CONTENTS

1 THOUGHT LEADERSHIP
Considering the high dependence of the Government on the revenues emerging from taxing statutes, their effective enforcement, policing and administration gains significance. Thus, there arises a need for “audit” of underlying records. Author highlights certain notable aspects of GST audits while referring to the nature of proceedings and trends in audit in other jurisdictions.

2 A MEANS TO JUSTICE MEANS A LOT!
Amidst debates, there is little denying that GST has made vast progress since its implementation. However, certain steps are required to be taken by the legislature so as to ensure that the justice delivery system provided under GST is not only robust, but also ideal. In this chapter, authors discuss certain glaring concerns that are required to be addressed under the current GST system.

3 LEGISLATURE AT WORK
Any new law and especially tax laws in India are followed by a series of clarifications and notifications to streamline the applicability of the law to varied business scenarios. This piece attempts to update the reader of these latest announcements, more importantly setting out ELP’s take on the same.

4 JUDICIARY PERSPECTIVE
A new law does not necessarily make redundant, concepts enshrined under the erstwhile law. The article deals with one such concept prevalent under erstwhile law which continues to be issue under GST. The chapter also updates the reader on the latest legal controversies under GST law, including the plethora of Advance Rulings that have been rendered over past few months.

5 QUOTABLE QUOTES
Highlights some interesting quotes from the who’s who on GST

6 KEY TAKEAWAYS FROM TS HANGOUT/ WEBINARS
The Chapter highlights the key takeaways from the special webinar series, which focuses on the burning issues under the new indirect tax regime
INTRODUCTION

Note from Editor

500 days into the ‘game changing’ GST regime, early-day jitters have given way to general acceptance that while this may not be the most perfect single tax system, it is definitely working! While the Govt. has adopted a refreshed and expeditious approach in addressing challenges faced by the industry, there are many knotty issues that remain to be addressed. It has been a roller coaster ride so far, with teething troubles in implementation & compliance now giving way to full blown litigation on legal/technical issues. The last few months have especially witnessed a flood of advance rulings, National Anti-Profiteering (NAA) orders and writs being filed across various HCs on several contentious issues.

‘Navigating GST’ is your one stop shop that brings to you all the GST news, views and unparalleled thought leadership stuff on the biggest indirect tax reform since India’s independence.

In the seventh edition of our monthly newsletter, in partnership with leading law firm Economic Laws Practice (ELP), we bring you yet another dose of legislative and judicial updates for the months of August and September 2018. The talented ELP team gives their take on each of the important developments and analyses the industry impact thereon.

In this edition’s ‘Thought Leadership’ section, Mr. Nishant Shah (Partner), Ms. Stella Joseph (Associate Partner) and Mr. Prakhil Mishra (Associate) highlight the need for “audit” of underlying records and discuss certain approaches which may be considered while preparing for the impending audits under GST. The authors also highlight notable trends in GST audits while referring to nature of proceedings in audit in other jurisdictions.

When staging an enquiry about trajectory of GST so far and its current position, it is amply clear that iconic GST law is still in the initial stage of evolution. It cannot be denied that despite being envisioned by several brains of economic brilliance and acute political acumen, the law suffers from various uncertainties. The Cover Story section takes us through the steps which are required to be taken by legislature to ensure that the justice delivery system provided under GST is not only robust but also ideal, while also highlighting certain glaring concerns that required to be addressed.

Contd...
INTRODUCTION

The ‘Legislature at Work’ chapter begins with summary of key amended provisions of Central Goods and Services Tax Act, 2017 (CGST Act), Integrated Goods and Services Tax Act, 2017 (IGST Act), Union Territory Goods and Services Tax Act, 2017 (UTGST Act) and Goods and Services Tax (Compensation to States) Act, 2017. While analysing the updates under GST law, the team delves into clarifications issued by CBIC on various issues, including scope of principal-agent relationship, applicability of GST on petroleum gases supplied, taxability of services provided by Industrial Training Institutions, etc.

In the section ‘Judiciary Perspective’, the team analyses the Gujarat HC ruling striking down Section 140(3)(iv) of CGST Act as well writ petitions filed before various HCs on several contentious issues. The section also takes us through the plethora of advance rulings rendered by various State AAARs and AARs under GST, as well as order of NAA in case of Pawan Sharma holding HUL’s distributor guilty of profiteering. The landmark judgment from yesteryears that the Newsletter dives deep into is the Apex Court ruling in Fiat India Pvt. Ltd., which laid down the principles on valuation of goods.

In this edition, we also bring you the key takeaways from the special hangout/webinar featuring ELP partners, focusing on burning GST issues and leave you with some more interesting quotes from who’s who of the GST world, in our section ‘Quotable Quotes’.
Audit under GST

Prior to introduction of Goods and Service Tax ("GST"), the indirect tax landscape in India comprised of multifarious taxes, wherein the incidents of tax arose on account of different taxable events. Central excise duty was levied on manufacture, service tax on the rendition of service and value added tax ("VAT")/ central sales tax on purchase and sale of goods. These multiple legislations have been replaced with GST with effect from 1st July, 2017, leviable on “supply” of goods and services in the country.

Considering the high dependence of the Government on the revenues emerging from taxing statutes, their effective enforcement, policing and administration gains significance. One of the factors for an effective enforcement of taxing statutes is the correctness of the computation of the tax liability by the assessee. Such computations are directly correlated to the underlying business operations and records.

Thus, there arises a need for “audit” of underlying records. From an indirect tax perspective, audit involves the examination of records, returns and other documents maintained or furnished by the assessee in order to verify the correctness of details declared by the assessee such as turnover, taxes paid, refund claimed and input tax credit availed, and to assess compliance with the applicable legal provisions.
# Audits under the erstwhile indirect taxes

Considering the manifold legislations under the erstwhile indirect tax regime, businesses were required to face multiple administrators and subjected to multiple audits at a given point in time. Some of the significant audits carried out under the erstwhile regime, and notable aspects thereto, are set out in the below table:

<table>
<thead>
<tr>
<th>Indirect tax</th>
<th>Audit</th>
<th>Relevant authorities</th>
<th>Notable aspects of the audit</th>
</tr>
</thead>
</table>
| Central Excise and Service tax    | Departmental Audit/ Excise Audit, 2000 ("EA-2000") | Directorate General of Audit ("DGA") at Delhi, who supervises audit functions. An audit section is attached to each Commissionerate. | - Audit is carried out by visit of assessee’s premises by “audit party”, which usually consists of 2-4 Central Excise officers.  
- Assesseees are selected on the basis of certain ‘risk factors’.  
- Questionnaires are sent to gather relevant documents. A wide-ranging nature of documents may be called for.  
- Audit Plan is prepared, to identify the vulnerable areas from revenue point of view.  
- Verification is carried out through a scheduled visit to the assessee’s premises.  
- The ‘Draft Audit Report’ is submitted to superior officers for review after which it becomes final.  
- In case the disputed amounts are not already paid on the spot, demand notices are issued by the Department for recoveries. |
| VAT                               | Assessments                                     | Officers appointed by the concerned State Governments                                | - These audits were carried out by C&AG under the Constitutional authority and was unconnected with the Departmental Audits/EA 2000.  
- Generally, CERA audit parties visit the premises of the assessee by giving advance intimation and conduct the audit of the records of the assessee.  
- The CERA Audit is essentially an audit of efficacy of the Central Excise officers. |
| Octroi                            | Surprise Audits                                  | Assessing Officers                                                                   | - The audit is conducted to check and verify the appropriateness of the calculation and payment of octroi as also reconcile the quantity and value of goods procured vis-à-vis that disclosed at the time of assessment and payment of octroi. |
While this article intends to dwell on the prospective audit environment likely to be faced by businesses under the GST regime, considering that the officers conducting the audits would be the same as under the erstwhile indirect tax regime, certain aspects may be anticipated under GST and hence, it may be useful to reflect upon the audit backdrop existing prior to GST to prepare oneself for the impending audits under GST.

**Audit under GST**

GST envisages the below modes of audits by the tax department:

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Type of Audit</th>
</tr>
</thead>
</table>
| (i)     | **Scrutiny of returns under Section 61 of the Central Goods and Services Tax Act, 2017 ("CGST Act")**  
- This involves a preliminary screening of data disclosed in the GST returns.  
- Explanation to be sought by jurisdictional authorities by issuing a notice.  
- No further action is to be taken if discrepancies are explained to the officer’s satisfaction.  
- Dissatisfactory explanations would trigger audit, inspection or Show Cause Notice ("SCN") proceedings.  
**Practical aspects:**  
- Many assessees have already received notices for mismatch in returns i.e. GSTR-3B and GTR-1, GSTR-3B and GSTR-2A and GSTR 3B and e-way bills.  
- Typically, short timelines (3-10 days) are provided to respond to the notices.  
- Assessee should carry out reconciliation exercise to identify reasons for differences. |
| (ii)    | **Departmental Audit under Section 65 of the CGST Act**  
- Audit will be carried out by GST Authorities to ensure correctness of claims and tax positions taken by the assessee.  
- Unexplained / Unaccepted audit findings to lead to SCN proceedings.  
- There is at present no clarity on frequency or tax payment limits for GST audits.  
**Practical aspects**  
- Such audits are likely to be initiated post submission of GST annual return and reconciliation statements. |
| (iii)   | **Special Audit under Section 66 of the CGST Act**  
- Audit by Chartered Accountant or Cost Accountant nominated by the Department.  
- Similar powers for special audits existed in the erstwhile indirect tax regime.  
**Practical aspects**  
- Generally, these audits are likely to be triggered in complex cases, where the value has not been declared correctly or credit is availed beyond normal limits. |
Notable aspects of audits under GST

Increased availability of data and ease of data mining:
- The entire GST system is driven by automation and digitization, resulting in a large quantum of data and information being automatically made available to the tax officers.
- A Directorate General of Analytics and Risk Management ("DGARM") has been specifically set up to utilize internal and external data sources for detailed data mining and analysis to generate outputs for focused and targeted action by field formations and investigation wings.
- GST envisages a system-based matching of Input Tax Credit and other details like duplication in payment of taxes (though not fully implemented at present). Further, there is also a seamless system-based tax payment system. Hence, as regards these aspects, there will be no requirement for the GST officers to do a manual check.
- Unlike the erstwhile regime where the audit teams would seek books of accounts and explanations as regards discrepancies, under GST, all registered persons with a turnover above INR 20 million have to mandatorily file their audited financials and a reconciliation statement between the financials and the GST returns. The audit team may thus be able to build its investigations on the disclosures made in the reconciliation statement.

Increased scrutiny of legal positions:
- GST has ushered with it a host of legal and interpretative issues, where often, there is a lack of clarity in law itself. The law is also in a constant flux on account of multiple amendments, notifications and circulars being issued.
- In the absence of clarity on a host of issues and with the frequent changes in law, there is more ammunition for the GST officers to scrutinize and question the legal positions adopted by the assessee, especially in key areas such as classification, valuation, applicability of exemption etc.

Attitude and orientation
- While GST is an overhaul of the entire tax administration, there are certain aspects which are likely to remain unaltered especially concerning the attitude of the officers. Since the officers conducting the audits under GST would be the same as those under the erstwhile regime, their attitude, orientation and even line of questioning would predictably be the same.
- The “target driven” approach of the tax officers is not likely to change under GST.
- The manner and methodology of the actual conduct of audits may also be similar as that has been followed in the erstwhile tax regime.
Global trends

Considering that the implementation of GST in India is inspired by popular indirect tax regimes around the globe, whether under the nomenclature of VAT or GST, it is useful to refer to the nature of proceedings and trends in audit in other jurisdictions.

- **Spain**: Spain has recently introduced significant changes in the VAT reporting system, which is likely to impact tax audits. A new VAT reporting system - SII Mechanism has been introduced from 1st July 2017, wherein all data with respect to incoming/outgoing invoices is to be reported in Excel format to the Spanish tax authorities within 4 days after the invoice is booked. All the VAT related billing records are made available on real-time basis to the AEAT Online system (Revenue Service for the Kingdom of Spain). The system thus helps in bridging the gap between recording or booking of several invoices and the actual reporting to the tax authority.

- **Other European nations**: In the early 2000’s, the OECD had developed the Standard Audit File for Tax Purposes (“SAF-T”), in terms of which specific business accounting transactions from the ERP system are to be provided to the tax service in a prescribed format. The SAF-T has been implemented by various countries in Europe viz. Portugal, France, Lithuania, Luxembourg, Norway, Poland and Austria. In most countries, SAF-T data is provided to the authorities in case an audit is announced, but in some countries such as Portugal, Poland and Lithuania, there is an additional monthly SAF-T for VAT specifically. In such cases, the tax authorities can compare the data declared in the SAF-T with that declared in the VAT return.

- **China**: Moving away from Europe and closer to home, one may study practices in China, where the government has, in an indirect manner, introduced self-policing through capturing of entire business data within their own system. The fapiao invoice system is an important component of tax compliance for businesses. Fapiao is a legal receipt which serves as an evidence in case of purchase for goods and services in the market. It is mandatory for every business to pay tax in advance on their future sales. VAT only becomes deducible once the customers are able to establish that they identified their suppliers by means of a VAT identification number and that the invoice which has been booked is paid by mentioning the bank account number of the supplier to whom payments are transferred. Ultimately however, since the data captured by government is directly correlated to/dependent on the data provided by the businesses, there still remains a need for the government to police and review through audits.

- **Australia**: In Australia, a simplified and tax payer friendly audit mechanism has been implemented, wherein audits are conducted on a selective basis, where it is seen that a deeper examination maybe required. There audits are more comprehensive than the risk reviews and involve intense examination where underpayment of GST or excise is a risk. Most of the audits in Australia escalate from a review which is conducted prior to initiation of audit.
Conclusions

GST has been a watershed reform in India for businesses as also for tax administrators, and predictably one will witness various changes in the tax audit function as well. A remarkable change has been the use of technology and how it will aid the GST officers to carry out their audits. This is aligned to the global trends where tax administrators are increasingly seen to use technology to their advantage in data mining, analysis and investigation.

However, peculiar to India, is the complexity of the GST law itself and the diverse nature of transactions to which it is applicable. Therefore, it is likely that under GST, the audit officers would carry out a deeper scrutiny of legal positions taken. Further the continuation of officers from the erstwhile tax regime would mean that the attitude and orientation of such officers is likely to remain the same under GST. Businesses will thus have to be mindful as regards defending their positions and practices to the tax auditors, whose efforts to unearth unpaid taxes, are now also bolstered by increased and easier availability of data.

Considering that audits will happen for the first time under GST, one can only hope that the audit officers are mindful and considerate of the teething problems faced by assessees, though, a simplified and a tax-payer friendly audit regime is but a distant dream.
Has the GST Law Settled?

With there being no evidence to confirm that the dust surrounding Goods and Services Tax (‘GST’) has finally cleared, the abstract debates on weathering of the GST storm continues to generate intellectual stimulation. The key claim made by a class of thinkers is that the simplification and standardization of the law is facilitating ‘ease of doing business’ by reducing business complexities and compliance burden. The same argument is often turned around, to contest that the constant tinkering with the GST law to give way to several reforms is making the law even more complex. Amidst the debates, there is little denying that GST has made vast progress since its implementation.

When staging an enquiry about the trajectory of GST so far and its current position, it is significant to bear in mind that tax laws have historically required time to settle down. Regardless of how simple or complex the taxing statute is, there has been a continuous process of evolution of law and its crucial taxing parameters. The aspects of classification, valuation, exemption, input tax credit etc., have always invited the cast of a judicial spell to make the law more definitive. In one way or the other, the Courts have been regularly molding the taxation laws until, with the passage of time, the law settles. Yet, the settled law may be disturbed by opening the pandora’s box by way of retrospective amendments and validating acts, which may lead to new disputes. Nonetheless, the aging of the tax laws, with constant judicial intervention, potentially improves its quality and helps it mature.

If we behold the present, it is amply clear that the iconic GST law is still at the initial stage of evolution. It cannot be denied that despite being envisioned by several brains of economic brilliance and acute political acumen, the GST law suffers from various uncertainties arising out of multiple tax slabs, exemptions,
cumbersome compliance procedures, and confusion over interpretation of provisions. Further, while the Government constantly endeavors to address the issues through its proactive and earnest attempts by issuing Circulars, notifications, tweets, advance rulings (conflicting in some cases), the same is not helpful enough and leaves scope for litigation.

With each passing day, GST is adding a good deal of new cases to the already laden system of unsolved cases, thereby adding to the woes of judiciary and tax tribunals in India. As a matter of fact, our indirect tax legal system, which was already grappling with a backlog of more than 1.45 lakh appeals, is further being clogged by a number of lawsuits, petitions, advance ruling applications after the introduction of GST.

The increasing backlog of cases results in denial of real access to the courts for far too many and there is an urgent need to identify the shortcomings and remove the same to the extent possible. Our former Chief Justice of India Justice Y.K. Sabharwal, while addressing a seminar, pointed out that an ideal justice dispensation system should necessarily have the following attributes:


In this connection, it is important to see if the justice delivery mechanism envisaged in the GST offers a system that is affordable to all and if it has been strengthened enough to dispense speedy and quality justice. As effective and quality justice, to a large extent, ultimately depends on the independence of the judiciary, the law is required to not only pre-suppose separation of power and non-interference from the executive as well as the legislature, but also to allow the judicial system to give paramount importance on upholding the imperatives of the Constitution. Therefore, the mechanism is expected to be devised in a way that the judiciary is independent from any pressure, bias or prejudice and is able to protect the foundation on which the edifice of our GST must rest.

Provisions relating to Appeals and Revisions under the GST law

Similar to the erstwhile regime, the system of appeals and revisions under the GST envisages various layers of appellate and revisionary authorities, till the matter is finally decided by the Hon’ble Supreme Court. As mandated by the principles of natural justice, the process would start with the issuance of a show cause notice which would lead to an adjudication order and the parties would have sequential appellate arenas to obtain relief. In addition, the Authorities have been vested with certain revisionary powers. The structure of appeals and revisions can be glanced through the chart hereinbelow:
A MEANS TO JUSTICE MEANS A LOT!

Appeal against Order passed by the Original Adjudicating Authority

Appeal preferred by the taxpayer.
(Time limit: 3 months. No fees required. Pre-deposit of 10% of disputed tax amount to be made).

Appeal preferred by the Department. (time limit: 6 months)

First Appellate Authority

Revisionary Authority
(Power to examine any order passed by adjudicating authority / first appellate authority within 3 years)

Appeal against Order passed by the Appellate Authority or Revisional authority
(Appeal to be filed within 3 months. Fees of Rs. 1000 for demand of every Rs. 1 Lakh, subject to max of Rs. 0.25 Lakh)

Issues involved relates to the place of supply

Issues other than issues relating to place of supply

Appeal before National / Regional Benches
Pre-deposit: 20% of additional amount of tax in dispute, in addition to 10% already paid before first appellate authority.

Appeal before State/ Area Benches
Pre-deposit: 20% of additional amount of tax in dispute, in addition to 10% already paid before first appellate authority.

Question of law

Appeal before the Jurisdictional High Court

Appeal before the Hon’ble Supreme Court
Concerns to be addressed

In view of the above backdrop and on perusal of the system in place under the GST law, it is clear that certain steps are required to be taken by the legislature so as to ensure that the justice delivery system provided under GST is not only robust, but also ideal. Certain glaring concerns that are required to be addressed under the current GST system have been indicated hereunder:

(i) The Appellate Tribunal should be made independent

As per the Economic Survey 2017-18 published by the Ministry of Finance, the Department success rate in an indirect tax proceeding pending before CESTAT is around 12%. This serves as an anecdotal evidence to suggest that the disputes at the adjudication and the first appellate stage are invariably resolved at the CESTAT level in favor of the taxpayer.

One may draw a conclusion that under the erstwhile regime, the members at the Adjudication stage and First Appellate Stage were primarily technical members and that in the absence of a judicial member at each such stage, groundless, arbitrary demands initiated at lower levels were, by and large, being judiciously decided only at the Tribunal stage (which consists of one Judicial Member and one Technical Member).

However, under the GST law, for hearing appeals against the orders passed by the First Appellate Authority or the Revisionary Authority, GST Appellate Tribunal is proposed to be a two-tier system consisting of the (a) National Bench and Benches thereof (‘Regional Benches’) to redress cases where one of the issues involved relates to determination of place of supply, and (b) State Bench and the Benches thereof (‘Area Benches’) to redress all other matters. It is proposed that each such bench shall all consist of one Judicial Member, one Technical Member (State) and one Technical Member (Center) leading to executive dominance over judiciary, even though the State GST law and Central GST law are identical.

The Judicial Member is either a qualified or to be appointed Judge of the High Court or a Member of Indian Legal Service. On the other hand, the Technical Member (Center) is a member of Indian Revenue (Customs and Central Excise) Service who has completed at least fifteen years of service and a Technical Member (State) is an officer of the State Government, not below the rank of Additional Commissioner of VAT and with at least three years of experience in VAT / GST / in the field of finance and taxation.

The aforesaid constitution of the GST Tribunal has been challenged in various petitions before different High Courts1 by relying on the judgment passed by the Apex Court in the case of Madras Bar Association2, wherein the Hon’ble Court had inter alia held that “a Two-Member Benches of the Tribunal should always have a judicial member. Whenever any larger or special Benches

1Pratik Satyanarayan Gattani vs. Union of India & Ors. [CA 7129/2018], Bharatiya Vitta Salahkar Samiti & Anr. vs. Union of India & Ors. [W.P. (C) No. 6900 OF 2018], and Mr.Vasanthakumar vs. Union of India [W.P.No.14919 of 2018]
2Madras Bar Association vs. UOI [2010 11 SCC 1]
are constituted, the number of Technical Members shall not exceed the Judicial Members’. Relying on this judgment, the High Courts admitted the petition and prima facie observed that the constitution of the GST Appellate Tribunal appears contrary to the law laid down by the Madras Bar Association and that under no circumstances can the number of Technical Member be more than the Judicial Members.

This shows that GST Tribunal is violative of constitutional provisions which enshrine the principles of Rule of Law, separation of power and independence of Judiciary. Given the above constitution of GST Tribunal and the statistics in the Economic Survey 2017-18, there is a likelihood that more taxpayers may be constrained to approach the High Court and the Supreme Court to seek justice.

Given a broader tax base and a lower threshold limit under GST, compared to erstwhile laws, a lot of small taxpayers are covered under the tax net. It being an undeniable fact that the cost of litigation at the Supreme Court and High Court level is too high, the same would lead to a virtual negation of the right to appeal for many small tax payers.

Currently, an order issued by the Commissioner under the Central Act involving high stakes travels directly to CESTAT and if the issue pertains to classification, valuation or taxability, it goes directly to the Hon’ble Supreme Court after decision by the CESTAT. Under GST law, every dispute, irrespective of the quantum involved, would necessarily go to the First Appellate Authority from the order by the Adjudicating Authority and every dispute, except that related to the question regarding place of supply, would necessarily go to the jurisdictional High Court. This means that the path to justice would be longer and will also be coupled with the burden of higher pre-deposit, filing and legal fees. In this connection, Ambrose Bierce words, “Litigation: A machine which you go into as a pig and come out as a sausage,” seem more relevant today than ever.

Further, the dream of making justice more accessible by constituting a State / Area Bench in every State / UT, even though admirable, may prove to be a distant one. This is in light of the present state of affairs wherein only nine CESTAT benches have been constituted to handle Customs, Excise and Service tax cases and even those are not functioning at its full anticipated capacity as we currently have only 24 members in total. Thus, the Government may find it difficult to cope up with the requirement of members and it would lead to further delay in dispensation of justice.

With each passing day, GST is adding a good deal of new cases to the already laden system of unsolved cases, thereby adding to the woes of judiciary and tax tribunals in India.

---

3 As per the CESTAT website, available at [http://www.cestatnew.gov.in/admin/members.php](http://www.cestatnew.gov.in/admin/members.php) and accessed on 08.10.2018
(ii) Mandatory Pre-deposit for filing appeal should be made reasonable

- The CGST Act postulates that no appeal shall be entertained by the First Appellate Authority and the Appellate Tribunal unless a pre-deposit of 10% (capped at 25 Crores) and an additional 20% (capped at 50 Crores) respectively is made by the taxpayer. This serves as a departure from the erstwhile Central laws, wherein a maximum pre-deposit of 7.5% for the First Appellate Authority and additional 2.5% for CESTAT is to be made.

- The payment of mandatory pre-deposit as high as 30% of the disputed demand is undesirable and is likely to impact the working capital of the taxpayers. This may encourage the revenue officers, keeping eye on the cash inflows on account of pre-deposit, to confirm the demand arbitrarily. The same gives an impression that the Department’s success rate in litigation matters at higher forum would further decline under GST.

(iii) The scope of the appellate jurisdiction of the Supreme Court should be aligned

Under the erstwhile regime, an appeal against the order passed by CESTAT, pertaining to determination of taxability, classification or valuation, would lie directly before the Hon’ble Supreme Court as the decision on these aspects affected not a single taxpayer, but taxpayers throughout the country. However, in the GST regime, only appeals against the order of the CESTAT, which involve an issue of determination of place of supply, shall lie directly before the Hon’ble Supreme Court. This may have pan India repercussions if divergent views are taken by the different High Courts on the disputes relating to classification, valuation and taxability. This would further delay the dispensation of justice.

(iv) Power of the Revisionary Authority should be curtailed

- The Revisionary Authority has been vested with the power to examine any proceedings and stay the operation of any decision or order passed by the adjudicating / first appellate authority, if it considers the same to be erroneous. Such powers shall be exercised within three years from the date of order, however, if the said order involves an issue which is pending resolution in any other case before the Tribunal, High Court or Supreme Court, the entire period between which such appeal is pending before the Court shall be excluded while calculating the limitation period of three years. This means that if a GST dispute is settled by Supreme Court, say after 10 years from the date of adjudication order, the revisionary authority would have a window of 13 years to reopen a similar issue (in case of another taxpayer) which have been concluded by the adjudicating authority or the first appellate authority and accepted by the both the parties.

---

4 The ceiling limit of 25 Crores and 50 Crores is being introduced vide the CGST Amendment Act, 2018.
5 Santani Sales Organization vs. CESTAT, New Delhi [2018 (6) TMI 249]
6 Commissioner of Central Excise vs. Mangalore Refineries & Petrochemicals Ltd. [2011-TIOL-366-HC-KAR-CX]
The question that also arises is when the right to appeal (that too with more time available i.e., 6 months as against 3 months available to assesses for appeal before the first appellate authorities) is conferred to the Department, what is the rationale behind giving more lethal power of revision to the Tax Authorities.

(v) Interplay between Customs Act vis-à-vis GST Act to be resolved

With a view to minimize disputes, the classification of goods under GST has been aligned with the Customs Tariff Act, which in turn is based on the Harmonized System of Nomenclature (HSN). However, the GST law employs various legal fiction which deems certain supplies to be services even though the same may be treated as goods under the Customs Act. Further, the concept of 'composite supply' and 'mixed supply' do not find place in Customs Act. Accordingly, with there being likely differences in classification adopted under Customs Act and GST Act, the taxpayers are to face difficulties when the same transaction involves both aspects.

Conclusion

It is important for the GST Council to address the above concerns to repose faith in taxpayers by building a more robust and ideal justice delivery system. If these concerns are adequately addressed, the justice delivery system envisaged under the GST law would be more speedy, affordable, independent, fair and pragmatic.

One must also be mindful that much of existing government resources are being utilized by the cases pertaining to the erstwhile regime. Therefore, a tax amnesty scheme – an opportunity for taxpayers to seek pardon from their liabilities by paying a defined amount – may likely be launched in the not so distant future to reduce burden on the judiciary and the existing structure.

Overall, a result-oriented and a fair framework shall prove to be a catalyst in strengthening and reinforcing the justice delivery system by freeing it from the shackles of pendency, inefficiency and inaccessibility.
Legislative amendments


Save as otherwise provided, the amendments will come into force from such date as may be appointed by Central Government vide a notification. Such notification is likely to be issued once similar amendments are carried out to the corresponding State GST legislations. Summary of key amendments are laid out below-

Amendments to the CGST Act and UTGST Act

- **Amendment to S. 2(4)**
  - Definition of ‘Adjudicating Authority’ is amended to re-nomenclature ‘Central Board of Excise and Customs’ as ‘Central Board of Indirect Taxes and Customs’. Additionally, the Anti-Profiteering Authority is proposed to be excluded from the said definition.

**ELP Take:**

Exclusion of the Anti-Profiteering Authority from the said definition elucidates that no statutory appellate remedy would be available from the order of the said authority. Such orders may therefore be challenged only before a Writ Court.
LEGISLATURE AT WORK

- **Substitution of S. 2(17)(h)**
  - Definition of ‘business’ is substituted to include thereunder ‘activities’ of a race club instead of ‘services provided’ by it, with the stated objective of addressing the apparent ambiguity, considering that ‘goods’ have been defined to include actionable claims and services have been defined to mean anything other than goods.

- **Omission of S. 2(18) read with substitution of S. 25(2) proviso and insertion of second proviso to S. 25(1)**
  - Proviso to S. 25(2) is substituted to withdraw the option of opting for business vertical wise registration under GST and instead facilitating obtaining of separate GST registration for each place of business in a State. Consequentially, the definition of ‘business vertical’ is omitted.
  - Further amendment is made to provide that an SEZ unit shall have to obtain a separate GST registration, distinct from place its business located outside the SEZ in the same State or Union Territory, with the stated objective of aligning the said provision with the Rule 8 of the CGST Rules.

**ELP Take:**

Several businesses have opted for business vertical wise registrations, for inter alia achieving efficiency from a credit as well as administrative and compliance standpoint. The dilution of the concept of ‘business vertical’ poses a significant challenge where business operations are being carried out from the same premises.

- **Substitution in S. 2(35)**
  - Definition of the term ‘cost accountant’ modified to insert correct reference to the Cost and Works Accountants Act, 1959.

- **Insertion in S. 2(69)**
  - Definition of ‘local board’ is amended to include a development board constituted under Article 371J of the Constitution of India, which grants special status to 6 backward districts of Karnataka-Hyderabad region.
  - Under the said article, the President is empowered to establish a separate Board to ensure equitable distribution of funds in the State’s budget to meet the developmental needs of the region. The amendment is being made based on the request received from the State of Karnataka.
• **Insertion of Explanation to S. 2(102)**  
  - An explanation is added to definition of ‘service’ to state that the said expression includes facilitating or arranging transactions in securities.

  **ELP Take:**  
  The amendment clarifies that though ‘securities’ per se are outside the scope of ‘goods’ and ‘services’; facilitating or arranging transactions in securities would qualify as ‘service’. This position has also been clarified recently through a detailed FAQ on Banking and Insurance.

• **Insertion of S.7(1A) and Amendment to Schedule II**  
  - Hitherto previously, it was possible to interpret that, in terms of S. 7(1)(d), the activities listed at Schedule II to the CGST Act, which primarily prescribes the nature of supplies to be construed as either goods or services, would independently qualify as ‘supply’, irrespective of whether the same meet the criteria laid down under S.7(1)(a) of the CGST Act *inter alia* including the requirement of supply being for a consideration and in the course of furtherance of business.
  
  - Effective 1st July 2017, the definition of ‘supply’ is aligned by way of insertion of new sub-section (1A), to subject the activities and transactions listed in Schedule II to the CGST Act to S. 7(1)(a), thereby necessitating that such activities and transactions must meet the threshold of ‘supply’ for being GST taxable. Reflective amendments made to Schedule II by inserting ‘transactions’ into the heading of the Schedule.

• **Substitution of S. 9(4)**  
  - S. 9(4) is substituted to effectively provide that applicability of GST on a reverse charge on supplies received from unregistered persons shall, instead of being applicable universally, shall be applicable only in respect of notified supplies
  
  - Similar substitutions have also been made to S. 5(4) of the IGST Act and S. 7(4) of the UTGST Act.

  **ELP Take:**  
  While the extant said provision was initially enacted with an over-ambitious objective of ensuring a seamless tax and credit chain, the same has been kept suspended (presently till 30th September 2019 vide Notification No. 22/2018 – Central Tax (Rate) dated 6th August 2018) owing to practical challenges in implementing the same. The welcome amendment reflects a more realistic approach of the Government in implementing the said provision in a more objective and phased manner.

• **Amendment to S. 10**  
  - Amendment is made to enlarge the ambit of the composition scheme by increasing the eligible turnover from INR 1 Crore to INR 1.5 Crores as well as permitting service transactions to the tune of 10% of turnover, subject to a ceiling of INR 5 lakhs.
  
  - Also, amendments are made to clarify that the composition amount is payable in lieu of tax payable ‘under sub-section (1) of Section 9’.
• Omissions in S. 12(2) and S. 13(2)
  - Amendments made to provide valid references to S. 31 and thereby rectify drafting errors.

• Substitution to the Explanation to S. 16
  - Explanation is substituted to further provide that, for the purpose of S. 16(2)(b), which lays down that input tax credit shall *inter alia* be admissible if services have been received, that services shall be deemed to have been received where services have been provided by on the direction of and on account of the person claiming such input tax credit.

  The substitution is made with the stated objective of facilitating availability of input tax credit to bill-to-ship-to transaction for services.

**ELP Take:**

Considering that the definition of the term ‘recipient’ of supply of service’ as contained in S. 2(93) itself recognises the person liable to pay the corresponding consideration as the service recipient; the stated condition of receipt of service could have been said to be met even absent the amendment. Nonetheless the amendment resonates the legislative intent and explicitly eliminates surrounding ambiguity. While it is being debated as to whether the said amendment is a tool for legalizing cross-charge transactions between distinct persons, the said view seems to be lacking credible legal substance and businesses are therefore advised to exercise diligence in cross-charging only against transactions that otherwise meet the test of ‘supply’ though without consideration.

• Insertion of Explanation to S. 17(3)
  - Explanation is added to S. 17(3) to state that the value of exempt supplies would not include value of activities or transactions specified in Schedule III.

**ELP Take:**

As per S. 7(2)(a) read with Schedule III, activities or transactions listed in Schedule III do not qualify either as supply of goods or supply of services. Corresponding to certain other amendments, pursuant to which high seas sale transactions, in-bond sales and out and out sale/merchant trade transactions do not attract GST (subsequently discussed), this amendment ensures that, for the stated transactions, input tax credit would continue to be eligible. This is a logical and a welcome move, specifically considering that in the stated transactions, GST levy may either crystallizes at a later stage in the value chain (high seas sale or in-bond sale) or the transactions lead to realization of foreign exchange, though not strictly meeting the threshold of export (out and out sale/merchant trade).


Substitution of S. 17(5)(a) and (b)

- Amendments are made to rationalize the input tax credit (‘ITC’) restrictions-
  
  (a) ITC as regards motor vehicle is being restricted (unless used for making specified outward supplies viz. supply of such motor vehicles, passenger transportation, training on driving) only to motor vehicles ‘for transportation of persons’ and having ‘approved seating capacity of not more than thirteen persons (including the driver)’, paving way for ITC admissibility qua motor vehicles having a higher seating capacity or other special purpose motor vehicles (dumpers, work-trucks, fork-lift trucks etc.)

  (b) The extant blanket ITC restriction as regards services of renting or hiring of motor vehicles have now been restricted to the type of motor vehicles covered in (a) above, unless used for making specified outward supplies.

  (c) ITC in respect of such goods and services or both shall be available where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

- At the same time, it is being provided that services of general insurance, servicing, repairs and maintenance in so far they relate to motor vehicles, vessels or aircrafts, in respect of which ITC is inadmissible, shall also be restricted, unless the same is used for making specified outward supplies.

**ELP Take:**

The amendments are a step forward towards meeting the promise of making GST a seamless tax. It is important for the sector to identify expenses incurred pursuant to the statutory mandate, which are otherwise hit by the restrictions of S.17(5). Specifically, considering that the restriction as regards ITC of services of general insurance, servicing, repairs and maintenance of motor vehicles, vessels or aircrafts have been explicitly inserted by the amendment, it can be argued that ITC thereof would still be admissible for the period prior to the amendment.
• Amendment to S. 20
  - Corrective amendment is made to insert reference to Article 92A of the Constitution of India (covering taxes payable on inter-state sale of goods).

• Amendments to S. 22
  - Based on recommendations received from certain States (Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand), the same are excluded from the purview of special category States and accordingly the revised taxable threshold of INR 20 lakhs would be applicable in relation to such States.
  - Further, an enabling proviso is inserted to enable the Government to prescribe a higher threshold turnover (upto INR 20 lakhs) for other special category states.

• Insertion in S. 24
  - Insertion is made to provide that only those electronic commerce operators who are required to collect tax at source under S. 52 would be required to obtain compulsory registration.

ELP Take:
Presently, an e-commerce operator is required to take compulsory registration even if his aggregate turnover in a financial year does not exceed Rs. 20 lakhs. This amendment will provide relief to smaller e-commerce operators, below the de minimis threshold, who are not notified to comply with TCS requirements (TCS provisions are presently deferred till 30th September, 2018 vide Notification No. 12/2018 –CGST dated 29th June 2018. Similar notifications were also issued for SGST Act and UTGST Act) and will not therefore be required register under GST laws.

• Insertions to S. 29
  - Where a registration is in the process of being cancelled, the proper officer may temporarily suspend the registration till the procedural formalities for cancellation are completed.

• Amendments to S. 34
  - Amendments are made to permit issuance of consolidated debit/credit notes against multiple invoices

ELP Take:
The amendment aims to relax the onerous requirement of issuing a single debit note/ credit note against a corresponding invoice, thereby facilitating issuance of a consolidated debit note /credit note against multiple invoices. This provides substantial relaxations to sectors and transactions which are prone to post supply price adjustments computed periodically.

• Insertion of proviso to S. 35(5)
  - The proviso provides that any department of the Central or State Government / local authority which is subject to audit by CAG need not get its books of account audited by any Chartered Accountant or Cost Accountant.
**Amendments to S. 39**

- An enabling provision is created to facilitate revision/ rectification of the prior return rather than making necessary disclosures in the return pertaining to the period in which the omission or incorrect particulars are noticed.

- Necessary amendments are made to enable separate prescription of periodicity of filing of returns, notification of registered persons required to furnish quarterly returns and required to pay tax due or part thereof as per the returns, on or before the due date for filing the returns, subject to conditions as may be prescribed.

**Insertion of S. 43A**

- A new section is introduced in order to enable the new return filing procedure as proposed by the Returns Committee and approved by GST Council-

  (a) Every registered person shall verify, validate, modify or delete details of supplies furnished by the corresponding suppliers

  (b) Procedure for availing ITC and verification thereof shall be as may be prescribed

  (c) Procedure for furnishing details of outward supplies by the supplier for the purpose of availment of ITC by the recipient shall be as may be prescribed

  (d) Procedure for claiming ITC not disclosed by the supplier under (c) above shall be as may be prescribed and such procedure may include the maximum amount of ITC which can be so availed, not exceeding twenty five percent of ITC available based on details furnished by the suppliers under (c) above

  (e) The amount of tax specified under (c) above shall be deemed to the tax payable by the supplier under the CGST Act

  (f) The supplier and the recipient shall be jointly and severally liable to pay tax or ITC, as the case may be, in relation to outward supplies for which details have been furnished under (c)/(d) above but return thereof has not been furnished

  (g) For (g) above, recovery shall be made in such manner as may be prescribed

  (h) Procedures, safeguards and thresholds of tax amounts that can furnished under (c) above by (i) a registered person within six months of taking registration, or, (ii) by a registered person who has defaulted in payment of tax for a period of more than two months from the due date of payment, shall be as may be prescribed
• **Insertion in S. 48(2)**
  - Insertion is made to allow the GST practitioner to perform other functions such as, filing refund claim, filing application for cancellation of registration etc., in addition to furnish the details of outward and inward supplies and various returns under S. 39, 44 or 45 on behalf of a registered person.

• **Insertion of proviso to S. 49**
  - Proviso is inserted to S. 49(5)(c)/ 49(5)(d) to state that credit of SGST/ UTGST can be utilized for payment of IGST only when the balance of the ITC on account of CGST is not available for payment of IGST.
  - Similar proviso is inserted to S. 9 of the UTGST Act.

**ELP Take:**

This amendment is required since the GST common portal has placed this restriction in the utilization of input tax credit of State tax/Union territory tax towards payment of integrated tax.

• **Insertion of S. 49A and S. 49B**
  - S. 49A is inserted to state that ITC on account of CGST, SGST or UTGST can be utilized for payment of IGST, CGST, SGST or UTGST, as the case may be, only after ITC available on account of IGST is first utilised fully towards such payment
  - S. 49B is inserted to empower the Government to prescribe the order and manner of utilization of ITC
  - Similar insertions are made of S. 9A and S. 9B to the UTGST Act.

**ELP Take:**

While the said amendments are with the stated objective of minimizing fund settlement on account of IGST, the same pose a possibility of liquidity issues for the dealers in certain situations, necessitating cash outflow.

• **Insertion in S. 52(9)**
  - Insertion was made to provide reference to return furnished under S. 39 (in addition to return under S. 37) and thereby rectify drafting error.
NAVIGATING

Amendments to S. 54
- Amendment is made to S. 54(8)(a) to provide that the relaxation from the requirement of establishing that incidence of tax has not been passed on, in relation to a claim of refund, shall be available only in respect of 'exports' and not 'zero-rated supplies'. This is with the stated objective of allowing ITC to the SEZ developer or SEZ unit and enabling the supplier in DTA to recover the tax amount therefrom. Thus, principle of unjust enrichment is being made applicable in case of refund claim arising out of supplies of goods or services made to SEZ developer/unit.
- Explanation to the Clause 2(a) is amended to provide that the relevant date in the case of refund of unutilized ITC under first proviso to clause (ii) of sub-section (3) [ITC on account of inverted duty structure] shall be the due date for furnishing of return under S. 39 for the period in which such claim for refund arises.
- As regards export of services, corresponding to amendment proposed to S. 2(6) of the IGST Act, reflective amendments are made to prescribe date of receipt of payment in convertible foreign exchange or 'in Indian Rupees where permitted by the Reserve Bank of India' as the relevant.

Insertion of Explanation to S. 79
- Explanation is inserted to enable recoveries being made from distinct persons present in different States / UTs with the stated objective of ensuring speedy recovery from other establishments of the registered person.

Insertions to S. 107 and S. 112
- The amount of pre-deposit payable for filing an appeal before an Appellate Authority and the Appellate Tribunal is being capped at INR 25 Crores and INR 50 Crores respectively.

Substitution in S. 129
- Time limit for payment of tax and penalty in respect of seized goods is increased from seven days to fourteen days.
**Amendments to S. 140**

- Effective 1st July 2017, S. 140(1) is amended to provide that CENVAT credit of ‘eligible duties’ carried forward in the return immediately preceding the appointed date can be transitioned into GST.

- Explanation 1 is retrospectively amended to provide that eligible duties do not include the additional duty of excise leviable under S. 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978.

Effective 1st July 2017, Explanation 3 has been inserted to state that ‘for removal of doubts’, the expression ‘eligible duties and taxes’ excludes any cess which have not been specified under Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs leviable under S. 3 of the Customs Tariff Act, 1975.

**ELP Take:**
The above amendment seeks to retrospectively bar the ability to transition credit pertaining to Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess, which has been a contentious issue. Recently, the Hon’ble Appellate Advance Ruling Authority, Maharashtra, in the case of Kansai Nerolac Paints Ltd. [TS-358-AAAR-2018-NT], refused to allow credit for the Krishi Kalyan Cess, strongly relying on the decision of the Hon’ble Delhi High Court in the case of Cellular Operators Association of India [TS-44-HC-2018(DEL)-EXC], against which decision an SLP has recently been admitted by the Hon’ble Supreme Court, which threw open the possibility of this issue taking another twist. Further, the Hon’ble Advance Ruling Authority, Maharashtra, in the case of CMI FPE, Ltd. [TS-403-AAR-2018-NT], relying on the Delhi High Court decision in Cellular Operations and the AAAR ruling in Kansai Nerolac, refused to allow credit. While this amendment attempts to put to rest the controversy, it would surely be susceptible to challenge, considering that it seeks to take away substantive benefits by means of a clarificatory amendment.

Further, in an attempt to reconcile the provisions with the legislative intent, a blunder seems to have been committed, as application of the definition of eligible duties to S. 140(1) has legally disabled transitioning of CENVAT credit thereunder, pertaining to Service tax as well as input services and capital goods, considering that definition of eligible duties does not include Service tax as also is restricted to specified duties in respect of inputs alone. Though this situation would require immediate redressal, the same can be achieved only through another round of parliamentary process.

**Amendment to S. 143**

- Discretionary powers provided to the Commissioner to increase the time limit for return of inputs and capital goods sent to job workers premises by a period of one year and two years respectively.

**Amendment to Schedule I**

- Entry 4 is amended to ensure that import of services by entities which are not registered under GST (say, they are only making exempted supplies) but are otherwise engaged in business activities is taxed when received from a related person or from any of their establishments outside India.
Additions to Schedule III

- Scope of Schedule III expanded to cover the following transactions-
  
  (a) Supply of goods from a place in the non-taxable territory to another place in non-taxable territory without the goods entering into India
  
  (b) Supply of warehoused goods to any person before clearance for home consumption
  
  (c) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

ELP Take:
The aforesaid is a welcome amendment as it explicitly notifies the stated transactions (high seas sale transactions, in-bond sales and out and out sale/ merchant trade transactions) as not being liable to GST. While this position was earlier clarified vide Circular No. 33/2017 dated 1st August 2017 and Circular No. 3/1/2018-IGST dated 25th May 2018 (in-bond sales), the same lacked legal mandate, which is sought to be achieved by this amendment. However, it was expected that the said amendments would be given a retrospective effect. Absent the same, for the interim period, the stated transactions can be statutorily considered to be within the ambit of GST, despite clarifications suggesting otherwise.

Amendments to the IGST Act:

- Insertions to S. 2(6)
  
  - Supply of services to be considered as exports even in cases where amount is received in INR, where permitted by RBI.

- Substitution in S. 5(4)
  
  - S. 5(4) is substituted to effectively provide that applicability of GST on a reverse charge on supplies received from unregistered persons shall, instead of being applicable universally, shall be applicable only in respect of notified supplies
  
  - Similar amendments have also been made to the S. 9(4) of the CGST Act and S. 7(4) of the UTGST Act.
1. **Omission in S. 8**
   - Corresponding to amendments made to S. 2(18) read with S. 25(2) of the CGST Act, reference to business vertical is excluded.

2. **Insertion of proviso to S. 12(8)**
   - Place of supply of the transportation of goods from a place in India to a place outside India shall be the place of destination of such goods
   - The said amendment is with the stated objective of providing a level playing field to the domestic transportation companies and to promote export of goods

**ELP Take:**
While the amendment is a welcome move, it overlooks the provision of S. 7(5)(a), in terms of which, supply of services, where the supplier is located in India and the place of supply is outside India, shall qualify as inter-state supply.

3. **Substitution of second proviso to S. 13(3)(a)**
   - Proviso is substituted to the effect that services of job work or any treatment or process carried out on goods temporarily imported into India and then exported outside India, without putting them to other use in India, shall not attract GST

4. **Insertion of S. 17(2A)**
   - The insertion provides that the amount not apportioned under sub-section (1) and (2) shall be, for the time being, apportioned equally between the Centre and States/UTs, as the case may be.

5. **Insertion of proviso to S. 20**
   - A proviso has been added to specify that the amount of pre-deposit payable for filing an appeal before an Appellate Authority and the Appellate Tribunal is capped at INR 50 Crores and INR 100 Crores respectively.

**Amendments to the Goods and Services Tax (Compensation to States) Act, 2017:**

6. **Insertion of S. 10(3A)**
   - For the unutilized amount in the Fund during the transition period, fifty per cent, or as may be recommended by the GST Council, be transferred to the Consolidated Fund of India, as the share of the Centre, and the remaining fifty per cent shall be distributed amongst the States in the ratio of their base year revenue.
   - Further, it is provided that in case of a shortfall in the amount collected in the Fund, as recommended by the GST Council, fifty per cent of the same shall be recovered from the Centre and the balance fifty per cent from the States in the ratio of their base year revenue.
Amendments to CGST Rules:


Unless otherwise specified, all amendments shall come into effect from the date of the notification.

- **Amendments vide Notification No. 39/2018 dated 4th September 2018**
  - **Insertion of proviso to Rule 22(4)**
    - In cases where the notice for cancellation of registration is issued, proceedings may be dropped by issuing order in Form GST REG-20, in such cases where the person instead of replying to such notice, furnishes all the pending returns and makes full payment of the tax dues along with applicable interest and late fee. Simultaneous amendment has been made in the format of Form GST REG-20.
  - **Insertion of proviso to Rule 36(2)**
    - Proviso has been inserted to provide for the availment of ITC even when the document on which ITC is being availed does not contain all the specified particulars provided below mentioned particulars are contained therein:-
      - Details of the amount of tax charged;
      - Description of goods or services;
      - Total value of supply of goods or services or both;
      - GSTIN of the supplier and recipient; and
      - Place of supply in case of inter-State supply
  - **Insertion in Rule 55(5)**
    - Conditions provided for transportation of goods in a semi knocked down or completely knock down form shall equally be applicable in case of ‘transportation of goods in batches or lots’.
  - **Substitution of definition of ‘adjusted total turnover’ in Rule 89(4)**
    - Definition of ‘Adjusted Total Turnover’ for the purpose of calculating ITC refund amount has been amended to align the same to the corresponding value of service export turnover which is considered in terms of the said rule for the purpose of determination of ITC refund in respect thereof i.e. linked to inward remittances received during the tax period or previously, to the extent representative of services rendered during the relevant tax period.
  - **Substitution in Rule 96(10) – restriction on claiming refund under GST on export of services**
    - The rule has been substituted to the effect that the restriction thereunder shall inter alia only apply where the exporter himself has claimed benefits under Notification No. 78/2017- Customs dated 13th October 2017 and Notification No. 79/2017-Customs dated 13th October 2017. Effectively, this restriction will not apply where such imported goods are purchased by an exporter in India on payment of GST and then exported. This rationale has been explained in Circular No. 59/33/2018-GST dated 4th September 2018
  - **Insertion of proviso in Rule 139A(1)**
    - In case of imported goods, additional obligation has been placed on person-in-charge to carry a copy of ‘Bill of Entry’ filed by the importer of such goods. Also, the number and date of the bill of entry shall be entered in Part A of Form GST EWB-01
  - **Change in format of GST ITC – 04 (for goods sent to job worker) – Rule 45(3)**
    - Details about “nature of job work done by job worker” as well as “losses & wastes” in terms of quantity are also to be reported
  - **Form for annual return in ‘Form GSTR – 9’ and ‘Form GSTR – 9A’ introduced – Rule 80**
    - Form for annual return in ‘FORM GSTR-9’ and ‘FORM GSTR-9A’ has been introduced for normal taxpayers and composition taxpayers respectively.
• Amendments vide Notification No. 48/2018 dated 10th September 2018
  - Powers conferred to the Commissioner for extending the date for submitting the declaration electronically in FORM GST TRAN-1 (not beyond March 31, 2019), in respect of registered taxpayers who could not submit the said declaration by the due date on account of technical difficulties on the common portal and in respect of whom the Council has made a recommendation for such extension
  - Vide Order No. 4/2018 – GST dated 17th September 2018, the last date for filing FORM GST TRAN-1 in the above case has been extended till 31st January 2018
  - Taxpayers submitting TRAN-1 as per above timelines may submit the statement in FORM GST TRAN-2 by April 30, 2019

• Amendments vide Notification No. 49/2018 dated 13th September 2018
  - Notifies format of Reconciliation Statement under Form GSTR-9C.
  - The Reconciliation Statement would require reconciliation of figures reported in annual financial statements vis-à-vis values reported in GST Returns in relation to gross turnover, taxable turnover, input tax credit etc.
  - In terms of the returns format, reasons will have to be provided for all unreconciled differences together with auditor’s recommendation on additional liability arising on account of such reconciliation.
Notifications & Circulars

A. Scope, Applicability and Rate

1. Exemption from payment of GST on reverse charge basis on supplies from an unregistered supplier has been extended
   - Exemption from payment of GST on a reverse charge basis in respect of supply of goods or services received from an unregistered supplier has been extended from September 30, 2018 to September 30, 2019
     [Notification No. 22/2018 – Central Tax (Rate) dated August 06, 2018]
     [Notification No. 22/2018 – Union Territory Tax (Rate) dated August 06, 2018]
     [Notification No. 23/2018 – Integrated Tax (Rate) dated August 06, 2018]

2. TDS and TCS provisions brought into force with effect from October 1, 2018
   - October 1, 2018 has been notified as effective date for applicability of provisions relating to Tax deduction at source (‘TDS’) and Tax collection at source (‘TCS’) under Section 51 and Section 52 of the CGST Act.
   - The following categories of taxpayers have also been additionally notified as persons who shall comply with the TDS provisions:
     - an authority or a board or any other body set up under any Act or established by any Government, with 51% or more participation, to carry out any function;
     - A society established by any Government or a Local Authority under the Societies Registration Act, 1860;
     - A public sector undertaking.
     [Notification No. 50/ 2018-Central Tax dated September 13, 2018]
     [Notification No. 51/ 2018-Central Tax dated September 13, 2018]

3. TCS Rate notified for tax collection by electronic commerce operator
   - 0.50 % and 1% have been notified as TCS rate for collection of tax at source on the value of intra-State and inter-state taxable supplies, respectively made through an electronic commerce operator by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.
     [Notification No. 52/ 2018-Central Tax dated September 20, 2018]
     [Notification No. 02/ 2018-Central Tax dated September 20, 2018]
4. **Scope of principal-agent relationship in the context of Schedule I of the CGST Act has been clarified**

- A clarification has been issued to explain the scope of principal-agent relationship as contemplated under clause 3 of Schedule I of CGST Act. In terms of the said clause supply of goods (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal, even without consideration is deemed as a supply.

- It has been clarified that all activities between a ‘principal’ and ‘agent’ do not fall within the scope of above clause 3 of Schedule I of the CGST Act. In terms of the definition of ‘agent’ under the CGST Act and Indian Contract Act, 1872 representative character of the agent is to be seen to determine whether a supply is within the ambit of the said entry.

- The key ingredient for determining relationship under Schedule I is whether the invoice for further supply of goods on behalf of principal is issued by agent in his name or not. In cases invoice is issued by agent to customer in its own name, then such agent shall fall within the ambit of Schedule I and supply of goods between agent and principal would be considered as deemed supply. The disclosure or non-disclosure of the name of the principal by agent is immaterial in such situations. However, where the goods being procured / sold by the agent are directly invoiced in the name of the principal by the vendor / customer, in such scenario agent is not an agent with respect to the supply of goods under Schedule I. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal. Certain illustrations have also been provided in the circular for ease in understanding and to ensure uniformity in the implementation.

[Circular No. 57/31/2018-GST dated September 04, 2018]

5. **Clarification regarding applicability of GST on petroleum gases supplied and retained by manufacturers of petrochemical and chemical products**

- This clarification has been issued with respect to supply of petroleum gases by oil refineries on a continuous basis through dedicated pipelines to the manufacturers of petrochemical and chemical products. It has been clarified that GST is payable by the oil refinery only on the supply of net quantity of petroleum gases retained by the recipient manufacturers and not on whole quantity of principal raw material supplied by the oil refinery.

- This clarification will also apply similarly on the other cases where feed stock is retained by the recipient and remaining residual material is returned back to the supplier.

[Circular No. 53/27/2018-GST dated August 09, 2018]
6. Clarification regarding applicability of GST rates on various goods and services

- Applicable GST rates on the following goods / services have been clarified:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Item</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Fortified Toned Milk</td>
<td>NIL</td>
</tr>
<tr>
<td>2.</td>
<td>Refined beet and cane sugar</td>
<td>5%</td>
</tr>
<tr>
<td>3.</td>
<td>Tamarind Kernel Powder (Modified &amp; Un Modified form)</td>
<td>5%</td>
</tr>
<tr>
<td>4.</td>
<td>Drinking water for public purpose (not supplied in sealed containers)</td>
<td>Nil</td>
</tr>
<tr>
<td>5.</td>
<td>Human plasma</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>Other plasma Products</td>
<td>12%</td>
</tr>
<tr>
<td>6.</td>
<td>Baby wipes, facial tissues and other similar products</td>
<td>18%</td>
</tr>
<tr>
<td></td>
<td>(classification would vary depending on the constituents used)</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Real Zari Kasab (thread)</td>
<td>5%</td>
</tr>
<tr>
<td></td>
<td>Imitation Zari thread or yarn</td>
<td>12%</td>
</tr>
<tr>
<td>8.</td>
<td>Marine Engine for fishing vessel</td>
<td>5%</td>
</tr>
<tr>
<td>9.</td>
<td>Cotton Quilt</td>
<td>GST rate will be applicable</td>
</tr>
<tr>
<td></td>
<td></td>
<td>based on the material filled</td>
</tr>
<tr>
<td></td>
<td></td>
<td>in the quilt</td>
</tr>
<tr>
<td>10.</td>
<td>(a) Bus body builder builds a bus, working on the chassis</td>
<td>28%</td>
</tr>
<tr>
<td></td>
<td>owned by him and supplies the built-up bus to the customer, and</td>
<td></td>
</tr>
<tr>
<td></td>
<td>charges the customer for the value of the bus.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>b) Bus body builder builds body on chassis provided by the</td>
<td>18%</td>
</tr>
<tr>
<td></td>
<td>principal for body building, and charges fabrication charges</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(including certain material that was consumed during the process</td>
<td></td>
</tr>
<tr>
<td></td>
<td>of job-work).</td>
<td></td>
</tr>
<tr>
<td>11.</td>
<td>Disc Brake Pad for automobiles</td>
<td>28%</td>
</tr>
</tbody>
</table>

[Circular No.52/26/2018-GST dated August 09, 2018]

7. Clarification regarding applicable GST rate on fertilizers supplied for use in the manufacture of other fertilizers

- Fertilizers supplied for use in the manufacturing of other complex fertilizers for agricultural use (soil or crop fertilizers) will attract 5% GST as applicable in general for fertilizers which are cleared to be used directly as fertilizers.

[Circular No.54/28/2018-GST dated August 09, 2018]

8. Exemption on one-time upfront amount payable towards long term lease services extended to entities indirectly owned by the Government

- Upfront amount (called as premium, salami, etc.) payable in respect of long-term lease services (thirty years, or more) of specified plots inter alia by an entity having 50 per cent or more ownership of Central Government, State Government or Union territory is exempt from GST in terms of Sl. No. 41 of the Notification No.12/2017- Central Tax (Rate) and other similar notifications issued under IGST and SGST laws.
9. Clarification regarding levy of GST on Priority Sector Lending Certificates (PSLC)

- It has been clarified that GST @ 12% on trading of Priority Sector Lending Certificate (PSLC) for the period 1.7.2017 to 27.5.2018 would be payable by seller bank on forward charge basis.

[Circular no. 62/36/2018-GST dated September 12, 2018]
WRIT PETITIONS BEFORE HIGH COURTS

Gujarat HC strikes down Section 140(3)(iv), one year time period to avail transitional credit unconstitutional

*Filco Trade Centre Pvt. Ltd. v. Union of India – [TS-446-HC-2018(GUJ)-NT]*

The Petitioner challenged the condition contained in clause (iv) of sub-section (3) of Section 140 of the CGST Act, 2017 which provides that no CENVAT credit would be available for the stock lying for more than one year prior to the appointed day.

The Petitioner explained that they have a sizable stock lying on which credit would not be available under GST regime due to the impugned condition.

The Hon’ble Court decided the writ petition in favor of the Petitioner and held the impugned condition to be unreasonable and liable to be struck down. While reaching the said conclusion certain observations were made which are inter alia provided as under:

(i) The impugned condition is retrospective in nature which restricts the vested right of the Petitioner;

(ii) There is no reasonable basis upon which such vested right can be curtailed by the Respondent; and

(iii) No such conditionality was present in earlier tax regime.

On the basis of the aforesaid observations, the Hon’ble Court struck down the impugned condition provided under clause (iv) of sub-section (3) of Section 140 of the CGST Act and disposed off the writ petition.

*Leasing land for new town development constitutes ‘supply of service’, one-time premium taxable*  
*Builder Association of Navi Mumbai & Anr. v. Union of India &Ors. - [TS-108-HC-2018(BOM)-NT]*
The Petitioner had challenged the levy of GST on the one-time lease premium charged by City Industrial and Development Corporation of Maharashtra Limited ("CIDCO") in respect of letting of plots of land, and thus, sought for a writ in the nature of mandamus. In this regard, the rationale adopted by the Petitioner inter alia included the following:

(i) A long-term lease of 60 years amounts to sale of the immovable property and the onetime consideration paid cannot be equated with lease as defined under Section 105 of the Transfer of Property Act, 1882;

(ii) CIDCO is performing a Government function and discharges statutory obligations viz. town development planning, in terms of Section 118 of Maharashtra Regional and Town Planning Act, 1966;

(iii) The activity of letting land by CIDCO cannot be considered as ‘supply’ in terms of Section 7 of the CGST Act as the same is not specifically covered under Schedule II of the CGST Act and the intention of the legislature was never to make such transaction taxable under GST.

While on the other hand, the Respondent inter alia argued that under GST law, there is no distinction between governmental and non-governmental agencies qua applicability of GST on supply of goods and services. It was also argued that the activity of CIDCO falls under the definition of ‘business’ as defined in Section 2(17) of the CGST Act.

In view of the above submissions advanced by the Petitioner, the Court was of the opinion that the activity of the CIDCO constitutes ‘supply’ as it is in the furtherance of business. The Court also noted that no Notification had been brought to the notice wherein the letting of land by CIDCO had been exempted from GST.

Accordingly, the Court dismissed the writ petition and held the levy of GST to be valid under law.

Recently, the Petitioner preferred a Special Leave Petition before the Apex Court against the Order of the High Court. In this regard, the Supreme Court has issued notice to the Respondents and the matter would be heard in due course.

**Punjab and Haryana HC: Revenue cannot refuse ‘Form-C’ for ‘natural-gas’ procured for electricity generation post GST implementation**

**Carpo Power Ltd. v. State of Haryana and Ors. – [TS-131-HC-2018(P & H)-VAT]**

The Petitioner approached the High Court for issuance of an appropriate order to direct the revenue authorities for issuance of Form C against inter-state purchases of natural gas made by the Petitioner.

In this regard, the Petitioner contended that being a power generation company, they were procuring natural gas at a concessional rate under section 8 of the CST Act. However, post GST, the Petitioner is paying full rate of tax due to non-issuance of Form C by the tax authorities.

In view of the above submissions advanced by the Petitioner, the High Court disposed of the petition and directed the revenue authorities to issue Form C to the Petitioner.
Recently, the Respondents moved to the Supreme Court [TS-371-SC-2018-VAT] by way of a Special Leave Petition against the order of the High Court. However, the Apex Court dismissed the Special Leave Petition citing the reason that inter-state sale of natural gas continues to be governed by Central Sales Tax Act. The Court further observed that Section 174 of HGST Act repeals Haryana VAT Act except in respect of goods (including natural gas) in Entry 54 of State List of Seventh Schedule to Constitution of India as amended by Constitution (101st Amendment) Act, 2016, therefore, HVAT Act continues to remain in operation qua natural gas. In view of the aforesaid, the Court found no merit in the Petition of the Respondent.

**HC issues notice over challenge to composition of Central & State GST Appellate Tribunals**

**Pratik Satayanarayan Gattani v. Union of India &Ors. –Special Civil Application No.7129 of 2018 (Gujarat High Court)**

The Petitioner challenged the constitutionality of Section 109 of the CGST Act providing for the constitution of the Appellate Tribunal and Bench thereof.

In this regard, the Petitioner contended that the impugned provision envisages constitution of such tribunals comprising of one Judicial and two Technical members and same would leave the judicial member in minority which is against the principles of ‘separation of powers’ and ‘independence of judiciary’ as enshrined under Constitution of India. The Petitioner further contended that the impugned provision is in contravention of the judgment of Supreme Court in case of *Union of India vs. R. Gandhi* [(2010) 11 SCC 1].

In light of the above, the High Court issued notice to the Respondents and matter would be heard in due course.

Similar writ petitioner has now been filed in the Madras High Court in the case of Revenue Bar Association v. Union of India and Ors., wherein the Petitioner has inter alia contended that constitution of Appellate Tribunal under Section 109 of the CGST Act is violative of Article 14, 21 and 50 of the Constitution of India and is in gross violation to doctrine of separation of powers and independence of judiciary. In this regard, the Petitioner prayed to stay the operation of Section 109 of the CGST Act. The matter is yet to list before the Court.

Also, another writ petition has been filed in the Madras High Court in the case of Vasantha Kumar v. Union of India &Ors. wherein the Hon’ble High Court admitted the writ petition and issued notice to the Respondents.
RECENTLY FILED WRIT PETITIONS

HC: Directs Revenue to allow transitional credit where TRAN-1 uploading hit by technical glitches
*Lamit Tubes and Mouldings LLP v. Union of India* - [TS-378-HC-2018(KER)-NT]

The Petitioner filed the present writ petition for seeking appropriate directions from the Hon'ble Court to allow them to carry forward their transitional credit.

The grievance of the Petitioner was that due to technical glitches on the online portal GST TRAN 1 could not be filed before the due date i.e. 27.12.2017 which disabled them to carry forward their transitional credit.

In this regard, the Department contended that the ‘IT Grievance Redressal Mechanism’ has been placed by the Government to resolve issues as faced by the Petitioner. Taking note of the redressal mechanism in place, the Hon'ble Court directed the Petitioner to approach the Nodal Officer for appropriate resolution. In view of the aforesaid, the Court disposed off the writ petition.

**HC: Dismisses PIL challenging imposition of late fees for filing delayed returns under GST**

*Raj Sanjaybhai Tanna v. Union of India* - [TS-418-HC-2018(GUJ)-NT]

The Petitioner, a practicing advocate, filed a Public Interest Litigation (PIL) challenging the constitutionality of Section 47 of the CGST Act which provides payment of late fee on failure to file returns beyond the prescribed time limit.

The primary contention raised by the Petitioner is that Section 47 is in the nature of a penal provision which would devoid the taxpayers to show cause the delay in filing of returns within the prescribed time limit. It was further pointed out by the Petitioner that there are numerous taxpayers whom are affected by the impugned provision as the returns could not be filed due to technical glitches on the common portal.

However, the Hon’ble Court without expressing anything on merits, did not entertain the present PIL on the basis that the subject issue does not merit to be decided in a PIL jurisdiction as the Petitioner does not represent any weaker of society and if any taxpayer who is affected / aggrieved by the impugned provision may approach the Court. In view of the above, the Hon’ble Court dismissed the PIL.

**HC: Quashes writ pertaining levy of GST on complimentary IPL tickets basis newspaper reports**

*Digvijay Singh Bhandari v. Shri Nishant Warwade and Ors.* - [TS-414-HC-2018(MP)-NT]
The Petitioner filed the present Public Interest Litigation to direct the Respondents to discharge applicable GST on supply of complimentary IPL cricket matches tickets made by Kings XI Punjab to the Respondents. In this regard, the Petitioner contended that supply of complimentary tickets amounts to ‘supply’ under Section 7 of the CGST Act. Therefore, the GST is required to be discharge on account of supply of complimentary tickets.

However, the said contention was merely based on news reports and in absence of authentic information, the Hon'ble Court dismissed the writ petition.

**HC: Restricting dealer’s right to carry-forward transitional credit subject to furnishing declarations not unreasonable**

*Willowood Chemicals Pvt. Ltd. v. Union of India – Special Civil Application No. 4252/2018 (Gujarat High Court)*

The Petitioner inter alia challenged the constitutional validity of second proviso to Section 140(1) of the Gujarat GST Act which restricts carrying forward of the transitional credit for want of forms viz. Form C, Form F and Form G, required to be produced under the erstwhile tax regime for availing the benefit of lesser rate of tax.

In this regard, the Petitioner inter alia contended that once the credit has been accrued to the Petitioner, it cannot be restricted by way of the impugned provision. Further, it was contested that second proviso to Section 140(1) is a charging provision but there is no machinery provision to compute the credit failing which the charging provision is redundant. Taking note of the submissions placed by the Petitioner, the Hon'ble Court admitted the writ petition and issued notice to the Respondent. The matter would be heard in due course.

**HC: Allows provisional release; Cannot dilute statutory rigours for “trivial omission” in E-Way Bill**

*Garuda Timer Traders V. Assistant State Tax Commissioner - [TS-384-HC-2018(KER)-NT]*

The Petitioner is inter alia engaged in the trading of timber and by way of this writ petitioner challenged the show cause notice demanding tax and penalty issued by the Respondent on account of non-furnishing of Part B of the E-Way Bill. The Petitioner also prayed for the release of detained goods and vehicle.

The Petitioner contended that due to technical glitches at GST common portal they could not fill in Part B (transporter details) of the E-Way Bill and therefore they had to commence the movement of goods without required information in Part B of the E-Way Bill. Further, the Petitioner contended that until detention of goods and vehicle is unconstitutional till the glitch free online system is ensured to the assessee. While the Respondents were of the view that the law mandates upon an assessee to carry all the required documents along with the goods.
In this regard, the Court analyzed the relevant provisions under GST and thereby directed the Petitioner to furnish bank guarantee for the tax and penalty and a bond for the value of goods for provisional release of the goods and further directed them to contest the detention of the goods before the appellate authorities. In view of the aforesaid, the writ petition stands disposed of.

J&K HC’s notice to Govt. over delay in processing claims under budgetary support scheme

**Jindal Drugs Private Ltd. v. Union of India and Ors. – W.P. No. 1544/2018 (Jammu and Kashmir High Court)**

The Petitioner has a unit in place under the erstwhile area based exemption Notification. Under GST regime vide Notification dated 05.10.2017 issued by the Ministry of Commerce and Industry extended certain benefits of tax exemption as granted under erstwhile area based exemption Notification. By way of this writ petitioner, the Petitioner challenged the delay in granting the benefits under the said Notification.

In this regard, the Petitioner inter-alia contended that due to delay in processing the refunds has resulted in blockage of working capital and making the unit unviable to operate. The Court took note of the difficulty faced by the Petitioner and issued notice to the Respondents. Meanwhile, the Court granted interim relief to the Petitioner by directing the Respondents to process the claim of the Petitioner by passing a speaking order. The matter would be heard in due course.

Kerala HC refrains invocation of Bank Guarantee until exhaustion of statutory appeal remedy

**Berger Paints India Ltd. v. State Tax Officer – [TS-370-HC-2018(KER)-NT]**

The Petitioner filed the present writ petition to restrain the Respondents from invoking the bank guarantee furnished by the Petitioner for the release of the detained goods and vehicle until the Petitioner avails the appellate remedy against the order of detention and demand of tax and penalty.

In this regard, the Petitioner inter alia contended that invocation of bank guarantee by the authorities prior to exhausting the remedy by way of an appeal would be against the principles of equity. The Court appreciated the concern raised by the Petitioner and inter alia directed the Respondents not to invoke the bank guarantee before the Petitioner exhausts its appeal remedy – within the period of limitation. In view of the above, the writ petition stands disposed of.
PRONOUNCEMENTS BY APPELLATE AUTHORITY FOR ADVANCE RULING

Maharashtra AAAR: Confirms classification of imported ‘Caesarstone’ as “Artificial Stone”, in lieu of “Quartz”

In Re: Hafele India Private Limited – [TS-359-AAR-2018-NT]

The Applicant who is engaged in the business of import of kitchen and bathroom fittings along with furniture and other home accessories, had sought appropriate classification of their product ‘Caesarstone Quartz Surfaces’ under the Maharashtra GST Act, contending that the same is classifiable under Heading 2506. The Advance Ruling Authority, vide order dated 20.03.2018, classified the product under the HSN Code 6810. The Appellant, therefore filed an appeal before the Appellate Authority.

The Appellant contended that the order has been passed on incorrect reading of Heading 2506 by stating that the kind of quartz that would be covered thereunder would be one which may or may not be roughly trimmed or merely cut with the method of cutting being specified as sawing or otherwise. The Appellant contended that ‘quartz’ or ‘quartzite’ should be read as two entries and not as a single entry as both are separated by a ‘semicolon’. It was further contended that composition of the goods is 93% crushed quartz and it should be classified as quartz only.

Upon hearing the contentions, the Appellate Authority observed that there were only two entries at eight-digit level under 2506, viz, 1010- in lumps and 1020- in powder, however the from in which the product is imported is Agglomerated/ Fabricated/ Engineered stone in slap form. Further, the contention the product being 93% crushed quartz was rejected as the correct classification would have to be determined by understanding the processes that the product has undergone. It was held that the Caesarstone is not a natural stone but an engineered product, manufactured after a series of mechanical processes. Hence, the decision of the Advance Ruling Authority was upheld by concluding that the product in question would be classifiable under Chapter 6810.

JUDICIARY PERSPECTIVE
Maharashtra AAAR: Upholds denial of transitional credit of accumulated KKC under GST


The Appellant who is engaged in manufacture of paint and provision of works contract services, had sought an advance ruling as to whether the accumulated credit by way of KrishiKalyanCess (KKC) as appeared in Service Tax Return of Input Service Distributor on June 30th 2017 which was carried forward in the electronic ledger, would be considered as eligible Input Tax Credit. The issue was decided against the Appellant by the Advance Ruling Authority vide Order dated 05.04.2018. The Appellant has thus filed an appeal to the Appellate Authority.

In this regard, the Appellant had submitted that as per Section 161(5) of the Finance Act, Chapter V of the Finance Act would apply for levy and collection of KKC. Since Entry 92C of the Union List I, empowering legislature to levy Service Tax, was deleted in view of GST, it was submitted by the Appellant that the KKC was also subsumed in GST. Given this, it was contended that the CGST liability subsumed KKC liability and hence migrated KKC credit would be admissible to be set off with CGST liability. It was also submitted that Section 140(1) of the CGST Act allows a registered person to carry forward CENVAT Credit as captured in return for period ending 30th June 2017. Further, the Cenvat Credit Rules have recognized KKC as CENVAT Credit. Hence, credit of KKC would be admissible.

The Advance Ruling Authority had relied on the decision of Delhi High Court in the case of Cellular Operators Association of India, wherein the High Court had denied cross utilization of unutilized EC and SHEC against excise duty and service tax liability. Further reliance was placed on the FAQs issued by CBEC in this regard.

Upon hearing the contentions, the Appellate Authority analyzed the erstwhile provisions to content that KKC could be utilized towards payment of KKC only and could not be cross utilized. The Appellate Authority also relied on the Delhi High Court decision to hold that credit of KKC would not be admissible. Given, the said deliberations, the Order of the Advance Ruling Authority as upheld by the Appellate Authority.

---

9Cellular Operators Association of India vs. UOI [W.P. (Civil) No. 7837 of 2016 dt. 15.02.2018]
Maharashtra AAAR: Upholds AAR, Liquidated damages from contractor for delay in deliverable taxable at 18%


The Applicant sought clarification with respect to levy of GST on recovery liquidated damages charged from their vendors on account of delay in (i) Operation and maintenance activities and (ii) Construction of new plants or renovation of old plants. In case, GST is leviable on the aforesaid, the Applicant sought clarity for the following issues:

(a) Appropriate rate of GST upon liquidated damages
(b) Determination of time of supply
(c) Calculation of liquidated damages in case some part of it pertains to pre-GST regime
(d) Availment of Input Tax Credit by the vendor on payment of GST on liquidated damages

With respect to the above, the Applicant inter alia contended that the amount of liquidated damages is deducted from the value of the main supply on account of deficiency of services and therefore, no GST is liable to be charged separately on amount of liquidated damages. It was also submitted that the primary intention is not to tolerate an act or a situation and therefore, cannot be taxed by virtue of Entry 5(e) of Schedule II to the CGST Act.

In this regard, the Bench perused a contract between the Applicant and its vendor (Bharat Heavy Electricals Limited), basis which it was observed that the deduction (liquidated damages) from the value of main supply is merely for the purposes of adjustments of accounts and contract price and liquidated damages are distinct events. In this regard, the Bench perused Entry 5(e) of Schedule II to the CGST Act and was of the view that subject liquidated damages is the result of the delayed supply made by the vendor. Such additional levy in the nature of liquidated damages would amount to income of the Applicant and therefore a consideration charged by the Applicant on account of tolerating an act of delay.

In view of the above, the Bench answered the aforesaid issues raised by the Applicant in following terms:

(a) GST is leviable at the rate of 18% in terms of Entry 5(e) of Schedule II to the CGST Act read with S. No. 35 of Notification No. 11/2017-Central Tax (Rate).
(b) On the basis of the relevant clauses of the contract, the liability of payment of liquidated damages by the vendor is established once the delayed supply is proven on the part of the vendor.
(c) For any liquidated damages received/collected for the period pertaining to pre-GST period, the same would be dealt in accordance with the erstwhile Service tax regime.
(d) With respect to the eligibility of the vendor on availment of Input Tax Credit, the Bench refrained to answer the said question as the Applicant is not a proper person.

Aggrieved by the order of the AAR, the Applicant approached the Appellate Authority for Advance Ruling. The Appellate Authority upheld the ruling of the AAR that GST is applicable on liquidated damages paid by the vendors inasmuch as it amounts to “tolerating an act or a situation” in terms of entry (e) of clause 5 of Schedule II of the CGST Act 2017, thus constituting “supply”.

JUDICIARY PERSPECTIVE

Maharashtra AAAR: Upholds AAR, Liquidated damages from contractor for delay in deliverable taxable at 18%
Maharashtra AAAR: Turnkey EPC contract for ‘solar power plant’ erection constitutes ‘composite’ ‘works contract’ supply

In Re: Giriraj Renewables Private Limited – [TS-461-AAAR-2018-NT]

By way of this Application, the Applicant sought advance ruling as to whether a turnkey contract for supply of goods as well as for setting up, operation and maintenance of a solar power plant would constitute a ‘composite supply’. It was further sought as to whether in such a case, the principal supply could be said to be ‘Solar power generation system’ taxable at 5% and whether such benefit would also be available to sub-contractors.

The Applicant relied on the terms of the contract and contended that it would be a composite supply of solar power generation system which involves supply of equipment and undertaking certain services. It was further contended that the agreement is not of a works contract as the essence is to supply solar power system and not to do certain activities on an immovable property. Further, reliance was placed on various decisions to state that solar power plant is not immovable property.

Upon hearing the contentions, the Authority held that the solar power plant would be in the nature of immovable property as it would have an inherent element of permanency. Further, the output which is power also has an element of permanency for which it would not be possible to shift base from time to time. Consequently, the activity was held to be in the nature of works contract and not composite supply. The question as to sub-contractors could not be answered in the absence of full details.

The order of the AAR was challenged by the Applicant before the Appellate Authority. The AAAR held that even though the EPC contract qualified as a composite supply but the same fell within the ambit of “works contract” defined u/s 2(119) of the CGST Act. Resultantly, there was no question of determining the principal supply and applicable rate of tax as Para 6 of Schedule II of the CGST Act treats works contract as supply of service.
West Bengal AAAR: Promotion & marketing of foreign university courses, assisting recruitment, not ‘export of service’

In Re: Global Research Education Services Private Limited – [TS-388-AAAR-2018-NT]

By way of this Application, the Applicant sought an advance ruling on the services provided viz. promotion of the courses of foreign universities among prospective students, would constitute as export within the meaning of Section 2(6) of the IGST Act.

In this regard, the Applicant inter alia submitted that principal supply is the service of promoting the courses of the Universities abroad, and the services incidental thereto are naturally bundled to the composite supply of business auxiliary services. It was further submitted that its role is limited to only promoting the courses in India and thus, earns consideration out of it. In this regard, the Applicant brought on record the agreements between the Universities abroad and the Applicant that clarifies that the relationship between them is not one of Principal and Agent. The Applicant also highlighted that all the requirement of the definition ‘export of service’ under Section 2(6) of the IGST Act stands fulfilled.

On perusal of the agreements brought on record, the Bench reached to the following conclusion:

(i) Applicant is facilitating recruitment / enrolment of students to foreign Universities;

(ii) Promotional service is incidental and ancillary to the above principal supply and the Applicant is paid consideration in the form of commission, based on performance in recruiting students, as a percentage of the tuition fee collected from the students enrolled through the Applicant; and

(iii) The Applicant represents the University in the territory of India and acts as its recruitment agent

Based on the above, the Bench held that the place of supply would be decided in terms of Section 13(8) (b) of the IGST which is location of supplier of service i.e. India and consequently, the pre-requisites of Section 2(6) of the IGST Act is not met by the Applicant. Accordingly, services of the Applicant are not ‘export of services’ and are taxable under GST.

Aggrieved by the order of the AAR the Applicant approached the Appellate Authority. The AAAR upheld the ruling given by the AAR that the services provided by the Applicant did not constitute “export” inasmuch as the Applicant qualified as an “intermediary” and thus the place of supply of service in terms of section 13 of the IGST Act would fall within India. Accordingly, the service provided by the Applicant was exigible to GST.
West Bengal AAAR: Upholds AAR; UPS & battery supplied at combined ‘single price’ constitutes a ‘mixed supply’

In Re: Switching Avo Electro Power Limited – [TS-386-AAAR-2018-NT]

The Applicant herein sought the advance ruling on whether supply of UPS along with battery can be considered as a composite supply within the meaning of Section 2(30) of the CGST Act.

In this regard, the Bench perused the definition of composite supply [Section 2(30)] and principal supply [Section 2(90)] of the CGST Act with respect to Note 3 of Section XVI of the Customs Tariff Act, 1975 and observed that Other machines, designed for the purpose of performing two or more complementary or alternative functions, however, could be classified with the help of Note 3 only ‘if they are naturally bundled and supplied in conjunction with one another in the ordinary course of business’. The Bench further noted that UPS cannot function unless the battery is attached to it and thus should be treated as a composite supply when a UPS is supplied with built-in batteries. The UPS being the principal supply, the relevant tariff head for the composite supply would be 8504 under Serial No. 375 of Schedule III in terms of Notification No. 01/2017-Central Tax (Rate) attracting 18% GST.

However, in cases where the Applicant supplies UPS and battery separately under a single invoice, the same would be construed as mixed supply in terms of Section 2(74) of the CGST Act.

The impugned order of the AAR was further appealed against before the Appellate Authority by the Applicant. The AAAR concurred with the views of the AAR and held that only supply of UPS with inbuilt batteries can be considered as composite supply. However, in cases where batteries are supplied separately with UPS the same cannot be considered as naturally bundled supply and thus, will fall within the ambit of mixed supply irrespective of the fact the both are supplied under the same contract at a combined single price.

West Bengal AAAR: Ayurvedic skincare products akin to “cosmetics”, not “medicaments” for treating injuries / illnesses

In Re: Akansha Hair and Skin Care Herbal Unit Private Limited – [TS-369-AAAR-2018-NT]

The Applicant is inter alia engaged in manufacturing skin care preparations viz. Pimple Pack and Anti-crack cream and thus sought classification of its products under Tariff 3004 under the Notification No. 01/2017-Central Tax (Rate) dated 28.06.2017.

In this regard, it was contended by the Applicant that the skin care preparations are Ayurvedic Medicaments and are meant for therapeutic or prophylactic uses and entirely correspond to the description of goods under Tariff 3004.

The Bench resorted to the rulings of the Apex Court in relation to the classification of such products and
deduced the tests namely (1) common parlance test and (2) whether the product has been manufactured using ingredients and formula provided in the authoritative textbooks of Ayurveda, required to be applied for their classification under Tariff 3004. While applying the aforesaid tests the Bench held the following:

(i) Products which are specifically provided under Tariff 3304 such as talcum powder sunscreen, moisturizing lotion etc. are not to be included in Tariff 3004;

(ii) Products such as Pimple and Anti-Crack cream are offered as Medicaments and thus classifiable under Tariff 3004; and

The other products, although manufactured as per test (2) mentioned above, are not offered as medicaments and therefore not to be included under Tariff 3004

The Applicant approached the Appellate Authority against the order of the AAR seeking classification of its 33 products under Chapter 30 of the Tariff as medicaments. The AAAR perused the definition of “medicament” and noted that for a substance to be considered as medicament it should treat an illness, ailment or injury. On a further perusal of the term “injury”, “illness” or “ailment” the AAAR construed that what the Applicant’s products cure viz. black heads, acne, freckles and blemishes etc. are not injuries per se but are more in tandem with the definition of “cosmetics”. Accordingly, they rejected the contention of the Appellant and classified the products under relevant chapters other than Chapter 30 and modified the order of the AAR.

PRONOUNCEMENTS BY AUTHORITY FOR ADVANCE RULING

Maharashtra AAR: ‘Tea’ not an ‘agricultural produce’, warehousing and storage service thereto not exempt


The Applicant is engaged in providing services in the nature of warehousing, loading, unloading, packing and storage of tea. The Applicant has sought advance ruling as to whether exemption as per Serial No. 54 of Notification No. 12/2017-Central Tax (Rate) would be applicable to the activity carried out by the Applicant.

The Applicant contended that the tea procured in bulk, either from public tea auctions or directly from manufacturers of tea is an agricultural produce as defined in Clause 2(d) of the Notification No. 12/2017. The Applicant explained the process involved in making green leaves marketable in the form of tea and contended that the process does not alter its essential characteristics. Reliance was also placed on the decision of D.S. Bist & Ors for establishing the same.

10Services relating to cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products or agricultural produce by way of-(e) loading, unloading, packing, storage or warehousing of agricultural produce;

11(d) “agricultural produce” means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;

12Commissioner of Sales Tax vs. D. S. Bist & Ors.
The concerned officer heavily relied on the Circular dated 15.11.2017 to contend that the issue already stands settled by the same, wherein it has been clarified that green tea leaves are falling under agricultural produce and not tea. Further reliance was placed on a series of judgments to reject the claim of the Applicant.

Upon hearing the contentions, the Bench analyzed the nature of the products being stored by the Applicant and the processes that the green leaves were being subjected to. The Authority was of the view that the activity of processing of raw tea leaves results in emergence of a new product having distinct name, hence the same cannot be considered as agricultural produce.

**Maharashtra AAR : Rejects application filed by service receiver for seeking a ruling on applicable ‘tax-rate’**


The Applicant has been declared as one of the National Institutes of Technology by the Central Government by way of an act of parliament i.e. National Institutes of Technology Act, 2007. The Applicant has advance ruling as to whether services received by it from various service providers would get covered under Entry No. 3 of Notification No. 12/2017-CT (Rate).

The Applicant contended that it would get covered under the definition of Governmental Authority as defined under Section 2(16) of the IGST Act as it is a statutory body set up under an Act of Parliament. Hence it was contended that no GST would be payable on the pure services received by the Applicant like security services, manpower services, gardening, hygiene maintenance etc.

Upon hearing the contention, the Bench observed that the Applicant was the recipient of service and not provider and such services were not under reverse charge. It was concluded that the Notification was applicable to service providers and not service recipient and therefore the application was rejected by the Authority.

---

13Circular No. 16/16/2017-GST dated 15.11.2017
14Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental Authority 16(or a Government Entity) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
15Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental Authority 16(or a Government Entity) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
Maharashtra AAR: ‘Modelling dough’ for use by children classifiable under CTH 3407, not as toys under CTH 9503

In RE: M/s A.W. Faber-Castell (India) Pvt. Ltd. - [TS-373-AAR-2018-NT]

The Applicant herein has sought advance ruling as to correct classification of their product “Modelling Dough” under the Customs Tariff Act, 1975 and GST Act. The Applicant has contended that their product is a specially manufactured semi-solid, clay-like structure to be used a toy for kids and would merit classification either under Chapter 34 or under Chapter 95 of the Customs Tariff Act.

The Applicant contended that the term modelling paste is covered under Chapter Heading 3407 which is taxable at the rate of 18% under Entry No. 63 of the Schedule-III of Notification No. 1/2017-Central Tax (Rate). However, there is an anomaly as the relevant section of the Customs Tariff for Heading 3407, i.e. Section VI reads as ‘Products of the Chemical or Allied Industries’ and the product in question is not of chemical or allied industry. Moreover, it was contended that the product could also be classified under Chapter 95 (heading 9503) which covers ‘Toys, games and sports requisites; parts and accessories thereof’.

Upon hearing the contentions, the Authority observed that the product contains several chemicals and not just maida per se. that these chemicals are needed to give the needful firmness, elasticity, plasticity and non-perishability to the shapes. Hence, the product would get covered under Section VI for ‘Products of the Chemical and Allied Industries’.

West Bengal AAR: Services towards metal manufacturing, including refractories maintenance for 3+ months, constitute ‘continuous supply’

In RE: M/s Vesuvius India Ltd. - [TS-365-AAR-2018-NT]

The Applicant, who is engaged in supply of old refractory components and allied services, is desirous of offering a new supply, namely ‘Contract Management System’ (CMS) and has sought a ruling as to whether such activity would amount to a supply of goods or services for the purpose of levy of GST and how would the time of supply be determined.

The Applicant contended that the activity, CMS would include application, installation and fixation of various refractories, wherein the Applicant would design the refractories, monitor their usage and inventory and supply the required refractory components and equipment. The Applicant contended that the proposed process would not involve transfer of title to the refractories used in the production process. Use of the refractories delivered to the customer, including application and disposal would continue to be controlled by the Applicant.

---

Ma 16th Modelling pastes, including those put up for children’s amusement; Preparations known as “dental wax” or as “dental impression compounds”, put up in sets, in packings for retail sale or in plates, horseshoe shapes, sticks or similar forms; other preparations for use in dentistry, with a basis of plaster (of calcined gypsum or calcium sulphate)]
Upon hearing the contentions, the Authority observed that the activities that the Applicant proposes to undertake are services associated with manufacturing of metal, value of which is measured at an agreed rate per tonne of hot metal produced and that the Applicant manufactures refractories which are used as inputs. It was further observed that the service involves round the clock monitoring of production process and invoices are raised on monthly basis. Hence, it was concluded that the activity would get covered in the purview of continuous supply of service within the meaning of Section 2(33) of the CGST Act and the time of supply would be date of issue of invoice in terms of Section 12(2)(a) of the Act.

Karnataka AAR: Employees’ services in corporate office for managing ‘distinct’ units, constitute “supply” under Schedule I

In Re:- M/s Columbia Asia Hospital Private Limited - [TS-368-AAR-2018-NT]

The Applicant is an international healthcare group and is engaged in providing health care services. The Applicant has a corporate office in Karnataka wherein some activities for all the units with respect to accounting, administration and maintenance of IT system are carried out. The Applicant sought an advance ruling as to whether the activities performed by the employees at the corporate office for the units located in the other states as well, would be leviable to GST.

The Applicant contended that activities carried out at the corporate office would amount to supply in terms of Entry 2 of Schedule I of the CGST Act, however, the same shall not be treated as supply by virtue of specific relaxation provided in Entry 19 in Schedule III of the CGST Act. In this regard, the Applicant contended that the word employment cannot be restricted to employment with registered person merely on account of the location from where he renders the service. Hence, it was contended that the activities carried out by the employees of the corporate office to other units would not be liable to GST.

Upon hearing the contentions, the Authority held that according to Entry 2 Schedule 1 of CGST the activities performed by the employees at the corporate office would be deemed as supply for the purpose of GST. Further, it was observed that the employees are providing service to the corporate office and there is an employer-employee relationship only in the corporate office and the other offices are distinct persons. Therefore, it was concluded that the activities performed by the employees of corporate office shall be treated as supply of services for the levy of GST.

17“continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

18Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

19Services by an employee to the employer in the course of or in relation to his employment.
West Bengal AAR: Diesel engines sold to SEZ units taxable as ‘zero-rated’ inter-state supplies

In Re: Garuda Power Private Limited – [TS-342-AAR-2018-NT]

The Applicant is engaged in trading of diesel engines and spare parts along with services of diesel engine (on AMC or as and when required basis). The Applicant has sought advance ruling as to whether the supply of goods and on-site services to customers in SEZ area to any SEZ unit or SEZ developer is zero rated supply under Section 16 of IGST Act.

The Bench observed that the Applicant was ultimately desirous of ascertaining whether GST was leviable on the said transaction and hence the Application was accepted.

The Authority observed that Section 16 would be applicable to tax liability would be zero under sub section 1(b). Hence, it was concluded that the Applicant could supply without payment of tax or with tax and claim refund subsequently in terms of Section 16(3) (a) of the IGST Act.

Karnataka AAR: Taxi aggregator “deemed supplier” of passenger transportation services, liable to GST


The Applicant herein has sought advance ruling as to whether the money paid by the customer to the driver of the cab for the services of the trip is liable to GST and whether the Applicant is liable to GST on this amount. The Applicant is engaged in Taxi Aggregation Service and Tax Service.

The Applicant contended that the charges are collected by the taxi drivers on the completion of the trip and the Applicant only collects service charges for usage of IT services provided from his end, i.e. mobile app and billing related services. Hence, it was contended that since the turnover of the drivers would not be more than the threshold of Rs. 20 lakhs per annum, no GST is leviable thereon.

The Bench observed that the Applicant is providing service to the taxi operators and is liable to pay GST on the monthly charges paid for using the application. The Bench was of the view that the taxi service is a service provided by the taxi operators and the amount is collected by them for the same. That the Applicant has no role to play other than issue of invoice. Hence, it was held that the Applicant was liable to pay GST on the amounts billed by it on behalf of the taxi operators in terms of Section 9(5) of CGST Act read with Notification No. 17/2017-Central Tax (Rate) dated 28.06.2017.

20 “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.

21 In exercise of the powers conferred by sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that in case of the following categories of services, the tax on intra-State supplies shall be paid by the electronic commerce operator—
(i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
(ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.
Karnataka AAR: No zero-rating benefit for coffee supplied through vending machines at SEZ units


The Applicant is engaged in supply of non-alcoholic beverages to SEZ units using coffee vending machines and charges them either on the bases of the size of the cups and the number of cups that are served or on the basis of the quantity of the ingredients supplied. The Applicant has sought advance ruling as to whether the supply of non-alcoholic beverages to SEZ units using coffee machines is in the nature of zero rated supply as defined under Sec 16(1) of the IGST Act, 2017.

The authorized representative of the applicant submitted as follows-

1) Application is in respect to issues relating to classification of goods and services, hence is maintainable under Sec 97 (2) of CGST Act, 2017.
2) Any Supply of goods in SEZ units is zero rated.
3) Person making zero rated supplies can claim refund of input tax credits or claim refund of IGST paid on such supplies.

Upon hearing the contention, the bench observed that zero rated supplies (as defined in Sec 16(1) of the IGST Act, 2017) mean export/ supply of goods/ services or both to a SEZ unit. Accordingly, the operations to be carried out in the SEZ and also in the units located therein have to be in accordance with authorization to be given by the central govt. Further, the SEZ unit must carry out only the authorized operations in the unit. Given this, the Bench concluded that the Applicant did not make a case that the activity undertaken by them is certified as authorized operation by the proper officer of the SEZ. Therefore, it was held that the activity undertaken by the applicant doesn’t qualify as zero-rated supply, as defined under Sec 16 of the IGST Act, 2017.

CONTINUED…

---

23 “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.
24As per Sec 16 of IGST Act, 2017
25As per Sec 4(2) of the SEZ Act
26As per Sec 15(9) of the said SEZ Act.
1. Sanjeev Sanyal, Principal Economic Adviser to the Finance Ministry: “In the long-term, the GST rates might be squeezed to three as more and more simplification will be done.”

2. Oil Minister Dharmendra Pradhan said: “Whatever the GST Council decides on including petroleum products within GST ambit, we would stand by that.”

He informed Rajya Sabha that “in principle, the Government of India and the Petroleum Ministry are of the view that petroleum products should come under the GST regime. The GST Council will take an appropriate action and at an appropriate time with due deliberation. When the GST Council framework was set up, at that time notionally all petroleum products were kept under the tax regime. But all states were of the view that their (tax) slabs and (implementation) dates would be decided by them.”

Further, Maharashtra’s Finance Minister, Sudhir Mungantiwar said “The Maharashtra government will surely back any proposal to include petroleum products under the Goods and Services Tax.”

3. The Principal Chief Commissioner of Central taxes (Bangalore Zone), AK Jyotishi said that there is an impression that tax assesses can get away by not complying with GST law believing that the GST authorities are still using manual methods. He said, “But let me flag you, after the initial handholding and a go-slow attitude, which was deliberate, we now have all the wherewithal to track tax defaulters and will act with a stern hand, if tax payers continue to default.”

4. Union Finance Minister, Piyush Goyal, who chaired the Council meeting in New Delhi, said the panel to be chaired by Union Minister of State for Finance, Shiv Pratap Shukla will examine all proposals received so far regarding tax relief for micro, small and medium (MSME) enterprises.

---

27 GST Slabs may reduce to 3 in the Long Term: Sanjeev Sanya, Livemint, available at: https://www.livemint.com/Politics/q94V7hzL1T1aN39PwcsXL/GST-slabs-may-reduce-to-3-in-longterm-says-Sanjeev-Sanyal.html.


and make recommendations to the Council. Goyal said, “All proposals will be reviewed in detail by the ministerial panel in consultation with the fitment and law committees (of officials)”. Further, Amit Mitra, Finance Minister of West Bengal said, ‘the group of ministers will look into all proposals relating to tax rates and procedure relaxation including the proposal to give relief to MSMEs with sales upto ₹1.5 crores from the Central GST (CGST). This would restore the excise duty exemption available to small businesses with sales upto ₹1.5 crore that existed in the pre-GST era”.31

5. Finance Minister Arun Jaitley, who resumed the post of Finance Minister on August 23 after Kidney transplant said in a facebook post “Following disruptions related to the November 2016 currency exchange initiative and the July 2017 goods and service tax (GST) rollout, growth slowed to 6.7 percent in FY2017/18, but a recovery is underway led by an investment pickup”.32

6. The IMF Report released on August 8 described GST as a ‘Milestone reform’. “Yet, the GST has a complex structure with a relatively high number of rates (and exemptions), which could be simplified without sacrificing progressivity of the current GST and with potentially significant gains from lower compliance and administrative costs” the report said. The IMF recommended: “A dual rate structure with a low standard rate and an additional higher rate on select items can be progressive and preserve revenue neutrality, while streamlining exemptions would further contribute to progressivity and reduce compliance and administrative costs”33

7. Chairman of GST Implementation Committee Sushil Modi said, “Revenue collection might fall in the next 3-4 months due to rate cuts on a number of items totalling to ₹ 70,000 crore.” Further, he said on refuting a single GST rate that, “The number of items under the 28% category may also be reduced but the states would be able to impose cess or surcharge on sin and luxury goods,” On bringing petroleum under GST he said, “If petroleum products are brought under GST, there is no guarantee there will be an impact since they are linked to international prices and no state will like to lose revenue as they can levy cess on them”.34

8. Amit Mitra, Finance Minister of West Bengal says “GSTN has major problems. We had much discussions and all that has to be settled and a committee of ministers has been formed along with a committee of officers …The panels would look into the glitches…Small and medium enterprises are suffering today, this has to be corrected.”35

The Goods and Services Tax Council has formed a seven-member group of ministers to examine how states hit by a natural calamity can be assisted under the tax regime with steps such as a separate cess. Finance Minister Arun Jaitley said, “We will have a seven-member GoM, which will make recommendations (to the Council) in the next few week”.36

31Ministerial Group Formed to Consider Tax Relief for Small Businesses, Live Mint, available at: https://www.livemint.com/Politics/ICHKh2UyVOsYOYueh1A0/Ministerial-group-formed-to-consider-tax-relief-for-small-bu.html.
10. Clarification regarding removal of restriction of refund of accumulated ITC on fabrics

Vide Notification No. 5/2017-Central Tax (Rate) refund of accumulated input tax credit on account of inverted duty structure was restricted for certain categories of fabrics listed therein. This restriction was removed with prospective effect vide Notification No. 20/2018-Central Tax (Rate) for input supplies received on or after August 1, 2018 and simultaneously it was provided that the unutilized ITC lying in balance (after payment of tax up to July 2018) on the inward supplies received up to July 31, 2018 shall lapse. With reference to the amendment brought by this Notification No. 20/2018-Central Tax (Rate), certain doubts were raised by the industry, which have been clarified vide this circular as follows:

(a) Whether this notification seeks to lapse all the input tax credit lying unutilized after payment of tax up to the month of July 2018. Whether unutilized ITC in respect of services and capital goods shall also be disallowed?

- It has been clarified that in terms of the amended notification, the accumulated ITC lying unutilized to the extent of purchases made on inputs before July 31, 2018 (after payment of GST for the month of July 2018) shall lapse. As the original Notification No. 5/2017-Central Tax (Rate) issued under Section 54 of the CGST Act does not put any restriction in respect of the ITC on input services and capital goods, ITC on the same will not lapse.

(b) What would be the manner of calculating the accumulated ITC amount on account of inverted duty structure on the inputs of said fabrics that would lapse?

- It has been clarified that the manner of calculation as prescribed in Rule 89(5) of the CGST Rules relating to refund of ITC on account of inverted duty structure would apply. An illustrative calculation has also been provided in the circular.

(c) Whether ITC on inputs relating to closing stock of finished goods as on July 31, 2018 would also lapse?

- It has been clarified that ITC involved in inputs contained in such closing stock may be excluded for determination of ‘net ITC’ for the purposes of applying the above referred formula.

(d) What would be the implication to fabrics like cotton and silk where there was no inverted duty structure?

- It has been clarified that the condition of lapsing ITC would apply only if ITC on inputs has been accumulated on account of inverted duty structure. The aforesaid formula takes care of this aspect.

(e) Whether accumulated ITC in respect of exports shall also be made to lapse?

- It has been clarified that accumulated ITC on zero rated supplies i.e. exports shall not lapse and it is ensured by the application of the above referred formula.

[Circular No. 56/30/2018 – GST dated August 24, 2018]
11. Clarification regarding taxability of services provided by Industrial Training Institutions ("ITI")

- Services provided by a private Industrial Training Institute ("ITI") in respect of designated trades notified under Apprenticeship Act, 1961 are exempt under Sr. No.66 of Notification No. 12/2017-CT (Rate). As a corollary, services provided by a private ITI in respect of other than designated trades would be liable to pay GST and are not exempt.

- Services provided by a private ITI in case of the designated trades by way of conduct of entrance examination against entrance fee or relating to admission to or conduct of examination will be exempt from GST.

- Services provided by a Government ITI to individual trainees/students is exempt as these are in the nature of services provided by the Central and State Government to individuals and this would cover both –vocational training and examinations conducted by a Government ITI.

[Circular No. 55/29/2018 – GST dated August 10, 2018]

12. Alternate procedure for recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit

- The circular prescribes an alternate procedure for recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit since the functionality to record the liability in the electronic liability register as earlier set under Circular No. 42/16/2018-GST dated April 13, 2018 is currently not available.

- It is clarified that taxpayers may reverse the wrongly availed CENVAT Credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B.

- Accordingly, the applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of FORM GSTR-3B

[Circular No. 58/32/2018-GST dated September 04, 2018]
C. Extension of due dates

13. Vide various notifications, due dates for filing returns have been extended as below

- Issued in the month of August 2018

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Type of Return</th>
<th>Applicability</th>
<th>Return Period</th>
<th>Notified Date</th>
<th>Notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>GSTR1 (Monthly)</td>
<td>Registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year</td>
<td>For each of the month from July 2018 to March 2019</td>
<td>11th day of the month succeeding return month</td>
<td>Notification No. 32/2018 - Central Tax dated August 10, 2018</td>
</tr>
<tr>
<td>2.</td>
<td>GSTR1 (Quarterly)</td>
<td>Registered persons having aggregate turnover up to 1.5 crore rupees in the preceding financial year or the current financial year</td>
<td>July - Sep, 2018</td>
<td>Oct 31, 2018</td>
<td>Notification No. 33/2018 - Central Tax dated August 10, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Oct - Dec, 2018</td>
<td>Jan 31, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Jan - Mar, 2019</td>
<td>April 30, 2019</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>GSTR 3B</td>
<td>All taxpayers</td>
<td>July, 2018 to March, 2019</td>
<td>20th day of the month succeeding return month</td>
<td>Notification No. 34/2018 - Central Tax dated August 10, 2018</td>
</tr>
<tr>
<td>4.</td>
<td>GSTR 3B</td>
<td>All taxpayers</td>
<td>July, 2018</td>
<td>Aug 24, 2018</td>
<td>Notification No. 35/2018 - Central Tax dated August 21, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>August, 2018</td>
<td>Oct 10, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>August, 2018</td>
<td>Oct 10, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td>GSTR-1 (Quarterly)</td>
<td></td>
<td>July – Sep, 2018</td>
<td>Nov 15, 2018</td>
<td>Notification No. 38/2018 - Central Tax dated August 24, 2018</td>
</tr>
</tbody>
</table>
**Legislature at Work**

- Issued in the month of September 2018

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Type of Return/ Form</th>
<th>Applicability</th>
<th>Return Period</th>
<th>Notified Date</th>
<th>Notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>GST ITC-04</td>
<td>Declaration for goods dispatched to a job worker or received from a job worker or sent from one job worker to another</td>
<td>Jul 2017 – Jun 2018</td>
<td>Sep 30, 2018</td>
<td>Notification No. 40/2018-Central Tax dated September 04, 2018</td>
</tr>
<tr>
<td>2.</td>
<td>GSTR-1 (registered taxpayers having aggregate turnover up to 1.5 crore rupees)</td>
<td>All Taxpayer</td>
<td>Jul 2017 - Sep 2017</td>
<td>Oct 31, 2018</td>
<td>Notification No. 43/2018-Central Tax dated September 10, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Taxpayer</td>
<td>Oct 2017 - Dec 2017</td>
<td>Oct 31, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Taxpayer</td>
<td>Jan 2018 - Mar 2018</td>
<td>Oct 31, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Taxpayer</td>
<td>Apr 2018 – Jun 2018</td>
<td>Oct 31, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Taxpayer</td>
<td>Jul 2018 - Sept 2018</td>
<td>Oct 31, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Taxpayers located in Kerala, Mahe (Puducherry) and Kodagu (Karnataka)</td>
<td>Jul 2018 - Sep 2018</td>
<td>Nov 15, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Taxpayers who have obtained GSTIN in terms of the Notification No. 31/2018– Central Tax dated August 6,2018</td>
<td>Jul 2017 - Sept 2018</td>
<td>Dec 31, 2018</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Taxpayer</td>
<td>Oct 2018 - Dec 2018</td>
<td>Jan 31, 2019</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>All Taxpayer</td>
<td>Jan 2019 - Mar 2019</td>
<td>Apr 30, 2019</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>GSTR 1 (registered taxpayers having aggregate turnover more than 1.5 crore rupees)</td>
<td>All taxpayers</td>
<td>Jul 2017 - Sep 2018</td>
<td>Oct 31, 2018</td>
<td>Notification No. 44/2018-Central Tax dated September 10, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Taxpayers who have obtained GSTIN in terms of Notification No. 31/2018– Central Tax dated August 6,2018</td>
<td>Jul 2017 - Nov 2018</td>
<td>Dec 31, 2018</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>GSTR-3B</td>
<td>Taxpayers who have obtained GSTIN in terms of Notification No. 31/2018–Central Tax dated August 06, 2018.</td>
<td>Jul 2017 - Nov 2018</td>
<td>Dec 31, 2018</td>
<td>Notification No. 45/2018-Central Tax dated September 10, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Notification No. 46/2018-Central Tax dated September 10, 2018</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Notification No. 47/2018-Central Tax dated September 10, 2018</td>
</tr>
</tbody>
</table>
D. Others

14. Clarification issued by the Assam Government on the scope of “goods” for issuance of Form – “C”

- Post introduction of GST, the scope of “goods” under the CST Act, 1956 has been restricted to include six goods i.e. petroleum crude, high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption.

- For the purposes of issuance of Form – “C” against inter-state purchases of the above goods, a doubt has been raised as to whether the term “goods” when it appears in the phrase “manufacture or processing of goods” under Section 8(3)(b) of the CST Act, 1956 would only cover the above goods (which do come under the ambit of GST) or cover any goods. In other words, the doubt which has arisen is whether C form can be issued against inter-state purchases of petroleum crude, high speed diesel etc. when used for manufacture of goods other than the said petroleum crude, high speed diesel etc.

- On the above issue, it has been clarified that declarations in Form – “C” shall only be issued if the goods are purchased for the purposes of resale of the above six goods, manufacture of the above six goods, or use in the telecommunication network or mining or generation or distribution of electricity or any other form of energy.

[Circular No. 12/2018-GST dated August 09, 2018]

15. Constitution of Standing Committee for proper utilization of Consumer Welfare Fund

- A ten member Standing Committee has been constituted for making recommendations for proper utilization of money credited to Consumer Welfare Fund for welfare of the consumers.

[Order-03/2018-GST dated August 16, 2018]
16. GST Revenue collections for July 2018
   - Government has released the followed data:
     - GST revenue collected in the month of July 2018 = INR 96,483 crore (comprising of CGST of Rs. 15,877 crore, SGST of Rs. 22,293 crore, IGST of Rs. 49,951 crore and cess of Rs. 8,362 crore)
     - 66 lakh GSTR 3B Returns have been filed.
     - For the months of April and May 2018, INR 3899 crore has been released as GST Compensation to the States

[Press Release dated August 01, 2018 issued by the Ministry of Finance]

17. GST Refund processed till July 31, 2018
   - Government has released data with respect to the IGST and RFD-01A refunds processed till July 31, 2018 as INR 29,829 crore and INR 24,549 crore, respectively.

[Press Release dated August 01, 2018 issued by the Ministry of Finance]

18. GST Compensation to States
   - As per the data released, States / UTs have been paid as GST Compensation of Rs. 48178 crore for the period of July 2017 to March 2018 and of Rs. 3899 for the period of April-May, 2018.

[Press Release dated August 10, 2018 issued by the Ministry of Finance]

19. Waiver of late fees
   - The Central Government has waived the late fees, in respect of the following:
     - Form GSTR-3B (October 2017) – In case where the said return was submitted but not filed on the common portal, after generation of the application reference number
     - Form GSTR-4 (October 2017 to December 2017) – In case where the said return was filed by the due date, but late fee was erroneously levied on the common portal
     - Form GSTR-6 – In case where late fee has been paid for filing or submission of the return for any tax period between January 01, 2018 and January 23, 2018.

[Notification No. 41/ 2018-Central Tax dated September 04, 2018]
20. Issuance of Format for Reconciliation Statement under Form GSTR-9C

- The Board has notified a format of Reconciliation Statement under Form GSTR-9C. The Reconciliation Statement covers details in respect of the following:
  - Reconciliation of turnover declared in audited Annual Financial Statement with turnover declared in annual return
  - Reconciliation of the tax paid as declared in the Reconciliation Statement with the actual tax paid as per the annual return
  - Reconciliation of the input tax credit based on the Audited Annual Financial Statement with the input tax credit claimed in the annual return
  - Auditor’s recommendation on the additional liability to be discharged by the taxpayer due to non-reconciliation

[Notification No. 49/ 2018-Central Tax dated September 13, 2018]

21. Penalty not imposable for minor specified errors in e-way bills & supporting documents

- Various representations have been received regarding imposition of penalty in case of minor discrepancies in the details mentioned in the e-way bill although there are no major lapses in the invoices accompanying the goods in movement. It has been clarified that where consignment of goods is accompanied with an invoice or any other specified document, and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated, inter alia, in the following situations:
  - Spelling mistakes in the name of the consignor or the consignee but the GSTIN, wherever applicable, is correct;
  - Error in the pin-code but the address of the consignor and the consignee mentioned is correct, subject to the condition that the error in the PIN code should not have the effect of increasing the validity period of the e-way bill;
  - Error in the address of the consignee if locality and other details of the consignee are correct;
  - Error in one or two digits of the document number mentioned in the e-way bill;
  - Error in 4 or 6 digit level of HSN where the first 2 digits of HSN are correct and the rate of tax mentioned is correct;
  - Error in one or two digits/characters of the vehicle number.

- In case of the above situations, a penalty of Rs. 500/- each under the CGST Act / SGST Act should be imposed (Rs.1000/- under the IGST Act) in FORM GST DRC-07 for every consignment.

[Circular No. 64/38/2018 – GST dated September 14, 2018]
1. **Webinar 1**

**Date and time:** August 10, 2018 at 11.00 am

**Speakers:** Rohit Jain, Vivek Baj, Darshan Bora

**Introduction:** The GST journey began little over a year ago and has been marked by a proactive approach by tax authorities in issuing clarifications and suggesting amendments. However, certain areas such as employer-employee transactions and cross-charge of common expenses, yet remain ambiguous.

Employer and employee being ‘related persons’, supplies without consideration would also attract GST in terms of Schedule I of the CGST Act. However, services by an employee to the employer in the course or in relation to his employment would not be treated as supply in terms of Schedule III of CGST Act. Therefore, transaction between employer-employee (monetary/non-monetary) needs to be analyzed cautiously.

All GST registrations of the same Company / business entity are considered as ‘distinct persons’ in terms of Section 25 of the CGST Act. Further, supply of goods and/or services between distinct persons is ‘deemed’ to be a supply regardless of whether such supply is for a consideration or not when made in the course or furtherance of business. This has given rise to issues as to whether there is a need to cross-charge expenditure incurred under one registration, which benefit other registrations and whether ISD mechanism is mandatory.

In this context, the topics covered in the webinar were: i) GST implications on various employer-employee transactions; and ii) Cross-charge/distribution of GST credit on head office expenditure.
Key takeaways:

Employer – Employee transactions:

- CGST Act does not provide any specific criteria to determine the benefits, compensation, facilities or perquisites provided by an employer to its employees as a consideration for services of employee. However, the Press Release issued by the Government states that supply/perquisites provided by employer to employee in terms of the “contractual arrangement entered between the employer and the employee” (i.e. in return of services provided by employee in terms of Schedule III) may not attract GST.

- Recoveries made by employer from the employee would be liable to GST. Further, as employer and employee are related persons, concern with respect to valuation arises. Cost of procurement of such services may be considered as Assessable Value in terms of Rule 28 of the CGST Rules.

- Another issue which may arise is to whether such a supply would be considered as a composite supply wherein facilitation service would be the principal supply, or would it be taxed individually.

- Given the complexities involved, HR policies and the benefits extended to the employees should be re-evaluated and appropriate changes should be incorporated.

Cross-charge vs. ISD:

- Head office (HO) / other offices incur certain expenses which benefit the Company as a whole or some other office. These could be inter-alia in the nature of: (i) Staff Payroll Costs (eg: CEO / CFO salary), (ii) Services from external vendors (eg: Audit fees, legal services), (iii) Capital goods and inputs (Eg: Laptops, printers, etc.)

- As regards Employee costs, exclusion from GST in terms of Sch III, Entry 1 shall also apply to employees at one office working for other offices. This position has also been clarified and accepted by Govt. through twitter handle;

- Common Services received from external vendors - ISD mechanism has specific legal framework and is risk free from the perspective of GST rate and valuation to be adopted, but it is laced with several practical difficulties. Cross-charge has scanty legal framework, but brings in flexibility and relative ease of compliance. While it appears that ISD and cross-charge are optional, however, the issue is likely to be litigious. Hybrid model is recommended - Cross-charge for specific services and ISD for common service.

- Issue as to whether capital goods / inputs used at HO constitutes “supply of services” to other branches could be contentious.
The GST Council in its 28th meeting (held on 9th July, 2018) proposed certain amendments to the GST legislations, after more than a year of implementation of GST in the country. This time gap perhaps offered the opportunity to comprehensively address issues and ambiguities, which plagued the GST landscape in its first year of operation and which was thought to be best addressed by way of legislative amendments to the GST enactments i.e. the Central Goods and Services Tax Act, 2017 ("CGST Act"), Integrated Goods and Services Tax Act, 2017 ("IGST Act"), the Union Territory Goods and Services Tax Act, 2017 and the GST Compensation Act, 2017.

The proposals took form of the GST Amendment Bills which received Presidential assent on 29th August 2018, and were notified in the Official Gazette on 30th August, 2018. While some of these amendments have a retrospective operation (with effect from 1st July, 2017) others would operate from a notified date.

Some of the amendments are substantial in nature while others are procedural in its operation or seek to correct certain typographical errors/ remedy ambiguities in the language.

The webinar attempted to delve into and deliberate upon the amendments which have a significant bearing on businesses and assessees in the country. Some of the discussed amendments are enlisted below:

<table>
<thead>
<tr>
<th>Sl.</th>
<th>Amendment</th>
<th>Key Impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Removal of Schedule II entries from Section 7(1) and coverage under new-subsection (1A) of Section 7 of CGST Act</td>
<td>Prior to this re-alignment, there was ambiguity as regards liability on Schedule II transactions even in the absence of “consideration” and even if not “in furtherance of business”. The amendment clears this ambiguity.</td>
</tr>
<tr>
<td>2</td>
<td>Import of services even by unregistered entities covered under Schedule I to the CGST Act</td>
<td>Entities which were earlier rendering exempt supplies and thus not registered under GST, would now have to discharge GST under reverse charge mechanism (“RCM”). The amendment would thus impact entities such as branch office/ liaison office rendering exempted services (to head office) or performing minimal activities in the country.</td>
</tr>
<tr>
<td>3</td>
<td>Inclusion of “merchant trade”, “in bond sale” and “high sea sale” under Schedule III to the CGST Act</td>
<td>The amendment clears ambiguity about the non-applicability of GST on these transactions. Earlier position on taxability on these transactions was dealt with in various Circulars and rulings of the Authority for Advance Ruling. Inclusion under Schedule III also means that there is also no requirement for reversal of Input Tax Credit (“ITC”) in relation to such transactions – in light of the amended Section 17(3) [See below].</td>
</tr>
<tr>
<td>4</td>
<td>Applicability of RCM under Section 9(4) to procurements from unregistered dealers, whittled down</td>
<td>Earlier, Section 9(4) of CGST Act (Section 5(4) of IGST Act) provided for RCM to apply to all procurements from unregistered dealers. This has now been whittled down to only notified class of persons.</td>
</tr>
<tr>
<td></td>
<td>Amendment to Section 16(2) as regards ITC in case of Bill to-Ship To scenario for input services</td>
<td>A registered person is now entitled to take ITC even where services are received by any person on the direction of or on account of such registered person. Prior to amendment, this facilitation existed only in case of Bill to-Ship to scenarios for goods (inputs).</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td></td>
<td>Amendment to Section 17(3) –Schedule III transactions not liable to be subjected to ITC reversal</td>
<td>ITC would now be available for transactions or activities specified in Schedule III, except those mentioned in Entry 5 of the said Schedule. These transactions (including the newly inserted entries covering high sea sale, in bond sale and merchant trading) would not be considered for reversing ITC.</td>
</tr>
</tbody>
</table>
|   | Over-hauling of certain restrictions on ITC under Section 17(5) | - The restriction on claim of ITC of tax paid on motor vehicles is diluted to restrict the credit on motor vehicles used for transport of passengers having a maximum seating capacity of thirteen persons, vessels and aircrafts.  
- ITC will now be eligible for certain supplies when such supplies are obligatory for an employer to provide to its employees under any law for the time being in force |
|   | Amendment to certain place of supply rules | Place of supply in case of transportation of goods from a place in India to a place outside India by an Indian transporter would be destination of goods and thus lie outside India. However, anomaly arising out of Section 7(5) of IGST Act remains unaddressed. |
|   | Concept of business vertical-wise registration replaced by registration for each place of business | The earlier option of obtaining separate registration for each business vertical has been done away with. Now the option is available for taking separate registration for each place of business. |
|   | On Credit Notes/ Debit Notes and Return Filing | - A registered person shall now be allowed to issue consolidated credit / debit notes in respect of multiple invoices issued in a financial year.  
- Taxpayers have been allowed to amend prior returns  
- Provision has been introduced to provide for a new procedure for filing of return and availment of ITC. |
In Re: - Dinesh Kumar Agrawal - [TS-332-AAR-2018-NT]

The Applicant, an individual, is proposing to undertake a certain project related service contract wherein the parties would enter into three different kinds of agreements, namely EPC Contract, Split contract, and Standalone contract.

The Applicant has sought advance ruling on the following issues:

(i) Whether Standalone Contract of transportation merits classification under Service code 9965 and whether same is exempted under Entry No. 18 of Notification No. 12/2017- Central Tax (Rate) dated 28 June 2017?

(ii) Whether the composite supply of transportation and insurance merits classification under service code 9965 and whether same is exempted under Entry No. 18 of Notification No. 12/2017- Central Tax (Rate) dated 28 June 2017?

(iii) Whether composite supply of ‘loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance’ merits classification under Service under Service code 9965 and whether same is exempted under entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017?

(iv) Whether the supply of services namely ‘loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at project site and in-transit insurance’ under Service Contract (under Split Contract) merits classification under Services code 9965 and whether same is exempted under Entry No. 18 of Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017?

(v) Whether the supply of services namely ‘loading of goods at the premises of the supplier, transportation in own/hired trucks to the project site, unloading and handling of goods at the project site and in-transit insurance’ under EPC contract merits classification under Service code 9965 and whether same is exempted under No. 18 of Notification No. 12/2017- Central Tax (Rate) dated 28 June 2017?

When the issue came before the authority, it was observed that there is no specific GST issue and all the issues raised by the Applicant are general in nature. The Authority took a view that the main issue would be whether transportation charges received by the Applicant under the standalone contract for transportation of equipment would be liable to GST, especially when the Applicant is not a goods
transport agency.

The Applicant contended that he is not a goods transport agency as he is not issuing any consignment note or the like. The Applicant relied on clause 10 of the contract which held the contractor solely responsible for transportation of equipment to contend that there was a standalone contract for transportation of equipment for which separate consideration was received. Given the same, no tax would be leviable on transportation by virtue of Sr No. 18\(^{36}\) of Notification No. 12/2017 Central Tax (Rate) dated 28/06/2017.

The authority observed that the clauses of the contract cannot be read in isolation and the entire contract was one of works contract and could not be divided into separate contracts. It was observed that the intent of the parties at the time of erection of the plant has to be seen to understand the nature of the contract and since in the present case, the intent is the completion of works, the same would get covered under the definition of “Work Contract” under section 2(119) of GST Act\(^{37}\) and GST would be leviable thereon.

**Karnataka AAR: Rules on taxability of derivative contract in diamonds; Conversion into e-Units constitutes ‘supply’**

**In Re:- M/s Rajarathnam’s Jewels- [TS-357-AAR-2018-NT]**

The Applicant is a partnership firm engaged in the retail business of gold and is desirous of entering into a derivative contract in diamonds through Indian Commodity Exchange Limited (ICEX) which provides a nationwide online trading platform in commodity derivatives. The Applicant sought an advance ruling on the following issues:

(i) Whether mere deposit of diamond with safe vaults acknowledged by Electronic Vault Receipts (EVR) would be treated as a supply for the purpose of levy of GST?

(ii) Whether conversion of EVR (representing receipt for diamonds deposited) into e-units (securities) would be treated as supply liable to GST?

(iii) Whether e-units would be treated as securities and thereby transaction in e-units would remain out of the scope of the levy under GST?

(iv) Whether the derivative contracts in e-Unit and settlement thereof would be treated as a transaction in the securities and not liable for GST?

---

\(^{36}\) Services by way of transportation of goods-
(a) by road except the services of
(i) a goods transportation agency;
(ii) a courier agency;
(b) by inland waterways

\(^{37}\) “Section 2(119) read as works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.
(v) Whether conversion of e-units into diamonds would be treated a supply liable to GST?

Upon hearing the contentions, the Authority observed that as far as the first question is concerned, there is only transfer of possession of diamonds and the safe Vault holds diamonds as bailee of the depositor. Further, there is no consideration involved in this transaction and hence the transaction does not amount to supply of good, i.e. diamonds. However, the conversion of EVR representing the diamonds held in the Vaults to E-Units would constitute a supply of diamonds as per Section 7 of CGST and liable to tax as per Notification No. 1/2017 Central Tax (Rate) dated 27/06/2017. As per Section 2 (101) of CGST E-Units are securities hence transaction in e-Units would remain out of the scope of levy tax under the GST Act. Section 2(bc) of the SCRA define the commodity derivatives as a contract for delivery of goods, as may be notified by the Central government. But it does not include securities. Hence, any e-units which have the diamond as underlying asset shall be treated as securities as per the definition of section 2(101) OF CGST. Therefore, the transaction of e-units was held to be not taxable under GST Act. Further it was observed that Section 7(1) of GST Act, 2017 covers the supply of goods in the form of exchange under the scope of supply and the definition of the consideration under Section 2(31) of the GST is wide enough to consider in the form of any payment made or to be made. Hence the exchange of diamonds to e-units was held to constitute a supply under section 7(1) of the CGST ACT leviable to tax under GST law.

Rajasthan AAR: Upholds levy of IGST on ‘ocean freight’, however, determination of value of imported goods outside AAR purview

In Re: M/s Chambal Fertilizers and Chemicals Limited – [TS-475-AAR-2018-NT]

The Applicant is engaged in the business of trading of goods like DAP and MOP etc. The said goods are purchased from a country outside India and imported into India. The applicant has sought ruling on the following issues:

(i) Whether the Applicant is liable to pay IGST on account of ocean freight (being consideration for transportation of the goods), paid by the supplier company, on import of the said goods on CIF basis?

(ii) Whether the amount of ocean freight already paid by the Applicant to the supplier company could be excluded from the value of goods imported under FOB basis, for the purposes of payment of IGST?

In this regard, the Applicant inter alia contended that IGST on ocean freight would amount to double taxation. However, at the other hand, the Department said the Applicant is liable to pay IGST on account of ocean freight in terms of Notification No. 10/2017 – Integrated Tax (Rate) dated 28.06.2017.

On undergoing the submissions of the Applicant as well as of the Department, the Authority ruled that the Applicant is liable to pay IGST on ocean freight component when the goods are imported on CIF basis. Whereas, for the second issue in consideration, the Authority observed that the issue pertains
to valuation and the same is outside the scope of CGST Act. Therefore, the Authority did not express anything on merits on the second issue.

**Rajasthan AAR: Project Management Consultancy to JDA, a Govt. authority, is exempt**

**In Re: M/s PDCOR Ltd. – [TS-473-AAR-2018-NT]**

The Applicant is Project Management Consultancy (PMC) Services provider and by way of this Application sought an advance ruling on the applicable rate of tax on PMC services provided to Jaipur Development Authority (JDA).

In this regard, the Applicant contended that JDA is a ‘Government Authority’ as it is set up by an Act of the State legislature and squarely falls definition of ‘Government Authority’ as provided under Notification 32/2017 Central Tax (Rate) dated 13.10.2017, and accordingly the services rendered to JDA are exempt by virtue of Exemption Notification (Notification 12/2017 Central Tax (Rate) dated 28.06.2017.

In this regard, the Authority reviewed the creation of JDA and observed that the same has been formed under Jaipur Development Authority Act, 1982 to carry out functions entrusted under Article 243G of the Constitution of India. Further, it was observed that the control of JDA lies with the State Government. On the basis of the aforesaid, the Authority concluded JDA to be a Government Authority and the services provided by to JDA are exempt from the levy of GST and would fall under S. No 03 of the Exemption Notification.

**Tamil Nadu AAR: Applicant withdraws application on moulds amortization issue pursuant to CBIC clarification**

**In Re: M/s Amalgamations Valeo Clutch Private Limited - [TS-466-AAR-2018-NT]**

The Applicant is *inter alia* engaged in the manufacturing and supply of automobile parts to Original Equipment Manufacturers (OEM) as per their design and specifications. By way of this Application, the applicant sought an advance ruling on whether the amortized value of tool/dies supplied by OEM to the Applicant would be included in the value of finished goods to be supplied to OEM.

However, no such provision is provided under GST law. Hence, the Applicant sought intervention of the Authority for Advance Ruling.

The Authority observed that subsequent of filing of the present Application, the Central Board of Indirect
Taxes and Customs issued a Circular No. 47/21//2018-GST dated 08.06.2018 wherein it was inter alia clarified that amortized value of tools/dies would be added to the value of finished goods to be supplied to OEM. In terms of the said Circular, the Applicant withdrew the present Application.

**West Bengal AAR: Petro-products movement from refinery to export warehouse, not ‘zero-rated supply’, disallows ITC on freight**

In Re: Indian Oil Corporation Ltd. - [TS-456-AAR-2018-NT]

The Applicant sought an advance ruling on the availability / non availability of input credit of GST paid on the transportation of High Speed Diesel, Motor Spirit and Aviation Turbine Fuel from its refinery to its export warehouse.

In this regard, the Applicant primarily contended that transportation of said goods from its refinery to the export warehouse are not used for home consumption and are only exported to Nepal under an Export Agreement, hence such supply is to be considered as zero rated supply under Section 16(1)(a) of the CGST Act. Resultantly, input credit of GST paid on transportation of said goods would be available in the hands of the Applicant.

However, the Department was of the view that the supply of goods from refinery to export warehouse does not amount to zero rated supply but it is merely a stock transfer of exempt supplies. Therefore, no input credit would be available in the hands of the Applicant on exempt supplies.

On hearing upon the submissions placed by both the parties, the Authority referred to the definition of ‘export’ provided under Section 2(5) of the IGST Act. On the perusal of the said definition, the Authority
JUDICIARY PERSPECTIVE

was of the view that goods have to be moved to a place out of India, which is absent in the said transaction. Therefore, the Authority concluded that the goods moved from refinery to the export warehouse does not constitute as zero rated supply. Accordingly, no credit is available of the GST paid on input service.

RULING PRONOUNCED BY NATIONAL ANTI-PROFITEERING AUTHORITY

National Anti-profiteering Authority: Holds ‘Affordable Housing’ developer guilty of profiteering for not passing ‘ITC’ benefit


The Applicants filed an Application before the Standing Committee constituted in terms of Rule 123(1) of the CGST Rules on account of not passing the benefit of Input Tax Credit (ITC) in respect of construction services in terms of Section 171 of the CGST Act. The Applicants had booked flats with the Respondent under Haryana Affordable Housing Policy, 2013. They alleged that before CGST Act, 2017 came into force, Excise Duty and VAT was being collected from them as Service Tax was exempt. However, with effect from 01.07.2017, only 12% GST was levied on construction service which was further reduced to 8% w.e.f 25.01.2018. the Applicant contended that after implementation of GST, the benefit of ITC which was available to the Respondent which was much more than the output tax liability, had not been passed on to them.

In this regard, the Standing Committee referred the matter to Director General of Anti-profiteering (“DGAP”) under Rule 129(1) of the CGST Rules for a detailed investigation. The DGAP carried out an investigation and submitted its report to the Anti-Profiteering Authority in terms of Rule 129(6) of the CGST Rules. It would be pertinent to mention that DGAP in its report made certain conclusions which are inter alia set out as under:

(i) The contention of the Respondent that Section 171 was not applicable to them as there was no reduction in rate of GST is unacceptable because the condition of passing on credit and reduced tax rate were two independent conditions and Section 171 would be attracted even if either of the conditions are attracted;

(ii) The maximum sale price per sq. feet carpet area had been fixed at Rs. 4,000/- and no minimum rate had been prescribed and hence the Respondent could not claim that there was restriction on reducing the price;

(iii) The report found merit in Respondent’s argument that the exact quantum of ITC could be determined only after the completion of the Project, however it was stated that profiteering was required to be established in a time bound manner.

(iv) It was admitted that in the pre-GST era, construction service was exempt from Service Tax and Respondent was not eligible to claim ITC on Excise Duty paid on inputs or Service Tax paid on input services. However, it was also admitted that post GST, credit was available on all inputs and services.
(v) Given the above, the report concluded that ITC available during pre-GST period was 1.1% of the taxable turnover while it is 7.2% in the post-GST period. Hence, with effect from 25.01.2018, GST was reduced to 8% and consequently the additional ITC was more than the increase in tax rate which had to be passed on to the Applicants.

In view of the aforesaid, the Anti-Profiteering Authority inter-alia held that the contention of the Respondent is wrong and the benefit of input tax credit was required to be passed on to the customers. The Anti-Profiteering Authority remarked that the contention of the Appellant that the cost of major raw material – steel had increased, and it would have to be accounted for before alleging profiteering, was not tenable. The Authority held that the Respondent had himself offered maximum price of Rs. 4,000/- and hence the price fluctuations were already considered while fixing the said rate. In light of the above, the Anti-Profiteering Authority directed the Respondent to reduce the price to be realized from the buyers of the flats. The Respondent was also directed to refund the amount to the buyers along with interest at the rate of 18%. Additionally, the Order sought to levy penalty under Section 122(1)(i) of the CGST Act, 2017.

National Anti-profiteering Authority: Holds HUL’s distributor guilty of profiteering absent Vaseline’s price reduction despite GST rate slash


The Applicants filed an Application before the Standing Committee constituted in terms of Rule 123(1) of the CGST Rules on account of not passing the benefit of reduced rate of GST in terms of Section 171 of the CGST Act. The Applicant has contended that the Respondent has not passed on the benefit of reduction in the rate of tax by lowering the price of Vaseline VTM 400ml when the rate of GST was reduced from 28% to 18% w.e.f. 15.11.2017.

In this regard, the Standing Committee referred the matter to Director General of Anti-profiteering (“DGAP”) under Rule 129(1) of the CGST Rules for a detailed investigation. The DGAP carried out an investigation and submitted its report to the Anti-Profiteering Authority in terms of Rule 129(6) of the CGST Rules. It would be pertinent to mention that DGAP in its report made certain conclusions which are inter alia set out as under:

(i) The benefit of reduction in tax rate should be passed on at the time of supply of goods and services and any future event related to that supply would not render, including return, would not render the transaction of original supply infructuous;

(ii) The GST rate on the product was reduced from 28% to 18% with effect from 15.11.2017 and hence the benefit was required to be passed on by the Respondent;

(iii) The DGAP submitted that the base price of the product, at the time of GST rate reduction, was increased to maintain the same selling price which was prevalent before reduction and therefore the Respondent has indulged in profiteering.
In view of the aforesaid, the Anti-Profiteering Authority inter alia held as follows:

(i) That base price of the product was increased and benefit of reduction in the rate of tax was not passed-on. The increase in the base price at the end of HUL cannot absolve the Respondent of its accountability of passing-on the benefit of the reduction in the rate of tax;

(ii) The Respondent could not produce any evidence to show that it had objected to the increase made by HUL;

(iii) It was argued that the products sold by the Respondent on 15.11.2017 stood returned on 15.12.2017 and therefore the transaction of ‘supply’ had become infructuous. However, NAA has not accepted this argument and has held that the transaction culminated in a ‘supply’ on 15.11.2017 itself.

(iv) It was argued that section 171 of CGST Act did not provide any methodology for determining commensurate reduction in prices. However, NAA held that only mathematical calculation of the amount by which the tax had been reduced was to be calculated and the same was required to be deducted from the existing MRP;

(v) The argument that the quantity of Vaseline stood increased from 300 ml to 400 ml and thus there was an increase in grammage was not accepted by NAA. As per NAA, the Respondent was not in a position to increase the quantity of the product as he was only an agent and not the manufacturer of the product.

(vi) The contention that excess ITC credited by the Respondent to HUL stood deposited by HUL in the Consumer Welfare Fund and thus there was no profiteering was not found acceptable to NAA. It has held that incorrect tax invoices were issued by the Respondent and that there was profiteering. Additionally, NAA sought to impose penalties under section 122 of the CGST Act read with Rule 133 (d) of the CGST Rules, 2017.
A taxing statute primarily requires ascertainment of value of a transaction for the purposes of levy of tax. Under the erstwhile tax regime including Central Excise Act, 1944 (“CE Act”), the issue of valuation has been a serious bone of contention between tax payers and the revenue authorities. The concept of valuation assumes great significance even in the present Goods and Services Tax (“GST”) regime ensuring that the legacy of taxing goods and services on the basis of arms length valuation stands continued in the GST regime.

Although, GST is a destination based tax and works on the principle of supply as opposed to the concept of sale/manufacture; but the same is inconsequential for the purposes of valuation of goods and services. Section 15 of the Central Goods and Service Act, 2017 (“CGST Act”) provides that value of supply shall be the ‘transaction value’ which is price paid or payable for the supply of goods and services. Further, to arrive at a transaction value one has to fulfill twin conditions which are set-out as under:

(i) The supplier and recipient should not be related person; and
(ii) The price paid or payable is the sole consideration for the supply.

Similar conditions existed for arriving at ‘transaction value’ under Section 4(1)(a) of the CE Act. Therefore, the principles of law as laid down by Hon’ble Courts on valuation of goods and services under the erstwhile Indirect tax laws would continue to be relevant even under the present regime. Consequently, one such decision as pronounced by the Hon’ble Supreme Court is analyzed in the ensuing paragraphs.

Decision in Fiat India Pvt. Ltd.

In this day and age of cut throat competition, businesses do resort to ‘aggressive pricing’ techniques in order to gain market penetration. Given this, it is most likely that the revenue authorities may dispute the valuation of underlying goods and services being supplied. This issue came-up for consideration before the Hon’ble Apex Court in the case of Commissioner of Central Excise, Mumbai v. Fiat India Pvt. Ltd. [2012 (283) ELT 161 (SC)].

The facts of the case were that the Respondent was inter-alia engaged in the manufacture of motor cars i.e. Fiat Uno model cars. They were declaring the wholesale price of the said cars in terms of Rule 173C of the Central Excise Rules, 1944 during the period 1996 to 2001. However, the Department was of the prima facie view that the prices declared by the Respondent was not the normal price and could not be considered as assessable value given that the price declared was below the cost of production. On the basis of aforesaid premise, the Department issued various show cause notices for the period 1996 to 2001 wherein the Respondent was inter-alia asked to show cause why the price declared should not be disregarded and correct duty should not be recovered from the Respondent in terms of correct valuation under Central Excise Valuation Rules, 1975 for the period 1996 to 2000 and under Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 [“Valuation Rules”].

Prior to the year 2000, the assessable value under Section 4(1)(a) was the normal price ordinarily charged by an assessee to a buyer in the course of wholesale trade for delivery at the time and place of removal.
In response to the show cause notice, the assessee *inter-alia* made the following submissions which are set-out as under:

(i) Price charged from the buyer was the sole consideration and no additional consideration was charged over and above the declared price;

(ii) There was no flow back of money (directly or indirect) from the buyers; and

(iii) The price declared was in order to penetrate into the Indian market.

However, the adjudicating authority concluded that an ‘extra commercial consideration’ is involved i.e. gaining market share and therefore, the price declared by the assessee could not be considered to be the sole consideration for the sale of cars. Aggrieved with the findings of the adjudicating authority, the assessee preferred an appeal which was dismissed by the First Appellate Authority. However, on appeal preferred by the assessee, the Appellate Tribunal was of the view that the price declared by the assessee is a normal price in terms of Section 4(1)(a) of the CE Act.

Now on the appeal preferred before the Hon’ble Supreme Court, the Department primarily contended that the price declared by an assessee should be the sole consideration for sale of goods and no other consideration should be involved over and above the declared price. However, there was an ‘extra commercial consideration’ involved in the present case which was to penetrate the market. On the other hand, the Respondent emphasized that the price charged was only the sole consideration and no additional consideration was charged from the buyers.

Upon hearing the aforesaid contentions of both the parties, the Court inter-alia observed that the primary reason for the Respondent to sell the cars at a lower price was to penetrate the market and the same would construe to be ‘extra commercial consideration’ over and above the agreed consideration. Further, the Court took note of the fact that Section 4 of the CE Act was amended with effect from April, 2000 to incorporate ‘transaction value’ to be the ‘assessable value’ instead of ‘normal price’ and the expression ‘ordinarily’ was omitted. However, the Court was of the view that essential condition viz. price is the sole consideration for sale remains the same for arriving at the assessable value under Section 4(1)(a) of the CE Act. The relevant extracts of the decision has been set-out as under:

“59. To attract Section 4(1)(a) of the Act what is required is to determine the ‘normal price’ of an excisable article which price will be the price at which it is ordinarily sold to a buyer in the course of wholesale trade. It is for the Excise authorities to show that the price charged to such selling agent or distributor is a concessional or specially low price or a price charged to show favor or gain in return extra-commercial advantage. If it is shown that the price charged to such a sole selling agent or distributor is lower than the real value of the goods which will mean the manufacturing cost plus manufacturing profit, the Excise authorities can refuse to accept that price.”
“60. Since under Section 4(1)(a), the price should be the sole consideration for the sale, it will be open for the Revenue to determine on the basis of evidence whether a particular transaction is one where extra-commercial consideration has entered and, if so, what should be the price to be taken as the value of the excisable article for the purpose of excise duty and that is what has been done in the instant cases and after analysing the evidence on record it is found that extra-commercial consideration had entered into while fixing the price of the sale of the cars to the customers. When the price is not the sole consideration and there are some additional considerations either in the form of cash, kind, services or in any other way, then according to Rule 5 of the 1975 Valuation Rules, the equivalent value of that additional consideration should be added to the price shown by the assessee. The important requirement under Section 4(1)(a) is that the price must be the sole and only consideration for the sale. If the sale is influenced by considerations other than the price, then Section 4(1)(a) will not apply. In the instant case, the main reason for the assessee to sell their cars at a lower price than the manufacturing cost and profit is to penetrate the market and this will constitute extra-commercial consideration and not the sole consideration. As we have already noticed, the duty of excise is chargeable on the goods with reference to its value then the normal price on which the goods are sold shall be deemed to be the value, provided: (1) the buyer is not a related person and (2) the price is the sole consideration. These twin conditions have to be satisfied for the case to fall under Section 4(1)(a) of the Act. We have demonstrated in the instant cases, the price is not the sole consideration when the assessee sold their cars in the wholesale trade. Therefore, the assessing authority was justified in invoking clause(b) of Section 4(1) to arrive at the value of the excisable goods for the purpose of levy of duty of excise, since the proper price could not be ascertained. Since, Section 4(1)(b) of the Act applies, the valuation requires to be done on the basis of the 1975 Valuation Rules.”

61. After amendment of Section 4: Section 4 lays down that the valuation of excisable goods chargeable to duty of excises on ad-valorem would be based upon the concept of transaction value for levy of duty. ‘Transaction value’ means the price actually paid or payable for the goods, when sold, and includes any amount that the buyer is liable to pay to the assessee in connection with the sale, whether payable at the time of sale or at any other time, including any amount charged for, or to make provisions for advertising or publicity, marketing and selling, and storage etc., but does not include duty of excise, sales tax, or any other taxes, if any, actually paid or payable on such goods. Therefore, each removal is a different transaction and duty is charged on the value of each transaction. The new Section 4, therefore, accepts different transaction values which may be charged by the assessee to different customers for assessment purposes where one of the three requirements, namely; (a) the goods are sold for delivery at the time and place of delivery; (b) the assessee and buyers are not related; and (c) price is the sole consideration for sale, is not satisfied, then the transaction value shall not be the assessable value.
and value in such case has to be arrived at, under the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000 (‘the Rules 2000’ for short) which is also made effective from 1st July, 2000. Since the price is not the sole consideration for the period even after 1st July, 2000, in our view, the assessing authority was justified in invoking provisions of the Rules 2000.”

In view of the aforesaid, the Apex Court inter-alia declared that the price declared by the Respondent was undervalued upholding the order passed by the adjudicating authority. Further, the Court held that the assessable value could not be ascertained under Section 4(1)(a) of the CE Act and resorting to the Valuation Rules was justified. Accordingly, the appeal of the Department was allowed and order of the Appellate Tribunal was set-aside.

The decision of the Supreme Court lays down a strong legal precedent qua valuation of goods. In an instance where an assessee is not able to satisfy the valuation of supply under Section 15(1) of the CGST Act then the tax authorities may resort to Rule 30 of the CGST Rules, 2017 which inter-alia provides for valuation of goods on the basis of cost plus profit method (drawing legal principles as laid down in Fiat India Pvt. Ltd. (supra) as discussed).

Key Takeaways:

In view of the above, the following key points emerge and can be taken note of:

(i) For the purposes of arriving at ‘transaction value’ under Section 15(1) of the CGST Act, one of the essential condition is that price should be the sole consideration for the supply involved;

(ii) Declaration of value lower than the production cost (and, without attribution of a reasonable margin) for penetrating the market / gain in market share may amount to ‘extra commercial consideration’; and

(iii) In the era of self-assessment, it is prudent to deliberate upon the principle of “extra commercial consideration” and take an informed call when it comes to valuation of supply to manage and circumvent litigation.
Authors
Anay Banhatti (Partner)
M. P. Devnath (Partner)
Nishant Shah (Partner)
Rajat Chhabra (Partner)
Vivek Sharma (Partner)
Archit Gupta (Associate)
Rahul Khurana (Associate Partner)
Tejus Pathak (Associate Partner)
Gopal Mundhra (Partner)
Abhinay Kapoor (Senior Associate)
Ginita Bodani (Senior Associate)
Supreme Kothari (Senior Associate)
Darshan Bora (Associate Partner)
Radhika Sahay (Partner)
Kumar Harshvardhan (Associate)
Suhasini Joshi (Associate)
Stella Joseph (Associate Partner)
Prakhil Mishra (Associate)
Virangana Wadhawan
Vishal Bisht (Associate)
Vivek Baj (Director)

Key Contacts

ROHIT JAIN | PARTNER

T : + 91 22 6636 7000
M : + 91 90046 04350
E : RohitJain@elp-in.com

Tax

NISHANT SHAH | PARTNER

T : + 91 22 6636 7000
M : + 91 90046 04323
E : NishantShah@elp-in.com

Tax
About Taxsutra

Launched in 2011, India based B2B portal Taxsutra.com, [http://www.taxsutra.com](http://www.taxsutra.com) is a trusted online resource for corporate tax directors, policymakers and practitioners. Taxsutra’s instant news alerts & incisive analysis on both domestic and international tax, coupled with unique features like tax ring, Taxsutra Insight, Litigation Tracker, Taxsutra TV and blogs make it a “must-have” for every tax professional.

Given the increasing focus of tax administrations on Transfer Pricing, [http://www.tp.taxsutra.com](http://www.tp.taxsutra.com) was launched in October 2011, as India’s first exclusive portal on TP. Apart from a comprehensive database of over 1000 Indian TP cases, the portal offers several new editorial features including Case Tracker, International Rulings, APA Space, TP Talk, Expert Corner, TP Personalities and ‘Around the World.’

Taxsutra’s thought leadership and continuous engagement with tax professionals has been on display through several unique initiatives/microsites/ special coverage on burning tax issues, controversies and important developments, be it APA, the $2bn Vodafone tax case, BEPS, our roadblocked coverage of Union Budget and even some light tax banter with our microsite on Soccer World Cup & tax!

Taxsutra has also championed various niche events and workshops.

Taxsutra also runs popular websites on GST ([www.gstsutra.com](http://www.gstsutra.com)), launched in 2017 with a highly interactive Mobile App as well and portals on indirect taxes ([www.idt.taxsutra.com](http://www.idt.taxsutra.com)), corporate law ([www.lawstreetindia.com](http://www.lawstreetindia.com)) and accounting ([www.greentick.taxsutra.com](http://www.greentick.taxsutra.com)). Another database portal launched to aid Indian tax professionals in their case law search, Orange, is sure to be a game-changer in the tax world.

**Taxsutra suite of portals :**

1. Real time tax news & analysis for Corporate Tax ([www.taxsutra.com](http://www.taxsutra.com))
2. Transfer Pricing Portal ([www.tp.taxsutra.com](http://www.tp.taxsutra.com))
4. “Orange” - Powerful Online Direct Tax Reference and Search Tool ([www.orange.taxsutra.com](http://www.orange.taxsutra.com))

**Corporate Laws and Accounting Standards portals:**

5. LawStreetIndia (LSI) ([www.lawstreetindia.com](http://www.lawstreetindia.com)) contains sub-modules on Company law, Securities law (SEBI/SAT), FEMA, IP laws & Competition Law
6. Taxsutra Accounting Standards portal ([www.greentick.taxsutra.com](http://www.greentick.taxsutra.com))

Contact us on [sales@taxsutra.com](mailto:sales@taxsutra.com) or call us on 9595218026 for subscription enquiries.

---

About ELP

Economic Laws Practice (ELP) is a full service Indian law firm established in 2001 by eminent lawyers from diverse fields. ELP brings to the table a unique combination of professionals which comprise of lawyers, chartered accountants, financial analysts, economists and company secretaries. Additionally a majority of ELP’s lawyers hold dual qualifications as lawyers and company secretaries/chartered accountants/economists or hold multi-jurisdictional qualifications enabling us to offer services with a seamless cross-practice experience and top-of-the-line expertise to our clients.

With six offices across India (Mumbai, New Delhi, Pune, Ahmedabad, Bangalore and Chennai), ELP has a team of over 180 qualified professionals. Working closely with leading national and international law firms in the UK, U.S., Middle East and Asia Pacific region, gives ELP the ability to provide an extensive pan India and global service offering to clients adding to the seamless service that the firm prides itself on.

ELP has a unique positioning amongst law firms in India from the perspective of offering comprehensive services across the entire spectrum of transactional, advisory, litigation, regulatory, and tax matters. The firm’s areas of expertise include Banking & Finance; Competition Law & Policy; Corporate & Commercial; Hospitality; Infrastructure (including energy, oil & gas, mining and construction); International Trade & Customs; Litigation, Arbitration & Dispute Resolution; Private Equity & Venture Capital; Securities Laws & Capital Markets; Real Estate & Construction; Tax; and Telecommunication, Media & Technology.

ELP’s vision has always been people centric and this is primarily reflected in the firms focus to develop and nurture long-term relationships with clients by providing optimal solutions in a practical, qualitative and cost efficient manner. The firms in-depth expertise, immediate availability, geographic reach, transparent approach and the involvement of senior partners in all assignments.