Critical Issues prevailing under GST

CA Tushar Aggarwal  CA Pitam Goel

TATTVAM ADVISORS
Tax Consultants
01 Departmental Notice for difference between 2A and 3B – Reversal required or not?

02 Payment of consideration within 180 days

03 Rule 36(4) has to comply with GSTR-2A or GSTR-2B?

04 ITC on CSR expenses

05 CGST/SGST credit availed as IGST or vice versa

06 Taxability of FOC supplies by recipient
07. Taxability of cross charge and related party transactions
08. Taxation of liquidated damages vs deficiency in service
09. Taxability of discount and incentive schemes
10. RCM applicability on government payments
11. Supreme court judgment on extension of time limit
12. Do and Don’t – E invoicing
Departmental notices for difference between GSTR-2A and GSTR-3B – Whether reversal of ITC required?
Relevant Period

01.07.2017 till 08.10.2019

09.10.2019 till Budget 2021 amendment effective

Post Budget 2021 amendment effective
Categories of Vendors

- B2B supplies not reported in GSTR 1 by mistake.
- B2B supplies reported as B2C by mistake.
- B2B supplies reported with wrong GSTIN by mistake.
- Invoice in name of transferor.

**Vendor has filed GSTR 3B**

**GSTR 3B has not been filed**
Procedural lapse cannot deny substantive benefit

This view may be taken in scenarios where the supplier has paid tax in GSTR-3B but omitted to report tax invoice in GSTR-1.

Mangalore Chemicals & Fertilizers Ltd., 1991 (55) ELT 437 (S.C.)

The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

Hospira Health Care India P. Ltd.

2016 (340) ELT 668 (Madras)

It held that a procedure should not run contrary to the substantive right in the policy. If the procedural norms are in conflict with the policy, then the policy will prevail and the procedural norms to the extent they are in conflict with the policy, are liable to be held bad in law.
Legal Background

Section 16

- Possession of Tax Invoice or debit note or any other valid document
- Credit to be taken by 20th October of next FY
- Furnished the return
- Payment to vendor within 180 days
- Payment of tax by supplier
- Receipt of goods or services

Section 16(2)(c)
- subject to the provisions of section 41 / 43A,
- the tax charged in respect of such supply
- has been actually paid to the Government,
- either in cash or through utilization of input tax credit admissible in respect of the said supply
Section 41

Every registered person to provisionally take the credit of eligible input tax, as self-assessed, in his return which shall be credited in his electronic credit ledger.

Section 42(3) – Matching, reversal and reclaim of ITC

The provisions related to matching, reversal and reclaim of Input Tax credit. Section 42(3) of the CGST Act states that where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

Section 42(5)

The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.
## Is Reconciliation legally required?

<table>
<thead>
<tr>
<th>Rule 69 – Matching of ITC</th>
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<td>Prescribes <strong>details</strong> relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 41, <strong>shall be matched</strong> under section 42 after the due date for furnishing the return in FORM GSTR-3.</td>
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<th>Rule 71</th>
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<td>It states that any <strong>discrepancy</strong> in the claim of input tax credit in respect of any tax period, specified in sub-section (3) of section 42 and the details of output tax liable to be added under sub-section (5) of the said section on account of continuation of such discrepancy, shall be made available to the recipient making such claim electronically in <strong>FORM GST MIS-1</strong> and to the supplier electronically in <strong>FORM GST MIS-2</strong> through the common portal on or before the last date of the month in which the matching has been carried out.</td>
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*On perusal of the aforesaid provisions, it can be said that there is a specific mechanism for reversing the credit in case of the discrepancy in the ITC availed by the recipient against the output liability of the supplier. However, the mechanism has been kept in abeyance due to some technical glitches in the GSTN System.*

- **Condition laid down under Section 16(2)(c) is subject to the provisions of Section 41 read with Rules 69 and 71**
- **ITC reversal mechanism as laid down in Section 41 read with Rules is kept in abeyance**
• Section 16(2)(c) is **arbitrary** as it doesn’t differentiate between tax evaders and bonafide taxpayers

• **Bonafide** recipient should not be penalized for non-payment of tax by supplier

• **Lex non cogit ad impossilia:** The law cannot compel the doing of impossibilities

• **No mechanism** to verify whether supplier has actually paid tax to the Government

• Denial of ITC to buyer due to default of supplier would tantamount to shifting the incidence of tax from supplier to the buyer which is unconstitutional

• Buyer would pay double tax on same transaction i.e., one at the time of purchase and another at the time of ITC reversal

• If buyer is denied ITC, it would be wholly unjustified and this causes the deprivation of the enjoyment of the property which is violative of Article 300A of the Constitution of India
Authorities cannot initiate recovery proceedings against a purchaser of goods due to the omission to remit tax to the Government on part of the seller

Facts:
The petitioners are traders in Raw Rubber Sheets. They had purchased goods from their seller and made payments thereto, including the tax component. Based on the returns filed by the seller, the petitioners availed input tax credit of the GST paid. Later, during inspection by the authorities, it came to light that the seller did not pay tax to the government, however show cause notice was issued to the petitioner. Consequently, without involving the sellers, the impugned orders came to be passed levying the entire liability on the petitioners to reverse the credit already taken due to non-payment of tax by their seller. Therefore, the petitioner have challenged the said impugned through this writ petition.

Held:
The Hon’ble High Court while allowing the Writ Petition, held the following:
• When it has come out that the seller has collected tax from the petitioners, the omission on part of the seller to remit the tax in question must have been viewed seriously and strict action ought to have been initiated against them
• The impugned orders suffer from fundamental flaws of non-examination of seller in the enquiry and non-initiation of recovery action against seller in the first place
Therefore, the impugned orders are quashed and the matter is remitted back to the file of the authorities
In the event that selling dealer fails to deposit the tax collected by him from the purchasing dealer, the remedy for the department would be to proceed against the selling dealer for recovery of such tax. Further, in cases where the department is satisfied that there is collusion of purchasing and selling dealer then proceeding under Section 40A of the DVAT Act can be initiated.

It was held that “the benefit of input tax cannot be deprived to the purchaser dealer, if the purchaser dealer satisfactorily demonstrates that while purchasing goods, he has paid the amount of tax to the selling dealer. If the selling dealer has not deposited the amount in full or a part thereof, it would be for the revenue to proceed against the selling dealer.”

It held that that no liability could be fastened on a buyer on account of non-payment of tax by the seller in the treasury unless a case of fraud is made out by the Revenue, or unless collusion/connivance between the seller and buyer is established.
It is clarified that the furnishing of outward details in FORM GSTR-1 by the corresponding supplier(s) and the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis in consonance with the provisions of section 16 of the Act. The apprehension that ITC can be availed only on the basis of reconciliation between FORM GSTR-2A and FORM GSTR-3B conducted before the due date for filing of return in FORM GSTR-3B for the month of September, 2018 is unfounded as the same exercise can be done thereafter also.
Amendment in Section 16(2)

- No registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,

  (a) he is in possession of a tax invoice or debit note
  (aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37,
  (b) he has received the goods or services or both
  (c) the tax charged in respect of such supply has been actually paid to the Government,
  (d) he has furnished the return under section 39
Section 16 of the CGST Act provides for conditions and restrictions subject to which the input tax credit shall be credited to the electronic credit ledger. It would be logical to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in Form GSTR 3B to that reflected in GSTR 2A of the recipient, subject to additional amount available under the rule 36(4).
Relevant Period

01.07.2017 till 08.10.2019

09.10.2019 till Budget 2021 amendment effective

Post Budget 2021 amendment effective
Payment of consideration within 180 days
Non-payment of consideration within 180 Days.

- **Section 16(2)** – Where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply of goods or services along with the tax payable thereon, within a period of **one hundred and eighty days** from the date of issue of invoice by the supplier, the amount equal to Input tax credit availed by the recipient shall be added to his **output tax liability**, along with **interest** thereon, in such manner as may be prescribed.

- The recipient shall be entitled to avail Input tax credit on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

- What does **failure to pay** means?

- What if contract term provide that payment is to be made within 200 days from date of issuance of invoice?
Reversal of Input Tax Credit

As per rule 37

Reversal of input tax credit in case of non-payment of consideration

Failure of Payment within 180 days from the date of issue of invoice shall furnish the details of such supply, the amount of value not paid and amount of ITC availed but not paid to the supplier in FORM GSTR-2 for the month.

Provided that the value of supplies made without consideration as specified in Schedule I shall deemed to have been paid for the purpose of second proviso to sub section (2) of section 16.

Rule 37(2): The amount of ITC which is not paid to the supplier shall be added to the output tax liability of the registered person for the month in which details are furnished.

Rule 37(3): The registered person shall be liable to pay interest at a rate as specified u/s 50 for the period starting from the date of availing such credit till the date when such amount is added in output tax liability is paid.

Rule 37(4): The time limit as specified u/s 16(4) shall not apply to a claim for re-availing of any credit, in accordance with the provision, that has been reversed earlier.
Reversal of ITC owing to ‘failure of payment’ within stipulated time period

According to 2nd proviso to Section 16(2)(d) of Central Goods and Service Tax Act, 2017 – Where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply and along with tax payable thereon **within a period of one hundred and eighty days from the date of issue if invoice** by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.

The Amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon.
Meaning of Non – Payment or failure to pay

Royal Calcutta Turf Club Vs. Wealth Tax Officer
The word Failure means “Non-fulfilment of an obligation imposed”.

Kavungal Kooppakkattu Zeenath Vs. Mundakkattu Sulfiker Ali
“Failure means not doing something that one is expected to do”

Ram Kishore Vs. Bimla Devi and Ors.
The word fails cannot connote the meaning of voluntary refusal. These words do not give a discretion or right to the person

Thattessara Subbaraya Vs. Chinne Gowda &Ors.
“Failure means the there is an omission on the part of the person to do something which it is possible for him to do

In Malaysian Airlines Vs. Union of India – Failure to pay means non-payment, which means failure to pay when due. In the said case, there is a penalty imposed if amount of foreign travel tax collected is not paid to the government, within fifteen days from the date of collection. It was held that failure to pay within this prescribed time frame would mean non-payment or failure to pay. If any persons fails to pay within the statutory period, then such person is well within the sweep of the words “failure to pay”
Once the statutory period is over and breach in payment of tax is committed, then it is immaterial when the defaulter in future is making the payment. Applying the said judgement, second proviso of section 16(2) of the CGST Act should only trigger when payment is due.
It is amount held back from a payment made to be made to the supplier. It is generally held to ensure that supplier performs all of its obligations under the contract and the amount is released either on practical completion or after the end of defects notification period.

GST Implication on Retention Money?

- Where a recipient fails to pay to the supplier the amount towards the value of supply of goods or services along with the tax payable thereon within a period of 180 days, such amount shall be added to output tax liability.
- Shall reversal under above section required to be done for consideration retained by recipient?
GSTR 2A vs GSTR-2B
Rule 36(4) of CGST rules – Whether GSTR 2A or 2B?

Rule 36(4)-
Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, shall not exceed 5 percent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility.

Details furnished in GSTR-1 is populated to GSTR 2A and GSTR 2B
## GSTR-2B vs. GSTR-2A

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Invoice Date</th>
<th>Reporting in GSTR-1 for the month of</th>
<th>Date of filing of GSTR-1</th>
<th>Auto-population in the month of</th>
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<td>11-02-2021</td>
<td>GSTR-2A</td>
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<td>11-04-2021</td>
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Late filing of return by supplier will auto-populate ITC in the delayed month. This is due to static nature of GSTR-2B wherein data freezes on 12th of the following month.
What to opt?

GSTR-2A
- Early Credit
- Dispute from Department
- More Reco issues

GSTR-2B
- Delayed Credit
- No Dispute
- Less Reco Issues
- Only GSTR-2B in future?

No loss of credit either in GSTR-2A or GSTR-2B?
Rule 36(4) of CGST rules – Whether GSTR 2A or 2B?

Subject: Restriction in availment of input tax credit in terms of rule 36(4) of CGST Rules, 2017

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<tr>
<th>Sl. No.</th>
<th>Issue</th>
<th>Clarification</th>
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<td>3</td>
<td>FORM GSTR-2A being a dynamic document, what would be the amount of input tax credit that is admissible to the taxpayers for a particular tax period in respect of invoices / debit notes whose details have not been uploaded by the suppliers?</td>
<td>The amount of input tax credit in respect of the invoices/debit notes whose details have not been uploaded by the suppliers shall not exceed 20% (now 5%) of the eligible input tax credit available to the recipient in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub- section (1) of section 37 as on the due date of filing of the returns in FORM GSTR-1 of the suppliers for the said tax period. The taxpayer may have to ascertain the same from his auto populated FORM GSTR 2A as available on the due date of filing of FORM GSTR-1 under sub-section (1) of section 37.</td>
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The petitioner challenged the notification introducing Rule 36(4) of the CGST Rules placing restrictions on availing ITC at 10/20 percent over and above the amount reflected in GSTR 2A, despite having a valid tax invoice.

The petitioner submitted that such introduction is *ultra vires* to Sections 38(1) and 42(3) of the CGST Act.

The matter has been admitted by the Rajasthan High Court and was last heard on 16 September 2020.
**Grounds for challenging Rule 36(4)**

Existence of a enabling section in the statute for the purpose of making Rule is necessary which is absent in case of Rule 36(4)

**Decisions**

a) **Academy Of Nutrition Improvement vs. Union of India**

b) **General Officer ... vs Subhash Chandra Yadav & Anr.** (1988 AIR 876)

c) **State Of Karnataka And Anvr vs H. Ganesh Kamath Etc.** (1983 AIR 550)

d) **Sukhdev Singh & Ors vs Bagatram Sardar Singh** (1975 AIR 1331)

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Whether general power under Section 164 can be used for the purpose of Rule 36(4)?

The Bombay High Court in case of **Nelco Limited v. Union of India** has held that Section 164 of the CGST Act is wide enough to enable the framing of rules fixing a time limit to claim Transitional ITC.
Vendor Management

- Invoice issued timely along with all particulars
- Return filing and tax payment
- Revise PO Terms
- GSTR 2B ??
Input tax credit on CSR expenses
• **Section 135 of the Companies Act, 2013** requires every company having a specified net worth or turnover or profit, to contribute at least **two per cent of its average net profit** towards satisfying its corporate social responsibility.

• Schedule VII of the Act and the Companies (Corporate Social Responsibility) Rules, 2014 provide for certain conditions and guidelines which are geared towards advancing CSR objectives.

• This stipulation *inter alia* relates to activities ranging from eradicating extreme hunger and poverty to imparting employment enhancing vocational skills and promoting gender equality.

• **Input tax credit availability on CSR Expenses?**
Whether CSR expenditure is in the course or furtherance of business?

- CSR activities are a part of the commercial transactions of a corporation, wherein the entity provides certain contributions and earns goodwill, which is crucial part of any corporate undertaking.
- They have to be carried out by certain companies, in absence of which, they can face repercussions
- CSR therefore facilitates the furtherance of a business by being a valuable but also imperative input.

M/s Dwarikesh Sugar Industries Limited, 2021-VIL-168-AAR

- The AAR observed that the applicant is compulsorily required to undertake CSR activities in order to run its business and accordingly, it becomes an essential part of his business process as a whole.
- Therefore the said CSR activities are to be treated as incurred ‘in the course of business’.
- Taking this into consideration, the Authority concluded that ITC in terms of Section 16, CGST Act, is to be allowed on such transactions.
ITC on CSR Expenses

M/s. Essel Propack Ltd. vs. Commissioner of CGST, Bhiwandi, 2018 (362) E.L.T. 833 (Tri.-Mumbai)

- CSR not only holistic approach but integrating core business strategy since same addresses well being of all stakeholders and not just company’s shareholders
- CSR also augmenting credit rating of company as well as its standing in corporate world
- Sustainability of company dependent on CSR without which companies cannot operate smoothly for long period as they are dependent on various stakeholders to conduct business in economically, socially and environmentally sustainable manner i.e. transparent and ethical

Commissioner Of Central Excise, Bangalore Vs Millipore India Pvt Ltd, 2012 (26) S.T.R. 514 (Kar)

“.now the concept of corporate social responsibility is also relevant. It is to discharge a statutory obligation, when the employer spends money to maintain their factory premises in an eco-friendly, manner, certainly, the tax paid on such services would form part of the costs of the final products, and the assessee is entitled to the benefit thereof..”
Meaning of “Gift”

• Section 17(5) *inter-alia* debars ITC when goods are written off or disposed of by way of *gift or free samples*

Meaning of the term “Gift”

• **Press Release dated 10.07.2017** analysed this expression as under:
  - Gift is made without consideration;
  - It is voluntary in nature
  - Made occasionally
  - It cannot be demanded as a matter of right and one cannot move court of law for obtaining gift

• Section 122 of *Transfer of Property Act* defines “gift” as *"the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee”*

• The Madras High Court held that a *transaction undertaken due to compulsion or enforcement does not amount to a ‘gift’ within the meaning of S. 122, TOPA*.

• Thus, the voluntary nature of a gift is recognized in several legal authorities and this disposition runs contrary to the substance of a CSR, which essentially arises out of a legal mandate and not voluntarily
Meaning of “Obligation”

Meaning of the term “Obligation”

• The mandatory nature of such CSR expenses take it a step further from ‘duty’ and makes it an obligation or a liability

• “Obligation” means a duty or a liability arising in law or from contract and liability itself means subjection to a legal obligation [The Punjab National Bank Ltd. v. The Union of India, 1984 SCC Online Del 64]

• The Calcutta High Court held that the word ‘obligation’ implies not a moral duty, but a legal duty which can be enforced by law and which is imposed upon a person by an outside agency or a third party in respect of the subject-matter [State of West Bengal v. Iswar Damodar Jew and others 1975 SCC OnLine Cal 136]

• The CESTAT, New Delhi held that the expenditure on CSR is a statutory requirement under the Companies Act [Northern Coalfields Ltd. v. Commissioner of GST, Cu. & C.E., 2019 SCC OnLine CESTAT 7515]
Whether ITC can be availed on CSR expenses

**Possible view**

- It can be said that CSR activities is a mandate by the statute, thereby making it an obligation and clearly discerning the difference between goods given under CSR and gifts distributed otherwise.
- Therefore, a view may be taken that ITC on CSR expenses is not restricted under the expanse of Section 17(5)(h) of CGST Act as gifts.
- However, ITC on CSR expenses is highly prone to dispute by the department in which case the relief can be expected at the higher judicial forums only.

**Alternate mechanism**

- Avail ITC on CSR expenses in GSTR-3B of the month in which such CSR expenditure is incurred or till September of the next financial year.
- Also, reverse such ITC through same GSTR-3B in which such ITC is availed.
- Further, once the legal position on availability of ITC on CSR expenses is settled, the ITC can be re-availed without any time limit restriction.
Treatment of CGST/SGST credit availed as IGST or vice versa
ISSUES

Supplier has issued invoice charging IGST
But the recipient has availed CGST+SGST instead of IGST

Supplier has issued invoice charging CGST + SGST
But the recipient has availed IGST instead of CGST + SGST

Reasons for wrong availment of ITC
a) ITC availed under wrong head in books
b) ITC correctly availed in books but wrongly claimed in returns
c) Supplier wrongly reported in GSTR-1 and thus wrongly reflected in GSTR-2A/2B
Manner of utilization of ITC

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<th>Tax Heads</th>
<th>IGST</th>
<th>CGST</th>
<th>SGST</th>
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<tr>
<td>IGST</td>
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Revenue neutral situation

What if timeline prescribed under Section 16(4) for availing credit has been expired?

Scenario 1: When credit has been availed under CGST + SGST head instead of IGST

- This situation is revenue neutral
- The department does not lose or gain anything due to the availment of credit under wrong tax head
- However, this view is highly prone to disputes by department and relief is expected at higher judicial authorities only.
Judicial Precedent – Revenue neutral

*Jay Yushin Ltd. vs. Commissioner of Central Excise, New Delhi*
2000 (119) E.L.T. 718 (Tribunal - LB)

**Principle to determine presence of revenue neutrality**

a) Revenue neutrality being a question of fact, the same is to be established in the facts of each case and not merely by showing the availability of an alternate scheme;

(b) Where the scheme opted for by the assessee is found to have been misused (in contradistinction to mere deviation or failure to observe all the conditions) the existence of an alternate scheme would not be an acceptable defence;

(c) With particular reference to Modvat scheme (which has occasioned this reference) it has to be shown that the Revenue neutral situation comes about in relation to the credit available to the assessee himself and not by way of availability of credit to the buyer of the assessee’s manufactured goods;
Judicial Precedent – Revenue neutral

Commissioner of Central Excise, Puducherry Vs. Anglo French Textiles
[2018] 95 taxmann.com 329 (SC)

Facts: Assessee produced in its unit 'C' unprocessed cotton fabrics and cleared same to its unit 'A' on payment of duty. Revenue issued on assessee a notice alleging that it had to pay duty at higher rate than adopted by assessee on unprocessed cotton fabrics cleared to 'A' unit and accordingly demanded differential duty.

Conclusion: Hon’ble Supreme Court affirmed the decision of tribunal stating that since goods were cleared by assessee to its sister unit and it was eligible for credit on duty paid, entire exercise was a revenue neutral situation and this being case, demand of duty was liable to be set aside on basis of revenue neutrality.

Facts: One of the Appellant in the appeal had exported chassis fitted with the engines on which excise duty was paid @10% instead of 10% plus specific excise duty @Rs.10,000/- per chassis. The duty paid was available as rebated to the Appellant since the goods had been exported. But, the Adjudicating Authority confirmed the demand alongwith interest and penalties

Conclusion: The Hon’ble Tribunal held that even if there is short payment of duty by the appellant, the same was available as rebate since the goods have been exported which leads to the situation of “revenue neutrality” and thus, set aside the demand

This decision was maintained by the Hon’ble Supreme Court in the case of Commissioner v. Man Trucks India Pvt. Ltd. - 2019 (27) G.S.T.L. J96 (S.C.)
Way to rectification

Reverse input tax credit under wrong tax head
Reverse input tax credit under tax heads wherein credit has been wrongly availed. Reversal of ITC would also trigger payment of interest liability.

Avail input tax credit under right tax head
Avail input tax credit under right tax head if timelines under Section 16(4) has not been expired i.e., earlier of following dates
a) before the due date of furnishing of GSTR-3B for the month of September following the end of financial year to which such invoice or debit note pertains or
b) furnishing of the relevant annual return, whichever is earlier
Revenue neutrality not possible

Scenario 2: When credit has been availed under CGST+SGST head instead of IGST

- Loss of revenue to the state as credit has been taken from that State. Hence, this is not revenue neutral
- IGST credit cannot be availed due to expiry of timeline
- CGST and SGST credit has to be reversed alongwith interest
Case Study 1: FOC Supply by Customer to contractor

Free of cost supply of steel
Case Study 2: Moulds/Die supplied by recipient

- Manufacturer enters into a contract with the customer wherein manufacturer is required to develop the product as per the specification of the customer.

- Die/Mould is provided by the customer, free of cost, to the manufacturer for the purpose of manufacturing the said product.
Case Study 3: Free of cost supply of Diesel by the recipient to supplier of mining services.
The recipient of supply may provide or make a thing available for the supplier to use in making the supply. However, the thing does not necessarily form consideration. They are rather conditions of the contract that define the supply made and are used in provision of the supply, rather than being a consideration in return for the supply. They do not provide economic value in return for the supply.

Mere enlargement of the contours of “gross amount charged” in a condition incorporated in an Exemption Notification would not amount to bringing to the tax net a value which is not taxable under Section 67 of the Act. The value of goods supplied free of cost by service recipient to provider of taxable service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider would be outside the taxable value or gross amount charged.

There is a marked distinction between “conditions to a contract” and “consideration for the contract”. A service recipient may be required to fulfill certain conditions contained in a contract but would not necessarily mean that this value would form part of taxable services that are provided.
Inclusion in Value of Supply

Section 15(2) - Inclusions in Value of Supply

(a) Taxes, duties, cesses, fees and charges other than CGST, SGST, UTGST and Compensation Cess

(b) Amount that the supplier is liable to pay but which has been incurred by the recipient of the supply

(c) Incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply

(d) Interest or late fee or penalty for delayed payment of any consideration for any supply

(e) Subsidies directly linked to the price but not those provided by the Central and State Governments
If the goods provided by the recipient forms part of obligation of supplier – **Value included**

Obligation of recipient to provide goods, free of cost, to the supplier – **Value not included**

**Key Takeaway**
Drafting of contract plays a crucial role in determining whether the FOC supplies shall form part of consideration or not?
Clarification on moulds and dies owned by OEM sent free of cost to component manufacturer

Moulds and dies sent free of cost by OEM to component manufacturer does not constitute supply provided they are not related/distinct person.

Shall not be included in value of supply by component manufacturer where cost of mould/dies was not to be incurred by component manufacturer.

If the contract between OEM and component manufacturer was for supply of components made by using mould/dies belonging to manufacturer and the same is being supplied by OEM, amortised cost of such mould/dies shall be added to value of supply.

No requirement of reversal of ITC availed on mould/dies by the OEM as the same is used in course or furtherance of his business.
A. Moriroku UT India (P) Limited vs State of UP (2008 (224) E.L.T 365 (SC))
- Toolings and Moulds supplied free of cost by the customer for manufacturing automobile components
- Sales Tax Department argued that amortization cost of toolings and moulds should be included in the value for the purpose of Sales Tax Department relied on the provisions of Central Excise Act where amortised cost is included in the value for the purpose of levy of excise duty
- The Court held that fiction created for the purpose of levy of excise duty cannot be borrowed for the purpose of sales tax. Excise is levied on the event of manufacture whereas sales tax is a tax on each commercial transaction. Tax can only be levied on actual price received or receivable.

B. Inox Air Products Ltd. Vs Commissioner of Central Excise (2012 (28) S.T.R 570 (Bom.))
- Cost of electricity supplied free of cost cannot be included in the value of taxable service.
- The fact that the same is includible under the Central Excise Act is irrelevant. Excise duty is levied on manufacture whereas service tax is levied on consideration received for services rendered.
- Unless cost of electricity supplied free of cost constitutes the consideration received by the assesse, it would not be includible in the value of taxable service.
Taxability of cross charge vis a vis ISD and related party transactions
Section 2 (61) of CGST Act, 2017

(i) An office of the supplier of goods or services or both.

(ii) The said office receives tax invoices towards the receipt of input services.

(iv) The said office issues tax invoice or other prescribed document for the purpose of distribution of credit.

(iii) The said office distributes the credit of GST paid on the said services to the supplier having the same PAN as that of the office.
Section 20(1)

The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit being distributed in such manner as may be prescribed.

i.e.

CGST as CGST or IGST
&
IGST as IGST or CGST
The Input Service Distributor may distribute the credit subject to the following conditions, namely:

(a) The credit can be distributed to the recipients of credit against a document containing such details as may be prescribed;

(b) The amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) The credit of tax paid on input services attributable to a recipient of credit, shall be distributed only to that recipient;

(d) The credit on input service is attributable to more than one recipient, credit is to be distributed among the recipients on pro rata basis of the turnover of such recipients in their state during the relevant period to the aggregate of the turnover of all such recipients as applicable;

(e) The credit on input service is attributable to all recipients, credit is to be distributed among the recipients on pro rata basis of the turnover of such recipients in their state during the relevant period to the aggregate of the turnover of all such recipients as applicable.
As per Section 7 of CGST Act, Supply can be of 2 types:

- **Without consideration** (As per Schedule I)
- **With Consideration**

**Related Party**
Section 15 of CGST Act, 2017 specifically provides situations where a person shall be deemed to be a related party. Any transactions among them shall be treated as ‘Supply’ only if it is in the course or furtherance of business. Exception has been given where value of gift by employer to employee doesn’t exceed 50000.

**Distinct person**
As per section 25(4), a person who has obtained or is required to obtain more than one registration, whether in one or more state or Union territory shall, in respect of each such registration, be treated as distinct persons. Thus, branches of an entity registered under GST in more than one state shall be treated as distinct persons.
Requirement of cross charging in case of halt in business operations

Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business

Concept of distinct Persons:

**Case 1:** Supply between 2 different GSTN located in one or more states or union territories.

Since one registration is to be considered as distinct person from other registration, company shall treat the registration supplying services as normal vendor of the recipient. **In case company is not paying its vendor anything because of force majeure clause, the same shall apply to different registration of company as well and no requirement of cross charge shall arise.**

**Case 2:** Supply between Establishments of one person located in two or more states.
Supplies between Related/Distinct persons

Common Trademark (E.g. TATA, Reliance)
Whether trademark registered in the name of holding company and used by various subsidiary or associate company be regarded as supply of services by holding company to subsidiary or associate company?

Common Infrastructure
It basically includes sharing of infrastructure/resources with the other party. Example: Accounting for all the branches being done at HO etc.

Common Management
Executives and management working for the entity as a whole be considered as provision of services between two related persons/distinct persons

After sale services provided by branches
Goods supplied by the head office to customers across India whilst warranty services are provided by the branches located in respective states. In this case, whether services have been supplied by branches to head office?
# Relevant Case Laws

## M/s Columbia Asia Hospitals Pvt. Ltd. (Karnataka AAAR) 2018-VIL-30-AAAR

- The AAAR has ruled that: “The India Management Office (IMO) of the Appellant is providing a service to its other distinct units by way of carrying out activities such as accounting, administrative work, etc. with the use of the services of the employees working in the IMO, the outcome of which benefits all the other units and such activity is to be treated as a taxable supply in terms of the entry 2 of Schedule I read with Section 7 of the CGST Act.”

## M/s OLAM AGRO INDIA LTD. 2018-VIL-526-CESTAT-DEL-ST

- The CESTAT, Delhi held that the nature of corporate guarantee as well as of bank guarantee is one and the same for facilitating lending facilities. The commission in respect of Corporate guarantee paid by the applicant to its parent company shall be treated as ‘Business Auxiliary Service’ under the Finance Act, 1994 and therefore, such commission shall be chargeable to Service Tax. Based on above, it is also chargeable to GST under the current GST regime.

## M/s KAIL LTD. 2016-VIL-61-SC

- The Supreme Court held that brand name has no relevance when the products are manufactured and sold in bulk by the holding company to its subsidiary company for marketing. However, the brand name assumes significance only when goods are marketed with publicity. Also, the appellant company is a subsidiary and/or a group company of M/s Videocon International Ltd and hence, is also allowed to use the brand name – however, when a product is marketed under the brand name, it is entitled to assume that the sale is by the holder of the brand name or by a person, who is entitled to use the brand name. So in this case, the parent company shall be deemed to the first seller under brand and usage of brand by the subsidiary will invoke supply.

## Sterlite Industries India Ltd. 2019-VIL-194-CESTAT-CHE-ST

The CESTAT, Chennai held that corporate guarantee is not same as bank guarantee since corporate guarantee is an in-house guarantee issued to safeguard financial health of associate enterprises. The Corporate guarantee commission paid by the applicant to its parent company doesn’t come within the fold of section 65(12) of the Finance Act, 1994 and therefore, such commission shall be not chargeable to Service Tax under “Banking and other financial services”.

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**Tattvam Advisors Copyright**
Emerging Issue - Cross Charge vs ISD

As per Section 7(1)(c) & section 25 of CGST Act, any supply among distinct persons is considered as GST supply if made in course of business. This concept is often denoted by the concept of "Cross Charge".

Example:

• ABC India has a plant at Maharashtra, and representative offices at Delhi, Chennai and Kolkata which are only engaged in marketing activities. All supplies are being done directly from Plant at Maharashtra to customers across India.

• In this case, Input tax credit of CGST & SGST in respect of services obtained at local offices at Delhi, Chennai and Kolkata shall be accumulated in their respective GSTINs leading to blockage of ITC. Thus, by adopting cross charge mechanism, such offices can raise invoices on their plant at Maharashtra in respect of providing business support services and consequently, accumulated ITC at these offices will be rightfully and efficiently utilised.
Issue of Credit Note and Liquidated Damages
Credit note is issued under the following circumstances:

- Taxable value or tax on invoice exceeds value and tax payable
- Deficiency in supply of goods and services
- Goods Returned

Note:-

- Timeline to issue the credit note:
  - On or before the 30th day of September following the end of the financial year in which such supply was made, or
  - The date of filing of the relevant annual return for the financial year, whichever is earlier.
- Proviso to Section 34 (2) provides that no adjustment shall be made if the incidence of tax and interest on such supply has been passed.
Adjustment of tax paid under GST be allowed in the following situations:

1. **Reduction in Base Price**
   Where due to any reason, the base rate of the goods have gone down leading to downward revision of price under the contract.

2. **Bad Debts**
   Where the debtor of the company is not in position to pay the consideration and the company has recorded him as bad debt in his books.

3. **Cancellation of Contracts**
   Where the recipient has asked the company to not provide him the services and the same ought to be cancelled.
1. **Bad debts** – There is no provision which provides for any adjustment of taxes through credit note or otherwise in case of bad debt.

2. **Cancellation of contract** – Since, taxable value and tax on invoice exceeds value and tax payable and therefore credit note can be issued. The terms of contract pay an important role in determination of taxability.

3. **Downward revision of prices under a contract** – Adjustment can be made through issue of credit note as per provisions of Section 34. It is important to note that such revision is subject to amendment in the contract of supply of goods or services or both.

<table>
<thead>
<tr>
<th>Clarification by Circular No. 137/7/2020-GST dated 13.04.2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Advance under service contract which got cancelled subsequently</td>
</tr>
<tr>
<td>(a) Supplier issued Invoice</td>
</tr>
<tr>
<td>• Supplier to issue credit note under Section 34 and adjust tax liability where invoice was issued before supply of service.</td>
</tr>
<tr>
<td>2. Sales return after issuance of invoice</td>
</tr>
<tr>
<td>• Supplier to issue credit note under Section 34 and adjust tax liability</td>
</tr>
</tbody>
</table>
As per clause (e) of SI.NO.6 of Schedule II to Central Goods and Services Tax Act, “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” is to be treated as supply of services.
The appellant imposed liquidated damages for delay in completion of the project. The AAR held that the service recipient has tolerated an act or a situation when there is delay in the completion of the project. The appellant is put to certain hardships which he tolerates in return of the payment of liquidated damages.

This AAR held that the empowerment to levy liquidated damages is for the reason that there had been a delay and the same would be tolerated, but for a price or damages. The income though presented in the form of a deduction from the payments was the income of the applicant and would be a supply of 'service'.

Held that there is mutual agreement between the appellant and the borrower that whenever repayment instruments are dishonored, the appellant can tolerate this event against some fixed agreed amount. Thus, here it can be said that the Appellant has tolerated an act or situation of default by the borrowers, for which they are recovering some amount in the name of the bounce charges.
Decisions under Service Tax

M/s K. N. Food Industries Private Ltd. vs. The CGST Commissioner & Central Excise, Kanpur, 2020 (1) TMI 6-CESTAT ALLAHABAD

In the given case, Job worker was entitled to ex-gratia payment from principal if quantum of goods manufactured is less than the standard mutually agreed. The Tribunal held that ex-gratia charges made by the M/s Parle to the appellant were towards making good the damages, losses or injuries arising from “unintended” events and does not emanate from any obligation on the part of any of the parties to tolerate an act or a situation and cannot be considered to be the payments for any services.

Madhya Pradesh Kshetra Vidyut Vitran Co Ltd. vs. Commissioner of CGST, Customs and Central Excise, 2019 (7) TMI 500-Cestat

The appellant deducted penalty from contractor bills due to various reasons. The Tribunal held that amount is already taxed and it is part of taxed amount, being deducted from the bill, by way of penalty and reflected by appellant under Miscellaneous income. Therefore, the said amount cannot be again subject to service tax.

HCL Learning limited vs. Commissioner of CGST, Noida (Allahabad CESTAT) – Final Order No. 71950/2019

The Hon’ble Allahabad CESTAT held that Service Tax shall not be leviable on notice pay recovered from outgoing employee.
Foreign Jurisprudence

Australia Goods and Service Tax Ruling GSTR 2001/4 (GSTR) explains the GST treatment of court orders and out of court settlements. It clarified that damages, loss or injury, being the substance of the dispute, cannot in itself be characterized as a supply made by the aggrieved party. The damage, loss or injury in itself does not constitute a supply under Australia GST.

Australia Goods and Service Tax Ruling GSTR 2003/11 answers whether GST is payable on early termination of a lease of goods. It clarified as under:
- payment received to compensate the lessor for damage flowing from early termination of lease is not consideration for a supply, even if lessor terminates the lease
- there is no taxable supply because a payment for genuine damages cannot be said to be made in connection with any supply
- the payment is in the nature of damages for the lessee’s breach of the lease

In New Zealand case S65 (1996) 17 NZTC 7408, the commissioner said that upon payment of the fine or penalty, the member continues to enjoy the same rights and privileges and it follows that the association is required to continue to provide the benefits of membership. Hence, it cannot be said that association ‘makes’ a supply where it already has a pre-existing obligation to continue to provide the benefits of membership.

The court held that where the client exercises the cancellation option available to him and that sum is retained by the hotelier as a fixed cancellation charge paid as compensation for the loss suffered and which has no direct connection with the supply of any service for consideration, it is not subject to tax.

M/s. Vehicle Control Services Limited reported at (2013) EWCA Civ 186: The court held that payment in the form of damages/penalty for parking in wrong places/wrong manner is not a consideration for service as the same arises out of breach of contract with the parking manager.
Issuance of Separate invoice vs. Credit Note

Contractual terms*

- **Option 1:** Liquidated Damages as a Separate Supply
- **Option 2:** Adjustment to Contract Price

*The determination of options will be subject to the terms of the contract.*
Taxability of Discount Schemes
Different Types of Discount Schemes

**Post Supply Discounts**

1. **Volume Based Discount**
   - Dependent upon purchases made by distributor. For eg. If distributor shall purchase 100 units of a product, he shall be provided with additional 3% discount

2. **Discount dependent upon sales by distributor to retailer**
   - Distributor to be provided with additional 3% discount if he sells 100 units of the product to retailer

3. **Goods sold at lower price by retailer**
   - Distributor to ask the retailer to sell goods at lower price to the customer and recover differential from the manufacturer

4. **Sale to Corporate Customer**
   - Distributor to be provided with additional 3% discount on sale made to corporate customer

5. **Organisation of event by distributor for manufacturer**
   - Displaying of product by the distributor at special strategic location
### Conditions for excluding discounts from value

<table>
<thead>
<tr>
<th>Section 15(3)(a) – Discount on invoice</th>
<th>Section 15(3)(b) – Post Supply Discount</th>
</tr>
</thead>
<tbody>
<tr>
<td>The value of the supply shall not include any discount which is given before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply.</td>
<td>The value of the supply shall not include any discount which is given—</td>
</tr>
<tr>
<td></td>
<td>(b) after the supply has been effected, if—</td>
</tr>
<tr>
<td></td>
<td>(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and</td>
</tr>
<tr>
<td></td>
<td>(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.</td>
</tr>
</tbody>
</table>
Assessee claimed deductions of Trade discount @ 2% on price realised from its dealers.

Held that contract entered was on P2P basis and mutually benefit the dealers and the assessee.

Substantial part attributable to - after sales service and advertisement expense incurred by the dealers.

2% representing adjustment for advertisement expenses and free after sale services from assessable value allowed, as it is in the nature of discount.
Discounts allowed in the trade (by whatever name such discount is described) should be allowed to be deducted from the sale price having regard to the nature of the goods, if established under agreements or under terms of sale or by established practice, the allowance and the nature of discount being known at or prior to the removal of the goods. Such trade discounts shall not be disallowed only because they are not payable at the time of each invoice or deducted from the invoice price.
Jurisprudence on Discount

IFB Industries Ltd. Vs State of Kerala [SC] and Godavari Fertilizers and Chemicals Ltd. v. Commissioner of Commercial Taxes [AP HC]

A discount given by means of credit notes issued subsequent to the sale is as much a trade discount admissible to deduction in determining the turnover of a dealer.

SOUTHERN MOTORS Vs. State of Karnataka 2017 (358) E.L.T. 3 (SC)

• To reiterate, trade discount though an admitted phenomenon in commerce, the computation thereof may depend on various factors singular to the parties as well as by way of uniform norms in business not necessarily enforceable or implementable at the time of the original sale.

• To deny the benefit of deduction only on the ground of omission to reflect the trade discount though actually granted in future, in the tax invoice/bill of sale at the time of the original transaction would be to ignore the contemporaneous actuality and be unrealistic, unfair, unjust and deprivatory.
Established in terms of agreement

Contemporaneous documents - sales invoice, agreement, brochures, communication, circular etc.

Terms of discount explained - *with consensus ad idem*

- Availability
- Nature of scheme or discount
- Conditions for entitlement of discount

Section 15(3)(b)(i)
Jurisprudence on Discount

- Availability of discount was known at the time of removal/supply
- Given for Commercial reasons and within trade practice
- Should not come back to supplier in any manner
- Quantum may not be known necessarily
- Actual quantum should be passed to customer either through credit note or in cash
Case Study 1

- Shall qualify as post supply discount if all the conditions met

- Issuance of Credit Note (Both GST and Commercial Credit note) – Allowed

- Where commercial credit note issued – No need for input tax credit reversal by distributor

- Credit note issued under Section 34 – ITC needs to be reversed by the distributor

Discount based upon purchase made by distributor from manufacturer

Section 34(1): Where one or more tax invoices have been issued for supply of any goods or services or both and the taxable value or tax charged in tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where goods supplied are returned by recipient, or where the goods or services supplied are found to be deficient, the registered person who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a FY.
As per various jurisprudence referred below, incentives received by dealers on achieving sales target shall not be considered to be promotion or marketing service under business auxiliary services.

Jurisprudence under earlier regime:

a. CST Mumbai vs Sai Service Station Ltd
b. Sharyu Motors vs CST Mumbai
c. Satnam Auto vs Commissioner of Central Excise and ST, Meerut
d. M/s Popular Vehicles and Service Ltd. Vs CCE

Please note that the said judgments does not talk post supply discount and its inclusion/exclusion in value of service.
Case Study 3 & 4

Case Study 3: Goods sold at a lower price by retailer

Case Study 4: Sale to Corporate Customer

Is it a post supply discount?

Shall it be treated as consideration received from third party and tax be paid on the entire amount?

As per Section 2(31) of the Act, consideration shall inter-alia include payment made whether by the recipient or by any other person.

Shall it be treated as supply of separate service?

As per Clause 5(e) of Schedule II agreeing to the obligation to do an act shall be treated as supply of service under GST.
Case Study 5
- Nature

Organisation of event by distributor for manufacturer

Where distributor organize an event or do any task for the manufacturer to promote the sales of his product, the same shall be treated as supply of service by distributor to manufacturer.

For eg.

- Displaying of product at a strategic location
- Running a promotional campaign
- Displaying banner of manufacturer’s products at distributor’s premises
1

**AP Group Limited vs Commissioner of Taxation**

The appropriate level for the assessment is the particular supply of the car in question by the dealer and payment which that supply triggers. The price paid by the customer is clearly consideration for the supply. But so too is the fleet rebate paid by Toyota to the dealers.

2

**GST Ruling 2014/1**

An incentive payment is third party consideration for a supply if the reason for making that payment is the supply of that motor vehicle to a particular customers.
Incentives Offered

- Manufacturer introduced various incentives on off-take and retail targets of the dealer on certain specified vehicles (Say Model A and Model B).
- Schemes were in the nature of providing accessories, loans with soft interest rates, free extended warranty, or free insurance cover provided for the vehicles. Also includes cash discount on invoice.

Manner of disbursement

- Based on the performance of the dealers in the previous months vis-à-vis the target achievement, the incentive amounts paid in respect of each brand of cars i.e. Model A and Model B.
- Model A carried lower duty than Model B.
- The amount of incentive payable in the system was given as ‘discount’ on sale of Model B only (on invoice discount).
Jurisprudence on Discount

*Tata Motors Ltd. Vs Commissioner of Central Excise, Tribunal - Mumbai*

- That is, it is not known at or prior to the removal of the goods; it is not in accordance with any established trade practice. **It is not passed on as a price reduction of the goods to which it pertains to. It is not a trade discount at all** so as to be eligible for exclusion from the assessable value.

- It is a compensation for the services rendered by the dealers on behalf of the manufacturer, masqueraded as a discount; it is not passed on to the end-customers; and it is not passed on as a price reduction of the goods to which it pertains to.

- Appellant chose to pass on incentive amounts to dealers in guise of special discount by reducing transaction value of only Indigo cars purchased by dealers during subsequent months and not by adjusting running account of dealers with appellants.
RCM applicability on payments to Govt. and Govt. authorities
<table>
<thead>
<tr>
<th>Supplier of service</th>
<th>Category of service</th>
<th>Recipient of Service</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Government, State Government, Union territory or local authority</td>
<td>Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - 1. Renting of immovable property, and 2. services specified below- i. services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; ii. services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; iii. transport of goods or passengers.</td>
<td>Any business entity located in the taxable territory</td>
</tr>
</tbody>
</table>
**Mechanism of RCM in respect of Payment made to Government or Statutory Authority**

<table>
<thead>
<tr>
<th>Government</th>
<th>“Government” to mean the Central Government. Similarly, respective State GST Acts defines “Government” to mean the State Government.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Authority</td>
<td>“local authority” means as below-</td>
</tr>
<tr>
<td></td>
<td>(a) a Panchayat</td>
</tr>
<tr>
<td></td>
<td>(b) a Municipality</td>
</tr>
<tr>
<td></td>
<td>(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;</td>
</tr>
<tr>
<td></td>
<td>(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;</td>
</tr>
<tr>
<td></td>
<td>(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;</td>
</tr>
<tr>
<td></td>
<td>(f) a Development Board constituted under article 371 of the Constitution; or</td>
</tr>
<tr>
<td></td>
<td>(g) a Regional Council constituted under article 371A of the Constitution;</td>
</tr>
<tr>
<td>Governmental Authority</td>
<td>“Governmental Authority” as an authority or a board or any other body, -</td>
</tr>
<tr>
<td></td>
<td>set up by an Act of Parliament or a State Legislature; or</td>
</tr>
<tr>
<td></td>
<td>established by any Government,</td>
</tr>
<tr>
<td></td>
<td>with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a Municipality under Article 243 W of the Constitution or to a Panchayat under Article 243 G of the Constitution.</td>
</tr>
<tr>
<td>Government Entity</td>
<td>“Government Entity” means an authority or a board or any other body including a society, trust, corporation, (i) set up by an Act of Parliament or State Legislature; or (ii) established by any Government, with 90 per cent or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.</td>
</tr>
</tbody>
</table>
The first step would be to determine whether the authority/body to whom the payment is being made qualifies as a 'government' or 'local authority'. If yes, then the second step would be to determine whether the payment is a consideration for any supply made to the taxpayer. If yes, whether the same is exempted under GST Law.

Examples of Government Payment on which RCM applicable

- ROC fees
- Product Empanelment Registration
- Embassy Legalization
- Trade License
- Drug Approval Charges
- Renewal of Trademark
- Explosive License
Supreme Court extends Limitation period from 14.03.2021 till further orders
WHAT IS LIMITATION PERIOD?

The law of limitation prescribes the time-limit for different suits within which an aggrieved person can approach the court/authority to seek redressal. Any suit, appeal or application initiated beyond the period if limitation shall be barred from being adjudicated.

SOME LIMITATIONS PERIODS UNDER CGST ACT

- As per Section 54, refunds can be filed within 2 years from relevant date
- As per Section 107, Appeals to Appellate Authority can be filed within three months from the date on which such decision or order appealed against in communicated to such person
In view of the outbreak of Covid-19 pandemic in March 2020, the Supreme Court of India vide an order dated March 27, 2020 extended the period of limitation prescribed under the general law or special laws with effect from March 15, 2020 till further orders.
In view of the difficulties faced by the litigants in filing applications/ appeals/suits/other proceedings within prescribed limitation, the following order has been issued

- In computing the period of limitation for any suit, appeal, application or proceeding, period from 15.03.2020 till 14.03.2021 shall stand excluded

- Where limitation would have expired during the period between 15.03.2020 till 14.03.2021, irrespective of the actual balance period of limitation remaining, a limitation period of 90 days with effect from 15.03.2021 shall be given to all persons

- If the remaining balance is greater than 90 days, then that longer period shall apply in such cases
The Supreme Court order dated 08.03.2021 prescribes the following manner of computation of limitation:

1. For computing limitation period, the period from March 15, 2020 to March 14, 2021 to be excluded

The period from March 15, 2020 to March 14, 2021 (Exemption Period) shall be excluded while computing the period of limitation for filing of any suit, appeal, application or proceeding

Illustration:

- For filing a suit for any cause of action arising on February 1, 2020 where the limitation is two years, the period of limitation will be computed as follows:
  
  a. February 1, 2020 to March 14, 2020 (42 days)
  
  b. The balance 688 days will be computed from March 15, 2021
2. Where limitation period expires between March 15, 2020 and March 14, 2021

Where the actual limitation period has expired during the exemption period, it will be extended by the higher of:

a. the balance number of days remaining in the limitation period from March 15, 2021, and

a. 90 days, regardless of the actual balance period of limitation, from March 15, 2021
Illustration 1:
If the cause of action for filing of a suit took place on May 15, 2017 and the limitation period is three years (i.e. ending on May 15, 2020), the computation of such period will pause on March 15, 2020. Regardless of the actual balance period being 61 days (March 15, 2020 to May 15, 2020), the limitation for filing the suit will expire after 90 days from March 15, 2021 i.e. June 13, 2021

Illustration 2:
If the period of limitation for filing a suit is due to expire on June 30, 2021, the entire balance period of limitation remaining as on March 15, 2021 i.e. 107 days (being more than 90 days) will become available from March 15, 2021 onwards
Our comments

- Based on this order of the Hon’ble Supreme Court, the extension in following actions shall be available to taxpayer:

  **Filing of appeals**
  - Filing in appeal before the Courts (Supreme Court/High Courts)
  - Filing in appeal before CESTAT under erstwhile indirect tax regime
  - Filing in appeal before Commissioner (Appeals) under erstwhile indirect tax regime
  - Filing in appeal before first Appellate Authority in GST regime
  - Appeal to Appellate Authority for Advance Ruling

- Further, since an inquiry for which summon is issued under Section 70 is deemed to be judicial proceeding, therefore, the extension shall be available to taxpayers for appearing before the authorities and providing details and documents.

- It can be argued that the extension shall also be available for making application of refund under Section 54
Supreme Court Order dated 27.04.2021 on extension of limitation period

• The Supreme Court Advocates on Record Association (SCAORA) had recently filed an application seeking the restoration of the *Suo moto order passed by the Supreme Court* on March 23, 2020, which had extended the limitation period with effect from March 15, 2020, until further orders.

• Last month, on March 8, 2021, the Supreme Court ended the extension of limitation with effect from 14.03.2021 by closing the suo moto case, observing that the COVID-19 situation has improved.

• The Application from SCAORA sought the revival of the limitation extension citing that

  "...after the passing of the above order (of March 8) there has been a considerable and instrumental change in the circumstances all across the country with regard to the Covid cases and the same has taken a serious turn and has also affected the movement of the general public at large"

• Now, the Bench comprising Chief Justice of India NV Ramana, Justices Surya Kant and AS Bopanna passed an order restoring the order dated 23rd March 2020 and in continuation of order dated 8th March 2021, directed that the period(s) of limitation, as prescribed *under any general or special laws* in respect of all *judicial or quasi-judicial proceedings*, whether condonable or not, shall stand extended till further orders.
Further, it has been clarified that the **period from 14th March, 2021 till further orders shall also stand excluded** in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.
E-invoicing
Dos & Don’ts for taxpayers
‘E-invoicing’ means reporting details of specified GST documents to a Government-notified portal and obtaining a reference number along with QR Code.

It doesn’t mean generation of invoice by a Government portal.

Generation of invoice with prescribed particulars using own ERP

Convertible in standard format (JSON)

Reporting of invoice to a central system (IRP)
What taxpayers should do

- Map business scenarios/transactions for EINV - Recoveries netted off with expenses, DN/CN for pre-GST invoices, CKD/SKD movement of goods
- ERP updation/Data transformation - Billing modules & masters for mandatory fields
- Finalise the modes of integration with IRP - Direct API/ASP/Offline utility
- Report other taxable charges freight, insurance, packaging etc. as separate line item in invoice
- Report non-taxable charges such as TCS, reimbursements under “Other Charges”
- Follow timelines for generation and cancellation of EINV
What taxpayers should do

- Download and Save details of EINV generated and cancelled within 24 Hrs.
- Amend any errors/incorrect details in EINV on GST portal if not cancelled within 24 Hrs.
- MIS reporting – Sales register vs. EINV vs. GSTR-1
- Vendor profiling & communications- identifying vendors need to be compliant
- AP process review – checks & balances to be built in system
- Stakeholder trainings and readiness
What taxpayers should **not** do

- Issue invoice having different POS
- Issue invoice starting with “0”, “/” or “-”
- Generate IRN internally
- Cancel EINV for active EWB
- Return of goods (damaged or lost) in transit on DC
- Generate EINV for self invoice – import of goods & services, URP purchases
What taxpayers should not do

- Use invoice number of cancelled invoice
- Movement of goods on invoice without QR code (IRN)
- Report financial credit notes on IRP
- Report B2C details on IRP
- Send company’s logo on IRP
- Cancel invoice partially
THANK YOU

CA Pitam Goel – 9650777079
pitam@tattvamadvisors.com

CA Tushar Aggarwal – 9953107107
tusharaggarwal@tattvamadvisors.com