

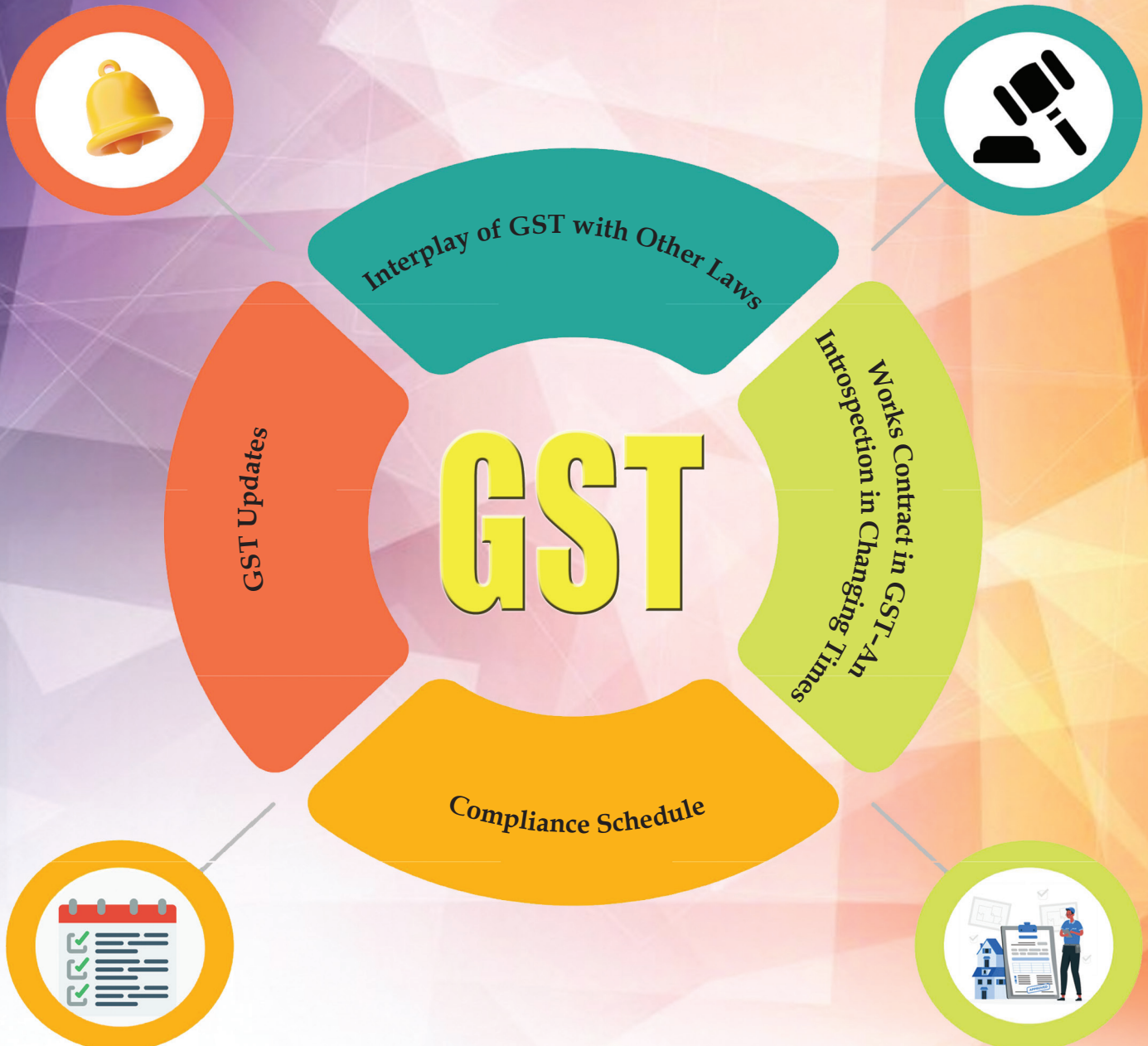


40<sup>th</sup> Edition

# ICAI-GST

**NEWSLETTER**  
September 2023

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



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# President's Communication



**Dear Professional Colleague,**

Greetings from the Institute of Chartered Accountants of India (ICAI)!

The Government is readily committed to making the tax procedures simple, as we are witnessing regular amendments in the law owing to the same. The 50<sup>th</sup> and 51<sup>st</sup> GST Council Meeting also placed emphasis on measures for trade facilitation and streamlining compliances in GST including taxability and valuation of Casino, Horse Racing and Online gaming.

Committed to our axiom of *Partner in Nation Building*, ICAI endeavors to regular assist the Government in its capacity building initiatives by organising training programmes on accounting and auditing aspects of GST for officers working with various Government departments. I am pleased to inform you that keeping with this objective, ICAI, through its GST and Indirect Taxes Committee, has entered into an MoU with Department of State Taxes, Jammu & Kashmir to develop co-operation and collaboration in capacity building, research, assistance in policy making, consulting and other such activities.

Also, the ICAI recognizes its responsibility to keep the members of the fraternity updated with the recent laws and regulations so that they can undertake their professional endeavors in a more efficient way. In this context, the ICAI through its GST & Indirect Taxes Committee has been working diligently to bridge the gap of the knowledge of GST of every stakeholder and in every sector by taking various initiatives. Sharing GST Updates through monthly newsletter is one of them. I urge all of you to take full advantage of the same.

I believe this 40<sup>th</sup> Newsletter adds value to your professional knowledge and skills.

Best wishes,

**CA. Aniket Sunil Talati**

President

The Institute of Chartered Accountants of India

# Chairman's Communication



Dear Members,

Warm Greetings!

I am delighted to share with you the 40<sup>th</sup> edition of ICAI GST Newsletter with a fond hope that you are well and thriving in your professional pursuits. As we cross the first half of the FY 2023-24, I would like to bring to your attention the importance of promptly reviewing and reconciling input tax credit (ITC) for FY 2022-23 as the deadline for availing ITC for the FY 2022-23, which falls on November 30, 2023, is drawing near.

The CGST (Amendment) Act, 2023 and IGST (Amendment) Act, 2023 which were enacted pursuant to the recommendations made at 50<sup>th</sup> and 51<sup>st</sup> Council meetings have been made effective from 01.10.2023. The amendments made vide the Amendment Acts aim to tax actionable claims supplied in casinos, horse racing and online gaming @ 28% on full face value, irrespective of whether the activities are a game of skill or chance. Amendments have also been made in CGST Rules, 2017 to provide for the valuation of supply of online gaming and actionable claims in casinos.

The Government has been taking various steps to reduce bogus invoicing and fake registrations. A time limit of 30 days from the date of document has now been set for reporting of all types of documents for which IRNs are to be generated on e-invoice portals for taxpayers with aggregate annual turnover of Rs. 100 crores or more. Further, 31 State Benches of the Goods and Services Tax Appellate Tribunal have also been constituted by the Government. In this Newsletter, we have curated a comprehensive overview of recent news, updates, and important changes in GST law.

I am pleased to inform you that batches of Certificate Course on GST are regularly being organized at various locations to empower the members with the skills and knowledge needed to excel in GST. You can keep track of upcoming batches at the Committee's website <https://idtc.icai.org>.

As I conclude, am reminded of the words of Mahatma Gandhi - *"Learn as if you will live forever, live like you will die tomorrow."*

Happy learning!

Yours sincerely,

**CA. Sushil Kumar Goyal**

Chairman

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

# WORKS CONTRACT IN GST –AN INTROSPECTION IN CHANGING TIMES

## Introduction

Levy of Indirect Taxes on works contract has been one of the most controversial subjects. The imbibed nature of goods and services in the contract makes it complicated for any person to provide straight answers to questions related to this subject. It has been held by Supreme Court in the case of *Commissioner of Central Excise & Customs, Kerala v. Larsen & Toubro Ltd. (2015 (39) S.T.R. 913 (S.C.))*, that the indivisible works contracts are separate species of contracts known to the commerce distinct from contracts for service simpliciter or contracts for supply of goods. Works contract supplies include transactions which include supply of both goods and services for e.g. construction of immovable properties like flats, offices, buildings etc., repair and maintenance of such immovable property, installation of machineries, EPC contracts, contracts of construction or maintenance of infrastructure projects etc. Likewise, the controversies surrounding works contract included levy of Sales Tax on works contract as deciphered in the case of *Gannon Drunkley I (1959 SCR 379)*, determination of valuation in the case of *Imagic Creative (2008 (9) STR 337 (SC))*, determination of nature of supply in the case of *Kone Elevators ((2014) 7 SCC 1)*, determination of multiple levies on various aspects in the case of *BSNL (2006 (2) S.T.R. 161 (S.C.))*, determination of inclusion of value of free supplies in the case of *Bhayana Builders Pvt. Ltd. (2018 (10) G.S.T.L. 118 (S.C.))* etc. The subject did not find peace in Goods and Services Tax (“GST”) as well. GST was seen as a good and simple tax and taxpayers envisaged that in GST, the levy and Input Tax Credit (“ITC”) would be amply clear on complex transactions like works contract as there would be no levies on various aspects and it would be one single tax payable. We shall examine the various new questions which are raised in this regime on transactions of works contract.

## The Definition

Section 2(119) of the Central Goods and Services Tax (“CGST”) Act, 2017 defines works contract as under:

*“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*

Thus, the essential constituents for any contract to qualify as works contract under GST are:

- It should be a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning;
- The activities stated should be with respect to an immovable property;
- There must be transfer of property in goods, and
- Such transfer should be made during the execution of such contract

Thus, the definition is pari-materia to the erstwhile era but with the change, it is now restricted to immovable property while in erstwhile era of indirect taxes, works contract included activities on movable as well as immovable properties. We shall, however, restrict our discussion in context of present regime i.e. GST only.

## Works Contract – The Indivisible

The observation of Hon'ble Supreme Court in the case of *Kone Elevators* (supra) still holds strong in GST regime as well, in every contract what is to be seen in the first instance is the relevant terms of the contract and finding out as to whether the essential ingredients of those terms would lead the Court to hold whether the element of ‘Sale’ that would fall within the definition of ‘Sale’ under the Sale of Goods Act is present. The Court held that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if separate contract is entered into for installation, that would be a contract for labour and service. But once there is a composite contract for supply and installation, it has to be treated as a works contract. It is not sale of goods/chattel simpliciter. It is not chattel sold as chattel or, for that matter, a chattel being attached to another chattel. Therefore, it would not be appropriate to term it as a contract for sale on the bedrock that the components are brought to the site, i.e., building, and prepared for delivery.

There is no doubt now after so many Apex Court decisions that works contract is a single composite indivisible supply. It is not one supply which can be bifurcated into multiple components for convenience of levying tax thereon. In *Gannon Dunkerley I (1959 SCR 379)*, the Apex Court held that a works contract is a composite contract which is inseparable and indivisible, and which consists of several elements which includes not only transfer of property in goods but labour and service elements as well. Thus, the very nature of any contract that needs to be examined first is whether it is a single indivisible one or a contract for supply of goods or supply of services separately. The Hon'ble Supreme Court has also observed that when the contract itself profoundly speaks of obligation to supply

goods and materials as well as installation of the lift which obviously conveys performance of labour and service and hence, the fundamental characteristics of works contract are satisfied.

What is important is not mere presence of supplies of goods and/or services but supply of such goods should be during the execution or performance of such services under the contract. A contract may have terms for supply of both goods and services. However, if these two supplies are distinct and there is no linkage between them, in terms of transfer of property post or during the execution and supplemented by a cross fall breach clause, the same is not a works contract but a contract for two distinct supplies. On the contrary, even when there are distinct supplies of goods and services under a contract or two different contracts, but having common completion point for the supplies supplemented by a cross fall breach clause, the contract shall be a works contract.

It is important for any taxpayer to be cautious while classifying his contract as works contract or otherwise, as it may have a huge impact under GST. For e.g., in case of works contract, the place of supply is the location of immovable property, while in a contract where only goods are supplied, the place of supply shall be the location where movement of goods terminate for delivery to the recipient. Similarly, there would be distinct rates applicable on the supply of goods and services if supplied under a distinct contract for the supply of goods and services, while there shall be one single rate in the case of works contract that will be applied on the entire value of the works contract. Thus, in case of a classification error in categorizing works contract vis-à-vis distinct contracts for the supply of goods and services, many other errors are bound to follow.

### What results in an Immovable Property?

In GST, to constitute a works contract, the activity must be with respect to an immovable property. However, what constitutes an immovable property has always been a matter of debate. Not every property attached to earth would constitute immovable property. Various tests have been laid down by the Apex Court for determining whether a property is immovable or not, which includes, the test of permanency and removal without structural damage (*Municipal Corp. of Greater Bombay v. Indian Oil Corp. Ltd. (AIR 1991 SC 686)*), test of attachment versus stability (*Solid and Correct Engineering Works (2010 (252) E.L.T. 481 (S.C.)*), test of attachment or better functioning (*Sirpur Paper Mills Ltd. ((1998) 1 SCC 400)*) etc. Thus, if a property qualifies the above tests, it could constitute an immovable property. Immovable property does not necessarily mean a property created as a result of brick and mortar. Even a plant and machinery can also be treated as immovable property. For e.g., in the case of *M/s. T.T.G. Industries Ltd. v. Collector of Central Excise (2004 (167) E.L.T. 501 (S.C.)*), the contract for the design, supply, supervision, erection and commissioning of four sets of hydraulic mudguns and tap hole drilling machines required for blast

furnace was held to be an immovable property.

### ITC on Works Contract

It's pertinent to mention that according to Section 17(5)(c) of the CGST Act, ITC on works contract services, when received for the construction of immovable property other than plant and machinery, is not permitted. However, ITC is allowed when it's received for the purpose of further supplying works contract services.

It is also pertinent to mention that some taxpayers are tempted to classify the resultant immovable property within the ambit of plant and machinery as ITC on plant and machinery is not restricted under Section 17(5)(c) and (d) of the CGST Act, 2017. As per Section 17 of the CGST Act, 2017, the expression "plant and machinery" is defined as apparatus, equipment and machinery fixed to earth by foundation or structural support used for making outward supply of goods or services or both and includes such foundation and structural support but excludes:

- a) land, building or any other civil structures;
- b) telecommunication towers; and
- c) pipelines laid outside the factory premises.

Courts have often given wider meaning to the term 'plant'. For example, in the context of the term "plant", the Supreme Court in *Scientific Engineering House Private Limited v. Commissioner of Income Tax, AP (1986 AIR 338)*, observed as below:

*"In other words, plant would include any article or object fixed or movable, live or dead, used by a businessman for carrying on his business and it is not necessarily confined to an apparatus which is used for mechanical operations or processes or is employed in mechanical or industrial business. In order to qualify as plant, the article must have some degree of durability, as for instance, in Hinton v. Maden & Ireland Ltd. [1960] 39 ITR 357 (HL), knives and lasts having an average life of three years used in manufacturing shoes were held to be plant. In CIT v. Taj Mahal Hotel [1971] 82 ITR 44 (SC), the respondent, which ran a hotel, installed sanitary and pipeline fittings in one of its branches in respect whereof it claimed development rebate and the question was whether the sanitary and pipeline fittings installed fell within the definition of plant given in section 10(5) of the 1922 Act which was similar to the definition given in section 43(3) of the 1961 Act and this court after approving the definition of plant given by Lindley L.J. in Yarmouth v. France [1887] 19 QBD 647, as expounded in Jarrold v. John Good and Sons Ltd. [1962] 40 TC 681 (CA), held that sanitary and pipeline fittings fell within the definition of plant."*

A judgement is also desirable in the GST regime to determine whether a property is a plant or machinery or not as the same would further decide the eligibility of ITC to the recipient.

Many taxpayers were perplexed as to whether their

supplies would amount to immovable property or not or were they performing their services in relation to or on immovable property. Accordingly, some of them even sought advance rulings on the issue. Some of the advance rulings in this respect are as follows:

Applicant	Issue
Reach Dredging Ltd. (2023 (74) G.S.T.L. 122 (A.A.R.- GST - W.B.))	Whether contract for desilting of foreshore of a barrage in Krishna river which includes dredging in foreshore of barrage with dredger and depositing materials in area of government lands/path qualifies as composite supply of 'works contract' as it aims at improvement of immovable property which involves both supply of services and supply of goods – Held Yes.
Utkarsh India Ltd. (2022 (67) G.S.T.L. 109 (A.A.R. - GST - W.B.))	Whether railway contract for dismantling of existing sleeper and fixing and/or installation of new H-beam steel sleepers involving both supply of goods and services relating to railway bridge being an immovable property, amounts to works contract – Held Yes.
Shakil Sikandar Gavandi (2022 (58) G.S.T.L. 579 (A.A.R. - GST - Goa))	Applicant provides the service of dumping of soil from one place to another and excavation service to main contractor engaged in the construction of bridges etc. Whether the supply of labour force/work without material by a sub-contractor to main contractor, who is engaged in supply of "works contract" service, also falls under "works contract" services? – Held No.
Nikhil Comforts (2020 (41) G.S.T.L. 417 (App. A.A.R. - GST - Mah.))	Activity involving supply, installation, testing and commissioning of variable refrigerant flow (VRF) indoor and outdoor units suitable for R-410 gas, refrigerant piping with insulation, drain piping with insulation, MS stands, cabling, additional refrigerant and associated electrical works, etc.- Held such installations are not works contract as they can be dismantled and moved to another site.
Om Prakash Contractor (2021 (48) G.S.T.L. 278 (A.A.R. - GST - Haryana))	Contracts for operation and maintenance of structures/components, staff quarters, pump chamber, boundary wall, distribution system, tube wells, pumping machinery, etc., under water supply scheme, and operation & maintenance of various sizes of sewer lines, repair of civil structures, supply of consumables, etc. fall within the ambit of works contract. – Held Yes.

The list is not exhaustive as many other questions have been posed before AARs by taxpayers. The positions adopted by AARs may also not be in consensus with the views of some experts. Yet, it is important to be aware of the works undertaken and its proper classification.

### Quantum of Labour or Goods – Is it Determining Factor for Works Contract?

Hon'ble Supreme Court in the case of *Kone Elevators ((2014) 7 SCC 1)* also held that "the dominant nature test" or "overwhelming component test" or the "degree of labour and service test" are really not applicable in determining whether or not a contract is works contract. If the contract is a composite one which falls under the definition of works contracts as engrafted under clause (29A)(b) of Article 366 of the Constitution, the incidental part as regards labour and service pales into total insignificance for the purpose of determining the nature of the contract. Thus, the very nature of the contract should be the determining factor of its being a works contract and not the value component of its constituent goods and services. The valuation would always follow determination of the nature of supply and not vice-versa. The determination whether a supply is an incidental supply or a part of the main supply is always a challenging task. Like, in the case of the lift where the majority of the site work was undertaken by the client and only installation of supplied goods was to be done by the assessee; since the contract was the one for supply and installation resulting in the transfer of the property only at the time of the execution and not before, the Apex Court treated it as a works contract. The position is no different in the GST regime. In some contracts, the value of the goods might be small compared to the value of services for e.g., a contract for cleaning and refurbishing of tanks also involving application of a layer of chemical or paint in a design pattern etc.

### Classification – Can Components be Invoiced Separately?

Having understood the nature of works contract, it is important to understand that once a transaction qualifies as works contract, specifying the separate values for its goods and services component would not make it a divisible contract for the supply of goods and services. The composite supply under a works contract shall be treated as a supply of services in terms of Section 7(1A) read with para 6(a) of Schedule II of the CGST Act, 2017. The identity of all supplies of goods and services shall subsume their identity in the service of composite supply of works contract. For e.g., Mr. X is awarded a contract for the supply and installation of LED display boards (immovable) on various shops belonging to a multi retail chain. Mr. X manufactures such boards in his Noida factory, transports them to the shops and then installs

them. Mr. X charges Rs. 15,000 per board, Rs. 5,000 for its transportation and Rs. 5,000 for its installation. While the consideration for the three main components of the transaction are separately provided, if the terms of the contract do not provide for the sale of such board and its consequential services separately, one cannot bifurcate such indivisible contract artificially. Accordingly, the same would constitute a composite indivisible works contract. This understanding draws support from the definition of 'composite supply' which does not use the words – single price, i.e., unlike in the case of 'mixed supply'. Thus, even in the absence of a single price for the complete contract, the connect of components when available as a practice in trade could make the supply a composite supply.

### Works contract –Associated Facilities / Sub-Parts

In infrastructure projects, it is often seen that a supplier may be engaged only for executing a part of the entire project and thereby performs some ancillary installations. It is pertinent to mention that even in such cases, the supply made by such contractor must be seen independent of the entire project and test of immovable property must be applied to such supply. Also, if such parts form an intractable part of the main project, the tax benefits as available to the main project may also be available to such sub-part. In *GMR Projects Pvt. Ltd. v. Commissioner (2021 (44) G.S.T.L. 110 (Tribunal))*, CESTAT has held that the construction of facilities like toll plaza, cattle/pedestrian crossings, parking bay for buses/trucks, rest room for staff and common public, etc. are a part of road. The decision has been affirmed by the Hon'ble Supreme Court (2022 (67) G.S.T.L. 5 (S.C.)).

### Liability of a Sub-Contractor – Independent of the Contractor

Often taxpayers consider the liability of a sub-contractor as a sub-set of the tax liability of the contractor. Accordingly, they often consider the tax liability discharged by the main contractor as discharge of the GST liability by the sub-contractor. At times, they imagine that the GST rate applicable to the main contractor would automatically be applicable to the sub-contractor. However, it is a trite law that the liability of a sub-contractor is independent of the main contractor. A sub-contractor should independently determine the levy, classification, rate, value etc. for his own supply. This issue has been addressed in the case of *M/s. Melange Developers Private Limited (2020 (33) G.S.T.L. 116 (Tri. - CB))* wherein the larger bench of CESTAT held that "a sub-contractor would be liable to pay Service Tax even if the main contractor has discharged the Service Tax liability on the activity undertaken by the sub-contractor in pursuance of the contract."

### Movement of Goods and Invoicing

Movement of goods and its documentation is often

misconceived in GST. Taxpayers are often tempted to issue invoice for the goods which shall be used in works contract at the time of supply of such goods to site. However, it is important to understand that there is no independent supply of goods in such cases and thus, the issuance of invoice at the time of movement of goods to site is misplaced. Rather, such movement should happen under a delivery challan accompanied by proper e-way bill as required under Rule 138 of the CGST Rules, 2017. Invoicing for works contract should be done as in the case of services. As per Section 31 of the CGST Act, 2017, invoice is required to be issued in case of continuous supply of services as under:-

- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
- (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

If works contract does not qualify as a continuous supply of services, then invoice should be raised before or after the provision of service, but within the prescribed period (30 days).

As the various components of works contract are indivisible, the tariff heading (HSN/SAC) to be mentioned on the invoice should be '9954' and not that of individual components of goods and services supplied during the execution of such works contract. Even if the values are bifurcated, still the HSN/SAC shall be that of works contract and not of individual components, i.e., if the contract satisfies the requisites of a composite supply.

### Conclusion

While there are many answered questions, the litigation is not yet over in the context of works contract under the GST law. In the new regime, old issues have resurfaced along with certain new ones. However, the works contract sector has embraced GST with full vigour and even though there may be limitations, still it is believed that the GST regime has relaxed the dual levy issue and compliance problems to much greater extent.

Considering the fact that technology has been converting many installations which were seen as permanent installations earlier into plug and play model, the tests laid by courts earlier like test of destruction, test of permanence etc. may need to be relooked in the changing circumstances. Thus, this topic of works contract shall always keep its relevance for the learners.

**Contributed by CA. (Dr.) Gaurav Gupta**



# INTERPLAY OF GST WITH OTHER LAWS

## Introduction

The idea of introducing GST was proposed by Kelkar Task Force in 2004, a committee set up by Central Government on recommendation of PM Atal Bihari Vajpayee in 2000. Later, Vijay Kelkar Committee came up with GST introducing to simplify the complex and fragmented tax system, promote economic integration, and also to reduce tax cascading. Another committee was set up under leadership of Asim Dasgupta, who proposed the First Discussion Paper in 2009.

In 2006-07, FM P. Chidambaram addressed the goal of bringing a unified taxation system in his speech and 1<sup>st</sup> April, 2010 was decided for introducing the GST regime. In 2007, bill was passed in Lok Sabha with motto that annihilation of Central Sales Tax (CST) would pave the path for GST.

In 2010, Government decided to computerize the whole Commercial Tax Department (CTD) at both the Central as well as State levels, with aim of helping citizens in availing the online services and will also ease the work of the CTD staff which postponed the implementation of GST. It took 17 years for the Government to implement it. After years of deliberation and negotiations between the Central and State Governments, the Constitutional (122<sup>nd</sup> Amendment) Bill 2014, was passed by the Lok Sabha in May, 2015 to enable GST implementation in the country.

Later, after going through various amendments, the bill was finally passed in the Rajya Sabha and after that by the Lok Sabha in August 2016, which was further rectified by the States and finally received the assent of the President on 8<sup>th</sup> September, 2016 and was enacted as the 101<sup>st</sup> Constitution (Amendment) Act, 2016. This article will highlight significant amendments made in the pre-existing provisions for implementing the GST law in a descriptive manner.

## GST vis-à-vis CONSTITUTION OF INDIA

The Constitution was amended in 2016 (101<sup>st</sup> Amendment Act) to incorporate GST within its provision, and the responsibility to prepare the roadmap for the same was handed down to the Empowered Committee of State Finance Ministers (EC). To which the EC proposed two dual GST components, one for the Central and the other for the State. As a result, few important amendments were made by the 101<sup>st</sup> Amendment Act, 2016 as mentioned below:

### 1. GST and State Defined:

The term 'GST' for the first time was defined under Article 366(12A), along with the incorporation of Articles 366(26A) and 366(26B), which defined 'services' and 'States,' respectively. Before this amendment, the term 'goods' was defined under Article 366(12) of the Act, 1950.

### 2. GST Council Creation:

Another significant change is the introduction of the President's power to form a GST Council with the insertion of Article 279A. This Council, as per the stated article shall consist of ministers from the State and the Union Governments, responsible for making suggestions or modifying any regulation related to GST.

### 3. GST Special Provision:

Introduction of Article 246A gave Parliament and State legislatures special powers to make GST laws in case of inter-State supplies. This amendment was necessary as even though Article 246 gave a clear-cut division of powers between the Central and the State Government, but the Central did not have the right to tax the sale of goods, except in the case of inter-State sales, and the State could not levy tax over services.

But this power is not absolute in nature and is subjected to conditions of Article 246A(2) and 269A which talks about inter-State supply. Therefore, the Parliament has power for dealing with supply of goods or services or both, except as mentioned under Article 246A(2) but cannot provide the manner for apportionment of tax collected by law under Article 246A (1), between Governments.

This differentiates between the power given under Article 246A(1), 246A(2) and 269A. Due to this, the inclusion of specific supplies in inter-State supplies, imposition of tax collected, and the levy of tax is not supported by the Constitution.

### 4. State Power of GST Law Making:

No Constitutional provision either gives or restricts the GST law-making power of the States. Even though Article 246A(1) talks about the 'legislatures of the State,' it also does not specify the nature of supply concerning which legislatures can make laws. Even the Parliament does not have the power to specify the nature of supply(s) of goods or services or both concerning which State legislatures can make laws.

This confusion was drawn out by reading Article 245, which also does not give absolute power to States and is subjected to the constitutional provisions like-

- tax on supply of alcoholic liquor for human consumption as the definition of 'goods and services tax' provided under Article 366 (12A) does not include any tax on the supply of alcoholic liquor for human consumption.
- tax on supply of petroleum crude, high-speed diesel, motor spirit (petrol), natural gas, and aviation turbine fuel until Article 246A takes effect regarding the supply of such goods.

- cannot make GST law on supply mentioned under Article 286 (1).

## 5. Constitutional Restriction:

Special heed is to be paid to Article 286 which talks about constitutional restrictions. It imposes restriction on State to tax the supplies which takes place outside the territory of the State or out of India, and also supersede any power conferred to tax, either given by the Constitution or any other law. Suppose the power related to tax is not interpreted in harmony with the restriction, then the provision will lose its value and will be considered void. To circumvent this constitutional restriction, the GST Act made several attempts to impose taxes on transactions outside India under the guise of a deeming fiction but could not succeed.

GST is a destination-based consumption tax different from the CBIC principle of tax on origin, is a well-known fact. The Parliament is provided right to impose a tax on goods destined outside India. In other words, consumption outside India cannot be taken as a local supply even after applying the principle of the place of supply. If done so, it will defeat the interpretation of the purpose of the Constitution's embargo on taxing extra-territorial transactions and foul of the inherent nature of GST being destination-based tax. Therefore, the extra-territorial application of law falls out of the constitutional frame work and the GST regime scheme.

It can be easily understood by applying doctrine of pith and substance, does the reading Article 269A provide any power to the authorities in the context of levying taxes on transactions that are consumed outside territory of India, and if done so, will fall out of the principle of equality as enshrined under Article 14 of the Constitution.

## 6. 7<sup>th</sup> Schedule Amendments:

Changes were made in the lists mentioned under 7<sup>th</sup> schedule of Constitution to incorporate GST and avoid any confusion between the Central and State in matters dealing with tax levying. To continue the levy of excise duty by the Central and to reduce the confusion, changes were made in entry 84 of the Union list (list I) which specifies list of goods manufactured or produced in India on which duties of excise is applicable.

Another crucial step was reduction of tax on small companies, reduce corruption, along with instilling order and accountability in the unorganized sector.

## 7. Taxes Levied and Distribution b/w Union and State:

Two clauses inserted namely (1A) and (1B) under Article 270. They talk about two categories of tax collection in which the laws can be made by Parliament. Article 269A, read with Article 246A(2), provide the Parliament with the right to make laws related to the levy and collection of tax and apportionment of tax collected between the States and the Union for the

supply of goods or services or both, in the course of inter-State trade or commerce and the course of import in India.

## GST vis-à-vis INDIAN EVIDENCE ACT

We know that adjudicating process of tax matters are summary trials. However, the evidence law plays a vital role in tax proceedings. The show cause notice (SCN) issued by the authorities relies upon the evidence presented before them. While filing the reply, the assessee is supposed to submit the documents in support of his defense reply, which, if not taken into consideration, will violate the assesses legal and statutory rights. Here, we will talk about different instances where evidence play important role:

### 1. Circumstantial Evidence:

Evidence plays a vital role in tax proceedings. In some cases, statement given by the person is recorded at the time of investigation to prove the authenticity of the facts presented. Here, the burden of proving the same lies on the person who claim the allegations to be false (Section 106 of IEA, 1872).

### 2. Statement of Person 'Not Accused':

Person not accused (including at the inquiry stage) cannot be compelled to testify in the courtroom. Also, any statement made in front of the officials of excise/customs by such a person cannot be treated as evidence as they are not the 'Police Officer' but just a 'Proper Officer'.

Commissioner holds power to conduct a search under suspicion, confiscate suspicious goods, and can perform the role of police but in restricted manner to the customs level, but cannot coerce the person to give statement without issuing SCN and if so, the information shared is null and void. The power to authorize any officer of Central tax to arrest any person under section 69 of the CGST Act, 2017 is more comprehensive as it gives the power to issue order for arrest merely on the ground of 'reason to believe'.

On the other hand, section 70 of the CGST Act, 2017 provides proper officer with power to issue summons to any person who, based on his understanding, is necessary for the case to either give evidence or produce a document. Both the sections give arbitrary power to proper officer to arrest or summon any individual as per their will or merely on the grounds of 'reason to believe'. But the major difference is when it comes to its applicability as Section 69, it gives direct power to arrest without even a justified cause merely on the grounds of doubt which not only affect the social status of the arrested person but can also its fundamental rights.

### 3. Rule of Evidence:

In case of joint involvement of a single person or more, the handwritten document containing a person's

signature is presumed to be true as per the 'rules of evidence'. On the other hand, if the documents submitted as evidence are not considered genuine, then in those cases, it is known as 'rebuttal presumption', where the person submitting the evidence is at burden to prove the authenticity of same.

Section 136 of the CGST Act, 2017, states that statement presented by the person summoned under section 70 of the CGST Act, 2017 should be relevant to the case if it is to fall under the 'rules of evidence'.

#### 4. Expert Opinion and Report of Documents Submitted:

Opinion of professionals, like Chartered Accountants or other experts, is considered a relevant fact. They are cross-examined as per section 138 of the IEA, 1872 based on their findings; if not present, such findings will be retained. Submission made in support are drawn, calculated and needs to be strong to support expert's testimony.

#### 5. Admissibility of Documents:

Before the CGST Act, 2017, section 126 of Model GST 2016 dealt with the admissibility of documents under the GST law. It provided a list of documents which can serve as evidence in tax matters, while section 126(1) of the same Act provided for the documents 'deemed' to be taken as evidence until and unless barred by any other law. These documents serve as evidence in the tax proceedings without any further proof or original document. It further in its explanation, also define 'computer', which gave admissibility to the computer printed documents or the online copy of the documents.

Currently, section 144 read with section 145 of the CGST Act, 2017 deals with the provisions governing presumption and admissibility of documents as evidence in the tax matters, which as per section 144(a) are true unless proven contrary by any other person. Here, the rule of evidence applies.

#### GST vis-à-vis INCOME TAX ACT

The fundamental difference between the Income Tax and GST law is that the former is assessed on the income of an individual while the latter is on the use of goods and services. Before GST implementation, around 17 indirect taxes were in force. But now GST officers have access to the Income Tax assessee database, and the Income Tax officers tap upon the facts and figures reported under the GST law.

#### 1. GST Introduction:

The digitally dedicated GST system has made it easy for authorities to keep a check on the business including maintenance of proper tax records and calculation of tax liability. It has also made it easy for Income Tax department to compare the tax for the total turnover of a particular business or person, catch tax evader and any discrepancy.

#### 2. Charitable Institutions:

The taxation aspect of charitable institutions under Income tax and GST laws is entirely different. 'Charitable purpose' is defined under section 2(15) of the Income Tax Act, 1961, which makes them fall under the exception of the Income Tax, which is not the same case under GST law as it defines 'charitable activity' under paragraph 2(r) of the *Notification No. 12/2017 – CT (Rate)*.

Section 12 of Income Tax Act, 1961 makes any voluntary contributions received and not made in any specific direction to be income from property held under trust or other legal obligation for charitable purposes, which is not taxable. While in GST, 'consideration' is defined under section 2(31) and does not include donations. Hence, it would not fall under the definition of 'consideration' and accordingly would also fall out of section 7 and automatically section 9 of the CGST Act, 2017 will fail. To understand it better, we can look at the definition of term 'business' under section 2(17) (a), (b) and (c) of the CGST Act, 2017 which on its interpretation reveals that any action, whether or not done for any monetary gain, regardless of volume, frequency, continuity, or regularity, is referred to as 'business.' Hence the 'supply' done by the charitable institute regardless of whatever intention will be interpreted under the ambit of 'business'. It concludes that supplies made by charitable institutions would be taxable unless exempted under Section 11 of the CGST Act.

The judgment of Authority for Advance Ruling (AAR), Maharashtra, in the case of *Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra (GST-ARA-41/2017-18/B-48)* has stated that the sale of spiritual products which is incidental or ancillary to main charitable object can be said to be 'business' and accordingly tax is required to be paid on such supply.

#### 3. Tax Deduction at Source:

Section 51 of the CGST Act, 2017 talks about concept of tax deduction at source popularly known as TDS. It makes it mandatory for Government companies or entities, and other designated entities by the Government in case of contractual payments credited to the suppliers where the total value of such supply under a contract exceeds INR 2.5 lakhs excluding GST. The competent Government / authority shall mandatorily deduct 2% of the total payment made (1% under each Act and 2% in the event of IGST) and send it to the appropriate GST account.

Moreover, section 194C of the Income Tax Act, 1961 makes the deduction of TDS mandatory in those cases where the payment was credited to the contractor or sub-contractor. But it only arises in those cases where the contract was for 'work' or 'supply of labour for a works contract,' and the amount of payment

made exceeds INR 30,000 in one single payment or exceeds INR 1 lakh. To avoid its misinterpretation, the lawmakers defined the term 'work' under section 194C. Further, the deduction mentioned under section 194C does not apply to all kinds of entities or companies. It also lists certain exceptions where deduction won't be applicable.

### **GST vis-à-vis IPC & CrPC**

GST impose stringent compliance requirements on all taxpayers and individuals who fall under its purview as it is a destination-based tax process. It establishes a strict set of rules for punishments and infractions parameters that taxpayers must follow to ensure transparency of intra-State and inter-State flow of commodities, prevent corruption, and create an effective tax collection system. Some acts of the taxpayer are characterized as an offence are mentioned below:

- a) Issuing goods with incorrect information or improper invoices.
- b) Using other person GSTIN.
- c) Entering false information or fraudulent filling of returns.
- d) Misleading information for GST registration.
- e) False information or committing fraud while claiming reimbursement.
- f) Fraudulent claim of ITC

Jharkhand HC in a writ case of *Anupam Kumar Pathak v. The State of Jharkhand and Ors., (W.P. (Cr.) No. 141 of 2022)*, in its judgment clearly stated that *"FIR logged, and criminal proceeding initiated under the IPC cannot be quashed merely because on reason that offence committed is covered under GST law."*

#### **1. Criminal Conspiracy:**

Section 120A of IPC Act defines 'criminal conspiracy', and punishment for it under section 120B. If two or more persons agree to do an illegal act will amount to conspiracy. Similarly, if two or more people agree to perform an illegal act such as tax evasion or fraud, they are held accountable under criminal conspiracy. If someone help in its execution will be punished with imprisonment for term not exceeding 6 months or with a fine or with both (Section 120B of IPC, 1860).

#### **2. Forgery:**

Section 463 to 468, 470, and 471 of the IPC Act discuss offences under 'forgery' and describes punishment for it. We know documents play an essential role in tax, whether in filing returns or in refunds. When there is a forgery in documents by the taxpayer, then the offence under these provisions is committed. The offender is charged with punishment of imprisonment which may extend to two years, or with a fine, or with both under section 465 of the IPC Act.

#### **3. Arrest:**

Section 46 of CrPC describes 'how the arrest is made' and Section 69 of the CGST Act provides 'power to arrest'. It gives Commissioner power to authorize any officer to arrest someone if he believes that the person has committed any offence described in clauses (a), (b), (c), and (d) of section 132(1), which are punishable under clause (2) of the same section.

#### **4. Summons:**

Section 70 of the CGST Act, 2017 gives power to issue summons for attendance of a person which the proper officer considers necessary for case. While according to section 67 of CrPC, whenever summons is issued outside local authority of department, a duplicate copy of issued summons should be sent to magistrate within that local limit. This provision of law also applies to the summons issued under section 70 of the CGST Act, 2017 in cases where the person resides outside local limit of issuing authority.

#### **5. Search by a Police Officer:**

Section 165 of CrPC addresses police officer searches. Section 67 of the CGST Act, 2017, while defining the power of 'search, inspection and seizure' also states that if the Joint Commissioner has reasonable grounds to assume that a taxable person is willfully suppressing transactions to escape taxes or has claimed excessive ITC, he may direct an officer of GST to investigate the taxable person's locations.

Similarly, he has authority to order search and seizure within the premises of taxable person if he has reasonable grounds to think that goods should be confiscated, or essential records related to the matter are hidden somewhere. He can also direct some other proper officer to do so in writing.

#### **6. Bailable and Non-bailable Offence:**

Offences are classified as bailable or non-bailable. Bailable offences are those for which bail is allowed, whereas non-bailable offences are those for which bail is not allowed. Similarly, under the CGST Act, some offences are bailable, and others are not. Section 132(5) of the CGST Act, 2017 specifies four cases as cognizable and non-bailable. If the amount of tax evasion, including compensation cess, and/or incorrect availment or utilization of ITC, and/or incorrect reimbursements exceeds Rs 5 crores, it is punishable by imprisonment for a term of up to five years or a fine. The non-bailable and cognizant offences as per section 132(5) of the CGST Act, 2017 are as follows:

- a) Supply of goods or services or both without the bill
- b) Billing without supply
- c) Wrong ITC or billing without supply
- d) Tax collected but not deposited.

While sections 436 and 437 of CrPC talk about the bail in both bailable and non-bailable cases, respectively.

## 7. CGST Special Provision:

Apart from the expressed provisions of penalties and punishment applicable on tax offenders under both GST law and other provisions of law, the CGST Act in section 125 has widened the scope of penalty by stating that if no penalty is separately provided for non-compliance with any provision of the GST law and rules, then it may extend up to INR 25,000/-.

### GST vis-à-vis FEMA & PMLA

#### 1. Export of Goods:

When we talk about export of goods, lawmakers tried to make export from India globally competitive, and to do GST was drafted in a way where exports are treated either as inter-State supply, which is governed by the IGST Act, or as a zero-rated supply which is totally tax-free.

For registered person, it is easy to believe that delivery of service or its supply to a foreign national person and payment received in convertible foreign exchange should be treated as an export of service. However, there are other criteria for determining export of services under GST regulations. The term 'export of services' is wide enough to incorporate a long list of various kind of export supply as defined under section 2(6) of the IGST Act.

Similarly, zero-rated goods, which are tax-free, can also be misinterpreted as having no GST registration, which is not the case. A zero-rated supply is not same as 0% tax rate supply. According to CGST Act 2017, no ITC can be claimed against 0% tax rate supplies. However, this restriction does not apply to zero-rated supplies, which makes it different and also makes the GST registration mandatory for all exporters.

Refund policy under section 54 of the CGST Act, read along with Rule 96, establishes a systematic approach for seeking refund on account of goods or services exported. As we know that the exporter has option of exporting products under two different conditions, either LUT or exporting goods after paying IGST and procedure for claiming refund under both the conditions is different from each other.

The export of goods from India under the FEMA guidelines while dealing with the export of services, the provisions of section 1(a) and 7(3) of the FEMA was amended by the FEMA Rules, 2000, where they provided directions for conducting export trade from India and also clarified that to export goods from India, exporters must have an Importer Export Code (IEC) assigned by the DGFT. Exporters must provide entire transaction data to the RBI via Authorized Dealer Category-I banks, including the amount representing total export value of products. In contrast to goods exports, no forms or declarations are required for service exports. Service exporters can provide

services to overseas buyers without submitting any forms or declarations, but they must understand the amount of foreign exchange owed to India and follow certain guidelines as mentioned under the provisions of FEMA.

#### 2. Disclosure of Information:

GST law of the country is an information technology-based infrastructure that provides services to the Federal and State Governments, taxpayers, and other stakeholders. While on the other hand, the PMLA is a criminal statute enacted to prohibit money laundering within the country and provide the authorities with the power to confiscate the property derived from or implicated in money laundering and associated problems. Currently, through an amendment in section 66 of PMLA, which governs information dissemination by issuing notification, Government has placed GSTIN under the purview of the PMLA. This amendment has widened the tax authority's power to act against tax defaulters.

### GST vis-à-vis COMPANIES ACT

As per the basic understanding we know that the GST was implemented in India on 1<sup>st</sup> July 2017, and it generally to all enterprises having an annual turnover exceeding INR 20 lakh. Here in this column, we will discuss the interplay of GST and various provisions of company law.

#### 1. Corporate Social Responsibility (CSR):

Section 135 of the Companies Act 2013 defines the term. The GST law makes no explicit provision for the taxability of products or services given by businesses as part of CSR activities. Donations in kind (giving away commodities or services) made willingly or gratuitously cannot be interpreted as a supply under GST because they are an activity without any *quid pro quo* and cannot be taxed as section 7(a) on its interpretation define that the supply is valid and legal if done in exchange of consideration which is not the case here.

Further, apart from interpreting the supplies under section 7 of the CGST Act, 2017, if we look at section 17(5)(fa) of the same Act, it is noted that the input credit cannot be claimed for goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

#### 2. Related Party Transactions:

Section 188 of the Companies Act, 2013 and other provisions of the same Act, as sections 166, 173, 177, and 184, deals with related party transactions. If we talk about the GST law, it has a broader approach as it covers international and domestic transactions in relation to related party transactions. Section 15 of the CGST Act, 2017 deals with the value of taxable

supply and states the conditions where the supply made between the related party is taxable and in what manner. Apart from this, Schedule I of the Act 2017 also talks about the supply made among related persons without consideration, is considered as supply as per the provision and is consequently subjected to GST.

If we read the provisions of both Acts, we can say that the goal of both the regulations is to reduce tax evasion in India. However, because these regulations are linked, there have been some inconsistent interpretations and conflicts.

### GST vis-à-vis LIMITATION ACT

Kerala High Court, in its latest judgment dated on 13.06.2023 in the appeal case of *Penuel Nexus Pvt Ltd v Additional Commissioner Headquarters, (2023 (6) TR 7501)* held that the provisions of section 107 of CGST Act, 2017 impliedly excluded the application of the Limitation Act. Accordingly, the Limitation Act will apply only if extended to the special statute. The Jharkhand HC gave a similar view in an appeal case of 2007 that Limitation Act is not applicable in the appeal matters, where the

prescription of the time limit is mentioned in tax laws and will have a binding effect.

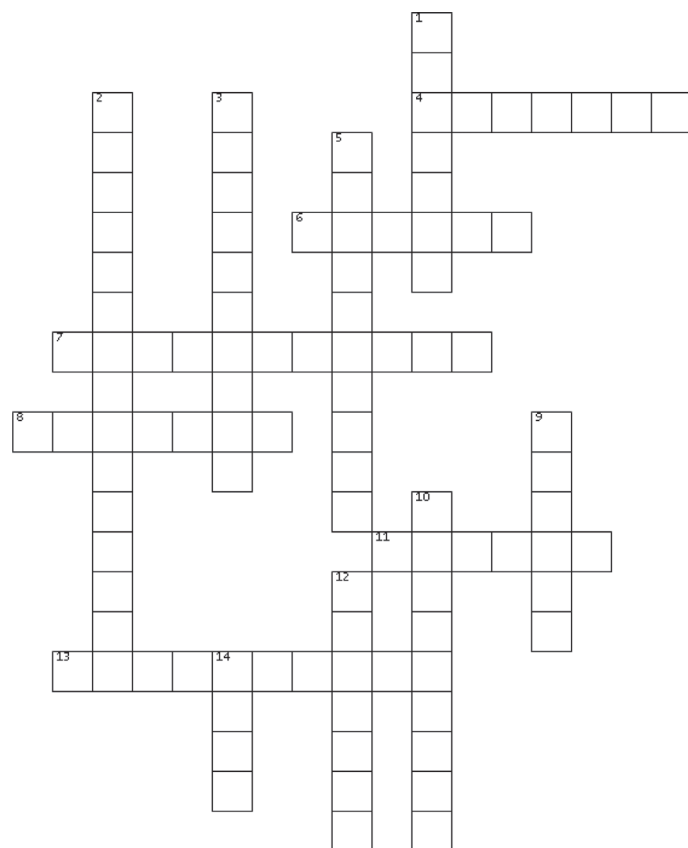
Section 168A of the CGST Act, 2017 gives the Government the power to extend the time limit prescribed under the Act by issuing a notification on the recommendation of the Council. This section also provides authority to issue extension notifications with the retrospective effect from the commencement date to the Government.

### Conclusion

In short, it can be concluded that the Government step of introducing the new tax regime and implementing the ideology of 'One Nation, One Tax' was not an easy and short process. Apart from mentioned provisions, various other provisions were amended time to time. It's linkage with other legal provisions provided a platform for checks and balances in case of any tax evasion or any fraudulent activity of the taxpayers. This interlinking helped the GST laws form a proper structural working at the State and Central level.

**Contributed by CA. (Adv.) Brijesh Verma & CA. Alka Choudhary**

## CROSSWORD



### ACROSS

4. Company having option to either reverse proportionate ITC on goods or services or both used for affecting

taxable and exempted supplies or avail 50% of the eligible ITC on inputs, capital goods and input services.

6. Action of Government to examine a place, area, person or object in order to find something concealed.  
7. Tax out of purview of GST.  
8. Manner in which detained goods can be sold.  
11. Refund claim for export of goods is processed by\_\_\_\_.  
13. Input tax credit on pipelines laid outside the factory premises.

### DOWN

1. In case of inter-State movement of goods, generation of e-way bill is mandatory irrespective of value when goods are supplied for\_\_\_\_.  
2. Document for sending goods to a job worker.  
3. Person liable to pay tax upto the date of transfer of business.  
5. Maximum number of instalments allowed by the Commissioner on an application filed by the registered person for payment of any amount due other than liability as self-assessed in any return.  
9. Place of business.  
10. After applying for cancellation of registration, the registration shall be deemed to be\_\_\_\_.  
12. Exclusion from value of supply if provided by Central Government.  
14. Tax to be charged if nature of supply not ascertainable at the time of supply.

# GST UPDATES

## 1. Reporting of invoices on the IRP Portal

A time limit of 30 days has been imposed for reporting of invoices including debit or credit note from the date of invoice, or as the case may be, date of issue of debit or credit note on e-invoice portals for taxpayers with Aggregate Annual Turnover (AATO) greater than or equal to 100 crores. Hence, the taxpayers in this category will not be allowed to report invoices older than 30 days on the date of reporting.

This validation shall come into effect from 1<sup>st</sup> Nov, 2023.

[einvoice1.gst.gov.in](http://einvoice1.gst.gov.in)

## 2. Mandatory 2 Factor Authentication

GST e-invoice portal has also mandated two factor authentication (2FA) for all taxpayers with AATO above Rs 20 Cr from 1<sup>st</sup> Nov, 2023. In order to implement this, users are requested to register for 2FA immediately and also create sub-users so that EWB activities are managed without any problem.

[einvoice1.gst.gov.in](http://einvoice1.gst.gov.in)

## 3. Establishment of State Benches of GST Appellate Tribunal

Central Government, on the recommendation of the Goods and Services Tax Council, has constituted the following State Benches of the Goods and Services Tax Appellate Tribunal:

S. No.	State Name	No. of Benches	Location
1.	Andhra Pradesh	1	Vishakhapatnam and Vijayawada
2.	Bihar	1	Patna
3.	Chhattisgarh	1	Raipur and Bilaspur
4.	Delhi	1	Delhi
5.	Gujarat	2	Ahmedabad, Surat and Rajkot
6.	Dadra and Nagar Haveli and Daman and Diu		
7.	Haryana	1	Gurugram and Hissar
8.	Himachal Pradesh	1	Shimla
9.	Jammu & Kashmir	1	Jammu & Srinagar
10.	Ladakh		
11.	Jharkhand	1	Ranchi
12.	Karnataka	2	Bengaluru
13.	Kerala	1	Ernakulum and Trivandrum
14.	Lakshadweep		
15.	Madhya Pradesh	1	Bhopal

16.	Goa	3	Mumbai, Pune, Thane, Nagpur, Aurangabad and Panaji
17.	Maharashtra		
18.	Odisha	1	Cuttack
19.	Punjab	1	Chandigarh and Jalandhar
20.	Chandigarh		
21.	Rajasthan	2	Jaipur and Jodhpur
22.	Tamil Nadu	2	Chennai, Madurai, Coimbatore and Puducherry
23.	Puducherry		
24.	Telangana	1	Hyderabad
25.	Uttar Pradesh	3	Lucknow, Varanasi, Ghaziabad, Agra and Prayagraj
26.	Uttarakhand		
27.	Andaman and Nicobar Islands	2	Kolkata
28.	Sikkim		
29.	West Bengal		
30.	Arunachal Pradesh	1	Guwahati, Aizawl (Circuit), Agartala (Circuit), Kohima (Circuit)
31.	Assam		
32.	Manipur		
33.	Meghalaya		
34.	Mizoram		
35.	Nagaland		
36.	Tripura		

Locations shown as 'Circuit' shall be operational in such manner as the President may order, depending upon the number of appeals filed by suppliers in the respective States.

[egazette.gov.in](http://egazette.gov.in)

## 4. Special procedure to be followed by manufacturers of Pan Masala and Tobacco products to be effective from 1<sup>st</sup> January, 2024

Notification No. 30/2023-CT dt. 31.07.2023 specifying the special procedure to be followed by a registered person engaged in manufacturing of Pan Masala, Tobacco, Cigarettes, Hookah etc., has been amended to provide that the said special procedure shall become effective from 01.01.2024.

Notification No. 47/2023-CT dt. 25.09.2023

**5. Amendments made vide the CGST (Amendment) Act, 2023 and IGST (Amendment) Act, 2023 have become effective from 01.10.2023.**

The Central Government vide *Notification No. 48/2023-CT dt. 29.09.2023* and *Notification No. 02/2023-IT dt. 29.09.2023* has appointed 1<sup>st</sup> day of October, 2023, as the date on which the provisions of the CGST (Amendment) Act, 2023 and the IGST (Amendment) Act, 2023 shall come into force.

**6. Supplies notified under section 15(5) of the CGST Act, 2017**

With effect from 01.10.2023, the Central Government vide *Notification No. 49/2023-CT dt. 29.09.2023* has notified the following supplies the value of which shall be determined in the prescribed manner notwithstanding anything contained in sub-section (1) or sub-section (4) of section 15:

- i) supply of online money gaming;
- ii) supply of online gaming, other than online money gaming; and
- iii) supply of actionable claims in casinos.

**7. GST on advances received against the supply of specified actionable claims**

With effect from 01.10.2023, *Notification No. 66/2017-CT dt. 15.11.2017* has been amended to provide that the registered persons who are engaged in making supply of specified actionable claims as defined under section 2(102A) of the CGST Act, 2017 shall be liable to pay GST on the advances received for such supply. *Notification No. 50/2023-CT dt. 29.09.2023*

**8. Amendments in CGST Rules, 2017**

The below-mentioned amendments have been made in the CGST Rules, 2017 vide *Notification No. 51/2023 – CT dt. 29.09.2023*. The amendments shall become effective from 01.10.2023 unless mentioned otherwise:

**a) Rule 8 (Application for Registration) and rule 14 (Grant of registration to person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient or to a person supplying online money gaming from a place outside India to a person in India)**

Rules 8 and 14 have been amended to provide that any person supplying online money gaming from a place outside India to a person in India shall submit an application for registration, duly signed or verified through electronic verification code, in FORM GST REG-10, at the common portal, either directly or through a Facilitation Centre notified by the Commissioner. The registration shall be granted in FORM GST REG-06, subject to such

conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

**b) Insertion of rules-31B (Value of supply in case of online gaming including online money gaming) and 31C (Value of supply of actionable claims in case of casinos)**

Rules 31B and 31C have been inserted in the CGST Rules, 2017 with effect from 01.10.2023 for determining the value of supply in case of online gaming including online money gaming and actionable claims in case of casinos respectively.

As per rule 31B, the value of supply of online gaming, including supply of actionable claims involved in online money gaming, shall be the total amount paid or payable to or deposited with the supplier by way of money or money's worth, including virtual digital assets, by or on behalf of the player. Further, any amount returned or refunded by the supplier to the player for any reasons whatsoever, including player not using the amount paid or deposited with the supplier for participating in any event, shall not be deductible from the value of supply of online money gaming.

As per rule 31C, the value of supply of actionable claims in casino shall be the total amount paid or payable by or on behalf of the player for –

- (i) purchase of the tokens, chips, coins or tickets, by whatever name called, for use in casino; or
- (ii) participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

However, any amount returned or refunded by the casino to the player on return of token, coins, chips, or tickets, as the case may be, or otherwise, shall not be deductible from the value of the supply of actionable claims in casino.

For the purpose of rules 31B and 31C, any amount received by the player by winning any event, including game, scheme, competition or any other activity or process, which is used for playing by the said player in a further event without withdrawing, shall not be considered as the amount paid to or deposited with the supplier by or on behalf of the said player.

**c) Amendment in rule 46 (Tax Invoice)**

In cases involving supply of online money gaming, the tax invoice issued by the registered person



to an unregistered person shall contain name of the State of the recipient and the same shall be deemed to be the address on record of the recipient.

**d) Substitution of rule 64 (Form and manner of submission of return by persons providing online information and data base access or retrieval services and by persons supplying online money gaming from a place outside India to a person in India)**

Every registered person providing online money gaming from a place outside India to a person in India, shall file return in FORM GSTR-5A on or before the twentieth day of the month succeeding the calendar month or part thereof.

**e) Amendment in rule 87 (Electronic Cash Ledger)**

A person supplying online money gaming from a place outside India to a person in India as referred to in section 14A of the IGST Act, 2017 may make the deposit in electronic cash ledger through international money transfer through Society for Worldwide Inter-bank Financial Telecommunication payment network, from the date to be notified by the Board.

**9. Amendments in Forms GSTR-5A and GST REG-10**

Form GSTR-5A (Details of supplies of OIDAR services by a person located outside India made to non-taxable online recipient (as defined in Integrated Goods and Services Tax Act, 2017) and to registered persons in India and details of supplies of online money gaming by a person located outside India to a person in India) has been amended to give the effect to the amendments relating to online gaming. Similarly, Form REG-10 (Application for registration of person supplying online money gaming from a place outside India to a person in India or for registration of person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient in India) has been amended in order to give the effect to the amendments relating to online gaming.

**10. Taxability of specified actionable claims**

*Notification No. 01/2023 – CT(R) dt. 28.06.2017* and *Notification No. 01/2023 – IT(R) dt. 28.06.2017* have been amended to bring into force the taxability of specified actionable claims as defined in section 2(102A) of the Act at the rate of 28% with effect from 01.10.2023. Further, an explanation has been inserted specifying that the words and expressions used and not defined in this notification, but defined in the CGST

Act, 2017, IGST Act, 2017 and the UTGST Act, 2017, shall have the same meanings as assigned to them in those Acts.

*Notification No. 11/2023 – CT(R) dt. 29.09.2023* and *Notification No. 14/2023 – IT(R) dt. 29.09.2023*

**11. Supply of online money gaming notified as the supply of goods on import of which, integrated tax shall be levied and collected under section 5(1) of the IGST Act, 2017**

With effect from 01.10.2023, the Central Government has notified the supply of online money gaming as the goods on import of which integrated tax shall be levied and collected under section 5(1) of the IGST Act, 2017 and not in accordance with the provisions of the Customs Tariff Act, 1975.

*Notification No. 03/2023- IT dt. 29.09.2023*

**12. Simplified registration scheme for overseas supplier of online money gaming**

With effect from 01.10.2023, the Central Government has notified the Principal Commissioner of Central Tax, Bengaluru West and all the officers subordinate to him as the officers empowered to grant registration in case of supply of online money gaming provided or agreed to be provided by a person located in non-taxable territory and received by a person in India.

*Notification No. 04/2023- IT dt. 29.09.2023*

**13. No IGST on ocean freight in case of import of goods on CIF basis**

The Supreme Court in the case of *Union of India & Anr. v. M/s Mohit Minerals Pvt. Ltd. Civil Appeal No. 1390 of 2022 dated May 19, 2022* has held that levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under section 2(30) read with section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of section 8 of the CGST Act.

In line with the said judgment, following amendments have been made in the IGST notifications to provide that IGST will not be leviable on ocean freight under reverse charge on CIF contracts of import of goods by the Indian importers, w.e.f 1<sup>st</sup> October, 2023:

**(i) IGST reverse charge notification (Notification No. 10/2017-IT (R) dt. 28.06.2017)** – In the table, serial no. 10 and the entries relating thereto have been omitted. Serial No. 10 pertained to 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 station of clearance in India [Notification No. 13/2023- IT(R ) dt. 26.09.2023].

(ii) **IGST rate notification (Notification No. 08/2017-IT (R) dt. 28.06.2017)** – In the Table, against serial no. 9 prescribing rate of 5%, in column (3), in item (ii), the words “including services provided or agreed to be provided by a person located in non-taxable territory to 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”, have been omitted [Notification No. 11/2023- IT(R ) dt. 26.09.2023].

(iii) **IGST exemption notification (Notification No. 09/2017-IT(R) dt. 28.06.2017)** – In the Table, against serial no. 10, in column (3), the proviso has been substituted. Clause (ii) of the proviso which pertained to services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry has been removed in the substituted proviso [Notification No. 12/2023- IT(R ) dt. 26.09.2023].

## COMPLIANCE SCHEDULE

### RETURNS/STATEMENTS FOR THE MONTH OF OCTOBER, 2023

Forms	Compliance Particulars	Due Dates
GSTR 7	Return to be furnished by the registered persons who are required to deduct tax at source.	10.11.2023
GSTR 8	Return to be furnished by the registered electronic commerce operators who are required to collect tax at source on the net value of taxable supplies made through it.	10.11.2023
GSTR 1	Statement of outward supplies by the taxpayers having an aggregate turnover of more than Rs. 5 crore or the taxpayers who have opted for monthly return filing.	11.11.2023
IFF	Statement of outward supplies by the taxpayers having an aggregate turnover up to Rs. 5 crore and who have opted for the QRMP scheme.	13.11.2023
GSTR 5	Return to be furnished by the non-resident taxable persons containing details of outward supplies and inward supplies.	13.11.2023
GSTR 6	Return to be furnished by every Input Service Distributor (ISD) containing details of the Input tax credit received and its distribution.	13.11.2023
GSTR 3B	Return to be furnished by all the taxpayers other than who have opted for QRMP scheme comprising consolidated summary of outward and inward supplies.	20.11.2023
GSTR 5A	Return to be furnished by Online Information and Database Access or Retrieval (OIDAR) services provider for providing services from a place outside India to non-taxable online recipient (as defined in Integrated Goods and Services Tax Act, 2017) and to registered persons in India and details of supplies of online money gaming by a person outside India to a person in India.	20.11.2023
PMT 06	Payment of GST for a taxpayer with aggregate turnover up to Rs. 5 crores during the previous year and who has opted for quarterly filing of return under QRMP.	25.11.2023

**Answers to Crossword on Page 14-**

**Across:**

4. Banking, 6. Search, 7. Property Tax, 8. Auction, 11. Custom, 13. Ineligible

**Down:**

1. Job work, 2. Delivery Challan, 3. Transferor, 5. Twenty Four, 9. Godown, 10. Suspended, 12. Subsidy, 14. IGST

# GST QUIZ

- Which of the following is a non-appealable order?
  - An order of High Court
  - An order passed under section 80 i.e. order for not allowing payment of tax and other amount in instalments
  - An order pertaining to detention of goods
  - All orders passed are appealable except the order of Supreme Court
- Is it permissible for the proper officer to conduct physical verification of a registered place of the taxpayer even when he is not available in the premises?
  - Yes
  - No
  - It is at the discretion of proper officer to do so.
  - The proper officer needs to take the permission of Commissioner to do so.
- Value of supply of services in relation to booking of tickets for travel by air provided by an air travel agent in case of international bookings is-
  - 5% of basic fare
  - 10% of basic fare
  - 15% of basic fare
  - Total fare charged
- Inward supply in relation to a person shall mean receipt of goods or services or both whether by purchase, acquisition or any other means-
  - With consideration
  - Without consideration
  - Both (a) or (b)
  - None of the above
- In case of transfer of business by way of demerger, the input tax credit shall be apportioned in the ratio of-
  - Value of assets of new unit as specified in the demerger scheme.
  - Value of net assets of new unit as specified in the demerger scheme.
  - Value of liabilities of new unit as specified in the demerger scheme.
  - As per the discretion of the demerging unit.
- Maximum number of adjournments that can be granted by the Appellate Authority to a person are-
  - Two (2)
  - Three (3)
  - Four (4)
  - Five (5)
- Is it possible to rectify an advance ruling order?
  - No
  - Yes, if an error is apparent on record, it can be rectified within a period of 6 months from the date of order.
  - Yes, if an error is apparent on record, it can be rectified within a period of 3 months from the date of order.
  - Yes, it can be rectified in all cases.
- In cases, where no/unsatisfactory explanation has been provided for differences in input tax credit provided in FORM GSTR-2B and FORM GSTR-3B, then the proper officer can initiate action under-
  - Section 73
  - Section 74
  - Both (a) and (b)
  - Section 79
- Intimation of retirement as partner in case of partnership firm, has to be given to the Commissioner within \_\_\_\_\_ to restrict the partner's liability up to the date of retirement.
  - 30 days from the date of retirement.
  - 45 days from the date of retirement.
  - 60 days from the date of retirement.
  - 1 month from the date of retirement.
- The deduction of tax under section 51 of the CGST Act, 2017 shall not be made if-
  - location of supplier and the place of supply is in a State which is different than the State of registration of recipient
  - location of supplier, place of supply and location of recipient are all in different States
  - Both (a) and (b)
  - Tax is to be deducted under section 51 of the CGST Act, 2017 invariably if the supply is made to a Government agency and the total contracted value of such supply is more than Rs. 2,50,000/-

The names of first five members who provided all the correct answers of the last Quiz within 48 hours are as under:

Name	Membership No.
CA. Anthony Joseph	098064
CA. Swapnil Jain	300170
CA. Prem Niwas Choudhary	305618
CA. Rahul Srivastava	432334
CA. Kartik Singhvi	450848

Please provide reply of the above MCQs in the link given below. The name of the first 5 members who provide all the correct answers within 48 hours of receipt of this Newsletter, would be published in the next edition.

Link to reply: <https://forms.gle/NK4D9j1oBom39yHBA>



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Your suggestions  
on the website  
are welcome  
at [gst@icai.in](mailto:gst@icai.in)

Secretary

GST & Indirect Taxes Committee

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