ICSI - GST

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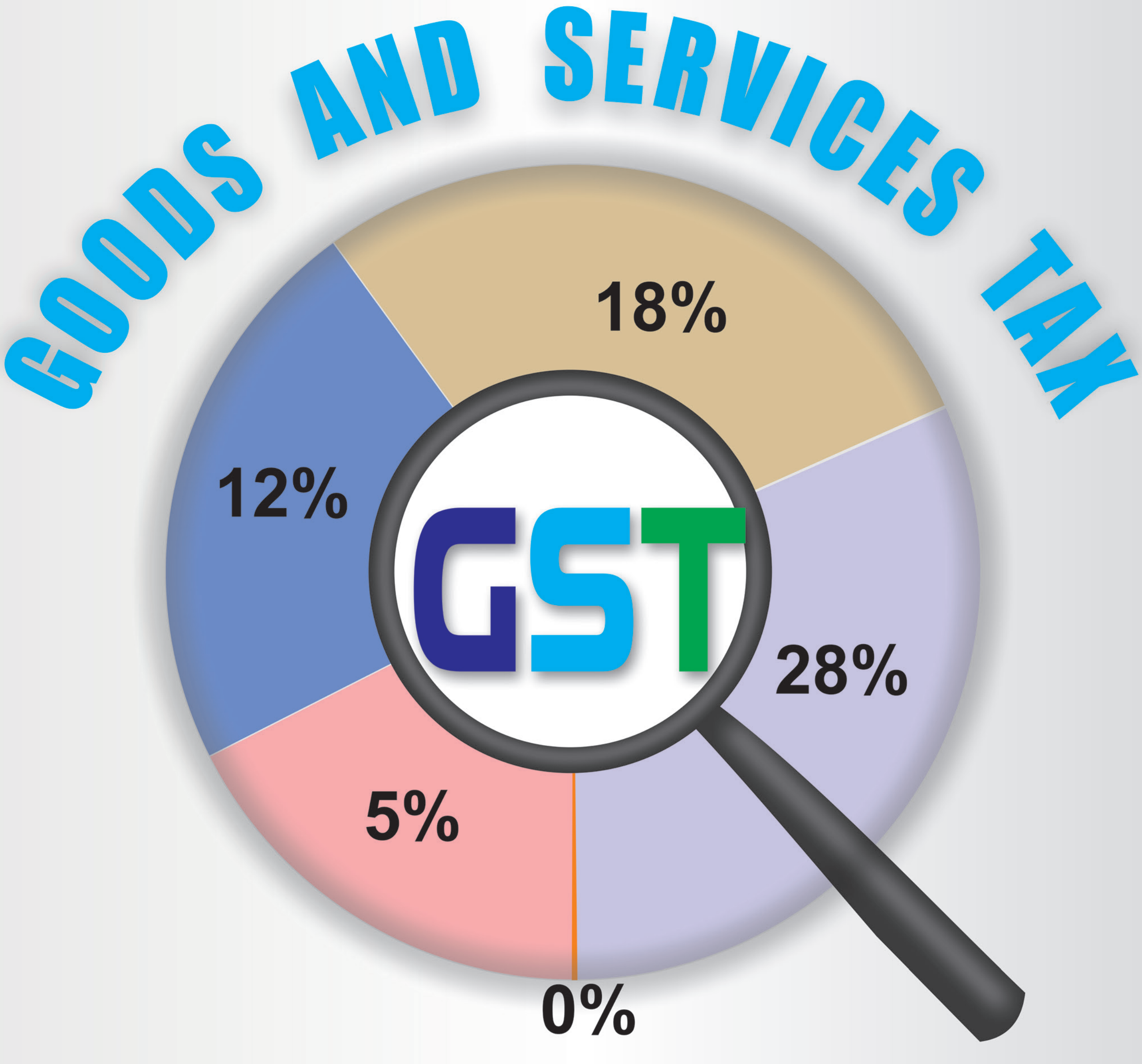

THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

INSIDE THE ISSUE

MESSAGE FROM PRESIDENT

Touting GST as a game changer, Hon'ble Prime Minister Narendra Modi said that 'GST will put India on path of a system that will be transparent, simple and keeps tabs on corruption'. Indeed, he was precise while mentioning the long term welfares of GST on the inclusive growth of the nation.

With the urge of completing one year of its enactment, GST seems to play an imperative role in the growth and development of India Rising and India Shining. With the latest affirmation of United Nations, The International Monetary Fund saying that 'India will be the fastest growing major economy in 2018, with a growth rate of 7.4 per cent that rises to 7.8 per cent in 2019 with medium-term prospects remaining positive'; additionally the IMF's Asia and Pacific Regional Economic Outlook reports that 'India is improving with the introduction of the Goods and Services Tax and leading to a robust GDP with a common market, common tax for the first time.' Further, with the recent data on GST revenue collection crossed Rs 1 trillion in April 2018, the highest in a month since the new indirect tax was rolled out in July, 2017 is confirming the successful milestones of GST towards simplified regime of taxation in India ensuing streamlined trade, lifted economy and employment opportunities. Certainly, GST is surpassing a vision of New, Inclusive and Promising India.

Well said by Jeffrey E. Garten, "A vision without execution is an hallucination", and therefore, in this context, it would be apt to state that the professionals including Company Secretaries are the real trumps to lead the directed implementation of GST with inclusive growth and consolidated development of India at the global platform.

Considering the role of Company Secretaries towards the directed implementation of GST and Institutes vision in building the capacity of its stakeholders in the emerging areas of governance and compliance, the Institute initiated the publication of this GST Newsletter to apprise the professional about facts and facets of GST as well as the cutting-edge updates taking place in GST regime in India. Succeeding Fourteen (14) volumes so far, we are happy to bring out this June Issue of GST Newsletter.

I am sure that this GST Newsletter would be a worthy foundation for describing the contemporary information on GST to professionals, academicians, students, and public as a whole.

Looking forward for your treasured feedback!

With Best Wishes
CS Makarand Lele
President, ICSI

GST in News

1. GST Surpasses Rs 1 trillion in April- Finance Minister

- The GST revenue collection crossed Rs 1 trillion in April, the highest in a month since the new indirect tax was rolled out in July last year
- As many as 69.5 per cent of assessees filed summary input-output returns in April, against 64.61 per cent in the previous month
- The mop-up at Rs 1.03 trillion far exceeded the Rs 898.8 billion average monthly collections for the first eight months after the GST was introduced

2. GST Council unveils new, simplified return filing process

- GST Council unveiled a new simplified return that would require a taxpayer to file only one return every month and set a period of six months for the transition to take place
- It will take about six months for GSTN to prepare for it, so for that period the current arrangement of GSTR3B and GSTR 1 will continue
- In the transition phase, which is after six months of the return being prepared, there will be a separate column for the dealer to claim provisional credit based on his own calculation

3. Companies get scrutiny notices for mismatch in GST returns

- GST officers have started sending scrutiny notices to companies whose tax payment did not match the final sales return, after revenue authorities detected underpayment of GST by about 34 per cent
- Also, companies whose final sales return GSTR-1 did not match GSTR-2A, which is a purchase return auto-generated by system from his seller's return, have also received scrutiny notices.

4. Ordering food on train will pinch you a bit more: AAR

- Supply of food and beverages in trains will face goods and services tax as applicable on such items and not the concessional rate of 5% as specified by the government through a circular, since a train is a medium of transport and cannot be termed restaurant, eating joint, mess or canteen, Delhi AAR said in a decision

5. Solar power plant EPC to attract 18% GST: AAR

- In a ruling that could spike the cost of setting up solar power plants, the Authority for Advance Ruling (AAR) for GST in Maharashtra said that engineering, procurement and construction (EPC) activities will be considered as 'work contract' and liable to be taxed at 18%

6. All businesses covered by RCM to register for GST: AAR

- A business is required to register under GST even if it qualifies to be exempted according to the GST Act, but has liability to collect tax under the reverse charge mechanism (RCM) - AAR on GST in Delhi said in a ruling

7. Expedite GST practitioners' registration: CBIC chief

- Several indirect tax experts find that they still haven't been approved as GST practitioners, despite having applied for registration months ago via the GST portal

- In this backdrop, the chairperson of the Central Board of Indirect Taxes and Customs (CBIC — earlier known as CBEC), recently wrote to officials to expedite the process

8. 28% GST to be levied on e-rickshaw tyres: AAR

- E-rickshaw tyres will attract GST at the highest slab of 28 per cent as they are registered as 'motor vehicles' under the Motor Vehicle Act, according to the order of the Authority for Advance Rulings

9. BSNL partners SAP to boost GST compliance in rural India

- State-owned telecom operator BSNL signed a memorandum of understanding (MoU) with enterprise solutions provider SAP to jointly offer innovative GST solutions to enterprises across India.

- The partnership is directed at realising the full potential of GST by increasing compliance on the back of BSNL's country-wide reach and SAP's expertise in providing robust technology offerings.

10. Malaysia's new government says GST to be effectively scrapped from June 1

- Malaysia's new government said it would reduce goods and services tax to zero from June 1, effectively abolishing it, a move that is likely to spur spending in the Southeast Asian nation but put pressure on its fiscal position.

11. Coaching centres for entrance exams liable to 18% GST: AAR

- Coaching centres providing tuition to prepare students for entrance examination are liable to pay 18 per cent GST, according to the Authority for Advance Rulings

12. Government extends deadline for filing April GSTR-3B by 2 days till May 22

- The government has extended the due date for filing GST summary sales returns for April by two days till May 22,2018

13. GST Council asks Centre, states to quickly set up appellate authorities

- The GST Council has asked the Centre and states to expedite setting up of appellate authorities for aggrieved entities to appeal against orders of the Authority for Advance Rulings

- With AARs in different states started giving rulings since March, it has become imperative for the Centre as well as states to set up the Appellate Authority for Advance Ruling

- So far only 12 states, including West Bengal, Gujarat, Madhya Pradesh, Rajasthan, Tamil Nadu and Uttar Pradesh, have issued notifications for setting up AAARs

14. Catering services provided to offices and industry canteens to attract 18% GST

- Clearing the cloud on the rate of GST for supply of food services to canteens at offices and factories, the Gujarat Authority for Advance Ruling (AAR) has said such services would attract 18% GST and not 5% that the industry was normally following

- The AAR has opined that catering services provided to offices and industry canteens, (which is supply of food services to canteens at offices/ factories) would be taxable at the rate of 18% under the category of outdoor catering in terms of Sr.7(v) of Notification no. 11/2017 - Central Tax (Rate) dated 28.06.2017.

15. Civil Aviation Ministry to urge Finance Ministry to bring ATF under GST

- To contain the rise in jet fuel prices and its cascading impact on air ticket prices, a proposal will be made to the Ministry of Finance to bring air turbine fuel (ATF) under the ambit of GST to contain the rise in jet fuel cost due to high global crude oil prices- Civil Aviation Secretary

16. Crypto currency might get classified as intangible goods with 18% GST

- Indian government is considering levying 18% GST on crypto currency trading that would put virtual currencies under intangible goods category

- This proposal might get applied retroactively from July 1, 2017, when GST came into action

17. GST to be levied on goods stored in customs warehouse only on final clearance: CBIC

- The Central Board of Indirect Taxes and Customs (CBIC) has asked its field offices to levy GST on goods in customs warehouse only at the time of final clearance

- The CBIC said that the Customs Tariff Act has been amended with effect from March 31, 2018, to state that the valuation for the purpose of levy of Integrated GST (IGST) on warehoused imported goods at the time of clearance for home consumption would be either the transaction value or valuation done at the time of filing the 'into-bond' bill of entry, whichever is higher

18. No GST on support services to farmers: Finance Ministry

- The finance ministry clarified that renting or leasing of land by farmers for agriculture, forestry, fishing or animal husbandry is exempt from the GST

- Clarifying on the applicability of GST on farmers, the ministry said support services to agriculture, forestry, fishing or animal husbandry are exempt from GST

- Exempted support services to agriculture include renting or leasing of vacant land with or without a structure incidental to its use

*IN-BOND SALES – DOUBLE TAXATION CONTINUES TO HAUNT…."

Article titled "Customs Frontiers and the charge of IGST", published in March' 2018 edition of the ICSI-GST Newsletter, discussed the nuances of High Sea Sales and In-Bond Sales, particularly in GST regime. It talked about the levy of IGST on the sale of warehoused goods as clarified by the Circular No. 46/2017-Customs dated 24.11.2017. Regardless of the legality or illegality of such levy, we had also seen the emerging risk of double taxation in such transactions. At the time of writing such article, the Government had already taken first step towards resolving the said issue by proposing insertion of Sub-Section 8A in Section 3 of the Customs Tariff Act, 1975. The author had, however, appealed to the Government to complete the course correction by withdrawing the Circular No. 46/2017-Customs dated 24.11.2017and that too w.e.f. 1.7.2017.

It is appreciable that the Government has understood the issue and acted swiftly by issuing Circular No. 3/1/2018-IGST dated 25.5.2018 wherein it is clarified that the supply of goods before their clearance from the warehouse would not be subject to the levy of integrated tax and the same would be levied and collected only when the warehoused goods are cleared for home consumption from the customs bonded warehouse. Thus, with this clarification, In-Bond Sales have been given the same treatment as given to High Sea Sales and both such transactions have been considered as occurring prior to the goods entering customs frontiers of India and levy thereon has been deferred until the Bill of Entry is filed for clearance thereof for home consumption.

However, the battle is still unfinished as the aforesaid circular dated 25.5.2018 has been made applicable from 1.4.2018 onwards [leaving the period 1.7.2017 to 31.3.2018 in limbo]. Though, we shall debate the legality of prospective issuance of circular w.e.f. 1.4.2018, it is believed that the Government appears to have aligned the said clarification with the insertion of sub-section 8A in section 3 of the Customs Tariff Act, 1975 w.e.f. 1.4.2018 which provides that the valuation for the purpose of levy of integrated tax on warehoused imported goods at the time of clearance for home consumption would be either transaction value or the value done at the time of filing the into-bond bill of entry, whichever is higher.

In short, Section 3(8A) of Customs Tariff Act will ensure that the Government do

**Contributed by Mr. Gurinder Pal Singh, Head Indirect Taxes, L&T Power and Member, ICSI-GST Core Advisory Group* not lose revenue especially where the warehoused goods are sold at price higher than the price which is declared at the time of filing "into-bond" bill of entry. Since, section 3(8A) of the Customs Tariff Act was introduced w.e.f. 1.4.2018, as a revenue protection measure, there was every logical reason for the Government to clarify the non-levy of IGST on warehoused goods prospectively from 1.4.2018 only.

At the same time, the author believes that the revenue protection philosophy cannot travel beyond the existing legal provisions. In the following paragraphs, we would find out how the prospective application of Circular dated 25.5.2018 will not eventually sustain legally as well as constitutionally. We will also test the revenue neutrality stance of the Government and show how the ghost of double taxation will continue to hurt the trade for the transactions effected during 1.7.2017 to 31.3.2018.

Legal provisions prevail over the Departmental Circular

Interestingly, the Circular dated 25.5.2018 has based its reasoning on proviso to Section 5(1) of the IGST Act, 2017 which provides that the tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 at the point when duties of customs are levied on the goods under section 12 of the Customs Act, 1962. It is strongly believed that there was no legal sanctity to commence the operation of said circular from 1.4.2018 onwards only as the guiding provisions contained in the IGST Act, 2017, more particularly the Proviso to Section 5(1) of the said Act, remained unchanged right from 1.7.2017 till today. Needless to say that the purpose of a Departmental Circular is only to clarify the position of law. Once the underlying legal provisions remain same in two sets of periods, the circular cannot midway change the interpretation and clarifies the opposite legal position. As also held by the Hon'ble Supreme Court in the matter of Ratan Melting & Wire Industries reported in 2008 (231) E.L.T. 22(S.C.) a circular contrary to the statutory provisions has really no existence in law. Thus, the author understands that legal position as per the proviso to Section 5(1) of the IGST Act, 2017 shall as much hold the ground for the period 1.7.2017 to 31.3.2018 as it is holding for the period 1.4.2018 onwards. The levy on warehoused goods, therefore, will not sustain for the period 1.7.2017 to 31.3.2018 even the clarification from the Government is wanting.

Double Taxation continues for the period 1.7.2017 to 31.3.2018

Originally, the present issue was raised by the trade primarily due to the possibility of double taxation arising in the subject category of transactions i.e. sale of warehoused goods. While, the position 1.4.2018 onwards has been sufficiently resolved with the clarification issued vide Circular dated 25.5.2018, the ghost of double taxation is still haunting the trade for the period 1.7.2017 to 31.3.2018. Someone may make a statement that the subject transaction would be a revenue neutral situation, it is, however, not the case where the recipient of warehoused goods is not entitled to input tax credit. Let us take an example where the goods lying in a warehouse are sold to a customer engaged in the business of electricity generation. Since, electricity is not within the scope of GST, the said customer shall not be eligible for any Input Tax Credit on the tax charged on such supply of warehoused goods. Contrary to the general belief that Input Tax Credit is available to the recipient on supply of warehoused goods and therefore double taxation would not impact the costing of the goods sold, the position is altogether different where the recipient is in the business where input tax credit is not eligible. The above situation is demonstrated by way of an illustration given below:

Step 1

Goods imported by “X” on 2nd July 2017. “X” deposited the goods in a bonded warehouse to defer duty.

“X” being an importer files an “into bond bill of entry” and the goods are deposited in a Bonded Warehouse. BCD and IGST [(Section 3(7) of Customs Tariff Act 1975)] are deferred

Illustration of duty deferment:

A: Value of goods = Rs. 100
B: say BCD is 10% = Rs. 10 (10% of Rs. 100)
C: say IGST is 18% = Rs. 19.80 (18% of Rs. 110)
D: Duty Deferred (B+C) = 29.90

Step 2

“X’ sells the goods to “Power Producer” on 21st July 2017 for Rs. 120 and charges IGST of Rs. 21.6 @18% (IGST)

The credit of IGST paid by “X” cannot be availed by the Power Producer as the latter is not engaged in the supply of taxable goods and / or services in terms of GST law.

Step 3

“Power Producer” files an Ex-bond Bill of entry on 25th of September 2017 and pays Rs. 29.90 (the deferred duty) which includes IGST of Rs. 19.80.
The credit of IGST paid while filing ex-bond bill of entry cannot be availed by the Power Producer as the latter is not engaged in the supply of taxable goods and / or services in terms of GST law.
Total IGST Paid: **Rs. 41.4** [19.80+21.60]
Total credit available: **NIL**
It results in a tax rate of 41.4% and that too non-creditable.

It is clear from the above that the supply of warehoused goods for the period 1.7.2017 to 31.3.2018 is suffering double taxation particularly where the recipient is not entitled to input tax credit.

Here, it emphasized that in pre-GST regime, the sale of goods in the course of import were totally exempted from the levy of tax in terms of Section 5(2) of the CST Act and in GST regime the recipients of such supply are suffering tax as high as 41.4%.

The author appeals to the Government to deal with the present impasse by making the clarification, issued vide Circular No. 3/1/2018-IGST dated 25.5.2018, applicable w.e.f. 1.7.2017 and allow refund of tax already paid on the supply of warehoused goods made during the period 1.7.2017 to 31.3.2018 particularly in those cases where the recipient of supply was not entitled to avail input tax credit. This small measure will not only be legal and proper but also absolve the assesses from unending litigation which may ensue over the demand of tax or rejection of refunds on warehoused goods sold during the period 1.7.2017 to 31.3.2018.

GST IMPORTANT JUDGEMENTS UPDATES

1. **Case Name: M/S Modern Traders Vs. State of U P And 2 others (Allahabad High Court)**

   (HC quashes order detaining goods for non-accompaniment of e-way bill)

   The High Court held that as e-way bill was produced on the same day of the interception of goods along with documents indicating payment of IGST but before seizure order is passed, no justification for passing orders of seizure of goods/vehicle and tax demand/penalty –order quashed, Respondent directed to immediately release goods/vehicle.

2. **Case Name: M/s Kairali Granites Vs. Assistant State Tax Officer (Kerala High Court)**

   (Good detained cannot be released unless security equal to Tax amount demanded is furnished)

   A consignment of marble, granite slabs & tiles was detained - Later, detention notice was issued to the assessee u/s 129(3) of the CGST Act, 2017 - The assessee claimed that the defect was purely technical - That the vehicle details were not updated in the e-way bills - The assessee claimed that such defect did not warrant detention of goods, particularly without there being any evasion of tax.

The HC held that Goods detained under a detention notice issued under CGST or SGST, cannot be released without furnishing security equivalent to the duty demand raised - Hence assessee directed to deposit bank guarantee, upon payment of which, the goods & vehicle would be released - Department to then adjudicate upon imposition of penalty.

3. Case Name: State Tax Officer (INT) Vs Kerala Gujarat Cargo Express (Kerala High Court)

(Goods and vehicle detained to be released only in accordance with Rule 140)

GST – Alleged evasion of SGST and CGST - Single Judge ordered release of the vehicle and goods by executing a simple bond - State has challenged the order contending that it is passed overlooking Rule 140 of the SGST Rules. The HC (Division Bench) held that on a reading of Rule 140, it is of the view -In the absence of any challenge against the rules, the goods and vehicle can be released only in accordance with Rule 140 - Therefore, interim order modified directing to release the goods and vehicle either on furnishing the bank guarantee or depositing the amount demanded.

4. Case Name: Maneesh Singh Vs State Of UP (Allahabad Higth Court)

(Municipal Corporation does not have the authority to levy advertisement tax)

The petitioner was served a notice from the municipal corporation concerned, raising duty demand for advertisement tax - Hence the present writ.

The High Court Held - Considering the provisions of Section 173 of the UPGST Act, 2017, the provisions of Section 172(2), 192 & 193 of the UP Municipal Corporation Act, 1959 have been omitted - In such case, the municipal corporation concerned has no authority to levy advertisement tax - The activity in question will only attract levy of GST - Hence the SCN issued is bad in law & merits being quashed.

5. Case Name: In re GKB Lens Pvt Ltd

(Valuation of supply between distinct or related persons/ Rule 28- West Bengal AAR)

Facts: Applicant is a Re-seller and Importer of Sun Glasses, Frames, Lenses, Contact Lenses, etc. having Head Office in West Bengal. Goods, namely, Optical Lenses and Frames for Spectacles and Accessories, are transferred from the Head Office in West Bengal to its branches in other states - Advance Ruling has been sought on whether such goods supplied to the branches in states other than West Bengal can be valued in terms of the Cost Price under the Second Proviso to Rule 28 of CGST Rules, 2017, instead of 90% of MRP as required under the First Proviso of the same Rule.

Held: Applicant has the option of not supplying goods to its branches under the first Proviso of Rule 28 and is eligible to value these goods by applying the terms of the second Proviso to Rule 28 of CGST Rules.

The expression "where the recipient is eligible for full input tax credit", as used in the Second Proviso to Rule 28 of CGST Rules, 2017, means that the recipient will be eligible to take full input tax credit of the amount of tax paid by the supplier as mentioned in the respective invoice or any other document valid under Section 16(2)(a) of CGST Act.

6. Case Name: In re Photo Products Company Pvt Ltd

(12% GST Payable on printing of photographs from media- Kolkata AAR)

Facts: Applicant is printing, content supplied by the customers, on photographic paper - Advance Ruling is sought regarding the nature and classification of the activity – whether it is supply of goods or service and whether the activity carried out by the Applicant is taxable under HSN 4911 or SAC 9989.

Held: Activity carried out by Applicant of "printing of photographs from media" is classifiable under SAC 9989; is taxable at CGST @ 6% under Serial No. 27 (i) of Notification No. 11/2017 – Central Tax (Rate) dated 28/06/2017 & equivalent SGST@6%.

GST QUIZ

Q1.	Mr A from Jodhpur ordered a machine to be installed in his plant. The supplier, from Delhi successfully installed at his factory at Jodhpur. Which is the Place of Supply in this situation?	A. Delhi B. Jodhpur C. Outside India D. None of these
Q2.	Which is the place of Supply when Howrah– New Delhi Rajdhani Express supplies food taken on board in Uttar Pradesh?	A. Kolkata B. Uttar Pradesh C. New Delhi D. West Bengal
Q3.	Anand registered and resident in Trivandrum moves to New Delhi. What would be the place of supply for packing and relocation and shipping of household effects?	A. Trivandrum B. New Delhi C. Place of business of movers & packers D. None of the above
Q4.	Mr. T got a voucher from Departmental Store for INR 3,000 and gifted it to Ms. N on 1st January 2018. The voucher was valid until 31st March 2018. Ms. N redeemed the voucher on 25th February 2018 In this case time of supply will be:	A. 1st January 2018 B. 25th February2018 D. 31st January 2018 C. 31st March 2018

Ans – Q1- B , Q2- B,Q3- A, Q4- B

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GST (GOODS AND SERVICES TAX)

Appeals and Review Mechanism

Introduction

Tax laws (or any laws, for that matter) impose obligations. Such obligations are broadly of two kinds: tax-related and procedure-related. The taxpayer's compliance with these obligations is verified by the tax officer (by various instruments such as scrutiny, audit, anti-evasion, etc.), as a result of which sometimes there are situations of actual or perceived non-compliance. If the difference in views persists, it results into a dispute, which is then required to be resolved.

Tax law recognizes that on any given set of facts and laws, there can be different opinions or viewpoints. Hence, it is likely that the taxpayer may not agree with the "adjudication order" so passed by the tax officer. It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases. It is for this reason that the statute provides further channels of appeal, to both sides.

However, since the right to appeal is a statutory right, the statute also places reasonable fetters on the exercise of that right. The time limits prescribed by the statute for filing of appeals and the requirement of pre-deposit of a certain sum before the appeal can be heard by the competent authority are examples of such fetters on the statutory right.

GST being implemented in our country is a dual GST i.e. to say every supply attracting the levy will be leviable to both central tax and state tax. So does this mean that if a taxpayer is aggrieved by any such transaction, he will have to approach both the authorities for exercising his right of appeal? The answer is a plain NO. The Act makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction. The Act also provides that where a proper officer under one Act(say CGST) has passed an order, any appeal/review/revision/rectification against the said order will lie only with the proper officers of that Act only (CGST Act)So also if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only.

Appellate Mechanism

A person who is aggrieved by a decision or order passed against him by an adjudicating authority, can file an appeal to the Appellate Authority (AA, for short). It is important to note that it is only the aggrieved person who can file the appeal. Also, the appeal must be against a decision or order passed under the Act. It is to be noted that no appeals whatsoever can be filed against the following orders:-

(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;

(b) an order pertaining to the seizure or retention of books of account, register and other documents; or

(c) an order sanctioning prosecution under the Act; or
(d) an order passed under section 80 (payment of tax in instalments).

The time limit for the party to file an appeal before the AA is 3 months from the date of communication of the impugned order. But the AA may condone a delay of up to one month, if he is satisfied that there was sufficient cause for such delay.

The AA has to follow the principles of natural justice – such as hearing the appellant, allowing reasonable adjournments (not more than 3), permitting additional grounds (if found reasonable), etc. The AA can also make such further inquiry as may be necessary.

On conclusion of the appeal process, the AA will pass his order (Order-in-Appeal) which may confirm, modify or annul the decision or order appealed against but shall not refer the case back to the authority that passed the said decision or order. The AA can also increase the "rigour" of the order appealed against by enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit, but this can only be done after the AA has given to the appellant a reasonable opportunity of showing cause against the proposed order. Further, if the AA is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or Section 74 of the CGST Act, 2017.

The Order-in-appeal has to be a "speaking order" i.e. it should state the points for determination, the decision thereon and the reasons for the decision. The law provides an advisory time limit of 1 year from date of filing of appeal for the AA to decide the appeal.

Appeals before Tribunal

The Tribunal is the second level of appeal, where appeals can be filed against the orders-in-appeal passed by the AA or order in revision passed by revisional authority, by any person aggrieved by such an order-in-appeal/Order in revision.

The law envisages constitution of a two tier Tribunal i.e. National Bench/Regional Benches and the State Bench/Area Benches. Jurisdiction of the two constituents of the GST Tribunal is also defined. If place of supply is one of the issues in dispute, then the National Bench/Regional benches of

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Appeals and Review Mechanism

the Tribunal will have jurisdiction to hear the appeal. If the dispute relates to issues other than the place of supply, then the State/Area Benches will have the jurisdiction to hear the appeal. An appeal from the decision of the National Bench will lie directly to the Supreme Court and an appeal from the decision of the State Bench will lie to the jurisdictional High Court on substantial questions of law.

Appeal to the Tribunal by the aggrieved person is to be filed within 3 months from the communication of the order under appeal. Further, Tribunal has the power to condone delay (of up to 3 months in case of appeals or 45 days in case of cross objections, beyond the mandatory period) on being satisfied that there is sufficient cause for the delay. The Tribunal has the discretion not to admit any appeal involving an amount of Rs. Fifty Thousand or less.

The law also provides for filing of cross-objections by the respondent against such part of the order against which the respondent may initially not have chosen to file an appeal. It is provided that on receipt of notice that an appeal has been filed (by the appellant), the party against whom the appeal has been preferred (i.e. the respondent) may, notwithstanding that he may not have appealed against such order or any part thereof, file within 45 days a memorandum of cross-objections against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified for the initial appeal. Condonation of delay (on sufficient cause) applies here also, but only to the extent of further 45 days from the date of expiry of the period for filing cross objections. The form, fees, etc. for the appeals to Tribunal shall be as prescribed by Rules.

The Tribunal after hearing both sides may pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the AA or to the revisional authority, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary. For reasons of natural justice (reasonable opportunity) it is also provided that the Tribunal may, if sufficient cause is shown, grant up to 3 adjournments to either side.

Concept of pre-deposit

As mentioned earlier, the right to appeal is a statutory right which operates within the limitations placed on it by the law. One such limitation flows from the principle that an appellant must first deposit the adjudged dues before his further appeal can be heard. However, often an appellant may succeed in his appeal, and hence it would (in retrospect) be unfair to saddle him with this financial burden. To balance these factors, tax laws mandate some "pre-deposit" so as to discourage frivolous appeals and also safeguard the bonafide interests of both the taxpayers and the revenue.

The CGST Act, 2017 require an appellant before AA to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order.

In so far as appeals to the Tribunal is concerned, no appeal can be filed before the Tribunal unless the appellant has deposited in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, in relation to which appeal has been filed.

If the pre-deposit made by the appellant before the AA or Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest at the rate specified in Section 56 shall be payable from the date of payment of the amount (and not from the date of order of AA or of the Tribunal) till the date of refund of such amount.

Appeals by the Department (CGST/SGST) before the AA/ Tribunal

At times, the Department itself is not in agreement with the decision or order passed by the (initial) adjudicating authority or the appellate authority. The GST Law provides that in such cases, the Department can file what is commonly known as a "review application/appeal".

The GST Law gives powers to the Commissioner to review any order passed by his subordinates acting either as an adjudicating authority, or the appellate authority or revisional authority. If the Commissioner is of the view that any order passed by such authorities are not legal and proper, he can direct any officer subordinate to him to apply to the competent authority. For example, if the order of adjudicating authority is reviewed, he can order his subordinate to file an appeal before the appellate authority. If the order of the appellate authority or the revisional authority is reviewed, he can direct his subordinate to file an appeal before the Tribunal. The grounds for appeal will be mentioned in his order. The review of the order and the consequent filing of appeal by the subordinate has to be done within a period of six months from the date of communication of the order. The resultant review application is required to be dealt with by the AA or the Tribunal as if it were an appeal made against the decision or order of the adjudicating authority and the statutory provisions relating to appeals shall, so far as may be, apply to such application.

Revision by Commissioner (CGST/SGST)

The GST Act also provides for the mechanism of revision, by the Revisional Authority, of the orders passed by his subordinate officers. If the Revisional Authority on examination of the case records is of the view that the decision or order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue, and is illegal or improper or has not taken into account material facts, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

The above power is subject to the condition that non-appealable orders and decision cannot be revised. Further the power of revision cannot be exercised if: -

(a) the order has been subject to an appeal before AA or Tribunal or High Court or Supreme Court; or
(b) the period of six months (from the date of communication of order) has

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GST (GOODS AND SERVICES TAX)
Appeals and Review Mechanism

not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or
(c) the order has already been taken for revision at an earlier stage; or
(d) the order sought to be revised is a revisional order in the first place:
If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation of 3 years where proceedings for revision have been initiated by way of issue of a notice under section 108 of the CGST Act, 2017.

However, the Revisional Authority may pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/HC/SC, before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years from the date of initial order, whichever is later.

Concept of authorised representative

Any person who is entitled or required to appear before a GST Officer or the AA or the Tribunal in connection with any proceedings under the Act, may appear through an authorised representative (except when he is required under the Act to appear personally for examination on oath or affirmation). For this purpose, "authorised representative" has been defined in the Act itself. Broadly, it includes a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or any person with prescribed qualifications. It is also provided that indirect tax gazetted officers can appear as authorised representative after one year from retirement.

The GST law also provides for some disqualifications for an authorised representative such as dismissal from government service, conviction under some specified Acts, insolvency, misconduct, etc. Such orders of disqualification are, however, required to be passed after following the principles of natural justice.

Appeal to the High Court

The law provides that either side (department or party) if aggrieved by any order passed by the State Bench or Area Bench of the Tribunal may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law. It is to be noted that on facts, the tribunal is the final authority.

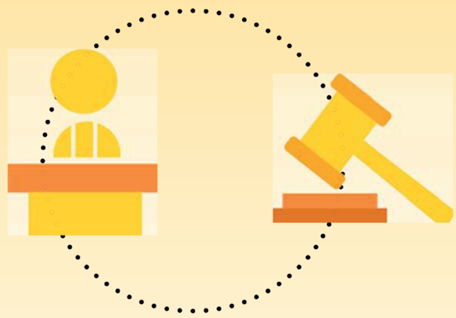
Appeals to the High Court are to be filed within 180 days, but the HC has the power to condone delay on being satisfied of sufficient cause for the same.

On being satisfied that a substantial question of law is involved, the High Court shall formulate that question, and the appeal shall be heard only on the question so formulated. However, the High Court has the power to hear the appeal on any other substantial question of law if it is satisfied that the case involves such question. The High Court shall decide the questions of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. The High Court may determine any issue which has not been determined by the Tribunal or has been wrongly determined by the Tribunal, by reason of a decision on such questions of law.

Appeal to the Supreme Court

The law provides for appeals to the Supreme Court from any judgment or order passed by the High Court, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

A (direct) appeal shall also lie to the Supreme Court from any orders passed by the National/Regional Bench of the Tribunal. It may be noted that the National/Regional Bench of the Tribunal has jurisdiction to entertain appeal if the dispute or one of the issues in dispute involves place of supply.



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GST (GOODS AND SERVICES TAX)

RECOVERY OF TAX

1. Tax administration occasionally comes across situations where the tax dues are not paid correctly by the tax payers, most of the times inadvertently and sometimes deliberately. To minimise the inadvertent short payment of taxes, the concept of 'Matching' details of 'Outward supplies' of supplier with the details of 'Inward supplies' of recipient has been introduced in the GST Act. Moreover, the self-assessed tax has to be paid by the due date prescribed under the GST Act and in case of any failure to pay the same by the due date, the Input Tax Credit will not be available to customers and also the tax payer will not be able to file any return for further period. Effectually these provisions work as a self-policing system and take care of any mis-match in the payment of taxes. However, despite these provisions, there may arise some instances where the tax was not paid correctly. To deal with such situations, the provisions for recovery are incorporated in any tax law. Accordingly, the GST Act contains elaborate provisions for the recovery of tax under various situations, which can be broadly classified into the following two categories:

   (i) Tax short paid or erroneously refunded or Input Tax Credit wrongly availed; and

   (ii) Non-payment of self-assessed tax or amount collected as representing the Tax.

Directorate General of Taxpayer Services

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GST (GOODS AND SERVICES TAX)

RECOVERY OF TAX

2. The incidence of short payment of tax or erroneous refund or wrong availment of Input Tax Credit may be because of an inadvertent bonafide mistake (Normal Cases) or it may be a deliberate attempt (Fraud Cases) to evade the tax. Since the nature of offence is totally different in both the incidences, hence, separate provisions for recovery of the tax and the amount of penalty have been made to deal with such type of cases. Besides these, there are provisions to encourage voluntary compliance such as no penalty or lesser penalty if the tax dues along with interest, are paid within the specified time limit/ incidence. The table below gives a comprehensive chart of provisions for voluntary compliance:

S. No.	Action by Tax Payer	Amount of Penalty payable — Normal Cases	Amount of Penalty payable — Fraud Cases	Remarks
1.	Tax amount, along with the interest, paid before issuance of Notice	No Penalty and no Notice shall be issued	15% of the Tax amount and no Notice shall be issued	The penalty shall also be not chargeable in cases where the self assessed tax or any amount collected as tax is paid (with interest) within 30 days from the due date of payment
2.	Tax amount, along with the interest, paid within 30 days of issuance of Notice	No Penalty. All proceedings deemed to be concluded	25% of the Tax amount. All proceedings deemed to be concluded	
3.	Tax amount, along with the interest, paid within 30 days of communication of Order	10% of the Tax amount or Rs. 10,000/-, whichever is higher	50% of the Tax amount. All proceedings deemed to be concluded	
4.	Tax amount, along with the interest, paid after 30 days of communication of Order	10% of the Tax amount or Rs. 10,000/-, whichever is higher	100% of the Tax amount	

3. As can be seen from the foregoing para that for all types of incidences of short payment or erroneous refund or wrong availment of Input Tax Credit, there are incentives for the person who accepts tax liability and readily discharges the same. The law provides an opportunity for the payment of tax, interest and a nil or nominal penalty (depending on the nature of offence) before the issuance of Notice and emphatically stipulates that in all such cases no Notice shall be issued and consequently there shall be no other consequences for any default. However, this is not the end of the road and there is another chance to discharge tax and interest liability with nil or nominal penalty (depending on the nature of offence) within 30 days of issuance of the Notice and the law provides that all proceedings in respect of the said Notice shall be deemed to be concluded. If it becomes inevitable to issue a show cause notice and thereafter pass an Order, the GST Act ensures timely completion of all these procedures by providing a fixed timeline for issuance of notice and order-as follows:

S. No.	Nature of Case	Time for issuance of Notice	Time for issuance of Order
1.	Normal Cases	Within 2 years and 9 months from the due date of filing Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 3 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
2.	Fraud Cases	Within 4 years and 6 months from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund	Within 5 years from the due date of filing of Annual Return for the Financial Year to which the demand pertains or from the date of erroneous refund
3.	Any amount collected as tax but not paid	No time limit	Within one year from the date of issue of notice

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RECOVERY OF TAX

S. No.	Nature of Case	Time for issuance of Notice	Time for issuance of Order
4.	Non-payment of self-assessed tax	No need to issue a show cause notice. Recovery proceedings can be started directly.	Penalty, @ 10% of the Tax amount or Rs. 10,000/-, whichever is higher, shall also be payable if the period of non-payment exceeds 30 days from the due date of payment of tax

The GST Act also ensures timely disposal of cases by further providing that if the Order is not issued within the stipulated time limit of three years or five years, as the case may be, the adjudication proceedings shall be deemed to be concluded. From all these provisions it is clear that the non-payment of self-assessed tax or the amount collected as representing the tax has been treated differently than the other short payments and in case of these two, the only opportunity for paying the same without incurring any penalty is, if it is paid, with interest, within 30 days from the due date of payment.

4. All these provisions makes it clear that there are sufficient opportunities to amend and discharge the tax liability with nil or nominal penalties. However, there are disincentives also for the person who fails to utilise these beneficial provisions. Besides that, the law also provides that the Board may fix certain monetary limits for not filing an Appeal against any order. It means, if any order is passed in favour of the assesse, the department will not pursue the case further by filing appeals if the amount involved is less than the specified limit. At present, under the existing laws, the monetary limits for not filing an appeal to various judicial forums are follows:

   i. Tribunal- Rs. 10 Lakhs

   ii. High Courts- Rs. 15 Lakhs and

   iii. Supreme Court- Rs. 25 Lakhs

5. The recovery proceedings are final steps towards the realisation of any tax or amount, which has been confirmed as payable after following the due process of adjudication by the proper officer. Therefore, if the tax dues and other amounts remain unpaid, despite these beneficial provisions, and the tax payer fails to pay the dues after the orders are passed and the statutory limit of 3 months is over, then the proper officer may initiate recovery proceedings. These recovery provisions under the CGST Act, 2017 lay down a well defined procedure which is as follows:

   i. Any amount payable, in pursuance to any order passed in this matter, is required to be paid within 3 months from the date of receipt of order and the tax payer should pay the same within this time limit. However, it may be mentioned that in certain cases, considering the interest of revenue, this period of 3 months may be reduced.

   ii. If the payable amount is not paid within the specified time limit of 3 months then recovery proceedings shall be initiated and various actions may be taken by the recovery officer, for realisation of Government dues. The options for recovery of Government dues include deduction of money from any amount payable to such tax payer, by detaining and selling any goods, by directing any other person from whom the money is due to such person, attaching any property belonging to the defaulter etc.

   iii. However, considering various business aspects, the provisions for payment of all such amounts, other than self-assessed tax, in instalments have also been made in the Act. A person can avail this benefit of payment in instalments, by making an application to the Commissioner by specifying reasons for such request. On receipt of application, the Commissioner may allow the payment of amount in instalments, subject to maximum 24 monthly instalments and on payment of applicable interest. Here it may be noted that if there is default in payment of any one instalment then the whole outstanding balance shall become due and payable immediately.

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GST First Anniversary

As the new tax regime completes one year, ICSI feels immense pleasure for becoming part of biggest tax reforms of the country. The concept of subsuming multiple taxes into one tax has eliminated cascading effect or double taxation and has created a common national market. With the availability of seamless input tax credit, the prices of goods and services have been decrease.

In the last one year Indian economy has witnessed continuous growth, tax base has significantly improved, compliance cost decreased significantly and with the introduction of e-way bill the movement of goods has been eased with abolition of multiple check points.

ICSI as a partner in nation building committed towards the effective implementation of GST, with this motive and to spread awareness of GST among members and students of Institute and other stakeholders, ICSI has started various initiatives, some of them are listed below:

Guinness World Record: Largest Taxation Lesson on "Tax Regime in India & Convergence of Indirect Taxes into GST- One Nation One Tax" on January 16, 2018 at Jaipur.

GST Newsletter: Monthly newsletter dedicated to the GST, 14 Editions have been released.

GST Educational Series: Daily GST Educational Series which are being very well received by all the stakeholders as well as public at large. Till date ICSI has brought out 268 issues of GST Educational Series.

Inclusion of GST in Syllabus: Incorporated GST in the syllabus of Executive and Professional level programme.

GST Point: GST Point is a call in session to resolve the queries of stakeholders and challenges being faced by them in day to day compliances. Till date ICSI has organized 91 sessions of GST Point.

GST Programmes: Various programmes, workshops and seminars on GST are being undertaken regularly at Regional Council and Chapter Office(s). GST Accounts Assistant Course:A certificate course for all students in association with NSDC.

GST Accounts Assistant Course:A certificate course for all students in association with NSDC.

I congratulate our members, students and other stakeholders for successfully completing one year of GST implementation, and I hope the new tax regime will continue to be a success in the development of Indian economy.

CS Makarand Lele
President, ICSI

Note :

Motto

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speak the truth. abide by the law. ❞

Vision

❝ To be a global leader in promoting good corporate governance ❞

Mission

❝ To develop high calibre professionals facilitating good corporate governance ❞

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