



ICAI-GST

NEWSLETTER

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President's Communication



Dear Professional Colleagues,

Greetings!

India's GST revenue for January 2025 stood at ₹ 1,95,506 crores, reflecting a 12.3% rise from ₹ 1,74,106 crores in January 2024 marking the highest collection since April 2024, showcasing robust economic activity and improved tax compliance.

The GST Council, at its 55th meeting, deliberated upon and approved several significant recommendations aimed at enhancing tax compliance, addressing concerns related to tax exemptions, and rationalizing GST rates. The decision to retrospectively treat the supply of goods warehoused in a SEZ or FTWZ as neither a supply of goods nor a supply of services is a welcome move that resolves the contentious issue of IGST applicability on such transactions. I extend my heartfelt gratitude to the Government for acknowledging this concern highlighted by the ICAI in its Pre-Budget Memorandum on Customs. While I write this message, Union Budget 2025 has been presented in the Parliament and the GST Proposals therein seek to give effect to the recommendations made by the GST Council at this meeting.

The GST & Indirect Taxes Committee of ICAI hosted a landmark event viz., “*Conclave on Indirect Taxes Litigation before Tribunal*” on 21st December, 2024 at New Delhi. The Conclave brought together over 20 distinguished members of the Customs, Excise & Service Tax Appellate Tribunal (CESTAT), offering our members a unique opportunity to gain insights from their rich practical experience and expertise. Hon'ble Justice Shri C. Hari Shankar of the High Court of India graced the event as the Chief Guest, while Hon'ble Justice Shri Dilip Gupta, President of CESTAT, attended as the Guest of Honour.

Also, the Committee hosted its 3rd National GST Symposium, 2024 at Kolkata for GST Officers of Central Tax, State Tax and Union Territory Tax which brought thirty-eight senior Officers like Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners/ Additional Commissioners/ from 19 States all over India. The Symposium is an initiative of the ICAI to facilitate the Officers in deliberating and exchanging thoughts and ideas in a stress-free environment for enhancing the efficiency of GST regime.

I hope this issue of the Newsletter proves to be a valuable resource in your professional journey. I encourage you all to continue expanding your knowledge and skills, as our collective growth strengthens our profession and benefits society, pushing us toward greater achievements.

CA. Ranjeet Kumar Agarwal

President

The Institute of Chartered Accountants of India

“NATIONAL GST SYMPOSIUM”



The GST & Indirect Taxes Committee of ICAI has organised its 3rd National GST Symposium, 2024 at Kolkata for GST Officers of Central Tax, State Tax and Union Territory Tax which brought all the Officers on one platform to foster synergy, discussions, exchange of ideas, flag issues and brainstorm resolutions. More than 30 high-ranking officers including Chief Commissioners, Commissioners, Additional Commissioners, Joint Commissioners and also senior officials from GSTN participated in the Symposium. There were deliberations on the topic *“Interplay of GST & Customs”* and panel discussions on the topics *“Tackling Revenue Leakages: Insights into Advanced Audit and Scrutiny Techniques”* and *“Input Tax Credit: Resolving Issues in Claim Eligibility and Reversals”*. Further, there was also a fire chat on the topic *“GST Journey: Milestones So Far & Way Forward”*.

Further, the Committee’s publication ‘*GST Act(s) and Rule(s)- Bare Law*’ January, 2025 edition was released in the Symposium.



Chairman's Communication



Dear Member,

As we move further into 2025, GST continues to evolve, bringing changes that enhance transparency, compliance, and efficiency. It's a prideful moment to announce the publishing of 50th edition of GST Newsletter marked by continuous engagement by our esteemed readers and bringing you important updates and insights to keep you ahead in the GST domain.

The Union Budget 2025 was presented by the Hon'ble Union Finance Minister, Smt. Nirmala Sitharaman on 1st February, 2025. As expected, all the GST proposals in the Finance Bill, 2025 are based on the recommendations made by the GST Council at its 55th Meeting which necessitated change in the CGST Act, 2017. The amendments will come into effect from a date to be notified after the passing of the Finance Bill, 2025.

In a significant relief to taxpayers, the GST Council, at its 55th meeting, approved a one-time waiver of late fees for delayed filing of Reconciliation Statement in Form GSTR-9C for any financial year up to 2022-23, if the Reconciliation Statement is furnished on or before 31.03.2025. The decision aims to promote compliance and address the challenges faced by taxpayers in meeting their GST obligations during the post-pandemic recovery period. However, any late fee already paid for delayed submission of GSTR-9C will not be refunded. *Notification No. 08/2025-CT dated 23.01.2025 & Circular No. 46/03/2025-GST dated 30.01.2025* have been issued by the CBIC to implement this decision of the GST Council.

The GST & Indirect Taxes Committee has released a new publication namely, ***“Technical Guide on Departmental GST Audit of Entities with Multiple GSTINs”*** which aims to offer thorough knowledge and practical guidance to registered persons with multiple GSTINs on the appropriate actions to be taken in the event of an audit conducted by the GST Department. Further, the Committee has also revised its various publications namely, ***‘GST Act(s) and Rule(s)- Bare Law’***, ***‘Background Material on GST’***, ***‘Guide to CA Certificates in GST’***, and ***‘Technical Guide on GST Annual Return (Form GSTR-9)’***. These publications would be of immense use to the members and other professionals working in the field of GST.

If you have any questions or thoughts to share, feel free to reach out. Stay tuned for more updates in the next edition.

CA. Sushil Kumar Goyal

Chairman

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

“CONCLAVE ON INDIRECT TAXES LITIGATION BEFORE TRIBUNAL”

The GST & Indirect Taxes Committee of ICAI organised the **“Conclave on Indirect Taxes Litigation before Tribunal”** on 21st December, 2024 at India Habitat Centre, New Delhi. The Conclave aimed to enhance the skills of Chartered Accountants in drafting, representation, and procedural compliance before the Tribunal, fostering effective advocacy in the field of indirect taxes. Over 20 distinguished members of the Customs, Excise & Service Tax Appellate Tribunal (CESTAT) participated in the Conclave, offering our members a unique opportunity to gain insights from their rich practical experience and expertise. Hon’ble Justice Shri C. Hari Shankar of the High Court of India graced the event as the Chief Guest, while Hon’ble Justice Shri Dilip Gupta, President of CESTAT, attended as the Guest of Honour.



Hon’ble Justice Shri C. Hari Shankar shared insights from his legal journey, endorsing ICAI’s vision to empower professionals in contributing to the nation’s progress.

Hon’ble Justice Shri Dilip Gupta, lauded ICAI’s pioneering efforts in organizing this event and emphasized the critical role of Chartered Accountants as guardians of financial integrity and catalysts for economic growth. Justice Gupta also delivered a heartfelt ode to Chartered Accountants as under:

*“With ledgers and journals, you weave your spell,
A master of numbers, a tale to tell,
you balance the books with possession and care,
the guardian of finances beyond compare,
your expertise guides through financial strife,
a beacon of hope in the world of fiscal life,
you are the wizards of the financial stage,
A chartered Accountant, a story to engage.”*

The President of ICAI emphasized the Conclave’s role in fostering synergy among CESTAT members, the judiciary, and Chartered Accountants. He highlighted ICAI’s commitment to nation-building by collaborating with the judiciary and the Government to achieve the Hon’ble Prime Minister’s vision of a Viksit Bharat by 2047. CA. Sushil Kumar Goyal, Chairman, GST & Indirect Taxes Committee who played the pivotal role in shaping the vision and execution of this landmark event, welcomed the dignitaries.

The Conclave marked a significant milestone in strengthening the professional capabilities of Chartered Accountants and promoting effective advocacy in the field of indirect taxes.

There were two technical sessions in the Conclave namely, **“CESTAT – Bringing Legal & Factual Perspectives in Indirect Tax Disputes”** and **“Mastering the Art of Representation Before CESTAT - Key Insights for Professionals”**. Both the sessions were handled by the members of CESTAT with one representative from Department side and one from taxpayer side.

First Session: CESTAT – Bridging Legal & Factual Perspectives in Indirect Tax Disputes

The first highly insightful panel discussion commenced with an important observation regarding the Department’s approach towards taxpayers’ replies and responses. **Shri S.K. Mohanty, Member (Judicial) of CESTAT Mumbai**,

emphasized the taxpayers' fundamental right to cross-examination. He asserted, *"Your fundamental right to cross-examination cannot be denied by the officer, department, or adjudicating authority. If proceedings are initiated against a taxpayer, it is their duty to explore the basis of such actions. Denial of cross-examination violates natural justice, and if brought before CESTAT, we would either remand the case back to the original authority or set aside the order. No one should be condemned unheard."*

Ms. R. Bhagya Devi, Member (Technical), CESTAT Bangalore, elaborated on the role of CESTAT, highlighting its jurisdiction over issues such as the taxability of items, their classification, quantum of tax, and recovery. She emphasized, *"The Hon'ble Supreme Court recognizes CESTAT as the last fact-finding authority."* The session underscored the importance of a meticulously prepared appeal, which should include a comprehensive synopsis of the case, clear written submissions, and well-structured arguments representing both the Revenue and the assessee's stand.

CA. Upender Gupta, retired Chief Commissioner of CGST, shared insights on the shortcomings of show cause notices and proceedings at lower levels. He highlighted ongoing efforts to improve the dispute resolution process and encouraged professionals to escalate significant issues to higher levels instead of settling them prematurely at lower stages.

Second Session: Mastering the Art of Representation Before CESTAT

The second session, titled *"Mastering the Art of Representation Before CESTAT,"* opened with a pertinent question: *Can CESTAT proceedings be conducted in Hindi?* **Dr. Rachna Gupta, Member (Judicial), CESTAT Delhi**, provided that under the CESTAT Procedure Rules, 1992, proceedings are conducted in English. However, **CA Ashok Batra** added, *"While submissions must be in English, arguments can be conducted in Hindi."*

On the admissibility of additional evidence before CESTAT, **Dr. D. M. Misra, Member (Judicial), CESTAT Bangalore** remarked, *"Admissibility depends on the context. If there is a violation of the principles of natural justice, such as in an ex-parte order, the case may be remanded to the original authority for rehearing. Additionally, if evidence not previously considered could have altered the outcome, the Bench may take it into account."*

Courtroom Decorum and Professionalism

The panelists emphasized the importance of courtroom decorum and professionalism. **CA Ashok Batra** aptly noted, *"Court craft is an art that comes with experience. An attorney is an officer of the court and must not exhibit bias toward either the client or the Revenue."* Panelists encouraged legal professionals to adhere strictly to procedural and decorum norms of the tribunal, demonstrating the highest level of professionalism.

Technology in Case Management: The e-ARC Initiative

Shri Shaik Khader Rahman, Principal Commissioner (AR), CESTAT New Delhi, explained the introduction of the Electronic Authorised Representative Case Management System (e-ARC) initiative. He said that this platform enables professionals to browse case files electronically and receive alerts for upcoming hearings. This initiative aims to enhance efficiency and accessibility in case management, streamlining processes for both representatives and stakeholders. He encouraged the professionals to remain vigilant with the case hearings, so the case can be disposed off in more efficient and effective manner.

The discussions, enriched by the expertise of distinguished panelists, provided valuable insights into navigating CESTAT proceedings effectively while upholding the principles of natural justice. The sessions, coupled with initiatives like e-ARC, underscored the Tribunal's focus on modernization, efficiency, and transparency in case management.



Challenging the reversal of Input Tax Credit (ITC) by a bonafide purchaser on purchases made from a Non-Existent Supplier

Introduction

One of the burning litigated issues under GST is demanding the reversal of Input Tax Credit (ITC) from a bona-fide purchaser of goods in case such goods are purchased from a supplier who later turns out to be non-existent or whose GST registration is retrospectively cancelled. The Adjudicating Officer on taking into consideration the relied upon documents (RUDs) and Investigation Report prepared by the investigation team of the Anti-Evasion Wing or the Directorate General of GST Intelligence (DGGI), issues a Show Cause Notice (SCN) u/s 74(2) of CGST Act, 2017 to the bona-fide recipient of goods alleging that the underlying goods had never been received, thereby leading to a violation of section 16(2)(b) of the CGST Act, 2017 read with section 20 of the IGST Act, 2017.

The moot question in this article is whether a bonafide purchaser be held liable for supplies made by a supplier who is later alleged to be non-existent and whether the ITC claimed on such supplies, that have actually been physically received, may be denied on the ground that the invoices are bogus/fake and that the underlying goods had never been received by the recipient, thereby leading to a violation of section 16(2)(b) of the CGST Act, 2017 read with section 20 of the IGST Act, 2017.

This article delves into the relevant legal provisions, the role of the tax authorities and analyses several grounds of defences, both on merit of facts and circumstances and on the basis of key judicial precedents to provide a comprehensive understanding of the issue and its possible legal safeguards. The thesis is that bona fide purchasers who have exercised due diligence should not be penalised for the supplier's default or non-existence, as denying ITC in such cases may contradict the principles of fairness and justice inherent in GST law.

Grounds of Defence:

Being a litigated issue, it becomes important to understand the grounds of defence that may be taken when replying to such SCNs in Form GST DR-06 or while filing appeal in Form GST APL-01.

(I) Grounds of merit on the basis of Facts:

In respect of a purchase transaction from an alleged non-existent supplier, the assessee in order to discharge his burden of proof u/s 155 of CGST Act, 2017 that the recipient is in possession of a valid tax invoice as is required u/s 16(2)(a) of CGST Act, 2017 and he has actually received

the underlying goods as required u/s 16(2)(b) of CGST Act, 2017 and that he is eligible to claim the ITC, may have to submit cogent and tangible evidences, preferably as follows:

- (1) Name and address of the suppliers,
- (2) Details of the vehicles which have delivered the goods from the supplier i.e. inward supplies,
- (3) Payment of freight charges to the transporters who have delivered the goods from the supplier,
- (4) Evidence of acknowledgement of taking delivery of goods including actual physical movement of the goods, such as consignment notes/bilty issued by the transporters in respect of inward supplies of the impugned goods,
- (5) E-way bills generated in respect of transportation of inward supplies of the impugned goods,
- (6) Weighment certificates issued for weighing the impugned goods at a weigh-bridge in respect of such inward supplies,
- (7) Undertaking declarations and certificates from the transporters certifying the actual receipt and transportation of inward supplies of the impugned goods and also from the recipients of the assessee, certifying the actual receipt of outward supplies of the impugned goods made the assessee and further certifying the payments made thereof to both the assessee and the transporters, if any,
- (8) Copies of Account Ledgers from the books of accounts of the assessee in respect of the transporters and recipients providing proof of supplies and payments in respect of the impugned goods,
- (9) Copies of bank statements of the assessee and its recipients with highlighted bank entries providing proof of payments in respect of the impugned supplied goods,
- (10) Tax Audit Reports in Form 3CD for respective audit period filed by Chartered Accountant containing inventory details confirming the exact quantity of closing inventory of goods that may include such underlying impugned goods,
- (11) CA certificate with UDIN certifying the actual quantity of closing inventory of impugned goods, if any, for the financial years during which the impugned goods were part of the total inventory,
- (12) The Inventory Summary Statement containing a

comprehensive and complete trail of details of inward and outward supplies of all types of inventory including detailed records of inventory of the impugned goods received, purchased, sold and delivered as is required to be maintained under section 35(1) of CGST Act, 2017 read with rule 56 of CGST Rules, 2017. This may establish beyond doubt an undisputed trail of movement of the impugned goods that had been received from the impugned supplier and which had been sold to the customer recipient.

- (13) In order to establish a complete and comprehensive trail of movement of the impugned goods from the point of purchase from the supplier till its delivery to the customer recipient, similar details are required to be provided as are mentioned in the aforementioned points (1) to (9) in respect of outward supplies sold to the customer recipient.

The assessee may compile all the aforementioned factual details in respect of the impugned inward supplies made from the alleged non-existent supplier and present it in a tabular manner, provided hereunder as an example, to the GST Department for a comprehensive evaluation of such facts. In order to establish a complete trail of movement of such impugned underlying goods and to substantiate the actual receipt of such impugned underlying goods in compliance with section 16(2)(b) of CGST Act, 2017, being SS Scrap of 80,730 Kgs in this example, the following relevant details have been tabulated below in respect of supplier details and tax invoices, Goods Transport Agency (GTA) details, E-way bills, consignment notes, vehicle numbers, weighment certificate numbers, source and destination of goods, quantity (weight) and nature of goods, invoice value and tax amounts:

Table with complete details of inward supplies of SS Scrap of a quantity of 80,730 Kgs:

Purchase Invoice No. & Date	Name of Transporter, C/N No. & Date	Vehicle No. and Weighment Cert. No.	E-Way Bill No. and Date	Name of Goods and Quantity weighed	Source	Destination	Invoice Value (In ₹)	Input Tax Credit/IGST (In ₹)
701 dt. 6.01.2018 Swastik International	Sharma Cargo Movers Pvt. Ltd. C/N. No. 28077 dt. 06.01.2018	PB05D9326 #3148	192018018 519553 dt. 11.01.2018	S.S. Scrap Weight- 20,160 kg	Delhi	Howrah, West Bengal	44,72,294	6,82,214
702 dt. 6.01.2018 Swastik International	Sharma Cargo Movers Pvt. Ltd. C/N. No. 28078 dt. 06.01.2018	DL1GC4309 #3161	192018018 519687 dt. 11.01.2018	S.S. Scrap Weight- 19,980 kg	Delhi	Howrah, West Bengal	44,32,363	6,76,123
707 dt. 7.01.2018 Swastik International	Sharma Cargo Movers Pvt. Ltd. C/N. No. 28079 dt. 07.01.2018	WB37B5567 #3145	192018018 519844 dt. 11.01.2018	S.S. Scrap Weight- 20,340 kg	Delhi	Howrah, West Bengal	45,12,226	6,88,305
708 dt. 7.01.2018 Swastik International	Sharma Cargo Movers Pvt. Ltd. C/N. No. 28080 dt. 07.01.2018	MP06HC0955 #3462	192018018 519986 dt. 11.01.2018	S.S. Scrap Weight- 20,250 kg	Delhi	Howrah, West Bengal	44,92,260	6,85,260
			Total	Weight- 80,730 kgs			1,79,09,143	27,31,902

Source: Self

The assessee may provide a similar table containing relevant factual details in respect of outward supplies made from the inventory of impugned goods purchased from the alleged non-existent supplier in order to establish a complete trail of movement of such impugned underlying goods and to substantiate the actual receipt of such impugned underlying goods.

Continuing with the above mentioned example, the assessee may provide the GST Department an Inventory Summary Statement in a tabular manner, provided hereunder as an example, containing details in respect of a complete trail of movement of inward and outward supplies of the inventory of the impugned underlying goods, being SS Scrap of 80,730 Kgs in this example, received, and sold and delivered as is required to be maintained under section 35(1) of CGST Act, 2017 read with rule 56 of CGST Rules, 2017. This may establish beyond doubt an undisputed trail of movement of the impugned goods of SS Scrap that had been entirely received from the impugned supplier, namely M/s. Swastik International of a total quantity of 80,730 Kgs in F.Y. 2017-18, and which had been entirely sold to two customer recipients, namely, M/s. Shree Hari Steel Industries of 75,590 Kgs in F.Y. 2017-18 and to M/s. Mirtunjai Udyog of 5,140 Kgs in F.Y. 2018-19.

Inventory Summary Statement of SS Scrap of a quantity of 80,730 Kgs:

**SS SCRAP
Stock Item Register
1-Apr-17 to 31-Mar-18**

Date	Particulars	Vch Type	Vch No	Inwards			Outwards			Closing		
				Quantity (in kg)	Rate	Value	Quantity (in kg)	Rate	Value	Quantity (in kg)	Rate	Value
12-Jan-18	Swatik International	GST Purchase	701	20,160.00	188.00	37,90,080.00						
	Swatik International	GST Purchase	702	19,980.00	188.00	37,56,240.00						
	Swatik International	GST Purchase	707	20,340.00	188.00	38,23,920.00						
	Swatik International	GST Purchase	708	20,250.00	188.00	38,07,000.00				80,730.00	188.00	151,77,240.00
18-Jan-18	Shree Hari Steel Industries	GST Sales	TICS/2017-18/087				14,820.00	190.50	28,23,210.00			
	Shree Hari Steel Industries	GST Sales	TICS/2017-18/088				14,190.00	190.50	27,03,195.00			
	Shree Hari Steel Industries	GST Sales	TICS/2017-18/089				15,050.00	190.50	28,67,025.00	36,670.00	188.00	68,93,960.00
29-Jan-18	Shree Hari Steel Industries	GST Sales	TICS/2017-18/090				16,010.00	191.00	30,57,910.00	20,660.00	188.00	38,84,080.00
03-Feb-18	Shree Hari Steel Industries	GST Sales	TICS/2017-18/091				15,520.00	191.00	29,64,320.00	5,140.00	188.00	9,66,320.00
	Total (As per Default Calculation)			80,730.00	188.00	151,77,240.00	75,590.00	190.71	144,15,768.90	5,140.00	188.00	9,66,320.00

**SS SCRAP
Stock Item Register
1-Apr-18 to 31-Mar-19**

Date	Particulars	Vch Type	Vch No	Inwards			Outwards			Closing		
				Quantity (in kg)	Rate	Value	Quantity (in kg)	Rate	Value	Quantity (in kg)	Rate	Value
01-Apr-18	Opening Balance			5,140.00	188.00	9,66,320.00				5,140.00	188.00	9,66,320.00
01-Mar-19	Mirtunjai Udyog	GST Sales	TICS/2017-18/098				5,140.00	191.00	9,81,740.00	0.00		0.00
	Total (As per Default Calculation)			5,140.00	188.00	9,66,320.00	5,140.00	190.71	9,80,249.40	0.00	188.00	0.00

Source: Self

(I) Grounds of relevant Judicial Pronouncements:

Following landmark court decisions may be referred to while drafting grounds of defence:

- (1) Reliance has been placed on the landmark judgement of the Hon'ble Supreme Court in the case of *The State of Karnataka vs. M/s Ecom Gill Coffee Trading Private Limited (Civil Appeal No. 230 of 2023)*, wherein was it held that "over and above the invoices and the particulars of payment, the purchasing dealer has to produce further material like the name and address of the selling dealer, details of the vehicle which has

delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods including actual physical movement of the goods, alleged to have been purchased from the concerned dealers."

Reliance has been placed on the landmark judgement of the Hon'ble Madras High Court in the case of *Tvl. Sahyadri Industries Ltd. vs. The State of Tamil Nadu, represented by, the Joint Commissioner (CT), Erode (2023)*, wherein was it held that "It was incumbent on the part of a registered dealer like petitioner/appellants availing input tax credit to prove that indeed a transaction of "sale" had taken place. They should not

only preserve but also produce collateral evidence in the form of transport documents, such lorry receipts or consignment note, etc. when called upon failing which it cannot be said they have discharged the burden of proof required to be discharged under section 17(2) of the TN VAT Act, 2006.”

Therefore, a dealer claiming ITC has to prove the actual transaction of sale by furnishing the name & address of the selling dealer, details of the vehicle which was/were used for delivery of the goods, tax invoices and payment particulars etc. The above information would be in addition to tax invoices, particulars of payment etc..

Relying on the aforementioned judgements, the assessee may emphasize that he has submitted all the aforementioned factual details in respect of the impugned inward supplies made from the alleged non-existent supplier in order to establish a complete trail of movement of such impugned underlying goods and to substantiate the actual receipt of such impugned underlying goods in compliance with section 16(2)(b) of CGST Act, 2017.

Further, the assessee may state that the onus of burden of proof as is provided u/s 155 of CGST Act, 2017 in respect of proving the eligibility of ITC as per section 16(2) of CGST Act, 2017 has been discharged by the assessee and now the burden has been shifted to the Department to prove to the contrary.

- (2) Reliance has been placed on the judgement of the Hon'ble Orissa High Court in the case of *M/s. Bright Star Plastic Industries vs. Additional Commissioner of Sales Tax (Appeal) and others (2021) (W.P.(C) No.15265 of 2021)*, wherein it was held that in order "to attribute fraud in such circumstances to the Petitioner, as a purchasing dealer, the Department would have to satisfy a high threshold of showing that the purchaser indulged in the transactions with the full knowledge that the selling dealer was non-existent. The Department would have to show that somehow the purchasing dealer and selling dealer acted in connivance to defraud the revenue. This threshold has not been made in the present case. In other words, the Department has failed to show that the Petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence."

Relying on the aforementioned judgement, the assessee may emphasize that the Department has neither brought on record nor has presented adequate relied upon documents or has not even mentioned in the impugned SCN any document or other cogent and tangible evidence to implicate the assessee that he had acted in connivance along with the impugned supplier to defraud the revenue or that the assessee indulged in the transactions with the full knowledge that the selling dealer was non-existent.

Furthermore, the assessee may emphasize that on the dates on which he has entered into the impugned transactions of purchase, the GST registration of the

alleged non-existent supplier had not been cancelled. That was to take place much later on retrospective date. Therefore, it may be emphasized that on the date, purchase took place there was no means for the assessee to know that entity which had a valid GST number, was in fact non-existent.

Furthermore, the assessee may state that conclusion cannot be drawn that the purchase transactions entered into by the assessee with the alleged non-existent supplier were fake transactions and the underlying goods have actually not been received at the premises of the assessee, in the absence of any cogent evidence presented by the Department which may be in the form of any statements or admissions taken from the transporters, weighbridge vendors, customer recipients and other parties. Further, the assessee may emphasize that the Panchnama issued by the DGCI is dated much after the date of the impugned transaction which had been drawn at the location of the impugned supplier, from said visits which were undertaken much after the date of the impugned transaction.

- (3) Reliance has been placed on the judgement of the Hon'ble Supreme Court in the case of *Deputy Assistant Commissioner-1 (ST) v. Arhaan Ferrous and Non-Ferrous Solutions (P.) Ltd. [Petitions for Special Leave to Appeal (C) No (S). 24711-2474 of 2023 dt. November 6, 2023]*, wherein the SLP was dismissed by the Apex Court and it was held that "the Respondent's responsibility will be limited to the extent of establishing that he bonafidely purchased goods from the supplier for valuable consideration after verifying the GST registration of the said supplier on the GST portal."

Relying upon the aforementioned judgment, the assessee may state that he had already fulfilled his obligation of conducting due diligence about the genuineness, existence and validity of the impugned supplier after carrying out due verification of its GST registration and the status of the GSTIN was showing active on the GST Portal on the dates of the transactions with the said impugned supplier.

- (4) Reliance has been placed on the judgement of the Hon'ble Madras High Court in the case of *Tvl. Cleon Optobiz Pvt. Ltd., represented by its Director Mr. Bhavesh K Shah vs. The Assistant Commissioner (ST), Chennai (W.P.No.495 of 2024)*, wherein it was held that "In view of the production of invoices, e-way bills and proof of payment of invoices in the form of the relevant bank statements, the above conclusion cannot be sustained. Therefore, the impugned order warrants interference. The impugned order is liable to be quashed for not duly considering the documentary evidence placed on record by the petitioner to establish that the purchases were genuine. Hence, the impugned order is quashed."

Relying on the aforementioned judgement, the assessee may emphasize that he has submitted all the aforementioned factual details in respect of the impugned inward supplies made from the alleged non-

existent supplier in order to establish a complete trail of movement of such impugned underlying goods and to substantiate the actual receipt of such impugned underlying goods in compliance with section 16(2)(b) of CGST Act, 2017.

- (5) Reliance has been placed on the judgement of the Hon'ble CESTAT of New Delhi in the case of *Shree Jagdamba Castings (P) Ltd. vs. Commissioner of C. EX., Bhopal (2006)*, wherein it was held *"that the appellant has adduced enough evidence in form of weighbridge slips, Consignment notes of the transporters etc. The revenue has not placed any evidence contrary, in the form of statement of the transporters or weighbridge owner to refute the appellant's claim. This in itself would indicate that the inputs were in fact transported to the appellant. The overwhelming evidences brought on record by the appellant are to suggest that the inputs were received in the factory of the appellant. Hence, on merits the appellant's appeal succeeds and demand of duty is unsustainable."*

Relying on the aforementioned judgement, the assessee may state that the Department has not placed any evidence on the contrary, in the form of statement of the transporters, recipient buyers or weighbridge owner to refute the assessee's claim apart from a mere statement or bald allegation which is that the impugned supplier has been found to be non-existent, hence the underlying goods were never received by the assessee, which is not sufficient to establish a serious charge of fraudulent availment of input tax credit.

- (6) Reliance has been placed on the judgements of the Hon'ble Calcutta High Court in the cases of *M/s LGW Industries Ltd. & ORS. vs. Union of India (2021)*, *Sanchita Kundu & ANR. vs. The Assistant Commissioner of State Tax, Bureau of Investigation, South Bengal & ORS. (2022)* and *M/s. Gargo Traders vs. The Joint Commissioner, Commercial Taxes (State Tax) & ORS.*, wherein the following paras of the judgements are relevant to the present case of the assessee:

"The main contention of the petitioners in these writ petitions are that the transactions in question are genuine and valid by relying upon all the supporting relevant documents required under law and contend that petitioners with their due diligence have verified the genuineness and identity of the suppliers in question and more particularly the names of those suppliers as registered taxable person were available at the Government portal showing their registrations as valid and existing at the time of transactions in question and petitioners submit that they have limitation on their part in ascertaining the validity and genuineness of the suppliers in question and they have done whatever possible in this regard and more so, when the names of the suppliers as a registered taxable person were already available with the Government record and in Government portal at the relevant period of transaction, petitioners could not be faulted if the suppliers appeared

to be fake later on. Petitioners further submit that they have paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks and petitioners are helpless if at some point of time after the transactions were over, if the respondents concerned finds on enquiries that the aforesaid suppliers were fake and bogus and on this basis petitioners could not be penalised unless the department/respondents establish with concrete materials that the transactions in question were the outcome of any collusion between the petitioners/purchasers and the suppliers in question."

Reliance has been placed on the judgement of the Hon'ble Delhi High Court in the case of *M/s. Balaji Exim vs. Commissioner CGST and ORS (2023)*, wherein it was held that *"there are no findings on the basis of the cogent material that the invoices issued by one of the petitioner's suppliers (M/s Shruti Exports) were fake. It was also noticed that there was no allegation that the petitioner had not exported the supplies in respect of which refund of ITC on inputs was claimed. Accordingly, the petition was allowed and the respondents were directed to process the petitioner's claim for refund."*

Relying on the aforementioned judgements, the assessee may state that the Department has not produced any evidence or document or statement to establish with concrete materials that the transactions in question were the outcome of any collusion between the assessee and the supplier in question and in such a case the bonafide and genuine assessee cannot be penalised on the ground that the supplier was found to be fake and bogus.

Conclusion:

The assessee may submit that on the basis of the aforementioned factual, tangible and cogent evidences submitted and on the basis of abovementioned several court judgements of Apex Court, High Court and Tribunals, he has proved beyond doubt that the underlying goods have actually been received by the assessee and that he has squarely discharged his obligation u/s 155 of CGST Act, 2017 to prove his eligibility to avail ITC in the light of all the conditions enumerated in section 16 of the CGST Act, 2017 including the fulfilment of conditions of actual receipt of the underlying goods as is provided in section 16(2)(b) of CGST Act, 2017 and also the genuineness of the tax invoices issued in compliance with section 31 of CGST Act, 2017 and rule 46 of CGST Rules, 2017 in compliance with section 16(2)(a) of CGST Act, 2017.

The assessee may further state that from the above undisputed facts, it is clear that the purported allegations raised by the Department about the alleged non-receipt of the underlying goods covered by the said invoice issued by an alleged non-existent suppliers are invalid and based on assumptions, presumptions, surmises, conjectures, unsubstantiated, flimsy and are unfounded and the consequential alleged demand raised on the basis thereof cannot be maintained in law.

Contributed by CA. Ishan Tulsian

GST UPDATES

1. Clarification on various issues pertaining to GST treatment of vouchers

Issue 1: Whether “transactions in vouchers” falls under the category of supply of goods and/or services?

From the definition of voucher under section 2(118) of CGST Act, it emerges that “voucher” may be in nature of payment instrument which creates an obligation on the supplier to accept it as a consideration or part consideration for the supply of goods and/or services.

Pre-paid instruments (PPIs) as defined by RBI are payment instruments that facilitate purchase of goods and/or services against the value stored on such instruments. The value stored on such instruments represents the value paid for by the holder, by cash, by debit to a bank account, or by credit card. As per section 2(75) of CGST Act, “money” includes an instrument recognized by the Reserve Bank of India which is used as a consideration to settle an obligation.

The combined reading of the definition of “voucher” as per section 2(118) of the CGST Act, along with definition of “money” as per section 2(75) of the CGST Act and the description of “pre-paid instruments” given by RBI, it emerges that where the voucher is covered as a pre-paid instrument recognized by the RBI and is used as a consideration to settle an obligation, then in such cases, the voucher will fall under the definition of “money”. In such a case, as “money” is excluded from the definition of goods and services as provided in section 2(52) and section 2(102) of the CGST Act respectively, the transactions in voucher would be considered neither as a supply of goods nor as a supply of services.

In cases, where voucher is not covered as a pre-paid instrument recognized by RBI and hence, cannot be treated as money, the voucher will be in nature of an obligation on the supplier to receive it as consideration or part consideration and assure the beneficiary/ voucher holder to claim certain goods and/or services as specified on the voucher or in the related documents. In such cases, the voucher can be considered as an “actionable claim” within the meaning of section 2(1) of the CGST Act, read with section 3 of the Transfer of Property Act, 1882.

As per entry 6 of Schedule III of CGST Act, an activity or transactions of actionable claims, other than specified actionable claims, is to be treated neither as a “supply of goods” nor as a “supply of services”. Further as per section 2(102A) of CGST Act, specified actionable claim means the actionable claim involved in or by way of betting, casinos, gambling, horse racing, lottery or online money gaming. As vouchers are not covered under definition of specified actionable claim, it appears that they are covered in entry 6 of Schedule III of CGST Act as actionable claims, other than specified actionable claims. Therefore, it appears that even in

such a case, transaction in vouchers would be treated neither as a “supply of goods” nor as a “supply of services”.

Therefore, it is clarified that irrespective of whether voucher is covered as a pre-paid instrument recognized by RBI or not, the voucher is just an instrument which creates an obligation on the supplier to accept it as consideration or part consideration and the transactions in voucher themselves cannot be considered either as a supply of goods or as a supply of services. However, supply of underlying goods and/or services, for which vouchers are used as consideration or part consideration, may be taxable under GST.

Issue 2: What would be the GST treatment of transactions in vouchers by distributors/ sub-distributors/ agents etc.?

There are primarily two models for distribution of vouchers through distributors/ sub distributors/ agents, etc.

- (i) Where vouchers are distributed through the distributors/ sub-distributors/ dealers on Principal-to-Principal (P2P) basis.
- (ii) Where vouchers are distributed using agents/ distributors/ sub-distributors on commission/ fee basis.

- **Where vouchers are distributed through the distributors/ sub-distributors/ dealers on Principal-to-Principal(P2P) basis:**

In such cases, the distributor/ dealer purchases voucher from the voucher issuer typically at a discounted rate and subsequently sells the same to the sub-distributors, corporates or end customers and generate revenue through a trading margin, which is a difference between the acquisition cost and the selling price of the vouchers by the said distributor/ dealer. In such cases, distributors/ dealers (including sub-distributors) own the vouchers and operate autonomously with full control over the process from purchase to the final sale of the vouchers to the end user.

As per section 9 (1) of CGST Act, GST is chargeable on the supply of goods and/or services. As the transaction in vouchers is neither supply of goods nor supply of services, therefore, pure trading of vouchers in this case would not constitute either supply of goods or supply of services. Accordingly, such trading of vouchers would not be leviable to GST as per section 9 (1) of CGST Act.

- **Where vouchers are distributed using distributors/ sub-distributors/ agents on commission/ fee basis**

In such cases, the transactions between the voucher issuer and the distributors/ sub-distributors/ agents are on principal-agency basis. These arrangements, as per contract/agreement between distributor/sub-distributor/agents and the voucher issuer may specify a set of obligations on such agents such as marketing

& promotion and other related support activities for distribution of vouchers against a commission/fee or any other amount by whatever name called, for such purpose. In such cases, distributors/sub-distributors/agents do not operate autonomously, do not own the vouchers and only act as agent of the voucher issuer. In such cases, GST would be payable by such distributor/sub-distributor/agent, acting as an agent of the voucher issuer, on the commission/fee or any other amount by whatever name called, for such purpose, as a supply of services to the voucher issuer.

Issue 3: What would be GST treatment of additional services such as advertisement, co-branding, marketing & promotion, customization services, technology support services, customer support services etc.?

In cases, additional services such as advertisement, co-branding, customization services, technology support services, customer support services, etc. are provided by either the distributor/ sub-distributor or by another person to the voucher issuer against a service fee/ service charge/ affiliate charge or any other amount, by whatever name called, as per contract/agreement between such service provider and the service recipient (voucher issuer). In such a case, the said service fee/ service charge/ affiliate charge or other amount for supply of such additional services to the voucher issuer as per the terms of contract/agreement, would be liable to GST at the applicable rate in the hands of the said service provider.

Issue 4: What would be the GST treatment of unredeemed vouchers (breakage)?

Sometimes, vouchers remain unused/ unredeemed at the end of their expiry period. In such cases, the businesses generally make book adjustments and account the said amount on account of unredeemed vouchers in their statement of income. The value of such unredeemed vouchers accounted for in the statement of income is called breakage. In the case of breakage, there is no redemption of voucher and there is no supply of underlying goods and/or services. Therefore, there is no supply of goods and/or services on account of such unredeemed vouchers (breakage).

Also, "consideration" under GST is defined under section 2 (31) of CGST Act, in relation to the supply of goods or services or both. As there is no underlying supply of goods and/or services in case of non-redemption of vouchers by the customer, the amount retained for unredeemed vouchers by the voucher issuer cannot be construed as consideration for any supply. Accordingly, such amount attributable to unredeemed vouchers (breakage) would not be taxable as per the provisions of section 9(1) of CGST Act.

Further, *Circular No. 178/10/2022-GST dated 03.08.2022* clarifies that agreement to do or refrain from an act should not be presumed to exist, and that there must be an express or implied agreement, oral or written, to do or abstain from doing something against payment of consideration, for a taxable supply

to exist. Considering the principle laid out in the said circular, it emerges that where the voucher is issued for the purpose of redemption in respect of a supply of goods and/or services and there is no express or implied agreement, oral or written, between the issuer of voucher and redeemer for payment of any amount or charges by the redeemer to the voucher issuer in case of non-redemption of the voucher, it cannot be considered that non-redemption of voucher by the redeemer tantamounts to supply of services. Therefore, it appears that the amount attributable to non-redemption of voucher (breakage) would not constitute as a "monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person". Therefore, no GST appears to be payable on such amount attributable to non-redemption of voucher (breakage).

Circular No. 243/37/2024-GST dt. 31.12.2024

2. Insertion of Rule 16A -Grant of Temporary Identification Number

A new rule 16A has been inserted in the CGST Rules, 2017 with effect from a date to be notified to provide for grant of Temporary Identification Number to a person who is not liable to take registration under the Act but is required to make any payment under the provisions of the Act. For this purpose, the proper officer may grant the said person a temporary identification number and issue an order in Part B of FORM GST REG-12.

Consequent amendment has been made in rule 87 (Electronic Cash Ledger) and FORM GST REG-12 has been substituted with a new Form.

3. Amendment in Rule 19-Amendment of Registration

Rule 19 has been amended to provide that the provisions applicable for amendment of registration shall now also be applicable to Form GST CMP-02 (Intimation to pay tax under Composition Levy-Section 10).

Notification No. 07/2025-CT dt. 23.01.2025

4. Waiver of late fee for late filing of Form GSTR-9C

The amount of late fee referred to in section 47 for late filing of Annual Return as required under section 44 for the registered persons who are required to furnish Form GSTR-9C along with Form GSTR-9 but failed to furnish the same for the financial years 2017-18 or 2018-19 or 2019-20 or 2020-21 or 2021-22 or 2022-23, has been waived which is in excess of the late fee payable upto the date of furnishing of FORM GSTR-9 for the said financial year, if the said reconciliation statement is furnished subsequently on or before the 31st March, 2025.

Further, no refund of the late fee already paid in respect of delayed furnishing of FORM GSTR-9C for the said financial years shall be available.

Notification No. 08/2025-CT dt. 23.01.2025

5. Amendments in GST rates for goods

Notification No. 1/2017-CT(R) dt. 28.06.2017 has been amended as follows:

- (a) Fortified Rice Kernel (FRK) has been shifted to Schedule I (2.5% GST) through the insertion of S. No. 98B (HSN 1904). Simultaneously, FRK has been explicitly excluded from Schedule III (9% GST) under S. No. 15, which previously taxed it alongside cereal-based products like corn flakes and bulgar wheat.
- (b) The explanation for 'pre-packaged and labelled' under GST has been substituted. It now covers all commodities intended for retail sale and containing not more than 25 kg or 25 litres, provided they meet the definition of 'pre-packed' as defined under section 2(l) of the Legal Metrology Act, 2009 and bear required declarations under the said Act and its rules. Hence, all commodities intended for retail sale in packages exceeding 25 kg or 25 litres have been excluded from its scope. Similar amendment has been made in *Notification No. 2/2017-CT(R) dt. 28.06.2017* vide *Notification No. 02/2025-CT(R) dt. 16.01.2025*.

Parallel amendments have been made in *Notification Nos. 1/2017-UTT (R) dt. 28.06.2017 & 1/2017-IT (R) dt. 28.06.2017*.

The above amendments shall become effective from 16th January, 2025.

Notification No. 01/2025-CT(R) dt. 16.01.2025, Notification No. 01/2025-UTT(R) dt. 16.01.2025 & Notification No. 01/2025-IT(R) dt. 16.01.2025.

6. Amendment in exemptions for goods

Notification No. 2/2017-CT(R) dt. 28.06.2017 has been amended to grant exemption to Gene Therapy.

Parallel amendment has been made in *Notification Nos. 2/2017 UTT (R) dt. 28.06.2017 & 2/2017 IT (R) dt. 28.06.2017*.

Notification No. 02/2025-CT(R) dt. 16.01.2025, Notification No. 02/2025-UTT(R) dt. 16.01.2025 & Notification No. 02/2025-IT(R) dt. 16.01.2025.

7. Amendments in special rates for goods

Notification No. 03/2025 - CT(R) dt. 16.01.2025 has amended *Notification No. 39/2017-CT(R)* to include food inputs for food preparations put up in unit containers and intended for free distribution to economically weaker sections of the society under a programme duly approved by the Central Government or any State Government under the GST rate of 5%.

Parallel amendment has been made in *Notification Nos. 39/2017-UTT (R) dt. 18.10.2017 & 40/2017- IT(R) dt. 18.10.2017*.

Above amendments shall become effective from 16th January, 2025.

Notification No. 03/2025 - CT(R) dt. 16.01.2025, Notification No. 03/2025- UTT(R) dt. 16.01.2025 & Notification No. 03/2025- IT(R) dt. 16.01.2025.

8. Amendment in GST rate of margin value supplies - Notification No. 08/2018-CT(R) dt. 25.01.2018

GST rate on all old and used vehicles other than those mentioned in S. No. 1 to S.No.3 of the *Notification No. 08/2018-CT(R) dt. 25.01.2018* has been increased from 6% to 9%. Hence, now the GST rate on margin value of all old and used vehicles shall be 9%.

Parallel amendment has been made in *Notification Nos. 08/2018-UTT (R) dt. 25.01.2018 & 09/2018 - IT (R) dt. 25.01.2018*.

Above amendments shall become effective from 16th January, 2025.

Notification No. 04/2025-CT(R) dt. 16.01.2025, Notification No. 04/2025-UTT(R) dt. 16.01.2025 & Notification No. 04/2025-IT(R) dt. 16.01.2025

9. Amendment in notification specifying the rates for supply of services

Notification No. 11/2017- CT(R) dt. 28.06.2017 has been amended as follows:

- (i) The definition of 'Declared tariff' has been omitted.
- (ii) The meaning of "Specified premises", for a financial year has been substituted as below:
 - (a) a premises from where the supplier has provided in the preceding financial year, 'hotel accommodation' service having the value of supply of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent; or
 - (b) a premises for which a registered person supplying 'hotel accommodation' service has filed a declaration, on or after the 1st of January and not later than 31st of March of the preceding financial year, declaring the said premises to be a specified premises; or
 - (c) a premises for which a person applying for registration has filed a declaration, within fifteen days of obtaining acknowledgement for the registration application, declaring the said premises to be a specified premises;
- (iii) Following Annexures have been inserted:
 - Annexure VII: Declaration by a registered person supplying hotel accommodation service before the jurisdictional GST authority declaring the premises to be a 'specified premises'
 - Annexure VIII: Opt-in declaration for person applying for registration
 - Annexure IX: Opt-out Declaration

The above amendments shall become effective from 1st April, 2025

Parallel amendment has been made in *Notification Nos. 11/2017-UTT (R) dt. 28.06.2017 & 8/2017-IT(R) dt. 28.06.2017*.

Notification No. 05/2025-CT(R) dt. 16.01.2025, Notification No. 05/2025-UTT(R) dt. 16.01.2025 & Notification No. 05/2025-IT(R) dt. 16.01.2025

10. Amendments in notification specifying the exemptions for services - Notification No. 12/2017-CT(R) dt. 28.06.2017

- (i) Following services have been exempted with effect from 16th January, 2025:
 - a) Services of insurance provided by the Motor Vehicle Accident Fund, constituted under section 164B of the Motor Vehicles Act, 1988 (59 of 1988), against contributions made by insurers out of the premiums collected for third party insurance of motor vehicles.
 - b) Any services provided by a training partner approved by the National Skill Development Corporation.
- (ii) The phrase “transmission and distribution” has been substituted with “transmission or distribution” ensuring that the exemption applies to ancillary services related to the supply of transmission of electricity as also the supply of distribution of electricity provided by electricity transmission or distribution utilities to their consumers.
- (iii) Following amendments have been made in the definitions:
 - i. Definition of declared tariff has been omitted w.e.f. 1st April, 2025
 - ii. Definition of insurer has been inserted as below- “insurer” has the same meaning as assigned to it in sub-section (9) of section 2 of the Insurance Act, 1938 (4 of 1938).

Parallel amendments have been made in *Notification No. 12/2017-UTT(R) dt. 28.06.2017* & *9/2017-IT (R) dt. 28.06.2017*.

All the above amendments shall become effective from 16th January, 2025 except the omission of declared tariff definition.

Notification No. 06/2025-CT(R) dt. 16.01.2025,
Notification No. 06/2025-UTT(R) dt. 16.01.2025 &
Notification No. 06/2025-IT(R) dt. 16.01.2025

11. Amendment in reverse charge for services - Notification No. 13/2017-CT(R) dt. 28.06.2017

(i) Sponsorship Service

The phrase “other than a body corporate” has been inserted after “Any person”. This restricts the applicability of Reverse Charge Mechanism (RCM) in case of sponsorship services i.e., RCM shall now be applicable when sponsorship services are provided by any person other than body corporate to another body corporate or partnership firm located in the taxable territory.

(ii) Service by way of renting of any immovable property other than residential dwelling

In the said service, the phrase “other than a person who has opted to pay tax under composition levy” has been added after “Any registered person.” This exclusion ensures that taxpayers under the composition scheme are not liable for reverse

charge on services related to renting any immovable property (other than residential dwellings) received from an unregistered person.

Parallel amendment has been made in *Notification Nos. 13/2017-UTT (R) dt. 28.06.2017* & *10/2017 IT (R) dt. 28.06.2017*

All the above amendments shall be effective from 16th January, 2025

Notification No. 07/2025-CT(R) dt. 16.01.2025,
Notification No. 07/2025-UTT(R) dt. 16.01.2025 &
Notification No. 07/2025-IT(R) dt. 16.01.2025

12. Amendment in notification notifying the categories of services the tax on supplies of which shall be paid by the electronic commerce operator

The definition of “specified premises” has been given the same meaning as defined in point 5(ii) above w.e.f. 01.04.2025 for the purpose of *Notification No. 17/2017-CT (R) dt. 28.06.2017*

Parallel amendment has been made in *Notification Nos. 17/2017-UTT(R) dt. 28.06.2017* & *14/2017-IT (R) dt. 28.06.2017*

Notification No. 08/2025-CT(R) dt. 16.01.2025,
Notification No. 08/2025-UTT(R) dt. 16.01.2025 &
Notification No. 08/2025-IT(R) dt. 16.01.2025

13. Concessional rate of compensation cess in case of Merchant Export

Notification No. 01/2025- Compensation Cess (Rate) dt. 16.01.2025 had been issued to provide the concessional rate of compensation cess for the supply of taxable goods intended for export under the GST framework. This notification provides that intra-State and inter-State supplies of goods meant for export will be subject to a reduced compensation cess of 0.1%, significantly lowering the cost burden for exporters.

The exemption is subject to fulfilment of the following conditions, namely: -

- (i) The registered supplier shall supply the goods to the registered recipient on a tax invoice;
- (ii) The registered recipient shall export the said goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier;
- (iii) The registered recipient shall indicate the Goods and Services Tax Identification Number of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export, as the case may be;
- (iv) The registered recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;
- (v) The registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;
- (vi) The registered recipient shall move the said goods from place of registered supplier –

- a) directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
 - b) directly to a registered warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- (vii) If the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- (viii) In case of situation referred to in condition (vii), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and
- (ix) When goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed to the registered supplier as well as jurisdictional tax officer of such supplier.

The registered supplier shall not be eligible for the above-mentioned exemption if the registered recipient fails to export the said goods within a period of ninety days from the date of issue of tax invoice.

The above amendment shall be effective from 16th January, 2025.

Notification No. 01/2025-Compensation Cess (R) dt. 16.01.2025

14. Clarification on the Regularizing payment of GST on co-insurance premium apportioned by the lead insurer to the co-insurer and on ceding /re-insurance commission deducted from the reinsurance premium paid by the insurer to the reinsurer –

The following activities or transactions which were included in Schedule III of the CGST Act, 2017 as activities or transactions which shall be treated neither as a supply of goods nor as a supply of services, became applicable with effect from 01.11.2024 vide the Finance (No. 2) Act, 2024 through *Notification No. 17/2024-CT dt. 27.09.2024*:

- a) The apportionment of co-insurance premium by the lead insurer to the co-insurer, for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance

agreements, subject to the condition that the lead insurer pays the Central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

- b) Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer subject to the condition that the Central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

As per the recommendations made in the GST Council meetings, GST payment on the above activities, from July 1, 2017 to October 31, 2024, have been regularized on an “as is where is” basis.

Circular No. 244/01/2025-GST dt. 28.01.2025

15. Clarification regarding applicability of GST on certain services

- (i) **Applicability of GST on penal charges being levied by the Regulated Entities (REs) in view of RBI instructions dt. 18.08.2023 directing such REs to levy penal charges in place of penal interest**

Regulated Entities (REs) such as banks and non-banking financial companies (NBFCs) have been instructed, vide *RBI instructions dt. 18.08.2023*, to discontinue the use of penal interest for non-compliance with loan terms. As per the instructions, instead of penal interest, REs are to levy penal charges for non-compliance with loan terms. These instructions are effective from 01.01.2024, and do not apply to credit cards, external commercial borrowings, trade credits and structured obligations which are covered under product specific directions.

Penal charges levied by REs, in compliance with RBI directions dt. 18.08.2023, are essentially in the nature of charges for breach of terms of contract and hence, fall within the ambit of the clarification issued by *Circular No. 178/10/2022-GST dt. 03.08.2022* wherein it was clarified that certain payments such as liquidated damages for breach of contract are not a consideration for tolerating an act or situation. It has been further clarified that the essence of a contract is its ‘performance’ and not its ‘breach’.

Hence, it has been clarified that no GST is payable on the penal charges levied by Regulated Entities, in compliance with RBI directions dt. 18.08.2023, for non-compliance with material terms and conditions of loan contract by the borrower.

- (ii) **Whether GST exemption under Sl. No.34 of Notification No. 12/2017-CT(R) dt.28.06.2017 is available to payment aggregators in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services?**

Payment Aggregators (PAs) are entities that facilitate e-commerce sites and merchants to accept various payment instruments from their customers without the need for the e-commerce sites and merchants to create a separate payment integration system of their own. In the process, PAs receive payments from customers, pool and transfer them on to the merchants within a specified time period.

Clause 8 of the RBI's Guide lines on Regulation of Payment Aggregators and Payment Gateways dt. 17.03.2020, pertaining to 'Settlement and Escrow Account Management' makes it clear that the PAs receive payments from customers in an escrow account, and are obligated to do the final settlement with the merchant within time periods specified by RBI. Therefore, the RBI regulated PAs, involved in the settlement process of making payments to the merchant, are covered by the second part of the definition of acquiring bank, i.e. "any other person, who makes the payment to any person who accepts such card" and hence, fall within the definition of acquiring bank, for the purpose of the exemption under Sl. No. 34 of *Notification No. 12/2017-CT(R) dt. 28.06.2017*, as they make the payment to the merchants who accept credit cards, debit cards, charge cards or other payment card services.

PAs are defined as entities who receive payments from customers, pool and transfer them on to the merchants within a specified time period. On the other hand, PGs are defined as entities that provide technology infrastructure to route and facilitate processing of an online payment transaction without any involvement in handling of funds.

It has been clarified that GST exemption under Sl. No. 34 of *Notification No. 12/2017-CT(R) dt. 28.06.2017* is available to RBI regulated PAs in relation to settlement of an amount, up to two thousand rupees in a single transaction, transacted through credit card, debit card, charge card or other payment card services, as PAs fall within the definition of 'acquiring bank' given in the Explanation to the said exemption entry. It is also clarified that this exemption is limited to payment settlement function only, which involves handling of money, and does not cover Payment Gateway (PG) services.

(iii) Regularizing payment of GST on research and development services provided by Government Entities against consideration in the form of grants received from Government Entities

Notification No. 08/2024-CT(R) dt. 8.10.2024 exempted research and development services provided by Government Entities or research associations, universities, colleges or other institutions, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961, against consideration in the form of grants with effect from 10.10.2024.

As recommended by the 55th GST Council, the payment of GST on the supply of research and

development services by Government Entities against grants received from the Government Entities is regularized for the period 01.07.2017 to 09.10.2024, on 'as is where is'.

(iv) Regularizing payment of GST on skilling services provided by Training Partners approved by the National Skill Development Corporation.

Vide Notification No. 08/2024 dt. 08.10.2024, the exemption available to the skilling services provided by Training Partners approved by National Skill Development Corporation was withdrawn w.e.f. 10.10.2024.

Vide Notification No. 06/2025-CT(R) dt. 16.01.2025, the earlier exemption to skilling services provided by Training Partners approved by the National Skill Development Corporation has been reinstated with effect from 16.01.2025.

Hence, as recommended by the GST Council, the payment of GST on services provided by Training Partners approved by the National Skill Development Corporation, which were exempt prior to 10.10.2024, is regularized for the period 10.10.2024 to 15.01.2025, on 'as is where is' basis.

(v) Applicability of GST on facility management services provided to Municipal Corporation of Delhi (MCD) Headquarters.

Sr. No. 3A of *Notification No. 12/2017-CT(R) dt. 28.06.2017* provides exemption to composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Government or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of The Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of The Constitution of India.

MCD is receiving the services of facility management such as housekeeping, civil maintenance, furniture maintenance and horticulture agency for the upkeep of their office. These services are not supplied in relation to performing any functions entrusted to a Municipality under Article 243W of The Constitution of India. Such services are not covered under the scope of entry at Sr. No. 3A of the *Notification No. 12/2017-CT(R) dt. 28.06.2017*.

It has been clarified that GST is applicable on the services provided by facility management agency to MCD, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of entry at Sr. No. 3A of the *Notification No. 12/2017-CT(R) dt. 28.06.2017*.

(vi) Whether Delhi Development Authority (DDA) is a local authority as per section 2(69) of the CGST Act, 2017?

Sr.No.5 of *Notification No.13/2017-CT(R) dt. 28.06.2017*, services supplied by local authority to a business entity are taxable on Reverse Charge (RCM) basis.

Local authority under section 2(69) of the CGST Act, 2017 has been defined as a “Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund”.

It means an authority which is similar to the elected self-governing body such as Municipal Committee and which is entrusted with the control and management of municipal or local fund can be termed as local authority.

DDA does not meet the requirement of local authority as per section 2(69) of the CGST Act, 2017. It has been clarified that DDA cannot be treated as local authority under GST law.

(vii) Regularizing payment of GST on Reverse Charge (RCM) basis on renting of commercial property by unregistered person to a registered person for taxpayers registered under composition levy

Vide *Notification No.09/2024-CT(R) dt. 08.10.2024*, effective from 10.10.2024, renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person was brought under reverse charge by inserting an entry at Sr. No. 5AB of the *Notification No. 13/2017-CT(R) dt. 28.06.2017*.

However, vide *Notification No. 07/2025-CT(R) dt. 16.01.2025*, taxpayers registered under composition levy have been excluded from entry 5AB.

Thus, as recommended by the 55th GST Council, payment of GST on Reverse Charge (RCM) basis on renting of immovable property other than residential dwelling (commercial property) by unregistered person to registered person under composition levy has been regularized for the period from 10.10.2024 to 15.01.2025 on ‘as is where is’ basis.

(viii) Regularizing payment of GST on certain support services provided by an electricity transmission or distribution utility

The services incidental or ancillary to the supply of transmission and distribution of electricity were exempted vide *Notification No. 08/2024-CT(R) dt. 08.10.2024*, with effect from 10.10.2024 by amending *Notification No. 12/2017-CT(R) dt. 28.06.2017*.

These incidental or ancillary services to the supply of transmission or distribution of electricity supplied by transmission or distribution utilities are now covered under the said exemption entry vide *Notification No. 6/2025-CT(R) dt. 16.01.2025*.

Thus, as recommended by the 55th GST Council, the payment of GST on certain incidental or ancillary services to the supply of transmission or distribution of electricity supplied by an electricity transmission or distribution utility has been regularized for the period 10.10.2024 to 15.01.2025 on ‘as is where is’ basis.

(ix) Regularizing the payment of GST on services provided by M/s Goethe Institute/Max Mueller Bhawans

Prior to 1st April, 2023, the Institutes did not collect GST from their students nor did they pay GST to Government as they were under the bonafide belief that their activities are exempt from GST.

Thus, as recommended by the 55th GST Council, payment of GST on services supplied by Goethe Institute/Max Mueller Bhawans is hereby regularized for the period from 01.07.2017 to 31.03.2023 on ‘as is where is’ basis.

Circular No. 245/02/2025-GST dt. 28.01.2025

16. Clarification on applicability of late fee for delay in furnishing of FORM GSTR-9C

On a combined reading of section 44 of CGST Act with rule 80 of the CGST Rules, it can be concluded that both pre and post omission of section 35(5) and substitution of rule 80 w.e.f. 01.08.2021, the provisions mandated that registered persons required to furnish an annual return in FORM GSTR-9 for a financial year shall also furnish along with it, a duly certified or self-certified reconciliation statement in FORM GSTR-9C, which reconciles the value of supplies declared in FORM GSTR-9 furnished for the said financial year with the audited annual financial statement if the aggregate turnover of the said registered person during a financial year exceeds the specified threshold limit.

It has been clarified that late fee under sub-section (2) of section 47 of the CGST Act, is leviable for the delay in furnishing of complete annual return under section 44 of the CGST Act, i.e. both FORM GSTR-9 and FORM GSTR-9C (where FORM GSTR-9C is also required to be furnished) and the late fee shall be payable for the period from the due date of furnishing of the said annual return upto the date of furnishing of the complete annual return i.e. FORM GSTR-9 and FORM GSTR-9C. It is also to be noted that late fee is not separately leviable for delayed furnishing of FORM GSTR-9 and delayed furnishing of FORM GSTR-9C but has to be calculated for the period from the due date of furnishing of annual return under section 44 of the CGST Act till the date of furnishing of complete annual return.

Accordingly, in cases where reconciliation statement in FORM GSTR-9C was required to be furnished along with the return in FORM GSTR-9, but was not furnished so for any financial years upto FY 2022-23, and has been furnished subsequently on or before 31st March, 2025, then no additional late fee shall be payable for delayed furnishing of FORM GSTR-9C which is in excess of the late fee payable under section 47 upto the date of furnishing FORM GSTR-9 for the said financial year. Further, no refund shall be admissible in respect of any amount of late fee already paid in respect of delayed furnishing of FORM GSTR-9C for the said financial years.

Circular No. 246/03/2025-GST dt. 30.01.2025

GST QUIZ

- Specify the cases under which an order passed by the Appellate Tribunal could be amended by the Tribunal itself?**
 - Where any error is apparent from record
 - If any error is brought to its notice by the Commissioner or Commissioner of State tax or the Commissioner of the Union Territory tax or the other party to the Appeal
 - Both (a) & (b)
 - None of the above
- Mr. X, resident of Chennai is travelling from Delhi to Chhattisgarh in an Air flight. He desires to watch an English movie during the journey by making the necessary payment. Determine the place of supply in case of transaction of providing English movie to Mr. X.**
 - Chhattisgarh - being the location of last schedule point of the conveyance
 - Delhi – being the location of first schedule point of departure
 - Delhi – being the location from where the passenger embarks on the flight
 - Chennai – being the location of recipient of services
- A CA Certificate needs to be furnished to establish that there is no unjust enrichment in the case of the refund applicant, in applicable cases where the amount of refund claimed exceeds _____.**
 - ₹ 1,00,000
 - ₹ 2,00,000
 - ₹ 4,00,000
 - ₹ 5,00,000
- Where a change in the constitution of any business results in change of the Permanent Account Number (PAN) of a registered Person, the person shall apply for _____.**
 - fresh registration
 - amendment of registration
 - cancellation of registration
 - No effect on registration
- What if the seized goods provisionally released are not returned by the assessee on the appointed date?**
 - The proper officer shall re-seize the goods.
 - The proper officer shall encash the security bond.
 - The proper officer shall re-initiate the fresh proceedings.
 - None of the above
- A special audit under GST is conducted by-**
 - the CGST Officials
 - the SGST Officials
 - Chartered Accountant or Cost Accountant as may be notified by the Commissioner
 - Any of the above
- When the goods are sent from one job worker to another, the challan issued by principal:**
 - may be endorsed by the job worker only for sending goods back to the principal.
 - may be endorsed by the job worker sending goods to another job worker.
 - either a) or b).
 - cannot be endorsed as such.
- The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in FORM?**
 - FORM ITC-03
 - FORM ITC-04
 - FORM ITC-05
 - None of the above
- ABC Consultants, a registered person under GST, provides consultancy services. On 12.12.2024, they had rendered services to Mr. Y and issued an invoice on 20.12.2024. The payment for the same is received on 25.12.2024. Determine the time of supply of the above services rendered.**
 - 12.12.2024
 - 20.12.2024
 - 25.12.2024
 - 10.01.2025
- Is E-way bill mandatory in case of transport of the handicraft goods from one State to another State by a person who has been exempted from the requirement of obtaining registration?**
 - E-way bill is not required as the supplier is exempt from the requirement of taking registration.
 - E-way bill is mandatory only if the value of consignment is more than ₹ 50,000.
 - E-way bill is mandatory even if the value of consignment does not exceed ₹ 50,000.
 - None of the above

The names of first five members who were the top scorers in the last Quiz are as under:

Name	Membership No.
CA. Sahith P	258141
CA. Vikash Gupta	471932
CA. Alpa Goklani	158659
CA. Amit Rathore	572011
CA. Karthik I	232089

Please provide reply of the above MCQs in the link given below. **Top five scorers will be awarded hard copy of the publication 'GST Act(s) and Rule(s)- Bare Law' & their names will be published in the next edition of the Newsletter.**

Link to reply: <https://shorturl.at/7l3ps>