



The Institute of Chartered Accountants of India
(Setup by an Act of Parliament)

Hyderabad Branch of SIRC

E-Newsletter

www.hydicai.org

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Chairman Writes

Dear Professional Colleagues,

I request all the members to be alert for the CORONA VIRUS which is now spreading in India after China and other country and kind advice to take all the preventive measures to get rid from its dangerous virus infection.



Among the programs to be conducted during this year we have planned for open an e-library for empowerment of the members to take the benefit of Self service portal, Digital Learning hub, Virtual CPE Hour, Digital Library, Centralized Distribution Portal for Publication etc. Among the other programs to be conducted during the month of March and April 2021 are Women's Day Celebration 2021, Seminar on Spice Plus scheme, Seminar on Bank Audit, Seminar on recent amendments of CARO, Career Counseling Programme in the school and colleges and Study circle meetings to discuss the professional development in different subjects by inviting our local resource person.

I would request all our members to participate, come together and derive maximum benefit out of the programmes conducted by our branch. Any type of suggestions, grievances, participation is always welcome from all our members.

Thank you!

Yours Sincerely,

CA. Machar Rao Meenavalli
Chairman.hyd@icai.in

Virtual CPE Programmes for the month of February, 2022

Day & Date	Timings	Topic	Resource Person	CPE	Delegate Fee	Venue
Thursday 03 rd Feb,2022	11 am to 1pm	Analysis of Union Budget - 2022	CA. Satish Saraf CA. Bhanu Narayan Rao YV CA. Pankaj Kumar Trivedi	2hrs	Free	Online Plat Form Zoom
Saturday 05 th Feb,2022	11 am to 1pm	Clause by Clause Analysis of Union Budget	CA. PVSS Prasad	2hrs	Free	Online Plat Form Zoom
Friday 11 th Feb,2022	5pm to 7pm	Recent Amendments in GST & Budget 2022	CA. Sumeet Sethia & Adv. Sweta Giridhar	2hrs	Free	Online Plat Form Zoom
Saturday 12 th Feb,2022	5pm to 7pm	Gearing up for Roc Annual Filings Annual Return (2020 -2021)	CA. Ujjwal Jindal	2hrs	Free	Online Plat Form Zoom
Thursday 24 th Feb,2022	9am to 5.30 pm	Seminar on Annual Returns in GST	Eminent Speakers	6hrs	Rs 600/-	FTCCI
Friday 25 th Feb,2022	6pm to 8pm	Preparing for reporting for CARO 2020 - Changes and Challenges for Medium and Small Audit Firms	CA. G. Ganesh	2hrs	Rs118/-	Branch Premises

Seminar on Annual Returns in GST

Organised by: **Hyderabad Branch of SIRC of ICAI**

Day & Date: Thursday 24th February, 2022, Venue: K.L.N Prasad Auditorium, Hyderabad

Delegate Fee: Rs 600/- Including GST

CPE Credit: 06 Hours

Timing	Topic	Speakers
09.00 - 10.00 AM	Networking & Inauguration	
Technical Session - I		
10.00 -11.00 AM	Overview of Annual Returns	CA. Satish Saraf Hyderabad
11.00 - 11.15 AM	Tea Break	
Technical Session - II		
11.15 - 1.00 PM	Detailed Discussion on GSTR-9	CA. Rajendra Prasad T & CA. Vamshi Krishna J Hyderabad
01.00 - 2.00 PM	Lunch Break	
Technical Session - III		
02.00 -3.30 PM	Detailed Discussion on GSTR-9C	CA. Sudhir VS Hyderabad
3.30 - 04.00 PM	Tea Break	
Technical Session - IV		
04.00 - 5.30 PM	Open House	CA. B. Hari Kishan CA. Sudhir VS CA. Satish Saraf CA. Rajendra Prasad T CA. Vamshi Krishna J

Proposed amendments in Budget 2022-23-GST and its impact

- CA. Satish Saraf & CA Venkat Prasad. P

The Government has proposed various changes in Finance Bill, 2022 in relations to Goods & Services Tax (GST) and which have serious impact on the businesses and compliances. The changes are mainly aimed at curbing the frauds or evasions in more rigid manner. The changes are explained below along with its impact.

1. Additional condition for ITC availment:

Previous position:

- Section-16(2) provides certain conditions for availment of ITC such as possession of invoice, receipt of goods or services, filing of return, payment of tax by the supplier, reflection of invoice in GSTR-2B (w.e.f 01.01.2022).
- Further, Section 16(2)(c) was subject to Section 43A which was inserted with an aim to implement the new return system but the same was scrapped by the Government

Proposed Amendment

- Clause (ba) was proposed to be inserted in Section- 16(2) as an additional condition for availment of ITC. Clause (ba) states that if the ITC has been marked as ineligible in the communication made to recipient under Section 38, the ITC cannot be availed.
- Reference to section 43A in clause (c) of section 16(2) has been removed as the Government has withdrawn its proposal to implement new return filing system.

Impact & comments

- The list of ineligible ITC as mentioned in GSTR-2B would not be allowed as ITC from the notified date. However, such ineligibility is linked with supplier's defaults which is practically out of the Recipient control.
- It also adds an additional responsibility to have regular check on supplier's compliance for ITC availment. Introduction of this amendment fortifies that ITC cannot be denied in the past for similar grounds (supplier's defaults in remitting taxes or registration cancelations etc.).
- The legal validity of this provisions shall be tested judicially. In the past, there are HC decisions holding that ITC shall not denied directly without attempting to recover from the suppliers.
- Further, decisions under VAT regime categorially held default of supplier cannot be a ground to deny the ITC. Few of them are - Commissioner Vs. Arise India Limited and others [TS-2-SC-2018-VAT]; Quest Merchandising India Pvt Ltd Vs Government of NCT of Delhi 2017-TIOI-2251-HC-DEL-VAT; ONXY Designs vs. The Asst. Comm of Commercial Tax Bangalore 2019(6) TMI 941 etc
- As the existing system of GSTR-1 & GSTR-3B is being continued, the provisions relating to alternative system of returns are omitted.

2. Increase in Time limit for availing the ITC:

Previous position:

- A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year.

Proposed Amendment:

- In Section- 16(4): for the words and figures "due date of furnishing of the return under section 39 for the month of September", the words "thirtieth day of November" shall be substituted.

Impact & comments:

- This is a welcome amendment as it provides additional time for availment of ITC till 30th November of next F.Y. This appears to have been done to make in line with the closure of Books of accounts & Income tax returns which generally happens by 30th Nov of next F.Y. Since the amendment is in 'substitution' form, it can be said that it applies retrospectively (for FY 2018-19 to 2021-22 also).

- Also, the amendment is also aimed at bringing parity between various due dates such as due date for availment of ITC, due date for issuing debit notes and credit notes, due date for amendments in GSTR-01, due dates for amendments in GSTR-3B.

3. **Change in return default period for cancellation of registration:**

Previous position:

The proper officer may cancel the registration-

- If a person paying tax under section 10 has not furnished returns for three consecutive tax periods
- If any registered person, other than composition tax payer, has not furnished returns for a continuous period of six months.

Proposed Amendment:

- The proper officer can cancel the registration of composition tax payer if do not furnish the return for a financial year beyond three months from the due date of furnishing the said return
- The proposer officer can cancel the registered person (other than composition taxpayer) if the returns are not filed for such continuous tax period as may be prescribed. The time period would be prescribed in rules.

Impact & comments:

- Presently taxpayers under composition scheme are liable to file only one return in a year (no monthly returns). This amendment is brought to make in line with that to specify registration would be cancelled if return is not filed by 3 months from the due date of such annual return.
- Presently registration of registered persons (other than composition dealers) would be cancelled if returns > 6 months continuously was not filed. By this amendment the default period will now be prescribed in rules which could defer for the different categories of taxpayers (> or < 6 months).

4. **Increase of time limit for raising credit notes- Section 34**

Previous position:

- A supplier shall raise a credit note pertaining to a supply of a particular financial year, not later than the
 - (i) the month of September following the end of the financial year in which such supply was made,
 - (ii) Date of furnishing the relevant annual return whichever is earlier.

Proposed Amendment:

- In section-34(2), for the word “September”, the words “the thirtieth day of November” shall be substituted.

Impact & comments:

- This is a welcome amendment as it has provided additional time for issuing credit note till 30th November of next F.Y. This appears to have been done to make in line with the closure of Books of accounts & Income tax returns which generally happens by 30th Nov of next F.Y.
- Also, the amendment is also aimed at bringing parity between various due dates such as due date for availment of ITC, due date for issuing debit notes, late date for availing ITC of previous year, due date for amendments in GSTR-01, due dates for amendments in GSTR-3B.

5. **Conditions and restrictions for filing of GSTR-1 - Section 37**

Previous position:

- Every registered person shall furnish the GSTR-01 return electronically and such details shall be communicated to the recipient within such time and manner as may be prescribed.
- Also, the due for rectification of GSTR-01 is the date of filing of return for the month of September of succeeding financial year.

Proposed amendment:

- The amendment has been proposed to prescribe additional conditions and restrictions in CGST Rules for filing the GSTR-01 and the manner of communication of such details to the recipient of such supplies.
- The following were omitted
 - a. First proviso to section 37(1)

- b. Section 37(2)
 - c. In section 37(3), the words and figures “and which have remained unmatched under section 42 or section 43”
- The time limit for the rectification of omission & mistakes in GSTR-1 has been prescribed as 30th November of next Financial Year
 - New section was inserted namely, section-37(4) to restrict a registered person to file GSTR-01 if the GSTR-01 for any of the previous tax periods has not been furnished by him.

Impact & comments:

- With the proposal to include the additional conditions for restrictions for filing GSTR-01, the legal backing has been given on the condition specified in Rule 59(6) that GSTR-1 cannot be filed if GSTR-3B of previous period is not filed. This fortifies that existing restriction is not sufficiently backed with section 37 and may run ultra vires to the Act till this amendment is notified.
- As the provisions are relating to GSTR-2 and GSTR-3 are omitted, the changes have been made in section 37 to make in line with law.
- With the introduction of Section 37(4), the taxpayers cannot file GSTR-1 without filing GSTR-1 for the previous months. This restriction was already implemented in GST portal without any legal backing and this amendment is made to support the above restriction. Further, the Government can issue notification for relaxation of the said provision for specified class of persons.

6. Communication of details of inward supplies – section 38

Previous position:

- Every registered person shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

Proposed amendment:

- As there is no need to file inward supplies returns (GSTR-2 now), Section 38 was suitably amended to support the existing system of GSTR-2A/GSTR-2B (auto-generated statement of inward supplies). This auto-generated statement would reflect the list of supplies eligible and ineligible for ITC availment. The list of supplies which are said to be ineligible (cannot be availed) would consist of invoices uploaded by following suppliers:
 - a. Supplier in the cooling period of taking new registration. (Period to be prescribed)
 - b. Supplier who has defaulted the tax payment for continuous period as prescribed in rules
 - c. Supplier who has paid tax in GSTR-3B < the tax payable in GSTR-1 subject to allowed limits
 - d. Supplier who has availed ITC more than allowed limits under section 38(2)(a).
 - e. Supplier who defaulted in complying mandatory payment of tax liability in cash if applicable (1% of tax liability)
 - f. Other class of suppliers as may be prescribed in rules.

Impact & comments:

- The restrictions specified under this section are linked to defaulters of the suppliers to deny the ITC to the recipient. This restriction requires to be tested judicially as recipient cannot be punished/denied ITC for every fault of suppliers. There are many challenges in implementations of this conditions on the GST portal and department officers for verification of ITC claims. Further, these restrictions are in conflict with the conditions prescribed in section 41.

7. Various Amendments relating to returns filing - Amendment to section 39

Previous position:

- The time limit for filing the GSTR-05 by the Non-resident taxable person is 20th of subsequent month
- The due date for payment of tax is the due date for filing the return under Section 39
- The time limit for making amendments in GSTR-3B is the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

- A registered person shall not be allowed to furnish GSTR-3B if the return for any of the previous tax periods has not been furnished by him.

Proposed amendment:

- The due for filing GSTR-05 has been proposed to be reduced to 13th of subsequent month.
- The option to pay adhoc tax amount instead of actual liability has been provided
- The time limit for making amendments has been proposed to be “30th day of November of succeeding financial year”
- The amendment has been proposed to restrict the filing of GSTR-3B if the GSTR-01 of such month or previous month is not filed.

Impact & comments:

- The option for making payment of tax on adhoc basis instead of actual liability has already been made available to the small tax payers under QRMP scheme.
- The increase in time limit for rectifications in GSTR-3B is a welcome amendment as it has provided additional time for any omission or incorrect particulars till 30th November of next F.Y. This appears to have been done to make in line with the closure of income tax returns which generally happens by 30th Nov of next F.Y.
- With respect to restriction on filing of GSTR-3B, before this amendment the GSTR-3B cannot be filed only if the earlier months GSTR-3B was not filed. From now the taxpayers cannot file GSTR-3B without filing GSTR-1 of such month or GSTR-3B of previous months. However, government may relax for certain persons which may be prescribed.
- For easy reference: Summary of increase in time limits for adjustments/ITC availment in monthly returns

Section	Particulars	Old due date	New due date
16(4)	Due date for availment of ITC for F.Y	20 th October of next F.Y	30 th November of next F.Y
34	Time limit for issue of credit notes and corresponding adjustment of tax liability	Due date for filing of Sep return of next F.Y	30 th November of next F.Y
37(3)	Rectification of errors or omissions in GSTR-1 for the F.Y	11 th October of next F.Y	30 th November of next F.Y
39(9)	Rectification of errors or omissions in GSTR-3B for the F.Y	20 th October of next F.Y	30 th November of next F.Y

8. ITC availment in monthly returns (not on provisional basis)

Previous position:

- The ITC can be availed on provisional basis and the same would be credited to electronic credit ledger
- The credit shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.

Proposed amendment:

- The concept of provisional availment is proposed to be removed
- Sub-section (2) has been substituted to state that if the supplier has not paid the tax, the ITC with respect to the same shall be reversed along with interest. However, the same can be re-availed if the supplier pays the tax.

Impact & comments:

- With this amendment
 - a. The concept of provisional ITC is removed and ITC availed in monthly returns would be considered as final.
 - b. ITC may have to be reversed along with interest (ITC is utilized), if not paid by supplier.
 - c. ITC can be re-availed once the supplier pays the tax.
- This amendment is conflicting with the conditions in section 16(2) and section 38(+ proposed amendments). Further, applicability of time limit u/s 16(4) for re-availment is not clear. In our view, it

can be said that time-limit is not applicable for re-availment cases. Government may remove the conflicts and clarify the scope & object of this amendment.

9. Omission of section 42, 43 and 43A

Previous position:

- Section 42 of CGST Act, 2017 specifies the mechanism for matching, reversal and reclaim of ITC wherein it was clearly stated the details of every inward supply furnished by a registered person shall be matched with the corresponding details of outward supply furnished by the supplier.
- Section 43 of CGST Act 2017 provides for Matching, reversal and reclaim of reduction in output tax liability.
- Section 43A: deals with the procedure for furnishing returns and availing input tax credit.

Proposed amendment:

- The section 42, 43 and 43A relating to the matching, reversal and reclaim of ITC, output tax liability has been omitted.

Impact & comments:

- As the existing system of GSTR-1 & GSTR-3B is being continued, the provisions relating to alternative system of returns are omitted.

10. Late fee for delay in TCS returns – section 47

Previous position:

- Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

Proposed amendment:

- In section-47(1), the words “or inward”, “or section 38” are omitted. In the same sub-section after the words “section 45” the words “or section 52” is inserted.

Impact & comments:

- Filing of inward supply return is dispensed with, the corresponding late fee provisions are deleted. Further, the late fee is prescribed for delay in filing TCS return (GSTR-8) by ECO u/s 52.

11. Removal of reference to inward supplies return – section 48

Previous position:

- A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 and to perform such other functions in such manner as may be prescribed.

Proposed amendment:

- In section-48(2), the words “the details of inward supplies under section 38” has been omitted.

Impact & comments:

- Filing of inward supply return is dispensed with, the corresponding provisions are deleted.

12. Transfer of balance in Electronic Cash Ledger within same PAN and legal provision backing Rule 86B – section 49

Previous position:

- Previously, Sub-section (10) allows transfer of cash balance available in Electronic Cash Ledger from one head of tax to any other head within the same registration

Proposed amendment:

- An amendment has been proposed to allow the registered person to transfer the cash balance available in Electronic Cash Ledger from one GSTIN to another GSTIN with same PAN. However, such transfer is not permissible if the said registered person has any unpaid liability in his electronic liability register.
- Sub-section (12) has been proposed to be included to take the power to prescribe such conditions and restrictions to specify such maximum proportion of output tax liability which may be discharged through the electronic credit ledger by a registered person or a class of registered persons.

Impact & comments:

With this amendment,

- The taxpayer can transfer the balance of IGST and CGST in electronic cash ledger to any other GSTIN in the same PAN, subject to that there is no unpaid liability in the electronic liability ledger.
- Provisions have been inserted to provide legal backing for Rule 86B (1% of tax liability mandatory to be paid in cash by specified persons even though ITC is available). This amendment fortifies that Rule 86B as in vogue now is ultra vires to the Act.

13. No interest on un-utilized ITC – section 50

Previous position:

- A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.

Proposed amendment:

- Sub-Section-50(3) is substituted to provide that interest on irregular availment of ITC is applicable only when such ITC is availed and utilised and is not applicable on mere availment.

Impact & comments:

- Interest is liable only on wrongly utilized ITC and not on mere availment. This provision is amendment retrospectively w.e.f. 01.07.2017 to avoid disputes for the past period. Before this amendment also, the existing provisions were sufficient to say that interest is not liable on the un-utilized ITC. Further, the rate of interest is clarified as 18% for wrongly utilised ITC not 24%.

14. Time limit extended for rectification of errors in the statement (form GSTR 8) furnished by electronic commerce Operator (ECO)

Previous position:

- The due date of making rectifications in the return filed by the ECO is the due date for filing of return for the month of September of succeeding financial year or the date of filing of annual return whichever is earlier

Proposed amendment:

- The amendment is proposed to increase the said time limit to 30th day of November of next financial year. Accordingly, now the rectification would be allowed till the 30th Day of November of next financial year or the date of filing of annual statement whichever is earlier. The effective date of the amendment is yet to be notified.

Impact & comments:

- Earlier, time limit for carrying out any rectification of any omission or incorrect particulars in Form GSTR 8 was kept based on the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier. With the proposed amendment, this time is extended to 30th November of next financial year.
- It is pertinent to note that the time limit for filing GSTR 8 is 10th of the succeeding month, which means that earlier the effective date of rectification was available up to 10th October of the next financial year.

- However, now the static date is kept at 30th November which means that the assessee needs to carry out the rectification in the return to be filed for the month of October of the subsequent financial year i.e., by Nov 10th of the subsequent month. Ideally, it must have been kept as the due date for filing the GSTR 8 of the November for the subsequent month.
- One may take a view that if the rectification is carried out in the books before 30th November and the effect of the same is given in the return filed for the month of November by 10th of December, then it must still be a sufficient compliance. However, this aspect is not clear as of now.

15. Delinking of refund of electronic cash ledger with GSTR 3/GSTR 3B

Previous position:

- Originally, upon introduction of GST, the refund of any balance lying in the Electronic Cash ledger was supposed to be refunded to the registered person based on filing of GSTR 3 u/s 39

Proposed amendment:

- Due to implementation of GSTR 3B in place of GSTR 3, this system of claiming refund of cash ledger through Form GSTR 3 could never be implemented.
- Since, GSTR 3 is kept in abeyance, therefore by virtue of this amendment, it is provided that a registered person can claim the refund of the balance lying in the electronic cash ledger in such form and manner as may be prescribed. The effective date of the amendment is yet to be notified.

Impact & comments:

- Since this difficulty was faced by the taxpayers, the GST common portal enabled a mechanism for taxpayers to claim the refund of the balance lying in electronic cash ledger. This amendment is merely to a post facto change brought in the law to give effect to the change already carried out on the GST common portal.
- However, originally, the refund of the balance lying in the electronic cash ledger was supposed to be automatic and was expected to be credited based on disclosure made in GSTR 3 without any question being asked. But now, with prescription of separate form, all the applications are now routed through the jurisdictional officers, which leads to unnecessary departmental intervention and delays in the sanction of refund claim.
- It is also seen that the refunds of cash balances are being denied based on simple procedural grounds which is leading to unnecessary litigation.

16. Extension of time-limit for filing of refund application in case of specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation, Consulate or Embassy of foreign countries.

Previous position:

- All the claims for such refunds by these bodies and organizations shall be made within six months from the last day of the month in which such supply is received.

Proposed amendment:

- The time limit for filing refund application is proposed to be two years from the last day of the quarter in which such supply was received.

Impact & comments:

- This is a beneficial amendment, and the time-limit is increased to be kept on par with other situations where the refund is granted. In our view, this benefit would be eligible even for the refund applications that are filed for the past period where the time-limit exceeds 6 months provided that the application is filed after the amendment is made effective.

17. The scope of withholding of or recovery from refunds is extended for all types of refund

Previous position:

- The power of recovery, withholding of refund was restricted only to refund of any unutilised input tax credit i.e., refunds on zero rated supply and inverted rate structure.

Proposed amendment:

- The amendment has been proposed to extend the power to recover or withholding of refund for all categories of refund. The effective date of the amendment is yet to be notified

Impact & comments:

- This amendment would adversely impact the taxpayers who would file the application for refund of the balances lying in the electronic cash ledger. This extension can lead to proper officer opening up the full-fledged for the simple refund application, thereby leading to adjustment, recovery of monies of refund.

18. Relevant date for refund against supplies made to SEZ units and SEZ developers is provided.

Previous position:

- The relevant date for filing the refund application for supplies made to SEZ Units and developers is not provided previously.

Proposed amendment:

- A new sub-clause (ba) in clause (2) of explanation is inserted to clarify that the relevant date for filing refund claim in respect of supplies made to a SEZ developer or a SEZ unit would be the due date of furnishing of return under section 39 in respect of such supplies. The effective date of the amendment is yet to be notified.

Impact & comments:

- Since there was no specific provision in the law providing for the relevant date for computation of 2 years, the taxpayers were facing harassment at the hands of the refund sanctioning officer with each officer interpreting the time-limit as per its whims and convenience.
- For instance, in the case of M/s S.R. Enterprises vs Deputy Commissioner 2021 (7) TMI 808 - COMMISSIONER (APPEALS), the refund was denied by holding a view that the relevant date must be taken from the date of supply of goods as per clause (a) of explanation 2 of sub section (14) of Section 54 of CGST Act,2017 and not from the date of payment of tax. Therefore, this amendment is a welcome move and would lead to clarity among the taxpayers and also the field formations in granting the refund for taxes paid for supply of goods or services to SEZ.

19. Interest to be paid @ 18% on wrong availment and utilization of ITC

Previous position:

- Earlier there is a confusion whether the rate of interest on wrong availment and utilisation of ITC was 24% or 18% on wrong availment and utilization of input tax credit.

Proposed amendment:

- Retrospective amendment w.e.f. 01.07.2017 is made in Notification No. 13/2017 – Central Tax, dated the 28th June, 2017 to notify the rate of interest @ 18% on wrong availment and utilization of input tax credit. Earlier the rate of interest was @ 24% on wrong availment and utilization of input tax credit.
- Similar amendment is also made in Notification No. 6/2017 – Integrated Tax, dated the 28th June, 2017 and Notification number 10/2017 – Union Territory Tax, dated the 30th June, 2017 so as to reduce the earlier rate of interest @ 24% to 18% on wrong availment and utilization of input tax credit.

Impact & comments:

- This is the welcome move from the Government. While the rate of 24% was mentioned for levy of interest in case of undue or excess claim of input tax credit, however the same was linked to cases where the ITC was not matching based on auto-system based mis-match u/s 42 and 43.
- However, since the mechanism of two-way system-based matching was itself never implemented, therefore the levy of interest rate @ 24% was not correct. But the field formations, the officers were issuing show cause notices demanding interest @ 24% in all cases of ITC matter leading to unnecessary confusion among the taxpayers and a litigation thereon. This retrospective amendment must settle the dust in this regard.

20. Retrospective exemption from central tax, Union territory tax and Integrated tax in respect of supply of unintended waste generated during the production of fish meal.

Proposed amendment:

- Amendment made in the rate notifications to provide the retrospective exemption from levy of Central Tax, Union Territory Tax and Integrated Tax on supply of unintended waste generated during the production of fish meal (falling under heading 2301), except fish oil during the period commencing from the 1st day of July, 2017, and ending with the 30th day of September, 2019 (both days inclusive).
- Further it is proposed that no refund would be available of all such tax which has been collected, but which would not have been so collected in line with the above retrospective exemption.

Impact & comments:

- The amendment is provided to grant exemption during the period 01.07.2017 to 30.09.2019 with the condition that refund would not be allowed even if the taxes were collected during the said period. In our view making retrospective amendment of exemption for the past period with the condition that the refund is not available if taxes were paid would not make real sense to brough such amendment. However, even if the refund is allowed for the past period, it would be difficult for the assessee to prove that the burden of tax is not pass on to the ultimate consumer.

21. Notifications providing the grant of alcoholic liquor licence neither a supply of goods nor a supply of service as per Section 7(2) of CGST Act, 2017 have been given retrospective effect from 01.07.2017

Proposed amendment:

- Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee has been declared as an activity or transaction which shall be treated neither as a supply of goods nor a supply of service vide notification No. 25/2019- Central Tax (R) dated 30.09.2019, notification No. 24/2019- Integrated Tax (R) dated 30.09.2019 and notification No. 25/2019- Union Territory Tax (R) dated 30.09.2019. With the proposed amendment these notifications have been given retrospective effect from 01.07.2017. However, it is proposed that no refund would be available of all such tax which has been collected, but which would not have been so collected in line with the above retrospective amendment.

Impact & comments:

- The amendment is provided to give retrospective effect to the notifications issued dated 30.09.2019 from 01.07.2017 with the condition that refund would not be allowed even if the taxes were collected before 30.09.2019. In our view making retrospective amendment for the past period with the condition that the refund is not available if taxes were paid would unnecessarily saddle the taxpayer with the excess tax burden. If the levy itself was not there since the inception of the GST the taxes paid could take the colour of money deposited with the government and the same should be refunded back to the taxpayer. However, it would be difficult for the taxpayer to prove that the burden of tax is not pass on to the ultimate consumer.

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(For queries/feedback: ss@ssnc.in, venkataprasad@hiregange.com)

Survey, Search and Seizure Update

CA. Hari Agarwal &

CA. Vivek Agarwal

- 1. Where assessee filed an application under section 132B for release of jewellery seized during search conducted upon her under section 132 and revenue failed to pass an order on same within stipulated period of 120 days from date on which last authorization for search was executed, entire seized jewellery was to be released to assessee***

Kamlesh Gupta v. Union of India

[2021] 130 taxmann.com 494 (Delhi)

Section 132B of the Income-tax Act, 1961 - Search and seizure - Retained assets, application of (Release of seized assets) - Assessment years 2018-19 and 2015-16 - During course of search and seizure operation under section 132 conducted upon assessee, jewellery and cash of certain amount was seized - Assessee filed an application under section 132B for release of seized jewellery - No action was taken by revenue on said application filed by assessee within stipulated period of 120 days from date on which last authorisation for search was executed under section 132 - Whether provisions of section 132B got triggered, once period of 120 days from date of last of authorisation for search under section 132 expired - Held, yes - Whether, therefore, entire seized jewellery was to be released to assessee - Held, yes [Paras 4 and 4.5] [In favour of assessee]

- 2. Penalty u/s 271AAA cannot be levied where the assessee has not failed to specify the manner of deriving undisclosed income per se in the absence of any question directed towards the assessee/deponent of the statement in this regard.**

BASANT KUMAR JAIN VS DEPUTY COMMISSIONER OF INCOME TAX

(2021) 63 CCH 0082 RaipurTrib

- 3. Reassessment-Validity-Reopening based on information gathered during course of statement recorded under section 132(4) from searched person by investigation wing-search assessment was required to be made u/s 153A/153C but not u/s 147.**

Samanthapudi Lavanya v. Asstt. CIT

[2021] 127 taxmann.com 188 (Visakhapatnam - Trib.)

Facts:

AO reopened assessment under section 147 in assessee's case on the basis of concealment of income estimated by DDIT (Inv.) in the appraisal report and made the additions on the basis of joint receipt which was found and seized during the course of search and the statement was recorded under section 132(4) on 10-4-2014 from M. Vijaya Kumar, Managing Director of Navya Constructions who was under the search. Assessee contended that assessments was to be made under section 153C, but not under section 147.

Held:

There was no dispute that joint receipt was seized during the course of search as mentioned by AO in the assessment order as well as in remand report and assessment was made under section 147 on the basis of statement recorded under section 132(4), appraisal report and the joint receipt. All of them were directly related to the information found from the searched person consequent to the search under section 132. No fresh information was collected by AO or no information had come to the notice of AO in normal course, other than the information collected during the course of search from searched person. Therefore, as provided under sections 153A and 153C, search assessments was required to be made under section 153A or section 153C, but not under section 147.



4. Search and seizure-Addition to income-Loose papers found during search not supported by corroborative evidence.

ACIT v. Ganpati Developers

ITA No. 1348/JP/2018

Facts:

AO, on the basis of a paper (loose sheet) found in possession of B.D. Mundra, one of the partners in assessee firm during the course of search proceedings on Mundra Group, made addition on account of receipt of on-money towards sale of land. Assessee contended that the paper was a rough working and had no link with the actual sale.

Held:

AO had not been able to adduce or bring on record any corroborative evidence to show that higher consideration was actually received by assessee outside the books of account to match with the figures of difference appearing in loose sheet. In fact, he did not even cross check with the partners Anil Mundra and Others regarding the same to establish any difference in their version given at the time of search. Even in the course of search proceedings, nothing was brought on record so as to establish any agreements to sell evidencing any cash or unaccounted consideration passing hands between buyers and assessee. If AO was convinced that assessee had suppressed the sales, he should have taxed the profit on the same because if the rate of Rs. 3,550 per square feet was true, then expenses would also be equally reducible and he had nowhere worked out that there were bogus expenses claimed against the actual sales shown. AO never made out a case under section 69C against buyers or referred the same to their respective AO. The absence of above two steps showed that AO made addition causally and without actually going into the depth of the issue and reaching conclusive findings through proper examination of evidences of persons. Therefore, addition made by AO based on the loose paper found during search without bringing on record other corroborative evidence could not be sustained.

5. No explanation is needed from assessee if gold found during search was below 500 grams per married woman: ITAT

Where gold seized during search proceeding was below limit prescribed by CBDT in Instruction No. 1916, dated 11-5-1994, department ought not to have seized such gold and addition under section 69A made in hands of assessee treating said gold as unexplained was to be deleted.

Ankit Manubhai Kachadiya v. Deputy Commissioner of Income-tax Central Circle-2, Surat

[2021] 131 taxmann.com 304 (Surat-Trib.)

Section 69A of the Income-tax Act, 1961 - Unexplained moneys (Jewellery) - Assessment year 2013-14 - During course of search at premises of assessee, gold jewellery and ornaments were found - As assessee had not submitted any details in this regard, said jewellery was treated as 'unexplained jewellery' by Assessing Officer under section 69A - Gold seized was only 636.790 grams embedded with diamonds of 7.95 carats, and in assessee's family there were three married ladies, who may hold gold up to 1500 grams, which need not to be explained by assessee, as per CBDT Instruction No. 1916, dated 11-5-1994 - Whether since gold seized was below limit prescribed by CBDT, no addition was warranted in hands of assessee - Held, yes [Para 5] [In favour of assessee]

Appreciating 'burden of proof' in GST

CA Jatin Christopher

Introduction

Taxpayers are mortally afraid of any 'Government letter', especially relating taxation. Taxpayer's response to letters from Tax Officer is met with fear and any occasion for personal interaction perceived with great trepidation. Law, GST too, provides great safeguards against 'administrative highhandedness' but when fear and trepidation blinds taxpayers eyes, no tax professional can alleviate these emotions, except by a first-hand experience of success when supervisory authorities strike down notices that are not in accordance with law.

Procedure established by law

Passion to protect interests of revenue does not permit bypassing 'procedure' established by law. Every proceeding in GST law is laid down in a specific section containing substantive administrative powers. Every substantive section assisted by rule of procedure. Every rule appended with a 'form' that acts as a guide to the administrate and information to taxpayer.

Tax administrators cannot espouse the cause of revenue collection beyond the passion shared by Legislature. Legislature in its wisdom has chosen that this law be implemented on 'self-assessment' basis and expressed that in no uncertain terms in section 59 of Central GST Act. Suspicion, howsoever, compelling does not authorize tax administration to encroach upon section 59 of Central GST.

"You have not paid GST correctly" is not a statement of fact but a matter of opinion. If tax administration holds this opinion, it is imperative to choose any of the following provisions to lawfully intervene and impeach the self-assessment carried out by taxpayer:

- a) Where there are any 'discrepancies' in any 'returns' filed by taxpayer, section 61 authorizes jurisdictional Proper Officer to issue ASMT10;
- b) Where general verification of 'correctness of' compliances are to be carried out, section 65 authorizes Proper Officer of Audit Commissionerate in case taxpayer is mapped to Central administration and of State Audit wing in case taxpayer is mapped to State administration, to issue ADT1 and commence their review but only of 'registered persons'; and
- c) Where specific intelligence is gathered, Proper Officer holding INS1 issued by Joint Commissioner (Centre or State) to inspect that specific area identified and initiate proceedings against 'any person'.

Tax administrators, especially in State formations, accustomed to exercising 'reassessment' powers tend to launch into a 'roving enquiry'. And unless taxpayer objects to such administrative overreach beyond the specific provision of law being attempted or proceedings undertaken without reference of any specific provisions of law, taxpayer will have given legitimacy to an otherwise illegitimate proceeding. See section 160(2) of Central GST Act which **entrusts taxpayer with the power to protect their rights, by raising objections at the earliest opportunity and refrain from entertain illegitimate notices.**

Rule of Law

It is as old as modern civilization which basically requires that 'law' must be knowable and only that which is published and made known must be 'enforced'. We have a Constitution and every authority operates under the Constitution. And laws made must conform to the law-making framework laid down in the Constitution, to be legitimate.

Law-making is by Legislature and not by the Government. Administration of law is left with the Executive Government. Judiciary oversees that the laws are administered according to the law laid down by Legislature. This is Rule of Law prevailing in our society. Therefore, no one is authority to travel beyond the boundaries of law laid down by Legislature and if there is any incidental leakage of revenue, wisdom of Legislature prevails over passion of tax administration.

Burden of Proof

One whose claim would fail, if no evidence were provided – is the person who bears burden of proof. In other words, if one were to make an assertion, that person bears the burden to produce proof that makes the assertion believable. Degree of proof depends on nature of assertion. Existence of a person can be proved by producing that person before a Court. Date of birth of that person cannot be proved in the same way but by producing something else that establishes the truth about assertion concerning date of birth.

Section 155 of Central GST Act states that burden on taxpayer is limited to proving "eligibility" to input tax credit and by implication, burden of proof regarding 'taxability of any transaction' remains on Revenue. And so does the burden regarding classification, time of supply, place of supply, valuation and all other aspects that are necessary to foist any demand of tax.

Penchant to operate in fear and trepidation makes taxpayer forfeit these safeguards in law and proceed to accept 'burden to prove innocence'. Supreme Court has held in AIR 1988 SC 1384 decision that provisions of Evidence Act are essentially Common Law principles to ensure delivery of justice and for this reason are applicable in taxation matters too.

Another interesting aspect to consider is where both Parties enter evidence, the question of who had the burden to prove, becomes academic and this was brought out by Supreme Court in AIR 1960 SC 100. Therefore, one who DOES NOT have this burden must refrain from tendering evidence, whether in fear or uncontrollable enthusiasm. Coupled with the doctrine of acquiescence in section 160(2) of Central GST, taxpayer is left with no excuse but to resist illegitimate exercise of authority.

Few pointers on law of evidence

Courts (as well as tax administration) are permitted in section 56 of Evidence Act, to 'take notice' without having to either plead or lead evidence on matters relating to 'existing state' of law, literature, science, etc. And in relation to GST, even if notice does not contain any averment that 'other income' appearing in P&L is arising out of 'taxable supply' made by taxpayer, Court can take 'judicial notice' of the subsistence of contractual relations as the plausible explanation for the income received.

Section 58 does not permit raising disputed about certain assertions in the notice, if those assertions were left undisputed in reply to notice. Section 101 requires person who makes any assertion, bear the burden of bringing home evidence in support of that assertion. Evidence covers two aspects, namely, pleading the assertion and adducing evidence to support or dispute the assertion. Where taxpayer omits to dispute any assertion (in the notice) and proceeds with rebuttal, then the onus to substantiate the rebuttal shifts to taxpayer in section 102.

Matters which are in the special knowledge of taxpayer, cannot be left to Revenue to prove but by taxpayer to prove. For example, information contained in accounts and records or in electronic records, they are within the special knowledge of taxpayer and Revenue cannot be expected to bear burden of proof due to section 106.

All actions by tax authorities carried out in their official capacity are presumed to be *bona fide* as in section 114 illustration (e). In relation to GST, roving enquiries on routine matters such as (i) 2A < 3B (ii) 1 ≠ 3B (ii) RCM for 2017-21 remaining unpaid (iii) unpaid interest on belated 3B (iv) RCM on inward supplies from unregistered persons up to 13 Oct 2017 and (v) tax liability of earlier months discharged out of credits availed in later months.

Matters to be brought out by Revenue in any Notice

From these learnings, following is a list of matters that Revenue is required to both allege and substantiate in any notice before attempting to fasten any liability to tax in GST:

- a. Description of (alleged) transaction;
- b. Coverage (of transaction) within definition of 'supply';
- c. Object of supply – whether goods or services – and its basis;
- d. Transaction falling outside exclusions from supply;
- e. HSN code under applicable tariff notification;
- f. HSN falling outside available exemption notification;
- g. Time of supply, per facts of transaction;
- h. Place of supply, per facts relating to Parties involved;
- i. Taxable value, where “price is the ‘sole consideration’ for supply”;
- j. Imputed value, where price is NOT the sole consideration;
- k. Applicability of ‘cum-tax’ treatment of demand.

Conspicuous in its absence is the aspect relating to ‘allowability’ of input tax credit. In earlier tax regime, where any demand for tax is made, credit that is otherwise admissible must be allowed and demand made only for ‘net tax’. This was endorsed in a catena of decisions as early as 77 ELT 511 and came to be addressed in Circular 962/5/2012-CX dated 28 Mar 2021. In GST, however, taxpayer is the one responsible to claim input tax credit through GSTR3B and credit claimed in a given ‘tax period’ and taxpayer is the one responsible to apply such credit to settle outstanding liability (in present demand).

Conclusion

Taxpayers must be mindful not to forfeit their safeguards in the law and expose themselves to the perils of ‘shifting of’ burden to prove if assertions by revenue are not disputed right at the beginning of any proceedings. Notices in GST are expected to be aplenty, but taxpayers must look for which ones are based on an opinion and which ones based on facts.

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