



37<sup>th</sup> Edition

# ICAI-GST

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



ICAI-Set up by an Act of Parliament



# 75<sup>th</sup> CA DAY CELEBRATION



The Hon'ble President of India, Smt. Droupadi Murmu, the Chief Guest at the 75<sup>th</sup> CA Day Celebrations said:

“...आज जो ICAI का स्थापना दिवस मनाया जा रहा है, मैं स्पष्ट रूप से आप सब को व्यवसायिक क्षेत्र के एक ऐसे मजबूत स्तंभ के रूप में देखती हूँ, जिससे सुशासन को बल मिलता है। आपको अर्थ व्यवस्था के वास्तविक स्वास्थ्य को प्रतिबिंबित करने की एक महत्वपूर्ण जिम्मेदारी सौंपी गई है।

अप्रैल २०२३ के महीने में GST Revenue Collection अब तक का सबसे अधिक रहा है जो की एक कीर्तिमान है। ये उल्लेखनीय उपलब्धि ना केवल करदाताओं बल्कि आप जैसे सभी पेशेवरों की प्रतिबद्धता का परिणाम है।...”



The Hon'ble Minister of State for Corporate Affairs, Shri Rao Inderjit Singh, the Guest of Honor at the 75<sup>th</sup> CA Day Celebrations said:

“...Since implementation of the indirect taxation regime in India, you always remained a great enabler and facilitator and played a very effective role, creating awareness about the various provisions of the new GST law resulting in smooth implementation of GST regime and removal of all doubts amongst the taxpayers, whenever required...”



# President's Communication



**Dear Professional Colleagues,**

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

The ICAI actively supports the Government in enhancing Goods and Services Tax (GST) literacy in the society at large through its technical publications, newsletter, seminars, conferences, workshops etc. Since the introduction of GST, the ICAI has organised numerous programmes, conferences & workshops on GST to enhance GST awareness amongst all stakeholders. The ICAI also facilitates the Government in GST policy making by way of its technical inputs/suggestions for formulating GST law, procedures and systems.

Chartered Accountants are professionals who can adapt to changing business and legal environments and help stakeholders comply with the law. The seventh year of GST regime in India has been started from July 1, 2023 and in the past 6 years we have witnessed significant changes in the GST law, which have posed many challenges and updations. Chartered Accountants have shown exceptional skills and dedication in navigating all changes and challenges in GST Laws, and in delivering high-quality service to their clients and society.

The GST and Indirect Taxes Committee of the ICAI has developed a variety of publications on various aspects of GST which are updated from time to time. These publications aid the members in addressing the practical challenges faced by them in their professional assignments and helps to provide clarity. In its constant endeavors, the Committee comes up with a newsletter to keep members updated with the changing law.

I hope this edition of Newsletter adds value to your professional knowledge and skills.

Yours sincerely,

**CA. Aniket Sunil Talati**

President

The Institute of Chartered Accountants of India

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# CONTENTS

- President's Communication 3
- Chairman's Communication 5
- GST Implications on Plotted Development 6
- GST –Interesting Constitutional Questions 10
- Judicial Pronouncements 12
- GST Updates 15
- Compliance Schedule 17
- Announcement 18
- GST Quiz 19



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# Chairman's Communication



Dear Members,

Warm Greetings!

It's time for another edition of our newsletter on Goods and Services Tax (GST), wherein we bring you the latest updates, insights, and resources related to GST.

In this edition, we have curated a range of articles and features to help you stay informed and navigate the world of GST more effectively. An important update from Goods and Services Tax Network (GSTN) is the introduction of E-Invoice Verifier App which offers a convenient solution for verifying e-invoices and other related details. Efficient and accurate e-invoice verification is vital in GST ecosystem, and this app aims to simplify the process for users' convenience.

As a GST professional, being up to date with the dynamic GST law is a *sine qua non*. Through this Newsletter, we provide you the most recent updates and changes in GST law. It may so happen that the amendments or new provisions may impact the business of your clients, and therefore you must keep yourself abreast with the latest developments to advise effectively for ensuring compliance and avoiding unnecessary penalties.

Our profession has seen many evolutionary changes in GST over the last few years and every Chartered Accountant has facilitated the Government in implementing the same in letter and spirit. In this dynamic, complex, demanding and competitive 21<sup>st</sup> century, we need to push the boundaries and rise beyond the ordinary. To aid our members, GST and Indirect Taxes Committee is holding GST Certificate courses at various cities. I am pleased to inform you that the fee for GST Certificate Course has been reduced to Rs. 9,000/- to benefit the members at large. I would suggest you to undergo this course to upgrade your knowledge and skills in GST as the GST law has undergone significant changes in the last six years. Interested members can keep track of the courses in their region/branch through the website of the Committee <https://idtc.icai.org/> in the tab 'Upcoming Events'.

I along with CA. Umesh Sharma, Vice-Chairman, GST & Indirect Tax Committee, would like to present to you the 37<sup>th</sup> Edition of the ICAI GST Newsletter. We value your feedback, so please feel free to reach out to us with any suggestions, questions, or topics you'd like us to cover in the next edition.

I end my message by quoting a famous saying and a beautiful line which I always believe in, "Knowledge isn't power until its applied".

Thank you for being a part of our GST community.

Yours sincerely,

**CA. Sushil Kumar Goyal**

Chairman

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

# GST IMPLICATIONS ON PLOTTED DEVELOPMENT

## 1. Introduction:

Plotted development, also known as plot development, refers to the process of dividing a larger tract of land into smaller individual plots or parcels. This division allows for the development of residential, commercial, or industrial properties on those individual plots. It involves selling of plots of land along with certain basic amenities like drainage system, lighting, plumbing etc.

Recently, plotted development has gained lot of attention of various builders as many consumers are interested in buying such plots for constructing their holiday homes.

Taxability of Plotted Development has been a subject matter of dispute since the inception of GST. One view is that the entire transaction of sale of plotted land is not liable to GST as it falls under Schedule III whereas the other view is that the entire transaction is of supply of service and hence subject to GST.

The present article discusses the taxability under GST on plotted development scheme in the hands of a builder.

## 2. Nature of Transaction

The following are the components of plotted development-

Sr. No.	Components	Particulars
1	Cost of Land	This includes only land.
2	Basic Amenities	This includes various developmental works like compound wall, approach roads, street lighting, water supply facility, drainage/sewerage facilities etc. which are directly linked to the plot of land.
3	Recreational Amenities	This includes amenities such as club house, swimming pool, garden etc. which are common facilities for all the plot buyers.

Typically, an agreement between a builder and a customer for plotted development will have the above bifurcation. However, in some cases, the builders may not provide any bifurcation of the amount for each component and a single price is charged for sale of plot. Such agreements will have the above-stated activities mentioned as part of builder's obligations.

## 3. Revenue's approach

The revenue officers have been relying on the Hon'ble Supreme Court's judgment in the case of *M/s Narne Construction Pvt. Ltd., reported in 2013 (29) STR 3 (SC)*, to contest that sale of plotted development is provision of service. The said judgement has been passed on the basis of interpretation of the definition of 'service' appearing under section 2(1)(o) of the Consumer Protection Act, 1986. The said definition is altogether different from the definition of 'service' as given under the CGST Act, 2017. Further, Hon'ble Supreme Court has given its observation in a consumer protection case. In such cases, the Courts always take a liberal view which is usually in favour of the consumers in order to protect their interest. In para 3 of the said judgment itself, the Hon'ble Supreme Court has observed that the provisions of Consumer Protection Act must be liberally interpreted in favour of consumers. Further, if definition of 'service' as per Consumer Protection Act is adopted for GST purpose, then even the sale of residential flat after occupation certificate will be treated as 'service' despite the same being specifically mentioned in Schedule-III of the CGST Act, 2017.

It is a trite law that taxing statutes must be interpreted as per the wordings of the Act. Thus, sale of developed plot should not be treated as service merely by relying on the Supreme Court judgment as referred above which is provided as per Consumer Protection Act, 1986.

## 4. Taxability

Let us discuss the taxability of plotted development in both the scenarios i.e., where agreement is having bifurcation of price between cost of plot/land, cost of basic amenities and recreational amenities and where agreement is having a single price including all the amenities.

### a) GST on consideration towards sale of plot/land

Schedule III of CGST Act, 2017 prescribes the list of activities or transactions which shall be treated neither as a supply of goods nor as a supply of services. Entry No. 5 of Schedule III reads as follows,

**"5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building"**

As per Entry No. 5 of Schedule III, Sale of land is excluded from the scope of "supply".

Plot is just a small piece of land. During the process of plotted development, the larger land is bifurcated into smaller plots to make it saleable/marketable, and it does not change the nature of land. The term “land” as well as “plot” is not defined under GST Act. Hence, the meaning as defined in any other Act or dictionary meanings will have to be used for understanding its meaning.

- Meaning of “plot” as per Collins Dictionary

*A plot of land is a small piece of land, especially one that has been measured or marked out for a special purpose, such as building houses or growing vegetables.*

- Meaning of “plot” as per The Britannica Dictionary
  - (a) *an area of land that has been measured and is considered as a unit*
  - (b) *a usually small piece of land that is used for a particular purpose*
- The term “land” has been defined in The Land Acquisition Act, 1894 as follows –
  - 3. *Definitions.* – *In this Act, unless there is something repugnant in the subject or context, -*
    - (a) *the expression “land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth.*

Thus, a plot is usually a small piece of land marked out for a special/particular purpose. Hence, the underlying asset will retain its form as “land” whether termed as “land” or “plot”. Accordingly, it can be concluded that consideration towards sale of plot is not liable to GST.

#### **b) GST on consideration towards basic amenities**

In plotted development scheme, the developer provides basic amenities like water supply pipelines, sewerage/drainage pipelines etc. along with the plot. Such services are incidental or ancillary to the main supply i.e., supply of land. A person cannot be expected to live without these basic services.

For example, service of stay in a hotel is often combined with use of television set, toiletries etc. Such services/supplies are ancillary to hotel accommodation and necessary for enjoyment of hotel accommodation service. Hence, the resultant package would be treated as supply of hotel accommodation service only.

The CBIC vide *Circular No. 177/09/2022 – TRU dated 03-08-2022* has also clarified that land sold after some development, like levelling, laying down of sewage lines etc., is also covered within Sr. No. 5 of Schedule III. Thus, the transaction as a whole (i.e., sale of land including charges for basic amenities) will not be subject to GST.

#### **c) GST on consideration towards recreational amenities**

As explained above, services like drainage line, water pipeline etc. are incidental to the main supply i.e. supply of land. However, the recreational amenities like club house, garden etc. are additional facilities provided by the builder. The plot of land can be used/ enjoyed even in absence of these additional facilities. Thus, they are to be treated as separate supplies.

Therefore, GST is payable on provision of recreational amenities. Some builders have taken a stand that even such additional recreational facilities are part of sale of plot of land and not liable to GST. The CBIC *circular 177/09/2022 – TRU dated 03-08-2022* does not discuss about the taxability of these services. Thus, it will be highly litigative to take a view that even such amenities are naturally bundled with the main supply of sale of plot and therefore are not liable to GST.

#### **d) No separate consideration**

As discussed above, some agreements do not have bifurcation between the cost towards sale of plot/land and cost towards various amenities. Some builders have been taking a stand that stamp duty is paid on the entire agreement value and the agreement as a whole is for sale of plot of land only. However, in such cases, there is a high risk that revenue officers may demand GST on the entire transaction value on the ground that it involves provision of service for which there is no separate value identified.

Therefore, it is advisable to indicate the consideration separately for all the 3 components namely, cost of land, basic amenities and recreational amenities in the agreement itself.

In case the agreements have already been entered into, then the taxpayer may enter into an addendum agreement to specify the value of basic and other amenities and pay tax on the latter. It must further be noted that value of land should not be artificially inflated to avoid GST liability.

#### **5. Classification of plotting of land**

An interesting question that needs to be addressed is whether plot development falls under construction of complex service (CCS) or works contract service (WCS)?

Schedule II of the CGST Act, 2017 has two competing entries:

Para 5(b) of Schedule II to the CGST Act, 2017 -

*“construction of a complex, building, civil structure or a part thereof, including a complex or building .....*”

Para 6 of Schedule II to the CGST Act, 2017 -

*“The following composite supplies shall be treated as a*

supply of services, namely

a) works contract as defined in clause (119) of section 2;”

In case developed plot is considered as a taxable supply another challenge would be to identify the correct classification as it would entail following further issues:

- a) Relevance of first occupation to decide whether tax is applicable only for construction of complex
- b) 1/3 land deduction eligible only for construction of complex
- c) Refund under inverted rate structure allowed for works contract but not for construction of complex

Where a legal position is taken that GST is applicable only on *Recreational Amenities*, the same could be classified as works contract service as per Entry 6 (a) of Schedule II supra.

## 6. Time of Supply

Activity of plotted development is supplied under a contract over a period of more than 3 months and hence the same is classified as ‘continuous supply of service’.

Section 31(5) provides for issuance of invoice in case of continuous supply of service. As per the said section, in case of continuous supply of service, invoice needs to be issued based on the completion of milestones as linked with the payment schedule mentioned in the agreement. Accordingly, the time of supply will arise as per the milestones mentioned in the agreement with the buyers of the plots.

For example, as per the payment schedule, usually recreational amenities charges are required to be collected at the time of possession. In such case, the invoice needs to be issued at the time of possession itself and not earlier than that.

## 7. Eligibility of ITC

Section 17 of CGST Act, 2017 provides that the credit shall be restricted to input tax as is attributable to the taxable supplies. Rule 42 prescribes the manner for reversal of credit as follows:

Sr. No.	Particulars	Denoted as
1	Total ITC	T
2	ITC exclusively for purposes other than business	T1
3	ITC exclusively for effecting exempt supplies	T2
4	ITC exclusively for effecting supplies restricted u/s 17(5)	T3
5	ITC exclusively for effecting taxable supplies	T4

Common credit is computed after reducing T1, T2, T3 and T4 from the Total Credit (T).

In terms of the above provisions, no ITC will be available of GST charged on services which are directly related to sale of land. For example – expenses incurred towards drainage line is directly attributable to effecting exempt supplies as it is part of basic amenities on which tax is not being paid.

On the contrary, ITC on services availed directly in relation to development of recreational amenities will be available as it is used for taxable supplies.

ITC on other services like advertisement cost, administrative cost, brokerage on sale etc. will be treated as common credit and proportionate ITC will have to be reversed on the basis of turnover in the State of the registered person.

## 8. Various Advance Rulings.

There have been contrary views taken in various advance rulings. A summary of some of these rulings is as follows-

**a) Dipesh Anilkumar Naik 2022 (61) G.S.T.L. 454 (App. A.A.R. - GST - Guj.)**

**Facts:** The applicant is selling developed plot along with basic amenities and other facilities.

**Ruling:**

- Sale of plotted development tantamounts to supply/rendering of service. The authority relied on the judgment in the case of *M/s. Name Construction Pvt. Ltd. reported at 2013 (29) S.T.R. 3 (S.C.)*.
- Transaction involving only sale of land will be covered under Entry 5 of Schedule III to the CGST Act, 2017 whereas development and provision of common facilities like drainage, electricity line, compound wall etc. fall under Entry 5(b) of Schedule II to the CGST Act, 2017.
- Since there is only one supply of service involved in the aforementioned transaction, there is no principal supply or ancillary supply.

The activity of the sale of developed plots would be covered under the clause ‘construction of a complex intended for sale to a buyer’. Thus, the said activity is covered under ‘construction services’ and GST is payable on the sale of developed plots in terms of CGST Act / Rules

*(The said ruling has been passed before issuance of CBIC Circular dated 03-08-2022)*

**b) M/s Satyaja Infratech 2020 (36) G.S.T.L. 228 (A.A.R. - GST - Guj.)**

**Facts:** The Applicant is engaged in purchase of land and selling the same by converting into integrated residential sub plots along with basic amenities and other common facilities.



**Ruling:**

- The activities of applicant will fall under clause (b) of paragraph 5 of Schedule-II and hence will be taxable.

*(The said ruling has been passed before issuance of CBIC Circular dated 03-08-2022)*

**c) M/s Godrej Properties Ltd. 2023 (5) TMI 709 – AAR, Karnataka**

**Facts:** The applicant is selling developed plot along with basic amenities and other facilities and has collected separate charges for each of the components.

**Ruling:**

- Consideration towards plot area is covered under Schedule III and hence not taxable.
- Basic infrastructure facilities like electricity access up to the plot, water and sewerage access up to the plot and roads, etc. are mandatory requirement for release of plots and the plots become saleable plots only after the provision of these basic infrastructure and facilities. Further, ownership of these amenities remains with the applicant till it is relinquished to the local authorities. Hence, the amount collected on account of this only increases the value of the land (plot) and hence does not form a separate supply and therefore not taxable.
- Club House and other common amenities are not mandatory facilities to be provided as per any law. These are provided as a service with no transfer of title to land and buildings and hence would not be covered under entry 5 of Schedule III of the CGST Act. Further, what is provided is only a service of access to the service facilities. Hence, the provision of access rights for a separate consideration would form separate supply and hence, is liable to GST.

**d) M/s Shantilal Real Estate Services 2022 (58) G.S.T.L. 569 (A.A.R. - GST - Goa)**

**Facts:** The applicant is selling developed plot along with basic amenities like roads, drainages, and poles.

**Ruling:**

- Sale of plots is not a supply.
- Basic amenities like roads etc. will be gifted to the local authority and no plot owner will have ownership of it.
- Further, neither any structure is being erected nor

construction of facilities such as gyms, clubhouses etc. in the nature of complex, building, civil structure or part thereof are being undertaken. So, it is concluded that it is sale of land and hence not taxable.

**e) M/s Rabia Khanum 2022 (9) TMI 785 – AAR, Karnataka.**

**Facts:** The applicant is an individual and is not registered under GST and intends to convert their land into residential sites. The development of land includes formation of roads, formation of rainwater drains, laying of electricity cables, water pipes, sewerage lines, drilling of borewells for supply of water, construction of water tank for storage and supply of water, setting up of a power sub-station for supply of electricity etc.

**Ruling:**

- In view of entry No. 5 of schedule III of CGST Act 2017 and clarification issued by CBIC, it has been held that sale of land does not attract GST.

## 9. Conclusion

It can be seen that various AARs have taken divergent views. Thus, the clarification provided vide Circular 177/09/2022 – TRU dated 03-08-2022 by CBIC was a welcome move. However, the said circular is silent on GST applicability on recreational activities. Further, a big question regarding valuation of taxable supply, in cases where a single price is charged for sale of plots along with amenities; remains unanswered. In the case of *M/s Godrej Properties Limited* (supra), the applicant had raised this very question before the authorities. The Hon'ble AAR observed that value proportionate to club house and common amenities will be subject to GST. However, only time will tell whether GST paid on such proportionate value will be accepted by the Revenue officers or not.

**Contributed by CA. Archit Agarwal**



# GST –INTERESTING CONSTITUTIONAL QUESTIONS

Constitution of India and GST are inter-linked and thus, any discussion on GST should start with Constitution of India ('COI') provisions. Thus, this article discusses key provisions and some key interesting questions from Constitution of India and GST perspective.

## 1. What is the meaning of the term 'both'?

The term 'both' finds first mention in COI at Article 366 (12A) which defines 'Goods and Services Tax' (GST) to mean "a tax on supply of goods or services or both ...".

Further, the term 'both' is mentioned more than **200 times** in the CGST Act, 2017 and more than 125 times in the CGST Rules. However, the term 'goods' or 'services' are defined in COI as well as in the CGST Act, but the term 'both' is not defined. So, what does the term 'both' means?

In GST legislation, the term '**both**' is used as 'goods or services or both'. Thus, it may be construed that the term 'both' envisages a transaction which has both i.e. 'goods' as well as 'services'.

Further, ideally, the term 'both', will only cover transactions which has 'both' i.e. two things together but not three things together. For eg. if there is a third element say land/ undivided share of land, then can GST be levied on such transactions (as GST is a tax, inter-alia, on supply of 'both' only)?

It is pertinent to note that the H'ble Apex Court in the case of *Ellis Bridge Gymkhana [1997 (9) SC 24]* observed that "The rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication. A charging section has to be construed strictly. If a person has not been brought within the ambit of charging section by clear words, he cannot be taxed at all."

Given aforesaid, when the charging section in GST (i.e. Section 9 of the CGST Act, 2017) refers to 'both' whether GST can be leviable on supply of under-construction apartment/ units, which has three elements i.e. goods plus services plus land/ undivided share of land?

Further, whether the one-third deduction for land (as provided in the *Notification No. 11/2017- CT (R) dated 28.06.2017* will suffice the charging section (i.e. section 9 of the CGST Act, 2017) specifies only 'both'? Similarly, can the levy extend to a transaction which has three elements when Constitutional mandate is to tax 'both' only?

It looks like that the term 'both' may bring a landmark Gannon-Dunkerley type judgment in GST!

## 2. Whether GST can be collected before 'Supply' takes place?

GST is applicable on 'supply'. In the COI the term 'supply' is mentioned at Article 366 (12A). Article 366 (12A) defines the term 'Goods and Services Tax' ('GST') to mean 'a tax on supply of goods or services or both...'.

Herein, its pertinent to note that the term used in the COI is 'supply' and it is used without any prefix or suffix such as 'made or agreed to be made'.

If COI specifically says GST is a tax on 'supply', can it be contended that unless the said taxable event of 'supply' takes place GST cannot be 'collected'?

Aforesaid contention can further be supported by Article 265 of COI which specifically provides that "No Tax shall be levied or collected except by authority of law".

However, at Section 7 of CGST Act its stated that '...supply includes all forms of supply, made or agreed to be made for a consideration'. Further, section 13 states that 'time of supply', inter-alia, is date of receipt of payment.

Given aforesaid discussion, if the COI specifically mentions GST means a tax on 'supply', can GST be collected much before the taxable event takes place? Further, can it be contended that even as an administrative measure/ convenience, it cannot be done as the same is not envisaged in COI?

Further, if GST is a tax on 'supply' and GST is paid on advance received for services and if at a later point of time (say after 3-4 years) the contract is cancelled, can a contention be taken that refund may not be deniable (say on limitation ground) as GST itself was not leviable (as there is no 'supply')?

## 3. Whether TDS under GST can be deducted on exempt supply?

Section 51 of the CGST Act, 2017 provides that TDS under GST is required to be deducted by the specified entities such as local authority or government in case of taxable supplies of goods or services or both. Thus, prima-facie, TDS under GST cannot be deducted in case of exempted supplies.

Herein, if the supply of services itself is exempted then given Article 265 of COI (which specifically debar even 'collection'), can TDS under GST be deducted by Municipal Corporations in such cases? And if it is being deducted, then, isn't it a violation of Constitutional guarantee given by Article 265?

#### 4. Whether 'Inter-State' supply will include 'inter-Country' supply ?

Article 269A of COI provides that 'Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India...'. The term 'State' is defined in the COI as "State with reference to articles 246A, 268, 269, 269A and article 279A includes a Union territory with Legislature". Thus, the term 'State' will include States of India.

Further, the terminology used in COI is 'inter-State' and not 'inter-Country'. Thus, by any stretch of interpretation, foreign country may not get covered under 'inter-State' supply.

Further, Explanation to Article 269A of COI deems 'import' of goods or services or both as 'inter-State'. However, similar to 'import' transaction, there is no deeming fiction for 'exports'.

Thus, lets say if consideration for export of services is received in Indian Rupees (instead of convertible foreign exchange) then whether GST is leviable (by invoking section 7(5)(a) of IGST Act) on such transactions (as its 'inter-Country' transaction)?

#### 5. Can GST law extend to 'exports'?

The Hon'ble Apex Court in the case of *All India Federation of Tax Practitioners (AIFTP) [2007 (7) S.T.R. 625 (S.C.)]* observed that "...it is clear that service tax is VAT which in turn is both a general tax as well as **destination based consumption tax** leviable on services provided within the country."

In cases where services are provided 'from' India then, the fact matrix can be as under:

Sr. No.	Intermediary service	Remarks
1.	Supplier / Origin	In India
2.	Recipient	Out of India
3.	Payment from	Out of India
4.	Consumption	Out of India
5.	Whether it will be taxed (say as import) in other Country?	Out of India

It can be observed that out of aforesaid five questions, answer to four questions is 'Out of India'. Given the aforesaid, can only on the basis of supplier being in India, IGST can extend to such transaction even if consideration for services is received in INR?

In the context of Article 245, the H'ble Apex Court in the case of *GVK Industries [2017 (48) STR 177 (SC)]* observed that "All that would be required would be that the connection to India be real or expected to be real, and not illusory or fanciful".

Now, while few may content that in case of 'export of services', there is a 'connection'. However, the question is

whether the connection (i.e. supplier presence) is strong enough to levy GST on exports (as GST is destination-based consumption tax)?

#### 6. Can there be two thresholds for 'goods' and 'services'?

At present, in GST law, there are two separate thresholds for 'goods' and 'services' (i.e. 40 lacs and 20 lacs respectively). Herein, the underlying question is whether GST Council ('GSTC') is empowered to recommend separate thresholds for goods and services under COI?

Article 279A (4) (d) of COI reads as under:

#### "279A. Goods and Services Tax Council

(4) *The Goods and Services Tax Council shall make recommendations to the Union and the States on:*

...

(d) *the threshold limit of turnover below which goods and services may be exempted from goods and services tax"*

It can be observed that the terminology is '**the**' threshold limit. Use of 'the' before term 'threshold limit' may not be missed.

The Apex Court in the case of *Shri Ishar Alloy Steels Ltd. vs Jayaswals Neco Limited Appeal (crl.) 219 of 2001, Special Leave Petition (crl.) 3854 of 2000* observed that "The" is the word used before nouns, with a specifying of particularizing effect opposed to the indefinite or generalizing force of "a" or "an"... "The" is always mentioned to denote a particular thing or a person." Given this, it may be stated that 'threshold limit' referred herein is specific than generic.

Further, it can be observed that that the power to make recommendation is for 'threshold limit' and not 'threshold limits'. Further, 'and' is used ('below which goods and services...') than 'or'.

Even further, Article 279A (6) of COI states that Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

Thus, it appears that, Constitutionally, Goods and Services Tax Council is empowered to recommended one threshold for goods 'and' services. So, can it recommends separate threshold for goods and services?

It may be recalled that in *VKC Footsteps India Pvt. Ltd. (2021) 52 GSTL 513 (SC)*, the Hon'ble Supreme Court has laid down few constitutional principles and the future evolution of judicial thought process is expected to be on the same for some time to come.

#### Way Forward

The aforesaid issues are raised to make the reader curious about the various underlying COI provisions and key issues!

**Contributed by CA. Pritam Mahure**

# JUDICIAL PRONOUNCEMENTS



## 1. Refund application cannot be kept pending indefinitely on ground of pendency of proceedings:

### Facts of the matter:

The petitioner was engaged in the business of export of goods with payment of tax i.e. IGST and entitle for refund of tax pursuant to Sec. 54 read with Rule 96 of the CGST Law. Petitioner had been issued a Show Cause Notice (SCN) by DGGI, Gurugram for the production of fake invoices and hence the application of refund was kept on hold as the proceedings initiated against the SCN were pending.

Petitioner has filed Writ Petition before the Hon'ble High Court that whether an application for refund can be kept pending indefinitely on the ground of pendency of proceedings?

### Observations by the Court:

The application for grant of refund once filed is required to be decided one way or the other and cannot be kept pending with an oral information that the claim has been withheld. Once an application for grant of refund is submitted, the application is required to be decided in accordance with the provisions of law applicable. In this case, the respondents have sought to justify by stating why they have not taken decision in the matter. However, there is no order passed by the competent authority on petitioner's application for refund. The refund application, therefore, is required to be decided and cannot be kept pending indefinitely on the ground of pendency of certain proceedings. The effect of pendency of proceedings could be a matter of consideration while exercising discretion in deciding the claim for refund.

### Ruling:

Since the present is a case of an allegation of raising fake invoices and the matter is under investigation, we are not inclined to issue a direction for refund but to direct the competent authority to decide petitioner's refund application in accordance with law keeping in view the mandate of Section 54 of the CGST Act and provisions contained in Rule 96 of the CGST Rules and all relevant considerations within a period of 60 days.

**[B. C. Power Controls Limited – Writ Petition No. 13049/2020, dated 18-04-2023 – Rajasthan High Court]**

## 2. Provisional attachment of bank account:

### Facts of the matter:

The Petitioner bank account – Cash Credit account maintained with bankers were provisionally attached to protect the revenue pursuant to Sec. 83 of the CGST Act by the Departmental officer.

Petitioner has filed the writ petition and raised the legal question as to whether an order of provisional attachment can be made to a Cash Credit account to protect the interest of the revenue?

### Observations by the Court:

Hon'ble Court has relied on the following judicial pronouncements –

#### **Jugal Kishore Das V. Union of India – (2013) SCC Online Cal 19941**

*“Cash-credit limit is a facility provided by the bank to its customers to use and utilise the money and if such facility availed of, it would attract the interest to be charged for the same so utilised. It is further held that the cash-credit facility is not a debt to be attached by the respondent authority.”*

#### **Manish Scrap Traders V. Principal Commissioner – (2022) 64 GSTL 482 (Gujarat)**

*“Law is well-settled that a cash-credit account of the assessee cannot be provisionally attached in exercise of powers under Sec. 83 of the CGST Act.”*

#### **Valerius Industries V. Union of India – (2019) 30 GSTL 15 (Gujarat)**

Hon'ble High Court had analyzed the circumstances under which the provisions of Sec. 83 can be invoked as under -

- 1. The order of provisional attachment before the assessment order is made, may be justified if the assessing authority or any other authority empowered in law is of the opinion that it is necessary to protect the interest of revenue. However, the subjective satisfaction should be based on some credible materials or information and should be supported by supervening factor. It is not any and every material, howsoever vague and indefinite or distant remote or far fetching, which would warrant the formation of the belief.*

2. *The power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weighty grounds and reasons.*
3. *The power of provisional attachment under Section 83 of the Act should be exercised by the authority only if there is a reasonable apprehension that the assessee may default the ultimate collection of the demand that is likely to be raised on completion of the assessment. It should, therefore, be exercised with extreme care and caution.*
4. *The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his/her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.*
5. *The power under Section 83 of the Act should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.*
6. *The attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under Section 83 of the Act should not be equated with the attachment in the course of the recovery proceedings.”*
7. *The authority before exercising power under Section 83 of the Act for provisional attachment should take into consideration two things:*
  - (i) *whether it is a revenue neutral situation.*
  - (ii) *the statement of “output liability or input credit”. Having regard to the amount paid by reversing the input tax credit if the interest of the revenue is sufficiently secured, then the authority may not be justified in invoking its power under Section 83 of the Act for the purpose of provisional attachment.”*

**Ruling:**

Respondents are directed to lift the order of provisional attachment of the cash credit account within 10 days from receipt of the server copy of this order. It was further clarified that this order will not in any manner prejudice the rights of the department to initiate other proceedings in accordance with law and this order pertains only to the provisional attachment of the cash credit account and not to the other bank accounts of the appellant.

**[J. L. Enterprise – Writ Petition No. MAT 1001 of 2023, dated 16-06-2023 – Calcutta High Court]**

**3. GST on salary deducted in lieu of notice period:**

**Facts of the matter:**

The applicant is engaged in the manufacture, sale and trading of automotive parts and provides products and services to the Indian and global automotive OEMs as well as other Tier I cities of India. Applicant had deducted certain amounts from the salary of those employees who have served less than the period specified in the employment contract and hence seek the ruling whether deduction of such amount would be liable to GST?

**Contention of the applicant:**

Applicant had contended that on account of the employment contract, they have a right to deduct an amount from the full & final settlement in lieu of the notice pay, enabling the employee to exit the company early i.e. to serve a lesser notice period. Moreover, in terms of section 7 read with section 2(31) of the CGST Act, 2017, there has to be a co-existence of ‘activity’ & ‘consideration’ & the reciprocal relationship between these two is necessary to treat an event as a supply. The deduction is in accordance with the employment contract between the applicant and the employee, which enables an employee to serve a lesser notice period than as laid down in his employment contract.

Applicant had relied on the following judicial pronouncements –

- (i) *Emcure Pharmaceuticals Ltd. – Order No. GST-ARA-119 of 2019-20/B-03, dated 04-01-2022 – AAR Maharashtra;*
- (ii) *GE T & D India Ltd. – Writ Petition No. 35728 to 35734 of 2016, dated 07-11-2019 – Madras High Court*

**Observation by the Authority:**

We find that the issue has already been clarified vide *Circular no. 178/10/2022-GST dated 3.8.2022*, wherein it is stated as follows:

Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period. An employer carries out an elaborate selection process and incurs expenditure in recruiting an employee, invests in his training and makes him a part of the organization, privy to its processes and business secrets in the expectation that the recruited employee would work for the organization for a certain minimum period. Premature leaving of the employment results in disruption of work and an undesirable situation. The provisions for forfeiture of salary or recovery of bond amount in the event of the

employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees, from taking up employment and to discourage and deter such a situation. Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

**Ruling:**

Applicant is not liable to pay GST on the amounts deducted towards notice pay.

**[Tata Autocomp Systems Ltd. – GST AAR Gujarat – Order No. GUJ/GAAR/R/2023/23, dated 19-06-2023]**

**4. Levy of penalty for shortage in the consignment while issuing e-way bill:**

**Facts of the matter:**

Appellant’s vehicle has been detained which was transported by the appellant for being exported to Bhutan. The detention of the goods was on the ground that the quantity of the boxes were lesser than the quantity shown in the document. Department had levied penalty on the entire consignment value rather than only on the shortage of the quantity transported. The learned single bench judged had declined to grant any relief in the order passed by the lower authorities vide order passed against the Writ Petition No. 3512 of 2023. Being aggrieved, appellant preferred an intra-Court appeal before the Hon’ble High Court.

**Observations by Court:**

The court found that the penalty could not be imposed on the entire consignment solely due to the discrepancy in the quantity of goods. Even at the time of the detention, the appellant had shown willingness to pay a penalty for the shortage of goods.

**Ruling:**

The appeal and the writ petition stand disposed of by setting aside the order passed by the appellate authority for levying penalty on the entire consignment and the matter is remanded back to the appellate authority to recalculate, to take note of the order and recalculate the penalty in respect of shortage in quantity and over than quantity penalty shall be levied at 200% and the remaining penalty which has been remitted by the appellant shall be refunded to the appellant within a period of eight weeks from the date of receipt of the server copy of the order.

**[Usha Gupta – MAT 477 of 2023, dated 30-03-2023 – Calcutta High Court]**

**5. Penalty for expired E-way bill:**

**Facts of the matter:**

The goods were dispatched through Lorry and the e-way bill was valid up to May 2, 2022. The said vehicle reached the destination on May 2, 2022 before the expiry of e-way bill. The goods were to be unloaded at the stockyard and accordingly the petitioner had directed the driver of the vehicle to take the vehicle to the said location. By the time, the driver reached the stockyard, it was closed and the next working day i.e. May 3, 2022, the stockyard was also closed because of Ed-UI-Fitr as a result, the vehicle could not enter the stockyard for unloading of the goods and the driver had parked the vehicle in the vicinity of the stockyard. On May 4, 2022 at 3:20 AM, the vehicle was intercepted by State Tax Officers of North Bengal. On May 5, 2022, the goods were inspected and as per the physical verification report dated May 5, 2022, the description and quantity of the goods matches with the description and quantity as per the invoice but only the difference was expiry of e-way bill on May 2, 2022.

The goods and the vehicle were detained by issuing a detention order on the ground of vehicle being found in transit with an expired e-way bill. A show cause notice was issued by proposing a penalty of Rs. 2,48,195/- each under CGST and WBGST or Rs. 8,13,528/- each under CGST and WBGST.

**Observation by Court:**

Hon’ble High Court has relied on the pronouncement of Coordinate Bench of this Court in the matter of *Hanuman Ganga Hydroprojects (P) Ltd. – WPA No. 1480 of 2022, dated 06-07-2022*, wherein it was upheld that since it is not a case of willful attempt on the part of the writ petitioner to evade payment of tax, the orders passed by the Appellate Authority and the penalty were all set aside and quashed.

Considering the peculiar facts of the case, this Court finds that there is no lack of bona fide on the part of the petitioner to state that there was wilful misconduct committed by the petitioner while transporting the goods.

**Ruling:**

In view of the above facts and circumstances of the case, the order of the Appellate Authority and the order passed by the adjudicating authority are set aside and quashed.

**[Perfect Enterprises – WPA No. 532 of 2023, dated 15-06-2023 – Calcutta High Court]**

**Contributed by CA. Ashit Shah**

# GST UPDATES

## 1) Extension of due date of Forms GSTR-1, GSTR-3B and GSTR-7 for the State of Manipur

The due date of filing following forms for the month of April, 2023 and May, 2023 has been extended to 30<sup>th</sup> June, 2023 for registered persons, whose principal place of business is in the State of Manipur:

S. No.	Forms	Extended Due Date
1.	GSTR-1 (Statement of outward supplies)	30 <sup>th</sup> June, 2023
2.	GSTR-3B (Monthly return)	30 <sup>th</sup> June, 2023
3.	GSTR-7 (Return by a registered person required to deduct tax at source under section 51)	30 <sup>th</sup> June, 2023

Notification No. 14/2023 – CT dated 19.06.2023.  
 Notification No. 15/2023 – CT dated 19.06.2023,  
 Notification No. 16/2023 – CT dated 19.06.2023.

## 2) Extension of due date of Form GSTR-3B in select districts of Gujarat

The due date of filing of Form GSTR-3B for the month of May, 2023 has been extended to 30<sup>th</sup> June, 2023 for registered persons having principal place of business in the districts of Kutch, Jamnagar, Morbi, Patan and Banaskantha in the State of Gujarat.

Notification No. 17/2023 – CT dated 27.06.2023

## 3) Guidelines for processing of applications for registration

In order to strengthen the process of verification of applications for registration at the end of tax officers, following guidelines have been issued in a uniform manner:

- a) The proper officer shall initiate process of scrutiny on receipt of the application for registration in FORM GST REG-01 along with the documents uploaded by the applicant. He shall scrutinize the documents uploaded by the applicant such as documents for constitution of business, address of principal place of business etc. to ensure whether the documents are legible, complete and relevant. The details and information furnished in the application should be examined to check the completeness, to correlate and cross-verify the same with the uploaded documents and to check the authenticity of the applicant. The authenticity of documents furnished as proof of address may be cross verified from the publicly available sources, such as websites of concerned authorities such as land registry, electricity distribution companies, municipalities, and local bodies, etc.
- b) The proper officer shall check and take into consideration the risk rating made available by the DGARM while verifying and processing the applications. Special attention to be paid to the

cases where “High” risk rating has been assigned.

- c) The proper officer may check the status of PAN as well as compliance record of such GSTINs where the registration has been obtained on the same PAN earlier. The proper officer may also give due consideration and special attention to the cases involving cancellation, suspension or rejection of any of the registrations obtained on the PAN of the applicant, risky place of business basis local risk parameters, prima facie suspicious/doubtful proof of place of business basis scrutiny of application and documents.
- d) The proper officer shall issue a notice to the applicant electronically in FORM GST REG-03 within the prescribed time limit if the application is found to be deficient or where clarification is required. The proper officer may seek clarification or information or document in following cases:
  - (i) where any document is incomplete or not legible.
  - (ii) where the address of place of business does not match with the document uploaded by the applicant, or where such uploaded document does not appear to be a valid proof of the address of the said place of business.
  - (iii) where the address of place of business is incomplete or vague, complete and unambiguous details of the address along with the corresponding documentary proof may be sought.
  - (iv) where any GSTIN linked to the PAN of the applicant is found cancelled or suspended, reasons for the same may be sought.
- e) The proper officer shall examine the clarification filed by the applicant in FORM GST REG-04 in response to notice issued in FORM GST REG-03. Where proper officer is satisfied with the reply furnished, he may approve the grant of registration to the applicant within the prescribed limit. However, where the proper officer is not satisfied with the reply furnished or the reply is not furnished by the applicant, he may for reasons to be recorded in writing, reject such application and inform the applicant in FORM GST REG-05.
- f) The proper officer shall immediately initiate the process for physical verification of business where the applicant has either failed or not opted to undergo Aadhar number authentication. The concerned officer must ensure that the physical verification report along with other documents, including photographs, is uploaded on the system in FORM GST REG-30 within the prescribed time limit.
- g) Where the applicant has undergone Aadhar authentication and if the proper officer is of the opinion that physical verification of place of business is essential to check the authenticity, he may get such physical verification conducted in the

time bound manner. Till the time the functionality for marking the application for physical verification in Aadhar authenticated cases is made available on portal/ACES-GST application, the CPC officer, wherever considered essential, get physical verification of the place of business conducted through jurisdictional officers of the concerned Division/Commissionerate.

- h) It will be ensured by the proper officer that no application for grant of registration is approved on deemed basis for want of timely action on part of tax officers. Strict view may be taken where any gross negligence is observed on part of concerned officer.
- i) Where registration is granted on deemed approval basis or where registration is granted in cases covered under para (c) above or in cases of "High Risk", and physical verification of the place of business was not conducted before grant of such registration, the CPC officer shall communicate the details to the concerned jurisdictional Commissionerate immediately after registration and physical verification of the place of business shall be got conducted by the concerned Commissionerate within 15 days of such registration. Besides, the concerned Commissionerate may get such physical verification of the place of business conducted in other cases also, wherever required based on risk parameters and risk ratings. Wherever the registered person is found to be non-existent or fictitious, subsequent remedial action(s) may be taken without any delay.
- j) The Principal Chief Commissioner/ Chief Commissioner of the CGST Zones may closely supervise the status of processing of the applications of registration, including physical verifications, within their zones. Wherever it is noticed that the application for registration has been granted deemed approval, the reasons for the same may get examined by the Principal Chief Commissioner/ Chief Commissioner for taking subsequent remedial action, if any, in a time bound manner.

*Instruction No.03/2023-GST dt. 14.06.2023*

### GSTN Advisories

#### 1) E-Invoice verifier App – Issued on 08.06.2023

The E-Invoice verifier App has been developed by GSTN offering facility to verify e-invoices and other related details. The key features of the App are as follows:

- a) **QR code verification:** It allows user to scan the QR code on an e-invoice and authenticate the embedded value within the code. This helps in identifying the accuracy and authenticity of the e-Invoice.
- b) **User-Friendly interface:** It provides a user-friendly interface with intuitive navigation, making it easy for users to navigate through app's features and functionalities.
- c) **Comprehensive coverage:** The app supports verification of e-invoices reported across all six IRPs, ensuring comprehensive coverage and convenience.

- d) **Non-login based:** The app operates on non-login basis. Hence, the users are not required to create an account or provide sensitive personal information to access its functionalities. It simplifies the user experience and makes it more convenient for users.

The user needs to download the app 'E-Invoice QR Code Verifier' from the play store and scan the QR codes on the invoice. The app will authenticate the information embedded in the code and one can compare it with information printed on the invoice. As the app does not require any user login or authentication process, anyone can freely scan QR codes and view the available information.

#### 2) Update on Enablement Status for Taxpayers for e-Invoicing - Issued on 16.06.2023

The threshold limit for e-invoicing has been lowered from 10 crores to 5 crores vide *Notification No. 10/2023 - Central Tax dated 10<sup>th</sup> May 2023*. GSTN has enabled all eligible taxpayers with an Aggregate Annual Turnover (AATO) of 5 crores and above as per GSTN records in any preceding financial year for e-invoicing. These taxpayers are now enabled on all six IRP portals including NIC-IRP for e-Invoice reporting. The enablement status can be checked on the e-Invoice portal at <https://einvoice.gst.gov.in>. The taxpayers can register and utilise the sandbox testing facility in order to familiarize themselves with the invoice reporting mechanism and ensure a seamless transition to the e-Invoice system. The enablement status does not indicate a legal obligation on the taxpayers to use e-Invoicing. However, actual liability to generate IRN shall be checked by them with respect to applicable notification in the light of facts pertaining to them. Thus, it is the legal responsibility of the concerned taxpayer, both buyers and suppliers, to ensure compliance. A taxpayer who is otherwise but not auto enabled on the e-Invoice portal, can self-enable for e-Invoicing using the functionality provided on the portal.

#### 3) Online compliance pertaining to liability/difference appearing in GSTR 1 - GSTR 3B (DRC-01B) – Issued on 29.06.2023

A functionality has been developed and made live by GSTN to enable the taxpayers to explain the difference in GSTR-1 & 3B return online. The functionality compares the liability declared in Form GSTR-1/IFF with the liability paid in GSTR-3B/3BQ for each return period.

If the liability declared in Form GSTR-1/IFF exceeds the liability paid in GSTR-3B by a pre-defined limit or the percentage difference between the liabilities declared in GSTR-1 exceeds the configurable percentage threshold from the liability paid in Form GSTR-3B for a return period, an intimation shall be issued in Form DRC-01B to the taxpayer. Upon receiving the intimation, the taxpayer must furnish either of the following response in Part-B of Form DRC-01B:

- a) either accept the liability; or
- b) provide an explanation for the difference; or
- c) choose a combination of both the above options

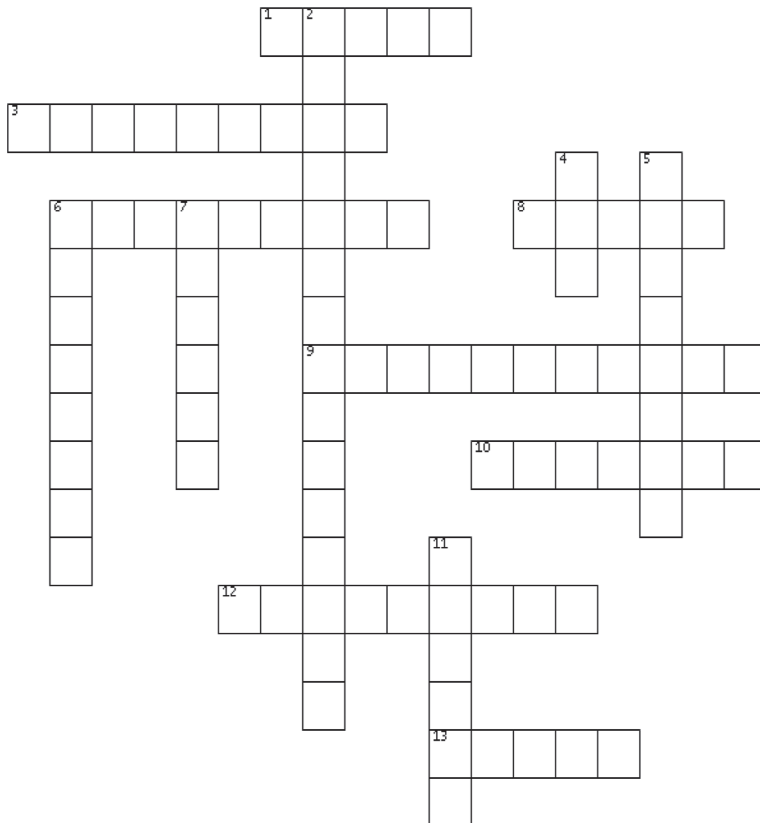


# COMPLIANCE SCHEDULE

## COMPLIANCES FOR THE MONTH OF JULY, 2023

Forms	Compliance Particulars	Due Dates
GSTR 7	Return to be furnished by the registered persons who are required to deduct tax at source.	10.08.2023
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.	10.08.2023
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.	11.08.2023
IFF	Statement of Outward supplies by the taxpayers having an aggregate turnover upto Rs. 5 crore and who have opted for the QRMP scheme.	13.08.2023
GSTR 5	Return to be furnished by the non-resident taxable persons containing details of outward supplies and inward supplies.	13.08.2023
GSTR 6	Return to be furnished by every Input Service Distributor (ISD) containing details of the Input tax credit received and its distribution.	13.08.2023
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.	20.08.2023
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 unregistered person in India.	20.08.2023
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.	25.08.2023

## CROSSWORD



### ACROSS

1. Capital goods not covered under section 143 (i.e., Job work)
3. Naturally bundled supply of goods and services
6. Document for availing input tax credit
8. Delegated legislation
9. GST is a \_\_\_\_\_ tax
10. Taxable actionable claim
12. Predominant element (supply) of composite supply
13. Maximum number of adjournments that can be granted during proceedings

### DOWN

2. Input tax credit available if engaged in same line of business, otherwise blocked
4. Document for export of goods without payment of tax
5. Facilitating or arranging transaction in securities
6. Rebate of duty, tax or cess chargeable on imported inputs
7. To be treated as supply of service whether or not in the course of furtherance of business
11. Maximum days upto which registration of casual taxable person is valid

# ANNOUNCEMENT

## Online Assessment Test of Certificate Course on GST scheduled on 6<sup>th</sup> August, 2023

The next Assessment Test of Certificate Course on GST has been scheduled online on 6<sup>th</sup> August, 2023 from 11.30 am to 12.30 pm. To appear in the aforesaid Assessment Test, please follow the steps given hereunder:

- (i) Log-in at ICAI Digital Learning Hub by using your SSP portal credentials and click on product "IDTC - Assessment - Certificate Course on GST Eligibility Batch" which has already been assigned to your dashboard and follow the process given in detailed instructions to subscribe to the product "IDTC - Assessment Certificate Course on GST\_Aug\_2023". Please note that the last date for subscribing to the product is 25<sup>th</sup> July, 2023 (5.30 pm).
- (ii) After you subscribe to the product, complete your face registration at "IDTC-Assessment-Certificate Course on GST\_Aug\_2023" which would be available in your dashboard under "My Products" on any date but not later than 27<sup>th</sup> July, 2023 till 5:30 pm. Face registration can be done by clicking "Launch" on the product "IDTC-Assessment Certificate Course on GST\_Aug\_2023".
- (iii) Complete your face authentication by visiting "IDTC-Assessment-Certificate Course on GST\_Aug\_2023" which would be available in your dashboard under "My Products" after 24 hours of face registration but not later than 28<sup>th</sup> July, 2023 till 5:30 pm.
- (iv) Participate in the Mock Test scheduled on 2<sup>nd</sup> August, 2023 for 30 minutes at any time between 11:30 am to 3:30 pm.
- (v) On 6<sup>th</sup> August, 2023 i.e., on the day of Assessment Test, log-in by 11:00 am to avoid any difficulties.

Please go through the aforesaid instructions carefully to avoid any last-minute issues.

In case of any difficulty, you may write to us at [gst@icai.in](mailto:gst@icai.in) or call at 0120-3045954 or message us on WhatsApp at 9212256643/9818240634.

**GST & Indirect Taxes Committee**

**The Institute of Chartered Accountants of India**

Noida

## Invitation to write articles on GST

Chartered Accountants and other experts, with academic passion and flair for writing are invited to share their expertise on GST through ICAI-GST Newsletter. The article may be on any topic related to GST Law. While submitting the articles, please keep the following aspects in mind:

- 1) Article should be of 2000-2500 words.
- 2) An executive summary of about 100 words may accompany the article.
- 3) It should be original and not published/should not have been sent for publishing anywhere else.
- 4) Copyright of the selected article shall vest with the ICAI.

Please send editable soft copy of the article at [gst@icai.in](mailto:gst@icai.in).

Answer to crossword:

**ACROSS:**

1. Mould, 3. Composite, 6. Debit Note, 8. Rules, 9. Consumption, 10. Lottery, 12. Principal, 13. Three

**DOWN:**

2. Outdoor Catering, 4. LUT, 5. Services, 6. Drawback, 7. Import, 11. Ninety

# GST QUIZ

- Mr X has availed excess input tax credit of Rs. 50,00,000. The proceedings relating to the same are pending before the Appellate Authority. Specify the period up to which Mr. A need to retain the books and other records.**
  - For a period of 1 year after final disposal of such appeal
  - Until the expiry of 72 months from the due date of furnishing of annual return
  - For a period of 8 years
  - (a) or (b) whichever is later
- A registered person whose registration has been cancelled shall furnish-**
  - annual return, on or before 31st December following the end of the financial year in which the registration has been cancelled.
  - final return, within 3 months of the date of cancellation or date of order of cancellation, whichever is later.
  - final return, within 60 days from the date of order of cancellation of registration.
  - final return, on or before 31<sup>st</sup> December following the end of financial year in which the registration has been cancelled.
- In case of change of constitution of business on account of sale, the unutilised credit of the transferor-**
  - gets invariably transferred to transferee
  - will lapse
  - can be transferred only if there is specific provision for transfer of liabilities
  - The transfer or will get refund of the unutilised credit
- Mr. X have supplied goods 'B' @ 18% on 15.06.2023. After that, the rate of tax on 'B' reduced to 12% on 30.06.2023. The invoice for the same is issued on 02.07.2023 and payment is received on 10.07.2023. What will be the time of supply in given case?**
  - 15.06.2023
  - 30.06.2023
  - 02.07.2023
  - 10.07.2023
- The liability to pay tax where an agent supplies or receives goods on behalf of its principal is of**
  - Agent
  - Principal
  - Both agent and principal, jointly and severally
  - Neither agent not principal
- Mr. A has dues of Rs. 1,60,000 under the CGST Act, 2017 other than his self-assessed tax liability. For this, he wants to avail the scheme of payment of tax in instalments. Which of these is correct regarding the payment in instalments?**
  - Mr. A can avail the option of payment of tax in instalments as the amount for which instalment facility is sought is more than Rs. 25,000
  - Mr. A can avail the option of payment of tax in instalments as the amount for which instalment facility is sought is more than Rs. 50,000
  - Mr. A cannot avail the benefit of payment of tax in instalments as the same is available only for self-assessed tax liability.
  - There is no mechanism under the CGST Act, 2017 which provides the benefit of payment of tax in instalments.
- Mr. X has supplied a kit containing chocolates, a shirt, a wallet and a book. The kit is supplied for a lumpsum price of Rs. 1,500. The rate of taxes as applicable to chocolates, shirt, wallet and book are 12%, 18%, 12%, 5%. The rate of tax applicable to kit is-**
  - 12%
  - 5%
  - 18%
  - Each item at their respective rates.
- Input tax does not include:**
  - tax paid under composition scheme
  - tax payable under the provisions of section 9(3) and 9(4) of the CGST Act, 2017
  - the integrated tax charged on import of goods
  - Both (a) and (c)
- 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.
- An Appellate Authority can refer back a case to the Adjudicating Authority who passed the order or decision against which appeal has been made. Is this statement correct?**
  - Yes, the case can be referred back to the Adjudicating Authority who passed the order or decision against which appeal has been made.
  - No, the case cannot be referred back to the Adjudicating Authority who passed the order or decision against which appeal has been made.
  - Partially correct as the case can be referred back to a different authority for fresh examination but not to the same authority who has passed the order or decision against which appeal has been made.
  - Partially correct as the case can be referred back to the Adjudicating Authority who passed the order or decision against which appeal has been made only if there has been an apparent error in the determination of facts.

**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.
Arpit Sahai	443489
Himanshi Rupani	463999
Vinay Chanchlani	448866
Komal Pokar	184017
Basanta Raj Timilsina	550960

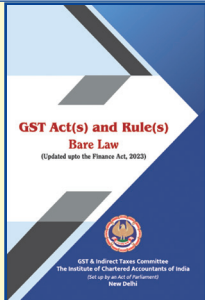
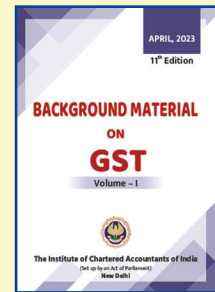
Please provide reply of the above MCQs in the link given below. The name of the first 5 members who provide all the correct answers within 48 hours of receipt of this Newsletter, would be published in the next edition.

Link to reply: <https://forms.gle/E8T4zwzim9VSmgSo8>

# REVISED PUBLICATIONS

## Background Material on GST - April 2023 (11<sup>th</sup>) Edition

The GST & Indirect Taxes Committee has come out with the 11<sup>th</sup> edition of the 'Background Material on GST' to keep the readers up to date with the changes in GST law as also have a deep understanding of the law. It contains statutory provisions of GST law and their analysis including FAQs, MCQs, flowcharts, illustrations etc. to make the publication reader friendly. It is updated with the notifications and circulars as issued by the CBIC upto 31<sup>st</sup> March, 2023 including the amendment made vide The Finance Act, 2023.



## GST Act(s) and Rule(s) - Bare Law

The GST & Indirect Taxes Committee has revised its publication "GST Act(s) and Rule(s) – Bare Law". The publication is a compilation of five Act(s) and two sets of Rule(s) pertaining to GST, namely the Constitution (101<sup>st</sup> Amendment) Act, the Central Goods & Services Tax Act, 2017, the Integrated Goods & Services Tax Act, 2017, the Union Territory Goods & Services Tax Act, 2017, the GST (Compensation to States) Act, 2017, the Central Goods & Services Tax Rules, 2017 and the Integrated Goods & Services Tax Rules, 2017. The publication is amended for the changes taken place upto 31<sup>st</sup> March, 2023 including the amendment made vide The Finance Act, 2023.



## GST & Indirect Taxes Committee

Home Overview Certificate Course Programme/Seminar Representations to Govt Publications Knowledge Sharing Useful Links

 CA. Aniket Sunil Talati President, ICAI	 CA. Ranjeet Kumar Agarwal Vice-President, ICAI
 CA. Sushil Kumar Goyal Chairman, GST & IDTC	 CA. Umesh Sharma Vice-Chairman, GST & IDTC

Background Material on GST (25.05.2023) - Volume - I & Volume - II - 11th Edition released by the President, ICAI during 421st Meeting of the Council on 25th May 2023.



### GST & INDIRECT TAXES COMMITTEE OF ICAI

**A ONE STOP DESTINATION FOR ALL INDIRECT TAXES**

website: [www.idtc.icai.org](http://www.idtc.icai.org)

The website of GST and Indirect Taxes Committee of ICAI viz. [www.idtc.icai.org](http://www.idtc.icai.org) provides the users a well-set platform for sharing and gaining knowledge on GST and easy accessibility to the Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in all the indirect taxes laws vide various mediums like organising programmes, developing/ updating publications, sending regular updates, etc.

### Main features:

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- ❖ Recordings of Live Webcasts/E-lectures on GST
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- ❖ Details of Certificate Courses, Programme, Seminars etc. on GST/Indirect Taxes
- ❖ Links of related important website

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

Secretary

GST & Indirect Taxes Committee

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ICAI Bhawan, A-29, Sector - 62, NOIDA (U.P.) India

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