ICSI - GST

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GST

GOODS & SERVICES TAX

THE INSTITUTE OF
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भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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MESSAGE FROM PRESIDENT

Dear Professional Colleagues,

Aligning the need to confer the maximum benefit of corporate tax to the range of industries, Lawrence Kudlow has vividly quoted that "Corporate tax reform should include not just large C-corps but also smaller business S-corps and LLC pass-throughs. And nearly as important as cutting business tax rates is the need to simplify the inexplicably opaque and complex system." Under the perspective of this rationalization corporate taxes, the Government of India is taking every possible step to streamline the indirect taxes, with a special focus on MSMEs.

Recently the Government has come up with various circulars to clarify the doubts related to Goods and Services Tax, being raised by various stakeholders which includes clarification on refund related issues, scope of Principal-agent relationship in the context of Schedule I of the CGST Act, e-way bill requirements in case of storing of goods in godown of transporter, processing of refund applications filed by Canteen Stores Department (CSD), levy of GST on Priority Sector Lending Certificate, and alike. In addition, the Government has also introduced detailed guidelines for deductions & deposits of TDS by the DDO under GST wherein the provisions related to TDS and TCS are going to be applicable from October 01, 2018. This confirms the promptness of the Government in addressing the concerns of the stakeholders and working towards a facilitative GST regime.

Indeed, with all these constant initiatives of the Government, when GST is paving the way to bind the country into an Economic Union, the dedicated efforts of professionals are of utmost importance in efficaciously implementing GST throughout the country and to ensure that the tax compliance is given top priority.

As Governance Professionals, Company Secretaries are apt to ensure the compliance of each and every provision of the GST laws in its letter and spirit. ICSI-GST Newsletter which is a monthly circular to the professional community is an effort of the Institute to help the professionals to upkeep every latest update in serving their professional expertise. With this, ICSI releases 18th in the series, October 2018 issue of ICSI-GST Newsletter focusing on recent amendments/ updates in GST provisions.

Looking forward for your treasured feedback for the GST Newsletter.

With Best Wishes
CS Makarand Lele,
President, ICSI

RECENT AMENDMENTS MADE IN THE CGST RULES, 2017

1. Insertion of proviso in Rule 22(4)- Cancellation of registration

Following proviso inserted in Rule 22(4):
"Provided that where the person instead of replying to the notice served under sub-rule (1) for contravention of the provisions contained in clause (b) or clause (c) of section 29(2), furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee, the proper officer shall drop the proceedings and pass an order in FORM GST-REG 20."

Thus, if SCN is issued for cancellation of registration on account of non filing of returns for continuous six months(regular taxpayer) or for three consecutive tax periods (composition taxpayer), and if all returns are later filed after issue of SCN and tax due paid, the SCN shall be dropped.

New Form GST REG 20 - Order for dropping the proceedings for cancellation of registration substituted.

2. Insertion of proviso in Rule 36(2)- Documentary requirements and conditions for claiming ITC

Following proviso inserted in Rule 36(2):
"Provided that if the said document does not contain all the specified particulars but contains the details of the amount of tax charged, description of goods or services, total value of supply of goods or services or both, GSTIN of the supplier and recipient and place of supply in case of inter-State supply, input tax credit may be availed by such registered person."

Thus, for taking ITC, all the particulars as required to be mentioned in Invoice/ BE / Debit Note /ISD invoice etc. as per Rule 45 to 55 of CGST Rules, 2017 are not necessary. ITC can be taken as long as the above mentioned six particulars are mentioned therein in the documents.

3. Change in Rule 55(5)- Transportation of goods without issue of invoice

In the said rules, in rule 55, in sub-rule (5), after the words "completely knocked down condition", the words "or in batches or lots" shall be inserted.

Now the Rule 55(5) reads as under:
Where the goods are being transported in a semi knocked down or completely knocked down condition or *in the batches or lots*

a) the supplier shall issue the complete invoice before dispatch of the first consignment;
b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;

Source: www.cbic.gov.in

c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and

d) the original copy of the invoice shall be sent along with the last consignment.

4. **Format of Annual Return -Forms GSTR-9 (Normal Taxpayers) and GSTR-9A (Composition Taxpayers) introduced (Rule 80 of CGST Rules).**

The details for the period between July, 2017 to March, 2018 are to be provided in these returns.

The form GSTR-9 has six parts as under:

Part I- Basic Details

Part II- Details of Outward and inward supplies declared during the financial year

Part III- Details of ITC as declared in returns filed during the financial year

Part IV- Details of tax paid as declared in returns filed during the financial year

Part V- Particulars of the transactions for the previous FY declared in returns of April to September of current FY or upto date of filing of annual return of previous FY whichever is earlier

Part VI- Other Information

The form GSTR-9A has five parts as under:

Part I- Basic Details

Part II- Details of Outward and inward supplies declared during the financial year

Part III- Details of tax paid as declared in returns filed during the financial year

Part IV- Particulars of the transactions for the previous FY declared in returns of April to September of current FY or upto date of filing of annual return of previous FY whichever is earlier

Part V- Other Information

5. **Changes in Form GST ITC -04 [in terms of Rule 45(3)] : The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter**

New form GST ITC-04 substituted with more columns taking care of following multiple situations, along with losses and wastes-

- Details of inputs/ capital goods received back from job worker to whom such goods were sent for job work

- Details of inputs / capital goods received back from job worker other than the job worker to whom such goods were originally sent for job work;

- Details of inputs/ Capital goods sent to job worker and subsequently supplied from premises of job worker;

6. Insertion of proviso in Rule 138A (1)- Documents and devices to be carried by a person-in-charge of a conveyance

Following proviso inserted in Rule 138A (1):
"Provided further that in case of imported goods, the person in charge of a conveyance shall also carry a copy of the bill of entry filed by the importer of such goods and shall indicate the number and date of the bill of entry in Part A of FORM GST EWB-01."

7. Rule 96(10) substituted with the following w.e.f. 28.10.2017:

"(10) The persons claiming refund of integrated tax paid on exports of goods or services should not have –

(a) received supplies on which the benefit of N/N. 48/2017-CT dated 18.10.17 or N/N. 40/2017-CT dated 23.10.17 or N/N. 41/2017-Integrated Tax (Rate), dated 23.10.17 has been availed; or

(b) availed the benefit under N/N. 78/2017-Customs, dated 13.10.17 or N/N. 79/2017-Customs, dated 13.10.17."

Earlier, it was stated that supplier should not have taken the benefit of notifications mentioned above. Now, it states that supplies should not have availed benefit of above notifications.

8. Clause E in Rule 89(4) i.e. Definition of Adjusted Total Turnover is substituted with the following:

(E) "Adjusted Total Turnover" means the sum total of the value of-

(a) the turnover in a State or a Union territory, as defined under section 2(112), excluding the turnover of services; and

(b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding-

(i) the value of exempt supplies other than zero-rated supplies; and

(ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.'

9. **Form GSTR-9C notified: GSTR-9C is a reconciliation statement to be submitted by every registered person whose turnover exceeds Rs.2 Crores.**

   In terms of Rule 80(3) of CGST Rules, every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

10. **Rule 117 of CGST Rules amended (Rule 117 relates to Tax or duty credit carried forward under any existing law or on goods held in stock on the appointed date).**

In rule 117,

(a) after sub-rule (1), the following sub-rule shall be inserted, namely:-

“(1A) Notwithstanding anything contained in sub-rule (1), the Commissioner may, on the recommendations of the Council, extend the date for submitting the declaration electronically in FORM GST TRAN-1 by a further period not beyond 31st March, 2019, in respect of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension.”;

(b) in sub-rule (4), in clause (b), in sub-clause (iii), the following proviso shall be inserted, namely:

“Provided that the registered persons filing the declaration in FORM GST TRAN-1 in accordance with sub-rule (1A), may submit the statement in FORM GST TRAN-2 by 30th April, 2019.”

11. **Rule 142 of CGST Rules amended (Rule 142 relates to notice and order for demand of amounts payable under the Act. Amounts pertaining to sec 125 also added)**

    In rule 142, in sub-rule (5), after the words and figures “of section 76”, the words and figures “or section 125” shall be inserted.

*Provisions of Accounts and Records under GST Laws – FAQs

Question 1: What are the records/documents are required to be maintained under GST Laws?

Answer: Section 35 and 36 of CGST Act, 2017 read with Rule 56 to 58 of CGST Rules, 2017 deals with provisions of Accounts and Records under GST Laws.

Section 35(1) of CGST Act, 2017 has cast duty on every registered person to keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of –

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

In addition to the above, as per Rule 56 (1), every registered person shall keep and maintain a true and correct account of –

1) goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with the relevant documents, including Invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers and refund vouchers.

2) accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

** Contributed by Mr. D.S. Mahajani, General Manager (Taxation) and Company Secretary, Transpek-Silox Industry Private Limited, Vadodara, and member of ICSI-GST Core Advisory Group*

(Views expressed in this article are the personal views of the author.)

3) advances received, paid and adjustments made thereto.

4) details of tax payable, tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

5) The particulars of –

   a) names and complete addresses of suppliers from whom he has received the goods or services chargeable to tax under the Act;
   b) names and complete addresses of the persons to whom he has supplied goods or services;

Further, if a registered person is engaged in –

- manufacturing goods, he shall maintain monthly production accounts showing quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof. [Rule 56 (12)]
- supplying services, he shall maintain the accounts showing quantitative details of goods used in the provision of services, details of input services utilised and the services supplied. [Rule 56 (13)]
- executing works contract, he shall keep separate accounts for works contract showing –

   a) the names and addresses of the persons on whose behalf the works contract is executed;
   b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
   c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
   d) the details of payment received in respect of each works contract;
   e) the names and addresses of suppliers from whom he received goods or services. [Rule 56 (14)]

Question 2: What is Document under GST Law?

Answer: It is important to note that the definition of document under CGST Act looks simple but is extensive as it takes its root to Information Technology Act, 2000.

As per Section 2 (41) of CGST Act, 2017, Document includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000.

Electronic record, as defined in Information Technology Act, 2000, means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

Question 3: What is the meaning of term "True and Fair"?

Answer: The term True and Fair is generally found in Auditing Standards.

The term True suggest that the Financial Statements are factually correct and have been prepared according to the relevant reporting framework e.g. Accounting Standard like IFRS. True means they do not contain any material misstatements that may lead to misled the stakeholders. Where material misstatements may result from material errors or omissions of transactions and balances in Financial Statements.

The term Fair implies that Financial Statements represents the information faithfully without any element of bias and they reflect the economic substance of transaction rather than just their legal form (i.e. substance over form).

Hence the combined reading of the term True and Fair implies that Financial Statements are free from material misstatements and faithfully represents the financial performance and position of the business entity.

Question 4: What is the meaning of term "True and Correct"?

Answer: The term True, as mentioned earlier, is to say something based on facts - i.e. whether something is factual, real or genuine or not. True is opposite to "false".

Now it is important to know **what is the meaning of term "Correct".**

The term Correct means something is free from error and in accordance with lawfulness. It deals with accuracy, whether something is right or not.

In short, **the term –**

- ✓ **True is associated with factual position,**
- ✓ **Fair is associated with reasonableness, and**
- ✓ **Correct is associated with Accuracy, Precision and Validness.**

Hence, the term True and Correct means factual and accurate/valid.

Question 5: What is the provision for alteration and deletion of documents?

Answer: As per Rule 56 (8), any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries, otherwise than those of clerical nature, shall be scored out under attestation and thereafter the correct entry shall be recorded and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

Question 6: Is Accounts and Records are subject to Audit under GST Laws?

Answer: As per Section 44 of CGST Act 2017, read with Rule 80, every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement.

U/s 44 (2) of CGST Act, 2017, the registered person shall also furnish the annual return for every financial year electronically on or before the thirty-first day of December following the end of such financial year.

The details of Annual Returns as per Rule 80 of CGST Rules, 2017 is as under –

Annual Return Form	Applicability
Form GSTR-9	Every registered person other than an Input Service Distributor, a person paying tax under section 51 or a casual taxable person and a non-resident taxable person.
Form GSTR-9A	Annual Return (For Composition Taxpayer)
Form GSTR-9B	Every electronic commerce operator required to collect tax at source u/s 52
Form GSTR-9C	Part - A: Reconciliation Statement Part - B: Certification

Question 7: What is the period of retention of Accounts and Records?

Answer: As per Section 36 of CGST Act 2017, every registered person shall be required to keep and maintain books of account or other records in accordance with the provisions of u/s 35 shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority shall retain the books of account and other records pertaining to the subject matter of such appeal proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

Retention of accounts and records for different period is explained as under -

For the FY	Date of Annual Return	Records to be maintained upto
FY 2017-18 (From July 2017 to March 2018)	31st December 2018	31st December 2024
FY 2018-19	31st December 2019	31st December 2025
FY 2019-20	31st December 2020	31st December 2026

As per Rule 56 (18), every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law for the time being in force. *(e.g. Pollution Laws/Labour Laws).*

Question 8: What are provision for generation and maintenance of electronic records?

Answer: As per Rule 57, proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within a reasonable period of time.

The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.

Where the accounts and records are stored electronically by any registered person, he shall, on demand, provide the details of such files, passwords of such files and explanation for codes used, where necessary, for access and any other information which is required for such access along with a sample copy in print form of the information stored in such files.

Question 9: What are consequences of failure to maintain Accounts and records?

Answer: As per Section 35(6), where registered person fails to account for the goods or services in accordance with the Section 35 read with rules framed thereunder, the proper officer shall determine the amount of tax payable on the goods or services that are not accounted for, as if such goods or services had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

Section 73 deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts.

Section 74 deals with determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful misstatement or suppression of facts by reason of fraud or any willful misstatement or suppression of facts.

GST IMPORTANT JUDGEMENTS UPDATES

I. Case Name: Apollo Screens Pvt. Ltd. Vs. Union of India (Gujarat High Court)
(Extension of time limit to file GST TRAN-1 on account of technical glitches for carrying forward credit not permissible in the absence of evidence of genuine attempts to file return)

Full text of the High Court Judgment:

1. Petitioner has prayed for a direction to the respondents to allow the petitioner to carry forward balance CENVAT Credit available as on 30.06.2017.

2. Briefly stated, the facts are that the petitioner, a private company is engaged in manufacturing activity. As on 30.06.2017, i.e. the last date of CENVAT regime, the petitioner has CENVAT Credit in the ledger account to the tune of Rs. 8.80 lakhs (rounded off). With the introduction of GST, section 140 of **Central Goods and Service Tax Act, 2017** provided for transfer of such CENVAT Credit. Rule 117 of the **Central Goods and Service Tax Rules, 2017** laid down time limit for filing return and making a declaration for the unused CENVAT Credit. Such time limit initially granted was for three months and extended from time to time. Lastly, it was extended till 27.12.2017. Admittedly, the petitioner did not file return which was to be done electronically till such date. The petitioner's first written communication was on 27.04.2018, in which, the petitioner conveyed to the departmental authorities that due to portal errors, the petitioner could not file the necessary declarations. The petitioner was under bona¬fide belief that such errors would be resolved. The petitioner admitted that no screen-shot of having made an attempt to upload the return was maintained.

Source: *1. www.cbic.gov.in 2. indiakanoon.org*

3. To this communication, the department replied on 03.05.2018 stating that there is no provision for filing physical return. The petitioner had not contacted the department during the time permitted for filing the return pointing out the difficulties in E-¬filing. At that stage, this petition was filed.

4. Having heard learned counsel for the petitioner, we do not find any reason to interfere. We are conscious, as pointed out by the counsel for the petitioner that some High Courts have intercepted and obviated the genuine difficulties in uploading the returns due to technical errors. However, facts of each case would have to be minutely examined. **Unless there is some prima-facie evidence of genuine attempts at filing the returns having failed on account of technical errors, accepting a bald declaration by the petitioner would virtually amount to extending the time limit for filing the returns and this would lead to chaotic results.**

5. In this context, we notice that there is nothing on record to suggest that all throughout from 01.07.2017 till 27.12.2017, the petitioner made multiple efforts at filing the returns making necessary declarations of unused CENVAT Credit. The normal conduct if the attempt was made but failed, would have been to approach the Nodal Officer or grievance cell of the department during the currency of time limit for filing the return. **The petitioner's first official attempt in writing came on 27.04.2018 i.e. good four months after the time limit has lapsed. In absence of any other material suggesting genuine honest attempt on the part of the petitioner to file the return electronically, the same having failed on account of portal error or some such technical error attributable to the department, it would not be possible to extend the time limit for the petitioner.**

6. In the result, petition is dismissed.

II. Case Name: Raj Sanjaybhai Tanna Vs. Union of India (Gujarat High Court)
(PIL filed against Constitutional Validity of Section 47 of CGST Act dismissed by HC)

Full text of the High Court Judgment:

1. This petition, in the nature of public interest, is filed by two petitioners. Petitioner No.1 is a practicing advocate, we are informed, mainly on the taxation side. Petitioner No.2 is also a tax consultant though we are informed not a practicing advocate. The petitioners have challenged the constitutional validity of section 47 of the Central Goods and Service Tax Act, 2017 ['CGST' for short] as being ultra vires the constitution. Section 47 of the CGST Act pertains to late fee for filing returns beyond the prescribed time limit. Sub-section (1) of section 47 provides that any registered person who fails to furnish the details of outward or inward supplies or returns by the due date, shall pay a late fee of one hundred rupees for every day of such delay subject to a maximum of five thousand rupees. Sub-section (2) of section 47 further provides that any registered person who fails to furnish the return as required under section 44 by the due date would be liable to pay a late fee of one hundred rupees for every day of delay subject to a maximum of an amount calculated at a quarter per cent of his turnover. Principal contentions of the petitioners are that the Government is trying to recover penalty in the guise of late fee charges. As a result, the dealers losing their valuable right of appeals as well as right to point out that there was sufficient cause preventing them from filing the return within the due date. It was argued

before us that in all previous laws which have been repealed by the statutes enacted under the new GST regime, such charges were categorized as penal in nature. Various practical difficulties in filing the returns including such as malfunctioning of the official portal which often times, prevents uploading of the returns were cited.

2. We are not inclined to entertain this petition which is categorized as a public interest litigation. We are of the opinion that this is not a case where PIL jurisdiction should be exercised. By the account of the counsel for the petitioners, there are not less than 1.30 crore dealers affected by the said provision. There is nothing to suggest that none of these affected persons can take up the cause and approach the Court of law as may be advised. Majority if not all of them would be persons with proper means who can also avail proper legal advice. This is not a case where the petitioners are espousing the cause of a weaker section of the society who, on account of hardships and handicaps inherently faced by them, are unable to knock the door of justice. The public interest jurisdiction of the High Court and the Supreme Court, over a period of time, has been considerably expanded to take within its sweep range of issues not confined to the assertion of rights of weaker sections of the society or the marginalized groups. Nevertheless, even after such expansion, public interest is confined to environmental issues, the issues of public accountability and such like. The reference in this respect can be made to the decision of Supreme Court in case of State of **Uttaranchal vs. Balwant Singh Chaufal and ors** reported in (**2013**) **3 SCC 402.**

3. In the present petition, the petitioners who are themselves active tax consultants and tax practitioners have challenged the vires of section 47 of CGST Act. They are obviously indirectly concerned with the same. As noted, they pointed out that there are millions of dealers who would be adversely affected by the provisions made therein. There is no reason why such an issue should be examined in a public interest petition when, as noted above, the group of persons whom the statute affects does not suffer from any handicap preventing them from taking up the litigation themselves and pursuing it.

4. Petition is dismissed.

III. Case Name: Filco Trade Centre Pvt ltd Vs. Union of India (Gujarat High Court)

[Section 140(3)(iv) held unconstitutional by Gujarat High Court]

Brief of the case:

- Challenge to Section 140(3)(iv) of CGST Act, 2017 on the ground that it prevented first stage dealers from claiming credit on invoices which were more than a year old from the appointed date – Vested right accrued under existing law – provision takes away the right retrospectively.

- **The Gujarat HC held that** no just, reasonable or plausible reason is shown for making such retrospective provision taking away the vested rights - clause (iv) is unconstitutional – It disagreed with the decision of Bombay High Court in JCB India Ltd. - 2018-TIOL-23-HCMUM-GST

- However, at the request of counsel for the Revenue this judgement stayed up to 31.10.2018

IV. Case Name: Vanrajbhai Hasmukhbhai Chauhan Vs. State of Gujarat (Gujarat High Court)
[Goods transported without e-way bills- Gujarat HC refuses to entertain writ petition filed under Article 226 of the Constitution of India]

Brief of the case:

- Truck of the petitioner was detained by the appropriate authority under the GST, having noticed that the e-way bill was not tendered for the goods in movement, bill amount is under-invoice and LR is blank.

- It was the case on behalf of the petitioner that the petitioner is ready and willing to pay taxes determined in accordance with law.

- During the pendency of the petition, the final order of assessment has been passed under Section 129(3) of the CGST Act and the order of demand of tax and penalty has been passed and therefore, by way of amendment, the same are under challenge.

- An affidavit in reply is filed on behalf of the Department pointing out that the Petitioner is a habitual offender and is in habit of transporting goods without e-way bill and similar modus operandi is adopted to pay tax, the moment he is caught. There were 10 instances wherein the petitioner is caught without e-way bill and therefore, the petitioner is habitual defaulter and tax evader.

- **The HC held that** considering the facts narrated hereinabove, more particularly when the petitioner is reported to be a habitual defaulter and tax evader and is found to be involved in atleast 10 cases wherein the petitioner was caught without e-way bills, the HC court refused to exercise discretion in favour of the petitioner. Alternate appeal remedy available for challenging order passed u/s 129(3).

APPLICABILITY OF GST RATE ON VARIOUS GOODS/SERVICES

1. Fortified Toned Milk

Toned milk is a method, developed in India, of treating buffalo milk by adding skim milk, powdered skim milk and water to buffalo milk. This process decreases the fat content, increases the quantity of available milk, and 'tones up' the non-fat solids level to the original amount.

Fortified Milk means milk made more nutritious by addition of milk protein, Vitamin A, or Vitamin D.

Toned milk fortified (with vitamins 'A' and 'D') attracts <u>NIL rate of GST</u> under HSN Code 0401.

2. Supply of Drinking Water for Public Purpose

Supply of water, other than those excluded from S. No. 99 of Notification No. 2/2017-Central Tax (Rate) dated 28.06.2017, would attract GST at "NIL" rate.

Therefore, supply of drinking water for public purposes, if it is not supplied in a sealed container, <u>is exempt from</u> GST.

3. Refined beet and Cane Sugar

Refined Beet Sugar

Refined Cane Sugar

Beet and cane sugar, including refined beet and cane sugar, fall under heading 1701 and attract <u>5% GST</u> rate.

Source: *Circular No. 52/2018-GST*

4. Disc Brake Pad for Automobiles

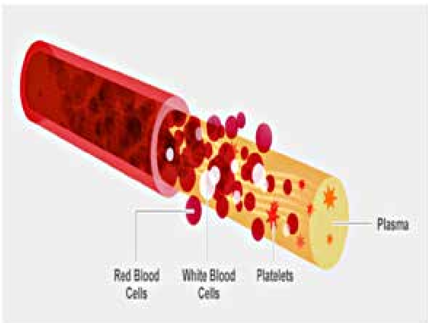
"Disc Brake pad" for automobiles, are classifiable under heading 8708 of the Customs Tariff Act, 1975 and would attract **<u>28% GST.</u>**

5. Tamarind Kernel Powder (Modified & Un Modified form)

There are two grades of Tamarind Kernel Powder (TKP): Plain (unmodified) form (hot, water soluble) and Chemically treated (modified) form (cold, water soluble).

Both plain (unmodified) tamarind kernel powder and treated (modified) tamarind kernel powder fall under Chapter 13, and therefore both attract <u>5% GST</u>

6. Normal Human Blood Plasma & Plasma Products



Plasma is the clear, straw coloured liquid portion of blood that remains after red blood cells, white blood cells, platelets and other cellular components have been removed.

Normal human plasma is specifically mentioned at S. No. 186 of List I under S. No. 180 of Schedule I of the notification No. 1/2017-Central Tax (Rate) dated 28th June, 2017, and attracts **<u>5% GST.</u>**

Other items falling under HS Code 3002 (including **plasma products**) would attract **<u>12% GST</u>** under S. No. 61 of Schedule II of the said notification, not specifically covered in the said List I.

7. Marine Engines for Fishing Vessel

Supplies of marine engine for fishing vessel (being a part of the fishing vessel), falls under tariff item 8408 10 93 attracts **<u>5% GST</u>** by virtue of S. No. 252 of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017.

8. Real Zari Kasab (Thread)

	Imitation zari thread or yarn known as "Kasab" or by any other name in trade parlance would attract a uniform **GST rate of 12%** under tariff heading 5605.

9. Baby wipes, facial tissues and other similar products

	Wipes of various kinds are classifiable under heading 3307 or 3401 depending upon their constituents. Therefore, **if the baby wipes are impregnated with perfumes or cosmetics, then the same would fall under HS code 3307 and would attract 18% GST rate.** Similarly, **if they are coated with soap or detergent, then it would fall under HS code 3401 and would attract 18% GST.**

10. Cotton Quilts

	A quilt filled with cotton constitutes a cotton quilt, irrespective of the material of the cover of the quilt. Cotton quilts falling under tariff heading 9404 attract a **GST rate of 5% if the sale value of such cotton quilts does not exceed Rs. 1000 per piece** [as per S. No. 257 A of Schedule I of the notification No. 01/2017-Central Tax (rate) dated 28.06.2017]. However, such cotton quilts, with **sale value exceeding Rs.1000 per piece attract a GST rate of 12%** (as per S. No. 224A of Schedule II of the said notification).

GST IN NEWS

1. Finance Ministry notifies Annual Return Forms under GST for 2017-18

- The finance ministry has notified annual tax return forms for businesses registered under the GST, in which details of sales, purchases and input tax credit (ITC) benefits accrued to them during 2017-18 fiscal have to be provided in a consolidated manner.
- The ministry has notified annual return form for normal taxpayers (GSTR-9) and for composition taxpayers (GSTR-9A). The last date for filing the annual return forms is December 31, 2018.

2. Government sets up office of GST Commissioner under CBIC to check tax evasion

- The revenue department has created the office of Commissioner GST (Investigation) to deal exclusively with enforcement issues like search, seizure and arrest, as it looks to crackdown on tax evaders.
- Initially, the Government was going slow on enforcement action to give time to the industry to adjust to the new tax regime. With most of the loose ends tied up with regard to Goods and Services Tax (GST), the revenue department has now decided to focus on enforcement with a view to shore up revenues by checking tax evasion.
- As per the instruction issued by Central Board of Indirect Taxes and Customs (CBIC), Commissioner GST (Investigation) will deal exclusively with policy issues and legislative matters, concerning enforcement aspect namely, search, seizure, arrest, prosecution and compounding under GST Act, Excise Act and matters relating to Service Tax.
- Commissioner (Investigation) will also monitor the work of Directorate General of GST Intelligence (DGGSTI) and GST field formations in relating to investigation of cases, search and seizure operations on searches, arrests etc.
- Neeraj Prasad has been appointed the first Commissioner in the office of GST-Investigation.
- The commissioner will also coordinate with DGGSTI and Directorate General of Analytics and Risk Management (DGARM) in analysing and disseminating intelligence to the field formations.
- It will act as a nodal agency for inter-departmental coordination relating to investigation and enforcement agencies and conduct research and studies to monitor and ascertain modus operandi of evasion.

Source: ***1.*** *www.business-standard.com* ***2.*** *economictimes.indiatimes.com* ***3.*** *www.bloombergquint.com* ***4.*** *www.cbic.gov.in*

3. YES Bank evaded Rs 330 million tax via 'cut and pay' scheme: GST Authority

- The anti-evasion wing of the Goods and Services Tax (GST) department in Mumbai has alleged that YES Bank evaded central GST (CGST) dues, through a 'cut and pay' scheme, to the tune of Rs 330 million. The bank, however, said it had consulted tax experts who confirmed its interpretation of the law was correct and tenable.

4. TDS and TCS provisions under GST laws to be implemented from October 1, 2018

- The Government has notified October 1 as the date for implementing the tax deducted at source (TDS) and tax collected at source (TCS) provisions under GST laws.

- As per the Central GST (CGST) Act, the notified entities are required to collect TDS at 1 per cent on payments to goods or services suppliers in excess of Rs 2, 50,000. Also, states will levy 1 per cent TDS under state laws.

- E-commerce companies will now be required to collect 1 per cent TCS (TCS Rates notified vide N/N. 02/2018- Integrated Tax and N/N. 52/2018- Central Tax) while making any payment to suppliers under the Goods and Services Tax (GST).

5. Taxpayer with turnover over Rs 2 Crore need GST Audit Certificate.

- The Government notified the FORM GSTR-9C for annual GST audit under which every taxpayer above Rs 2 Crore turnover in a financial year would need to fill up a reconciliation statement and also obtain a certification of audit.

- Under GST, annual return is to be furnished in GSTR-9 (recently notified on September 4, 2018). In addition, as per Section 35 of CGST Act, 2017, every tax payer whose turnover exceeds Rs 2 Crore during a financial year, is required to submit audited annual accounts and a reconciliation statement in GSTR-9C.

- The Government through the Notification No. 49/ 2018 - Central tax dated September 13, 2018 has notified the format for GSTR-9C.

6. IIMs' Executive Post-Graduate Programmes to face GST

- Executive post-graduate programmes offered by the Indian Institutes of Management (IIMs) will face the GST, according to the Authority for Advance Rulings.

- The Madhya Pradesh AAR said the one year programme is taxable even though the Indian Institutes of Management Act, 2017, provides tax exemptions for courses offered by the IIMs. It said executive programmes are not specifically exempted from tax.

- The ruling came in response to an application filed by IIM Indore, which sought to know if this programme would be taxable. The MP AAR held that the Executive Post-Graduate Programme in management is taxable under GST. Under GST, services provided by an educational institution are exempt from tax. Under the GST law, educational institutions include those providing training to obtain a qualification recognised by law.

- IIM Indore had contended that with the enactment of the IIM Act, degrees and diplomas granted by IIMs are recognised by law and hence should be exempted from tax. The AAR, however, observed that the services provided by the IIMs are specified by way of a separate entry in the exemption notification. While the two-year full time MBA courses, five-year integrated programme and fellow programme in management are exempt from tax, courses such as executive development programmes are not exempted.

- The ruling underlines the principle that a specific entry shall prevail over a general entry.

7. Watchdog penalises builder for not passing GST benefit to homebuyers

- In a first ever order against a real estate firm for failing to pass on the GST reduction benefits to homebuyers, the federal anti-profiteering watchdog has ordered Gurgaon-based Pyramid Infratech to refund over Rs 8.22 crore to 2,476 flat owners within the next three months with 18% interest.

- Passing the order, the National Anti-profiteering Authority (NAA) said it will also issue a notice asking the builder why penalty should not be imposed on it for the violation. It has directed the builder to refund or reduce the amount, for every buyer at the time of collecting the last installment. The authority has also ordered Haryana's tax commissioner to monitor the compliance and submit a report within four months.

- According to the order, 109 home buyers had filed a complaint of profiteering against the builder in two affordable housing projects — Urban Homes in Sector-70A and Urban Homes in Sector-86 — in Gurgaon. They had alleged that the builder had not passed on the benefit of lower tax arising out of availing of input tax credit (ITC) post roll out of the GST and hence was indulged in profiteering.

- Passing the order after an investigation by the Director General of Anti-Profiteering (DGAP), the authority said it as "absolutely clear" that excess ITC was available to Pyramid Infratech and it was required to be passed on to the buyers. "The Respondent (Pyramid Infratech) cannot appropriate this benefit as this is a concession given by the government from its own tax revenue to reduce the prices being charged by the builders from the vulnerable section of society which cannot afford high value apartments," the order said.

- It further stressed that the builder was not being asked to extend this benefit out of his own account and it was only liable to pass on the benefit of ITC to which it had become entitled by virtue of the grant of ITC on the construction service by the government.

8. Finance Ministry extends GSTR-1 filing date to October 31, 2018

- The Finance Ministry extended the last date for filing final sales return GSTR-1 to October 31 for the taxable periods from July 2017 to September 2018. The ministry also waived the late fee for the delayed filing of returns.

- It said that the number of taxpayers who have filed summary sales return GSTR-3B is substantially higher than the number of taxpayers who furnished GSTR-1.

- "In order to encourage taxpayers to furnish Form GSTR-1, a one-time scheme to waive late fee payable for delayed furnishing of GSTR-1 for the period from July 2017 to September 2018 till October 31, 2018, has been launched," the ministry said.

- For taxpayers having aggregate turnover up to Rs 1.5 crore, the due date for furnishing GSTR-1 for the quarters from July 2017 to September 2018, too has been extended till October 31, 2018.

- "For registered persons having aggregate turnover up to Rs 1.5 crores in Kerala, or whose principal place of business is in Kodagu (Karnataka) and Mahe (Puducherry), the due date for furnishing GSTR-1 for the quarter July 2018 to September 2018 would continue to remain as November 15, 2018," the ministry said.

- It further said that those taxpayers who will now be migrating to GST the last date for furnishing the details of outward supplies of goods or services or both in GSTR-1 and for filing the return in GSTR-3B for the months of July 2017 to November 2018 has been extended till December 31, 2018.

- "The registered person shall not be entitled to take input tax credit in respect of any invoice after the due date of furnishing of the return for the month of September following the end of financial year to which such invoice pertains; or furnishing of the relevant annual return, whichever is earlier. The taxpayers are thus, advised to furnish their returns on time to ensure that input tax credit does not become time barred," the ministry added.

9. Organized fan manufacturers seeks 12% GST slab

- Fan manufacturers in the organised sector are seeking a reduction in GST slab from 18% to 12% for which representations have been already submitted to the GST Council.

- Indian Fan Manufacturers Association (IFMA) said that fans are a basic necessity in a tropical climate like India and being used by all strata of the society.

10. Finance Minister proposes additional cess under GST to help flood-hit Kerala

- Finance Minister Arun Jaitley has proposed additional cess on select commodities under GST to raise funds to help Kerala tide over the damages caused due to floods, a state minister said on Friday.

- The proposal of levy of cess is expected to come up for discussion at the GST Council meeting on September 28.
- "Kerala welcomes the suggestion of hon'ble FM for a national level cess on selected commodities for a specified period to help such states. GST Council to discuss," Kerala Finance Minister Thomas Isaac said in a tweet.

11. Cabinet Clears Proposal to Convert GSTN into Government Entity

- The Cabinet cleared a proposal to convert GST Network (GSTN) into a government-owned company, Finance Minister Arun Jaitley said.

- Briefing reporters about the decisions taken in the Cabinet meeting, the finance minister said that 50% stake will be owned by the Centre and the remaining by the states on pro-rata basis in the new structure.

- Currently, the Centre and states together hold 49% stake in the GSTN, the company that provides IT backbone to the new indirect tax regime. The remaining 51 per cent is held by five private financial institutions -- HDFC Ltd, HDFC Bank Ltd, ICICI Bank Ltd, NSE Strategic Investment Co and LIC Housing Finance Ltd.

- The proposal to convert GSTN into 100% government-owned company was earlier approved by the all-powerful GST Council.

- The GSTN was incorporated as a private limited company on March 28, 2013 under the UPA government. It is a Section 8 company under the new Companies Act and hence is a not-for-profit entity.

12. Infosys to Design New Forms for Filing GST Returns

- The Goods and Services Tax Network (GSTN) has directed its software vendor Infosys to design new forms for filing returns by traders, said its Group of Ministers Chairman Sushil Kumar Modi.

- “We plan to roll out the new simplified GST returns form in the next 4-6 months for the benefit of dealers or traders paying the indirect tax through the network,” said Modi, who is also Bihar deputy chief minister.

- The GoM has identified 18 companies across the country to develop a uniform accounting software for the smaller tax payers.

- “The new software will be given to all small traders to ensure uniformity in filing GST returns,” said Modi.

TDS and TCS Provisions Implemented from October 1, 2018

TDS Provisions

Provisions of Section 51 of the CGST Act, 2017 came into force w.e.f. October 1, 2018 for the following persons:

(a) a department or establishment of the Central Government or State Government;

(b) local authority;

(c) Governmental agencies; and

(d) persons specified below under this clause vide *N/N. 33/2017- Central Tax:*

  (a) An authority or a board or any other body, -

    (i) set up by an Act of Parliament or a State Legislature; or

    (ii) established by any Government,

  with fifty-one per cent or more participation by way of equity or control, to carry out any function;

  (b) Society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);

  (c) Public sector undertakings.

Note: Above notified entities are now required to collect **TDS at 2%** on payments to goods or services suppliers in excess of Rs.v 2,50,000. 1% TDS is required to be deducted under both the CGST and the SGST Act and therefore the total TDS to be deducted is 2%. In case of an inter-state transaction, IGST would be levied and 2% TDS would be levied in this case as well.

TCS Provisions

Provisions of Section 52 of the CGST Act, 2017 came into force w.e.f. October 1, 2018 which means E-commerce Operators are now required to collect **1% TCS** while making any payment to suppliers under the Goods and Services Tax (GST).

Rate of TCS is 0.5% under each Act (i.e. the CGST Act, 2017 and the respective SGST Act / UTGST Act respectively) and the same is 1% under the IGST Act, 2017.

Source: *www.cbic.gov.in*

GST QUIZ

1.	GST Rate applicable on Cotton Quilts with sale value exceeding Rs. 1000 per piece is _________	A. NIL B. 5% C. 12% D. 18%
2.	GST Rate applicable on Cotton Quilts when sale value doesn't exceed Rs. 1000 per piece is _________	A. 5% B. 12% C. 18% D. 28%
3.	GST Rate applicable on Marine Engines for Fishing Vessel is _________	A. NIL B. 5% C. 12% D. 18%
4.	GST Rate applicable on Tamarind Kernel Powder is _________	A. NIL B. 5% C. 12% D. 18%
5.	GST Rate applicable on Baby Wipes impregnated with perfumes or cosmetics is _________	A. NIL B. 5% C. 12% D. 18%

Answer: Q1- C, Q2- A, Q3- B, Q4- B, Q5- D

Source: *www.cbic.gov.in*

Note :

Motto

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