National Conclave on GST
A Catalyst for Economic Growth & Ease of Doing Business

7th October 2017

Hotel Hyatt Regency, New Delhi

REFERENCE COMPENDIUM

PHD CHAMBER OF COMMERCE AND INDUSTRY

ADVAITA LEGAL

ATTORNEYS AND ADVOCATES

Taking a cue from the Sanskrit word "Advaita" (meaning singular, unique), Advaita Legal was set up in September 2013 with a vision to provide workable legal solutions attuned to the requirements of its clientele. We combine our substantive legal expertise in a diverse array of disciplines, issues and industries with our in-depth understanding of administrative, regulatory and legislative processes to provide our clients with a 360° experience.

A boutique law firm specializing in (a) Tax; (b) Infrastructure/ contract documentation/Government advisory; (c) Corporate/M&A; (d) Contractual/Commercial dispute resolution (including arbitration/mediation) and (e) Employment and labour laws.

Led by Sujit Ghosh, Partner and National Head at Advaita Legal, who has been listed by the *International Tax Review*, 2014-16 as one of the leading tax lawyers of India, awarded the "Tax lawyer of the Year, 2016-17" by the *Indian National Bar Association* and the "Star Tax Lawyer of the Year 2017" by *Legal Era*

Sudipta Bhattacharjee, Partner - Sudipta is leading GST impact analysis and transition advisory assignments for various large Indian groups and is also engaged in similar assignments for upcoming VAT regime in the Middle-East

After the very first year of its existence, Advaita Legal was listed in '*The Legal 500* –*The Clients Guide to the Asia-Pacific Legal Profession*'. Advaita Legal has been mentioned by International Tax Review as one of the 'Firms to watch out for' *vis-à-vis* Transfer Pricing litigation. Advaita Legal has been recognized as a leading law firm in India by *Legal500*, *Chambers and Partners* and *Magic Law*. Advaita has been **awarded the "Most Promising Legal Firm - Up & Rising" award** in the 6th Annual Indian Legal Awards 2016-17 and has also been felicitated as Runner-up in the category "**Start-up Law Firm of the Year**" at the IDEX Legal Awards, 2017 (a Thomas Reuters event).

OUR VALUE PROPOSITION

- Significant emphasis on knowledge and domain expertise
- Investment in research and creation of new legal solutions
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- Experience of advising across myriad sectors
- Multiple service offerings
- 'Ownership approach' rather than only advisory
- Exposure to a broad spectrum of industries and its practices
- Insights derived from several complex assignments
- Access to AL knowledge database
- Significant litigation expertise

OTHER SENIOR TAX LAWYERS

A.R. Madhav Rao, Arijit Chakravarty, D.K. Rana, Kamal Sawhney, Kanupriya Bhargava and Mihir Deshmukh.

Advaita's value proposition *vis-à-vis* GST

- **Transition advisory and Implementation Planning** – we are undertaking such assignments **in India and middle-east** for a wide variety of clients and industries and can bring that depth of expertise to the fore
- Proactive litigation strategy under GST including strategic writ petitions, advance rulings and anti-profiteering proceedings
- Preparation of **comprehensive price-negotiation kit** with tailored tools to aid negotiation of price reduction with suppliers owing to GST (based on **anti-profiteering** provisions)
- **In-depth legal review of the key contract/tender templates** used by the assessee for entering into contracts on its expense & revenue sides. This will help identify the key edits that may be required to protect the said assessee's interests while transitioning to GST and thereafter.
- **Key themes/areas in contract templates/tender document templates that would be looked at by us:**
  - Transfer of title/ownership clauses – under GST, taxable event will be "*supply*" of goods and services. Most 'transfer of title/ownership clauses' today are predicated upon planning options based on extant VAT/CST or service tax regime (like E1/E2 or 'in-transit' sale).
  - 'Change in law' clause(s) – does it enable tracking the impact of 'change in law' across the supply chain?
  - **Review of PPAs, Concession agreements on the output side** to ascertain if tax cost enhancement under GST can be passed on
  - Capturing specific indemnities and obligations *apropos* tax compliances to ensure that there is no leakage of tax credit/benefits.
  - Interplay between above indemnities, damages clauses and clauses pertaining to termination.
  - **Single contract vs multiple contracts - for 'works contracts' as well as 'composite/mixed supplies' under GST**
  - Bid evaluation criteria in the tender documents may need to be relooked at given the possibility of enhanced availability of credits in GST.

The Advaita Advantage

- Experience of several client engagements involving some of the largest Indian/multinational companies across sectors for strategic advisory and comprehensive hand-holding for **GST transition**
- **Invited by the Rajya Sabha Standing Committee** which was examining the GST constitutional amendment bill to present issues/amendments for their consideration
- We **understand your business**: we combine sectoral understanding, deep domain expertise in the realm of taxation and a vast litigation experience across all Judicial and quasi-Judicial fora – in other words, we combine the macro-perspective of a consulting firm with the scalpel like precision of a seasoned litigation lawyer.
- **Known for our thought leadership** – regularly quoted in reputed newspapers such as *Economic Times*, *Business Standard* and specialist portals like *Taxsutra* and *Corpkonnect* on GST related issues.

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National Conclave on GST

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PHD CHAMBER OF COMMERCE AND INDUSTRY

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PHD Chamber of Commerce and Industry

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वित्त एवं कार्पोरेट कार्य मंत्री
भारत

सत्यमेव जयते

Arun Jaitley
Minister of Finance and Corporate Affairs
India

DY. NO. 592751 /FM/FMP/2017

22nd September, 2017

MESSAGE

I am happy to know that PHD Chamber is organizing a National Conclave on "GST - A Catalyst for Economic Growth & Ease of Doing Business" on 7th October, 2017 at New Delhi.

GST will ease inflation, make tax avoidance difficult and boost GDP growth. Its implementation of the landmark unified tax should be seen as the beginning of a new journey that will expand the country's economic horizon. It is a journey where India will awake to limitless possibilities to expand its economic horizons and loftier political visions.

I wish all success to PHD Chamber for this Conclave and also for releasing a Compendium to commemorate the occasion.

(Arun Jaitley)

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शिव प्रताप शुक्ल
Shiv Pratap Shukla

सत्यमेव जयते

वित्त राज्य मंत्री
भारत सरकार
नई दिल्ली–110001
MINISTER OF STATE FOR FINANCE
GOVERNMENT OF INDIA
NEW DELHI-110001

MESSAGE

I am happy to note that PHD Chamber is organizing a National Conclave on "GST- A Catalyst for Economic Growth & Ease of Doing Business" on 7th October 2017 at New Delhi.

GST will bring many positives compared to the current system such as easy process of single point tax, elimination of cascading tax system and simpler taxation. I am sure that it will boost the competitiveness of the Indian Industry.

My best wishes and sincere appreciation to PHD Chamber for this initiative.

(Shiv Pratap Shukla)

New Delhi.
27.09.2017

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From President's Desk

Goods and Services Tax (GST) is one of the biggest economic and taxation reforms undertaken in India. GST aims to streamline the taxation structure in the country and replace a gamut of indirect taxes with a singular GST to simplify the taxation procedure.

GST is a single tax on the supply of goods and services, right from the manufacturer to the consumer. Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. GST will ensure that indirect tax rates and structures are common across the country, thereby increasing certainty and ease of doing business. A system of seamless tax-credits throughout the value-chain, and across boundaries of States, would ensure that there is minimal cascading of taxes.

The National GST Conclave aims to promote an informed dialogue on almost all the realms of business operations in our country. The Conclave will address specific issues of Trade & Industries and will provide a platform for interaction among Industry, Experts and Government Officials.

This Compendium contains Articles contributed by eminent experts highlighting different perspectives of the subjects under focus at the Conference.

I am sure the participants will find the Conclave rewarding and informative.

Gopal Jiwarajka
President
PHD Chamber

From Chairman's Desk (Indirect Taxes Committee)

When the clock struck midnight on June 30, 2017, the Country India witnessed the biggest indirect tax reform namely Goods and Services Tax receiving a red carpet welcome in Parliament's Central Hall. It was a luxury welcome for the long-awaited GST, ending a 14-year struggle to enlist political support for a move that will replace around 17 federal and state levies and unify a country of 1.3 billion people into one of the world's biggest common markets.

It gives me great pleasure to share that the Indirect Taxes Committee has organised this 'National Conclave on GST – A catalyst for economic growth & ease of doing business' at an opportune time when the Government is making all efforts to wrinkle out teething problems being faced post implementation of much awaited Indirect Tax reform of Goods & Services Tax in India. It is expected that this momentous law will finally prove to be a 'Good and Simple Tax' for Country India.

We are deeply grateful for the encouragement received by us from the Ministry of Finance through their messages for insertion in the Compendium.

This Compendium of Articles contributed by eminent tax experts on the different perspectives under GST would help to provide a better understanding of developments on the subject.

We thank most sincerely the authors of articles and all concerned who have worked hard towards organizing the Conclave and for compiling this Compendium.

Bimal Jain
Chairman
Indirect Taxes Committee
PHD Chamber

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Principles of Time of Supply under GST and key highlights of GST Council's 21st meeting

Mr. Bimal Jain, Chairman
Indirect Taxes Committee, PHD Chamber
Ms. Isha Bansal, Partner
A2Z Taxcorp LLP

Principles of Time of Supply under GST and key highlights of GST Council's 21st meeting

It was a moment of pride for the country in the hour-long glittery event, when the clock struck midnight on June 30, 2017. Country India witnessed the biggest indirect tax reform namely GST receiving a red carpet welcome in Parliament's Central Hall, marking an end to the arduous journey since the day of inception of the very idea of GST, comprehended more than a decade before. Our Hon'ble Prime Minister, Shri. Modi, hailed GST as a "Good and Simple Tax".

This Article deciphers the provisions of 'Time of Supply' under the CGST Act, 2017 [Applicable to UTGST vide Section 21 of the UTGST Act, 2017 and to IGST vide Section 20 of the IGST Act, 2017], in a lucid manner for easy understanding and discusses key highlights of the 21st GST Council meeting held on September 9, 2017.

Principles of Time of supply for goods and services [Section 12 to 14 of the CGST Act, 2017]

The taxable event under the GST regime is 'supply' of goods and services. However, the time of supply when the liability to pay CGST/SGST (for Intra-state supply) or IGST (for inter-state supply) on goods and services arises, shall be determined in the following manner:

I General provision

The time of supply of goods and services shall be the determined as under:

Time of supply for goods [Section 12(2)]	Time of supply for services [Section 13(2)]
Earliest of the following: a) Date of **issue of invoice** by the supplier or the **last date on which he is required, to issue the invoice** [under Section 31(1)] with respect to the supply b) Date on which the supplier **receives the payment** with respect to the supply	Earliest of the following: a) **Invoice issued within prescribed time period [under Section 31(2)]** → Date of issue of invoice by the supplier, or the date of receipt of payment, whichever is earlier; or b) **Invoice not issued within prescribed time period [under Section 31(2)]** → Date of provision of service, or the date of receipt of payment, whichever is earlier; or c) **Other** → Date on which the recipient shows the receipt of services in his books of account

It is important to note here that unlike services, where Service tax is payable on accrual basis, applicability of tax on advance payment received is a new phenomenon for goods taxability in GST. GST is payable on advance amount received in respect of both goods and services.

Further, insertion of date of entry in books of account of recipient as one of the parameter to determine time of supply for services is bound to create litigation as it is not possible for an assessee to identify the date on which recipient of services shows the receipt in his books of account.

Provisions for raising invoice:	
Supply of goods [as per Section 31(1)]	Supply of services [as per Section 31(2)]
Before or at the time of,- (a) **removal of goods** for supply to the recipient, where the supply involves movement of goods, or (b) **delivery of goods or making available thereof to the recipient**, in any other case	**Before or after the provision of service** but within a period prescribed [i.e. 30 days in all cases/ 45 days in case of banking and financial institution from the date of supply of services]

Where amount upto Rs. 1,000/- is received in excess of amount indicated in an invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice.

II Supply under reverse charge mechanism ("RCM")

The time of supply of goods and services in RCM cases shall be the determined as under:

Time of supply for goods [Section 12(3)]	Time of supply for services [Section 13(3)]
Earliest of the following: (a) Date of **receipt of goods**, or (b) Date of **payment** as entered in the books of account of the recipient or the date on which the payment is debited to his bank account, whichever is earlier, or (c) Date **immediately following 30 days from the date of issue of invoice/any other document by the supplier**	Earliest of the following: (a) Date of **payment** as entered in the books of account of the recipient or the date on which the payment is debited to his bank account, whichever is earlier, or (b) Date **immediately following 60 days from the date of issue of invoice/any other document by the supplier**
Where it is not possible to determine the time of supply under the above sub-sections, the time of supply shall be the date of entry in the books of account of the recipient of supply	
-	**In case of associated enterprise:** Where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient or the date of payment, whichever is earlier.

Illustration: Time of Supply in RCM cases for goods

Date of receipt of Goods	Date of payment by Recipient	Date of issue of invoice by supplier	Date immediately following 30 days from date of invoice	Time of supply
July 1	August 10	June 29	July 30	July 1
July 1	June 25	June 29	July 30	June 25
July 1	Part payment made on June 30 and balance amount on July 20	June 29	July 30	June 30 for part payment made and July 1 for balance amount
July 5	Payment is entered in the books on June 28 and debited in recipient's bank account on June 30	June 1	July 2	June 28 (i.e. When payment is entered in the books of the recipient)
July 1	Payment is entered in the books on June 30 and debited in recipient's bank account on June 26	June 29	July 30	June 26 (i.e. When payment is debited in the recipient's bank account)

Illustration: Time of Supply in RCM cases for services

Date of payment by Recipient	Date of issue of invoice by supplier	Date immediately following 60 days from invoice	Time of supply
August 10	June 29	August 29	**August 10**
August 10	June 1	**August 1**	**August 1**
Part payment made on **June 30** and balance amount on September 1	June 29	**August 29**	**June 30 for part payment made and August 29 for balance amount**
Payment is entered in the books on **June 28** and debited in recipient's bank account on June 30	June 1	August 1	**June 28 (i.e. when payment is entered in the books of recipient)**
Payment is entered in the books on June 30 and debited in recipient's bank account on **June 26**	June 29	August 29	**June 26 (i.e. when payment is debited in the recipient's bank account)**

III Supply of vouchers [Section 12(4) and Section 13(4)]

In case of supply of vouchers, by whatever name called, by a supplier, the time of supply for goods and services shall be:

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

(b) Date of redemption of voucher, in all other cases.

IV Residuary provision [Section 12(5) and Section 13(5)]

Where it is not possible to determine time of supply under the above provisions, time of supply for goods and services shall be:

(a) In a case where a periodical return has to be filed - Date on which such return is to be filed

(b) In any other case - Date on which the CGST/ SGST or IGST is paid

V In case of addition in value of supply by way of interest, late fee or penalty for delayed payment of consideration [Section 12(6) and Section 13(6)]

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

VI Change in the rate of tax in respect of supply of goods or services

Here, the provisions provided under the GST Law are drawn on similar line as existing Rule 4 of the Point of Taxation Rules, 2011 ("POTR"). In other words, determination of rate of tax depends upon three important events viz.:

- Date of supply of goods or services,
- Date of invoice; and
- Date of receipt of payment.

Thus, the rate of tax would be the one prevailing when two out of three events occur either prior to or after the date of change in rate of tax.

Illustration: Supply before/ after change in rate of tax

Assume that rate of tax changes from 12% to 18% w.e.f. June 1

Date of supply of goods or services (1)	Date of issue of invoice (2)	Date of receipt of payment (3)	Time of supply (4)	Applicable rate (5)
May 28	**June 9**	July 25	**June 9**	**18%**
	May 28	July 25	**May 28**	**12%**
	June 9	**May 26**	**May 26**	**12%**
June 10	May 28	**June 25**	**June 25**	**18%**
	May 28	**May 16**	**May 16**	**12%**
	June 9	May 28	**June 9**	**18%**

Manifestly, it seems that most provisions are borrowed from the earlier Point of Taxation Rules, 2011 under the Service tax laws, with some modifications. Determination of the time of supply provisions under forward charge for goods has been mainly limited to the following two parameters:

- Date of issue of invoice or the last date on which the invoice is required to be issued
- Date of receipt of payment

For services, the parameters are drawn on similar line as earlier Service tax provisions with additional aspect of entry in books of accounts of recipient as one of the parameters.

However, still no provision is provided in the GST Act/Rules to determine the time of supply where goods or services becomes taxable for the first time under GST regime as was provided under erstwhile Section 67A of the Finance Act, 1994 read with Rule 5 of the Point of Taxation Rules, 2011.

Key Highlights of GST Council's 21st meeting and way forward:

In the backdrop of various technical glitches being faced by the IT backbone of the mammoth indirect tax reform, GST, in the country, the GST Council in its 21st meeting held at Hyderabad on September 9, 2017, once again decided to extend the deadline in filing the GST returns and this time extended by a month. The due date for the filing of GSTR-1 for July month has been revised to October 10 from September 10 (For registered persons with aggregate turnover of more than Rs. 100 crores, the due date shall be October 3, 2017). While GSTR-2 has a revised to due date of October 31 from September 25, GSTR-3 has been revised to November 10 from September 30. The filing of GSTR-6 by ISD has been revised to October 13, but, due date for filing returns by Composition suppliers in GSTR-4 for the quarter ending September 2017 remains unchanged at October 18.

It was further decided that summarised return in Form GSTR-3B will continue to be filed for the months of August to December, 2017. Moreover, the due date for submission of Form GST TRAN-1 for availing transitional credits under Rule 117 of the CGST Rules, 2017, has also been extended by one month i.e. till October 31, 2017. Further, an option for once revising Form GST TRAN-1 has also been provided. Besides, there were other key decisions as well like raising the cess on motor vehicles--mid-size cars, large cars and sports utility vehicles by 2%, 5% and 7% respectively instead of whole 10% increase effected in the law, exemption from mandatory registration in case of inter-state supply of handicraft goods made under the cover of e-way bill and in case of inter-state supply of job work services (except jewellery, goldsmiths' and silversmiths' wares) made to registered persons where goods moves under the cover of e-way bill, reducing GST rates for 30 items, including disposable items, dried tamarind etc.

At a briefing after the meeting, Finance Minister Arun Jaitley said the glitches were "transient challenges", and a committee had been appointed to resolve GSTN-related issues. But, the moot question as to real preparedness of GSTN network at the pace required to be, is left unanswered, leaving room for doubts in the minds of Trade and Industry for the gloomy time to come if concrete steps are not taken immediately. Exporters refund will also be held mid-way, blocking their funds, if GSTN delays in working smoothly. Envisaging, GST as Good and Simple Tax for country India, let us hope to see proper GSTN functionality soon.

***

GST- "A catalyst for economic growth"

Mr. N K Gupta
Co-Chairman, Indirect Taxes Committee
S S Kothari Mehta & Co.

Amidst of economic crisis, India has positioned itself as a beacon of hope for boosting economic growth by treading on the path of 'Make in-Digital India'. In this backdrop introduction of GST is one of the remarkable job done by Government of India. GST has replaced multilayer indirect tax structure into a single tax system. The present system of taxation was a major hang-up for India's economic growth and competitiveness. GST has redesign and transform this existing framework by subsuming majority of taxes. It has created a unified market across the world and there by free flow of goods. The advent of GST has led to significant shift in the way the business is being coxed. It is very big challenge for the Indian industry to accept such a huge reform which requires the whole restructuring of business. At the initial phase there is some melee to abide by the new rules and regulation but gradually all the hurdles would come down. The GSTN, IT based system for GST compliance is also at the developing stage and getting upgraded to the meet the requirement of large assessees. It is well said that Progress is impossible without change, and those who cannot change their minds cannot change anything. It is a great move taken by the Government after the demonetisation to bring the economy again at the emergent platform.

Growth factor for the Indian economy

The introduction of GST will increase GDP growth over 3-5 years due to outright elimination of cascading effect of taxes. Seamless input tax credit under GST will boost investment as it will result in 12-14% drop in the cost of production. Presently for many capital goods, input tax credit is not available which turns out to be a bane for capital accumulation thereby hindering the margins which is a pre-quisite to the growth. In the GST regime profit margins are set to rise resulting from lowering of logistics cost and subsequently the cost of production.

The GST has widened tax base resulting in higher revenues for Indian Government. Increase in the revenue is expected to add 1%-2% in the overall GDP. There is an air that the goods or services may be sold at exorbitant prices. Clearing the clouds on such humours, in the short run it will escalate the prices but once the new tax structure and processes flow in the industry, prices will get reduced. Reduction in the price would surge the demand. Growth in real income and per capita income would become a key for development of the country.

There are some apprehensions that Industry will pass on the benefit to the ultimate consumers or not. But to avoid such a situation, the law has laid down provision that anti-profiteering clause shall apply in this cases where direct benefits arising from seamless flow of input tax credit and reduction in tax rates will get passed on to the ultimate customers.

The Pharmaceutical industry is also benefitted as there is 8 types of taxes borne by them in the earlier indirect tax system. Similarly the impact of GST on all other sectors like Infrastructure, Entertainment, textile, IT, Agriculture, Food Industry, Transport are

affirmative and all the sectors will be benefitted with the implementation of GST. No doubt that GST will give India a world class tax system by curbing different treatment to manufacturing and service sector.

Free flow of goods across the country

GST has eliminated tax barriers across the check posts which contributes to substantial part of logistics cost & accounts for slow movement of trucks. The erstwhile taxation regime was a major road block in India's economic growth due to tax barriers in the form of CST and entry tax etc. The new law has plugged the lacunas of prevailing taxation laws by eliminating the check posts. It would surely benefit the sectors having long value chain from basic goods to final consumption stage with multiple operations PAN India.

It will indirectly lower the product cost by way of reduction in carrying cost. Reduced cost will help to control inflationary pressures and bring efficiency in the supply chain. It is expected that implementation of GST will bring transparency in the present form of transactions. In the recent past, countries such as Australia, New Zealand, Thailand & Canada which have implemented GST have witnessed a curb on inflation.

GST law is stationed on the principles of harmonious flow of credit and that will encourage producers and traders to buy goods from registered dealers which will bring more vendors and suppliers under the purview of taxation thereby widening tax base. Seamless flow of credit will create a common market leading to economies in scale of production. In highly developing economy, change in the concept of taxation from origin to consumption based taxes is likely to accelerate the revenue. Beyond that, the developing States will get a lift as the current 2% non-creditable inter-state levy means production is kept within a State whereas under the GST national market, this can be dispersed, creating opportunities for others. With interstate taxes becoming creditable, companies could ring in a more efficient procurement plan.

GST aims to make products competitive in domestic and international market consequently attracting foreign buyers. Increase in the foreign exchange reserves signal growth for the Indian economy along with favorable balance of payments. It is believed that GST will lead to higher foreign direct investment inflows & a narrow current account deficit. GST will help Indian Rupee to outpace the other Asian & emerging market currencies.

Automation of taxation system

It is noteworthy to say that the built-in checks on business transactions through matching of input tax credit and invoice level details will reduce the scope of black money generation and will bring more transparency from the root level. Further, compliance rating concept would lead to productive and effective use of capital to deal with the various vendors. GSTN, a robust platform for processing tax returns, refunds and tax payments is likely to phase out the current practice of filing manual returns which will thus force the dealers to reveal their correct sales and plugging tax evasion.

Four-Tier GST Rate Structure

In the present scenario, goods are taxed at 12.5% (Excise duty) plus 5-15% (VAT) which is passed on to the end consumer and on the other side GST rates varies from 5-28% depending upon the nature of products.

The economist are of the view that inflation will come down gradually as GST on essential goods such as food grain, household consumer items and essential services have either been exempt or taxed at a lower rate. As per the Consumer Price Index (CPI) 55% items are tax-exempt, 32% are at a low rate and only 12 % are at a standard rate.

As far as the service industry is concerned, the output tax will significantly rise from 15% to 18%. Such increase will be offset by the tax incentives in the form of seamless flow of credit of VAT which were earlier not available. Nevertheless, services which fall under the higher tax brackets is a matter of concern

as higher tax rates will be devastating for the different service sectors which has been the engine of growth for Indian Economy. However, industry stands to be benefited immensely from this pricing theory. The consolidated tax rates would lower the tax impact on procurement and availability of more input taxes would offset output taxes.

GST will lead to economic growth to some extent whereas the sectors like real estate which are kept outside the ambit of GST will face lot of hardships owning to credit blockages. As far as infrastructure sector is concerned which is considered as the barometer for the growth of the economy, concerns have been raised for the probable discontinuous of current exemptions & concessions as GST Law depicts widening the tax base with reduction in exemptions. Moreover, the sectors like oil & gas which are set aside from the domain of GST for initial years will affected at large as the companies will now have to operate under twin regime i.e. one without GST & other with GST for some time. It is notable that oil is one of the substation factor of production. Therefore, coverage of all sectors under GST is the need of the hour which the Government needs to rethink as widened the tax base lower would be tax rate.

Needless to say, the multiple taxations have led to the birth of a sluggish system of tax collection which is loaded with Red-Tapism consequently doing more harm than good to the growth of the Indian economy. GST would hopefully do away with such irregularities as it is based on the scientific and rational system of assessment. It will stop pilferage and at the same time will offload the overloaded tax burden from many organizations. GST would free India from the shackles of indirect tax laws and usher in a new era of growth and prosperity.

GST is likely to crystallize tax collection and boost the economic growth. It would expedite a much needed correction in fiscal deficit. There is no way to become great over the night and that too for Indian economy where there is political raj and decisions are taken by keeping in mind interest of all the stakeholders. Every economic reforms comes with its pros & cons. So making assumptions by looking at one aspect will be like building castles in the air. Needless to say, the success of India is sure with this new system of taxation launched after decade of deliberations. Only requirement is to have fortitude and collective efforts to comply with this new Law. All the stakeholders need to pick up string right away in compliance of new Law and go by this reform.

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Meaning of 'State' and GST Revenue Distribution

CA Kashish Gupta
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I. India shall be a Union of States: Constitution of India

According to Article 1(1) of the Constitution, India, that is, Bharat shall be Union of States.

Scope of the territory of India – Art 1(3) of the Constitution provides that the territory of India shall comprise –

(a) The territories of the States;

(b) The Union territories specified in the First Schedule; and

(c) Such other territories as may be acquired.

Originally, the territory of Union of India was divided into the States of four categories, i.e., Part A, B, C and D states. But later on Constitution Seventh Amendment Act, 1956 has abolished these categories and now the territory of India is divided into three following categories:

1. States – Andhra Pradesh, Assam, Bihar, Gujarat, Kerala, Madhya Pradesh, Tamil Nadu, Maharashtra, Karnataka, Odisha, Punjab, Rajasthan, Uttar Pradesh, West Bengal, Jammu & Kashmir, Nagaland, Haryana, Himachal Pradesh, Manipur, Tripura, Meghalaya, Sikkim, Mizoram, Arunachal Pradesh, Goa, Chhattisgarh, Uttarakhand, Jharkhand and Telangana.

2. Union Territories – Delhi, the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Puducherry and Chandigarh.

3. Other territories as may be acquired – Nil.

II. Special provisions for two UT i.e. Delhi and Puducherry

Out of seven union territories, territory of Delhi and Puducherry have their legislative assembly. Article 239A and 239AA of the Constitution provides for such provisions. On the whole, it can be said that there are two type of Union territories:

(a) Union territory with legislative assembly

- Legislature of Puducherry is created by Parliament

- Legislature of Delhi is created by Constitution

(b) Union territory without legislature

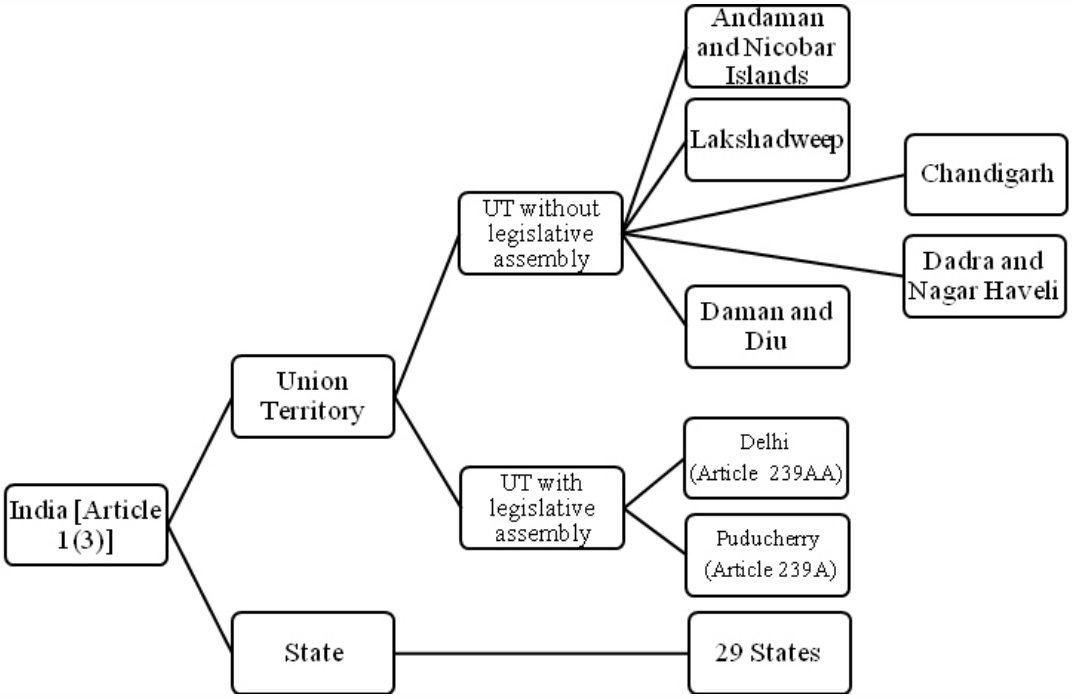


Fig 1. Diagrammatic presentation of union of states

III. Definition of State and Union Territory in Constitution and different statutes

State' not defined in Constitution till Constitution (101st Amendment) Act, 2016

Article 366 of the Constitution provides definition of various terms. Said article nowhere provides meaning of term State. In the absence of such definition, States as defined under article 1(3) read with first schedule to Constitution of India means 29 States.

However, Constitution (101st Amendment) Act, 2016 has inserted a meaning of 'State' as follows:

'(26B) "State" with reference to articles 246A, 268, 269, 269A and 279A includes a Union Territory with Legislature;'

'Union Territory' defined in Constitution

Clause (30) of the article 366 of Constitution of India defines "Union territory" means any Union territory specified in the First Schedule and includes any other territory comprised within the territory of India but not specified in that Schedule. It means that as per Constitution, Union territory without legislative assembly and with legislative assembly are covered under the expression 'Union territory'.

'State' defined in General Clauses Act, 1897

As per clause (1) of article 367 of the Constitution, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

As per General Clauses Act, State includes Union territory with legislature as well as Union territory without legislature. This definition reads as follows:

"State"- As respects any period before the commencement of the Constitution (Seventh Amendment) Act, 1956, shall mean a Part A State,

a Part B State or a Part C State, and as respects any period after such commencement, shall mean a State specified in the First Schedule to the Constitution and shall include a Union territory.

'State' and 'Union Territory' as defined in Goods and Services Tax Act, 2017

As per clause (103) of section 2 of Central GST Act, 2017 "State" includes a Union territory with Legislature.

As per clause (114) of section 2 of Central GST Act, 2017 "Union territory" means the territory of—

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli;

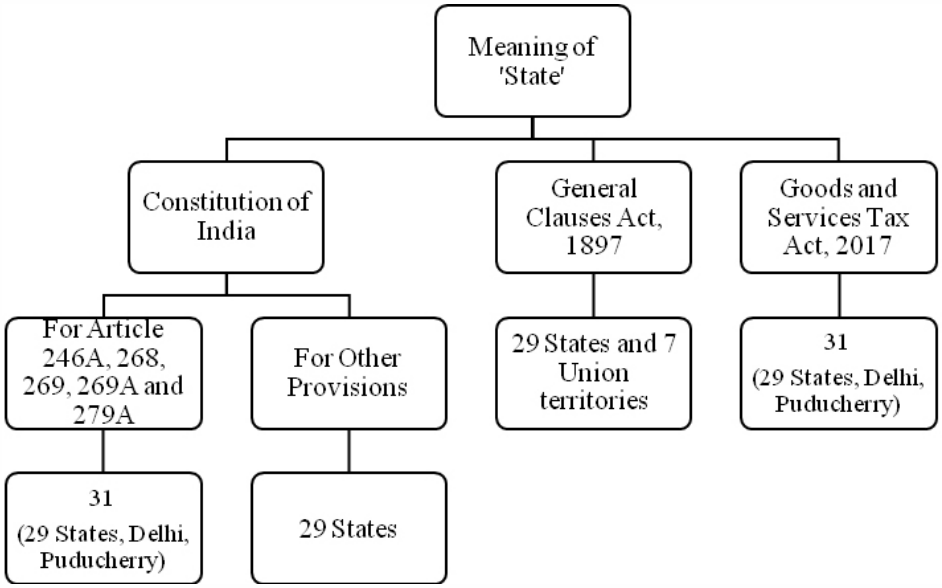
(d) Daman and Diu

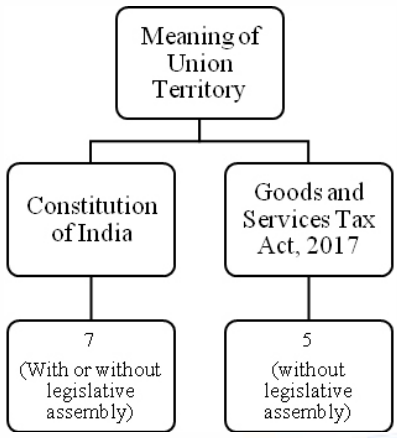
(e) Chandigarh; and

(f) other territory.

Explanation.—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

Hence, the meaning of State and Union Territory is different at different places which has been summarized in the chart below:-





IV. Implications of meaning of 'State' in Goods and Services Tax law

- Article 246A- Power of CG and SG to frame law on GST:- This article deals with the powers of the central government as well as state government related to framing law on GST. In GST regime, Parliament and State Legislature, both would have the power to frame laws for intra-state supply i.e. for CGST and SGST. However, in respect of inter-state supplies, only Parliament would have the exclusive power to frame law i.e. for IGST.

  State for the purposes of this article includes union territories with legislature i.e Delhi and Puducherry. Therefore, legislative assemblies of Delhi and Puducherry have enacted SGST law for Delhi and Puducherry. On the other hand, UTGST law have been enacted for Union territories without legislative assemblies i.e. Lakshadweep, Andaman & Nicobar, Daman & Diu, Dadra & Nagar Haveli and Chandigarh by Parliament. UTGST law have been enacted by the Parliament because the term 'State' under article 246A does not include union territory without legislative assembly.

- Article 269A- Levy and collection of GST in course of inter-state trade or commerce:- As per this artcle:-

(1) IGST i.e. Goods and Services Tax to be levied in the course of inter-state trade or commerce is collected by Government of India and thereafter apportioned between the Union and States on the recommendations of GST Council. Parliament would provide the manner of distribution by law.

Explanation: IGST shall be levied on import of goods. CVD and Spl CVD would not be levied on imports. However, Basic Custom Duty would continue.

(2) Out of total IGST proceeds, the amount attributable towards SGST (i.e. SGST portion of IGST) shall not be transferred to Consolidated Fund of India rather it would be directly transferred to account of consuming States.

(3) Amount of IGST utilized for the payment of SGST shall not form part of Consolidated Fund of India.

(4) Amount of SGST utilized for payment of IGST shall not form part of Consolidated Fund of State.

(5) Constitution has given powers to the Parliament to frame laws to determine place of supply of goods and services. Because of this clause, provisions relating to place of supply of goods and place of supply of services has been inserted in Chapter V of IGST Act, 2017.

Provisions regarding 'apportionment' of IGST are contained in Chapter VIII of IGST Act, 2017 (Section 17, 18 and 19 refers) to be read with provisions related to transfer of input tax credit as contained in section 53 of CGST Act, 2017, section 10 of UTGST Act, 2017 and section of respective SGST Act.

The provisions relating to devolution of IGST is as follows:

– At first, Central Clearing Agency would settle the accounts of Centre, States and Union territories. Debit and Credit adjustments would be made on account of

- Utilization of IGST for the payment of CGST. (Section 18(a) of IGST Act, 2017)
- Utilization of IGST for the payment of UTGST. (Section 18(b) of IGST Act, 2017)
- Utilization of IGST for the payment of SGST. (Section 18(c) of IGST Act, 2017)
- Utilization of CGST for the payment of IGST. (Section 53 of CGST Act, 2017)

- Utilization of UTGST for the payment of IGST. (Section 10 of UTGST Act, 2017)
- Utilization of SGST for the payment of IGST. (Provisions contained in respective SGST Act)

– As a result debit and credit adjustment,

Transaction	Debit and Credit from/in IGST Account
IGST Utilized for payment of CGST	Such amount is transferred to CGST Account.
IGST Utilized for payment of UTGST	Such amount is transferred to UTGST Account.
IGST Utilized for payment of SGST	Such amount is transferred to SGST Account.
CGST Utilized for payment of IGST	Such amount is transferred to IGST Account.
UTGST Utilized for payment of IGST	Such amount is transferred to IGST Account.
SGST Utilized for payment of IGST	Such amount is transferred to IGST Account.

After these adjustments, IGST account would reflect amount which is truly earmarked to proceeds related to inter-state supply. Now this balance would be apportioned as under:

CGST portion related to following inter-state supplies to be transferred to CGST Account

(a) To an unregistered person or a composition dealer;

(b) To a registered person who is not eligible to take input tax credit;

(c) To a registered person who does not take input tax credit within the specified period (i.e. 20th October of next F.Y. or date of filing annual return, whichever is earlier) and thus remains IGST account after expiry of due date for furnishing of annual return for such year in which the supply was made;

(d) In case of imports for Cases a) to c) mentioned above.

SGST portion related to above inter-state supplies to be transferred to SGST Account

UTGST portion related to above inter-state supplies to be transferred to UTGST Account

Since 'State' for the purposes of this article includes 'Union territory with legislative assembly' i.e. Delhi and Puducherry, apportionment of SGST portion of IGST shall be made in total 31 territories (29 States and 2 UTs).

- Now, article 270 deals with the distribution of amount collected as 'CGST' and amount apportioned as 'CGST out of IGST' between the union and states. It is to be noted that meaning of State for the purposes of article 270 does not include union territories with legislative assembly. Therefore, distribution shall be made between 29 States only.

Article 270. Net proceeds from 'CGST' and 'CGST portion of IGST, as apportioned' shall be distributed between the Union and States in the manner prescribed by the President on the recommendations of the FINANCE COMMISSION. Further, the amount of IGST utilized for the payment of CGST shall also be distributed between the Union and States in the manner prescribed by the President on the recommendations of the FINANCE COMMISSION.

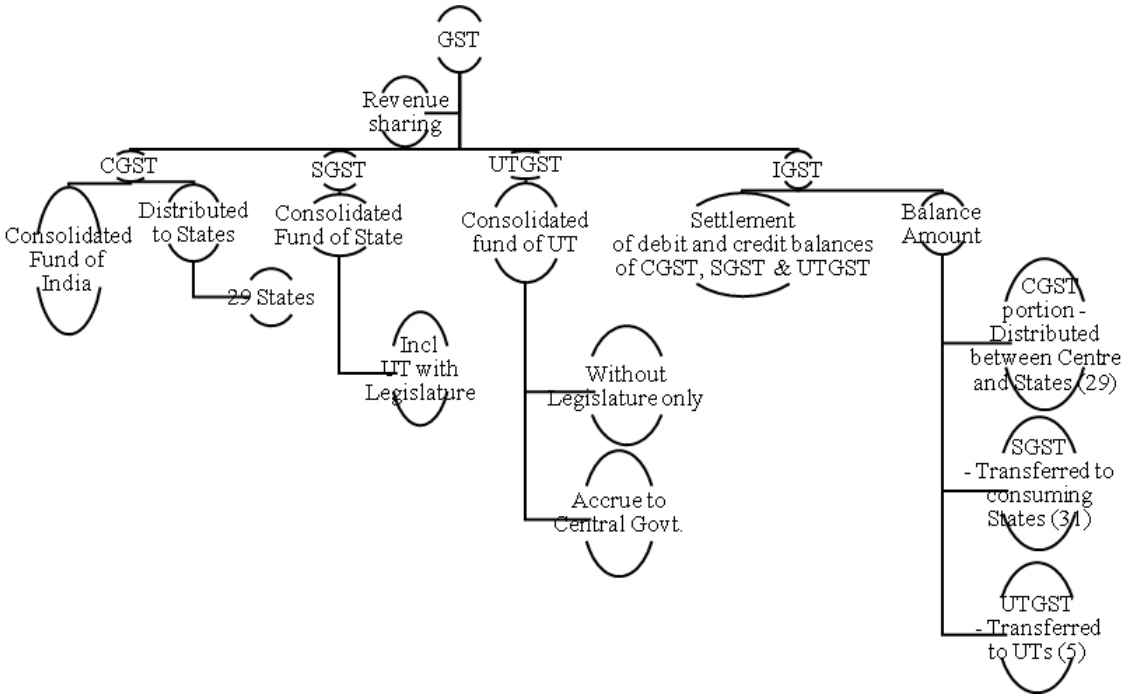
Note: Hence, from above discussion, it is important to understand here that:

(a) State for the purposes of this article (distribution of taxes) does not include Union territories. It means 29 States only.

(b) Under the existing law, no portion of union taxes, for instance, excise, customs duty and service tax, is distributed to Union territories either with legislative assembly or without legislative assembly.

(c) Net proceeds from taxes of Union territories without legislature including item of taxes normally collected by States are collected by UTs and it accrue to Central Government only.

(d) Delhi and Puducherry is not included in distribution list of 'CGST' and 'CGST portion of IGST' proceeds.



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Advance ruling mechanism under GST

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Mr Shrey Bharadwaj
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Advance Rulings enable taxpayers to achieve certainty about the tax consequences of contemplated transactions, and are thus indispensable in the modern world of tax administration and compliance. The concept of Advance Ruling evolved with opening up of the Indian economy to foreign investments through liberalization. The Indian Government, primarily for non-residents / foreign companies to have clarity on their tax implications in India introduced the Authority for Advance Rulings for the federal/central taxes. Authoritative and binding nature of Advance Rulings allowed the traders and investors to make business decisions regarding taxes and duties under a stable and predictable environment. It is a cardinal principle of Tax laws that there should be 'certainty' and 'predictability' of tax implications on a future business transaction. The concept of Advance ruling was extended to Central Excise and Customs and to Service Tax vide Finance Act, 1999 and Finance Act, 2003 respectively. Subsequently, the VAT concept which was adopted by the Indian states as a replacement for State sales tax laws also had some sort of an advance ruling mechanism typically referred to as 'Determination of Disputed Questions' (DDQ's) under relevant State VAT laws.

While it is debatable as to whether the Authority for Advance Ruling (AAR) under erstwhile indirect tax laws fully served its purpose, the Government of India has emphasized that AARs under GST laws would be an important body in view of introduction of new tax regime so as to clarify the doubts of the assessees in a timely and expeditious manner. They have been provided in Chapter XVII of the Central Goods and Services Tax Act, ranging from Section 95- Section 106 and similar provisions are contained in each of the State and Union Territory Goods and Service Tax statutes.

In this Article we will provide an overview of the distinctive mechanism of Advance Ruling under the Central as well as the State GST Laws. In order to elucidate upon the matters on which Advance Ruling can be sought, the requisite eligibility of the applicants, we will throw some light upon the procedural aspects of the adjudication under the mechanism of Advance Rulings. This Article also aims at identifying the Appeal provisions and illuminate the nuances involved in the law relating to the rectification of the Advance Ruling on account of the errors apparent on the face of record. The article also explains the void nature of the Advance Rulings in certain peculiar circumstances and concludes by drawing a comparison between the pre and post GST indirect tax regimes in India with respect to the Advance Ruling Mechanism.

Advance Ruling under the GST Regime is defined as the written interpretations of GST laws provided by the Authority/ Appellate Authority of Advance Ruling (AAR/AAAR), as the case may be, with respect to matters pertaining to the supply of goods and services undertaken/ proposed to be undertaken by

1 Section 94, CGST Act, 2017

the applicant[1] . Provided in the Chapter XVII of the various GST statutes, the Advance Ruling Mechanism paves the way for companies or individual assesses to seek clarifications pertaining to the feasibility and position of the anticipated transactions in consonance with the relevant laws.

Authorities for Advance Ruling

The Central Goods and Services Tax Act, 2017 through Section 96 envisages the constitution of Authority for Advance Ruling through the State Goods and Services Tax Acts or Union Territory Goods and Services Act and specifies that such State/union territory AARs shall be deemed to be the authority for Advance Ruling in respect of that particular State.

Thus, unlike the earlier regime where there was one centralized AAR for the federal/central taxes and State specific AARs for VAT related questions, advance ruling under GST would always be State specific wherein rulings under one State GST law would not be binding on another State's AAR – this is a significant departure in the advance ruling mechanism compared to the pre-GST era.

AARs would consist of one member from amongst the officers of Central tax and one from the officers of State tax. Central Board of Excise & Customs will nominate Principal Chief Commissioner / Chief Commissioner to function as Appellate Authority for their respective States' AAR, while Chief Commissioners shall nominate officers in grade of Jt. Commissioner as member of AAR in each State[2].

The Act also provides for the constitution of an Appellate Authority in respect of appeals against the advance ruling issued under the Authority for Advance Ruling. The constitution of the same is provided under the State Goods and Services Tax Act and Union Territory Goods and Services Tax Act for that specific state or union territory. The constitution of the Appellate Authority is also a departure from the pre-GST regime wherein, at least for the central/ federal taxes, there was no statutory appellate mechanism[3].

It is pertinent to reiterate and emphasize here that there will be no central authority in this regard and the ruling passed by the AAR of a State will be binding only in that particular State since the AAR and AAAR are exclusively set up under the provisions of respective SGST/UTGST Act.

In such a scenario, an AAR order need not necessarily bring in uniformity of tax positions across the country under GST.

Application for Advance Ruling

An application for Advance Ruling shall be put into process by an applicant desirous of seeking an advance ruling under the Act in the format and mode, accompanied by such fee, as prescribed. An applicant, for the purposes of application has been defined under Section 95(c) as any person registered or desirous of obtaining registration under this Act; which is a mark of departure from the previous regime. The definition now removes the restrictions on 'residents' from obtaining advance rulings as under the previous system of law.

A wide catena of matters pertaining to which clarifications can be sought, have been enlisted in the GST laws as eligible for advance rulings. Answers relating to the following questions may be answered by AARs:

- classification of any goods/services
- applicability of a notification issued- having a bearing on the rate of tax
- determination of time and value of supply of the goods or services or both
- admissibility of input tax credit of tax paid or deemed to have been paid

2 D.O. No. C-50/94/2017 Ad. II dated 28th August 2017
3 http://www.caalley.com/gst/BGM-on-GST-Act(s)-Draft-Rule(s)2017.pdf

- determination of the liability to pay tax on any goods/services
- Whether applicant liable to be registered
- Whether anything done w.r.t to goods or services or both amounts/ results in a supply

However, the AARs do not have the jurisdiction to decide upon Place of Supply and restricting the scope of Advance Ruling in such manner makes it clear that the State AARs will only have power to decide on matters within the territorial jurisdiction of their State.

Nonetheless, overall, the list of issues on which clarity can be sought under the GST laws are fairly comprehensive.

Procedural Aspects

The application for advance ruling received by the Authority is to be acted upon, and a copy would be forwarded to the concerned officer in order to direct him to furnish all the relevant records thereof. The next step includes the decision by the Authority on the admissibility of the application, after careful perusal of the relevant records and the application. The application can be rejected if the query is already pending or has been answered in case of an applicant under the provisions of the Act. However, every applicant shall be provided with an opportunity of hearing before rejecting or admitting the application.

On admission of the application, the authority shall scrutinize the application, provide the opportunity of hearing and then pronounce an advance ruling on the question specified in the application, within a time frame of 90 days from the filing of the application. Subsequently, a copy of the same, duly signed by the members and certified in the prescribed manner, shall be forwarded to the concerned officer and the jurisdictional officer.

Appellate Authority- Procedure and Powers

The Appellate Authority, to be constituted under the provisions of each State Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of Advance Rulings. Constitution of this authority is a fresh concept in comparison with the tax regime prior to the GST system.

When can an appeal be preferred: An appeal to the Appellate authority lies against an advance ruling pronounced by the AAR (filed within a period of 30 days from the date of communication of the ruling to the concerned officer as well as the applicant). A reference to the Appellate Authority can also be made when a difference of opinion is observed among the members of the AAR. However, in the event of similar situation within the Appellate Authority, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

Procedure: GST laws provide discretionary power to the Appellate Authority to prescribe the specific procedure for filing an appeal against the respective ruling. However, GST laws impose a limitation of 90 days on the time period, within which the Appellate Authority may pass an order against the preferred appeal. A copy of the same order, duly signed by the members and certified in a prescribed manner, has to be mandatorily communicated to the applicant, concerned officer, and jurisdictional officer and to the Authority after such pronouncement.

Powers: The Appellate Authority has been bestowed with all the powers of a civil court under the Code of Civil Procedure, 1908. The proceedings before the authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

Miscellaneous Provisions

Rectification of Advance Ruling: Section 102 of the GST laws enable the Authority and the Appellate

Authority to rectify any error to make amendments to the orders passed u/s 98 or section 101, to rectify any error apparent on the face of record. Such errors may be brought to notice of the Authority or the Appellate Authority on its own, or by the concerned officer, the applicant or the appellant within a time frame of six months from the date of the order.

Void nature of the Ruling in some cases: The GST laws also substantiate the circumstances which render the Advance Ruling void. In accordance with the Section 101 of the GST laws, if the ruling pronounced under Section 98 or Section 101 is found by the Authority (or Appellate Authority) to be obtained by the applicant or appellant by fraud or suppression of material facts or misrepresentation of facts, it may declare such ruling to be void ab-initio and will be governed by the provisions under this act or the rules as if such ruling had never been made. Opportunity of being heard must be granted prior to declaring an order or ruling as void. Further, when the Order is declared to be void, all provisions of the Act including Section 73 and 74 shall apply as if the advance ruling never existed and while computing the time period of issuing notice and passing order under Section 73 and 74, the period beginning with the date of such advance ruling and ending with date of order declaring the order to be void- to be excluded.

Who is bound by an advance ruling: The advance ruling pronounced by the Authority or the Appellate Authority shall bind the applicant who sought it, the concerned or the jurisdictional officer and in cases where facts or circumstances supporting the original ruling are similar.

Advance ruling need not pertain only to a proposed transaction: The definition of Advance ruling under GST is a broad one and an improvement over the erstwhile regime. Under the erstwhile dispensation, advance rulings could be given only on a proposed transaction, whereas under GST, Advance ruling can also be obtained on transaction already undertaken (as confirmed by the Government vide their e-flier on Advance ruling available at http://www.cbec.gov.in/resources/htdocs-cbec/gst/advnc-rulin-mechanism-gst-20Jul.pdf) .

In conclusion – comparison between Advance rulings under the old and the new tax regimes

Particulars	Pre-GST regime	GST Regime
Certainty of Tax position	The Advance Ruling mechanism for Central Tax Laws and State Tax Laws were distinct and were capable of providing a much more conclusive position regarding the Law under which they were established.	The orders of AAR & AAAR will be applicable only within the jurisdiction of the concerned state. In such a situation, objective of uniformity of tax position across the country may just remain a pipe dream.

Expeditious Disposal	In the absence of any Appellate Authority for Advance Ruling under the erstwhile regime, the order passed by the AAR was binding upon the Applicants and the Authority. Under the erstwhile indirect tax regime, despite provisions for time bound disposal, the AAR had often been unable to pass an advance ruling order for reasons such as vacancy of members, etc.	In terms of Section 98(6) of the CGST Act, 2017, AAR shall pronounce its advance ruling in writing within ninety (90) days from the date of receipt of application. Our experience in the past does not allow us to be optimistic on this count. Further, provision of appeal against an Advance Ruling means that there may not be immediate finality of the issue as is being envisaged. On appeal before the AAAR, the AAAR is duty bound to pass the order as it think fit, confirming or modifying the ruling appealed against or referred within a period of ninety (90) days on preference of appeal.
No High Court/Supreme Court judges on AAR benches	Under the erstwhile indirect tax regime, the Bench included a retired High Court/ Supreme Court judge thereby ensuring the application of a judicial mind in arriving at the order.	AAR/ AAAR benches shall comprise of Revenue officers of the rank of Joint Commissioners appointed as member by the Government. Being officers appointed by the Government, the possibility of a revenue bias creeping in subconsciously amongst the members cannot be ruled out.

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Inspection, Search and Seziure under GST

Mr. J K Mittal
Advocate

Introduction: Like any other fiscal law, GST laws also have provisions of inspection, search and seizure. We may keep in mind that provision of inspection, search and seizure are essential for tax officers to acts against the possible tax evasion, therefore, the power of inspection, search and seizure per se cannot be regarded as bad in law. However, when such power granted under the law is abused by the officers then such provisions treated as draconian law. Therefore, in such law, proper safeguard should be made to ensure to avoid chances of misuse of power by officers.

A. Power of inspection [section 67 (1)]

(I) Circumstances under which inspection can be carried out of taxable person [section 67(1)(a)]: Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that –

(a) a taxable person has suppressed any transaction relating to supply of goods and/or services to evade tax under this Act or

(b) a taxable person has suppressed the stock of goods in hand to evade tax under this Act, or

(c) a taxable person has claimed input tax credit in excess of his entitlement under the Act to evade tax under this Act or

(d) a taxable person has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or

(II) Circumstances under which inspection can be carried out of any person [section 67(1)(b)]: Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that –

(a) any person engaged in the business of transporting goods or

(b) an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act.

(III) Who can carry out inspection: The proper officer (not below the rank of Joint Commissioner) may authorize in writing any other officer of central tax to carry out such inspection.

(IV) Which places can be inspected: Where the officer has been authorized to inspect, he may inspect

(a) any places of business of the taxable person or

(b) any places of business of the persons

engaged in the business of transporting goods or

(c) any places of business of the owner or the operator of warehouse or godown or any other place.

B. Power of search and seizure [section 67 (2)]

(I) Who can authorize the search: The proper officer, not below the rank of Joint Commissioner can authorized for search. [section 67(2)]. It has been held that search authorization must only be in favour of a designated officer, he only exercise the power setout therein [see ITO v M/s Seth Brothers and others 1969 (74) ITR 836 at page 843: AIR 1970 SC 292]. The Karnataka High Court in Nenmal Shankarlal Parmer v Assistant Commissioner of Income Tax (Investigation), 1992 (195) ITR 582, observed that a search warrant issued in respect of a particular premises, without mentioning the name of the person or the company relating to which the said warrant had been issued, the search and seizure carried out pursuant to such a warrant would be arbitrary and illegal.

(II) Circumstances under which search can be carried out: When such officer either pursuant to an inspection carried out under sub-section (1) of section 67 or otherwise, has reasons to believe that

(a) any goods liable to confiscation are secreted in any place or

(b) any documents or books or things are secreted in any place,

which in his opinion shall be useful for or relevant to any proceedings under this Act. [section 67(2)]

(III) Who can carry out search: The proper officer, not below the rank of Joint Commissioner or any other officer authorized by him in writing can carry out search. [section 67(2)]

(IV) What can be search & seized: Search can be carried out in any place where such goods, documents, books or things are secreted and such officers may seize such goods, documents, books or things. [section 67(2)]

(V) Order for non-removal of goods: Where it is not practicable to seize any such goods, the proper officer may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer. This is also known as goods under 'supurdginama' [first proviso to section 67(2)].

(VI) Seizure of documents/ books for limited period: The documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act. [second proviso to section 67(2)].

(VII) Returning of books/ documents not relied upon: The documents, books or things which were seized or any other documents, books or things produced by a taxable person or any other person, which have not been relied on for the issue of notice under the Act or rules made thereunder, shall be returned to such person within a period not exceeding 30 days of the issue of the said notice. [section 67(3)]

(VIII) Power to seal or break open door etc.: The officer who is authorized to carry out search & seizure, shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied. [section 67(4)]

(IX) Entitlement to take copies of documents: The person from whose custody any documents are seized shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorised officer at such place and time as the officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation. [section 67(5)].

(X) Provisional release of goods: The goods so seized shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be. [section 67(6)]

(XI) Return of seized goods, if notice is not issued within 6 months or extended period: Where any goods are seized and no notice in respect thereof is given within 6 months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. [section 67(7)]. However, the aforesaid period of 6 months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding 6 months. [proviso to section 67(7)].

(XII) Disposal of goods seized: The Government may by notification, specify the goods or class of goods which shall, as soon as may be after its seizure, be disposed of by the proper officer in such manner as may prescribed. The Government shall issue such notification having regard to

(a) the perishable or hazardous nature of any goods,

(b) depreciation in the value of the goods with the passage of time,

(c) constraints of storage space for the goods or

(d) any other relevant considerations. [section 67(8)].

(XIII) Inventory of Disposed goods: Where any seized goods have been disposed of as per notification issued by the Government, the proper officer shall prepare an inventory of such goods in the manner as may be prescribed in this behalf. [section 67(9)]

(XIV) Applicability of provisions Cr.P.C.: The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the words Commissioner were substituted. [section 67(10)]. Therefore, once the goods are being seized during search, then officer have to prepare a seizure memo giving complete list of such goods, documents or books, as the case may be. The Supreme Court, in Commissioner of Commercial Taxes v. R.S. Jhaver and Others, AIR 1968 SC 59 held that all searches must be made in accordance with the provisions of the Code of Criminal Procedure to the extent to which they may apply. Anything confiscated, based on a defective warrant, must be returned to the person concerned.

(XV) Seizure of accounts etc. which is produced before officer: Where the proper officer has reason to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of such person produced before the said officer and shall grant a receipt for the same, and shall retain the same for so long as may be necessary, in connection with any proceeding under this Act or for a prosecution. [section 67(11)].

C. Power of purchase of goods/ services to verify tax evasion [section 67(12)]

The Commissioner or an officer authorized by him may cause purchase of any goods and/or services by any person authorized by him from the business premises of any taxable person, to check issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued. [section 67(12)].

D. Inspection of goods in movement [section 68]

(I) Carrying of documents and devices: The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount to carry with him such documents and also to carry with him such devices as may be prescribed. [section 68(1)]. The details of documents required to be carried shall be validated in the manner as may be prescribed. [section 68(2)]

(II) Production of documents and devices to proper officer: Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the aforesaid documents and devices for verification, and the said person shall be liable to produce the documents and devices and also allow inspection of goods. [section 68(3)].

E. "Reasons to believe"

The provisions for 'inspection' or for 'search & seizer', to avoid any arbitrary and abuse of power by officer, the safeguard have been made in the provisions that officer can exercise the said power only when there are "reasons to believe" for suppression of any transaction, stock or excess credit claim, indulge in contravention of provisions of Act or rules, to evade tax or cause evasion of tax or goods, documents or books or things are secreted. Therefore, the officer before order for inspection, search or seizer, must have some material before him to form such opinion, and record the reason in writing on the basis of such material placed before him. It has also been held that intimation simpliciter by CBI for recovery of money cannot constitute 'information' to so as to induce a belief, "it would be giving naked powers to the authorities to order search against any person and prone to be abused. This cannot be permitted in a society governed by rule of law." [see Ajit Jain v UOI (2000) ITR 302 (Delhi)]. "There must be some material for formation of the belief." [see Bishnu Krishna Shrestha v UOI and others 1987 (27) ELT 369 (Cal.) para 22]. It has been held that officer "must record reasons for the belief", [see ITO v M/s Seth Brothers and others 1969 (74) ITR 836 at page 843: AIR 1970 SC 292]. It is also held that the words "reason to believe" postulate application of mind and assigning of reasons. [see Ganga Saran & Sons Pvt. Ltd. V ITO (1981) 130 ITR SC 212]. In Mapsa Tapes Pvt. Ltd. v UOI, 2006 (201) ELT 7 (P&H), the Court held that the power of search and seizure exercise will liable to be struck down unless 'reason to be believe' were duly recorded before the action of search and seizure is taken. In State of Rajasthan v. Rehman reported in 1978 (2) E.L.T. J294 (S.C.), the Apex Court observed that a search made without jurisdiction does not become legal just because the officer making the search has recorded reasons for making such search.

It is settled principle of law that 'reason to believe' is not synonymous to 'reason to suspect' [see Dr. Partap Singh and another v Director of Enforcement, FERA and others AIR 1985 SC 989 para 10], and it is not an empty formalities [see Visa Comtrade Ltd. v. UOI and Others 2011-TIOL-546-HC-ORISA-IT para 39] and held that "formation of opinion must be in good faith and not a mere pretence" [see Dr. Nand Lal Tahiliani v CIT and others 1988 170 ITR 592 All., 1988 39 TAXMAN 127 ALL.Para 3].The Hon'ble Court has held that merely reputation of roaring practice and rumour for charging high rate of fee without any tangible material for formation of a reasonable

belief only mean clothing the Department with arbitrary power to take action against any person even for personal vendetta or through misguided zeal [see Dr. NandLalTahiliani v CIT and others 1988 170 ITR 592 All., 1988 39 TAXMAN 127 ALL.].

F. 'Inspection' or for 'search & seizer' cannot be tool for recovery taxes or to force to pay taxes to achieve targets:

It has been seen that many a times, the Government gave or fix target of revenue and to achieve that targets, the officers many a times use to power to coerce taxpayers to tax taxes, which are neither due and nor payable. It has also been seen that many a time tax officers while carrying of search operation also collect cheques for tax payments. These practices by tax officers have been deprecated by the Courts. The High Court in the case of Gee Kay International v UOI, 2008 (230) ELT 590 (P&H) held that there is no justification for the Department to retain the cheque collected during search and seizure operation as no demand is determined and the Department has no legal or moral right to retain the said amount in the absence of demand raised and the Court directed to refund the amount collected during search and seizure. In the case of Naresh Kumar & Co. v UOI, 2010 (19) STR 161 (Cal.) : 2010-TIOL-497-HC-KOL-ST, the High Court held that the authority concerned has no jurisdiction or authority to collect any amount at the time of raid, simply because it is not empowered legally to do so. In Chitra Builders P.Ltd. v. Addl.CCE & ST,Coimbatore, 2013 (31) STR 515 (Mad), Rs. 2 crore was taken by Department during search claiming it is voluntary payments, however the Court held that it cannot be held to be valid in eyes of law and holding that "no tax could be collected from the assesse, without an appropriate assessment order being passed by the authority concerned and by following the procedures established by law." The Hon'ble Supreme Court in the matter of Dabur India Ltd. v State of Uttar Pradesh, 1990 (49) ELT 3 (SC) : AIR 1990 SC 1814 : (1990) 4 SCC 113 (vide para 30) held that "we would not like to hear from a litigant in this country that the Government is coercing the citizens of this country which the litigant is contending not to be leviable. ..... the Government, Central or State, cannot be permitted to play dirty games with the citizen of this country to coerce them in making payments which the citizens were not legally oblige to make".

Conclusion:

GST laws would prove to be good law if the power of officers is checked. The law must have power to check tax evasions, but if such power instead of using against tax evaders, used as a tool to harass the taxpayers as officers feel they are power charged. In our country, such power have less been used against tax evaders but often have been used a tool to harass the tax payers. The Supreme Court in the case of Mahesh Chandra v Regional Manager, U.P. Financial Corporation, (1993) 2 SCC 279 (para 15) held that "The public functionaries should be duty conscious rather than power charged. Its actions and decisions which touch the common man have to be tested on the touchstone of fairness and justice. That which is not fair and just is unreasonable. And what is unreasonable is arbitrary. An arbitrary action is ultra vires. It does not become bona fide and in good faith merely because no personal gain or benefit to the person exercising discretion should be established. An action is mala fide if it is contrary to the purpose for which it was authorised to be exercised. Dishonesty in discharge of duty vitiates the action without anything more. An action is bad even without proof of motive of dishonesty, if the authority is found to have acted contrary to reason." It is expected and hope that the GST officers will use power of inspection, search and seizure with due care and caution, which wins the trust of tax payers and citizen, which also serve the purposes for which such provisions are made in fiscal laws.

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Treatment of Input Tax Credit under Goods and Services Tax

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Finally, the long-awaited Goods and Services Tax (GST) is in place. The multitude of indirect taxes including the Central Excise duty and Service Tax levied by the Centre and Sales Tax or Value Added Tax levied by the States have been subsumed into the GST. The Hon'ble Prime Minister put the number of such taxes subsumed at over 500 in his speech in the Central Hall of Parliament at the time of ushering in the GST.

GST will be dual with each State imposing a State GST or SGST (Union Territory GST or UTGST in case of Union Territories) and the Central Government imposing Central GST or CGST on each intra-State transactions. Inter-State supplies including imports will be leviable to Integrated GST or IGST to be levied and collected by the Central Government, but transferred to the destination-State and/or settled using an online mechanism. Exports and supplies to Special Economic Zones are zero-rated.

Seamless credit chain

Subsumption of such large number of taxes into GST together with allowing a seamless input tax credit (ITC) across the entire value chain enables elimination of cascading effect of indirect taxes and thereby reduction in costs and better compliance.

But it must be noted that alcoholic liquor has been kept out of the GST. Five specified petroleum products namely high speed diesel, motor spirit (petrol), natural gas, aviation turbine fuel and crude which contribute an estimated over 40% of the indirect tax revenues of the Centre and the States have also been kept out of the GST net at least for the present. So it cannot really be said that the ITC chain is complete or that the cascading effect has been fully mitigated in the GST as implemented at present.

Eligibility to ITC

Input Tax Credit (ITC) is available a registered person in respect of his inputs, capital goods and input services. 'Capital goods' means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business. 'Input' and 'input service' respectively mean any goods other than capital goods, or service used or intended to be used in the course or furtherance of business.

For eligibility to ITC, the goods and services on which ITC is sought to be taken shall be used or intended to be used in the course or furtherance of the business of the registered person[1]. 'Business' has a very wide connotation and includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not for a pecuniary benefit and whether or not there is volume, frequency, continuity or regularity of such

1 Refer section 16(1) of the CGST Act, 2017.

transactions. But the question of whether and when a good or service is used 'in the course or furtherance of the business' still remains moot and capable of alternative interpretation.

ITC shall be available to a registered person subject to fulfilment of the following conditions[2], namely:-

(a) He is in possession of a tax invoice or debit note issued by a registered supplier or such other tax paying document as prescribed.

(b) He has received the goods or services.

(c) The tax charged has actually been paid to the Government (either in cash or through utilization of credit) and

(d) He has furnished the GST return prescribed.

'Government' for CGST and IGST purposes means the Central Government and for SGST purposes means the respective State Government. As far as CGST is concerned, irrespective of the State in which it is paid, the amount goes to the Central Government. So a ticklish question which arises here is whether CGST paid by a supplier in one State is eligible to be taken as ITC by the recipient in another State assuming that the other conditions are also fulfilled. But I may caution that, whatever be the legal position, credit will be available only if the business rules in the Common GST Electronic Portal which maintains the electronic credit and other ledgers of the registered person permit so.

ITC of eligible input tax as self-assessed is allowed to be taken on a provisional basis for utilisation against self-assessed output tax as per the return filed.

ITC restrictions

Section 17 of the CGST Act, 2017 spells out the restrictions to availing ITC. Where the goods and services are used by the registered person partly for the purpose of any business and partly for other purposes, the credit shall be restricted only to so much of the ITC attributable to the purposes of his business. Similarly, where the goods or services are used partly for effecting taxable supplies including zero-rated supplies and partly for exempt supplies, the credit shall be restricted only to that attributable to the taxable supplies.

'Taxable supply' is defined as a supply which is leviable to tax under the said Act and 'exempt supply' means supply which are wholly exempt or which attracts nil rate of tax, and includes non-taxable supply. Here a question may arise whether taxable supply would include exempt supply except to the extent of non-taxable supply or not.

Section 17(5) lists 9 specific items (a) to (i) in respect of which no ITC shall be available notwithstanding anything contained in the eligibility conditions discussed above. Those listed inter alia include –

(a) Motor vehicles and other conveyances except when used for specific purposes

(b) Works contract services when supplied for construction of an immovable property (other than plant and machinery) except when it is an input service for further supply of works contract service

(c) Goods or services used for personal consumption

(d) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Plant and machinery for the aforesaid exclusion means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of gods or services and includes foundation and structural supports, but excludes land building or any other civil structures, telecom towers and pipelines laid outside the factory premises. Since 'manufacture' as the taxable event is no more relevant for GST law and the Central Excise Act, 1944 stands repealed (except to the extent

2 Refer section 16(2) of the CGST Act, 2017

of savings mentioned), the meaning of the term 'factory' could be a matter of contention.

Section 18(2) imposes a further restriction that the ITC shall not be available after expiry of one year after of the date of issue of the tax invoice relating to the supply. Further, as per the Second Proviso to Section 16(2), ITC shall be reversible with interest if the recipient does not pay the value of supply along with tax payable thereon within a period of 180 days from the date of invoice by the supplier.

Matching principle

The claim of ITC in respect of invoices or debit notes relating to a supply received by a recipient shall be finally allowed only to the extent of tax declared by the supplier in his valid return. For this purpose, the there will be matching of supplier and receiver data and credit will be confirmed only after such matching. Where the data is not matched and where the supplier has not made the tax payment, the ITC shall be reversed with interest.

Prioritisation in ITC utilisation

IGST credit shall first be utilised towards payment of IGST and the amount remaining, if any, can be utilised towards payment of CGST and then SGST or UTGST, in that order. Similarly CGST credit shall be utilized towards payment of output CGST or IGST, and SGST/ UTGST credit shall be utilized towards output SGST/ UTGST or IGST. However, SGST/UTGST credit cannot be utilised for payment of CGST and vice versa.

Transitional Provisions

The amount of credit carried forward in a Return filed under the existing law, i.e. Central Excise, Service Tax, VAT, etc. will be allowed as ITC. However such carry forward is allowed only if the credit is admissible in terms of the ITC provisions of the GST Law. Since the ITTC is a fungible pool, the question will still remain of how to determine the admissibility of the carry forward credit under the GST law.

Credit of eligible duties and taxes in respect of inputs held in stock is also allowed in certain situations.

Refund under Inverted tax structure

Section 54 of the CGST Act, 2017 inter alia allows for refunds in cases where ITC has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies (except in cases of nil rated or exempt supplies), with exceptions as may be notified. The output supplies could be either of goods or services or both.

It is not clear why only inputs have been specified and not input services. Moreover, there could be cases where there are multiple inputs (e.g. used in manufacture) with some of the inputs being at rates higher than applicable on the final product. Here we may note that the Rules notified in respect of refund of this excess credit specifies a maximum limit only in respect of supply of goods, but takes into account the inversion in GST rate for both inputs and input services.

Here it may be noted that in certain cases (e.g. while prescribing a lower 5% GST rate on fabrics), the GST Council has decided that the lower GST rate would apply subject to no ITC refund being available on the credit accumulation. In such cases, the credit accumulation which, without sufficient avenues for cross-utilisation, could become a cost for the industry.

Conclusion

Thus the GST law relating to ITC may require greater delineation both in terms of the policy as well as in terms of interpretation. In many cases, the Rules and procedures may require further clarification.

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GST: Implementation and Transitional Issues

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Goods & Service Tax is termed to be Good & Simple Tax in the words of Hon. Prime Minister, Shri Narendrabhai Modi. Albeit, the benefits of GST is undoubted but expectations from implementation of GST are too far from the reality.

It was expected that GST will have seamless flow of credit and simple Taxation System. However, considering various issues including four rates slabs, IT network, matching concept and non-awareness, lot of confusion in the trade & industry has really created chaos.

There is no need to convey or convince that GST is only the growth engine for any nation and much awaited economic tax reform finally resulted in the reality. In spite of the same, the hurriedness in the GST implementation w.e.f. 1st July 2017 without much of the IT focus or much of the understanding the trade & industries issues, unnecessarily negativity is getting spread against the positive impact of GST.

In spite, Govt. of India have published number of FAQ and started answering on twitter at @askGST_GoI. Number of times, answers were contradictory and specific questions were not answered but each of us should appreciate the efforts and intention of the Govt. and the Govt officials for creating an awareness and smooth transition from complex tax regime to Good & Simple Tax regime.

In the GST Council Meeting held at Hyderabad on 9th Sept 2017 has decided to form the Task Force to understand the issues of network and GSTN to solve the technical issues faced by Trade and Industries. Intention of the Govt is to address the difficulties faced by the industries has to be applauded. After GST implementation, Govt has released / issued notifications, circulars, press release which has been listed below :

Sectoral FAQs

- Government Services
- Gems and Jewellery
- IT & ITES
- Handicrafts
- Mining
- Drug & Pharmaceutical
- E-Commerce
- Food Processing
- MSME
- Exports
- Textiles

Topic wise FAQs :

- FAQs on GST on Services
- FAQ on Cooperative Society as on 5th sept. 2017
- FAQ on Composition levy
- FAQ for GST Rates
- GST Rate-II

- GST traders

Press Release :

1. Clarification on term "registered brand name

2. Gifts up to a value of Rs 50,000/- per year by an employer to his employee are outside the ambit of GST. However, gifts of value more than Rs 50,000/- made without consideration are subject to GST, when made in the course or furtherance of business

3. Cabinet approves Scheme of Budgetary Support under GST Regime to the eligible units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim.

4. Clarification on tax in reverse charge on gold ornaments; Sale of old jewellery by an individual to a jeweller will not make the jeweller liable to pay tax under reverse charge mechanism on such purchases; However, if an unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply

5. Reduced Liability of Tax on complex, building, flat etc. under GST

6. Services provided by the Housing Society Resident Welfare Association (RWA) not to become expensive under GST; There is no change made to services provided by the Housing Society (RWA) to its members in the GST regime.

7. No GST on Annual subscription/fees charged as lodging/boarding charges by educational institutions from its students for hostel accommodation;

8. Services provided by an educational institution to students, faculty and staff are fully exempt from GST.

Webinars :

GSTN has taken the webinar for how to file Form GSTR-3B, GSTR-1, GSTR-2 in English & Hindi, so as to enable Trade & Industries for smooth filing of returns.

Circulars :

Central Tax :

Circular No.	Date	Subject
07/2017	01-09-2017	System based reconciliation of information furnished in FORM GSTR-1 and FORM GSTR-2 with FORM GSTR-3B - regarding
06/2017	27-08-2017	CGST dated 27.08.2017 is issued to clarify classification and GST rate on lottery
05/2017	11-08-2017	Circular on Bond/LUT in case of exports without payment of integrated tax
Order-01/2017	21-07-2017	Extension of date for filing option for composition scheme
04/2017	07-07-2017	Reagrding issues related to Bond/Letter of Undertaking for exports without payment of integrated tax – Reg.
03/2017	05-07-2017	Proper officer relating to provisions other than Registration and Composition under the Central Goods and Services Tax Act, 2017–Reg
02/2017	04-07-2017	Issues related to furnishing of Bond/ Letter of Undertaking for Exports–Reg
01/2017	26-06-2017	Proper officer for provisions relating to Registration and Composition levy under the Central Goods and Services Tax Act, 2017 or the rules made thereunder – Reg

Integrated Tax :

1/1/2017-IGST	07-07-2017	Clarification on Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance- regarding

Compensation Cess Tax :

1/1/2017-Compensation Cess	26-07-2017	Seeks to provide clarification regarding applicability of section 16 of the IGST Act, 2017, relating to zero rated supply for the purpose of Compensation Cess on exports.

GST Council meeting after Appointed date:

Council Meeting	Date of Meeting	Location	Highlights
19th Meeting	17th July 2017	Video Conference	
20th Meeting	5th August 2017	New Delhi	1. E-way bill to be rolled out from 1st October. However the same will not be required to transfer exempted goods. 2. In-principle approval is given to anti-profiteering measures and proposal is made to set up a Screening Committee in 15 days to see if tax reductions after implementation of GST have been passed on to consumers 3. Proposal to alter Tax Rates w.r.t. following: ü Rate of tax on few tractor parts to be reduced from 28% to 18% ü Rate of tax to be lowered for rent a cab service ü Work contracts under GST will be taxed at 12% with input tax credit ü Rate of tax for job work for textile sector to be lowered from 18% to 5%
20th Meeting	9th Sept	Hyderabad	1. Due date for filing return has been extended as follows: Due dates for filing of the above mentioned returns for subsequent periods shall be notified at a later date. 2. GSTR-3B will continue to be filed for the months of August to December 2017. 3. Option to opt for composition levy will be available till 30th September 2017. Such person can avail benefit of composition scheme from 1st October 2017. 4. Person making inter-state supply of handicraft upto aggregate total turnover of Rs. 20 Lakhs will not be liable for registration provided goods always move with cover of e-way bill. 5. Job worker making interstate supply of service is not liable for registration upto total aggregate turnover of Rs. 20 Lakhs as long as the goods move under the cover of an e-way bill. This exemption will not be available to job work in relation to jewellery, goldsmiths' and silversmiths' wares as covered under Chapter 71 which do not require e-way bill. 6. Due date for submission of FORM GST TRAN-1 has been extended to 31st October 2017 and the same can be revised once. 7. The registration for persons liable to deduct tax at source (TDS) and collect tax at source (TCS) will commence from 18th September 2017. However, the date from which TDS and TCS will be deducted or collected will be notified later. 8. It is proposed to increase compensation cess for the SUV, Large Cars and Mid Sze cars. 9. GST Rate change for number of items 10. For pulses, cereals and flours, put up in unit container and bearing a registered brand name,

Govt. has also extended the dates for filling the returns :

Sl. No.	Details / Return	Tax Period	Revised due date
1.a)	GSTR -1 For registered persons with aggregate turnover of more than Rs. 100 Crores.	July, 2017	03-Oct-17
1.b)	GSTR -1 For other Tax Payers	July, 2017	10-Oct-17
2)	GSTR-2	July, 2017	31-Oct-17
3)	GSTR-3	July, 2017	10-Nov-17
4)	GSTR-4 (Composition Levy)	July-September, 2017	18-Oct-17 (no change)
5)	GSTR-6 (ISD)	July, 2017	13-Oct-17

GSTR3B will be required to be filed upto December 2017.

To conclude, Govt is at one end creating the awareness and solving the various difficulties faced by the Trade & Industries but considering the complexities of changeover from old tax regime to new tax regime and massive change, there will be bound to have number of issues and number of difficulties but still following aspects needs to be addressed without any further delay.

Exporters :

- EOUs & SEZ are contributing more than 60% of the exports and export through merchant exporter contributes more than 20% of the total exports and unfortunately all these sectors are suffering due to lack of clarification or provisions in the GST Law

- SEZs : Supply to SEZ is zero rated and is treated as inter-state supplies in terms of section 8 of IGST Act 2017.In view of the same, the small traders, service providers are facing the difficulties of doing the business with SEZ since any person who is involved in inter-state supplies will have to obtain the registration and even threshold limit will not be applicable to them and they will have to pay the tax for all the supplies in domestic other than SEZ, even if small portion is supplied to SEZS unit / developers.

Further, every SEZ unit will have to obtain separate GST registration and comply with all GST formalities including filing of return. They will have to file GSTR-1 and all exports will be reported from such table of GSTR-1 but sale in domestic unit are subjected to be cleared and against the bill of entry and therefore it cannot be shown / reflected in GSTR-1 as outward supply. There is no clarity how such outward supplies to be reflected.

EOU : In the GST Era, EOU units are almost at par with the DTA Unit and their special status as EOU Unit has become a curse, since day to day operations are badly affected. When EOU Unit is clearing the goods in DTA in terms of Para 6.8 of Foreign Trade Policy then in terms of notification number 52/2003 Cus as amended by notification number 59/2017-Cus dtd. 30th June 2017. EOU Unit will have to discharge CGST + SGST or IGST as the case may be and also pay the custom duty forgone on imported inputs used in the manufacture of goods and sold in DTA, but such custom duty payment is not been accepted by the bankers nor GAR challan is countersigned by the Central Tax officers/ Custom Officers.

Further, Para 6.15 of Foreign Trade Policy allows to clear surplus obsolete and non-useable inputs and capital goods in the domestic market on payment of duty. Whereas they have to pay basic custom duties on value at the time of imports and existing basic custom duty rate on such imported inputs and capital goods. There is no method to pay directly and upload the challan before effecting such challan.

Number of EOUs are having their own DTA Units either in the same premises or either in the same state. In earlier regime, it was treated as transfer as duty was paid accordingly, now in the GST regime, as registration number of both the units is same there is no mechanism to pay basic custom duties and do not pay CGST + SGST. This has created lot of bottleneck and flexibility of operations of EOUs.

Since EOUs are treated at par and they are facing the challenges mentioned above, the de-bonding option cannot be exercised. In GST regime, there is no mechanism spelt out in the law when EOU is getting de-bonded, how to pay BCD. Though simplification was made vide notification 59/2017-Cus dated 30-06-2017, there is need of issuing the new circular / guidelines for the benefit of industry & field formation so as to have ensure intentions converts the reality.

EOUs are also permitted to export through Merchant Exporters under the concept of "Third Party Exports", however in the GST regime, sale to the merchant exporters is treated as DTA Sale and EOU will have to pay the Basic Custom Duty on imported material used in such finished goods which are meant for exports. This is never the intention of the policy makers and hence FTP and notification 52/2003-Cus needs further amendment to cover sale to merchant exporter for ultimate exports without payment of BCD.

Merchant Exporter

Exports by merchant exporters have badly affected since they are required to procure the goods by payment of GST. Although, they will be entitled for ITC and subsequent refund when exports are made on payment IGST. Considering the existing network and utilities developed by GSTN, there is no possibilities to grant the refund before January 2018. This has resulted into huge requirement of working capital and interest burden thereon which was never considered in export costing.

Service Exports

Service exports contribute almost more than 40% of total exports and generates more than 70% of net foreign exchange earnings (i.e. difference between exports and imports). Earlier, tough service tax was applicable on services and exports of services were exempt, they were not required to execute the bond / LUT. Now each service exporter either has to give the bond or execute LUT which has resulted into lot of harassment by GST officials and it was the axe on the concept of "ease of doing of business". There is no need to execute Bond / LUT in GST also, exporters from small service providers has been adversely impacted since they were asked to give Bank Guarantee which has added to the cost of exports. Their refunds also been delayed and no refund will be given prior to January 2018. This has also resulted into high working capital requirement for them.

MSME Sector

Most of the MSME Units were availing exemption under Central Excise up to the turnover of 1.5 Crore and they were not much acquitted with the concept of ITC. Number of SSI units also do not have computer literacy and now they are required to equip with reporting Inward supplies and outward supplies through IT systems. Undoubtedly this issue was addressed by GST council and therefore the concept of TRPs, GST practitioner and CFC was floated. But GSTN has not opened the window for authorizing them to file the returns on their behalf. GSTN has approved GSPs and GSPs are authorizing ASPs after approval of GSTN but MSME sector cannot bear high burden of transactional cost of ASPs and GSPs. Therefore, MSME sector and traders

are adversely affected on their day to day working and comply with provisions of GST.

Agro Sector

Agriculture is backbone of Indian Economy and methodology of doing agriculture and avenues available to farmers will not only reduce the suicides of the farmers and make India economically stronger. The Focus on agriculture should be improving the quality of the soil, quality of seeds, fertilizers and proper usage of insecticides / pesticides / fungicides. Classification of Fertilizers un-necessarily disputed in spite of clear cut board circular issued by CBEC dated 6th April 2017. However, in GST regime the wording of classification though remains the same, tariff rate have been notified based on nomenclature which was created again the confusion in the minds of manufacturers / traders and the field formations. It might have been much better to issue the similar clarification and applicability of rates. It is also recommended to have GST rates maximum upto 12% or 5% for agricultural equipment, implements, tractors and parts thereof as well as for fertilizers / plant growth promoters, Pesticides, Insecticides, Fungicides etc.

If the issues raised above of the agriculture, MSME, Exporters are addressed there is certainty to grow exports and overall productivity which will not only reduce the inflation but will create job opportunities, employment and will also contribute to growth in GDP.

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Valuation in Goods & Services Tax Regime

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1. introduction

The value of the supply is the value on which the GST is chargeable. Determination of value of the supply is not only required to charge the goods and services tax, but also for arriving at the value of supply to compute the turnover prescribed for the purpose of computing the eligibility of registration under GST.

GST Regime has adopted the concept of 'transaction value' for determining the taxable value of supply on which the goods and services tax shall be levied. The section 15 of the CGST Act deals with value of taxable supply. This section has also been made applicable for determination of value for the purposes of IGST Act, UTGST Act and GST Compensation Cess Act. Currently, the concept of transaction value is followed both under Central Excise and Customs legislations for levying central excise and customs duties by the Central government.

2. Transaction Value In GST

As per section 15(1), the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and recipient of the supply are not related and the price is the sole 'consideration' for the supply.

It is pertinent to note that the GST needs to be paid on 'transaction value'. The concepts / modes of calculation of excise duty as are presently available under Central Excise Act, 1944 like;

- Specific duty
- Tariff Value basis [section 3(2)]
- Production capacity basis [section 3A]
- Ad valorem basis [Section 4]
- MRP based duty [section 4A]
- Compounded levy [Rule 15 of the Central Excise Rules, 2002] are not available under GST regime.

3. Inclusions in The Transaction Value

As per section 15(2) of the CGST Act, the value of supply shall include the following:

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

It may be observed that currently petroleum, diesel etc are currently outside the purview of GST. Thus these products will continue to attract existing taxes like VAT, Entry Tax etc. All these taxes will become non creditable in GST regime and will become the part of input cost of the product. GST will also be charged on the above taxes as well.

Thus Industry will still face the issue of cascading of taxes in case of Inputs which are not within the GST regime like High Speed Diesel, Electricity etc.

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of the goods or supply goods or supply of the services;

Example: In case of a dealer of Air conditioner, while selling AC, the dealer also provides the service of installation , then the same will become the part of transaction value and GST will be charged on the same.

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

It may be noted that in the existing regime, Interest or late fee or penalty for delayed payment did not attract VAT etc. However in GST regime, the above will form a part of transaction value.

(e) subsidies directly linked to the price excluding subsidies provided by the Central and State governments. However, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

3. Discounts In GST Regime

As per section 15(3), the value of the supply shall not include :

(a) Discount given before or at the time of the supply: provided such discount has been duly recorded in the invoice issued in respect of such supply.

(b) Discount given after the supply has been effected: provided that:

- such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- input tax credit has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.

4. Value of Supply Cannot Determined –GST Valuation Rules

As per section 15(4), where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be Prescribed [i.e prescribed by the GST Valuation Rules].

Meaning of Relevant Terms

'Open Market Value'

As per explanation (a) to GST Valuation Rules, "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

'Supply of Goods or Services or Both of Like Kind and Quality'

As per explanation (b) to GST Valuation Rules, "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

The relevant valuation rules are given below:

4.1 Value of supply of goods or services where the c onsideration is not wholly in money

As per Rule 27 of CGST Rules, where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-

(a) be the open market value of such supply;

(b) if open market value is not available, be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by application of rule 30 or rule 31 of CGST Rules in that order.

Illustration:

(1) Where a new phone is supplied for Rs. 20000 along with the exchange of an old phone and if the price of the new phone without exchange is Rs. 24000, the open market value of the new phone is Rs 24000.

(2) Where a laptop is supplied for Rs. 40000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is Rs. 4000 but the open market value of the laptop is not known, the value of the supply of laptop is Rs. 44000.

4.2 Value of supply of goods or services or both between distinct or related persons, other than through an agent

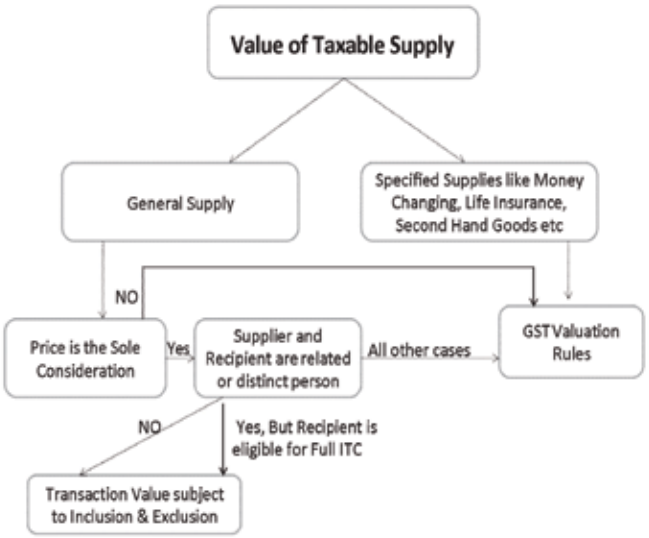
As per rule 28 of CGST Rules, the value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall,-

(a) be the open market value of such supply;

(b) if open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if value is not determinable under clause (a) or (b), be the value as determined by application of rule 30 or rule 31, in that order:

However, as per first proviso to rule 28, where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person.



Further, as per second proviso to rule 28, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

Fig :Valuation of Supply in case of Supply to Related or Distinct Person

4.3 Value of supply of goods made or received through an agent

As per rule 29 of CGST Rules, the value of supply of goods between the principal and his agent shall,-

(a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient;

Illustration: A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.

(b) where the value of a supply is not determinable under clause (a), the same shall be determined by application of rule 30 or rule 31 in that order.

4.4 Value of supply of goods or services or both based on cost

As per rule 30 of CGST Rules, where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be one hundred and ten percent of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services.

4.5 Residual method for determination of value of supply of goods or services or both

As per rule 31 of CGST Rules, where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 and these rules.

However, in case of supply of services, the supplier may opt for this rule, disregarding rule 30.

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After all it is the value that drives.....

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The biggest tax reform in the Indian history, the Goods and Services Tax (GST) that has been most awaited, most opposed, most debated and most discussed is finally here..!!

While the jury is still to be out with its verdict with regard to efficiency and robustness of the GSTN portal said to be the backbone of GST, there remains a large number of tax related technical issues that the business community would have to bear, owing to complexities of the GST law. GST aims to streamline the taxation structure in the country and replace a gamut of indirect taxes with a single GST to simplify the taxation procedure.

Post implementation of the GST, the tax system has two components, namely: a central GST and a state GST leviable on local supply within the state and an integrated tax on inter-state supplies. The taxes are creditable across the supply chain and this ensures a complete, comprehensive and continuous mechanism of tax credits.

Though, the major credit issue is resolved due to implementation of GST, still one of the pressing issues, the valuation of goods and services that has significantly contributed to the huge pile of pending litigations in the erstwhile VAT / excise and Service tax regime remains to be deciphered.

GST, like the earlier indirect taxes would be levied on the value of supply made, hence 'Valuation of supply' gains paramount importance in the new regime also.

After all, it's the value that drives the tax to be paid on such supply. While the Government wants the value of supply to be on the higher side, the assesse always creates measures to arrive at a value, which would be on the lower side. This creates a tug of war between the revenue and the assesse and needless to say, disputes on the subject matter of Valuation.

Rulings of the Supreme Court and High Court interpreting the principles of valuation in the erstwhile regime have added new dimensions to the interpretations. Having said so, a question needs to be addressed is that : Have the lawmakers taken enough precautions to ensure that the litigated issues of the erstwhile regime do not get replicated in the GST legislation? – let's take a look..!!

GST provisions relating to Valuation of goods and services are contained in section 15 of CGST Act, 2017 read with CGST rules prescribed to this effect. The said rules have been a blend of valuation principles contained in Service tax law, customs law and excise law. The concept of 'transaction value' that formed the backbone of the excise and customs law have been incorporated in the GST legislation as well. To put it in simple words, 'Transaction value' is the price which is agreed to be paid for the supply of goods or services by the supplier to the recipient, where the supplier and recipient are unrelated parties.

Transaction value is also explained to include within its ambit other taxes and levies such as entertainment taxes, free supplies, expenses such as commission/ packing / freight, interest/ late fee and subsidies - directly linked to price, except Government subsidies as well as certain conditional discounts. Thus, GST law continues to keep a check on the split-up pricing system that was typically adopted by the suppliers of goods to avoid payment of VAT or excise duty on the charges for extra sale related services. By including the value of services like transportation, packing etc. in the value of the goods supplied, GST law has put a full stop on the disputes relating to dual levy of Service tax and excise / VAT on such facilities provided by supplier of goods.

Having discussed about transaction value above, one also needs to focus that there are twin conditions that need to be satisfied simultaneously for the application of transaction value – First, supplier and recipient are not related parties and Second, price is the sole consideration. Valuation with regard to related party transactions and self-supplies are contained in the GST valuation rules. Further, Section 15(4) also provides that where transaction value fails, the value of supply shall be determined in such manner as may be prescribed (valuation rules). Therefore, there are adequate provisions in the valuation machinery that provide for the process to be adopted in case the aforementioned conditions are not met.

Section 15(2) and 15(3) list out the inclusions and exclusions to the value of supply. Interestingly section 15(2) does not include reimbursements. So does that mean that all sorts of reimbursable expenditures that are claimed over and above value of services continue to attract tax even if they are on cost-to-cost basis – well, the issue is too complicated to have a straight forward answer. The concept of 'pure agent', has also made its way into GST valuation rules from the erstwhile Cenvat Credit Rules – though some of the legs of its definition have been clipped in the revised rules.

An issue that has been the subject matter of various disputes, is the different types of discounts offered by sellers in various commercial scenarios. GST law tries to simplify this endless list of discounts by categorizing them into Post sale and Pre sale discounts. The GST Law mandatorily requires post sale discounts to be specifically linked to the invoices against which such discount is provided and the same is 'established' in terms of an agreement entered into or before the time of such supply. This is a major challenge for the industry as such discounts/ incentives are offered by taxpayers to their dealers / distributors only once a certain sales target or volume is met, at the end of the financial year. Also there is no clarity on the usage of the term 'established' while referring to its inclusion in the agreement. Businesses would need to carry out an assessment of all their incentive / discount schemes to see which ones meet the criteria of a post-sale discount as provided under the GST Law. One of the major conditions to be fulfilled to avail tax adjustments in relation to post sales discounts is the mandatory issuance of credit notes by the supplier and corresponding reversal of credit by the recipient proportional to such discount.

Also, an engaging matter that has been discussed at length and still not done away with is the valuation of goods and services in case of related parties and more importantly in case of self-supplies happening between different branches of the same legal entity in different states termed as distinct persons under GST law. Supply of services, like administration support, sharing of manpower between establishments of a legal person (head office and branch offices) in different states, is subject to GST even if provided without consideration. Attributing a value to this was always going to be a complex task – however GST law has done well enough to avoid unnecessary disputes at this front

While reading the concepts of 'open market value' and value of goods of similar type and nature, one could easily draw resemblances to the customs law and a simple plain reading could give nightmares to the business community in terms of the endless possible litigation on account of the vagueness in the law. However, the lawmakers gave a big relief to the taxpayers by incorporating a proviso to accept the value declared by the taxpayers where

such related party transactions are revenue neutral (that is, where the tax paid by the supplier is fully allowable as credit to the recipient). The proviso, is fair and logical for the simple reason that if the supplier declares a value higher than the fair value of the supply, the recipient has to pay for the increased input credit. It's like paying extra cash and converting the same into an eligible credit. Conversely, if the supplier declares a lower value than the fair value, recipient will have accumulated lesser credits resulting in excess cash payment of taxes. Hence the system will automatically drive the declared value to be close to the fair value. Though, such a relaxation looks very fair and industry friendly, nonetheless, the requirement that recipient should be eligible for full tax credit makes it impractical for transaction like supply of free samples and other supplies which are not eligible for input tax credit. Valuation of the same between related parties and in case of self-supplies between distinct persons is a highly litigative matter.

The Government has left no stone unturned in providing for the prescribed rules of valuation for many of the diverse categories including pure agent, life insurance business, air travel agent, redeemable vouchers etc. However, the possibility of the contrary interpretations cannot be ruled out.

Further, the value of imported goods which would be governed through Customs Act, 1962 is also not straightforward. While IGST on import of services would be leviable under the IGST Act, the levy of the IGST on import of goods would be levied and collected under the Customs Act, 1962 read with the Custom Tariff Act, 1975 on the value as determined under the said Act. IGST on goods would be in addition to the applicable Basic Customs Duty (BCD) and GST compensation cess. Thus, the taxable value for the levy of IGST in case of imports of goods would be assessable value calculated as per the Customs Act plus Customs duty levied under the said Act. It has however been observed that the method of valuation adopted at various ports of customs are different and no clear instruction seem to have been delineated to the authorities governing the clearance of goods.

Despite plethora of rulings of Supreme Court and High Court, laying down underlying principles of Valuation of goods and services under the previous regime, analogy of which may be drawn and adopted under the GST law, the subject matter of Valuation remains a matter of debate, myriad with complexities causing uneasiness across the industry.

There is no denying of the fact that the GST regime is going to make businessmen and dealers alike, reassess pricing of goods and services, determining their value, pricing products etc. During the month of June and July, the instances of how organisations were seeking to adjust their product prices in the wake of GST, have been widely reported in media. The Government has also established the Anti-profiteering law to protect consumers from any arbitrary price increase in the name of GST and ensure that businesses do not pocket all the gains from the increase in flow of credits therefrom.

Let us all hope that this 'Brahmastra' of the Government, as our honourable Revenue Secretary likes to call it, is wisely used in the greater commercial interest and any unwarranted harassment of the

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Issues in filing GST Returns

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Filing of GST Returns is a key business process in Goods & Services Tax Act, 2017. It is important from the point of view of the government as it helps it to know the overall revenue figures and also to collect taxes. It is also relevant for a buyer as he will get credit of input taxes through returns filed by suppliers. Inspite of it being so important, there are many issues which a professional or businessman is facing while filing these returns.

Issues in filing returns

- Returns have to be filed in a sequential manner. A regular or casual assessee has to file GSTR-1, 2 & 3 for a month, in sequence. Not only that, he cannot file his returns, say for the month of August, if he has not filed the same for July, for any reason, whatsoever. Reason may be incomplete data, inability to pay huge tax liability in a particular month and so on. Tieing the hands of the assessee in this manner is not a good strategy. Whether it is Income tax, state VAT laws, Service Tax etc., assessee can file returns for a period even if earlier one is pending.

- In B2B cases, Invoice wise and Rate wise data has to be given in GSTR-1, irrespective of the amount and quantum of transactions. For businesses where quantum of B2B transactions is large, the size of data increases exponentially, resulting in issues in uploading the same on GST portal. What objective does the government want to achieve by taking loads of information from the assessees. A better approach could have been to take data dealerwise and rate of tax wise, at least in the nascent stages. With familiarity of the masses, more detailed data could be asked for, if required. To burden the assessees and the GST portal from day one, does not seem to be a wise decision.

- Murmurs of dissent are also being heard regarding periodicity of returns. If we were fine with half yearly Service Tax returns, Quarterly VAT returns (in many cases), why we could not kick start GST with Quarterly returns, to begin with? A simple monthly GSTR-3B type of return and monthly tax deposit could have achieved the objective of monthly tax collection, without overburdening the tax payer.

- Designing of returns leaves much to be desired. The same should have been simpler and self explanatory. One does not know whether "Aggregate Turnover" of 2016-17 and Q1 of 2017-18 in GSTR-1 should be for that particular GSTIN or PAN based i.e. for the organisation as a whole. Similarly, one does not know whether one should include GST or not in "Value" under Invoice details of outward supplies. This lack of clarity results in different interpretations and consequently different reporting by different persons.

- We appreciate that Returns have to be filed in a time bound manner. But asking the assessee to file them during a particular time period, not

allowing him to file during another period and even levying late fee for not filing in time, is not justified.

- Late filing fee should also be rationalised. Levying it separately for CGST & SGST is devoid of reason as it is a single return. Levying same on all sequential returns (GSTR-1,2,3 & 3B) is also open to legal scrutiny.

- Not allowing the assessee to adjust excess deposit of GST under one head with another head is also not justified. Why should he be asked to deposit SGST & CGST again if inadvertently he has deposited the amount under IGST? Similar issues in Income tax TDS resulted in a lot of hardship to the assessees. With experience, it was done away with and presently TDS paid under any head can be adjusted with that payable under other heads. Why can't we learn from our mistakes?

- A buyer cannot ensure that his supplier will deposit taxes and file timely returns. To punish him for no fault of his, is also senseless. Why should he be asked to pay taxes with interest, if the counter party has not fulfilled his responsibilities properly. Businesses are here to do business. To burden them with your responsibilities without any authority to ensure compliance of the same, is an unjust and debatable decision.

- Reversal of input taxes if payment is not made by the buyer in 180 days, is encroaching in the business relationship of the buyer and the seller. Issues regarding quality, quantity and payment etc. can best be left to the wisdom of the two parties and government should not have a role to play in it. Though it seems valid to some, difficulties in its implementation should have deterred the government in taking this stand.

- Asking e-commerce operators to collect tax at source from all payments made to vendors results in extra burden on vendors selling through e-commerce portals, besides increasing compliance burden of Snapdeals and Flipkarts of the world.

- Not allowing an assessee to revise returns is another major roadblock in smooth transition to the new regime. All corrections, alterations cannot be routed through debit/credit notes, amendments etc. Some require changes in the initial entry itself. Making corrections in subsequent returns and linking each change to earlier reported figures, make return filing process cumbersome.

- Filing minimum 37 returns per registration per year is a mammoth task for a regular assessee. Small and medium assessees may not have the requisite staff for the same and may have to depend on professionals. Counter argument that GSTR-2 & 3 are auto-populated does not hold water because even these returns require time and effort to ensure correct and complete filing. Matching of own records with those of supplier in GSTR-2A is not easy, particularly where the volume of transactions is large. Supplier may have inadvertently entered someone else's GSTIN or entered incorrect amount, GST etc or applied incorrect rate and so on. Ensuring all details are correct and match with our records is not easy, to say the least.

- Return of Outward Supplies (GSTR-1) cannot be filed if even a single GSTIN is invalid. This is very harsh and a return of a few thousand line items cannot be stopped just because a few GSTIN are not correct. It may not always be possible to take the correct GSTINs in the limited time. If we leave such bills in a month, then we have to pay even interest on the same in subsequent months. A solution to such cases could be to allow the seller to put a standard GSTIN in these cases and allow him to correct it subsequently. This worked successfully for PAN where PANNOTAVBL, PANINVALID and PANAPPLIED were allowed to be used for almost 7 years so that the deductors did not face practical problems while filing returns.

- Many errors such as invalid GSTIN are thrown at the time of actual filing on the portal. The

average user reaches the portal when he has completed all his work, reconciled figures etc and this generally happens in the last few days of return filing period. Throwing such unpleasant surprises at the last moment, results in delayed filing. Ideally all such issues should be pointed out in an offline utility.

- Some suppliers may show parties whose correct GSTIN not received as unregistered and club them together statewise (for supplies upto Rs. 2.50 lacs). Though they have deposited the correct GST amount, how will they correct this anomoly in subsequent returns. They will have to pay interest for late furnishing of invoice particulars in subsequent months when GSTIN is received for such parties.

- Practical issues have not been handled well in GST Returns. Taxing advances has resulted in a lot of problems. Sometimes initially it is not clear as to the items for which advance is received or whether it is for intra-state or inter-state supplies. Asking the person to pay GST @ 18% in such cases is fine but if later on supplies are made for a 6% item or 12% item, who is going to make those corrections and adjustments. If there is shortfall, he may be asked to pay interest on the same together with shortfall. If excess tax has been paid will government adjust it or refund the same.

- Though requirement of HSN code has been done away with in invoice wise details, HSN summary of the same is required in Return of Outward Supplies. This means that the assessee will have to maintain these details in any case. Mentioning HSN code in invoices and in summary in return is challenging for an average taxpayer even if his turnover exceeds Rs. 1.5 cr.

- Summary of documents issued in return of outward supplies for invoices, debit/credit notes, etc, is uncalled for. Assessee has to report starting and ending number of all bill books, number of bills issued, cancelled and net bills issued and other documents. Even details of invoices and payment vouchers have to be given separately for reverse charge cases . If that was not enough, Receipt voucher and refund voucher details have to be given for advances received and refunded.

- Sole dependence on supplier for accepting invoices/debit/credit notes not uploaded by him and added by the purchaser might result in supplier misusing his position. He might delay such acceptance which will mean additional liability of tax and interest for the buyer.

- We are aware that "One Nation, One Tax" is only a slogan as we have several taxes in the same nation. Not only that, we even have multiple formats for reporting in different departments of the same government. MCA takes data in XBRL/pdf format, Income tax department in XML format (IT Returns) and Text format(TDS statements) and now GST department wants data in JSON format. Software requirements like signer, java version, browser versions are different for each. This accentuates the technical issues faced by an average user and professional.

- After filing 3 returns per month, a regular person has to even file an Annual Return which is quite detailed. Audit Report where yearly turnover exceeds Rs. 2 crores is also mandatory. Reconciliation of all expenses will have to be made.

- What is the logic for asking for details of tax free and exempt supplies in GST returns? Will the tax payer now have to account separately for petrol/diesel expenses and other repair and maintenance expenses of vehicles, generators etc as the former are non-GST supplies. Similarly, if supplies upto Rs. 5,000 per day from unregistered suppliers is not liable to GST, why should it be reported in exempt supplies?

- Technical glitches at GST portal are galore. In many cases, tax payers are unable to file timely returns due to technical issues at GST portal. Such issues should be resolved at the earliest so

that the filing experience can be smooth, sturdy and seamless. Frequent crash of GST portal on last few days needs to be tackled properly. Its capacity should be increased manyfold so that there should not be allegations and counter allegations from the GST authorities and actual users. Use of "stick" always does not have the desired result and beyond a point children become stubborn and indifferent. So "carrots" should also be used to motivate the users to file returns early. Some monetary benefit or rebate can be one such solution.

Having a uniform law for taxing goods and services all over the country was unthinkable till recently. The very fact that GST has seen the light of the day is a victory of the government and that of collective federalism. People at large also need to be congratulated for their acceptance of the new system, inspite of it being too system driven and too demanding as far as reporting and deadlines are concerned. But we all know that Rome was not built in day. All big projects take time to materialise and have gestation periods, besides teething problems. GST is no exception. But to expect 100% compliance and adherence to strict deadlines inspite of technical glitches and ambiguous law, is expecting too much from a common tax payer. Let us be reasonable, user friendly and receptive to the genuine issues and problems faced by businessmen and professionals. Let us consider them as stakeholders and not merely goose which lay golden eggs.

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Issues in Works Contract under GST

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Taxability of works contract has always been a complex area due to the contract involving goods and services and the basis of valuation of goods and services being not uniform across the States. Since the basis of taxation of a works contract was different compared to taxing the goods and services separately treating them as separate transactions, businesses had to first determine if a contract was a works contract or a contract involving independent sale of goods and provision of services. Over a period of time, the Courts have factored in intent of the parties, deeming fiction in the law etc. to conclude taxability of works contract. To get away with this interpretational issue, works contract of immovable property has been codified as a deemed service in the Goods and Services Tax (GST) regime, with the intent to avoid tax disputes.

To appreciate the possible tax disputes, the rationale behind making this amendment and other issues in the GST regime, it is imperative to understand the meaning of works contract in the erstwhile tax regime.

Works contract under the erstwhile tax regime

Works contract was defined to mean a contract in whose execution transfer of property in goods takes place. From a tax perspective-

- VAT was applicable on the goods portion and
- Service tax was applicable on the service portion

Due to varied treatment of works contract across the nation due to different rates of VAT applicable in different states and different rates of abatements for different kinds of contracts, the concept of works contract was complicated. The added complication arose due to the fact that VAT was levied by State Governments while service tax was levied by Central Government and both attributing higher proportion of the contract value towards goods and services respectively.

Works contract under the GST regime

Under the GST regime, works contract has been considered as a service by deeming fiction. As per Central GST Act, works contract has been defined to include:

- a contract for building, construction, installation, repairs, maintenance, renovation etc. of any immovable property;
- where transfer of property in goods is involved in execution of contract

In terms of the above, works contract under GST has been restricted only to immovable property unlike the erstwhile tax regime which extended the scope of works contract to moveable property also. Further, the Government introduced the concept of composite supply under GST regime, which was

present in the service tax regime in a limited way. With this exclusion from the scope of works contract and introduction of a new concept of composite supply, there is likely to be ambiguity on taxability of contracts relating to movable property. To comprehend this better, it is imperative to discuss the concept of composite supply.

Under the GST law, 'composite supply' means a supply consisting of two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is principal supply. Further, principal supply has been defined to mean the supply which constitutes the pre-dominant element of a composite supply. It is specifically provided that a composite supply will be treated as supply of the principal supply forming part of the said composite supply.

In terms of the above, 'predominant nature' should be given a statutory recognition in the GST law, and in the absence of which, in any composite contract involving movable property, it would be critical to identify the principal supply as the rules related to place of supply, valuation, rates etc. would be applied accordingly.

For instance, given the limited scope of 'works contract' in GST, it appears that repair or maintenance of a movable property will be a 'composite supply' of goods and services which are naturally bundled in the course of business.

On a similar note, if a work contract has been carried out for a movable property such as repair of a car with spare parts under annual maintenance contract (AMC), the same would be treated as a composite supply but what is the predominant element is a subject matter of interpretation.

- Is the principal supply a supply of goods (spare parts) in the said example given the intent of owner of the car who has taken AMC to insure the cost of spare parts, which is apparently very high as compared to labour charges?
- Is the principal supply a supply of services in light of Point 3 of Schedule II of the CGST Act which states that "any treatment or process which is applied to another person's goods is a supply of services"?

In light of the above, it is evident that pre-dominant element in every contract of moveable property is open to varied elucidations and its taxability can be argued both ways. If the predominance is determined in terms of value component, there is an issue as there is possibility of the values changing every year.

In a nutshell, it can be said that the tax treatment of composite supplies involving movables is not clear even under the GST law. Despite of the efforts made by the law makers towards minimizing possible disputes, it appears that the treatment of such supplies under GST will still be open to interpretation and prone to litigation. Clarification from the Government in this regard would certainly be of help to taxpayers.

On the procurement side, the GST law has specifically restricted the input tax credit on works contract services when supplied for construction of an immovable property (except plant and machinery) except when it is further used for further supply of works contract service. In other words, we can say that only contractor can avail the ITC in respect of services availed from sub-contractor. This will again lead of cascading effect of taxes, the ultimate burden of which will be borne by customer.

Other burning issues in works contract under GST

A few of the issues surrounding works contract under GST are discussed below:

- One issue relating to valuation of works contract of construction of immovable property which arises is due to non-inclusion of stamp duty within the ambit of GST. Buyer of a flat needs to pay stamp duty over and above the GST which will lead to additional burden of

taxes on the buyer apart from GST. From a valuation perspective, whether stamp duty and registration charges collected from the buyer would also be subjected to GST is not clear. In the absence of any clarification, such charges will thus bound to be included in the taxable value which will lead to cascading effect.

- Issuance of free material by contractee to contractor is a common phenomenon in transactions of works contract, and was a litigative issue under the service tax regime. It is not clear whether the notional value of such free supplies needs to be included in the transaction value for the purpose of determining GST liability in the hands of contractor

- Small contractors undertaking works contracts of immovable property are not entitled for composition scheme as the same is confined to supply of goods only. This results in higher tax incidence for such works contracts, as the 18% GST is not creditable in the hands of service recipient.

- In case of turnkey projects, which includes:

• Imported supplies (which the works contractor transfers to Project owner on high seas sales)

• Domestic supplies (which the works contractor sells to project owner on in-transit sale basis)

• Civil works billed separately (sub-contracted by client to local contractors with divisible elements of goods and labour)

• Installation services billed as per milestone and then

• AMC post one year warranty

Since this is all part of a turnkey contract (immovable property) do we treat the whole contract as a works contract and thus a service or given the fact that all have separate prices, we decide GST separately on each aspect by treating each stream as a separate supply.

- Article 366(29A) of the Constitution of India pertains to transactions to be treated as deemed sales for the purpose of levy of taxes by State Government. Therefore, as per Constitution, works contract is a deemed sale whereas for the purpose of GST, works contract is a deemed service. The question that remains unanswered is whether deeming fiction created by an Act can override the provisions of the Constitution of India. This loophole will provide a scope for challenging Schedule II and thereby challenging the levy of GST on works contract. Hence, it is hoped that the government will make suitable amendments in the proposed GST law so that unnecessary litigations can be avoided.

- In the real estate sector, transfer of development rights (TDRs) is a key transaction in works contract involving construction of residential building. However, its taxability under the GST regime is ambiguous given the fact that these rights are effectively rights in land and not land by itself. As per the GST law, the activity of sale of land has been considered neither a supply of goods nor supply of services. In view of this exclusion, whether transfer of TDRs will be accorded the same tax treatment as that of transfer of land is not clear, and can give rise to tax disputes.

Recommendations to the government

As input tax credit has been disallowed for construction of immovable property except for plant & machinery, it is imperative to define the meaning of these two terms ' immovable property' and 'plant and machinery' in the GST law itself. Given the fact that certain goods are affixed/fastened/embedded to land/ building for their functioning, it is imperative to cite some sector specific examples for different kinds of works contract to clear the ambiguity surrounding GST implications.

Independent of the above, it is imperative to reinstate GST exemptions (as existed in the erstwhile regime) for works contracts executed in the infrastructure sectors like construction of airport, highways etc. in order to limit the cost of such projects. This is more relevant for authorities like NHAI, whose output activities (toll collection) is not subject to GST. Connected to this aspect, it is worth considering to subsume electricity in GST as works contract supplies procured by power generation companies are a cost for the companies, which results in increased cost of operations and power tariffs.

Considering the national priorities, it is desirable to revisit GST provision for works contract and issue extensive clarifications/ FAQs to remove ambiguity.

It is evident from the above that the GST law has many issues in regard to works contract and it is imperative that the Government address these issues over a period of time. It is expected that at the time of making further amendments or while drafting other relevant provisions, trade and industry will be consulted which would enable correct appreciation of the issues faced by the industry and possibly its solution.

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GSTN: The Challenges and Propects for Tax Payers Today

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Technology is a big enabler, however, if not implemented correctly could become a big disabler. And this is true for every aspect of life wherever technology is used, be it internet, mobile phones or a technology which helps you register, file returns and pay your taxes. The Goods and Services Tax Network (GSTN), the technology backbone for GST in India, was conceived to make life easy for tax payers by helping them file their returns and pay their taxes in a very simplistic manner.

Challenges Faced - The Grey Clouds

With 80 lakh users, 1.2 lakh transactions in a second and 320 crore transactions per month, the GSTN needed to have a robust technology to handle the mind-boggling amount of data. The system was designed considering the above aspects and was geared to handle upto 60,000 users per second which could increase if the traffic increased. Well, all of this sounded very promising, however, there was still a huge scepticism considering the experience that the users had witnessed while filing summary returns. There was a constant re-assurance that the GSTN was ready and all geared up to handle the registrations and filings. The start of the journey however was not as smooth as contemplated.

Starting with the process of registration and granting provisional ID, users started facing multiple issues. Tax payers were not able to register owing to requirements such as Aadhar card, digital signature etc. In a country of our size with a digital penetration of 27% (Internet penetration in Year 2016), it was least expected that small-time tax payers would be savvy of the requirements of GSTN, specifically those who had come into the tax net for the first time. Apart from the usual documentation issues, there were multiple system errors that were emerging, both for tax payers who were migrating and for those who were new. Provisional id's didn't reach many of the tax payers who were migrating or with substantial time gaps. Amongst host of issues, there were certain instances where the data migrated was incorrect and there was no support to get the same rectified quickly. What resulted from this is that a lot of tax payers were left stranded without a proper GST Id. Clearly, this impacted not only them, but, also their eco-system when filings commenced.

The next step was filing of returns. The Government did realise that GSTN was not geared up to transaction wise filing on the due date for July returns and hence, a facility of uploading GSTR 3B was granted in lieu of invoice wise filing. Since it was a summary filing, it was supposed to be simpler, but it turned out to be a night mare for all tax payers. The experience for most professionals and Company's tax and accounting teams so far has been a string of late nights, frantic phone calls and long onsite visits for the filing of Returns.

While errors were expected in filing, last moment decision to allow tax payers to take opening credit in GSTR 3B by filing Trans-1 made things difficult. Data was required to be filled manually which resulted

in multiple errors. Turnover data as well as the tax data was reported wrongly and got submitted with no opportunity to rectify the same. There were numerous validation checks that were put in place which also posed a lot of difficulty e.g. Until the tax amount was paid or the delayed penalty was paid, returns were not allowed to be submitted. Consider a situation where a tax payer has mistyped the tax amount as 2,75,00,000 instead of 27,50,000, and submitted 3B. He couldn't have rectified, neither he could had paid a whopping differential GST amount, thereby resulting in a non-filing of returns. These errors were common considering the way in which the system behaved. The filing of GSTR-1 for the month of July was no different experience and multitudes of issues were being faced e.g. validation of the customer GST ID because of which the system did not accept the data, requiring the said line item to be reported as B2C and not B2B. There were multiple other challenges arising out of the disconnect between the provisions of law and the way the system was configured. E.g. supplies to SEZ within the same State is a IGST transaction, however, the system was accepting only CGST & SGST as the State Code was the same. Another example was credit notes. For service tax invoices issued in the pre-GST (at 15%) regime and credit note issued in the GST regime, there was no clarity on what rate should be selected as the only options available were 0,5,12,18 & 28. A similar situation had arisen where GST was charged at 28% and subsequently was to be rectified at 18% thereby, leading to issuance of a differential credit note of 10%. The GSTN system has no provision to consider the rate of 10%. Apart of these, there were multiple impractical requirements such as reporting HSN, uploading line wise details of all invoices for which credit is being carried forward (in Trans 1), providing details of Form F and Form C which was resulting in the balances going negative, requirement of reporting deemed credit stock in Trans 1 with the value field being made mandatory (the deemed credit is available on the actual transaction value which was not available at the time of Trans-1), forcing tax payers to insert value as Zero, issues around filing of Nil returns, in case of new registrations applied in July but received in August 2017 the tax payers were unable to file returns for July 2017, Circular was issued waiving off late fee in filing of Form 3B, however, the assesses were made to pay the late fee for uploading the return online, there were times when the GSTN portal was unequipped to deal with the load on its portal when tax payers flooded the portal with last-minute returns, causing it to temporarily stop functioning and at other instances the GSTN did not recognise or accept the payment of tax. Further to add to the concerns, credits of TRANS-1 filed were not reflecting instantaneously but took couple of days before one could file the return. The same was the issue with payments. There were also issues being faced with digital signature, again causing delay to the whole process of filing. Some relief though has come whereby, the tax payers being granted an extension to file the GSTR 1.

The question which begs consideration is what went wrong when the technology contemplated was so robust and there was a complete understanding of the volumes of data which will get uploaded and the fact that there would be a huge traffic near to the return filing dates. All of this was known, was spoken of multiple times and reported in newspapers and the Government time and again acknowledged that GSTN was ready.

While the technology may be extremely robust, the devil lies in its effective implementation. No technology can be fool-proof unless it is extensively tested by the user and despite the same, there would be gaps. The GSTN never underwent extensive user testing. Even where the opportunity was given, corporates were so busy amending their own systems, there was no scope for testing. The teething issues started coming to limelight after the actual process of filings commenced. There were multiple restrictions and validations which led to multiple errors being thrown. There was no consolidated document which was made available to the public which explained these. Wherever there were system errors, rectification took time. Any changes in law resulted in a system change which again could not have been made public without rigorous testing,

which also took time. However, it got compounded by the fact that there was a reporting deadline.

Clearly, these are transient issues which will get resolved in the due course. The Government has, acknowledged the issues being faced, granted extension in the timelines by which the returns are to be filed and has given an assurance that the problems will be resolved expeditiously. In the wake of 21st GST Council meeting, the Government has constituted a five-member group of Ministers to tackle the IT issues and glitches faced by the tax payers at the time of filing of returns. The intent with which the GSTN network was contemplated is worth bearing all the pain and trouble that the tax payers have gone through.

The Silver Lining Ahead

The erstwhile system of reporting and payment of taxes had multiple flaws letting people not to pay their due share of taxes. Besides, there were multiple frauds conducted whereby, tax invoices were issued with no corresponding payment of taxes, whereas, the recipient was taking credit. There was no common database whereby, the authenticity of the data could have been cross verified.

GST is a complete game changer and the GSTN ensures that taxes cannot be evaded. GSTN has culminated into creating an ecosystem and it the very foundation for the practical functioning of the GST law. The returns ecosystem starts at a monthly level with a Supplier's GSTR-1 (Outward Supplies Return) from which the data is auto-populated into the Recipient's GSTR-2A and the Recipient then has the option to accept or reject or modify it (which modification would appear to the Supplier in his GSTR-1A to accept or modify) and then file his GSTR-2 (Inward Supplies Return). The final monthly Return which is a combination of GSTR-1 and GSTR-2 is GSTR-3 forming the basis for payment of tax liability. Although a breather has been provided to the tax payers in terms of a summary return, GSTR-3B till December 2017, all of the above returns are to be filled on an invoice level basis.

The system allows capturing of the entire chain of transaction right from the first purchases up to the end consumer sale and any breakage in the chain is easily identifiable. The credit mismatch provisions do ensure that taxes are available as credit only when paid to the Government. The GSTN system by way of the e-way bill process ensures that the movement of goods is in alignment with the taxes paid. Any transaction made in any corner of the country would leave its mark on the GSTN portal, whether it is a simple transport of goods requiring an e-way bill to be filed or a transaction with an unregistered dealer. The volumes of data collected would enable the Government to get into complete data analytics and would help the Government assess and identify the defaulters.

From a tax payer's perspective, GST being a culmination of various Indirect taxes, enables the tax payer to now file a single return as opposed to multiple filings under Excise, VAT & Service tax era. While the transaction wise reporting seems cumbersome when compared with the summary reporting followed in the pre-GST era, however, does also ensure that there are no errors via the credit mismatch process. The way the GSTN is designed, it will eliminate a lot of reporting errors at the outset itself. E.g. the GSTN portal instantly throws up an error when an incorrect GSTN number is fed into the portal. This creates an environment of checks and balances to ensure the smooth flow of credit to the right tax payer and avoids any misreporting that may be caused due to faulty or incorrect GSTN numbers. If a tax payer has purchased goods / services and has failed to report in its return, the error can be rectified when the vendor reports the transaction. The same is the scenario with the outward supply. Further, since the tax payer would report every transaction, this minimises the mistakes around tax calculation.

Additionally, the tax payers will not have to face litigation around credits availed where suppliers fail to pay the taxes, as he will have to pay the GST mandatorily in the following month, failing which the purchaser will become aware and be denied credit and can take immediate remedial action. The

GSTN is expected to reduce the physical interface with the Government officials and has brought into place a creative check to corruption therein.

While the teething problems may seem like a storm, there is always the bright light to look forward to when GSTN portal runs smoothly and helps build an integrated and interdependent economy allowing for the seamless filing of returns, flow of credits and information. GST is a strong step towards curbing the unorganised economy and bringing more players into the tax net. An impact of extension of the Indirect tax base is a direct impact on extension of the direct tax base. Further, reporting of all transactions would lead to a larger revenue disclosure and higher tax payments both on the direct as well as the indirect tax front.

From the Government's perspective it is imperative that the issues being faced on filings are resolved expeditiously, whether it be in terms of the GSTN network or disconnect with the law. Certain onerous provisions (e.g. Unregistered dealers and compliances around it) and cumbersome and complex reporting requirements (e.g. reporting of data into multiple sections) can be done away with or postponed till the new law settles down.

Not everything can be achieved, or expected to be achieved on day 1.

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Branch Transfer in GST

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It is quite common in a business having pan India transactions to transfer its stock to its other units, depos, warehouses to cater to timely delivery orders from different Geographical Locations. Under old Tax scenario, inter- state or intra-state stock transfers were subjected to levy of Excise Duty on removal of Goods. Intra-state stock transfers were not subject to VAT. Interstate stock transfers were subject to CST, in case the same were not supported by Form-F. Further there was a reversal of ITC (different quantum in different States) in case the goods so transferred were having component of ITC.

Under the GST regime, tax is collected not only on supply of Goods against consideration, but also in some cases where there is no consideration.

TAXABILITY:

GST has created some new concepts such as BUSINESS VERTICALS (allowing more than one registration on a single PAN with in a State), DISTINCT PERSON (having same PAN but registered in different States/UTs) and RELATED PERSON and has formulated concept of valuation in between them and taxation of such transactions.

Sec.25(4) of Central Goods and Services Tax Act, 2017 (CGST Act) defines DISTINCT PERSON as A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as DISTINCT PERSON for the purposes of this Act.

Clause 2 of Schedule I of the said Act further stipulates – Supply of goods or services or both between related persons or between DISTINCT persons as specified in section 25, when made in the course or furtherance of business shall be treated as supply even if made without consideration. Thus, Branch Transfer, even if made without consideration, is to be treated as supply and shall be taxable under GST if such goods and or services are otherwise exempt or not taxable.

BUSINESS VERTICAL is defined under Sec.2(18) of the said Act as: "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

Explanation. - For the purposes of this clause, factors that should be considered in determining whether goods or services are related include —

(a) the nature of the goods or services;

(b) the nature of the production processes;

(c) the type or class of customers for the goods or services;

(d) the methods used to distribute the goods or supply of services; and

(e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;

Further Sec. 2(85) of the said Act defines "PLACE OF BUSINESS" to include —

(a) place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both;

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

Cumulative reading shows that in intrastate branch transfer, if the other office is included as additional place of business, then such Supply shall not attract GST, however if the other office is a business vertical and a separate GSTIN has been obtained for the same, it shall be treated as DISTINCT PERSON and supply in between such units shall be taxable under the GST.

In case of interstate branch transfer, supply shall attract GST.

Instances of branch transfer of taxable services may be provision of any taxable service by Branch/ HO say procurement of goods/services, payroll services, maintenance services, execution of a part of manufacturing etc…

VALUATION:

To apply tax there must be a value of supply. Sec.15 of CGST Act read with Rule 28 of CGST Rules deal with valuation of a supply.

Sec.15(1) of the CGST Act stipulates that the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

Sec. 15(4) further stipulates that Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

Sec.15(5) stipulates "Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed."

Explanation.- For the purposes of this Act,—

(a) persons shall be deemed to be "related persons" if—

(i) such persons are officers or directors of one another's businesses;
(ii) such persons are legally recognised partners in business;
(iii) such persons are employer and employee;
(iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
(v) one of them directly or indirectly controls the other;
(vi) both of them are directly or indirectly controlled by a third person;
(vii) together they directly or indirectly control a third person; or
(viii) they are members of the same family;

Rule 28. Value of supply of goods or services or both between distinct or related persons, other than through an agent - The value of the supply of goods or services or both between distinct persons

as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall -

(a) be the open market value of such supply;

(b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

Rule 30. Value of supply of goods or services or both based on cost - Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

Rule 31. Residual method for determination of value of supply of goods or services or both - Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

For the purpose of these Rules,

(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

(b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

Example 1

A and B are two separate branches. 'A' supplies raw material (RM) to 'B'. 'A' supplied 100 Kgs of 'RM' to 'B' in July for Rs.1000 per Kg. The following transactions of sale are undertaken by 'A' in July.

- Supply of 100 kgs to another distinct party 'C' for Rs.1100 per kg
- Supply of 500 kgs to an unrelated party for Rs.1000 per kg

On what value will 'A' charge GST?

A supply to distinct party cannot be considered as an open market value and hence the value of supply to 'C' cannot be considered as a value for levying GST. Similarly, a supply of different quantity (500 kgs) cannot be considered as a supply of goods of like kind and quality (100kgs).

The only option left to 'A' is to resort to cost based valuation under rule 30.

Example 2:

Facts are same as in example 1. Further B can take full input tax credit for supply of 'RM'. On what value will 'A' charge GST?

The proviso to Rule 28 provides that where the recipient is eligible for full credit then value declared in the invoice will be the value on which GST will be levied. Hence 'A' can charge GST on supply value of Rs.1000 per kg and need not resort to Rule 30.

In view of these provisions of law, open market value of supply in case of branch transfer can be considered as:

1. An amount equal to 90% of the price charged for the supply of goods of like kind and quality by the recipient branch to an un-related person; OR

2. Transaction value where the receiver is eligible to claim input credit;

If the value can not be determined as above, then

3. Value of supply of goods or services of like kind and quality; ELSE

4. An amount equal to 110% of the cost of production/manufacture/acquisition; ELSE

5. Any other reasonable method to ascertain value.

Availability of ITC to the receiver of branch transfer:

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

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless —

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both.

Explanation — For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

Second proviso to Sec.16(2) provides further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

We can understand the concept of Sec.16 by following example:

A Company has Branch H which is a registered taxable person in Haryana conducts conference in a hotel in Mumbai (Maharashtra) where CGST+SGST is charged by the hotel. The Company also has Branch M which is a registered taxable person in Mumbai.

Now the provisions of section 16(1) operate as follows:

- CGST+SGST charged by the hotel in Mumbai (Maharashtra) is 'used in the business of Branch H in Haryana and not in the business of Branch M in Mumbai.

- Hotel would issue the bill in the name of Branch H, however will charge CGST+SGST.

- Credit of CGST+SGST charged by the hotel, would not be available to Branch H as tax paid in Maharashtra is not a creditable tax in Haryana

- Hotel may on, insistence, issue invoice in the name of Branch M quoting its GSTIN.

- But, Branch M in Mumbai cannot justify this input tax credit as it is not 'used by it' in 'its business' but it is 'used by another' in 'that others business'.

Sec. 31 of CGST Act stipulates -

(1) A registered person supplying taxable goods shall, before or at the time of —

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

Provided that the Government may, on the recommendations of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice

shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:

Explanation.—For the purposes of this section, the expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Rule 36 prescribes: Documentary requirements and conditions for claiming input tax credit -

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely -

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;

(c) a debit note issued by a supplier in accordance with the provisions of section 34;

(d) a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;

(e) an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.

(2) .....

(3) .....

From the above provisions of law, it is observed that the transferring unit shall raise TAX Invoice within the prescribed time and the receiving unit will have to make payment thereof along with GST within stipulated time of 180 days.

ITC can be claimed without payment of value of supply and GST thereupon immediately on receipt of goods/services and the TAX Invoice thereof. However, the so claimed credit will be added to output tax

liability alongwith interest of the transferee Unit in the very next month (after 180 days) if the payment of the value of supply and GST thereupon is not made to the transferor Unit within 180 days.

We do not envisage that HO is registered but branch may remain unregistered under GST or vice versa as the threshold exemption is available for one PAN on all India Basis.

Conclusion:

With the shift of taxable event from sales to supply, the taxability of stock transfers under the GST exemption is bound to have an impact on the cash-flow. This is primarily because of the fact that tax is levied on the date of stock transfer, and it is used in an effective manner once the stock is liquidated by the branch that receives the consignment. Thus, under the GST regime, business entities that are engaged in stock transfers, especially the ones in case of pharmaceutical and FMCG goods, the need for additional working capital will arise due to tax instances. This is a huge challenge for various small and medium business enterprises that are operating with a relatively thin working capital.

Despite the fact that stock transfers are taxable in GST regime, it is allowed to have the whole tax as credit. This will be useful in the elimination of the cascading effect that existed under the pre-GST regime. This will surely result in making the products more cost-effective. Even though this will create a crunch in working capital, effective planning of branches and leveraging cross-branch transfers can certainly help in reducing its impact on the working capital.

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Works Contract Under GST

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"The more you try to simplify things, the more you complicate them" - Cecelia Ahern

The above quote though relevant for life in general, often holds true in case of our country's law makers. They strive towards making the legal framework simple but end up in further complicating it. The mayhem behind the taxation of works contract and the everlasting intention of lawmakers to simplify it, has made it complex every time.

The present article is an attempt to delve into the taxation of works contract and understand how the concept operates under the Goods & Services Tax (GST) regime.

Background

In simple words, a works contract is a contract involving sale of goods as well as provision of services where both goods and services have significant role. For example, construction contract involving sale of construction materials as well as provision of labour services.

In the case of Gannon Dunkerley & Co., AIR 1958 SC 560, the Supreme Court held that the sale element in the execution of works contract is not taxable. Post this judgment, the concept of deemed sales was introduced vide clause 29A in Article 366 of the Constitution of India. This amendment created a legal fiction to impose sales tax on transfer of property in goods (whether in form of goods or in some other form) involved in the execution of works contract. Even after this amendment, it was pertinent to determine the dominant intention of the contract to characterize the same as a works contract or contract for sale of goods or provision of services.

Later on, the Supreme Court rendered plethora of judgments on this issue (Associated Cement Co. Ltd., 2001 (124) STC 59 and Kone Elevators, (2014) 7 SCC 1). The Court held that it is not necessary to ascertain the dominant intention of a contract if it is a works contract. Thus, even if the dominant intention of a works contract is rendition of services, it shall continue to qualify as a works contract and VAT shall be levied on the material portion of such contract.

Thus, under the earlier taxation regime, an arrangement for carrying out a work (such as construction, repair & maintenance etc.) involving transfer of property in goods and provision of services, qualified as a works contract. Such contract was subject to simultaneous levy of VAT and service tax on goods and services portion respectively. With VAT and service tax being charged under different laws (and being levied by different governments, State and Central Government respectively), the taxation of works contract was intricate.

Taxation of works for movable property under GST regime – A twist in the tale

GST, the landmark indirect taxation reform, is introduced with a noble intention to simplify the earlier taxation regime. As GST is a comprehensive tax on goods and services, the intricacies in taxation

of transactions involving both goods and services (such as works contract) were also expected to simplify.

Under the GST law, 'works contract' is defined to mean a contract involving transfer of property in goods and includes contract for building, construction, fabrication, repair, maintenance etc. of any immovable property. Further, works contract is deemed to be 'supply of service' and is taxed as a service transaction.

It is important to note that the definition of 'works contract' has a staring difference vis-à-vis the earlier law as its coverage is restricted to immovable property. Hence, contracts involving work pertaining to movable property fall outside the scope of works contract. In a bid to tax such work arrangements relating to movable property, GST law has introduced concepts of 'composite supply' and 'mixed supply'.

A 'composite supply' comprises of two or more taxable supplies of goods or services or both, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. A principal supply is the one which constitutes the predominant element of a composite supply and to which other supply is ancillary.

In terms of the above, taxation of works for movable property involves determination of predominant element between supply of goods and services. The tax applicable on predominant element shall apply on the entire consideration for work. Importantly, identification of predominant supply is a question of fact and would depend upon the following factors:

- Intention of the parties to the contract (provider and recipient), i.e., whether the contract was for rendition of service and supply of material was incidental or vice-versa
- Value of goods vis-à-vis services involved in execution of the work
- General industry practice

It is pertinent to note that in case of a composite supply, the existence of split consideration between goods and services (or amongst various goods or various services) will not matter. When the supply of goods or services is in conjunction with each other, still it shall be a 'composite supply' and predominant element will determine the taxation.

Hence, the arrangements involving job-work, photography, printing, polishing, dyeing, coating etc. will require determination of predominant supply between goods and services. Further, an arrangement involving supply and installation of plant & machinery with split consideration between the two, will also be taxed as per predominant supply. Thus, the alteration to the definition of works contract in GST regime has brought the taxpayers to pre 46th Constitutional Amendment era [prior to introduction of Article 366(29A)] as far as movable property is concerned.

Another concept introduced under GST law is a 'mixed supply'. A 'mixed supply' consists of two or more individual supplies of goods or services or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

This shall cover arrangements wherein the supply of goods or services is not naturally bundled but all are supplied at a single price. In case of mixed supply, the highest rate of GST on the elements in the bundle shall be the rate of GST for the entire supply.

The concept of 'mixed supply' will not cover transactions of works if these are naturally bundled together in the ordinary course of business. Hence, such contract of works will be covered under 'composite supply' (as detailed above).

Conclusion

As the GST rate is based on the predominant element, the characterization of contract of works (involving movable property) becomes essential in GST regime. Such an exercise shall not be easy and may be prone to disputes with the tax authorities. Thus, in a bid to simplify the taxation of works contract, the lawmakers seem to have complicated it further.

Input Tax Credit Under Gst Regime – some thoughts

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Input Tax Credit Scheme - the welcome aspects

The Input Tax Credit Scheme under GST has a distinctive merit over the erst while CENVAT Credit Scheme.

Firstly, all disputes related to eligibility to credit being circumscribed by "Place of removal" "use in or in relation to manufacture" of goods are now a thing of the past. Considerable litigation has been generated around the above aspects under the cenvat credit rules, and a cursory look at the cases reported in the law journals would reveal that a substantial chunk of litigation has been triggered by Audit objections both by the Departmental teams as well as by the C & AG. In spite of the rulings by the Tribunal/Courts show cause notices used to be issued only because of the Audit objection being made. In some cases and rightly too, strictures came to be passed on the Departmental officers for not following the binding rulings of the Tribunal/ Courts – for not following the jurisdictional discipline taking cue from the ruling in UNION OF INDIA V. KAMALAKSHI FINANCE CORPORATION – 1991 – 55 – ELT – 433 (SC). Now input tax credit is related to use of the supply of goods/service in the course or furtherance of business of the person availing the credit. This is a much commodious and wider concept than what was prevailing earlier much of litigation is destined to fade away, and that for good reason, as, businessmen loathe litigation which is wearisome and distractive. Not only that, Tribunals/ courts can also breathe easy. The Apex court once commented in its one of judgment that numerous amendments to the CENVAT Credit Rules by the Government has led to lot of confusion and thus proceeded to hold that extended period of limitation (on ground of suppression and fraud) cannot be invoked by Department in such a secenario and even set aside the penalty.

Secondly, Input Tax Credit Scheme is now part of the Act and not the Rules. This is a very unique aspect which once cannot fail to notice. In this sense it is more frozen and less flexible to amend at will. Earlier the CENVAT Credit Rules were part of subordinate legislation which gave free hand to the Executive to make frequent amendments of even far reaching consequences for the business. For instance till 31.03.2011 all "activities relating to business" were part of eligible "input services" but with effect from 01.04.2011 this phrase was removed, though there was a considerable reasoning existing on record, as to why this phrase was in the first instance introduced in the CENVAT Credit Rules. Again credit on services used in setting up factory was denied with effect from 01.04.2011. Well the executives' hands are now well cuffed and cannot swing at will, as any amendment has to be made by the Parliament under Chapter V of the CGST Act. The Executive can only lay down the procedural aspects in the Rules and these cannot go counter to the statutory provisions but have to be supplementary to the statute. Thus reasonable permanence is assured in the statutory framework as amendments usually are made only

as part of the annual budgetary exercise, that too after the GST Council approves. Good check on the Executive's power to amend which was wielded more liberally all along.

Input Tax Credit under the GST regime that that needs a relook

In the interest of brevity, some of the issues under the Input Tax Credit scheme which need a relook are listed herein below:-

a) Credit eligibility is subject to the condition that supplier has paid the tax and has also furnished his Return under Section 39. This provision is what is disliked most by the Industry. Why should this be condition precedent? Does it mean that the Department has no means of collection of the tax at the supplier end? This was not the position in the earlier frame work. Why should the Government underestimate its powers of recovery of tax from the supplier when these provisions are more robust under the GST Law? Having paid the tax to the supplier why should an assessee suffer disallowance of the credit entitlement?

b) There is no reason why credit should be denied for catering services provided at least in a factory and other establishments in which there is a statutory obligation to do so under the labour laws?

c) Tax paid on rent-a-cab scheme used for business purposes also has no reason to be put on the negative list.

d) Group Medi-claim premia, Health insurance premia, paid in the interest of welfare of the employees should be notified by Government as eligible for credit under Section 17 (5) (b) (iii) of the CGST Act at the earleist.

e) Works contracts service for construction of immovable property has been denied if the expenditure is capitalized in the books. In other words, WCT paid on repair work (which is of Revenue nature) in a factory or premises providing service would alone be eligible for credit. If the Works contract service is of a capital nature such as building of a factory, erection of new sheds/go-downs etc no credit would be allowed as the same would be capitalized as per the extant Accounting standards. But the question is why it should be denied as no business manufacturing or trading can be carried on without a building. The credit availment could have been spread over a longer period say 5 to 6 years. But a blanket ban is a most unwelcome step. The relieving aspect is the Works Contract service connected with say erection of plant and machinery is allowed as credit – this would include preparation of concrete foundations and supporting structures for machines etc which were disallowed under the earlier regime.

f) Further for purposes of credit related to Works contracts, department should not raise disputes as to what is capital and revenue in nature if for accounting and income tax purposes the treatment given by the assessee has been accepted. A repair for instance may be capital or revenue in nature depending upon specific facts. A mere re-plastering of part of the building may be of revenue in nature but the complete renovation say of the storage shed by strengthening the foundation ceiling etc may not be revenue in nature. Similarly extensive repairs, benefit of which would last for many years may not be Revenue in nature.

g) Why should tax paid under Section 74, 129 and 130 not be allowed as credit especially when the Department recovers 100% of the tax involved as penalty, besides interest? Does Section 17 (5) (i) of the CGST Act seek to treat the tax paid itself as a penalty so to deny the credit downstream by issue of supplementary invoice. Since because there was a similar provision in the CENVAT Credit Rules there is no reason to carry that faithfully into the GST frame work. If the provision is intended to punish the evader, there the extent of punishment is already too

harsh and the denial of credit being passed on only adds salt to the injury.

h) Again why should a non-resident taxable person be denied credit on services paid for by him in India while discharging his tax liability (Section 17 (5) (f) of the CTGST Act?

i) Goods on which credit has been taken may be destroyed while being used in business. Why should credit be denied under Section 17 (5) (b) of the CGST Act. For instance, many parts and components on which credit has been taken may get destroyed/damaged during assembly in production line, testing, or while being used in the R & D Section. Should credit be denied? Should a factory keep an account of such goods destroyed during use in the factory? Can such use be said to be not for furtherance of business? Use in the production line is use in furtherance of business only by any stretch of imagination . Then why deny the credit.

j) Again on Goods cleared as free samples credit, is not allowed under Section 17 (5) (h) of the CGST Act. After all samples are given as a business promotion measure only. Why should credit be disallowed on the same; after all cost of such free samples would be indirectly covered over a period in the price of the goods actually sold over a period of time – no business runs on free lunches.

k) As far as the scope of "exempted supply" is concerned for purposes of reversal of credit under Section 17 (2) why should tax paid under reverse charge be treated as exempt supply when the assessee is actually paying tax. If the supplier had charged tax assessee would have paid the tax and availed credit. Instead of the supplier collecting the tax and paying to the Government, the recipient is directly asked to pay the tax to Government under reverse charge method. What difference does it make to the assessee either way – he pays tax, still it is treated as an exempt supply – No logic. Similarly, on transactions in securities also credit will have to be reversed but why? Balance sheet of any business would display asset disposition in varied ways – by way of investment in securities like equities, bonds, debentures etc.. Is this activity not a part of business when credit in the main is allowable if supply is used in the course or furtherance of business. Such transactions in securities also are a part of the business activity, there is no sound logic in insisting on reversal of credit. Where is the seamless credit that the Government is talking about?

l) In regard to taxes paid on motor vehicles and other conveyances there are restrictions on availing input credit under Rule 17 (5) (a). The circumstances under which credit will be allowed are narrated in the said provision but there are situations where motor vehicles were used for other legitimate business t purposes also. It is not understood why when the user of the motor vehicles is demonstrably for the purpose of furtherance of business, credit should not be allowed. For instance, Motor vehicles are used for legitimate business purposes by various officials in the Marketing department or in the Production department in a factory. In some cases the vehicles may be used for ensuring transportation/movement within the factory which is spread over the vast geographical area. Obviously motor vehicles will be used for transportation of goods but that will not be a taxable supply to be eligible for credit. Yet there is no dispute that vehicle is used for furtherance of business such as moving some raw materials or semi-finished goods from one location to another location within the factory and vice versa. Similarly, certain business entities may be owning their vehicles for transportation of their employees daily to the factory and back. This is also used for the purpose of business. Again the credit in this case is denied without any reasonable logic or reason.

m) Credit is sought to be denied on services related to Membership of a club, healthor fitness centre. It is not uncommon to come across many establishments having a fitness centre in their own premises – may be it is out sourced. The purpose being that the employees also

should wherever they feel or in some cases mandatorily, go for regular fitness as part of their working schedule. Fitness also include the practice of Yoga which is more dear to the present Government which has even heralded "International Yoga Day". Yoga is being considered as positively promoting health and fitness which are essential for every employee to render service in a efficient manner in t he course of his employment. Therefore, in respect of service tax of health and fitness centre set up in the business premises credit should be allowed.

In the case of services a lot of sub-contracting takes place. Obviously the sub contractor will charge tax on the main contractor and the main contractor will charge tax on the ultimate customer and the credit system will automatically take care of the value addition. But there are certain peculiar situations where a foreign party is involved. Say for instance, a foreign principal may provide after sale service for some machinery sold to an Indian customer through its own subsidiary company in India. Say XYZ an American Company would have supplied some machinery to an Indian company A Ltd. XYZ appoints its Indian subsidiary B Ltd. to provide the service of after sale maintenance for these machines for say 5 years. The Indian company B Ltd., will raise a bill on the foreign supplier and since the place of supply is India would end up paying tax under reverse charge on this billing say for an amount of Rs. 5 lakhs. Now the foreign company would in turn raise a bill on the Indian customer A Ltd. for Rs. 6 lakhs (adding its own profit margin) for the service, for which A Ltd. would also pay service tax under reverse charge. Obviously, the billing amount by XYZ on A Ltd. is higher than the billing amount for which bill was raised by B Ld. Here the value addition done by passes the credit route. In all the parties in the above transaction were in India, then while paying tax on Rs. 6 lakhs, tad paid on Rs. 5 lakhs would have been set off as credit. That benefit is not available in the former case. These are practical issues in business which are to be looked into by the Government for providing the much deserving relief on double taxation of the same transaction.

TRANSITITIONAL CREDIT

Next certain aspects of transitional credit dealt with hereunder also need introspection:

a) Why there is a condition that carry forward credit earned under the earlier regime as per the credit ledge, also should also conform to eligibility under the CGST Act. [Section 140 (1)]. Whenever one talks of carry forward, it is the Credit which was availed rightly under the CENVAT Credit Rules 2004 only. An assessee has vested right in such a credit. Should it be denied only because under the CGST Act some part of the credit is not permissible – certainly not a reasonable approach. A case in point is an assessee would have availed credit of tax paid on WCT services pertaining to huge repairs of a capital nature say in the month of April 2017. That was allowed in the CENVAT Credit Rules. But in Transition phase, the assessee has to reverse the credit if such credit has not already been fully utilized by him prior to 01.07.2017. A laudatory approach should have been to uphold carry forward of whatever credit assessee had legitimately availed under the CENVAT Credit Rules. There may not be many items on which the new regime denies credit. But it would be edifying for the Government to undo this provision.

b) Credit under Section 140 (3) is subject to a restriction of one year period. Why? There are some sectors of industry where inventory over-build is the norm, say for instance sanitary items, electrical fittings, textiles. Moreover due to cyclical fluctuations certain sectors may be flooded with inventory buildup. Why curtail credit to only stock held 1 year backwards of 01.07.2017? Does the Government feel the pulse of these sectors where business is so slow/ docile/dormant and on top of it when the old inventory is sold and tax is paid thereon, there would be no corresponding credit. Is this again seamless credit under GST?

c) A service provider using goods while providing taxable services is not eligible for transitional

credit under Provisions of 140 (3) why? So long as he uses the goods in providing the taxable supplies or even disposes off the goods as such he is liable to pay tax but he is not allowed the transitional credit there on - there seems to be no logic in this

d) As far as the miscellaneous transitional provisions contained in Section 142 (3) (4), why should refund claims filed but rejected after 1.7.2017 partially or fully, lapse? Are the Revenue authorities so liberal in sanctioning, refund? A case in point is the plethora of rejection of refund of service tax paid on various input services used for exports under different notifications, but reversed by the Tribunal in appeal. Can the rejection by an authority of a refund claim pending on 01.07.2017 be taken as final? Definitely not.

Well the GST Council has to take a very pragmatic, business friendly view. The indirect tax wind that wafts thro the business segment has definitely a refreshing smell, but it should gather more fragrance on the way. The aura it has created not only within India but also internationally should be well-deserved. The clime and time have changed over the years as far as taxation of goods/service is concerned – changes have been more determined and at good momentum so to say. But the creases in the Input Tax Credit mechanism need to be ironed out, the sag has to be lifted and the provisions need to be made ramrod straight with no subtle frills, reflective of reasonable expectations of the industry, and least of all be archaic and pedantic. Tax laws should conduce to ease of doing business and tax credit mechanism should indeed reflect the philosophy of seamless credit down the line without artificial barriers. There is a well known saying by Late Justice Krishna Iyer of the Apex court, an eminent jurist " it is better to be ultimately right, rathen than being consistently wrong." This applies to all walks of life including taxation.

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Imports And Exports Under GST

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GST, the path-breaking reform in indirect tax system has changed the way business, including international trade in goods and services, is done in India. It has impacted not only computation of duties of imports and exports, but also EOU operations, drawback, refunds and the terms of foreign trade policy.

Under the provisions of Article 269A of the Constitution, imports as well as exports of goods and services are considered as supplies in the course of inter-State trade or commerce, and are, therefore, leviable to Integrated tax i.e. IGST. However, exports are zero-rated except export of such goods which are chargeable to Customs Export duty.

Import of goods means bringing goods into India from a place outside India. Payment of IGST arises when the import goods cross the Customs frontiers of India. IGST on goods is to be levied and collected in accordance with the provisions of Customs Act, 1962 and Customs Tariff Act, 1975. In place of CVD and SAD which will be applicable on goods like Pan Masala, imports would attract levy of IGST and GST Compensation Cess. Valuation provisions for levy of IGST to apply accordingly i.e. value to include landed cost plus Customs duties leviable, including anti-dumping and safeguard duties.

In respect of goods imported after purchase from high sea sales, IGST will be leviable when the duties of Customs are leviable. In other words all high sea sales other than the last one in respect of any import consignment shall remain exempt but the value addition of each transaction of high sea sales will get included in the assessable value for levy of IGST.

Import of services will cover supply of such services where the supplier is located outside India, the recipient of services is located in India and the place of supply is in India. Importer of services has to pay IGST on reverse charge basis. However, in respect of online information and database access or retrieval (OIDAR) service imports by unregistered, non-taxable recipients, the supplier located outside India will be liable to pay tax.

The SEZs as well as SEZ units are entitled to import goods and services, as also receive supplies from DTA, free of IGST. However, 100% EOUs, while enjoying exemption from duties of Customs are required to pay IGST on their imports of goods and services. Similar provisions are prescribed for exemption/levy of IGST on procurement of goods and services by such entities from DTA. EOUs can take input credit of IGST paid and use it to discharge liability of IGST on DTA supplies. Clearance of goods in DTA will attract GST and also payment of an amount equal to Customs duty exemption availed on inputs used in goods being cleared to DTA. Refund of unutilized ITC is admissible to EOUs. Supply of goods from one EOU to another EOU (inter-unit transfer) will require payment of applicable GST.

Whereas Customs duties are exempted on imports made under export promotion schemes EPCG, DEEC, DFIA etc., IGST and Compensation Cess will

have to be paid on such imports. Further, MEIS or SEIS scrips issued by DGFT are currently used to pay CVD/SAD in addition to duties of Customs. Under GST regime, such scrips cannot be used for payment of any liability of GST.

Under Project imports, currently CVD is levied as per rates applicable in Central Excise Tariff for each item, but under GST, all project import items would attract a uniform levy of 18%. Personal Baggage import is exempt from IGST.

With regard to exports under GST, export of goods means taking goods out of India to a place outside India. In respect of services, exports cover such supplies where the supplier of services is located in India, the recipient is located outside india, the place of supply of service is outside India, payments are in convertible foreign exchange, and the supplier and recipient are not merely establishments of a distinct person as defined in law.

As already indicated, exports are inter-State supplies and covered under the provisions of IGST and are zero-rated. Even exports to Bhutan, Nepal and Bangladesh are zero-rated if the export proceeds are realized in freely convertible foreign exchange. Zero-rating implies not only nil rate of duty on exports, but also that credit of input taxes paid for making exports of goods and services is admissible as refund. It is laid down that a registered taxable person may export goods or services under bond/LUT without payment of IGST and claim refund of unutilized input tax credit. Or, such a person may export on payment of IGST utilizing input tax credit, and claim refund of IGST paid on exports. In respect of supplies of goods or services made to SEZ developer or SEZ unit, refund of IGST paid by the registered taxable person can be claimed by such SEZ developer/unit.

Zero-rating is not applicable to goods and services supplied to EOUs. Such supplies are liable to GST like normal supplies. Exports made by EOUs are, however zero-rated like any exports.

IGST paid by a tourist leaving India on goods being taken out by him after a stay of not exceeding six months is refundable as per laid down procedure.

On re-export of imported goods, drawback under Section 74 will cover refund of IGST and Compensation Cess in addition to duties of Customs.

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Pains and gains of valuation of taxable supplies under Goods and Services Tax (GST) regime

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With the introduction of this renewed form of indirect tax system in India – GST, questions arise about how effective this new tax regime will be and if the anomalies of the earlier indirect tax system will be corrected. In particular, will the desired objectives of increase in government revenue on account of voluntary compliances by taxpayers, ease in doing business in India and a fair tax system which is not regressive or inflationary be achieved?

GST is applicable on the change in value at each point in the production and distribution of goods and/or services, with the tax being ultimately paid by the final consumer. This being a tax on consumption should not be a cost in the business of a fully taxable taxpayer. Among all the key principles that have been adopted under the GST regime, valuation of taxable supplies has been one of the most vexing aspects. On plain reading – one might say that valuation of goods and services have been rationalized for the simple reason that, for all supplies, GST is to be levied on the transaction value which is the price actually realized. Nevertheless, certain aspects of the valuation rules appears to be vague and taxpayers have been looking for clear guidelines on practical implementation of these principles such as determination of transaction value where money is not the sole consideration, valuation of job-work charges, determination of open market value - while it may be easier to determine the open market value for goods, there are difficulties in identifying and determining the open market value for services, attributes required to become a like kind and quality, whether cost of acquisition to be computed on depreciated value etc.

In this article, we have focused on the principles of valuation, underlying implications and issues confronting valuation of goods and/or services as mandated under GST laws.

Transaction Value – Price being the sole consideration between unrelated parties

Conceptually, GST is applicable on the transaction value of the taxable supply at arm's length price which is aligned to the principles suggested by OECD Guidelines. Transaction value has been defined as price actually paid which is the sole consideration for the said supply between unrelated parties . The price actually paid is to be derived after adding specific inclusions such as taxes paid under an any statute except GST; incidental expenses; interest, penalty or late fee for delay in payment etc. and subtracting exclusions such as upfront discounts, subsidies provided by government etc. Exclusions such as adjustment of the proportionate tax towards any types of post-sale discounts like cash or volume discounts offered subsequent to the sale; arm's length price and inclusion of incidental expenses etc. which have been subject to intense litigation under earlier VAT and central excise laws.

Therefore, the primary condition for adopting 'transaction value' for discharging GST liability is contingent upon parties being not related and no other consideration, in any form, flowing back to the seller (either directly or indirectly). Related person has been specifically defined under GST laws which is identical to the definition existing under Indian customs laws. However, the definition is broader than the earlier central excise laws, which was on the premise that two persons must have mutual interest to qualify as related parties and there was no concept of related person under service tax laws.

Transaction Value – Price not being the sole consideration

GST laws further provides that in case the value of the supply of goods and/or services cannot be ascertained as per definition of transaction value as discussed above, the same needs to be determined in the manner prescribed under Central GST Rules, 2017 (GST Valuation Rules). With evolving transfer pricing guidelines and a renewed focus on indirect taxation, valuation principles globally have been based on 'arm's length'. GST Valuation Rules have been framed on the same principles of 'arm's length' or 'open market value of same goods/services' or 'supply of goods and/or services of like kind and quality'. Though arm's length has not been defined under GST laws, 'open market value of same goods/services' and 'supply of goods and/or services of like kind and quality' have been specifically defined as below:

- Open market value: The full value in money, excluding the GST and the cess payable, between unrelated supplier and recipient

- Supply of goods or services or both of like kind and quality: Any other supply of goods and/or services with characteristics, quality, quantity, functional components, materials, and reputation of the goods and/or services, closely or substantially resembling a particular supply of goods and/or services.

From the above definitions, it can be observed that GST Valuation Rules provides for adjustment on account of applicable GST and cess, quantity, functional components, quality, characteristics etc. However, in the absence of any guidance or instructions on the manner of adjustments it needs to be seen how such adjustments are practically implemented specially in case of adjustment owing to characteristics, quality, reputation of the goods and/or services, etc. being subjective in nature.

GST Valuation Rules prescribes different valuation rules to be adopted under different scenarios as tabulated below:

Table 1 – GST Valuation Rules under different scenarios

Scenario	GST Valuation Rule
Supply where the consideration is not wholly in money	Some of the examples of transaction not wholly in money are buy back schemes, exchange/barter etc. The transaction value in such cases would sequentially be 1) open market value of such supply or 2) consideration received in money and money equivalent of the consideration not in money (value of any goods exchanged etc.) or 3) value of supply of 'like kind and quality'. If value is still not ascertainable, transaction value would be 110% of the cost of production or provision of services or using reasonable means consistent with the principles and general provisions of transaction value and other provisions of the GST laws.

Supply between distinct or related persons (excluding agent)	As per GST laws, branches of same legal entity with same Permanent Account Number (PAN) located at different states are considered to be distinct persons and any supply amongst distinct persons to attract GST even if such supplies are without any consideration. In case of supplies between distinct and/or related persons value of taxable supplies, including supplies without any consideration, would sequentially be 1) open market value of such supply, or 2) value of supply of 'like kind and quality'. If the value is still not ascertainable, transaction value would be 110% of the cost of production or provision of services or using reasonable means consistent with the principles and general provisions of transaction value and other provisions of the GST laws. Thus, this Rule enables levy of GST on stock transfer of goods and supply of services between branches of same legal entity. Further, the Rule provides that valuation in case of resale of goods, value would be 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer. This Rule would cover the scenarios where goods are resold by distributors. This Rule also provides that if the recipient is eligible for full input tax credit, the value declared on the invoice would be the open market value of goods or services. However, it's not clear if the invoice value has to be cost-plus or any reasonable value adopted by the supplier would be accepted by the government.
Supply made or received through an agent	Value of supply of goods between a principal and agent would sequentially be 1) open market value of goods or 2) 90% of price charged by the agent to its unrelated customer or 3) 110% of the cost of production or provision of services or using reasonable means consistent with the principles and general provisions of transaction value and other provisions of the GST laws. This Rule would cover the scenarios where agents are appointed by manufacturers for sale of goods on their behalf and would not cover the cases where goods are sold through distributors.
Supply based on cost	Where value of supply is not ascertainable as per the previous rules, transaction value of a supply shall be 110% of the cost of production or acquisition or provision of services or using reasonable means consistent with the principles and general provisions of transaction value and other provisions of the GST laws. No specific clarification has been issued, in case of determination of cost of acquisition, whether written down value should be adopted or the prevailing market rates. Similar provisions also existed under earlier central excise laws for valuation of manufactured goods cleared for captive consumption and customs laws for valuation of imported goods.
Residual method for determination of value of supply	Where value of supply is not ascertainable as per the previous rules, transaction value of supply to be determined using reasonable means consistent with the principles and general provisions of transaction value and other provisions of the GST laws. An option has also been provided to the supplier of services to disregard the cost plus mark-up method and directly apply the residual method.
Determination of value in respect of certain supplies	Similar to earlier service tax laws, specific valuation methods have been prescribed for certain supplies such as services in relation to purchase or sale of foreign currency, air travel agent's services and life insurance business services etc. Special valuation method has also been prescribed for a person engaged in buying and selling of second hand goods.
Value of supply of services in case of pure agent	As per GST laws, any expenditure or costs incurred by a supplier as a 'pure agent' of the recipient of supply to be excluded from the value of supply subject to the supplier acting as a pure agent of the customer - when he makes payment to the third party on authorization by such customer. Pure agent has been defined to mean a person who enters into an agreement with its customer to act as his pure agent to incur expenditure in the course of supply of goods or services on behalf of the customer without holding any title to the goods or services so procured. Similar provisions also existed under the service tax laws and have been subject to multitude of litigations.
Rate of exchange of currency for determination of value denominated in foreign currency	For determination of value of taxable supply, exchange rate to be adopted is the applicable rate of exchange as per generally accepted accounting principles on the date of time of supply. This is in line with the principles which existed under service tax laws.
Supply inclusive of GST	Facility of cum-duty has also been carried forward to GST regime. Where the value of supply is inclusive of GST, method of determining tax amount has been prescribed as under: $\text{Tax amount} = \frac{\text{(Value inclusive of taxes X tax rate in \% of GST)}}{\text{(100+ sum of tax rates, as applicable, in \%)}}$

Conclusion

Thus, transaction value concept for determination of taxable value for supply of goods as well as services, (similar to provisions existing under customs laws and earlier central excise laws), brings in uniformity in the manner of determination of the value of taxable supplies. However, it's explicit that, while specific valuation rules have been prescribed to deal with different scenarios, confusion regarding determination of taxable value in few cases still persists without specific valuation rules. Some of which are - no rule has been prescribed for determination of value of job work transactions except for a clarification in one of the government FAQs that only job work charges are to be subject to GST. As a consequence, some job workers have being arguing to compute transaction value by including value of the goods sent for job work. Also, no rule has been prescribed for adjustments or arriving at taxable value where recipient supplies goods and/or service free of cost or at reduced rate to enable the suppliers to provide taxable supply. Such transactions were prevalent under erstwhile VAT regime in case of works contract where owner of the project used to supply materials viz. steel, iron etc. free of cost to contractors. Further, the GST Valuation Rules, nowhere mandates that transaction value has to be necessarily above cost of production plus a notional mark as held by the Supreme Court of India on 29 August 2012 in the Fiat India case. Supreme Court had directed Fiat India to pay central excise duty on cost of production plus a notional mark-up and rejected the valuation principles based transaction value which was discounted selling price for payment central excise duty.

While taxpayers are settling down with this new taxation regime, clear guidance and clarifications issued by the government on prevailing ambiguities viz. supply of services between distinct persons and to what extent the provision of deemed supply without consideration between distinct person to be applied; how to determine the cost of production or acquisition; permissible adjustments for computing cost of production, value for job work transactions etc. would enable taxpayers in adopting appropriate valuation methods and enable easy implementation of this renewed form of valuation. The concerns discussed above do not reflect issues with the principles underlying GST, but relate to areas where the legislation does not fully give guidance on practically implementing the policy intention.

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Third Series of PHD Educative & Knowledge Series on Revised Model GST Law

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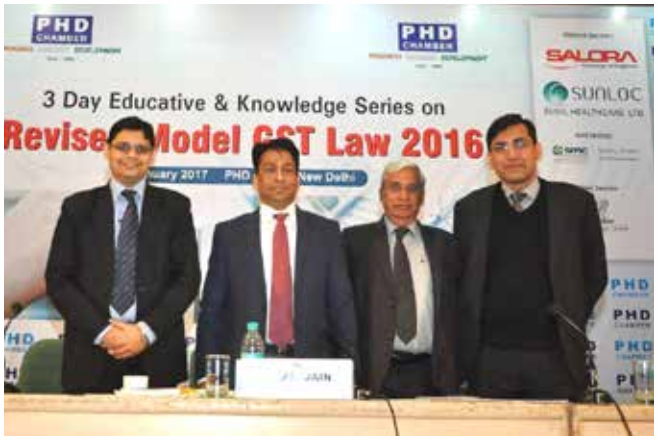

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Mr. Bimal Jain, Chairman, Indirect Taxes Committee, PHD Chamber; CA Avinash Poddar; and CA Gaurav Gupta and Mr. N K Gupta, Co-Chairman, Indirect Taxes Committee, PHD Chamber.

National GST Conclave One Nation One Tax – Pivotal Tax Reforms
Thursday, 9th February 2017 at Hotel Hyatt Regency, New Delhi

Mr. Manish Sisodia, Hon'ble Finance Minister, Govt. of NCT of Delhi ; Mr. N K Gupta, Co-Chairman, Indirect Taxes Committee, PHD Chamber; Mr. Anil Khaitan, Sr. Vice President, PHD Chamber; Mr. Najib Shah, Chairman, CBEC; Mr. Gopal Jiwarajka, President, PHD Chamber ; Mr. Bimal Jain, Chairman, Indirect Taxes Committee, PHD Chamber and Mr. Vijay Chaudhry Director Finance, PHD Chamber.

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Meeting with Deputy Chief Minister and Hon'ble Finance Minister, Govt. of NCT of Delhi

16th February, 2017 at New Delhi

Mr. Bimal Jain, Chairman, Indirect Taxes Committee along with Mr. N K Gupta, Co-Chairman, Indirect Taxes Committee and Mr. Vijay Chaudhry, Director Finance met Shri Manish Sisodia, Deputy Chief Minister and Hon'ble Finance Minister, Govt. of NCT of Delhi

Seminar on Goods & Services Tax

Friday, 24 March 2017, Faridabad, Haryana

Mr. Bimal Jain Chairman, Indirect Taxes Committee, PHD Chamber; Mr. Vijay Chaudhry, Director(Finance), PHD Chamber; Ms. Kanupriya Bhargava, Advaita Legal and Mr. N K Gupta, Co-Chairman, Indirect Taxes Committee, PHD Chamber.

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Mr. Kapil Sharma, Lakshmikumaran & Sridharan; Mr. Bimal Jain, Chairman, Indirect Taxes Committee, PHD Chamber; Mr. Vijay Sahni, Webtel.

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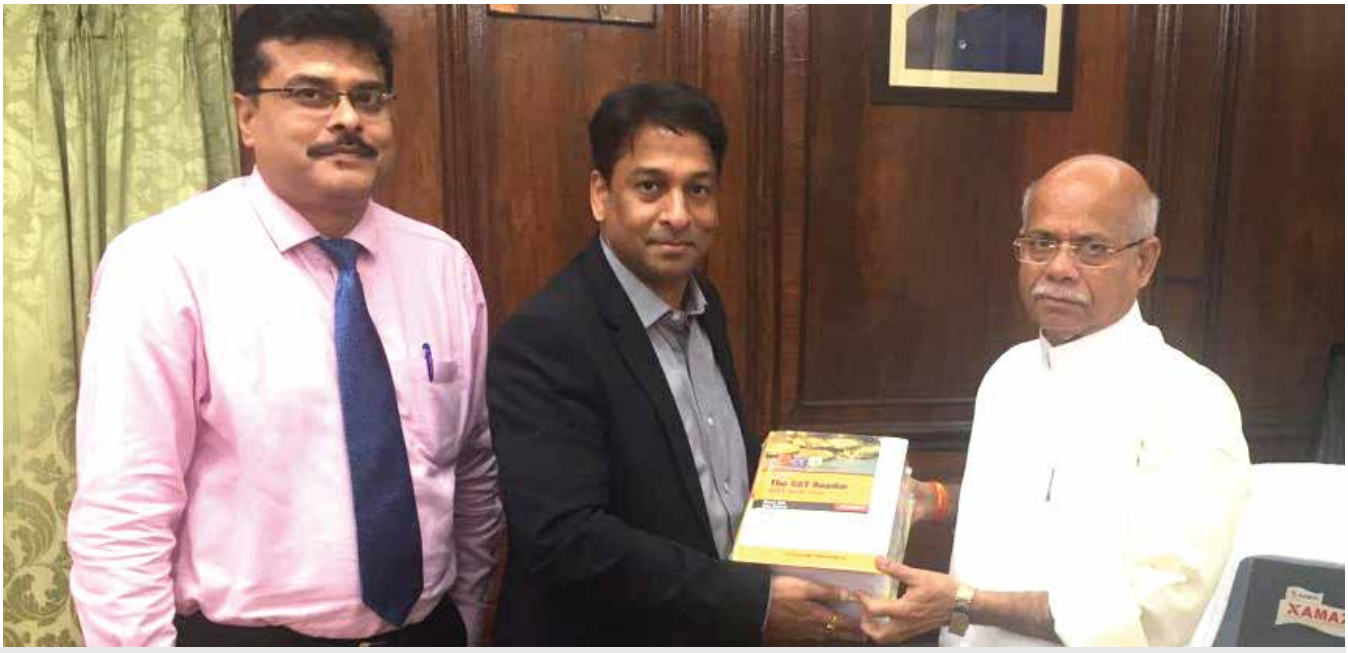
Workshop on ''GST Implementation - Intricacies & Implications - An Interactive Open House Session for Industry and Government'' on 28th August, 2017 at PHD House, New Delhi

Mr. Puneet Agrawal, Athena Law Associates; Mr. Kaushik TG, Assistant Commissioner, GST Council; Mr. Abhinarayan Mishra, Director (Finance), PHD Chamber; Mr. Anand Kumar Tiwari, Additional Commissioner, Department of Trade & Taxes, Delhi; Mr. N K Gupta, Co-chairman, Indirect Taxes Committee, PHD Chamber

Meeting with Shri. Susanta Kumar Panda, Member (IT), CBEC
September 7, 2017 at North Block, New Delhi

Mr. Bimal Jain, Chairman, Indirect Taxes Committee, PHD Chamber met Shri. Susanta Kumar Panda, Member (IT), CBEC .

Meeting with Shri Shiv Pratap Shukla, Hon'ble Minister of State for Finance
September 11, 2017 at North Block, New Delhi



Mr. Bimal Jain, Chairman, Indirect Taxes Committee, and Mr. Abhinarayan Mishra, Director (Finance), met Shri Shiv Pratap Shukla, Hon'ble Minister of State for Finance

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