

# GST Compendium

**A monthly guide**

August 2020



# Editor's note

To address the concerns faced by the taxpayers in these challenging times, the government has initiated various tax-friendly measures and steps to ease compliances. The due dates for various returns have been extended over the past few months. Further, waiver/reduction in interest and late fee has been provided to ease the compliance burden. Recently, the CBIC had undertaken a 'special refund drive' to provide some support to the taxpayers wherein about 46,000 GST refund claims worth INR 18,588 crore (from April 2020 to June 2020) have been released.

The apex court has issued standard operating procedures for conducting hearing through videoconference to maintain social distancing norms as recommended by healthcare authorities. This could probably become a norm in future or an alternative to personal appearance.

Other measures taken by the CBIC recently, include rolling out a facility to file NIL return in Form GSTR1 through SMS, launch of e-platform for services related to foreign trade and a nationwide faceless assessment programme. The government has also invited suggestions from trade and industry for review of existing customs law procedures and exemptions to align them with the current economic reality.

This edition focuses on the key issues in the 'healthcare sector' vis-à-vis the GST regime and explores some of the plausible solutions that authorities may consider.

We hope you will find it informative and interesting.

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## Finance ministry issues clarification on GST rate on hand sanitisers

The Ministry of Finance has, in response to media reports, issued clarification on the rate of Goods and Services Tax (GST) applicable to hand sanitisers, such as soaps and anti-bacterial liquids.

In this regard, the ministry has clarified that hand sanitisers are taxed at the standard GST rate of 18%. The ministry has said that reducing the rate on hand sanitisers would put domestic

manufacturers at a disadvantage vis-à-vis importer due to the following reasons:

- **Inverted duty structure:** Inputs of hand sanitisers, such as chemicals, packing material, input services, attract 18% GST. Thus, reducing the rate on sanitisers would lead to an inverted duty structure, which would ultimately not benefit the ultimate consumer.
- **Against the Atmanirbhar Bharat policy:** Reducing the GST rate on hand sanitisers would make their import cheaper as compared to domestic manufacturing. This is against the nation's policy of Atmanirbhar Bharat.

## CBIC notifies e-invoicing for businesses with turnover above INR 500 crore

The government had earlier announced the introduction of electronic invoicing (e-invoicing), in a phased manner, for reporting of business-to-business (B2B) invoices from 1 January 2020 on

voluntary basis. The Goods and Services Tax Council, in its 39th meeting, decided to defer the dates for implementation of e-invoicing and quick response (QR) code to **1 October 2020**.

Now, the Central Board of Indirect Taxes and Customs (CBIC) has notified the following:

- Format/schema for e-invoice in Form **GST INV-01**.
- In order to provide relief to small-scale businesses, the threshold for

mandatory issuance of e-invoice has been increased. Businesses with turnover **above INR 500 crore** (earlier limit INR 100 crore) are now required to

mandatorily issue e-invoice.

- Special Economic Zones (SEZs) **are not required** to follow e-invoicing

## CBIC rolls out the facility of filing NIL return in Form GSTR-1 through SMS

The government had recently rolled out the facility of furnishing NIL return in Form GSTR-3B through Short Messaging Service (SMS). In the similar lines, the

government has now rolled out the facility to file NIL GST return in Form GSTR-1 through SMS from first week of July 2020.

As per the press release, this facility will substantially improve ease of GST compliance burden for over 12 lakh registered taxpayers.

## Government amends export policy related to PPE kits/masks

Considering the increase in demand for face masks and related personal protection goods due to the COVID-19 pandemic, the government had earlier put restriction on export of personal protection equipment (PPE) kits. It has now amended the export policy with respect to PPE kits/masks.

### Key changes notified

The Directorate General of Foreign Trade (DGFT) has now removed restriction on export of certain medical coveralls of all classes/categories as under:

- Surgical drapes
- Isolation aprons
- Surgical wraps
- X-ray gowns

Accordingly, the following PPEs exported either as part of kits or as individual items shall continue to be prohibited:

- Medical coveralls of all classes/categories except those mentioned above
- Medical goggles
- Face shield
- Medical Nitrile/NBR gloves
- All masks other than non-medical/non-surgical masks (cotton, silk, wool, polyester, nylon, rayon, viscose-knitted, woven or blended)

## SC issues SOP for e-filing, mentioning, listing and conducting hearing through videoconference

### Summary

To ensure social distancing, reduce physical presence due to COVID-19 pandemic, the Supreme Court has issued a Standard Operating Procedure (SOP) laying down procedures for e-filing, mentioning, listing and hearing of matters through videoconference/teleconference.

### Listing of matter

- **Matters lying in pool:** Fresh matters lying in pool that could not be listed earlier, may be listed before the virtual court in the week commencing 6 July 2020 to 10 July 2020.
- **Miscellaneous cases:** With effect from 13 July 2020, subject to availability of matters and the requirement, miscellaneous cases may be listed on Monday and Friday.

- **Non-miscellaneous days, i.e., Tuesday, Wednesday and Thursday:** Miscellaneous matters including final hearing matters and regular matters may be listed, giving preference to part heard matters.

### Videoconference/teleconference for hearing

- **Link for joining the videoconference:** The web link for joining the videoconference shall be provided to:
  - The Advocate-on-Record (AOR) registered at the time of the AOR code generation; or
  - The party-in-person on the email id and/or mobile number mentioned at the time of filing the petition.

- In case the AOR requires a senior advocate or an arguing counsel to appear and conduct the hearing and/or a litigant to view the proceedings, the AOR shall indicate the contact details like name, email id and mobile number of the senior advocate/arguing counsel and the litigant through email.
- **A maximum of two appearance links will be provided per party together** with one viewing link that may be provided for the litigant, separately. Request for such links should be sent to [video.conference@sci.nic.in](mailto:video.conference@sci.nic.in) latest by 2 p.m., on the day preceding the hearing of the matter.
- **Manner of joining videoconference:** The invitation link for appearance and viewing will be sent by the registry



through SMS/e-mail/WhatsApp around half-an-hour before the scheduled hearing. Parties can join the videoconference on VIDYO platform. The desktop application of the platform can be downloaded from the site <https://nofnvc.nic.in>. Mobile/tablet compatible version of the platform can also be downloaded.

- **Technical assistance:** After publication of cause list, a WhatsApp group may be created by the registry before the hearing of the matters where the participants may raise any query related to videoconferencing. In addition, the parties may contact helpline telephone number 1881.



### Mentioning and e-filing

- In all matters involving urgency, the AOR or the party-in-person is first required to file the petition/miscellaneous application, preferably through the e-filing mode.
- Upon completion of above formalities and registration, the mentioning application shall be submitted at the email address [mention.sc@sci.nic.in](mailto:mention.sc@sci.nic.in). The applications received by 2 p.m. on a particular day shall be

processed for listing in the cause-list to be published immediately thereafter subject to availability of the concerned Bench and approval of the competent authority.

- The mentioning application must inter-alia contain the case details and contact details of the AOR/party-in-person like email ID, mobile number with alternate number(s), camp/office address stating pin code and police station.
- The mentioning application shall include separate paragraph(s) with a prayer for exemption from filing duly affirmed affidavit in the prevailing circumstances, together with an undertaking to the effect that physical copies of documents relied upon in the petition, deficit court fees or other charges, if any, shall be filed at the earliest.

## First phase of e-platform for services related to foreign trade launched effective 13 July 2020

The Directorate General of Foreign Trade (DGFT), as part of the Digital India programme, has launched first phase of a new digital platform on 13 July to facilitate foreign trade and revamp its service delivery mechanism. The platform will become accessible through the existing website <https://www.dgft.gov.in>.

### Key features of the new platform

#### • Services offered

- The first phase would cater to digital delivery of import-export code (IEC) related services like issue, modification, amendments, etc. The platform would also feature a chatbot (a virtual assistant)

catering to queries of users.

- Other online modules relating to advance authorisation (AA), export promotion capital goods (EPCG) and exports obligation discharge will be rolled out subsequently.

#### • Accessing the platform

- First-time users will have to create a login/user ID by following the registration process.
- For user ID creation, the registered mobile number and email IDs of the IEC holders will be mandatorily required. The same will be authenticated through one-time password (OTP) or email-based authentication process.

- The users will have to link their login IDs to their specific IECs. The process of linking would be available post login through digital signature certificate (DSC) or Aadhaar-based e-sign.

- The user profile can be later used to engage with the DGFT and its services. This will enable the users to electronically file their application related to IEC, AA, EPCG, including amendments and redemption, monitoring the status of the application, raising queries, replying to the deficiencies, etc.

#### • Application or modification of IEC

DSC or Aadhaar-based e-sign will be

required for applying and modifying IEC or adding/updating the IEC-linked users. In this regard, the users will have to take necessary actions for updating their information on the DSC and Aadhaar.

- **Temporary suspension**

As launching the first phase would require changes in the system, the IEC applications and modification processes will be suspended from

3:00 p.m. on 10 July 2020 till 13 July 2020. Thus, businesses should plan their IEC related services in advance.

## Second phase of nationwide faceless assessment programme rolled out with effect from 3 August 2020

To mitigate the impact of COVID-19 crisis, the CBIC had announced measures to facilitate and expedite customs clearance process by making it contactless, i.e., automated and paperless (online). The first phase of all-India roll-out of faceless assessment was recently done under the umbrella of Turant Customs Programme.

The CBIC has now decided to roll out

the second phase of the programme from **3 August 2020**. Under this phase, Delhi and Mumbai customs zones shall be included and the scope of faceless assessment in Chennai and Bengaluru custom zones shall be extended. It has, however, been clarified that imports already covered under the first phase would continue.

Further, the CBIC has already granted

powers to jurisdictional Commissioners of Customs (Appeals) at Bengaluru, Chennai, Delhi and Mumbai to take up appeals filed in respect of faceless assessments pertaining to imports made in their jurisdictions, even though the assessing officer may be located at other customs station.





## CBIC announces measures to facilitate and expedite customs clearance - Turant Suvidha Kendra and other initiatives

### Turant Suvidha Kendra (TSK)

The principal chief commissioners of customs/chief commissioners of customs are advised to set up TSKs in all customs stations by 15 July 2020. This step is being taken before the pan-India rollout of faceless assessment, which would be done in phases and will be announced soon.

The document verification by customs officers at assessment and customs compliance verification (CCV) stages would normally be based on the documents uploaded in the e-Sanchit and did not require physical submission of the documents. However, if in any exceptional situation, the physical submission of documents is required by customs for defacement or validation, such submission would be made only at the TSKs.

### New functionalities on ICEGATE

New functionalities, as under, have been enabled effective 6 July 2020 in

ICEGATE to reduce the need for physical interaction between customs and trade and also speed up the customs clearance process.

#### 1. Registration of authorised dealer (AD) code, bank accounts through ICEGATE

A functionality within ICEGATE login has been enabled to allow the exporters to make an online request for registration/modification of their AD code/bank account(s) and electronically submit the passbook copy or bank authorisation letter through e-Sanchit. The detailed step-by-step guide is available on the [ICEGATE portal](#).

The principal commissioner/commissioner of customs is advised to ensure that the concerned customs officer completes the approval process for registration/updation of the AD code and bank account(s) details in ICES within the same working day of receiving the

applications, if all requirements are submitted in ICEGATE.

#### 2. Automated debit of bond after assessment

ICES would automatically debit the bond and reflect the same in the first copy of the Bill of Entry, provided the details of the bond are provided during submission of the Bill of Entry.

#### 3. Simplified registration of importers/exporters in ICEGATE

Simplified registration module for importers/exporters based on verification provided in associated GSTIN has been provided. This does not require a digital signature.

Importers/exporters are advised to register on ICEGATE and conduct their customs clearances electronically. The simplified registration on ICEGATE can be done easily by following the steps given on the [portal](#).



## CBIC and CBDT signs memorandum of understanding to facilitate exchange of data

The CBIC and the Central Board of Direct Taxes (CBDT) have signed a memorandum of understanding (MoU) for data exchange between the two organizations. The MoU supersedes the one signed between the CBDT and the erstwhile Central Board of Excise and Customs (CBEC) in 2015.

### The MoU will facilitate:

- Sharing of data and information on an automatic and regular basis between the CBDT and the CBIC.
- Exchange of required information on request and spontaneous basis.

A data exchange steering group has also been constituted for this purpose, which

will meet periodically to review the status. The group shall take steps to further improve the effectiveness of the data sharing mechanism.

## Government invites suggestions for review of existing customs law, procedures and exemptions



- Consolidation of similar entries
- Extent of use of the notification, etc.

It has, however, been stated that routine merit-based change of duty rates are not covered under this review exercise.

- Customs law and procedures for aligning them with the need of changing times and ease of doing business.

The suggestions are sought from all stakeholders including importers, exporters, domestic industry, trade associations and public at large. Stakeholders can submit their suggestions on the MyGov portal - <https://innovate.mygov.in/suggestions-for-review-of-existing-customs/> - by **21 August 2020**.

- Customs exemption notification to identify those notifications that may have outlived their utility or become outdated. The suggestion may include:

- Need for review of a particular notification
- Amendment in wording of the notification or bringing clarity

## Ministry of Commerce and Industry working on an early solution to MEIS issue

Considering the fund allocation and to limit the issuance of any more scrips, the authorities blocked online **Merchandise Export From India Scheme (MEIS)** module from 23 July 2020. Accordingly, it was intimated that new MEIS applications for registration of shipping bills having 'Let Export Order'

1 April 2020 onwards will not be accepted henceforth.

However, realising the difficulties of exporters, during the National Digital Conference on Ease of Doing Business held on 30 July 2020, the ministry has intimated that they are looking for an

early solution to resolve the issue with respect to the MEIS incentive scheme. Further, they stated there is a cashflow issue and they are discussing with the respective authorities to ensure that exports are not affected.

## Special refund and drawback drive to benefit MSMEs/exporters during COVID-19

To provide immediate relief to business entities, especially micro, small and medium enterprises (MSMEs) and address their cashflow concerns, the government had introduced a Special

Refund and Drawback Disposal Drive to process and dispose of all pending refund and drawback claims on priority. As per the recent data provided by CBIC, to ensure liquidity to the GST taxpayers

during the lockdown, 46,090 GST refund claims worth INR 18,588 crore (from 8 April 2020 to 28 June 2020) has been released.

## CBIC launches special drive to clear pending GST registrations

The GST laws provide for deemed approval of GST registration within three working days if the concerned officer fails to take any action on the said application. To avoid possible misuse of the deemed approval mechanism during COVID-19 lockdown, it was decided that deemed approval of the application would not be granted on the portal from 25 March 2020.

Considering the lockdown is over in most parts of the country, the CBIC has now made certain announcements in order to clear pending GST registrations.

- **Applications pending as on 30 June 2020:** Deemed approvals have been granted for all those registration applications pending as on 30 June 2020, which have not been processed till 15 July 2020.
- **Applications pending as on 28 July 2020:** Applications received thereafter remaining pending as on 28 July 2020 shall be deemed to be approved on 31 July 2020. The three days deemed approval of application of registration would resume from 1 August 2020.
- **Deemed approval due to technical glitches:** In case of few registrations, applications that were deemed approved on the portal during the lockdown period due to technical glitches, physical verification of the business premises (wherever required) can be done by the proper officer.

Accordingly, the CBIC has requested to dispose all pending applications of registration by 30 July 2020 as a special drive.

## Issuance of interim measure for filing revocation of cancellation order pending in appeal channel

The Goods and Service Tax Network (GSTN) has issued interim measure for filing revocation of cancellation order for cases pending in the appeal channel. This is applicable where the application for revocation of cancellation of registration was rejected by the tax authorities before 12 June 2020.

The steps to be followed in this regard are:

- **Request to pass offline order:** The taxpayers can request the appellate

authority or the higher authority to pass a simple offline order on it for restoration of the application.

- **Restoration by the jurisdictional authority:** Based on such an order, the jurisdictional authority can restore the application for revocation of cancellation.
- **Reapplication by the taxpayer:** The taxpayers need to re-apply after login. For this purpose, taxpayers will have

to enter application reference number (ARN) of the order and would require to upload scanned copy of the order passed after clicking 'Appeal in favour'.

The GSTN has further informed that it is working to remove the present restriction in the system and make the filing of revocation of application a one-step process.

## 2a

# Key judicial pronouncements



## SC directs no coercive action against petitioner involved in alleged GST fraud

### Background

In a recent case, the petitioner allegedly indulged in registration of fake firms and issued fake invoices without the supply of goods and committed offences to the tune of INR 52 crore. The GST law grants powers to arrest in such cases. The petitioner has been in custody for about 22 months. It filed a writ challenging that the provision related to arrest lacked constitutional backing.

It also submitted that the arrest was illegal and in violation of its fundamental rights claiming that the investigation conducted was in violation of the procedure established by the law. Thus, it sought an appropriate interim relief from the Supreme Court (SC) as well.

### SC's interim order<sup>1</sup>

A three-judge bench of the SC, while issuing notice to the government, has directed that no coercive action should be taken against the petitioner meanwhile.



### Our comments

The SC granted relief to the petitioner considering that it already spent about 22 months in custody for an offence that constitutes maximum punishment of five years and the trial is not

likely to end soon due to the COVID-19 pandemic. The High Court of Punjab and Haryana had also granted similar relief in another case and further extended the bail due to COVID-19.

The SC has already issued notice to the government. It will be interesting to observe the contentions/arguments put forth by the tax department and the final verdict of the SC. This may set a precedent for all similar cases under GST in future.

1. Mr. Aditya Gupta vs. Union of India



## Time limit prescribed for claiming transitional credits is mandatory and not directory: Madras High Court

### Summary

The Madras High Court (HC), in a recent case, held that the time limit prescribed under the GST law for claiming transitional credits is 'mandatory' and not 'directory' in nature. Further, it held that disregarding the time limit and permitting a taxpayer to avail transitional credits in perpetuity would render the provisions unworkable. In this regard, the HC highlighted that provisions related to transitional credits should be construed as a concession, which cannot be availed without complying with the conditions prescribed in relation thereto.

### Facts of the case

- The petitioner<sup>2</sup> is a proprietary concern involved in the retail trading of mobile phones, electrical, electronic and other items.
- It filed a writ of mandamus<sup>3</sup> before the HC. The petitioner requested the HC to direct the tax department to permit it to avail transitional credit<sup>4</sup> beyond the period provided under the GST law.
- Additionally, the petitioner also challenged the provision<sup>5</sup> to the extent it imposes time-limit for carry-forward of CENVAT credit to the GST regime.
- The petitioner argued that the time-limit is arbitrary, unconstitutional and violative<sup>6</sup>. It contended that the time-limit specified is procedural in nature, and not a mandatory provision and thus the period provided therein cannot be enforced to deprive it from availing their vested right.

### Madras HC's observations and ruling

- **Provision unworkable:** In the context of transitional credits, disregarding the time limit and permitting the petitioner to avail transitional credits in perpetuity would render the provision unworkable.
- **Credits cannot be availed except within stipulated time:** Both input tax credit (ITC) and transitional credits cannot be availed except within the stipulated time limit and such time limits may, however, be extended through statutory intervention<sup>7</sup>.
- **Extension of time limit does not mean there is no time limit:** The fact that time limit may be extended under circumstances does not imply that there is no time limit for transitioning the credit. The GST law<sup>8</sup> itself imposes a time limit for availing ITC and further provides that it would lapse upon expiry thereof.
- **ITC must be construed as a concession:** ITC must be construed as a concession and not a vested right. It is a time limit related to the availing of a concession or benefit. If construed as mandatory, the substantive rights of the taxpayers would be impacted. If construed as directory, it would adversely impact the government's revenue interest, including the predictability thereof. Thus, it cannot be availed of without complying with the conditions prescribed in relation thereto.
- **Time limit is mandatory:** Thus, the HC held that the time limit is mandatory

and not directory. The HC further dismissed the petitioner's plea to declare the relevant provisions<sup>9</sup> as ultra vires and direct the authorities to permit the petitioner to file Form GST TRAN - 1 either electronically or manually to claim the transitional ITC.



### Our comments

The Delhi HC<sup>10</sup> had earlier held that the time limit prescribed under the GST law for claiming transitional credit is 'directory' in nature. It further stated that prescribed time limit would not result in the forfeiture of rights in case the credit is not availed within the period prescribed.

Contrary to this, the Madras HC has now held that transitional credit is mandatory and not directory and that such credit must be availed within the stipulated time.

The tax department had filed a special leave petition (SLP) against the order of Delhi HC arguing that the time limit prescribed for availing transitional credit is 'mandatory', 'rational' and 'reasonable'. The SC had stayed the operation of the Delhi HC order. Accordingly, taxpayers will now have to wait for the SC's verdict in this regard.

2. M/s P.R. Mani Electronics

3. Writ Petition No.8890 of 2020 and WMP.No.10803 of 2020

4. as on 30 June 2017 by filing declaration in Form TRAN-1

5. Rule 117 of the Central Goods and Services Tax Rules, 2017

6. Of Article 14 of the Constitution of India

7. Bombay HC decision in the case of Nelco Limited v. Union of India [2020 SCC Online Bom 437]

8. Section 19(3)(d) of TNVAT Act

9. Rule 117 of the CGST Rules, 2017 read with Section 140 of the CGST Act, 2017

10. M/s Brand Equity Treaties Limited

## Punjab and Haryana HC stays Appellate Authority's order holding BPO as 'intermediary'

### Background

The petitioner<sup>11</sup> had filed a writ before the Punjab and Haryana High Court (HC) alleging that the First Appellate Authority had illegally relied upon a circular which was withdrawn right from its inception so as to allow the appeal of the Revenue. Thus, the claim of refund of the petitioner on account of export

of services was disallowed by wrongly holding it to be 'intermediary'.

The petitioner had also challenged the constitutional validity of provision under GST law<sup>12</sup> (granting power to the authorities to issue instructions or directions) primarily on the ground that no mandate can be provided for directing the lower quasi-judicial

authority to treat the circular / instructions issued by the Board to be binding on the assesseees.

### Punjab and Haryana HC order

The HC has issued notice to the Revenue and granted stay on the aforementioned order. Further listed the matter for 8 September 2020.



11. M/s Genpact India Pvt. Ltd.

12. Section 168 of the Central Goods and Services Act, 2017

## 2b

# Decoding advance rulings



## Goods shipped to overseas customer directly by foreign vendor are liable to IGST: Gujarat AAR

### Summary

The Gujarat Authority for Advance Ruling (AAR), in a recent case, has held that GST is payable on goods sold to customer located outside India even when goods are shipped directly from the vendor's premises located outside India to the customer's premises. The AAR held that in such cases, the transaction would be liable to integrated tax (IGST).

However, the AAR directed that GST would not be payable on goods procured from a vendor located outside India if the goods so procured are not brought into India.

### Facts of the case

- The applicant<sup>13</sup> (a registered taxpayer) is engaged in the development and supply of telecommunication software, including WiFi service management platform.
- Proposed transaction: The applicant proposed to undertake transaction and supply of hardware, commercially known as 'merchant trade transaction', wherein the applicant will receive an order from the customer located outside India. The applicant's vendor (a person located outside India, in the instant transaction) would ship the goods directly to the customer.
- Flow of consideration: The vendor would issue invoice on the applicant against which payment would be made in foreign currency. Separately, the applicant would raise invoice on the customer and would receive the consideration in foreign currency.
- The applicant sought an advance ruling from the Gujarat AAR to determine the taxability of the proposed transaction.

13. M/s Sterlite Technologies Ltd.



### AAR's observations and ruling

**Whether GST is payable on goods procured from vendor located outside India when such goods are not brought into India?**

- The AAR held that where the bill of entry/import declarations are not being filed with respect to the goods so procured, the GST would not be leviable<sup>14</sup>.

**Whether the GST is payable on goods sold to customer located outside India when goods are shipped directly from the vendor's premises (located outside India) to the customer's premises?**

- **Classified as 'inter-state supply':** The applicant is selling goods for a consideration in the course or furtherance of business and as such

the transaction would be treated as 'supply'. Further, since the supplier is in India and the place of supply is outside India, the said transaction would qualify to be an interstate supply<sup>15</sup>.

- **Transaction would not be treated as 'export':** The AAR noted that since the goods have not crossed the Indian customs frontier, the goods are not physically available in the Indian territory. Thus, it held that in such situation the question of taking goods out of India would not arise.
- **IGST applicable:** Accordingly, the AAR concluded that since the subject transaction does not qualify as 'export of goods' and is covered within the ambit of inter-state supply, the same would be liable to IGST.



### Our comments

As per provisions of the GST law, a transaction of sale of goods is not treated as supply and consequently not liable to GST, if the supply of goods takes place from one non-taxable territory to another without such goods entering into India.

The Kerala AAR had earlier held that merchant trade transactions in which the traded goods never enter the Indian territory are not liable to GST, as the goods are never imported to India. Contrary to this, the Gujarat AAR has now ruled that such transactions would attract GST even when the goods do not enter the Indian territory.

Such contrary rulings create confusion amongst the taxpayers and may give rise to further litigation. As such, the taxpayers entering similar kinds of transactions need to be cautious. A clarification from the government on this issue will surely be helpful in preventing unnecessary litigation.

## Gujarat AAR holds sale of plots with primary amenities as provision of services, liable to GST

### Summary

The Gujarat AAR, in a recent case, has held that GST is applicable on sale of plot of land with primary amenities such as, drainage line, waterline, electricity line, land levelling, provided by the applicant. The AAR further stated that sale of developed plot is not equivalent to sale of land but tantamount to rendering of service and hence liable to GST.

### Facts of the case

- The applicant<sup>16</sup> has a vacant land, which it intends to sell as individual plots to different buyers without any construction on the same. However, being a mandatory requirement of the

Zila Panchayat, the applicant shall also provide primary amenities along with the land such as, sewerage and drainage lines, water line, electricity line, land levelling for road, pipeline facilities for drinking water, streetlights, telephone line.

- The applicant sought an advance ruling on the applicability of GST on sale of the plot of land along with the aforesaid primary amenities.

### Gujarat AAR's observations and ruling

- **Exclusive sale of land excluded under GST:** The AAR perused provisions<sup>17</sup> of the GST law and observed that a

transaction of sale of land shall be out of GST-net if the activity is exclusively dealing with transfer of title or transfer of ownership of land or plot.

- **Sale price includes cost of amenities also:** The sellers generally charge the rates on super built-up basis, which includes the area used for common amenities, roads, water tank and other infrastructure, on a proportionate basis. In the present case also, sale price includes the cost of the land as well as the cost of common amenities on a proportionate basis.
- **Rendering of service:** The above indicates that sale of developed plot is not equivalent to sale of land but

14. Circular No. 33/2017 Customs dated 1 August 2017 issued in the context of 'High Sea Sales'

15. Section 7(5) of IGST Act, 2017

16. M/s Shree Dipesh Anilkumar Naik

17. Sr No. 5 to Schedule III of the Central and Goods and Service Tax (CGST) Act, 2017

is a different transaction. Sale of such developed plot tantamount to rendering of service<sup>18</sup>.

- **Leviable to GST:** In the instant case, the activity of the sale of developed plots would be covered under the clause 'construction of a complex intended for

sale to a buyer'<sup>19</sup>. Accordingly, the said activity is covered under 'construction services' and GST is payable on the sale of developed plots.



#### Our comments

The GST law specifically provides that sale of immovable property shall be outside its purview. However, the AAR has ruled that GST shall be leviable on the entire sale price treating it to be provision of service, which includes the value of land also. It is pertinent to note here that in the Supreme Court's decision referred to by AAR, the buyers were identified, whereas in the present case, the applicant is developing the plots on his own. Thus, the ruling seems contrary to the settled legal position and the intention of the legislature.

It is pertinent to mention here that AAR's decision is applicable only to the applicant, however, there is possibility that department may apply this ruling to issue demand notices in other cases as well. A clarification from the government on this issue will surely be helpful in avoiding future litigation on this account.

## ITC on vehicles hired for transportation of employees not available unless obligatory under any law: HP AAR

### Summary

The Himachal Pradesh AAR, in a recent case, held that ITC paid on services of hiring commercially licensed vehicles for transportation of employees shall not be available unless providing such facility is obligatory under any law.

### Facts of the case

- The applicant<sup>20</sup> is a public service broadcaster. It avails services of hiring taxis to provide pick and drop facilities to its employees.
- The applicant sought an advance ruling from the AAR to determine availability of ITC on GST paid on services of hiring taxis.

### Himachal Pradesh AAR's observations and ruling

- The AAR observed that under the GST laws, ITC is available only on the condition that such goods or services, or both, is obligatory for an employer to provide to its employees under any law for the time being in force<sup>21</sup>.
- In the instant case, the applicant has not been able to cite any law under which the service of providing the facility of transportation to his employees is obligatory under law. Thus, the AAR held that ITC in respect of GST paid on such services shall not be available.



#### Our comments

The GST law was formulated with the intention of ensuring free flow of credits. However, it provides for certain restrictions in availing ITC in respect of goods or services. With effect 1 February 2019, the law was amended to provide that ITC shall be available on motor vehicles for transportation of persons having approved sitting capacity of not more than 13 persons, including the driver, when such is used for transportation of passengers. The Haryana Appellate Authority for Advance Rulings<sup>22</sup> had also ruled that the ITC on hiring of buses on contract basis with capacity of more than 13 passengers shall be available.

18. The AAR referred to Supreme Court's decision in the case of M/s Narne Constructions P Ltd.

19. Schedule II clause 5(b) to the CGST Act, 2017

20. M/s Prasar Bharti Broadcasting Corporation of India

21. Section 17(5)(b) of the CGST Act, 2017

22. M/s YKK India Pvt Ltd

However, the ITC in respect of renting or hiring of motor vehicles is allowed only if it is obligatory under any law. Providing transportation facilities to employees is one of the major expenditures for most businesses and such kind of restrictions add to the costs rather than ensuring free flow of credits. Thus, the government should amend the provisions appropriately to ease the availability of ITC in respect of these services.



## Branch office in India qualifies as fixed establishment and tantamount to be supplier of service: West Bengal AAR

### Summary

The West Bengal AAR in a recent case held that supply of maintenance and repair services by the foreign company to a client located in India does not qualify as import of service and therefore, the recipient in India is not liable to pay IGST under reverse charge mechanism. However, the applicant being a branch in India through which the foreign company provides the services qualifies as a fixed establishment of the foreign company and shall be treated as the supplier liable to pay GST.

### Facts of the case

- The applicant<sup>23</sup> is a local branch of a Russian business entity (foreign company). The foreign company signed a Maintenance and Repair Contract with a client in India<sup>24</sup> with respect to the machinery and equipment it had supplied.
- The applicant sought an advance ruling to know that the applicable GST in respect of supply of the above services shall be payable by the foreign company or the client in India under reverse charge mechanism.

### West Bengal AAR's observations and ruling

- **Deputation of employees and supply of consumables at site in India:** As per the contract, the supplier of the maintenance and repair service is responsible for supply of the spares, components and consumables over the entire period. It will depute the officers, support staff and system expert at the site for maintenance and repair of equipment and train the client's personnel.
- **Branch qualifies as fixed establishment:** It is evident that the foreign company maintains suitable structures in terms of human and technical resources at the sites of client in India through applicant. It ensures supervision of the equipment, supply of spares and consumable and overheads during entire span of the contract, indicating sufficient degree of permanence to the human and technical resources employed at the sites. Therefore, the applicant qualifies as a fixed establishment of the foreign company in India<sup>25</sup>.
- **Applicant shall be supplier:** Applicant shall be the supplier of the services and the location of the supplier shall be in India<sup>26</sup>.

- **Applicant liable to GST:** Applicant being registered branch of the foreign company should be treated as the domestic holder of the maintenance contract and be liable to pay GST accordingly<sup>27</sup>.



### Our comments

In the present case, the AAR has held that the registered branch of the foreign company should be treated as the domestic holder of the maintenance contract and be liable to pay GST. Deputation of employees at Indian site offices for provision of maintenance and repair services in respect of goods or machinery/equipment supplied by foreign entities is a common business practice amongst various manufactures of specialized high-end machinery/equipment and due evaluation shall be required by the companies.

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

23. M/s IZ-Kartex named after P G Korobkov Ltd  
 24. Bharat Coking Coal Ltd (hereinafter "BCCL")  
 25. Section 2(7) of the IGST Act, 2017  
 26. Section 2(15) of the IGST Act, 2017  
 27. Section 12(2)(a) of the IGST Act, 2017



## Accounting entry of expat employees' salary cost in the books of Indian project office not a supply leviable to GST: Maharashtra AAR

### Summary

The Maharashtra AAR in a recent case held that GST shall not be applicable on accounting entry made for the purpose of Indian accounting requirements in the books of accounts of project office (PO) in India for salary cost of expat employees paid by the head office (HO) located outside India as such does not constitute as supply under the GST law.

### Facts of the case

- The applicant<sup>28</sup> is a PO in India permitted to undertake only activity of execution of project (wholly or partly) in India that is awarded to the HO a foreign company located outside India.
- The applicant sought an advance ruling to understand the applicability of GST on accounting entry passed in the books of PO for salary cost of expat employees paid by the HO.

### Maharashtra AAR's observations and ruling

- **PO is an extension of foreign HO:** In order to keep record of the expenses

of salary cost of expat employees working from India, the PO makes an accounting entry in the financial books of account in India even though the salary is paid by the HO. Further, the PAN and TAN has been allotted to PO in the name of the foreign HO. Thus, the PO is an extension of HO and is required to carry all activities relating and incidental to the execution of the project in India.

- **Expat employees are employees of HO:** The AAR observed that the expat employees are employees of the employer, i.e., HO and since the PO is an extension of the HO there is a relation of employer and employee between the PO and the expat employees.
- **No supply of services:** For GST to be applicable on accounting entry made in the books of PO for salary cost of expat employees paid by the HO such accounting entry should be seen as a supply of goods, services or both. As services by an employee to employer in the course of employment are outside the purview of GST<sup>29</sup> such

transaction will not be a supply and therefore will not attract GST.



### Our comments

As per the Reserve Bank of India (RBI) regulations, foreign companies are required to obtain RBI approval to establish PO in India. The PO is established for specific project/specific period. Such PO is merely an extension of foreign HO and does not have a separate identity.

In the present case, the UP AAR has correctly held that as PO is an extension of HO, there exists an employer employee relationship between the PO and the expat employees. Thus, this is a welcome ruling and will bring required relief for the MNCs operating under similar model and thereby help to curb litigation on this account.

## Supply of medicines, drugs, stents, implants, etc., to in-patients not liable to GST: AP AAR

### Summary

The Andhra Pradesh AAR, in a recent case, has ruled that supply of medicines to in-patients through pharmacy as well as supply of medicines, drugs, stents, implants etc. administered to in-patients during the medical treatment or procedure shall not be liable to GST.

The AAR further stated that as the supply of medicines and the consumables are integral part of the treatment extended to in-patients in hospitals, services rendered by the applicant shall be composite supply. Thus, holding that in such cases healthcare service is the 'principal supply' whereas supply of medicines,

drugs, etc. shall be the 'ancillary supply'.

### Facts of the case

- The applicant<sup>30</sup> has a multi-specialty tertiary care hospital providing healthcare services.
- The central store of the hospital procures stocks of medicines, implants, consumable etc. from various suppliers and distribute to its outlets such as in-patient pharmacy, operation theatre pharmacy and out-patient pharmacy based on the indent issued.
- The in-patient pharmacy and operation theatre pharmacy supply

medicines, implants and consumables only to in-patients whereas the out-patient pharmacy attached to the hospital entertain the medical prescription of out-patients.

- Apart from medicines, drugs, stents, implants, the in-patients are also provided stay facilities, food, consumables, etc. as per the treatment required.
- The applicant sought an advance ruling from the Andhra Pradesh AAR regarding taxability of the medicines, drugs, stents, implants, etc. supplied by in-patient pharmacy and during the medical treatment.

28. Hitachi Power Europe GmbH

29. Schedule III to the CGST Act, 2017

30. M/s CMC Vellore Association



### Andhra Pradesh AAR's observations and ruling

- **Supply of medicine is an integral part of the treatment:** Applicant renders health care services to in-patients in the form of supply of medicines, drugs, stents, implants etc. being administered during the medical

treatment or procedure. Treatment or care extended by hospitals cannot be devoid of medicines, relevant consumables, or implants. Thus, the supply of medicines and the consumables are integral part of the treatment extended to in-patients in hospitals.

- **Composite supply:** The AAR concluded that services rendered by the applicant shall be composite supply<sup>31</sup> where providing healthcare service is the 'principal supply' and supply of medicines, drugs, etc. shall be 'ancillary supply'.
- **Supply of medicines not liable to GST:** Placing reliance on an earlier circular<sup>32</sup>, the AAR held that supply of medicines to in-patients through pharmacy as well as supply of medicines, drugs, stents, implants etc. administered to in-patients during the medical treatment or procedure shall not be liable to tax<sup>33</sup>.



### Our comments

The Andhra Pradesh AAR has rightly held that the supply of medicines and other consumables during treatment to in-patients shall not be leviable to GST as the same is an integral part of the treatment. Thus, this is a welcome ruling and will provide the required clarity on this aspect.

Similar ruling was given by the Kerala AAR<sup>34</sup> wherein it had held that supply of medicines to in-patients through pharmacy shall not be leviable to GST separately. Earlier, the Karnataka AAR<sup>35</sup> had also held that supply of goods and services in conjunction with the healthcare services falls.

## Marketing services to overseas client held as 'intermediary services' liable to IGST: AP AAR

### Summary

The Andhra Pradesh Authority for Advance Ruling (AAR), in a recent case, has held that marketing consultancy services provided by the applicant to overseas client constitutes 'intermediary services'. Further, the AAR has stated that merely because consideration is received in convertible foreign exchange would not make the transaction as 'export of service'.

### Facts of the case

- The applicant<sup>36</sup> is an authorised non-exclusive consultant for the foreign company<sup>37</sup>.
- The applicant will provide marketing and promotion services to the foreign company for a fixed percentage of

commission on net sales in respect of orders solicited by the applicant and accepted by foreign company. The said commission shall be billed in foreign currency by the applicant.

- The applicant sought an advance ruling to determine the taxability of the marketing consultancy services provided to overseas client.

### Andhra Pradesh AAR's observations and ruling<sup>38</sup>

- **Facilitate supply of goods:** The AAR observed that the applicant will facilitate supply of goods between the foreign company and its customers in India. Therefore, the services provided by the applicant shall be considered as intermediary services<sup>39</sup>.

- **Place of supply is in India:** The place of supply shall be the location of the supplier, i.e., location of the applicant which is in India<sup>40</sup>.
- **Services does not qualify as export of service:** As the transaction fails to satisfy the prescribed conditions, it does not qualify as export<sup>41</sup>. The AAR further clarified that merely because the consideration will be received in convertible foreign exchange, it would not qualify as export.
- **Inter-state supply:** The AAR held that the marketing consultancy services provided by the applicant shall be covered under 'intermediary service' and shall be treated as an inter-state supply liable to IGST.

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

32. Circular No.32/06/2018-GST (F.No. 354/17/2018-TRU) date: 12 February 2018

33. Sl. No. 74 Heading 9993 vide Notification No 12/2017-Central Tax (Rate) dated June 28, 2017

34. M/s Ernakulam Medical Centre Pvt Ltd

35. M/s Columbia Asia Hospitals Private Limited

36. M/s DKV Enterprises Private Limited

37. Grace Products (Singapore) Pte. Limited

38. AAR no. 04/AP/GST/2020 dated 24.02.2020

39. Section 2(13) of the IGST Act, 2017

40. Section 13(8) of the IGST Act, 2017

41. Section 2(6) of the IGST Act, 2017



## Our comments

The taxability of 'intermediary services' has been a matter of extensive litigation under GST regime. A similar ruling was also given by the West Bengal AAR in case of Global Reach Education Services Pvt. Ltd., which was further upheld by Appellate Authority for Advance Ruling as well. It held that the marketing and promotion of foreign university's courses and assistance in enrolment/recruitment of students in India shall be treated as 'intermediary service' as the consideration was based on the number of students enrolled.

Contrary to this, under the service tax regime, in case of GoDaddy India Web Services Private Limited, it held that the services of marketing and branding provided by India entity to its parent company in USA shall be regarded as 'export' as provision of services was on a principal-to-principal basis. Even though advance ruling is applicable only to the applicant, such rulings under GST regime may prompt companies undertaking marketing/promotion activities for overseas entities to evaluate their service contracts and revisit their

tax positions. It is pertinent to note that to address the ambiguity in this regard, the CBIC had issued a clarification that was subsequently withdrawn. A revised clarification is still awaited.

At this juncture, due clarification from government will be a welcome move as levying GST on such services will affect the competitiveness of the Indian exporters undertaking marketing and promotion activities for overseas clients.





## 2c

# Key National Anti-profiteering Authority orders



## Benefit cannot be passed as per own convenience – National Anti-Profiteering Authority

### Summary

The National Anti-Profiteering Authority (NAA) upheld profiteering against a franchisee of Subway alleging that it denied the benefit of tax reduction from 18% to 5% (without benefit of ITC) to its customers. The NAA further stated that the respondent cannot pass on the benefit as per his own convenience as he is legally bound to pass on the benefit through price reduction only.

### Facts of the case

- An application was received against the respondent<sup>42</sup> by the Directorate General of Anti-Profiteering (DGAP) alleging that despite reduction in the GST rate from 18% to 5% effective

from 15 November 2017, it had not passed on the commensurate benefit of tax reduction as it had increased the base prices of his products.

- The DGAP compared average selling prices with actual selling prices post rate reduction and found that the respondent had increased the base prices and the price (inclusive of tax) paid by the consumers and the prices were not reduced commensurately.
- Thus, based on the pre and post rate reduction prices of the products and the impact of denial of ITC, the profiteered amount was worked out to INR 41.93 lakh.

### NAA observations and order

- **Increase in prices:** The NAA observed that the base prices of 152 items were increased more than their commensurate prices by the respondent post rate reduction by more than 9.19%.
- **DGAP methodology correct:** The NAA stated that the DGAP's methodology for computing profiteered amount by comparing the average base prices with actual post rate reduction prices is correct, reasonable, justifiable and in consonance with the anti-profiteering provisions under the GST law<sup>43</sup>.

<sup>42</sup> M/s Neeva Foods Pvt. Ltd. (a franchisee of M/s Subway India Pvt. Ltd.

<sup>43</sup> Section 171 of the CGST Act, 2017

- **No right to appropriate benefit of tax reduction:** The NAA observed that though the respondent is allowed to fix its prices, it however, does not have a right to appropriate the benefit of tax reduction<sup>44</sup>.
- **WTO methodology:** The NAA refused to accept the respondent's contention to apply 'netting off' or 'zeroing' methodology for calculating profiteered amount as used by the WTO in anti-dumping duties and clarified that the customers have to be considered as individual beneficiaries and they cannot be compared with dumped goods and netted off.
- **Benefit cannot be passed as per own convenience:** The NAA further stated that, the Respondent cannot pass on the benefit as per his own convenience as he is legally bound to pass on the above benefit through price reduction only.
- **No impact of MRP:** Further, states that MRP has no impact on computation of profiteered amount and thereby dismissed the respondent's plea for removal of MRP based products where tax incidence has increased due to ITC denial.
- **Deliberate misleading:** The NAA remarked that the respondent is deliberately misleading by claiming that it had to carry out complex and exhaustive mathematical computations which cannot be done in the absence of procedure framed under GST law.
- **Profiteering upheld:** Accordingly, the NAA upheld the profiteering to the extent of INR 41.93 lakh and directed the amount profiteered by the respondent is deposited in the Consumer Welfare Fund.



### Our comments

In the present case, the NAA held that the businesses cannot pass on the benefit as per their convenience and are legally bound to pass on the benefit only through commensurate reduction in prices. However, the biggest lacunae that persists is the absence of prescribed mechanism/ methodology from authorities to derive at commensurate reduction in prices.

In most of the cases till date, it has been observed that the companies have passed on the benefits of rate reduction to ultimate consumers and the methodology has been derived depending upon the nature of business and understanding of the law by the business concerns. Since there are no prescribed guidelines by NAA, the methodology is bound to differ from business to business. Infact, the methods adopted by DGAP in one case is also different from method adopted by DGAP in another case.

At this juncture, it is imperative that the government along with the GST Council undertake detailed deliberation on this issue and suitably amend the law to incorporate methodology/ guidelines for computation to avoid further litigations. Besides, the GST Council should also consider providing a statutory appellate mechanism for challenging the orders of NAA as presently the business organisations can only file a writ petition in the high courts against the NAA orders.

<sup>44</sup>. Article 19(1)(g) of the Constitution of India

# 3

## Experts' column



### GST on healthcare sector – Time to introspect

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The impact of global coronavirus pandemic has taken its toll not only in India but across the world. The healthcare sector is at the epicenter of this unprecedented global pandemic challenge and has also risen to the occasion to lead from the front. India

has so far been able to withstand the pandemic onslaught. Prime Minister Narendra Modi acknowledged in one of his addresses to the nation that “the lockdown looks costly from an economic perspective, but if we take into account the number of lives saved, this is but a minor cost.” According to the International Business Report (IBR) – a mid-market survey of leaders across the globe - by Grant Thornton, while economic optimism fell to a series low, 63% of the respondents in India are optimistic and 58% are expecting an increase in revenue over the next 12 months. India ranks fifth and fourth respectively, in business optimism and revenue generation, globally.

While the pandemic has strained the

healthcare system, another challenge has been the impact of indirect taxes on the sector. To ensure seamless, effective and economical functioning of this sector and to reduce underlying cost to some extent, it is important to introspect the element of indirect taxes on these extremely essential supplies. Here are few of the challenges that the healthcare sector is facing vis-a-vis applicability of GST and also possible recourses that may be considered by the government officials to address these challenges.

#### Cost of healthcare services

Most healthcare expenses are paid by patients and their families, rather than by the government, unlike in





other developed countries. However, Government of India (GOI) has minimised the burden of medical expenditure by exempting levying indirect taxes on such expenses.

Taxability of healthcare services under the GST law has been adopted from the erstwhile service tax regime with more clarity being imparted time and again wherever any ambiguity/anomaly has been observed by the government or concerns have been raised by various stakeholders. Healthcare services have been notified as exempted services with similar scope as was covered under the erstwhile service tax regime. However, all this while, an important issue raised by many large and medium industry players remains unaddressed, i.e., if there is no indirect tax on healthcare services for people of the nation.

Let us understand how patients are still indirectly paying GST on these services to the government. Under the service tax as well as GST law, where any goods and services are procured for supply of exempted supply, ITC in respect of such procurements are not available to registered persons. Accordingly, ITC in respect of procurements, such as medicines, consumables, medical equipments, including orthopedic

implants, gloves, syringes, magnetic resonance imaging devices, cannot be availed for supply of healthcare services that are exempt under GST. This implies, taxes paid on procurements made by hospitals, clinical establishments, etc., form part of their cost and results in increased charges for such services, consequently borne by patients. Hence, the intention of the government to provide tax free healthcare services remains defeated.

### Medical tourism

Medical tourism is another area that is facing disruptions due to restrictions on travel across the globe. According to a report, Healthcare industry in India by India Brand Equity Foundation, Indian medical tourism market is growing at 18% y-o-y and is expected to reach USD 9 billion by 2020. Hospitals and diagnostic centers attracted Foreign Direct Investment (FDI) worth USD 6.72 billion between April 2000 and March 2020, according to the data released by Department for Promotion of Industry and Internal Trade (DPIIT). It can be another ancillary reason due to which the healthcare sector may be relooked from a cost perspective. In order to revive medical tourism in India after the restriction on inter-country travels is

back to normal, decreasing the cost of healthcare in the hands of consumers would directly help in creating increased demand and may build better prospects of same in India.

### Clinical trials/research and development activities

The exemption has been provided only for specified services under the healthcare sector. However, there are few ancillary activities, such as clinical trials, research and development activities, which are carried out by pharmaceutical companies and are leviable to GST at 18%. These services are ultimately consumed by the pharma companies for manufacturing their products that are largely taxed at 12%. This results in increased costs of medicines as no refund is available for input services under inverted duty mechanism.

### Exemption limited to certain defined healthcare services

Most healthcare services are exempt from GST, however, medicines, consumables and provision of services by plastic surgeons (when cosmetic in nature) are not. The artificial limb, which is essential for restoration of life and implants, are also taxable. Similarly, health insurance also falls under category of 18% GST for which no ITC is available to end customers. Therefore, we can say that medical services are mostly exempt but not fully exempt.

### What the government can do to overcome these challenges

Since the introduction of GST, industry players have time and again reached out to concerned tax officials to share their concerns along with few possible solutions that can be adopted to minimise tax impact on these transactions.

#### Alternate 1:

One option which has always topped in the proposal is the government may consider zero rating of healthcare services, which will not only ensure that the credit chain is intact but also input taxes are not loaded into cost of said services. Through this, healthcare service providers could ensure a pass through of benefits and

correspondingly, readjust the pricing for their services to patients. Further, ITC could be availed and refund applied in respect of all input taxes paid on goods and services consumed.

It is also worthwhile to refer to the framework adopted by other countries with respect to healthcare services. Under UAE VAT law, these services are not exempted and are zero-rated. Similarly, few basic healthcare services are zero-rated in Australian GST law as well as in VAT laws in Bahrain. These countries acknowledged the need of providing such services without any cost of tax. Taking a cue from its foreign counterparts, the Indian tax authorities may consider taking some steps towards zero rating of healthcare services.

#### **Alternate 2:**

A lower rate of 5% was also proposed for healthcare services by many players to open the blocked credits that can be ultimately used to pay these output taxes. Balance ITC over and above 5% may be converted into liquid funds by allowing refund on such services because of inverted duty structure. This option would result in unlocking of the differential ITC and will ease costs for all healthcare service providers, including nursing homes, clinics and hospitals.

Similarly, benefit of lower rate can be assessed for clinical trials, research and development activities and health insurance services as well. This will help in creating low cost facilities for the consumers.

Though, these proposals may have a certain impact on the revenue, implementation of said proposals may allow some space to the industry in reducing their charges. This may also serve the purpose of the government to provide said necessity at minimum possible cost to consumers/patients. Further, as mentioned initially, decreased costs may result in attracting more people from abroad to avail world-class healthcare services from India which may in-turn yield greater revenue for industry and the government.

The government officials have been proactive in providing clarifications to the sector for various industry specific issues, such as levy of GST on services provided by medical staff hired by hospitals and taxability of food supplied to in-patients. In relation to hiring of senior doctors/consultants/technicians by the hospitals without any employer-employee relationship, the GST officials clarified that services provided by them to the hospitals are healthcare services which are exempt, irrespective of whether there is any employer-employee relationship. For the issue pertaining to taxability of food supplied to in-patients, it was sufficiently clarified that food supplied to in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. However, supply of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

Recently, GOI has tried to address few concerns quite proactively by

announcing a stimulus package of INR 20 trillion for the Indian economy and various other schemes and packages for the healthcare and pharma sector. With a view to make 'Atmanirbhar Bharat', the government has also announced industrial schemes, including production-linked incentive schemes to boost domestic manufacture of API, drug intermediaries and medical devices as these industries have also taken a hit due to supply-chain disruptions. 47% of the respondents in India, according to IBR, are looking at modifying their supply-chain as part of their business strategy post COVID-19. This will also boost the 'Make in India' initiative of GOI.

The government along with medical associations, public and private hospitals, medical practitioners has been at the forefront since the outbreak of the pandemic. But the impact left by coronavirus on the entire world has firmly established the need for active action and a robust, collaborative, scalable and agile digital healthcare infrastructure.

Healthcare being a necessity and not a luxury, is likely to grow at a much better tangent as compared to most other industries. Hence, it would be a remarkable step by the central government if they realign the actual intention behind bringing in the exemption for healthcare sector and further bring down the cost of the healthcare, pharma and other related supplies for general public at large.



### What is the procedure to file NIL return in Form GSTR-1 through SMS

The procedure to file NIL returns by SMS is:

- **Initiate NIL filing:** The taxpayer is required to send an SMS as 'NIL<space>R1<space>GSTIN<space>Tax period (in MMYYYY)' from registered mobile number on 14409 to receive a code.  
Illustrative message for filing NIL return for April 2020: NIL R1 09XXXXXXXXXXZC 042020
- **Confirm NIL filing:** For confirmation of filing, the taxpayer is required to send an SMS as 'CNF<space>R1<space>code' from registered mobile number on 14409. The taxpayer will receive an acknowledgment number through SMS.

Example of confirmation message:  
CNF R1 123456

- **For any help:** The taxpayer can send an SMS as 'HELP R1' on 14409 from the registered mobile number or visit 'Help' section on the [GST portal](#).
- **Track status:** The status of the returns so filed can be tracked on the GST portal by logging in to the portal and navigating to Services – Returns -Track return status.

### Is GST applicable on supply of medicine by hospital to in-patients and out-patients?

Healthcare services provided by a clinical establishment, an authorised medical practitioner or paramedics are exempted under GST<sup>45</sup>. The supply

of medicines to in-patients through hospital pharmacy as well as supply of medicines, drugs, stents, implants, etc., administered to in-patients during the medical treatment or procedure shall not be liable to GST as the supply of medicines and the consumables are integral part of the treatment extended to in-patients in hospitals. Further, such supply shall be treated as a composite supply wherein providing healthcare service is 'principal supply' whereas supply of medicines, drugs, etc., shall be 'ancillary supply'. The supply of medicines to out-patients shall be leviable to GST<sup>46</sup>.

### Is GST applicable on money retained by hospitals after making payments to consultants/technicians?

Out of the total amount charged from the patients, hospitals pay some amount

<sup>45</sup>. Sl. No. 74 Heading 9993 vide Notification No 12/2017-Central Tax (Rate) dated June 28, 2017

<sup>46</sup>. Circular No. 32/06/2018-GST dated February 12, 2018



to consultants/technicians and keep the balance in respect of ancillary services that include nursing care, infrastructure facilities, paramedic care, emergency services. The Tax Research Unit (TRU) division of department of revenue had clarified that the entire amount charged

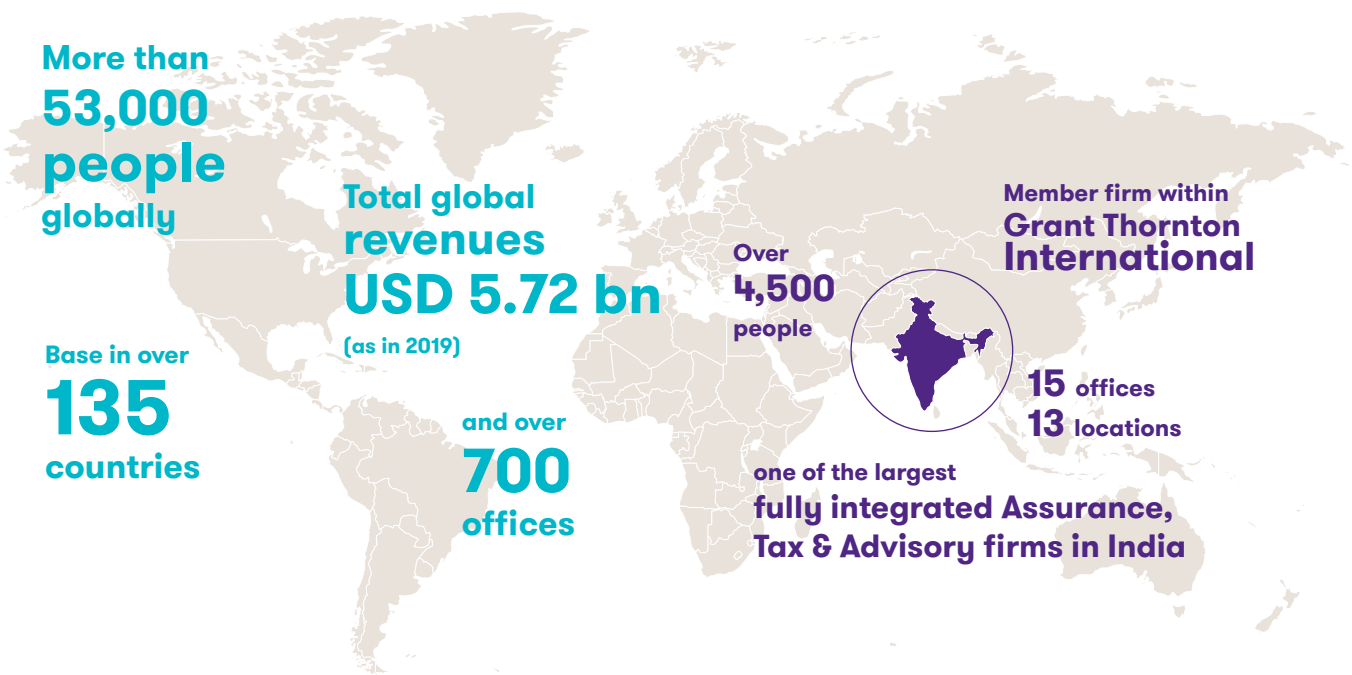
by hospitals from patients including the retention money and the fee/payments made to the doctors is towards healthcare services provided by the hospitals. Hence, the amount charged by hospitals is exempt.

#### **What is the recourse available for an applicant against the order of NAA?**

The GST law does not provide for any alternate remedy against the order of NAA. However, the applicant may file a writ petition against the order of NAA before the respective HC.



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