



Recent Developments in Goods & Services Tax (GST) & Issues in Input Tax Credit (ITC)

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Agenda

I. Recent Developments in GST

- E-Invoicing where aggregate turnover exceeds Rs.20 Cr
- Interest on delayed payment of taxes
- Never-ending Saga of Input Tax Credit under GST
- Supplies to Government Entity
- Amendments to Section 49 of CGST Act





Part I (1)

**E-Invoicing
where aggregate
turnover
exceeds Rs.20 Cr**

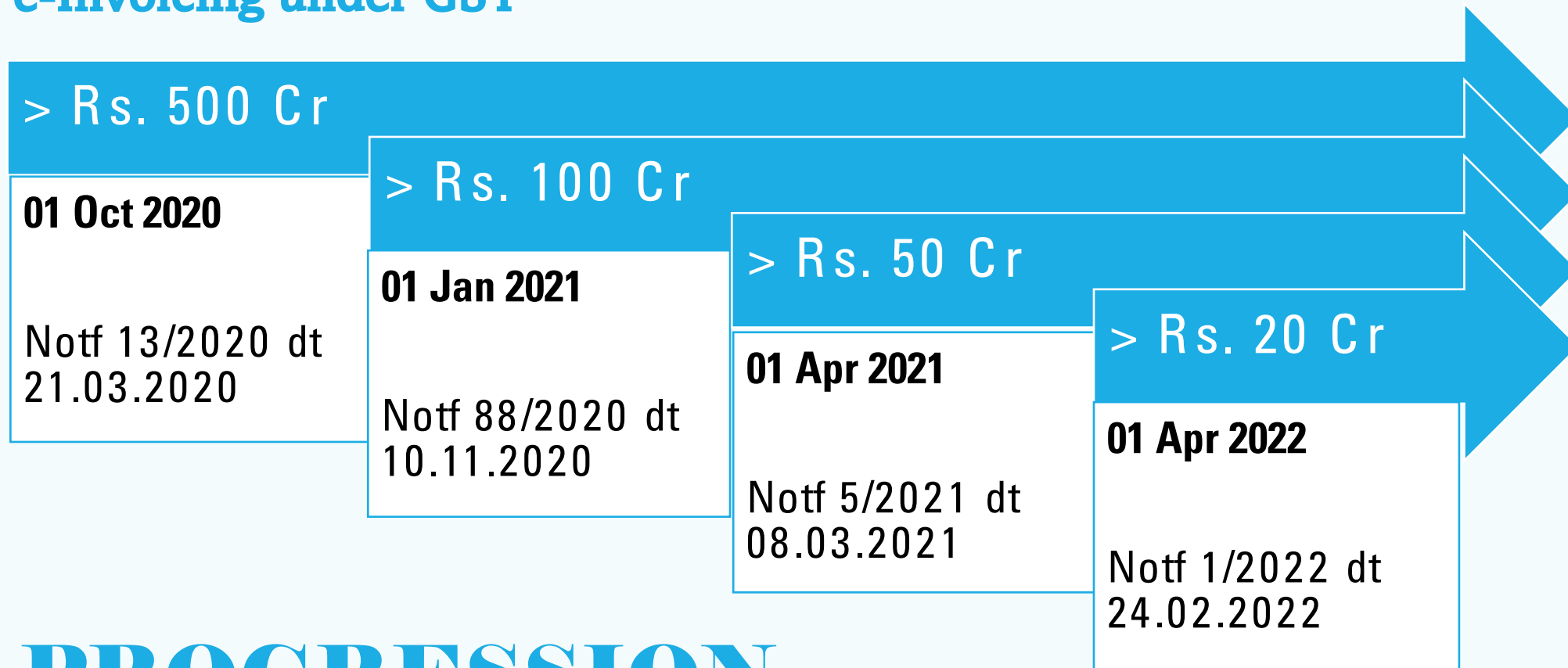
e-Invoicing under GST

- e-Invoice is a system in which **B2B invoices are authenticated electronically** by GSTN for further use on the common GST portal.
- Under the e-Invoice system, an identification number will be issued against every invoice by the **Invoice Registration Portal (IRP)** to be managed by the **GST Network (GSTN)**
- E-invoicing prescribes a standardized format of invoice which can be read by a machine. **This will require the changes in accounting software. The IRP will generate QR code and send back to taxpayer.**

ELECTRONIC INVOICING

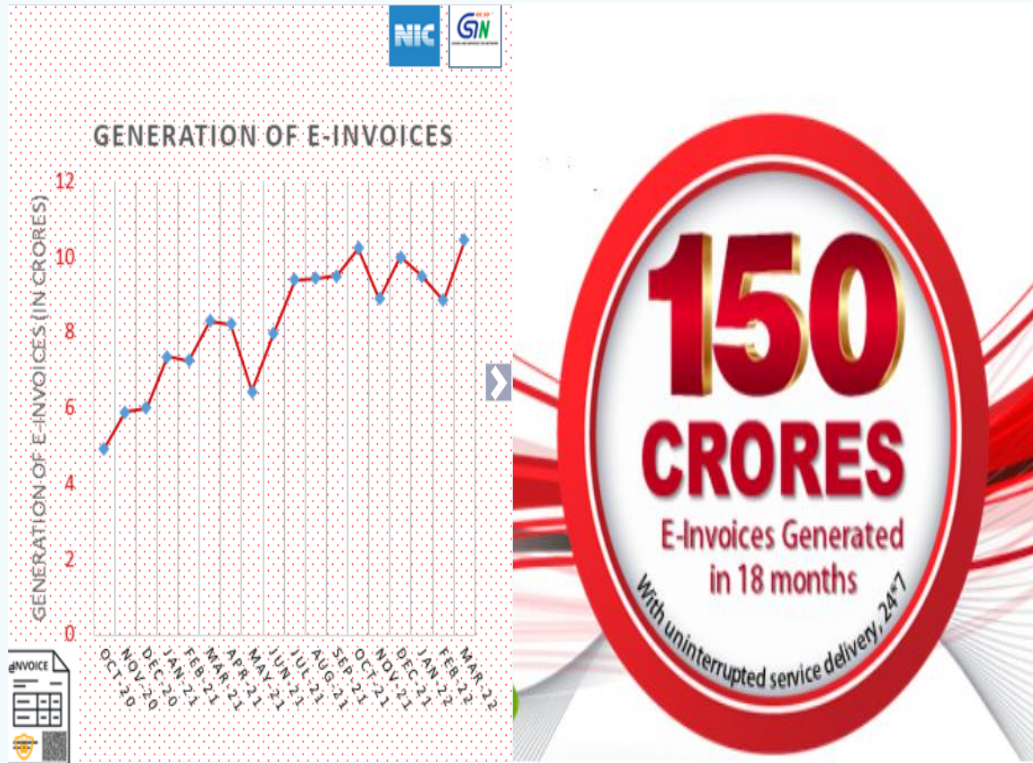


e-Invoicing under GST



PROGRESSION

e-Invoicing under GST



BENEFITS

Eliminates fake Invoice

Increased Compliance

Improved revenue collection

Avoids the errors, One standard format

Auto-population in GSTR-1 & e-Waybill

Genuineness in ITC

Common questions?

- **Our entity's aggregate turnover had crossed the prescribed threshold during current financial year (e.g. during 2022-23). From what date, I'm supposed to start e-invoicing?**

If your turnover exceeds the prescribed limit in the current financial year, then starting e-Invoicing would be required w.e.f. beginning of next financial year.

- **What documents need reporting to IRP?**

- Invoices
- Credit Notes
- Debit Notes, when issued by notified class of taxpayers (to registered persons (B2B) or for the purpose of Exports) are currently covered under e-invoice.

- **Whether e-invoicing is applicable for invoices between two different GSTINs under same PAN?**

Yes. e-invoicing by notified persons is mandated for supply of goods or services or both to a registered person.

- **Is e-invoice required for RCM transactions?**

If the invoice issued by notified person is in respect of supplies made by him but attracting reverse charge under Section 9(3), e-invoicing is applicable.

Common questions?

- **Is there any time window within which I need to report an invoice to IRP?**

No such validation is kept on portal

- **Can I amend details of a reported invoice for which IRN has already been generated?**

Amendments are not possible on IRP. Any changes in the invoice details reported to IRP can be carried out on GST portal (while filing GSTR-1).

- **Are there any penal provisions for not issuing invoice in accordance with GST Law/rules?**

The penal provisions are provided in Section 122 of CGST/SGST Act read with CGST Rules.

As per Rule 48(5), any invoice issued by a notified person in any manner other than the manner specified in Rule 48(4), the same shall not be treated as an invoice. So, the document issued by notified person becomes legally valid only with an IRN.

- **Can I verify e-Invoice?**

Yes, it is important to verify the e-Invoice using the QR Code Verify app



Part I (2)

Interest on delayed payment of taxes

Rétrospective amendment of Sec. 50- INTEREST-ing Saga!

Finance Act, 2019 (W.e.f 01.09.2020)

- Interest for delayed filing of returns payable 18%
- Payable on liability remitted through electronic cash ledger only
- Implies if returned filing delayed but not cash liability → No interest liability
- Does not apply to tax paid pursuant to adjudication u/d 73 / 74

Finance Act, 2021 (W.e.f 01.07.2017)

- Interest for delayed filing of returns payable 18%
- Payable on liability remitted through electronic cash ledger only
- Implies if returned filing delayed but not cash liability → No interest liability
- Does not apply to tax paid pursuant to adjudication u/d 73 / 74

Finance Act, 2022 (W.e.f 01.07.2017)

- Interest for wrong **availment & utilization** of ITC
- Interest at rate not exceeding 24%
- Implies – erroneous / inadvertent ITC availment but not utilized does not trigger interest u.s 50.
- Effective from 01 July 2017 but yet to be notified

Let us understand some Interest-ing Scenarios

- **Scenario A :** Belated return filed & no cash liability
- **Scenario B :** Belated return filed & partly paid in cash. Balance was available in Cash ledger.
- **Scenario C :** Missed reporting one Invoice in Jan-2022. Reported in Mar-2022 but paid through ITC ?
- **Scenario D:** Missed reporting tax on income, identified during the audit u/s74 but paid through ITC ?
- **Scenario E:** Inadvertently availed ineligible ITC . Reversed subsequently.
- **Scenario F:** Inadvertently availed & utilized ineligible ITC . Reversed subsequently.
- **Scenario G:** Short reversal / non-reversal of ITC subsequently reversed pursuant to SCN issued u/s 73



Never-ending Saga of Input Tax Credit

Part I (3)

Never-ending Saga of Input Tax Credit

First discussion paper

- GST is a tax on goods and services with comprehensive and continuous chain of set-off benefits from the producer's point and service provider's point upto the retailer's level. **The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.**

Constitutional Amendment

- The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a **common national market for goods and services.**

Reality check

- Over a period of time, there have been a series of amendments by which, the taxpayer's right to claim and utilize ITC have been curtailed significantly and the ease of doing business is getting significantly affected

As it was!

- Every registered person is entitled to take credit of input tax charged on any supply, which are used or intended to be used in the course or furtherance of his business. [Ref: Section 16(1) of the CGST Act]
- The conditions for taking Input Tax Credit ("ITC") are as under :
 - The person is in possession of a tax invoice or other prescribed documents issued by the supplier,
 - The person has received the goods or services or both,
 - **The tax charged in respect of such supply has been actually paid to the Government, and**
 - The return has been filed under Section 39. [Ref: Section 16(2)]

Was it challenged?

- Section 16(2)(c) [since 01.07.2017] specifies that ITC shall be available to the recipient if “the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply.”
- **The vires of the said section was challenged in a number of cases, mainly on the ground that**
 - i. the recipient has **no control over the supplier** to ensure that the tax (paid by the recipient to the supplier) is deposited with the Government,
 - ii. it is the **supplier’s obligation to deposit such tax** with the Government, and
 - iii. denial of ITC to the recipient in respect of supplies for which tax has been paid by the recipient to the supplier would amount to **double taxation**.

Was it challenged?

- The challenge to Section 16(2)(c) of the CGST Act is pending before various High Courts, including :
 - **Unifab Engineering [2021 (11) TMI 646 - Bombay HC**
 - **Sahil Enterprises [2021 (9) TMI 826 –Tripura HC**
 - **Aniruddha Banerjee [2021 (8) TMI 1010 - Calcutta HC**
- Various High Courts have upheld the proposition that ITC cannot be denied to the recipients due to the defaults of the supplier
 - **East Singhbhum [2013 (294) E.L.T. 394 (Jharkhand HC)**
 - **R.S. Infra-Transmission [2018 (4) TMI 1800 - Rajasthan HC]**
 - **D.Y. Beathel Enterprises [(2021) 127 Taxman. Com 80 Madras HC]**

- **It must be noted that a similar provision, i.e., Section 9(2)(g) of Delhi VAT Act was stuck down as being unconstitutional by the Delhi High Court in Arise India Limited [2017 (10) TMI 1020 - Delhi High Court], in as much as it disallowed ITC to the purchaser due to the default of selling dealer in depositing tax. The Supreme Court has maintained the said decision in Arise India [2018 (1) TMI 555].**

Mis-match of ITC 2A Vs. 3B?

- After the implementation of GST, taxpayers used to avail the entire ITC on their invoices. GSTR – 2A was implemented as a facilitation measure and did not impact the ability of the taxpayer to avail ITC. (**Press Release dated 18.10.2018**)

Insertion of Rule 36(4) vide Notification No. 49/2019 – Central Tax dated 09.10.2019

- In order to restrict ITC on the basis of GSTR-2A, Rule 36(4) was introduced to provide that a registered person shall be eligible to take ITC up to a maximum of 120 % / 110% / 105% (as amended from time to time) of the ITC as reflecting in its Form GSTR-2A.
- Absent any provision enabling the rule-making body to place such substantive restrictions on the availment of ITC, the Constitutional validity of Rule 36(4) has been challenged

Insertion of Section 16(2)(aa) to give statutory sanction to Rule 36(4)

- Section 16(2)(aa) was inserted w.e.f. 01.01.2022 to give statutory sanction to Rule 36(4).
- Therefore, w.e.f. 01.01.2022, ITC is to be taken by the recipient only in cases where the details of the invoices / debit notes are appearing in GSTR – 2B / GSTR – 2A.
- It is evident that another onerous and impossible burden has been placed on the recipient to ensure that the supplier remains tax compliant.

New availment framework under Section 16(2)(ba)

Insertion of Section 16(2)(ba) vide the Finance Act, 2022

- Section 16(2)(ba) is proposed to be inserted to the CGST Act to provide that ITC with respect to a supply would not be available if the same is restricted in the details provided in Form GSTR – 2B under Section 38 of the CGST Act.
- The ITC availment process is being moved to a one-way communication process (auto-generated statement in Form GSTR – 2B) which would consist of a list of (i) eligible, and (ii) ineligible / restricted credits, in terms of Section 38.

Substitution of Section 38 of the CGST Act vide Finance Act, 2022

- Section 38 prescribes that recipients cannot take ITC on invoices (ineligible credits) from suppliers who have:
 - i. raised invoice within such period of registration, as may be prescribed;
 - ii. defaulted in payment of tax for a continuous period, as
 - iii. short paid the tax under Form GSTR –3B as compared to the self-assessed liability under Form GSTR –1;
 - iv. availed ITC in excess of eligible ITC;
 - v. defaulted in paying the prescribed minimum output tax liability in cash; and
 - vi. Such other cases as may be prescribed.



Part I(4)

Supplies to Government Entity

RECENT DEVELOPMENTS IN GST & ISSUES IN ITC

Supplies to Government

Types of service recipients

- Central Government
- State Government
- Local authority
- Government Entity
- Governmental Authority

Exempt

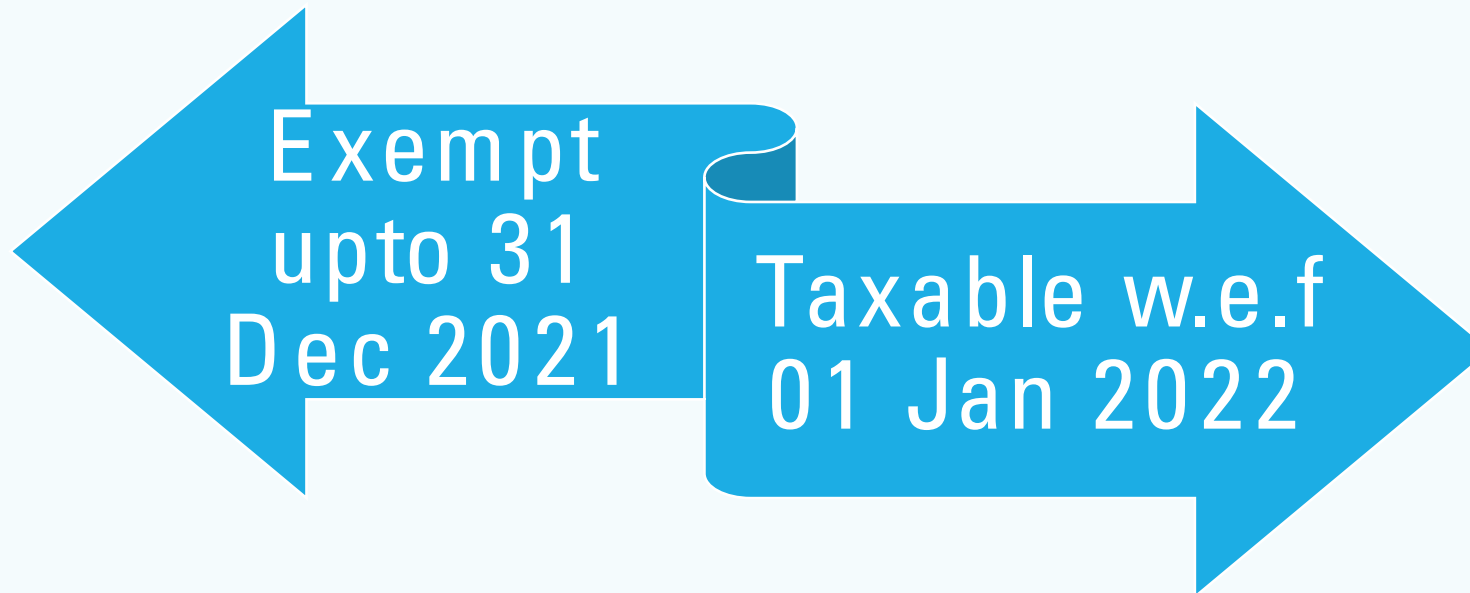
Standard-rate

Concessional rate

Exemption withdrawn

Notification No. 16/2021-CT (R) dated November 18, 2021 w.e.f. 01 Jan 2022

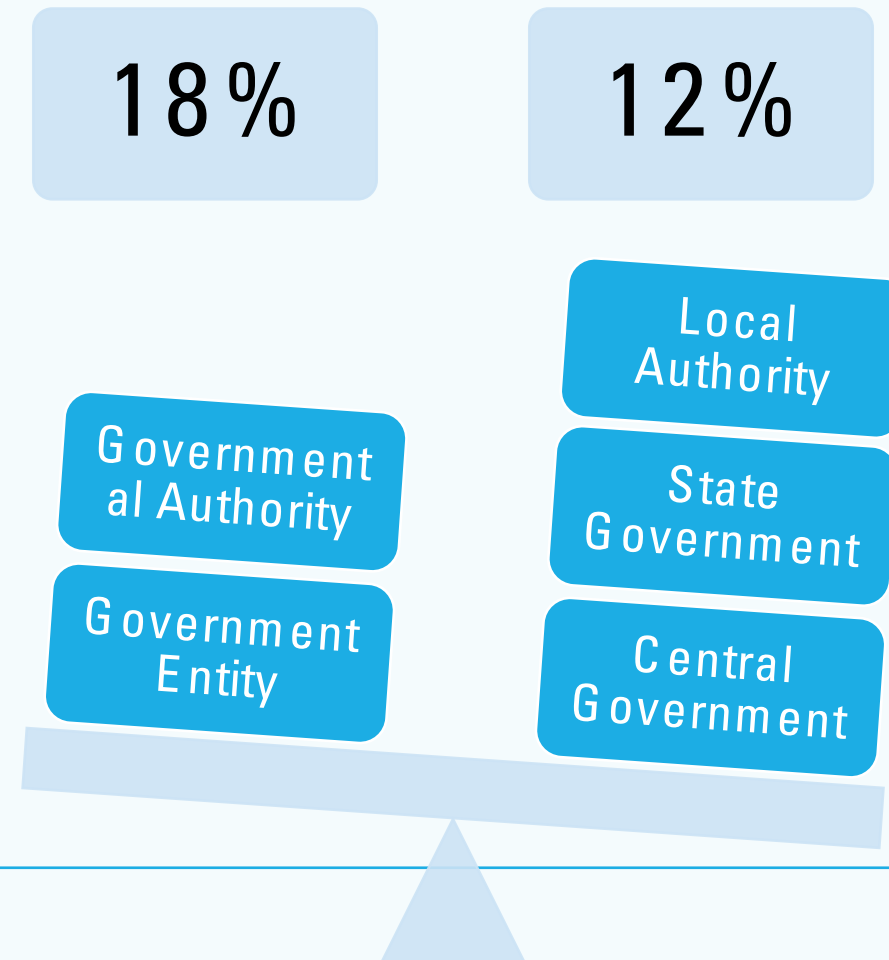
- Entry 3 of Notification No. 12/2017:
- Pure Services provided to Governmental authority / governmental entity by way of any activity in relation to any function entrusted under article 243G / 243W of constitution



Concessional rate of 12% - withdrawn

Notification No. 15/2021 CT(R) dated November 18, 2021 w.e.f 01 Jan 2022

- > 50 Advance rulings given so far
- Supplies made to “Government Entity” always matter of contention
- 12% / 18% issue
- Concessional rate scope removed w.e.f 01 Jan 2022





Part I(5)

Amendments to Section 49 of CGST Act

Amendments to Section 49 of CGST Act

Finance Act, 2022

ELECTRONIC UNDER GST

- **Section 49(10)** is being amended to allow transfer of any amount of tax, interest, penalty, fee etc. available in electronic cash ledger a registered person to the electronic cash ledger of a distinct person registered under same PAN.
- **Section 49(12)** is being inserted to provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger. It means the balance liability has to be discharged in cash.
- Vide the Finance Act, 2022, amendments in **Section 49(4)** and **Section 49(12)**, which empowers the Government to prescribe the maximum proportion of output tax liability which may be discharged through the Electronic Credit Ledger and such other conditions and restrictions as it may deem fit.

Vires of Rule 86B of CGST Rules, 2017

- Rule 86B was inserted **01-01-2021** in the CGST Rules to provide that in cases where the value of taxable supply **(other than exempt supply and zero-rated supply), in a month exceeds INR 50 lakhs**, more than 99 percent of the output tax liability cannot be discharged by using ITC. However, **it has certain exceptions such as:**
- Person/Proprietor/Karta/MD/At least two partners > One Lakh rupees of Income Tax in each of the last two financial years
- the registered person has received a refund amount of more than one lakh rupees
- which is in excess of 1% of the total output tax liability, applied cumulatively upto the current month in the financial year
- the registered person is –
 - (i) Government Department; a Public Sector Undertaking; or

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GST

2/4/20XX
local authority; or a statutory body

Vires of Rule 86B of CGST Rules, 2017



- The vires of Rule 86B has been challenged before the Gujarat High Court in **AAP and Co. [[2021] 123 taxmann.com 365]** on the ground that the CGST Act does not envisage such restriction and / or empower the rule making body to notify such a restriction. (matter currently pending)
- Considering that the amendments to Section 49 are prospective in nature and Rule 86B may have statutory backing going forward, the vires of the said rule for the period prior to enactment of the Finance Act, 2022 may still be tested in the Courts

Agenda

II. Issues in ITC

- Blocking of Input Tax Credit under Rule 86A
- Conundrum for Time-limit to avail ITC – Date of Invoice or Date of underlying supply?
- Contractual obligations under GST vis-à-vis Gift u/s 17(5)
- Blocked Credit u/s 17(5) vis-à-vis Safari Retreats





Part 2 (1)

Conditions of use of amount available in electronic credit ledger under Rule 86A

Conditions of use of amount available in electronic credit ledger under Rule 86A

Notification No. 75/2019-CT dated December 26, 2019

Backdrop

- Section 164 empowers the Government to make rules for carrying out provisions of the Act
- Rule 86A empowers the Proper officer to block ITC which is either fraudulently availed or ineligible ITC where he has **REASONS TO BELIEVE**
 - (a) (i) credit availed on invoices or debit notes issued by a **supplier, who is found to be non-existent** or not conducting any business from the place declared in registration.
 - (ii) credit availed on invoices **without actually receiving any goods or services**.
 - (a) credit availed on invoices in respect of which **tax has not been paid to the government**.
 - (b) **registered person claiming credit found to be non-existent or not conducting any business** from the place declared in registration.
 - (c) **credit availed by the registered person without having any tax invoice** or debit note or any other valid document for it.

Conditions of use of amount available in electronic credit ledger under Rule 86A

Notification No. 75/2019-CT dated December 26, 2019

Proper Officer

Total amount of ineligible or fraudulently availed input tax credit	Officer to disallow debit of amount from electronic credit ledger under Rule 86A
Not exceeding Rupees 1 crore	Deputy Commissioner/Assistant Commissioner
Above Rupees 1 crore but not exceeding Rs. 5 crore	Additional Commissioner/Joint Commissioner
Above Rs. 5 crore	Principal Commissioner/Commissioner

CBIC has issued detailed guidelines - Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017 issued vide Instruction **F. No. CBEC-20/16/05/2021-GST/1552**, dated 2-11-2021.

Instructions

- The amount of fraudulently availed or ineligible ITC shall be ascertained based on material evidence available or gathered on record. The officer should **apply his mind** as to whether there are reasons to believe and such reasons **must be recorded in writing**
- The action by the Commissioner/authorized officer, to disallow debit from electronic credit ledger of a registered person, is to be **informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit.**
- The restriction imposed as per sub-rule (1) of rule 86A **shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.**

Conditions of use of amount available in electronic credit ledger under Rule 86A

Notification No. 75/2019-CT dated December 26, 2019

Relied upon caselaws

- In **Valerius Industries v. Union of India - 2019-TIOL-2094-HC-AHM-GST**, the Court held that blocking of ITC without issuing a show cause notice and opportunity of hearing, was patently illegal and arbitrary and therefore asked the Department to accordingly unblock the ITC so blocked.
- In **M/S M.M. Traders, M/S JBM Steels, 2022 (4) TMI 417 - Allahabad HC** the High Court held the petitioners should first approach the authorised officer raising objections against the blocking of the input tax credit and the said authority would be under an obligation to decide the objection within a time bound period.
- In **New Nalbandh Traders v. State of Gujarat & 2 Other (S) 2022 (3) TMI 908 - Gujarat High Court** **“Reason to believe” is a subjective term and can be interpreted differently by different individuals.** When this rule requires arriving at a subjective satisfaction which is evident from the use of words, “must have reasons to believe”, the satisfaction must be reached on the basis of some objective material available before the authority



Part 2 (2)

ITC CONUNDRUM Invoice date Vs Supply Date

RECENT DEVELOPMENTS IN GST & ISSUES IN ITC

ITC CONUNDRUM: Invoice date Vs Supply Date

Section 99 of Finance Act, 2022 amending Section 16(4) of CGST Act, 2017

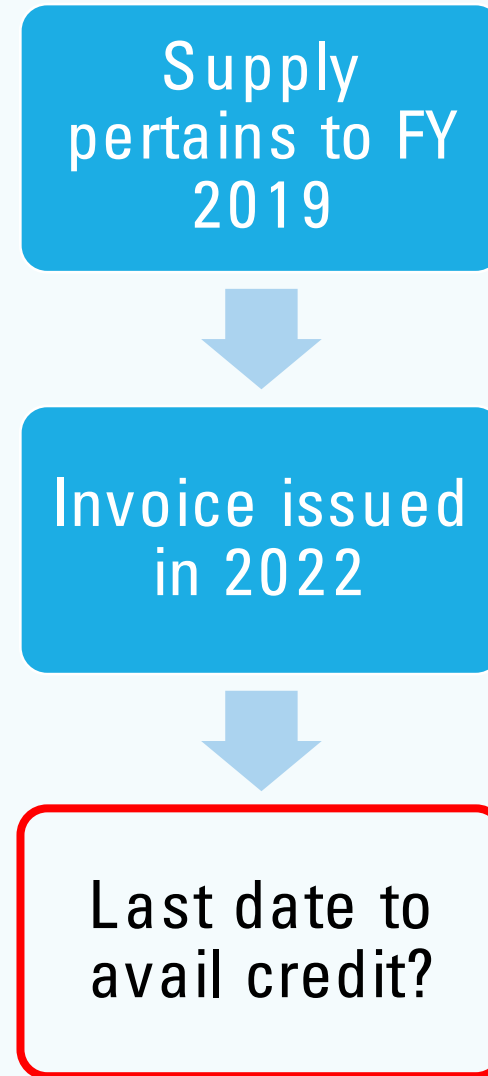
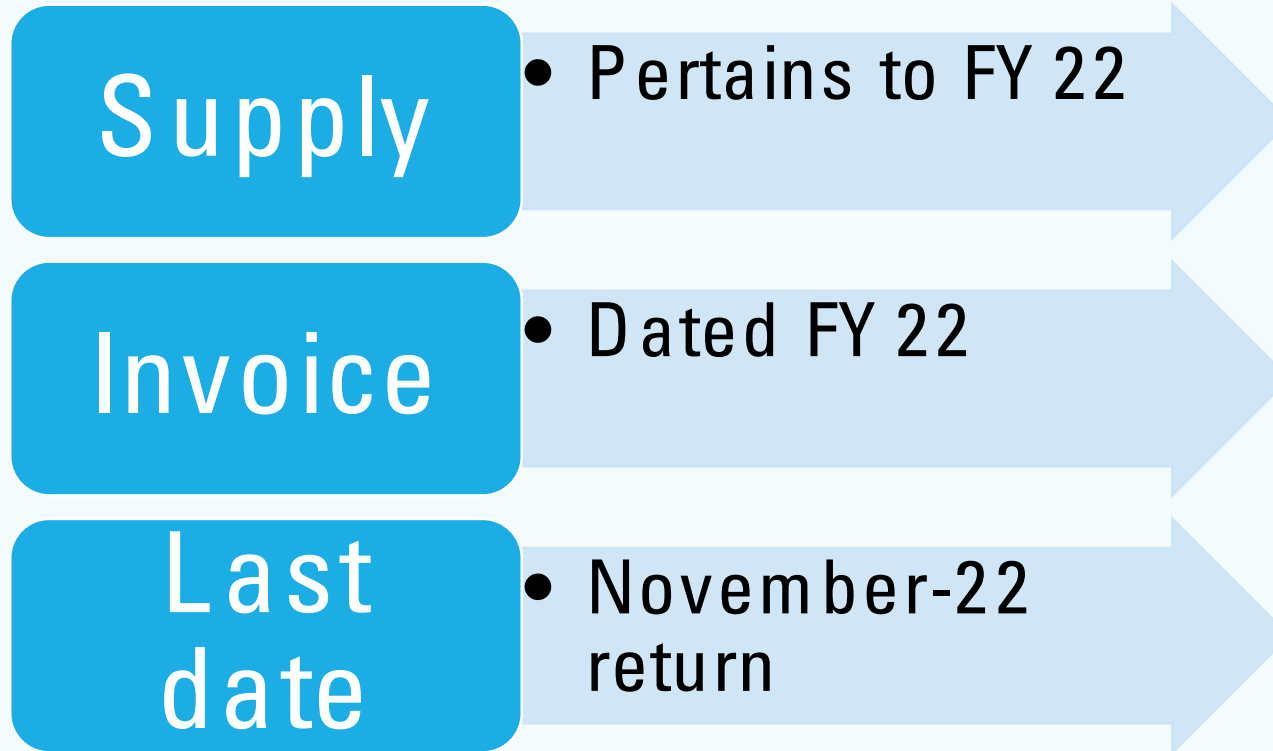
- Last date to avail input tax credit for any invoice – Sec 16(4):

“(4) 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 thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.”

Finance Act, 2022 extends the last date to avail input tax credit of any invoice to November of the succeeding financial year. Implies, 2 additional months given to tax payers to reconcile, trace and identify missed input tax credit.

What is the Conundrum?

Last date of an invoice : Invoice date Vs Supply Date





Part 2 (3)

Contractual obligations under GST vis-à-vis Gift u/s 17(5)

Contractual obligations under GST vis-à-vis Gift u/s 17(5)

Section 16, Section 17(5) of CGST Act, 2017

- Biostadt India Limited, AAR Maharashtra, 2019 (3) TMI 540
- GRB Dairy Foods Private Limited, AAR Tamilnadu 2022 (3) TMI 1368

Assessee's Question

- Whether the GST paid on inputs & input services procured by the applicant to implement the promotional scheme is eligible for Input Tax Credit under the GST law in terms of Section 16 read with Section 17 of the CGST Act, 2017?

Assessee's Contention

- Goods & services are procured **in the course or furtherance of business**
- Sales linked promotion schemes are purely for **advancement of the Company's business**
- Gift is not defined under the CGST Act. Gift means a voluntary act without any consideration. **In business, each and every act done comes with consideration.**
- These giveaways under promotional schemes have **direct nexus to increase the sales, collections and marketing & business expansion activities**

Contractual obligations under GST vis-à-vis Gift u/s 17(5)

Notification No. 75/2019-CT dated December 26, 2019

Relied upon caselaws

- In the case of **Sonia Bhat vs State of UP 1981 (3) TMI 250 (SC)**, A gift has aptly been described as a gratuity and an act of generosity and stress has been laid on the fact that if there is any consideration then the transaction ceases to be a gift.
- In the case of **Birla Corporation Ltd. vs DCIT, Kolkata 2011 (10) TMI 194-ITAT (Kol)**, The very premise that the impugned expenditure is without consideration, is wrong because the object/consideration is sales promotion. In the present case various items were given in terms of trade scheme depending upon sales targets achieved by stockiest/ dealers.

AAR's Views

- It can be inferred as if the distributor of the applicant is providing **services of increased sale** for which consideration is in the form of a gold coin is supply liable to tax.
- Even if it seems, as per the applicant, that Section 16 (1) is applicable in their case and allows them credit, **Section 17(5) shall block such credits.**
- It is interesting that the applicant has provided rewards by way of goods and also foreign tours. Thus what they provided in the scheme was goods and services. **The provisions of the clause (h) is exclusively applicable for goods.**



Part 2 (4)

Blocked Credit u/s 17(5) vis-à-vis Safari Retreats

Blocked Credit u/s 17(5) vis-à-vis Safari Retreats

- There are some goods & services on which credit cannot be claimed even though GST has been already paid during the purchases or expenses incurred. These transactions are included under Section 17(5) of the Goods and service Tax Act,2017 dealing with blocked input tax credit.
- Goods & Services received for construction of immovable property (not plant & machinery) on his own account including when such Goods/services are used in the course of furtherance of business.
- In Safari Retreats Private Limited 2019 (5) TMI 1278 - ORISSA HIGH COURT, The Provision of Section 17(5)(d) is to be read down and the narrow restriction as imposed by the Department, is not required to be accepted, inasmuch as keeping in mind the language used in EICHER MOTORS LTD. VERSUS UNION OF INDIA [1999 (1) TMI 34 - SUPREME COURT] , the very purpose of the credit is to give benefit to the assessee.
- In that view of the matter, if the assessee is required to pay GST on the rental income arising out of the investment on which he has paid GST, it is required to have the input credit on the GST

What are my options?

- Availment of ITC , Restrict utilisation (**Impact of Rule 88A may make this practically impossible**)
- Availment of ITC , Reversal of ITC and Intimation of reversal under protest to department
- Availment of ITC and Reversal of ITC without any intimation to department (except Rule 37)

**12% GST APPLICABLE ON
WORKS CONTRACT SERVICES**



Thank you



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GST Audit u/ s 65

CA Sriram Kapaganty, K V R & C o

April 22, 2022

Coverage

01. Introduction

Legal Provisions related to audit under GST Law

02. Principle of audit

Department hierarchy, Guidelines for auditors, duration of audit

03. Selection criteria

Risk factors and Parameters for selection of auditee and Process Flow

04. Important documents/details and records

Importance of every document, records and important ratios

05. Important judicial discussions

Few important judgements for constitutional challenges

06. Tips to handle and common issues

Audit u/s 2(13)

(a) Detailed examination of

i.records,

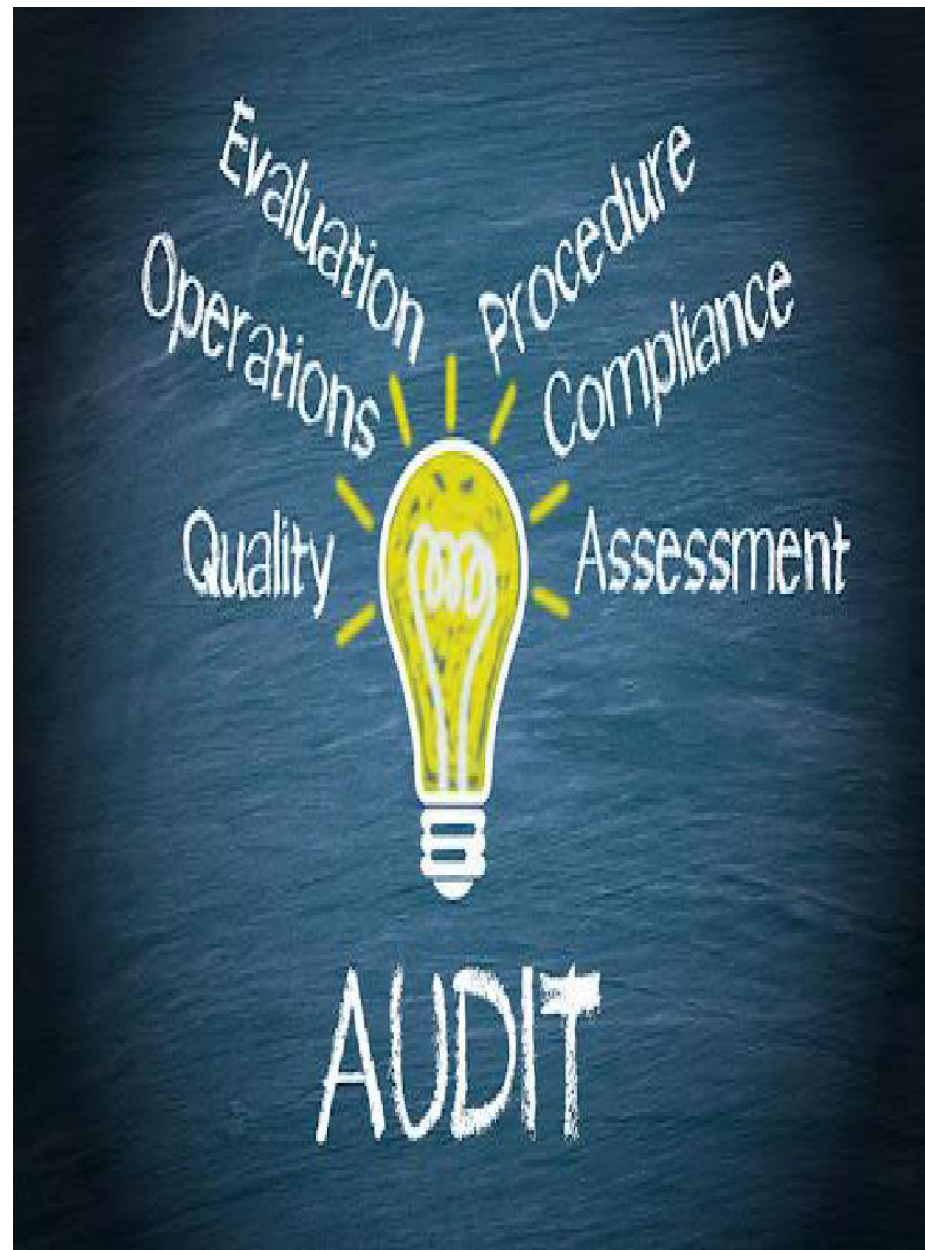
ii.returns and

iii.other documents

maintained / furnished by a registered person, under GST law/any other law or rules;

(b) For verification of correctness of -

(i) turnover declared; (ii) taxes paid; (iii) refund claimed; (iv) input tax credit availed; and (v) assessment of compliances with provisions of GST law and rules



Audit by tax authorities u/s Sec. 65

- (1) The Commissioner or any officer authorized by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
- (2) Audit at the **place of business of the registered person or in their office.**
- (3) The registered person shall be informed by way of a notice **not less than 15 working days.**
- (4) The audit shall be completed within a period of 3 months from the date of **commencement of the audit.** Extendable upto 6 months by Commissioner.
- (5) the authorised officer may require the registered person to **afford him the necessary facility** to verify the books of account or other documents, to furnish such information as he may require and render assistance for timely completion.
- (6) the proper officer shall, **within thirty days,** inform the registered person **about the findings with reason.**
- (7) **de**tection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilized – **section 73/74.**

Place of business – 2(85) and Principal Place of business - 2(89)

(85) —place of business includes—

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called.

(89) - principal place of business means the place of business specified as the principal place of business in the certificate of registration.

Provision for access to business premises and records of taxpayer for Audit u/s 71

- (1) **Any officer authorized** shall have access to any business place of a registered person to inspect books of account, documents, computers, computer programs, computer software whether reinstalled in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every person in charge of business place referred shall, on demand, make available to the authorized officer or the audit party deputed by the proper officer within 15 days of demand:
- i. such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
 - ii. trial balance or its equivalent;
 - iii. statements of annual financial accounts, duly audited, wherever required;
 - iv. **cost** audit report, if any, u/s 148 of the Companies Act, 2013;
 - v. **the income-tax** audit report;
 - vi. **any other relevant record.**

Rule 101

1. The period of **audit shall be a financial year or part thereof or multiples thereof.**
2. the proper officer shall issue a notice in FORM GST ADT-01.
3. Verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the GST Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied, the ITC availed and utilised, refund claimed, and other relevant issues and record the observations in his audit notes.
4. The proper officer may **inform the registered person** of the discrepancies noticed, if any, as observed in the audit and **the said person may file his reply** and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.
5. On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in **FORM GST ADT-02.**

Calling for documents from registered taxpayer

Form ADT-01

atleast 15 days prior to the conduct of audit and also request for providing records / documents which are necessary for conducting audit.

Registered person not volunteering to submit

another letter should be issued giving details of penal provisions contained in Section 122, 123 and 125

No Response to letter

Reminder to be issued within reasonable time

Inclusion in risk parameters

details of such registered persons should be forwarded to the respective zonal units of Directorate General – Audit.
Downgrade GST Compliance Rating.

Management at Department level

**DG Audit,
New Delhi**

**Seven Zonal Units at Ahmedabad, Bangalore, Chennai, Delhi,
Hyderabad, Kolkata and Mumbai**

**GST Audit
Commissionerate**

**Principal Chief Commissioner/Chief Commissioner
Additional/Joint Commissioner
DC/AC in-charge of sections
DC/AC in charge of Circles**

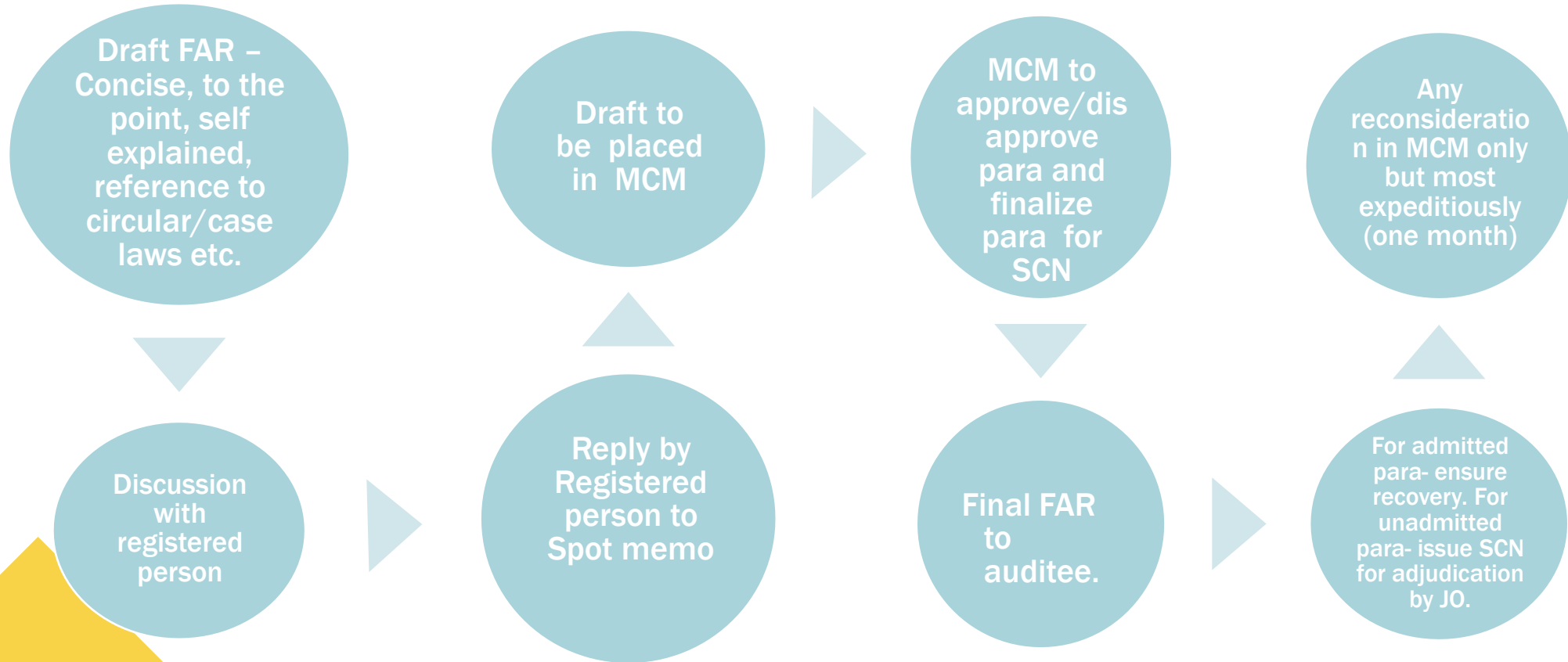
**GST Executive
Commissionerate**

**Performing operational tasks like attending litigation, performing audit,
pursue recovery of paras etc.**

DGARM

Performing Risk assessment jointly with local team for selection of Units.

Audit – FAR to SCN



Principles of Audit - GSTAM

1. Audit in a systematic and comprehensive manner.
2. Emphasis on the identified risk areas and scrutinizing the records maintained in the normal course of business.
3. Applying audit techniques on the basis of materiality.
4. Proper recording of all checks and findings
5. Identifying the unexplored compliance verification parameters.
6. Educating the taxpayer for voluntary compliance.



Indicative Duration of Audit

- Large Taxpayers – 6 to 8 working days.
- Medium Taxpayers – 4 to 6 working days
- Small Taxpayers, TDS/TCS – 2 to 4 working days

Applicable for one year. 25% increase for every additional year.

Covers days spent in office as well as at the premises of the registered person.



Selection of registered person for Audit

1. Revenue Risk Assessment process followed which comprises of various Risk Parameters.
2. Such evaluation method is prescribed by DG-Audit in consultation with DGARM and it changes every year.
3. List is prepared based on above and communicated to GST Audit Commissionerate.
4. GST Audit Commissionerate may select unit after reviewing in context with local risk perceptions and parameters.
5. 20% of the taxpayers to be audited should be selected based on local risk factors after obtaining the approval of the Chief Commissioner.

Preparation before Audit

Nature of business and the revenue streams

- i) Books of accounts, records & Audited Financial statements (entity level and GSTIN level)
- ii) Annual return (FORM GSTR-9)
- iii) Reconciliation Statement (FORM GSTR-9C)

Incomes

- Types of supplies – intra-state supply; inter-state supply; exports; nil rated supply; non-GST Supply; no Supply, deductions; exemptions.
- Rate of tax applicable

Preparation before Audit

- Reverse Charge
- Input Tax Credit – GSTR 2A;GSTR 3B;
- Reversal under Rule 36(4);
- Blocked credit;
- Apportionment u/r. 42 & u/r. 43 of CGST Rules, 2017
- Reimbursements
- Closing Balance
- Tax paid – Cash + Credit
- Refunds claimed

Tax liabilities comparison statement

Dashboard

Services ▾

GST Law

Downloads ▾

Search Taxpayer ▾

Help and Taxpayer Facilities

e-Invoice

Registration

Ledgers

Returns

Payments

User Services

Refunds

e-Way Bill System

Track Application Status

Returns Dashboard

Track Return Status

ITC Forms

TDS and TCS credit received

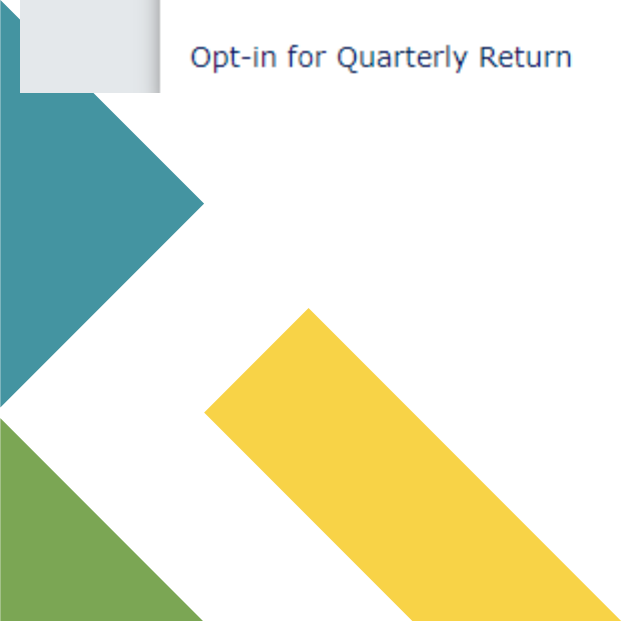
Opt-in for Quarterly Return

View Filed Returns

Transition Forms

Annual Return

Tax liabilities and ITC comparison



[Difference in liability declared and paid ?](#)

+

[Tax liability and ITC summary ?](#)

+

[1. Tax liability other than export / reverse charge ?](#)

+

[2. Tax liability due to reverse charge ?](#)

+

[3. Tax liability due to Export and SEZ supplies ?](#)

+

[4. Input tax credit claimed and due \(Other than import of goods\) ?](#)

+

[5. Input tax credit claimed and due \(Import of goods\) ?](#)

+

[6. Reverse charge liability declared and Input tax credit claimed thereon ?](#)

+

BACK

DOWNLOAD COMPARISON REPORTS (EXCEL)

Some Important documents and their review

Annual Report
and Director
Report

- To find qualification which may effect GST liability.
- CARO for Fixed assets position, proper physical verification, proper records for damaged goods and disputed liabilities of various laws.

P&L a/c

- Scrutiny of supplies for nature, valuation, rate etc.
- RCM u/s 9(3)/9(4)

Balance sheet

- To understand subsidiary/holding and to analyse valuation aspects.
- Fixed assets schedule to check sales of goods.

Notes to Account
Trial

- Use of inputs for non-business, related party transaction
- Any important happening like destruction of records, R&D expense etc.

Balance Cost

- To check quantitative details, costings etc.

Audit reports Tax
audit reports

- Clause 18(Dep), 27(a)(Cenvat), 21(b)(TDS), 38(CE Audit) and 40(GP)

Additional for service sector

Annual
Report and
Director
Report

- Forex earned and paid

P&L a/c

- Reimbursements verification
- Out of pocket expenses verification
- Corelation between expense and income

Cost
Audit
reports

- Royalty and know how charges

Records and Registers which can be verified

Marketing and outward supplies related

- Purchase Orders/Agreements
- Price Circulars
- Delivery Challans
- Material transfer note
- Sales Book
- Outward supply book

Stores department related

- Stores Ledger
- Goods Receipt Note (GRN)/Material Receipt Note/Inspection Cum Receipt Report (ICRR)
- Material Return Note
- Rejected Goods Register
- Waste Register
- Physical Stock Verification Statement
- Job work/Sub-contract Register

Finance department related

- Ledgers
- Debit Note/Credit Note
- Journal Voucher
- Internal Audit Reports
- Purchase Book
- Purchase Return Book
- Income Tax Audit Report and ITR
- Fixed Assets Register
- Monthly Stock Statement to Bank

Important judicial discussions

Audit u/s 65 and search u/s 67 possible simultaneously – Held Yes [*Suresh Kumar P. P [2021] 125 taxmann.com 61 (SC)*]

“Audit under section 65 is a routine procedure to be carried out by the Commissioner in such frequency and in such manner as prescribed in the rules; which is independent of an investigation under section 67

section 67 is a more onerous procedure which can be initiated only on the satisfaction of an Officer not below the rank of a Joint Commissioner of, suppression of taxable transactions, excess claim of input tax credit, contravention of the provisions of the Act and Rules, keeping of goods and accounts in contravention of the provisions, escapement of tax, secreting of goods or material liable to confiscation or relevant or useful in any proceedings under the Act and any act leading to evasion of tax.”

Important judicial discussions

Audit of service tax period under Rule 5A by CGST Audit Commissionerate – Held No, [OVS Warehouse Services LLP v. Union of India 2018 (19) GSTL 27]

“while enacting the Central Goods and Services Tax Act, 2017 there was no provision saving Rule 5A of the ST Rules to enable fresh proceedings for audit to be initiated under that rule for a period prior to the repeal of the Rule.”

- Relied in T.R. Sawhney Motors (P.) Ltd. [2019] 110 taxmann.com 145 (Delhi) and stay granted

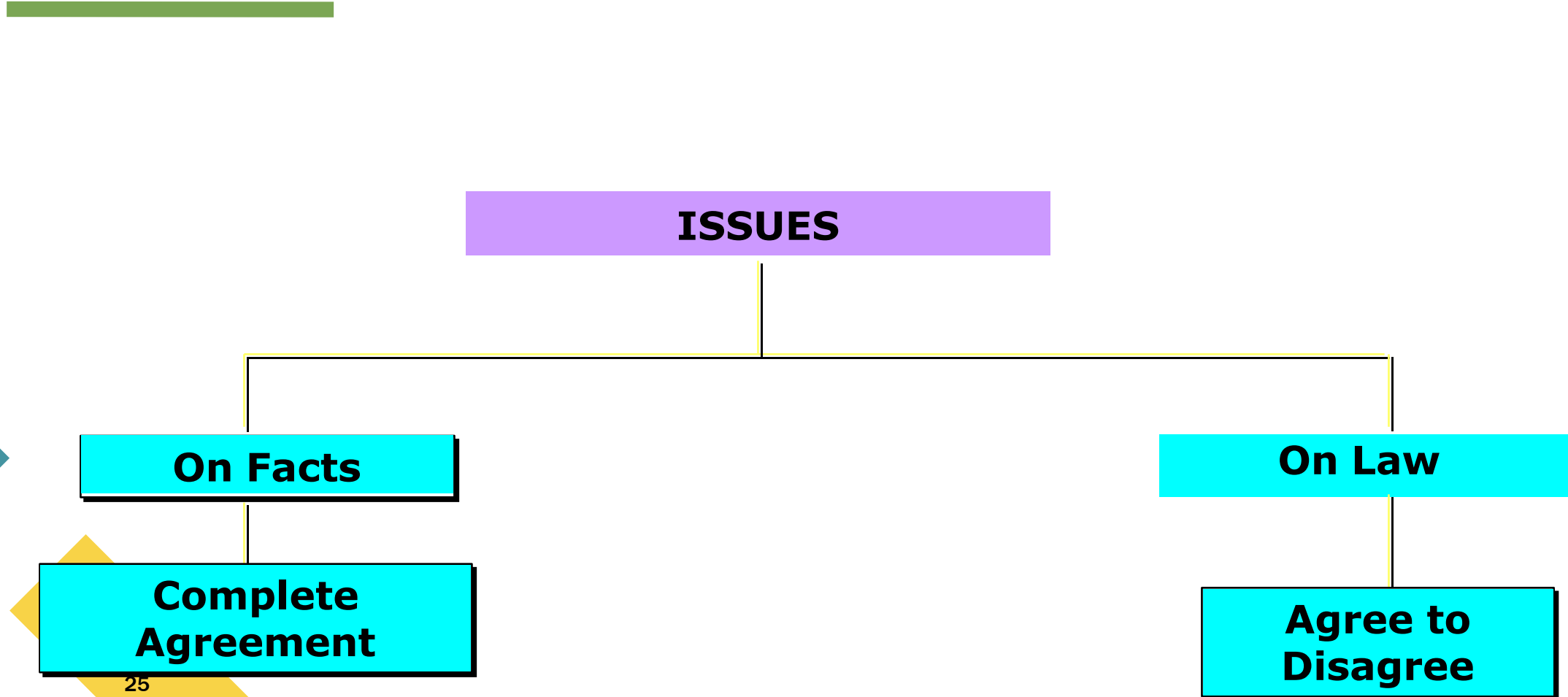
Tips to handle Audit – Key pointers

1. Ensure that ADT-01 is issued by proper officer.
2. Check for any parallel audit in progress or already conducted for same period.
3. Cooperate with audit team and provide documents/information asked. Extensive powers with department. Matter may be referred to DGGI.
4. Information/documents should be ready – first impression is last impression.
5. Seek adjournment/extension, wherever required.
6. Information about one category should be provided in one-go.
7. Before submission of documents ensure vetting.
8. Documents should be submitted under Cover letter having date mentioned and acknowledgment to be obtained.

Tips to handle Audit – Key pointers

1. Any data/figures should be properly explained and legal and factual backing should be made.
2. Issue wise/Para wise specific submissions to be made
3. Prior to accepting audit observations, check legal position.
4. In case of admitted para, deposit liability under intimation.
5. Never deposit any amount under pressure. If payment made under protest, record the fact clearly in letter.
6. Check section invoked – 73 or 74 and analyze legally before accepting report/demand.
7. Check if any procedural lapse is made by department team. Refer GSTAM, 2019.
8. Develop a robust Internal/pre audit mechanism.

- Verify facts and figures before submitting to the audit party – Basic Investigation
- In case auditor wants to issue an SCN on any point try and restrict it only to law and clear all differences in facts and figures.....



Few Common issues

- Incorrect classification/nomenclature of goods or services
- GSTR-2A v/s 3B.
- TRAN-1 ITC claim
- Procedural error while adjusting debit notes/credit notes.
- Personal guarantee by directors for Corporate loans.
- Claim of ITC for GST paid under RCM u/s 9(3) post applicability.
- ITC reversal on exempt supplies treated as Non-GST supply earlier.
- Interest on ITC wrongly availed but not utilized.
- GST on services to employees/notice pay



**THANK
YOU!**



sriram@kvrco.in

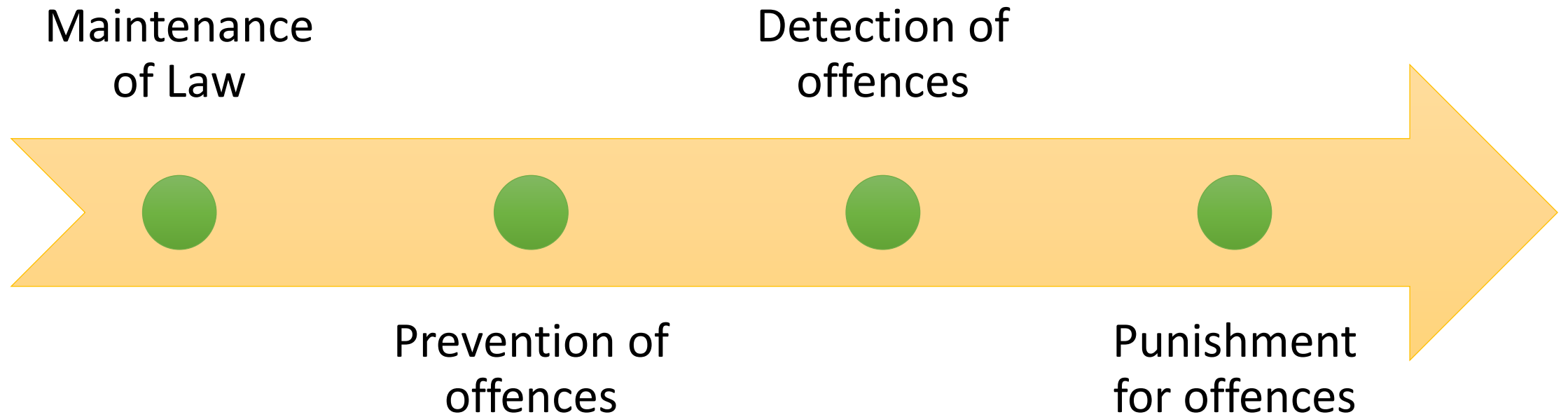


| Inspection | Search | Seizure | Arrest | in GST

CA Satish Saraf

| Saraf Satish & Co | #S Tax Advisory (P) Ltd. |

Generally, any Law is..



Agenda

Section
67 & 69
of CGST Act,
2017

Rules
139, 140 & 141
of CGST Rules,
2017

Forms
GST INS-01,
GST INS-02,
GST INS-03,
GST INS-04 &
GST INS-05

Sections

S No	Section	Particulars
1	67	Power of inspection, search and seizure
2	69	Power to arrest

Rules

S No	Rule	Particulars
1	139	Inspection, search and seizure
2	140	Bond and security for release of seized goods
3	141	Procedure in respect of seized goods

Forms

S No	Form	Particulars
1	GST INS-01	Authorization for inspection or search
2	GST INS-02	Order of seizure
3	GST INS-03	Order of prohibition
4	GST INS-04	Bond for release of goods seized
5	GST INS-05	Order of release of goods /things of perishable or hazardous nature

Inspection

Section 67(1) of CGST Act, 2017

Who can conduct

- [Proper Officer](#) not below the rank of Joint Commissioner

When to conduct

- Has Reasons to believe

Upon whom

- Taxable person or
- Transporter of Goods, or
- Owner or operator of Godown etc.

Where to inspect

- [Any place of business](#) of

Purpose to conduct

Evade the tax under the Act

- Suppression of transaction – supply of goods or services
- Suppression of stock on hand
- Claim of ITC in excess of entitlement, or
- indulged in contravention of Act or Rules

Transporter or Owner or operator of Godown Etc.

- Escaped the payment of tax
- Likely to cause evasion of tax

Search

Section 67(2) of CGST Act, 2017

Who can conduct

- Proper Officer not below the rank of Joint Commissioner
- Can JC delegate the power to other officer

When to conduct

- In pursuance of Inspection conducted U/s. 67(1) Or **otherwise**
- Has reasons to believe that
 - Are secreted in any place, which are
 - Goods liable for confiscation
 - [Documents](#) or [books](#) or [things](#) relevant for proceedings under this act

Who can search & seize

- Any Authorized officer or JC himself

Search & Seize – Goods, Documents, Books or things

Documents, books and things – not relied upon.

Seal or Break open – where access is denied.

No notice is issued within six months from date of seize of goods

- What has to be done – extension of time limit

Disposal of certain goods due to their nature.

- Preparation of inventory of goods disposed

Applicability of CRPC for GST Proceedings – as far as may be applicable

Power to retain documents, Books, records, registers

Instruction No: 01/2020-21(GST-Investigation),
Dt: [02-02-2021](#)

Authorized officer to purchase or take to check issue of Tax Invoice etc.,

Search

Search

Legal & Illegal search –
it's consequence

Search timings

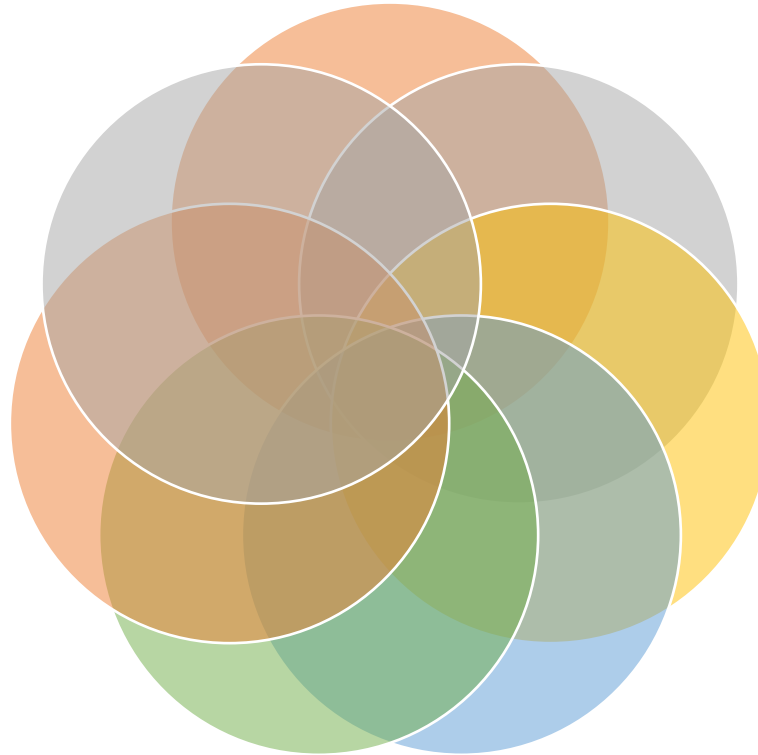
Reason to suspect

Panchanama

Whether **cash** is **thing**
or not – MP-HC-
Indore Bench [2020]
27 TAXLOK.COM 076
(MP)

What is document

What is incriminating
material



Seizure

Section 67(2) of
CGST Act, 2017

Inventory

Things ?

Perishable Goods
etc.

Documents etc.

Taking extracts or
copies of
documents, books
or things seized

Release of Goods
seized

Books, Registers or
documents -
produced

Arrest

Section 69 RW Section 132 of CGST Act, 2017

Who can authorize arrest

- Commissioner of CGST / SGST

When can arrest

- Has reasons to believe that a person has committed an offence
- Specified in Section [132\(1\)\(a\), \(b\), \(c\), \(d\)](#)
- Which are punishable under [132\(1\)\(i\) / \(ii\) & 132\(2\)](#)

When to produce before Magistrate

- Offence [U/s. 132\(5\)](#) – Cognizable & [Non-Bailable](#)
- Informing the person arrested – grounds of arrest
- Within 24 Hours from the time of arrest.

Arrest

Other offences specified in Section 132

- Offence specified under 132(4)
 - Arrest and grant of bail, or
 - Arrest and forwarded to custody of Magistrate

Offences not specified in Section 132(1)

- No Arrest
- Prosecution proceedings

Punishment in all cases as specified U/s. 132.

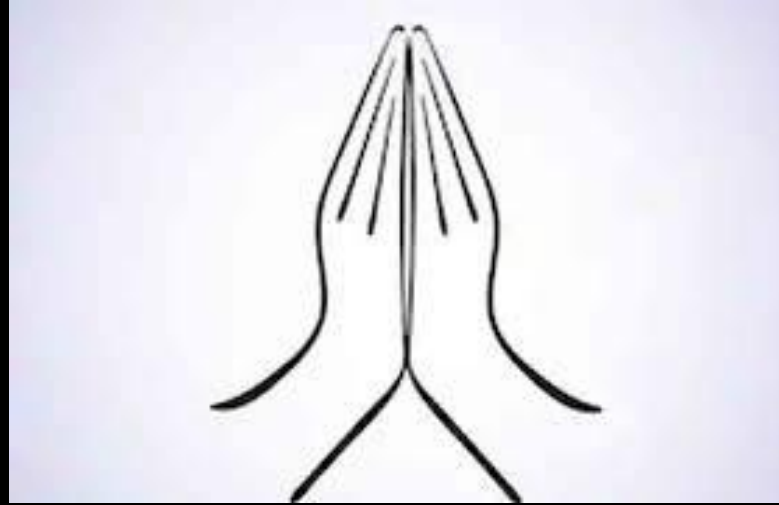
- Six months to 5 years with fine

Anticipatory Bail is permitted?

“Causes to commit and retain the benefit arising out of”

Circular on Arrest – ST –
Circular No:
201/11/2016, Dt: 30-09-2016.

Thank you



CA Satish Saraf

Instruction No: 01/2020-21(GST-Investigation), Dt: 02-02-2021

- Valid & Justified reasons – to be recorded in writing
- Generation of DIN for Search Authorization – for each
- Premises of other person can not be searched – Person already dead
- Search of Residence - Lady officer must as part of search team
- Two or more independent witnesses
- Officer – to identify themselves first – offer personal search
- Execution of search authorization by signatures
- Panchanama to contain
 - Truthful account of proceedings of search – List of documents / goods / things – Time & date of commencement & conclusion – Personal search to be recoded
- Videography of sensitive premises to be considered and recoded on Panchanama
- During the search – polite to assessee - religious sentiments – Special care towards children / elderly persons – person is not well-medical practitioner may be called.
- Any document is seized – allowed to take extract / copies
- Signatures of persons – Officer – assessee – witness
- Search party to leave premises – immediately after conclusion of search process, [etc.](#)

Place of Business

2(85) —place of business includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever [name called;](#)

Document - THE INDIAN EVIDENCE ACT, 1872

Document means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.

Illustrations

- A writing is a document;
- Words printed lithographed or photographed are documents;
- A map or plan is a document;
- An inscription on a metal plate or stone is a document;
- A caricature is a [document](#).

Books - THE INDIAN EVIDENCE ACT, 1872

34. Entries in books of account when relevant. — Entries in books of account, including those maintained in an electronic form], regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability.

Illustration

A sues B for Rs. 1,000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the [debt](#).

Thing – 8th Edition of Black's Law Dictionary

THING - 1.

The subject matter of a right, whether it is a material object or not; any subject matter of ownership within the sphere of proprietary or valuable rights.

Things are divided into three categories:

- (1) things real or immovable, such as land, tenements, and hereditaments,
- (2) things personal or movable, such as goods and chattels, and
- (3) things having both real and personal characteristics, such as a title deed and a tenancy for a term.

The civil law divided things into corporeal (tangi possunt) and incorporeal (tangi non possunt).

THING - 2.

Anything that is owned by someone as part of that person's estate or [property](#).

Proper Officer

- 2(91) —proper officer in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

Section 132(1)(a)(b)(c)(d)

132. Punishment for certain offences.— (1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:—

(a) supplies any goods or services or both **without issue of any invoice**, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues any invoice or bill **without supply of goods or services or both** in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(c) avails input tax credit using the invoice or bill referred to in clause (b) or **fraudulently avails input tax credit** without any invoice or bill;

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of **three months from the date on which such payment becomes due**;

Section 132(1)(i)(ii) & 132(2)

132(1) (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **five hundred lakh rupees**, with imprisonment for a term which may extend to **five years and with fine**;

(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **two hundred lakh rupees but does not exceed five hundred lakh rupees**, with imprisonment for a term which may extend to **three years and with fine**;

132(2) Where any person **convicted** of an offence under this section is **again convicted** of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

Section 132(5)

132(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be **cognizable and non-bailable**.

Bailable offence & Cognizable offence - CRPC

2(a) “bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and “non-bailable offence” means any other offence;

2(c) “cognizable offence” means an offence for which, and “cognizable case” means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without [warrant](#);

GST - Recent & Imp. case laws

CA. Venkat Prasad. P, LLB



Introduction

Initial Caveats

- Last 2 years cases were taken.
- Omission of any case laws is purely unintentional and try to discuss if memory permits
- To give more content & time constrains - Coverage of facts, issues involved is limited. If any specific case to be elaborated, much privileged to do.
- Application & adoption of case laws purely depends the text & context of facts, legal provisions. Hence, due care may be taken while relying on cited case law
- Future developments of the case laws (reversed or upheld or changes in legal provisions) is also to be considered
- AAR & AAAR's are not considered

SC on GST

- ***"The Parliament had intended the GST to be a citizen-friendly tax structure. The purpose of the Act is lost by the manner in which tax law is enforced"*** observed by SC while hearing the case of Radha Krishan Industries vs. State of Himachal Pradesh 2021 (48) GSTL 113 (S.C.) (source: <https://www.livelaw.in/top-stories/supreme-court-gst-parliament-citizen-friendly-purpose-lost-by-enforcement-government-172211>)
- ***"It is very easy to reach the moon...we would take a chance...but to understand your policies and intricacies of this tax...Oh God, with folded hands, we say that it is beyond our capacity to understand"***. The comment of Gujarat HC during an online hearing (source: <https://www.youtube.com/watch?v=p0jvjkFXKmY>)

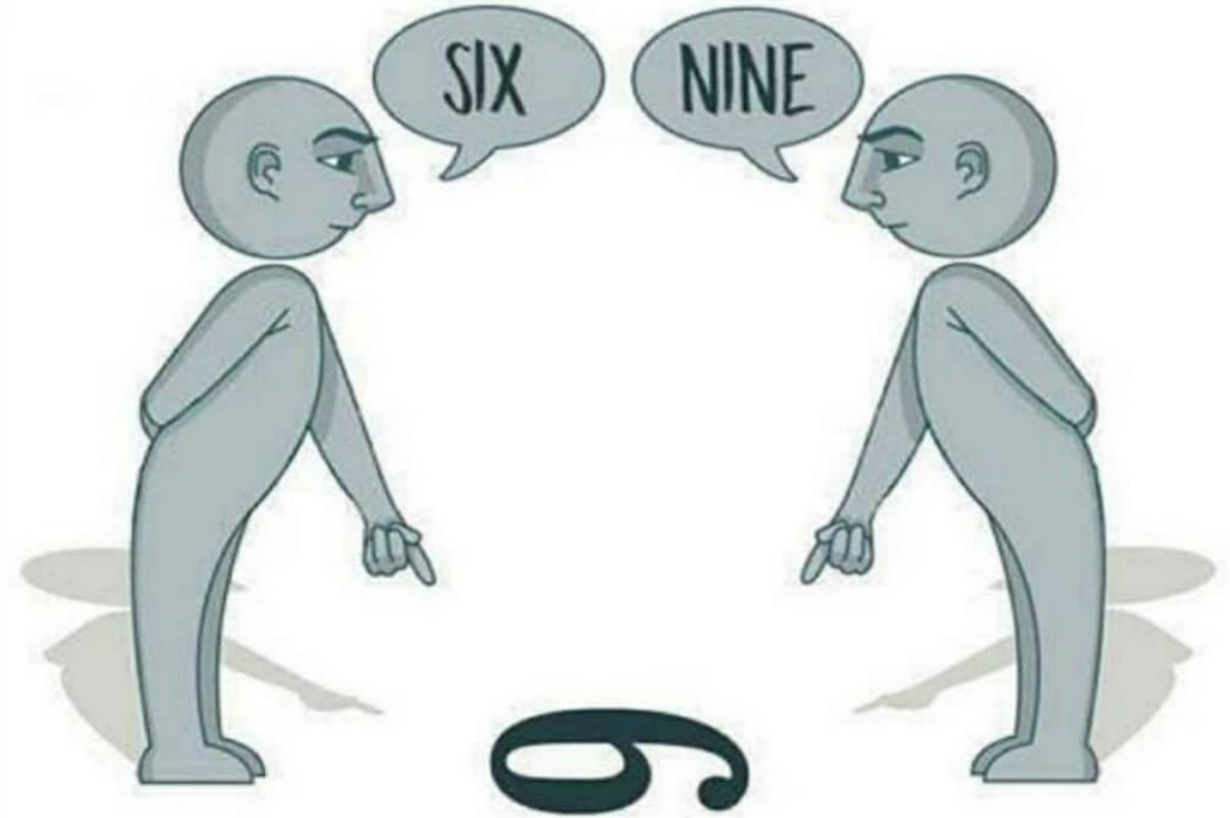
Reasons for Disputes

Department Perspective

- Aggressive tax collection behaviour
- Lack of Training and skills of tax officers
- Lack of accountability and judicial indiscipline
- Lack of supervision and guidance
- Fear of Audit, Vigilance machinery and CBI

Taxpayers perspective

- Complicated law
- Cumbersome procedures
- Compliance requirements
- Ignorance
- Deliberate evasion
- Competition by tax evaders



Just because you are right, does not mean, I am wrong. You just haven't seen life from my side.



SC decisions

- The rationale of Hon'ble SC decision in case of **Radha Krishan Industries v. State Of Himachal Pradesh & Ors 2021 (48) G. S. T. L. 113 (SC)** & Gujarat HC in case of Valerius Industries v. Union of India — [2019 \(30\) G.S.T.L. 15 \(Guj.\)](#).
 - ✓ It is very drastic and far reaching power
 - ✓ It must be exercised with extreme care and caution. Not to harass the tax payers or cause detrimental effect on business
 - ✓ It shall be exercised as last resort/Measure and not as means of regular recovery.
 - ✓ It shall be done based on some credible materials & supervening factor and not casual evidence.
 - ✓ The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1);
 - ✓ The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable;

- ✓ The expression “necessary so to do for protecting the government revenue” implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment;
- ✓ The person whose property is attached is entitled to dual procedural safeguards :
 - An entitlement to submit objections on the ground that the property was or is not liable to attachment; and
 - An opportunity of being heard;
- ✓ The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;
- ✓ If appeal is filed against the order u/s. 73/74(9), the provisional attachment shall cease
- ✓ No second time attachment without change in facts & circumstances

UOI Vs. VKC Footsteps India Pvt. Ltd. 2021-TIOL-237-SC-GST

- Gujarat HC held refund of GST on input service in inverted rate structure is allowed and Madras HC held it is not allowed. The matter went to Supreme Court.
- SC affirmed Madras HC view and held that provision restricts refund for inputs only and it would be unconstitutional to expand refund provisions beyond what legislature had provided.
- Parliament empowered to decide whether refund should be allowed
- Challenge to Rule 89(5) on the ground that it is ultra vires of Section 54(3)(ii) lacks substance.
- Further, the absence of word 'as may be prescribed' does not preclude rule-making authority from making rules to carry out the provisions of the Act.

Union of India Vs. Bharti Airtel and Ors. SLP No. 8654 of 2020 SC

- Respondent compelled to pay GST in cash as GSTR 2A not available for July and August 2017.
- ITC discovered in October 2018 and tax paid in cash sought as refund.
- High Court allowed GSTR-3B rectification
- SC held that non operationalization of GSTR-2A cannot be a ground to allow revision of returns.
- Respondent under legal obligation to maintain books and records
- GST portal is only facilitator to feed or retrieve information and taxpayer is obliged to do self assessment of ITC, reckon its eligibility to ITC and of output liability including balance in electronic ledgers

Union of India Vs. AAP & Co 2021 (12) TMI 840 - SUPREME COURT

- The two-Judge Bench of the Apex Court relying on Bharti Airtel Ltd. & Ors., reported in (2021) 13 SCALE 301 observed that the argument of distinguishing the three-Judge Bench judgment was not available.
- In 2019, the Hon'ble Gujarat High Court in the case of AAP And Co., (2019 (7) TMI 401) –Held that the impugned press release dated 18th October 2018 could be said to be illegal to the extent that it's Para-3 purported to clarify that the last date for availing input tax credit relating to the invoices issued during the period from July 2017 to March 2018 is the last date for the filing of return in Form GSTR-3B. The return in FormGSTR-3B is only a temporary stop-gap arrangement till the due date of filing the return in Form GSTR-3 is notified.
- **Recanting** the ruling that **GSTR-3B is not a return** the Hon'ble Apex Court held that the said judgment in the case of AAP And Company has been expressly overruled by a three-Judge Bench decision of this Court in Union of India vs. Bharti Airtel Ltd. & Ors.



**Pending before
SC**

- In 'P.V. Ramana Reddy v. Union of India' - 2019 (25) G.S.T.L. 185 (Telangana) Hon'ble Telangana HC held
 - Arrest can be made before completion of the assessment
 - Pre-trial arrest can be challenged before HC
 - Compounding is not possible if not applied;
- Further, the petitioners filed a special leave petition before the Supreme Court against the judgment of Telangana High Court. The Supreme Court dismissing the plea, said that it is not inclined to interfere [2019 (26) G.S.T.L. J175 (S.C.)].
- HC of Karnataka & Bombay has taken different view and the matter is pending before 3 member bench of Hon'ble SC now on the above issues
- Various HC's have granted/denied bail or coercive measures based on specifics of its case

Ocean Freight – RCM?

In Mohit Minerals Pvt Ltd v. UOI 2020 (33) G.S.T.L. 321 (Guj.)

- Notification No. 8/2017-I.T. (Rate) & Entry 10 of Notification No. 10/2017-I.T. (Rate) both dated 28-6-2017 asking importer of goods as the person liable to pay IGST on Ocean Freight services (Goods Transportation by vessel from outside India) by a foreign shipping lines to the foreign supplier, are *ultra vires* the provisions of IGST Act, 2017
- IGST Act does not contemplate levy and collection of tax from a person who is neither the supplier nor the recipient of the supply, levying the tax on the supply of ocean freight service and making the importer of goods as the person liable for paying the tax are unconstitutional
- This process makes GST a tax on value addition at each stage. The consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages
- It appears that while issuing the impugned notification, the delegated legislature had in mind the provision of the Finance Act, 1994, rather than keeping in mind the object of bringing the GST
- The obligation to pay consideration is also of the foreign exporter. the shipping line cannot recover the consideration from the writ-applicant.
- location of the recipient of the service, i.e. the foreign exporter, is not in India but outside India

Matter is pending before SC now (heard & pending for order from SC as on date)

➤ Form GST Tran-01 is the prescribed to transfer the closing balance of old credits or stock credit into GST & the due date to file was 27-12-2017. However, a larger number of the taxpayers have missed filing the Form Tran-01 for various reasons.

➤ Government provided a window to file till 31-03-2020 for persons who has digital evidence to prove the technical glitches in filing Tran-1. However, the Government has not allowed the taxpayers who could not file form Tran-01 for various other reasons such as

- ✚ Attempted filing online but did not take the digital evidence.
- ✚ Unawareness about the due dates [which was changed frequently]
- ✚ Mandatory e-filing system being new or Lack of computer system in place.
- ✚ Mistakes committed while filing online.
- ✚ Ignorance with the hope that due date would be extended (which was very frequent in GST) etc.,

All these categories of the taxpayers who lost the benefit approached HC's. While many of HC's has held that another chance to be given & some contrary decisions also holding that filing of the Forms after the due date is not allowed. **Brand Equity Treaties Limited Vs UOI 2020 (38) G.S.T.L. 10 (Del.); SKH Sheet Metals Components Vs UOI 2020 (38) G.S.T.L. 592 (Del.); Adfert Technologies Pvt. Ltd. Vs UOI 2020 (32) G.S.T.L. 726 (P & H); Siddharth Enterprises v. Nodal Officer — 2019 (29) G.S.T.L. 664 (Guj.) etc. Now this matter is pending before Hon'ble SC.**

- GST demand on mining lease/royalty/Seinorage etc., is stayed by Hon'ble SC in case of **M/s. Lakhwinder Singh v. UOI & Others**, **Writ Petition (Civil) No.1076 of 2021** noting that the matter is pending before 9 judge bench of Hon'ble SC in Mineral Area Development Authority & Ors. Steel Authority of India & Ors., (2011) 4 SCC 450. Following SC order, various HC's are also granting Stay on the GST demands made on the Roaylty, Seinorage etc., till the disposal of matter by 9 judge bench of SC.
- ITC on Construction expenses of commercial complex meant for lease is eligible and the restriction u/s. 17(5) of CGST Act, 2017 was read down - Orissa HC in case of **Safari Retreats Private Limited v. Chief Commissioner — 2019 (25) G.S.T.L. 341 (Ori.)** and pending before Hon'ble SC.
- Whether long term lease (say 60/90 yrs) is equivalent to a sale of land and not liable for GST? Matter pending before Hon'ble SC as on date. Previously Bom HC in case of **Builders Association of Navi Mumbai v. Union of India — 2018 (12) G.S.T.L. 232 (Bom.)** says liable for GST
- The dominance of technical member strength in a Bench is contrary to the settled law that strength of Judicial member shall not be less than of expert/technical members and the corresponding provisions was struck down - **Madras HC in case of Revenue Bar Assn. v. Union of India 2019 (30) G.S.T.L. 584 (Mad.)**



HC decisions

- Denial of ITC to the buyer of goods or services for default of the supplier of goods or services, clearly frustrates the underlying objective of removal of cascading effect of tax...
- One of the progressive ideals of GST is to avoid cascading taxes. GST law contemplates seamless flow of tax credits. The basic rationale is to allow input tax credit and denial of credit would be opposed to the object of avoiding cascading effect, leading to increase in the cost of services and/or goods to the consumer.
 - ***Safari Retreats Private Limited vs Chief Commissioner of CGST 2019 (025) GSTL 0341 (Ori.)***
 - ***Mohit Minerals Pvt Ltd 2020 (033) GSTL 0321 (Guj)***
 - ***M/s Tara Exports Vs Union of India 2019 (020) GSTL 0321 (Mad),***
 - ***M/s Brand Equity Treaties Ltd 2020 (38) GSTL 10 (Del)***

- Horse race is game of skill and Totalizer liable for GST only on Commission earned on bets not the total face value of Bets. Fiduciary capacity of person receiving money cannot be held to be consideration. Rule 31A(3) to tax 100% of the face value of the bet is ultra vires to the CGST Act. **Bangalore Turf Club Ltd Vs State of Karnataka 2021 (51) G.S.T.L. 228 (Kar.).**
- Similar views in case of Gurdeep Singh Sachar v. Union of India — [2019 \(30\) G.S.T.L. 441](#) (Bom.); Ravindra Singh Chaudhary vs. UOI 2020 (42) G.S.T.L. 195 (Raj.) Not every money receipt/inflow cannot be consideration and in turn value of taxable supply. Receipt of grants and incurring on behalf of Govt/Organizations while retaining some % as admin/service charges etc., can use this rationale to say GST is only retention amounts or specific charges not on total amount received.
- Assessment of ITC eligibility or short payment or non payment of GST shall not be done in registration revocation proceedings. In guise of considering application for revocation, Authorities cannot embark upon process of assessment - To state that registration will not be revived since petitioner has incorrectly availed of ITC would be putting the cart before horse. **Ramakrishnan Mahalingam v. STO 2021 (50) G.S.T.L. 369 (Mad.)**

Bundl Technologies Private Limited TS-546-HC(KAR)-2021-GST

- ‘Swiggy’ runs the business of food delivery through delivery partners and in peak season, engages the third party (Greenfinch in the present case) to honour the deliveries who charged the consideration & GST thereon which was availed as ITC by Swiggy.
- The DGGI, Hyd Zone investigation revealed that ‘Greenfinch’ is non-existent and summoned the presence of directors & forced to pay back the ITC availed under threat of arrest (in Nov & Dec 2019). While making the payment, the DGGI had objected to use the word ‘under protest’ in Form DRC-03 (letter was filed through email by the petitioner).
- Sought refund of aforesaid payments since the DGGI did not conclude the investigation even after 2 yrs & no notices were issued. The refund sought to be rejected stating it is premature and also payments are made under self-ascertainment u/s. 74(5)

HC held

- Mere payment of tax cannot be construed to be payment towards self-ascertainment as contemplated under Section 74 (5) of CGST Act. Refund available as it amount collected is without the authority of law.
- **It must be noted that filing of return and payment of substantial taxes by the petitioner would clearly warrant for treating such tax payers with certain element of dignity**
- Court also orders for installation of CCTV & recording of interrogation

Material Recycling Association of India vs UOI 2020 (40) G.S.T.L. 289 (Guj.)

- Section 13 (8) (b) of the IGST Act prescribing place of supply of intermediary is constitutional.
- Section 13(8)(b) of IGST Act, 2017 says Place of Supply for intermediary is where the Intermediary is located.
- Services of Intermediary, like Commission Agent, Broker, Steamer agents e.t.c when provided to foreign principal will not be treated as export of services under GST Law.
- Government of India should consider intermediary's representation in favor of them.

Split judgment rendered on the Constitutional validity of levying GST on Cross border. Intermediary services - Difference in opinion, matter to be placed before CJI **Dharmendra M Jani Vs UOI & others** [2021-TIOL-1297-HC-MUM-GST] and [2021-TIOL-1326-HC-MUM-GST]

Shirdiri Sainath Industries vs. DCST 2020-TIOL-2052-HC-AP-GST

Background:

- AP govt (Civil supplies) gives Paddy to the Rice millers who in turn **shall give 67% rice yield irrespective of the actual yield.** The actual average rice yield is b/w. 61-62%
- The milling charges (CMR) are fixed at Rs.15 per quintal paddy. Bye products namely Broken rice, husk & bran arises during milling process which is allowed to be retained by the millers
- GST has been paid on milling activity (treating as 'supply of service). The broken rice & husk are exempted, and 'Bran' is liable @5%

Issue involved:

- Whether 'bye products' retained constitutes additional consideration (non-monetary) for milling activity done to Govt? Whether CMR is 'sole consideration'?

Hon'ble HC held

- Clause of the agreement do not indicate that 'bye products' is an additional consideration'
- It is a compensation for bearing yield loss of 6-7% while supplying standard yield of 67% rice to Govt and not a consideration for 'CMR'

CBIC Circular No. 153/09/2021-GST, dated 17-6-2021 clarified that milling activity being pure service is exempted from GST

- ITC cannot be denied if all the purchases and transactions are found to be supported by valid documents, genuine and the same are made before the cancellation of registration of the supplier. [LGW Industries And Others v. UOI 2021 VIL 868 CAL]
- ITC is not deniable on the normal Loss u/s 17(5) – **[ARS Steels and Alloys International Private Limited 2021 TIOL (1393) – Mad]**
- Credit ledger cannot be blocked in lieu of recovering the dues from the supplier - M/s Nipun A Bhagat, Proprietor of Steel Kraft Industries vs State of Gujarat 2021-TIOL-147-HC-AHM-GST
- The credit ledger cannot be debited for making payment of pre-deposit at the time of filing of the appeal. Output Tax u/s 2(82) could not be equated to pre-deposit required to be made in terms of section 107(6). **Jyoti Construction v. DC 2021 (54) G.S.T.L. 279 (Ori.)**
- Closing balance of EC, SHEC & KKC as on 30.06.2017 is eligible Transitional credit under GST Bombay HC in **Godrej & Boyce Mfg. Co. Ltd. v. Union of India and Ors 2021-TIOL-2112-HC-MUM-GST**
- Tran credit missed in Form Tran-1, instead of directing the portal to be opened, the assessee who are facing such kind of difficulties may be permitted to file individual tax credit in the GSTR-3B - **Nodal Officer, Joint Commissioner Vs Das Auto Centre 2022-TIOL-41-HC-KOL-GST**

➤ SEZ units can also claim GST refund **Platinum Holdings (P.) Ltd. v. AC 2022 (58) G.S.T.L. 3 (Mad.) & Britannia Industries Limited Vs UOI 2020 (42) G.S.T.L. 3 (Guj.)**

➤ The benefit of extension of time granted by the Supreme Court would apply for refund claims also. [GNC Infra LLP v. UOI 2021 (11) TMI 973; Saiher Supply Chain Consulting Pvt Ltd TS- 04-HC(BOM)-2022-GST]

➤ Rule 97 A which permits manual refund filing prevails over Master Circular No. 125/44/ 2019 GST dated 18.09.2019 according to which refund claims have to be filed online. [Laxmi Organic Industries Ltd v. UOI 2021 TIOL 2248 HC MUM GST]

➤ Time limit for applying refund under section 54 does not apply when the collected amount is unconstitutional and not considered to be a tax – [Comsol Energy Pvt. Ltd 2021(55) GSTL 390 (Guj)]

➤ Refund cannot be denied merely on the ground that investigation is pending - u/s 54(10) of CGST Act – [Evertime Overseas Pvt. Ltd v. UOI 2021 (55) GSTL 257 (Bom)]

➤ GST refund is eligible under inverted duty structure even for the traders & supply of same goods at different rates. The clarification of CBIC circular No. 135/05/2020-GST dated 31.03.2020 is incorrect & held unsustainable **Shivaco Associates & Anr. V. Joint Commissioner Of State Tax 2022 (4) TMI 118 & BMG INFORMATICS PVT LTD Vs UoI 2021-TIOL-1831-HC-GUW-GST**

- Incorrect location of purchaser- UP instead of AP in GSTR-1 – rectifiable – entitled to avail ITC – **Pentacle Plant Machineries Pvt. Ltd. 2021 (52) GSTL – 129 – Mad**
- Tax evasion cannot be presumed merely on account of expiry of e-Way bill. **(Telangana HC) - Satyam Shivam Paper Pvt Ltd , (2021-TIOL-1338-HC-TELANGANA-ST) & upheld by Hon'ble SC**
- Vehicle cannot be seized or penalty cant be imposed u/s. 129 for mere laspe of not adding the delivery location in registration certificate. No penalty when there is no intention to evade tax u/s. 129 - **Smart Roofing Pvt Ltd Vs STO 2022-TIOL-444-HC-MAD-GST & Algae labs pvt. Ltd. V. STO 2022-TIOL-503-HC-MAD-GST**
- The assessee can be summoned only as a last resort and as far as practicable, details can be obtained from an assessee by way of an ordinary letter. The summons cannot be issued to coerce and pressurize the assessee. – [FSM Education Pvt. Ltd v. UOI 2022-TIOL-61-HC-MUM-GST]
- Authorities should ensure that the taxpayer is left in a position where he can continue with his business because it is only if the dealer continues with the business that he would be in a position to generate revenue and pay the taxes. Bringing the business of a dealer to a halt does not in any manner serve the interest of the revenue. – **[Steel Rolling Mill v. Assistant Commissioner of State Tax, 2019 (20) G.S.T.L. 732 (Guj), Siddarth Mandavia vs Union of India 2021 (044) GSTL 0347 (Bom)]**

- Refund of Service tax under RCM or CVD/SAD paid after GST is refundable – Doctrine of necessity is applied - **Ganges International Pvt Ltd Vs The A.C.G & C.E. 2022-TIOL-325-HC-MAD-GST; Flexi Caps and Polymers Pvt Ltd Vs Commissioner 2021 (9) TMI 917-CESTAT New Delhi; Terex India Pvt Ltd v. Commissioner 2021-TIOL-696-CESTAT-MAD**
- Leasing of building to use as 'Hostel' is exempted from GST under Sl. No. 13 of Ntn No. 12//2017 - **Taghar Vasudeva Ambrish Vs AAAR 2022-TIOL-242-HC-KAR-GST**
- Upto 7,500 exempted means only excess to be paid (*Madras High Court*) **GREENWOOD OWNERS ASSOCIATION vs. UOI [2021-TIOL-1505-HC-MAD-GST] – This was stayed by Division Bench**
- Revenue authorities can neither issue any advices regarding payment of tax nor coerce the taxpayer to pay tax without determining the liability u/s. 73/74. Recovery in the stage of investigation/summons proceedings is wholly arbitrary and without jurisdiction.- **Deem Distributors Private Limited v. UOI 2022 (56) GSTL 286 (Telangana)**
- Best judgment Method adopted by Department in case of non-filers of GSTR-3B returns in multiplying monthly amount by 3 and imposing 100% penalty, was arbitrary and contrary to GST Act - **Golden Mesh Industries vs. Assistant Commissioner of State Tax 2022 (57) GSTL 108 (Telangana)**

- Cash/money can be seized u/s. 67(2) of CGST Act, 2017 **Kanishka Matta v. UOI 2020 (42) G.S.T.L. 52 (M.P.)**
- Portal/technical glitches in the network shall not go beyond the law to deny the eligible benefit. **Hindustan Unilever Limited v. UOI 2021 (49) G.S.T.L. 292 (Mad.) BODAL CHEMICALS LTD Vs UoI 2022-TIOL-303-HC-AHM-GST**
- Portal developed by the Government cannot go contrary to the Law. **Deendayal Port Trust vs UOI 2020 (35) G.S.T.L. 188 (Guj.)**
- Exempted Services also eligible for refund of Input Taxes, if services are exported. **Sutherland Global Services Pvt. Ltd Vs CCE 2021 (47) G.S.T.L. 454 (Mad.)** Clarified by Circular No. 125/44/2019-GST, dated 18-11-2019
- Holding & Subsidiary Company are not merely establishments of a distinct person in accordance with Item (b) of explanation 3 of clause (44) of Section 65B of the Finance Act. They are separate legal entities. Refund is eligible to subsidiary company. **Linde Engineering India Private Ltd VS UOI 2022 (57) G.S.T.L. 358 (Guj.). Clarified by circular No. Circular No. 161/17/2021-GST, dated 20-9-2021**
- Government entities – not business entities – no penalty - no extended period. – UOI v. National Remote Sensing Agency 2021 (50) GSTL 465 – Telangana HC (Service Tax)
- **Jian International vs CCGST 2020 (39) G.S.T.L. 385 (Del.)** GST Officer cannot issue the deficiency memo in refund application after 15 days.

Few from Pre-GST laws which mutatis mutandis applies to GST also

- Department is not entitled to recover or appropriate any amount in excess of NCLT order under IBC (resolution plan) and the department shall refund the excess appropriation or adjustment to Corporate debtor. **GGs Infrastructure Pvt. Ltd. vs. Commr. of CGST & Central Excise 2021 (51) GSTL 187 (Bom.) Jagat Janani Services v. UOI 2021 (54) G.S.T.L. 283 (Ori.)**
- Recovery of ST from Director by using the GST provisions is not permissible **Sanjiv Kumar Mittal v. Deputy Commissioner (TRC), CGST, Delhi South 2021 (44) G.S.T.L. 14 (Del.)**
- Affiliation and allied activities like inspection etc., done by the Universities are to be treated as imparting education by the Educational institution. **Madurai Kamaraj University Vs Joint Commissioner 2021-TIOL-1812-HC-MAD-ST**
- Discounts received from manufacturer are not towards any services. **T.V. Sundram Iyengar & sons Pvt. Ltd. v. Commissioner 2021 (55) G.S.T.L. 144 (Mad.)**
- Amount recovered as 'Notice pay' for pre-termination of employment agreement is not liable for service tax **GE T & D India Limited v. Deputy Commissioner — 2020 (35) G.S.T.L. 89 (Mad.)**

Who questions much,
shall learn much,
and retain much.
Francis Bacon

THANK YOU!

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