

## THE GST ODESSEY: Litigation and the Art of Sailing Through



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The taxpayers have suddenly found themselves entangled in a web of multiple notices. ASMT-10, DRC-01A, DRC-01, DRC-07, scrutiny of returns, returns mismatch, ineligible Input Tax Credit—do these terms ring a bell? For every registered person under the Goods and Services Tax (GST), these terms have become frequent visitors to both their email inboxes and the GST portal. In this article, Gourav Sogani and Anushka Jain of Economic Laws Practice delve into the challenges faced by taxpayers in navigating this intricate maze of GST notices and the broader implications it has on their businesses.



The notices pertain to initiation of audit proceedings, mismatch of returns, and scrutiny of specific transaction or even an industry wide issue identified by the GST authorities. More particularly, these notices have been issued for the period 2017-18 and 2018-19 since the limitation period was about to expire. What then follows is a cumbersome process involving replies, submission of extensive documentation and frequent visits to the department to explain the matter to the GST authorities. Further to the dismay, in many cases, even after providing explanations and supporting documents, GST officers may still initiate adjudication proceedings and pursue the recovery of amounts.

## Parallel proceedings by different authorities

Unlike the erstwhile regime, where there were separate legislations for service tax, VAT, excise duty etc., the GST regime has subsumed all these taxes into one single legislation called the GST Law. Under the erstwhile regime, there were respective legislations under State and Centre to administer the taxpayers. However, under GST Law, while the taxpayers have been registered either under the State jurisdiction or the Central jurisdiction, it is pertinent to note that it does not affect the powers of State authorities to issue notices to Centrally registered taxpayers and vice versa. Under GST, both Central Authority (i.e. Central Jurisdictional office, DRI, Directorate General of GST Intelligence ('DGGI') and State Authority (i.e. State Jurisdictional office, Audit and Investigation authority) are empowered to issue notices to the taxpayers.

Consequently, taxpayers are receiving notices from different wings of the GST department for same period and / or identical transactions, leaving taxpayers bewildered and uncertain about how to navigate the situation. Consequently, the taxpayers are submitting the same set of documents and explanations multiple times before different wings of the GST department.

Managing multiple proceedings simultaneously for the same matter is not only time consuming but may also entail financial burden on the taxpayers. Further, at times these notices lack sufficient explanation or reasoning with respect to the alleged demand, thereby hampering a taxpayer's ability to reply adequately.

At this juncture, it may be relevant to note that Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 ('CGST Act') stipulates that where a proper officer under the Act has initiated any proceedings on a subject matter, no proceedings



shall be initiated by another proper officer on the same subject matter. In other words, the law prohibits simultaneous proceedings by different authorities for the same transaction and period involving the same taxpayer<sup>1</sup>. Also, due to the overlapping notices by the different wings of the department. This has driven taxpayers to seek judicial intervention to ascertain the validity of such actions.<sup>2</sup> Accordingly, there have been instances where, upon the provision of sufficient information and data, department officials have dropped parallel proceedings on the identical issue.

While these measures bring reassurance to taxpayers, the effectiveness at the departmental level remains challenging, given that taxpayers continue to receive notices from multiple authorities. Therefore, the issue persists and still haunts the taxpayers.

## Reasons for issuance of multiple notices

### Time Barred

While the government initially intended to adopt a lenient approach towards taxpayers in the early years of GST, the current scenario shows a surge in the issuance of numerous notices as the 5-year limitation period is drawing to a close. Therefore, due

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to the expiry of the limitation period, all of a sudden multiple notices are being issued to the taxpayers.

### Frequent amendments

In the initial years of GST, particularly in F.Y. 2017 -18 and 2018 - 19, comprehending the newly introduced GST Law amid the constant updates and changes was clearly a complex task for one and all. The government

issued a plethora of notifications and circulars, making it challenging for the taxpayers to keep abreast with the law. Further, in certain instances the provisions on law basis which the notices are being issued (such as matching of returns) never got implemented.

The table below illustrates the volume of notifications, circulars, and judicial precedents issued in the GST journey from July 2017 to July 2023, wherein it can be seen that more than 5000 notifications, circulars and judicial precedents have been issued in a span 6 years:

Even where the Government has introduced and / or amended the provisions or updated GST portal, the practical challenges continue. Take, for instance, while ITC reflecting in GSTR 2A of a particular month can be rightfully availed in GSTR 3B in the subsequent months within the stipulated time period, however, the department is still issuing notices seeking explanation from taxpayers for each such month.

Type	2017	2018	2019	2020	2021	2022	2023	Total
<b>GST Notification- Tax</b>	75	79	78	95	40	7	16	<b>390</b>
<b>GST Notification- Rate</b>	47	30	29	5	22	2	5	<b>140</b>
<b>IGST Notification- Tax</b>	2	4	4	6	3	0	0	<b>19</b>
<b>IGST Notification- Rate</b>	50	31	28	5	22	2	5	<b>143</b>
<b>CGST Circulars</b>	26	55	49	14	24	20	11	<b>199</b>
<b>IGST Circulars</b>	2	1	1	0	0	0	0	<b>4</b>
<b>High Court Rulings</b>	98	256	275	330	384	421	172	<b>1,936</b>
<b>Advance Rulings</b>	59	601	619	440	514	382	29	<b>2,644</b>
<b>Total</b>	<b>359</b>	<b>1,057</b>	<b>1,083</b>	<b>895</b>	<b>1,009</b>	<b>815</b>	<b>230</b>	<b>5,475</b>

Given the approach of the GST department in issuing notices, responding appropriately and thoughtfully is essential for the taxpayers for all notices issued by the department. An improper reply may lead to adverse consequences, such as the denial of legitimate ITC, demands for excess outward tax liability, imposition of interest and penalties, or even the suspension of GST registration.

## Industry Wide Issues

Furthermore, the department is also extending its reach to industry-specific issues. When a particular issue is identified for a specific taxpayer, the department issues notices to all taxpayers within the industry. For instance, recently a plethora of notices have been issued to insurance companies, demanding GST on reinsurance premiums. Therefore, in situations where an entire industry or association is grappling with a barrage of notices, it may be prudent to submit a representation to the Ministry for clarity on the matter, rather than awaiting notices from the GST department.

## Sharing of Information between Different Departments

Instances of communication between the departments are evident, with the Income Tax department issuing notices to insurance companies based on information from the GST department about alleged malpractices in commission payments to agents. Similarly, DGGI has also sent notices to insurance companies for suspected issuance of fake invoices to claim ITC without providing services.

Now therefore, the taxpayers need to be cautious about their positions and the reflection of transactions under various legislations. Further, it is also essential to note that incomplete or incorrect information / differing position under various laws can lead to complications. Therefore, it is imperative to seek proper guidance when submitting information to ensure accuracy and consistency across all relevant departments.

## Dispute Resolution Mechanism

### Authority for Advance Ruling

The Authority for Advance Ruling ('AAR') is a body which delivers rulings that are binding only on the applicant. It has been observed that AAR comprises of departmental



representatives, accordingly, approach of the AAR, at times, appears to be pro-revenue. Moreover, contrary rulings are being issued by AARs of different states on identical issues which has added to the confusion of the taxpayers.

The other dispute resolution available to the taxpayers is to file an appeal through the normal route before the Appellate Tribunal against order of the first Appellate Authorities. However, delay in the formation of GST Tribunal has led to a surge in filing of Writ Petitions before the High Courts.

## GST Tribunal

The GST Appellate Tribunals ('GSTAT') are quasi-judicial bodies that serve as the forum for hearing appeals and resolving disputes related to GST, against decisions of the first Appellate Authorities. As of June 30, statistics reveal that the number of pending appeals from taxpayers over Central GST levies had spiked sharply to over 14,000<sup>3</sup>.

In the absence of a functional GSTAT, departmental authorities pursue recovery post an Order of the first Appellate Authority, including bank account attachments. Taxpayers are left with limited recourse and are often resorting to High Courts through writ petitions to safeguard themselves from recovery of the demand confirmed.

However, in September 2023, the government, on the recommendations of the GST council, notified the establishment of 31 GST Tribunals across various states in India. Subsequently, in October 2023, the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 were notified. It is anticipated that first set of

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Tribunals would become operational by January 2024, subject to the outcome of the petition filed by the Madras Tax Bar Association challenging the constitutional validity of the GST Tribunal provisions before the Hon'ble Supreme Court.

Nevertheless, given the substantial backlog of pending appeals awaiting filing before the GSTAT, it becomes pertinent to see the anticipated timeframe for a taxpayer to secure a hearing for their case.

## Recent issues on which clarification has been issued

### Input Service Distributor Vs Cross Charge

Up until July 2023, debates surrounding the applicability of the ISD versus cross charge mechanism in GST created significant uncertainty. Amidst the prevailing ambiguity, the issuance of a clarification by CBIC by way of a circular brought a much needed and significant relief to taxpayers. However, the ambiguity regarding certain issues such as definition of "internally generated services", application of deemed NIL open market value to input services, amongst others, still remains.

### Valuation of Corporate Guarantee

The Hon'ble Supreme Court in the case of Edelweiss Financial Services Ltd, has recently held that issuance of Corporate Guarantees between the parent and subsidiary companies would not be liable to Service Tax if there is no consideration involved. However, CBIC issued a circular dated which provided that the taxable value for Corporate Guarantees would be 1% of the amount of guarantee issued or the actual consideration, whichever is higher. Although the circular brings a certain amount of clarity on

the valuation of corporate guarantees under GST, various questions still persist such as whether the issuance of a corporate guarantee can be considered as a supply of service under GST and if at all, how will valuation be done for the same corporate guarantee for continuing period.

## Secondment Services

Following the judgement of the Hon'ble Supreme Court in the case of Northern Operating Systems Private Limited on secondment of employees between Indian and overseas group companies, the GST department started issuing notices to taxpayers. To this, the CBIC issued an instruction wherein it was specified that the judgment should not be followed in a mechanical manner to issue notices. Rather, the taxability would depend on the facts and circumstances of every case. However, even though the circular brought a much relief clarification for the taxpayers who were receiving notices, the issue which remains open for interpretation is the criteria to be followed by the department for determining the taxability and issuing notices.

## Conclusion

In the labyrinth of various challenges surrounding GST, taxpayers find themselves grappling with a barrage of notices, parallel proceedings, and advancing regulations. The establishment of GST Tribunals would provide some respite amid the chaos. Yet, uncertainties persist, emphasizing the imperative for taxpayers to stay vigilant. Keeping a watchful eye on updates and ensuring the adequacy of submissions made to authorities is paramount for safeguarding financial interests and avoiding unwarranted litigation. So be alert, be careful and be prepared.

## Reference

1. Instruction No. CBEC/20/43/01/2017-GST (Pt.) dated 05-10-2023 provides that both the Central and State tax administrations shall have the power to take intelligence-based enforcement action in respect of the entire value chain
2. M/s R.P. Buildcon Private Limited & Anr v. The Superintendent, CGST & CX [2023 (68) G.S.T.L. 114 (Cal.)]
3. Source – Titled "Government notifies 31 Benches of GST Appellate Tribunal" from The Hindu dated 15-09-2023. ■