

ICMAI - WIRC

TAX CHRONICLE

SEPTEMBER 2024

KEY FUTURE FOCUS AREAS:

- Oct to Dec 2024: Engineering & Automobile Engineering
- Jan to Mar 2025: Textile
- Apr to Jun 2025: Construction and Real Estate

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THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory Body under an Act of Parliament)

FOREWORD

CMA DR. ASHISH P. THATTE
Chairman, Indirect Tax Committee, ICAI



It is my privilege to extend a warm message on the occasion of the release of the first-ever edition of TAX Chronicles, a quarterly tax bulletin published by the Western India Regional Council (WIRC) of ICAI. This publication, spearheaded by the WIRC Task Force on Income Tax and GST under vision of Chairman CMA Arindam Goswami, and support of PD Chairman CMA Chaitanya Mohrir, the leadership of CMA Nanty Shah, marks a significant milestone in WIRC's efforts to provide our members with timely, relevant, and insightful updates on the ever-evolving tax landscape.

As the parent body, ICAI has always recognized the importance of disseminating knowledge and empowering its members across regions. Taxation, particularly indirect tax, has become increasingly complex with ongoing legislative changes, technological advances, and global economic influences. Publications like TAX Chronicles play a crucial role in helping our members and the industry at large stay informed and ahead of these changes.

This bulletin will cover significant amendments, landmark judgments, and key policy developments in both direct and indirect taxes. Additionally, the inclusion of sector-specific themes over the next few quarters—starting with Engineering and Automobile Engineering—further enriches its relevance, offering tailored insights for professionals in those industries.

I would also like to take this opportunity to encourage all our members and students to actively participate in the recently launched CMA Tax Volunteer Scheme. This initiative, announced by the Tax Research Department of ICAI, invites contributions from CMAs, students, and the public to submit suggestions for the Comprehensive Review of the Income Tax Act, 1961. The focus of this scheme is to simplify the language of the Act, make it easier to understand, and propose ways to reduce litigation and compliance burdens. This is a unique opportunity for professionals to contribute to the future of tax legislation and help build a more efficient tax system. I strongly encourage you to participate before the deadline of 31st October 2024 and help shape a better tax environment. An online certificate will be issued to participants who provide valid suggestions. You can participate via the following link: forms.gle/1puGsnnHABfMPiZ5.

I congratulate the WIRC office bearers—CMA Arindam Goswami (Chairman), CMA Mihir Narayan Vyas (Vice Chairman), CMA Nanty Shah (Hon. Secretary and Chairman of the Task Force on IT and GST), and CMA Chaitanya Laxmanrao Mohrir (Treasurer)—for their efforts in bringing this publication to life. CMA Nanty Shah's leadership in steering this task force has been pivotal in shaping this initiative, ensuring that the bulletin will be a valuable resource for our members.

I encourage all readers to actively engage with TAX Chronicles, share their knowledge, and stay connected with the latest developments in taxation. This is not just a publication, but a platform for professional growth, dialogue, and deeper understanding of the tax environment in India.

On behalf of the Indirect Tax Committee, I extend my best wishes for the success of TAX Chronicles. I am confident that it will soon become an indispensable resource for tax professionals across the Western region and beyond.

Warm regards,

CMA Dr. Ashish P Thatte
Chairman, Indirect Tax Committee
ICAI

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Institute Motto

From ignorance, lead me to truth
From darkness, lead me to light
From death, lead me to immortality
Peace, Peace, Peace...

असतो मा सद्गमय ।
तमसो मा ज्योतिर्गमय ।
मृत्योर्मा अमृतं गमय ।
ॐ शान्तिः शान्तिः शान्तिः

Vision Statement

The Institute of Cost Accountants of India would be the preferred source of resources and professionals for the financial leadership of enterprises globally.

Mission Statement

The Cost and Management Accountant professionals would ethically drive enterprises globally by creating value to stakeholders in the socio-economic context through competencies drawn from the integration of strategy, management and accounting.

From the Desk of the Chairman

CMA ARINDAM GOSWAMI
Chairman, ICAI-WIRC



Dear Esteemed Members and Aspiring CMAs,

We are pleased to announce the publication of the first edition of the WIRC Tax Chronicle, a comprehensive guide designed to educate CMA members and students alike on the latest developments in the taxation sector. The new initiative from the Taskforce of the Income Tax and GST Committee marks a significant turning point in our continued efforts to give our fraternity the perceptive knowledge and abilities necessary for success in the workplace.

We have gone to great lengths to ensure that the articles we have selected address a broad range of subjects, including corporate taxation, GST, transfer pricing, and newer fields like taxation on cryptocurrencies and ESG-related regulations. This chronicle also includes a Tax Calendar that lists critical deadlines for taxes, so you can stay on top of your compliance obligations at all times.

My profound gratitude goes out to our contributing writers and CMA Nanty Shah, Chairman of the Income Tax and GST Committee Taskforce, for their commitment and labor of love in bringing this edition to life. Your knowledge and dedication are genuinely admirable. In order to further the growth of our profession as a whole, I also urge more members and students to share their knowledge and experiences in upcoming editions.

As we advance, I see the WIRC Tax Chronicle developing into a reliable resource for all of our members and students, assisting us in accurately and confidently navigating the complexities of taxation. Let's keep pushing for greatness, utilizing this forum to develop as a community and raise the profile of CMAs in the tax industry.

We're still committed to providing more programs like this in the future to help you advance professionally. I kindly request that you take full advantage of this invaluable tool, and I eagerly await your comments and recommendations for additional releases.

Wishing you all continued success and learning!

With Regards,

A handwritten signature in blue ink that reads "Arindam Goswami". The signature is written in a cursive style and is positioned above the printed name and title.

CMA Arindam Goswami
Chairman
Western India Regional Council of
The Institute of Cost Accountants of India

From the desk of Chairman Task force GST and Income Tax

CMA NANTY SHAH
Hon. Secretary, WIRC of ICAI



Dear Professional Colleagues,

It gives me immense pleasure to introduce the inaugural edition of The Tax Chronicles, a quarterly e-bulletin by the WIRC Task Force on Income Tax and GST. This initiative is a collaborative effort of our dedicated team, led by WIRC Chairman Arindam Goswami, Vice Chairman Mihir Vyas, Treasurer Chaitanya Mohrir, and myself as Secretary of WIRC and Chairman of the Task Force. Together, we aim to provide insightful and comprehensive updates on the latest developments in Indian taxation. Also, I would like to acknowledge the guidance given by CMA Sanjay Bhargave sir, Mentor-GST WIRC.

Updates on Income Tax and GST

Over the last three months, we have witnessed significant developments in the Indian tax landscape. Key amendments to the Income Tax Act, GST rules, and customs laws have come into effect, offering both opportunities and challenges to businesses and professionals alike. The recent GST Council decisions, particularly on rate rationalizations and compliance simplifications, have been welcomed by many sectors, and landmark judgments from various courts have clarified important aspects of both direct and indirect tax laws.

We are pleased to present these updates in this edition, ensuring that our readers stay informed of the latest tax reforms and their implications. As a inaugural issue, I thank the seniors and members of my task force, namely CMA Harpreet Singhjee, CMA Deepak Joshijee, CMA Vandit Trivedi Jee and CMA Shailendra Saxenajee for contributing the article, Also special recognition to dynamic CMA Hirav Shahjee for his support to coordinate with various team members.

What You Can Expect from The Tax Chronicles:

The e-bulletin will serve as a go-to resource for our members and the industry, covering key areas such as:

- Amendments and Reforms in Income Tax, GST, and Customs
- Landmark Judgments impacting tax policies and practices
- GST Council Decisions and their practical implications
- Queries from CMAs and Industry Experts answered by our Task Force
- Sector-Specific Analysis for the next three quarters, with a special focus on:

1. **October to December 2024:** Engineering and Automobile Engineering
2. **January to March 2025:** Textile
3. **April to June 2025:** Construction and Real Estate

Each issue will delve deeper into these sectors, offering valuable insights on taxation-related challenges and opportunities.

Looking Forward

I encourage all our members, industry experts, and stakeholders to actively participate by submitting articles, queries, and case studies. Let us use The Tax Chronicles as a platform to share knowledge, debate reforms, and foster growth within our professional community.

I look forward to your contributions and feedback as we continue this journey to make The Tax Chronicles a powerful resource for all things taxation.

Warm regards,

CMA Nanty Nalin Shah

Chairman, WIRC Task Force on Income Tax and GST
Secretary, WIRC of ICAI

APPEALS IN GST

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What is “Appeal”

The term “appeal”, in legal context, is generally understood so as to mean proceeding or application preferred by an aggrieved party before the higher judicial forum for review of a decision of the lower court. An appeal generally speaking is a rehearing by a superior Court on both law and fact.

Appeal is a proceeding undertaken to have a decision reconsidered by bringing it to a higher authority, specially for submission of a lower Court’s decision to higher court for review and possible reversal.

Appeal Provisions in GST at a glance

- CGST Act makes provisions of first appeal before Appellate Authority. Appellate Authority will be departmental officers. Under CGST Appellate Authority, Central - Commissioner (Appeals)/Joint Commissioner will be Appellate Authorities. Under State GST Acts, Joint Commissioner / Dy. Commissioner will be Appellate Authorities.
- As per Sec 107 or Section 108 of the CGST Act 2017, Appeal against any decision or order passed under GST Act by an adjudicating authority is to be filed before Appellate Authority within three months from the date of communication of the order or decision.
- As per Sec 109(5) of the CGST Act, Appeal against order of Appellate Authority to be filed before National / Regional Bench of Tribunal if one of the issue relates to place of supply, within three months from the date of communication of the order.
- As per Sec 109(7) of the CGST Act 2017, Appeal against order of Appellate Authority to be filed before State / Area Bench of Tribunal if the issue relates to place of supply is not involved, within three months from the date of communication of the order .
- As per Sec 112 of the CGST Act, Any person aggrieved by any decision or order passed under Sec 107 or Section 108 of the CGST Act or the SGST Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Tribunal as may be prescribed within three months from the date on which the said decision or order is communicated to such person.”
- Section 117 of the CGST Act provides that Appeal against order of Tribunal to be filed before High Court on substantial question of law (Sec 117 Appeal or writ petition). If High Court certifies to be fit case for appeal before Supreme Court, then Appeal is to be filed before Supreme Court.
- As per Sec 118 of the CGAT Act , Appeal against order of Tribunal to be filed before Supreme Court if substantial question of law is not involved (Sec 118 Appeal or SLP).
- It is pertinent to note that No appeal can be filed in Civil Court for matters related to GST (Sec 162)

Meaning of 'Person aggrieved'

As per 'Advanced Law Lexicon by P. Ramanatha Aiyar, "aggrieved" means one whose pecuniary interest is directly affected by the adjudication, one whose right of property may be established or divested thereby." Right of appeal to be exercised by the persons permitted by the statute to prefer appeal subject to conditions regarding filing the appeals.

Appealable Order' – means

- As per Sec. 107 (1) – "any decision or order passed under the CGST Act or the SGST Act or the UTGST Act by an adjudicating authority...." And
- As per Sec. 112 (1) – "an order passed against person under Section 107 or Section 108 of the CGST Act or SGST Act or UTGST Act...."

No Appeal can be filed in following cases.

As per Sec.121 of the CGST Act, 2017 –"Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:–

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under this Act; or
- (d) an order passed under section 80".(Payment of tax in instalments).

However, Right to Writ before Hon. High Court and Hon. Supreme Court is not affected.

First Appeal before Appellate Authority

- Time limit for filing Appeal is 3 months from the date of communication of the order.
- Department can file appeal within 6 months from the date of communication of order.
- Condonation of delay of 1 month may be granted on the basis of sufficient cause
- No appeal can be filed unless the appellant has deposited-
 - ✓ in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him,
 - ✓ an amount of 10% of the remaining amount of tax in dispute (maximum to ₹ 25 crores each under CGST and SGST. (It is recommended as ₹ 20 crores each under CGST and SGST) w.e.f. 01.11.2024 Refer Notification No. 17/2024 CT Dt.27.09.2024
- Before passing Order, as per Sec 107(8) of the CGST Act, the Appellate Authority shall give an opportunity of personal hearing to the appellant.
- As per Sec 107(9) of the CGST Act, only three adjournments may be granted.

- As per Sec 107(10) of the CGST Act, the appellate authority may allow additional grounds at the time of personal hearing.
- As per Sec 107(11) of the CGST Act, the appellate authority may modify the order but shall not refer the case back to the adjudicating authority .
- As per Sec 107(12) The order shall be in writing and shall state the points for determination, the decision thereon and the reasons for decision
- As per Sec 107(13), Time Limit for passing order is one year from the date on which appeal is filed.
- As per Sec 107(15) of the CGST Act, a copy of the order passed by the appellate authority shall also be sent to the Jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST / UTGST or the authority designated by him.
- As per Sec 107(16) of the CGST Act, if no appeal is filed against the order of the appellate authority, the order shall be treated as final and shall be binding on the appellant as well as department.

Appeal before Appellate Tribunal (State Bench) (Sec. 112 & 113)

- Time limit for filing appeals is 3 months (from date as notified by Govt.)
- Time limit for departmental appeal is 6 months
- Time limit for cross objection is 45 days
- No appeal can be filed unless the appellant has deposited-
 - ✓ in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him,
 - ✓ 10% of the remaining amount of tax in dispute, in addition to the amount paid under Sec. 107(6) arising from the said order with maximum amount of ₹ 20 crores each under CGST and SGST. (It is recommended to reduce it to 10% instead of 20% and maximum cap from ₹ 50 crores to ₹ 20 crores each under CGST and SGST) w.e.f. 01.11.2024 Refer Notification No. 17/2024 CT Dt.27.09.2024
- Appellate Tribunal has discretion to refuse to admit appeal where the tax involved or the difference in tax involved or the amount of fine or penalty determined in order passed by the appellate authority/ adjudicating authority does not exceed ₹ 50,000/-.
- A memorandum of cross-objections to be filed within 45 days from receipt of notice .
- Appeal to National Bench in case of issue related to "Place of Supply"
- Appeal to be filed in prescribed form and should be accompanied with prescribed fee.
- As far as possible, Tribunal shall decide every appeal within a period of 1 year from the date of filing an appeal.
- Principle of natural justice to be followed .
- Only 3 adjournments for personal hearing.

- Appeal Fees:- for filing appeal , fees are prescribed. ₹1000/- for every ₹ 1 lacs of tax or ITC or amount of fine, fee or penalty involved- subject to maximum of ₹ 25000/-

Interest on delayed refund of pre-deposit (Sec. 115):

An amount is deposited u/s. 107 or Sec. 112 will be refunded with interest at specified rate (6% as per Sec. 56).

Monetary limits for filing appeal

Monetary limits are prescribed for filing appeal by the Central / State Tax officers, below which appeal or application or special Leave Petition, as the case may be, shall not be filed by the Central tax Officers. Vide Circular No. 207/1/2024-GST Dt. Following monetary limits are prescribed for filing appeal by departmental officers .

Appellate Forum	Monetary limit
GSTAT	Rs.20,00,000/-
High Court	Rs.1,00,00,000/-
Supreme Court	Rs.2,00,00,000/-

It has been clarified that while determining whether a case falls within the above monetary limits or not, the following principles are to be considered :

- (i) Where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal.
- (ii) Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.
- (iii) Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.
- (iv) Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.
- (v) Where the dispute pertains to demand of interest, penalty and/or late fee (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing appeal.
- (vi) Where the dispute pertains to erroneous refund, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether appeal needs to be filed or not.
- (vii) Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.
- (viii) In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

Exclusions

Monetary limits specified above for filing appeal or application by the department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases, except in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits :

- (i) Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or
- (ii) Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or
- (iii) Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the Rules made thereunder; or
- (iv) Where the matter is related to -
 - (a) Valuation of goods or services; or
 - (b) Classification of goods or services; or
 - (c) Refunds; or
 - (d) Place of Supply; or
 - (e) Any other issue, which is recurring in nature and/or involves interpretation of the provisions of the Act/the Rules/notification/circular/order/ instruction etc.; or
- (v) Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or
- (vi) Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

It has been further clarified that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. Filing of appeal in such cases is to be decided on merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.

It is also clarified that

- attention is drawn to sub-sections (2), (3) & (4) of Section 120 of the CGST Act, which provide that in cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specifically record that “even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board.”
- Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.
- Further, it is reiterated that in such cases where appeal is not filed solely on the basis of the above monetary limits, there will be no presumption that the Department has acquiesced in the decision on the disputed issues in the case of same taxpayers or in case of any other taxpayers. Accordingly, in case any prior order is being cited or relied upon by the taxpayer, claiming that the same has been accepted by the Department, it must be checked as to whether such order was accepted only on account of the monetary limit before following them in the name of judicial discipline.

- Also, in respect of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/counsels must make every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference shall be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of sub-section (4) of Section 120 of the CGST Act, 2017 as reproduced in para 1.1 above.

Procedure for filing Appeal

- Appeal to be filed in prescribed form –

For First Appeal-

- For Taxpayers APL 01
- For Department APL 03

For Appeal before Tribunal-

- Appeal APL 05
- Cross-Objection APL 06
- Appeal/Cross Objection to be filed with the relevant documents.
- Appeal/Cross Objection to be filed electronically or otherwise
- As per Rule 108(2) of the CGST Rules, 2017, Grounds of appeal and the form of verification to be signed in the manner specified in Rule 26 of the CGST Act. The appeal can be digitally signed .
- Provisional acknowledgement is to be issued by the concerned official.
- As per Rule 108 (3) and Rule 109(2) of the CGST Rules, 2017, Certified copy of the Order to be submitted within 7 days of filing the appeal/application.
- After getting the certified copy , final acknowledgement in FORM GST APL-02 will be issued.
- Certified copy filed - Date of filing appeal shall be the after 7 days date of final acknowledgement.
- No such provision for the Departmental Application
- Final order in Form GST APL-04

Contents of Appeal

Apart from the details required in APL, following additional information is required.

Column in APL-01	Particulars
✓ Col.9 (1)	Brief issue of the case under dispute
✓ Col.11 -	Statement of facts
✓ Col.12 -	Grounds of Appeal

Statement of Facts should include

- Name, Place of business, Registration number under GST of the appellant.
- Brief note about the business undertaken by the appellant.
- References and brief notes on the events such as assessment, audit and audit observations.
- Pre consultation (generally reference of DRC01A) and reply to DRC01A,
- Show Cause notice DRC01 – Allegations in SCN and details of demands raised in SCN
- Reply to show cause notice
- Details of personal hearing and
- Details of the order such as number of the Order and decision by the authority.
- Reason for filing appeal.
- Details of pre deposit.

Grounds of Appeal should include

- Merits of the case –
 - (a) Explain in Detail- How the decision of the Adjudicating Authority is incorrect with facts, legal provisions. Also furnish evidence in support of the each ground taken for defense.
 - (b) Give details of relevant provisions of the law
 - (c) Reliance can be placed on the relevant judgements, circulars. In such cases give citations and decisions of the authorities. Never read only the summary of the case. Peruse the decision and then decide whether to place reliance on the same. Also give in brief as to how the decision is applicable to the present case.
 - (d) Comments on computation of demand – Explain how the computation is wrong, inclusive of tax, valuation etc., if any
- Comments on Limitation. This is mainly applicable to cases invoking extended period, suppression of facts etc u/s 74 of the CGST Act,2017.
- Challenge to the penal action and other action proposed.
- Ask for personal hearing.
- Prayer and verification by the appellant.

Do not forget to

- ✔ Attach self attested copy of the order.
- ✔ Attach copies of all relevant documents, judgements relied upon.
- ✔ Prepare a paper book of appeal. The paper book should have with page numbers and index.
- ✔ Number the paragraphs .

Business can't face double jeopardy: Two Authorities cannot investigate & demand to pay tax at one point in time.

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Citation: 2024 (9) TMI 1635 – Delhi High Court, Dated: 4-9-2024

Issue:

The petitioner, DLF Home Developers Ltd received a demand order for ITC to be reversed on non-business transactions and exempt supplies, they were subject to two parallel investigations, one by the Directorate General of GST Intelligence (DGGI) and another by the Central Goods and Services Tax (CGST) department. Both agencies initiated actions on the same set of transactions concerning alleged tax evasion under the GST framework. The dispute centered on whether two different authorities could investigate the same transaction simultaneously, raising concerns of duplication and legal overreach.

Legal Provisions:

The key legal issue pertains to the interpretation of Section 6(2)(b) of the Central Goods and Services Tax Act, 2017 (the CGST Act). This provision restricts the initiation of proceedings by more than one officer for the same subject matter.

Section 6(2)(b) of the CGST Act specifically states that if one officer has initiated proceedings under the CGST Act, no other officer of the same or any other tax authority should start parallel investigations.

Court's Findings & Conclusion:

The Honorable High Court (HC) analyzed the legislative intent behind Section 6(2)(b) and concluded that it was designed to prevent duplication of efforts and to avoid placing an undue burden on taxpayers. Also, the court acknowledged that while both authorities have jurisdiction to investigate tax evasion, they should not exercise their powers simultaneously on the same issue.

The Delhi High Court ruled in favor of DLF Home Developers Ltd., holding that DGGI and CGST cannot conduct parallel investigations on the same matter. The court directed that only one authority pursue the investigation, and any proceedings initiated by the other authority must be dropped. This judgment reaffirms the need for coordination between different tax enforcement bodies to avoid unnecessary litigation and harassment to the taxpayer.

Breach of Provisions – Issuance of a Single Show Cause Notice for multiple years

Citation: 2024 (9) TMI 1347- Karnataka High Court Dated: 4-9-2024

Issue:

The petitioner, M/s Vermax Technologies Limited, received a single consolidated show cause notice (for 2017-18, 2018-19, 2019-20, 2020-21), from the tax authorities for alleged discrepancies in GST filings spanning multiple financial years.

The primary contention was whether the issuance of a consolidated SCN covering multiple periods complied with the statutory framework of the Goods and Services Tax Act, 2017 (CGST Act), which requires separate assessment and notice issuance for each distinct period of assessment.

Legal Provisions:

Section 73 of the CGST Act: This section deals with the determination of tax not paid or short-paid. It mandates that a proper show cause notice must be issued for each assessment year where there is a shortfall in tax payment, specifying the details for that particular year.

Section 74 of the CGST Act: This section applies in cases involving fraud, willful mistake, or suppression of facts. It similarly requires separate notices for each assessment year under investigation, particularly when the liability spans multiple years.

Principles of Natural Justice: The petitioner argued that the issuance of a single consolidated notice violates the principle of natural justice, as it denies the taxpayer the opportunity to adequately address and defend against allegations each year.

Court's Findings & Conclusion:

The court noted that the CGST Act necessitates separate assessments and individual notices for each tax period, allowing the taxpayer to respond specifically to the discrepancies for that year. Issuing a single, consolidated notice deprives the taxpayer of this procedural safeguard.

The Madras High Court, while addressing a similar issue, relied on the Hon'ble Supreme Court's decision in the State of Jammu and Kashmir and Others vs. Caltex (India) Ltd., AIR 1966 SC 1350. The Hon'ble Apex Court held that where an assessment encompasses different assessment years, each assessment order can be distinctly separated and must be treated independently.

The HC ruled in favor of the petitioner, M/s Vermax Technologies Limited, stating that the issuance of a consolidated show cause covering multiple years was procedurally flawed and violated the provisions of the CGST Act. The court held that separate SCNs must be issued for each assessment period to comply with the statutory provisions of the GST Act.

Full payment of tax shall be legally valid to admit an appeal & to litigate

Citation: TS-607-HC(P&H)-2024-GST-Punjab & Haryana High Court Dated: 27-09-2024

Issue:

The appellant, JTEKT India Ltd., challenged an order passed by the tax authorities under the GST law. During the pendency of this challenge, the appellant deposited the **entire disputed amount**, which was significantly more than the statutory **pre-deposit requirement of 10%** under Section 107(6) of the CGST Act.

The key issue was whether; after paying the full disputed amount, the appellant was still obligated to make the **10% pre-deposit** to proceed with the appeal before the Appellate Authority.

Legal Provisions:

Section 107(6)(a) of the CGST Act: This provision requires that the appellant should deposit 10% of the tax in dispute to file an appeal.

Section 107(6)(b) of the CGST Act: Further details the requirements for the pre-deposit to ensure that a portion of the disputed tax is secured before the appeal can be heard.

The appellant argued that having deposited 100% of the disputed amount, there was no need to adhere to the **10% pre-deposit requirement**.

Court's Findings & Conclusion:

The HC carefully examined the statutory requirement of pre-deposit under Section 107 and emphasized that the intent behind the pre-deposit requirement was to ensure the appellant deposits some portion of the disputed amount while the appeal is being heard.

In this case, the appellant had deposited the entire amount in dispute, which exceeded the pre-deposit requirement of 10%. The court held that when the entire disputed amount has already been paid, the statutory mandate of 10% is rendered inapplicable. The pre-deposit requirement is satisfied by the full payment. Therefore, the appellate proceedings should not be hindered by further financial obligations.

The HC underscored that Section 107(6) does not mandate a pre-deposit when the taxpayer has deposited the full disputed amount and allowed the appeal, ruling that the appellant was not required to make an additional 10% pre-deposit.

A minor error in the E-way bill does not invoke the provisions for detention and penalty

Citation:2024 (9) TMI 1013-Allahabad High Court dated 12-09-2024

Issue:

The dispute arose when the Uttar Pradesh Tax authorities detailed a vehicle due to a minor typo error in an e-way bill of Rimjhim Ispat Limited. The error pertained to the minor incorrect entry of the value of goods (₹27,30,000 was mentioned as ₹2,73,000,00/-odd). This inadvertent mistake triggered the detention of goods under Section 129 of the Central Goods and Services Tax Act, 2017 (CGST Act).

M/s Rimjhim Ispat Limited filed a writ application to the High Court. The petitioner argued that the error was trivial and did not reflect any intention to evade tax or commit fraud. Therefore, the detention of goods and subsequent actions taken by the authorities were claimed to be disproportionate and unjust.

Legal Provisions:

Section 129 of the CGST Act, 2017 – This section deals with the detention, seizure, and release of goods and conveyances in transit. It allows authorities to detain goods if there is reason to believe that a violation of GST provisions has occurred, such as discrepancies in the e-way bill.

Rule 138A of the CGST Rules, 2017 – This rule mandates that goods transported should be accompanied by an e-way bill, and details pertaining to it. Non-compliance with this rule may lead to detention under Section 129.

Court's Findings & Conclusion:

The Honorable High Court examined whether the authorities were justified in invoking Section 129 of the CGST Act for a minor typographical error that did not affect the substance of the transaction. Further attention was also drawn to Circular No. 64/38/2018, dated 14-09-2018, which addresses various discrepancies noticed in the E-way Bill.

The Allahabad High Court ruled in favor of Rimjhim Ispat Limited, holding that the detention of goods based on a minor typographical error in the e-way bill was unwarranted under the circumstances and ordered the release of the goods and quashed the penalty, reinforcing that Section 129 of the CGST Act should not be invoked for trivial procedural lapses that do not indicate intent to evade tax or commit fraud.

SEZ unit is entitled to claim refund of accumulated ITC on Export without payment of tax

Citation: 2024 (9) TMI 1459 – Gujarat High Court

Issue:

M/s Meghmani Organochem Limited, the petitioner, manufactures chemical products and has a Special Economic Zone (SEZ), located in SEZ Dahej, Gujarat. Being an SEZ unit, the company exports the goods under LUT and hence filed a refund claim for accumulated ITC under Rule 89(4) of the CGST Rules, 2017 for the period May 21- March 22.

The CGST Department has issued a refund order (OIO – Order in Original) whereby the refund claim was partially allowed and partially rejected. Then, the CGST Department filed an appeal, and the Appellate authority accepted the below-mentioned grounds of the CGST Department and set aside the OIO:

- The Company, being an SEZ unit, is a recipient of the goods and services only.
- The refund can be filed only by the provider of goods and services and not by the recipient as per the provisions of the GST Act.

Later, the Company filed a writ petition to the Gujarat High Court (HC).

Legal Provisions:

Section 54 of the CGST Act governs the eligibility of criteria for admissibility of the refund claim under various scenarios.

Rule 89 of the CGST rule provides the procedure to file a refund application under different scenarios.

Court's Findings & Conclusion:

The Hon. HC carefully analyzed whether the refund claim by SEZ shall be legally accepted under the provisions of the GST laws. Further, the HC referred to the identical issue that was settled by the Guj HC in the matter of M/s. Britannia Industries versus Union of India [2020 (42) G.S.T.L. 3(42)]. Presently, this matter is pending with the Apex Court and no stay order has been issued.

Since the matter is yet to be decided, the decision by the Division Bench for Britannia (Supra) stands legally valid. Therefore, the appellate authority cannot ignore it as the decision is pending at the higher level. And hence the honourable HC allowed the petition by quashing & setting aside the order.

Intriguing Facts: Cost Management Accounting & Taxation in India

1. DID YOU KNOW?

The Marginal Costing approach can assist businesses in determining the impact of fixed and variable costs on their pricing decisions, which directly affects taxable income and tax liabilities.

2. DID YOU KNOW?

Companies in India can utilize the Input Tax Credit (ITC) under GST for the tax paid on inputs used in manufacturing, effectively reducing the overall cost and tax burden when managed correctly.

3. DID YOU KNOW?

Cost management accounting techniques such as Activity-Based Costing (ABC) can help businesses accurately allocate costs to products and services, thereby optimizing pricing strategies and enhancing profitability, which is crucial for tax planning.

Implementation of Recommendations of 53rd GST Council Meeting

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- Dipak N Joshi is a Practicing Cost Accountant
- He has been working as a partner at Deodhar Joshi & Associates pioneer firm in indirect taxes since 1992. Litigation in indirect taxes is his core area of practice. He fought the cases on the Central Excise and Service Tax for his clients up to the Tribunal in the erstwhile regime of Central Excise.
- He is a fellow member of The Institute of Cost Accountants of India.
- He is pursuing his doctoral research (Ph.D) in Issues and Challenges in Input Tax Credit. He has published 4 research papers in the UGC recognized journal as a part of his Ph.D journey to date on important issues.
- He is looking after the Consultancy & Internal audit of more than 150, small, medium, and large-scale industries all over Maharashtra particularly in the area of Indirect taxes. He is also involved in setting up a Cost Accounting system, Cost Accounting records, and Cost audits of many Public and Private limited companies under the Companies Act 2013.
- He is Chairman of Vidya Prabodhini Prashala-CBSE School of CHME Society
- He is the former Chairman of the Nashik Chapter of Cost Accountants and nominated member of the task force of Indirect Taxes of WIRC of ICMAI. He is also a resource person for the Tax research department of The Institute of Cost Accountants of India (ICMAI).
- He is a well-known tutor for the subject "Indirect Taxes & Financial Management" for CA, CMA, and CS Final.
- He is an official tutor for the certificate course in GST conducted by ICMAI.
- He was part of the editorial team of taxmann to decipher the fine print of the Union Budget 2017.
- He is the author of the book "GST Made Simple" published by Bharat Law House Pvt Ltd, Delhi and a Guidance note of the filing of FORM GSTR-9 & 9C issued by The Institute of Cost Accountants of India (ICMAI).
- He is also authoring various articles for reputed legal journals like Corporate professional today, and Goods & Service tax cases. His articles are also published on various online platforms like Taxmann.com, CAClub India, Taxguru.com, GSTIndia.com etc.
- He has also presented several technical papers in various conferences all across the world including the National Cost Convention of The Institute of Cost Accountants of India.

Introduction:

The 53rd GST Council meeting was held in New Delhi on 22nd June 2024 under the Chairpersonship of Union Minister for Finance & Corporate Affairs Smt. Nirmala Sitharaman. The Council has recommended lot of changes in GST law for simplification and trade facilitation. The article summarizes all such changes along with reference of relevant notifications

A) Important Notifications (Rate)

I) Changes in the rate of tax on goods:

On recommendations of GST council rates in respect of following goods have been changed-

1. **Rate of tax on Solar Cookers:** The GST rate for solar cookers, whether they use a single or dual energy source (solar energy and grid electricity), has been reduced to 12% (previously higher). This applies to items classified under HS codes 7321 and 8516.
2. **Rate of tax on Milk Cans:** The GST rate for milk cans made of iron, steel, or aluminum has been set at 12%. This is applicable to items classified under HS codes 7310, 7323, 7612, or 7615.
3. **Cartons, Boxes, and Cases:** The GST rate for cartons, boxes, and cases made of corrugated or non-corrugated paper or paperboard has been reduced to 6%.
4. **Parts of Poultry-Keeping Machinery:** The GST rate for parts of poultry-keeping machinery is now set at 12%, classified under tariff item 8436 91 00.
5. **Pre-Packaged and Labeled Agricultural Produce:** The definition of "pre-packaged and labeled" has been amended to exclude agricultural produce supplied in packages exceeding 25 kilograms or 25 liters.

[Notification No. 02/2024-Central Tax (Rate)/ Integrated Tax (Rate)/Union territory Tax (Rate) dt. 12th July, 2024]

[Notification No. 03/2024-Central Tax (Rate)/ Integrated Tax (Rate)/Union territory Tax (Rate) dt. 12th July, 2024]

II) Changes in the rate of services:

rates in respect of following services have been changed-

1. Exemptions for Railway Services:

- Platform Tickets, Retiring Rooms, and Cloak Room Services provided by Indian Railways are now exempt from GST.
- Battery-Operated Car Services used within railway stations for mobility are also exempt from GST.
- Transactions between different zones or divisions under the Ministry of Railways are exempt from GST, applicable retrospectively from 20th October 2023.
- GST is exempted for services provided by SPVs to Indian Railways for using infrastructure built and owned by SPVs during the concession period
- Maintenance services supplied by Indian Railways to SPVs are also exempt, applicable retrospectively from 1st July 2017.
- Accommodation services with a value up to ₹20,000 per person per month, provided for a continuous period of at least 90 days, are exempt from GST.

[Notification No. 04/2024-Central Tax (Rate)/ Integrated Tax (Rate)/Union territory Tax (Rate) dt. 12th July, 2024]

B) Important Notifications

- 1. Verification of application of registration:** A verification shall be done at the Felicitation Center notified by the commissioner by taking a photograph of an individual or individuals as the case may be along with verification of the original documents uploaded on the portal along with the application for registration. The application shall be deemed to be completed only after successful verification.
- 2. Registration to be cancelled or suspended in certain cases:** Certain amendments are made in Rules 21 & 21A of CGST Rules, 2017 to incorporate the FORM GSTR-1A in the provisions of cancellation of registration and suspension as under-
 - Earlier registration was subject to cancellation when the liability declared in GSTR-1 for one or more tax period which is in excess of outward supplies declared in GSTR-3B. With the introduction of GSTR-1A, GSTR-1 after amendment in GSTR-1A would be considered for the comparison with GSTR-3B.
 - A new clause (ga) is added to empower cancellation of registration in cases where pending returns till the date of revocation of cancellation of registration are not filed within 30 days from the date order of revocation of cancellation of registration and in cases where registration is cancelled retrospectively and returns are not filed for the period of cancellation till the date of revocation of cancellation within 30 days from the date of order of revocation of cancellation of the certificate.
 - Rule 21A(2A)(a) of CGST Rules, 2017 empowers suspension of registration in cases where there is a significant difference in the credit taken in GSTR-3B with details of outward supplies furnished in FORM GSTR-1. The rule is amended to incorporate the amendment made through FORM GSTR-1A.
- 3. Valuation of Corporate Guarantee:** Sub-rule (2) was inserted into Rule 28 of CGST Rules, 2017 to incorporate the valuation mechanism in case of a supply of services to the related person by way of providing a corporate guarantee to any banking company or financial institution. The value of service would be 1% of the guarantee amount or actual consideration whichever is higher. Such sub-rule is now amended to restrict such valuation only in case the related person is located in India at 1% of the guarantee amount per annum or actual consideration whichever is higher, and the recipient is eligible for the input tax credit.
- 4. Condition for claiming ITC:** Rule 36 (4) provides that a registered person is not entitled to credit unless the invoice is reported in FORM GSTR-1 & auto-populated in GSTR-2B. An amendment is made to incorporate the amended GSTR-1 i.e. GSTR-1A.
- 5. Reversal of ITC in case of nonpayment by the supplier:** Rule 37A provides for the reversal of ITC in respect of invoices that are declared in GSTR-1 but the return is not filed by the supplier under Section 39. An amendment is made to incorporate the amended GSTR-1 i.e. GSTR-1A.
- 6. Procedure for distribution of ITC by ISD:** Rule 39 of CGST Rules, 2017 prescribes the manner of distribution of input tax credit by Input Service Distributor. Rule 39 is substituted, and a new procedure is to distribute the ITC by ISD is notified w.e.f. date to be notified. Following are the important changes in Rule 39.
 - The input tax credit available for distribution in a month shall be distributed in the same month in FORM GSTR-6.
 - The amount of credit distributed shall not exceed the amount of credit available for distribution.
 - The credit shall be distributed to a recipient who availed such credit.

- In case of more than one recipient, credit shall be distributed on pro rata basis on the basis of the turnover in a State or turnover in a Union territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such services are related and which are operation in current year.

- In case one of the recipients(R1) is supplying exempt supply or is not registered under GST, credit shall be distributed using following formula-

$$C1 = (t1 / T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t1" is the turnover, as referred to in clause (d) and (e), of person R1 during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable

- Both eligible and in-eligible ITC would be distributed as per the above formula separately.
- CGST, SGST, and IGST shall be distributed separately.
- IGST credit shall be distributed as IGST
- CGST & SGST credit shall be distributed as CGST & SGST if the recipient is located in the same state where ISD registration is located. In other cases, it would be distributed as the IGST which will be some total of CGST & SGST.
- The ISD is required to issue an ISD invoice expressing clearly that such invoice is issued for distribution of ITC.
- Credit notes shall be issued to reduce the distributed credit in the same ratio in which the original credit was distributed. Such an amount shall be reduced from the credit distributed to each recipient. In case the credit distributed to such person is less than the credit to be reversed, then such credit shall be added to the output tax liability of such recipient. The situation where credit is reduced by the supplier by issuing credit notes shall be dealt with in a similar manner. ISD is required to issue credit note in such cases to respective recipients.
- Debit notes shall be issued in case of distribution of additional amount.
- In the case of credit on inward supply on which tax is paid under the reverse charge mechanism, the credit shall be distributed to distinct persons in the same manner as discussed above.
- Turnover of relevant period means-
 - Turnover of the recipient in the preceding financial year to the financial year in which the credit is to be distributed.
 - If the turnover of the preceding financial year is not available, the turnover of all recipients during the last quarter previous to the month during which credit is to be distributed.

7. Claiming credit in special circumstances: Rule 40 allows availment of ITC on inputs held in stock or contained in semi-finished or finished goods held in stock, or on capital goods. Said credit is subject to verification of the details furnished by the supplier in GSTR-1. An amendment is made to incorporate amended GSTR-1 i.e. GSTR-1A.

- 8. Manner of issuing invoice:** Rule 48(3) requires a registered person to report a serial number of invoices issued during the period in FORM GSTR-1. The rule is amended to provide such a facility in amended FORM GSTR-1A.
- 9. Introduction of FORM GSTR-1A:** Presently there is no facility to amend details furnished in GSTR-1 for the tax period before filing GSTR-3B of the said tax period. A registered person can make the amendments in the GSTR-1 of the subsequent months. Now, a facility is given to amend or provide additional details in said GSTR-1 through GSTR-1A before filing GSTR-3B of the said tax period. The addition or amendment of the details of outward supply includes the invoice-wise details of interstate and intra-state supplies made to the registered persons, invoice-wise supplies made to unregistered persons where invoice value is more than 1 lakhs, consolidated details of intra-state supplies and interstate supplies where invoice value is up to 1 lakhs for each tax rate and debit and credit notes issued during the month for the invoices issued in the previous tax period. Following are important features of FORM GSTR-1A
- FORM GSTR-1A is an optional facility that allows taxpayers to add or amend details for the current tax period that were missed or incorrectly reported in FORM GSTR-1.
 - There is no late fee for filing FORM GSTR-1A
 - FORM GSTR-1A becomes available on the portal after the due date or the actual filing date of FORM GSTR-1, whichever is later, and remains open until FORM GSTR-3B for the same period is filed.
 - For quarterly taxpayers, it is available quarterly after the filing or due date of FORM GSTR-1 (Quarterly) until FORM GSTR-3B is filed.
 - The details declared in FORM GSTR-1A, along with those in FORM GSTR-1, will be incorporated into FORM GSTR-3B.
 - Change in GSTIN No is not possible through GSTR-1A
 - Supplies declared in FORM GSTR-1A will be reflected in the next available FORM GSTR-2B. For example, if an invoice is missed in FORM GSTR-1 but added in FORM GSTR-1A, it will appear in the recipient's FORM GSTR-2B for the following month.
- 10. Ascertaining details of Inward Supplies [GSTR-2A/2B]:** Rule 60 of the CGST Rule, 2017 provides that outward supplies declared by the supplier in GSTR-1 would be auto-populated in FORM GSTR-2A & 2B. Details added or amended in GSTR-1A would also be part of GSTR-2A & 2B. In the case of GSTR-2B, the addition or amendments in GSTR-1A would reflect in the GSTR-2B of the next tax period.
- 11. Change in the due date of filing the return in FORM GSTR-4:** The composition dealer needs to file the return in FORM GSTR-4 for every financial year by 30th April every year. The due date for filing FORM GSTR-4 is now changed to 30th June every year from the financial year 2024-25.
- 12. Matching of details furnished by e-commerce operator:** Rule 78 of CGST Rules provides for the matching of details declared in FORM GSTR-8 by the e-commerce operator with the details declared by the supplier in GSTR-1. The amendment is made to incorporate the effect of GSTR-1A i.e. GSTR-1 as amended in GSTR-1A.
- 13. Manner of calculating interest on delayed payment of tax:** Rule 88B prescribes a manner of calculating interest on delayed payment of tax. Presently a registered person is required to pay an interest component on the amount debited from the electronic cash ledger after the due date of filing of return for the period of delay in filing the said return beyond the due date of filing the return under Section 50 at 18% p.a. An amendment is made in Rule 88B inserting proviso after sub-rule (1) to not levy interest on the cash component credited in the electronic cash ledger on or before the due date of filing of return but debited after the due date of filing of the return.

- 14. Manner of dealing with the difference in GSTR-1 & GSTR-3B:** The manner of dealing with the difference in liability declared in FORM GSTR-1 vis a vis liability paid in FORM GSTR-3B is defined in Rule 88C of CGST Rules. The rule is amended to incorporate the additions or amendments made in GSTR-1 in GSTR-1A. Therefore, the comparison will be made with GSTR-1 or GSTR-1 as amended in GSTR-1A with GSTR-3B.
- 15. Refund of IGST paid on an upward revision of prices in case of export:** A provision for refund of integrated tax paid on the upward revision of prices in the case of export of goods was not there previously. Sub-Section (1B) is inserted in Rule 89 to incorporate the provision of refund of tax paid on account of upward revision of prices on account of export of goods. A refund claim can be filed within 2 years from the relevant date. The limitation period of 2 years for claiming a refund of tax paid for the period before the introduction of this sub-rule will start from the date on which this sub-rule comes into force. A corresponding change is also made in Rule 96 to incorporate the provision of a refund on IGST paid on export of goods on account of upward revision.
- 16. Refund of tax on inward supplies of goods by CSD:** Rule 95B is inserted in CGST Rules to allow the Canteen Stores Department under the Ministry of Defense to claim a refund of tax to the extent of 50% of applicable tax paid by it on all inward supplies which are further supplied to the Unit Run Canteens of the Canteen Stores Department or the authorised customers of the Canteen Stores Department. A refund claim shall be made quarterly under Section 55 in FORM GST RFD-10A. The refund is available subject to fulfillment of the following conditions-
1. Supply is received on tax invoice and details of such supply are furnished by the supplier in GSTR-1 and GSTR-3B for the said period is furnished by the supplier.
 2. Name & GSTIN No of the applicant is mentioned in the tax invoice; and
 3. Goods received by the CSD are used by them for the subsequent supply to units run by the CSD or the authorized customers of CSD
- 17. Refund of IGST on goods or services exported out of India:** Rule 96 provides for the refund of IGST paid on the export of goods out of India. Such a refund is subject to the filing of GSTR-3B and matching of details filled in the shipping bill with details of export filed in FORM GSTR-1. An amendment is made to incorporate an addition or amendment made in FORM GSTR-1A.
- 18. Payment of tax along with interest on non-realisation of payment on account of export of services:** Rule 96A(1)(b) provides for the payment of IGST along with the interest if payment of services exported is not received within one year or such extended period as allowed by the commissioner from the date of issue of invoice. Amendment is made in clause (b) to allow the period allowed under the FEMA Act, 1999. Therefore, payment of tax and interest is required to be done by the supplier if payment against such supply is not received after 15 days from the expiry of one year or the period allowed in FEMA including the extension allowed by RBI whichever is later from the date of invoice, or such further period as may be allowed by the Commissioner.
- 19. Appeal to Appellate Tribunal:** Rule 110 of the CGST Act provides for the procedure for filing of an appeal. The present rule is substituted. Following are the key changes in the revised Rule 110
- Appeals to the Appellate Tribunal must now be filed electronically using FORM GST APL-05. Manual filing is permitted only if the Registrar issues a special or general order allowing it, and under specified conditions.
 - The memorandum of cross-objections must be filed electronically in FORM GST APL-06. Manual filing is allowed only by the Registrar's special or general order.
 - The rule clarifies that where the order appealed against is uploaded on the common portal, a final acknowledgment will be issued upon removal of any defects, and the date of provisional acknowledgment will be considered the filing date.

- If the order is not uploaded on the portal, a self-certified copy must be submitted or uploaded within seven days. The filing date is considered the date of the provisional acknowledgment if submitted within this period. If submitted later, the filing date is the date of submission or upload of the self-certified copy.
- The fee structure for filing or restoring appeals remains one thousand rupees for every one lakh rupees of tax or input tax credit involved, capped at twenty-five thousand rupees, with a new minimum fee of five thousand rupees.
- Appeals against orders not involving any demand will have a flat fee of five thousand rupees.
- There is no fee for applications made for rectification of errors under sub-section (10) of section 112.

20. Appeal to Appellate Tribunal by the Department: Rule 111 provides for the appeal to the Appellate Tribunal by the Department. Rule 111 is substituted and incorporated following key changes-

- Applications to the Appellate Tribunal must be filed electronically using FORM GST APL-07, with a provisional acknowledgement issued immediately. Manual filing is allowed only if the Registrar issues a special or general order permitting it, subject to specified conditions.
- The memorandum of cross-objections must be filed electronically in FORM GST APL-06. Manual filing is permitted only by the Registrar's special or general order.
- If the order appealed against is uploaded on the common portal, a final acknowledgement will be issued upon removal of any defects, with the provisional acknowledgement date considered the filing date.
- If the order is not uploaded, a self-certified copy must be submitted or uploaded within seven days. The date of provisional acknowledgement will be the filing date if submitted within this period. If submitted later, the date of submission or upload of the self-certified copy will be the filing date.
- The appeal and the memorandum of cross-objections must be signed as specified in rule 26.
- The rule clarifies that the appeal is considered filed only when the final acknowledgement indicating the appeal number is issued.
- The term "Registrar" includes the Registrar, Joint Registrar, Deputy Registrar, and Assistant Registrar appointed by the Government.

21. Withdrawal of Appeal or Application filed before the Appellate Tribunal: Rule 113A is inserted to incorporate the provisions of withdrawal of appeal or application filed before the Appellate Tribunal. FORM GST APL-05 (withdrawal of appeal) or FORM GST APL-07 (withdrawal of an application) are designated for the withdrawal application. In case an acknowledgement of filing of an appeal is received in FORM APL-02, the withdrawal of an appeal is subject to the approval of the Appellate Tribunal. The Appellate Tribunal shall decide on the withdrawal application within fifteen days of its filing. Any fresh appeal or application following such withdrawal must be filed within the time limits specified in Section 112(1) or Section 112(3), as applicable.

22. E-way bill in case of a supplier of handicraft goods or an unregistered person who wants to generate an E-way: In case of interstate movement of handicraft goods and where a person is exempted from registration under Section 24(i) & (ii), e-way bill is required to be prepared by said person irrespective of the value of goods. An unregistered person is also allowed to prepare an E-way bill for the movement of goods. Such persons shall get the credentials for generating e-way bill by enrolling to the portal in FORM GST ENR-03 either directly or through a Facilitation Centre notified by the Commissioner.

- 24. Payment of tax before service of notice:** Under Rule 142(2) of CGST Rules, a person can make the payment of tax in before service of notice or statement and required to inform to proper officer in FORM DRC-03. The proper officer then issues an acknowledgment, accepting the payment made by the appellant in FORM GST DRC-04. Amendment is made to allow system to issue acknowledgment in FORM DRC-04 which was earlier issued by the proper officer.
- 25. Acceptance of submission or payment made against FORM DRC-01A:** Presently there is no facility to accept the submission or payment made against FORM DRC-01A. Now, the proper officer can issue intimation in Part-C of FORM GST DRC-01A, accepting the payment or the submission or both
- 26. Adjustment of payment made in FORM DRC-03 against the liability in Electronic Credit Ledger:-** Rule (2B) is inserted under Rule 142 of CGST Rules allowing a registered person to offset the DRC-03 against the liability raised in electronic liability ledger. If a person pays any tax, interest, penalty, or other amounts under Sections 52, 73, 74, 76, 122, 123, 124, 125, 127, 129 or 130, using FORM GST DRC-03, he has the option to file an application electronically via FORM GST DRC-03A on the common portal. This application ensures that the amount paid and intimated through FORM GST DRC-03 is credited in the Electronic Liability Register (FORM GST PMT-01) against the relevant debit entry, treating the payment as if it was made on the date of intimation. However, if an order in FORM GST DRC-05 has been issued, concluding the proceedings related to that payment, the application in FORM GST DRC-03A cannot be filed for that payment.
- 27. Consent based sharing of information furnished in GSTR-1A:** Rule 163 allows Government to share certain information furnished on the GST portal with other agencies. Presently the Government is sharing information furnished in REG-1, GSTR-3B and GSTR-1. Along with that the Government is now allowed to share information furnished in FORM GSTR-1A.
- 28. Changes in FORM GSTR-1:** Table 5 of FORM GSTR-1 is amended. The threshold for reporting details of interstate supplies to un-registered person (B2CL) in GSTR-1 is reduced to Rs. 1 lakh from 2.5 lakhs. Similar amendment is also made in Table 6 & 7 of GSTR-5.
- 29. Provision for negative liability:** There was no option for reporting negative liability of previous tax period in FORM GSTR-3B. FORM GSTR-3B is amended to incorporate provision of carry forward of negative liability GSTR-3B in subsequent period.
- 30. Changes in FORM GSTR-7:** In case of tax deducted at source, deductor of TDS is required to file GSTR-7. Deductor supposed to report GSTIN wise details of TDS deducted in said return in Table 3 of GSTR-7. Amendment is made to report invoice wise information in Table 3 in place of GSTIN wise information.
- 31. Changes in FORM GSTR-8:** E-commerce operator are required to furnish details of supplies made through them and TDS deducted is required to be furnish in GSTR-8. FORM GSTR-8 is amended to incorporate the information on the place of supply in Table 3 and 4 of GSTR-8.
- 32. Changes in FORM GSTR-9:** Following changes are made in FORM GSTR-9.
- Supplies on which tax is paid by e-commerce operators: A separate row is inserted in Table 4 for reporting of supplies (net of amendments) on which e-commerce operators are required to pay tax as per section 9(5). E-commerce operators are supposed to report the information in this table. Similarly, a separate row is inserted in Table 5 for reporting supplies (net of amendments) on which e-commerce operators are required to pay tax as per section 9(5). The supplier is supposed to report the information in this table.
 - Non-GST Supplies to be reported separately: Non-GST supply is required to be shown separately. A registered person has the option to report exempted and nil-rated supply under the row exempted supply.

- Particulars of Demand and Refund: Table 15 pertaining to details of demand of demand and refund are made optional for FY 2023-24.
- Details of supplies from composition taxpayers, deemed supply under section 143 and goods sent on an approval basis: Table 16 requires a registered person to provide information on supplies received from composition taxpayers, deemed supply under section 143 and goods sent on an approval basis. For FY 2023-24, the information in said table is made optional.
- HSN-wise inward supply: A registered person is required to provide HSN-wise inward supply in Table 18 of GSTR-9. For FY 2023-24 said table is made optional.

33. Changes in FORM GSTR-9C: Following tables of FORM GSTR-9 are made optional for FY 2023-24.

- Unbilled revenue in Table 5B & 5O
- Unbilled advances in Table 5C & 5-I
- Deemed Supply in Table 5D
- Credit notes issued after the financial accounts but reflected in GSTR-9 Table 5E
- Trade discount given in the books of accounts in Table 5F
- Credit notes issued in financial accounts but not in GST in Table 5J
- Supplies by SEZ units to DTA units in Table 5K
- Turnover for the composition period in Table 5L
- Adjustment under Section 15 in Table 5M
- Adjustment due to foreign exchange fluctuations in Table 5N
- Expenses-wise details of ITC availed in Table 14

[Notification No. 12/2024-Central Tax dt. 10th July, 2024.]

34. Aadhar based authentication: Sub-rule (4A) of Rule 8 provides for aadhar based authentication. However, rule 4B allows the Government to notify the states where the application of Rule 4A is exempted. Accordingly, vide Notification 27/2022-Central Tax provisions of Rule 8(4A) made inapplicable to all the states except Gujrat. Said Notification is now rescinded vide Notification No. 13/2024-Central Tax dt. 10th July, 2024.

[Notification No. 13/2024-Central Tax dt. 10th July, 2024.]

35. Exemption from filing Annual Return: The registered person whose aggregate turnover is up to 2 crores for the financial year 2023-24 is up to 2 crores are exempted from filing of annual return for FY 2023-24.

[Notification No. 14/2024-Central Tax dt. 10th July, 2024.]

36. TCS rate in case of supply through E-commerce operator: Every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of half per cent vide Notification No. 52/2018 Central Tax dt 28th September, 2018. Said rate of half per cent is reduced to 0.25 per cent

[Notification No. 15/2024-Central Tax dt. 10th July, 2024.]

B) Important Circulars

- 1. Guidelines for recovery of outstanding dues, in cases wherein first appeal has been disposed of, till Appellate Tribunal comes into operation:** A circular is issued to address the recovery of outstanding dues in cases where the first appellate authority has confirmed a demand, and taxpayers are unable to appeal to the GST Appellate Tribunal due to its non-constitution. The circular clarifies that taxpayers can make pre-deposits against demands by navigating through the GST portal to the Electronic Liability Register (ELL) Part-II, and these pre-deposits will be adjusted against the amount required for filing an appeal once the Tribunal is operational. It also provides that, upon making the pre-deposit and providing an undertaking to file an appeal when the Tribunal becomes operational, the recovery of the remaining confirmed demand will be stayed. However, if the taxpayer fails to make the pre-deposit or provide the undertaking, recovery proceedings may be initiated. Furthermore, the circular explains that payments made inadvertently through FORM GST DRC-03 can be adjusted against demands if an application in FORM GST DRC-03A is submitted, ensuring that such payments are considered towards the intended demand from the date of intimation. Until the functionality for FORM GST DRC-03A is available on the portal, taxpayers can inform proper officers about inadvertent pre-deposits, and officers are advised not to insist on recovery until the portal functionality is available. The circular also requests field formations to issue trade notices to publicize its contents and report any difficulties in implementation to the Board.

[Circular No 224/19/2024-GST dt 11th July 2024]

- 2. Clarification on various issues pertaining to taxability and valuation of supply of services of providing corporate guarantee between related persons:** CBIC has clarified the taxability and valuation of corporate guarantees provided between related persons. The circular follows recommendations from the GST Council, which led to the insertion and subsequent amendment of sub-rule (2) in Rule 28 of the CGST Rules, 2017. The circular addresses several key issues as under-

- Corporate guarantees issued before 26th October 2023 remain taxable, and their valuation should follow the pre-existing Rule 28 provisions. The valuation of such guarantees is based on the guaranteed amount rather than the loan disbursed, allowing for full Input Tax Credit (ITC) irrespective of loan disbursement.
- Loan takeovers do not trigger GST unless a new or renewed guarantee is issued.
- In cases of co-guarantors, GST is payable proportionately to their share of the guarantee.
- Domestic intra-group guarantees incur GST under the forward charge mechanism, while foreign guarantees for Indian entities are subject to reverse charge.
- The valuation for guarantees is set at 1% per annum of the guaranteed amount or actual consideration, with proportional adjustments for periods less than a year.
- The proviso in sub-rule (2) aligns with sub-rule (1), deeming invoice value as the supply value if full ITC is available.
- Rule 28(2) does not apply to export services of corporate guarantees.

[Circular No 225/19/2024-GST dt 11th July 2024]

- 3. Mechanism for refund of additional Integrated Tax (IGST) paid on account of upward revision in price of the goods subsequent to export.:** A procedure to claim refunds of additional Integrated Tax (IGST) paid due to upward price revisions of goods in case of export. The current automated system processes IGST refunds but does not accommodate additional IGST paid due to such price revisions.

Exporters can now file refund applications electronically using FORM GST RFD-01 on the common portal under the "Any other" category, with specific documentation including shipping bills, original and revised invoices, payment proofs, and foreign exchange remittance evidence. The GST officer will verify the refund claims, ensuring the additional IGST and applicable interest have been paid and the details properly reported. The circular also notes that in cases of downward price revisions, exporters must repay the excess refunded IGST.

[Circular No 226/20/2024-GST dt 11th July 2024]

4. Clarifications regarding the applicability of GST on certain services: CBIC has clarified the various issues pertaining to Indian railways, the applicability of GST on statutory collection made by the RERA according to the RERA Act, 2016, GST on incentive received on the digital payment ecosystem, GST on reimbursement of general and life insurance scheme, GST liability on the reinsurance schemes where premium is paid by the government, GST on retrocession services and GST liability on accommodation services. Following are the important clarifications-

- **GST Exemption for Indian Railways:** Services such as platform tickets, retiring rooms, and battery-operated car services are exempt from GST, effective from 15th July 2024, with retrospective regularization from 20th October 2023 to 14th July 2024.
- **Transactions Between SPVs and Ministry of Railways:** These transactions are now exempt from GST, effective from 15th July 2024, with past liabilities regularized from 1st July 2017 to 14th July 2024.
- **Statutory Collections by RERA:** These collections are exempt under notification No. 12/2017-CT(R) dated 28th June 2017.
- **Incentives in the Digital Payment Ecosystem:** Incentives paid by the Ministry of Electronics and Information Technology (MeitY) to banks for promoting RuPay Debit Cards and low-value BHIM-UPI transactions are considered subsidies and are not taxable.
- **Reinsurance of Specified Insurance Schemes:** Certain general and life insurance schemes reinsured from 1st July 2017 to 24th January 2018 are exempt from GST. This exemption also applies to government-paid insurance schemes until 26th July 2018.
- **Accommodation Services:** Services costing less than or equal to ₹20,000 per person per month, provided for at least 90 continuous days, are exempt from GST from 15th July 2024. Past liabilities for these services are regularized from 1st July 2017 to 14th July 2024.

[Circular No 228/22/2024-GST dt. 15th July, 2024]

5. Clarification regarding GST rates: Clarification is issued in respect of GST rates on certain goods as recommended by the 53rd GST Council meeting. The following are the important clarification-

- **Solar Cookers:** Dual-source solar cookers that use both solar energy and grid electricity are classified under heading 8516 and attract a 12% GST rate.
- **Fire Water Sprinklers:** All types of sprinklers, including fire water sprinklers, are subject to a 12% GST rate.
- **Poultry-Keeping Machinery Parts:** These parts are classified under tariff item 8436 91 00 and also attract a 12% GST rate.
- **Pre-Packaged and Labeled Agricultural Produce:** The scope of "pre-packaged and labeled" for agricultural produce has been clarified and amended in relevant notifications to exclude certain supplies from GST.
- **Supplies to or by Government Agencies:** Clarifications were provided on GST rates for supplies of pulses and cereals made to or by government agencies, with specific conditions for regularization.

[Circular No 229/22/2024-GST dt. 15th July, 2024]

(Views are personal. The content is intended for general informational purposes only and should not be considered as professional advice.)

RECOMMENDATION of 54th GST COUNCIL MEETING

CMA Dipak N. Joshi

Introduction: The 54th GST Council meeting was held on 9th September, 2024 under the Chairpersonship of Smt. Nirmala Sitharaman, the Union Minister for Finance & Corporate Affairs in New Delhi. The Council recommended the following changes for the facilitation of trade and measures for streamlining compliances in the GST

5. Changes/Clarifications in GST Tax Rates: Following changes are recommended in respect of goods and services

- **Food Products:** GST rate of extruded or expanded products, savoury or salted (other than un-fried or un-cooked snack pellets, by whatever name called, manufactured through process of extrusion), falling under HS 1905 90 30 (except unfried or uncooked snack pellets) reduced from 18% to 12% prospectively.
- **Cancer Drugs:** GST on drugs like Trastuzumab Deruxtecan reduced from 12% to 5%.
- **Metal Scrap:** Reverse Charge Mechanism (RCM) introduced for supply by unregistered persons to registered person. A TDS at 2% is payable by a registered person in B2B supplies.
- **Car and Motorcycle Seats:** GST on car seats raised from 18% to 28% prospectively, matching motorcycle seat rates.
- **Roof Mounted Package Unit (RMPU) Air Conditioning Machines for Railways:** It is clarified that roof Mounted Package Unit (RMPU) Air Conditioning Machines for railways would be classified under HSN 8415 attracting a GST rate of 28%.Services.
- **Insurance:** A Group of Ministers (GoM) will review GST issues on life and health insurance and will submit the report by the end of October 2024.
- **Flying Training:** It is clarified that DGCA-approved flying courses are exempt from GST.
- **Research Services:** R&D services by a Government Entity; or a research association, university, college or other institution, notified under clauses (ii) or (iii) of sub-section (1) of section 35 of the Income Tax Act, 1961 using Government or private grants are exempt from GST.
- **Preferential Location Charges (PLC):** It is clarified that location charges or Preferential Location Charges (PLC) are paid along with the consideration for the construction services of residential/commercial/industrial complex before issuance of completion certificate are composite supply and are eligible for same tax treatment as the main supply i.e. construction service.
- **Affiliation Services:** Affiliation services provided by educational boards like CBSE are taxable. However, affiliation services provided by State/Central boards or councils to government schools will be exempt prospectively. It is also clarified that Affiliation services provided by universities to their constituent colleges do not qualify for the exemptions available to educational institutions. Therefore, GST at the rate of 18% will apply to these services.
- **Import of service by branch Office:** Import of services by an establishment of a foreign airline company from a related person or any of its establishments outside India without consideration are made exempted from GST.
- **Renting of commercial property:** Renting of commercial property by unregistered person to a registered person will be now subject to payment of tax under RCM.

- **Ancillary/intermediate services are provided by GTA:** It is clarified that ancillary/intermediate services are provided by GTA are composite supply will be treated as part of the principle supply. In case these services are not provided as part transportation of goods and invoiced separately, then these services will not be treated as the composite supply of transport of goods.
- **Electricity related expenses:** The GST Council recommended exempting services such as application fees for electricity connections, rental charges for meters, testing fees for meters/transformers, labor charges for shifting meters or service lines, and charges for duplicate bills. These services, when provided as part of the composite supply of electricity transmission and distribution, will be exempt from GST. Additionally, the GST liability for the past period will be regularized on an "as is where is" basis.

B) Trade Facilitation Measures:

- **Introduction of rules and procedures for waiver of interest or penalties for tax demands from FYs 2017-18 to 2019-20:** Rule 164 is recommended to be inserted in CGST Rules along with the necessary forms providing for the procedure and conditions for availment of benefit of waiver of interest or penalty or both, relating to tax demands under section 73 of CGST Act, pertaining to FYs 2017-18, 2018-19 and 2019-20, as per section 128A of CGST Act. It is also recommended that Section 128A may be notified w.e.f. 01.11.2024.
- **Providing a mechanism for implementation of newly inserted sub-section (5) and sub-section (6) in section 16 of CGST Act, 2017:** The GST Council recommended Sections 118 and 150 of the Finance (No. 2) Act, 2024 should be notified at the earliest, which retrospectively inserts sub-sections (5) and (6) into Section 16 of the CGST Act, 2017, effective from 1st July 2017. The Council also proposed a special procedure for rectifying orders issued under Sections 73, 74, 107, or 108 of the CGST Act, which confirmed demands for wrongful input tax credit (ITC) claims due to non-compliance with Section 16(4). This rectification process would apply to cases where the ITC is now valid under the newly inserted sub-sections (5) and (6), and where no appeal has been filed. The Council also recommended issuing a circular to clarify the procedures and issues regarding the implementation of these provisions.
- **Amendment in refund rules i.e. Rule 89 & 96:** The GST Council recommended that if imported inputs, initially exempt from IGST and compensation cess under Notifications 78/2017 and 79/2017, later have the IGST and cess paid with interest and the Bill of Entry reassessed by Customs authorities, the refunded IGST on exports will not be considered in violation of rule 96(10) of the CGST Rules. Additionally, due to difficulties faced by exporters under refund restrictions imposed by rules 96(10), 89(4A), and 89(4B) of the CGST Rules, the Council recommended the prospective removal of these rules to simplify and expedite the refund process for such exports. The Council also recommended amendments in some other provisions of CGST Rules, 2017
- **Clarification on certain aspects:** The council has recommended to issue a clarification on the following aspects-
 1. Clarification on the Place of Supply of advertising services provided by Indian advertising companies to foreign entities.
 2. Clarification regarding availability of Input Tax Credit on demo vehicles by the dealers of the vehicle manufacturers.
 3. Clarification on Place of Supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India

- B)**
- **New e-invoicing pilot program for B2C transactions to enhance retail efficiency and transparency:** The Council has recommended to implement a pilot for B2C e-Invoicing for better efficiency in b2c transactions.
 - **Introduction of new ledgers and an Invoice Management System (IMS) to improve input tax credit reconciliation:** The GST Council discussed enhancements to the existing GST return system, which include the introduction of three key features: a Reverse Charge Mechanism (RCM) ledger an Input Tax Credit (ITC) Reclaim ledger, and an Invoice Management System (IMS). Taxpayers can declare their opening balances for these ledgers by 31st October 2024. The IMS will allow taxpayers to accept, reject, or keep invoices pending in relation to availing ITC. This optional feature aims to minimize errors in claiming ITC and improve reconciliation, ultimately reducing the number of notices issued for ITC mismatches in GST returns.

(Views are personal. The content is intended for general informational purposes only and should not be considered as professional advice.)

Essential Tax Terminologies to Remember!

1. Tax Avoidance



The legal practice of minimizing tax liabilities through strategic planning and financial arrangements.

2. Tax Evasion



The illegal practice of not paying taxes owed by misrepresenting or concealing income.

3. Assessing Officer (AO)



A tax officer appointed by the Income Tax Department to assess the income and tax liability of individuals and entities.

4. Aggregate Turnover



The total value of all taxable supplies, exempt supplies, and exports made by a person, excluding the value of inward supplies on which tax is payable.

5. Withholding Tax



A percentage of an employee's wages withheld by the employer for tax purposes and paid directly to the government.

6. Self-Assessment Tax



The tax that a taxpayer is required to pay on their own, based on their own calculation of tax liability.

7. Provisional Assessment



An assessment conducted based on the available information, which may be subject to finalization once additional information is obtained.

8. Transfer Pricing



The rules and methods for pricing transactions between enterprises under common ownership or control, aimed at ensuring fair tax practices.

Invoice Management System (IMS) Under GST

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The Invoice **Management System** (IMS) will be introduced by the Goods and Services Tax Network (GSTN) on October 1, 2024, as part of an upgrade to its GST portal. With this new feature, taxpayers will have an easier time managing and validating invoices, which will expedite the Input Tax Credit (ITC) claim process.

What is the Invoice Management System (IMS) Under GST?

To help with better invoice handling, the GST portal is integrating a new feature called the Invoice Management System (IMS). Recipient taxpayers can choose to accept, reject, or hold onto bills for further action. The widespread problem of discrepancies between recipient returns and supplier bills, which frequently makes ITC claims more difficult, is addressed by this concept. Recipients will be able to verify the legitimacy of received invoices using the IMS, ensuring that only accurate invoices are included in their GSTR-2B for Input Tax Credit (ITC) reasons.

How Does the Invoice Management System Work?

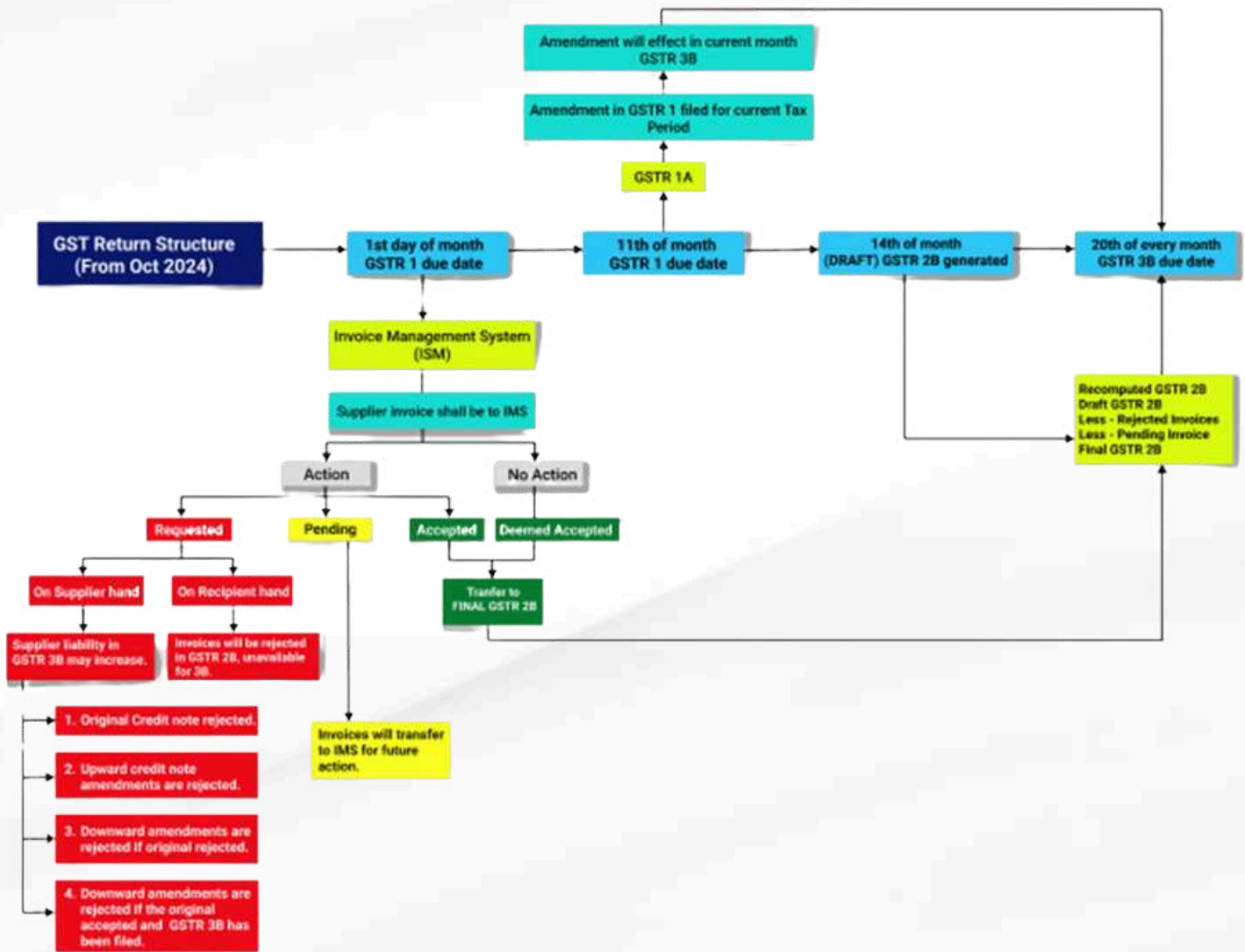
Here's a step-by-step breakdown of how the IMS will operate:

1. **Supplier Submissions:** Suppliers will use GSTR-1, GSTR-1A, or the Invoice Furnishing Facility (IFF) to upload and send invoices. The recipient's IMS dashboard will thereafter see these invoices.
2. **Recipient Actions:** Recipients can take one of three actions on each invoice:
 1. **ACCEPT:** The invoice will be included in the recipient's GSTR-2B as eligible ITC.
 2. **REJECT:** The invoice will not be included in the GSTR-2B and will be marked as rejected.
 3. **PENDING:** The invoice will not be included in the current month's GSTR-2B but will be carried forward for future action.
- Default Action:** The invoice will be "Deemed Accepted" and included in the GSTR-2B if the recipient does not
3. take any action by the twentieth of the month.
- Amendments:** When suppliers make changes to an invoice, the recipient must act on the revised version as
4. the amended invoice will take the place of the original in the IMS.
- Future Claims:** PENDING invoices can be reviewed and acted upon in future months, subject to the limits
5. prescribed by Section 16(4) of the CGST Act, 7.
- GSTR-2B Generation:** The supplier's invoices alone will be taken into account for Input Tax Credit (ITC) in
6. GSTR-2B. Every month on the 14th, the draft GSTR-2B will be published. Recipients can still take action on invoices up until the GSTR-3B is filed.

The takeaways:-

The introduction of the IMS is expected to facilitate transparency between recipients and suppliers and streamline the reconciliation of ITC, which has been a challenging process since the introduction of GST. The practical benefits of the system to taxpayers will become clearer as it is implemented. Considering 1 October 2024 as the implementation date, companies will have to revisit their compliance processes and gear up their systems to quickly adhere to this new requirement.

FLOW OF IMS



Availment of ITC on Construction Services

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A. Facts of the case:

1. Safari Retreats Private Limited is involved in constructing shopping malls and subsequently leasing them out to tenants on rental basis.
2. For the purpose of such construction, the Company procured various input-goods (cement, steel, sand, etc.) and services (engineering, architectural, legal and professional services etc.) for the construction of these malls.
3. The company sought to claim ITC on such purchases/expenses made for the purpose of construction and utilised the same in discharging its output tax liability on GST received on rentals from the tenants/lessees.
4. On applying for availing input tax credit, the same was denied on grounds of restriction imposed by section 17(5) (d) of the CGST Act, by which the input tax credit will not be available for goods and services received by a taxable person for the construction of an immovable property, excluding plant or machinery, even if they are used in the course of business.
5. The petitioners filed instant writ petition Orissa High Court before challenging the action of the opposite parties whereby the opposite parties without considering the provisions under section 17(5)(d) held that the provisions of the CGST Act was not applicable in the case of construction of immovable property intending for letting out for rent.

B. Judgement and Reasoning of the High Court of Orissa:

1. High Court permitted the ITC on inputs and input services used for constructing the shopping mall to be availed against GST payable on rent income from tenants.
2. The HC highlighted that the CGST Act aims to ensure uniform tax provisions and prevent multiple taxation. High Court interpreted Section 17(5) (d) of the CGST Act in a manner that benefits those who have paid GST. The court read down Section 17(5) (d) to allow ITC for properties intended to be let out, differentiating them from properties intended for sale. It emphasized that treating both types of transactions identically for GST purposes violates Article 14 of the Constitution which guarantees fundamental right to equality.
3. The HC found that the Revenue's interpretation of the CGST Act frustrates its objective to prevent cascading of tax and imposes an undue tax burden on the petitioner. The court reasoned that since the petitioner was letting out the property and paying GST on rental income, denying ITC would result in undue tax burden.
4. Relying on the precedent set in (1999) 2 SCC 361, the court stressed that the purpose of ITC is to benefit the assessee. Therefore, if GST is paid on rental income from investments on which GST was already paid, ITC should be allowed. The court asserted that the credit mechanism is intended to benefit the assessee, and thus, ITC should be allowed in such cases.

C. Hon'ble SC framed the Issues:

The issue that materializes is whether ITC can be availed in respect of goods and services used for constructing a shopping mall against GST payable on rent income from tenants of the constructed mall. For this, SC had following main questions for consideration based on the submissions made by the parties, the

- C.1 First Issue:** Whether clauses (c) and (d) of Section 17(5) of the CGST Act are unconstitutional? **(Note: Refer to Para D.1 below)**
- C.2 Second Issue:** Whether the definition of “plant and machinery” in the explanation appended to Section 17 of the CGST Act applies to the expression “plant or machinery” used in clause (d) of sub-section (5) of Section 17? **(Note: Refer to Para D.2 below)**
- C.3 Third Issue:** If it is held that the explanation does not apply to “plant or machinery”, what is the meaning of the word “plant”? **(Note: Refer to Para D.3 below)**

Note: Refer to Para D.4 and Para D.5 below pertaining to matter remanded to HC and rejection of Writ Petition respectively.

D. Judgment of the Supreme Court:

The Supreme Court granted the Revenue Department's SLP in the Safari Retreats Pvt Ltd case and stated as per below:

- D.1** The challenge to the constitutional validity of Section 17(5)(c) and 17(5)(d) and Section 16(4) of the CGST Act is not established because:
- a) classification made by the law in question is based on an intelligible differentia.
 - b) classification has a reasonable nexus with the object sought to be achieved by the law
- SC states that the Union of India rightly contends that immovable property and immovable goods for the purpose of GST constitute a class by themselves. Clauses (c) and (d) of Section 17(5) apply only to this class of cases. The right of ITC is conferred only by the Statute; therefore, unless there is a statutory provision, ITC cannot be enforced. It is a creation of a statute, and thus, no one can claim ITC as a matter of right unless it is expressly provided in the statute. It cannot be disputed that the legislature can always carve out exceptions to the entitlement of ITC under Section 16 of the CGST Act.
- D.2** The expression “plant or machinery” used in Section 17(5)(d) cannot be given the same meaning as the expression “plant and machinery” defined by the explanation to Section 17.
- D.3** **The question whether a mall, warehouse or any building other than a hotel or a cinema theatre can be classified as a plant within the meaning of the expression “plant or machinery” used in Section 17(5)(d) is a factual question** which has to be determined keeping in mind the business of the registered person and the role that building plays in the said business. If the construction of a building was essential for carrying out the activity of supplying services, such as renting or giving on lease or other transactions in respect of the building or a part thereof, which are covered by clauses (2) and (5) of Schedule II of the CGST Act, the building could be held to be a plant.

Then, it is taken out of the exception carved out by Section 17(5)(d) to Section 16(1). **Functionality test will have to be applied to decide whether a building is a plant. Therefore, by using the functionality test, in each case, on facts, in the light of what we have held earlier, it will have to be decided whether the construction of an immovable property is a “plant” for the purposes of Section 17(5)(d).**

D.4 Remanded to HC: The writ petitions are remanded to the High Court of Orissa for limited purposes of deciding whether, in the facts of the case, the shopping mall is a “plant” in terms of Section 17(5)(d). Appeals are partly allowed in above terms.

While deciding these cases, SC said that it cannot make any final adjudication on the question of whether the construction of immovable property carried out by the petitioners in Writ Petitions amounts to plant, and **each case will have to be decided on its merit by applying the functionality test in terms of this judgment.** The issue must be decided in appropriate proceedings in which adjudication can be made on facts. The petitioners are free to adopt appropriate proceedings or raise the issue in appropriate proceedings.

D.5 The writ petitions are **rejected subject to the interpretation of Section 17(5)(d) of the CGST Act made by SC.**

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Navigating Complex Tax Landscapes: Expert FAQs

1. What is the significance of the “residential status” in income tax?

Residential status determines an individual’s tax liability in India. It is classified into three categories: resident, non-resident, and resident but not ordinarily resident, each affecting how global income is taxed.

2. How does the Double Taxation Avoidance Agreement (DTAA) work?

The DTAA is a treaty between India and another country that prevents individuals from being taxed twice on the same income. Understanding its provisions is crucial for expatriates and international investors.

3. What are the implications of Transfer Pricing regulations?

Transfer Pricing regulations govern the pricing of transactions between related entities in different tax jurisdictions. Non-compliance can lead to significant penalties and adjustments in taxable income.

4. What are the tax consequences of a Limited Liability Partnership (LLP) converting to a Private Limited Company?

The conversion can trigger tax implications such as capital gains tax on the transfer of assets, and understanding the specific provisions under the Income Tax Act is crucial for seamless transition.

5. What are the tax implications of income from foreign sources for resident Indians?

Resident Indians are taxed on their global income, including foreign sources. However, understanding the impact of DTAA and the foreign tax credit is crucial to avoid double taxation.

6. What role do Special Economic Zones (SEZ) play in tax exemptions and incentives?

SEZs provide various tax exemptions and incentives to promote exports, including a 100% income tax exemption on export profits for the first five years. Understanding eligibility and compliance is vital for businesses operating within SEZs.

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