PRE-BUDGET MEMORANDUM 2022

Goods & Services Tax

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

NEW DELHI

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I. EXECUTIVE SUMMARY

S. No.	Topic	Suggestion
A. Suggestions on substantive law		
1.	Audit by Chartered Accountants under GST	The amendment made in sections 35(5) and 44 of the CGST Act, 2017 vide the Finance Act, 2021 be withdrawn and requirement of getting annual accounts audited and reconciliation statement certified by a Chartered Accountant be reinstated in GST law.
2.	Payment of mandatory pre-deposit for filing appeal by utilizing input tax credit	Sections 41 and 49 of the CGST Act, 2017 be amended suitably to clarify that payment from the electronic ledger can be made for payment of mandatory pre-deposit under section 107(6) and section 112(8). Alternatively, a circular be issued to clarify that input tax credit can be utilised for payment of pre-deposit.
3.	Interest on reversal of input tax credit due to non-payment to the supplier within 180 days	Interest be payable on the credit which was availed and utilised. Mere availment of credit should not attract interest as there is no revenue loss to the Government. This would be in line with recommendation made at the 45th GST Council meeting that interest demand ought to be calculated only upon utilization of ineligible input tax credit in GST returns and not on mere availment of input tax credit.
4.	Reversal of input tax credit on capital goods in case of taxable as well as exempt supplies	To simplify the reversal mechanism, an option be provided to reverse the estimated credit pertaining to exempt supplies in the first month itself. At the end of 60 months, registered person be required to submit a return for final reversal computation along

		with an option to reverse or reclaim the excess or short credit. Alternatively, input tax credit be reversed without any interest liability.
5.	Cancellation of registration of suppliers registered under QRMP Scheme or under composition levy under section 29(2) of the CGST Act, 2017	Clause (b) and clause (c) of section 29(2) of the CGST Act, 2017 be amended suitably considering that now Form GSTR-3B can also be filed quarterly under QRMP scheme and Form GSTR-4 is filed annually by the supplier registered under composition scheme.
6.	Definition of composite supply under section 2(30) and its taxability under section 8(a) of the CGST Act, 2017	Amendment be made to remove the disparity between the provisions of section 2(30) and section 8(a) of the CGST Act, 2017.
7.	Clarity on the nature of supply of vouchers	The term "voucher" be defined as under: "'voucher' means (a) any instrument or entitlement received from an arrangement with one person requiring another person to accept the same in redemption against payment owed in respect of a taxable supply, or (b) any instrument or entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty Explanation 1: Voucher shall not include a system of payment recognized under the Payment and Settlement Systems Act, 2007 or any other law for the time being in force. Explanation 2: Voucher shall not include actionable claims.
8.	Place of supply of services provided by way of admission to a cultural, artistic, sporting,	A suitable explanation on the line as provided in section 12(7) of the IGST Act, 2017 be provided in section 12(6) of the IGST

	scientific, educational, or entertainment event or amusement park etc.	Act, 2017 as well for cases where services are provided at multiple locations under a single contract. The related IGST rules may be amended to provide that value of the service may be apportioned on the basis of the duration of the event held at each place.
9.	Refund computation under inverted duty structure	The formula may have an underlying assumption that the input tax credit accumulated on account of input services shall be first used for payment of tax payable on inverted goods and services, and only the remaining tax, is paid out of accumulated input tax credit on account of input. Accordingly, the formula under rule 89(5) of the CGST Act, 2017 be modified as under: Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net input tax credit ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods after setting off the input tax credit on input services.
10.	Insertion of overriding clause in section 23 of the CGST Act, 2017	Section 23 of the CGST Act, 2017 may commence with a non-obstante clause viz., "Notwithstanding anything contained in sections 22 and 24" to bring clarity on the overriding effect of section 23 and also to enable harmonious interpretation between these three vital provisions deciding the requirement of registration under GST law.
11.	Reversal of input tax credit in case of MEIS/SEIS scrips	A circular be issued to clarify the intent of the law that input tax credit on inputs and input services used in the export of goods and services against which the scrips have been issued, is not required to be reversed under rule 42 of the CGST Rules, 2017. Only the input tax credit availed in the tax period, which is attributable to the sale of

		scrip be reversed in the tax period in which such sale is made.
12.	Supply of information technology software	Clause (d) and clause (f) of paragraph 5 of Schedule II to the CGST Act, 2017 be amended in the following manner to provide clarity: (d) development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software excluding sale of information technology software as such ……. (f) transfer of the right to use any goods other than information technology software for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
13.	*Notification No. 2/2019 CT (R)* vis a vis section 10(2A) of the CGST Act, 2017	Either *Notification No. 2/2019 CT (R)* be withdrawn, or clarification be issued that section 10(2A) of the CGST Act, 2017 will not be operational until *Notification No. 2/2019 CT (R)* remains in force.
14.	Provisional Assessment – security or surety to be furnished with the bond	Requirement of executing surety or security in the form of bank guarantee with prescribed bond for provisional payment of tax be done away with.
15.	GST on ocean freight under reverse charge be dispensed off	The levy of IGST on ocean freight for importing goods in case of CIF contracts be dispensed with to remove the double taxation on such freight.
16.	Transfer of immovable property by way of lease	The exemption under *Notification No. 12/2017-CT(R) dated 28.06.2017* be extended to all transfers of immovable property through long-term leases (i.e., more than 30 years) whether or not to an industrial unit in

		the cases where upfront lump-sum consideration is paid.
17.	Registration in case of transfer	The words "giving effect to such order of the High Court or Tribunal" appearing in section 22(4) of the CGST Act, 2017 be omitted since in several situations there are delays in issuing the certificate of incorporation by Registrar of Companies.
18.	Refund to foreigners while leaving India	Having a provision for refund of taxes to foreign tourists will definitely act as a motivation for international travellers. In case the goods are purchased in India and taken by the tourist outside India, it should be seen as export and necessary refund may be made available.
19.	Adjustment of tax paid due to incorrect determination of nature of supply	In case of wrong payment of tax on account of incorrect determination of nature of supply or place of supply, an option to subsequently change the nature of tax or the place of supply be provided in the law. This would help in managing the working capital of the taxpayers. From the taxpayers' perspective, it is a double pay-out as claiming refund is a long-drawn process. Such an option will not be prejudicial to the revenue and would improve the ease of doing business.
20.	Eligibility of input tax credit on construction of immovable property	Credit of goods/services acquired in the construction of immovable property be allowed without any restrictions to all such businesses, in one go or in staggered manner.
21.	Formal process of special audit under section 66 of the CGST Act, 2017	A uniform audit manual containing detailed procedure for special audit be introduced, which should be adopted and implemented by Central and State Officers. *Circular No. 821/18/2005 dated 7 Nov 2005* be updated and

		fees to special auditor be revised commensurate with current times.
22.	Penalty provisions	Instructions providing clear guidelines for levying penalty be issued as it would help both the taxpayers and the tax authorities.
B. Suggestions on rate notification for services – *Notification No. 11/2017 CT (R) dated 28.06.2017*		
23.	Classification of permanent transfer of intellectual property right in respect of goods/service as supply of goods	*Notification No. 11/2017 CT(R)* be amended to remove the words "or permanent" in Sl. No. 17. Similarly, *Notification No. 13/2017 CT(R)* be amended to insert the word "temporary" before the word "transfer" in Sl. Nos. 9 & 9A. In addition, a circular be issued to clarify that permanent transfer of IPR amounts to supply of goods, as para 5(c) of Schedule II clearly provides that only temporary transfer or permitting the use or enjoyment of any intellectual property right is treated as supply of service.
24.	Construction service HSN 9954 entry 3 (i) to (if)	A circular be issued to clarify as to whether 'plot development' is taxable or not.
25.	Confusion due to usage of words 'renting or leasing' in duplicate HSNs	In entry nos. 17(viia) and 17(viii) of HSN 9973 a specific explanation be added that this entry shall not include any of the supplies classifiable under 9964, 9965 and 9966.
26.	Overlapping of entries 23(i) and 23(iii) for 'travel agents' in HSN 9985	A circular be issued to clarify as to which of the specific entries under HSN 9985 ought to be followed by travel agents or tour operators.
27.	Overlapping of job work and manufacture in HSN 9988 and 9989	The word 'manufacturing' be deleted from: • Column (2) of entry 26; • Entry 26(iv); and • Entry 27(ii) since the activity not amounting to manufacture will still be a treatment or

		process on goods belonging to others and deemed to be supply of service as per Entry No. 3 of Schedule II to the CGST Act and would be squarely covered under *Notification No. 11/2017-CT(R).*
C. Suggestions on exemption notification for services – *Notification No. 12/2017 CT (R) dated 28.06.2017*		
28.	Entry 1 in respect of 'charitable activities'	An explanation be added to entry 1 as under: "Explanation: Exemption will be available where consideration for such charitable activities is received from participating donors whether in India or outside India".
29.	Entry 9C in respect of 'government grants'	A condition be added in entry 9C that the exemption shall be available only if the result of research/activity undertaken by the Government entity vests with the Central Government, State Government, Union territory, local authority giving the grant.
30.	Entry 22 in respect of 'hiring of means of transportation of goods by GTA'	Column (2) of entry 22 may be amended to include HSN 9971 apart from HSN 9973 and 9966.
31.	Entry 47 in respect of 'registration required under any law'	Entry 47(a) be suitably amended to provide that exemption shall be available on all kinds of statutorily imposed fee or charges to secure, maintain and comply with the conditions relating to registration or such other compliance under any law for the time being in force.
D. Suggestions on procedural law		
32.	E-way bill portal – Date range	For facilitating reconciliation of Form GSTR-1 and Form GSTR-3B and to ascertain accuracy of purchases / supply made, e-way bill summary for the full year be generated similar to Form GSTR-2A.

33.	Modifications in Form GSTR 3B	The Form GSTR-3B be amended to include the following: a) Provision for reporting negative data in Form GSTR 3B. b) Provision for reporting the details of the previous period to which the changes made in current Form GSTR 3B pertain to. c) Provision for reporting the month to which the input tax credit availed in current Form GSTR 3B pertains to.
34.	Cancellation of e-invoice and amendment therein	The time period for cancellation of e-invoice be extended to at least up to 72 hours. Further, amendment in e-invoicing be allowed for at least up to 72 hours.
35.	Size of documents to be uploaded while applying for registration	The size limit of the uploaded files be increased so as to maintain the quality and readability of the documents uploaded in GST online portal.
36.	Risky exporter under customs and GST	• The SOP should be amended to make it mandatory to clearly inform the reasons for declaring an exporter as "risky" because this tag has several consequences for the exporter. • After categorization as risky exporter, the export consignments/shipments be subject to 100% examination at the customs port maximum for 3 consignments instead of such a long period. • Clear direction to complete the proceedings within the time limit should be provided to the field formations upon receiving the relevant documents.

37.	Selection of Commissionerate code under State and central while applying registration.	The appropriate Commissionerate code be auto selected by the system on the basis of the area PIN code entered by applicant.
E. Other Suggestions		
38.	Regular updation of the Acts/Notifications/Circulars etc.	The CBIC may periodically issue/webhost the updated versions of the following documents: 1. Latest updated bare act with tracking of amendments – CBIC has issued one such dated 31st August, 2021. However, such a document should be issued as soon as possible as and when the Acts get amended. 2. Latest updated GST Rules – While CBIC has been issuing such updated Rules, the frequency can be increased to keep the compilation most recent. 3. Consolidated Updated rate notifications – While CBIC has issued consolidated rate notifications, the frequency is not adequate enough considering the frequency of changes in these notifications. It is highly applicable for the following major rate notifications: a) *01/2017-Central Tax (Rate), dt. 28-06-2017* – Schedule of rates for supply of goods b) *02/2017-Central Tax (Rate), dt. 28-06-2017* – Exemption on supply of goods c) *11/2017-Central Tax (Rate), dt. 28-06-2017* – Schedule of rates for supply of services d) *12/2017-Central Tax (Rate), dt. 28-06-2017* – Exemption on supply of services All the circulars issued so far may be categorized according to the topics and

		multiple master circulars may be issued. The exercise would be similar to how master *Circular No. 125/44/2019 – GST dated 18th Nov 2019* has been issued for refunds under GST. However, the key point here is to keep updating such master circulars at regular intervals. Currently, one has to go through all the circulars issued subsequent to such master circular, which defeats the very purpose of issuing such master circulars. Hence, the two critical aspects to be taken care of while issuing master circulars are: a) Ensuring the completeness of consolidating ALL the circulars issued at the time of issuance of master circular, so that one may have to go through ONLY master circulars without any need to go through the past circulars for any clarification. b) Keeping such master circulars updated as frequently as clarifications are issued, so that it serves the purpose of being master circulars.
39.	Technical support from GST Help Desk	Technical Support Team should be given a deadline to solve the glitches and till the time the issue is not resolved, the supplier should be given some alternate remedy so that his business does not get affected.

II. SUGGESTIONS IN DETAIL

A. Suggestions on substantive law

1. Audit by Chartered Accountants under GST

Section 35(5) and section 44 of the CGST Act, 2017 have been amended vide the Finance Act, 2021 to remove the mandatory requirement of getting annual accounts audited and reconciliation statement certified by a Chartered Accountant.

GST Audit by a Chartered Accountant ensures maker checker concept thereby detecting inconsistencies, lapses, errors and ambiguities, if any, in complying with the provisions of GST law. Thus, audit helps in plugging revenue leakages and ensures that the Government gets its dues well within time. As auditors, Chartered Accountants use their competencies to ensure that a taxpayer claims legitimate input tax credit, reports all taxable supplies made by him with correct value, determines correct nature of tax, applies the appropriate rate of tax and timely discharges his tax liabilities.

Further, the Government also benefits from audit in as much as it gets the structured data from reconciliation statement prepared and certified by Chartered Accountants. A reconciliation statement certified by a Chartered Accountant helps the officers in completing the departmental scrutiny and audit within the prescribed time limit.

It may be noted that the income-tax law also mandates audit by Chartered Accountant beyond a specified threshold turnover limit. The success of tax audit (Form 3CD) by a Chartered Accountant under the income-tax law, which is in addition to the statutory audit prescribed under the Companies Act, especially needs a mention here as it has been facilitating the Department in selecting limited scrutiny cases, processing cases under section 143(3) and plugging revenue leakages.

The consequences from dispensing with the certification of reconciliation statement by a Chartered Accountant will be prohibitive and probably result in large-scale disruption of compliance. The lapses discovered from such exercise will result in notices demanding tax, interest and penalties. Further, the taxpayer would be burdened with legal expenses as there would be increase in litigation due to errors that would be left unresolved until departmental audit is conducted.

While accounting standards are mandatory for some taxpayers, IndAS are applicable for other taxpayers and for non-corporates both these standards are

not applicable. Further, income-tax law requires taxpayers to compute income chargeable to tax by following another set of standards viz., ICDS. Chartered Accountants are well conversant with most of the essential standards and thus, GST audit of all taxpayers by Chartered Accountants helps ensure compliance. Some of the examples where Chartered Accountant makes use of his professional expertise are in ensuring (i) matching concept so that all revenues are reported only in the year in which costs are reported (ii) reporting of accrued cost so that the same are not deferred to years of poor performance or arbitrarily capitalized (iii) benefits-in-kind given to customers and employees are identified and reported as outward supplies or as perquisites for correct tax compliance (iv) reporting of accrued income, whether billed or unbilled for purposes of time of supply.

Revenue is recognised differently in accounting and GST law. Whereas financial statements are prepared on 'accrual system', GST follows a vastly different 'time of supply' based system of tax payment. For this reason, it is essential that the reconciliation statement be certified by a Chartered Accountant who is proficient in both accounting aspects as well as GST law.

Suggestion

The amendment made in sections 35(5) and 44 of the CGST Act, 2017 vide the Finance Act, 2021 be withdrawn and requirement of getting annual accounts audited and reconciliation statement certified by a Chartered Accountant be reinstated in GST law.

2. Payment of mandatory pre-deposit for filing appeal by utilizing input tax credit

For filing an appeal before the Appellate Authority or GST Appellate Tribunal, the appellant has to make a mandatory pre-deposit of the full amount of admitted liability and 10% of the disputed tax liability if the appeal is preferred before the Appellate Authority and 20% of the disputed tax liability if the appeal is preferred before the GST Appellate Tribunal respectively.

Under the erstwhile excise and service tax law, the said pre-deposit could be paid by utilizing the CENVAT credit. There is enough jurisprudence on the matter favoring payment of such deposit through CENVAT credit. The CESTAT in the case of *Haryana State Electricity Board V Collector of C. Ex., New Delhi - 1994 (73) E.L.T. 588 (Tribunal), Jhalani Tools (I) Ltd. V Commissioner of Central Excise, New Delhi - 1997 (95) E.L.T. 105 (Tribunal), Birla Yamaha Ltd. V Collector of Central Excise, Meerut - 2002-TIOL-456-CESTAT-DEL-SB*, *Manak Moti Forgings Pvt Ltd Vs Commissioner of Central Excise, Aurangabad - 2010-TIOL-1863-CESTAT-MUM*, has held that pre-deposit for filing appeals can be paid by debiting CENVAT account. The Gujarat High Court in the case of *Cadila Health Care Pvt Ltd - 2018-TIOL-1236-HC-AHM-CX* also took the same view.

Issue

Though the matter was amply clear under the erstwhile indirect tax laws, provisions of CGST Act, 2017 are not in line with the settled legal position in this regard. Section 41(2) categorically lays down that the credit shall be utilised only for payment of self- assessed output tax and section 49(4) lays down that the amount available in the electronic credit ledger may be used for making any payment towards output tax under the CGST Act or under the IGST Act. Therefore, it seems that inadvertently the GST law has deviated from the settled position on this matter under the erstwhile law.

On account of such provisions, recently the Orissa High Court in the case of *M/s Jyoti Construction* has held that pre-deposit for filing an appeal needs to be paid through cash ledger and that input tax credit cannot be used for the payment of the same.

Such a position is very detrimental to the taxpayer. As it is, the quantum of pre-deposit has been increased under the GST law and not allowing the use of credit for the payment of the same will severely impact the working capital of the taxpayer. It is unjust to prohibit usage of credit for payment of pre-deposit. In fact, pre-deposit is a temporary payment and the taxpayer can claim refund if he wins the case.

Suggestion

Sections 41 and 49 of the CGST Act, 2017 be amended suitably to clarify that payment from the electronic ledger can be made for payment of mandatory pre-deposit under section 107(6) and section 112(8). Alternatively, a circular be issued to clarify that input tax credit can be utilised for payment of pre-deposit.

3. Interest on reversal of input tax credit due to non-payment to the supplier within 180 days

Second proviso to section 16(2) of the CGST Act, 2017 lays down that the registered person must pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice. In the event of failure to do so, the corresponding credits availed by the registered person are added to his output tax liability, with interest. As per rule 37(3) of the CGST Rules, 2017, interest is payable @ 18% from the date of availing credit till the date when the amount added to the output tax liability is paid.

Issue

Irrespective of whether or not the input tax credit is utilised for payment of tax, interest is applied at the rate of 18% from the date of availment of input tax credit to the date of reversal.

Suggestion

Interest be payable on the credit which was availed and utilised. Mere availment of credit should not attract interest as there is no revenue loss to the Government. This would be in line with recommendation made at the 45th GST Council meeting that interest demand ought to be calculated only upon utilization of ineligible input tax credit in GST returns and not on mere availment of input tax credit.

4. Reversal of input tax credit on capital goods in case of taxable as well as exempt supplies

Issue

At present, if any capital goods are used for both taxable and exempt supplies, credit is claimed and reversed in the following manner:

I. Full credit is availed in the first month;

II. Proportionate credit is reversed every month till 60 months in the ratio of exempt turnover to total turnover along with applicable interest

There does not seem to be any justifiable rationale for this provision as the law itself allows taking complete input tax credit at the first instance with reversal on a periodical basis based on certain parameters. Therefore, it is not fair to demand interest from the taxpayer for complying with the law with no default on his part. Further, due to the cumbersome process, most of the registered persons who have both taxable and exempt supplies do not claim the input tax credit pertaining to capital goods.

Suggestion

To simplify the reversal mechanism, an option be provided to reverse the estimated credit pertaining to exempt supplies in the first month itself. At the end of 60 months, registered person be required to submit a return for final reversal computation along with an option to reverse or reclaim the excess or short credit. Alternatively, input tax credit be reversed without any interest liability.

5. Cancellation of registration of suppliers registered under QRMP Scheme or under composition levy under section 29(2) of the CGST Act, 2017

Section 29(2) of the CGST Act, 2017 provides that the proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, --

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

The proper officer shall not cancel the registration without giving the person an opportunity of being heard. Further, during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

Issue

Clause (c) lays down that registration may be cancelled if the registered person has not furnished returns for a continuous period of six months. This provision was relevant when returns were filed only monthly. Now with quarterly return filing system also in place, the provision needs to be amended suitably to take into account the quarterly tax period.

Similarly, for suppliers registered under composition levy now the periodicity of return filing has changed from quarterly to annually and only tax is paid quarterly. Here also, clause (b) needs to be amended appropriately to take into account the yearly tax period.

Suggestion

Clause (b) and clause (c) of section 29(2) of the CGST Act, 2017 be amended suitably considering that now Form GSTR-3B can also be filed quarterly under QRMP scheme and Form GSTR-4 is filed annually by the supplier registered under composition scheme.

6. Definition of composite supply under section 2(30) and its taxability under section 8(a) of the CGST Act, 2017

Issue

Section 2(30) of the CGST Act, 2017, which defines composite services uses the expression "two or more taxable supplies" whereas, section 8(a) of the CGST Act, 2017, which provides for the tax liability on composite and mixed supplies uses the expression "two or more supplies".

Therefore, as per the definition of composite supply, one taxable and one exempt supply which are naturally bundled cannot be grouped under composite supply. However, as per section 8(a), a composite supply can comprise of an exempt supply and a taxable supply and same is taxed depending upon whether the principal supply is an exempt or taxable supply. Such different position in two provisions of the Act relating to one aspect create conflict and unnecessary confusion.

Suggestion

Amendment be made to remove the disparity between the provisions of section 2(30) and section 8(a) of the CGST Act, 2017.

7. Clarity on the nature of supply of vouchers

Section 12(4) of the CGST Act, 2017 provides that in case of supply of vouchers by a supplier, the time of supply shall be:

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

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

Similar provisions are prescribed in section 13(4) of the CGST Act, 2017 for vouchers exchangeable for services.

Section 2(118) of the CGST Act, 2017 defines voucher as an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

Issue

The definition of 'voucher' is ambiguous and not comprehensive.

For example:

a) All Pre-Paid Instruments (PPIs) approved by RBI under Payments and Settlement Systems Act, 2007 are popularly referred to as 'voucher' such as Shopper's Stop Gift Voucher but these PPIs fit the definition of money in section 2(75) in the phrase "……. or any other instrument recognized by RBI when used as consideration to settle as obligation……". Also, PPIs are of 3 types and all of them are called vouchers, but section 12(4) or 13(4) should not apply, these should be covered by 12(2)(b) or 13(2)(b) as being 'payment received'

b) Loyalty points are also circulated as credits in a digital wallet or converted into a redeemable document and are popularly referred to as 'voucher'. Where

the issuer-and-redeemer are one and the same, these are 'future discount entitlements' and not vouchers. Loyalty is also rewarded by coupons – Domino's coupon – or electronic code – Uber code – and these are only discounts but referred to as vouchers.

c) Vouchers are truly called vouchers (as defined) only if the issuer-and-redeemer are different distinct persons and an intermediary is undertaking trade or distribution of these vouchers to incentivize like Groupon.com now called nearbuy.com (https://en.wikipedia.org/wiki/Nearbuy) – where vouchers of any other company can be purchased for a price.

Suggestion

The term "voucher" be defined as under:

"'voucher' means

(a) any instrument or entitlement received from an arrangement with one person requiring another person to accept the same in redemption against payment owed in respect of a taxable supply, or

(b) any instrument or entitlement received from any Government under a law for the time being in force to redeem the same in respect of settlement of any payment owed towards any tax or duty

Explanation 1: Voucher shall not include a system of payment recognized under the Payment and Settlement Systems Act, 2007 or any other law for the time being in force.

Explanation 2: Voucher shall not include actionable claims.

8. Place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park etc.

Section 12(6) of the IGST Act, 2017 provides that the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

Issue

If services mentioned in section 12(6) are performed at various locations under a single contract, then the place of supply is not envisaged. In case it happens to be each place where the services are provided, then the break-up of various places should be clearly spelt out.

Suggestion

A suitable explanation on the line as provided in section 12(7) of the IGST Act, 2017 be provided in section 12(6) of the IGST Act, 2017 as well for cases where services are provided at multiple locations under a single contract. The related IGST rules may be amended to provide that value of the service may be apportioned on the basis of the duration of the event held at each place.

9. Refund computation under inverted duty structure

Section 54(3)(ii) of CGST Act, 2017 provides that no refund of unutilised input tax credit shall be allowed in cases other than where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

The Supreme Court in the case of *VKC Footsteps* has held that inverted duty refund is admissible only with respect to inputs and not for input services, thus putting to rest the doubts after contradictory views by the High Courts of Madras and Gujarat. However, the Apex Court has urged the GST Council to look into the anomalies in the computation formula for refund prescribed under rule 89(5).

Issue

The existing formula under rule 89(5) for computation of refund is as under:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods and services) x Net input tax credit ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods and services.

Net input tax credit = Input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both

Adjusted Total Turnover = Sum total of the value of- (a) the turnover in a State or a Union territory, as defined under clause (112) of section 2, excluding the turnover of services; and (b) the turnover of zero-rated supply of services determined in terms of clause (D) above and non-zero-rated supply of services, excluding- (i) the value of exempt supplies other than zero-rated supplies; and (ii) the turnover of supplies in respect of which refund is claimed under sub-rule (4A) or sub-rule (4B) or both, if any, during the relevant period.

The formula makes a presumption that the output tax payable on supplies has been entirely discharged from the input tax credit accumulated on account of inputs and there has been no utilisation of the input tax credit on input services. However, input tax credit on both inputs and input services is accumulated in the electronic ledger and is then utilised for the payment of output tax. Owing to such

an assumption, the quantum of refund gets reduced. The formula is particularly not in favour of the registered person having only inverted rated output supplies as he cannot set off the input tax credit on input services against any other output supplies. On the other hand, a registered person having output supplies in addition to the inverted rated supplies, can utilise the input tax credit availed on input services for payment of tax on output supplies not having an inverted rate structure.

Suggestion

The formula may have an underlying assumption that the input tax credit accumulated on account of input services shall be first used for payment of tax payable on inverted goods and services, and only the remaining tax, is paid out of accumulated input tax credit on account of input. Accordingly, the formula under rule 89(5) of the CGST Act, 2017 be modified as under:

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net input tax credit ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods after setting off the input tax credit on input services

10. Insertion of overriding clause in section 23 of the CGST Act, 2017

Section 9(3) of the CGST Act, 2017 provides that the Government may, on the recommendations of the Council, by notification, 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.

In terms of section 23(1)(a) of the CGST Act, any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act shall be exempt from obtaining registration.

Section 24 of the CGST Act *inter alia* provides that a person required to pay tax under reverse charge mechanism is required to obtain compulsory registration irrespective of the threshold limit of registration and does not make any reference to section 23.

Issue

Although a person engaged exclusively in the supply of exempted goods/services is exempted from obtaining registration u/s 23 of the Act, he will be required to obtain registration u/s 24, if he procures notified goods /services [covered under the provisions of section 9(3)].

Section 23 and section 24 are independent sections and thus, section 24 cannot override section 23 or *vice-versa* and mandate registrations for such persons who are exempt from registration under section 23. However, the provisions in their present form convey that section 22 and section 24 will hold the field even in situations covered under section 23.

For e.g., a person engaged in the supply of printed books, which is exempt from payment of tax is exempt from obtaining registration u/s 23. If he avails sponsorship services / legal services from an advocate which are notified under section 9(3), he will be liable to obtain registration and pay tax despite the exemption provided u/s 23.

Another instance of a similar scenario is in the case of an agriculturalist making inter-State supplies, wherein there is no clarity on whether the agriculturalist is exempt from obtaining registration u/s 23 or is required to obtain registration u/s 24 for making inter-State supply.

Suggestion

Section 23 of the CGST Act, 2017 may commence with a non-obstante clause viz., "Notwithstanding anything contained in sections 22 and 24" to bring clarity on the overriding effect of section 23 and also to enable harmonious interpretation between these three vital provisions deciding the requirement of registration under GST law.

11. Reversal of input tax credit in case of MEIS/SEIS scrips

Sale of duty scrips is exempt from GST under *Notification No. 2/2017 CT(R)* thereby attracting provisions of rule 42 of the CGST Rules, 2017 for reversal of input tax credit. Therefore, input tax credit which is attributable to sale of such duty scrip ought to be reversed. Expenses like professional/consultant fees in relation to realisation/utilisation of such scrips, if any, could be considered as directly attributable to exempt supplies and input tax credit thereon would need to be reversed. Further, administrative expenses like telephone, internet, GST professional assistance fees, etc. may be considered as common credit for the purpose of input tax credit reversal.

Issue

However, the tax authorities are taking a view that input tax credit on inputs and input services which have been used to export the goods/services against which the scrips have been issued, need to be reversed. This view is not correct in as much as the input tax credit on such inputs and input services is not attributable to the scrips but to the exported goods and services against which full input tax credit is allowed under the GST law.

Further, rule 42 envisages that out of the common input tax credit availed during a tax period, input tax credit attributable to exempt activity should be reversed in the ratio of turnover of that period. It does not prescribe that input tax credit availed in a tax period can be reversed in another tax period based on the ratio of turnover of that tax period.

Suggestion

A circular be issued to clarify the intent of the law that input tax credit on inputs and input services used in the export of goods and services against which the scrips have been issued, is not required to be reversed under rule 42 of the CGST Rules, 2017. Only the input tax credit availed in the tax period, which is attributable to the sale of scrip be reversed in the tax period in which such sale is made.

12. Supply of information technology software

Para 5(d) of Schedule II to the CGST Act, 2017 provides that development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software will be treated as supply of service.

Issue

However, the law does not specifically provide the classification for supply of information technology software 'as such' through electronic form or through physical form (CD, DVD etc.) or by way of transferring right to use of such software. Software has been held by the Supreme Court to be 'goods'. However, para 5(d) is being confused by trade to be a deemed classification of all software as 'services'.

Suggestion

Clause (d) and clause (f) of paragraph 5 of Schedule II to the CGST Act, 2017 be amended in the following manner to provide clarity:

(d) development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software excluding sale of information technology software as such

…….

(f) transfer of the right to use any goods other than information technology software for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

13. *Notification No. 2/2019 CT (R) vis a vis* section 10(2A) of the CGST Act, 2017

Notification No. 2/2019 CT (R) was issued to provide a composition scheme for supplier of services with a tax rate of 6% having annual turnover in preceding

year up to Rs 50 lakh. The scheme was made operational from April 1, 2019. Subsequently, the Finance (No. 2) Act, 2019 inserted sub-section (2A) in section 10 of the CGST Act, 2017, which provides for composition levy in case of goods, to include therein the provisions of composition scheme for supplier of services provided vide the said scheme. Provisions of sub-section (2A) became effective from 01.01.2020.

Issue

Even after the provisions of sub-section (2A) of section 10 becoming effective, *Notification No. 2/2019 CT (R)* has not been withdrawn. Thus, at present provisions for composition scheme for supplier of services are provided at two places in law viz., *Notification No. 2/2019 CT (R)* and section 10(2A) of the CGST Act, 2017. This creates confusion.

Suggestion

Either Notification No. 2/2019 CT (R) be withdrawn, or clarification be issued that section 10(2A) of the CGST Act, 2017 will not be operational until Notification No. 2/2019 CT (R) remains in force.

14. Provisional Assessment – security or surety to be furnished with the bond

Section 60(2) of the CGST Act, 2017 provides that payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

Further, as per Assessment and Audit rules, the proper officer shall issue an order in Form GST ASMT-04, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis indicating the value or the rate or both on the basis of which the provisional assessment is to be made and the amount for which the bond is to be executed and security to be furnished not exceeding 25% of the amount covered under the bond.

The registered person shall execute a bond in accordance with the provisions of subsection (2) of section 60 in Form GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub rule (3).

Issue

The requirement of security or surety to be submitted along with the bond will cast additional financial burden on the taxpayer. There already exist adequate safeguards in the law to protect the interest of the Revenue and the taxpayer need not be burdened for the same.

When the registered person is required to give an indemnity bond, there should be no further requirement of a bank guarantee equivalent to 25% of the amount covered under bond. Obtaining bank guarantee would mean that the registered person has to block funds to get bank guarantee (i.e. by opening an account for a Fixed deposit with the bank to obtain bank guarantee). In addition to that, the Bank will charge commission on the same to the tune of 1% to 2% which can be a huge cost and a wasteful expenditure for the registered person. In addition to this, GST will be levied on the bank commission which would further increase the cash outflow.

Suggestion

Requirement of executing surety or security in the form of bank guarantee with prescribed bond for provisional payment of tax be done away with.

15. GST on ocean freight under reverse charge be dispensed off

In case of services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the tax is payable under reverse charge by the importer, as defined in clause (26) of section 2 of the Customs Act, 1962, located in the taxable territory [*Notification No. 10/2017-Integrated Tax (Rate), dated 28-6-2017*].

Further, vide Sl. No.9 of *Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017*, the Central Government has notified that the IGST at the rate of 5% will be leviable on the service of transport of goods in a vessel including the services provided or agreed to be provided by a person located in a non-taxable territory to a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs stations of clearance in India.

Issue

In case of import of goods, customs duties are leviable on CIF (Cost, Insurance, and Freight) value of imports and accordingly IGST is also paid on the same. Levy of IGST on ocean freight leads to double taxation since the value on which IGST is paid on the imported goods includes freight. In case of CIF contracts, services of foreign shipping lines are procured by the foreign exporter, hence; importer of goods cannot be said to be the "recipient" of services for the purpose of payment of IGST. The entire gamut of transaction occurs outside India. Supply of service of transportation of goods by a person in a non-taxable territory to another person in a non-taxable territory from a place outside India up to the Customs station of clearance in India is neither an inter-State supply nor an intra-State supply. Also, the Gujarat High Court in case of *Mohit Minerals Pvt. Ltd. Vs Union of India*, order

dated 23.01.2020, has held that the levy of IGST on ocean freight is not permissible and has declared the relevant notification as unconstitutional.

Suggestion

The levy of IGST on ocean freight for importing goods in case of CIF contracts be dispensed with to remove the double taxation on such freight.

16. Transfer of immovable property by way of lease

Transfer of land under a long lease is essentially a 'transfer of said property' and is liable to State level stamp duties. GST law, however, treats such transfers as 'taxable supplies' but grants exemption to transfer of land by State Government Industrial Development Corporations or Undertaking to Industrial Units (for a period exceeding 30 years) if an upfront fee is paid in respect of such transfer *[Notification no. 12/2017 dated 28th June 2017 (Central Tax-Rate)].*

Thus, such upfront fee becomes taxable if the period of lease is less than 30 years or the land is leased to any person other than industrial units.

Further, it is to be noted that Central Government vide *Circular no. 44/18/2018 dated 2nd May, 2018* has provided that merely because a transaction or a supply of tenancy rights involves execution of documents which may require registration and payment of registration fee and stamp duty, it would not preclude them from the scope of supply of goods and services and from the payment of GST on tenancy premium.

Issue

Although the Government has clarified vide *Circular No.44/18/2018 CGST dated 08.05.2018* that such transactions are subject to GST, these transactions are related to immovable property and are subject to stamp duties. Thus, tax burden on leasing of non-industrial property by the Government entities like CIDCO should also be reduced. The clarification cited supra may be reconsidered and exemption be granted to such transactions.

Suggestion

The exemption under Notification No. 12/2017-CT(R) dated 28.06.2017 be extended to all transfers of immovable property through long-term leases (i.e., more than 30 years) whether or not to an industrial unit in the cases where upfront lump-sum consideration is paid.

17. Registration in case of transfer

Section 22(4) of the CGST Act, 2017 provides that in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court,

Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Issue

The said sub-section provides that the effective date of registration would be the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court. Although a Certificate of Incorporation will be required for the new entity, the Registrar of Companies does not issue any certificate of incorporation specifically to give effect to the order of the High Court on amalgamation or demerger under Scheme of Arrangement.

Suggestion

The words "giving effect to such order of the High Court or Tribunal" appearing in section 22(4) of the CGST Act, 2017 be omitted since in several situations there are delays in issuing the certificate of incorporation by Registrar of Companies.

18. Refund to foreigners while leaving India

Section 15 of the IGST Act, 2017 provides that the integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Even after almost 4 years since successful implementation of GST, section 15 of the IGST Act, 2017 has not yet been enforced.

Suggestion

Having a provision for refund of taxes to foreign tourists will definitely act as a motivation for international travellers. In case the goods are purchased in India and taken by the tourist outside India, it should be seen as export and necessary refund may be made available.

19. Adjustment of tax paid due to incorrect determination of nature of supply

Where a taxpayer pays CGST & SGST/UTGST on a transaction considered by him to be an intra-State supply but the same is subsequently held to be an inter-State supply, he is required to make a fresh payment of IGST and the tax wrongly paid is refunded. Likewise, where a taxpayer pays IGST on a transaction considered by him to be an inter-State supply but the same is subsequently held to be an intra-State supply, he is required to make a fresh payment of CGST & SGST/UTGST and the tax wrongly paid is refunded.

Issue

Many registered persons face the issue of paying wrong taxes on account of incorrect determination of nature of supply (i.e., CGST/SGST instead of IGST or *vice versa*) or paying taxes to the wrong State on account of declaring wrong place of supply. The GST law prescribes a long process of paying the correct taxes and opting for refund of the wrong taxes paid. Changing the form of tax or the place of supply is currently not provided as an option.

Suggestion

In case of wrong payment of tax on account of incorrect determination of nature of supply or place of supply, an option to subsequently change the nature of tax or the place of supply be provided in the law. This would help in managing the working capital of the taxpayers. From the taxpayers' perspective, it is a double pay-out as claiming refund is a long-drawn process. Such an option will not be prejudicial to the revenue and would improve the ease of doing business.

20. Eligibility of input tax credit on construction of immovable property

Issue

Input tax credit on works contract and construction services is not allowed except in cases where such services are provided for construction of plant and machinery or in the same line of business. This is causing genuine hardship to the persons who use such goods/services for construction of their factory or who construct a property for letting it out. In such cases, the rentals are charged with full rate of GST. Moreover, ITC of GST paid on construction services/goods in relation to such immovable property is not allowed. This results in increased cost for any entity trying to set up new business.

In the past statutes, businesses like cold-storage, hospital building, hotel building, factory shed were subject to litigation as to whether they are immovable properties or plant and machineries subject to CENVAT. The Hon'ble Orissa High Court in the case of *M/s Safari Retreats*, has held that input tax credit shall be available in respect of goods /services received by a taxable person for construction of immovable property, where such property is let out, as the property is being used for making a taxable supply. The said case is now before Supreme Court on this issue. Therefore, there is a need to bring clarity on this issue.

SEZ developers who are primarily involved in letting-out buildings constructed (in the zone) are eligible for zero-rated benefit on construction goods and services whereas non-SEZ developers having business of real estate for letting-out buildings are not extended the benefit of input tax credit.

Suggestion

Credit of goods/services acquired in the construction of immovable property be allowed without any restrictions to all such businesses, in one go or in staggered manner.

21. Formal process of special audit under section 66 of the CGST Act, 2017

Section 66 of the CGST Act, 2017 provides for special audit that empowers a Government officer to nominate a chartered accountant or cost accountant for conducting special audit and to submit an audit report duly signed and certified by him. The audit procedure followed by the nominated chartered accountant or cost accountant may vary from person to person.

Non-standard document requests in order to conduct audit may become a roving inquiry calling for information such as returns and financial statements that are already available on common portal and thus, does not harmonize with ease of doing business.

Suggestion

A uniform audit manual containing detailed procedure for special audit be introduced, which should be adopted and implemented by Central and State Officers. Circular No. 821/18/2005 dated 7 Nov 2005 be updated and fees to special auditor be revised commensurate with current times.

22. Penalty provisions

Section 122 of the CGST Act, 2017 provides for penalty provisions in case of certain offences.

Issue

The taxpayers are still in the process of understanding the various complex provisions and taxability of various transactions under the GST law. However, show cause notices demanding only penalty are rampant, and the reasons are not very serious. Such demands are unlikely to be sustained in appeal. By penalizing every taxpayer for even frivolous issues, there would be no accountability on the mischief maker as both genuine taxpayers and errant taxpayers would be treated at par.

Suggestion

Instructions providing clear guidelines for levying penalty be issued as it would help both the taxpayers and the tax authorities.

B. Suggestions on rate notification for services – *Notification No. 11/2017 CT (R) dated 28.06.2017*

23. Classification of permanent transfer of intellectual property right in respect of goods/service as supply of goods

Clause (c) of Para 5 of Schedule II to the CGST Act, 2017 provides that temporary transfer or permitting the use or enjoyment of any intellectual property right shall be treated as supply of service.

Notification no. 1/2017 CT(R) and 1/2017 IT(R) dated 28th June, 2017 providing applicable tax rates for goods provides the rate of tax applicable on permanent transfer of intellectual property right in respect of goods. At the same time, *Notification no. 11/2017 CT (R) and 8/2017 IT (R) dated 28th June 2017* providing applicable tax rates for services provides the rate of tax applicable on temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods [Sl. No. 17]. Since only temporary transfer of IPR is classified as supply of services, the usage of word "permanent" in Sl. No. 17 is not in line with para 5(c) of Schedule II.

Further, *Notification no. 13/2017 CT(R) dated 28th June, 2017* enlisting the services chargeable to tax under reverse charge includes supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like. Thus, all types of transfers of IPR be it temporary or permanent are classified as supply of services under the said reverse charge notification which is not in consonance with para 5(c) of Schedule II.

Issue

The rate notifications as well as reverse charge notification create ambiguity with respect to classification of permanent / temporary transfer of IPR in respect of goods / services and are not in tandem with what is envisaged under para 5(c) of Schedule II. Although the rate of tax applicable on the permanent / temporary transfer of IPR is the same whether such transfer is classified as goods or services, the provisions for determining the time and place of supply for goods and services are different. This leads to confusion and ambiguity in interpreting the law.

Suggestion

Notification No. 11/2017 CT(R) be amended to remove the words "or permanent" in Sl. No. 17. Similarly, Notification No. 13/2017 CT(R) be amended to insert the word "temporary" before the word "transfer" in Sl. Nos. 9 & 9A. In addition, a circular be

issued to clarify that permanent transfer of IPR amounts to supply of goods, as para 5(c) of Schedule II clearly provides that only temporary transfer or permitting the use or enjoyment of any intellectual property right is treated as supply of service.

24. Construction service HSN 9954 entry 3 (i) to (if)

Issue

Construction of apartment is well understood to be within the scope of these entries. But there is doubt as to whether construction service also covers 'plot development' based on the same RERA compliant model where (a) joint-development agreement is entered into with landowner on area sharing or revenue sharing basis (b) infrastructure like STP, solar power, power, water and sanitary facilities, club house and other infra are put up. Except for a mention in definition of 'developer-promoter' which states that 'develops a plot for sale', there is no clear specification as to whether plotted development is taxable or covered under Schedule III.

Suggestion

A circular be issued to clarify as to whether 'plot development' is taxable or not.

25. Confusion due to usage of words 'renting or leasing' in duplicate HSNs

Issue

In HSN 9971 and 9973, lease arrangements of two kinds – financial lease and operating lease – are covered. In HSN 9964, 9965 and 9966, user right in the form of 'service of transportation' is provided without any transfer of possession. However, in HSN 9973 entry nos. 17 (viia) and (viii), the words 'or renting' are used which is not appropriate under 9973. Due to these words, there are competing entries where the rate of tax is 5% or 28% (plus cess). This confusion must be resolved.

Suggestion

In entry nos. 17(viia) and 17(viii) of HSN 9973 a specific explanation be added that this entry shall not include any of the supplies classifiable under 9964, 9965 and 9966.

26. Overlapping of entries 23(i) and 23(iii) for 'travel agents' in HSN 9985

Issue

Hotel accommodation is always liable to CGST-SGST (18%/28%). Recipient outside the State loses this credit as they are registered in other States. To save this credit loss, travel agents facilitate credit flow from CGST-SGST to IGST by paying for the intra-State invoice from hotel towards accommodation and then issuing inter-State invoice. GSTN portal also does not stop this credit flow. Now,

explanation in entry 23(i) defines 'tour operator' as the one who provides 'any' of the services listed. Hence, travel agent facilitating hotel accommodation get classified under entry 23(i) (5%) and NOT under entry 23(iii)(18%). But this classification results in loss of credit.

If the intent is to permit credit flow, then a suitable clarification be issued to this effect. If not, then another clarification must be issued to make this intention of the Government known to trade.

Suggestion

A circular be issued to clarify as to which of the specific entries under HSN 9985 ought to be followed by travel agents or tour operators.

27. Overlapping of job work and manufacture in HSN 9988 and 9989

Issue

'Manufacture' is defined in section 2(72) as a processing which results in emergence of a 'new' article. 'Job work' as defined in section 2(68) means any treatment or process undertaken on goods belonging to another registered person. Thus, scope of job work is much wider than manufacture. Hence, usage of the word 'manufacture' in entries under HSN 9988 and 9989 would leave those job work supplies which DO NOT result in emergence of a new article outside the scope of these HSNs. But there is no other HSN covering non-manufacturing job work supplies. It ma be noted that entry 26(iii) uses the words 'tailoring services' without referring to whether 'manufacturing or non-manufacturing'. Such drafting leads to confusion and unwarranted doubts.

Suggestion

The word 'manufacturing' be omitted from:

- *Column (2) of entry 26;*
- *Entry 26(iv); and*
- *Entry 27(ii)*

since the activity not amounting to manufacture will still be a treatment or process on goods belonging to others and deemed to be supply of service as per Entry No. 3 of Schedule II to CGST Act, 2017 and would be squarely covered under Notification No. 11/2017-CT(R).

C. Suggestions on exemption notification for services – *Notification No. 12/2017 CT (R) dated 28.06.2017*

28. Entry 1 in respect of 'charitable activities'

Issue

It is very common for NPOs with section 12AA/12AB registration to undertake specified charitable activities where consideration is received in the form of donations from donors. The language of entry 1 appears to exempt only those services provided by the charitable institution for which the consideration is received from the actual beneficiaries of the charitable activity and thus, such 'end-use contributions' received from the donors get excluded from the scope of the exemption. Here, it is to be noted that the donation which is received without being linked to any specific charitable activity is outside the scope of supply and thus not liable to GST. However, owing to the language of entry 1, donations received for specified charitable activities gets taxable thereby defeating the very objective of the exemption entry.

Suggestion

An explanation be added to entry 1 as under:

"Explanation: Exemption will be available where consideration for such charitable activities is received from participating donors whether in India or outside India".

29. Entry 9C in respect of 'government grants'

Issue

Supply of service by a Government Entity to Central Government, State Government, Union territory, local authority or any person specified by Central Government, State Government, Union territory or local authority against consideration received from Central Government, State Government, Union territory or local authority, in the form of grants is exempt from GST.

Section 2(31) of the CGST Act, 2017 lays down that consideration in relation to the supply of goods or services or both includes *inter alia* any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person. Thus, a general grant given without any specific direction is not a consideration and hence is not liable to GST. Entry 9C, thus, essentially covers the grant given with a specific requirement or direction. However, this exemption is allowed only to Government entities and not to private sector NPOs. Most of the NPOs neither have the resources nor the ability to undertake research activities without any grant. However, for such NPOs, the 'end use grants'

become consideration for carrying out specific research and thus, get taxable. These issues create hardships for the NPOs and act as a barrier for advancement of this sector in India.

Suggestion

A condition be added in the entry that the exemption shall be available only if the result of research/activity undertaken by the Government entity vests with the Central Government, State Government, Union territory, local authority giving the grant.

30. Entry 22 in respect of 'hiring of means of transportation of goods by GTA'

Issue

Entry No. 22 of the exemption notification grants exemption to, *inter alia,* services by way of giving on hire to a goods transport agency, a means of transportation of goods. When motor vehicles are leased to a GTA, the same may be classified under two identical headings viz., 9971 (ii and iii) i.e., under financial leasing services as well as 9973 (iii and iv) leasing or rental services without operator [*Notification No. 11/2017 CT(R) as amended*]. The intent of entry no 22 in the exemption notification is to give exemption where motor vehicles are hired (leased or taken on rent) by GTA. However, under entry no. 22 only headings 9973 and 9966 are covered and not heading 9971.

Under heading 997114, financial leasing services are covered. The confusion arises because following two entries are included under heading 9971 (ii and iii) as well as 9973 (iii and iv)

"Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration."

"Any transfer of right in goods or of undivided share in goods without the transfer of title thereof."

Suggestion

Column (2) of entry 22 may be amended to include HSN 9971 apart from HSN 9973 and 9966.

31. Entry 47 in respect of 'registration required under any law'

Issue

Exemption under clause (a) of this entry is restricted only to registration required under any law for the time being in force. Spirit of this exemption is that no tax needs to be paid where a taxpayer is paying to meet a statutory liability. For example, registration is taken under Factories Act, to protect the workers and to ensure that the occupier of the factory is providing a healthy environment. In

order to monitor whether the occupier of factory is fulfilling this obligation, taking license is mandatory. This license is to be renewed every year as a statutory requirement. Moreover, license fee paid for renewal is a sort of fee paid for continuation of registration under any law for the time being in force. However, exemption is not available for such renewal fees under entry 47.

Paying fee such as ROC fee for increase in authorized capital is a statutory requirement and no separate service as such is received from the Government. However, exemption is not available for such fee as well.

To summarise, taxpayers pay fee to Government departments not only for 'registration' but also for 'renewals' and other statutory requirements. Hence, scope of this exemption must be suitably broad-based to include all obligatory fee and charges paid.

Suggestion

Entry 47(a) be suitably amended to provide that exemption shall be available on all kinds of statutorily imposed fee or charges to secure, maintain and comply with the conditions relating to registration or such other compliance under any law for the time being in force.

D. Suggestions on procedural law

32. E-way bill portal – Date range

Date range in e-way bill reports is mere 5 days which is a very low range.

Suggestion

For facilitating reconciliation of Form GSTR-1 and Form GSTR-3B and to ascertain accuracy of purchases / supply made, e-way bill summary for the full year be generated similar to Form GSTR-2A.

33. Modifications in Form GSTR 3B

Current Form GSTR-3B is a summary form on basis of which taxpayer liability is determined. However, the form lacks certain details which make it difficult to file annual return at the end of the year and make reconciliations.

Suggestion

The Form GSTR-3B be amended to include the following:

a) Provision for reporting negative data in Form GSTR 3B.

b) Provision for reporting the details of the previous period to which the changes made in current Form GSTR 3B pertain to.

c) Provision for reporting the month to which the input tax credit availed in current Form GSTR 3B pertains to.

34. Cancellation of e-invoice and amendment therein

Issue

E-invoicing issued through portal can be cancelled only within 24 hours. Further, credit note can be issued only in 4 cases as stipulated in section 34 of the CGST Act, 2017. This causes hardships in practical scenarios.

Suggestion

The time period for cancellation of e-invoice be extended to at least up to 72 hours. Further, amendment in e-invoicing be allowed for at least up to 72 hours.

35. Size of documents to be uploaded while applying for registration

Issue

At the time of registration, supporting documents are required to be attached, for which the uploaded file must be within the prescribed file-size. Several documents such as agreements are larger than the prescribed maximum size of 1 MB, and therefore, the taxpayer faces issues in uploading such documents.

Suggestion

The size limit of the uploaded files be increased so as to maintain the quality and readability of the documents uploaded in GST online portal.

36. Risky exporter under customs and GST

Exporters are deemed as 'risky exporter' on the basis of specific risk indicators based on the data analytics and artificial intelligence tools as specified in *Circular No.131/1/2020-GST, dated 23rd January, 2020*. Verification of such exporters is done as per the procedure specified in *Circular No. 16/2019-Customs, dated 17th June, 2019*. Further, for such exporters, 100% examination of export consignments is made mandatory and IGST refund has been suspended till action is taken by the Custom formations on the basis of verification report from GST formations.

Issue

Many 'Star Exporters' have been categorized as 'risky exporters' on the basis of some unspecified risk parameter-based checks driven by data analytics and artificial intelligence tools of the customs authorities despite not being involved in any non-compliance or any untoward activity. They do not even know the reason for being classified as 'risky exporter'.

The timelines as provided in the SOP are not followed by the field formations. Even thereafter, the tag of risky exporter is removed only when the DGARM issues no objection certificate; for 6 months – 12 months the tag of risky exporters is not untagged by the Customs & GST department. The exporters are,

consequently, subject to the following hardships–

- 100% consignments are subject to physical verification at the custom port; packing and product gets damaged.
- IGST refund and other export benefits i.e., duty drawback, MEIS license are kept in abeyance till verification thereby blocking the working capital of the exporter.
- GST field formations are taking more than half year to complete the verification. GST/ Custom field formations are not aware of the procedure to be followed to provide solutions to the exporter. Hence, the entire business of such exporters is ruined.

Suggestion

- *The SOP should be amended to make it mandatory to clearly inform the reasons for declaring an exporter as "risky" because this tag has several consequences for the exporter.*
- *After categorization as risky exporter, the export consignments/shipments be subject to 100% examination at the customs port maximum for 3 consignments instead of such a long period.*
- *Clear direction to complete the proceedings within the time limit should be provided to the field formations upon receiving the relevant documents.*

37. Selection of Commissionerate code under State and central while applying registration

Issue

At the time of registration, many a times the taxpayer is unable to provide proper information with respect to jurisdiction code. In few cases, the proper officer has rejected the application for the reason that wrong Commissionerate code is entered by the applicant.

Suggestion

The appropriate Commissionerate code be auto selected by the system on the basis of the area PIN code entered by applicant.

E. Other Suggestions

38. Regular updation of the Acts/Notifications/Circulars etc.

Issue

GST law since its inception has been extremely dynamic with multitude of notifications/circulars being issued frequently. While this has been positive in as much as the Government has been responsive to the needs/issues of the taxpayers and has been making frequent changes wherever required, this has also created difficulties for the taxpayers in keeping themselves abreast with all the amendments/changes so as to take correct legal positions and ensure correct and timely compliances.

Suggestion

The CBIC may periodically issue/webhost the updated versions of the following documents:

1. *Latest updated bare act with tracking of amendments – CBIC has issued one such dated 31st August, 2021. However, such a document should be issued as soon as possible as and when the Acts get amended.*
2. *Latest updated GST Rules – While CBIC has been issuing such updated Rules, the frequency can be increased to keep the compilation most recent.*
3. *Consolidated Updated rate notifications – While CBIC has issued consolidated rate notifications, the frequency is not adequate enough considering the frequency of changes in these notifications. It is highly applicable for the following major rate notifications:*
    a. *01/2017-Central Tax (Rate), dt. 28-06-2017 – Schedule of rates for supply of goods*
    b. *02/2017-Central Tax (Rate), dt. 28-06-2017 – Exemption on supply of goods*
    c. *11/2017-Central Tax (Rate), dt. 28-06-2017 – Schedule of rates for supply of services*
    d. *12/2017-Central Tax (Rate), dt. 28-06-2017 – Exemption on supply of services*
2. *All the circulars issued so far may be categorized according to the topics and multiple master circulars may be issued. The exercise would be similar to how master Circular No. 125/44/2019 – GST dated 18th Nov 2019 has been issued for refunds under GST. However, the key point here is to keep updating such master circulars at regular intervals. Currently, one has to go through all the circulars issued subsequent to such master circular, which defeats the very purpose of issuing such master circulars. Hence, the two critical aspects to be taken care of while issuing master circulars are:*

a. *Ensuring the completeness of consolidating ALL the circulars issued at the time of issuance of master circular, so that one may have to go through ONLY master circulars without any need to go through the past circulars for any clarification.*

b. *Keeping such master circulars updated as frequently as clarifications are issued, so that it serves the purpose of being master circulars.*

39. Technical support from GST Help Desk

The taxpayers often face technical glitches in compliance of GST provisions / registration / amendments while working on GST Portal. In case of issues these are forwarded to Help Desks wherein standard replies are given for solving the issues. However, there is no fixed turnaround/ problem solution time or deadline, and many issues remain pending for very long period. These issues when kept unresolved for long period of time hamper businesses of taxpayers.

Suggestion

Technical Support Team should be given a deadline to solve the glitches and till the time the issue is not resolved, the supplier should be given some alternate remedy so that his business does not get affected.

ABOUT GST & INDIRECT TAXES COMMITTEE OF ICAI

The Institute of Chartered Accountants of India (ICAI) is a statutory body established under the Chartered Accountants Act, 1949 to regulate the profession of Chartered Accountants in India. During its more than seven decades of existence, ICAI has achieved recognition as a premier accounting body not only in the country but also globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. ICAI now is the second largest accounting body in the whole world.

The Council of ICAI functions through various Standing and Non-Standing Committees. The GST & Indirect Taxes Committee is one of the most important non-standing Committee of ICAI. The main function of the Committee is to contribute to make GST and other indirect tax laws in the country simple, transparent, certain and equitable. It examines indirect tax laws, rules, regulations, notifications, circulars, etc. and provides its technical inputs to the Government on the same. It is also involved in enhancing the knowledge of professionals, trade industry, revenue officers and general public in the area of indirect taxes. The GST & Indirect Taxes Committee is actively involved in the process of formulation of budget by offering pre-budget and post-budget suggestions/ comments to simplify tax laws and their administration for the purpose of making it more responsive to tax payers.

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