

GST Compendium

A monthly guide

December 2020



Editor's note

Recently, the Mumbai zonal unit of Directorate General of GST intelligence has unearthed frauds relating to the GST of more than INR 2350 crore. In another case, the anti-evasion branch of the CGST has busted a racket relating to input tax credits (ITC) through fake billing of INR 1278 crore. A nationwide drive has been undertaken by the GST authorities and some arrests have also been made. This has become a major issue and the government is working round the clock to tackle the perils of fake invoices. The law committee of the GST Council has suggested that the registration process for new applicants should be tightened to eliminate fake invoices. We may witness more aggressive stance by the government and the regulatory authorities to address such issues.

With an aim to make Indian manufacturers globally competitive and enhance exports, the Union Cabinet has given its approval to introduce Production-Linked Incentive Scheme for 10 key sectors. These priority sectors include specified electronic products, automobiles and auto components, pharmaceutical drugs, telecom and networking products, textile products, and food products.

On the judicial front, the Madras High Court has quashed the levy of interest on the ITC portion. Recently, the CBIC has also clarified that the interest needs to be recovered only on net cash tax liability. The decision by the Madras HC is in sync with position taken by the government.

In this edition, we share our views on GST issues relating to the cross-border transactions.

If you want us to cover any specific topic, we will be happy to do so.

We hope you will find this edition informative and interesting.

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01. Important amendments/updates



Union Cabinet approves Production-Linked Incentive (PLI) Scheme for 10 key sectors

The Union Cabinet has approved the PLI Scheme for enhancing India's manufacturing capabilities and exports. The scheme shall be implemented across 10 key sectors. It aims to make Indian manufacturers globally competitive; attract investment in the areas of core competency, cutting-edge technology; ensure efficiencies; create economies of scale; enhance exports and make India an integral part of the global supply chain.

A look at the key sectors

Category of taxpayer	New due dates
Advance chemistry cell (ACC) battery	ACC batteries
Electronic/technology products	Semiconductor fab, display fab, laptop/notebooks, servers, IOT devices, specified computer hardware
Automobiles and auto components	Automobile and auto components
Pharmaceuticals drugs	Category 1: Biopharmaceuticals, complex generic drugs, patented drugs or drugs nearing patent expiry, cell based or gene therapy products, orphan drugs, special empty capsules, complex excipients Category 2: Active pharma ingredients (APIs)/key starting materials (KSMs)/drug intermediaries (DIs) Category 3: Repurposed drugs, auto-immune drugs, anti-cancer drugs, anti-diabetic drugs, anti-infective drugs, cardiovascular drugs, psychotropic drugs and anti-retroviral drugs, in-vitro diagnostic devices (IVDs), phytopharmaceuticals, other drugs not manufactured in India, other drugs as approved



Category of taxpayer	New due dates
Telecom and networking products	<ul style="list-style-type: none"> Core transmission equipment, 4G/5G next generation radio access network and wireless Equipment, access and customer premises equipment (CPE), internet of things (IoT), access devices and other wireless equipment, enterprise equipment: switches, router
Textile products: MMF segment and technical textiles	Man-made fiber segment, technical textiles
Food products	Ready to eat/ready to cook (RTE/RTC), marine products, fruits and vegetables, honey, desi ghee, mozzarella cheese, organic eggs and poultry meat
High efficiency solar PV modules	Solar PVs
White goods (ACs & LED)	Air conditioners, LED
Speciality steel	Coated steel, high strength steel, steel rails, ally steel bars and rods

The above are in addition to the already notified PLI Schemes in the following sectors:

- Mobile manufacturing and specified electronic components
- Critical KSMs/DIs/APIs
- Manufacturing of medical devices

The PLI Scheme will be implemented by the concerned ministries/departments and will be within the overall financial limits prescribed. The final proposals of PLI for individual sectors will be appraised by the expenditure finance committee (EFC) and approved by the cabinet. Savings, if any, from one PLI

Scheme of an approved sector can be utilised to fund that of another approved sector by the empowered group of secretaries. Any new sector for PLI will require fresh approval of the cabinet.

GSTN provides online application for unblocking of e-way bill generation facility from 28 November 2020

The e-way bill (EWB) generation facility of a taxpayer is to be blocked, in case the taxpayer fails to file their returns¹ for two or more consecutive tax periods. In this regard, the GST Network has now provided a facility to the taxpayers to file an application online to unblock their EWB generation facility² from 28 November 2020 onwards.

Steps for unlocking EWB generation facility

1. Login to the portal and navigate to **Services> User services> My Applications**
2. Select application type as **"Application for unblocking of e-way bill"** and click New Application

3. Submit application in Form EWB-05, with upload of up to four documents
4. The tax official can issue a notice for personal hearing of the taxpayer. Further, the taxpayer can file their reply to the notice online, along with supporting documents.
5. The tax officer shall issue an order (in Form EWB-06) approving the taxpayer application for unblocking the EWB generation facility.
6. If the officer rejects the taxpayer's application vide order in Form EWB-06, the EWB generation facility will remain blocked and the taxpayer shall be required to file their pending returns (in Form GSTR-3B/Statement

in Form CMP-08, so as to reduce the pendency to less than two tax periods), for restoration of the EWB generation facility.

7. Notice(s)/order issued by the officer will be sent via SMS and mail to taxpayer and will be made available on the taxpayer dashboard **(Services > User Services > View Additional Notices/Orders option).**

1. in Form GSTR-3B or Statement in Form CMP-08

2. in Form EWB-05

CBIC waives penalty for non-compliance of QR Code for B2C transactions till March 2021

Based on the recommendations of the GST Council, the Central Board of Indirect Taxes and Customs (CBIC) has waived the penalty payable for businesses with turnover exceeding 500 crore on non-implementation of dynamic quick response code

from 1 December 2020 to 31 March 2021.

The said waiver is subject to the condition that the said person complies with the aforesaid provisions from **1 April 2021**.

CBIC notifies procedure for furnishing details of outward supplies in Form GSTR-1 effective from 1 January 2021

Pursuant to the recommendations of the GST Council from time to time, the CBIC prescribed revised procedure for furnishing of details of outward supply in Form GSTR-1 effective from 1 January 2021 as under:

- The taxpayers filing quarterly Form GSTR-1 may furnish such details for the first and second months of a quarter, up to a cumulative value of INR 50 lakh in each of the months, using invoice furnishing facility (IFF) electronically on the common portal till the 13th day of the said month.
- The taxpayers intending to furnish return in Form GSTR-1 on a quarterly basis shall indicate their preference electronically, on a common portal, for furnishing of return on a quarterly

basis from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised.

- Once opted, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods unless:
 - The taxpayer becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or
 - Opt for furnishing of return on a monthly basis, electronically, on the common portal
- The taxpayer whose aggregate

turnover exceeds INR 5 crore during the current financial year (FY) shall opt for furnishing of return on a monthly basis from the first month of the quarter, succeeding the quarter during which the aggregate turnover exceeds INR 5 crores.

- The taxpayers who have furnished Form GSTR-1 for October 2020 on or before 30 November 2020 shall be deemed to have opted for the monthly or quarterly furnishing of return as under:

Aggregate turnover in preceding FY	Type of Form GSTR-1 filed in current FY	Deemed option
Upto INR 1.5 crore	Quarterly	Quarterly
Upto INR 1.5 crore	Monthly	Monthly
More than INR 1.5 crore and upto INR 5 crores		Quarterly

The default option can be changed electronically on the common portal from 5 December 2020 to 31 January 2021.



CBIC notifies revised timeline for filing return in Form GSTR-1 (details of outward supply) with effect from 1 January 2021

Pursuant to the recommendations of the GST Council from time to time, the CBIC has notified revised timelines for filing return in Form GSTR-1 as under:

Type of return	Timeline
Monthly	Eleventh day of the month succeeding such tax period
Quarterly	Thirteenth day of the month succeeding such tax period

GSTN issues advisory on auto-population of e-invoice details into return in Form GSTR-1 (details of outward supply)

The GST Network (GSTN) has notified that the details of e-invoices available for auto-population along with status of auto-population can now be downloaded as excel file. To give effect to this change, certain tabs/labels are being added on GSTR-1 dashboard and screens. In this regard, the GSTN has notified certain action points for the taxpayers as under:

- **For the period of October 2020:** The e-invoice details would be processed incrementally from 13 November 2020. The processing of details of e-invoices/IRNs generated till 31 October 2020 is expected to take upto 10 days.

- **File GSTR-1 on their own:** The taxpayers are advised not to wait for auto-population but file return in Form GSTR-1 for October on their own (if not filed already). However, there is an option to download the details of October-dated documents through excel file (download details from e-invoice (Excel) button available at the bottom portion of GSTR-1 dashboard).
- **Verification of details downloaded in Excel:** Taxpayers are requested to verify the documents present in Excel and share feedback on GST Self

Service Portal in respect of whether all documents reported to IRP are present in Excel, whether each e-invoice/IRN is correct and all the details of document are populated correctly.

- **For the period of November 2020:** The e-invoices generated (i.e. the documents dated in the month of November) will be auto-populated into GSTR-1 in incremental manner and the process for whole month will be completed by 2 December 2020.

Auto-populated return in Form GSTR 3B in PDF available from October 2020 onwards

In continuation of the return linkage project, the GSTN has now introduced an auto-populated Form GSTR-3B in the PDF format for benefit of the taxpayers. This facility shall be available for taxpayers who are registered as normal taxpayer, Special Economic Zone (SEZ) developer, SEZ unit and casual taxpayer.

Further, the same shall be made available in Form GSTR 3B dashboard from October 2020 tax period onwards.

The auto-populated PDF of Form GSTR-3B will consist of: -

- Liabilities from Form GSTR-1

- Liability and Input Tax Credit (ITC) auto-drafted ITC Statement from Form GSTR-2B

The taxpayers will be able to access their Form GSTR-3B (PDF) through:
Login to GST Portal > Returns Dashboard > Select Return period > GSTR-3B> System Generated 3B.

Last date for filing applications under Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 extended for Jammu and Kashmir and Ladakh

The Jammu and Kashmir Reorganisation Act, 2019 came into force with effect from the 31 October 2019 and for considerable period during which the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 (Scheme) was open for filing of declaration, the internet services were disrupted in Jammu and Kashmir and Ladakh. These extraordinary circumstances created

an impediment in the implementation of the provisions of the scheme as the taxpayers in these Union Territories could not avail the benefits.

In this regard, the CBIC has extended certain timelines in respect of eligible cases in Jammu and Kashmir and Ladakh as under:

Milestone	Timeline
Filing declaration	31 December 2020
Issuance of statement	31 January 2021
Issuance of estimate of amount payable	15 January 2021
Payment of dues by declarant	28 February 2021

Recent amendment to list of authorised operations for SEZ developer/ approved co-developer

The government has recently amended the consolidated list of default authorised operations which can be undertaken by the SEZ developer/ approved Co-developer by default effective from 2 November 2020.

As per the amendment, the office space for development commissioner, customs, IFSC authority, security and state governments staff has been inserted to cover the same in list of authorised activities which can be undertaken by

SEZ developer/approved co-developer by default.

Migration of online modules to the new DGFT platform from 1 December 2020

With an objective to provide paperless, digital, efficient and transparent services to the exporters and importers, and to further the overall goal of trade facilitation and Digital India, the Directorate General of Foreign Trade (DGFT) has planned to introduce new platform with various revamped services.

Recently, the DGFT had notified the linking of Import-export code (IECs) in

the new DGFT online environment. In addition, the DGFT has now informed that services for Advance Authorization (AA), Export Promotion Capital Goods scheme (EPCG), Duty-Free Import Authorisation scheme (DFIA) and norms are soon to be migrated to the new online DGFT systems from 1 December 2020. Therefore, the services for amendment of any AA, EPCG or DFIA licences would be temporarily

suspended from 12:00 PM on 20 November 2020 till 30 November 2020. The amendment of licences includes cases of re-validation, invalidation, value enhancement, EO extension, etc.

However, the services for new license issuance, or submission of any new application file would remain available throughout this period.

2a. Key judicial pronouncements



Madras HC quashes levy of interest on ITC portion

Summary

The Madras High Court (HC) has recently in a batch of writ petitions³, quashed the levy of interest on delayed payment of GST, including GST paid through utilising, input tax credit (ITC). The HC further quashed the orders of the assessing officer directing coercive recovery by attachment of bank accounts. The HC directed the appropriate authority to compute the interest liability for belated remittances of cash and refund the balance of the amount collected from the petitioner within a period of four weeks from date of uploading of this order.

Facts of the case

- The petitioner had filed a writ before the Madras HC challenging the interest provisions under the GST law⁴.
- The petitioner argued that interest is a measure of compensation and since ITC is already available in the electronic ledger, there is no question of the same being due to the revenue.
- It further argued that the amendment which provides that interest shall be levied only on that part paid in cash has been inserted to set right an anomaly and is therefore retrospective in operation.

Madras HC observations and ruling⁵

- **No loss to revenue:** The Madras HC observed that interest is indented to compensate the revenue for loss of capital⁶. In the present case, there is no loss in so far as the revenue is in possession of the credit which is as good as cash and cannot thus be said to be prejudiced in any way⁷.
- **CBIC's circular⁸:** The CBIC reiterated that the amendment⁹ is intended to be retrospective. The Centre, the State and the CBIC are in agreement that the operation of the amendment should only be retrospective. The

3. M/s. Maansarovar Motors Private Limited

4. Section 50 of the CGST Act, 2017

5. Dated 16 October 2020

6. SC in the case of Commissioner of Income Tax Vs. Anjum H Ghaswada, (252 ITR 1)

7. SC in the case of Eicher Motors (supra)

8. Circular No.F.No.CBEC.20/01/08/2019 GST dated

18 September 2020

9. by insertion of proviso of Section 50 of the CGST Act

interpretation to the contrary by the authorities constituted under the CBIC is clearly misplaced as is the consequential coercive recovery.

- **Recovery for past period extended due to technical difficulties:** The Madras HC observed that the CBIC has extended a waiver of recovery for the past period in line with the decisions of the GST Council through the administrative instructions that cemented the long line of assurances of the GST Council and the CBIC. While promising that the amendment

in question will be clarified to be retrospective, the CBIC has indicated certain difficulties in carrying out the stated amendment at this juncture.

- **Petitions allowed and direction to refund excess amount collected:** Thus, the HC allowed the writ petitions and directed the appropriate authority to compute the interest liability for belated remittances of cash and refund the balance of the amount collected from the petitioner within a period of four weeks from date of uploading of this order.



Our comments

The GST Council, in its 39th meeting, had recommended that the interest on delay in payment of GST should be charged on the net tax liability and the same shall be made applicable retrospectively from 1 July 2017.

In accordance with the decision taken by the GST Council, the provisions relating to computation of interest liability in case of delay in paying the GST were amended and further it was also clarified that no recoveries shall be made for the past period.

The CBIC has also issued administrative instructions, wherein the authorities have been instructed to recover interest only on net cash tax liability (i.e. the portion of the tax that has been paid by debiting the electronic cash ledger or is payable through cash ledger) from 1 July 2017. Further, it was also being clarified that in cases where show-cause notices (SCNs) have been issued on gross tax payable, the same shall be kept in call book till retrospective amendment in the provision is carried out.

Accordingly, the present decision by the Madras HC seems to be in line with the above changes announced by the government and is a welcome ruling, which shall hopefully provide big relief to taxpayers.

2b. Decoding advance ruling



ITC unavailable on medicines, food and beverages supplied to in-patients – Karnataka AAR

Summary

The Karnataka Authority for Advance Ruling (AAR), in a recent case, has held that input tax credit (ITC) is to be restricted on medicines used in the course of supply of health care services and on supply of food and beverages to in-patients. Further, the AAR held that the ITC can be availed on medicines supplied to others i.e. customers, who are neither in-patients nor out-patients, as there are no health care services provided and such supply is liable to tax.

Facts of the case

- The applicant¹⁰ is engaged in the business of providing health care services through hospital.

- The applicant sought an advance ruling before the Karnataka AAR on availability of ITC in respect of medicines supplied to in-patients, out-patients, other customers as well as ITC in respect of supply food and beverages to in-patients.

Karnataka AAR's observations and ruling

Availability of ITC in respect of supply of medicines to in-patients:

- The AAR mentioned that supply of medicines is not a separate supply as the medicines are consumed in the course of supply of medical treatment.

- Therefore, the same would not constitute a 'composite supply'¹¹ as there is only one supply i.e. 'treatment of ailment' which is a health care service.
- Since, the outward supplies (health care services) are exempt¹², the applicant is not eligible to avail ITC on inward supply of medicines used for providing 'health care services' to the in-patients.

Availability of ITC in respect of medicines supplied to out-patients:

- The AAR observed that while the applicant is eligible to claim ITC on medicines sold from its pharmacy

10. M/s Ambara

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

12. under entry No.74(a) of No. 12/2017-CTR dated June 28, 2017

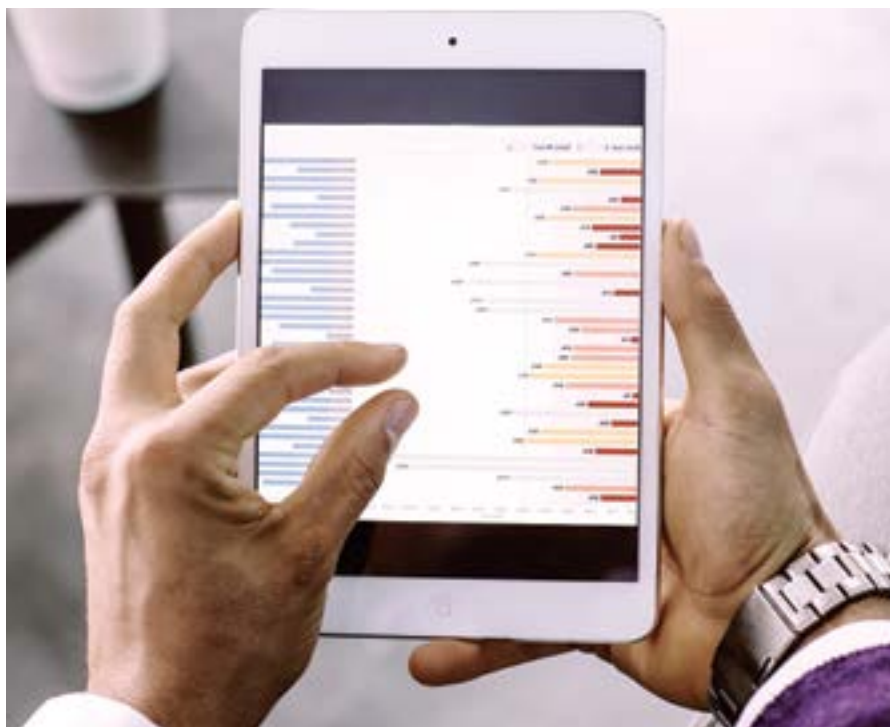
counter, however, ITC is ineligible on medicines supplied as part of health care services provided to out-patients.

Availability of ITC on supply of medicines and other goods to other customers:

- In this case, the applicant is selling the medicines as a trader and is liable to collect and pay the applicable tax on the goods sold and also is eligible to claim ITC like any supplier of taxable goods, subject to restrictions.¹³

Availability of ITC in respect of supply of food and beverages to the inpatients:

- The AAR held that if the supply of food and beverages is under the prescribed diet as an integral part of the treatment process then the food and beverages loses its identity as a separate supply and merges with the supply of treatment service similar to supply of medicines.
- Therefore, it becomes an exempted supply on which the applicant cannot claim ITC.



Our comments

The Karnataka AAR has held that the supply of medicines and other consumables during treatment of in-patients is not separate supply as these are consumed in the course of treatment. Thus, as the health care services are exempt, ITC in respect of such supply shall not be available.

It is pertinent to note that the Karnataka AAR has mentioned that such supply would not constitute a composite supply as there is only one supply i.e. treatment of ailment which is a health care service. Contrary to this, the Karnataka AAR¹⁴ had earlier held that supply of goods and services in conjunction with the health care services fall under the definition of composite supply. Further, similar ruling was also pronounced by the Kerala AAR¹⁵.

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

13. Section 17 of the CGST Act, 2017

14. M/s Columbia Asia Hospitals Private Limited

15. M/s Ernakulum Medical Centre Private Ltd

Printing of answer books for educational institution taxable as supply of goods – Rajasthan AAR

Summary

The Rajasthan AAR in a recent case has held that the activity of printing of answer booklets/copies and supplying it to educational institutions by using its own raw material consisting of paper, printing ink, etc. is supply of goods. . The AAR further held that this supply is ancillary to the principal supply of the answer booklets, with or without own raw material.

Facts of the case

The applicant¹⁶ is engaged in the business of supplying answer booklets/copies to educational institution. Consideration from educational institution is received on the basis of number of answer booklets supplied.

The applicant sought an advance ruling before the Rajasthan AAR to determine the taxability of the activity of printing of answer booklets/copies supplied to educational institutions by using its own raw material consisting of paper, printing ink, etc.

Rajasthan AAR's observations and ruling¹⁷

- **Essential character:** The Rajasthan AAR stated if the activity of printing gives essential character to the printed product, it will be supply of service. If the usage of the product gives essential character, it will be supply of goods¹⁸.
- **Supply is ancillary to principal supply:** The supply of printing to the content as supplied by the recipient of the supply is the ancillary to the principal supply of the answer booklets/copies with or without OMR, therefore the supply will be considered a supply of goods.
- **Supply of goods:** The activity of printing of answer booklets/copies and supplying it to educational institutions to be used in examinations by using its own raw material consisting of paper, printing ink, etc. is supply of goods and chargeable to GST at 12%.¹⁹



Our comments

Taxability of printing activity along with the supply of materials has always been a matter of litigation. In order to address the ambiguity, the government had earlier clarified that determining whether such supplies constitute a supply of goods or services would be based on what constitutes the principal supply.

In the present case, the applicant is supplying answer booklets/copies having name logo, etc. of the educational institution using own printing material and the supply has been held to be a supply of goods.

The Karnataka Appellate Authority for Advance Ruling (AAAR)²⁰ had provided a similar ruling, wherein it had held that the activity of printing content provided by customer on banners and supply of such printed trade advertisement material is supply of goods.

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

16. M/s Markk Business Private Limited

17. Order No. RAJ/AAR/2020-21/10 dated 18 September 2020

18. Circular No. 11/11/2017-GST dated 20 October 2017

19. falling under chapter Heading/ Tariff item 4820 of entry 123 of the schedule II to the notification 01/2017 central tax (Rate) dated 28/06/2017 as amended

20. M/s Macro Media Digital Imaging Pvt. Ltd.

2c. Key national anti-profiteering authority orders



GST law does not restrict investigation only to complained products

Summary

The National Anti-profiteering Authority (NAA) recently upheld profiteering charge against a famous coffee selling chain of restaurants. The NAA further stated that the GST law does not provide that the investigation shall be restricted only to the complained goods or services. Further, held that the mathematical methodology employed by the Directorate General of Anti-Profiteering (DGAP) to compute profiteered amount is based on information supplied by the Respondent through his GST returns and the methodology logical, reasonable, appropriate and in consonance with anti-profiteering provisions. Hence the same cannot be disputed by Respondent.

Facts of the case

- The applicant filed an application before the anti-profiteering authorities, alleging that the Respondent²¹ had not passed on the benefit of reduction in the GST rate on restaurant service when it was reduced from 18% to 5% w.e.f. 15.11.2017 without benefit of input tax credit (ITC).
- The applicant alleged that the Respondent had increased the base prices of the food items sold by him and applied 5% GST thereon, by either maintaining the pre-rate reduction selling prices or even increasing them in the post-rate reduction period and thus he had resorted to profiteering.
- The DGAP had calculated the profiteered amount as INR 2.43 crores by comparing the average base prices of the 51 products sold during the period from 1 October 2017 to 31 October 2017 and 571 products sold during the period from 1 November 2017 to 14 November 2017, with the actual basic prices of the said products sold during the period from 15 November 2017 to 30 June 2018. This profiteered amount had been arrived at in respect of those supplies where the base prices, post 15 November 2017, were increased by more than 11.79% (impact of denial of input tax credit).

21. M/s Starbucks Coffee

NAA's observations and ruling

- **Additional ITC benefit:** The DGAP based on the pre and post reduction GST rates, the impact of denial of ITC, the details of the outward taxable supplies other than zero rated, nil rated and exempted made during the period from 15 November 2017 to 30 June 2018, as per the product-wise sales registers reconciled with the GSTR-1 and GSTR-3B returns, has computed the amount of net higher sale realisation or the profiteered amount due to increase in the base prices of the products, despite reduction in the GST rate from 18% to 5%. Accordingly, the profiteered amount has been accordingly calculated as INR 1.05 crores.
- **Methodology is logical, reasonable and appropriate:** The above mathematical methodology employed by the DGAP to compute the profiteered amount is based on the information supplied by the Respondent through his GSTR-1 and GSTR-3B returns, details of the outward taxable supplies as well as the submissions of the Respondent and hence the same cannot be disputed by the Respondent. The above methodology is logical, reasonable, appropriate and in consonance with the anti-profiteering provisions²².
- **No restriction under law:** The Authority has jurisdiction to examine all

such cases in which the above benefits are required to be passed on suo moto or to get them investigated through the DGAP and its power to do so is not circumscribed by any restriction to the effect that it cannot examine those cases in respect of which no complaint has been made.

- **Investigation by DGAP of all products is legal:** The DGAP is bound to bring before this authority all such cases in which both the above benefits have not been passed on irrespective of the fact whether any complaint has been received concerning them or not once they have come to his notice. The Respondent cannot be allowed to deny benefit of rate reduction to the other buyers under the above pretext and misappropriate the amount of benefit of ITC which he is not to pay from his pocket. Accordingly, the DGAP has rightly investigated the benefit of rate reduction to be passed on to the other buyers on the products other than the complained product after giving him due notice²³ and hence, the investigation conducted by him in this regard is legal and is in consonance with the anti-profiteering provisions.
- **Contravention of anti-profiteering provisions:** The Respondent has not only collected excess base prices from his customers which they were not required to pay due to the reduction in the rate of tax but he has also

compelled them to pay additional GST on these excess base prices which they should not have paid. The Respondent has thus defeated the objective of both the Central and the State governments to provide the benefit of rate reduction to the ordinary customers by sacrificing their tax revenue. The Respondent was legally not required to collect the excess GST and therefore, he has not only violated the provisions of the GST law but has also acted in contravention of the anti-profiteering provisions as he has denied the benefit of tax reduction to the ordinary buyers by charging excess GST.



Our comments

The GST law does not prescribe a mechanism/methodology to determine the amount of benefit to be passed on. In most cases, the authorities generally compare the pre-GST base price of a product with the post-GST base price, in case there is a reduction in the tax rates and various other external aspects are not factored in. The absence of methodology is the prime reason for discrepancies leading to litigation.

22. Section 171 of the CGST Act, 2017

23. under Rule 129 (3) of the CGST Rules, 2017

03. Experts' column



Deciphering cross-border transaction hitches under GST

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The GST Act, hailed as the biggest indirect tax reform, has completed three years of its operation. The Act, which was delineated as a good and simple tax, aimed to transform the Indian tax system and eliminate the compounding effects of multi-layered tax systems.

Three years down the line, it has been an adventurous ride for India Inc. as well as the government, coupled with series of changes focusing on rationalisation of tax rates, simplification of returns and measures to curb tax evasion. Despite the continuous efforts by the government to streamline the tax positions and processes, the GST law is yet to be stabilised to resolve the issues/ambiguities and the main purpose of the law, which is the ease of doing business, is yet to be achieved.

The COVID-19 pandemic has posed unprecedented challenges, leading to a shift in global dynamics that could turn out to be a blessing in disguise for India to attract foreign investments. A foreign company

may initiate business in India by setting up a subsidiary company or branch office or project office or liaison office, after seeking prior approval from the Reserve Bank of India, under the Foreign Exchange Management²⁴. Therefore, it becomes critically important to examine GST implications or ambivalence on the cross-border transactions.

Intricacies on the classification of intermediary services

One of the most contentious issues is the classification of “business support services” provided by the Indian entity to its foreign counterparts to be treated as **intermediary services or export of services**.

²⁴. Establishment in India of a branch office or a liaison office or a project office or any other place of business] Regulations, 2016

The concept of intermediary was originally introduced under the erstwhile service tax regime and has been carried forward as such under the GST regime. As per Section 2(13) of the IG-ST Act, 2017, “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.” Broadly, an intermediary tantamounts to two supplies at a time i.e. one between principal and third party and supply of his service to the principal, for which fee or commission is generally charged involving his representative character.

Under the erstwhile service tax regime, it had been much debated and a subject matter of long-drawn litigations with a plethora of jurisprudence. CESTAT Mumbai, in the matter of **M/s Chevron Phillips Chemicals India Pvt. Ltd. vs Comm. CGST & Central Excise**²⁵, has held that where the service provider is not acting as a bridge between overseas entities and its customers, it would not be qualified under intermediary services. Similarly, in the matter of **M/S Godaddy India Web Services Pvt. Ltd. Versus Commissioner Of Service Tax, Delhi-IV**,²⁶, the AAR held that supporting the business/brand of GoDaddy US in India was the main service and processing payments and oversight of services of third-party call centers were ancillary as well as incidental to the provision of the main service in naturally bundled services. Since such services are being provided on their own account, it cannot be treated as intermediary services. Reliance may be placed on the Education Guide issued by the CBIC to understand the guiding principles laid down for identifying the intermediary services.

Under the GST regime, advance rulings are opening a Pandora’s box for India Inc. to ponder upon where the authorities are more inclined in classifying services to overseas entities as intermediary services, without relying on the precedents established under the erstwhile service tax regime

or considering the factors laid under Education Guide for determination of intermediary services.

The Maharashtra AAR in the matter of **Vservglobal Private Limited**²⁷ held that where the applicant is engaged in providing business support services comprising of back-office support and accounting services, which inter-alia includes liaison with the buyers/sellers with respect to delivery, transportation of goods and payment, etc., it would fall under the category of intermediary since the applicant arranges or facilitate the supply of goods or services. A similar view has been held in the matter of **M/s Toshniwal Brothers (SR) Private Limited**²⁸ and **Global Reach Education Services Pvt Ltd**²⁹.

To end unwarranted confusion, the CBIC issued clarification elaborating the applicability of GST on the supply of Information Technology enabled Services (ITeS)³⁰. It was clarified that back-end facilitation services would fall under the ambit of intermediary services and when such services are coupled with back-end services on own account and facilitating various other support services, taxability would depend on the facts and circumstances of each case. However, pursuant to various representations made by the taxpayers, the said circular was withdrawn ab-initio. Resultantly, the matter is subject to different interpretations as to when a supply would constitute on own account or intermediary services.

To maximise the tax revenue, the authorities tend to extend the principle of the agency to widen up the ambit of intermediary services even though such services may be provided independently or on own account. Therefore, the government should issue a fresh circular laying down the principles for the classification of intermediary or support services. Also, from the taxpayer’s point of view, the contractual agreement should set out the scope of work, role and responsibility of each party.

Uncertainty on the taxability of project/liaison office

Likewise, a foreign company may open a project/liaison office within the

premise of FEMA regulations.

- A project office is defined as a place of business in India that represents the interests of the foreign company executing a project in India but excludes a liaison office.
- A liaison office means a place of business that acts as a channel of communication between the principal place of business or head office or by whatever name called and entities in India but which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel.

Ambiguities exist as to whether the activities undertaken by the project/liaison office and corresponding expenses reimbursed by the head office to the project/liaison office are liable to GST or not.

To qualify a supply liable to GST, an activity has to fall under Section 7 of the CGST Act, 2017, which includes all the forms of supply made or agreed to be made for a consideration in the course or furtherance of business.

Further, Schedule I of the CGST Act specifies supply of services between related parties or distinct persons, even without consideration, constitute as supply. It was decided in the Maharashtra AAR ruling of **M/s. Hitachi Power Europe GmbH**³¹ that a mere accounting entry, as per the Indian accounting standards, made by the project office will not attract levy of GST on salary paid to the expat employees. The transaction between a foreign company and project office is an intra-company affair as PAN and TAN of the project office is issued by Income Tax Department and registration under the Companies Act is obtained under the name of a foreign company. Accordingly, the project office is merely an executing arm of its foreign company.

The liaison office operates within the stipulated guidelines specified by the RBI and no consideration is being charged separately by the liaison office. It is merely an extension of the head office and does not have

25. 2019-VIL-763-CESTAT-MUM-ST

26. Ruling No. AAR/ST/08/2016

27. 2018-VIL-270-AAR

28. 2018-VIL-203-AAR

29. 2018-VIL-06-AAR

30. Circular No.107/26/2019 – GST dated July 18, 2019

31. 2020 VIL 44 AAR

any independent revenue or clients, signifying that there cannot be a flow of services between liaison office and head office as it amounts to service to oneself. The same view has been supported in the matter of **M/S Habufa Meubelen B. V. by Rajasthan AAR**³² and Tamil Nadu AAR in the matter of **M/s TAKKO HOLDING GmbH**³³

However, to add ambiguities and unwarranted litigation, Karnataka AAR in one of its latest pronouncement in the matter of **Fraunhofer-Gesellschaft Zur Forderung der angewandten Forschung**³⁴ held that the activities carried out by a liaison office (LO) in India, such as the business promotion of head office (HO) incorporated in Germany amounts to supply. The applicant and its HO are deemed to be related persons. Therefore, even in the absence of any consideration, activities performed by the applicant fall under the scope of supply as it is in relation to the furtherance of business. Further, the AAR held that the applicant and HO shall be treated as establishments of distinct persons and the activities performed by them cannot be classified as the export of services. The existence of such contrary rulings create confusion amongst the taxpayers and may give rise to further litigation.

In a nutshell, since the project/liaison office does not generate income on its own account and carry out its activities within the permissible guidelines established as per FEMA regulations, such transactions should not be leviable to the GST. However, contrary decisions by AAR's leads to dispute on the taxability at the lower level of authorities. It would be helpful if suitable clarification is issued by the government to bring the rest to this anomaly.

Input tax credit implications on branch office transactions

Moving forward, another convoluted issue revolves around the taxability of the branch office (BO). Under FEMA Regulations, BO in India can execute a different set of permissible activities, which includes rendering professional or consultancy services, carrying out research work, representing the parent foreign company, etc.

Before delving into the GST, it is noteworthy to mention that transactions between the branch and its head office (HO) were not liable to tax under the erstwhile service tax regime as the location of the recipient of the services and the place of provision of services both falls outside India. Perhaps such services should never be intended to tax under the GST.

Under the GST framework, where a person has an establishment in India and any other establishment outside India, they are treated as establishments of distinct persons. For a supply to be considered as an export of service, it is imperative that all the conditions laid down in Section 2(6) of the IGST Act are satisfied, one of which includes that supplier and recipient of services are not merely establishments of a distinct person.

Therefore, the supply of service by the branch to its HO outside India would not be classified as zero-rated supplies, thereby implying GST liability on such transactions, even though the place of supply is outside India and remittance is received in convertible foreign exchange. In the initial days of GST law, there were no exemptions granted by the government due to which representations were made by taxpayers.

To provide relief from GST, the CBIC exempted services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with the explanation I in Section 8 of the IGST Act, provided the place of supply is outside India in accordance with section 13 of IGST Act³⁵. It may be noted that such an exemption was not retrospective in nature.

Even though the place of supply is outside India, these transactions are treated exempt under GST thereby affecting input tax credit eligibility as exempt supply triggers reversal of credit.

As per Section 17(2) of the CGST Act, 2017, read along with Section 16(2) of the IGST Act, where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax so attributable to the said taxable supplies including zero-rated supplies. In the instant case, since the transaction does not qualify as export, the input tax credit is restricted.

In the end, it may be noted that while the BO is permitted to carry out all sort of permissible activities, restricting the input tax credit and not treating the entity firm on a par with a private limited subsidiary, etc., which is also a related party, it continues to be a cost to such establishments. A suitable solution in this regard would be helpful.

32. 2018-VIL-98-AAR

33. 2019-VIL-48-AAR

34. 2020-VIL-295-AAR

35. vide Notification no. 15/2018 - Integrated Tax (Rate) dated 26.07.2018

04. Issues on your mind



What is Quarterly Return Monthly Payment Scheme (QRMP)?

As a trade facilitation measure and in order to further ease the process of doing business, the GST Council, in its 42nd meeting, had recommended that registered person with an aggregate turnover up to INR 5 crores may be allowed to furnish return on quarterly basis along with monthly payment of tax effective from 1 January 2021.

Key features of the scheme are:

- **Eligibility:** Taxpayers with an aggregate turnover of up to INR 5 crores in the preceding financial year and filing return in Form GSTR-3B shall be eligible for the scheme.
- **Exercising the option:** Taxpayers can opt for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter.
- **Furnishing return in Form GSTR-1:** The taxpayers opting for the scheme would be required to furnish the details of outward supply in Form GSTR-1 quarterly through IFF till 13th of the month. The said details of outward supplies shall, however, not exceed the value of INR 50 lakh in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available.
- **Monthly tax payment:** The taxpayers under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in Form GST PMT-06, by the 25th of the month succeeding month. While generating the challan, the taxpayers should select monthly payment for quarterly taxpayer as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months:
 - **Fixed sum method:** A facility is being made available on the portal for generating a pre-filled challan in FORM GST PMT-06 for an amount equal to 35% of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly.
 - **Self-assessment method:** The said person can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available (in Form GSTR-2B), in Form GST PMT-06.

The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.

- **No deposit in case of adequate balance:**

In case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month.

- **Quarterly filing of Form GSTR-3B:**

The registered persons would be required to furnish Form GSTR-3B for each quarter on or before 22nd or 24th day of the month succeeding such quarter.

- **Interest:**

- **In case of fixed sum method:** No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount by the due date. In other words, if while furnishing return in Form GSTR-3B, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made/received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the Form GSTR-3B of the quarter by the due date.

- **Self-assessment method:** Interest amount would be payable as per the GST provisions³⁶ for tax or any part thereof (net of ITC) which remains unpaid/paid beyond the due date for the first two months of the quarter.

- **Late fee:** Late fee is applicable for delay in furnishing of return/details of outward supply as per the GST provisions³⁷. Late fee would be the applicable for delay in furnishing of

the said quarterly return/details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

What is the procedure for online e-hearing before the Maharashtra AAR?

Due to the COVID-19 pandemic, the AAR decided to initiate the e-hearing on provisional basis, in respect of applications filed. The following instructions have been issued in this regard³⁸:

- **Submission of documents through postal or courier services:** The application for advance ruling will continue to be filed online by the applicant along with payment of fee on GST website. Further, the submission of documents will continue to be through postal services or courier. Only the hearing will be done online.
- **E-hearing process:**
 - The AAR will create the hearing event by using the Microsoft Teams application and will schedule the date and time of hearings. The link of such hearing will be sent to the email of the applicant or the authorised representative and concerned officer well in advance.
 - The applicant/authorised representative and concerned officer can attend the e-hearing on Microsoft Teams application by clicking on this link.
 - The applicant attending the e-hearing shall carry ID proof. If the applicant wishes to be represented by an authorised representative, then such authorised representative shall file authorisation letter/ Vakalatnama along with copy of photo ID Card and contact details, their email id.
 - The AAR will send an email to applicant and concerned departmental officer or their authorised representatives, if any, mentioning the submissions made by the applicant as well as the concerned officer or their

authorised representatives. The applicant and the concerned officer or their authorised representatives are expected to revert the mail with remark noted and in case of any disagreement, may communicate their say in detail within two days from the date of the mail. In case of no reply it will be assumed that they agree with the contents of the emailed record of personal hearing.

- **Service of order:** The service of AAR order will be done through email only. The date on which the advance ruling order is mailed to the designated email id of applicant shall be considered as valid service date for all further purposes. The physical copy of order shall be sent on specific request from the applicant/authorised representative/concerned officer.

- **Documents for e-hearing:** Documents required to be submitted for e-hearing may be sent by the applicant on mail id advancerulinggst@mahagst.gov.in

What are the recent updates on blocking of e-way bill (EWB) generation facility?

The EWB generation facility of a taxpayer is liable to be restricted in case the taxpayer fails to file their FORM GSTR-3B returns/statement in FORM GST CMP-08, for tax periods of two or more . From 1 December 2020 onwards, the blocking of the bill generation facility would be made applicable to all the taxpayers (irrespective of their Aggregate Annual Turnover (AATO)) on the EWB Portal.

Thus, on 1 December 2020, the system will check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08, for the class of taxpayers to whom it applies, and restrict the generation of the bill in case of:

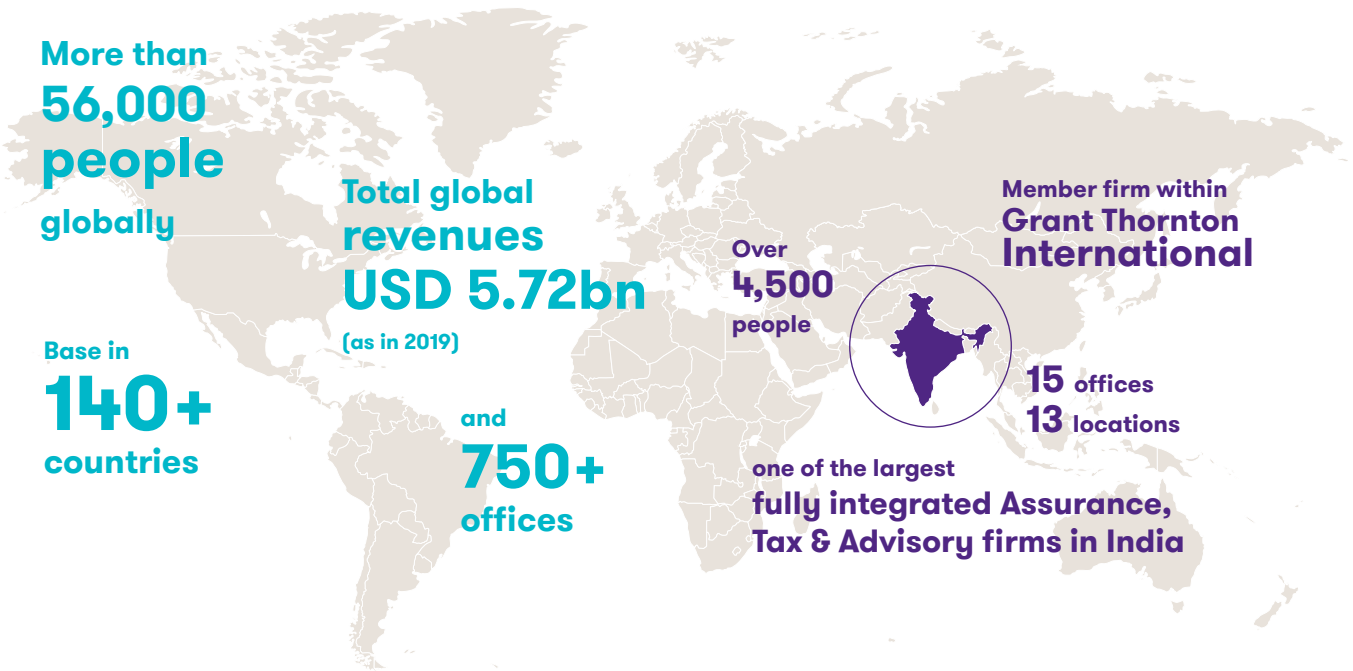
- Non-filing of two or more returns in Form GSTR-3B for the months up to October 2020; and
- Non-filing of two or more statements in Form GST CMP-08 for the quarters up to July to September 2020.

36. Section 50 of the CGST Act, 2017

37. Section 47 of the CGST Act, 2017

38. Trade Circular ARA-01T of 2020 dated 2 November 2020

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