



ICAI-GST

NEWSLETTER

A Newsletter from The Institute of Chartered Accountants of India on GST





Certificate Course on GST at Ahmedabad



Certificate Course on GST at Visakhapatnam



GST Conclave at Ahmedabad



Workshop on GST at Trichur



Certificate Course on GST at Raipur



National Conference on GST at Hyderabad



GST Conclave at Kolkata



Workshop on GST at Jamshedpur

President's Communication



My Esteemed professional colleagues,

With the introduction of GST, significant changes have been brought in the Indian taxation system, the dual levy of tax by the Centre as well as State, brought changes in tax structure, return filing etc. GST Council in its 23rd Meeting held on 10th November, 2017 at Guwahati took several important decisions in order to provide relief to the industry including reduction in GST rates, exemption of advances on goods for normal taxpayers, proposal to increase limit for composition taxpayers, extension of return filing dates. Also, a Committee on GST has been constituted to resolve the issues faced by tax payer in compliance the newly introduced taxation system including issues related to GST returns filing.

*Being a facilitator and supporter of GST implementation since inception, ICAI has been undertaking various initiatives to support the Government as well as the stakeholders to smoothen the implementation. Recently, ICAI has again submitted many suggestions relating to GST implementation faced by assessee and our members as tax payer and GST consultant. ICAI has recently launched two new publications namely viz. **Handbook on GST for Service Providers** and **Booklet on Seamless Credit** making total of publications on GST to nine. Further, to enable ease of learning, a virtual certificate course on GST will be organized in the month of December, 2017 for the member.*

ICAI also submitted its suggestion/recommendation on the ease of doing business with regards to the issues faced by industries under GST to DIIPP (Department of Industrial Policy and Promotion), Ministry of Commerce.

ICAI, through its Dubai Branch, has been organizing faculty identification programme, certificate courses and seminars, etc., in respect of UAE VAT which is going to be implemented from 1st January 2018 for the benefit of our members as well as other stakeholders.

The website of Indirect Taxes Committee of ICAI, www.idtc.icai.org, too equipped with knowledge gaining offline webcasts, offering regular GST and other indirect taxes updates, articles, information on upcoming programmes/seminars, e-publication on GST, suggestions submitted to the Government etc., to all its registered users. All the concerned stakeholders may get themselves registered at the website so as to exploit maximum benefits.

Let us support the journey of transformation of GST.

CA. Nilesht S. Vikamsey
President, ICAI

25 November 2017



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GST UPDATES

GSTR-1 for the month of July 2017 has been opened again for filing

FORM GSTR-1(Outward supplies) for month of July 2017 has been re-opened again for filing on the GST portal those who missed to file earlier can file now.

[gst.gov.in]

Clarification regarding the inter-State purchases against C form for period starting from 1st July ,2017

Maharashtra sales tax department vide Trade circular no. 477 of 2017 dated 17th November, 2017 has issued clarification regarding the inter-State purchases against C form for period starting from 1st July, 2017

Background

The definition of "goods" in Central Sales Tax Act, 1956 in section 2(d) upto 30th June, 2017 was as under: -

"(d) "goods" includes all materials, articles, commodities, and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities.

In view of the constitution (one Hundred and first amendment) Act, 2016 dated 8th September, 2016 the Central Government has amended the Central Sales Tax Act vide Taxation Laws (Amendment) Act, 2017 (18 of 2017) dated the 4th May 2017

By virtue of this amendment the aforesaid definition of "goods" has been amended. The amended definition is reproduced as under: -

(d) "goods" means-

- i. Petroleum crude
- ii. High speed diesel;
- iii. Motor spirit
- iv. Natural gas;
- v. Aviation turbine fuel; and
- vi. Alcoholic liquor for human consumption.

The Ministry of Finance, Department of Revenue, State Tax Division, New Delhi issued office memorandum dated the 7th November, 2017 to clarify the inter-State purchases against C form for period starting from 1st July, 2017. The clarification is reproduced as under: -

"The undersigned is directed to say that opinion of department of Legal Affairs, ministry of Law was solicited on the issue "Whether the definition of "goods" the phrase "manufacture or processing of goods" in section 8(3)(b) of the Central Sales Tax Act would be as per the definition provided under section

2(d) of the Central Sales Tax Act or that the word "goods" when it appears in the phrase "manufacture or processing of goods" means any goods i.e "goods" which fall within GST as well as "goods" which do not come under the ambit of GST.

Department of Legal Affairs, Ministry of Law has confirmed that the term "goods" has been specifically defined under the Central sales Tax Act, 1956 and prima facie the term "Goods" referred to in section 8(3)(b) of the Central Sales Tax Act, 1956 will have same meaning as defined and amended under section 2(d) of the Central Sales Tax Act, 1956 vide tax laws Amendment Act, 2017. However, it does not affect the provisions of section 8(3)(b) of CST Act relating to telecommunication network or mining or generation or distribution of electricity or any other form of power."

In view of this clarification the following instructions as being issued

1. The clarification is applicable for the declarations in Form 'C' to be issued for the period from 1st July onwards.
2. Form 'C' shall be used for the inter-State purchases of the "goods" (as amended) only subject to purposes enumerated in (3) below: -
3. Declaration in Form 'C' for the periods starting from 1st July 2017 shall be issued only if such goods are purchased for the purposes enumerated in the office memorandum issued by ministry of Finance, Department of Revenue, State Tax Division, New Delhi dated 7th November 2017 such as: -
 - i. Resale of above six goods;
 - ii. Manufacturing of above six goods;
 - iii. Use of above six commodities in the telecommunication network or mining or generation or distribution of electricity or any other form of power.

Apportionment of IGST credit with respect to Advertisement service when provided to Government

The Central Government vide Notification No.12/2017-Integrated Tax dated. 15th November, 2017 has inserted new rule 3 to the IGST Rules, 2017 to determine the value attributable to different States or Union Territories, in the case of supply of advertisement services to the Central Government, State Government, a statutory body or a local authority, in the absence of any contract between the supplier of service and recipient of services.

Value attributable to the dissemination in each State or Union Territory shall be determined in the following manner: -

	Mode of Advertisement	Basis of allocation
(a)	Advertisements on Newspapers and publications	Amount payable for publishing an advertisement in all the editions of newspaper or publications which are published in each State or Union Territory

(b)	Advertisements on Printed material like pamphlets, leaflets, diaries, calendars, t-shirt etc.	Amount payable for the distribution of a specific number of such material in each State or UT
(c)	(i) Advertisements on Hoardings other than on trains	Amount payable for the hoardings located in each State or UT
	(ii) Advertisements placed on trains	Ratio of the length of railway track in each State of that train
(d)	(i) Advertisements on back of utility bills of oil and gas companies etc.	Amount payable for the advertisements on bills pertaining to consumers having billing address in such States or Union Territory
	(ii) Advertisements on railway tickets	Ratio of number of railway stations in each State or Union Territory
(e)	Advertisement over radio stations	Amount payable to such radio station, which by virtue of its name is part of a State or Union Territory
(f)	Advertisements on Television channels	Ratio of the viewership of such channel in such State (last week of a given quarter shall be used for calculating viewership for the succeeding quarter)
(g)	Advertisements at cinema halls	Amount payable to a cinema halls or screens in a State or Union Territory
(h)	Advertisements over internet	Ratio of internet subscribers in such State or Union Territory
(i)	Advertisements through short messaging service	Ratio of telecommunication subscribers in such State or Union Territory

Various examples to the above situations have been explained in the Notification which may be referred.

Comment: Please note that IGST Rules had adopted the CGST Rules in its entirety and with the introduction of this rule, value apportionment is being prescribed for purposes of payment of IGST or CGST-SGST as the case may be. As such, this rule appears

to affect valuation of CGST-SGST supplies also but without a corresponding change in the CGST Rules.

Extension of time limits for filing various forms under GST

The Commissioner, on the recommendations of the Council, has extended the time limit for filing the following forms:

FORM	Description	DUE DATE PRIOR TO THIS NOTIFICATION	EXTENDED DATE
GST CMP-03	Form for intimation of details of stock held on the date preceding the date from which the option for composition levy is exercised.	31st October, 2017	30th November, 2017
GST REG-26	Form for submitting application by a person who holds a provisional certificate of registration.	3 months from the appointed date	31st December, 2017
GST ITC-01	Form to be filed by registered person after taking registration to the effect that he is eligible to avail the input tax credit	31st October, 2017	30th November, 2017
GST REG-29	Form for submitting an application electronically for the cancellation of registration granted to every person registered under any of the existing laws.	31st October, 2017	31st December, 2017
GST ITC-04 for the quarter July-September, 2017	Form formaking the declaration in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another, during the quarter July to September	25th October, 2017	31st December, 2017
GSTR-4 for the quarter July September, 2017	Return by composition dealer	18th October, 2017	24th December, 2017
GSTR-5 for July, 2017	Return by a non-resident taxable person, under subsection (5) of section 39 of the CGST Act read with rule 63 of the Central Goods and Services Tax Rules, 2017	20th August, 2017 or 7 days from the last date of registration whichever is earlier	11th December, 2017

GSTR-5A for July, 2017	Return by a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient	20th August, 2017	15th December, 2017
GSTR-6 for July, 2017	Form for filing return by an Input Service Distributor under subsection (4) of section 39 of the CGST Act read with rule 65 of the Central Goods and Services Tax Rules, 2017	13th August, 2017	31st December, 2017
TRAN-1	Form for submitting the declaration of stock held on the appointed day under rule 120A and rule 117 of the CGST Rules	30th September, 2017	27th December, 2017

[Order No. 05/2017- Central Tax dated 28th October, 2017, Order No. 06/2017- Central Tax dated 28th October, 2017, Notification No. 53/2017- Central Tax dated 28th October, 2017, Notification No. 51/2017- Central Tax dated 28th October, 2017, Notification No. 59/2017 – Central Tax dated 15th November 2017, Notification No. 60/2017 – Central Tax dated 15th November 2017, Notification No. 61/2017 – Central Tax dated 15th November 2017, Notification No. 62/2017- Central Tax dated 15th November, 2017, Order No. 9/2017-GST dated 15th November, 2017, Order No. 10/2017- GST dated 15th November, 2017]

No GST on advance received against supply of GOODS for all assesses

The CBEC vide Notification No. 66/2017 – Central Tax dated 15th November 2017 notified that the registered person who did not opt for the composition levy under section 10 of the CGST Act as the class of persons who shall pay the central tax on the outward supply of goods at the time of supply as specified in clause (a) of sub-section (2) of section 12 of the said Act including in the situations attracting the provisions of section 14 of the said Act, and shall accordingly furnish the details and returns as mentioned in Chapter IX of the said Act and the rules made thereunder and the period prescribed for the payment of tax by such class of registered persons shall be such as specified in the said Act.

Therefore, all persons (below or above 1.5 cr limit) shall not be required to pay tax on advance received against future supplies of goods. This facility was allowed only to persons below the 1.5 cr limit which will continue to enjoy the relaxation from 13th October 2017 but all other taxable persons (other than composition) will now enjoy from 15th November 2017 onwards.

Return Filing

To facilitative measures for taxpayers, the CBEC vide Notification no. 56 to 60 dated 15th November 2017 notified following changes in view of the difficulties being faced during the return filing process, the return filing process is to be further simplified in the following manner: -

- I. All taxpayers would file return in FORM GSTR-3B along with payment of tax by 20th of the succeeding month till March 2018.

Month	Dates
January, 2018	20th February, 2018
February, 2018	20th March, 2018
March, 2018	20th April, 2018

[Notification No. 56/2017 – Central Tax dated 15th November 2017]

- II. For filing of details in FORM GSTR-1 till March 2018, taxpayers would be divided into following two categories: -
 - a) Taxpayers with annual aggregate turnover upto Rs. 1.5 crore need to file GSTR-1 on quarterly basis as per following frequency:

Period	Dates
Jul- Sep	31st Dec 2017
Oct- Dec	15th Feb 2018
Jan- Mar	30th April 2018

[Notification No. 57/2017 – Central Tax dated 15th November 2017]

- b) Taxpayers with annual aggregate turnover more than Rs. 1.5 crore need to file GSTR-1 on monthly basis as per following frequency:

Period	Dates
Jul- Oct	31st Dec 2017
Nov	10th Jan 2018
Dec	10th Feb 2018
Jan	10th Mar 2018
Feb	10th Apr 2018
Mar	10th May 2018

[Notification No. 58/2017 – Central Tax dated 15th November 2017]

- III. The time period for filing GSTR-2 and GSTR-3 for the months of July 2017 to March 2018 would be worked out by a Committee of Officers. Therefore, filing of GSTR-1 will continue for the entire period without requiring filing of GSTR-2 & GSTR-3 for the previous month / period.
 1. A large number of taxpayers were unable to file their return in FORM GSTR-3B within due date for the months of July, August and September 2017. Late fee was waived in all such cases. It has been decided that where such late fee was paid, it will be re-credited to their Electronic Cash Ledger under "Tax" head instead of "Fee" head so as to enable them to use that amount for discharge of their future tax liabilities. The software changes for this would be made and thereafter this decision will be implemented.
 2. The amount of late fee payable by any registered person for failure to furnish the return in FORM GSTR-3B from

the month of October, 2017 would be limited to Rs. 50/- per day (Rs. 25/- per day each under CGST & SGST Acts). However, the amount of late fee payable by a taxpayer whose tax liability for that month was 'NIL' will be Rs. 20/- per day (Rs. 10/- per day each under CGST & SGST Acts) instead of Rs. 200/- per day (Rs. 100/- per day each under CGST & SGST Acts).

[Notification No. 64/2017 – Central Tax dated 15th November 2017]

Suppliers of Services below threshold limit exempted from Compulsory Registration even if carrying out in inter-State supplies

CBEC vide Notification No. 65/2017 – Central Tax dated 15th November 2017 exempts those service providers whose annual aggregate turnover is less than Rs. 20 lakhs (Rs. 10 lakhs in special category states except J & K) from obtaining registration even if they are making inter-State taxable supplies of services. As a further measure towards taxpayer facilitation to exempt such suppliers providing services through an e-commerce platform from obtaining compulsory registration provided their aggregate turnover does not exceed Rs. 20 lakhs. As a result, all service providers, whether supplying intra-State, inter-State or through ecommerce operator, will be exempt from obtaining GST registration, provided their aggregate turnover does not exceed Rs. 20 lakhs (Rs. 10 lakhs in special category States except J & K).

Clarifications regarding applicability of GST and availability of ITC in respect of certain services

CBEC vide Circular No. 16/16/2017- GST dated 15th November, 2017 clarified certain issues brought to the notice of Board:-

Manual filing and processing of refund claims in respect of zero-rated supplies –reg

CBEC vide Circular No. 17/17/2017-GST dated 15th November, 2017 clarified the conditions and procedure subject to which the applications/documents/forms pertaining to refund claims on account of zero-rated supplies shall be filed and processed manually, due to non-availability of the refund module on the common portal.

For details regarding the steps, formats and procedure to be followed, Circular No. 17/17/2017-GST dated 15th November, 2017 may be referred.

Amendment in CGST Rules

Central Government vide Notification No. 55/2017 – Central Tax dated 15th November 2017 w.e.f 15th November 2017 amends following rules:-

1. An explanation has been inserted after sub-rule (2) in rule 43 for the purposes of rule 42 and this rule that the aggregate value of exempt supplies shall exclude the value of supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.
2. In rule 54, in sub-rule (2), for the words "supplier shall issue", the words "supplier may issue" shall be substituted.
3. New Rule 97A & 107A on "Manual filing and processing" has been inserted after rule 97 & 107 respectively "Notwithstanding anything contained in this Chapter, in respect of any process or procedure prescribed herein, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall,

S.No.	Issue	Comment
1	Is GST applicable on warehousing of agricultural produce such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc.?	It is hereby clarified that processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (dehusked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT(Rate) and 12/2017-CT(Rate) and corresponding notifications issued under IGST and UGST Acts and therefore the exemption from GST is not available to their loading, packing, warehousing etc. and that any clarification issued in the past to the contrary in the context of Service Tax or VAT/ Sales Tax is no more relevant
2	Is GST leviable on inter-state transfer of aircraft engines, parts and accessories for use by their own airlines?	It is hereby clarified that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter-state supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as specified in section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.
3	Is GST leviable on General Insurance policies provided by a State Government to employees of the State government/ Police personnel, employees of Electricity Department or students of colleges/ private schools etc. (a) where premium is paid by State Government and (b) where premium is paid by employees, students etc.?	It is hereby clarified that services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Sl. No. 40 of notification No. 12/2017-Central Tax (Rate). Further, services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. 12/2017- CT(R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.

in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

4. New Rule 109A. Appointment of Appellate Authority has been inserted after rule 109 namely: -

Any person aggrieved by any decision or order passed under CGST Act or SGST or UTGST may appeal to	
Authority	Condition
Commissioner (Appeals)	Order is passed by the Additional or Joint Commissioner
Additional Commissioner (Appeals)	Order is passed by the Deputy or Assistant Commissioner or Superintendent, within 3 months from the date on which the said decision or order is communicated to such person
An officer directed under sub-section (2) of section 107 to appeal against any decision or order passed under CGST Act or SGST or UTGST may appeal to	
Commissioner (Appeals)	Order is passed by the Additional or Joint Commissioner
Additional Commissioner (Appeals)	Order is passed by the Deputy or Assistant Commissioner or Superintendent, within 6 months from the date on which the said decision or order is communicated to such person

5. Termination Power with Central Government: - Central Government with the approval of the Chairperson of the Council may terminate the appointment of the below officials at any time as per new proviso has been inserted in sub-rule (4) & (5) of rule 124 of CGST Act 2017.

- Chairman.
- Technical Member

6. New refund forms had been inserted after the "FORM GST RFD-01".

Further, the Commissioner, on the recommendations of the Council, vide Notification No. 51/2017- Central Tax dated 28th October, 2017 has issued Central Goods and Services Tax ((Eleventh Amendment) Rules, 2017, to clarify the following in relation to Central Goods and Services Tax Rules, 2017:

New proviso added to the Rule 96 sub-rule (2) and Rule 96A sub-rule (2)

A proviso to the Rule 96 sub-rule (2) and Rule 96A sub-rule (2) as under: -

"Provided that where the date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the

system designated by the Customs:

Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.";

Exemption in case of skimmed milk extended to companies also

Exemption presently applicable on skimmed milk powder now recommended to extend to be available where such milk is distributed through companies registered under the Companies Act also. Earlier it was provided on supply of skimmed milk powder or concentrated milk by any person to distinct person under section 25(4), if such skimmed milk powder or concentrated milk was to be used in production of milk for distribution through dairy cooperatives only.

[Notification No. 50/2017-Integrated Tax (Rate) dated 14th November 2017, Press Release on GST rate changes dated 10th November 2017]

Rationalization of exemption on Fair Price Shops by way of sale of goods under (PDS)

The CBEC vide Notification no. 21/2017 Central (Rate) provided exemption on services by Fair Price Shops by way of sale of specified goods under Public Distribution System (PDS) against consideration in the form of commission or margin, the exemption was as follows:

Services provided to	By way of sales of
Central Government	Wheat, rice and coarse grains.
State Governments or Union territories	Kerosene, sugar, edible oil, etc

The central government vide Notification No.47/2017- Central Tax (Rate) dated 14th November 2017 w.e.f. 15th November 2017 substituted the following entry against entry no. 11A for the entry in column (3) and omitted the related entry no. 11 B :

"Service provided by Fair Price Shops to Central Government, State Government or Union territory by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System against consideration in the form of commission or margin."

These existing exemption entries are being rationalized to remove ambiguity regarding list of items and the category of recipients to whom the exemption is available.

Rationalization of exemption entries of Construction Services

Central Government vide Notification No. 46/2017- Central Tax (Rate) dated 14th November 2017 w.e.f. 15th November 2017 amends entry at item (vi) of sr. no.3 of Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 was mentioned as "Construction services" whereas entries at items (ii), (iii), (iv) and (v) of s.no.3 it was mentioned as "Composite supply of Works contract" as defined in clause 119 of Section 2 of CGST Act, 2017. To maintain consistency and remove ambiguity the word "services" in entry (vi) will be replaced with "Composite

supply of Works contract as defined in clause 119 of Section 2 of CGST Act, 2017”.

Changes in GST rate of goods

The CBEC vide Notification No. 41/2017-Central Tax (Rate) dated 14th November 2017 effective from 15th November 2017 reduced GST rate on goods from 28% to 18% on goods falling in 178 headings at 4-digit level (including 4 tariff heading that are partially pruned). After these changes, only 50 items will attract GST rate of 28%.

For details of rates Notification No. 41/2017-Central Tax (Rate) dated 14th November 2017 may be referred.

Q- How do we determine the rate of tax in case, if there is change in the tax rates?

Ans. Three important events need to be considered – Date of raising invoice, receipt of payment and completion of supply. If any of the two events occur before the change in rate of tax, then the old rate will apply else the new rate will apply.

Illustration – Rate of GST on Supply made on or after November 15, 2017 reduced from say 28% to 18% then the tax to be applied on supplies will be as under:

Before – Event occurred before November 15, 2017

After – Event occurred on or after November 15, 2017

Supply Provided	Invoice issued	Payment received	GST Rate
Before	After	After	18%
Before	Before	After	28%
Before	After	Before	28%
After	Before	After	18%
After	Before	Before	28%
After	After	Before	18%

It may be noted that date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Changes in the GST rates have been made with a view to rationalize and minimized classification disputes.

Permanent transfer of Intellectual Property is a supply of goods or service

To obviate dispute and litigation, CBEC vide Notification No. 41/2017-Central Tax (Rate) dated 14th November 2017 notified that irrespective of whether permanent transfer of Intellectual Property is a supply of goods or service: -

Description	Rate
Permanent transfer of Intellectual Property other than Information Technology software	attracts GST @ 12%
Permanent transfer of Intellectual Property in respect of Information Technology software	attracts GST @ 18%

Additional goods under RCM under section 9(3) of CGST Act

Section 9 of CGST Act 2017 read with Notification No. 13/2017-Central Tax (Rate) dated 28th June, 2017 specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Central Government vide Notification No. 43/2017-Central Tax (Rate) dated 14th November 2017 w.e.f 15th November, 2017 had been notified to include “supply of raw cotton by agriculturist” under the reverse charge and tax will be liable to be paid by the recipient of such supply under reverse charge.

Changes relating to GST rates on certain services

CBEC vide Notification No. 46/2017 dated 14th Nov, 2017 effective from 15th Nov, 2017 made the following changes in the rate of service tax :

S. No.	Description	Rate
1	All stand-alone restaurants irrespective of air conditioned or otherwise Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink provided by a restaurant, eating joint including mess, canteen or takeaways including those located in residential or lodging premises having declared tariff of any unit of accommodation up to Rs. 7,499/-.	2.5% CGST / SGST each without ITC
2.	Supply of (1) above, those located in residential premises having declared tariff of any unit of accommodation of Rs. 7,500/- or more per day.	18% with ITC
Explanation.- “declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.		
3.	Outdoor catering will continue to be Taxed	18% with ITC
4.	GST on services by way of admission to “protected monuments”	Exempted w.e.f 15th November 2017
5.	GST rate on job work services in relation to manufacture of those handicraft goods in respect of which the casual taxable person has been exempted from obtaining registration	5% with ITC w.e.f 15th November 2017

Revised rate of GST is not 'optional' in respect of restaurant services. Accordingly, credit availed and remaining unutilized as at 14th November 2017 will need to be extinguished in accordance with section 18(4) of CGST Act.

Accepting of UIN of Foreign Diplomatic Missions/ Suppliers

Various representations have been received from Foreign Diplomatic Missions (FDM) / UN Organizations (UN) regarding unwillingness of the vendors / suppliers to record the UIN (Unique Identify Number) while making sales to such Missions / Consulates or UN organizations. It may be noted that sale or supply to FDM/ UN Organizations is like any other Business to Consumer (B2C) sale and will not have any additional effect on the supplier's tax liability. Recording of UIN while making such sales will enable FDM / UN Organizations to claim refund of the taxes paid by them in India. Therefore, it is advised that under no circumstance any supplier should decline to record the UIN of the diplomat / official on the tax invoice.

Further, it may also be noted that the diplomats / consulate staff may quote the same UIN as allotted to their Missions / Consulates or UN organizations while making any purchases.

UIN is a 15-digit unique number allotted to any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries. First two digits of the UIN denotes State code where the Diplomatic Mission/Consulate/ Embassy is located.

Search functionality for UIN is available on the GST Common Portal in "Search Taxpayer" option. On entering UIN and captcha, details of the Diplomatic Mission/Consulate/ Embassy/ will be available.

[CBEC Press Release dated 13th November 2017]

Clarification on the Insurance services provided by Government

- i. Services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Sl. No. 40 of notification No. 12/2017-Central Tax (Rate);
- ii. Services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. 12/2017-CT(R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.

[Press Release on GST rate changes dated 10th November 2017]

Clarifications on Inter State Movement of Goods

Inter- State Movement of Goods not constitute Supply: -To

clarify that inter-state movement of goods like rigs, tools, spares and goods on wheel like cranes, not being in the course of furtherance of supply of such goods, does not constitute a supply. This clarification gives major compliance relief to industry as there are frequent inter-state movement of such kind during providing services to customers or for the purposes of getting such goods repaired or refurbished or for any self-use. Service provided using such goods would in any case attract applicable tax.

[Press Release on GST rate changes dated 10th November 2017]

UIN of Foreign Diplomatic Missions/ Suppliers

Benefits for Diplomatic Missions/UN organizations: - To lessen the compliance burden on Foreign Diplomatic Missions (FDM) / UN Organizations, a centralized UIN will be issued to every FDM / UN Organization by the Central Government and all compliance for such agencies will be done by the Central Government in coordination with the Ministry of External Affairs.

[CBEC Press Release dated 10th November 2017]

Press Release on Changes recommended in Composition Scheme

The GST Council in its 23rd Meeting held at Guwahati on 10th November 2017 recommended following changes in Composition Scheme under Section 10 of CGST Act, 2017 subject to necessary amendment in the CGST Act and SGST Acts:-

Uniform rate of tax @ 1% for manufacturers and traders: Earlier in case of Manufacturer 1% each composition rate applicable & 0.5% each in case of trader as per section 10 of CGST Act 2017. GST Council recommended for application of uniform rate of 1% on trader & manufacturer.

Further, turnover only for supply of taxable goods will be considered for the tax liability in other words turnover of exempted goods will not be considered in Total Turnover.

Introduction of Threshold of Rs. 5 Lakh for Composition taxpayer in respect of Services provided by them:

Supply of services by Composition taxpayer up to Rs 5 lakh per annum will be allowed. Earlier Composition Scheme is not available to a service provider except restaurants. In such a case, a supplier of goods who has opted for composition scheme becomes ineligible for composition as soon as he makes any outward supply of services except restaurant services. To avoid such hardships being faced by composition taxpayers, it is now proposed to allow them to make outward supply of Services up to Rs. 5 Lakh in a year.

GST Council Recommended Composition Scheme threshold to Rs 2 crore: Annual turnover eligibility for composition scheme will be increased to Rs 2 crore from the present limit of Rupees 1 crore under the law.

Thereafter, eligibility for composition scheme upto Rs.1.5 crore

will be allowed to composition taxpayers.

Operative notification giving effects to the above Council decisions are awaited.

[CBEC Press Release dated 10th November 2017]

Procedure regarding procurement of supplies of goods from DTA by (EOU)/(EHTP Unit /STP Unit/BTP Unit .

The CBEC vide Circular No. 14/14 /2017 - GST dated 6th November 2017 clarifies that supplies of goods by a registered person to EOUs etc would be treated as deemed exports under Section 147 of the CGST Act, 2017 and refund of tax paid on such supplies can be claimed either by the recipient or supplier of such supplies. The procedure and safeguards for supplies to EOU / EHTP / STP / BTP units are prescribed. For further details, Notification No. 48/2017- Central Tax dated 18.10.2017 may be referred.

The given procedure and safeguards are in addition to the terms and conditions to be adhered to by a EOU / EHTP / STP / BTP unit in terms of the Foreign Trade Policy, 2015- 20 and the duty exemption notification being availed by such unit.

Clarification on Unstitched Salwar Suits

The Central Board of Excise & Customs vide Circular No. 354/129/2017-TRU dated 27th October, 2017 clarifies the doubts which have been raised regarding the classification of Cut pieces of Fabrics under GST. It has been represented that before becoming readymade articles or an apparel, the fabric is cut from bundles or thans and sold in that unstitched state. The consumers buy these sets or pieces and get it stitched to their shape and size. Fabrics are classifiable under chapters 50 to 55 of the First Schedule to the Customs Tariff Act, 1975 on the basis of their constituent materials and attract a uniform GST rate of 5% with no refund of the unutilized input tax credit. Mere cutting and packing of fabrics into pieces of different lengths from bundles or thans, will not change the nature of these goods and such pieces of fabrics would continue to be classifiable under the respective heading as the fabric and attract the 5% GST rate.

Exemption to Supply of services having place of supply in Nepal and Bhutan, against payment in Indian Rupees

The Central Government vide Notification No. 42/2017-Integrated tax(Rate) dated 27th October, 2017 made the amendment in the Notification No.9/2017- Integrated Tax (Rate), dated the 28th June, 2017 whereby a new entry has been inserted in the exemption notification, namely, Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.

Clarification regarding applicability of GST on the superior kerosene oil retained for the manufacture of Linear Alkyl Benzene

CBEC vide Circular No. 12/12/2017-GST dated 26th October,

2017 clarifies the issue as to whether GST would be levied on SKO sent by IOC for extracting n-paraffin or only on the n-paraffin quantity extracted by the LAB manufactures. In this context, LAB manufacturers have stated that they receive superior Kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n-Paraffin (C9-C13 hydrocarbons) from SKO and return back the remaining of SKO to the refinery. Further, doubt has also been raised as to whether the return of remaining Kerosene by LAB manufactures would separately attract GST in such transaction.

The matter was examined. LAB manufacturers generally receive superior kerosene oil [SKO] from a refinery through a dedicated pipeline; on an average about 15 to 17% of the total quantity of SKO received from refinery is retained and balance quantity ranging from 83%- 85% is returned back to refinery. The retained SKO is towards extraction of Normal Paraffin, which is used in the manufacturing of LAB. In this transaction consideration is paid by LAB manufactures only on the quantity of retained SKO (n-paraffin).

Accordingly, it is hereby clarified that, in aforesaid case, GST will be payable by the refinery only on the net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB). Though, refinery would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person. This clarification is issued in the context of Goods & Service Tax (GST) law only and past issues, if any, will be dealt in accordance with the law prevailing at the material time.

IGST Rate in case Export on supply of taxable goods by a registered supplier to a registered recipient Merchant Exporter

The Central Government vide Notification No. 40/2017-Central Tax (Rate) dated 23rd October, 2017 exempts the intra-State supply of taxable goods in excess of the amount calculated @0.05 % by a registered supplier to a registered recipient w.e.f. 23rd October, 2017 for export is subject to fulfilment of the following conditions namely:

- i. Supplier shall supply the goods to the Recipient on a tax invoice.
- ii. Recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the Supplier.
- iii. Recipient shall indicate the GSTIN of the Supplier and the tax invoice number issued by the Supplier in respect of the said goods in the shipping bill or bill of export.
- iv. Recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce.
- v. Recipient shall place an order on Supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the Supplier.

- vi. Recipient shall move the said goods from place of Supplier –
- directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
 - directly to a warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- vii. If the Recipient intends to aggregate supplies from multiple Suppliers and then export, the goods from each Supplier shall move to a warehouse and after aggregation, the Recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- viii. In case of situation referred to in condition (vii), the Recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the Supplier as well as to the jurisdictional tax officer of such supplier; and
- ix. When goods have been exported, the Recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the Supplier along with proof of export general manifest or export report having been filed to the Supplier as well as jurisdictional tax officer of such supplier.
- (Terms referred in above conditions shall be read as Supplier – Registered Supplier, Recipient – Register Recipient, Warehouse – Registered Warehouse)
- Further, the Supplier shall not be eligible for the above-mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.
- Similar notification has been brought under UTGST Act, 2017 vide Notification No. 40/2017-Union Territory Tax (Rate) dated 23rd October, 2017 and under IGST Act, 2017 vide Notification No. 41/2017--Integrated Tax (Rate) dated 23rd October, 2017.
- [Notification No 40/2017- Central Tax (Rate) dated 23rd October, 2017, Notification No. 40/2017-Union Territory Tax (Rate) dated 23rd October, 2017, Notification No. 41/2017--Integrated Tax (Rate) dated 23rd October, 2017]



INDIRECT TAXES COMMITTEE (IDTC) OF ICAI
A ONE STOP DESTINATION FOR INDIRECT TAXES i.e. IDTC
 website: www.idtc.icai.org

The Indirect Taxes Committee of ICAI has launched its website viz. www.idtc.icai.org to provide the users a well set platform for sharing and gaining knowledge on indirect taxes and easy accessibility to the Indirect taxes Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in the Indirect tax laws vide various mediums like, organising programmes, updating study materials, sending regular updates etc.

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DOUBLE LEVY OF TAX ON A SINGLE TRANSACTION – YES OR NO!!

Article discusses issues relating to section 142(11)(c) – Transition Provision relating to a transaction where both VAT & Service Tax has been paid.

Before we set out to interpret section 142(11)(c), the rules of interpretation on the basis of which we have interpreted section 142(11)(c) is listed below for the reference of the discerning reader:

1. Injustum est nisi tota lege inspecta, de una aliqua ejus particula proposita judicare Vel respondere - To interpret and in such a way as to harmonize law with laws, is the best mode of interpretation.
 - i. The rule of interpretation is relied upon to harmonise
 1. the applicability and
 2. the areas of operation
 of the three sub clauses of section 142(11).
 - ii. Section 142(11)(a) applies to a transaction which is liable to VAT while section 142(11)(b) applies to a transaction liable to Service Tax. If that be so, what would be the areas of operation of section 142(11)(c) would the question which would be topmost on the reader's mind.
 - iii. The above rule of interpretation is relied upon to so interpret clauses (a), (b) and (c) of section 142(11) such that each of the sub clauses of section 142(11) is given its due play and area of operation.
 - iv. The above rule of interpretation is relied upon to interpret section 142(11)(a), (b) and (c) such that none of the clauses are rendered otiose.
 - v. The above rule of interpretation is relied upon to determine jurisdiction and areas of operation of clauses (a) and (b) vis-à-vis clause (c) such that the provisions do not over-ride or run into conflict with one another.
2. Injustum est nisi tota lege inspecta, de una aliqua ejus particula proposita judicare Vel respondere - It is unjust to decide or respond as to any particular part of a law without examining the whole of law.
 - i. This rule of interpretation is relied upon to interpret clause (c) in the schema of section 142(11).
 - ii. Section 142(11)(c) would have to be interpreted in light of and along with section 142(11)(a)&(b) and not independently.
3. Ex praecedentibus et consequentibus optima fit interpretation – The best interpretation is made from the context.
 - i. Sub clauses of section 142 must be interpreted in the context of 'area of operation' and in terms of 'time lines' of erstwhile laws and GST.

- ii. Interpreting in the context of transition means giving due effect to the charge and assessment provisions under the erstwhile laws and under GST law.
- iii. The law ought to read in such a manner that it does not over-ride a charge under the erstwhile law while at the same time protecting the levy under GST law.
- iv. Interpreting in the context of transition means that no transaction should be exigible to double taxation nor must any part of the transaction get excluded from charge, which was otherwise chargeable under the erstwhile laws and GST law.

Having set the ground rules, we now proceed to interpret section 142(11)(c). It is imperative to understand the scope and ambit of section 142(11)(a)&(b), so that we can determine the jurisdiction of section 142(11)(c). Section 142(11)(a)&(b) both start with non-obstante clause. Section 142(11)(a) over-rides section 12 of GST law while section 142(11)(b) over-rides section 13 of the GST law. Readers would be aware that section 12 and section 13 deals with time of supply of goods and services respectively.

Section 12(1) and section 13(1) state that liability to pay tax on goods and services respectively arise at the time of supply as determined by provisions of section 12 and 13. Since section 142(11)(a)&(b) over-ride section 12 and 13 respectively, the provisions of section 142(11)(a)&(b) would therefore hold fort as regards levability or non-levability of GST for transactions subject to section 142(11). As per section 142(11)(a)&(b), GST shall not be 'payable' on goods or services respectively to the extent tax was 'leviable' under VAT/ Finance Act, 1994 respectively. The Apex Court in Assistant Collector of Central Excise V. National Tobacco Co of India Ltd, 1978 (2) ELT 416 (SC) held that levy is of a wide importance and that it includes both imposition of tax and assessment of tax. Thus if any transaction is liable to VAT/ Finance Act, 1994, the said transaction cannot be assessed and collected to tax under GST.

It is with this understanding that we proceed to interpret section 142(11)(c). The relevant provision is extracted herein below for ready reference of the reader:

where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994 (32 of 1994), tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed

Section 142(11)(c) starts with the words, 'where tax was paid on any supply both under VAT and FA, 94'. For tax to be payable, there must first exist a levy, then and then only the amount paid would

be clothed with the nature of 'tax', else not. Reliance is placed on Article 366(28) of the Constitution, which defines 'taxation' as including any 'imposition' of tax, whether general or special and further states that 'tax' shall be constructed accordingly. Reliance is also placed on Article 265 of the Constitution which states that 'No tax shall be levied except by authority of law'. Hence for section 142(11)(c) to apply, first there must have been an imposition of tax. For imposition of tax, there must be a levy, as per National Tobacco Company case. A transaction which is purely in the nature of sale of goods would be subject matter of section 142(11)(a) while a transaction which is purely in the nature of service would be subject matter of section 142(11)(b). However, what would the tax treatment for transition purposes in case of a composite transaction which is liable to both VAT and Service Tax was the subject matter of discussion of the study group.

The study group examined two interpretations which are both presented here along with the arguments to support each for reader's consideration.

An Interpretation

The material portion of the composite transaction would get covered under section 142(11)(a) and the service portion of the composite transaction would get covered under section 142(11)(b). And support was found in these grounds:

The secure premise on the basis of which the aforesaid interpretation is made lies in the wordings employed by section 142(11)(a)&(b), which use the term 'leviable on the said goods/ services' respectively. Since material portion and service portion of composite transaction are leviable to VAT and Service Tax respectively, hence the first line of interpretation is that section 142(11)(a)&(b) themselves inter-se cover the entire canvas of transactions leviable to VAT and/or Service tax. If that be the case, what is the purpose, scope and ambit of section 142(11)(c) would be the topmost question in the reader's mind. The first line of interpretation, is that section 142(11)(c) applies only to a case where:

- i. VAT and Service Tax though not payable was yet paid voluntarily by an assessee to gain tax arbitrage during transition.
- ii. The VAT and Service Tax so paid, though not leviable would fall within the scope of section 142(11)(c).
- iii. That section 142(11)(c) has been enacted as a safeguard against such astute and shrewd assessee who pay VAT and Service Tax, though not 'leviable' to save themselves from anticipated increase in tax rate under GST regime.
- iv. That in a case where VAT and Service Tax was not 'leviable' but VAT and Service Tax has been paid would never get covered under section 142(11)(a)&(b) since 'leviability' to VAT/ Service Tax is a pre-condition for applicability of clauses (a) and (b). Such a transaction which does not fall under clauses (a) and (b) would fall under section 142(11)(c).

In the aforesaid case, VAT and Service Tax was paid, though it was not leviable under the respective acts. Since VAT and Service Tax was paid, though it was not leviable under the said Acts, the credit

of taxes paid under the said Acts would be available under GST. In a case where GST is payable on a transaction on which VAT and Service Tax has been paid (though not payable under the respective erstwhile laws), section 142(11)(c) would apply and seeks to remedy the mischief by bringing the transaction to tax under GST, to the extent supply is made after the appointed date and provides VAT paid and Service Tax paid voluntarily as credit to be set off against GST to avoid double taxation of the same transaction both under the erstwhile laws of VAT, Service Tax and under the new law of GST. The aforesaid line of thought is fortified by Article 20(2) of the Constitution which prohibits double jeopardy, in addition to a catena of judicial decisions which have held that tax cannot be levied twice on the same aspect twice, unless expressly stated by the law. It would be pertinent at this juncture to rely on CCE V. Vazir Sultan Tobacco Co Ltd., 1996 (83) ELT 3 (SC). The Supreme Court in the said case was deciding about the levability of Special Excise Duty on goods cleared/ removed after the imposition of Special Excise Duty but manufactured prior to bringing Special Excise Duty on the statute books. The Supreme Court laid down the following propositions in law in the aforesaid case:

- i. Once the levy is not there at the time when the goods are manufactured or produced in India, it cannot be levied at the stage of removal of the said goods. The idea of collection at the stage of removal is devised for the sake of convenience.
- ii. Section 3 (Charging section of CEA, 44) cannot be read as shifting the levy from the stage of manufacture or production of goods to the stage of removal. The levy is and remains upon the manufacture or production alone. Only the collection part of it is shifted to the stage of removal.
- iii. Special Excise Duty came into effect only on and from March 1, 1978 which means that the goods produced prior to that date were not subject to such levy. If that is so, the levy cannot attach nor can it be realised because such goods are removed on or after March 1, 1978

Though the ratio is laid down in the context of Central Excise duty, manufacture and removal, the concepts laid down therein would apply on all fours to the present case also. Applying the ratio of Vazir Sultan Tobacco Case to section 142(11), it can be stated that:

- i. GST came into effect only from 1.7.17, hence transactions on which both VAT and Service Tax was payable prior to 1.7.17 is liable to VAT and Service Tax on material and service portion respectively and cannot be leviable to GST.
- ii. If a transaction is leviable to both VAT and Service Tax prior to 1.7.17, the liability towards material portion gets covered under VAT and the liability toward service portion gets covered under Service Tax law.
- iii. As a natural consequence the material portion of composite transaction would get covered under section 142(11)(a) and service portion would get covered under section 142(11)(b).
- iv. In the same manner as levy cannot be shifted from 'manufacture' to 'removal', merely because excise duty was payable on removal, similarly mere payment of tax both under

VAT and Service Tax on a composite transaction would not shift the liability of the transaction to VAT and Service Tax.

- v. For a transaction to be leviable to VAT/ Service Tax, the taxable event must have occurred or the point of taxation must have been triggered. If points of taxation under VAT and Service Tax is not triggered, it cannot be stated that the transaction is 'leviable' to VAT/ Service Tax, notwithstanding the fact that VAT and Service Tax has been paid on the same voluntarily by the assessee (presumably to claim tax arbitrage during the course of transition into GST).
- vi. Mere payment of both VAT and Service Tax by an assessee, though the taxable event has not occurred/ point of taxation has not been triggered would not make the transaction 'liable' to VAT/ Service Tax.
- vii. Hence, in such a case, where both VAT and Service Tax were not liable, the VAT and Service Tax paid is allowed to be taken as credit and set off against the GST liability under section 142(11)(c) to the extent the supply is made after the appointed date, since GST would get attracted on such a transaction.

This view needs to buttress against an alternative view that GST is leviable on composite transactions to the extent 'supply' is made after the appointed date as per section 142(11)(c), notwithstanding the fact that tax has already been remitted under the erstwhile VAT and Service Tax laws. And that VAT and Service Tax paid on such composite transactions under the erstwhile laws would be available as credit under section 142(11)(c), to the extent VAT and Service Tax has been paid under old laws, which is treated as 'Supply' under GST. An exception has been carved out in section 142(11) wrt composite transactions. While the normal rule under section 142(11)(a)&(b) is that a transaction 'leviable' to VAT/ Service Tax would not be leviable to GST, section 142(11)(c) carves out an exception to the said rule. Section 142(11)(c) states that with respect to composite transactions which are leviable to both VAT and Service Tax, GST would be leviable to the extent 'Supply' is made after the appointed date. Since tax would become leviable both under the erstwhile VAT and Service Tax law on the one hand and GST on the other, VAT and Service Tax paid under the erstwhile laws would be allowed as credit to the extent such VAT and Service Tax paid relates to 'Supply' made after the appointed date. Such an interpretation flows from the text of section 142(11)(c). Support can be found in *Baidyanath Ayurveda Bhawan Pvt Ltd V. Excise Commissioner, 1999 (110) ELT 363 (SC)*, where the Apex Court laid down the following rule of interpretation of statutes:

In a taxing Act one has to look at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used. The Apex Court reiterated this principle of interpretation from *Cape Brandy Syndicate V. Commissioner of Inland Revenue, (1921) 1 KB 64*.

Though beset with formidable legal challenges, though no devoid of fitting reply to those legal challenges (provided in italics):

Double Taxation – A transaction can be leviable either to VAT

and Service Tax law (collectively called as 'erstwhile laws') or GST and not both. If tax paid under erstwhile laws is allowed as credit and made amenable to GST, then it would tantamount to double taxation, once under VAT and Service Tax law and secondly under GST.

- i. The legality or otherwise of double taxation has been dealt with the Honourable Supreme Court in the following cases amongst others.
- ii. The Apex Court in *Jain Brothers V. UOI, (1970) 77 ITR 107* held that:
 1. It is not disputed that there can be double taxation if the legislature has distinctly enacted it.
 2. It is only when there are general words of taxation and they have to be interpreted, they cannot be so interpreted as to tax the subject twice over to the same tax (vide *Channell J. in Stevens v. Durban-Roodepoort Gold Mining Co. Ltd.*).
 3. The Constitution does not contain any prohibition against double taxation even if it be assumed that such a taxation is involved in the case of a firm and its partners after the amendment of section 23(5) by the Act of 1956. Nor is there any other enactment which interdicts such taxation.
 4. It is true that section 3 is the general charging section. Even if section 23(5) provides for the machinery for collection and recovery of the tax, once the legislature has, in clear terms, indicated that the income of the firm can be taxed in accordance with the Finance Act of 1956 as also the income in the hands of the partners, the distinction between a charging and a machinery section is of no consequence.
 5. Both the sections have to be read together and construed harmoniously.
 6. If any double taxation is involved the legislature itself has, in express words, sanctioned it. It is not open to any one thereafter to invoke the general principles that the subject cannot be taxed twice over.
- iii. The Apex Court in *Hind Plastics V. Collector of Customs, 1994 (71) ELT 325 (SC)* held that double taxation may be harsh but it is not illegal.
- iv. The Apex Court in *Premier Tyres Ltd V. CCE, 1987 (28) ELT 58 (SC)* further held that 'there can be no double taxation in the levy of excise duty, but the court may lean in favour of construction which will avoid double taxation'
- v. The Delhi HC in *UOI V. Intercontinental Consultants & Technocrats Pvt Ltd., 2013 (29) STR 9 (Del)* held that 'there can be double taxation but it must be clearly provided for and intended. Double Taxation cannot be enforced by implication'
- vi. Section 142(11)(c) employs the words 'where tax was paid on any supply both under VAT and Finance Act, 1994, tax shall be leviable under this Act'. Hence GST law has specifically stated that there shall be double taxation once under VAT and Service Tax law and secondly under GST law.
- vii. The second portion of section 142(11)(c), repairs the hardship

caused by double taxation by way of granting credit of VAT and Service Tax paid.

- viii. Thus in law, though the impugned transaction is subject to tax twice, in reality the burden of tax is only once since credit is provided for VAT and Service Tax.

Mere grant of credit of VAT and Service Tax paid would not correct the illegality of double taxation.

- i. Double Taxation is not illegal. Courts would lean in favour of construction which will avoid double taxation.
- ii. The words used in section 142(11)(c) is 'tax' paid under VAT and Service Tax law would be allowed as credit to the extent they relate to 'tax' leviable under GST law.
- iii. Once the term 'tax' paid under VAT and Service Tax is used, it denotes levy and imposition under the said laws, if not the amount would not be eligible to be bracketed as 'tax' within the meaning of A.265 r/w A.366(28) of the Constitution of India.
- iv. The construction of section 142(11)(c) would provide sufficient elbow room for the Courts to hold that there is no double taxation in case of section 142(11)(c), since credit is granted of the erstwhile taxes paid.

Another Interpretation

The above interpretation was contrasted with another view that the study group valued so greatly that it made its way as a meritorious alternative for readers to consider.

Sr. no	Registration No of VAT	Service Tax Registration No.	Invoice/ document no.	Invoice/ document date	Tax Paid	VAT paid Taken as SGST Credit or Service Tax paid as Central Tax Credit
1	2	3	4	5	6	7
			Total			

Here, section 142(11)(c) is considered to be a provision that is put into place to ease the hardship of all composite transactions which are liable to both VAT and Service Tax law. The valuation mechanisms under VAT and Service Tax law are not mutually exclusive leading to double taxation in a few cases (software/ right to use) and increased taxation in other cases (110%, 140%, as the case may be in case of construction contracts). Works Contracts are liable to tax on advances under service tax law and VAT law in a few states. Thus VAT would be paid on advances in some states but remain unpaid in some states on advances. To bring in a solution for such diverse law, section 142 (11)(c) has been brought into statute which takes care of states and avoids tax arbitrage during transition into GST.

Transitional Provisions are guidelines which are to be followed to ensure that there is smooth transition from erstwhile laws to GST law. In the changeover to the new GST regime, a lot of discussion goes around with regard to double taxation of composite transaction to the extent supplies are made after the appointed date on which VAT and Service Tax has already been remitted under the erstwhile law. To tackle the same, Form TRAN 1 has

come out with a table for section 142(11)(c), where VAT and Service Tax paid under the erstwhile laws are allowed to be carried forward as credit to the extent 'supply' is made after the appointed date on such composite transactions.

Details of credit availed in terms of section 142 (11 (c))

Table 11 of Trans-1 requires the following details to be furnished

1. Registration number of VAT
2. Registration Number of Service tax
3. Invoice document Number
4. Invoice document date
5. Taxes paid under old regime
6. VAT paid taken as credit to SGST law
7. Service Tax paid taken as credit as CGST law.

The contents as required in Table 11 state that all the above details are mandatory to claim the transitional credit. Therefore it gives an indication that section 142(11)(c) is applicable for composite contracts where both VAT and Service tax are paid under the old regime.

Conclusion:

As evident from the foregoing discussion, the applicability, area of operation of section 142(11)(c) or the lack of it have been well argued in both views. And section 142(11)(c) will be applied by trade in these two and many other ingenious ways. But, the interpretation that tax administration is likely to follow will not be

free from fierce challenge. Armed with time-tested construction laid down by our Courts, judiciary will have occasion to show why these judgements have guided our understanding of law for decades and the reason we celebrate them.

Contributed by Bangalore Study Group



A LOOK AT GST THROUGH THE LENSES OF MSMEs

Introduction:

While big players usually receive utmost attention, it is Micro, Small and Medium Enterprises ("MSME") that make up almost 40% of the gross industrial value added in the Indian economy. Among commercial enterprises, the MSMEs deserve special attention. Though MSMEs are small investment enterprises, but their contribution to the Indian economy is significant. MSMEs are responsible for providing the product and the services that larger companies rely on. Based on the export data maintained by Director General of Commercial Intelligence & Statistics, Ministry of Commerce and the information available about MSME products having significant export, the share of MSMEs in India's total export, for the year 2012-13, 2013-14 and 2014-15, has been estimated as 43.00 per cent, 42.38 per cent and 44.70 per cent respectively. They may also be in the form of export orders from large units or the production of parts and components for use for finished exportable goods. It would surprise many to know that non-traditional products account for more than 95% of the SSI exports. MSMEs contribute for more than 37% of GDP and employment for 805 lakh Indians.

MSME has shown constant growth of around 11% annually till the year 2010-11. The highest growth in recent time was recorded during the year 2011-12 i.e. 18.45%, whereas during the year 2012-13 and 2013-14 growth rate was around 14% and 12%, respectively. But it has jumped to 17% in the year 2014-15.

A significant group of MSME businesses in India are involved in the job work sector, providing outsourced manufacturing services. Job work is a sort of outsourced service, wherein the treatment or processes are undertaken by the job worker on the goods belonging to the principal manufacturer. Thus, under a job work, the principal manufacturer sends inputs or semi-finished goods to a job worker for auxiliary or further processing. Many industries find it difficult to complete the whole process of production or manufacturing activity on their own. So, the industry depends on outside support for many things like testing, various intermediate processes on raw material etc., for completing/intermediating the manufacturing process.

Box 1: Characteristics of MSME as per MSMED Act, 2006

Micro, Small and Medium Enterprises Development (MSMED) Act, 2006, notified on October 2, 2006, deals with the definition

of MSMEs. The MSMED Act, 2006 defines the Micro, Small and Medium Enterprises based on:

1. the investment in plant and machinery for those engaged in manufacturing or production, processing or preservation of goods and
2. the investment in equipment for enterprises engaged in providing or rendering of services.

The guidelines about investment in plant and machinery or equipment as defined in the MSMED Act, 2006 are:

Nature of activity of the Enterprise	Investment in plant and machinery excluding land and building for enterprises engaged in manufacturing or production, processing or preservation of goods	Investment in equipment excluding land and building for enterprises engaged in providing or rendering of services (loans up to Rs. 1 crore)
Micro	Not exceeding Rs.25.00 Lakhs	Not exceeding Rs.10.00 Lakhs
Small	More than Rs.25.00 lakhs but does not exceed Rs.500.00 lakhs	More than Rs.10.00 lakhs but does not exceed Rs.200.00 lakhs
Medium	More than Rs.500.00 lakhs but does not exceed Rs.1000.00 lakhs	More than Rs.200.00 lakhs but does not exceed Rs.500.00 lakhs

Note: The investment in plant and machinery is the original cost excluding land, building and other items specified by the Ministry of Small Scale Industries vide its notification no. S.O. 1722 (E) dated 05.10.2006.

Facts and Figures – MSME

Of the total working enterprises, share of micro, small and medium enterprises were 94.95%, 4.86% and 0.19%, respectively. Data also reveals that 10.49 lakh units (67.10%) were manufacturing enterprises, 2.52 lakh units (16.13%) were repairing and maintenance enterprises and 2.62 lakh units (16.78%) were service enterprises. Proportion of the enterprises operating in rural areas was 45.26%.

Table 1: Distribution of Working Enterprises by Sector in Rural and Urban Areas

Area/Sector (in lacs)	Micro		Small		Medium		Total	
	Number	% age	Number	% age	Number	% age	Number	% age
Rural	6.87	46.26%	0.19	25.00%	0.01	33.33%	7.07	45.20%
Urban	7.98	53.74%	0.57	75.00%	0.02	66.67%	8.57	54.80%
Total	14.85	100.00%	0.76	100.00%	0.03	100.00%	15.64	100.00%
	94.95%		4.86%		0.19%		100.00%	

MSME and GST

Over the last two decades, there has been a swing toward encouraging greater “social entrepreneurship” as a means of poverty alleviation, increasing employment opportunities and empowerment of disadvantaged or under-represented groups, particularly in rural areas. Attentiveness towards the potential which entrepreneurship may offer for promoting social inclusion is growing worldwide. Much of this emphasis placed by the Government is focused on assisting target groups to start up micro enterprises, usually by means of the provision of low cost micro finance. But it need much more. Arguably, micro and small industries are the most likely candidates for leading India’s manufacturing growth in the coming decades. Government fiscal policy, in turn, shapes the institutional environment in which entrepreneurial decisions are made. MSME being an important engine of national growth, it is important to understand provisions of GST that impacts MSMEs.

GST Salient Features and Applicability

We all know, GST is destination-based consumption tax levied at multiple stages of production and distribution of goods and services. It has subsumed around 17 indirect taxes such as state and local tax, entertainment tax (unless levied by local bodies), excise duty, surcharges, octroi and others. The tax is applicable on transaction value which includes packaging, commission and other expenses incurred during sales. It allows the taxable person to avail full input tax credit on eligible inputs, input services and capital goods procured (subject to negative list of items prescribed in Section 17(5) of the CGST Act, 2017), which can be later on set off against the GST output liability.

GST is envisaged as a tax reform which will bring uniform taxation across the country and eliminate time consuming border tax procedures & toll check posts. The reform gives the same footing to the big enterprises and MSMEs, along with removing the tax differentiation on stock transfers.

Before analysing the impact of GST on Small & Medium Enterprises, we should understand how GST is going to widen the taxpayer base.

Under Excise law, the benefit of normal SSI exemption (exemption based on the value of clearance) was available if the value of manufactured goods (on own or through job worker) cleared domestically does not cross threshold limit of Rs. 1.5 crores. While in the case of Service Tax, exemption limit was set at an aggregate turnover of Rs. 10 lakh in preceding financial year. SSI exemption limit under VAT ranges from Rs. 5 Lakhs to Rs. 20 Lakhs, from one state to another.

However, with the merging of all State and Central level taxes into the ambit of GST, any supplier of goods or services with an aggregate turnover of Rs. 20 Lakhs [Rs. 10Lakhs for North-eastern and hilly States (special category states)] will have to take registration under GST and comply with its provisions & procedures.

For this purpose, the definition of ‘aggregate turnover’ has been provided under section 2(6) of the CGST Act, 2017 and respective States’ GST Act, 2017.

A taxable person having registration in state other than special category states (except Uttarakhand and J&K) can also opt for composition scheme if his aggregate turnover did not exceed Rs. 1 Crore in preceding financial year. In case of taxable person having the registration in special category states i.e. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh, the aggregate turnover limit is Rs. 75 lakhs.

Impact of MSMEs under GST

Earlier, vendors had to deal with cascading taxes levied on goods at each level throughout the whole trade process. However, under GST, subsumation of multiple taxes would create a seamless market across the country. Apart from that, the elimination of distinction between goods and services will also help in reducing instances of tax evasion.

While there are several demerits also that come with this new taxation structure, its impact on the Indian MSME sector is expected to vary across different segments.

Since, under GST regime, limit of threshold exemption has been reduced to Rs. 10 lakhs/20 lakhs from Rs. 1.5 crore, it will adversely affect the manufacturers. In the case of service providers, it will be slightly beneficial. As a result, a large number of MSMEs and start-ups will be mandated to come under the tax net and will have to pay a large chunk of their earnings towards tax. Moreover, certain categories of businesses will compulsorily have to register under GST irrespective of turnover levels.

Section 22 (1) of CGST Act 2017, states that, “Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees.”

Besides, Section 24 prescribes that, notwithstanding anything contained in sub-section (1) of section 22 (i.e. irrespective of threshold limits), the [certain] categories of persons shall be compulsorily required to be registered under GST Act, which, inter alia, includes persons making any inter-State taxable supply. However, the Central Government vide Notification No. 10/2017-Integrated Tax dated October 13, 2017, has prescribed that persons making inter-State supplies of taxable services and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of Rs. 20 Lakhs/ Rs. 10 Lakhs in a financial year as the category of persons exempted from obtaining registration under the said Act.

This means many MSMEs that hitherto did not have to worry about indirect tax compliance before 1st of July, 2017 will have to rework their way of doing business.

Digital transaction trails created by dual authentication of invoices under GST will strengthen tax compliance. All the compliance procedures under GST — Registration, Payments, Refunds and Returns are now to be carried out through online portals only and thus MSMEs need not worry about interacting with department officers for carrying out these compliances, which were considered as a headache in the earlier tax regime but at the same time may

increase their compliance costs.

Additionally, a lower tax burden under GST will reduce the cost of raw materials and logistics.

For the services sector, though, the tax burden will increase. Hence, organised players with the ability to hold their price-lines, or pass on any increase in cost to customers, will be able to maintain or improve profit margins.

Composition Levy

Composition levy has been in vogue in indirect taxes to address the compliance issues vis-a-vis revenue in case of MSMEs particularly small job workers and their specific business units having complexity in the determination of valuation of taxable amount. GST requires considerable compliance cost due to detailed accounting and information technology (IT) work involved. Such small taxable persons do not have sufficient knowledge and expertise to comply with requirements relating to accounts and IT. Hence, for them, a composition scheme has been provided, vide section 10 of the CGST Act, 2017.

As per Section 10 (1) of the CGST Act, notwithstanding anything to the contrary contained in GST Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding, —

- a) one percent of the turnover in State or turnover in union territory in case of a manufacturer,
- b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause of paragraph 6 of Schedule II, and
- c) half percent of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

Notification No. 46/2017 of Central Tax allowed traders, manufacturers and restaurants with turnover of up to Rs. 1 Crore to avail of the composition scheme, against Rs. 75 lakh earlier. Traders who have below Rs. 1 Crore turnover will have to pay 1 per cent tax, manufacturers will have to pay 2 per cent while restaurant businesses will have to pay 5 per cent if they opt to go for the Composition Scheme under GST. Also provided that aggregate turnover in the preceding financial year shall be Rs. 75 lakh rupees in the case of an eligible registered person, registered under section 25 of the said Act, in any North-eastern and hilly States.

However, under this scheme, no input tax credit will be made available. Ice cream, pan masala and tobacco makers cannot opt for the GST composition scheme.

Box 2: GST Council Recommendations (22nd meeting) - GST

Composition Scheme and Relief for Small and Medium Enterprises

Notification issued on 13th October 2017 to give effect the various decisions taken by the GST Council in its 22nd Meeting held on 6th October 2017

1. The composition scheme shall be made available to taxpayers having annual aggregate turnover of up to Rs. 1 crore as compared to the current turnover threshold of Rs. 75 lacs. This threshold of turnover for special category States, except Jammu & Kashmir and Uttarakhand, shall be increased to Rs. 75 lacs from Rs. 50 lacs. The turnover threshold for Jammu & Kashmir and Uttarakhand shall be Rs. 1 crore. The facility of availing composition under the increased threshold shall be available to both migrated and new taxpayers up to 31.03.2018.
2. Presently, anyone making inter-state taxable supplies, except inter-State job worker, is compulsorily required to register, irrespective of turnover. It has now been decided to exempt those service providers whose annual aggregate turnover is less than Rs. 20 lacs (Rs. 10 lacs in special category states except J & K) from obtaining registration even if they are making inter-State taxable supplies of services. This measure is expected to significantly reduce the compliance cost of small service providers.
3. The reverse charge mechanism under sub-section (4) of section 9 of the CGST Act, 2017 and under sub-section (4) of section 5 of the IGST Act, 2017 has been suspended till 31.03.2018 and will be reviewed by a committee of experts. This will benefit small businesses and substantially reduce compliance costs.
4. The requirement to pay GST on advances received is also proving to be burdensome for small dealers and manufacturers. In order to mitigate their inconvenience on this account, it has been decided that taxpayers having annual aggregate turnover up to Rs. 1.5 crore in the preceding FY or whose aggregate turnover in the year in which such person has obtained registration is likely to be less than Rs. 1.5 Crore and who did not opt for the composition levy under Section 10 shall not be required to pay GST at the time of receipt of advances on account of supply of goods. The GST on such supplies shall be payable only when the supply of goods is made.
5. It has come to light that Goods Transport Agencies (GTAs) are not willing to provide services to unregistered persons. In order to remove the hardship being faced by small unregistered businesses on this account, the services provided by a GTA to an unregistered person shall be exempted from GST.

Box 3: GST Council Recommendations (23rd meeting) - GST Composition Scheme and Relief for Small and Medium Enterprises

Notifications dated 14th and 15th November, 2017, giving effect to GST Council's recommendation in its 23rd meeting held on 10th November, 2017:

1. All taxpayers would file monthly return in Form GSTR-3B along with payment of taxes by 20th of the succeeding month till March, 2018.

2. For filing of details in Form GSTR-1 till March 2018, taxpayers would be divided into two categories – those with annual aggregate turnover up to Rs. 1.5 Crore need to file GSTR-1 on quarterly basis as per prescribed frequency and those with annual aggregate turnover more than Rs. 1.5 Crore need to file GSTR-1 on monthly basis as per prescribed frequency.
3. Time period for filing GSTR-2 and GSTR-3 for the months of July, 2017 to March, 2018 would be worked out by a Committee of Officers.
4. For subsequent months, i.e. October 2017 onwards, the amount of late fees payable by a taxpayer whose tax liability for that month was 'NIL' will be Rs. 20/- per day (Rs. 10/- per day each under CGST & SGST Acts) and for all other taxpayers, Rs. 50/- per day (Rs. 25/- per day each under CGST & SGST Acts) instead of Rs. 200/- per day (Rs. 100/- per day each under CGST & SGST Acts)
5. As a further measure towards taxpayer facilitation, it has been decided to exempt such suppliers providing services through an e-commerce platform from obtaining compulsory registration provided their aggregate turnover does not exceed Rs. 20 lakhs/ Rs. 10 Lakhs.

GST Council Recommendations as regards composition scheme in its 23rd meeting held on 10th November, 2017:

1. Uniform rate of tax @ 1% under composition scheme for manufacturers and traders (Tax to be paid on Taxable turnover excluding exempt supply of goods). No change for composition scheme for restaurant.
2. Composition Dealers will be allowed to make Supply of services upto Rs. 5 Lakhs per annum within overall limit of composition dealer.
3. Annual turnover eligibility for composition scheme will be increased to Rs. 2 Crore from the present limit of Rs. 1 Crore under the law. Thereafter, eligibility for composition will be increased to Rs. 1.5 Crore per annum. This change recommended by the GST Council will be implemented only after the necessary amendment of the CGST Act and SGST Acts.

Input Tax Credit

As we know Input Tax Credit (ITC) is the core concept of GST as it is destination based taxation. One of the positive features of GST is that it helps to avoid the undesirable cost cascading effect (i.e. tax on tax) that existed previously. Now, in the case of GST, there is the mechanism of ITC which helps to eliminate the cost cascading effect of the pre-GST tax regime. However, the cascading effect will still be there to the certain extent under GST Regime as ITC on goods/services procured specified under Section 17(5) of the CGST Act, 2017, will not be available to the registered person.

As per Section 16 (1) of the CGST Act, 2017, 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.

Section 2(62) of the CGST Act defines 'input tax' does not include the tax paid under the composition levy. While where any registered taxable person who opted to pay tax under section 10 of CGST Act [i.e. under composition scheme] shall not be entitled to take credit of input tax.

With the introduction of input tax credit across the supply chain (from the manufacturing stage till it reaches the consumer) and across state borders, GST will make the transition easy and seamless for the companies and businesses when it comes to claiming of input tax credit (ITC). Moreover, this concept of "furtherance of business" will reduce cost of operation, and directly increase the net margins of business, thereby, lead to reduction of working capital requirement. But enforcing input-tax credit can hurt the MSMEs and the economy.

However, under GST, input tax credit will be dependent on your supplier's compliance i.e. MSME's supplier should file the return declaring the outward supplies along with the tax payment. If their supplier does not comply, it will cause a major dent to their cash outflow. For some reason, if their supplier fails to furnish the valid return, the input tax credit claimed by them will be reversed and they will be asked to discharge the tax liability, arising due to denial of ITC, along with interest. Unlike industrial giants, MSMEs are not able to influence their suppliers to comply with GST provisions for claiming ITC (Though filing of GSTR-2 and concept of matching ITC is suspended till March, 2018 but still the corresponding provisions need to be adhered for filing of returns in future).

Job Work

Jobwork sector constitutes a significant industry in Indian economy. The GST Act makes special provisions regarding removal of goods for job-work and receiving back the goods after processing from the job-worker without the payment of GST. The benefit of these provisions shall be available both to the principal and the job worker. The job worker is not required to obtain registration unless his aggregate turnover exceeds the threshold limit of 20 lakhs/10 lakhs. Moreover, only value of goods or services used by the job worker for carrying out the job work will be included in the turnover of job worker. Further only principal is required to maintain proper accounts related to job work.

Section 2(68) of the CGST Act, 2017 defines job work as 'any treatment or process undertaken by a person on goods belonging to another registered person'. The one who does the said job would be termed as 'job worker'. The ownership of the goods does not transfer to the job-worker but it rests with the principal. The job worker is required to carry out the process specified by the principal on the goods.

As per Explanation (ii) to Section 22 of the CGST Act, 2017, i.e. Registration – the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker. As per the explanation provided in Section 143 of the CGST

Act, 2017, where certain process is carried out on the input before removal of the same to the job-worker, such product after carrying out the process is to be referred as the intermediate product. Such intermediate product can also be removed without the payment of tax. Therefore, both input and intermediate product can be cleared without payment of duty to job-worker.

For the benefit of MSMEs in the 20th GST Council meeting it is decided to cut the tax rate on services rendered by third parties in respect of the textiles and textile products from 18 per cent to 5 per cent. Earlier, the GST Council had lowered the rates on the job work in the jewellery sector while keeping the rate unchanged at 18 per cent on readymade garments.

The GST has removed many of the confusions and litigations existed in earlier tax laws relating to job work. The processes and systems for sending the inputs and capital goods to job worker for further processing has been made simpler and effective. The job worker has been exempted from registration, returns and maintenance of records subject to conditions. This is expected to provide a great relief to MSMEs.

Wrestle with GST technology based strict compliance

World over cumbersome tax system is one of the main reasons that MSMEs operate in the informal economy. Reforms to encourage private sector development, to sustain innovation and growth need to address and eliminate obstacles for MSMEs' formalization. MSMEs' understanding of GST provisions and its impact on their business is still at a nascent stage. It entails monthly computation of every Business to Business(B2B) transaction with every party that a single enterprise does business with. For MSMEs, this means capturing every invoice for it to be reconciled against how the corresponding party (supplier or buyer) recorded that same transaction.

The concept of matching of ITC may not be new to the taxpayers, especially for the dealers who are currently operating under the Value Added Tax (VAT) regime. However, the same is alien or relatively new to non-VAT taxpayers and hence there is a need to understand the concepts of ITC matching, ITC reversals and re-claim of ITC in GST regime. The prototypical requirement for carrying out matching of ITC is that the supplier must have filed his valid returns for the corresponding or preceding tax period and/or the GST has been paid by the supplier or IGST has been paid by the recipient in case of import of goods/ services. Failure to file valid return by the Supplier (or failure to pay appropriate IGST by the recipient in case of import of goods) may lead to denial of ITC in the hands of the recipient.

Various provisions of GST are still ambiguous. Categorisation of goods and services in various cases is still unclear. Provisions for anti-profiteering, as well as the now-deferred e-way bill, which tracks consignments across states, are unclear. The new tax regime requires transporters to generate e-way bills on the GST portals which include incurring substantial costs to install radio frequency identification devices (RFIDs). Currently there is no clarity on who will bear the bill for the infrastructure. To sum up, businesses will need to file multiple returns, a minimum of 37 in most cases, and this can increase multifold in accordance with business models. Clients will need to ensure timely compliance by registered suppliers to

ensure there is no loss of input credit. This will necessitate correct data and reports to fill accurate GST returns. Mammoth challenge in front of MSMEs is with GST rates and their complexities only recently becoming a part of our policy framework, skilled staff with updated GST subject knowledge and training is not easily available. Making a relaxation for small businesses, rules allow those with an annual turnover between Rs. 20 lakh and Rs. 1 Crore lakh (or up to Rs. 75lakh for hilly States) [to be further increased as per recommendation of the GST Council in its 23rd meeting] to opt for the composition scheme and file returns every quarter, the bigger challenges seems to be automating their systems and installing at least one computer for making and uploading invoices. For them the problem is bigger in majority of towns and villages where connectivity and the use of computers considered a big challenge. Challenge is also to build technical literacy among MSMEs to make optimal use of the technology-enabled platform for GST considering the fact that 45.20% of MSME are based in rural India.

But the objective of filing returns is also to ensure that more firms come into the formal economy and pay taxes. GSPs, like Taxmann, are working with small businesses to make them aware of compliance under the new tax regime and automating their invoices.

Way forward

It is too early to judge for sure on the outcome of the GST regime will be for MSMEs. But it is for sure that like any other statute, GST is also a mix of contingent opportunities and challenges for MSMEs. Acceptance of GST by MSMEs will not be an easy task. Chartered Accountants will need to bone up on GST. Government should also adopt concrete measures for MSMEs to effectuate implementation of GST in business processes effectively and efficiently. With more than 92% of the enterprises are in the unregistered sector and these account for more than 81% of the employment, it is pertinent to note that GST will encourage MSMEs to register themselves and take them to formal economy.

To bring about financial behavioural change, it is advisable that equipping the MSMEs members through practical interventions so that they build up confidence and improve their financial capability like financial planning, budgeting, cash management principles, book keeping and accounting, entrepreneurial skills enhancement, financial education, motivation, etc.

Leveraging services of GSPs, ASPs, TRPs, Chartered Accountants etc. to build financial capabilities is important. They should create awareness and knowledge among the MSMEs not only about GST but also concerning to various financial practices. MSMEs should be motivated to maintain GST discipline and financial soundness so that they do not default in compliances.

Formalisation and digitalisation is an important way forward for Indian MSMEs.



ICAI'S CONTRIBUTION FOR SMOOTH IMPLEMENTATION OF GST AS PARTNER IN NATION BUILDING

1. Suggestion for enabling GST Implementation

The Committee submitted 217 suggestions relating to policy, law and procedural issues of GST to the Government on 8th November, 2017.

2. Presentation before Ministry of Commerce & Industry

The Department of Industrial Policy and Promotion, Ministry of Commerce & Industry had invited ICAI to present suggestions on GST with a view to facilitate ease of doing business in India. Accordingly, CA. Atul Gupta, Central Council Member attended a meeting on 13th November, 2017 at Vigyan Bhawan, New Delhi, which was chaired by Shri Ravinder, Joint Secretary, Ministry of Commerce and Industry and presented 10 top suggestions for ease of doing business.

In addition, a copy of all the suggestions submitted by ICAI to the Government on 8th November, 2017 was also submitted to them for consideration.

3. Representation seeking clarification on issue pertaining to Re-insurance exemption

The Committee submitted a representation to the Government on 27th November, 2017 seeking clarification regarding exemption to Re-insurance.

4. E-Guide on CST- a new publication

The Committee has come out with an E-Guide on CST. It contains large no. of cases which would be a good reference material in hand of the members for referring in litigation matter.

5. Train the trainer programme on GST

A Train the trainer programme on GST was organised from 7th to 10th November, 2017 at Mumbai which was attended by 52 members. All these members had earlier been screened in Faculty Identification Programme organised in five different cities.

6. Training Programme for Officer of Airforce

In addition to the earlier organized 3 training programmes, the Committee has scheduled further three (3) training programme for Officers of Airforce as follows:

Sl. No.	Date	City
1.	14th& 15th Dec, 2017	Nagpur
2.	19th& 20th Dec, 2017	Trivandrum
3.	21st& 22nd Dec, 2017	Kanpur

7. Initiatives for VAT in Dubai

VAT is expected to be implemented in UAE from 1st January, 2018. In this regard, Committee has taken following further

initiatives to support the members working there:

A. Certificate Course on UAE VAT

First Batch of Certificate Course on UAE VAT was launched on 24th November, 2017.

B. Train the Trainer Programme on UAE VAT

A Train the Trainer Programme on UAE VAT was organised at Dubai on 24th, 25th Nov and 8th Dec, 2017. Further, another programme was organised at Mumbai from 28th to 30th November, 2017. The participants of both these Programme were earlier identified in Faculty Identification Programme organised recently.

C. BGM on UAE VAT - Revision

Committee had released a comprehensive Background Material on UAE VAT. Since the VAT Regulation has recently been released, the Committee is revising this BGM.

8. Results of Assessment Test of Certificate Course on GST

1st Assessment Test of Certificate Course on GST was held on 13th August, 2017 at 75 Centres across India at the same time, which was applied by approx. 3800 members.

The results of 47 centres was declared on 6th Nov, 2017 wherein 1608 members were declared successful. The results of remaining 28 centres have been withhold and would be declared after investigation.

9. E-Learning on GST:

Committee launched E-learning on GST through recorded video sessions covering almost the entire topics of GST on 7th July, 2017. During the reporting period, 83 stakeholders have subscribed to this e-learning, making the total no. of subscriber to 1965 and total collection from this venture is Rs. 17.64 lacs.

10. Committee's immediate future initiatives:

The Committee is working to bring out/organise:

- Handbook on GST for Trader
- Guidance Note on Accounting Treatment of Goods and Services Tax
- Booklet on Exemptions under GST
- Booklet on Transitional provisions
- Short video on GST
- Guidance Note on Audit under GST

11. Workshops, Seminars and Conferences:

More than 2600 workshops, seminars and conferences on GST have been organised across the country since January 2017 wherein more than 2 lakh members have participated.



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Fee Details

CATEGORY	FEES	TIME LINE FOR REGISTRANTS
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ACA/FCA/Non Member/Foreign Participants	₹ 4,500/- +18%GST = 5,310/-	Post 20 th November, 2017

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For Sponsorship, please contact. Dr. Surinder Pal, Joint Secretary, ICAI, Email: spal@icai.in, Mobile: +91 93507 99931

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