

# GST Compendium

**A monthly guide**

January 2021



# Season's Greetings!

Due to COVID-19, 2020 was challenging and difficult for the trade and industry, negatively impacting overall growth of the economy. With vaccine on the anvil, 2021 should bring back life to normal. On this positive note, we share our January edition of the GST Compendium.

The GST revenue collections for December 2020 recorded an all-time high of INR 1,15,174 crore, since the implementation of GST. Considering the difficulties faced by the businesses, the due date for filing the annual return for FY 2019-20 has been extended to 28 February 2021.

On the judicial front, the Delhi High Court held that in the absence of any specific provision under the erstwhile service tax law, the ex-director is not vicariously/jointly liable for the service tax dues of the company. The HC observed that the GST provisions are confined to liabilities assessed under GST law only and cannot be used to impose personal liability on directors for company's dues determined under the service tax law.

In another important ruling, the Maharashtra AAAR held that the society charges collected by the society from its members for providing various facilities and benefits, shall be construed as supply under GST. The AAAR held the judgment of the apex court in case of Calcutta Club Limited shall not apply in the present case. The authorities further observed that the ruling pronounced by the appellate authorities in case of Lions club and Rotary club shall also not apply as the activities done by the club were purely administrative in nature and no benefit/facility was being provided by the club to its members.

'Intermediary services' is an area prone to disputes and extensive litigation. Our experts have shared their perspective on this subject.

Budget is an important annual milestone for the businesses and the government to interact and exchange notes on various policy matters. Though GST is not part of the Budget, interactions with revenue authorities can be used to convey industry issues and possible resolutions. This edition shares inputs on some of the industry issues.

If you have any suggestions and recommendations to be made to the government on any tax policy matters, please write to us at [contact@in.gt.com](mailto:contact@in.gt.com)

Wish you a Happy & Prosperous 2021!

**Vikas Vasal**

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# 01. Important amendments/updates



## CBIC notifies certain restrictions in claiming input tax credit

The Central Board of Indirect Taxes and Customs (CBIC) has recently notified certain changes related to claiming input tax credit (ITC).

### Key changes notified

**Restriction on claiming ITC (amendment to Rule 36(4) effective from 1 January 2021):** A registered person can claim ITC in respect of invoices or debit notes not reflected in Form GSTR-01 only to the extent of **5% (instead of 10% earlier)** of total eligible credit as per the details furnished by the supplier in Form GSTR-01.

**Restriction on use of amount available in the electronic credit ledger (new Rule 86B inserted effective from 1 January 2021):** The new rule provides that the registered

person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax **in excess of 99% of such tax liability**, in cases where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds INR 50 lakh.

### The above restriction shall not apply in following cases:

- Where such registered person has paid income tax exceeding INR 1 lakh in each of the last two financial years
- Where such registered person has received refund exceeding INR 1 lakh under the GST law in the preceding financial year on account of unutilised ITC
- Where such registered person has

used electronic cash ledger to pay liability on outward supplies that cumulatively makes 1% of the total liability up to the said month

### Filing of details of outward supplies (Form GSTR-1) to be blocked in certain cases:

- A registered person who fails to furnish return in Form GSTR-3B for preceding two months (for monthly taxpayers)/ preceding tax period (for quarterly taxpayers).
- A registered person having value of taxable supply other than exempt supply and zero-rated supply in a month exceeding INR 50 lakh who is restricted as per new Rule 86B mentioned above.

## CBIC notifies certain changes in GST registration process

The CBIC has notified certain changes in provisions related to GST registrations.

### Key changes notified

#### Process for obtaining GST registration

The application shall deem to be complete after the process laid down below has been followed:

- Every application shall be followed by biometric-based Aadhaar authentication and taking photograph, if opted for authentication of Aadhaar number.
- Taking biometric information, photograph and verification of such other KYC documents, if opted not to get Aadhaar authentication done.
- Verification of the original copy of the documents uploaded with the application in Form GST REG-01 at one of the facilitation centres.
- The registration shall be granted within 30 days of submission of application, after physical verification of the place of business in the presence of the said person.
- If the person fails to undergo

authentication of Aadhaar number or does not opt for authentication of Aadhaar number, a notice in Form GST REG-03 may be issued not later than 30 days from the date of submission of the application to carry out physical verification of the places of business.

- The application for grant of registration shall be deemed to have been approved if no action is taken:
  1. within a period of 7 working days from the date of submission of the application; or
  2. within a period of 30 days from the date of submission of the application, in cases where Aadhaar authentication fails; or
  3. within a period of seven working days from the date of the receipt of the required clarification, information or documents.

#### Cancellation of GST registration in certain cases

The GST registration can be cancelled, if:

- the registered person avails input tax credit (ITC) in violation of the relevant provisions under the GST law; or
- furnishes the details of outward

supplies in Form GSTR-1 for one or more tax periods, which is in excess of the outward supplies declared by him in Form GSTR-3B for the said tax periods; or

- violates the restrictions on use of amount in electronic credit ledger (as per provisions of new Rule 86B).

#### Suspension of GST registration

- Registration shall be suspended where a comparison of the returns furnished by a registered person, with the details of outward and inward supplies furnished, show significant differences or anomalies indicating contravention of the provisions of the GST law
- The said person shall be intimated in Form GST REG-31, electronically on the common portal or by sending an email communication, highlighting the said differences and anomalies. Further, the said person shall be required to explain within a period of 30 days, as to why his registration should not be cancelled.
- A registered person, whose registration has been suspended shall not be granted any refund during the period of suspension of his registration.

## Due date for furnishing annual return for FY 2019-20 extended

Pursuant to the recommendations of the GST Council, the Central Board of Indirect Taxes and Customs (CBIC) has extended the due date for furnishing the annual returns for FY 2019-20 from 31 December 2020 to **28 February 2021**.

## Remission of Duties and Taxes on Exported Products scheme implemented from 1 January 2021

With an aim to boost exports, Government of India has taken a major step to extend the benefit of the Remission of duties and Taxes on Exported Products (RoDTEP) scheme to **all export goods with effect from 1 January 2021**.

The scheme would provide refund of central, state and local duties/taxes to exporters that were so far not being rebated/refunded and were therefore, placing exports at a disadvantage. The refund would be credited in the exporter's ledger account with customs and can be used to pay basic customs duty on imported goods. Such credits can also

be transferred to other importers.

The RoDTEP rates would be notified shortly and shall be applicable with effect from 1 January 2021 to all eligible exports of goods (subject to specified conditions and exclusions).

The government has also issued an advisory providing step by step guide for users to create a RoDTEP credit ledger account, generate scrips and transfer the scrips to any other user.

#### Key points for consideration

- To avail the benefits under the Scheme, user has to login at the ICEGATE

website and create RoDTEP credit ledger account. This can be done by IECs holder who have registered on ICEGATE with a Digital Signature Certificate (DSC).

- Exporters shall be required to furnish a declaration in the shipping bill to avail the benefit of RoDTEP.
- Further, effective 1 January 2021, it shall be mandatory for the exporters to indicate in their shipping bill, whether or not they intend to claim RoDTEP on the export items.

## CBIC issues instructions/guidelines on key areas regarding faceless assessment

With a view to enhance the efficiency of the process involved in faceless assessment, the CBIC has issued the following instructions/guidelines in respect of key areas that require immediate attention<sup>1</sup>:

- **Re-assessment in accordance with the principles of natural justice:**

The board observed many a times the importers are not given an opportunity of being heard before re-assessment of the goods. In this regard, the CBIC clarified that such practice is not in conformity with the provisions of law and needs to be accordingly discontinued. It is emphasised that the process of re-assessment must be in accordance with the customs law<sup>2</sup>.

- **Complete description of goods:**

In many instances, the importers do not give complete description of the imported goods, while filing the Bill of Entry. This constrains the assessing officer and delays the process of verification of the assessment by the

faceless assessment group (FAG). Therefore, it is important that the importers/customs brokers are advised to give complete description of the imported goods while filing the Bill of Entry, in the first instance.

- **Document codes for regular documents to be uploaded in e-Sanchit:**

The board further observed that the importers/customs brokers are not uploading all the required supporting documents to justify their claim of a duty exemption notification or fulfilment of a CCR requirement etc., along with the Bills of Entry. In this regard, the board decided that **effective from 15 January 2021**, these supporting documents shall be mandatorily uploaded on e-Sanchit by the importers/customs brokers. The illustrative list of the required documents along with their document code has been provided in the annexure to the circular.

- **Enhancement in the monetary limit for assessment by the appraising officers:**

The board has decided to enhance the monetary limit of assessment of Bills of Entry by the appraising officers from present **INR 1 lakh to INR 5 lakh effective from 21 December 2020**. To assess the impact of this change, the board also decided that 10% of the Bills of Entry now entrusted to the appraising officers would be subjected to transactional PCA.

- **Assessments in respect of liquid bulk cargo:**

The respective co-convenors of the NACs assessing such consignments are advised to ensure that all such consignments are subjected to the second check system of assessment, with duty being assessed on a provisional basis. Moreover, the concerned officers in the FAGs and the respective NAC commissioners may be suitably sensitised to follow board's circulars<sup>3</sup> while carrying out such assessments.

## Special measures announced to facilitate MSMEs

In line with Prime Minister's Aatmanirbhar Abhiyan to support medium, small and micro enterprises (MSMEs) against the challenges of the COVID-19 pandemic, the CBIC has decided to relax the current accreditation process and reduce the compliance burden for their Authorised Economic Operator (AEO) Programme accreditation.

The procedural modifications/relaxations for AEO accreditation of MSMEs are as under<sup>4</sup>:

- The eligibility requirement of handling a minimum of 25 documents during the last financial year has been relaxed to 10 documents, subject to handling at least 5 documents in each half-year period of the preceding financial year;
- The requirement for the applicant to have business activities for at least

three financial years preceding the date of application has been relaxed to two financial years;

- The qualifying period for legal and financial compliance has been reduced from the last three financial years to the last two financial years;
- For AEO T1 and T2 accreditation, the present annexures have been supplanted with two annexures viz. MEME Annexure 1 and 2;
- For AEO T2 certification, the present annexures for physical verification have been rationalised to a single annexure viz., MSME Annexure 3. The rationalisation has been carried out to ensure the security requirements for an MSME are objective and cover the minimum verifiable security criteria;
- The time limit for processing of MSME AEO T1 and AEO T2 application

has been reduced to 15 working days (presently one month) and three months (presently six months) respectively, after the submission of complete documents for priority processing by customs zones;

- The benefit of relaxation in furnishing bank guarantee for AEOs has been further relaxed to 25% from 50% and 10% from 25% of that required to be furnished by an importer/exporter, who is not an AEO certificate holder, for MSME AEO T1 and MSME AEO T2 entities respectively.

The aforesaid relaxations shall apply only to an applicant who has a valid MSME certificate from the line-ministry. Further, the approved MSME must ensure their continuous MSME status during the validity of its AEO certification, if granted.

1. Circular No.55/2020-Customs dated 17 December 2020

2. Sub Sections (4) and (5) of Section 17 of Customs Act, 1962

3. Circular No. 34/2016-Cus, dated 26.07.2016 and No.38/2016- Cus, dated 22.08.2016

4. Circular No. 54/2020-Customs dated 15 December 2020



## CBIC issues instructions for time bound processing of duty drawback claims

To reduce pendency and improve rate of disposal of duty drawback claims, the CBIC has instructed all remaining drawback claims to be positively disposed of by 31 March 2021 and while doing so, the target of disposing drawback within 7 working days should

be achieved.

The CBIC has further informed that in the 5th meeting of the National Committee on Trade Facilitation (NCTF), it has been instructed that at least 90% of drawback should be credited within three days. Further, the refund may be

deposited into the customer account in T+2 days. The above-cited time-limit given by NCTF for crediting duty drawback within a period of three days should be strictly complied with<sup>5</sup>.

## GSTN issues advisory on auto population of details in Form GSTR-3B from GSTR-1 and GSTR-2B

The Goods and Services Tax Network (GSTN) has enabled a facility of auto population of details in Form GSTR-3B for taxpayers on monthly basis from tax period November 2020 onwards. This facility has been made available for monthly filers as of now. It would be enabled for quarterly filers also in due course. Further, the table-wise computation of the values, auto-populated in Form GSTR-3B has been made available in PDF format. The same can be downloaded by clicking on the 'System Generated GSTR-3B' tab.

### Key features of auto population system are as under:

- Liabilities (pertaining to inward supplies liable to reverse charge), are computed by the system on the basis of details of outward supplies as filed in Form GSTR-1 for the tax period.
- Input Tax Credit (ITC) details and details of inward supplies liable to reverse charge are computed as per system generated Form GSTR-2B for the tax period.
- These systems computed auto populated values are only for assisting the taxpayers in filing their Form GSTR 3B. Taxpayers must ensure correctness of the values being reported and filed in Form GSTR-3B.
- System will prompt taxpayers with an alert in cases where the variance of the edited values from the auto-populated values is higher than a particular threshold. Taxpayers can change/edit auto populated values in Form GSTR-3B.
- In case taxpayer has not filed Form GSTR-1 for the period, system generated summary will display the respective values as 'not filed'. Similarly, if Form GSTR-2B is not generated for the period, system generated summary will display the respective values as 'not generated'.
- If the taxpayer has entered and saved any values in Form GSTR-3B before auto-population by the system, the saved values will not be changed / over-written by the system.

## GSTN enables facility to file annual return in Form GSTR-9 for FY 2019-20

The GSTN has now provided a facility to file annual return in Form GSTR-9 for FY 2019-20. The form has been enabled for those taxpayers whose table 8A<sup>6</sup> computation has been completed. Further, the GSTN has informed that the computation of the table 8A of the said return for auto population from returns

is under progress and is likely to be completed soon.

In this regard, the GSTN has advised the taxpayers to ensure that all applicable returns of the said year have been filed before attempting to file the said return.



## CBIC issues standard operating procedure for verification of taxpayers granted deemed registration

The CBIC observed that from 21 August 2020 to 16 November 2020, deemed registration has been granted in many cases where Aadhaar authentication has not been opted for or has failed. In this regard, the CBIC has issued a

standard operating procedure (SOP) to be followed by the proper officer for carrying out the physical verification of the persons who have been granted a deemed GST registration as under<sup>7</sup>:

- The proper officer shall conduct physical verification of the principal place of business and wherever possible, additional place of business, indicated in GST registration Form REG-01 of the concerned registrant.

5. CBIC Drawback Division instruction no. 21/2020-Customs dated 16 December 2020

6. Table 8A contains details of the total input tax credit available during the financial year from inward supplies

7. Instruction No. 4/3/2020-GST dated 27 November 2020



- During the physical verification, the proper officer shall also verify the following details:

|  |  |
|--|--|
| In case the applicant intends to carry out manufacturing activity, whether capital goods, if required for the said manufacturing activity, have been installed | Electricity connection, bills paid in the relevant period  |
| Size of the premises – whether it is commensurate with the activity to be carried out by the applicant   | Whether premises is self-owned or is rented and documents relating ownership/ registered lease of the said property. In case of doubt, enquiry may also be made from the landlord/owner of the property in case of rented/ leased premises |
| No of employees already employed and record of their employment  | Aadhaar and PAN of the applicant and its proprietor, partners, Karta, Directors as required and the authorised signatories   |
| Bank's letter for updated KYC  |  |

- In addition to the physical verification, the proper officer, in the interest of revenue, would carry out the preliminary financial verification of the registrants by seeking the following documents and carrying out its scrutiny:

|  |   |
|--|---|
| ITRs of the company/LLP from the date of incorporation or for last three financial years, whichever is less  | The status of activity from the date of registration of all the bank account(s) linked to registration; the same may be taken through a letter/undertaking from the applicant   |
| Phone number declared/linked to each of the bank accounts may also be obtained   | Quantum of capital employed/proposed to be employed. Whether out of own funds or loan funds   |
| In case of own funds, also check the audited balance sheet for previous financial year, where available, in addition to the income tax returns mentioned in (a) above. | In case of loan funds, check the proposal submitted to the bank/financial institution (FI) for approval of the loan and the maximum permissible bank finance as per such proposal, where the amount is proposed to be borrowed from a Bank and/ FI. |

## Date of completion or compliance of action by authorities under the anti-profiteering provisions further extended

The CBIC had earlier extended the time limit for completion of compliance of any action by authorities under the anti-profiteering provisions under the

GST law falling between 20 March 2020 and 29 November 2020 until 30 November 2020.  
In this regard, the CBIC has now further

extended the said time limit falling between 20 March 2020 and 30 March 2021 until **31 March 2021**<sup>8</sup>.

## CBIC waives recording of UINs on invoices for April 2020 to March 2021 for UIN entities

The CBIC had earlier waived the recording of UIN on the invoices issued by retailers/other suppliers were given to UIN entities<sup>9</sup> till March 2020<sup>10</sup>. However, the CBIC has noticed that the issue of non-recording of UINs has continued even after 31 March 2020. The CBIC has now provided waiver from recording of UIN on the invoices issued by the retailers/suppliers, pertaining to the refund claims from April 2020

to March 2021. Such waiver shall be subject to the condition that the copies of such invoices are attested by the authorised representative of the UIN entity and the same is submitted to the jurisdictional officer. However, the CBIC has noticed that the issue of non-recording of UINs has continued even after 31 March 2020. The CBIC has now provided waiver from recording of UIN on the invoices issued

by the retailers/suppliers, pertaining to the refund claims from April 2020 to March 2021. Such waiver shall be subject to the condition that the copies of such invoices are attested by the authorised representative of the UIN entity and the same is submitted to the jurisdictional officer.

8. Notification No. 91/2020 - Central Tax dated 14 December 2020

9. Embassy / Mission / Consulate / United Nations Organizations / Specified International Organizations

10. Vide Circular No.63/37/2018-GST dated 14th September, 2018 & corrigendum to the said circular dated 6th September 2019,



## 2a. Key judicial pronouncements



### Director not vicariously or jointly liable for service tax dues of company – Delhi HC

#### Summary

In response to a writ petition filed, the Delhi HC has held that in the absence of a specific provision and given a company's separate legal personality, the petitioner even if with knowledge of affairs of the company, is not vicariously or jointly liable for the service tax dues of the company. Further, it held that the onus of proof shall remain on the department/respondents to show that a director is personally liable for the dues of the company at the stage of issuing show cause notice (SCN).

#### Facts of the case

- The petitioner<sup>11</sup> is a former director of the assessee-company and is

aggrieved by the attachment of his personal bank account by the service tax authorities towards recovery of dues from the assessee-company<sup>12</sup>.

- Subsequent to petitioner's resignation as a director, SCNs were issued to the assessee-company through the petitioner in his capacity as its director. Further, order was issued for attachment of the director's personal bank account for recovery of service tax dues of the assessee-company.
- Aggrieved, the petitioner filed the present writ before the Delhi HC.

#### Delhi HC's observations and ruling<sup>13</sup>

- **Company is a distinct juristic entity:** The HC stated it is a well settled principle that a company is a

distinct juristic entity<sup>14</sup>. The distinction between a company and its director cannot be jettisoned unless there is a specific statutory provision to the contrary or till a case for lifting of the corporate veil is made out.

- **No provision under service tax law makes an ex-director liable for company's dues:** The HC highlighted that though the GST law<sup>15</sup> saves any duty or tax that is due or may become due under the repealed Act, including service tax law, there is no provision under the service tax law making the directors personally liable for service tax liabilities of a company.
- **No liability can be fastened for prior period:** The relevant provision<sup>16</sup>

11. Sanjiv Kumar Mittal

12. under the Finance Act, 1994

13. W.P. (C) 5590/2020 & CM APPL.20200/2020 dated 06 November 2020

14. SC decision in the case of Directors. In Bacha F. Guzdar, Bombay vs. Commissioner of

Income Tax, Bombay (AIR 1955 SC 74)

15. Section 174(2) of CGST Act, 2017

16. Section 89 of CGST Act, 2017

under the GST law is confined only to liabilities assessed under the GST law and cannot be used to fasten personal liability on directors for company's dues determined under the service tax law. No new liability can be fastened under the GST law for a period prior to its enactment as it does not have retrospective operation.

- **Service tax law does not entitle revenue to attach personal bank accounts of directors:** The service tax law<sup>17</sup> provides for a Garnishee Order only, i.e., provides for attachment of funds of an assessee lying with third parties. The law does not entitle the revenue to attach personal bank accounts of a director such as the petitioner, for recovery of dues of the assessee company, on the assumption that money is due or may become due from the petitioner to the assessee company.
- **Director is not vicariously or jointly liable for dues of the company:** In the absence of a specific provision

and given a company's separate legal personality, the petitioner/ex-director, even if having knowledge of affairs of the company, is not vicariously or jointly liable for the service tax dues of the company. The onus of proof shall remain on the department/respondents to show that a director is personally liable for the dues of the company at the stage of issuing SCN<sup>18</sup>.

- **Recovery cannot be selectively initiated against one of the directors:** Any SCNs issued to the assessee-company during the adjudication proceedings does not amount to notice to the petitioner in his personal capacity. Admittedly no notice was ever issued to the petitioner personally prior to the passing of the impugned demand notices. Therefore, the HC held that the impugned order is in violation of principles of natural justice. Further, it stated recovery cannot be selectively initiated against one of the directors only.



#### Our comments

The GST law provides that in cases where tax dues cannot be recovered from a private company, the director shall be jointly and severally liable for tax dues of the company unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance, or breach of duty on his part in relation to affairs of the company.

In the present case, the Delhi HC has held that in the absence of any specific provision under the erstwhile service tax law, the ex-director is not vicariously/jointly liable for the service tax dues of the company. The HC observed that the GST provisions are confined to liabilities assessed under GST law only and cannot be used to impose personal liability on directors for company's dues determined under the service tax law.

## SCN served by email instead of uploading on website is not a valid procedure - Madhya Pradesh HC

### Summary

The Madhya Pradesh HC has recently allowed the writ petition filed by the petitioner<sup>19</sup> and held that the statutory procedure prescribed for communicating the SCN was not followed by the revenue. Such SCN were communicated to petitioner by email and were not uploaded on website of the revenue. Consequently, the impugned demand in the order was struck down as the notice were not communicated in appropriate mode.

### Facts of the case

- The petitioner was communicated the SCN through email.
- The petitioner filed a writ before the Madhya Pradesh HC challenging the principle of natural justice under the GST law.<sup>20</sup>
- The petitioner contended that the provision statutorily obliges the revenue department to communicate SCNs/orders<sup>21</sup> by uploading the same on the website of revenue so that the aggrieved person can have access to the same and be aware of reasons behind the demand to enable the

aggrieved person to avail alternative remedy before the higher forum.

- The petitioner filed writ petition on the grounds that the order was never communicated and hence requested for quashing of the impugned order.

### HC observations and decision<sup>22</sup>

- **Statutory procedure:** The statutory procedure prescribed for communicating SCN has not been followed by the revenue.
- **No material produced by revenue:** The revenue has not provided any material to show that SCNs were uploaded on the revenue's website. The revenue has stated that SCNs were communicated through email to the petitioner and were not uploaded on website of the revenue.
- **Trite principle of law:** It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes more stringent when statutorily prescribed as is the case herein.

- **Petitions allowed and direction to follow the procedure:** The HC allowed the writ petition and stated that the impugned order deserves to be struck down. Further, directed the revenue that with liberty, it can follow the procedure prescribed under law<sup>2</sup> by communicating the SCNs to the petitioner by appropriate mode.



#### Our comments

In the present case, the HC allowed the petition and quashed the demand on order basis that the notice was served vide email and not uploaded on website.

The decision by the HC has further backed the principle of natural justice and specifically clarified the meaning of serving notices electronically. It is interesting to note that such decisions have been given during the pandemic when many SCNs have been served vide email. The need to upload the notice on website provides suitable clarification on mode of communication of SCN.

17. Section 87(b)(i) of the Finance Act, 1994  
18. U/s 73 of the Finance Act, 1994

19. Akash Garg

20. Rule 142(1) of Central Goods and Services Tax Rules, 2017  
21. Show-cause notice/orders No. 11 and 11a dated 10 June 2020

22. W.P. No.16117/2020 dated 19 November 2020

## 2b. Decoding advance ruling



### Supply of services by cooperative housing society to its members constitutes supply – Maharashtra AAAR

#### Summary

The Maharashtra Appellate Authority for Advance Ruling (AAAR) has upheld the Maharashtra Authority for Advance Ruling (AAR) order stating that various activities undertaken by the appellant such as management, maintenance, administration of the society property, amounts to supply under GST. Further, it held that the provision of any facilities or benefits by a club, association or society to its members against a subscription or any other consideration would be construed as business liable to GST.

#### Facts of the case

- The appellant<sup>23</sup> is a registered co-operative housing society<sup>24</sup>. It collects

various charges from the members of the society on monthly or quarterly basis for property taxes, water charges, common electricity, repair and maintenance, car parking, sinking fund, non-occupancy charges, interest on default, insurance charges, lease charges, lease rent, etc.

- Post introduction of GST, the appellant obtained GST registration and is discharging GST liability on services provided to members.
- The appellant sought an advance ruling before the Maharashtra AAR to understand whether the activities carried out by the appellant would amount to supply liable to GST.

- The AAR held that the activities carried out by the appellant would amount to supply<sup>25</sup> and accordingly would attract GST<sup>26</sup>.
- Aggrieved, the appellant filed the present appeal.

#### Maharashtra AAAR's observations and ruling<sup>27</sup>

- **Activities done by the appellant fall under definition of business:** The Maharashtra AAAR observed the activities performed by the appellant are entirely oriented towards providing facilities, benefits or convenience to its members whether it is obtaining the conveyance of the right, title or interest from the promoter or management,

23. Apsara Co-operative Housing Society Ltd.

24. Under the Maharashtra State Co-operative Society Act, 1960

25. Section 7(1)(a) of the CGST Act, 2017

26. Maharashtra AAR No. GST-ARA-21/2019-20/B-34 dated 17 March 2020

27. Maharashtra AAAR No. MAH/AAAR/RS-SK/28/2020-21 dated 05 November 2020

maintenance or administration of the property of the society, which are shared jointly by all the members of the society, or undertaking various social, cultural and recreational activities for the members. Therefore, all the activities would rightly get covered under the definition of the term business<sup>28</sup>.

- **Activities done by appellant fall under scope of services:** Under the GST law, the term services have been rendered very wide connotation, which is evident from the presence of the expression 'anything other than goods, money and securities'. In view of this, it is clear the activities undertaken by the appellant would rightly get covered under the scope of term service<sup>29</sup>.
- **Provision of any facilities or benefits by a club, association or society to its members is construed as business:** On a plain reading of the definition of business, it is understood beyond doubt that the legislature wanted to bring the activities of clubs, association, society or any such body under the ambit of

GST law. Therefore, the specific clause has been categorically carved out under the GST law<sup>30</sup>.

- **Society charges can be construed as consideration:** In the present case, the appellant is undertaking various activities as against the contribution called society charges that can be reasonably construed as consideration<sup>31</sup>.
- **Activities of the appellant constitute supply:** Since the appellant is providing services to its members against the consideration named as society charges in the course or furtherance of business, therefore, the activities would be construed as supply<sup>32</sup>. The same would be liable to GST subject to the condition that the monthly subscription/contribution charged by the society from its members is more than INR 7500/- per month per member and the annual aggregate turnover of the society by way of supplying of services and goods is also INR 20 lakh or more<sup>33</sup>.



#### Our comments

Referring to the SC's judgement in the case of M/s Calcutta Club, the Maharashtra AAAR stated that there is difference between the provisions governing taxability of services by clubs or associations under the erstwhile indirect tax laws and GST laws. The aforesaid judgement was given during the erstwhile sales tax law, which is different and distinct from the GST laws where the term supply has been rendered a very wide scope. Therefore, the decision cannot be made applicable in the present case.

Further, the AAAR has highlighted that in the case of M/s Lions Club and Rotary Club, the activities done by the club were purely administrative in nature and no benefits and facility was being provided by the club to its members. In the present case, the objective of formation of the society is mutual benefits, interest, and convenience of the member. Therefore, the activities of the society have been held to be supply.

Even though advance ruling is applicable only to the applicant, the same acts as a guiding tool for other taxpayers with similar issues.



28. Section 2(17)(e) of the CGST Act, 2017

29. Section 2(102) of the CGST Act, 2017

30. Section 2(17)(e) of the CGST Act, 2017

31. Section 2(31) of the CGST Act, 2017

32. Section 7(1)(a) of the CGST Act, 2017

33. Clause (c) of Sr. No. 77 of Notification No. 12/2017 CT (Rate) dated 28 June 2017 as amended by Notification No. 2/2018 CT (Rate) dated 25 January 2018



## 2c. Key national anti-profiteering authority orders



### Benefit of tax reduction cannot be passed in non-monetary terms by supplying additional quantities - NAA

#### Summary

The National Anti-Profiteering Authority (NAA) has upheld profiteering in the case of a FMCG giant and held that benefit of tax reduction must be passed on by way of commensurate reduction in monetary terms and cannot be passed in non-monetary terms by supplying additional quantities of the products or through sales promotion schemes.

#### Facts of the case

- The applicant had alleged that the respondents<sup>34</sup> had not passed on the benefit of reduction in rate of GST from 28% to 18% effective from 15 November 2017 to the recipients by way of commensurate reduction in the prices of the products being sold by them.

- The Directorate General of Anti-Profiteering (DGAP) had also stated that the base prices of 1,383 goods had been increased by the respondents after the rate of tax was reduced on them and hence, it had contravened the anti-profiteering provisions<sup>35</sup>.
- The DGAP had further reported that the respondents had profiteered to the extent of INR 244 crore by denying benefit of tax reduction to their customers.

#### NAA's observations and ruling

- **Benefit to be passed in respect of each supply:** The NAA stated that the anti-profiteering provisions require each customer must pass on the benefit of tax reduction on each

purchase made by him. Further, the word 'any supply' mentioned therein also requires that the supplier must pass on the benefit of tax reduction in respect of each supply made by him.

- **Methodology adopted by DGAP is appropriate, correct, logical and reasonable:** The NAA further stated the methodology adopted by DGAP appears to be appropriate, correct, logical, reasonable, justifiable and in consonance with the anti-profiteering provisions. This mathematical methodology has also been approved by the NAA in respect of all such cases of reduction in tax rate. Therefore, the same can be safely relied upon.
- **Respondent cannot enrich at the expense of customers:** The NAA

34. M/s Procter & Gamble Home Products (PGHP) Private Limited, M/s Procter & Gamble Hygiene and Healthcare (PGHH) Private Limited and M/s Gillette India Limited (GIL)

35. Section 171(1) of the CGST Act, 2017

stated that the respondent has denied benefit of tax reduction to the ordinary customers and forced them to pay additional price and GST between 15 November 2017 and 30 September 2018, when there was no COVID-19 impact. Therefore, the respondents cannot enrich themselves at the expense of the unorganised, voiceless and vulnerable customers and set off their losses against the profiteered amount illegally obtained by them.

- **Benefit must be passed in monetary terms only:** The NAA stated it is evident that the benefit of tax must be passed on by way of commensurate reduction in price in monetary terms and cannot be passed in non-monetary terms by supplying additional quantities of the products.
- **Respondent failed to produce evidence:** The NAA observed that the respondent has also not shown any agreement to prove that they have settled the price in non-monetary

terms. It has also failed to produce any evidence to show that they have reduced their prices post reduction or through discounts and by supplying additional quantities. Hence, all claims made by the respondent in this regard are incorrect and unacceptable.

- **Respondents, engaged in supply at SKU level, must pass benefit at SKU level:** Since the respondents are making supplies at the SKU level, they must pass benefit on each such supply at the SKU level. It is not making supplies and charging base prices and tax at the HSN code or entity level hence they cannot pass the benefit at such code or entity level.
- **Profiteering upheld:** The NAA stated that the respondents have denied the benefit of rate reduction to their buyers of their SKUs and thus resorted to profiteering. Hence, it has committed an offence for violation of anti-profiteering provisions.



#### Our comments

Various writ petitions have already been filed before the HCs against the orders pronounced by the NAA. The Delhi HC recently heard a batch of writ petitions challenging the constitutional validity of the anti-profiteering provisions and directed clubbing of all the questions on constitutional validity in the writ petitions. It also directed continuation of interim orders. The HC has postponed the hearing to January after it found that there was no consensus between the tax department and the companies that had approached the court.



## 03. Experts' column



### Intermediary services: A pandora's box

**Biren Vyas**

Partner

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Manager

It has been more than three years since the inception of Goods and Services Tax (GST) but the convolutions related to

the concept of intermediary services still prevail. The intricacies of this predate the GST era and originate from the service tax regime.

#### **Interpretational challenges:**

As per the business dictionary, an intermediary is a firm or a person (such as a broker or consultant) who acts as a mediator or a link between parties to a business deal, investment decision, negotiation, etc.

Under GST law, 'Intermediary' means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

The above definition can be analysed into three parts:

| Definition  | Analysis   |
|---|--|
| a broker, an agent or any other person, by whatever name called   | <ul style="list-style-type: none"> <li>In relation to the expression 'any other person', the rule of ejusdem generis should be applicable, which states that where general words are used in a statute after specific words, the general word would take the colour from the specific word preceding them.</li> <li>Although the word broker is not defined in the Act, the word agent has been defined as a person, including a factor, broker, commission agent... who carries on the business of supply or receipt of goods or services or both on behalf of another. Thus, prima facie, an agent does include a broker as per the definition.</li> <li>Karnataka AAR held the fundamental difference is that a broker is middleman whose job is only to facilitate whereas an agent acts on behalf of the principal. Further, the phrase cannot be interpreted by applying the principle of ejusdem generis. Hence, the phrase 'any other person, by whatever name called' will also include persons who are not necessarily like a 'broker' or an 'agent'.</li> <li>The authority has scrutinised the literal meaning of the words, thereby highlighting the difference between them basis functional responsibilities, ignoring the similarity based on the function they perform. At the crux, both a broker and an agent facilitate the supply between two or more persons.</li> </ul>   |
| who arranges or facilitates the supply of goods or services or both, or securities  | <ul style="list-style-type: none"> <li>The prime requirement for a supply to be classified as an intermediary is that it should assist or enable another supply (principle transaction) of goods or services or even securities.</li> <li>The term arranges or facilitates has not been defined in the Act. The Karnataka AAR observed that the terms 'arranging' or 'facilitation' would cover a wide range of activities ranging from marketing or sales promotion of the goods or services of the client, locating prospective buyers for the client's products or locating sources of supply of the goods or services required by the client, price negotiation with the prospective buyer/prospective supplier, procuring sales orders in respect of the goods or services of the client and like activities. [M/s. Infinera India Pvt. Ltd.]</li> <li>The definition of intermediary has been tailored to cover a variety of transactions by specifically including supply of securities given that securities are excluded from the definition of goods. It is noteworthy that such a specific inclusion did not exist in the definition of intermediary that was prevailing during the service tax regime.</li> <li>The key point here is whether the principle transaction is a supply or not. For example, where the principle transaction is supply of warehoused goods to any person before clearance for home consumption (i.e. covered under Schedule III), any service facilitating this transaction may not be classified as an intermediary service and will have to be independently evaluated for taxability under GST.</li> <li>The terms of consideration may also be evaluated to gauge whether a person is facilitating supply of goods or services. In a particular case, the Mumbai CESTAT observed that, inter alia, the consideration received is based on cost plus mark up and nowhere connected to the main supply of goods. Hence, the company could not be termed as an intermediary. [Lubrizol Advanced Materials India Pvt. Ltd. vs. CCE Belapur]</li> </ul> |
| between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account | <ul style="list-style-type: none"> <li>An intermediary is a person who facilitates supply between two or more persons and excludes such a person who makes such supply on his own account.</li> <li>This part of the definition supports the explanation in the first part of the definition basis which it may be inferred that 'any other person' refers to person facilitating supply between two or more persons. This is the essence of the services provided by a broker or an agent.</li> <li>In the landmark case of GoDaddy India Web Services Private Limited, it was held that the appellant was providing support services on principal-to-principal basis to GoDaddy US and hence is not an intermediary service.</li> <li>The Karnataka AAR held that where the applicant provided support services to a foreign entity and had no interaction with third persons the applicant is not involved as an intermediary. [Fulcrum Info Services LLP.]</li> <li>The Mumbai Tribunal held that since the appellant had no role in fixation of price nor negotiate the terms between the overseas company and its clients, they could not be regarded as intermediary. [Chevron Phillips Chemicals India Pvt. Ltd. vs. Commissioner of CGST and Central Excise]</li> </ul>   |

Thus, the scope of the definition is wide enough to envelop a gamut of services. The classification of a service provider as an intermediary has been a contentious issue even before the GST regime.



## Significance of location of recipient of service

The provision for the place of supply in relation to supply by intermediaries differs depending on whether the recipient of the service is within India or outside India.

Where the recipient is in India, the place of supply shall be similar to a vast majority of services, be determined basis the location of the recipient.

In contrast to the above, where the recipient is outside India, the place of supply shall be location of supplier. Owing to this provision, intermediary transactions where the locations of the recipient is outside India are classified as an intra-state supply.

Such restrictive provisions originate back to the service tax regime whereby as per Rule 9 of the Place of Provision of Service Rules, 2012, the place of provision of service for intermediary service shall be deemed to be the location of the service provider.

In the GST regime, the list of advance rulings in relation to conundrums of intermediaries generally consist of a recipient of service located outside India. In a recent judgment, the Gujarat High Court held that, the basic logic or inception of section 13(8) is in order to levy CGST and SGST and

such intermediary services would be out of the purview of levy of IGST. Similar situation was also in existence under the service tax regime. Therefore, this being a consistent stand, the service provided by the intermediary located in India to a person outside India cannot be considered as an export of service. [Material Recycling Association of India vs. Union of India].

## Exemption to certain intermediaries

Relief has been provided to certain intermediary services who facilitate supply of goods between persons located outside India. With effect from 1 October 2019, the CBIC exempted supply of intermediary services where the buyer and seller of goods is located outside India. Such an exemption is only in relation to goods and is subject to fulfillment of certain documentation

requirements. The exemption provided will in turn entail proportionate ITC reversal in terms of Section 17 of the CGST Act, 2017.

## IT enabled services

A specific nature of service, which has been the focus of intermediary related discussions is – IT-enabled services (ITeS). These services broadly include back-office operations, call center services, database management services, etc. In a bid to resolve the difficulties faced in relation to taxation of such transactions, the CBIC had issued a circular<sup>36</sup>. The CBIC enumerated three scenarios explaining the classification of a transaction basis whether or not the services are provided by the service provider are on his own account or not. They are summarised as follows:

| Scenario  | Classification as per the Circular   |
|---|--|
| Where back end services are provided by the supplier on his own account         | <ul style="list-style-type: none"><li>The supplier will not be categorised as an intermediary in such a scenario.</li><li>Even where a supplier supplies ITeS services to customers of his clients on clients' behalf, but supplies these services on his own account, the supplier will not be categorised as intermediary.</li></ul> |
| Where back end services are provided by the supplier but not on his own account | <ul style="list-style-type: none"><li>The supplier of such services will fall under the ambit of an intermediary.</li></ul>  |
| Where a mix of services as explained in the above scenarios is supplied         | <ul style="list-style-type: none"><li>Whether or not the supplier of such services would be categorised as an intermediary will have to be determined basis the facts and circumstances of each case depending on the principal service.</li></ul>   |

The circular, undoubtedly, led to numerous apprehensions due to subjective nature of the phrase 'on his own account'. Also, the scenarios used to dispel ambiguity led to further dubiety due to their overlapping nature. This circular was withdrawn ab-initio on 4 December 2019. Further clarification in relation to this issue is still awaited from the CBIC.

## Conclusion

The classification of a given transaction as an intermediary will require careful evaluation of the circumstances and shall depend on the facts and intricacies of each case. The issues in relation to intermediary services may

prove to be a labyrinth due to application of standard provisions to distinctive transactions which in turn lead to diverse interpretations. Clarifications or circulars are welcome from the Department, which are intended to address such issues.

-\*Melroy Sutari also contributed to this article

36. Circular no 107/26/2019-GST dated 18 July 2019



## 04. Union Budget 2021-22 – industry expectations and wish list



The Ministry of Finance has already commenced the exercise to formulate the Union Budget 2021-22 by seeking suggestions and proposals from the trade and businesses. The upcoming budget holds more importance than its predecessors as it is expected to get the economy back on track. The COVID-19 crisis has changed the modus operandi of the legislative system in many ways and has given rise to digital economy.

The government has announced several measures on digital schemes and artificial intelligence to avoid face-to-face transactions during this pandemic.

The Budget will play an important role, especially when the industries are slowly gearing up from the pandemic. The expectation from Budget would broadly be around easing of compliances, reducing litigation and lowering tax burden either by reducing tax rates or

providing exemption/incentive to the most affected industries.

In this segment, we have encapsulated various burning issues that persist even after the completion of three years of GST and have suggested certain measures to curb the litigation and reduce the tax burden/working capital blockages of the taxpayers.

## Measures to reduce litigation and tax burden

| Topic  | Issue   | Recommendation   |
|--|---|--|
| Intermediary services  | It has always been a matter of extensive litigation to determine the scope of 'intermediary service'  | <p>The government should make necessary amendment in the law to determine as to what constitutes 'facilitation' for the purpose of intermediary.</p> <p>For instance, in a scenario where the goods are moving from a country outside India to another country outside India without entering Indian territory and the facilitation has been provided from India, then the same should not be treated as 'intermediary service' and GST should not be levied.</p> <p>Recently, the government had issued a clarification on the subject matter and the same was withdrawn subsequently. The revised clarification is still awaited that needs to be issued to avoid future litigations</p> |
| Transitional credits   | Due to technical glitches on the GST portal, the taxpayers were unable to claim transitional credits in Form TRAN-1. In addition, there is lack of clarity on the timelines provided under the GST law to claim these credits   | The matter is under litigation before various HCs and currently, the same is being challenged before the apex court. It is imperative to derive a consensus at the earliest, to avoid unwarranted litigation.  |
| Anti-profiteering provisions   | The NAA was formulated under the GST regime to ensure that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of the ITC has been passed on to the recipient by way of a commensurate reduction in prices. However, the mechanism/ methodology to determine the quantum of benefits to be passed on has not been prescribed under the law. As a result, there has been litigation and imposition of penalty by NAA | Detailed guidelines/methodology must be prescribed for determining the profiteered amount to be passed on to the consumer  |
| GST rates of software  | Transfer of intellectual property rights (other than software) has been classified under the tax category of 12% whereas software is taxed at the rate of 18%   | The software should also be included in the 12% tax slab instead of present 18% tax slab   |
| Use of logo / group name   | GST department, in its various investigations, has raised that use of 'group name' or 'logo' (owned by foreign holding/subsidiary) by Indian company would be deemed to be 'supply'   | Issuance of clarification from the tax authorities on this aspect would remove ambiguity   |
| Year-end provisional accounting entry - related party transactions                               | In case of related party transactions, year-end provisional entries are made for expenses in the books of accounts. However, those are only provisional entries and it should not trigger any GST liability   | Suitable amendment in the law should be made or due clarification should be issued that there should not be any GST liability for such provisional entries made in the books of accounts   |
| Land value deduction   | The GST provisions prescribes for abatement/ deduction of value of land to the extent of one third of the total amount charged for supply for arriving at the final taxable value for levy of GST   | The government may consider increasing the abatement to actual value of the land or at least one-half of the value of supply   |
| Levy of interest on ITC availed in case of nonpayment of consideration to vendor within 180 days | Proviso to Section 16(2) of CGST Act requires levy of interest on ITC availed in case of non-payment of consideration to the vendor within 180 days   | GST council had proposed to not levy interest on such reversal of input tax credit, however the same was not part of the GST amendment bill passed. Therefore, it is recommended that interest levy on such delay should be done away with.  |
| RCM liability on service recipient in case of sponsorship services                               | In case of sponsorship, the recipient of service is liable to pay GST under RCM.  | The RCM liability should be made applicable only incase when the service provider is not a registered entity. In all other cases, where the service provider is a registered entity under GST, the same should be made applicable under forward charge basis instead of reverse charge   |

## Measures to reduce working capital blockages

| Topic                                     | Issue                                     | Recommendation   |
|---|---|--|
| GST payment – duty credit scrips          | Payment of GST through duty credit scrips | To allow payment of GST through duty credit scrips   |
| Payment of social welfare surcharge (SWS) | Payment of SWS through duty credit scrip  | Clarification on payment of SWS when the import duties are paid by utilisation of duty credit scrips |

## Measures in relation to input tax credit (ITC)

| Topic  | Issue  | Recommendation  |
|--|--|---|
| ITC on immovable property  | Section 17(5)(d) of the CGST Act specifically restricts ITC on construction of immovable property on its own account even if it is used in course or furtherance of business   | ITC should be granted in case of renting of commercial property as disallowance leads to additional cost/financial burden for the taxpayer  |
| Non reversal of ITC on dividend income                                     | Dividend income requires ITC reversal resulting in increase in costs for the business. Dividend income is exempt supply under GST. As per Section 17 of the CGST Act, exempted supplies are liable for proportionate ITC reversal  | Dividend income should be excluded from exempted supplies, for alignment with the rules of excluding interest income for proportionate reversal for input credit since interest and dividend both are financial income  |
| ITC admissibility in GST in case of expenses booked towards CSR activities | <p>As per Section 135 of the Companies Act, 2013, a company is required to spend at least 2% of its average net profit for the immediately preceding 3 financial years on Corporate Social Responsibility (CSR) activities subject to its turnover /net worth/ net profit crossing prescribed limits.</p> <p>Accordingly, company incurs expenses for procurement of goods and services while undertaking CSR activities. Since such supplies are procured in course of business activities and as mandated by Statute, availment of ITC of GST charged on such supplies under Section 16(1) should not be in dispute</p> <p>However, there is lack of clarity as to whether company will be called upon to reverse the ITC on the ground that the company has provided such goods and services to the recipient of such CSR activity without charging any consideration and thereby, using such goods and services in undertaking non-taxable supplies, which will be subject to provisions contained in Section 17(2) of CGST Act.</p> | Given that CSR is mandated under Statute and also in order to encourage CSR spends in excess of mandated limits, it would be appropriate if the taxpayers are not burdened with additional cost of input taxes while undertaking CSR activities. A suitable clarification in this regard and /or an amendment in the CGST Act, may be carried out as deemed fit |
| Availment of ITC on advance payments                                       | CGST Act, 2017 provides for liability of GST on advance payments received by the supplier of services under Section 13 (2). However, the aforesaid legislation restricts the periodicity of availment of credits to receipt of services, which would be at a later date as mandated under Section 16(2)(b).  | A relaxation is sought to allow the recipient of services, the input tax credit on payment of advances. Alternatively, the liability of making payment of GST on advances received for supply of services may be removed as in line with the exemption given from payment of GST on advance received for supply of goods.                                       |
| Distribution of free samples/ free supply                                  | It is a common business practice especially in Pharma sector to distribute free samples as a part of its advertising and business promotional activity. Even for all the other businesses, promotion and advertising of business by way of free supply is a common business strategy. Section 17(5)(h) of the CGST Act, which relates to blocked credit provision disallows the credit for goods disposed of by way of gift or free samples  | Such free samples/free supply forms part of the cost of the company and are incurred in the course and furtherance of business.   |



## Measures in relation to input tax credit (ITC)

| Topic   | Issue   | Recommendation  |
|---|---|---|
| Scope of input tax – credit to be allowed on all business expenditure | <p>Definition of ‘input tax’ as given in Section 2(62) of the CGST Act has been assigned a very wide connotation, as it includes all types of GST paid on supply of goods or services. While all inputs, capital goods and input services in relation to business are covered, restriction on availment of credits (similar to those under present law) continues, particularly for input services under Section 17 of the CGST Act.</p> <p>Entities only incur expenditures during furtherance of business and therefore, GST paid on procurement of goods and services should be allowed.</p> | It is recommended that credit be allowed of GST paid on all procurements made during business. For example, GST paid on the input services such as rent a cab, life and health insurance, outdoor catering should be allowed. |
| Deemed supplies between distinct establishments of exempt sector      | <p>Distinct establishments of an entity are related person as per Section 25(4) of the CGST Act, 2017. All the transactions, even without consideration with related person is deemed to be a supply chargeable to GST as per Schedule I of the CSGT Act 2017.</p> <p>The same stand was taken in the AAR in the case of Columbia Asia Hospitals Pvt. Ltd. wherein it was held that activities performed by the employees at the corporate office in relation to units located in the other states shall be treated as supply as per entry 2 of Schedule I of the CGST Act.</p>                 | It is suggested that the concept of deemed supplies should not be made applicable on the exempt sector, as the exempt entities are not eligible to avail ITC of the tax paid on such deemed supplies.                         |

## Measures to refund

| Topic  | Issue   | Recommendation  |
|--|---|---|
| Refund on inverted duty structure of input services                | <p>Section 54(3) of CGST Act, 2017 provides for refund on account of inverted duty structure of any unutilised input tax credit at the end of any tax period. Input Tax credit includes credit on account of input services also. However, explanation to Rule 89(5) restricts the Net ITC while calculating the refund amount to credit availed on inputs only. The same appears to be ultra vires the Act. Further, the Gujarat High Court also ruled that companies can claim refund using unutilized tax credit arising from input services under the inverted duty structure.</p> <p>It observed that disallowing refund of the tax paid on input services is contrary to the CGST Act. As such, the court ruled that businesses must be allowed to factor in the tax paid on input services for calculating the claim of refund under the inverted duty structure.</p> <p>In doing so, the court read down of a part of the CGST rules that excluded input services from the purview of a refund.</p> | Retrospective amendment in the rule to address the issue and allow ITC of input services.   |
| Re-filing of refund application on issuance of Deficiency memo(DM) | Re-filing of refund application on issuance of DM is a major setback for taxpayers seeking refund.  | There should be a facility to upload additional supporting documents so that time and cost on account of re-filing of application due to minor issues can be avoided. |

It would be interesting to see if any announcements/roadmap will be created on how the government would attempt moving to comprehensive faceless assessment and end-to-end e-processes wherein invoice to GST return would be made automatic. Further, it would be noteworthy to observe whether the Budget would be successful in attracting start-ups and promote MSME sector.

## 05. Issues on your mind



### What is the procedure for generation of e-way bill by transporter for e-invoices?

The system has been enabled for the taxpayer to generate the e-way bill along with IRN or after generation of IRN. There are two APIs for this purpose. There is also provision to generate e-way bill or 'Part-A Slip'. The 'Part-A Slip' will enable the supplier to assign the e-invoice to the transporter. In turn using this, the transporter will enter the Part-B and generate the regular e-way bill.

The detailed procedure is as under<sup>37</sup>:

- While preparing the invoice, if the supplier is aware about the Part-B details, he can pass the invoice details along with the transportation (Part-B) and transporter Id details as per the e-way bill requirements and get the IRN generated along with the e-way bill as well. This e-way bill can be passed

onto the transporter for movement of goods and further updating Part-B, if required.

- While preparing the invoice, if the supplier is not aware about the Part-B details and knows the transporter, then he can pass the invoice details along with the transporter Id as per the e-way bill requirements and get the IRN generated along with the 'Part-A Slip'. This 'Part-A Slip' number can be passed onto the transporter so that he can enter the transportation details as per the requirement and generate the E-Way Bill and move the goods. He will also be enabled to carry out the other activities of the e-way bill, if required.
- While preparing the invoice, if the supplier is not aware about the Part-B details and the transporter, then he can pass the invoice details and get

the IRN generated. Afterwards, once the transportation or transporter details available, the supplier can generate E-way Bill or 'Part-A Slip' accordingly, using 'Generate EWB by IRN' API and pass it to the transporter for further updation, if required and start movement of goods.

### What is the complaint redressal mechanism available to the consumer under the anti-profiteering provisions under GST?

The GST law provides for the following complaint redressal mechanism under the anti-profiteering provisions<sup>38</sup>:

- The aggrieved persons may file an application, in the prescribed format, before the standing committee on anti-profiteering or before the state level screening committee. (If the issue involved is of local nature).

37. As per advisory issued by National Informatics Centre dated 16 December 2020

38. FAQs on Anti-Profiteering provisions issued by CBIC

- The state level screening committee constituted in every State/UT with legislature examines it and forwards it to the standing committee constituted at the national level, if a prima facie case of profiteering is made out against the registered person.
- Thereafter, the standing committee shall refer the matter to the director general of anti-profiteering (erstwhile DG, Safeguards) for a detailed investigation, if prima facie evidence of profiteering exists.
- The DG, anti-profiteering shall conduct the investigation and submit its report to the NAA constituted by the central government<sup>39</sup> for taking appropriate action.

### **What is a composite supply and mixed supply under GST and what is the tax treatment of both under GST?**

Under GST, a composite supply would mean a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply<sup>40</sup>.

A mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply<sup>41</sup>.

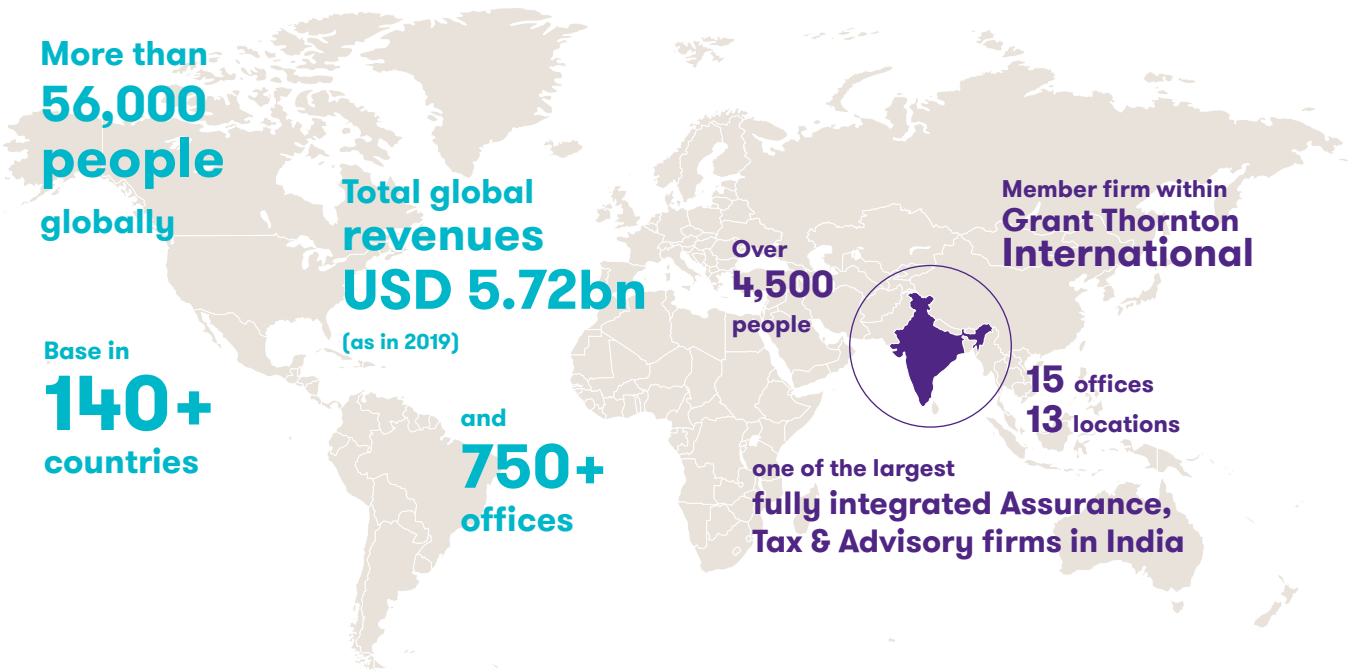
The tax liability in case of a composite or a mixed supply shall be determined in the following manner, namely<sup>42</sup>:

- a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.



39. U/s 171 (2) of the CGST Act, 2017  
 40. Section 2(30) of the CGST Act, 2017  
 41. Section 2(74) of the CGST Act, 2017  
 42. Section 8 of the CGST Act, 2017

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