 171(3A)² of the CGST Act, the NAA has been passing orders proposing commencement of proceedings for imposition of penalty for the alleged profiteering. Typically, pursuant to such an order of profiteering, a show cause notice is separately issued by the NAA calling upon the assessee to show cause as to why penalty under Section 171(3A) of the CGST Act read with Rule 133(3)(d) of the CGST Rules should not be imposed. In this regard, it is interesting to note that till 01.01.2020, the CGST Act did not have any substantive provision requiring payment of penalty in respect of alleged amount of profiteering under Section 171 of the CGST Act. Rather till 01.01.2020, the NAA was empowered to order imposition of penalty by virtue of only Rule 133(3)(d) of the CGST Rules, which infact was contrary to settled judicial position that subordinate legislation has to conform to the statute under which it is made.³ Therefore, prior to 01.01.2020, the NAA was legally empowered to impose only a penalty of Rs. 25,000/- under residuary Section 125 of the CGST Act.



were not subject matter of initial investigation). Such investigations have been ordered *qua* same GSTIN / across business verticals / different locations / involving different periods, thereby expanding the scope of investigation. The Companies have

² Inserted vide Notification No. 1/2020-CT dated 01.01.2020

³ State of A.P. v. McDowell & Co. [(1996) 3 SC 709] and Indian Express Newspapers/(Bombay) Pvt. Ltd. v. Union of India [1999 (110) E.L.T. 3 (S.C.)]

ANTI-PROFITEERING – WHETHER THE LEGISLATION HAS BEEN FOLLOWED IN LETTER AND SPIRIT?

It is to be noted that prior to 01.01.2020 [i.e. even before Section 171(3A) came into effect], the NAA was passing orders proposing penalty under Section 122 of the CGST Act read with Rule 133(3) (d) of the CGST Rules. Needless to mention that such actions were grossly illegal in as much as the Section 122 does not provide for penalty in case of profiteering and Rule 133(3)(d) was not backed by any statutory provision. Accordingly, the orders passed by NAA to impose penalty under Section 122 read with Rule 133(3)(d) of the CGST Rules, suffer from the vices of arbitrariness and illegality.

Way Forwards:

As per Section 107(1) of the CGST Act, any person aggrieved by **any decision or order passed under this Act** or the SGST Act or the UTGST Act by an **adjudicating authority** may appeal to such Appellate Authority as may be prescribed. It is pertinent to note that definition of 'Appellate Authority' under Section 2(4) of CGST Act has been amended w.e.f. 1-2-2019 to specifically exclude the Authority referred to in sub-section (2) of section 171, i.e. NAA. Considering the aforesaid, since the law specifically excludes to appeal orders of the NAA, the only recourse for aggrieved taxpayers is to file a writ petition. Several writ petitions are filed in various High Courts. Further, vide Order dated 19.02.2020 in Transfer Petition (Civil) Nos. 290-292 of 2020, the Hon'ble Supreme Court has directed that all Writ Petitions concerning NAA be transferred / filed to the Delhi High Court.

Conclusion:

While the NAA in **Subway Systems India Pvt. Ltd. [TS-224-NAA-2020-NT]** has observed that *"the welfare of the consumers who are voiceless, unorganised and scattered is the soul of the antiprofitteering provision"*, the question arises "Is positioning of such 'consumer welfare' provision under a taxing statute and giving it the teeth of the tax machinery (in the form of recovery and penal liabilities) valid?" The NAA has consistently been emphasizing that any 'reduction in the rate of tax' is a notional sacrifice of revenue by the Government, the benefit of which necessarily needs to be passed on to the final consumer. On a perusal of the Constitutional scheme, this assertion does not seem to be well footed. When a tax rate is reduced from 10% to 5% by the Government, the new levy of 5% is the tax that the Government is authorized to collect as per the Articles 246A and 265 of the Constitution of India.

The Government has no right on any amount that is above the prescribed rate of tax as the same is not authorized by law. The Constitutional scheme does not envisage any notional tax or sacrifice of such notional tax and every tax policy cannot be said to be aimed at reducing prices for the final consumer without considering the interest of the business. In any event, the price component of the goods/ service goes beyond the legislative competence



of Articles 246A and 265 of the Constitution of India and bringing the same within the purview of the GST regime is contrary to the tenets of the Constitution. Asking the tax collectors to adjudicate a consumer dispute and ensure whether an individual has been charged a rupee more or not in excess (or even less in some cases) is a policy debacle.

Even assuming that Section 171 of the CGST Act is constitutionally valid, it is a settled position that in absence of proper computation or machinery provisions, the entire scheme of the statute by which a charge is sought to be created fails.⁴ In case of anti-profiteering, neither the NAA nor any other provision of the GST laws have prescribed any mechanism or methodology for determining anti-profiteering measure or as to how and in what manner the additional benefit is required to be passed on to the consumers. In the absence of a determining mechanism, the entire investigation undertaken by DGAP as well as adjudication undertaken by the NAA appears to be unconstitutional and without authority of law.

The author believes that codifying methodology and appointing right authority could have been the key to effectively put profiteering measures in place and lessen the burden on the High Court where several writ petitions are pending to seek justice against the NAA orders.

⁴ CCE vs. Larsen & Toubro Ltd. [(2016) 1 SCC 170], CIT vs. B.C. Srinivasa Setty [(1981) 2 SCC 460], Suresh Kumar Bansal vs. Union of India [2016-TIOL-1077-HC-DEL-ST]



FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

The following chapter has been authored by **Adarsh Somani (Director)** and **Sahil Kothari (Associate Manager)** - ELP

Spotlight Case Law

1. New Delhi High Court in case of ***Bharti Airtel Limited vs Union of India* [WP(C) 6345/ 2018]**

Other Cases

2. Karnataka Appellate Authority for Advance Ruling in case of ***WeWork India Management Private Limited* [Order No KAR/ AAAR-17/ 2019-20]**
3. Ahmedabad CESTAT in case of ***Mosaic India Private Limited vs CC Jamnagar* [Final Order No A/ 11113/ 2020]**
4. **Mumbai CESTAT in case of *Moser Baer India Limited vs CC (II)* [2020-VIL-235-CESTAT-MUM-CU]**
5. Karnataka Authority for Advance Ruling in case of M/s ***Dolphine Die Cast (P) Limited* [Ruling No KAR ADRG 35/ 2020]**

Bharti Airtel Limited vs Union of India [W.P. (C) 6345/2018, CM APPL. 45505/2019]

Facts of the Case

- Petitioner is engaged in rendering telecommunication services in India. During the period of transitioning to GST regime, during July 2017 to September 2017, several issues were faced on the GST portal, which significantly impacted input & output tax liability computation. One such issue was short reporting of input tax credit, in absence of automatic verification system.
- Short reporting of ITC resulted in discharge of output tax liability in cash to the tune of INR 923 crore. Petitioner realized such short reporting only when Form GSTR 2A was operationalized by Government in the month of October 2018.
- Given the above, Petitioner contended that short reporting of ITC and consequent excess cash payment of GST was due to inefficiencies in the GSTIN system and non-operationalization of Form GSTR 2 and Form GSTR 3.

- GST reporting structure envisaged that any reporting mistake of input and output tax should be rectified immediately by validation, either by supplier or recipient. If such model was operationalized since beginning, short reporting of ITC would not have been encountered.
- Further, Circular No 7/2017 - GST dated September 1, 2017 provided that if eligible ITC recorded in Form GSTR 3B is less than ITC reflected in Form GSTR 2, then correct amount of ITC will be reflected in Form GSTR 3B of the very same month.
- However, vide Circular No 26/ 2017 - GST dated December 29, 2017, Government has kept Circular No 7 in abeyance due to continuing extension of timelines to file Form GSTR 1, 2 and 3 and non-availability of facility to file Form GSTR 2. Further, para 4 of the said Circular also states that Form GSTR 3B can be corrected only in the month in which error is noticed.



- Against the above backdrop, Petitioner's grievance is that there is no rationale for not allowing rectification / revision in the month for which the return is filed. Non-availability of facility to rectify / revise GST return for past period is creating stumbling block. ITC, which was short reported earlier, cannot be claimed as refund since law allows refund only in specific situation.

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

- Thus, Petitioner filed instant petition to rectify / revise past returns and claim refund of GST paid vide cash on account of short reporting of ITC.

Ruling

- Hon'ble Delhi High Court took cognizance of the fact that structure of the GST law envisages a facility for validation of monthly data filed in Form GSTR 1, GSTR 2 and GSTR 3. Form GSTR 3B has no inbuilt checks and balances to ensure data uploaded is accurate, verified and validated.
- Thus, the design & scheme of the law as envisioned, have not been entirely put into operation, as yet. If the envisioned system was put into operation, the Petitioner would have known the correct amount of ITC available and could have discharged its liability through ITC, instead of cash.
- Accordingly, present petition was allowed, and Petitioner was granted permission to rectify Form GSTR-3B for the past periods.

ELP Comments

- Above ruling sends a positive message to industry, to the effect that failure to operationalize GST portal as envisaged from beginning, would not detrimentally impact taxpayers. Further, this ruling also reflects sympathetic approach of the Court, especially during the transition phase of GST.
- Number of issues relating to transition period are pending before Courts and such sympathetic and reasonable approach would indeed benefit tax payers.
- However, the conundrum of vexed interpretations subsists with recent retrospective amendment to the Section 140. It is more likely than not that, the said new provision would again be challenged before courts and thus, the dispute/ litigation may yet not have seen light at the end of tunnel.

WeWork India Management Private Limited
[Order No KAR/ AAAR-17/ 2019-20]

Facts of the Case

- Applicant is engaged in providing shared workspace / office space to the freelancers, start-ups, small businesses and large enterprises.



- Applicant procures goods and services from various contractors for fitting-out of the workspace and provides the said workspace on rent to various customers. Applicable GST has been paid on the procurements.
- Specific query was with respect to following furniture and fixture goods procured by Applicant for used in the Applicant's business:
 - o Detachable 14mm engineered wood with oak top wooden flooring;
 - o Detachable sliding and stack glass partition.
- Applicant sought clarification with respect to availability of input tax credit ('ITC') on above procurements in terms of Section 16 read with Section 17(5) of the CGST Act.
- Karnataka Advance Ruling Authority held that ITC on detachable 14mm engineered wood with oak top wooden flooring since it is movable in nature and capitalized as furniture.
- However, ITC detachable sliding and stack glass partition was disallowed. An appeal was filed before the appellate authority to allow ITC on the ground that such goods are not used for construction of any immovable property.

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

Ruling

- The Appellate Authority observed that since glass partitions are not permanently embedded and can be dismantled and moved at Applicant's discretion. Further, they are affixed to earth only by nuts and bolt and can be demolished without damage to civil structure.
- On these observations, it was held that glass sliding should not qualify as immovable property and would be eligible for ITC.

ELP Comments

- Indeed, a positive ruling from Appellate Authority, which is in line with well-established tests laid down by Courts.
- An interesting argument was put forth by the Applicant that language used in Section 17(5) - *goods used for construction of immovable property*, should have a narrow compass since the word 'for' is more specific than the word 'in relation to'. However, the Appellate Authority did not consider this argument, which could have a far-reaching impact.

Mosaic India Private Limited vs CC Jamnagar [Final Order No A/ 11113/ 2020]

Facts of the Case

- Appellant is engaged in import of certain goods from its related overseas party in the United States. Price of the impugned goods widely fluctuates, basis macro-economic factors.
- Import transaction between importer and its overseas related party was evaluated by the Special Valuation Branch ('SVB') and after examination, it was ruled in June 2006 that contracted price reflects arm's length consideration.
- In December 2007, appellant contracted with overseas supplier for import of (2) consignments of diammonium phosphate. Price agreed for the consignment was the same and goods were destined to arrive in March 2008 (approx. \$650).
- While the goods were in high seas, the international price of the subject goods spiked considerably, and Appellant sold goods contained in consignment 2 to its overseas

group company in Hong Kong in March 2008 (for approx. \$ 960). Subsequently, Hong Kong entity sold the subject goods to Tata Chemicals Limited in March 2008 (for approx. \$ 960).

- Both the above transactions were undertaken at high seas. Consignment 1 as well as consignment 2 arrived in India in April 2008 and were custom cleared by Appellant and Tata Chemicals respectively.
- On observing wide difference in import value declared by Appellant (approx. \$ 650) and Tata Chemicals Limited (approx. \$ 960), a show cause notice was issued to Appellant on allegation of under-valuing the imported goods.
 - o Price agreed is as per international standard / guidance prevalent during the relevant times
 - o Supreme Court has held in various rulings that different prices for the same commodity contracted under different contracts entered at different points of time is acceptable, even though the goods are imported on the same date
- Department argued that SVB report is not applicable since the same is conditional upon availability of contemporaneous imports, which is in the instant case is available.



FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

Ruling

- Hon'ble CESTAT held that since transaction value has already been examined by SVB, import value thereof should be accepted in terms of Rule 3(3)(a) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007
- Further, although contemporaneous imports are at higher price, the examination of the circumstances indicate that relationship between Appellant and its supplier has not influenced the price.
- CESTAT observed that there is cogent difference in assessable value on account of price fluctuation and different date of contract execution by importers.
- Basis the above, transaction value was accepted and allegation of under-valuing import was set aside.



- o Payment for Digi Beta Tape containing movie; and
- o License fee or royalty for obtaining reproduction and distribution rights.
- At the time of import, only the value of Appellant has declared the value of Digi Beta Tape containing movie was declared for the purpose assessment of duty, excluding license fee or royalty paid for reproduction and distribution rights.
- It was alleged that amount of license fee or royalty should be included in the assessable value. Appellant contended that as per Rule 10 (1) (c) of Custom Valuation (Determination of Price of Imported Goods) Rules, 2007 ('Valuation Rules'), royalty and license fee is includible only if:
 - o License fee is related to imported goods; and
 - o Payment of license fee is a condition of sale of the goods.
- However, Appellant argued that as per Interpretative Note 10 to Rule 10(1)(c), charges for right to reproduce imported goods in the country of importation is not includible irrespective of whether such payment is condition of sale or not. 'Condition of sale' test applies only when payment is towards right to distribute or resale of imported goods.

ELP Comments

- Various macro-economic factors impacting the price of imported goods, including contract date, international price, etc would impact the assessable value of the imported goods.
- These factors, along with supporting documentation would assist in defending the declared assessable value, even if contemporaneous imports are at higher price.

Moser Baer India Limited vs CC (II) (Airport Special Cargo) [2020-VIL-235-CESTAT-MUM]

Facts of the Case

- Appellant is engaged providing entertainment contents on DVD or VCD to Indian customers. For this, Appellant enters into contract with foreign production houses for acquiring rights to reproduce foreign movie on DVD / VCD in India.
- Foreign movies are imported in Digi Beta Tapes, which are used in India for replicating / reproducing the content on multiple DVD(s) and VCD(s) to be sold in India
- Following payments are made to foreign production house:

Ruling

- The Tribunal reviewed the underlying agreements and made following observations:
 - (a) Agreement has been styled as Distribution Agreement

FROM THE BENCH - KEY JUDICIAL PRONOUNCEMENTS

- (b) Entire payment of 'License Fee' is required to be made prior to delivery of goods
- (c) No bifurcation is provided of License Fee that pertains to right of reproduction & right to distribution
- Basis the above, it was held that payments made by Appellant is towards distribution rights and payable as condition of sale of goods. Reliance was also placed on the judgement of **Indo Overseas Films case [2002 (139) ELT 729 (T)]**, wherein in a similar fact pattern, since agreement did not provide any break-up of amount payable towards each of the rights/licences granted to the Appellant, exclusion from Valuation Rules was not feasible.

ELP Comments

- The above ruling is a testament that documented terms in contract will be principal test for determining taxability or otherwise.
- To avoid ambiguity or adverse rulings, the intent of transaction should be carefully incorporated in agreement in backdrop of established legal principles.

Dolphine Die Cast (P) Limited – Karnataka [AAR KAR ADGR 35/2020]

Facts of the Case

- Applicant is manufacture and exporter of Aluminium and Zinc die casting.
- Applicant manufacture steel die as per the requirement and specification given by the foreign customer. After seeking the approval, Applicant uses steel dies for making Aluminium and Zinc die casting. These manufactured Aluminium and Zinc castings are exported to the overseas customer.
- However, the Applicant retains the steel die till the completion of the export order or completion of life of die.
- The Applicant raises the tax invoice for the steel die in the name of overseas customer, though the die is not physically exported to the foreign customer.
- Applicant also imports aluminium and zinc casting from overseas suppliers. While overseas

supplier supplies the castings, the steel casting is retained by overseas supplier till the completion of order. However, overseas supplier issued invoice for the steel casting in the name of Applicant, although the same is not imported.

- Advance ruling was sought by the Applicant on taxability of above transactions.

Ruling

- Advance Ruling Authority, after perusing Section 2(5), Section 8(1) and Section 10(1) of the Integrated Goods and Services Tax Act, 2017 ('IGST Act'), held that with respect to invoice raised on overseas customer for steel cast, instant transaction would not qualify as export in absence of movement of goods outside India.
- Further, place of supply would be location of such goods and thus, underlying transaction should qualify as inter-State supply (since place of supply and location of supply is in same State).
- On the contrary, with respect to invoice raised by overseas supplier on Applicant for steel cast, Authority held that transaction would not qualify as 'import' in absence of movement of goods in India. Further, the place of supply of such transaction is outside India, transaction should not attract GST.

ELP Comments

- Ruling clarifies taxability for cross-border transactions of goods which do not involve movement of goods.





EXPERT SPEAK

Interview with Mr. Rakesh Bhanushali, Director & Financial Controller - Commscope India Private Limited

Interview conducted by Pranav Pagaria (Senior Associate)

- **According to you, did the introduction of GST in India supplement the proposition of ease of doing business in India? What is your take on the global perception regarding the same?**

GST, which is based on the principle of One Nation One Tax, was introduced from July 1, 2017. It subsumed multiple Central, State levies and Cesses. Introduction of GST has brought about myriad structural and operational benefits to the industry. To name a few:

- Eliminating tax on tax,
- Improving supply chain efficiency through warehouse planning,
- Transporting goods faster across the country, and
- Automation and transparency in regulatory filings.

We have also experienced faster processing of refunds under the GST regime, which is providing enhanced liquidity to the industry thereby supplementing furtherance of business.

All of this in my view has led to an improved

ease of doing business, which is also reflected in India's higher rankings in the Ease of Doing Business Index published by World Bank.

From a global standpoint, I believe the world is convinced that in the long run GST will play a crucial role in not only formalizing the economic activity in the country but also in improving India's GDP.

- **From a macro-economic perspective, what according to you is the impact of introduction of GST on your industry. Did it supplement the synergies in business across the supply chain and optimize costs and operations?**

I believe introduction of GST has been very positive for the telecom and IT hardware manufacturers. GST with all its benefits related to avoiding double taxation and faster monetization of credits, has surely helped us optimize costs and working capital requirements.

Easing logistics costs and increasing transparency of taxes has led to better estimation of costs in the value chain and allowed the industry to be competitive in the market, serving the best interest of the consumers.



EXPERT SPEAK

- **How do you see the government's push towards E-invoicing system under GST? Do you feel that the industry is geared up to embrace the digitization dose and in your view is it a welcome change or it just adds to the compliance burden?**

I am happy with every move which supports further automation and standardization related to GST administration. E-invoicing will enhance interoperability and uniform interpretation across the GST ecosystem. I am cognizant of the challenges faced by the industry to keep track of and adapt to the frequent changes and guidelines, make changes to their ERP systems, etc., which is a genuine pain point. However, I would still lend due credence to the efforts towards automation as I believe long term benefits of such change outweigh the costs and challenges of one-time implementation.

Digitization in my view would also lead to reduction in future tax litigations, resulting from standardization as well as support automation of returns, thereby reducing people dependence for handling the massive amount of data. It will in addition also help curb abuse of law by certain classes of taxpayers, who indulge in activities such as issuance of fake invoice, etc., thereby increasing compliance and broadening the tax base.

- **GST has brought about a paradigm shift in the compliance reporting framework, where invoice line item level details are now available with the authorities beforehand, as against the erstwhile regime. Do you see this as only affording ease and causing simplification or you perceive that this could lead to concerns qua the assessment methodology that will be adopted by the tax office?**

As long as the assessee has been honest with all his filings, he need not worry about the assessment

methodology. In fact, with more automation and cross checks in monthly/annual returns, I expect lower litigations, especially on many technical compliance issues going forward. So, I am quite happy that the tax administrators have all the information upfront. In fact, due to the significant lag in the tax assessments sometimes, there are challenges in providing information due to internal realignments and changes. These issues however might not arise now. Yes, organizations who are not very transparent or are trying to bypass the law would find this very



tough to deal with. That in my view is the very intent of such a change, and I firmly support it.

- **What steps in your view are very critical for any Company to adopt to turnaround the business dynamics and emerge stronger from the business disruption caused by COVID 19?**

COVID-19 has impacted everyone across the globe. Having said that, it has affected different companies differently, depending on the industry they operate in, their location, business model, liquidity position, etc. Hence, the response has to be in accordance with the cause.

In general, the most important thing is safety. Every company must make their employees

EXPERT SPEAK

feel safe and comfortable. While business and profits are important, the commitment we show towards our employees' and their families' health would uplift employee morale and spring long term success. In addition to safety, empathy is very critical. For example, paying salaries fully and on time to the extent possible is critical. Your employees who could not report to work due to the lockdown or being in containment zones deserve your support.

Another lesson learnt during this period is to relook at your supply chain model. Be it location of your factories, availability of dual source for material/spares, ports/airports from where you can import/export - all inefficiencies have come to notice, which also gives an opportunity to improve and come out stronger for future.

Also, prompt communication and pro-active decisions/approvals are absolutely critical. One needs to ensure that all internal and external stakeholders are updated, to avoid any surprises. This would help create lasting relations. Further, it is very important to manage cash and fund

requirements properly. Though Work from home can surely give some operating advantage usually it cannot replicate workplace level standards of teamwork and work culture. This needs to be periodically evaluated on a case to case basis. However, while we have all these challenges and opportunities, it is very important that the company does not deviate from its value proposition and long-term strategic vision.

- **Do you feel the relaxations in GST provisions provided by the Government, in the aftermath of COVID 19, are adequate to support the industry? If not, what more support do you expect from the Government on the GST front?**

From a GST perspective, government reliefs related to the extension of due dates in filing returns, easing interest rates, the waiver of late fees and penalties, have been helpful. However, given that at the moment there is a supply side issue, there is very limited role GST regulations can play to accelerate demand in most of the sectors.



LEGISLATURE AT WORK - RECENT AMENDMENTS

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

Recent Amendments

Extension of due date of certain compliances under Goods and Services Tax (GST) law and other indirect tax enactments

- The validity period of any e-way bill generated on or before 24th March, 2020, has been deemed to be extended till 30th June, 2020, with effect from 31st May, 2020, in cases where the period of validity has expired on or after 20th March, 2020.⁵
- Time limit for furnishing of the annual return (Form GSTR-9 and Form GSTR-9C) specified under Section 44 of the Central Goods and Services Tax Act, 2017 (CGST Act) electronically through the common portal for the financial year 2018-2019 has been extended to 30th September, 2020 from 30th June, 2020.⁶
- Due date of furnishing Kerala Flood Cess return for the period February 2020 to May 2020 has been extended in the below manner:
- Persons whose principal place of business or place of business was in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th January, 2020, and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from 27th January, 2020 onwards, are now required to follow the special procedure⁷ prescribed in relation to their transition up to 31st July, 2020.⁸
- In respect of registered persons who were served notice for cancellation of registration on account of non-furnishing of returns for a continuous period of six months (or three consecutive periods in case of a person paying tax under Section 10 of CGST Act), in the manner specified in Section 169(1) (c) and Section 169(1)(d) of CGST Act, the later of the following dates shall be considered for the purpose of calculating the period of thirty days for filing an application for revocation of cancellation of registration, in cases where cancellation order was passed up to 12th June, 2020⁹:

S. No.	Class of registered persons	Tax period	Due date
	Taxpayers having an aggregate turnover of more than Rs. 5 Crores in the preceding financial year	February 2020, March 2020 and April 2020	24 th June, 2020
		May 2020	27 th June, 2020
	Taxpayers having an aggregate turnover of more than Rs. 1.5 Crores and up to Rs. 5 Crores in the preceding financial year	February 2020 and March 2020	29 th June, 2020
		April 2020	30 th June, 2020
	Taxpayers having an aggregate turnover of up to Rs. 1.5 Crores in the preceding financial year	February 2020	30 th June, 2020
		March 2020	3 rd July, 2020
		April 2020	6 th July, 2020
	Taxpayers having an aggregate turnover of up to Rs. 5 Crores in the preceding financial year	May 2020	12 th July, 2020

⁵ Refer Notification No. 47/2020 – Central Tax dated 9th June, 2020.

⁶ Refer Notification No. 41/2020 – Central Tax dated 5th May, 2020.

⁷ Vide Notification No. 10/2020 – Central Tax dated 21st March, 2020, a special procedure was prescribed in for such category of persons in respect of ascertainment of tax periods for January 2020 and February 2020, transfer of ITC and payment of tax, etc.

⁸ Refer Notification No. 45/2020 – Central Tax dated 9th June, 2020, effective from 31st May, 2020.

⁹ Refer Central Goods and Services Tax (Removal of Difficulties) Order, 2020 dated 25th June, 2020.

LEGISLATURE AT WORK - RECENT AMENDMENTS

- Date of service of the said cancellation order; or
- 31st day of August, 2020
- For the purpose of calculating the period of 30 days for filing an application for revocation of cancellation of registration under Section 30(1) of CGST Act, for those registered persons who were served notice under clause (b) or clause (c) of sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and where cancellation order was passed up to 12th June, 2020, the later of the following dates shall be considered
- In the event, the time limit for completion of any statutory compliance prescribed by the CGST Act falls between 20th March, 2020 and 30th August, 2020, then time limit for such compliance has been extended up to 31st August, 2020.¹⁰ Previously, extension for completion of statutory compliances was provided up to 30th June 30, 2020.
- Previously, a relaxation in time limit for compliance of certain actions under Central Excise Act, 1944, the Customs Act, 1962 (except certain prescribed provisions), Customs Tariff Act, 1975 and Chapter V of the Finance Act, 1994 was provided to taxpayers. The relaxations have been further extended by the Government in respect of actions, the end date of completion of which falls between 20th March, 2020 to 29th September, 2020. The time limit for complying with such action has been extended up to 30th September, 2020.¹¹

Amendments in the special procedure to be followed by corporate debtors under GST law

- A special procedure has been prescribed under GST law for taxpayers qualifying as corporate debtors (in terms of Insolvency and Bankruptcy Code, 2016) undergoing the corporate insolvency resolution process, and the management of whose affairs are being

undertaken by interim resolution professionals (IRP) or resolution professionals (RP)

- Vide **Notification No. 39/2020 – Central Tax dated 5th May, 2020**, the following amendments have been introduced to the previously prescribed procedure to be followed by such corporate debtors:

- The said procedure has been made inapplicable to those corporate debtors who have furnished the statements under Section



37 (Form GSTR-1) and the returns under Section 39 (Form GSTR-3B) of CGST Act for all the tax periods prior to the appointment of IRP/RP

- The time frame within which the corporate debtor is required to take registration after appointment of IRP/RP is now amended to 30 days from the date of appointment of the IRP/RP, or by 30th June, 2020, whichever is later, w.e.f. 21st March, 2020. Prior to the amendment, the corporate debtor was required to obtain registration within 30 days from the date of appointment of IRP/RP.

Issuance of clarifications in relation to certain compliance requirements under GST law

- Vide **Circular No. 138/08/2020 – GST dated 6th May, 2020**, following clarifications were issued

¹⁰ Refer Notification No. 55/2020 – Central Tax dated 27th June, 2020

¹¹ Refer Notification No. G.S.R. 418(E) dated 27th June, 2020.

LEGISLATURE AT WORK - RECENT AMENDMENTS

to address some of the challenges faced by registered persons in fulfilling compliance requirements pursuant to the spread of COVID-19:

- IRP/RP can obtain registration under GST within 30 days of its appointment, or by 30th June, 2020, whichever is later
- It is clarified that IRP/RP would not be required to take a fresh registration in cases where Form GSTR-1 and Form GSTR-3B have been furnished under the registration of corporate debtor (earlier GSTIN), for all the tax periods prior to the appointment of IRP/RP
- In case of any change in IRP/RP during the insolvency process, it would be deemed to be a change of the authorized signatory, and



not the creation of a distinct person required to obtain a separate registration. Accordingly, in the event of such a change, one needs to amend the registration form to add the new IRP/RP as the authorized signatory. Such addition can be done with the help of the previous authorized signatory or failing that, by the concerned jurisdictional officer

- Requirement of exporting of goods by merchant exporters within 90 days from the date of issue of tax invoice by the registered supplier¹², is extended to 30th June, 2020 in cases where the said 90 days period expires during 20th March, 2020 to 29th June, 2020

- Due date for furnishing Form GST ITC – 04 for the quarter ending March 2020, is extended to 30th June, 2020

GST portal introduces new functionality for registration of IRP/RP

- Facility for registration of IRP/RP has now been made available on GST portal.¹³
- In relation to the same, certain instructions/clarifications have been provided by the GST portal which are as follows:
 - Reason for registration should be selected as "Corporate Debtor undergoing the Corporate Insolvency Resolution Process with IRP/RP" from the drop-down menu
 - The date of commencement of business for IRP/RPs will be the date of their appointment, and their compliance liabilities will also come into effect from the said date
 - The person appointed as IRP/RP shall be the Primary Authorized Signatory for the newly registered Company
 - Details specified in original registration of the corporate debtors are required to be entered in the new registration form in respect of 'Principal Place of business/ Additional place of business'
 - The new registration application shall be submitted electronically on GST Portal under DSC of the IRP/RP
 - The new registration by IRP/RP will be required only once. In case of a change in IRP/RP, after initial appointment, it would be deemed to be change of authorized signatory and not an appointment of a distinct person requiring a fresh registration
 - In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by a non- core amendment in the registration form

¹²This requirement has to be complied with for a supplier to be eligible to supply goods to a merchant exporter at a concessional rate of GST, in terms of Notification No. 40/2017 – Central Tax (Rate) dated 23rd October, 2017.

¹³<https://www.gst.gov.in/newsandupdates/read/377>

LEGISLATURE AT WORK - RECENT AMENDMENTS

- The change in Primary Authorized Signatory details on the portal can be done either by the authorized signatory of the Company or by the concerned jurisdictional officer (if the previous authorized signatory does not share the credentials with his successor) on request of IRP/RP

Furnishing of Form GSTR-3B and Form GSTR-1 through electronic verification code (EVC)

- A relaxation has been provided to taxpayers registered under the provisions of the Companies Act, 2013, in respect of furnishing of Form GSTR-3B, in light of the current COVID-19 situation. They have been permitted to furnish Form GSTR-3B during the period 21st April, 2020 to 30th June, 2020, by verifying the same through electronic verification code, with effect from 21st April, 2020¹⁴. Vide **Notification No. 48/2020 – Central Tax dated 19th June, 2020**, the said relaxation has been further extended to Form GSTR-3B furnished during the period 21st April, 2020 to 30th September, 2020, with effect from 27th May, 2020.
- This relaxation has also been extended to the aforementioned class of taxpayers in relation to furnishing of Form GSTR-1 during the period 27th May, 2020 to 30th September, 2020, with effect from 27th May, 2020.¹⁵

Furnishing of Nil Form GSTR-3B and Form GSTR-1 through SMS

- Registered persons furnishing a Nil return (i.e. Form GSTR-3B having nil or no entry in any of its tables) for a tax period, may now furnish the same through SMS using the registered mobile number, with effect from 8th June, 2020. The verification of such return is to be done through a registered mobile number based One Time Password facility.¹⁶
- In this regard, Frequently Asked Questions (FAQs) were issued by GSTN. The FAQs *inter alia* provide the following clarifications:
 - Nil Form GSTR-3B can be filed a person who has not made any outward supply, does not have

any reverse charge liability, does not intend to take input tax credit (ITC), and does not have any liability in relation to the particular tax period, or any previous tax period

- Filing of Form GSTR-3B is mandatory for all normal and casual taxpayers, even if there is no business activity in any particular tax period. Therefore, for such tax period, taxpayers can file Nil Form GSTR-3B, subject to fulfilment of necessary conditions
- Nil Form GSTR-3B can be filed by taxpayers on or after the 1st day of the subsequent month for which the return is being filed
- Taxpayers fulfilling the below conditions will be eligible to file Nil Form GSTR-3B through SMS:



- Taxpayer must be registered as Normal taxpayer / Casual taxpayer / SEZ Unit / SEZ Developer and must have a valid GSTIN
- Authorized signatory and his / her phone number must be registered on the GST Portal
- There is no pending liability in relation to any previous tax period, interest or late fee while filing Nil Form GSTR-3B

¹⁴ Refer Notification No. 38/2020 – Central Tax dated 5th May, 2020.

¹⁵ Refer Notification No. 48/2020 – Central Tax dated 19th June, 2020.

¹⁶ Refer Notification No. 38/2020 – Central Tax dated 5th May, 2020 read with Notification No. 44/2020 – Central Tax dated 8th June, 2020.

LEGISLATURE AT WORK - RECENT AMENDMENTS

- All Form GSTR-3B for the previous tax periods must be filed
- There must not be any data in saved stage, in online version of Form GSTR-3B, on the GST Portal
- All authorized representatives, for a particular GSTIN, are allowed to file Nil Form GSTR-3B through SMS on behalf of the taxpayer. In the event, more than one authorized signatories / representatives of the taxpayer have the same mobile number, which is registered on the GST Portal, such authorized signatories / representatives cannot file Nil Form GSTR-3B through SMS. In such a scenario, the authorized signatory / representative first needs to update their mobile number on the GST Portal, through non-core amendment process, by giving a unique mobile number for every authorized signatory of the particular GSTIN



- An authorized signatory, who functions as an authorized signatory for multiple GSTINs, with the same mobile number registered for all GSTINs, can file Nil Form GSTR-3B for all the GSTINs from the same number

- Additionally, the Government has also decided to introduce the facility to furnish Nil Form GSTR-1 through SMS from the first week of July 2020¹⁷.

Notification of amendment to Section 140 of CGST Act

- Section 128 of the Finance Act, 2020 was introduced to amend Section 140 of CGST Act retrospectively (w.e.f. 1st July, 2017). This amendment grants power to the Government to prescribe the time limit within which transitional credits can be claimed by taxpayers. Section 128 of the Finance Act shall come into force from 18th May, 2020¹⁸.

CBIC amends Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 to incorporate relaxations provided in light of COVID-19

- Vide **Notification No. 01/2020-Central Excise (N.T.) dated 14th May, 2020**, certain amendments have been made to the Sabka Vishwas (Legacy Dispute Resolution) Scheme Rules, 2019 to incorporate the relaxations provided in light of COVID-19.
- The amendments are in line with the changes made to Section 127 of the Finance Act (No.2), 2019 vide The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (No. 2 of 2020).
- The amendments are as follows:
 - The statement containing the amount payable by the declarant is to be issued by the designated committee in Form SVLDRS-3 on or before 31st May, 2020
 - In cases where the amount estimated (by the designated committee) to be paid by the declarant exceeds the amount declared by the declarant, the designated committee should issue the amount estimated by them in Form SVLDRS-2 on or before 1st May, 2020
 - Payment is required to be made by the declarant of the amount due under the Sabka Vishwas (Legacy Dispute Resolution) Scheme on or before 30th June, 2020

¹⁷Refer Press Release dated 27th June, 2020.

¹⁸Refer Notification No. 43/2020 – Central Tax dated 16th May, 2020.

LEGISLATURE AT WORK - RECENT AMENDMENTS

Issuance of instructions in relation to processing of GST refund claims

- The Commissioner of State Tax, Maharashtra State, Mumbai, has issued certain instructions in relation to processing of GST refund claims with an intent to expedite disposal of refund claims.¹⁹
- Requirement to seek approval of the supervisory authority while processing the refund claim (both provisional or final refund) has been modified in the below manner:

the taxpayer at least once before processing the refund claim. Accordingly, all Nodal officer have been directed to undertake such visits at the earliest once the lockdown is over.

- All Nodal officers have been directed to dispose the pending GST refund claims (provisional, final or otherwise) on or before 31st May, 2020.

Issuance of clarification by Maharashtra government with respect to appeal mechanism to be followed in light of non-constitution of Appellate Tribunal

S. No.	Refund processing officer	Average monthly refund amount / amount of refund per application	Approval required or not (If required, relevant designated authority for approval)
1.	State Tax Officer	Less than Rs. 10 Lakhs	Not required
2.	State Tax Officer	Rs. 10 Lakhs or more	Concerned Deputy Commissioner of State Tax
3.	Assistant Commissioner of State Tax	Less than Rs. 25 Lakhs	Not required
4.	Assistant Commissioner of State Tax	Rs. 25 Lakhs or more	Concerned Deputy Commissioner of State Tax
5.	Deputy Commissioner of State Tax	Any amount	Not required

The term "Average monthly refund amount" used in the above table means the amount of refund specified in the refund application divided by the number of months for which the refund application is filed.

- Further, Nodal officers who have processed the refund claims while working from home are required to send an email to the concerned Joint Commissioner of State Tax, within three days from the date of issuance of order of refund, furnishing information in the format prescribed thereto.
- The above revised monetary limits for approval of refund claims and associated instructions have been made inapplicable to GST refund claims filed by a taxpayer for the first time on or after 1st July, 2017, refunds processed under other laws like MVAT, CST, etc.
- Additionally, in cases where the taxpayer has filed GST refund claim, it is mandatory for the Nodal officer to visit the place of business of

- It has been clarified that in absence of constitution of Appellate Tribunal in light of the decision of Hon'ble High Court of Madras in **Revenue Bar Association v. Union of India**, the limitation period for preferring an appeal before the Appellate Tribunal (in terms of Section 112 of Maharashtra Goods and Services Tax Act, 2017) will be counted from the date on which the President or the State President enters office, in accordance with the Maharashtra Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 6th January, 2020.²⁰

- The appellate authorities have been advised to dispose the pending appeals at the earliest, and not wait for the constitution of the Appellate Tribunal.

- Further, in the event the appellate authority has confirmed the demand or created an additional demand at the time of disposal of the appeal under Section 107 of Maharashtra Goods and Services Tax Act, 2017, taxpayers desirous of preferring an appeal against the same (under Section 112(1) of Maharashtra

¹⁹ Refer Internal Circular No. 07 A of 2020 dated 7th May, 2020.

²⁰ Refer Trade Circular No. 09 T of 2020 dated 26th May, 2020.

LEGISLATURE AT WORK - RECENT AMENDMENTS

Goods and Services Tax Act, 2017), will be required to submit a declaration in Annexure – I to the said Circular, before the jurisdictional tax officer. Upon failure of submitting within fifteen days from the communication of the said order, recovery proceeding may be initiated by the Department.

Condonation of delay in filing appeal and other related relief measures issued by Maharashtra government

- The following steps have been announced to provide relief to taxpayers in the state of Maharashtra in light of the current lockdown²¹:



- Taxpayers wishing to file an appeal under Maharashtra Value Added Tax Act, 2002 (MVAT Act) against an assessment order which was passed on the SAP system (i.e., through the online procedure) before or during the lockdown period, and in respect of which the limitation period of preferring an appeal is expiring during the lockdown period, can file such appeal beyond the prescribed period of 60 days. Such delays will be condoned by the appellate authorities

without levy of compounding fees, provided an appeal is filed within 30 days from the end of the lockdown period

- Taxpayers have been now permitted to email unsigned Form 314 to the concerned nodal officer (application for stay of recovery for which demand notice under section 32(4) of MVAT Act has been served) in cases where the assessment orders have been passed manually and the same is yet to be updated on the SAP system. Such applications will be processed post confirmation and verification of the same by the concerned nodal officer with taxpayer or authorized representative of taxpayer
- In the event, any submission received by e-mail or otherwise, till the date of passing the assessment order, is not considered by the assessing officer while passing the assessment order, the same should be considered on merit, if the dealer applies for rectification under Section 24 of the MVAT Act

Imposition of COVID Cess by Chandigarh government on sale of liquor through wholesale licensees

- Municipal Corporation, Chandigarh has been empowered by the Administrator of Union Territory of Chandigarh²², to levy COVID Cess on sale of all categories of liquor sold through wholesale licensees at the rate of 5% on Minimum Retail Sale Price²³.
- The Excise and Taxation Department, UT, Chandigarh has been tasked with collecting and remitting the COVID Cess to the Municipal Corporation.
- The imposition of levy of COVID Cess will remain effective upto 31st December, 2020, or till issuance of further orders in this regard, whichever is earlier.
- Additionally, it is clarified that the said COVID Cess will be subjected to VAT.²⁴

²¹ Refer Trade Circular No. 08 T of 2020 dated 25th May, 2020.

²² In exercise of the powers conferred under Section 90 (2)(b) & 90(3) of the Punjab Municipal Corporation Act, 1976 as extended to Union Territory, Chandigarh by the Punjab Municipal Corporation Law (extension to Chandigarh) Act, 1994.

²³ Refer Notification No. F-II(8)/2020/6633 dated 21st May, 2020.

²⁴ Refer Circular No. 2069 dated 27th May, 2020 issued by Excise & Taxation Department, U.T., Chandigarh.

LEGISLATURE AT WORK - RECENT AMENDMENTS

CBIC issues clarification in respect of levy of GST on Director's remuneration

- Vide **Circular No. 140/10/2020 dated 10th June, 2020**, the following clarifications were issued by CBIC in relation to levy of GST on remuneration paid to directors:
 - Remuneration paid to independent directors, or those directors, by whatever name called, who are not employees of the company, are leviable to GST. The company will be required to discharge appropriate GST payable under reverse charge mechanism in such cases.
 - As regards remuneration paid to directors who are also employees of the company and act in dual capacities, it is clarified that the part of the remuneration which is declared as 'Salaries' in the books of accounts of the company, and subjected to TDS in terms of Section 192 of the Income tax Act, 1961, are not leviable to GST.
 - However, the part of the director's remuneration which is declared separately other than 'Salaries' in the company's books of accounts, and subjected to TDS under Section 194J of the Income tax Act, 1961 as 'Fees for professional or Technical Services', will be exigible to GST. The company will be required to pay the appropriate GST under reverse charge mechanism in this scenario.

CBIC provides certain extensions and clarifications in relation to GST refund claims

- In relation to refund claims of accumulated ITC, it has been clarified that the restriction of granting refund only in respect of those invoices which reflect in Form GSTR-2A of the taxpayer, is not applicable to ITC availed in relation to imports, ISD invoices and inward supplies liable to reverse charge.²⁵
- Separately, in cases where a notice has been issued for rejection of refund claim, in full or in part, and the time limit for issuance of order sanctioning refund in terms of Section 54(5) read with Section 54(7) of CGST Act falls during the period 20th March, 2020 to 29th June, 2020, the time limit for issuance of order has been

extended to 15 days after the receipt of reply to notice from the registered person, or 30th June, 2020, whichever is later, vide **Notification No. 46/2020 – Central Tax dated 9th June, 2020** (Notification No. 46), with effect from 20th March, 2020.



- Subsequently, through amendment of Notification No. 46, the time limit for issuance of refund orders has been further extended to 15 days after the receipt of reply to notice from the registered person, or 31st August, 2020, whichever is later, in respect of refund orders where the time limit for issuance thereof falls during the period 20th March, 2020 to 30th August, 2020.²⁶

Kerala Government directs second level verification of new registrations

- With an intent to combat bogus and benami registrations in the State, Kerala Government has decided to conduct a second level verification for all new registrations granted with effect from 1st June, 2020. The task of carrying of the verification has been assigned to the State Enforcement Wing.²⁷
- Post verification, the Enforcement squads are required to furnish reasoned reports recommending whether the registration is required to be cancelled or not to the Registering authority, marking copy to the Deputy Commissioner (Intelligence) and the concerned District Joint Commissioner.
- The entire process of verification and furnishing of report is required to be completed within 7 days of receipt of details by the squad.

²⁵ Refer Circular No. 139/09/2020 – GST dated 10th June, 2020.

²⁶ Refer Notification No. 56/2020 – Central Tax dated 27th June, 2020.

²⁷ Refer Circular No. 5/2020 dated 17th June, 2020 issued by the Commissioner of State Tax, State Goods and Services Tax Department, Kerala.

LEGISLATURE AT WORK - RECENT AMENDMENTS

Ministry of Finance prescribes the form to be used by real estate promoters / developers for making certain payments

- Form GST DRC-03 has been identified as the relevant form to be used by real estate promoters / developers for making payment of differential tax (on the value of shortfall in inward supplies) in case of non-compliance with the threshold requirement of procuring 80% inputs and input services from registered persons, which is a prerequisite for levying GST at the lower rate of 1% on construction of affordable residential apartments in terms of **Notification No. 11/2017 – Central Tax (Rate) dated 28th June, 2017** (as amended by **Notification No. 3/2019 – Central Tax (Rate) dated 29th March, 2019**).²⁸
- The tax on such shortfall is required to be paid by 30th June, 2020 for FY 2019-20.

Amendments pursuant to the 40th GST Council Meeting

Appointment of date of implementation of certain provisions of Finance Act, 2020

- The following provisions of Finance Act, 2020 have been notified as being effective from 30th June, 2020.²⁹



- Section 118, which amends the definition of "Union Territory" provided in Section 2(114) of CGST Act to include Dadra and Nagar Haveli and Daman and Diu, and Ladakh
- Section 125, which amends Section 109(6) of CGST Act to remove the restriction on the Government's power to specify a State Bench of Goods and Services Tax Appellate Tribunal (GSTAT) for the State of Jammu and Kashmir. Additionally, the first proviso to Section 109(6) of CGST Act, which provided that for the State of Jammu and Kashmir, the State Bench of GSTAT constituted under the CGST Act will be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017
- Section 129, which excludes the following from the ambit of Section 168(2) of CGST Act which provides who shall be considered as "Commissioner" for the purpose of certain sections:
 - Section 66(5) of CGST Act, which empowers the Commissioner to determine and pay the expenses incurred during the course of a special audit
 - The second proviso to Section 143(1) of CGST Act which authorizes the Commissioner to extend the period of one year and three years provided under Section 143(1) of CGST Act for the principal to bring back inputs and capital goods, respectively, to his place of business after job work
- Section 130, which amends Section 172 of CGST Act to extend the power of the Government to issue orders for the purpose of removal of difficulties in giving effect to the provisions of CGST Act, up to a period of five years from the date of commencement of CGST Act. Similar amendment has also been made to Section 25 of Integrated Goods and Services Tax Act, 2017 vide Section 134 of Finance Act, 2020.

²⁸ Refer Instruction No. 3/2/2020 – GST dated 24th June, 2020 issued by Ministry of Finance.

²⁹ Refer Notification No. 49/2020 – Central Tax dated and Notification No. 4/2020 – Integrated Tax, both dated 24th June, 2020.

LEGISLATURE AT WORK - RECENT AMENDMENTS

Rate of tax of composition levy

- Rule 7 of Central Goods and Services Tax Rules, 2017, which sets out the rate of tax of composition levy has been amended to provide that registered persons not eligible under Section 10(1) and Section 10(2) of CGST Act to pay tax under the composition levy scheme, but eligible to opt to pay tax under composition levy in terms of Section 10(2A) of CGST Act, will be required to pay tax at a rate equivalent to 3% of the turnover of supplies of goods and services in the State or Union territory, with effect from 1st April, 2020.³⁰

Furnishing of Form GSTR-1 and Form GSTR-3B

- The rate of interest payable by taxpayers on delayed furnishing of Form GSTR-3B for the period February 2020 to July 2020 has been amended in the below manner:³¹
- Previously, a lower rate of interest, i.e., 9% per annum, was made applicable to taxpayers having aggregate turnover above INR 5 Crores, provided the returns were filed within the specified date. In the event of failure to furnish the return by the specified date, the benefit of lower rate of interest would not be available, and interest would be required to be paid at the rate of 18% for the entire period of delay.

Sr. No.	Class of registered persons	Rate of Interest	Tax Period
1.	Taxpayers having an aggregate turnover of more than INR 5,00,00,000 in the preceding financial year	Nil for first 15 days from the due date, and 9% thereafter till 24 th June, 2020	February 2020, March 2020, April 2020
2.	Taxpayers having an aggregate turnover of up to INR 5,00,00,000 in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Nil till 30 th June, 2020, and 9% thereafter till 30 th September, 2020	February 2020
		Nil till 3 rd July, 2020, and 9% thereafter till 30 th September, 2020	March 2020
		Nil till 6 th July, 2020, and 9% thereafter till 30 th September, 2020	April 2020
		Nil till 12 th September, 2020, and 9% thereafter till the 30 th September, 2020	May 2020
		Nil till 23 rd September, 2020, and 9% thereafter till the 30 th September, 2020	June 2020
		Nil till 27 th September, 2020, and 9% thereafter till the 30 th September, 2020	July 2020
3.	Taxpayers having an aggregate turnover of up to INR 5,00,00,000 in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	Nil till 30 th June, 2020 and 9% thereafter till 30 th September, 2020	February 2020
		Nil till 5 th July, 2020 and 9% thereafter till 30 th September, 2020	March 2020
		Nil till 9 th July, 2020 and 9% thereafter till 30 th September, 2020	April 2020
		Nil till 15 th September, 2020 and 9% thereafter till 30 th September, 2020	May 2020
		Nil till 25 th September, 2020 and 9% thereafter till 30 th September, 2020	June 2020
		Nil till 29 th September, 2020 and 9% thereafter till 30 th September, 2020	July 2020

³⁰ Refer Notification No. 50/2020 – Central Tax dated 24th June, 2020 read with Corrigendum No. G.S.R. 412(E) dated 25th June, 2020.

³¹ Refer Notification No.51/2020 – Central Tax dated 24th June, 2020 and corresponding integrated tax and union territory tax notifications.

LEGISLATURE AT WORK - RECENT AMENDMENTS

- However, post the above revision in the rate of interest payable by taxpayers on delayed furnishing of Form GSTR-3B, it is now clarified that taxpayers would be required to pay interest at the rate of 18% only for the period of delay after the specified date and not for the entire period of delay.³²
- Additionally, in terms of the notification, taxpayers having aggregate turnover below INR 5 Crores
- The due date for furnishing Form GSTR-3B for the month of August 2020 has been extended for taxpayers having an aggregate turnover of up to INR 5 Crore to 1st October, 2020 / 3rd October, 2020, on the basis of the location of their principal place of business.³⁴
- Relaxation offered to taxpayers by way of waiver of late fees for delayed furnishing of Form GSTR-3B has been amended in the below manner³⁵:

Sr. No.	Class of registered persons	Tax Period	Condition for waiver of late fees
1.	Taxpayers having an aggregate turnover of more than INR 5,00,00,000 in the preceding financial year	February 2020, March 2020 and April, 2020	If return in Form GSTR-3B is furnished on or before 24 th June, 2020
2.	Taxpayers having an aggregate turnover of up to INR 5,00,00,000 in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	February 2020	If return in Form GSTR-3B is furnished on or before 30 th June, 2020
		March 2020	If return in Form GSTR-3B is furnished on or before 3 rd July, 2020
		April 2020	If return in Form GSTR-3B is furnished on or before 6 th July, 2020
		May 2020	If return in Form GSTR-3B is furnished on or before 12 th September, 2020
		June 2020	If return in Form GSTR-3B is furnished on or before 23 rd September, 2020
3.	Taxpayers having an aggregate turnover of up to INR 5,00,00,000 in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	July 2020	If return in Form GSTR-3B is furnished on or before 27 th September, 2020
		February 2020	If return in Form GSTR-3B is furnished on or before 30 th June, 2020
		March 2020	If return in Form GSTR-3B is furnished on or before 5 th July, 2020
		April 2020	If return in Form GSTR-3B is furnished on or before 9 th July, 2020
		May 2020	If return in Form GSTR-3B is furnished on or before 15 th September, 2020
		June 2020	If return in Form GSTR-3B is furnished on or before 25 th September, 2020
		July 2020	If return in Form GSTR-3B is furnished on or before 29 th September, 2020

have been granted the benefit of Nil rate of interest till the specified dates and thereafter interest at the lower rate of 9% per annum would be applicable up to 30th September, 2020. For any delays post 30th September, 2020, interest at the rate of 18% would be applicable only for the period post 30th September, 2020.³³

It is clarified that in case the returns for the specified tax periods are not furnished on or before the dates specified in the said notification, late fees will be payable from the due date of return, till the date on which the return is filed.³⁶

³² Refer Circular No. 141/11/2020 – GST dated 24th June, 2020.

³³ Ibid.

³⁴ Refer Notification No. 54/2020 – Central Tax dated 24th June, 2020.

³⁵ Refer Notification No. 52/2020 – Central Tax dated 24th June, 2020.

³⁶ Refer Circular No. 141/11/2020 – GST dated 24th June, 2020.

LEGISLATURE AT WORK - RECENT AMENDMENTS

- Further, if the taxpayers mentioned in the above table, fail to furnish Form GSTR-3B within the above specified dates, but furnish it till 30th September, 2020, the total amount of late fees payable for such delayed furnishing of the return is waived to the extent it is in excess of Rs. 500, and is fully waived for those taxpayers where the total amount of central tax payable in the said return is Nil³⁷. A similar waiver has been provided for taxpayers having an aggregate turnover of more than INR 5 crores in the preceding financial year, who fail to furnish the return in FORM GSTR-3B for the months of May, 2020 to July, 2020, by the due date but furnish the said return till 30th September, 2020.
- Additionally, late fees for the delayed furnishing of Form GSTR-3B for the period July 2017 to January 2020 are also waived to the same extent discussed above, provided the said returns are furnished during the period 1st July, 2020 to 30th September, 2020.³⁸
- Benefit of conditional waiver of late fees for delayed furnishing of Form GSTR-1 extended to taxpayers previously in light of COVID-19, has been amended in the below manner³⁹:



Sr. No.	Month / Quarter	Condition for waiver of late fees
1.	March 2020	If return in Form GSTR- 1 is furnished on or before 10 th July, 2020.
2.	April 2020	If return in Form GSTR- 1 is furnished on or before 24 th July, 2020
3.	May 2020	If return in Form GSTR- 1 is furnished on or before 28 th July, 2020
4.	June 2020	If return in Form GSTR- 1 is furnished on or before 5 th August, 2020
5.	January to March 2020	If return in Form GSTR- 1 is furnished on or before 17 th July, 2020
6.	April to June 2020	If return in Form GSTR- 1 is furnished on or before 3 rd August, 2020

³⁷ Refer Notification No. 57/2020 – Central Tax dated 30th June, 2020.

³⁸ Refer Notification No. 52/2020 – Central Tax dated 24th June, 2020.

³⁹ Refer Notification No. 53/2020 – Central Tax dated 24th June, 2020.

ALLIED LAWS

The following chapter has been authored by Vinitt Nagla (Associate Partner) - ELP



Recent Developments

Extension of validity of Recognition of Pre-Shipment Inspection Agencies ("PSIAs")

- DGFT vide **Public Notice No. 11/2015-2020** dated 30.06.2020, extends the validity of recognition of PSIAs included in Appendix 2G of the Appendices and Aayat Niryat Forms (A&ANF) of Foreign Trade Policy (2015-20), which are going to complete their original or extended tenure on or before 30.6.2020, upto 30.9.2020.

Extension of validity of Authorised Economic Operator ("AEO") certification

- Central Board of Indirect Taxes & Customs ("CBIC") vide **Circular No. 31/2020-Customs** dated 30.06.2020, has decided to extend the validity of AEO certificates, in view of representations received by the field formations regarding the difficulties being faced by the AEO entities in renewing their existing certifications owing to the national lockdown.



- Accordingly, the Board has decided to extend the validity of all the AEO certificates expired/ expiring between 01.03.2020 and 30.09.2020 to 30.09.2020 except for those entities against which a negative report is received during this period.

Amendment in Export Policy of Personal Protection Equipment ("PPE")

- Directorate General of Foreign Trade ("DGFT") vide **Notification No. 16/2015-2020** dated 29.06.2020, refers to Notification No. 14 dated 22.06.2020 which has been amended to the extent that PPE medical Coveralls for COVID-19, exported against the mentioned HS codes or falling under any other HS code, are now "restricted" for exports. A monthly quota of 50 Lakh PPE medical Coverall for covid-19 units has been fixed for issuance of export licenses to the eligible applicants to export PPE medical Coveralls for COVID-19 as per the criteria to be separately issued in a Trade Notice.
- All items that are part of PPE kits and listed in the description in the Notification No. 14 dated 22.06.2020, however, continue to remain "prohibited" for export whether exported as individual item or as part of PPE kits and monthly quota shall not be applicable on export of these items.

Procedure and Criteria prescribed for submission and approval of applications for export of PPE Medical Coveralls for COVID-19

- DGFT vide **Trade Notice No. 17/2020-21** dated 29.06.2020, refers to Notification No. 16/2015-2020 dated 29.06.2020, restricting the export of PPE medical coveralls for COVID-19 and fixing the export quota of 50 Lakh PPE Coverall Units per month.
- In this regard, the application procedure and criteria for export of PPE Medical Coveralls for COVID-19 is prescribed as follows:
 - Export of only 50 Lakh units of 'PPE medical coveralls for Covid-19' will be allowed every month.
 - Exporters may apply online through DGFT's ECOM system for Export authorizations (Non-SCOMET Restricted items) - Refer Trade Notice No. 50 dated 18.03.2019. There is no need to send any hard copy of the application via mail or post.

ALLIED LAWS

- Only applications for export of "PPE medical coveralls for Covid-19" filed from 1st to 3rd day of each month will be considered for the quota of that month.
- All the applications will be examined as per the Para 2.72 of Handbook of procedures and all approvals/allocations will be done by 10th of every month.
- Validity of the export license will be for 3 months only.

Extension of time limit for compliance under Excise & Customs Law

- CBIC vide **Notification dated 27.06.2020** specifies that –

(i) the 29th day of September, 2020 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Central Excise Act, 1) 1944 of 1944), the Customs Act, 52) 1962 of 1962) (except sections 30 ,30A, 41 ,41A, 46 and 47), the Customs Tariff Act, 51) 1975 of 1975) or Chapter V of the Finance Act, 32) 1994 of 1994) falls for the completion or compliance of such action as specified under clause (a) or (b) of the said section; and

(ii) the **30th** day of September, 2020 shall be the end date to which the time limit for completion or compliance of such action shall stand extended.

Amendment in Para 4.44 of the Foreign Trade Policy ("FTP")

- DGFT vide **Notification No. 15/2015-20** dated 25.06.2020 has amended Para 4.44, of FTP enhancing the time limit for an exporter (with annual export turnover of Rs 5 crores for each of the last three years) or the authorized offices/agencies in India of laboratories mentioned under paragraph 4.74 of Hand Book of Procedures to export cut & polished diamonds (each of 0.25 carat or above) to any of the agencies/laboratories mentioned under paragraph 4.74 of Handbook of Procedures with re-import facility at zero duty.
- In light of COVID-19, re-import facility at zero duty has been enhanced from three months

to six months for cases where reimport period is expiring between 1st February, 2020 to 31st July, 2020.

Launch of new DGFT platform and Digital delivery of Import Export Code ("IEC") related services

- DGFT vide **Trade Notice No. 16/2020-2021** dated 25.06.2020, as part of Digital India programme and for ease of Doing Business, has undertaken an initiative to revamp its services delivery mechanisms to promote and facilitate foreign trade. As a step in that direction, the first phase of a new digital platform of DGFT is scheduled to Go-Live on 13th July 2020. The platform will become accessible through the existing website: <https://www.dgft.gov.in>.
- It has been clarified that in the first phase, the website will be catering to the services related to the IEC issuance, modification, amendments etc. processes along with a Chatbot (a virtual assistant) catering to queries of users. Other online modules relating to Advance Authorisation, EPCG, and Exports Obligation Discharge which are part of next phase will be rolled out subsequently after the first phase stabilizes.



- It is pertinent to note that for the purpose of go-live of first phase and the required systems configurations, the IEC applications and modification process would be suspended from 3:00 pm on 10.07.2020 till 13.07.2020.

ALLIED LAWS

Imposition of Anti-Dumping Duty on import of Flat rolled product of steel

- CBIC vide **Notification No. 16/2020- Customs (ADD)** dated 23.06.2020 imposes Anti-Dumping Duty on import of Flat rolled product of steel, plated or coated with alloy of Aluminium and Zinc originating in, or exported from China PR, Vietnam and Korea RP.
- The subject goods mentioned in column (3) in the Table mentioned in the Notification do not include the following products: –
 - (a) Flat rolled steel products coated with Zinc without addition of Aluminium;
 - (b) Flat rolled steel products coated with Aluminium without addition of Zinc; and
 - (c) Pre-painted or colour coated Aluminium Zinc alloy coated steel sheets (Pre-coated SGL sheets).



- The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, amended or superseded earlier) from the date of imposition of the provisional antidumping duty, that is, the 15th October, 2019 and shall be payable in Indian currency.

Initiation of 'Faceless, Contactless and Paperless Customs'

- CBIC vide **Circular No. 30/2020- Customs** dated 22.06.2020 directs that w.e.f. 22.06.2020 only the digital copy of the Shipping Bill bearing the Final Let Export Order ("LEO") would be electronically transmitted to the exporter and the present practice of printing copies of the said document for the exporters and also for maintaining a docket in the Customs House would stand discontinued. This reform complements the introduction of a digital pdf Out-of-Charge (OOC) copy of the Bill of Entry and Gatepass w.e.f. 15.04.2020 and launch of the 1st Phase of Faceless Assessment at Chennai and Bengaluru w.e.f. 08.06.2020.
- The salient features of the secure electronic communication of the Final LEO copy of the Shipping Bill and the Gatepass copy of Shipping Bill have been further specified comprehensively in the aforesaid Circular.

Issuance of Preferential Certificate of Origin ("COO") for India's exports to Vietnam under ASEAN-India FTA

- DGFT vide **Trade Notice No. 15/2020-2021** dated 21.06.2020, in view of the various representations received from exporters expressing difficulties in obtaining preferential access in Thailand and Vietnam, has facilitated the COO applications for exports under ASEAN-India FTA to all ASEAN countries except Thailand to be

submitted through the e-COO Platform by the exporters to the offices of the designated issuing agencies i.e. EIA, MPEDA and Textile Committee. No physical application shall be accepted from 22.06.2020. However, manual applications submitted prior to the given date may be issued.

ALLIED LAWS

Amendment in Export Policy of Hydroxychloroquine API and its formulations

- DGFT vide **Notification No. 13/2015-2020** dated 18.06.2020, amends Notification No. 54 dated 25.03.2020 to change the export policy of Hydroxychloroquine API and its formulations from "Prohibited" to "Free", with immediate effect.

Amendment in Import Policy of Tyres

- DGFT vide **Notification No. 12/2015-2020** dated 12.06.2020, amends import policy of new pneumatic tyres covered under ITC HS codes 40111010, 40111090, 40112010, 40112090, 40114010, 40114020, 40114090, 40115010 and 40115090 from 'Free' to 'Restricted'.

Clarification w.r.t official website of DGFT

- DGFT vide **Trade Notice No. 14/2020-2021** dated 11.06.2020, has initiated systematic changes to establish secure communication with its stakeholders. The contact information provided by the Exporters/Importers is used/will be used by DGFT for communication. Exporters/Importers are requested to avoid sharing their details with private/unrelated/unknown persons/entities etc. which may have a potential for misuse and fraud.
- The official website of the DGFT for applying for IEC and other services is <https://dgft.gov.in> or <http://dgft.gov.in>. The stakeholders are advised to access these two official websites for availing services and for addressing their various requirements.

Amendment w.r.t export of Special Chemicals, Organisms, Materials, Equipment and Technologies (SCOMET) items

- DGFT vide **Notification No. 10/2015-2020** dated 11.06.2020, amends Appendix 3 (SCOMET Items) to Schedule - 2 of ITC (HS) Classification of Export and Import Items, 2018, thereby notifying Annual SCOMET Updates-2020.
- The updated Appendix 3 (SCOMET Items) to Schedule-2 of ITC (HS) Classification of Export and Import Items, 2018 including annexure to the aforementioned notification would be uploaded on the web-portal of DGFT under heading Policies and Sub-heading SCOMET (<http://dgft.gov.in/scomet>).

Amendment in Export Policy of Diagnostic Kits/Laboratory Reagents/Diagnostic Apparatus

- DGFT vide **Notification No. 09/2015-2020** dated 10.06.2020, refers to Notification No. 59 dated 04.04.2020, which has been amended to the extent that only diagnostic kits/reagents as described in para 1(A) and all diagnostic instruments/apparatus/reagents as described in para 1(B) falling under any HS code, including HS codes specified in the Notification, are 'restricted' for exports whether as an individual item or as a part of any diagnostic kits/reagent.
- All other diagnostic kits/reagents/instruments/apparatus falling under the HS codes mentioned in the Notification are freely exportable subject to submission of an undertaking by the exporter to the Customs Authorities at the time of export.



Amendment in rate of Customs Duty on Bamboo Imports

- Ministry of Finance (Department of Revenue) vide **Notification No. 27/2020** dated 09.06.2020, in order to encourage use of domestic bamboo for Aatma Nirbhar Bharat, amends Notification No. 50/2017- Customs dated 30.06.2017, thereby hiking customs duty on bamboo imports by agarbatti manufacturers from 10% to 25% with immediate effect.
- The 25% customs duty rate shall now uniformly apply to any import of bamboo, including by traders.

ALLIED LAWS

Amendment w.r.t revalidation of Export Authorisation/License for Non-SCOMET and SCOMET items

- DGFT vide **Public Notice No. 10/2015-20** dated 08.06.2020 amends Paragraph 2.20(b) of HBP of FTP 2015-2020 to allow revalidation of the Export Authorization / License for Non-SCOMET and SCOMET items on merits for a period of six months at a time and maximum upto 12 months by the DGFT (Hqrs).

Imposition of Anti-Dumping Duty on Electronic Calculators

- Ministry of Finance (Department of Revenue) vide **Notification No. 12/2020- Customs (ADD)** dated 03.06.2020, in the matter of "Electronic Calculators of all types [excluding calculators with attached printers, commonly referred to as printing calculators, calculators with ability to plot charts and graphs, commonly referred to as graphing calculators and programmable calculators]" (hereinafter referred to as the subject goods) falling under heading 8470 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), originating in, or exported from Malaysia (hereinafter referred to as the subject country) and imported into India, imposes definitive anti-dumping duty on the subject-goods.
- For the purpose of the Notification, "Electronic calculator", exclude the following:
 - a. Calculators with attached printers commonly referred to as printing calculators;
 - b. Calculators with ability to plot charts and graphs commonly referred to as graphing calculators;
 - c. Programmable calculators.
- The anti-dumping duty imposed under this notification shall be effective for a period of five years (unless revoked, amended or superseded earlier) from the date of publication of this notification in the Gazette of India and shall be paid in Indian currency.

Relaxations w.r.t Merchandise Exports Incentive Scheme/ Service Exports from India Scheme ("MEIS/ SEIS") scrips

- Department of Commerce vide **Public Notice No. 08/2015-2020** dated 01.06.2020, has provided relaxation from applicable late cuts for SEIS/MEIS applications and the validity of scrips issued under Chapter 3 of FTP which are expiring between 01.03.2020 to 30.06.2020 has been extended upto 30.09.2020.

Amendment in Export Policy of Alcohol based Hand Sanitizers

- DGFT vide **Notification No. 08/2015-2020** dated 01.06.2020, refers to Notification No. 04 dated 06.05.2020 which has been amended to the extent that only "Alcohol based Hand Sanitisers" exported in containers with the Dispenser Pump, falling under any ITCHS Code including the HS Codes mentioned in the Notification,



are prohibited for export. Alcohol based Hand Sanitisers exported in any other form/packaging are "free" for exports, with immediate effect. All other items falling under the HS Codes referred in the Notification are freely exportable.

Extension of facility of 24*7 customs clearance

- CBIC vide **Instruction No. 08/2020- Customs** dated 01.06.2020 extends the facility of 24*7 Customs Clearance at all customs formations till June 30, 2020, considering the prevailing COVID 19 pandemic situation. CBIC further clarifies designated seaports/airports already under 24*7 operations shall continue to function even after June 30, 2020.



LEGAL CLASSICS

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

Akbar Badruddin Jiwani vs. Collector of Customs [1990 (47) E.L.T. 161 (S.C.)]

Introduction:

The common parlance test has been instrumental in deciding the classification disputes under taxation statutes. Broadly, common parlance test is known as while interpreting the entry for the purpose of taxation, recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them.



The Courts have on various occasions relied upon the common parlance test to decide on the classification of a product. It is well settled that the general principle of expression of Tariff Entries in a tax statute is that of a commercial nomenclature or understanding in the trade. However, contrary views have also been taken by the Courts in the specific facts and circumstances of the said cases wherein the Tariff Entry has been interpreted relying on the scientific or technical meaning instead of the common parlance test.

One such issue came up before the Hon'ble Supreme Court in the case of **Akbar Badruddin Jiwani vs. Collector of Customs [1990 (47) E.L.T. 161 (S.C.)]**. The Hon'ble Apex Court in the said case held that in taxing statute the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the Tariff Entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the Tariff Entry and any other Entry in the Tariff Schedule. The ratio of the said judgment was followed by the Hon'ble Bombay High Court in the case of **Kulkarni Black and Decker Ltd. v. Union of India, 1992 (57) E.L.T. 401 (Bom.)**.

With the introduction of GST, the dispute of classification of Tariff items has continued. The ratio laid down in the above judgment may be relevant even under the GST regime for deciding the classification disputes which may come to the aid of the assessee's as well as the department for interpretation of the Tariff items.

Decision in Akbar Badruddin Jiwani:

The issue under dispute before the Hon'ble Court was whether calcareous stones must be understood in a scientific or technical sense or must be regarded as 'marble' in terms of the common trade nomenclature which is a restricted item in the List of Restricted Items provided under Appendix 2, Part 8 of Import and Export Policy for April, 1988 - March, 1991.

The Appellant, in order to import calcareous stones covered by the open general license took certain precautions and obtained certificates from the importer, experts and laboratories to ensure that the calcareous stone in question is not marble in

LEGAL CLASSICS

order to enable him to import the same under open general license. However, the Assistant Collector of Customs (Group I) issued a query memo dated February 6, 1989 on the alleged basis that 'calcareous stones are nothing but marble only' and, therefore, governed by Entry 62, Appendix 2, Part B of Import and Export Policy for March 1988 to April 1991 and a show cause notice was issued which was challenged by the Appellant. After dismissal of the case at various forums, the importer filed an appeal before the Hon'ble Supreme Court.

The Hon'ble Supreme Court after considering various judgments held that it is well settled that in taxing statute the words used are to be understood in the common parlance or commercial parlance but such a trade understanding or commercial nomenclature can be given only in cases where the word in the Tariff Entry has not been used in a scientific or technical sense and where there is no conflict between the words used in the Tariff Entry and any other Entry in the Tariff Schedule. In the facts of the said case, the Hon'ble Court held that the calcareous stone as mentioned in ITC Schedule has to be taken in scientific and technical sense as therein the said stone has been described as of an apparent specific gravity of 2.5 or more. Therefore, the word 'marble' is to be interpreted in the scientific or technical sense and not in the sense commercially understood or as meant in the trade parlance. Hence, Entry 62 is confined only to marble as it is understood in a petrological or geological sense and it does not extend to or apply to other calcareous stones mentioned in the ITC Schedule.

In view of the above, it was held that the slabs of calcareous stones imported by the Appellant cannot be held to be marble as they have not been re-crystallized and metamorphosed in the geological and petrological sense of the term.

Applicability under GST law

The GST Tariff is based on Harmonized System of Nomenclature (HSN) system which is globally accepted and is used to classify the goods/services in a systematic manner. The ratio laid down in the above judgment would be vital in the interpretation of the GST Tariff as well. Number of Advance Ruling Applications are being filed on the issue of classification of the goods/services under the GST Tariff. The ratio laid down by the Hon'ble Court in the above judgment on the applicability of the

common parlance test would support in deciding the classification disputes.

In a recent ruling passed by the Authority for Advance Ruling (AAR) Maharashtra - **Alligo Agrovet Pvt. Ltd. [2019 (29) G.S.T.L. 781 (A.A.R. - GST)]**, the authority while deciding the question on classification, referred to the judgment of Hon'ble Bombay High Court in case of *Kulkarni Black and Decker Ltd. v. Union of India (supra)* to rely upon the literature published by the Appellant describing the product as a tool for classification of the product.

Considering that the litigation under GST era have just begun and show cause notices are being issued to the assessee's on various issues including classification, it would be interesting to see how the ratio laid down in the above judgment would be referred to by the Courts for deciding the classification disputes. It will always be open for the assessee's to determine the question on classification of goods/services basis the ratio laid down in the above judgment and in case of a contrary view being taken by the department, an argument may be available that no penalty, in any event can be imposed in view of the aforesaid judgment.





QUOTABLE QUOTES



1. "Central Board of Indirect Taxes & Customs to begin faceless assessment by December 31, 2020"
(Morning Standard, New Delhi).
2. Modi Government has carried out unprecedented reforms to drive prosperity & usher into a New India (Times of India, New Delhi).
3. "Tax GDP ratio plunges to 9.88%, lowest in 10 years" (Business Standard, Mumbai)
4. "GST relief will be provided to taxpayers with turnover up to Rs. 5 crore", says Nirmala Sitharaman, Finance Minister (Free Press Journal, Mumbai)
5. CBIC launches paperless documentation for exporters in its continuing endeavour to promote 'faceless, contactless, paperless customs' (Millenium Post, Delhi)

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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!

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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.

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