

सीए. निलेश एस. विकमसी  
अध्यक्ष  
CA. Nilesh S. Vikamsey  
President



दी इन्स्टीट्यूट ऑफ चार्टर्ड  
एकाउन्टेन्ट्स ऑफ इन्डिया  
(संसदीय अधिनियम द्वारा स्थापित)  
THE INSTITUTE OF CHARTERED  
ACCOUNTANTS OF INDIA  
(Set up by an Act of Parliament)

ICAI/IDTC/2017-18/Cir/40

8<sup>th</sup> November, 2017

**Shri Arun Jaitley**  
Hon'ble Finance Minister  
Ministry of Finance,  
Government of India,  
North Block,  
New Delhi - 110001

Respected Sir,

**Sub: Suggestions for enabling GST implementation**

We thank you for considering many of the suggestions on issues in implementation of GST submitted by the ICAI in August, 2017.

We are enclosing herewith further policy, law and procedural issues on GST identified by members across India who are involved in its implementation and suggestion thereon. We hope that these suggestions would also be favorably considered.

We shall be glad to provide any further input as may be required and CA. Madhukar N Hiregange, Chairman and CA. Sushil Goyal, Vice-Chairman, Indirect Taxes Committee at [idtcc@icai.in](mailto:idtcc@icai.in) or 0120-3045954 will be in touch with you in case of any clarification.

With best regards

Yours faithfully,

CA. Nilesh S Vikamsey

Encl.: As above.

# Suggestions on GST Law(s) & Rule(s)

*(November 8, 2017)*



*Indirect Taxes Committee*

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA  
NEW DELHI**

## INTRODUCTION

1. The Institute of Chartered Accountants of India considers it a privilege to submit its suggestions on GST Implementation Issues. We have segregated the 217 suggestions in 3 parts:

- Policy related issues
- Law Related Issues
- Procedural Issues

We shall be pleased to discuss suggestion in meeting to illustrate the points made by us.

2. We look forward to contributing in the drafting of simple, transparent, & fair GST laws in India.
3. In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same. The contact details are:

Name and Designation	Contact Details	
	Ph. No.	Email Id
CA . Madhukar N Hiregange Chairman, Indirect Taxes Committee	9845011210	<a href="mailto:madhukar@hiregange.com">madhukar@hiregange.com</a>
CA . Sushil Kumar Goyal Vice-Chairman, Indirect Taxes Committee	9830088400	<a href="mailto:skgoyal@icai.org">skgoyal@icai.org</a>
CA . Atul Kumar Gupta Central Council Member, IC A I	9810103611	<a href="mailto:atulservicetax@gmail.com">atulservicetax@gmail.com</a>
CA . Sharad Singhal, Secretary, Indirect Taxes Committee	09310542608 0120-3045954	<a href="mailto:idtc@icai.in">idtc@icai.in</a> ; <a href="mailto:s.singhal@icai.in">s.singhal@icai.in</a>

For any further information, please visit the website of Indirect Taxes Committee:  
[www.idtc.icai.org](http://www.idtc.icai.org).

# EXECUTIVE SUMMARY

## POLICY ISSUE

S. No.	Topic(s)	Suggestion(s)
1.	Consolidated list of Goods	It is suggested that a single consolidated list of products may be prepared for classification purpose by merging various schedules. Consolidated list may be adopted so that classification criteria follow settled law of basic to advance as far as possible and thus categorizing the products under one chapter with one rate.
2.	Rate of taxes	It is suggested that the number of rates of tax may be brought down- viz., Exempt rate (nil rate), Lower rate, Standard rate and demerit rate. Also, the rate of tax on services be capped at a single rate of 18% as present under Service tax regime.
3.	Reduction of GST Rate on Construction machinery	It is suggested to reduce GST Rate on Construction machinery covered by Chapter "8429" and "8430" from 28% to 18% as most of the capital goods are eligible to GST at 18% and are to be comparable with the tax rates under the pre-GST regime.
4.	Change in GST Rate on Railway/ Metro fare	<ul style="list-style-type: none"><li>➤ It is suggested that instead of exempting railway/ metro fare, make it zero rated or 5% to enable availment of input tax credit.</li><li>➤ It is also suggested not to restrict refund of input tax credit on expenses. (e.g. Operations and Maintenance)</li></ul>
5.	Compensation Cess on Coal	<ul style="list-style-type: none"><li>➤ It is suggested to levy Compensation Cess on Coal only at the first point when the raw coal and lignite and peat are raised and dispatch from the mine and it is also suggested that any further moment thereon be exempted.</li><li>➤ Further, transitional credit be provided of clean energy cess paid in erstwhile regime.</li></ul>
6.	GST on Petroleum products	It is suggested that a suitable notification be provided as early as possible to levy GST on petroleum products. As it will bring an important chain into the economic activity as well as into the GST fold.
7.	No GST on payment of advance receipts for all assessee	It is suggested that the liability to pay GST on advances be deferred for a period of 2 years for all assessee and it may arise only at the time of issue of invoices.
8.	Deferment of E-Way bill	It is suggested that the concern of the industry be



*The Institute of Chartered Accountants of India*  
*Suggestions on GST Implementation Issues- November 2017*

		addressed by putting the E-W ay bill legislation on hold if not shelved forever.
9.	No Anti-profiteering clause under GST	It is suggested that Anti-profiteering clause be scrapped, as this is not likely to result in any revenue to the Government, and would only enrich the intermediaries and the corrupt.
10.	Reduction in GST Rate required to provide level playing field to indigenous over imported goods	It is suggested that GST rate for the items falling under 84198910 i.e. Pressure Vessels, Reactors, Columns or tower or chemical storage tanks should be reduced to 18% so as to provide level playing field to Indian domestic manufacturing sector and boost to Make in India Mission.  Further, since these items are capital goods in nature, it deserves, lower GST rate of 18% like other capital goods which currently attracts GST at 18% .
11.	Deferment of Invoice wise return filing & GSTIN wise reconciliation be accepted	<ul style="list-style-type: none"> <li>➤ It is suggested that that invoice wise reconciliation be deferred for the time being, may be for a period of 1 year. In its place, GSTIN wise reconciliation be introduced.</li> <li>➤ Further, it is suggested that in place of monthly filing of GSTR 1, 2 and 3, system of quarterly filing of these forms be considered while keeping payment of GST monthly at any point of time in addition to Form 3B. This will reduce the compliance on the part of the Assessee without any loss of revenue to the Government.</li> </ul>
12.	Option for Cancellation of registration	Considering the recent amendment being made through notification no. 38/2017- Central Tax (Rate), it is suggested that option for cancellation of registration be given to the assessee.
13.	Practical Issues faced while working on GST common portal	It is suggested that: - (i) All the utilities on the GST portal be placed first and thoroughly tested before being implemented and only after that or after a period of 1 month, the trade/ industry be mandatorily required to comply with it. (ii) Matching insistence itself be deferred/ omitted till March 2018 and after that only for Rs. 10,000 of credit to be matched and amount reduced every 6 months to Rs. 1000/- . Less than that credit not to be matched.
14.	All arrangements between	It is suggested that all arrangement between employee -



*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

	employer-employee should be kept out of GST	employer be kept outside the preview of GST as Cost of monitoring and reporting of supplies by an employer to an employee and payment of taxes thereon is an administrative hassle.
15.	Place of Supply for B2B transactions	➤ It is suggested that the provisions for determining place of supply be amended to provide that the place of supply for all Business to Business transactions(B2B) is the registered place, and continue the existing provisions in the IGST Law only in respect of Business to Customer(B2C) transactions.
16.	Adjustment of tax paid due to incorrect place of supply	It is suggested that the adjustment in inter unit head be allowed by assessee by way of debit entry at the option of assessee.
17.	Lower Interest rate in case of delayed payment of tax	It is suggested that the difference in the interest rates given under Section 50 and section 56 be aligned or reduced to a minimal level.
18.	Training to the officers under GST	It is suggested that the officers be trained under this Act in respect of mindset of trust and support to the industry as against the tax terror which is prevalent even today. Those officers who would adjudicate and hear appeals are to compulsorily go through a special learning and test for understanding.
19.	Interest be not considered as supply except Banking, NBFC Company	It is suggested that exemption income be not considered as supply except banking, NBFC Company and no reversal in regards to interest income be required to made.
<b>Definition</b>		
20.	Definition of term Aggregate Turnover	<ul style="list-style-type: none"> <li>➤ It is suggested that the reference of the words “export of goods / services” be accordingly removed / omitted / deleted from the definition of Aggregate Turnover.</li> <li>➤ It is suggested that instead of words “aggregate turnover” the words “aggregate turnover of taxable supplies” be used.</li> </ul>
21.	Definition of Capital Goods	<ul style="list-style-type: none"> <li>➤ It is suggested that an exception be provided for items which are written off during the year of purchase in books of accounts to treat them as capital goods even if not capitalised in books of accounts.</li> <li>➤ Further, it is suggested that this definition may also</li> </ul>



		<p>include the goods, the value of which is amortized over a period in the books of accounts.</p> <ul style="list-style-type: none"> <li>➤ Additionally, the term “in the course or furtherance of business” be replaced with “for the purpose of business” so that no scope for restriction of credit is left. Same change may also be done for definitions of <b>“Input” &amp; “Input Services”, “Outward Supply” and also in Schedule I &amp; II.</b></li> <li>➤ The term “value” be replaced with the words ‘purchase consideration’ for better clarity.</li> </ul>
22.	Separate consideration charged for goods and services supplied in conjunction	It is suggested that suitable clarification be provided in regards to composite supply.
23.	Definition of Electronic Commerce	It is suggested that words” supply of” ‘be replaced with the words ‘facilitating the supply of .....!’.
24.	Definition of Exempt Supply - In line with Govt. Policy	<ul style="list-style-type: none"> <li>➤ It is suggested that non-taxable supplies be kept outside the ambit of ‘exempt supplies’ as well as ‘aggregate turnover’. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.</li> <li>➤ An amendment may be required in said definition that ‘Exempt supply means any supply of goods/services which are non-taxable under this act <b>other than supply for job work in accordance with Section 143 of the Act</b> and includes such supply of goods or services or both, which attract nil rate of tax or which may be exempt from tax under section 11.</li> </ul>
25.	Sale of Canned software not included as services	It is suggested that an explanation as provided in Model GST law to the definitions of Goods as well as Services be restored that goods <b><u>do not include intangible property</u></b> and <b><u>service includes intangible property</u></b> .
26.	Definition of “Inward Supply” – If removed denial of credit	<ul style="list-style-type: none"> <li>➤ It is suggested that supplies made without consideration be kept outside the purview of the definition of “Inward Supply”.</li> <li>➤ The above definition be changed to ‘Inward</li> </ul>





*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

		supply' in relation to a person with reference to whom the place of supply is determined means the corresponding supply by the supplier of the outward supply".
27.	Definition of Job Work – Repair should be part of Job Work	It is suggested that a proviso be inserted to the definition of Job Work to provide that job-work will not include repair or maintenance or other forms of supply which are carried out with respect to the goods belonging to another taxable person.
28.	Definition of “Location of the supplier of goods”	It is suggested that “Location of the supplier of goods” be defined as Location of supplier means the location where goods are situated under the control of the supplier ready for supply with a proviso to cover situation in case of bill to ship to model U /s10(1)(b) of IGST Act, 2017.
29.	Definition of the term Consideration	<ul style="list-style-type: none"> <li>➤ It is suggested that the words “made or to be made” be replaced with the words “received or to be received” so as to enable levy of GST on the full consideration received by air-travel agents who collect commission from passenger as well as from airline. And there are other industries where there is two-way flow of consideration for the same supply</li> <li>➤ Further, to remove any ambiguity the definition of consideration be rephrased as follows: “Consideration in relation to the supply of goods and/or services includes.....”.</li> </ul>
30.	Term Provision to be included in Definition of Supply	It is suggested that the term “provision” be included in the scope of supply.
31.	Removal of words “such as” as the definition of Supply is inclusive one	It is suggested to remove / delete or omit the words 'such as' as even after such deletion, supply would not become limited in any way as the definition is inclusive to take care of any extraneous situation.
32.	Taxability of Import of services	It is suggested that entry 4 of Schedule I of CGST Act be deleted.
33.	Business Goods put to Private use by an assessee	<ul style="list-style-type: none"> <li>➤ It is suggested that an option be given to assessee's to adopt some presumptive value of the use of specified assets for personal purposes based on the quantum of usage made by him.</li> <li>➤ Further, if the Government intends to levy GST on such services (personal use) then Input Tax</li> </ul>





*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

		Credit on such services also be allowed to the Taxable person.
34.	Reimbursement of expense for which invoice is issued in the name of employee	It is suggested that there be provided a suitable clarification regarding taxability of reimbursements made by an employer to the employee when the bill for a service etc. is issued in the name of that employee.
35.	Clarity on GST applicability on Securitization Transaction:	It is suggested that the definition of actionable claim be provided It is suggested that suitable clarification be provided on aforesaid issues
36.	Mandatory Registration under section 9(3) for Reverse Charge purpose need not trigger the provisions of section 9(1)	It is, therefore, suggested that relaxation be given to the Assessee who is required to register due to section 9(3) and having turnover less than 20 lacs.
37.	Permanent transfer/ disposal of business assets	It is therefore suggested to clarify the transaction related to permanent transfer/disposal of business assets.
38.	Definition of Business Assets	It is suggested that the term "Business Assets" be replaced with words "Inputs & Capital Goods" to curb the interpretational issues.
39.	Tax liability on Composite and Mixed Supply	It is suggested that definition of "Principal Supply" may be change to bring in the concept of dominant intention theory
40.	Supply of Information Technology software	It is suggested that the Point 5c and 5d of Schedule II be redrafted as: - 5c. temporary transfer or permitting the use or enjoyment of any intellectual property right <b>but does not include supply of information technology software when supplied as goods.</b> 5d. development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software <b>but does not include supply of information technology software when supplied as goods</b>



<b>Levy &amp; collection</b>		
41.	Levy and Collection- Effective Date of applicability of the notification	<p>Following proviso may be inserted to avoid practical difficulties in ascertaining the effective date of applicability of the notification</p> <p><i>“Every notification issued under sub-section (1) in respect of rates shall take effect from the next date succeeding the date of its publication in the Official Gazette, unless some other date is specified therein for this purpose”</i></p>
42.	Levy & Collection under Reverse Charge	An explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 9(3).
43.	Availability of Composition Levy	<ul style="list-style-type: none"> <li>➤ It is suggested that eligibility for composition scheme be made available uniformly to all suppliers whether supplying goods or services or both</li> <li>➤ Alternatively, Sector specific composition schemes may be designed to cater to need of different sectors.</li> <li>➤ It is suggested that in section 10(1) the words “under this Act” be added after the words “in lieu of tax payable by him” to restrict the taxes to CGST/ SGST paid under this Act.</li> <li>➤ The embargo placed on effecting inter-State supplies by the taxable person opting to pay tax under the composition scheme must be done away with. GST, being a destination based consumption tax and moving in the direction of being ‘One India – One Tax’, this embargo appears to be travelling in the opposite direction.</li> <li>➤ Penalties in respect of cancellation of registration under a composition scheme of a registered taxable person for whatever reason must be limited to recovery of differential taxes. There must not be any further penalty / interest considering that the tax payer would be a small player and will not be in a position to follow the rigours of a GST regime.</li> </ul>
44.	Type of tax liability of person liable to pay tax under reverse charge scheme	It is suggested that suitable clarification be provided in the law where in transaction changes its colour from the perspective of the supplier/recipient as it would create hardship for the recipient to get themselves registered in the States from where the supply is procured.



45.	A vailability of C omposition S cheme to various assessees	It is suggested that option of paying tax u/s 10 should also be extended to goods and services covered u/s 17(5)(b), (c) & (d) and services provided by professionals having small turnover.
46.	C omposition S cheme be extended to all	<ul style="list-style-type: none"> <li>➤ It is suggested that benefit of composition scheme be extended to those who are supplying services upto a limit of Rs.35 Lacs or making any supply of goods which are not leviable to tax under the Act.</li> <li>➤ It is suggested that Instead of three rates of tax 2.5%; 1% and .05% a single rate be provided for composition scheme i.e., 1% for C GST and 1% for S GST</li> <li>➤ All conditions for availing composition scheme be done away with except the limit of turnover in the preceding financial year.</li> <li>➤ Even the turnover prescribed for opting composition scheme be reconsidered and fix as 2 crore for first year and 1.5 from year 2</li> </ul>
47.	C omposition S cheme U/s 10 of C GST Act - subject to double taxation	<ul style="list-style-type: none"> <li>➤ It is suggested that credit available by composition assessee be passed to the recipient like under central excise law First stage dealer provisions or any other model of adhoc credit basis like 40% or 60% or any other basis as procurement by the recipient from the composition dealer affecting MSE Sector as prices of supplies made by composition dealer are high in comparison to the normal dealer.</li> <li>➤ Registration wrongly granted be rectified to composition on immediate basis.</li> </ul>
48.	Ineligibility to opt for C omposition S cheme if assessee has interstate purchased stock	It is suggested that in case where the person wishing to opt for C omposition S cheme holds such goods in stock which have been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, he be allowed to opt for C omposition S cheme upon payment of appropriate applicable tax under G ST.
49.	A pplicability of composition scheme in case of caterer and banquet hall food supply	It be clarified that whether caterer or banquet hall may claim composition scheme as it has been raised by such industries considering that Government in the press releases announce for the Restaurant only but as per law, it appears that even caterer or banquet hall may claim composition scheme.



*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

50.	Composition tax on entire turnover	It is suggested that appropriate amendment be made to provide relief to composition dealer on exempted supply or nil rated supply of goods as it is against the principal of taxability as well as creating inequality with the normal dealer.
51.	Classification & HSN code in case of services are overlapping & not aligned	Appropriate amendment be made in the said notification to remove the ambiguity. Further, clarification on SAC codes under GST to be used on professional services rendered by chartered accountants be provided.
52.	Power to grant exemption from Tax	It is suggested that a proviso be added to sub-section 3 to provide that "every such insertion / amendment / modification that has the effect of increasing the tax payable be effective from the date of such insertion".
53.	Exemption in respect of Charitable Institutions	It is suggested to extend the exemption to ancillary activities or to put a cap on such ancillary activities like 20% of total receipts.  Further, It is suggested that exemption from GST must be provided on hotel accommodation services provided by charitable institute since the intent of government is to exempt accommodation service to students.
54.	Power to grant exemption from tax.	Following Proviso may be inserted to avoid difficulties :  <i>"Every notification or order issued under sub-section (1) and (2) respectively, shall take effect from the next date succeeding the date of its publication in the Official Gazette, unless some other date is specified therein for this purpose."</i>
55.	Exemption provided from Reverse Charge in case of supply made U/s 9(4)	Clarification be provided as to what is the effective date for deferment of reverse charge as notification used the word "omission" in reference to the earlier exemption notification. It has created confusion among the trade and industries in respect of effective date of notification. It is therefore required to be clarified that the deferment be made effective from the appointed date.
56.	Composition dealers not to be given exemption under Notification No. 38/2017(CT)	It is suggested that either of the two options be availed :-  1. Notification No. 8/2017 (CT) may be amended to provide that benefit of this notification not be available to taxable person who has opted for



*The Institute of Chartered Accountants of India*  
*Suggestions on GST Implementation Issues- November 2017*

		<p>section 10.</p> <p>2. Rule 5(1) may be amended to provide that composition dealer will not take benefit of notification no. 8/2017 read with 38/2017 (C T)</p>
57.	Possible Exempt supply in case of interest or discount	It is suggested that the Notification 9/2017 dated 28.06.2017 (IGST-Rate) be suitably amended by inserting an explanation that the above entry only relates to supply made by the banking and other financial company. This will exclude those entities whose principal supply is taxable and it is only one of supply that they advanced loan to its subsidiary and consequently earning interest income.
<b>Time &amp; Value of Supply</b>		
58.	Time of supply of goods and services under RCM	It is suggested that the time limit prescribed in the case of goods as well as services, both be made 90 days in line with the current provision of service tax.
59.	Time of supply in case of continuous supply	It is suggested that reference to only section 31 may be given instead of section 31(1) in the section 12 of the CGST Act, 2017
60.	Change in Rate of tax w.r.t Supply of Services	In order to avoid possible litigation, it must be suitably clarified regarding time of supply in case of change in rate of tax w.r.t continuous supply of services/goods.
<b>Value of Supply</b>		
61.	Value of Taxable Supply	It is suggested that the words “for the purpose of this Act and notwithstanding anything contrary to any other law for the time being in force” be added before the words “value of supply.....” so as to enable section 15 application to CGST, SGST & IGST.
62.	Taxes/duties paid under IGST not to be included in value of supply	Any taxes, duties, cesses, fee and charges levied under any other statute be excluded from the transaction value so that spirit of GST may be maintained. Such charges, being simply in the nature of statutory levies, never form part of the taxable value, as no supply is rendered by airlines per se, in lieu of such charges.
63.	Manner of determination of amount liable to be paid by the supplier	It is suggested that the amount liable to be paid by supplier may have a reference to the contract or agreement between suppliers and recipient by the words ‘by reason of or in connection with’. So, supplier’s liability be restricted within the scope of the contract or agreement.
64.	Meaning of term “Vouchers”	➤ It is suggested that Section 13(4) be omitted from



	for Supply of Vouchers	<p>the law.</p> <p>➤ Further it is suggested that to avoid misinterpretation the following definition of term "Voucher" be provided:</p> <p><b>'voucher</b> means</p> <p>(a) any entitlement received from an arrangement involving a supplier who will accept the same in redemption to settle payment owed in respect of a taxable supply</p> <p>(b) any entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty or</p> <p>(c) any entitlement to participate in any future contingent event.</p> <p>Explanation 1: voucher shall not include a system of payment recognized under the Payment and Settlement Systems Act, 2007 or any other law for the time being in force.</p> <p>Explanation 2: any supply attendant to issuance of such voucher shall not be excluded"</p>
65.	Valuation in case of sale of repossessed goods	Applicability of the proviso for disposal of goods repossessed from registered persons be clarified.
66.	Supply of Goods on which ITC was not allowed at the time of purchase	Rule 32 of the CGST Rules may suitably be amended so as to provide valuation of such goods shall be only over and above the consideration on which tax has already been paid.
<b>Input Tax Credit</b>		
67.	Exempt Supplies to include reverse charge supplies for credit apportionment	<p>➤ It is suggested that supplies covered under reverse charge mechanism be kept outside the ambit of exempt supplies for the purpose of proportionate credits.</p> <p>➤ Alternatively, the supplier may be provided an option to either pay tax on forward charge basis with corresponding ITC, or not to claim ITC and instead the tax be paid by the recipient under reverse charge at a reduced rate, subject to the condition of no ITC being claimed by the supplier.</p> <p>➤ Further, refund mechanism in line of erstwhile Rule 5B of CENVAT Credit Rule be provided to such supplier providing services under 9(3).</p>



68.	Blocking of Input Tax Credit for certain set of Services	It is suggested that the facility of availing input tax credit not be blocked when goods and/or services are used or intended to be used in the course or furtherance of business in lines with the provisions of Section 17(1).
69.	Disallowance of Credit in respect of works contract services	<ul style="list-style-type: none"> <li>➤ It is suggested that clause c be rephrased as “works contract and goods or services used in a works contract except where it is an input for further supply as works contract”.</li> <li>➤ It is suggested that the provisions under Section 17 relating to the Input Tax Credit be rationalized and brought at par with the simple concept that if outward supplies of a person are taxable then the inward supplies of the goods or services or both may be allowed as credit.</li> <li>➤ Further, it is suggested that renovation works, repairs etc. be eligible for credit if they are in course / furtherance of business.</li> <li>➤ The restriction of ITC in respect of all works contracts resulting in immovable property at large be removed since in large number of contracts which qualify as works contracts, the end result would be immovable property'.</li> </ul>
70.	Section 17(5)(b) of the CGST Act provides for restriction from availing input tax credit in respect supply of certain goods or services or both.	It is suggested that an exception may be carved out under Section 17(5)(b) for outdoor catering just like the rent-a- cab service. If an analogy is drawn between the treatment given to Rent-a-cab services and outdoor catering, the exception would be required under GST Law.
71.	Non-availability of ITC on motor vehicle to builders	It is suggested that suitable amendment be made to allow ITC on motor vehicles when used by builders for the provision of construction service.
72.	Denial of Credit on Goods Confiscated or detained	It is suggested that there be no denial of ITC on goods confiscated or detained. Interest & penalty may be charged but denial of credit lead to cascading and multipoint tax philosophy.
73.	Exempt Supply becoming Taxable Supply	➤ It is suggested that suitable credit be allowed after deducting appropriate depreciation as the person earlier has some exemption but has now come under the taxable chain. Article 14 of the Constitution of India provides right of equality and if credit to such person is not allowed then it will





		<p>lead to non-equality among the equal.</p> <ul style="list-style-type: none"> <li>➤ It is suggested that as a principle of Natural Justice, dealers obtaining delayed registrations be allowed to set off the tax paid on the material on which output liability is being created as Output Tax would be collected from the dealer from the date when he became liable for registration.</li> <li>➤ Following explanations be added to Section 18(1)(d)           <p>"Explanation 1 - exempt supply becomes a taxable supply includes when a bone fide view is overturned by law or decision of a Court or Tribunal and such bona fides declared in the law so laid down.</p> <p>Explanation 2 –notwithstanding anything to the contrary in this Act, entitlement to take credit on input tax shall refer to input tax related to input, input service and capital goods, computed as aforesaid, used in relation to such supply that has so become taxable.</p> </li> </ul>
74.	Time Limit of 1 year for taking Input Tax Credit for Capital Goods	It is suggested that period of 1 year for availing input tax credit be restricted only to inputs and in case of capital goods a longer period of at least 3 years be prescribed such as time allows under rule 43.
75.	Supply of Input Tax Credit paid Capital Goods	It is suggested that in place of words “in case of supply of capital goods or plant and machinery” in Section 18(6) of CGST Act, the words "In case of supply of capital goods, on which input tax credit...." be used.
76.	Eligibility and Conditions for taking Input Tax Credit	<ul style="list-style-type: none"> <li>➤ It is suggested that following proviso be added :           <p>"Provided further that every registered taxable person will be entitled take credit of input tax in accordance with this section even though tax is paid on outward supply is in accordance with section 7(1)(c) or section 9 (5) or any such provision from time to time"</p> </li> <li>➤ It is suggested that mechanism to avail input tax credit on the purchase of inputs made during the unregistered period be incorporated by way of proviso to Section 16(1) or by suitably changing the wordings contained in section 40 to “effective date of First Purchase” instead of ‘effective date of registration’.</li> <li>➤ It is also suggested that a suitable mechanism in</li> </ul>



		case of matching the credit should also be provided for. This would be in line with the suggestion to allow credit in respect of reversal of bona fide exemption which is reversed by a Superior Court ruling, credit relatable to the output which is not rendered liable to GST earlier cannot be denied.
77.	Time Limit for availing Input Tax Credit	<ul style="list-style-type: none"> <li>➤ It is suggested that the deadline to claim Input Tax Credit in respect to any invoice be linked with the due date rather than actual filing of the return. This would help avoid extension of time limit due to delay in filing of return.</li> <li>➤ Further, it is suggested that the provision regarding belated claim of Input Tax Credits be suitably clarified.</li> </ul>
78.	Basis of apportionment of Credits or Blocked Credits	It is suggested that a basis of apportionment like based on the turnover be provided for accurate attribution of credit.
79.	Disallowance of credit in respect of Motor Vehicles	<ul style="list-style-type: none"> <li>➤ It is suggested that point ii of Section 17(5)(a) of the CGST Act be rephrased as follows: “(ii) for transportation of goods including own supplies whether or not any amount is separately charged therefor”</li> <li>➤ Further, clarification regarding transportation of items like money, securities, alcohol, petroleum products etc. be suitably provided.</li> <li>➤ It is suggested that input tax credit in respect of motor vehicles be allowed, if the motor vehicle is used in the course of business for business purposes.</li> </ul>
80.	Dumpers and tippers or other similar nature & category of motor vehicles be made eligible Inputs	It is suggested that the dumpers and tippers or other similar nature & category of motor vehicles be included in the definition of “plant and machinery” in explanation in Section 17 for the purposes of Chapter V (Input Tax Credit) and Chapter VI (Registration) and hence be eligible for Input Tax Credit and excluded from the definition of motor vehicles specifically as these motor vehicles are not principally designed used for transportation but construction (furtherance of business)
81.	Any other civil structure not to be excluded from Plant and machinery	It is suggested that the words “other civil structures” be removed from the Explanation in section 17. Clear statement also be made with respect of passive



		structures that are used for furtherance of business and even if they are considered as ‘immovable property’ for purposes of municipal taxes by special provisions in that law.
82.	Disallowance of Credit in respect of Rent-a-cab services and other services	<ul style="list-style-type: none"> <li>➤ It is suggested that restriction of availing credit on Ren-a-cab services be dispensed and credit be allowed for rent-a-cab used in course of business Sec17(4)(b)(iii).</li> <li>➤ Further, it is suggested to remove restriction on availing credits on travel benefits extended to employees on vacation such as leave or home travel concession as provided in Sec17(4)(b)(iv).</li> </ul>
83.	Denial of Credit on Goods Confiscated or detained	It is suggested that there be no denial of ITC on goods confiscated or detained but released in accordance with law.
84.	Credit of taxes paid prior to grant of registration be allowed for 6 months	<ul style="list-style-type: none"> <li>➤ It is suggested that Assessee be allowed to take credit of duty paid by them to their supplied considering that it is initial period of implementation of GST and Assessee are still struggling to adopt new system of GST.</li> <li>➤ Further, registration issued from the date approval not from the date application filed. For registration, sometimes it has taken 15 to 20 days due to system glitches on 11<sup>th</sup> August application etc., documents verification. Therefore, it is suggested to issue the registration from the date of application</li> </ul>
85.	Renting of immovable properties	A clarification in respect of the said understanding would address the concerns of the community at large and prevent avoidable litigation at a future date.
86.	Interest on Reversal of Capital goods	It is suggested that the words “along with applicable interest” be omitted in case of reversal of ITC of Capital Goods.
<b>Registration</b>		
87.	Eligibility for Composition Scheme to dealers when they are receiving Interest Income	It is suggested that it be suitably clarified that in case a dealer receives interest then he would be eligible for opting Composition Scheme. Similar clarity is also required for inclusion/exclusion of non-operational income e.g. interest/dividend while calculating aggregate turnover for computing limit of Rs. 20 L for registration purpose u/s 22 & 24 of CGST Act, 2017.



*The Institute of Chartered Accountants of India*  
*Suggestions on GST Implementation Issues- November 2017*

88.	Registration for Assessee with Aggregate Turnover over Rs. 20 Lakhs	It is suggested that for computing the aggregate turnover limit of Rs. 20 lakhs for mandatory registration the income earned without any business motive not be considered.
89.	Registration for interstate supply of goods	It is suggested that the benefit of twenty lakh for interstate service providers should be extended to interstate supply of goods also.
90.	Time limit to fix effective date of Registration	It is suggested that time limit be relaxed due to lack of awareness for a period of 1 year i.e. delayed registered be provided credit from the date of liability itself not from the date of grant of registration.
91.	Special provisions relating to casual taxable person and non-resident taxable person	<ul style="list-style-type: none"> <li>➤ It is suggested to replace the word with estimated tax liability with “estimated net tax liability” and it would be allowed to be paid with input tax credit if any transfer of goods being made by casual dealer in the course of such transaction.</li> <li>➤ It is also suggested to dealer be allowed to make this estimate as any underestimating attracts interest. Leaving the question of ‘who’ will make this estimate will introduce unwarranted subjectivity and interference</li> </ul>
92.	Cancellation of Registration	<ul style="list-style-type: none"> <li>➤ It is suggested that clause (d) of Section 29(2) of the CGST Act be deleted.</li> <li>➤ Also, it is suggested that not to permit cancellation of registration from earlier date.</li> </ul>
93.	Certificate of Incorporation issued by ROC	It is suggested that effective date be the Appointed Date under the Scheme instead of aforesaid for being liable to registration.
94.	Deemed Registration	It is suggested to activate the deemed number on immediate basis, so as to facilitate dealers in commencement of paying GST.
95.	Anomaly in registration Provision	It is suggested that in section 23 of the CGST Act, an over-riding clause be inserted: - "Notwithstanding anything contained in section 22 & 24"
96.	Requirement of registration in respect of construction works undertaken in an outside State	Clarification be provided in respect of construction works undertaken outside the registered State that no such registration will be required of the project site does not qualify as ‘location of supplier services’.



97.	Cancellation of registration	It is suggested that cancellation of registration facility should be activated at the earliest. Alternatively, GST Council may consider providing exemption for all goods and services provided by taxable persons with less than Rs.20 lakhs turn over which will remove the obligation of receiver to pay the tax.
98.	Registration for an agent	It is suggested that every agent acting (being liable to tax under schedule I) on behalf of other taxable person be made out of ambit of compulsory registration i.e., Section 24 of the CGST Act.
99.	All suppliers to SEZs are required to mandatorily register	It is suggested that receipt of goods / services from unregistered suppliers may be exempted for SEZ units or SEZ developers akin to the exemption granted for import of services.
<b>PROCEDURE RELATED ISSUES</b>		
100.	Reason of Validation error not provided during registration	It is suggested that the reason for validation error be communicated to the assessee desirous of registration through email etc. so that he may provide the correct particulars and correct the errors promptly.
101.	Option of having multiple Trade Names with single GSTIN	It is suggested that option of having a multiple trade names in case of proprietor against one GSTIN be provided to facilitate ease of doing business.
102.	Effective date of cancellation of registration in case of automatically migrated from earlier regime	It is suggested that appropriate notification providing that if cancellation application has been filed within the specified time limit it will be effective from the appointed date to give relaxation to such assesses. It may also be noted that utility for cancellation of registration has also not be provided to the taxpayers.
103.	Registration related issues under GST	It is suggested that detail list of issues of registration be resolved appropriately.
104.	Provision for cancellation of Provisional Registration	It is suggested that provision for cancellation of migration and the consequent registration be provided for and the option to surrender GST registration be activated at the earliest with retrospective effect at the option of assessee.
105.	Mismatch in GST Registration Number	It is suggested that system glitches be looked into and resolved so that the genuine assesses are not penalised for system defaults.
106.	Registration taken under the	It is suggested that while making an application for



	Wrong Head	registration under a particular head an option for reconfirmation field be added and later on assessee be permitted to modify such fields.
107.	<b>Issues faced while applying for GST Registration</b>	
a)	Provision for amendment of registration particulars	It is suggested that there may made available a facility on online portal for amending the particulars submitted while making an application for Registration.
b)	Date of grant of Registration Certificate	It is suggested that the registrations so granted be checked for such anomalies and a provision for revision of date in such genuine cases be provided for.
c)	Delay in grant of Registration Certificate	It is suggested that proper officers be requested to adhere to the time lines laid down by the law and support the assesseees with timely grant of Registration Certificate.
d)	Proof of Business Premises	It is suggested that at the time of registration sales deed/ Index 2 in name of owner be accepted as a valid proof of business premises.
e)	Size of Documents to be uploaded while undertaking registration	It is suggested that the size limit of the uploaded files be increased so as to maintain the quality and readability of the documents uploaded.
f)	Requisite Forms be activated on GST portal	It is suggested that forms related to Registration, Amendment, Cancellation or Modification in Registration be activated now so that the assesseees requiring amendments or cancellations to their registrations may apply accordingly.
g)	List of items/ services supplied to be specified in Registration form	It be clarified if the assessee starts dealing in goods/ services other than those listed while applying for registration does it call for amendment in Registration Certificate.
h)	Selection of Commissionerate code under state & central while applying registration Issue	It is suggested that system should select the appropriate system code on the basis of the area and pin code entered by assessee at state and Centre both
<b><u>TAX INVOICE, CREDIT AND DEBIT NOTES</u></b>		
108.	Treatment of tax paid on units cancelled	Clarification be provided.
109.	One Consolidated Credit and debit notes on monthly basis	It is suggested that the consolidated debit / credit note be allowed on GSTIN basis during the month, however, credit will be available on matching of debit and credit only.



*The Institute of Chartered Accountants of India*  
*Suggestions on GST Implementation Issues- November 2017*

110.	Receipt Voucher in case of receipt of Advances against supply of goods or services in same month	<ul style="list-style-type: none"> <li>➤ It is suggested that complexity in documentation should be simplified to avoid pressure on the IT system without compromising on the revenue implications.</li> <li>➤ It is also suggested that the Receipt Voucher for advance be made mandatory for cases only where the advances are to be adjusted for supplies to be made beyond other than the or later than the month in which the advances so received.</li> </ul>
111.	GST applicability on Advance	It is suggested that the similar exemption be issued in IGST /SGST also.
112.	Issuance of invoice in case of supply from unregistered person	Clarification is sought as to whether an invoice u/s 31(3)(f) is required or not until the operation of Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017.
113.	Invoice and Value in case of Barter transactions	<ul style="list-style-type: none"> <li>➤ It is suggested that a specific rule may be inserted to prescribe for the issue of tax invoice in case of a barter transaction.</li> <li>➤ Clarification is sought as to whether different value from both the parties i.e. supplier and receiver can be considered and GST can be levied accordingly may be in one case at lower value and another case it would be on higher value.</li> </ul>
<b><u>Procedure Related Issues</u></b>		
114.	Difficulty in keeping quantitative record of stock	Retails traders are worried about stock keeping, as they have wide range of different products. It is very tough to keep quantitative details of all products.
115.	Multiple Details required to be provided in an invoice	It is suggested that till an appropriate system is in place, GSTIN and product general details with some identification marks to correlate with Invoice or delivery challan be sufficient for invoicing. Place, HSN and other mandatory details be implemented when GST system is set to run smoothly.
116.	One cash ledger instead of separate cash ledger(s)	It is suggested that in cash ledger there should be only one cash ledger and as this money is not (yet) revenue of the Government, it can remain with the Union. Let cash ledger act as a E-wallet but, not as a dedicated column for the payment type. A djustment of late fee, interest, penalty be possible in cash ledger with any head.





117.	Deferment of matching requirement & Time line provided for filing of return is cumbersome	<ul style="list-style-type: none"> <li>➤ Option of offset liability of tax payment at any time basis be provided to avoid interest as merely payment of cash payment in the cash ledger is not fulfilling the requirement of tax payment by the assessee.</li> <li>➤ It is suggested that invoice wise reconciliation be deferred for the time being, may be for a period of 1 year. In its place, GSTIN wise reconciliation be introduced, it will significantly reduce the compliance burden on the part of the Assessee on one hand and also facilitate the reconciliation with ease on other hand, therefore, meeting the requirement of the Government</li> </ul>
<b><u>ACCOUNTS AND RECORDS</u></b>		
118.	Definition of Books of Accounts for the purpose of GST	It is suggested to define the term “Books of Accounts” for the purpose of GST. The reference for the books of accounts has also been made in Time of Supply provisions. A clear meaning would thus support correct interpretation.
119.	Audited Annual Accounts	It is suggested that a format of the Audit Report / Reconciliation Return should be specified to bring in clarity so that the assessee can plan and make necessary changes in their IT applications in a timely manner.
<b><u>RETURNS</u></b>		
120.	Furnishing details of outward and inward supplies by the casual taxable person	<ul style="list-style-type: none"> <li>➤ It is suggested that the casual taxable person be excluded from the scope of Section 37(1) &amp; Section 38(1).</li> <li>➤ Also, a casual trader may be asked to furnish quarterly return under section 39.</li> </ul>
121.	Matching, reversal and reclaim of input tax credit	<ul style="list-style-type: none"> <li>➤ It is therefore suggested that a specific provision be added to cover this aspect for the purpose of better compliance by supplier.</li> <li>➤ Also, exclude from the operation of this section in cases covered by section 18(4) – bona fide exemption reversed.</li> </ul>
122.	Furnishing details of outward / inward supplies	<ul style="list-style-type: none"> <li>➤ It is suggested that between the word “furnished the details under Section 37(1)/38(2) for any tax period” and “which have remained unmatched under section 29” word “and” be replaced by the word “or”</li> <li>➤ It is suggested that Suo motto rectification of return as well as details of outward /inward</li> </ul>



		supplies be permitted for tax period upto due date of filing annual return or actual filling of return of that period, whichever is earlier.
123.	Facility be provided for Rectification of data/ return before or after payment of tax	It is suggested that rectification menu be inserted especially in case of Form 3B return, which be applicable — (a) for rectification of data/returns before payment of tax; and (b) rectification even after payment of the tax, wherein if the assessee is liable to pay more tax on rectification, the same may be required to be paid immediately. However, if rectification results into a refund to the assessee, the system should credit the refund amount to his account after due verification.
124.	Time for filing of GSTR-1 for July, 2017 be allowed for few days due to extension of GSTR-2	➤ It may be suggested that filing of Form GSTR-1 for the month of July a period of five days be provided in November, 2017. ➤ Further, interest/penalty for late filing be waived.
125.	Refund of late fee paid for the month of August, 2017	It is suggested that: - (i) the refund be granted in electronic cash ledger not in late fee ledger. (ii) easy method of revision/ rectification of returns till March 2018 be provided with no late fee or interest till 31 <sup>st</sup> March, 2017 as majority of issue are due to system not up to the mark.
126.	Unable to add missing invoice uploaded but not filed by the supplier	It is suggested that the assessee may be allowed to add invoices in GSTR-2 correctly.
<b>Procedure Related Issues</b>		
127.	HSN code is required to be mention in GSTR 1 & 2	➤ It is suggested that an alternative way of identifying the rate-wise supplies being reported to give relief to small traders who are otherwise not required to mention the digits of HSN codes in a tax invoice issued by them. ➤ Further, it is also suggested that such requirement in case of GSTR-2 be removed in case of all assessee
128.	ISD - distribution of credit - returns not enabled	It is suggested to enable return GSTR-6 so that credit be available to the tax payers.



<b><u>GSTR 3B Related Issues</u></b>		
129.	Liability to pay interest on late payment of tax due to extension of due date of filing GSTR 1 & 2 due to technical problem	It is suggested that the interest payable on late payment of tax at least be waived off for the month of July 2017 for which due date for filing GSTR 1& 2 has been extended due to technical problem in GST network. Alternatively, a payment mechanism of debit of cash or credit ledger be made available to the assessee at any time during such time period.
130.	Copy paste option disabled in password	It is suggested to enable the copy paste option in passwords & does not make it mandatory to change the passwords.
131.	No option to change Authorised signatory contact details	It is suggested that there must be an option to change authorized signatory contact details in GST database.
132.	No option to download return filed	It is suggested that download option should be available on the GST Portal.
133.	No acknowledgement for return filed	It is suggested that an option for generation of receipt in ARN tracking or View my Submissions tab for each filling done on GST portal.
134.	Pure agent reimbursement would go as non-taxable supply - may lead to excess reversal	It is suggested that required column in the return to be inserted to show service provided as pure agent so that while calculating the proportionate ineligible credit, service provided as pure agent will not be considered as non-taxable supply.
135.	Still errors appearing while filing GSTR -3B	It is suggested that the technical issue may be resolved at the earliest.
<b><u>GSTR 1, 2 &amp; 3 related</u></b>		
136.	CENVAT Credit reversed earlier due to non-payment	<ul style="list-style-type: none"> <li>➤ It is suggested that GSTR TRANS 1 be amended and be allowed to be revised with eligible CENVAT Credit if payment is made in July-September 2017 period.</li> <li>➤ Data Fields of GST TRANS 1 be modified so as to provide data field to reclaim ITC as per section 140(9) of CGST Act for Transitional arrangement for Input tax credit.</li> </ul>
137.	First Return cannot be filed if registration is granted in next month	It is suggested that there be made available a facility to enable filing of GST return if the registration has been applied within prescribed time limit.
138.	Multiple Monthly Returns under GST	It is suggested that there be made applicable only one return Quarterly under GST which includes all



		combined details from GSTR-1 & 2 as GSTIN based matching concept in the erstwhile law of 2A & 2B matching initially for a period of 2 years and keep tax payment date to be 25 <sup>th</sup> of the next month on monthly basis with an option to provide any time payment to Govt. by debiting cash ledger.
139.	GSTN related problem	It is suggested that Processing be on real time basis to avoid system failure due to heavy load of users.
140.	Non-availability of provision for filing of return without payment of tax	It is suggested to allow return filing without payment so that Tax can be paid till last date i.e. 20th, which will be credited automatically in the ledger.
141.	Actual date of Return filing missing	It is suggested that the actual date of return filing must appear in the record of the assessee on the GST portal so that the department may proceed with them without causing any problem to assessee.
<b><u>PAYMENT OF TAX</u></b>		
142.	No interest recovery on the credit reversal on date of completion of building	It is suggested to insert a proviso in the section as under: - "Provided that no interest would be payable in case of reversal of credit due to grant of permission or certificate in respect of building referred in Schedule II para 5(b)".
143.	Extension of time limit to furnish information by the Electronic Commerce Operator	It is suggested to relax the given provision by providing extension of the time limit for furnishing of details by the Electronic Commerce Operator.
144.	Certificate of tax collection in case of e-commerce operators	<ul style="list-style-type: none"> <li>➤ It is suggested that the enabling provisions regarding issuance of tax collection certificate be incorporated and suitable forms to be notified by way of rules.</li> <li>➤ Further, it is suggested that the words "<u>not being agent</u>" be deleted in Section 52 of the CGST Act</li> </ul>
<b><u>GSTN Related Issues</u></b>		
145.	Delay in responses from GSTN Helpdesk	Owing to above concerns, it is suggested that additional manpower be deployed for resolving queries/ issues, reduce call/ email revert time to help keep up the good work undertaken by GST helpdesk. An assistance provided by properly trained officials will add to the smooth functioning of the GST helpdesk and providing specific answers to the queries/ issues as against being referred to GST Acts, Rules, FA Qs etc.



146.	Huge Interest rate in case of default in payment or wrong availment of credit	In the implementation phase of GST, interest rate be notified equivalent to present bank rate only as due to lack of knowledge of new law, taxpayer may have made some error.  Even post 1 year, Interest rate be not exceeding more than 12%.
<b><u>REFUNDS</u></b>		
147.	Refund in case of accumulated Credit where input tax credit amount is higher than tax liability	It is suggested that: <ul style="list-style-type: none"> <li>➤ the word 'inputs' be replaced with the phrase 'inputs and input services'</li> <li>➤ Also, the word 'Output Supply' be replaced with the word 'Outward Supply'.</li> </ul>
148.	Payment of refundable amount to applicant	It is suggested that all the input tax credits be seamlessly covered under the provisions of Section 54(6).
149.	Execution of LUT / bond for export	It is suggested that execution of LUT / bond be removed for export of services and also for third country trading cases.
150.	Deemed exports	It is suggested that NN 49/2019-Central Tax to be made 'subject to' section 16 and 17 of CGST Act
<b><u>Advance Ruling</u></b>		
151.	Advance Ruling	<ul style="list-style-type: none"> <li>➤ It is suggested that Advance Rulings provisions as per Section 96 &amp; 97 of the CGST Act be made simple and exhaustive.</li> <li>➤ It is suggested that Advance Ruling provision for filing of application on behalf of association representing its member be allowed and decision would also mutatis mutandis will apply to all the members of association representing such issue /industry. Association be permitted to append list of units with their PAN number so she to be bound by this ruling.</li> </ul>
<b><u>ASSESSMENT</u></b>		
152.	Provisional Assessment – Security or Surety to be furnished with the Bond	It is suggested that requirement of executing surety or security with prescribed bond be done away with.
153.	Adjustment of additional tax paid – Section 60(3)	It needs to be stated that proviso of sec. 39 (9) says "Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or



		<p>second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier”.</p> <p>Alternatively, if the law is to stand as it is then it should be provided that notwithstanding the provisions of sec. 16 (4) and 39 (9) of the C G S T A ct the registered person(s) shall be allowed to adjust the amount paid in terms of order passed u/s 60 (3) of C G S T A ct in the month following the month in which final payment is made by the registered person or refund is received by the registered person.</p>
<b><u>DEMANDS AND RECOVERY</u></b>		
154.	Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any will full misstatement or suppression of facts	It is therefore suggested that the time limit be reduced to 12 months since no information is hidden from the department with this elaborate reporting system in G S T R 1-2-3 including non – G S T supplies and exempt supplies. Extended periods of limitation may remain only for fraud, suppression etc. in which case it can be 3 years (as per limitation A ct)
155.	General provision related to demand	It is suggested that exclusion of time limit under Section 75(11) be qua assessee and qua state.
<b><u>OFFENCES AND PENALTIES</u></b>		
156.	Incorrect Classification of goods or services	It is suggested that initially, to support assessee during transition process, for a period of 6 months or so the cases of wrong classification of goods or services be treated as tax neutral and assessee not be penalized for incorrect classification.
<b><u>TRANSITIONAL PROVISIONS</u></b>		
157.	Assessee unable to complete migration process opted for new registration	It is suggested that an option may be given in order to rectify the migration done wrongly so that the assessee may be able to claim Input Tax Credit.
158.	Transitional Credit is not available to Manufacturer / Service provider	Credit be allowed in cases in the detailed suggestion.
159.	No Provision for availment of Credit of tax paid under earlier law	It is suggested to suitably clarify as to whether the taxes paid under earlier law like advance payment of service tax or tax amount paid after the appointed date would be eligible for Input Tax Credit under G S T .



*The Institute of Chartered Accountants of India*  
*Suggestions on GST Implementation Issues- November 2017*

160.	Credit of unavailed CENVAT Credit in respect of Capital Goods	<ul style="list-style-type: none"> <li>➤ It is suggested that a proviso be inserted under section 140(2) to allow credit on capital goods lying on the appointed date which was not availed earlier as the person was not required to register under the erstwhile law.</li> <li>➤ It is suggested that there be provided appropriate transition provision to allow credit of VAT paid on purchase of Capital Goods not reflected in returns under earlier law.</li> <li>➤ It is suggested that appropriate provision be provided to avail such credit in respect of capital goods which are used for supply of goods and services which become taxable with effect from 01/07/2017.</li> </ul>
161.	Credit of eligible duties and taxes in respect of inputs held in stock to a works contract service provider	It is suggested that the necessary amendment be made in Clause 140(3) to avoid the ambiguity by replacing the word “and” in the erstwhile Clause 140(3) by “or who was”.
162.	Credit of Transition stocks held with Branch	It is suggested that transition credit available with branch be provided along with its mechanism.
163.	Invoice not to be older than 12 months for availing credit	It is suggested that the time limit of 12 months be prescribed for purchases made on or after the appointed day and as a one-time transitional measure, there need not be any time limit for availment of credits on the basis of purchase invoices/ documents pertaining to a period prior to 12 months, if all other conditions are satisfied.
164.	Eligibility of Transitional Credit subject to the condition that supplier of services is not eligible for any abatement	It is suggested that the words “is not eligible for” be replaced with the words “has not availed”.
165.	Transition provision for tax paid on receipt basis	It is suggested that clarification be provided in the law for cases where levy in the erstwhile law was on receipt basis.
166.	Taxes paid under earlier laws but bill has been received after appointed day	It is suggested that introduction of specified format of getting input credit in such cases be provided.
167.	Capital goods in transit as on the appointed date	It is suggested that the law be amended to allow credit of duty paid on capital goods which remain in transit during the appointed day.





*The Institute of Chartered Accountants of India*  
*Suggestions on GST Implementation Issues- November 2017*

168.	Extension of time limit for the recording of supplies in the books of account under sec 140(5)	Due to ERP testing, customization and internal control many of the honest tax payers could not record by 30/07/2017. To avoid the same and follow the spirit, an order be issued for such extension. It is suggested that the condition relating to recording of invoice or any other duty or tax paying document in the books of account of such person within a period of thirty days from the appointed day be extended by a further period of 30 days.
169.	Reclaiming of credit which was earlier reversed due to non-payment of consideration within 3 months	It is suggested that appropriate notification be issued in this regard with its mechanism.
170.	Treatment of capital goods with job worker as on 30.06.2017	Suitable clarification be provided in regards to capital goods with job worker as on 30.06.2017.
171.	Lapse of Refund claims filed and rejected under earlier law	It is suggested that assessee be given an opportunity of being heard and/or filing of appeal against such rejection.
172.	Transitional Issue on progressive supply of service	It is suggested that same needs to be clarified. Also, cases where only one of the taxes, that is, either VAT or service tax only, had been paid for and reason, the current provisions do not allow the vendor of credit under 142(11)(c)
173.	Transitional provisions where CENVAT credit reversed under earlier law	It is suggested that the transitional provisions be amended to include the situation for availment of credit for cases where CENVAT credit has already been reversed under Current regime and goods are received after the appointed date.
174.	Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law	It is suggested that a proviso be included in section 142(4) of the CGST Act by virtue of which the CENVAT credit may lapse only after being given an opportunity of being heard and based on the grounds of rejection given in writing.
175.	Stage wise deduction for an Immovable property	A provision similar to the erstwhile VAT law be provided under GST.
176.	Revision of service tax return	It is suggested that the Revision option of service tax return be activated till the date of filing transitional credit.
177.	Unutilized cash balance in	It is suggested that appropriate provisions be made for



	PLA under Central Excise Law	utilization / carry forward of such unutilized balance of PLA Account in the electronic cash ledger under GST Law.
178.	Transitional credit of Clean Energy Cess for utilising against the liability of Compensation Cess on Coal	There should be a mechanism provided in TRAN -1 for claiming and utilising the Clean Energy Cess levied under Custom Tariff Act against the liability of Compensation Cess levied in GST Regime. Moreover, the ITC so brought forward should even be allowed to be set off against the liability of compensation cess for the months of July onwards.
<b>Procedure Related Issues</b>		
179.	Wrong format of Principle and Agent details in TRAN 1	It is suggested that 10(a) of TRAN 1 should actually ask for the GSTIN of the agent which shall be furnished by Principal on the basis of which the agent can avail the credit of the goods lying with him on furnishing of TRAN 1.
180.	Issues in filing form TRAN -1	It is suggested that: - (i) these technical issues may be resolved at the earliest. (ii) Time limit of 1 year be extended reasonably. Those persons who do not have documents evidencing payment of duty are eligible to avail deemed credit under the proviso, while persons having duty/ tax paid documents cannot avail credit, beyond the said time-frame. (iii) Transitional provisions be amended to entitle registered person to avail credit on Capital Goods for past years with depreciation for traders/ service providers/ area based exempted manufacturers.
181.	Deemed credit- TRANS 2 returns not enabled.	It is suggested to enable form GST TRANS-2 at the earliest so that credit be claimed by tax payer.
182.	No option for offline bulk uploading	An offline utility and a report with the stock item and input claimed need to be generated before submission
183.	Difficulty in carry forward of credit of branches under same PAN who had different registrations under service tax	It is suggested that the form should be amended so that input credit of other branches under same PAN can duly be carried forward.
184.	TRANS 1 for Job Work transactions	It is suggested that in TRAN -1, there be one table or column, where one can disclose the CENVAT



*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

		reversed under erstwhile laws and which can be claimed in future based on the occurrence of an event. i.e. goods received back by dealer from Job worker in order to avail that credit.
185.	Clarification between nil and exempted supply	It is suggested that a dedicated column for different type of supplies be made in the return form. Such segregated data will also be helpful to perform various analysis by respective authorities.
186.	Compensation cess field missing in GSTR 1	It is suggested that appropriate column be added in the return form to depict cess amount on export.
187.	Compliance requirement where registration cancelled by department	It is suggested that suitable clarification be provided in this regard.
188.	Credit Reversal in case of Banking Company	It is suggested that Return form GSTR 2 be suitably amended to add a column for 50% credit reversal in case of banking company
189.	Aggregate turnover figure entered wrongly in return	It is suggested to provide any suitable alternative to modify the figure of aggregate turnover which has been furnished wrongly in the Return by assessee.
190.	Input tax credit in respect of inputs sent for job work	It is therefore suggested that the section be amended as follows: “if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker on expiry of said stipulated time and issued invoice accordingly for which job worker be allowed to take credit.
191.	Movement of goods from Job worker	It is suggested that Such transaction may be notified under Section 140(5) so as to avoid tax becoming a cost for the assessee
192.	The duties and responsibilities and powers of the Officers at various levels be specifically put up for public comment	<ul style="list-style-type: none"> <li>➤ Officers to be trained in respect of mindset of trust and supporting to the industry as against tax terror which is prevalent even today.</li> <li>➤ Forum for mandatory audit be made public as by January 2018, such audits can begin which would be useful for the trade/ industry rather than starting after the year end.</li> <li>➤ Officers to be trained in GST as the vast majority are unable to answer basic questions. If this is not the case let them take a proper examination. Those who would adjudicate and hear appeals to</li> </ul>



		compulsorily go through a special learning and test for understanding
IGST ACT		
193.	Location of the recipient where the address on record exists	It is suggested that appropriate clarification be provided for the cases in retail trade.
194.	Place of Supply of Service	<ul style="list-style-type: none"> <li>➤ It be suitably clarified that the list of services provided in the sub-section is an exhaustive list.</li> <li>➤ Section 12(4) be rephrased as follows:               <ul style="list-style-type: none"> <li>○ “(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment <b>and</b> health service including cosmetic and plastic surgery shall be the location where the services are actually performed.”</li> </ul> </li> </ul>
195.	Section 12(6): Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc	<ul style="list-style-type: none"> <li>➤ It is suggested that the words "or where the park or such other place is located" be deleted.</li> <li>➤ Also, a mechanism be provided for cases where services are provided at multiple locations under a single contract.</li> <li>➤ A proviso be added as: <b>Provided</b> where the basis of allocation is not forthcoming, the duration in each State as a proportion to the total duration of the event shall be applied.</li> </ul>
196.	Insurance of Immovable Properties	<p>It is suggested that a mechanism for insurance of immovable properties be incorporated in the statute by way of following proviso:</p> <p><b>Provided</b> that in the case of insurance of immovable property, where the basis of allocation is not forthcoming, the value of immovable property situated in each State as a proportion to the total value of the immovable property shall be applied.</p>
197.	Place of supply of services provided by tourism accommodation services such as hotels, cruises, campsites etc.	<ul style="list-style-type: none"> <li>➤ It is suggested that suitable amendment in the place of supply provisions be made to achieve seamless flow of credit and avoid any harm to the tourism industry.</li> <li>➤ Place of supply of accommodation (B to B) service provided to               <ul style="list-style-type: none"> <li>• registered person shall be the location of recipient instead of location of immovable property</li> </ul> </li> </ul>



		<ul style="list-style-type: none"> <li>unregistered person shall be the location of immovable property as per existing provisions.</li> </ul>
198.	Place of supply of services in case of works contractor	In case of works contract being service movement of goods from one state to another state is not industry friendly, therefore appropriate amendment be made in C G S T Rules.
199.	Relief from payment of IGST to Representatives in India earning foreign exchange from Overseas Suppliers	If this 'origin based tax' rule cannot be omitted, it is suggested that the general definition of an "intermediary" in Section 2(13) of the IGST Act be reconsidered by excluding intermediary for goods to provide level playing field to members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products
200.	Export of Service	<ul style="list-style-type: none"> <li>It is suggested that suitable rules to be framed in respect of Third country trading / manufacturing /service Business Modules in the Indian Global Economy.</li> <li>It is also suggested that, third country trading / manufacturing /service companies need to be exempted from GST implications in respect of their global business done from India</li> </ul>
201.	Dual Levy on Export of services in case foreign exchange has not been received	It is suggested that such transactions be notified as an exempt service. This will have reversal on account of input, input service and capital goods. Also, it would help to avoid dual levy and one can undertake such transactions with ease.
202.	Levy of GST on services rendered in the course of export to foreign parties for use outside India and consideration for which is received in convertible foreign exchange	<ul style="list-style-type: none"> <li>It is suggested to reconsider the levy of GST on such services by tweaking the Place of Supply Rules, is beyond the scope of the Act.</li> <li>It is also suggested to reconsider such levy to address the injustice meted out to exporters of such services</li> </ul>
203.	Nature of Supply under IGST – Correct nomenclature to be used	It is suggested that in order to avoid the confusion the phrase "in the course of interstate trade or commerce" be replaced with " <b>in the course of interstate supply</b> ".
204.	<b>General Suggestion</b>	
(a)	Settlement Commission provision be restored	Provisions related to Settlement Commission as provided in Chapter VIII of Draft Model GST Law be



*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

		reinstated as initially due to complexity of the law genuine mistakes may occur and there may be provisions for settlement.
(b)	Kar Samadhan Schemes	Kar Samadhan Schemes under existing laws (both Central and state) be introduced to help the assessee clear their issues/ dues under existing law, support with hassle free transition and reduce litigations.
(c)	training and understanding of GSTN systems	In order to get acquainted with GSTN and related procedures, an optional access be provided to the interested assessee to help them with training and understanding of GSTN systems.
(d)	Petroleum products and electricity	In order to maintain the level playing field, Petroleum products and electricity to be brought within the ambit of GST immediately. These industries if kept outside the purview of GST, would face the issues like cascading of taxes, non-availability of credit, maintaining separate books of accounts for claiming ITC etc.
(e)	Advance Ruling	In order to support smooth transition and ensure reduced litigations, Government should speed up in notifying the Advance Ruling Authorities to enable the tax payers to make applications and gain a clarity regarding tax implications.
(f)	Anti-Corruption measures	Anti-Corruption measures need to be strengthened by building in the accountability of Revenue officers. A 360 degree Compliance Rating be given to the officers ensure compliance on their part.
(g)	Pendency Of Cases	It has been communicated to us, due to paucity of time hasty disposals of pending cases being done resulting into undue huge demand leading to pendency of cases as well blockage of funds due to mandatory pre deposit.
(h)	Exemption to exporter from payment of Tax on Inputs the time system stabilize:	A general exemption maybe issued for a period 6 months to enable exports of goods as well as services to be carried out without any payment of taxes on inputs or inputs services as refund mechanism has not been established due to system glitches, margin erosion and impracticality.
(i)	Exemption to small assessee	Exemption to small assessee be provided to pay tax on receipt basis wherein in erstwhile law upto Rs. 50 Lacs assessee was permitted to pay tax on receipt basis.





*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

(j)	GST Rate on PSLC	It is suggested that the GST rate on such goods may be provided so as to address the key concerns of the banking sector and to get certainty on the transactions
(k)	'Duty free scrip'	<ul style="list-style-type: none"> <li>➤ The expression 'duty free scrips' be defined clearly</li> <li>➤ It is clarified that whether duty free scrips includes all licenses or authorizations issued under FTP that are permitted to be traded.</li> </ul>
205.	Services received by employees in course or furtherance of business	It is suggested that credit of such tax paid on such goods/services used by the employees in the name of the company/ firm be made available to the company/firm and therefore the Credit provisions be specified for availing credit on such invoices/bills.
206.	Documents to be issued for Certain Specified movements	It be suitably clarified as to how movement of goods in aforesaid transactions would be covered as the same may not be covered by Invoice, bill of supply etc.
207.	Absence of Rules regarding the manner of collection and input credit in case of Compensation	It is suggested that appropriate rules may be prescribed in relation to charge and credit of Compensation Cess. Also, it may kindly be examined which provisions of CGS Act are rendered inapplicable to Cess Act due to the reference to only limited provisions in sections 11(1) and 11(2) of Cess Act. For example, refund s. 54 not referred.
208.	Solution provided through Twitter and /or FAQ in some cases are contradictory in nature and even FAQ are having disclaimer which is creating confusion.	
209.	Deemed deduction towards land in case of sale of apartments	<p>It is suggested that: -</p> <ol style="list-style-type: none"> <li><b>a.</b> A deduction may be provided for the market value of the land – as per the agreement between the developer and customer; OR based on certification by an approved valuer OR provide for different rates of deemed deduction based on location, areas or cities or distance from cities etc.</li> <li><b>b.</b> Also, following clarifications may be provided vide circular to be issued : <ul style="list-style-type: none"> <li>• The said deduction towards land cost must be allowed to be availed upfront out of the first few instalments received.</li> <li>• The components of receipts that would form part and parcel of the consideration towards availing the land cost deduction must include – Car park charges, club house charges, reticulated gas supply charges, modular</li> </ul> </li> </ol>





*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

		<p>kitchen, preferential location charges, floor rise charges, water and power charges, DG set charges, maintenance charges etc. This is because these costs are in the nature of construction costs.</p> <ul style="list-style-type: none"> <li>• In case of unsold flats on obtaining OC / PC, the reversal of input tax credits must not be arbitrary (but based on area unsold) and must not be subject to consequential levies such as interest / penalties.</li> </ul>
210.	Joint Development Agreements (JDAs) – time and valuation for payment of GST	It is suggested that GST becomes payable, only when, and to such extent that the units are sold; In respect of unsold units relating to the Land Owner, the GST be made payable at the time of obtaining the OC / PC from the prescribed authorities.
211.	Revenue sharing under Construction service	Suitable clarifications may be issued on the following points: (a) How is the land cost to be determined? (b) Can it be said that what is paid / payable to the Land Owner would be the Land Cost and therefore permissible as deductions?
212.	Input Tax Credit for Real Estate developers	A clarification may be issued in respect of the said understanding which would address the concerns of the community at large and prevent avoidable litigation at a future date.
213.	Transfer of immovable property by way of long lease	It is suggested that similar exemption may be extended to all transfers irrespective of the period of lease and whether or not to an Industrial Unit and for any purpose as acquiring land on long lease is one of the well-known recognized methods of acquisition of land and levy of tax on land is a State subject.
214.	Transfer of immovable property by way of Assignment of Lease - GST implications	Accordingly, it may be suggested that the assignment of an existing lease by one Lessee to another (Assignee) would not amount to an activity and would amount to a transfer of title and therefore, be exempt under GST on the same basis as sale of land is exempt.
215.	Transfer of immovable property by way of grant of Development rights - GST implications	Accordingly, it may be suggested that any transaction of grant of development rights also needs to be exempted under GST laws on the basis of the exemption granted for sale of land.



*The Institute of Chartered Accountants of India  
Suggestions on GST Implementation Issues- November 2017*

216.	Rate of tax on sale of under construction units	It is suggested that the GST rate for sale of under construction real estate not to be more than 6% on the agreement value which will make it comparable to the present situation
217.	Transferable Development rights	A clarification needs to be issued that such TDRs are not taxable under the GST Laws since it is an immovable property right.

# SUGGESION IN DETAIL

## POLICY ISSUE

### 1. Consolidated list of Goods

Central Board of Excise and Customs issued separate booklets for classification of Goods as well as Services available on website as well as on the android mobiles whereby separate lists have been provided rate wise.

For eg: - Tobacco leaves are covered under Schedule I i.e. rate of 5% while other tobacco products are covered under Schedule II i.e. rate of 28% .

#### **Issue**

The classification criteria adopted under the GST Law takes into account various different Schedules whereby a single product may be classified under more than one schedule with the different rates of GST .

#### **Suggestion**

It is suggested that a single consolidated list of products may be prepared for classification purpose by merging various schedules. Consolidated list may be adopted so that classification criteria follow settled law of basic to advanced as far as possible and thus categorizing the products under one chapter with one rate.

### 2. Rate of taxes

Fixing the rate(s) of tax is one of the key issues for a successful implementation of GST . Government released booklets on rates of GST on Goods as well as Services whereby five different list of Goods/Services are given with five different rates of tax.

#### **Suggestion**

It is suggested that the number of rates of tax may be brought down– viz., Exempt rate (nil rate), Lower rate, Standard rate and demerit rate. Also, the rate of tax on services be capped at a single rate of 18% as present under Service tax regime.

### 3. Reduction of GST Rate on Construction machinery

Construction machinery are prime movers of Infrastructure projects like roads, highways, irrigation etc. and as such any price increase should be avoided.

#### **Issue**

- In the pre-GST regime, most of the states where construction machinery was manufactured, concessional VAT rate was applied. As a result, these products were effectively suffering taxes of around 17% to 18%. However, Construction machinery covered by Chapter “8429” and “8430” now attracts GST at 28% .



### **Suggestion**

It is suggested to reduce GST Rate on Construction machinery covered by Chapter “8429” and “8430” from 28% to 18% as most of the capital goods are exigible to GST at 18% and are to be comparable with the tax rates under the pre-GST regime.

#### **4. Change in GST Rate on Railway/ Metro fare**

Vide exemption notifications, Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017 and Notification No. 8/2017-Integrated Tax (Rate) dated June 28, 2017 railway/metro fare is subjected to NIL rate of Goods and Services Tax.

### **Issue**

Railway/ Metro fare being chargeable to NIL Rate of GST results in increased fare for general public as GST paid on all the Inputs and Input services will become part of cost

### **Suggestion**

- It is suggested that instead of exempting railway/ metro fare, make it zero rated or 5% to enable availment of input tax credit.
- It is also suggested not to restrict refund of input tax credit on expenses. (e.g. Operations and Maintenance)

#### **5. Compensation Cess on Coal**

In GST regime, Compensation Cess on Coal is levied at every point of sale while under the Central Excise corresponding clean energy cess on coal was levied only on Raw Coal, Lignite and Peat raised and dispatch from a coal mine.

### **Issue**

- The basis of incidence of the compensation cess in GST is same as that of clean energy cess in erstwhile Excise Law. So, if in Central excise, clean energy cess on coal was levied only on Raw Coal, Lignite and Peat raised and dispatch from a coal mine, and all other type of coal at other stages were exempt, some thought process would have been behind that.

Even for the purpose of import the Central Excise Law provided that – ‘As imported coal would not satisfy the condition regarding payment of appropriate cess at the raw stage, clean energy cess would apply to all forms of imported coal including wash coal’. Thus, it is suggested that status quo of compensation cess taxability be made as that of Clean cess in the erstwhile Central Excise Law

- If Compensation Cess on Coal is only levied at the first point when the raw coal and lignite and peat are raised and dispatch from the mine and any further movement thereon be exempted This would be a revenue neutral situation because the Compensation Cess is levied at the rate of Rs. 400/- per tonne of coal. Once the coal is raised from the mine, that would be the maximum quantity on which Compensation Cess would be



payable. After each further processing, the quantity would reduce. Thus, even if there is a credit chain of compensation cess, that would not bring any effect on the revenue.

- Further, in practice the way coal is used by various industries like power industry or coal industry, it is difficult to maintain the credit chain even if they wish too. For instance, in case of power company when they buy coal from a mine, they may use part of the coal themselves to produce power or they may send the coal for processing or they may sell some reject coal. When they sell the reject coal they will again have to pay compensation cess on which they would wish to take input credit of such cess. But in their accounting systems, they are expensing off the clean energy cess from long past and it is forming part of their cost which in turn effect the price of the power.

### **Suggestion**

It is suggested to levy Compensation Cess on Coal only at the first point when the raw coal and lignite and peat are raised and dispatch from the mine and it is also suggested that any further moment thereon be exempted.

Further, transitional credit be provided of clean energy cess paid in erstwhile regime.

## **6. GST on Petroleum products**

Section 9 of CGST Act, 2017 provides that the central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

### **Issue**

Petroleum crude, high speed diesel, motor spirit, natural gas etc. constitutes a major expense for every business but these items are not yet covered under GST. Therefore, they have been sold at such a higher cost because of non-availability of credit on such products.

### **Suggestion**

It is suggested that a suitable notification be provided as early as possible to levy GST on petroleum products. As it will bring an important chain into the economic activity as well as into the GST fold

## **7. No GST on payment of advance receipts for all assessee**

As per Section 12 and 13 of the CGST Act, the liability to pay tax shall arise at the time of supply and the time of supply shall be determined on the basis of date of issue of invoice for goods/services, date of provision of service or the date of payment with respect to supply of goods/services.



**Issue**

The liability to pay GST at the time of receipt of advances disturbs the normal accounting methodology and revenue recognition norms internationally. This would have very limited compliance. Moreover, those who comply will not find it a tedious process.

**Suggestion**

It is therefore suggested that the liability to pay GST on advances be deferred for a period of 2 years for all assessee and it may arise only at the time of issue of invoices.

**8. Deferment of E-Way bill**

**Issue**

The present IT system under GST is under serious pressure particularly for huge quantum of documentation and various interfaces. A further addition of E-way bill for supplies would add more documentation and complexities to the business process.

The Govt. may observe the functioning of the controls and procedures as provided for under the GST law over a period of time and only if concerns of revenue leakage persists, the alternative of E-way bill be examined.

The focus of the Govt. ought to be on the simplification of the tax laws and rationalisation of the tax rates rather than complicating the business processes. It must be remembered that the E-way bill would be a serious impediment to the ease of doing business in India.

**Suggestion**

It is suggested that the concern of the industry be addressed by putting the E-Way bill legislation on hold if not shelved forever.

**9. No Anti-profiteering clause under GST**

Section 171 of the CGST Act provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. For this purpose, the Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

**Suggestion**

It is suggested that Anti-profiteering clause be scrapped, as this is not likely to result in any revenue to the Government, and would only enrich the intermediaries and the corrupt.



**10. Reduction in GST Rate required to provide level playing field to indigenous over imported goods**

The Central Government, on the recommendations of the Council, notifies the rate of the integrated tax for goods vide Notification No 01/2017-Integrated Tax (Rate) dated June 28, 2017 specified in 6 Schedules.

Most of the capital goods are chargeable to GST at higher rate of 28% required for the initial setting up of a unit, or the substantial expansion of an existing unit, of a specified Industrial plant, Irrigation project, Power project, Mining project.

**Issue**

If aforesaid items are imported under project import, IGST will be applicable at 18% whereas same item if procured from Indian supplier, GST will be charged at 28%. In case of petroleum refineries GST charged by Indian Supplier will be a cost to them and therefore for BID comparison, IGST paid on import is considered as part of Cost on lower side. Therefore, the loading of tax cost for Indian supplier would be higher as compared to the tax cost for the foreign supplier.

**Suggestion**

It is suggested that GST rate for the items falling under 84198910 i.e. Pressure Vessels, Reactors, Columns or tower or chemical storage tanks should be reduced to 18% so as to provide level playing field to Indian domestic manufacturing sector and boost to Make in India Mission.

Further, since these items are capital goods in nature, it deserves, lower GST rate of 18% like other capital goods which currently attracts GST at 18%

**11. Deferment of Invoice wise return filing & GSTIN wise reconciliation be accepted**

As per rule 59 of the CGST Rules, 2017, every registered person is required to furnish the details of outward supplies of goods or services or both furnished in FORM GSTR-1 invoice wise for all the registered persons and unregistered persons having invoice value more than two and a half lakh rupees.

**Issue**

Various difficulties are being faced by the Assessee while filing the invoice wise details in the return forms GSTR-1, GSTR-2 and GSTR-3 thereby making the compliance burden on them and difficult reconciliation

**Suggestion**

It is suggested that that invoice wise reconciliation be deferred for the time being, may be for a period of 1 year. In its place, GSTIN wise reconciliation be introduced.

Further, it is suggested that in place of monthly filing of GSTR 1, 2 and 3, system of quarterly filing of these forms be considered while keeping payment of GST monthly at any





point of time in addition to Form 3B. This will reduce the compliance on the part of the Assessee without any loss of revenue to the Government.

## **12. Option for Cancellation of registration**

Section 29 of the CGST Act, the proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration where the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24.

### **Issue**

Many of the Assessee making inter-state supply have been registered mandatorily under section 24 of the CGST Act due to the provision of Section 9(4) relating to reverse charge.

### **Suggestion**

Considering the recent amendment being made through notification no. 38/2017- Central Tax (Rate), it is suggested that option for cancellation of registration be given to the assessee.

## **13. Practical Issues faced while working on GST common portal**

The GST common portal [gst.gov.in](http://gst.gov.in) is a common platform for all the GST related issues and several problems are being faced by the industry while working with the common portal.

### **Suggestion**

It is therefore suggested that: -

- (iii) All the utilities on the GST portal be placed first and thoroughly tested before being implemented and only after that or after a period of 1 month, the trade/ industry be mandatorily required to comply with it.
- (iv) Matching insistence itself be deferred/ omitted till March 2018 and after that only for Rs. 10,000 of credit to be matched and amount reduced every 6 months to Rs. 1000/-. Less than that credit not to be matched.

## **14. All arrangements between employer-employee should be kept out of GST**

As per Schedule III, only the supply of services by an employee to an employer under the terms of an employment contract is kept out of the meaning of supply.

### **Suggestion**

It is suggested that the reverse may also be excluded. Cost of monitoring and reporting of supplies by an employer to an employee and payment of taxes thereon is an administrative hassle. Hence, it is a point of reiteration from a Government perspective.



**15. Place of Supply for B2B transactions**

Section 12 and 13 of the IGST Act provides for determination of the place of supply of services where location of supplier and recipient is in India and location of supplier or location of recipient is outside India.

**Suggestion**

It is suggested that the provisions for determining place of supply be amended to provide that the place of supply for all Business to Business transactions(B2B) is the registered place, and continue the existing provisions in the IGST Law only in respect of Business to Customer(B2C) transactions.

**16. Adjustment of tax paid due to incorrect place of supply**

Section 77 of the CGST Act, a registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

**Issue**

The given section provides for refund of the tax paid earlier on account of incorrect place of supply and on the other side, the assessee is forced to pay once again, the amount of tax paid earlier (and await refund) i.e. he will pay double the amount of actual tax. This double payment of tax amount by the assessee will lead to severe hardship to the assessee and blockage of working capital funds

**Suggestion**

It is suggested that the adjustment of cash payment in wrong head be allowed to be adjusted at assessee level by way of debit entry.

**17. Lower Interest rate in case of delayed payment of tax**

Section 50 of the CGST Act provides that every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.



**Issue**

Assessee is required to pay much higher rate of interest on delayed payment of tax as provided under section 50 in comparison to the Government on delayed refund of tax provided under section 56. This leads to undue hardship to the assessee. The difference in the interest rates is too big that a huge number of assessee would be suffering from this as due to lack of knowledge of new law, taxpayer may have made some error.

**Suggestion**

It is suggested that the difference in the interest rates given under Section 50 and section 56 be aligned or reduced to a minimal level.

**18. Training to the officers under GST**

**Issue**

Officers to be appointed under GST Act may be untrained as the vast majority of them are unable to answer basic questions. The officers lack learning and test for understanding. The GST law. Further, there is no examination procedure while appointing the officers under this Act.

**Suggestions**

It is suggested that the officers be trained under this Act in respect of mindset of trust and support to the industry as against the tax terror which is prevalent even today. Those officers who would adjudicate and hear appeals are to compulsorily go through a special learning and test for understanding.

**19. Interest be not considered as supply except Banking, NBFC Company**

**Issue**

Exemption to interest income and inclusion of the same for the purpose is creating difficulty for trade & industry.

**Suggestions**

It is suggested that exemption income be not considered as supply except banking, NBFC Company and no reversal in regards to interest income be required to made.

**DEFINITION**

**20. Definition of term Aggregate Turnover**

Section 2(6) of CGST Act provides that “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), **exempt supplies, exports of goods or services or both** and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;



### Issue

- The term “exports of goods or services or both” cover all the exports which may be taxable as well as non-taxable. Reference may be drawn from wordings in section 2(108) (taxable supply) C G S T A ct read with sections 2(5) (export of goods) and 2(6) (export of services) I G S T A ct, 2017.
- If ‘exempt supplies’ are included in the aforesaid threshold of Rs.20 lakh that would mean that if a dealer is involved in exclusive supply of exempt goods/services and if he happens to make a small supply of taxable goods/services including High seas sales, then he will become liable for registration. As such the turnover limit of Rs.20 lakh is too low a limit and if the exempt supplies are also included therein than a very large number of people will become liable for registration without any substantial revenue to the Government.

### Suggestion

- It is therefore suggested that the reference of the words “export of goods / services” be accordingly removed / omitted / deleted from the definition of A ggregate Turnover.
- It is suggested that instead of words “aggregate turnover” the words “aggregate turnover of taxable supplies” be used.

## 21. Definition of Capital Goods

Section 2(19) of the C G S T A ct 2017 provides that “capital goods” means goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business;

### Issue

Under this definition, no treatment for the items have been provided which will be expensed during the year of purchase but not written off in the books due to their nature and use in industry.

### Suggestion

- It is suggested that an exception be provided for items which are written off during the year of purchase in books of accounts to treat them as capital goods even if not capitalised in books of accounts.
- Further, it is suggested that this definition may also include the goods, the value of which is amortized over a period in the books of accounts.
- Additionally, the term “in the course or furtherance of business” be replaced with “for the purpose of business” so that no scope for restriction of credit is left. Same change may also be done for definitions of **“Input” & “Input Services”, “Outward Supply” and also in Schedule I & II.**



- The term “value” be replaced with the words ‘purchase consideration’ for better clarity.

**22. Separate consideration charged for goods and services supplied in conjunction:**

Section 2(30) of the CGST Act, 2017 defines Composite supply as a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

**Issue**

If separate considerations are charged for various goods and services supplied in conjunction with each other in ordinary course of business, whether the same shall also amount to composite supply.

**Suggestion**

It is suggested that suitable clarification be provided.

**23. Definition of Electronic Commerce**

Section 2(44) of the CGST Act defines the Electronic Commerce as supply of goods or services or both including digital products over digital or electronic network.

**Issue**

The current definition appears to include only 'supply on own account' and not 'supply through the portal but by other Suppliers'. Also, electronic commerce appears to exclude 'information portals' and 'customer to customer' portals but the same will be covered by section 52(1).

**Suggestion**

It is suggested that words “supply of” be replaced with the words “facilitating the supply of .....”.

**24. Definition of Exempt Supply - In line with Govt. Policy**

As per the definition given in Section 2(47) of CGST Act, “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;



### Issue

- Non-Taxable Supplies have been excluded from the scope of Aggregate Turnover in the CGST Act but still the term “Exempt Supply” covers the same. Thus, inclusion of non-taxable supply in the exempt supply would ultimately bring it within the scope of aggregate turnover.
- Interpretation of aforesaid definition appears that supply made to job worker covered under exempt supply. Since a registered taxable person may send any inputs and/or capital goods without payment of tax, to a job worker for job-work and therefrom subsequently send to another job worker.

### Suggestions

- It is suggested that non-taxable supplies be kept outside the ambit of ‘exempt supplies’ as well as ‘aggregate turnover’. Inclusion of non-taxable supplies in aggregate turnover results in an effectively lower limit for composition levy as well as for threshold exemption. Further, when a supply is non-taxable, it should not affect the taxability indirectly by affecting the threshold exemption and composition scheme.
- An amendment may be required in said definition that “Exempt supply means any supply of goods/services which are non-taxable under this act **other than supply for job work in accordance with Section 143 of the Act** and includes such supply of goods or services or both, which attract nil rate of tax or which may be exempt from tax under section 11.

### 25. Sale of Canned software not included as services

Section 2(52) of CGST Act, 2017 defines goods as ‘every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply’.

Further section 2(102) defines services as “anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged”

### Issue

Draft Model GST Law specifically contained an explanation in the definition of goods which clarified that goods **do not include intangible property**. The definition of services also contained a similar Explanation to the effect that **service includes intangible property**. Hence, it was made very clear that software in any form is always classifiable as a service and not goods.

However, the explanations cited aforesaid have been deleted in the CGST Act. It has only been specified in Para 5(d) of Schedule II that development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information



technology software is a service. The deeming provision in Schedule II is a replica of what we have in Clause 66E of the Finance Act, 1994 which deals with Declared Services.

The deletion of the aforesaid Explanations would once again raise the long-standing classification dispute as to whether sale of shrink wrapped software or canned software is a supply of good or service.

### **Suggestion**

It is suggested that an explanation as provided in Model GST law to the definitions of Goods as well as Services be restored that goods **do not include intangible property** and **service includes intangible** property.

### **26. Definition of “Inward Supply” – If removed denial of credit.**

Section 2(67) of CGST Act provides that “inward supply” in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without **consideration**;

#### **Issue**

- Inward Supplies made without consideration are also treated as a part of total inward supplies. This means present definition shall cause the buyer to upload the purchases on GSTR2 for the free supplies which shall not be posted by the supplier causing reconciliation issues. Since there is no levy on the free of cost supplies, this inclusion of supplies without consideration need not be required.
- The current definition introduces new terms like 'purchase, acquisition, etc.' which appear to convey that they are the mirror opposite of each of the forms of supply in section 7(1)(a) of CGST Act, 2017.

#### **Suggestion**

- It is suggested that supplies made without consideration be kept outside the purview of the definition of “Inward Supply”.
- The above definition be changed to ‘Inward supply’ in relation to a person with reference to whom the place of supply is determined means the corresponding supply by the supplier of the outward supply”.

### **27. Definition of Job Work – Repair should be part of Job Work**

Section 2(68) of CGST Act provides that “job work” means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly;

#### **Issue**

The definition of job work appears to overlap with repairs etc.





### **Suggestion**

It is suggested that a proviso be inserted to the definition of Job Work to provide that job-work will not include repair or maintenance or other forms of supply which are carried out with respect to the goods belonging to another taxable person.

### **28. Definition of “Location of the supplier of goods”**

Section 2 (70) & (71) of C G S T A ct, 2017 defines “Location of the recipient of services” & “Location of the supplier of services” but does not define “Location of the supplier of goods”. A bsence of definition is causing great concern.

### **Suggestion**

It is suggested that “Location of the supplier of goods” be defined as Location of supplier means the location where goods are situated under the control of the supplier ready for supply with a proviso to cover situation in case of bill to ship to model U / s10(1)(b) of I G S T A ct, 2017.

### **29. Definition of the term Consideration**

A s per Section 2(31) of the C G S T A ct, “consideration” in relation to the supply of goods or services or both includes—

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central G overnment or a State G overnment;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central G overnment or a State G overnment:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

### **Issue**

- Consideration is not what the buyer pays but what the seller receives. Section 2(d) of Indian Contract A ct recognizes that the promise or 'any other person' may also pay the consideration.
- Further, the present definition does not deal with situations of composite supply of goods along-with services.



### Suggestions

- It is suggested that the words “made or to be made” be replaced with the words “received or to be received” so as to enable levy of GST on the full consideration received by air-travel agents who collect commission from passenger as well as from airline. And there are other industries where there is two-way flow of consideration for the same supply
- Further, to remove any ambiguity the definition of consideration be rephrased as follows:

“Consideration in relation to the supply of goods and/or services includes.....”.

### LEVY AND COLLECTION OF TAX

#### 30. Term Provision to be included in Definition of Supply

Section 7(1) of C G S T A ct, 2017 provides that the expression “supply” includes—

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

#### Issue

There are various terms given under clause (a) as example which constitutes supply. However, the term **“Provision of service”** is not included here, which has been used at various places in the C G S T A ct.

#### Suggestion

It is suggested that the term “provision” be included in the scope of supply.

#### 31. Removal of words “such as” as the definition of Supply is inclusive one

Section 7(1)(a) of the C G S T A ct provides that

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

#### Issue

In section 7(1)(a), the words 'such as' while listing the various forms of supply appears to be an indicative list and due to this, various concerns arise.

It appears to render 'manufacture' also to be liable to GST even if it is only in preparation of supply. Contracts signed without any goods or services being appropriated appears to attract GST.



### **Suggestion**

It is suggested to remove / delete or omit the words 'such as' as even after such deletion, supply would not become limited in any way as the definition is inclusive to take care of any extraneous situation

### **32. Taxability of Import of services**

Section 7(1)(b) of CGST Act provides that supply includes import of services, for a consideration whether or not in the course or furtherance of business, and

Further, Schedule I Point 4 of the CGST Act provides that Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business will be treated as supply even if made without consideration.

### **Issue**

Import of services is anyway covered in section 7(1)(b) and establishments outside India is a distinct person which will apply to import of services also. Dual coverage of import of services might lead to interpretational issues.

### **Suggestion**

It is suggested that entry 4 of Schedule I of CGST Act be deleted.

### **33. Business Goods put to Private use by an assessee**

Clause 4(b) of Schedule II of CGST Act, 2017 as specified in Section 7 provides that where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.

### **Issue**

As per the provision, in the event, a car is owned by a taxable person in the name of a company and the same is being used by him occasionally for his personal use then such personal use would be considered as supply of service and would be subject to GST. In the given scenario, how should the taxable person determine the value of such services (personal use) for the purpose of levability of GST?

Further, as per Section 17(1) Input Tax Credit on such services (used for other purpose) would not be available. This is a double jeopardy to the Taxable person.

### **Suggestions**

- It is suggested that an option be given to assessee's to adopt some presumptive value of the use of specified assets for personal purposes based on the quantum of usage made by him.



- Further, if the Government intends to levy GST on such services (personal use) then Input Tax Credit on such services also be allowed to the Taxable person.

#### 34. Reimbursement of expense for which invoice is issued in the name of employee

As per Schedule III of the CGST Act, 2017 services by an employee to the employer in the course of or in relation to his employment are treated neither as a supply of goods nor a supply of services.

##### Issue

There may arise many instances wherein an employee is reimbursed by his employer for expenses incurred by an employee during course of employment but for which a bill is issued in the name of the employee. For example, Mr. A hires a cab while on a tour for company work and makes the payment for the same. The bill is issued in name of Mr. A and company reimburses the amount so borne by Mr. A. This reimbursement is not a part of Mr. A's salary. The taxability of such transactions needs to be clarified.

##### Suggestion

It is suggested that there be provided a suitable clarification regarding taxability of reimbursements made by an employer to the employee when the bill for a service etc. is issued in the name of that employee.

#### 35. Clarity on GST applicability on Securitization Transaction:

##### Issue

In terms of para 6 Schedule III of the CGST Act, Actionable Claims other than lottery, betting and gambling is **neither** be treated as a Supply of Services **nor** supply of goods.

Actionable claim has been defined under the CGST Act to have the meaning assigned to it under Transfer of Property Act, 1882. As per Section 3 of Transfer of Property Act "Actionable Claim" means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;"

##### Issue

- It can be inferred from above that the secured debt would get excluded from the definition of Actionable Claims. Thus exigible to GST which may be subject matter of dispute in future if not clarified timely by the Government.
- Further, assignment / securitization transactions are **transactions in money** being assignment of loan receivables. Taxing such transactions would mean either taxing a loan transaction or taxing interest thereon.



- Countries worldwide like Canada, Malaysia, United Kingdom, Singapore, Australia etc. have specifically kept securitization transactions outside the indirect tax regime.

**Suggestion:**

- It is suggested that the definition of actionable claim be provided
- It is suggested that suitable clarification be provided on aforesaid issues

**36. Mandatory Registration under section 9(3) for Reverse Charge purpose need not trigger the provisions of section 9(1)**

Section 9(3) prescribed that Government may by notification specify the categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods and services or both. In this case, Assessee is required to register and pay GST on reverse charge basis. Further, once they are registered, they are required to collect tax on all the goods or services supplied by them even though their turnover is less than 20 lacs.

**Issue**

There may arise a situation wherein an assessee has obtained registration under GST for availing certain services on which tax is liable to be paid under Reverse Charge as per section 9(3) but the outward supplies made by such assessee will be subject to tax even if less than Rs.20 Lacs.

**Suggestion**

It is, therefore, suggested that relaxation be given to the Assessee who is required to register due to section 9(3) and having turnover less than 20 lacs.

**37. Permanent transfer/disposal of business assets**

Section 7(1) of the CGST Act provides that supply includes—

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- (b) import of services for a consideration whether or not in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Schedule I covers the matters to be treated as supply even if made without consideration which includes Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.



### **Issue**

- There is a drafting anomaly between both the sections. It appears that as per para 1 of Schedule I, if credit is not availed on business assets (which would be capitalized in the books) then it is not a supply. But section 7(1)(a) itself covers the permanent transfer/disposal of any asset for furtherance of business whether the credit is availed or not on such assets.
- It is defined that activities specified in Schedule II would become "supply" even though they are not supplies as per clauses a, b & c. This definition will result in a lot of unintended consequences. The reference to Schedule II may be restricted only for the purpose of classification of supplies, once they become supplies by virtue of clauses a,b & c of Section 7(1).

### **Suggestion**

- It is therefore suggested to clarify the transaction related to permanent transfer/disposal of business assets.
- It is suggested that clause (d) may be removed from section 7(1) and may be placed as a separate sub section

### **38. Definition of Business Assets**

Schedule I of the CGST Act provides that Permanent transfer/disposal of business assets where input tax credit has been availed on such assets would be treated as supply even if made without consideration. However, the term "Business Assets" has not been defined anywhere.

### **Suggestion**

It is suggested that the term "Business Assets" be replaced with words "Inputs & Capital Goods" to curb the interpretational issues.

### **39. Tax liability on Composite and Mixed Supply**

Section 2(30) of the CGST Act provides that "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Further, Section 8 (a) of the CGST Act provides that a composite supply comprising two or more supplies, one of which is a principal supply, then the tax liability on a composite supply shall be treated as a supply of such principal supply.

Furthermore, as per section 2(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.



**Issue**

- There is no clarification regarding whether medicines, equipments, consumables, etc supplied along with the treatment to inpatients will be considered as composite supply.
- Lack of clarification as to whether sales from pharmacy to inpatients and outpatients would be covered under composite supply.

**Suggestions:**

It is suggested that definition of "Principal Supply" may be change to bring in the concept of dominant intention theory

**40. Supply of Information Technology software**

Schedule II point 5 provides that the following matter shall be treated as supply of services: -

- 5(c) temporary transfer or permitting the use or enjoyment of any intellectual property right
- 5(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software

**Suggestion**

It is suggested that the Point 5c and 5d be redrafted as: -

- 5c. temporary transfer or permitting the use or enjoyment of any intellectual property right **but does not include supply of information technology software when supplied as goods.**
- 5d. development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software **but does not include supply of information technology software when supplied as goods**

**41. Levy and Collection- Effective Date of applicability of the notification**

Section 9(1) of the CGST Act provides that: "Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person"

**Issue**

**Practical difficulties in ascertaining the effective date of applicability of the notification**





**Suggestion:**

**It is suggested that following proviso may be inserted to avoid practical difficulties in ascertaining the effective date of applicability of the notification**

“Every notification issued under sub-section (1) in respect of rates shall take effect from the next date succeeding the date of its publication in the Official Gazette, unless some other date is specified therein for this purpose.”

**42. Levy & Collection under Reverse Charge**

Section 9(3) of the CGST Act provides the Central or a State Government may, on the recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the person receiving such goods and/or services and all the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to such goods and/or services.

**Suggestion**

An explanation be added to specify that supplies other than those in course or furtherance of business are excluded from the purview of Section 9(3).

**43. Availability of Composition Levy**

Section 10 of the CGST Act provides that benefit of Composition Scheme would be available to a registered taxable person, whose aggregate turnover in the preceding financial year did not exceed Rs. 50 lakhs (now 1 Crore), to pay, in lieu of the tax payable by him, an amount calculated, subject to certain conditions at such rate as may be prescribed, but not less than 1% in case of a manufacturer ; 2.5% in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II and 2.5 % in any other case, of the turnover in a State or Union territory during the year:

Provided that the Government may, by notification, increase the said limit of Rs.50 to such higher amount, not exceeding Rs. 1 Crore , as may be recommended by the Council.

Provided further that the registered person shall be eligible to opt u/s10 (1), if:

- (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
- (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
- (c) he is not engaged in making any inter-State outward supplies of goods;
- (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:



### **Issue**

Non-availability of composition scheme to those who are supplying services or making any supply of goods which are not leviable to tax under the Act seems to be harsh on such person. Small suppliers, supplying services only shall be required to comply with the normal provisions of the law which could prove to be cumbersome for such suppliers. Further, small suppliers making few of the supplies not chargeable to tax while majority of supplies are taxable may find this provision an unnecessary burden on them.

### **Suggestion**

- It is suggested that eligibility for composition scheme be made available uniformly to all suppliers whether supplying goods or services or both
- Alternatively, Sector specific composition schemes may be designed to cater to need of different sectors.
- It is suggested that in section 10(1) the words “under this Act” be added after the words “in lieu of tax payable by him” to restrict the taxes to CGST/ SGST paid under this Act.
- The embargo placed on effecting inter-State supplies by the taxable person opting to pay tax under the composition scheme must be done away with. GST, being a destination based consumption tax and moving in the direction of being ‘One India – One Tax’, this embargo appears to be travelling in the opposite direction.
- Penalties in respect of cancellation of registration under a composition scheme of a registered taxable person for whatever reason must be limited to recovery of differential taxes. There must not be any further penalty / interest considering that the tax payer would be a small player and will not be in a position to follow the rigours of a GST regime.

#### **44. Type of tax liability of person liable to pay tax under reverse charge scheme**

Under CGST Act, Section 9(3) / 5(3) of IGST Act, 2017 requires tax to be paid by recipient in case of receipt of supply notified by the government and Section 9(4) / 5(4) requires tax to be paid by registered person on receipt of supply of goods or services from an unregistered person.

### **Issue**

Suppose, a recipient of supply of goods and services having registration at Delhi receives supply from an unregistered person who is based at Haryana. Supposing, the place of supply being Haryana as per the GST laws and the Location of supplier is at Haryana, the transaction is an intra state supply within Haryana, and hence H-SGST & H-CGST shall be charged on such transaction. But how the person registered at Delhi will pay the tax to the Government as supply from the prospective of supplier is intra state whereas from the prospective of recipient it is procurement in Haryana and goods brought to his registered office at Delhi.



### **Suggestion**

It is suggested that suitable clarification be provided in the law for such transactions else it would create hardship for the recipient to get themselves registered in the States from where the supply is procured.

#### **45. Availability of Composition Scheme to various assessees**

Section 10 of the CGST Act, 2017 provides for Composition Scheme availability to registered persons whose aggregate turnover in the preceding financial year did not exceed Rs. 75 lakhs.

### **Issue**

The benefit of composition scheme is available for works contract as defined in clause (119) of section 2 & supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

However, composition scheme is not available for other set of services not eligible for input tax credit like outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, rent-a cab etc. as provided u/s 17(5)(b). Moreover, input tax credit is not allowed in such supplies except when used for making outward supply of the same category.

This goes against the very intention of GST which was believed to bring manufacturers, traders and service providers at parity. Such a provision may prejudice the interests of small service providers not wanting to undertake the lengthy compliances applicable to a normal supplier. This may further encourage tax evasion.

### **Suggestion**

It is suggested that option of paying tax u/s 10 should also be extended to goods and services covered u/s 17(5)(b), (c) & (d) and services provided by professionals having small turnover.

#### **46. Composition Scheme be extended to all**

Section 10 of the CGST Act provides that benefit of Composition Scheme would be available to a registered taxable person, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but

- (a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,
- (b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and



- (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

Further, the registered person shall be eligible to opt under sub-section (1), if--

- (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
- (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
- (c) he is not engaged in making any inter-State outward supplies of goods;
- (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Further sub-section (4) of Section 10 provides that if the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 63 or 74, as the case may be, shall apply mutatis mutandis for determination of tax and penalty.

### **Issue**

Non-availability of composition scheme to those who are supplying services or making any supply of goods which are not leviable to tax under the Act seems to be harsh on such person. Small suppliers, supplying services only shall be required to comply with the normal provisions of the law which could prove to be cumbersome for such suppliers. Further, small suppliers making few of the supplies not chargeable to tax while majority of supplies are taxable may find this provision an unnecessary burden on them.

### **Suggestion**

- It is suggested that benefit of composition scheme be extended to those who are supplying services upto a limit of Rs.35 Lacs or making any supply of goods which are not leviable to tax under the Act.
- It is suggested that Instead of three rates of tax 2.5%; 1% and .05% a single rate be provided for composition scheme i.e., 1% for CGST and 1% for SGST
- All conditions for availing composition scheme be done away with except the limit of turnover in the preceding financial year.



- Even the turnover prescribed for opting composition scheme be reconsidered and fix as 2 crore for first year and 1.5 from year 2

#### **47. Composition Scheme U/s 10 of CGST Act - subject to double taxation**

Under composition scheme dealer is required to pay tax based on Turnover including exempted Turnover of goods.

##### **Issue:**

- (i) Composition dealer can not avail the credit for the goods or services procured by him leads to cascading of taxes
- (ii) Additional Turnover Tax needs to be paid by composition assessee which is part of the cost of the composition supplier which is generally equivalent to the value addition for eq. if 1% is payable then value addition is charged on 10%.
- (iii) Registration applied for composition but granted under normal scheme

For example: Manufacturer Mr. A supply goods to registered dealer Mr. B after charging GST @ 28%. Since the dealer Mr. B has opted for composition scheme he must pay tax @ 1% without availing input tax credit and Now Mr. C, who has purchased goods from Mr. B, supply goods to registered dealer Mr. D than he will be liable to pay GST @ 28% on its further supply this leads cascading of taxes on account of non-availability of credit by composition dealer to registered dealer. This restriction on the credit transfer making the composition scheme ineffective.

##### **Suggestion**

- (i) It is suggested that credit available by composition assessee be passed to the recipient like under central excise law First stage dealer provisions or any other model of adhoc credit basis like 40% or 60% or any other basis as procurement by the recipient from the composition dealer affecting MSE Sector as prices of supplies made by composition dealer are high in comparison to the normal dealer.
- (ii) Registration wrongly granted be rectified to composition on immediate basis.

#### **48. Ineligibility to opt for Composition Scheme if assessee has interstate purchased stock**

Rule 5 of CGST Rules, 2017 provides that the person exercising the option to pay tax under section 10 shall comply with the following conditions, namely: -

- (a) he is neither a casual taxable person nor a non-resident taxable person;
- (b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3;



- (c) the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;
- (d) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;
- (e) he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year;
- (f) he shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him; and
- (g) he shall mention the words “composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

### **Issue**

There may arise a situation wherein an assessee who has been granted provisional registration and wishes to opt for Composition scheme satisfies all the conditions specified in Rule 5 of CGST Rules, 2017 except that he holds the stock which has been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State.

A further a condition provides that his stock should not include goods purchased from an unregistered dealer where tax has not been paid under reverse charge. But if he pays tax under reverse charge he is eligible to opt for Composition Scheme. Such a relaxation for payment of tax and opting for Composition levy is not available in case of purchases made in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State.

Also, Section 10 only restricts inter-state outward supply of goods, no restriction w.r.t. inter-state purchase or purchase from unregistered dealer.

### **Suggestion**

It is suggested that in case where the person wishing to opt for Composition Scheme holds such goods in stock which have been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, he be allowed to opt for Composition Scheme upon payment of appropriate applicable tax under GST.

#### **49. Applicability of composition scheme in case of caterer and banquet hall food supply:**

Section 10 read with Section 6 (1) (b) of Schedule II of the CGST Act provides that composition scheme is available to the supplier who is providing services by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other



article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

**Issue**

Whether caterer or banquet hall may claim composition scheme u/s 10.

**Suggestion**

It be clarified that whether caterer or banquet hall may claim composition scheme as it has been raised by such industries considering that Government in the press releases announce for the Restaurant only but as per law, it appears that even caterer or banquet hall may claim composition scheme.

**50. Composition tax on entire turnover**

Section 10 of CGST Act 2017 provides that, a registered person, whose aggregate turnover in the preceding financial year did not exceed Rs.75 lacs / Rs.50 Lacs rupees, may opt to pay @ 0.5%/1%/2% of the **turnover**, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding, --

**Issue**

Section 10 provides tax rates as a % of turnover i.e. on opting for composition levy an assessee becomes liable to tax on the entire turnover including exempted or nil rated supply of goods

**Suggestion**

It is suggested that appropriate amendment be made to provide relief to composition dealer on exempted supply or nil rated supply of goods as it is against the principal of taxability as well as creating inequality with the normal dealer.

**51. Classification & HSN code in case of services are overlapping & not aligned**

Notification No. 11/2017-Central Tax (Rate), dt. 28-06-2017 provides 4 digit classifications in the main notification, wherein annexure to the notification provides 8 digit classification.

**Issue**

HSN code & classification provided by annexure to the notification is overlapping to the main notification in many of services.

**Suggestion**

Appropriate amendment be made in the said notification to remove the ambiguity. Further, clarification on SAC codes under GST to be used on professional services rendered by chartered accountant be provided.





## **52. Power to grant exemption from Tax**

Section 11 of the CGST Act empowers Central/ State Governments to exempt ..... Goods or services or both from whole/ part of tax leviable thereon.

Further section 6(3) provides that the Central or a State Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

### **Issue**

This provision empowers the Central / State government to retrospectively change / amend / alter / modify the nature of exemption. This leads to a situation, where the benefit of exemptions intended to be granted to supplies under this section with the concurrence of the council could stand denied to supplies of such goods/services. In the possibility of retrospectivity as well as the vulnerability to introduce changes with the Council's concurrence, this sub section may be detrimental to the interest of the assesseees.

### **Suggestion**

It is suggested that a proviso be added to sub-section 3 to provide that "every such insertion / amendment / modification that has the effect of increasing the tax payable be effective from the date of such insertion".

## **53. Exemption in respect of Charitable Institutions**

Pursuant to Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017 and Notification No. 9/2017-Integrated Tax (Rate) dated June 28, 2017, the Government has exempted Charitable Organisations from the GST.

### **Issue**

- Although exempt vide aforesaid Notifications, Charitable Organisations are compelled to register, as they have receipts on account of ancillary activities like providing a shop on rent to outsider so that the visitors get tea and food, charitable hospitals running pharmacy and providing medicines at free or concessional rate, but also selling medicines at full rate to others
- The service provided by charitable trust registered under section 12AA of income tax act are liable to pay GST on hostel accommodation service provided to students at concessional charge however if such service is provided by educational institute than exempt from GST

### **Suggestion**

It is suggested to extend the exemption to ancillary activities or to put a cap on such ancillary activities like 20% of total receipts.



It is suggested that exemption from GST must be provided on hotel accommodation services provided by charitable institute since the intent of government is to exempt accommodation service to students.

**54. Power to grant exemption from tax**

- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon. ~~with effect from such date as may be specified in such notification.~~
- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

**Issue**

Practical difficulties in ascertaining the effective date of applicability of the notification

**Suggestion**

Following clause may be inserted to avoid difficulties :

“Every notification or order issued under sub-section (1) and (2) respectively, shall take effect from the next date succeeding the date of its publication in the Official Gazette, unless some other date is specified therein for this purpose.”

**55. Exemption provided from Reverse Charge in case of supply made U/s 9(4)**

The Central Government vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017, has amended Notification No. 8/2017 – Central Tax (Rate) dated 28th June, 2017 by omitting proviso under Paragraph 1 which deals with the exemption limit of Rs. 5000 per day available to the registered person on procurement of goods or services from any or all unregistered suppliers. Thus, exemption shall be available to all the registered persons till March 31, 2018 without any limit in case of supply procured from unregistered supplier.

Similar notification has been issued in case of IGST.

**Issue**

The effective date for deferment of reverse charge is not provided

**Suggestion**

Clarification be provided as to what is the effective date for deferment of reverse charge as notification used the word “omission” in reference to the earlier exemption notification. It has created confusion among the trade and industries in respect of effective date of



notification. It is therefore required to be clarified that the deferment be made effective from the appointed date.

**56. Composition dealers not to be given exemption under Notification No. 38/2017(CT)**

Notification number 38/2017 (CTR) dated October 13, 2017 exempts all registered persons (which means including composition dealers) from payment of tax under RCM. In case of composition dealers rate of taxes are 1% and 2% for traders and manufacturer respectively, irrespective of rate of tax on goods or services supplied. In such cases Government will get only 1%/ 2% of the value as tax on the goods supplied by the composition dealer.

RCM is normally tax neutral in case of taxable goods supplied by a dealer other than composition dealers. Whereas foundation of composition scheme is to get the tax on inputs by way of forward charge or by RCM. Rate of 1%/ 2% are only symbolic rate for tax on value addition by composition dealers. In such a scenario apart from losing revenue by government, it will work as catalyst to increase grey economy as traders will try to purchase from URD (actual or fictitious) which will substantially reduce the cost of product as the tax burden will be very less.

**Issue**

After issue of Notification no. 38/2017 (CT), No RCM liability exists even on the composition dealers. Therefore, genuine Government revenue gets affected and thus scheme is against the ideology of the Composition scheme.

**Suggestion**

It is suggested that either of the two options be availed :-

- 1: Notification No. 8/2017 (CT) may be amended to provide that benefit of this notification not be available to taxable person who has opted for section 10.
- 2: Rule 5(1) may be amended to provide that composition dealer will not take benefit of notification no. 8/2017 read with 38/2017 (CT)

**57. Possible Exempt supply in case of interest or discount**

Entry No. 28 of the Notification No. 9/2017- Integrated tax (Rate) provides exemption to the services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services).

**Issue**

On a conjoint reading of section 7 (1) (a), section 2 (17) and section 2 (102) of the CGST Act, 2017 and entry.no 28 of the Notification No. 9/2017- IGST(Rate) dated 28.06.2017, it may be inferred that in case a manufacturing entity has advanced loan to a subsidiary and receives interest, the same will be considered as an exempt supply. Further, reversal consequences have to be followed.



### **Suggestion**

It is suggested that the Notification 9/2017 dated 28.06.2017 (IGST-Rate) be suitably amended by inserting an explanation that the above entry only relates to supply made by the banking and other financial company. This will exclude those entities whose principal supply is taxable and it is only one of supply that they advanced loan to its subsidiary and consequently earning interest income.

### **TIME AND VALUE OF SUPPLY**

#### **58. Time of supply of goods and services under RCM**

Section 12(3) of the CGST Act provides that in case of supplies of goods in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—

- (a) the date of the receipt of goods; or
- (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier;
- (d) However, as per section 13(3) of the CGST Act provides that in case of supplies of services, the time of supply shall be the earlier of the following dates, namely-
- (e) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (f) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

### **Issue**

The time period of 30/60 days from the date of issue of invoice by the supplier is quite short considering the time taken for delivery of goods with invoice and may create unnecessary interest liability if payment is not made within 30 or 60 days.

### **Suggestion**

It is suggested that the time limit prescribed in both the cases be made 90 days in line with the current provision of service tax.

#### **59. Time of supply in case of continuous supply**

Section 12(2) of the CGST Rules, 2017 provides for the determination of time of supply of goods as earlier of the following dates, namely:-

- the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or



- the date on which the supplier receives the payment with respect to the supply.

#### **Issue**

Section 12 of the C G S T A ct is not applicable in case of the continuous supply of goods and services. Reference has been given to Section 31(1) given in Section 12(2) of the C G S T A ct which virtually restricts applicability of section 12 on continuous supply of services.

#### **Suggestion**

It is suggested that reference to only section 31 may be given instead of section 31(1) in the section 12 of the C G S T A ct, 2017

### **60. Change in Rate of tax w.r.t Supply of Services**

Section 14 of the C G S T A ct indicates the provisions for determining the time of supply in case where there is a change in the rate of tax in respect of services.

In case, service has been provided before change in rate of tax the time of supply will be date of payment or invoice whichever is earlier.

In case, service has been provided after change in rate of tax the time of supply will be date of payment or invoice whichever is later. In case both payment and invoice are received before change in rate of tax the time of supply will be earlier of the two dates.

#### **Suggestions**

In order to avoid possible litigation, it must be suitably clarified regarding time of supply in case of change in rate of tax w.r.t continuous supply of services/goods.

### **VALUATION**

### **61. Value of Taxable Supply**

Section 15 of C G S T A ct provides that the value of a supply of goods or services or both shall be the transaction value, that is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

Further, Section 15(4) lists down the special situations where the transaction value cannot be determined as such and needs to be determined as per the rules.

#### **Suggestions**

It is suggested that the words “for the purpose of this A ct and notwithstanding anything contrary to any other law for the time being in force” be added before the words “value of supply.....” so as to enable section 15 application to C G S T , S G S T & I G S T .



**62. Taxes/duties paid under IGST not to be included in value of supply**

Section 15 of the CGST Act provides for the valuation of supply. Sub-section (2)(a) of section 15 includes any taxes, duties, cesses, fees and charges levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient.

**Issue:**

- Inclusion of any taxes, duties, cesses, fee and charges levied under any other statute would defeat the very purpose of eliminating tax cascading and may lead to interpretational issues as well as litigations at a later date. The charges such as Passenger Service Fee (PSF), User Development Fee (UDF), Mandi taxes and other alike charges are levied by Airport Authority of India, under Airport Authority of India Act, 1994, and collected by Airlines on the tickets issued to passengers

**Suggestions**

Any taxes, duties, cesses, fee and charges levied under any other statute be excluded from the transaction value so that spirit of GST may be maintained. Such charges, being simply in the nature of statutory levies, never form part of the taxable value, as no supply is rendered by airlines per se, in lieu of such charges.

**63. Manner of determination of amount liable to be paid by the supplier**

Section 15(2)(b) of the CGST Acts provides that the value of supply shall include any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both

**Issue**

Since the value of supply includes an amount liable to be paid by the supplier but incurred by the buyer, the basis for determination of the amount liable to be paid by supplier is not specifically mentioned herein. It could lead to large scale litigations if the amount to be determined is left open to the discretion of taxpayers.

**Suggestion**

Therefore, it is suggested that the amount liable to be paid by supplier may have a reference to the contract or agreement between suppliers and recipient by the words 'by reason of or in connection with'. So, supplier's liability be restricted within the scope of the contract or agreement.

**64. Meaning of term "Vouchers" for Supply of Vouchers**

Section 12(4) of the CGST Act provides that in case of supply of vouchers by a supplier, the time of supply shall be

- (a) the date of issue of voucher, if the supply is identifiable at that point; or



- (b) the date of redemption of voucher, in all other cases.

Similar provisions are provided in section 13(4) under IGST Act.

### **Issue**

The term 'vouchers' has nowhere been defined under the law and is open to interpretations which in turn may give rise to interpretational issues.

Further, Vouchers are understood to be as actionable claim and since actionable claims are goods the time of supply of it shall be provided only in section 12 and not in 13.

### **Suggestion**

- It is suggested that Section 13(4) be omitted from the law.
- Further it is suggested that to avoid misinterpretation the following definition of term "Voucher" be provided:

**'voucher** means

- (d) any entitlement received from an arrangement involving a supplier who will accept the same in redemption to settle payment owed in respect of a taxable supply
- (e) any entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty or
- (f) any entitlement to participate in any future contingent event.

Explanation 1: voucher shall not include a system of payment recognized under the Payment and Settlement Systems Act, 2007 or any other law for the time being in force.

Explanation 2: any supply attendant to issuance of such voucher shall not be excluded"

## **65. Valuation in case of sale of repossessed goods**

Rule 32(5) of Central Goods and Services Tax Rules, 2017 ("**CGST Rules**") provides for manner of determination of value of taxable supply in case of trading in used goods. The Rule states that:

Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored

Further, proviso to the said Rule specifically deals with a case where goods repossessed from a defaulting borrower would be disposed of by the lender for the purpose of recovery of loan or debt. As per the proviso to Rule 32(5) of the CGST Rules, the value of taxable





supply in such case would be the purchase value of repossessed goods as reduced by five percentage points for every quarter or part thereof between the date of purchase and date of disposal by Banks/ N BFC , if the defaulting borrower is not registered under GST.

While the proviso to Rule 32(5) of the CGST Rules makes a qualification that the defaulting borrower should be unregistered person, there is no such condition specified under Rule 32(5) of the CGST Rules. The issue that arises for consideration is that whether the option of determining the value of taxable supply as provided in Rule 32(5) of the CGST Rules is applicable to cases where the dealer disposes repossessed goods of the defaulting borrower, even when such borrower is a registered person.

#### **Suggestion**

Applicability of the proviso for disposal of goods repossessed from registered persons be clarified.

#### **66. Supply of Goods on which ITC was not allowed at the time of purchase.**

Section 15 of the CGST Act and Rule 32 of the CGST Rules, 2017 provides for determination of value of supply in respect of certain supplies.

#### **Issue**

Goods on which credit is not available at the time of purchase (e.g. Motor Car or Machinery purchased for manufacture of exempted supplies), gets taxed again at the time of their further supply on transaction value which increases the price of product and since the same will not be competitive with new goods in market, it will give birth to increase of grey market.

#### **Suggestion**

Rule 32 of the CGST Rules may suitably be amended so as to provide valuation of such goods shall be only over and above the consideration on which tax has already been paid.

### **INPUT TAX CREDIT**

#### **67. Exempt Supplies to include reverse charge supplies for credit apportionment**

Section 17(3) of the CGST Act inter alia provides that the value of exempt supply u/s 17(2) shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

#### **Issue**

Supplies on which reverse charge is applicable is an input service & cannot be used in pro-rata formula for determining pro-rata credit between taxable & exempt supplies. Inclusion of supplies (covered under RCM) into value of exempt supplies for the above purposes will have effect of same supply being taxed two times. Such supplies being considered as exempt



seems to be illogical as such supplies are taxed, though tax has been paid by the recipient instead supplier.

Example: One company has provided professional services of Rs.25 Lacs taxable supplies and as well as well as earn through sponsorship Rs.10 Lacs. Now credit available towards taxable supplies will be reduced due to sponsorship wherein for providing sponsorship services actually there is no input.

### **Suggestion**

It is therefore suggested that supplies covered under reverse charge mechanism be kept outside the ambit of exempt supplies for the purpose of proportionate credits.

Alternatively, the supplier may be provided an option to either pay tax on forward charge basis with corresponding ITC, or not to claim ITC and instead the tax be paid by the recipient under reverse charge at a reduced rate, subject to the condition of no ITC being claimed by the supplier.

Further, refund mechanism in line of erstwhile Rule 5B of CENVAT Credit Rule be provided to such supplier providing services under 9(3).

### **68. Blocking of Input Tax Credit for certain set of Services**

Section 17(5)(b) of CGST Act, 2017 provides that no input tax credit is available on supply of goods or services or both: —

- (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply
- (ii) membership of a club, health and fitness centre;
- (iii) rent-a-cab, life insurance and health insurance with provided exceptions
- (iv) travel benefits extended to employees on vacation such as leave or home travel concession.

### **Issue**

Certain expenditure of the given nature can also be required to be made under the requirements of any law and not necessarily for making taxable outward supplies of the same category. Say, for example, food and beverages used in the canteen of a factory.

### **Suggestion**

It is suggested that the facility of availing input tax credit not be blocked when goods and/or services are used or intended to be used in the course or furtherance of business in lines with the provisions of Section 17(1).



### **69. Disallowance of Credit in respect of works contract services**

Section 17(5)(c) of the CGST Act provides that works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is an input service for further supply of works contract service.

Clause d provides that goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business.

Explanation 1.- For the purpose of this clause, the word “construction” includes reconstruction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

#### **Issue(s)**

- Works contract is already limited to immovable property; hence the current language is redundant.
- Further, suppose that a person constructs a Factory Building, Hotel Building or a building which he wants to or has let out on rent, as per provisions of Section 17(4) (c) and (d) of the CGST Act, credit of any taxes paid on construction of Immovable property would not be allowed. This is a differential treatment being laid out that firstly where being a tenant of a building, a person would be getting the credit of the taxes paid on the rent to the owner of the Immoveable property but if a person has constructed building himself, then he would not be getting any credit of the taxes paid. This would be a huge negative for the Hotel Industry or the Manufacturing Industry wherein large investment is required in Building for the rendering of the supplies. Immoveable Property in case of Hotel Industry, Industries and used in Letting out on rent forms an important part of the supply chain and cannot be treated as being used for self-consumption.
- It leads to cascading of taxes which is not the spirit of GST Law, as to provide seamless credit.

#### **Suggestions**

- It is suggested that clause c be rephrased as “works contract and goods or services used in a works contract except where it is an input for further supply as works contract”.
- It is suggested that the provisions under Section 17 relating to the Input Tax Credit be rationalized and brought at par with the simple concept that if outward supplies of a person are taxable then the inward supplies of the goods or services or both may be allowed as credit.
- Further, it is suggested that renovation works, repairs etc. be eligible for credit if they are in course / furtherance of business.



- The restriction of ITC in respect of all works contracts resulting in immovable property at large be removed since in large number of contracts which qualify as works contracts, the end result would be immovable property'.
- Cascading effect in case of outdoor catering

**70. Section 17(5)(b) of the CGST Act provides for restriction from availing input tax credit in respect supply of certain goods or services or both.**

**Issue**

In certain industries, the canteen expenses are borne by the company itself and the burden is not passed on to the employees. Moreover, reference could be taken from the provisions of The Factories Act (Sec. 46) which casts a responsibility on the occupier, to provide and maintain such canteen services. Section 17(5)(b)(i) of the CGST Act expressly disallows input tax credit in respect of supply of goods or services or both by way of the outdoor canteen.

The said canteen expenses fall under the definition of outdoor catering as provided in the erstwhile service tax law. This has an implication of GST becoming a cost in the hands of the supplier and thereby imposing cascading effect in the value chain.

**Suggestion**

It is suggested that an exception may be carved out under Section 17(5)(b) for outdoor catering just like the rent-a-cab service. If an analogy is drawn between the treatment given to Rent-a-cab services and outdoor catering, the exception would be required under GST Law.

**71. Non-availability of ITC on motor vehicle to builders**

Section 17(5) of CGST Act, 2017 restricts the input tax credit on certain items which includes motor vehicle and other conveyances except when they are used - (i) for making the following taxable supplies namely:

- A. Further supply of such vehicles or conveyances; or
  - B. Transportation of passengers; or
  - C. Imparting training on driving, flying, navigating such vehicles or conveyances
- (ii) for transportation of goods.

**Issue**

Builders providing construction services are in regular use of special purpose motor vehicles to carry out construction activities effectively thus we can say Construction Sector heavily relies on use of Motor Vehicles / Motor Vehicle Mounted Machineries for making outward supply of Construction Activities but section 17(5) restricts ITC on such motor vehicles



when used for any purpose other than specified purposes due to which entire burden of tax on motor vehicle falls on the customer in the form of increases prices of infrastructure.

**Suggestion**

It is suggested that suitable amendment be made to allow ITC on motor vehicles when used by builders for the provision of construction service.

**72. Denial of Credit on Goods Confiscated or detained**

Clause (i) of Section 17(5) of CGST Act provides that input tax credit shall not be available in respect of the any tax paid in terms of section 74, 129 or 130 dealing with confiscation and detainment of goods.

**Issue**

When the Confiscated Goods are released and sold it will be subject to tax and hence to deny the credit thereon is not appropriate subject to tax, interest & penalty.

**Suggestion**

It is suggested that there be no denial of ITC on goods confiscated or detained. Interest & penalty may be charged but denial of credit lead to cascading and multipoint tax philosophy.

**73. Exempt Supply becoming Taxable Supply**

Section 18(1) of CGST Act provides that a person who has applied for registration under this Act within 30 days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take **credit of input tax** in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

Section 18(1)(d) of CGST Act provides that where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed.

**Issue**

- Though the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act is allowed, no clarification is provided as to credit of Capital Goods lying on the day



immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

- Law only allows the Input Tax Credit for registered persons applying for registration within thirty days from the date on which he becomes liable for registration and does not provide for registered person applying for registration beyond the period of thirty days. The law is trying to penalize the registered person on wrong front. It is agreed that the registered person has not taken registration within the prescribed time limit. He should be penalized for that with stringent penalty provisions.
- Bona fide view entertained about non-eligibility to tax cannot become such a burden that industry will be forced to look for ways to escape from such consequences.

### **Suggestions**

- It is suggested that suitable credit be allowed after deducting appropriate depreciation as the person earlier has some exemption but has now come under the taxable chain. Article 14 of the Constitution of India provides right of equality and if credit to such person is not allowed then it will lead to non-equality among the equal.
- It is suggested that as a principle of Natural Justice, dealers obtaining delayed registrations be allowed to set off the tax paid on the material on which output liability is being created as Output Tax would be collected from the dealer from the date when he became liable for registration.
- Following explanations be added to Section 18(1)(d)

"Explanation 1 - exempt supply becomes a taxable supply includes when a bona fide view is overturned by law or decision of a Court or Tribunal and such bona fides declared in the law so laid down.

Explanation 2 –notwithstanding anything to the contrary in this Act, entitlement to take credit on input tax shall refer to input tax related to input, input service and capital goods, computed as aforesaid, used in relation to such supply that has so become taxable.

#### **74. Time Limit of 1 year for taking Input Tax Credit for Capital Goods**

Section 18(1) of CGST Act, 2017 provides that subject to such conditions and restrictions as may be prescribed—

(a) a person who has applied for registration under this Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act;

(b) a person who takes registration under sub-section (3) of section 25 shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-



finished or finished goods held in stock on the day immediately preceding the date of grant of registration;

(c) where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed;

(d) where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relating to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed

Further, Section 18(2) of CGST Act, 2017 provides that registered person shall not be entitled to take input tax credit under sub-section (1) in respect of any supply of goods or services or both to him after the expiry of **one year from the date of issue of tax invoice** relating to such supply.

### **Issue**

The provision seems beneficial but restricting the period of one year for availing Input Tax Credit on Capital Goods is very less. For a dealer purchase of Capital Goods is a rare activity where a huge investment is involved. The dealer will transit to GST with such high tax paid capital goods and is expected to use them for further supply in GST regime.

Further, as per clause (c) and (d) of Section 18(1) a percentage point method shall be prescribed for taking input tax credit in case of capital goods. Thus, there seems a gap between the provisions of section 18(1) and Sec 18(2) since percentage point method is used for a longer period.

### **Suggestion**

It is suggested that period of 1 year for availing input tax credit be restricted only to inputs and in case of capital goods a longer period of at least 3 years be prescribed such as time allows under rule 43.

## **75. Supply of Input Tax Credit paid Capital Goods**

Section 18(6) of CGST Act provides that in case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value





of such capital goods or plant and machinery determined under section 15, whichever is higher:

Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

#### **Issue**

The provision deals with reversal of input tax credit in case of removal of capital goods but the current wordings "In case of supply of capital goods or plant and machinery" have a far-reaching impact. First it uses the term supply which includes even renting of that capital goods i.e. to say in case the capital goods are rented out, Sec 18(6) triggers and there would be reversal of ITC which is not the intention and secondly the use of word plant and machinery is not required as they are already covered under the meaning of capital goods. It will help give the provision intended scope and not hit those transactions which are not intended.

#### **Suggestion**

It is suggested that in place of words "in case of supply of capital goods or plant and machinery" the words "In case of supply of capital goods, on which input tax credit..." be used.

### **76. Eligibility and Conditions for taking Input Tax Credit**

Section 16(1) of the CGST Act provides that every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

#### **Issue**

- Where tax is payable by a person other than the supplier such as principal or agent in Schedule I or section 9(5), the books of account will not reflect the turnover although such turnover will be considered for tax purposes. In such cases, it is necessary to include a proviso that the payer of the tax will not be denied all credits subject to compliance with section 16(2).
- There may arise a situation where after the appointed day, an unregistered person buys inputs from a registered person on payment of tax and such unregistered person obtains registration subsequently. He would want to claim the input tax credit on purchases made during his unregistered period. This situation is not provided for in Section 16(1). This facility is available in the current Excise and Service Tax Laws on the premise that such inputs were used for manufacturing output goods and/or providing output services.



### **Suggestions**

- It is suggested that a proviso be added as follows:  
"Provided further that every registered taxable person will be entitled take credit of input tax in accordance with this section even though tax is paid on outward supply is in accordance with section 7(1)(c) or section 9 (5) or any such provision from time to time"
- It is suggested that mechanism to avail input tax credit on the purchase of inputs made during the unregistered period be incorporated by way of proviso to Section 16(1) or by suitably changing the wordings contained in section 40 to "effective date of First Purchase" instead of 'effective date of registration'.
- It is also suggested that a suitable mechanism in case of matching the credit should also be provided for. This would be in line with the suggestion to allow credit in respect of reversal of bona fide exemption which is reversed by a Superior Court ruling, credit relatable to the output which is not rendered liable to GST earlier cannot be denied.

### **77. Time Limit for availing Input Tax Credit**

As per section 16(4) of the CGST Act a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

#### **Issue**

- If we analyse the provisions in the law and the compliance based system developed in GST, it would be appropriate that the deadline in proviso of Section 37(3), 39(5), 39(9) and 16(4) are linked with respect to the due date of filing of return for the month of September following the end of financial year rather than actual filing of the Return for the month of September of the next financial year or annual return whichever is earlier
- Further, there is no clarity as to whether belated claim of ITC shall be claimed in the return for the tax period of September following the end of the financial year or in the annual return as the case may be. The filing of revised return may not be permissible in such cases

### **Suggestions**

- It is suggested that the deadline to claim Input Tax Credit in respect to any invoice be linked with the due date rather than actual filing of the return. This would help avoid extension of time limit due to delay in filing of return.
- Further, it is suggested that the provision regarding belated claim of Input Tax Credits be suitably clarified.



#### **78. Basis of apportionment of Credits or Blocked Credits**

Section 17 (1) & (2) of the C G S T A ct provide that:

- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business
- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this A ct or under the I G S T A ct and partly for effecting exempt supplies under the said A cts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

H owever, the basis of apportionment has not been provided for in both the cases.

#### **Suggestion**

It is suggested that a basis of apportionment like based on the turnover be provided for accurate attribution of credit.

#### **79. Disallowance of credit in respect of Motor Vehicles**

Section 17(5)(a) of the C G S T A ct provides that input tax credit shall not be available in respect of the following: (a) motor vehicles and other conveyances except when they are used

- (i) for making the following taxable supplies, namely- (A) further supply of such vehicles or conveyances; or (B) transportation of passengers; or (C) imparting training on driving, flying, navigating such vehicles or conveyances;
- (ii) for transportation of goods.

#### **Issue**

- A plain reading of this provision provides that assessee who use their own vehicles to transport goods such as mining companies, food companies, etc., stand to lose credit and are forced to constitute another taxable person to undertake transport activity.
- Further, businesses that are involved in transportation of items not covered under definition of goods will get suffered from denial of input tax credit. For example, business of transportation of money (as defined) i.e. those who are engaged in refill of A T M 's.
- Further there is doubt whether "petroleum products", "A lcohol" would be treated as goods under G S T where transportation involved largely.

#### **Suggestion**

- It is suggested that point ii be rephrased as follows:



“(ii) for transportation of goods including own supplies whether or not any amount is separately charged therefor”

- Further, clarification regarding transportation of items like money, securities, alcohol, petroleum products etc. be suitably provided.
- It is suggested that input tax credit in respect of motor vehicles be allowed, if the motor vehicle is used in the course of business for business purposes.

**80. Dumpers and tippers or other similar nature & category of motor vehicles be made eligible Inputs**

As per Section 17(5)(a) of the CGST, no Input Tax Credit shall be available of motor vehicles except in specified circumstances.

As per Section 17(4) of Revised Model GST Law, Works contract services are not entitled to any Input Tax Credit on the inward supply of motor vehicles.

**Issue**

Dumpers and tippers are integral to the process of works contract. Works, such as road making, earth work etc. are not possible without the assistance of such motor vehicles. As of now, the works contractors can purchase dumpers and tippers @ 2% on issuance of C Form. By putting such motor vehicles on negative list, hardship will be caused to the works contractors.

**Suggestion**

It is suggested that the dumpers and tippers or other similar nature & category of motor vehicles be included in the definition of “plant and machinery” in explanation in Section 17 for the purposes of Chapter V (Input Tax Credit) and Chapter VI (Registration) and hence be eligible for Input Tax Credit and excluded from the definition of motor vehicles specifically as these motor vehicles are not principally designed ~~used~~ for transportation but ~~construction~~ (furtherance of business)

**81. Any other civil structure not to be excluded from Plant and machinery**

Explanation in section 17 for the purposes of Chapter V (Input Tax Credit) and Chapter VI (Registration) provides that the ‘Plant and Machinery’ means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—

- (i) land, building or any other civil structures;
- (ii) telecommunication towers; and
- (iii) pipelines laid outside the factory premises.



**Issue**

Inclusion of the term “Other civil structures” may lead to numerous disputes on the eligibility of credit on various plant and machineries as various plant and machineries require civil works to support their operation.

**Suggestion**

It is therefore suggested that the words “other civil structures” be removed from the said Explanation. Clear statement also be made with respect of passive structures that are used for furtherance of business and even if they are considered as ‘immovable property’ for purposes of municipal taxes by special provisions in that law.

**82. Disallowance of Credit in respect of Rent-a-cab services and other services**

Section 17(5)(b) of the C G S T A ct inter alia provides that input tax credit will not be available in respect of supply of goods and services,

- rent-a-cab, life insurance and health insurance except where except where-
  - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
  - (B) such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply;
- travel benefits extended to employees on vacation such as leave or home travel concession;

**Issue**

- Rent-a-cab, today, has become a significant mode of transport of employees for business purposes. Placing such restrictions are arbitrary. Like other services credit of rent a cab should also be allowed if it is being used for taking part in business meetings, meeting with business partners etc. Non-availability of Input Tax Credit in respect of the specified service will lead to cascading effect of taxes under the G S T regime.

**Suggestion**

- It is suggested that restriction of availing credit on Ren-a-cab services be dispensed and credit be allowed for rent-a-cab used in course of business Sec17(4)(b)(iii).
- Further, it is suggested to remove restriction on availing credits on travel benefits extended to employees on vacation such as leave or home travel concession as provided in Sec17(4)(b)(iv)

**83. Denial of Credit on Goods Confiscated or detained**

Section 17(4)(i) of the C G S T A ct provides that input tax credit shall not be available in respect of the any tax paid in terms of 129 or 130 dealing with confiscation and detainment of goods.



**Issue**

When the Confiscated Goods are released and sold it will be subject to tax and hence to deny the credit thereon is not appropriate.

**Suggestion**

It is suggested that there be no denial of ITC on goods confiscated or detained but released in accordance with law.

**84. Credit of taxes paid prior to grant of registration be allowed for 6 months**

As per Section 16 of the CGST Act, every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

**Issue**

Many of the assesses had applied for registration in June or July, 2017, however, due to system error or otherwise, registration to many of them have been granted in August or September, 2017. It has resulted in denial of credit to the Assessee prior to the date of registration.

**Suggestion**

It is suggested that Assessee be allowed to take credit of duty paid by them to their supplied considering that it is initial period of implementation of GST and Assessee are still struggling to adopt new system of GST.

Further, registration issued from the date approval not from the date application filed. For registration, sometimes it has taken 15 to 20 days due to system glitches on 11<sup>th</sup> August application etc., documents verification. Therefore it is suggested to issue the registration from the date of application

**85. Renting of immovable properties**

Section 17 of the CGST Act, 2017 blocks credit in respect of all goods, services and works on all contract services which are for construction of an immovable property unless, such immovable property is 'plant and machinery'.

Where a building is constructed and let on rent, it is important to understand that such building would qualify as 'plant' – hence the corresponding input credits used in constructing the said building should be allowed. Similarly, for construction of factories, office premises etc. where such premises are used in business.



### **Suggestion**

A clarification in respect of the said understanding would address the concerns of the community at large and prevent avoidable litigation at a future date.

### **86. Interest on Reversal of Capital goods**

Rule 43(h) of the C G S T Rules, 2017 provides that the amount of input tax credit along with the applicable interest shall, during every tax period of the useful life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

### **Issue**

Assesses are practically facing a problem while first claiming input tax credit on Capital goods being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies and after then paying interest on the proportionate amount of reversal.

### **Suggestion**

It is suggested that the words “along with applicable interest” be omitted.

## **REGISTRATION**

### **87. Eligibility for Composition Scheme to dealers when they are receiving Interest Income.**

Section 10(2)(a) of C G S T Act, 2017 provides that the registered person shall be eligible to opt under sub-section (1), if he is **not** engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II.

### **Issue**

Interest received on any amount appears to be a service and has been provided exemption under the exemption notification. Therefore, there is a doubt that in case dealer receives interest then he may not be eligible for composition scheme.

### **Suggestion**

It is suggested that it be suitably clarified that in case a dealer receives interest then he would be eligible for opting Composition Scheme. Similar clarity is also required for inclusion/exclusion of non-operational income e.g. interest/dividend while calculating aggregate turnover for computing limit of Rs. 20 L for registration purpose u/s 22 & 24 of C G S T Act, 2017

### **88. Registration for Assessees with Aggregate Turnover Over Rs. 20 Lakhs**

Section 22 on the C G S T Act, 2017 provides that every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds Rs. 20 lakhs.





Section 7(1) of the CGST Act provides that “supply” includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.

Further section 2(6) of CGST Act, 2017 provides that (6) “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), **exempt supplies**, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

#### **Issue**

In case a person is earning interest income from Fixed Deposit Receipts of Rs. 15 Lakhs and a Rental income from renting of immovable property of Rs. 6 Lakh, he would need to take registration and collect GST on rented property (as it covered under definition of supply). However, interest income on FDR is not liable to GST. On inclusion of interest income in aggregate turnover unnecessary burden is imposed on various assesseees including senior citizens who are at present not involved in carrying business and for that person complying the law is very difficult.

#### **Suggestion**

It is suggested that for computing the aggregate turnover limit of Rs. 20 lakhs for mandatory registration the income earned without any business motive not be considered.

#### **89. Registration for interstate supply of goods**

The Central Government vide Notification No. 10/2017 – Integrated Tax dated October 13,2017 has exempted the persons making inter-State supplies of taxable services and having an aggregate turnover not exceeding an amount of Rs. 20 lakhs in a financial year from obtaining registration.

Further, aggregate turnover limit should not exceed Rs. 10 lakhs for availing exemption from registration for the states specified in Article 279A (4) (g) of the Constitution

#### **Suggestions**

It is suggested that the benefit of twenty lakh for interstate service providers should be extended to interstate supply of goods also

#### **90. Time limit to fix effective date of Registration**

Section 25(11) of the CGST Act provides that a certificate of registration shall be issued in the prescribed form, with effective date as may be prescribed.



### **Suggestion**

It is suggested that time limit be relaxed due to lack of awareness for a period of 1 year i.e. delayed registered be provided credit from the date of liability itself not from the date of grant of registration.

### **91. Special provisions relating to casual taxable person and non-resident taxable person**

Section 27(2) of the CGST Act provides that: A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

#### **Suggestions**

- It is suggested to replace the word with estimated tax liability with “estimated net tax liability” and it would be allowed to be paid with input tax credit if any transfer of goods being made by casual dealer in the course of such transaction.
- It is also suggested to clarify that who would make the estimate of tax liability. Since, it is possible that authorities may intervene and reject estimate made by the dealer.

### **92. Cancellation of Registration**

Section 29(2) of the CGST Act provides that the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, --

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

#### **Issue**

- If cancellation of registration is permitted from anterior (earlier) date, it would lead to disruption of whole credit chain and difficulties will be faced by persons who have already availed credit.



- Dealers may not be able to file periodical returns on time due to financial hardship in paying tax. Hence, stringent times for non-filing of returns would lead to cancellation of registration, which may not be required.

**Suggestion**

- It is suggested that clause (d) be deleted
- Also, it is suggested that not to permit cancellation of registration from earlier date.

**93. Certificate of Incorporation issued by ROC**

Section 22 (4) of the CGST Act provides that in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

**Issue**

The said clause provides effective date of registration to be the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court. ROC does not issue any Certificate of Incorporation on amalgamation or demerger under Scheme of Arrangement.

**Suggestion**

It is suggested that effective date be the Appointed Date under the Scheme instead of aforesaid for being liable to registration

**94. Deemed Registration**

Section 26(1) of the CGST Act provides that the grant of registration or the Unique Identity Number under the SGST Act or the UTGST Act shall be deemed to be a grant of registration or the UIN under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in section 25(10).

**Issue**

Even if, deemed registration may be granted, the dealer would not be able to proceed with GST compliances such as payment of taxes, filing of returns, etc. unless the registration number is activated.

**Suggestion**

It is suggested to activate the deemed number on immediate basis, so as to facilitate dealers in commencement of paying GST.



**95. Anomaly in registration Provision**

Section 9(3) of the C G S T A ct provides that the G overnment may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this A ct shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Further, Section 24 of the C G S T A ct interalia provides a person required to pay tax under reverse charge is required to compulsory registration irrespective of the threshold limit of registration

Hence, section 23 & 24 both are independent sections. N either section 23 overrides section 24 nor Section 24 overrides section 23

M oreover, pursuant to section 23(1)(a) of the C G S T A ct, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this A ct or under the Integrated G oods and Services T ax A ct

**Issue**

A person “exclusively dealing in exempted goods/services” is required to take registration u/s 24, if hit by Section 9(3) of the C G S T A ct, though section 23 gives immunity to such persons.

For example: - a person dealing in ‘non-branded atta’ /schools/hospitals which are exempt and on paying advocate fees he should not be made liable for registration under G S T u/s 24(clause iii).

**Suggestion**

It is suggested that in section 23 of the C G S T A ct, an over-riding clause be inserted: -

"N otwithstanding anything contained in section 22 & 24”

**96. Requirement of registration in respect of construction works undertaken in an outside State**

**Issue**

There exist an ambiguity regarding the requirement for taking registration in respect of construction works undertaken outside the State.

**Suggestion**

C larification be provided in respect of construction works undertaken outside the registered State that no such registration will be required of the project site does not qualify as ‘location of supplier services’.



**97. Cancellation of registration**

Notification No. 10/17 Integrated Tax dated October 13, 2017 exempts taxable persons from registration, if the turnover limit of Rs.20/10 lakhs has not been exceeded

**Issue**

Since, there is no cancellation of registration already taken facilitated by GSTN,

Persons who have already taken registration have to pay tax even if they are not liable as facility of cancellation of registration is not yet provided in GSTIN

**Suggestion**

It is suggested that cancellation of registration facility should be activated at the earliest. Alternatively, GST Council may consider providing exemption for all goods and services provided by taxable persons with less than Rs.20 lakhs turn over which will remove the obligation of receiver to pay the tax.

**98. Registration for an agent**

Section 24 of the CGST Act inter alia provides that persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise is required to get compulsorily registered irrespective of the threshold limit.

**Issue**

The commission practice is very common in India and due to its reach, large Companies pay commission to persons at every nook and corner of the Country. Although, the annual amount is far below the basic threshold limit and the agent are compulsorily required to registration pursuant to section 24 of the CGST Act, 2017.

**Suggestion**

It is suggested that every agent acting (being liable to tax under schedule I) on behalf of other taxable person be made out of ambit of compulsory registration i.e., Section 24 of the CGST Act.

**99. All suppliers to SEZs are required to mandatorily register**

Supplies to SEZ units or SEZ developers are treated as inter-State supplies under GST law therefore registration by the supplier is mandatory. This has put lot of small suppliers (exceeding Rs.20 lacs but lower than Rs.1.5 crores) into trouble and undue hardship. On the flip side, if the supplier is unregistered it triggers tax under reverse charge mechanism.

**Suggestion**

It is suggested that receipt of goods / services from unregistered suppliers may be exempted for SEZ units or SEZ developers akin to the exemption granted for import of services.



**PROCEDURE RELATED ISSUES**

**100. Reason of Validation error not provided during registration**

At the time of Registration if there is a validation error, the reason for error is not provided through the email. It is difficult to guess which field is entered incorrectly which has generated the validation error.

**Suggestion**

It is suggested that the reason for validation error be communicated to the assessee desirous of registration through email etc. so that he may provide the correct particulars and correct the errors promptly.

**101. Option of having multiple Trade Names with single GSTIN**

Under earlier law, in case of Proprietorship there was a provision of having multiple trade names while having single Registration No as an assessee may want to have multiple trade names for running his business. However, under GST there is no such option available of having multiple trade names against single GSTIN .

**Suggestion**

It is suggested that option of having a multiple trade names in case of proprietor against one GSTIN be provided to facilitate ease of doing business.

**102. Effective date of cancellation of registration in case of automatically migrated from earlier regime**

Section 29(3) of C G S T A ct,2017 provides that cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this A ct or to discharge any obligation under this A ct or the rules made thereunder for any period prior to the date of cancellation whether such tax and other dues are determined before or after the date of cancellation.

**Issue**

Where a person was registered under earlier law but is not liable to register under GST than he has to file an application for cancellation of registration within 30 days to proper officer and as per section 29(3) cancellation effect will be prospective i.e. even a delay by one day from appointed day in filing cancellation application makes the assessee liable to file return, pay tax and to comply with other obligations which is difficult for him as he has not collected tax on his supplies made before the date of filing application for cancellation of registration .

**Suggestion**

It is suggested that appropriate notification providing that if cancellation application has been filed within the specified time limit it will be effective from the appointed date to give



relaxation to such assesses. It may also be noted that utility for cancellation of registration has also not be provided to the taxpayers.

### 103. Registration related issues under GST

GST law came into force with effect from July 1, 2017, however for most interfaces between department and tax payer GSTN has been taken as common portal w.e.f 22<sup>nd</sup> June 2017. It is backbone for implementation of GST. After one month of implementation of GST still there are many areas whereby requisite functionality is not available or not properly working. Some of the issues faced are as follows:

S. No.	Relevant Law	Particulars	Issue/ Comment
1	Sec. 10 Rule 3(1) Form GST CMP-01	As per Rule 3(1), Intimation to for opting composition scheme has to be filed by persons migrated from existing regime to GST within 30 days from the appointed day (i.e. by 21 <sup>st</sup> July). However, the date has been extended till August 16, 2017.	Existing registrants are not able to file intimation for opting to pay tax under composition scheme in form GST CMP-01. Most of times system shows some error. Out of them common are: - "U nable to Submit form" - "Please fill the jurisdiction" whereas tab of jurisdiction is blocked. - "You cannot opt for the composition as you are an ISD registrant." (Whereas, applicant is not the ISD registrant.)
2	Sec. 10 Rule 3(4) Form GST CMP-03	As per Rule 3(4), Stock details are to be furnished within 60 days, in case Composition Scheme is opted by a person migrated from existing regime to GST.	Functionalities are not operational.
3	Sec. 22(2) Rule 24 Form GST REG-26	As per Sec. 22(2), all persons registered under the existing law, were supposed to get themselves registered under the GST. For which Form REG-26 is to be filed.	Most of Taxable persons who have been enrolled on the GST portal have not been allotted the GST REG-06 (Permanent Registration), even if they have filed GST REG 26 (Part B).
4	Sec. 24, 51 & 52	Certain persons are	Application for registration





*The Institute of Chartered Accountants of India*  
*Suggestions on GST Implementation Issues- November 2017*

	Rule 12 Form GST REG-07	required to deduct or collect tax at source under the GST law. (However, it may be noted that both the sections i.e. Sec. 51 & 52 are not notified for the time being).	for TDS Deductor or TCS Collector are not available on GSTN portal.
5	Sec. 24 Rule 13 Form GST REG-09	Every Non-Resident Taxable Person has to take registration at least five days prior to making supplies.	Application of registration by Non-resident taxable person not available.
6	Sec. 24 Rule 14 Form GST REG-10	Registration by Taxable Person proving OIDAR Services	Registration functionalities not in operations as of now.
7	Sec. 25	Validation Errors	Many a times validation errors are there, in case of fresh registrations, but reason has not been communicated by GSTN.
8	Sec. 25 Rule 10 Form GST REG-06	Registration Certificate are not digitally signed.	REG-06 issued to the registered person is not digitally signed by the proper officer and section under which registration has been granted is not mentioned on the form.
9	Sec. 25(9) Rule 17 Form GST REG-13	Assignment of UIN to special entities	Registration functionalities not in operations as of now.
10	Sec. 28 Rule 19 Form GST REG-14	In case of change in any information given in application of registration or UIN, the same has to be intimated to the department within 15 days from such change.	Functionalities are not operational.
11	Sec. 29 Rule 24(4) Form GST REG-29	Any person who migrated into GST, but not liable to get himself registered under the GST Law had to file application for cancellation	Functionalities are not operational.



		of his registration within 30 days from the Appointed Day. (However, it may be noted that now rule has been amended to provide that such application can be filed upto September 30, 2017)	
12	Sec. 49	Ledger summary of cash paid and utilization thereof.	Registered persons are able to make payment of tax online on the GST portal, but the balance of the same is not been shown in ledger summary. Further, utilization of cash payment has not been enabled on the common portal.

#### Suggestion

It is suggested that aforesaid issues of registration be provided for and resolved appropriately.

#### 104. Provision for cancellation of Provisional Registration

Section 139(1) of the CGST Act, 2017 provides that on and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

Further, Section 139(3) provides that the certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

Rule 24 of the CGST Rules, 2017 provides detailed procedure for migration of persons registered under the erstwhile law. It provides that an assessee who has been granted provisional registration as per section 139 but is not required to get registered under GST may make an application in FORM GST REG 29 for cancellation of registration granted to him on or before 30<sup>th</sup> September 2017



**Issue**

Presently, the assesseees who have been granted provisional registration but are not required to get registered under GST, are facing issues as the option for cancellation of registration by filing FORM GST REG 29 is not available to the said assesseees. Thus, such assesseees even though not required to get registered are required to collect GST on supplies made by them and ensure all the GST compliances like, payment of GST collected, filing of returns etc. are adhered upon. This is putting unnecessary burden on small assesseees who may also not have adequate access to online utilities.

**Suggestion**

It is suggested that provision for cancellation of migration and the consequent registration be provided for and the option to surrender GST registration be activated at the earliest with retrospective effect at the option of assessee.

**105. Mismatch in GST Registration Number**

**Issue**

In many cases GSTIN number issued by department and that mentioned on the GST certificate when downloaded are different which is creating confusion among assesseees to determine their GSTN number against which they have to comply with all requirements of GST.

For e.g.: In a particular case, wherein GSTIN number issued is 24A C C F S 6 8 2 2 N 2 Z S but when the GSTIN certificate is downloaded the number generated is 24A C C F S 6 8 2 2 N 3 Z R. This has raised a confusion as to which number needs to be used while complying with GST requirements. Also by using 24A C C F S 6 8 2 2 N 2 Z S GST Registration number to login the return dashboard showed no records.

**Suggestion**

It is suggested that such system glitches be looked into and resolved so that the genuine assesseees are not penalised for system defaults.

**106. Registration taken under the Wrong Head**

It has been observed under many cases that the assessee has taken registration under a head other than the head he intends to. For example, a small dealer who was covered under the Composition Scheme in VAT wants to register as a Composition dealer under GST but mistakenly selects nature of business as ISD, EOU etc. As the system doesn't have any checks or a certification of such activities the genuine applicant might lose on to apply as Composition dealer.

**Suggestion**

It is suggested that while making an application for registration under a particular head an option for reconfirmation field be added and later on assessee be permitted to modify such fields.



### **107. Issues faced while applying for GST Registration**

Registration Rules provided under CGST Rules, 2017 provide for detailed registration processes.

#### **(a) Provision for amendment of registration particulars**

While applying for registration there exists a possibility that the applicant might put in some wrong information due to lack of knowledge or by mistake. This may lead to cases where registration is granted with wrong particulars or the proper officer may reject the application altogether. There exists no provision for amendment of particulars of existing registration.

#### **Suggestion**

It is suggested that there may be made available a facility on online portal for amending the particulars submitted while making an application for Registration.

#### **(b) Date of grant of Registration Certificate**

Rule 10(2) of the CGST Rules, 2017 provides that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date. However, certain assesseees have faced the issues wherein the application was made within a period of 30 days but the registration was effective from the date the registration was granted instead of the date of liability for registration.

#### **Suggestion**

It is suggested that the registrations so granted be checked for such anomalies and a provision for revision of date in such genuine cases be provided for.

#### **(c) Delay in grant of Registration Certificate**

Rule 9(1) of CGST Rules, 2017 provides that the application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of 3 working days from the date of submission of the application. However, in many cases the assesseees are facing the issues like all the documents have been submitted and response to show cause notice have been timely made but still the Registration Certificate has not been issued within 3 days.

#### **Suggestion**

It is suggested that proper officers be requested to adhere to the time lines laid down by the law and support the assesseees with timely grant of Registration Certificate.



**(d) Proof of Business Premises**

An assessee at the time of registration is required to submit the proof of business premises being owned by him. Many a times owner does not update name at Property tax and Electric Bill, as mainly property ownership was decided by its sales deed or Index 2.

**Suggestion**

It is suggested that at the time of registration sales deed/ Index 2 in name of owner be accepted as a valid proof of business premises.

**(e) Size of Documents to be uploaded while undertaking registration**

At the time of registration, supporting documents are required to be attached. For that portal gives small size for uploading, mostly in KBs, which makes the documents non-readable.

**Suggestion**

It is suggested that the size limit of the uploaded files be increased so as to maintain the quality and readability of the documents uploaded.

**(f) Requisite Forms be activated on GST portal**

It is suggested that forms related to Registration, Amendment, Cancellation or Modification in Registration be activated now so that the assessee requiring amendments or cancellations to their registrations may apply accordingly.

**(g) List of items/ services supplied to be specified in Registration form**

It be clarified if the assessee starts dealing in goods/ services other than those listed while applying for registration does it call for amendment in Registration Certificate.

**(h) Selection of Commissionerate code under state & central while applying registration**

**Issue**

At the time of registration proper information about code is not provided, and in few cases officer has rejected the application in case of wrong commissioner code filed up by assessee

**Suggestion**

It is suggested that system should select the appropriate system code on the basis of the area and pin code entered by assessee at state and centre both

**TAX INVOICE, CREDIT AND DEBIT NOTES**

**108. Treatment of tax paid on units cancelled**

Under CGST Act, Section 34(2) provides that any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later



than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.

**Issue**

A Builder has issued demand note in the month of March. Buyer has cancelled the unit in December i.e. after filing of GSTR for the month of September. Now, how builder can avail credit/benefit of GST paid earlier at the time of demand note or builder has the option to go for refund.

**Suggestion**

Suitable clarification be provided.

**109. One Consolidated Credit and debit notes on monthly basis**

In terms of section 34 of the CGST Act, where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

Further, where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note (include a supplementary invoice) containing such particulars as may be prescribed.

Moreover, any registered person who issues a credit/debit note in relation to a supply of goods or services or both shall declare the details of such credit/debit note in the return for the month during which such credit/debit note has been issued and the tax liability shall be adjusted in such manner as may be prescribed.

It is pertinent to mention that credit note be issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier. Further, no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person

**Issue**

In GST regime, any price change, discount etc. invoice wise debit / credit note need to be raised. This will increase unnecessary clerical activity at both supplier and receiver end.



### **Suggestion**

It is suggested that the consolidated debit / credit note be allowed on GSTIN basis during the month, however, credit will be available on matching of debit and credit only.

### **110. Receipt Voucher in case of receipt of Advances against supply of goods or services in same month**

Section 31(3)(d) of the CGST Act read with Notification No. 40/2017 – Central Tax dated October 13,2017, provides that a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment.

### **Issue**

- ❖ There is a distinction in respect of
  - advances against delivery and
  - advances against which delivery is deferred over a period of time.

It is contended that advances against which supplies are effected within the same month, not to be supported by Receipt Voucher and only those advances for which supplies are to be made beyond the month period be required to suffer appropriate GST by way of Receipt Voucher

### **Suggestion**

- It is suggested that complexity in documentation should be simplified to avoid pressure on the IT system without compromising on the revenue implications.
- It is also suggested that the Receipt Voucher for advance be made mandatory for cases only where the advances are to be adjusted for supplies to be made other than the or later than the month in which the advances so received.

### **111. GST applicability on Advance**

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017, the Central Government vide Notification No. 40/2017 – Central Tax dated 13th October,2017 has provided that the registered person whose aggregate turnover in the preceding financial year did not exceed Rs. 1.5 crores or the registered person whose aggregate turnover in the year in which such person has obtained registration is likely to be less than Rs. 1.5 crores and who did not opt for the composition levy under section 10 of the CGST Act,2017 as the class of persons who shall pay the central tax on the outward supply of goods at the time of issue of invoice by the supplier or the last date on which supplier is required under section 31(1) to issue the invoice with respect to the supply and shall accordingly furnish the details and returns.





Further, such persons shall also not be required to pay tax on advance received against future supplies.

**Issue**

- No such exemption is provided in respect of IGST
- Exemption issued under section 148 of the CGST Act is not applicable to SGST Act, only exemption under section 11 of the CGST Act applies to SGST

**Suggestion**

- It is suggested that the similar exemption be issued in IGST /SGST also.

**112. Issuance of invoice in case of supply from unregistered person**

The Central Government vide Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017, has amended Notification No. 8/2017 – Central Tax (Rate) dated 28th June, 2017 by omitting proviso under Paragraph 1 which deals with the exemption limit of Rs. 5000 per day available to the registered person on procurement of goods or services from any or all unregistered suppliers. Thus, exemption shall be available to all the registered persons till March 31, 2018 without any limit in case of supply procured from unregistered supplier.

**Issue**

- URD-purchase information to be filed in GSTR-2:
- With the exemption being granted from payment of tax on purchases from unregistered person under section 9(4). No exemption has been provided from the operation of section 31(3)(f) of the CGST Act

**Suggestion**

Clarification is sought as to whether an invoice u/s 31(3)(f) is required or not until the operation of Notification No. 38/2017 – Central Tax (Rate) dated October 13, 2017

**113. Invoice and Value in case of Barter transactions**

In terms of section 7 of the CGST Act, supply includes barter transactions

**Issue**

In the barter supply, there is a confusion regarding

- issue of invoice by both parties exchanging goods or services.
- Value in respect of barter transactions



### **Suggestion**

- It is suggested that a specific rule may be inserted to prescribe for the issue of tax invoice in case of a barter transaction.
- Clarification is sought as to whether different value from both the parties i.e. supplier and receiver can be considered and GST can be levied accordingly may be in one case at lower value and another case it would be on higher value.

### **PROCEDURE RELATED ISSUES**

#### **114. Difficulty in keeping quantitative record of stock.**

Retails traders are worried about stock keeping, as they have wide range of different products. It is very tough to keep quantitative details of all products.

#### **115. Multiple Details required to be provided in an invoice**

Rule 46 of CGST Rules, 2017 provides that a tax invoice referred to in section 31 shall be issued by the registered person containing the specified particulars. The requirement of providing multiple fields in an invoice takes up a lot of time. Mandating the mention of all the fields makes invoicing process cumbersome.

### **Suggestion**

It is suggested that till an appropriate system is in place, GSTIN and product general details with some identification marks to correlate with Invoice or delivery challan be sufficient for invoicing. Place, HSN and other mandatory details be implemented when GST system is set to run smoothly.

### **PAYMENT**

#### **116. One cash ledger instead of separate cash ledger(s)**

##### **Issue:**

Credit in Cash ledger is segregated into different heads which made assessee unable to set off the cash credit of one head for other which can be possible if there is a uniform cash ledger. E.g.: If a person has 1,000/- in interest & a short amount of Rs.100/- in late fee then again, he need to transfer amount from Bank Account although an excess amount is lying Electronic cash ledger.

There are a number of instances where flexibly to appropriate amounts deposited in cash ledger is necessary for ease of doing business because the exact tax liability may not be known at the time of making cash deposit. Also, this is similar to request for TDS-TCS to remain in this common can ledger so that Deductor-Collector does not get to decide the nature of supply.



### **Suggestion**

It is suggested that in cash ledger there should be only one cash ledger and as this money is not (yet) revenue of the Government, it can remain with the Union. Let cash ledger act as a E-wallet but, not as a dedicated column for the payment type. Adjustment of late fee, interest, penalty be possible in cash ledger with any head.

### **117. Deferment of matching requirement & Time line provided for filing of return is cumbersome**

#### **Issue**

Due to the matching concept filing of return leads to 10<sup>th</sup>, 13<sup>th</sup>, 15<sup>th</sup>, 17<sup>th</sup> & 20<sup>th</sup> as the case may be wherein in the present form GSTIN System is unable to handle such data loads and Time provided to the taxpayer for filing of return & its reconciliation in GSTR Form 2 is too less.

#### **Example:**

Supplier are required to submit details of its purchases of supply made in Form GSTR-2 which includes reconciliation of receipts of goods i.e. good in transit/not received, calculation on the restrictive credit, common credit etc. 5 days provided for the return filing including holidays leads may lead to 2-3 days in some months.

#### **Suggestion:**

- Option of offset liability of tax payment at any time basis be provided to avoid interest as merely payment of cash payment in the cash ledger is not fulfilling the requirement of tax payment by the assessee.
- It is suggested that invoice wise reconciliation be deferred for the time being, may be for a period of 1 year. In its place, GSTIN wise reconciliation be introduced, it will significantly reduce the compliance burden on the part of the Assessee on one hand and also facilitate the reconciliation with ease on other hand, therefore, meeting the requirement of the Government

## **ACCOUNTS AND RECORDS**

### **118. Definition of Books of Accounts for the purpose of GST**

Section 35 of the CGST Act provides that every registered taxable person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods or services or both, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf:

PROVIDED that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business concerned:



PROVIDED FURTHER that the registered taxable person may keep and maintain such accounts and other particulars in the electronic form in the manner as may be prescribed.

**Suggestion**

It is suggested to define the term “Books of Accounts” for the purpose of GST. The reference for the books of accounts has also been made in Time of Supply provisions. A clear meaning would thus support correct interpretation.

**119. Audited Annual Accounts**

Section 35(5) of the CGST Act, requires every registered person to get its accounts audited by a Chartered Accountant or Cost Accountant and its submission along with reconciliation as mentioned under section 44(2). However, the format for the audited accounts and audit report is yet to be prescribed.

**Suggestion**

It is suggested that a format of the Audit Report / Reconciliation Return should be specified to bring in clarity so that the assessee can plan and make necessary changes in their IT applications in a timely manner.

**RETURNS**

**120. Furnishing details of outward and inward supplies by the casual taxable person**

Section 37(1) of the CGST Act provides that every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed.

Further, Section 38(1) of the CGST Act provides that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

**Issue**

The given provisions are silent in case of the casual taxable person since the provisions related to non-resident and casual taxable persons are almost similar under the CGST Acts.



### **Suggestion**

- It is therefore suggested that the casual taxable person be excluded from the scope of Section 37(1) & Section 38(1).
- Also, a casual trader may be asked to furnish quarterly return under section 39.

### **121. Matching, reversal and reclaim of input tax credit**

Section 42(1) of the CGST Act provides that the details of every inward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched-

- (a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,
- (b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him; and
- (c) for duplication of claims of input tax credit.

### **Issue**

There is no provision to cover situations where recipient pays tax on reverse charge which is not disclosed by the supplier. Where a recipient of Goods or Services pays the taxes on reverse charge basis he should not be denied ITC of the same merely on the grounds that it is not disclosed by a Supplier.

### **Suggestion**

- It is therefore suggested that a specific provision be added to cover this aspect for the purpose of better compliance by supplier.
- Also exclude from the operation of this section in cases covered by section 18(4) – bona fide exemption reversed.

### **122. Furnishing details of outward / inward supplies**

Section 37(3) / 38(5) of the CGST Act provides that any registered person, who has furnished the details u/s 37(1)/38(2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.

Provided that no rectification of error or omission in respect of the details furnished u/s 37(1) or 38(2) shall be allowed after furnishing of the return under section 39 for the month



of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.

**Issue**

Supplier be allowed to rectify the said mistake / revise the statement of outward/inward supplies as such errors are not unusual. Moreover, denying rectification of mistake is against the basic tenet of law. Even presently under M V A T A ct, 2002, a dealer can rectify the mistake till the due date of filing of V A T A udit report.

**Suggestion**

- It is suggested that between the word “furnished the details under Section 37(1)/38(2) for any tax period” and “which have remained unmatched under section 29” word “and” be places by the word “or”
- It is suggested that Suo motto rectification of return as well as details of outward /inward supplies be permitted for tax period upto due date of filing annual return or actual filling of return of that period, whichever is earlier.

**123. Facility be provided for Rectification of data/ return before or after payment of tax**

**Issue**

If a wrong liability of tax is created due to an inadvertent error, the assessee is left with no option but to pay the tax. In most of such cases, the erroneous liability so created is exorbitant for the assessee to pay, thereby terming him as a defaulter with the passing of each successive day.

**Suggestion**

It is suggested that rectification menu be inserted especially in case of Form 3B return, which be applicable —

- (c) for rectification of data/returns before payment of tax; and
- (d) rectification even after payment of the tax,

wherein if the assessee is liable to pay more tax on rectification, the same may be required to be paid immediately. However, if rectification results into a refund to the assessee, the system should credit the refund amount to his account after due verification.

**124. Time for filing of GSTR-1 for July, 2017 be allowed for few days due to extension of GSTR-2**

A s per Section 37 of the C G S T A ct and rule 59 of the C G S T R ules, every registered person, other than certain specified person, shall furnish, electronically, the details of outward supplies of goods or services or both in Form GSTR-1 effected during a tax period on or before the tenth day of the month succeeding the said tax period.



However, Notification N o. 30/2017- Central Tax notifies the extension in filing the Form GSTR-1 for the month of July, 2017 till 3rd October for registered persons having turnover of more than one hundred crore rupees and 10th October for other registered persons having turnover of up to one hundred crore rupees.

**Issue**

Considering the technical glitches in the software and the initial period of GST implementation, many assessee have been facing challenges from many corner and trying to adopt the new system of GST. Further, due to filing GSTR-2 has recently been extended to 30th November, they would not be able to file GSTR-1 till 30th November, 2017.

**Suggestion**

- It may be suggested that filing of Form GSTR-1 for the month of July a period of five days be provided in November, 2017.
- Further, interest/penalty for late filing be waived.

**125. Refund of late fee paid for the month of August, 2017**

Section 47 of the CGST Act provides that any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

**Issue**

As per the press release dated 18th June,2017 it was assured to the taxpayers that No late fees and penalty would be levied for the interim period of July and August to provide a sense of comfort to the taxpayers to attune themselves with the requirements of the changed system. But while filing the GSTR 3B for the month of September,2017 system is automatically calculating late fee for the month of August which is mandatorily required to be paid before filing September Return which has created a hardship on part of tax payers.

In this regard, a circular has been issued clarifying that refund of such late fee would be granted. However, if refund is granted in late fee ledger, then it would be eligible for adjusting against late fee only.

**Suggestion**

It is suggested that: -

- (i) the refund be granted in electronic cash ledger not in late fee ledger.
- (ii) easy method of revision/ rectification of returns till March 2018 be provided with no late fee or interest till 31<sup>st</sup> March, 2017 as majority of issue are due to system not up to the mark.





**126. Unable to add missing invoice uploaded but not filed by the supplier.**

Section 38 of the CGST Act provides that every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 in GSTR-2 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier in GSTR-1 under sub-section (1) of section 37.

**Issue**

While adding missing invoices in GSTR-2 the assessee couldn't add the invoice due to invoice already appearing in the GSTR-2. Presently assessee are prefixing "0" while adding the invoice in GSTR-2.

**Suggestion**

It is suggested that the assessee may be allowed to add invoices in GSTR-2 correctly.

**PROCEDURE RELATED ISSUES**

**127. HSN code is required to be mention in GSTR 1 & 2**

Notification No. 12/2017 – Central Tax dated 28<sup>th</sup> June 2017 provides that a registered person having annual turnover in the preceding financial year less than Rs.1 .5 Crore is not required to mention the digits of HSN codes in a tax invoice issued by him. However, in GSTR 1 & 2 he must give the details of stock sold HSN code wise.

**Issue**

In such cases although the small trader is not required to mention HSN code in invoice but he is required to give HSN code details in his returns.

**Suggestion**

It is suggested that an alternative way of identifying the rate-wise supplies being reported to give relief to small traders who are otherwise not required to mention the digits of HSN codes in a tax invoice issued by them.

Further, it is also suggested that such requirement in case of GSTR-2 be removed in case of all assessee.

**128. ISD - distribution of credit - returns not enabled.**

Section 39(4) of CGST Act provides that every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within thirteen days after the end of such month



**Issue**

Returns required to furnish by input service distributor under section 39(4) has not been enable yet.

**Suggestion**

It is suggested to enable return GSTR-6 so that credit be available to the tax payers.

**GSTR 3B Related Issues**

**129. Liability to pay interest on late payment of tax due to extension of due date of filing GSTR 1 & 2 due to technical problem**

As per section 50 of CGST Act, 2017 every person who is liable to pay in accordance with the provision of this Act or the rules made there under, but fails to pay the tax or any part thereof to the government within the period prescribed shall for the period for which tax or part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the government on the recommendation of the council.

**Issue**

In case if excess ITC availed or some supply is omitted to be furnished in form GSTR 3B, as it cannot be revised, the information furnished wrongly, if any, needs to be corrected at the time of filing GSTR 1 & 2. If there is any increase in liability on this account, then interest is also payable on the excess liability. It may be noted that for the month of July due date for filing GSTR 1 & 2 has been extended upto 10<sup>th</sup> October and 31<sup>st</sup> October respectively. Technical snags faced may lead to delay in discharging excess liability by approx. 55 days for which interest will also be liable to be paid

**Suggestion**

It is suggested that the interest payable on late payment of tax at least be waived off for the month of July 2017 for which due date for filing GSTR 1 & 2 has been extended due to technical problem in GST network. Alternatively, a payment mechanism of debit of cash or credit ledger be made available to the assessee at any time during such time period

**130. Copy paste option disabled in password**

Copy paste option disabled in passwords and it is mandatory to change the password within specified period. There is no reason to disable the copy paste option from password & to change it in specified period. It only increases burden for filing returns.

**Suggestion:**

It is suggested to enable the copy paste option in passwords & does not make it mandatory to change the passwords.



**131. No option to change Authorised signatory contact details**

there is no option to change authorized signatory contact details in GST forms. If Authorized signatory contact details does not change then how he will generate Electronic verification code if there is no option to change the same in GST forms.

**Suggestion:**

It is suggested that there must be an option to change authorized signatory contact details in GST database.

**132. No option to download return filed**

After filing of GSTR-3B, download option is not coming in the GST Portal.

**Suggestion**

It is suggested that download option should be available on the GST Portal.

**133. No acknowledgement for return filed**

No Formal receipt of Acknowledgement is generated by the system on submission of various returns and forms except a message being displayed, which make it difficult for professionals to provide any evidence of work done to the clients.

**Suggestion**

It is suggested that an option for generation of receipt in ARN tracking or View my Submissions tab for each filling done on GST portal.

**134. Pure agent reimbursement would go as non-taxable supply - may lead to excess reversal**

Column 3.1(c) of **GSTR 3B Detail of Outward Supplies and Inward supplies liable to reverse charges** requires total taxable value of other nil rated and exempted supplies

RULE 33 of CGST Rules provides that Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply

Further section 17 of CGST Act, 2017 provides that Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.



**Issue**

As per section 17 of CGST Act, 2017 credit shall be available for input goods or services used for providing taxable supplies only. Since service provided as pure agent is not outward taxable supply so it is required to mention in column (c) i.e. value of nil rated or exempted supplies it leads to excess reversal of proportionate credit on service provided as pure agent

**Suggestion**

It is suggested that required column in the return to be inserted to show service provided as pure agent so that while calculating the proportionate ineligible credit, service provided as pure agent will not be considered as non-taxable supply.

**135. Still errors appearing while filing GSTR-3B**

As per Rule 61(5) of the CGST Rules, where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

**Issue**

Assessee while saving the form GSTR-3B are facing the following error “Error during save please re-try” and while submitting GSTR-3B “Some error occurred. Please save GSTR-3B form again” due to which the assessee are still not filed GSTR-3B for the period July 2017.

**Suggestion**

It is suggested that the technical issue may be resolved at the earliest.

**GSTR 1, 2 & 3 related**

**136. CENVAT Credit reversed earlier due to non-payment**

Section 140(9) of the CGST Act, 2017 provides that where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of 3 months from the appointed day.

**Issue**

CENVAT credit reversed earlier due to non-payment can be claimed as input credit if payment is made during July to September 17 period. However, there is no column in any return forms to claim credit of this. Section 140(7) & 140(9) permit credit of CENVAT credit reversed earlier due to non-payment if payment is made in July to September period.



### **Suggestion**

- It is suggested that GSTR TRANS 1 be amended and be allowed to be revised with eligible CENVAT C credit if payment is made in July- September 2017 period.
- Data Fields of GST TRANS 1 be modified so as to provide data field to reclaim ITC as per section 140(9) of C GST Act for Transitional arrangement for Input tax credit.

### **137. First Return cannot be filed if registration is granted in next month**

Section 40 of the C GST Act, 2017 provides that every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

Rule 10(2) of the C GST Rules, 2017 provides that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

### **Issue**

There have been cases wherein an assessee has applied for registration within prescribed time limit i.e. For July 2017 assessee applied for registration on 27<sup>th</sup> July 2017 and has been granted registration on 2<sup>nd</sup> August 2017 but is not allowed to file return for July. Dealer has inward supplies as well as outward supplies but is not able to insert bill wise details in GSTR 1 and thus unable to claim ITC for July.

### **Suggestion**

It is suggested that there be made available a facility to enable filing of GST return if the registration has been applied within prescribed time limit.

### **138. Multiple Monthly Returns under GST**

An assessee needs to file 3 GST Returns viz. GSTR 1, GSTR 2, GSTR 3 on 10<sup>th</sup>, 15<sup>th</sup> & 20<sup>th</sup> of every month which is a burdensome process. In general view, it is felt that Tax & Trade ecosystem is not ready for 3 monthly returns. Assesses need time of at least 2-3 months to adjust themselves with new return formats, for implementing required changes in the software and to know about how to do Data entry so that GSTR ready reports are available.

### **Suggestion**

It is suggested that there be made applicable only one return Quarterly under GST which includes all combined details from GSTR-1 & 2 as GSTIN based matching concept in the erstwhile law of 2A & 2B matching initially for a period of 2 years and keep tax payment date to be 25<sup>th</sup> of the next month on monthly basis with an option to provide any time payment to Govt. by debiting cash ledger.



**139. GSTN related problem**

Processing time of GSTN is high as compare to other online portals due to which persons need to login number of times for the same task leads to unnecessary load on portal.

**Suggestion**

It is suggested that Processing be on real time basis to avoid system failure due to heavy load of users.

**140. Non-availability of provision for filing of return without payment of tax**

Everyone likes to file the return well before time but not to pay heavy taxes before time. Govt wants that return filer should not wait for last date and should file it earlier so that there is no load on the portal but the reason for filing the return in last days is payment of tax not the return.

**Suggestion**

It is suggested to allow return filing without payment so that Tax can be paid till last date i.e. 20th, which will be credited automatically in the ledger.

**141. Actual date of Return filing missing**

**Issue**

The filing date is not displayed or appearing in the portal and department people were calling assessee and asking for A R N reference and date on which the return has been filed.

**Suggestion**

It is suggested that the actual date of return filing must appear in the record of the assessee on the GST portal so that the department may proceed with them without causing any problem to assessee.

**PAYMENT OF TAX**

**142. No interest recovery on the credit reversal on date of completion of building**

Section 50 of the CGST Act provides that every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding 18%, as may be notified by the Government on the recommendations of the Council.

**Issue**

There may be bona fide cases where the CEN VAT credit was rightly availed at the time of availment but some external event (like grant of Original Certificate for building) can result



in GST not being applicable. In such cases, demanding the interest recovery on the GST amount would be inequitable.

**Suggestion**

It is suggested to insert a proviso in the section as under: -

"Provided that no interest would be payable in case of reversal of credit due to grant of permission or certificate in respect of building referred in Schedule II para 5(b)".

**143. Extension of time limit to furnish information by the Electronic Commerce Operator**

Section 52(12) of the CGST Act provides that any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to—

- (a) Supplies of goods or services effected through such operator during any period, or
- (b) stock of goods held by the suppliers making supplies through such operator in the godown or warehouses, by whatever name called, managed by such operators and declared as additional places of business by such suppliers –

Also, Section 52(13) of the CGST Act provides that every operator on whom a notice has been served under sub-section (12) shall furnish the required information within **fifteen working days** of the date of service of such notice.

**Issue**

Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice. There is no provision for extension of this time period which may lead to difficulties.

**Suggestion**

- It is therefore suggested to relax the given provision by providing extension of the time limit for furnishing of details by the Electronic Commerce Operator.

**144. Certificate of tax collection in case of e-commerce operators**

Section 52 of the CGST Act provides that every electronic commerce operator, not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it where the consideration with respect to such supplies is to be collected by the operator.

**Issue**

- The provision regarding issuance of certificate for payment of taxes collected at source appears to be missing. Accordingly, it would be difficult for the supplier to claim credit of tax collected by the electronic commerce operators.





- The requirement to establish the absence of agency is cumbersome. As long as the supply (a) is not by the Electronic Commerce Operator on his own account and (b) payment is passed through the Electronic Commerce Operator, then TCS is applicable

#### Suggestions

- It is therefore suggested that the enabling provisions regarding issuance of tax collection certificate be incorporated and suitable forms to be notified by way of rules.
- Further, it is suggested that the words “not being agent” be deleted.

#### GSTN Related Issues

#### 145. Delay in responses from GSTN Helpdesk

GST helpdesks have been a boon for resolving transitions, registration etc. issues/ queries and is helping one and all with smooth transition to GST regime. Considering the bulk of enquiries made to the help desks, it results in minimum waiting time for each call to shoot up beyond 30 minutes, delay in revert by emails being more than 15 days which may or may not cater to the issue/ query so raised.

#### Suggestion

Owing to above concerns, it is suggested that additional manpower be deployed for resolving queries/ issues, reduce call/ email revert time to help keep up the good work undertaken by GST helpdesk. An assistance provided by properly trained officials will add to the smooth functioning of the GST helpdesk and providing specific answers to the queries/ issues as against being referred to GST Acts, Rules, FAQs etc.

#### 146. Huge Interest rate in case of default in payment or wrong availment of credit

By notification no. 13/2017—In exercise of the powers conferred by sub-sections (1) and (3) of section 50, sub-section (12) of section 54 and section 56 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council fixed the rate of interest per annum, for the purposes of the sections as specified in column (2) of the Table below, as mentioned in the corresponding entry in column (3) of the said Table

Serial Number	Section	Rate of interest (in per cent)
1.	Sub-section (1) of section 50	18
2.	sub-section (3) of section 50	24
3.	sub-section (12) of section 54	6
4.	section 56	6
5.	proviso to section 56	9



### Issue

Comparing the notified interest rate of 18% or 24% with the present bank rate, which is not more than 7-8% per annum is too huge.

### Suggestion

In the implementation phase of GST, interest rate be notified equivalent to present bank rate only as due to lack of knowledge of new law, taxpayer may have made some error.

Even post 1 year, Interest rate be not exceeding more than 12%.

## REFUNDS

### 147. Refund in case of accumulated Credit where input tax credit amount is higher than tax liability.

Sec 54(3)(ii) of CGST Act provides that no refund of unutilised input tax credit shall be allowed in cases other than where the credit has accumulated on account of **rate of tax on inputs** being higher than the rate of tax on **output supplies** (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

#### Issue:

A manufacturer or a service provider may have accumulated credit balances for the reason that he is availing input services which attract at higher rate of GST (say, 18% or 28%) whereas the final product or output service attracts GST rate of 18% or 28%. However, the authorities may deny refund on the ground that the provision allows refund benefits only if the input is subject to higher rate of GST and not in case where the input service attracts higher rate of GST. If a strict interpretation is taken that refund would be allowed only if the GST rate of input is higher without considering the rate of input service, then the very object of the provision would stand defeated.

#### Suggestion

It is suggested that:

- the word 'inputs' be replaced with the phrase 'inputs and input services'
- Also, the word 'Output Supply' be replaced with the word 'Outward Supply'.

### 148. Payment of refundable amount to applicant

Section 54(8) of the CGST Act provides that the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to –

- (a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- (b) refund of unutilised input tax credit under sub-section (3);



- (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- (d) refund of tax in pursuance of section 77;
- (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- (f) the tax or interest borne by such other class of applicants as the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

### **Suggestion**

It is suggested that all the input tax credits be seamlessly covered under the provisions of Section 54(6).

### **149. Execution of LUT / bond for export**

In terms of Rule 96 A of the CGST Rules, any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in FORM GST RFD-11 to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest specified under section 50 (1) within a period of 15 days after the expiry of 3 months or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India; or 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange.

### **Issue**

Execution of LUT / bond for export of services is not practical and it does not serve any purpose

### **Suggestions:**

- It is suggested that execution of LUT / bond be removed for export of services and also for third country trading cases.

### **150. Deemed exports**

Rule 89 of the CGST Rules inter alia provides that any person, except the persons covered under notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, other than refund of integrated tax paid on goods exported out of India, may file an application electronically in FORM GST RFD-01 which shall be accompanied by various documentary evidences in Annexure 1. one such document in terms Rule 89(1) (g) is



“a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports”

Further, the Central Government vide Notification N o. 49/2017-Central Tax dated October 18,2017 (“**NN49/2019-Central Tax**”) notifies the following, as evidences which are required to be produced by the supplier of deemed export supplies for claiming refund, namely:-

- (1) Acknowledgment by the jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
- (2) An undertaking by the recipient of deemed export supplies that no input tax credit on such supplies has been availed of by him.
- (3) An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

**Issue:**

- There is no 'end use' test in case of Deemed exports in terms of NN 49/2019-Central Tax
- Non-creditable supplies and ineligible supplies can also be claimed as 'deemed exports' due to the benefit under NN 49/2019-Central Tax read with Rule 89 ; which appears to by-pass the tests in section 16 and 17 of the CGST Act.

This implies that credit that would be available now becomes refundable and this appears to be unfair to non-EOUs and other supplies

**Suggestion**

It is suggested that NN 49/2019-Central Tax to be made 'subject to' section 16 and 17 of CGST Act

**ADVANCE RULING**

**151. Advance Ruling**

**Issue**

Present provisions of Section 96 & 97 of the CGST Act are too procedural & out of reach of small & medium taxpayer.

Advance ruling can be filed by assessee but not association representing the industry as member.



**Suggestion:**

It is suggested that Advance Rulings provisions as per Section 96 & 97 of the CGST Act be made simple and exhaustive.

It is suggested that Advance Ruling provision for filing of application on behalf of association representing its member be allowed and decision would also mutatis mutandis will apply to all the members of association representing such issue /industry. Association be permitted to append list of units with their PAN number so as to be bound by this ruling.

**ASSESSMENT**

**152. Provisional Assessment – Security or Surety to be furnished with the Bond**

Section 60(2) of the CGST Act, 2017 provides that payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

Further as per Assessment & Audit rules, the proper officer shall issue an order in FORM GST ASMT-04, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis indicating the value or the rate or both on the basis of which the provisional assessment is to be made and the amount for which the bond is to be executed and security to be furnished not exceeding 25% of the amount covered under the bond.

The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub rule (3).

**Issues:**

The requirement of security or surety to be submitted along with the bond will cast additional financial burden on the taxpayer. There already exist adequate safeguards in the law to protect the interest of the Revenue and the taxpayer need not be burdened for the same.

When registered taxable person is giving indemnity bond then why again bank guarantee equivalent to 25% of the amount covered under bond is required. The same is because obtaining bank guarantee means registered taxable person has to block funds to get bank guarantee i.e. they may have to keep bank Fixed deposit to obtain bank guarantee. In addition to that Bank will charge commission on the same to the tune of 1% to 2% which can be huge which is a wasteful expenditure for registered taxable person. In addition to that GST will be levied on bank commission so further cost will increase



### **Suggestion**

It is suggested that requirement of executing surety or security with prescribed bond be done away with.

### **153. Adjustment of additional tax paid – Section 60(3)**

It is not clearly stated in the act as to when additional tax is paid then how will the registered person(s) adjust it against input/output liability as the case may be. Even if we assume that the decision shall be delivered by proper officer within a period of one year then the period of September of the following year would have lapsed if the application is filed in say July/August for which the final return is required to be filed u/s 39 (9) by the month of September of next year

### **Suggestions**

It needs to be stated that proviso of sec. 39 (9) says “Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier”.

Alternatively, if the law is to stand as it is then it should be provided that notwithstanding the provisions of sec. 16 (4) and 39 (9) of the CGST Act the registered person(s) shall be allowed to adjust the amount paid in terms of order passed u/s 60 (3) of CGST Act in the month following the month in which final payment is made by the registered person or refund is received by the registered person.

## **DEMANDS AND RECOVERY**

### **154. Time limit for issuance of order for tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any will full misstatement or suppression of facts**

Section 73(10) of the CGST Act provides that the proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund

### **Issue**

The time limit for issuance of order under sub-section (9) is in excess of the time limit prescribed under the erstwhile laws. Since all the transactions are nowadays online and compliance systems are designed with enough safeguards & cross tally. In such a tech-savvy environment, the time frame of 3 years is not warranted.

### **Suggestion**

It is therefore suggested that the time limit be reduced to 12 months since no information is hidden from the department with this elaborate reporting system in GSTR 1-2-3 including



non – GST supplies and exempt supplies. Extended periods of limitation may remain only for fraud, suppression etc. in which case it can be 3 years (as per limitation Act)

#### **155. General provision related to demand**

Section 75(11) of the CGST Act provides that where an issue on which the First Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the First Appellate Authority or the Appellate Tribunal or as the case may be, the High Court is pending, the following periods be excluded in computing the period referred to in Section 73(8) or Section 74(8), as the case may be, where proceedings are initiated by way of issue of a show cause notice under Section 73:

- between the date of the decision of the First Appellate Authority and the date of decision of the Appellate Tribunal or
- the date of decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be or
- the date of the decision of the High Court and the date of the decision of the Supreme Court

#### **Issue**

Section 75(11) provides exclusion of time limit for issuance of order by proper officer, where the matter was under challenge before any court of law. The provision does not limit itself to matters which are pending to the assessee's own case and accordingly this could result in difficult situations. For e.g. where a decision is passed in case of some other assessee, the period of limitation gets extended for all other assessees. Similarly, the provisions of excluding of time limit should apply only on account of the appeals pending in that particular State, as it may result in situations where other States may have already completed assessment and the same would be re-opened based on decision of dispute pertaining to some other State.

#### **Suggestion**

It is suggested that exclusion of time limit under Section 75(11) be qua assessee and qua state.





## **OFFENCES AND PENALTIES**

### **156. Incorrect Classification of goods or services**

Section 122 of the CGST Act, 2017 provides that where a taxable person who supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

#### **Issue**

There may arise a situation wherein a product or a service is wrongly classified by an assessee, due to lack of information, owing to which he collects & pays incorrect tax amount to the government. The amount of penalty may burden a genuine assessee who due to lack of information or incorrect guidance classified the goods or services provided by him incorrectly and becomes liable to penalty under section 122.

For Example: Mr. A (a dealer) sells goods to Mr. B (a dealer) and charges GST @ 12% as per the incorrect classification of goods known to him. However, while making a further sale Mr. B charges GST @ 18% as per the correct classification. Here the government will receive tax @ 18% but Mr. A would be penalized for incorrect classification and issue of incorrect invoice.

#### **Suggestion**

It is suggested that initially, to support assesseees during transition process, for a period of 6 months or so the cases of wrong classification of goods or services be treated as tax neutral and assessee not be penalized for incorrect classification.

## **TRANSITIONAL PROVISIONS**

### **157. Assessee unable to complete migration process opted for new registration**

Section 139 of the CGST Act provides On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration

#### **Issue**

Some of the assessee who were unable to complete the migration process and wrongly migrated (i.e. instead of company PAN the director PAN considered for migration) in these cases the assessee opted for new registration and registration has been issued during the end of July or in the month August. In those cases assessee are unable to claim the ITC and also for the period July GSTR-1 is not filed and customer will be unable to claim ITC.



### **Suggestion**

It is suggested that an option may be given in order to rectify the migration done wrongly so that the assessee may be able to claim Input Tax Credit.

#### **158. Transitional Credit is not available to Manufacturer / Service provider:**

(a) Transitional credit not being available to some manufacturers/ service providers would be discriminatory and impact the margins. Needs to be provided to all if the goods/ services earlier were not liable to tax.

E.g.: Printing services were brought under the tax net w.e.f 01.07.2017 @ 18% / 12%, however no transitional credit is available to such service provider under proviso to section 140(3) of CGST Act, 2017 in case taxable person has procured the goods i.e. paper of printing from the trader on which VAT / CST was charged as well Entry Tax was imposed.

### **Suggestion**

Adhoc transitional credit be provided in the line of proviso to section 140(3) of CGST Act, 2017.

b) Capital goods credit not available for exempted units/ service providers as well as traders who may have invested in pre-GST period needs to be allowed with depreciations for number of years to build in fairness and equal treatment under GST.

### **Suggestion**

Credit be allowed in such cases.

#### **159. No Provision for avilment of Credit of tax paid under earlier law**

Section 140(1) of the CGST Act, 2017 provides that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

### **Issue**

Carry forward of credit/ tax paid might lead to certain issues. The transitional provisions provide no clarification regarding the credit of advance service tax paid by an assessee under earlier law. Also, if an assessee makes payment of service tax under reverse charge on 6<sup>th</sup> July 2017 he would not be eligible to take the credit of the same as the same will not be carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law. It appears that this amount will lapse as there is no Transition Provision in the GST law to take credit of the service tax paid again GST.

Similarly, no clarification is available w.r.t. credit availed under Rule 6(3) and Rule 6(4A) of Service Tax Rules, 1994.



### **Suggestion**

It is suggested to suitably clarify as to whether the taxes paid under earlier law like advance payment of service tax or tax amount paid after the appointed date would be eligible for Input Tax Credit under GST.

### **160. Credit of unavailed CENVAT Credit in respect of Capital Goods**

Section 140(2) of CGST Act, 2017 provides that a registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the erstwhile law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the erstwhile law and is also admissible as input tax credit under this Act.

Explanation. --For the purposes of this sub-section, the expression "unavailed CENVAT credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

### **Issue**

- The traders and manufacturers availing SSI exemption were not eligible for the CENVAT credit under the erstwhile law as they were not paying excise duty on the final products. Such entities, now falling under the GST regime would not be eligible for the credit on capital goods purchased before the appointed date which might lead to credit loss for such assesseees. Further section 140(3) does not provide for carry forward of credit of capital goods.
- There may arise a situation wherein a company was incorporated in May 2017 but was not given registration by the VAT department or was unable to register with VAT department till 30.06.2017. Upon purchase of Capital Goods by the said company, the credit of VAT paid on such goods would not be available as the company is unregistered as per VAT records. Due to this the company would not be able to avail the credit of VAT paid on purchase of Capital Goods under GST regime as the amount of VAT so paid would not be reflected in the returns furnished under the earlier law.
- As per CENVAT Credit Rules, 2004, where the capital goods are used for the manufacture of exempted goods or provision of exempted service for two years from the date of commencement of commercial production or provision of service, no CENVAT credit shall be allowed on such capital goods meaning thereby CENVAT credit is allowed if assessee start production of goods or provision of taxable services within 2 years.



In case an assessee purchased a capital good in April 2017 to be used for exempted services and therefore no credit was available in respect of such capital goods. However, with effect from 01/07/2017, such services have become taxable and such capital goods are now being used for providing such taxable services. In view of above section, credit in respect of such capital goods is not available as such credit was inadmissible under old law. In certain cases, there might be huge amount of credit in respect of such capital goods.

### **Suggestion**

- It is suggested that a proviso be inserted under section 140(2) to allow credit on capital goods lying on the appointed date which was not availed earlier as the person was not required to register under the erstwhile law.
- It is suggested that there be provided appropriate transition provision to allow credit of VAT paid on purchase of Capital Goods not reflected in returns under earlier law.
- It is suggested that appropriate provision be provided to avail such credit in respect of capital goods which are used for supply of goods and services which become taxable with effect from 01/07/2017.

### **161. Credit of eligible duties and taxes in respect of inputs held in stock to a works contract service provider**

Section 140(3) of the CGST Act, 2017 provides that a registered person, who was not liable to be registered under the erstwhile law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or **who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax**, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to specified conditions.

### **Issue:**

The above provision does not contemplate a situation where a service provider providing works contract services opts not to avail the benefit of notification No 26/2012 but valuation as per Rule 2A of Valuation Rules and pays service tax on service portion derived with under deduction method or percentage method.

### **Suggestions**

It is suggested that the necessary amendment be made in Clause 140(3) to avoid the ambiguity by replacing the word “and” in the erstwhile Clause 140(3) by “or who was”.

### **162. Credit of Transition stocks held with Branch**

Under CGST Act, Section 140(3) allows registered importers to avail the credit of eligible duties in respect of inputs held in Stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to certain conditions. One of the condition



being possession of invoices or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs.

**Issue**

Suppose, ABC Ltd is a registered importer having its head office at Haryana and a branch at Odisha. The head office had sent goods to branch office prior to the appointed day through Form F. Now while filing the TRAN 1, for the stocks lying with the branch, whether the branch shall be eligible to get the credit of all the taxes paid at the time of import on the basis of documents possessed by the Head office and the Form F or branch shall be eligible for deemed credit on such transaction on the account of non-possession of documents?

**Suggestion**

It is suggested that aforesaid issues of transition be provided with its mechanism.

**163. Invoice not to be older than 12 months for availing credit**

Section 140(3)(iv) of CGST Act, 2017 provides that transitional credit to a registered taxable person covered under Section 140(3) shall, amongst others, be subject to the condition that “such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day;”

**Issue**

There may arise a situation where stocks (in hand or in process) on the appointed day may contain goods which has been purchased prior to twelve months preceding the appointed day (especially in case of long term contracts/ works contracts wherein the contracts are in progress for more than a year). Disallowance of credit paid on inputs in such cases will result in financial hardship to the taxable person. The provision of deemed credit does not have any such 12 months' period and therefore may not be harmonious as a whole. However, one who is less diligent would be eligible for deemed credit without any time limit.

**Suggestion**

It is suggested that the time limit of 12 months be prescribed for purchases made on or after the appointed day and as a one-time transitional measure, there need not be any time limit for availment of credits on the basis of purchase invoices/ documents pertaining to a period prior to 12 months, if all other conditions are satisfied.

**164. Eligibility of Transitional Credit subject to the condition that supplier of services is not eligible for any abatement**

Section 140(3) (v) of CGST Act, 2017 provides that transitional credit to a registered taxable person covered under Clause 140 (3) shall, amongst others, be subject to the condition that “the supplier of services is **not eligible for** any abatement under the Act.”



**Issue**

One may be eligible for abatement but might not have availed it. Benefit should not be denied in such cases.

**Suggestion**

It is suggested that the words “is not eligible for” be replaced with the words “has not availed”.

**165. Transition provision for tax paid on receipt basis**

Rule 6 of Service Tax Rules, 1994 provides that in case of such individuals, partnership firms and one-person companies whose aggregate value of taxable services provided from one or more premises is Rs. 50 lakhs or less in the previous financial year, the service provider shall have the option to pay tax on taxable services provided or agreed to be provided by him up to a total of rupees fifty lakhs in the current financial year, by the dates specified in this sub-rule with respect to the month or quarter, as the case may be, in which payment is received.

Section 140(5) of C G S T A ct, 2017 provides that a registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

Section 142(11)(b) of C G S T A ct, 2017 provides that notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994.

Section 174(2) of C G S T A ct 2017 provides that the repeal of the Finance Act, 1994 as amended to the extent mentioned in the sub-section (1) or section 173 shall not affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended A ct or repealed A cts or orders under such repealed or amended A cts.

**Issue**

In cases where services were provided in the earlier law and option of payment of service tax was exercised on receipt basis. Now if invoice for a service was raised and service was provided on 31.10.2016 but payment is expected to be received in November 2017, then owing to aforesaid provisions assessee is required to pay tax on receipt basis i.e. service tax.

**Suggestion**

It is suggested that suitable clarification be provided in the law for such transition situations.





**166. Taxes paid under earlier laws but bill has been received after appointed day**

Input or Input Services received before appointed day, but bill dated on or before June 30, 2016 has been received after appointed day and taxes on same has been paid as per earlier laws.

Section 140(5) of C G S T A ct, 2017 provides that a registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes **in respect of inputs or input services received on or after the appointed day** but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

In the law, it is stated that input or input services received on or after appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, hence by reading this it seems that it covers only the advance payments made on which taxes are paid under earlier laws.

**Issue**

In case, goods or services are delivered or received before the appointed date and the assessee received the invoices after appointed day i.e. supplier has raised the invoice on or before the appointed date but the recipient has received the invoice only after the appointed date in case services was provided earlier or in case of goods if goods were sent on approval basis as the same leads to drafting anomaly.

**Suggestion**

It is suggested that aforesaid issue be resolved suitably with introduction of specified format of getting input credit.

**167. Capital goods in transit as on the appointed date**

Section 140(5) of the C G S T A ct, 2017 provides that a registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes **in respect of inputs or input services** received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the erstwhile law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

**Issue**

The aforesaid provision does not allow credit of duties and taxes in respect of capital goods received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the erstwhile law. Excise and V A T paid on the capital goods will form a part of cost for the assessee. This might be unfair to disallow the credit of such taxes paid.





### **Suggestion**

It is suggested that the law be amended to allow credit of duty paid on capital goods which remain in transit during the appointed day.

#### **168. Extension of time limit for the recording of supplies in the books of account under sec 140(5)**

In terms of Section 140(5) of the CGST Act, a registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.

### **Issue**

It is observed from a practical stand point that many organisations are not in a position to record the receipt of goods within the prescribed period of 30 days. This has led to denial of ITC under sec. 140(5).

### **Suggestion**

Due to ERP testing, customization and internal control many of the honest tax payers could not record by 30/07/2017. To avoid the same and follow the spirit, an order be issued for such extension.

It is suggested that the condition relating to recording of invoice or any other duty or tax paying document in the books of account of such person within a period of thirty days from the appointed day be extended by a further period of 30 days.

#### **169. Reclaiming of credit which was earlier reversed due to non-payment of consideration within 3 months**

Section 140 (9) of C GST Act, 2017 provides that where any CEN VAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

### **Issue**

In case where an assessee received a service on which tax was chargeable under reverse charge and failed to make payment within the period of three months due to which he reversed the CEN VAT credit under the service tax. Now after the appointed date if he makes a payment to vendor within 3 months, how credit of service tax paid be added to electronic credit ledger and also GSTR 2 does not mention about such input tax credit.



### **Suggestion**

It is suggested that appropriate notification be issued in this regard with its mechanism.

#### **170. Treatment of capital goods with job worker as on 30.06.2017**

Section 141 of C G S T A ct, 2017 provides provisions for applicability of G S T on inputs, semi-finished goods and finished goods available with job worker as on appointed day and returned after appointed date.

In due course of business, manufacturers also send capital goods e.g. moulds etc. to job workers. These capital goods are used by job workers to perform specific job on inputs/semi-finished/finished goods sent for job work. No clarification is available w.r.t. applicability of G S T on return of these capital goods after appointed date.

### **Suggestion**

Suitable clarification be provided.

#### **171. Lapse of Refund claims filed and rejected under earlier law**

Section 142(3) of C G S T A ct, 2017 provides that every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of C E N V A T credit, duty, tax, interest or any other amount paid under the erstwhile law, shall be disposed of in accordance with the provisions of erstwhile law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of erstwhile law other than the provisions of sub-section (2) of section 11B of the C e n t r a l E x c i s e A c t, 1944:

Provided that where any claim for refund of C E N V A T credit is fully or partially rejected, the amount so rejected shall lapse

### **Issue**

Lapse of fully or partially rejected C E N V A T Credit shall put a financial hardship to the assessee if he is not given an opportunity of being heard and/or filing of appeal against such rejection.

### **Suggestion**

It is suggested that assessee be given an opportunity of being heard and/or filing of appeal against such rejection.

#### **172. Transitional Issue on progressive supply of service**

Section 142(11) (b) of the C G S T A ct, 2017 provides that notwithstanding anything contained in section 13, no tax shall be payable on services under this A ct to the extent the tax was leviable on the said services under C h a p t e r V of the F i n a n c e A c t, 1994

Rule 7 of P o i n t of T a x a t i o n R u l e s, 2011 provides that notwithstanding anything contained in rules 3,4, or 8, the point of taxation in respect of the persons required to pay tax as



recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made.

Similarly, under sales tax WCT is deducted at the time of making payment to contractor.

#### **Issue**

In cases, where the vendor who has raised the invoice for the services (such as manpower or works contract service on which reverse charge is applicable) rendered in the month of June 2017 and the payment is made in the month of September 2017. Whether to pay service tax or GST in the instant case. Also, whether WCT is required to be deducted w.r.t. invoices dated prior to 1<sup>st</sup> July 2017 payment made on or after 1<sup>st</sup> July 2017.

#### **Suggestion**

It is suggested that same needs to be clarified. Also, cases where only one of the taxes, that is, either VAT or service tax only, had been paid for and reason, the current provisions do not allow the vendor of credit under 142(11)(c)

#### **173. Transitional provisions where CENVAT credit reversed under earlier law**

Sections 141 of the CGST Act cover the transitional provisions for Inputs, Semi Finished Goods and Finished Goods lying with the job worker as on appointed date for carrying out certain processes and returned on or after the appointed day. Transition provisions covers a situation where goods are sent to job worker under current regime within the preceding six months from the appointed date i.e. goods on which credit is not reversed on the appointed date.

#### **Issue**

The transitional provisions do not cover those situations where goods are received back after the appointed date in respect of which CENVAT credit is already reversed prior to appointed date.

#### **Suggestion**

It is suggested that the transitional provisions be amended to include the situation for availment of credit for cases where CENVAT credit has already been reversed under Current regime and goods are received after the appointed date.

#### **174. Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law**

Section 142(4) of the CGST Act provides that every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law:



Provided that where any claim for refund of CEN VAT credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund shall be allowed of any amount of CEN VAT credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

### Issue

The given provision denies the refund claim of any amount of CEN VAT credit if it is so rejected and it does not provide for an opportunity of being heard in such a case

### Suggestion

It is therefore suggested that a proviso be included in section 142(4) of the CGST Act by virtue of which the CEN VAT credit may lapse only after being given an opportunity of being heard and based on the grounds of rejection given in writing.

## 175. Stage wise deduction for an Immovable property

The present provision for taxation of supply of under construction flat / premises do not take into consideration the status of the construction at the time of execution of the contract. Thus, if the flat is booked, say when 60% of the construction is completed; attracts same levy of tax as it would attract when construction is yet to begin or where the construction is 90% complete. During the course of the construction, by virtue/nature of the activity, by laying each brick it acquires the status of **immovable property** even while the building is getting constructed in the process. Therefore, such “immovable property” cannot be subjected to levy of GST. Therefore, an appropriate deduction should be provided to ascertain value to the extent of such “immovable property” at the time of entering into contract with the buyer of the flat. This is popularly referred to as “stage wise deduction” under the Maharashtra VAT Act, 2002. Rule 58(1B) of the Maharashtra Value Added Tax Rules, 2005 is reproduced herein under.

- a) Where the dealer undertakes the construction of flats, dwellings, buildings or premises and transfers them in pursuance of an agreement along with the land or interest underlying the land then, after deductions under sub-rules (1) and (1A) from the total contract price, the value of the goods involved in the works contract shall be determined after applying the percentage provided in column (3) of the following TABLE depending upon the state at which the purchaser entered into contract.

TABLE

Sr. No.	Stage during which the developer enters into a contract with the purchaser.	Amount to be determined as value of goods involved in works contract.
(1)	(2)	(3)
(a)	Before issue of the Commencement Certificate.	100%



(b)	From the Commencement Certificate to the completion of plinth level.	95%
(c)	After the completion of plinth level to the completion of 100% of R C C framework.	85%
(d)	After the completion of 100% R C C framework to the O ccupancy Certificate.	55%
(e)	A fter the O ccupancy Certificate.	N il%

### Suggestion

A provision similar to the above may please be brought in under the GST.

### 176. Revision of service tax return

#### Suggestion

It is suggested that the Revision option of service tax return be activated till the date of filing transitional credit.

### 177. Unutilized cash balance in PLA under Central Excise Law

As per section 140 of the CGST Act, existing taxpayers registered under any of the existing laws migrating to GST is entitled to take in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

#### Issue

Many of the taxpayers registered under the Central Excise Law are having huge amount of unutilized balance remaining in PLA Account. However, there is no provision which exists for utilization / carry forward of the same in the GST Law.

#### Suggestion

It is suggested that appropriate provisions be made for utilization / carry forward of such unutilized balance of PLA Account in the electronic cash ledger under GST Law.

### 178. Transitional credit of Clean Energy Cess for utilising against the liability of Compensation Cess on Coal

Clean energy cess is levied as per section 3(1) of Custom Tariff Act. The same was eligible for cenvat credit. Rule 3 (vii) of the Cenvat Credit Rules 2004 covered "the additional duty leviable under section 3 of the Customs Tariff Act, equivalent to the duty of excise specified under clauses (i), (ii), (iii), (iv), (v), (vi) and (via)" as eligible credit. Therefore, cess paid on coal imported in India was eligible for cenvat credit.

Above view also finds support from the judgment of Hon'ble Karnataka High Court in the case of Commissioner of Central Excise, Belgaum Vs M/s Shree Renuka Sugars Limited



reported in 2014 (302) E.L.T. 33 (Kar.) in the context of sugar cess levied as a duty of excise. In this case, it was held by the Hon'ble High Court that the assessee is entitled to claim credit of sugar cess even though the same is not specified in the list of duties for credit as such cess is also duty of excise.

#### **Issue**

Some importers of coal had transitional stock of coal with them as on 30.06.17, on which clean energy cess was levied/ paid at the time of import, @ Rs. 400/- per ton. Now in GST regime, such importers would again be liable for payment of compensation cess @ Rs. 400/- per ton. The Form TRAN -1 does not provide for claim of ITC of such clean energy cess paid earlier, whereas the transitional provisions make the clean energy cess eligible.

In case such cess paid earlier on the transitional stock is not allowed, it would be a complete loss to the importer, as he would not be able to recover the amount twice, from his customers. Instead, other importers would import in GST regime on payment of compensation cess, and claim ITC of such cess while selling to their customers. This would be a grossly undesired situation. The importers of coal have therefore been able to neither make payment of the compensation cess in cash, nor to file their TRAN -1 or the return. Once they pay the compensation cess for the earlier months of July onwards in cash, they would never be able to utilize the transitional credit in future, as their fresh stocks would be compensation cess paid, at the fixed rate of Rs. 400/- per ton on both inward supply as well as outward supply.

#### **Suggestion**

There should be a mechanism provided in TRAN -1 for claiming and utilising the Clean Energy Cess levied under Custom Tariff Act against the liability of Compensation Cess levied in GST Regime.

Moreover, the ITC so brought forward should even be allowed to be set off against the liability of compensation cess for the months of July onwards.

### **PROCEDURE RELATED ISSUES**

#### **179. Wrong format of Principle and Agent details in TRAN 1**

Under CGST Act, Section 142(11) requires the details of goods held in stock as agent on behalf of the principal to be furnished in point no. 10 of TRAN 1.

#### **Issue**

Point 10(a) of TRAN 1 shall be filled by Principal which allows furnishing the details of goods of his own stock held by agent. However, the format asks for the GSTIN of principal to be furnished.



### **Suggestion**

It is suggested that 10(a) of TRAN 1 should actually ask for the GSTIN of the agent which shall be furnished by Principal on the basis of which the agent can avail the credit of the goods lying with him on furnishing of TRAN 1.

### **180. Issues in filing form TRAN-1**

#### **Issues**

- a) The assessee are using offline file i.e. CSV file for uploading pending C form details online but after uploading the CSV file the data is not appearing in the Trans-1 form.
- b) In same C-form there are different rates i.e. 5/5.5/14 due to which the system is not accepting and the c-form error has been displayed.
- c) Offline utility was not provided for uploading details like Capital goods credit, closing stock details and inputs received post July 2017. Assessee were facing difficulty to upload the details online.
- d) Assessee has successfully filed Trans-1 but the ITC is not appearing in the credit ledger. Due to which assessee facing with liability payment in cash which is affecting the GST working capital.

#### **Suggestion**

It is suggested that: -

- (iv) these technical issues may be resolved at the earliest.
- (v) Time limit of 1 year be extended reasonably. Those persons who do not have documents evidencing payment of duty are eligible to avail deemed credit under the proviso, while persons having duty/ tax paid documents cannot avail credit, beyond the said time-frame.
- (vi) Transitional provisions be amended to entitle registered person to avail credit on Capital Goods for past years with depreciation for traders/ service providers/ area based exempted manufacturers.

### **181. Deemed credit- TRANS 2 returns not enabled.**

RULE 117 of CGST Rules, 2017 provides that the registered person availing the scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2), submits a statement in FORM GST TRAN 2 at the end of each of the six tax periods during which the scheme is in operation indicating therein, the details of supplies of such goods effected during the tax period;

#### **Issue**

Rule 4 provides for the submission of GST TRAN-2 for giving the details of supplies of goods during the tax period but the prescribed form has not been enabled yet





**Suggestion**

It is suggested to enable form GST TRANS-2 at the earliest so that credit be claimed by tax payer.

**GST Form TRANS 1**

**182. No option for offline bulk uploading**

There is no off-line utility for filing form Tran-1. In table 7 (b) for claiming ITC on input and services in transit, invoice wise details need to be punch which is very cumbersome. The same problem arises in case of table 6 for claiming unavailed amount of ITC on capital goods there also invoice wise details are required to be punched in but no offline utility is available for the same. Also, the total amount is not shown anywhere. So, if there is any mistake in manual data punching, the same cannot be checked anywhere.

**Suggestion**

An offline utility and a report with the stock item and input claimed need to be generated before submission

**183. Difficulty in carry forward of credit of branches under same PAN who had different registrations under service tax**

As GSTIN is PAN based one GSTIN can be allotted against single PAN in a single state. Branches under same PAN have different Service Tax Registrations and Input credit is available to be carried forward against many branches but the Form accepts only the input credit of the branch against which the Provisions ID was allotted and all other Service Tax codes as invalid. During registration, all branches were dully mentioned with Service Tax as additional places of business.

**Suggestion**

It is suggested that the form should be amended so that input credit of other branches under same PAN can duly be carried forward.

**184. TRANS 1 for Job Work transactions**

In case of job worker, if goods are not returned within 6 months in current law we have to make reversal of Cenvat and once the goods are received back we can claim the Cenvat. What if in case there is reversal made on 30.06.2017 and the goods are received back by the dealer after 1.07.2017. The credit cannot be claimed as there is no section under GST provisions. Further, there is no mechanism in Tran-1 to claim the same. There is only disclosure of goods lying with job worker and its value.

There is case where dealer have moved goods with Job worker prior to 01.07.2016 and the he made reversal of the Cenvat and disclosed in TRAN-1 in section 141 but no Cenvat details are captured



**Suggestion**

It is suggested that in TRAN -1, there be one table or column, where one can disclose the CENVAT reversed under erstwhile laws and which can be claimed in future based on the occurrence of an event. i.e. goods received back by dealer from Job worker in order to avail that credit.

**185. Clarification between nil and exempted supply**

In GSTR 1 Return form there is a single column for nil, exempted and Non-GST supplies and consolidated figure of these three types of supplies is required to furnish in the return.

**Suggestion**

It is suggested that a dedicated column for different type of supplies be made in the return form. Such segregated data will also be helpful to perform various analysis by respective authorities.

**186. Compensation cess field missing in GSTR 1**

There shall be levied a compensation cess on supplies of specified goods or services or both.

**Suggestion**

It is suggested that appropriate column be added in the return form to depict cess amount on export.

**187. Compliance requirement where registration cancelled by department**

In case of migration, provisional registration is provided first and thereafter on basis of documents furnished by assessee registration is cancelled but there is no clarification regarding compliance requirements after cancellation of registration like whether return is required to be filed or how will assessee pay tax to government which has been charged during the period of provisional registration.

**Suggestion**

It is suggested that suitable clarification be provided in this regard.

**188. Credit Reversal in case of Banking Company**

As per Section 17 of CGST Act, 2017 where goods and services is used both for taxable and exempted supplies, only proportionate credit is allowed to a registered person. However, in case of banking company or financial institution there is an option to avail 50% of total credit and reverse the rest but there is no provision in the GSTR 2 form to disclose such credit reversal.

**Suggestion**

It is suggested that Return form GSTR 2 be suitably amended to add a column for 50% credit reversal in case of banking company



**189. Aggregate turnover figure entered wrongly in return**

In case an assessee having more than one registration has inadvertently entered wrong figure of aggregate turnover while filing a return and corrected the figure of aggregate turnover in another registration return.

**Suggestion**

It is suggested to provide any suitable alternative to modify the figure of aggregate turnover which has been furnished wrongly in the R return by assessee.

**MISCELLANEOUS**

**190. Input tax credit in respect of inputs sent for job work**

As per section 143 (3) & (4) of the CGST Act, if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out.

**Issue**

In case goods are received back subsequently i.e. after the period of 1 or 3 years, as the case may be, the levy of interest amount along with GST in such cases will be harsh to some extent.

**Suggestion**

It is therefore suggested that the section be amended as follows:

“if the goods sent to job worker are not received within stipulated time then, it shall be deemed that such inputs had been supplied by the principal to the job-worker **on expiry of said stipulated time and issued invoice accordingly for which job worker be allowed to take credit.**”

**191. Movement of goods from Job worker**

Where goods have been transferred to Job worker and 6 months have been passed from date of removal: Where the excise was reversed under earlier law (CENVAT), The same is required to be claimed back, there is no clarity in the transitional provisions towards the same. Law covers the movement from Job worker to supplier, but in this case it will become cost.

**Suggestion**

It is suggested that Such transaction may be notified under Section 140(5) so as to avoid tax becoming a cost for the assessee



**192. The duties and responsibilities and powers of the Officers at various levels be specifically put up for public comment.**

**Issue :**

Procedural issues relating to transparency:

**Suggestion :**

- Officers to be trained in respect of mindset of trust and supporting to the industry as against tax terror which is prevalent even today.
- Forum for mandatory audit be made public as by January 2018, such audits can begin which would be useful for the trade/ industry rather than starting after the year end.
- Officers to be trained in GST as the vast majority are unable to answer basic questions. If this is not the case let them take a proper examination. Those who would adjudicate and hear appeals to compulsorily go through a special learning and test for understanding.

**IGST ACT**

**193. Location of the recipient where the address on record exists**

Section 12(2) of the IGST Act refers to the location of the recipient where the address on record exists (wherever they occur) which is potentially litigative and could result in multi-routing in the case of retail trade thereby depriving the appropriate State of their legitimate right to collect revenue.

**Suggestion**

- It is suggested that appropriate clarification be provided for the cases in retail trade.

**194. Place of Supply of Service**

Section 12(4) of the IGST Act provides that the place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

**Issue**

In case services mentioned in Section 12(4) of the IGST Act, pertaining to supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out

**Suggestion**

- Also, it be suitably clarified that the list of services provided in the sub-section is an exhaustive list.



- Section 12(4) be rephrased as follows:

“(4) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment **and** health service including cosmetic and plastic surgery shall be the location where the services are actually performed.”

**195. Section 12(6): Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc.-**

Section 12(6) of the IGST Act provides that the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

**Issue**

The words “or where the park or such other place is located” may turn out to be potentially litigative. The purpose is served without these words and without any ambiguity. Furthermore, if services mentioned in section 12(6) are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break of various places should be clearly spelt out

**Suggestion**

- It is suggested that the words "or where the park or such other place is located" be deleted.
- Also, a mechanism be provided for cases where services are provided at multiple locations under a single contract.
- A proviso be added as: **Provided** where the basis of allocation is not forthcoming, the duration in each State as a proportion to the total duration of the event shall be applied.

**196. Insurance of Immovable Properties-**

Section 12(13) of the IGST deals with situation where the place of insurance does not cover immovable properties. It is suggested that a mechanism for such coverage be incorporated in the statute.

**Suggestion**

It is suggested that a mechanism for insurance of immovable properties be incorporated in the statute by way of following proviso:

**Provided** that in the case of insurance of immovable property, where the basis of allocation is not forthcoming, the value of immovable property situated in each State as a proportion to the total value of the immovable property shall be applied.



**197. Place of supply of services provided by tourism accommodation services such as hotels, cruises, campsites etc.**

Section 12(3) of the IGST Act inter alia provides that the place of supply of services

- by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or [Section 12(3)(b)]
- by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property [Section 12(3)(c)]

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.

Thus, it can be inferred that place of supply of accommodation services is the location of the immovable property. Accordingly the supply is classified as intra-state supply and Central tax and State tax is levied.

**Issue**

Assessee not having registration in the place of services lead to restriction of credit due to different place of supply.

Further as per the CGST Rules, the input tax credit of Central and State tax cannot be cross utilized, thus the GST paid in that State becomes cost to the business ranging between 18 to 28% and it discourages business to go and held seminar, conferences in the hill states or tourist states.

**Suggestion**

- It is suggested that suitable amendment in the place of supply provisions be made to achieve seamless flow of credit and avoid any harm to the tourism industry.
- Place of supply of accommodation (B to B) service provided to
  - registered person shall be the location of recipient instead of location of immovable property
  - unregistered person shall be the location of immovable property as per existing provisions.

**198. Place of supply of services in case of works contractor**

The place of supply of services, --

- (a) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate



agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

- (b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or
- (c) by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
- (d) any services ancillary to the services referred to in clauses (a), (b) and (c),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation. --Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

#### **Issue**

In terms of Section 12(3) of the IGST Act, the works contractor need to register in the State where he performs the work.

In practical scenario, where most of the works contractors comes with a group of people, led by one person and they go for civil works wherever they get a contract and later dissolve or A contractor himself gathers the people and take them for work. Once the contract work is completed they will dissolve, till the contractor gets new work order. Since, most of the work contractors are illiterate, they are unable to decide whether multiple registration is required or they can opt for IGST billing by taking single registration.

#### **Suggestion**

- In case of works contract being service movement of goods from one state to another state is not industry friendly, therefore appropriate amendment be made in CGST Rules.

#### **199. Relief from payment of IGST to Representatives in India earning foreign exchange from Overseas Suppliers**

Section 13(8) of the IGST Act provides that the place of supply of the following services shall be the location of the supplier of services:





- (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
- (b) intermediary services;
- (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation- For the purpose of this section, the expression n –

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (b) “banking company” shall have the same meaning as assigned to it u/s 45A (a) of the Reserve Bank of India Act, 1934;
- (c) “financial institution” shall have the same meaning as assigned to it in section 45-I (c) of the Reserve Bank of India Act, 1934;
- (d) “non-banking financial company” means,—
  - (i) a financial institution which is a company;
  - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
  - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

### **Issue**

The inclusion of intermediaries in above section might work against members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products in return for which they receive commission in convertible foreign exchange and no consideration is received from Indian customers. Though these activities satisfy all the conditions of 'Export of Services', the same has surprisingly been proposed to be taxed under the category of 'intermediary services'.

Further, the proposed provision is a clear case of double/multiple taxation within India. For example, IGST would be required to be paid on the entire value of commission received by an intermediary and the same would also be an intrinsic part of the CIF value of goods imported into India, which would be again subjected to Basic Customs Duty and IGST. It is also a settled principle of taxation to not levy same tax on same value twice. In fact, recently, the Tribunal in the case of United Shippers Ltd. vs. CCE, Thane –II reported in 2015 (37) S.T.R. 1043 has held, that on the same value, a component of service tax as well as Customs duty cannot be imposed by the Government. This judgment has been upheld by the Supreme Court also vide its order reported in 2015 (39) S.T.R. J369 (SC). Also, this sub-rule is opposed to 'destination principle' of GST.



### **Suggestion**

If this 'origin based tax' rule cannot be omitted, it is suggested that the general definition of an "intermediary" in Section 2(13) of the IGST Act be reconsidered by excluding intermediary for goods to provide level playing field to members engaged in assisting the overseas suppliers in the formulation of commercial and technical strategies resulting into successful marketing of their products

## **200. Export of Service**

### **Issue**

Indian entrepreneurs have started making global business out of India. The service and goods purchased by them in one Country and sold / delivered in another Country and all that business done from India, are treated as service import and service export when it is accounted in the Books.

Moreover, if tax authorities intent to tax these services as import which may adversely affect the global competitiveness

### **Suggestions:**

- It is suggested that suitable rules to be framed in respect of Third country trading / manufacturing / service Business Modules in the Indian Global Economy.
- It is also suggested that, third country trading / manufacturing / service companies need to be exempted from GST implications in respect of their global business done from India

## **201. Dual Levy on Export of services**

Section 2 (6) of the IGST Act defines the Export of services as supply of any service where: -

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

### **Issue**

By virtue of section 5 of the IGST Act, if location of supplier is in India and the place of supply is outside India, it qualifies as an inter-state supply. However, in certain cases, convertible foreign exchange is not received, and therefore, it fails to qualify as an export of



service. Taking the same forward, such transaction will also be taxed by the receiving country as an import of service. Thereby it is being taxed twice.

### **Suggestion**

It is suggested that such transactions be notified as an exempt service. This will have reversal on

Account of input, input service and capital goods. Also, it would help to avoid dual levy and one can undertake such transactions with ease.

## **202. Levy of GST on services rendered in the course of export to foreign parties for use outside India and consideration for which is received in convertible foreign exchange**

Section 16(1) of IGST Act provides “zero rated supply” means any of the following supplies of goods or services or both, namely: --

- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Hence, export of services is zero rated supply

### **Issue**

- Exports of services relating to R&D, Technical Testing and Analysis, Clinical trials, Re-engineering is emerging as a new big opportunity for technologists and scientists in India similar to what we witnessed in the IT sector. The export status to the above services is provided under Act but sought to be denied by place of provisions rules.
- The levy of tax on export of such services even after re-exports of the article, vehicle or equipment after completion of the study is not accepted as a sufficient reason to establish export of service and as a result hampers the growth of such export industry in India.
- The additional tax liability on export of such services is eating into the thin margins that the exporters earn out of such exports.

To escape such a draconian tax, the only option to the exporter in India is to shift his base outside the country which is certainly not the purpose and intent of GST or for that matter the Prime Minister's 'Make in India' and 'Serve from India' policies.

### **Suggestion**

- It is suggested to reconsider the levy of GST on such services by tweaking the Place of Supply Rules, is beyond the scope of the Act .
- It is also suggested to reconsider such levy to address the injustice meted out to exporters of such services



### 203. Nature of Supply under IGST – Correct nomenclature to be used

Section 7(1) & (2) of the IGST Act, 2017 provides that subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in--

- (a) two different States;
- (b) two different Union territories; or
- (c) a State and a Union territory,

shall be treated as a supply of goods in the course of **inter-State trade or commerce**.

Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of **inter-State trade or commerce**

#### Issue:

In both sections, a phrase used is “**in the course of inter-state trade or commerce**”. Which has been borrowed from various entries of the Constitution. However, the same has not been defined in the GST law but the definition of supply has been given. This creates a confusion since it is not necessary that a trade or commerce constitute a supply.

For Example- In case of clause 4(b) of schedule II where business assets are used for personal purpose outside the state of registration then such transaction is not one which is in the course of interstate trade or commerce. However, it is an interstate supply.

#### Suggestion:

It is suggested that in order to avoid the confusion the phrase “in the course of interstate trade or commerce” be replaced with “**in the course of interstate supply**”.

### 204. General Suggestion(s)

#### (a) Settlement Commission provision be restored

Provisions related to Settlement Commission as provided in Chapter VIII of Draft Model GST Law be reinstated as initially due to complexity of the law genuine mistakes may occur and there may be provisions for settlement.

#### (b) Kar Samadhan Schemes under existing laws (both Central and state) be introduced to help the assessee clear their issues/ dues under existing law, support with hassle free transition and reduce litigations.

#### (c) In order to get acquainted with GSTN and related procedures, an optional access be provided to the interested assessee to help them with training and understanding of GSTN systems.

#### (d) In order to maintain the level playing field, Petroleum products and electricity to be brought within the ambit of GST immediately. These industries if kept outside the



purview of GST, would face the issues like cascading of taxes, non-availability of credit, maintaining separate books of accounts for claiming ITC etc.

- (e) **Advance Ruling** - In order to support smooth transition and ensure reduced litigations, Government should speed up in notifying the Advance Ruling Authorities to enable the tax payers to make applications and gain a clarity regarding tax implications.
- (f) Anti-Corruption measures need to be strengthened by building in the accountability of Revenue officers. A 360 degree Compliance Rating be given to the officers ensure compliance on their part.
- (g) It has been communicated to us, due to paucity of time hasty disposals of pending cases being done resulting into undue huge demand leading to pendency of cases as well blockage of funds due to mandatory pre deposit.
- (h) Exemption to exporter from payment of Tax on Inputs the time system stabilize:

A general exemption maybe issued for a period 6 months to enable exports of goods as well as services to be carried out without any payment of taxes on inputs or inputs services as refund mechanism has not been established due to system glitches, margin erosion and impracticality.

- (i) Exemption to small assessee be provided to pay tax on receipt basis wherein in erstwhile law upto Rs. 50 Lacs assessee was permitted to pay tax on receipt basis.
- (j) **GST Rate on PSLC**

CBEA released different rates schedules for goods as well as services but the rate schedule does not prescribe the rate for the PSLC. These are goods, as per the RBI website, however, no VAT is currently charged in the states.

#### **Suggestion**

It is suggested that the GST rate on such goods may be provided so as to address the key concerns of the banking sector and to get certainty on the transactions

- (k) **Duty Free Scrips**

The expression 'duty free scrip' is term of common usage which may be interpreted differently and exemption denied

#### **Issue:**

- Expression 'duty free scrips' not clear
- Whether duty free scrips includes all licenses or authorizations issued under FTP that are permitted to be traded?

#### **Suggestion**

It is suggested that the clarification be provided on aforesaid issues



**205. Services received by employees in course or furtherance of business**

The employees use/receive many services/goods in the course of furtherance of the business of the company/firm and in many instances the invoice issued by the supplier of good/service would show the name of the employee as being the recipient of service although the GSTIN of the company/firm would be reflected as the recipient of the said goods or services.

The CGST law does not deal with the issue of availment of credit on such invoices/bills.

**Suggestion**

It is suggested that credit of such tax paid on such goods/services used by the employees in the name of the company/ firm be made available to the company/firm and therefore the Credit provisions be specified for availing credit on such invoices/bills.

**206. Documents to be issued for Certain Specified movements**

Under the GST Law most of the movement of goods would be covered by Invoice, bill of supply etc. However, no clarification has been provided for following transactions:

- (a) Movement of taxable goods by a taxable person within same state
- (b) Movement of non-taxable goods by a taxable person
- (c) Movement of capital goods within the state
- (d) Movement of goods sent on approval basis at the time of initial delivery

**Suggestion**

It be suitably clarified as to how movement of goods in aforesaid transactions would be covered as the same may not be covered by Invoice, bill of supply etc.

**COMPENSATION CESS ACT**

**207. Section 12 of GST (Compensation to States) Act,2017 empowers the Central Government to make rules in relation to Compensation Cess. Presently there are no such rules. It is only the columns in the return formats in GSTN which are inferring how compensation is to be levied and that the credit of compensation cess would be available against the liability. Such rules are required to clarify the law related to the input credit of compensation cess particularly.**

**Issue**

Absence of Rules regarding the manner of collection and input credit in case of Compensation Cess



### Suggestion

It is suggested that appropriate rules may be prescribed in relation to charge and credit of Compensation Cess

Also, it may kindly be examined which provisions of CGS Act are rendered inapplicable to Cess Act due to the reference to only limited provisions in sections 11(1) and 11(2) of Cess Act. For example, refund s. 54 not referred.

### TWITTER OR FAQ RELATED ISSUES

#### **208. Solution provided through Twitter and /or FAQ in some cases are contradictory in nature and even FAQ are having disclaimer which is creating confusion.**

##### **(i) Supply of Business Assets on which Credit has not been availed is subject to tax again**

Twitter has clarified that tax on the sale of capital assets is not subject to tax whereas provision of law does not provide such mechanism.

##### **(ii) Salary to Partner by Partnership firm**

Twitter has clarified that salary paid by partner by partnership firm is not subject to tax whereas it has not been clarified through circular or any notification exemption being provided.

##### **(iii) An Individual renting residential dwelling to Pvt. Ltd. Co. for residential use of director /officer.**

Twitter replied liable to GST wherein exemption is provided for residential use.

##### **(iv) Employee reimbursement**

Twitter has clarified that employee reimbursement are **generally (with disclaimer)** are not liable to GST. Earlier it was explained that it is subject to tax also.

##### **(v) Credit of tax paid on RCM**

Twitter has clarified that tax paid under RCM be allowed in the next month and as well as same month, dual answer. No such official clarification being provided.

##### **(vi) Credit of KKC**

Twitter has clarified that tax paid under KKC is not allowed, however it was an eligible duty under earlier law and restriction of credit is unnecessary leading to cascading.





## **CONSTRUCTION INDUSTRY RELATED ISSUES IMPACTED TO ALL SECTORS**

### **209. Deemed deduction towards land in case of sale of apartments**

C BEC vide Notification No. 11/2017- Central Tax (Rate) specifies that the supply of services by way of Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply

#### **Issue**

The law does not take cognizance of the fact that the values of undivided share in land for construction of apartments are different in different localities in the cities across India.

The Government's move to provide a blanket deduction of 1/3<sup>rd</sup> of the total value of the contract / agreement with the customer irrespective of where the land / apartment complex is erroneous. The Government must appreciate that cost of construction of such apartment complexes (considering the quality of construction, inputs used, labour cost, nature of facilities provided etc.) does not vary beyond 15% to 20% irrespective of the location. It appears billing in real estate sector has almost come to a standstill.

Eg: If an Apartment coming up in the prestigious MG Road area at Bangalore and another apartment coming up in outskirts of Bangalore get the same proportion of deduction, it is incorrect.

#### **Suggestion**

It is suggested that: -

- c. A deduction may be provided for the market value of the land – as per the agreement between the developer and customer; OR based on certification by an approved valuer OR provide for different rates of deemed deduction based on location, areas or cities or distance from cities etc.
- d. **Also, following clarifications may be provided vide circular to be issued :**
  - The said deduction towards land cost must be allowed to be availed upfront out of the first few instalments received.
  - The components of receipts that would form part and parcel of the consideration towards availing the land cost deduction must include – Car park charges, club house charges, reticulated gas supply charges, modular kitchen, preferential location charges, floor rise charges, water and power charges, DG set charges, maintenance charges etc. This is because these costs are in the nature of construction costs.



- In case of unsold flats on obtaining OC / PC, the reversal of input tax credits must not be arbitrary (but based on area unsold) and must not be subject to consequential levies such as interest / penalties.

#### **210. Joint Development Agreements (JDAs) – time and valuation for payment of GST**

In a JDA, it is important to note that the consideration provided by the Developer to a Land Owner (for transfer of undivided interest in land [UDI] by the Land Owner) is the future delivery of a constructed portion to the Land Owner.

Contractually and legally, the UDI in land does not get transferred to the developer (except in cases where the developer sells the units to his customers and the land owner is a consenting party to the contract).

The field formations are of the firm belief that GST triggers as soon as the JDA is signed – on the premise that the consideration is already received from the Land Owner.

##### **Suggestion**

It is suggested that GST becomes payable, only when, and to such extent that the units are sold; In respect of unsold units relating to the Land Owner, the GST be made payable at the time of obtaining the OC / PC from the prescribed authorities.

##### **Further a circular need to be issued in respect of the following:**

- (a) Who is required to pay taxes on the Land Owners constructed portion?
- (b) Whether such taxes payable, are required to be remitted monthly, quarterly or annually?
- (c) What is the mechanism for valuation in such cases? Cost basis or cost-plus basis?
- (d) Alternatively, is it permissible for a developer to reverse input tax credits based on the constructed area to be handed over to the Land Owner?

#### **211. Revenue sharing under Construction service**

One of the most recent and emerging concepts in a construction industry is where the Land Owner and the Developer enter into agreements to share the revenues generated from the project. Assuming that the revenue sharing arrangement is 40% to the Land Owner and 60% to the Developer.

##### **Suggestion**

Suitable clarifications may be issued on the following points:

- (a) How is the land cost to be determined?



- (b) Can it be said that what is paid / payable to the Land Owner would be the Land Cost and therefore permissible as deductions?

### **212. Input Tax Credit for Real Estate developers**

Section 17 of the CGST Act, 2017 mandates that credit of tax on works contracts can be availed only if the output is also works contracts – specifically for developers, while the sub contract work is ‘works contracts’, the output is ‘construction services’. Keeping in line with the objective of the GST law, outward supply being ‘construction services’ will not disentitle the developer from claiming input credit.

#### **Suggestion**

A clarification may be issued in respect of the said understanding which would address the concerns of the community at large and prevent avoidable litigation at a future date.

### **213. Transfer of immovable property by way of long lease**

A transfer of land under a long lease is essentially a ‘transfer of said property’ and is liable to State level stamp duties. However, under the GST law, it is proposed to treat even such transfers as ‘taxable supplies’.

However, if an upfront fee is paid in respect of transfers by State Government Industrial Development Corporations or Undertaking to Industrial Units (such supplies for a period exceeding 30 years) then such supplies are exempt in terms of notification no. 12/2017 dated 28<sup>th</sup> June 2017 (Central Tax-Rate).

It may be noted that under the GST laws, such upfront fee would remain taxable if the period of lease is lower than 30 years or to any person other than Industrial Units.

#### **Suggestion:**

It is suggested that similar exemption may be extended to all transfers irrespective of the period of lease and whether or not to an Industrial Unit and for any purpose as acquiring land on long lease is one of the well-known recognized methods of acquisition of land and levy of tax on land is a State subject.

### **214. Transfer of immovable property by way of Assignment of Lease - GST implications**

One of the means of acquisition of land is acquiring the leasehold interest of any Lessee in the land by way of an Assignment of Lease such that all the rights of the Lessee are transferred in favour of the Assignee. In law, title can be in different forms such as freehold title, leasehold title, etc.

Under the Service Tax law, transfer of title of any immovable property is a carve-out from the definition of Service and hence not liable to Service Tax. Moreover, under the Service Tax law, any service is defined to be an ‘activity’ carried out by a person for another. Therefore, Assignment of Lease is considered as transfer of title and not liable to Service Tax.



Under GST law, 'services' is defined to be anything other than goods. The point being that the concept of an activity in order for it to be a service is absent in the GST law. Under GST law, in Schedule III, item 5, sale of land and sale of building (in the case of building after its completion) is exempt as it is considered neither as supply of goods nor as supply of services.

#### **Suggestion**

Accordingly, it may be suggested that the assignment of an existing lease by one Lessee to another (Assignee) would not amount to an activity and would amount to a transfer of title and therefore, be exempt under GST on the same basis as sale of land is exempt.

#### **215. Transfer of immovable property by way of grant of Development rights - GST implications**

It is a well-recognized fact that transactions for transfer of land take place under various forms such as sale of land or lease of land or assignment of an existing lease of land or grant of development rights in respect of a land. It is also well-recognized in law that property is a bundle of rights whereby the property can be transacted by transfer of any, or all rights. Development right is one of the constituent of such a bundle of rights. Therefore, a transaction of grant of development rights would be similar to a transaction of transfer of land.

#### **Suggestion**

Accordingly, it may be suggested that any transaction of grant of development rights also needs to be exempt under GST laws on the basis of the exemption granted for sale of land.

#### **216. Rate of tax on sale of under construction units**

Hitherto, the sale of under construction units (which is on the basis of considering it as a Works Contract) was subject to both Service tax and VAT. The Service tax law allows an abatement of 70% on the total agreement value (where such value includes land value). Thus, Service tax is applicable @ 15% on 30% of the agreement value, making the effective Service tax burden only 4.5%.

On the VAT side, some of the States typically provide two ways of taxation in case of real estate construction contracts. Either the land value is included in the total taxable value which is then taxed at a very low rate or VAT is levied on the value after providing for standard deduction towards the value of land and labour. Effectively, on VAT side a substantial value of about 50% to 60% is reduced from the agreement value towards the land value. As against this, in Maharashtra the general Works Contract rate of VAT is around 5% which is brought down to 1% due to land value being included in the agreement value.

Thus, the net Service tax and VAT is about 7.5% of the agreement value. Both under Service tax law and VAT law, there is no levy of Service tax and VAT for sales after completion of the project.

Under GST, general rate for Works Contract is 18%. However, for sale of under construction real estate, deduction for land value is provided @ one-third of the sale value. Therefore, on account of land value, the GST rate is reduced from 18% to 12% which



effectively results in an abatement of about 33%. Compared to this, currently the abatement both under Service tax law and VAT law is 50% to 60%. This has clearly resulted in a worse of situation under GST compared to the present law by almost halving the abatement from an average 55% to 33%.

A nother consequence of such an abatement is that in projects where the land value is higher than 33% of the sale value of the property, then effectively the sale of land suffers GST. Although, under the GST law, there cannot be GST on sale of land. The constitutional validity of this needs to be examined.

Under the present Service tax law and VAT, there is a saving of 7.5% for any purchaser if the purchase is after completion of the project. However, under GST such saving will be higher at 12% which means effectively during the construction period there will not be any sales as every purchaser would look to save 12% GST by purchasing after completion of the project. This will wipe out the market for under construction project which will have adverse repercussions for everyone.

Given below is an example computing the GST liability together with passing on of the Input Credit.

In any building construction, the ratio between cost of material and labour + works contract is 4:6. Considering the same given below is an estimated GST as part of Input costs.

Particulars	Ratio	Applicable GST rate
Cement and RMC (goods)	1.2	28%
Steel (goods)	1.2	18%
Sanitary fittings / Marble / Granite / Tiles (goods)	0.8	28%
Miscellaneous materials (goods)	0.8	18%
Cost of labour + Works Contract (services)	6.0	18%

Thus, the average GST as a percentage of constructions cost will be 22%. On one hand, the Input Credit is 20% of the construction costs, while the Output liability is 12% of the sale price. Therefore, the Output GST liability although at a lower percentage is on a higher value while Input GST percentage is on a lower amount of cost of constructions. This would not result in any higher set off and will ultimately lead to higher GST liability as compared to the ST and VAT liability.

### Suggestion

It is suggested that the GST rate for sale of under construction real estate not to be more than 6% on the agreement value which will make it comparable to the present situation.



### **217. Transferable Development rights**

Transferable Development Right (TDR) means making available certain amount of additional built up area in lieu of the land area relinquished or surrendered by the owner of the land, so that he can use the permissible extra built up area (on account of allotment of TDR) either by himself or transfer it to another person in need of the extra built up area for an agreed sum of money.

If the owner of any piece and parcel of land / property is required to surrender the same to the Government or Governmental Agency for the purposes of road widening, formation of new roads or development of parks, play grounds, civic amenities etc., as per the proposed plan of the said Government or Governmental Agency he shall be eligible for the award of Transferable Development Rights. Such award will entitle the owner of the land in the form of a Development Rights Certificate (DRC) which he may use for himself or transfer it to any other person.

#### **Suggestion**

A clarification needs to be issued that such TDRs are not taxable under the GST Laws since it is an immovable property right.