

ISSUE - 2 MARCH 1-31

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**Construction
Metamorphosis –
Legacy to GST**

**GST impact on Joint
Development
Agreements**

CONSTRUCTION SPECIAL



**Treatment of Disputed Credits
/ Blocked Credit in TRAN –
CBEC Circular Vs GSTN**

**Not So 'Good and Simple': Why
GST is still not 'Tax-Friendly'?**

Interviews :

Madan B. Lund, CREDAI, Tamil Nadu

Dr. R. Kumar, Managing Director, Navin Housing & Properties Pvt Ltd

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Editorial Team

Sindhu Mangat

Rasheela Basheer

Abdullah Karuthedakam

Design & Layout

Anagha M

Sparrowsolution

www.sparrowsolution.com

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Sindhu Mangat

The month of March, being the end of financial year, is qualified with analysis of past and estimates for future. The end of financial year is much more significant for GST, since GST has formally completed one year of its infancy and is entering its next, full-fledged financial year from April 2018 onwards.

On a macro level, the Indian economy is reported to have grown at 7.2 percent in October-December 2017, regaining its lost status outpacing China. This shows that the impact of demonetisation and apprehension on GST is slowly settling down.

The government is optimistic on improving the GST revenue collection from next financial year to Rs. 90,000 crores per month.

At the micro level, the first indication of 'What is in store for GST in next financial year' is to be decrypted from the 28th GST Council meeting held on 10.03.2018. The decision to continue suspension of reverse charge mechanism on procurement from unregistered dealers, extension of GSTR-3B return, postponement of TDS, E-Commerce taxation etc. show that the government

intends to give further sufficient time to the tax payer to get used to GST and at the same time, they still work up on the basic infrastructure for tracking multitudinal transactions and accommodating one crore + tax payers registered under GST hassle free.

March has been a golden month for the export community, since more than three circulars have been issued solely with the intention of mitigating the problems faced by both industry and Department in refund procedure. The thrust of all circulars are on reconciling the particulars shown in GSTR-3B and shipping bill, mismatch and correction, so on and so forth.

The office of the Prime Minister had held a special meeting on the issue of refund claims of exporters. It is well appreciable that 15th to 29th of March, 2018 is dedicated exclusively to sanctioning pending refund claims. Government has deployed additional staff and special refund cells for this purpose.

Government is also intending to launch E-wallet system for exporters with effect from 01.10.2018. Under this mechanism, eligible exporter would be given notional credit on basis of past record.

At the same time, Government has informed the public that the quantum of refund claims pending with the

Department, as reported by media is inaccurate and unreliable.

The initial hiccups for States are slowly dwindling, is evident from the open statement of Chief Minister of Tamil Nadu that they are gaining slowly from implementation of GST. Even the Government of Maharashtra has declared that GST would make them a 'Self-sufficient State'.

So far so good.. but there is no escapement from the flip side ...

There is no mixing of words when CBEC says that time for hand-holding is now over and that it will now maximise its efforts to identify tax evasion. Tax evasion is identified in form of rampant black markets, undervaluation of imports, supply of goods without invoice, claiming credit in excess of tax payment etc. The reintroduction of e-way bill system from 1st of April, 2018 is one definite step in the direction of creating more accountability and transparency and thereby to curb evasion. But, without having a proper system to track the receipt of goods at destination, how far the evasion can be curbed through e way bill is a question to be answered in due course by time and experience.

The Department has commenced its onslaught by scrutiny of returns filed under GST.



Another area where the department is going to make the life of taxpayer miserable is the verification of the transitional claims through Form TRAN-1. There are specific communications to the field formations to scrutinise every claim above Rupees one crore. Recent communication from Office of Director General of Audit restricts credit of inputs lying in work in progress as on 30.06.2017 to those engaged in works contract service on ground that Section 140 (3) provides only for closing stock credit on semi-finished or finished goods, and as such, constructed/semi constructed property is not 'goods'. The measures initiated would result in denying eligible credit to those who were paying tax under works contract and have taken credit on inputs used in buildings which are not fully constructed as on 01.07.2017. It defies all sense of equity to state that the benefit is to be denied since the language is not specific to case of person undertaking works contract.

CBEC is also intending to bring proprietary business, LLPs and HUFs under scanner on issue of transitional credit.

Government is stringent on Anti-Profitteering enquiries and have identified Real Estate and FMCG as two areas where

there is massive non-compliance.

The High Courts continue to be the guardian of rights of hapless taxpayer. The recent observation of the Hon'ble High Court of Mumbai is worth quoting:

“A tax like GST was highly publicised and termed as popular. These celebrations mean nothing. The special sessions of Parliament or special or extraordinary meetings of council would mean nothing to the assesseees unless they obtain easy access to the website and portals. The regime is not tax friendly.”

Certain alarming data have been publicised during last two weeks. The first is on GST Return to the effect that the data on return filing shows only 16% of GSTR-3B matches with GSTR-1. Therefore almost 84% of taxpayers are furnishing incorrect particulars. This would point to the quantum of scrutiny that is going to be in store for taxpayer.

Another publicised statement is from bi-annual report of World Bank on India Development. The report has been hailed for its mention of GST as one of the most complicated tax system in the world. This has been mentioned in the context



of multiplicity of tax rates alone. A detailed reading of the report would make one understand that the report says that the Indian economy is likely to recover from the impact of demonetization and the GST, and growth should revert slowly to a level consistent with its proximate factors—that is, to about 7.5 percent a year. The following paragraph of the report merit consideration:

However, while teething problems on the administrative and design side persist, the introduction of the GST should be considered as the start of a process, not the end. With the economy adapting to the new system, the GST council has been evaluating and evolving the tax structure and its implementation.

The report concludes recommending following measures for success of new tax system.

... the benefits of the GST are likely to outweigh its costs in the long run. Key to success is a policy design that minimizes compliance burden, for example by minimizing the number of different rates and limiting exemptions, with simple laws and procedures, an appropriately structured and resourced administration, compliance strategies based on a balanced mix of

education and assistance programs and risk-based audit programs. A nuanced communications campaign is crucial to convey the various aspects of the new system of GST amongst businesses, consumers and key intermediaries, such as tax practitioners, as well as amongst the tax administration itself and the political class.

Hoping that the government and officials responsible for the implementation would draw inspiration from the above, and work tirelessly to streamline the GST infrastructure and network further, and by the end of financial year 2018-19, the country will have a flawless full-fledged system for the historic tax reform of the century.

■



GST impact on Joint Development Agreements

G Natarajan

Advocate and Senior Partner in Swamy Associates

The indirect taxation scenario on construction sector, especially in the context of service tax was always mired in confusions. It was the hope of the industry that these confusions would be ironed out under GST regime. Though the hope was addressed to some extent under the GST law, still lot of confusions continue to gag the industry. In this write up we will address one such confusion.

GST liability in respect of Joint Venture Agreements.

2.0 In a Joint Development Agreement (JDA) the Landowner and a Builder would agree to develop the land owned by the landowner, into a residential or commercial complex and an agreed portion of constructed area (number of

flats in case of residential complex) would be handed over to the landowner and the remaining constructed area / flats would be sold to various buyers by the builder. The builder would sell his share of constructed area / flats, along with proportionate undivided share of land (UDS) and retain the sale proceeds. Strictly speaking the benefit for the builder for constructing and handing over agreed extent of constructed area / flat to the landowner, is only the sale proceeds realised from sale of UDS land pertaining to builder's share of constructed area / flats. The applicability of erstwhile service tax on the services provided by the builder to the landowners, its valuation and timing of payment were always shrouded with mysteries under the erstwhile service tax



regime. These aspects were clarified in different manner in various CBEC Circulars / Education Guide. Let us try to understand the implications under the GST regime afresh, without any reference to any such circulars / clarifications / Judgements.

When GST is payable?

3.0 In this connection it is also relevant to refer to Notification 4/2018 Central Tax (Rate) Dated 25.01.2018, which is reproduced below.

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the following classes of registered persons, namely :-

(a) registered persons who supply development rights to a developer, builder, construction company or any other registered person against consideration, wholly or partly, in the form of construction service of complex, building or civil structure; and

(b) registered persons who supply construction service of complex, building or civil structure to supplier of development rights against consideration, wholly or partly, in the form of transfer of development rights, as the registered persons in whose case the liability to pay central tax on supply of the said services, on the consideration received in the form of construction service referred to in

clause (a) above and in the form of development rights referred to in clause (b) above, shall arise at the time when the said developer, builder, construction company or any other registered person, as the case may be, transfers possession or the right in the constructed complex, building or civil structure, to the person supplying the development rights by entering into a conveyance deed or similar instrument (for example allotment letter).

3.1 Since the above clarification has been issued in the form of a Notification, issued in terms of Section 148 of the CGST Act, its relevance and legality cannot be put into question, unlike various circulars issued in service tax regime.

3.2 The above notification, for the first time recognises the existence of a supply of service by the Landowner to the Developer in the form of transfer of development rights. Though the Joint Development agreements are couched in such language that there is a transfer of development right by the landowner to the builder, in effect the landowner would part with a portion of his UDS land get back constructed area from the builder. This activity in the hands of the landowner is recognised as a transaction in immovable property and subjected to income tax levy as capital gains. How far there is an element of supply of service by the landowner to the developer in the form of grant of development right, against consideration in the form of getting some constructed area is going to be a hotly debated talk in the days to come,

not only in academic forums but also in the corridors of various Courts.

As far as the time at which the builder is liable to pay GST in respect of the service of undertaking construction for the landowner (handing over specific constructed area / flats in favour of the landowner), the Notification has clearly laid down that the liability would arise, when a conveyance deed or any similar instrument is entered into between the

landowner and developer, thereby putting to rest all speculations on this.

Rate of GST payable.

4.0 As per Notification 11/2017 Central Tax (Rate) Dated 28.06.2017 the following rates of GST have been prescribed, which are relevant.

3	Heading 9954 (Construction services)	(i) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. (Provisions of paragraph 2 of this notification shall apply for valuation of this service)	9	-
		(ii) composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017.	9	-
		(iii) construction services other than (i) and (ii) above.	9	-



2. In case of supply of service specified in column (3) of the entry at item (i) against serial no. 3 of the Table above, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the total amount charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of

land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. - For the purposes of paragraph 2, “total amount” means the sum total of, -

(a) consideration charged for aforesaid service; and

(b) amount charged for transfer of land or undivided share of land, as the case may be.

(Subsequent

amendments to the above entries in the notification are not considered as they are not relevant for the present purpose).

4.1 It may be noted from the above, when there is a transaction involving sale of UDS land also, GST is payable @ 18 % on two thirds of the total amount charged, including the amounts charged for sale of UDS land, as per S.No. 3 (i). In case of sale of flats to the buyers, where the total amount received from the buyers includes the value for UDS land also, the rate thus prescribed under S.No. 3 (i) can be adopted. It may be noted that irrespective of the actual value at which the UDS land is sold, one third of the total value is deemed to be the land value and deducted from the total amount. This is a case where the builder is engaged in a comprehensive activity of conveyance of UDS land, transfer of property

in various goods during construction and supply of construction services.



4.2 But it may be noted that when the constructed area / flats are handed over to the landowners, there is no element of sale of UDS to the landowner, as the construction has been done in the land belonging to the landowner himself. Thus the services provided by the builder to the landowner is not akin to the one provided to buyers. The role of the builder towards landowner is limited to transfer of property in goods and supply of construction services and thus the services provided to landowners is a “works contract”. Hence the rate of GST applicable would be 18 % (9 CGST and 9 SGST) as per S.No. 3 (ii) of Notification 11/2017. The rate prescribed under S.No. 3 (i) of Notification 11/2017 cannot at all be applied to the services provided to landowners, as there is no sale of UDS in favour of landowner.

Value of services provided to landowners.

5.0 The next moot question is to find out what value should be adopted by the builder for payment of GST in respect of the services provided by him to the landowner, by way of construction of flats for him, under the JDA. The following three alternative arguments are possible in this regard.

(i) As what the builder is receiving from the landowner as a consideration is only the sale proceeds realised upon sale of UDS land

pertaining to builder's share of constructed area, only such UDS value realised upon sale of builder's share of constructed area shall be the value of services supplied to the landowner.

(ii) At the time when the constructed area is conveyed / handed over to the landowner, if a “comparable value”, i.e. if any part of the constructed area is sold to any buyer, the same shall be adopted as the value of services supplied to the landowner.

(iii) Value of service provided to the landowner shall be 110 % of the cost of construction.

5.1 Let us first refer to Section 15 of the CGST Act, 2017, dealing with valuation (relevant portion).

15. Value of taxable supply. — (1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(2) The value of supply shall include —

(a) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and

the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(b) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(c) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(d) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(e) subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.

Explanation. — For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(3) The value of the supply shall not include any discount which is given —

(a) before or at the time of the supply if such discount has been duly recorded in the

invoice issued in respect of such supply; and

(b) after the supply has been effected, if —

(i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(4) Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.

(5) Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

5.2 As already mentioned, no direct monetary consideration would be identified in the JDA towards the flats being constructed and handed over by the builder to the landowner. The builder would be given the right to develop the complex, sell his share of flats along with proportionate UDS land and retain the sale proceeds, though the entire land is owned by the landowner.

5.3 It may be noted that the term “price” used in Section 15 has not been defined in the Act and as per the general meaning of the term, it refers to the consideration payable for sale of goods or for provision of services. As per Black Law Dictionary, “price means the amount of money or other consideration asked for or given in exchange for something else; the cost at which something is bought or sold”. The term has also been interpreted in many decisions to the effect that the term is very wide to cover all forms of consideration. It is also relevant to refer to the definition of the term “consideration” as per Section 2 (31) of the CGST Act.

“consideration” in relation to the supply of goods or services or both includes —

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government :

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

5.4 In the instant case, when the UDS land proportionate to the builder’s share of flats is sold by the builder and such sale proceeds is retained by the builder, the same is the consideration for the builder for the construction done for landowner and hence the same is the “price” being payable by the landowner to the builder.

5.5 Hence, it can be reasonably concluded that the value of service provided by the builder to the landowner is the value of UDS land pertaining to the builder’s share of flats, at the time when the builder is conveying / making allotment of the flats for the landowners.

6.0 Even assuming that there is value as defined under Section 15 of the Act in this case, recourse has to be made to the provisions under the CGST Rules, 2017 relating to valuation. The following rules may be referred to.

RULE 27. Value of supply of goods or services where the consideration is not wholly in money. — Where the supply of goods or services is for a consideration not

wholly in money, the value of the supply shall, -

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Illustration :

(1) Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand rupees, the open market value of the new phone is twenty four thousand rupees.

(2) Where a laptop is supplied for forty thousand rupees along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of the laptop is forty four thousand rupees.

RULE 30. Value of supply of goods or services or both based on cost. — Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

RULE 31. Residual method for determination of value of supply of goods or services or both. — Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter :

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30

Explanation. — For the purposes of the provisions of this Chapter, the expressions -

(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax,

central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

(b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

6.1 It may be noted that Rule 27 would apply "where the consideration is not wholly in money". If it is considered that the development right and the right to sell the UDS land pertaining to the builder's share of constructed area and retain such proceeds, is not a consideration in money, then recourse has to be made to this rule.

6.2 As per clause (a) of Rule 27, the value shall be "open market value" which term is also defined. From the definition of the said term it may be observed that the same refer to the comparable value, at the same time when service is provided to landowner, i.e. at the time of handing over the flats meant for landowner, through a con-

veyance deed or allotment letter. But the question is whether the transaction between the builder and the buyer, which involves transfer of UDS land also, is comparable with the transaction between builder and landowner, where there is no involvement of land. There are three transactions between the builder and buyer, viz., (i) Sale of UDS land; (ii) Transfer of property in goods; and (iii) construction services. In such cases, the total amount charged from the buyer is the consideration for these three activities and their inter-se break up can be arbitrary based on various parameters. That is why, the valuation of that part of such composite supply, which is liable to GST is artificially fixed at two thirds of the total value.

6.3 In the transaction between the builder and landowner, there are only two transactions, viz., (i) Transfer of property in goods; and (iii) construction services. So, the value on which GST is paid by the builder in case of flats sold to buyers, cannot constitute a comparable value for the construction undertaken for landowners. Hence Rule 27 (a), based on "open market value" cannot be applied here.

6.4 As per Rule 27 (b) the value of supply shall be sum total of (i) consideration in money and (ii) such further amount in money as is equivalent to the consideration. In this case, no money is received from the

landowner and only the value of consideration, i.e the value of development right granted by the landowner, represented by the sale value of UDS land pertaining to builder's share of flats alone can be the value of service provided to the landowners.

of constructed area / flats, as on the date on which the constructed area / flats meant for landowners is conveyed to the landowners through a conveyance deed or allotment letter.

6.5 Since the value can thus be decided as per Rule 27 (b), there is no need to take recourse to the other valuation provisions.

To conclude,

7.0 In respect of the constructed area / flats handed over by the builder to the landowners in terms of Joint Development Agreements shall be based on the value of UDS land pertaining to the builder's share





Abatement of 33% Towards Cost of Land to be Enhanced, for enabling the Consumer to reap full benefits of GST



In conversation with:

Madan B. Lund

CREDAI, Tamil Nadu



Madan Lund is a Graduate in Business Management from Iowa State University, USA. He graduated in the year 1987 and joined the family business known as the Srivari Group of Companies thereafter, which at that time was primarily in Financial Services. The group diversified into Property Development and Real Estate Promotion in 1989 and into Tea Plantations in 1991. In 2003, Srivari added Retail of Lighting products to its businesses. Srivari is a family run business group and Madan Lund is one of its Directors in charge of Administration, Planning and Law.

He is a Management Committee member of CREDAI, Tamilnadu and has also been a Convenor of the Infrastructure Panel of CII, Coimbatore.

In this interview, Mr Madan Lund has an exclusive chat with TAXLAWGiST over various aspects of GST in the construction sector.

Q. Do you feel complexities in Indirect taxes for construction sector has come down under GST?

Except for the multiple rates of tax, the complexities have definitely come down under GST. The multiple tax authorities and their compliances were a major issue for the industry.

Q. GST, is said to have brought about more clarity to construction sector by classifying works contract as a 'service'. How will this help the construction industry?

Yes, GST has definitely brought in more clarity into the Construction Sector by clearly identifying the sector under Construction Services. There is however one major interpretation that is proving a dampener. In Tamilnadu, builders still fall under the category of Works Contractors rather than Construction Services due to the nature of the Construction Agreement and Sale Deed entered into between the Builder and Purchaser. This is due to the Stamp Act and Registration Act and rates of Stamp Duty. The benefits for low cost housing are therefore not being passed on. Under Construction Services the GST for Low Cost housing is effectively 8% and Under Works Contract it remains at 18% on Construction Value.

Q. Several of exemptions that existed under service tax for construction has been taken away under GST. What is the impact of such withdrawal of exemptions?

Under the Service Tax regime the main exemption was the abatement at 75% or 60% as the case may be. Today, under Construction Services the abatement towards notional value of Land is 33%. Further, input Credit is a great impetus to the industry in general. This has the potential to

bring down costs, provided, the Vendors of goods and services are educated to understand Input Credit and to Pass on the same on to their Consumers.

Q. After 01.07.2017, we have seen several changes in GST , especially through representations to GST council. Are there representations from construction industry before GST Council on any specific issue.

The main representations to the GST Council by the Builders has been on the abatement of only 33% towards Cost of Land. In all of the Metro Cities and in a majority of the Tier II cities in India the Land Value far exceeds 50% of the total sale value of a Unit. Therefore 33% abate-

ment increases cost to a consumer considerably. The builders have therefore represented for a substantial increase in abatement. Alternatively, the builders have also represented that a GST of 5% be charged without any input credits.

Q. Whether construction service providers has claimed credit of inputs held in stock as on 01.07.2017.

If the stock was purchased within the stipulated period of 1 year prior to implementation of GST as specified under the GST rules, yes, credit of inputs have been availed.

Q. Is Industry willing to pass on benefit of GST to buyers?



Yes the industry is definitely willing to pass on benefits of GST to the buyers. GST is a tax which has no cascading affect. This must be understood by all stake holders including vendors of all Goods and Services to builders. If this principle is followed, the consumer stands to benefit substantially.

Q. Construction industry has been limping for sometime, can GST be one of the factors to revive industry?

There has been a revival in the movement of residential space in the past eight to nine months and commercial space has seen a considerable revival. Whether it can be attributable to GST is a moot point. In the long term, GST will play a part in ending anomalies in the interpretation of various taxes thus bringing down the costs of compliance and thereby helping industry.

Q. How the e way bill system is viewed by industry?

Implementation of the E Way bill has been postponed and for good reason. It was chaos on the day it was brought in. The system is being looked upon positively by industry provided the governance is minimal and not too intrusive. Implementation should be hassle free. Delay in deliveries can increase costs substantially, especially in areas where demurrage is charged.

Q. What is the effect of RERA on industry ?

RERA is the best thing that could have happened to the Real Estate sector. It protects both the consumer and the service provider. It is sincerely hoped that all the stake holders be brought into the fold of RERA such as Banks and especially the Government. Proper implementation would boost customer confidence and this would help in increasing investments into the Real Estate sector in a more organised manner. A major cost to the builder is the cost of funds. RERA would help bring down the cost of funds thus eventually helping the consumer.

Q. What further simplification does industry wish for making GST more effective?

As mentioned earlier, reducing the number of slabs in GST reduces interpretation anomalies thus easing compliance. At present, with the prevailing Stamp Duty, Registration Charges, GST and other Taxes such as Building Licence Fees, Infrastructure Charge, etc the total taxes paid by a consumer to the Government in various forms is around a whopping 22% and is one of the highest taxed Sectors in India. For a priority sector such as Housing, this is way too high. The government must take a holistic view of both State and Central Taxes to arrive a rate of GST which is fair to a consumer.





Not So ‘Good and Simple’: Why GST is still not ‘Tax-Friendly’?



Rasheela Basheer
is an Editor and Co-Founder of Taxscan Media

A few days before the historic rollout of GST, a petition was filed before the Bombay High Court challenging the GST rollout in the middle of a financial year, “without proper preparations”. However, the Government managed to convince the Court that entire machinery has been geared up not only to accept the new challenge but to ensure GST is implemented effectively.”

“A tax like Goods and Services Tax was highly publicized and termed as popular. We had yet not seen a celebration of New Tax regime, but that has followed with great hue and cry. These celebrations mean nothing. The special sessions of Parliament or special or extraordinary meetings of Council would mean nothing to the assesseees unless they obtain easy access to the website and portals. The regime is not tax friendly.”

-Bombay High Court in *Abicor and Binzel Technoweld Pvt. Ltd. v. The Union of India* and
Anr. WP (L) No. 2230 of 2018.

After nine months, the same Court has said the Government to 'wake up' and take corrective measure to address the problems of the taxpayers before 24th April.



Technical glitches, ambiguity over the concepts, lack of preparation, delay in implementing E-Way Bill, reverse charge mechanism, TDS and TCS provisions etc makes India's biggest Tax reform a disaster.

This article attempts to point out what made the 'highly publicized' Goods and Services Tax a failure.

Celebrations v. Lack of Preparations

As noted by Justice S.C. Dharmadhikari and Justice Bharati H. Dangre, India welcomed the Goods and Services Tax (GST) regime with huge celebrations. However, NDA's newborn tax baby is still struggling to survive even after nine months of its birth.

The major reason for the low performance of GST is poor IT infrastructure. As the new tax era replaces conventional registration, transportation, and returns

filing process, there was a lack of preparation on the part of the Government to ensure an efficient IT backbone.

Too many extensions to the due date for return filing, postponement of E-Way Bill mechanism etc. shows how poor technology was made for welcoming the historic reform.



Amidst this 'return-filing game', the Government wants to implement E-Way Bill. The question is, how will this Government be able to monitor lakhs of consignments at a time with such a poor technology?

Online Return Filing v. Technical Glitches

The new indirect tax law mandates compliance through electronic mode. Return filing through the GST portal is nothing less than a nightmare to the taxpayers, especially, to the professionals due to technical issues. Most of the times, when a taxpayer tries to push the returns on the website, it either shows 'system error' or sometimes gets unresponsive.

Despite multiple deadlines and Court





directions to fix issues over these log-in errors and missing data, GST is still tripping up on the technical glitches. Many times, the taxpayers were compelled to approach the Courts seeking directions for re-opening of GSTN to file returns.

In the initial days, the GST Council meetings were held only to extend the return filing due dates.

The Group of Ministers (GoM), which was formed for suggesting ways to simplify the return process and to examine issues related to the GST Network, couldn't contribute anything.

Simplification of return filing process would have eased the burden of taxpayers who file multiple returns with this poor technology. The 26th GST Council meeting on March 10th failed to come up with any conclusive simplification process.

Huge Revenue Expectation v. Tax Evasion

No doubt, through the implementation of GST, the Government expected a huge rise in the revenue figures by widening the tax base. But in reality, it couldn't achieve the same due to several reasons such as too much complex procedures and delay on the part of the Government to implement anti-evasion measures.



Though in February, the number of taxpayers reached 1.3 crores, it couldn't boost up the revenue figures. Surprisingly, the revenue for the month of January slipped to rupees 86,318 crores from 86,703 crores in December.

During the transition period of GST, the country witnessed the highest tax evasion in the history. Prices of some



products were varying according to location as traders have not fully aware of the new structure and even tried to misuse the same. Anti-profiteering authority, a mechanism to ensure that the consumer is protected from arbitrary price increase in the name of GST, started its function in the end of the transition period.

In the initial months, the entire tax department was shocked to see input tax credit claims of over Rs. 65,000 crores for Central Goods and Services Tax (CGST) for July. Suspecting tax evasion, the Central Board of Excise and Customs (CBEC) had enquired on transitional credit claims over one crore rupees and initiated proceedings against fake claims.

Export Refund v. Procedural Issues

The issue of refunds to exporters has been hanging fire for over nine months now, with exporters complaining that delay in GST refunds has blocked their working capital.

Though the Government took a defense that there are discrepancies in forms submitted by exporters with the customs department and those with the GST Network (GSTN), there are a lot

of other issues which is lagging the process of export refund claims.

A report of the Central Board of Excise and Customs (CBEC), released in February, revealed that around 70 percent of refund are stuck due to various errors.

“In order to overcome the causes of the delay in sanctioning of refunds, Government has taken various steps, which includes amendments in the rules, changes in the business procedures of common portal and customs automated system to address the systemic issues. Many of the errors plaguing the claims for refunds are on account of inadequate familiarisation of the exporters with the GST laws and data entry errors in the various GSTRs / forms,” a statement released by the Ministry of Finance recently said.

In a bid to deal exclusively with the pending GST refund claims (IGST & ITC), the CBEC is observing ‘Refund Fortnight’ across all its field formations from 15th – 28th March, 2018 fills some hope on the minds of the taxpayers.



Hope v. Reality

The attempts made by the Government and the most-powerful GST Council to resolve these issues were like “building a ship while sailing.”

Recently, the World Bank in its bi-annual India Development Update released on 14th March, said that GST is one of the most complex with the second highest tax rate in the world among a sample of 115 countries which have a similar indirect tax system.

There is no doubt that India needed a unified tax structure. Without these glitches, the idea of GST was great. If the Government have spent some time for preparation instead of celebration, it would have been more beneficial to the people as envisaged by the law makers.

Simply, India’s most celebrated and biggest tax reform, in its present form, is not a ‘Good’ and ‘Simple’ Tax anymore.



26 th GST Council Meeting held on 10 th March 2018 : Key Takeaways

1

The present system of filing of GSTR 3B and GSTR 1 is extended for another three months i.e., April to June, 2018 till the new return system is finalized.

2

The provisions for deduction of tax at source (TDS) under section 51 of the CGST Act and collection of tax at source (TCS) under section 52 of the CGST Act shall remain suspended till 30.06.2018.

3

The liability to pay tax on reverse charge basis has been deferred till 30.06.2018.

4

GST implementation Committee (GIC) has been tasked with the work of redressing the grievances caused to the taxpayers arising out of IT glitches.



Construction Metamorphosis – Legacy to GST

An insight into the GST Transitional Provisions for the Construction Sector



Joseph K. Antony
Advocate, Swamy Associates

Infrastructure and real estate has always seen a boom since its evolution as a business domain and has ever since been the epitome of lucrative business in the country. However, it has always been perforated, at uneven stances, with heavy litigation

owing to the shedload of taxes and the dual administration in the Centre and the State levies, which has only caused skepticism and promoted ignorance and indecision among the businesses. There are long standing issues pending disposal before various judicial fora that are yet to be concluded. With the introduction of this new phase of Indirect Taxation w.e.f. 01.07.2017 with the tagline ‘One Nation, One Tax, One Market’, the vital assurance that the Government gave was a sound transition from the ‘existing laws’ to the ‘new law’. It is with this rationale that the Government introduced specific mechanism as a part of the Act itself for plain sailing transition from the erstwhile laws to the GST regime.



Transition Hypothesis

The Government has notified GST applicable to construction and real estate projects at the rate of 18% (or effective 12% with abatement of one-third land value), with lesser rates to some specified cases. The GST shall not only apply to construction projects commenced post the introduction of GST law, but also on the ongoing projects that were earlier subject to the erstwhile levies. The only difficulty in opening the scope of credit to the ongoing projects is in dealing with the legacy levies prior to GST regime where the various costs incurred have been subjected to old taxes like VAT, Excise, CST, Service Tax, Octroi, Entry Taxes etc.

“The GST shall not only apply to construction projects commenced post the introduction of GST law, but also on the ongoing projects that were earlier subject to the erstwhile levies.

The Transitional provisions under GST, as envisaged under Section 140 to 142 of the Central Goods and Services Act, 2017 (CGST Act) and the corresponding prescribed rules ranging from Rules 117 to 121 of the CGST Rules, 2017 along with the

prescribed forms have been assigned in that regard. On a bare perusal, the provisions may seem to be straightforward; however, the brand-new legislation doesn't appear to make life simple.

Let us comprehend the various important transitional provisions under GST and its implications on the construction sector at large:

Carry Forward Credit

The fundamental transitional provision that the Act extended, common for all assesseees including the Construction businesses, is the carry forward of the credit reflecting in the last furnished statutory returns, as Input Tax Credit (ITC) under GST (Section 140 (1), CGST Act). However, the same is limited with conditions that the credit being carry forwarded as ITC should also be admissible as ITC under the GST law.

Similarly, another provision that the Act provides is the option to claim the unavailed CENVAT Credit in respect of the Capital Goods (50% scheme) that was not carried forwarded from the erstwhile law. The corresponding provisions under the respective SGST Acts provides for the availment of credit of the erstwhile state levy i.e. VAT Credit.



Closing Stock Credit

Section 140 (3) and Section 140 (6) are the most crucial transitional provisions, particularly in the case of builders availing benefit of Service Tax abatement in case of construction of complex and so on, or paying VAT under the simplified composition schemes under the state VAT Act respectively. The provisions are purported to equally benefit the Construction sector as well as the other categories of persons mentioned in the said provisions, wherein the credit of eligible duties can be availed in the ITC ledger in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock with the condition that the same should be further used for making taxable supplies while the credit being admissible under the GST law as explained above. However, the determining factor is that the person shall be in possession of the invoice or like document indicating the tax amount but not more than 1 year old from the date of GST law implementation (01.07.2017).



The central difficulty in availing this option to the builders was that most of the materials held in stock would have been procured from local vendors wherein no Tax Invoice would have been ordinarily available.

The central difficulty in availing this option to the builders was that most of the materials held in stock would have been procured from local vendors wherein no Tax Invoice would have been ordinarily available. Further, even if the invoices were available, the limitation clause of 1 year also posed a problem since real estate projects take long period, there will be a situation where invoices are older than the said period.

Further, the widely discussed recourse to the above difficulty has been given as the proviso to Section 140 (3) of CGST Act.

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

The above provides an option to avail 'deemed credit' on the inputs held in stock, semi-finished and finished goods in the absence of a Tax Invoice on the prescribed proportions. However, the above shall not apply to builders who fall within the exclusion category of proviso being a supplier of services. Further, the credit scheme when the excise documents are not available is restricted only to the traders alone. This has left the builders muddled and would increase the effective tax liability of the builders.



Under-construction projects - WIP

Another issue that was faced by the builders was availing credit on the under-construction projects as on 01.07.2017. For a builder, the Work-in-Progress (WIP) goods would ordinarily be the under-construction projects. That being the case, the credit attributable to the stock of cement, steel and other goods contained in the WIP shall be entitled as ITC under the GST law provided the Invoices evidencing payment of duty are available and not earlier than 1 year from 01.07.2017.

However, the above proposition is hit and contradicted by a recent instruction issued by the Directorate General of Audit, Central Taxes, wherein it has been indicated that the builder's claim of credit on the inputs contained in their semi-finished or finished goods i.e. the under-construction projects is not in tune with the provisions laid thereon and as such, the transitional credit of inputs already used in construction and contained in WIP as on 30.06.2017 is not admissible. It has been contended in the said circular that the under-construction building does not fall within the definition of 'input' or 'goods' and rather are immovable property attached to the earth. However, per contra, it also needs to be appreciated that such WIP property is stock-in-trade for the builder, and as such, the equity needs to be satisfied in this regard. Despite the above being said, it is seen that respective authorities

have been instructed to verify the transitional credit in the construction industry in that regard. This development would have an adverse effect on the builders since most of them would have already exercised such option, and if proceeded against, may result in unexpected losses by way of escalated burden of taxes, interest and penalty. However, the same may be subject to litigation and time would decide whether it stands the test of judicial interpretations.

Closing Stock Credit in the case of Sub-contractors

Another peculiar situation in the construction industry is that the builder would have sub contracted the entire work to a sub-contractor and the sub-contractor would procure all materials. In such case, entitlement for any transitional credit in respect of inputs in stock should be determined only at the hands of the contractor. To the extent of work completed, the sub-contractor would have already claimed consideration from the builder and thus, if the work done upto 30.06.2017 has already been billed by the sub-contractor, there would be no work in progress at the hands of the sub-contractor. The sub-contractor would be entitled to avail transitional credit only for the stock of inputs lying as such with him. At the hands of the builder, the unsold flats would be his work in progress and in respect of the materials contained in such work in progress, to the extent of last one year purchases, though ITC is legally entitled, the same can



neither be availed by the sub-contractor (as it is not a work in progress for him as he had already billed for the completed work on the builder) nor by the builder (as he would not be in possession of any duty paying documents in his name as the purchases are made by the sub-contractor).

GST vis-à-vis legacy levies

Another provision that is particularly applicable to the construction industry is Section 142 of CGST Act, particularly sub-sections 10 and 11.

(10) Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

(11) (a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax

shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

Section 142 (10) and (11) only reinforces the proposition laid in the above preceding paras that all the ongoing construction projects, the contracts of which have been entered into prior to 01.07.2017, shall be subject to tax under the provisions of the GST Act. In other words, the unexecuted portion of the various construction projects shall be taxed under the GST regime, and as such, the legacy levies absolutely cease to apply post 01.07.2017.

Further, that being the case, adjustments with regard to Service Tax paid on Mobilization Advances received, which was a grey area during the Service Tax regime also gets resolved to the effect that no GST shall be payable on the construction services to the extent such amounts have suffered tax under the Service Tax regime.

At this juncture, it is important to analyze an interesting provision envisaged under Section 142 (11) (c), which appears to have been included to avoid a cascading effect of the erstwhile and the new indirect taxation. As long as the taxes paid under the erstwhile

laws are proportionate to the extent of construction already executed, there would be no issues in reconciliation. But when the proportion is disturbed and the taxes paid under the erstwhile laws are more than the extent of construction already executed, then Section 142 (11) (c) shall come into action. However, the said provision appears to apply only in cases where both VAT and Service Tax has been paid, the credit of which can be claimed as transitional credit (SGST & CGST respectively) to the extent of supplies effected after 01.07.2017. This situation normally arises in cases of works contract including builders' construction activities (i.e. flats, villas, shops etc.) where both Service Tax and VAT were paid.

That being said, it is also interesting to note one of the Advisories of the Kerala Goods and Services Taxes Department dated 18.07.2017 on the GST on Works Contract which has also contemplated on such issues with illustrations, wherein various interpretative hypothesis under the transitional provisions in relation to the erstwhile VAT laws have been discussed in detail which are in line with the above discussions. Therefore, in view of the scope of this provision, the affected businesses can take recourse under this provision to claim the credit of taxes already paid under the erstwhile laws where the corresponding supply is executed only in the GST regime.

Non-utilization of Disputed Credit and Blocked Credit

Further, the Circular issued by the Board vide Circular No. 33/07/2018-GST dated 23.02.2018 also affects the business at large which indicates the non-utilization of transitional credit pertaining to 'disputed credit' and 'blocked credits'. The instructions are two-fold:

- o If there was a dispute on entitlement for CENVAT Credit and if any Order-in-Original (OIO) or Order-in-Appeal (OIA) has been passed disallowing such credit, such credit, if carried forward into GST regime as transitional credit, cannot be utilized under GST regime for payment of GST liabilities so long as the OIO / OIA is in existence. If such credit is utilized it shall be recovered.
- o Any credit which is barred under Section 17(5) of the CGST Act, 2017, if carried forwarded under the transitional provisions, such credit should not be utilized. If such credit is utilized it shall be recovered.

The respective authorities have already instructed field formations to verify the transitional credit on the above lines and take necessary actions in that regard.

This, however, has imposed a practical difficulty on the businesses owing to the fact that once the credit in respect of various inputs, input services and capital goods are availed, they form part of the pool of credit in a single CENVAT Account and as such, the identity of a particular credit amount is taken away by the larger credit family. That being the case, it is very difficult to identify the credit attributable to the said 'disputed credits' or 'blocked credits' other than turning towards FIFO (First In, First Out) method, which was also inbuilt in Rule 14 of the erstwhile CENVAT Credit Rules, 2004. A harmonious reading of Circular would suggest that the impact of the same is only when no appeal is filed against the said OIO / OIA or when there is no stay against the said OIO / OIA by the appellate forum, though the proposition needs clarity and the legal sanctity of the same needs to be distinctly examined.

 **It is very difficult to identify the credit attributable to the said 'disputed credits' or 'blocked credits' other than turning towards FIFO (First In, First Out) method, which was also inbuilt in Rule 14 of the erstwhile CENVAT Credit Rules, 2004.**

Anti-profiteering

Anti-Profiteering provisions have been introduced in GST in order to ensure that the businesses pass on the benefits corresponding to reduction of rates and provision of Input Tax Credit, to the customers. Though the clarity on the scheme is not absolute, the intention of the Government is mainly to benefit the B2C customers to ensure there is no adverse effect on the life of the common man by way of any inflation or undue disadvantages. The construction businesses are still in the dark with respect to this clause due to the lack of clarity as to whether the benefits are to be passed to all the customers for a particular project or only to those customers from whom outstanding amount is still due on the appointed date. Further, it may even pose some other practical difficulties in adhering to the scheme, failing to which would lead the businesses into some handsome troubles at the behest of the Department.

Before parting, the upshot of the implementation of the GST regime had caused much speculation among businesses as to benefits and adversities that are likely to impact them in the long run. Even the Department appears to be left half-cooked when it comes to the interpretation and implementation of the various provisions



of the GST law, particularly in the area of Transitional Credit. It is clear that the prime focus of the Department for the year would be the strict verification of the transitional credit availed apropos of the various instructions issued by the authorities. It is also interesting to contemplate the modus operandi of the Department for the efficient and effective implementation of all the transitional clauses, considering the huge work load already at hand. Unsurprisingly, that is why a new question has been lately resonating among the masses with a tinge of sarcasm,
'Were you GST ready?'





“While the philosophy of GST is laudable, tax neutrality has been missed out between pre and post GST eras due to inadequate understanding of industry specific complexities.”

In conversation with:

Dr. R. Kumar

Managing Director,
Navin Housing & Properties Pvt Ltd



Dr. R. Kumar, the visionary behind Navin's, has led the organization over the last 28 years, helping it to surge ahead as the most trusted and respected construction & real estate brand in the city of Chennai.

An irreplaceable force within the organisation, Dr. Kumar has been one of the thought leaders of the industry and has always measured his value by the ethical practices he follows. In 25 years, Dr. Kumar has ensured that Navin's has brought out over 110 functionally elegant projects, most of which have been landmarks in the city.

Dr. R. Kumar completed his B.E. in Civil from the Government Engineering College, Salem before going on to do his M.E. in Urban from the College of Engineering, Guindy. He is one of those few developers in the industry who has hands-on knowledge and to fuel his passion and commitment, he keeps upgrading his education and skillsets by constantly striving to learn new things.

As part of this endeavour Dr. Kumar has undergone the Owner President Management Programme (OPM) at HARVARD BUSINESS SCHOOL during 2012 – 2014 and completed the same successfully. He has been conferred with an Honorary Doctorate by University Popolare Degli

Studi DI Milano, Milan, Italy.

It is for these qualities that the prestigious Royal Institute of Chartered Surveyors, London honoured Dr. Kumar making him a Fellow of the Institute (FRICS), which is regarded as a world recognised qualification for professionalism and ethical practices in this field.

In this interview, Mr. Kumar takes us through various practical aspects of GST affecting Construction Sector.

Q. How have the last seven months post introduction of GST affected construction sector?

The sale of under construction projects and new projects are very badly hit due to reluctance of buyers to cough up GST. Most of the sales are clocked in the completed projects due to GST not being applicable.

Q. Whether the GST rates are revenue neutral for construction industry?

We would love it if GST rates are revenue neutral. Unfortunately, it is not. The labour cost which is about 30-35% of construction cost hitherto did not attract service tax. But now that is also taxed at 18% This is a complete

addition of about 6%. Further input credit is not new to the industry. Input credit was also available during service tax regime. Costs of several materials have also gone up after GST, while only a few materials costing less.

Q. Has GST Triggered demand?

Far from that. It has in fact subdued the demand. Imagine every construction contract now carries 18% GST which is acting as a dampener, even after adjusting for any savings in material input costs.



We would love it if GST rates are revenue neutral. Unfortunately, it is not.

Q. We heard, the propaganda that spread through media, is affecting construction sector, since public are more demanding on reducing price due to GST. Is this true?

They are already demanding reduction on prices and now seek increased discounts. And they are reluctant to pay GST, which is affecting the sale of new and under construction projects.

Q. Is Industry willing to pass on benefit of GST to buyers

On the contrary, the industry is forced to absorb the dis-benefits of GST

Q. What is the effect of RERA on industry

As far as Navin's is concerned there is very little difference between pre RERA and post RERA periods, except for the increase in compliance costs. However the impact is felt across the Industry with launches dropping considerably and many small time players and unsystematic developers getting affected. While there is increased protection for buyers, increased transparency and increased disciplining of the Developers, the industry per se is left vulnerable as approving authorities Government and its Departments, Service agencies etc have been left out its ambit. The buyer is also allowed to cancel booking any time despite signing the agreement, introducing uncertainties to the developer. The Act is expected to evolve over time bringing in the required maturity amongst all stakeholders.



While the philosophy of GST is laudable, tax neutrality has been missed out between pre and post GST eras due to inadequate understanding of industry specific complexities.

Q. Compared to present compliance system under GST, was con-

struction industry comfortable with earlier system of compounding under VAT and service tax or is the current system more beneficial due to availability of input credit?

As I said earlier, input credit was available even in the Service tax regime. While input tax credit under GST moderates the impact of higher tax incidence, it is still very complicated especially with the non-payment of GST by supplier robs the credit claim of the developer, making him responsible for monitoring and ensuring GST payment by supplier. While the philosophy of GST is laudable, tax neutrality has been missed out between pre and post GST eras due to inadequate understanding of industry specific complexities. However its hoped that all pain points would be addressed and removed soon.



GST is seriously impacting Joint Development Agreements by taxing the land owner share at the same sft value of that of the buyer.

Q. How is GST going to impact the controversial issues of Joint Development Agreements?

GST is seriously impacting Joint Development Agreements by taxing the land owner share at the same sft value of that of the

buyer. While the buyers price includes several components like cost of marketing, interest costs and profit margin, the land lord has traditionally been treated like a partner when area sharing is finalised. Its illogical to adopt any value for landlord share other than the value of the land he transfers, as the rest of sale price is anyway taxed in the hands of the flat buyer.



Sale of under construction projects and new projects are very badly hit due to reluctance of buyers to cough up GST. Most of the sales are clocked in the completed projects due to GST not being applicable.

Q. Whether movement of material across country for construction is smooth after GST?

Yes.





NFRA: REPORTING AUTHORITY OR REGULATORY AUTHORITY?

The Union Cabinet of India, on March 1, 2018 approved the setting up of an independent regulator of auditors i.e. the National Financial Reporting Authority (NFRA). This move by the government is a direct consequence of the recent Punjab National Bank fraud and like-natured frauds which have taken place in the wake of institutes and authorities regulating such acts of “misconduct”. The establishment of such a body has been called “requirement of the day” by the 2016 Report of Com-

panies Law Committee. Broadly speaking of the purpose of establishment of the NFRA, it shall provide for “matters relating to accounting and auditing standards under the Act”.

It is established “for enforcement of auditing standards and ensuring the quality of audits to strengthen the independence of audit firms, quality of audits and, therefore, enhance investor and public confidence in financial disclosures of companies”.

THE NACAS AND NFRA



Establishment and Powers

National Advisory Committee on Accounting and Auditing Standards (NACAS) was introduced by the Companies (Amendment) Act, 1999 w.e.f. October 31, 1998, was a Committee formed under the Companies Act of 1956 to advise the Central Government on the formulation and laying down of accounting policies for adoption by companies. The Amendment Act made it mandatory for companies to abide by the accounting standards prescribed by the CG in consultation with the NACAS.

NFRA on the other hand is an Authority deriving its powers from the Companies Act of 2013. The NFRA is an independent quasi-judicial body for monitoring corporate financial management. NFRA would not only continue with the advisory functions of the NACAS but will further recommend the Central Government on the formulation of accounting and auditing policies for adoption by companies or class of companies or their auditors, monitor and enforce the compliance with such standards,

oversee the quality of service of the professions and suggest measures required for improvement in quality of service and to perform “such other functions” relating to the above stated matters” as may be prescribed.

THE ICAI AND NFRA: A CONFLICT?

Establishment

The Institute of Chartered Accountants is established under The Chartered Accountants Act of 1949 (C.A. Act). The Act was enacted to make provision for the regulation of the profession of Chartered Accountants. It provides for the establishment of a Disciplinary Directorate, Board of Discipline and Disciplinary Committee for the investigation of matters pertaining to “misconduct”.



Application

The NFRA has been conferred with the power to investigate Chartered Accountants and their firms of listed companies, large unlisted public companies and such other entities where public interest would be involved. However, the ICAI would continue to exercise its



inherent regulatory role in respect to members of the Institute, private limited companies and public unlisted companies. Hence, in the presence of clearly demarked spheres of jurisdictions of both the institutions, a problem of overlapping does not arise. According to Arun Jaitley, “NFRA will certainly be an oversight body. It is not intended to replace the disciplinary jurisdiction of the CA Institute.”

Power to Investigate



Further, the NFRA shall have the power to investigate Chartered Accountants and their firms of listed companies, large unlisted public companies and such other entities where public interest would be involved either suo moto or on a reference made to it by the Central Government. Besides this power to investigate, where the NFRA has already initiated an investigation, no other institute or body shall initiate or continue any proceedings in such matters of misconduct.

The C.A. Act provides for a Disciplinary Directorate for making investiga-

tions in respect of any information or complaint received by it. There are two Schedules under the C.A. Act. The “misconduct” enlisted under the Second Schedule are of a graver nature than the acts enlisted under the First Schedule. If the Director of the Directorate is of the opinion that a member is guilty of any professional or other misconduct mentioned in the First Schedule, the matter shall be placed before the Board of Discipline and if he is of the opinion that the matter falls within the Second Schedule, he shall place the matter before the Disciplinary Committee.

The ICAI would continue to exercise its inherent regulatory role in respect to members of the Institute, private limited companies and public unlisted companies.

Power to Punish

If professional or other misconduct is proved, NFRA has the power to make order for imposing a penalty (which vary in cases of individuals and firms), debar the member or the firm from engaging himself or itself from practice as a member if the ICAI. On the other hand, the Committee or Board have the powers



listed under the Schedules to the C.A. Act.

Similarity: Powers of a “Civil Court”

Furthermore, both the Authorities has been conferred with same powers as a “civil court” while trying a suit for matters including: (i) discovery and production of books of account and other documents; (ii) summoning and enforcing the attendance of persons and examining them on oath; (iii) inspection of any books, registers and other documents of such person; (iv) issuing commissions for examination of witnesses or documents.



Akshi Narula is a Law Student in School of Law, University of Petroleum & energy Studies, Dehradun

CONCLUSION

The NFRA named as a ‘Reporting’ Authority has not only limited its functions to just advise on the formulation and laying down of accounting policies for adoption by companies contrary to the NACAS under the Companies Act, 1956 but possesses such powers to also enforce the compliance with such standards, oversee the quality of service of the professions, suggest measures required for improvement in quality of service and also order investigation on grounds of “misconduct”. Such wide powers residing with the institution has hence expanded the scope of activities to be performed by the body. It does not prolong to be a ‘Reporting Authority’ but has been conferred with the ‘Regulatory’ functions as well.



Input Tax Credit

Treatment of Disputed Credits/- Blocked Credit in TRAN : CBEC Circular Vs GSTN

R. Raghavendra Rao



On 23rd February 2018, the CBEC issued Circular No. 33/07/2018-GST on the issue of carrying forward disputed credits and blocked credits (i.e., ineligible credits under Sec 17(5) – like credit on telecom towers and pipelines laid outside the factory premises).

The essence of the Circular is if the

disputed credit / blocked credit under pre-GST era is more than 10 lakhs, an undertaking shall be filed by the tax payer with the jurisdictional officer of the Central Government that such credit shall not be utilized or has not been availed as transitional credit.

Whosoever drafted this Circular appears to have not seen the GST portal nor has any basic knowledge on how the credit is utilized in GST era or how a return is



filed and how the liabilities are offset in GSTR 3B.

While utilizing the ITC there are some conditions imposed under Sec 49(5) of the CGST Act, 2017, which are as under:

(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of—

(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;

(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;

(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;

(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and

(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

The GST Portal has also been programmed to implement the above conditions and any cross utilization of ITC is not permitted by the system at the time of offsetting the liabilities in GSTR3B. The GST Network follows a protocol for utilisation and the taxpayer cannot “maintain” balances “unutilized” in CGST account as per his choice. This can be explained in the following example:



IGST liability in a month = Rs 1,00,000/-

CGST credit (Rs 20,000/- plus disputed credit of Rs 25,000) = Rs 45,000/-

SGST Credit = Rs 40,000/-

While paying IGST of Rs 1,00,000/-, unless the tax payer exhausts all the CGST credit balance of Rs 45,000/-, he is not allowed utilize the SGST balance of Rs 40,000/-. Hence though a taxpayer wants give an undertaking as per the CBEC Circular to carry forward the disputed or blocked credit in credit ledger, and not utilize the same, the GST Network does not permit the same. If we try, the following message is displayed:

 Offset the CGST Credit completely before cross utilization SGST credit against IGST tax liability

X

Another issue is about the blocked credits. If any taxpayer had availed credit much before 01/07/2017 on items like telecommunication towers or pipelines laid outside the factory, how to identify it from the common pool of credit carried forward in TRAN? Follow FIFO and check utilization every month? How long back? One year, two years or ten years?

R. Raghavendra Rao is a Consultant , GST





CASE BRIEFS

No Service Tax on Value of Materials Supplied Free of Cost by Service Recipient during Construction

In a ruling in favor of the construction industry, a two-judge bench of the Supreme Court, held that service tax cannot be levied on the value of goods/material supplied free of cost by a service recipient during construction.

The service tax is to be levied in respect of 'taxable services' and for the purpose of arriving at 33% of the gross amount charged, unless the value of some goods/materials is specifically included by the Legislature, that cannot be added.

The supremecourt has followed the Order of Larger bench dated September 6, 2013. The Honourable Court has examined the scope of Explanation (c) to Section 67 which defines 'gross amount charged'. The Department had referred that the explanation reads that 'gross amount charged' includes includes payment by cheque, credit card, deduction from account and any form of payment by issue of credit notes or debit notes. Any form of pay-

ment would include value of free supplies as well. Countering same, the Honourable court has held that the expression any form of payment refers essentially to mode of payment as cash, cheque, credit/debit notes etc and that same shall not be construed to refer to addition of materials supplied free of cost. The Court has gracefully held that only gross amount charged by provider expressly can be said to be consideration.

The issue whether value of 'free supplies' shall be included for the purpose of indirect taxation has been subject matter of litigation under erstwhile Sales Tax/VAT. The test usually applied under such laws used to be whether the gross value of contract is undergoing any change by virtue of such free supplies. Ofcourse, the question had a major impact under sales tax /vat laws, since the free supplies always used to be materials. As far as service tax is concerned, same may not have much relevance since value of material is anyway excluded from purview of service tax.

Supreme Court - COMMISSIONER OF SERVICE TAX ETC. vs M/S. BHAYANA BUILDERS (P) LTD. ETC. - CIVIL APPEAL NO. 15865 OF 2017 - dt. 19-02-2018

Read More

Builder not Liable to pay Service Tax for providing Maintenance Services under Statutory Obligation

The Bombay High Court held that the builder or developer are not liable to pay service tax for collecting amount for up-keep of the apartment or premises when the same are provided under statutory service.

The bench observed that “the provisions of Sections 5 and 6 and eventually the further provisions right upto Section 13 of the MOFA would make it clear that builder and developer maintains and repairs the property till it is conveyed or the title in the same is conveyed to the Flat purchasers or the legal entity which would ultimately be formed by him. Thus, a cooperative housing society or a company would have to be formed of all those Flat purchasers who have purchased the Flats prior to or under construction, namely, subsequently purchased Flats. The completion of the building or it being rendered fit for occupation is one of the duties and obligation of

the builder and promoter under this law. For them to be conveyed he has to maintain the property. His liability is in terms of the statute itself. It is towards that end that money is collected and paid over to the statutory authorities in the form of charges and taxes as it is the builder’s obligation to collect these amounts from individual Flat takers and make it over to these authorities.”

Bombay High Court - The Commissioner of Service Tax vs M/s. Shri Krishna Chaitanya Enterprises & Ors - CENTRAL EXCISE APPEAL NO.311 OF 2016 - dt. 25.01.2018

Read More

Amount received for providing Common facilities is subject to Service Tax under the head ‘renting of immovable property’

The Delhi bench of the CESTAT, held that service tax is payable on the amount received for providing Common facilities under the head ‘renting of immovable property’ through the same was received under a separate agreement.

CESTAT Delhi - M/s. A.B. Hotels Ltd. vs CST, Delhi - Service Tax Appeals Nos.600 and 3119/2012 (DB) - dt. 12.02.2018

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Concept of Unjust Enrichment not applicable for Export of Service

The Delhi bench of the CESTAT recently held that the concept of unjust enrichment is not applicable for Export of Service in respect of service of making payment of money provided by Department of Post on instruction of foreign party to customer in India.

It has been held that Unjust enrichment is not applicable since service is provided by Department of Post to foreign party and the person who receives the money in India cannot be treated as recipient service provided by Department of Posts.

CESTAT Delhi - Service Tax Appeals Nos.56290-56293/2013 (DB) - M/s.Western Union Financial Services Inc. vs CST, Delhi - dt. 25.01.2018

Read More

Excise & Customs

If Place of Removal is Factory Premises of Assessee, Outward Transportation ‘from the said place’ would amount to Input Service

The Supreme Court has said that once it is accepted that place of removal is the factory premises of the assessee, outward trans-

portation ‘from the said place’ would clearly amount to input service.

The Apex Court further observed that “Once it is accepted that place of removal is the factory premises of the assessee, outward transportation ‘from the said place’ would clearly amount to input service. That place can be the warehouse of the manufacturer or it can be customer’s place if from the place of removal the goods are directly dispatched to the place of the customer. One such outbound transportation from the place of removal gets covered by the definition of input service”.

The Judgment deals with period prior to 01.04.2008 , when the definition of ‘input service’ under Cenvat Credit Rules, covered outward transportation from ‘Place of Removal’ as input service. The Honourable Supremecourt on interpreting definition of ‘input service’ as it stood during the relevant time read with Circular 97/8/2007-ST dated August 23, 2007 has held that credit is eligible on outward transportation from Place of Removal subject to conditions as prescribed in circular 97/8/2007-ST.

The Honourable Supreme Court recently has held in matter of ‘Ultra Tech Cement ‘that credit of service tax paid on outward transportation from 01.04.2008 is not available for outward transportation from place of removal.



Please click the link for copy Judgment :
<http://www.taxscan.in/preview/?pre-views=1E3MVukZSTsf-vQBmdu0Q-FLuy9OSmTgUU>

With the above two judgments, a number of cases pending on the issue before various appellate forums would attain finality.

Supreme Court – COMMISSIONER OF CUSTOMS CENTRAL EXCISE AND SERVICE TAX , GUNTUR vs M/S. THE ANDHRA SUGARS LTD - CIVIL APPEAL NO. 11872 OF 2016 - dt. 05.02.2018

Read More

Food Preparations made in Restaurants are ‘Excisable Goods’: CESTAT

The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) recently held that food preparations made in restaurants such as pastry, cakes, biscuits, cookies, chocolates etc are excisable goods.

The Tribunal observed that “starting point with various ingredients and the ending point with combination of these ingredients involving different duration of preparation requiring heating, boiling and various other processes will certainly result in the new identifiable and marketable prepared food

and it is an admitted fact that the duration of shelf life by itself will not decide the marketability or excisability”.

CESTAT Delhi - M/s Bharat Hotel Limited vs CCE, Delhi – I - Excise Appeal No. 51684 of 2017 - dt. 13/02/2018

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There is no provision in Customs Act allowing freezing a Bank Account

In the case of S.B International, the Delhi High Court recently held that there is no sanction in the Customs Act, 1962 which allows freezing the bank account of the Assessee.

The Court observed that “Freezing a bank account is not the same as seizing an asset; it interdicts operation of a bank account and it deprives the account holder of banking facilities. Indisputably, there is no sanction in the Customs Act for such action”.

Delhi High Court - S. B. INTERNATIONAL vs. THE ASSISTANT DIRECTOR, DIRECTORATE OF REVENUE INTELLIGENCE AND ORS. - W.P.(C) 237/2018 - dt. 05.02.2018

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Essential Components of Boiler classifiable as ‘Boilers other than parts’,

Taxable at 10%

The Supreme Court held that essential components of boiler classified as 'boilers other than parts' are taxable at the rate of 10 percentage.

The Court observed that "Primary Authority as well as the First Appellate Authority was perfectly justified in coming to the conclusion that the components of the boilers cleared as parts but essential to put into operation the boilers, would be classifiable under sub-heading 'goods other than parts' and not as claimed by the Revenue under the sub heading 'parts'.

Supreme Court - COMMISSIONER OF CENTRAL EXCISE vs M/S BHEL - CIVIL APPEAL NO(S).8490 OF 2009 - dt. 07.02.2018

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SSI Exemption available If Assessee using Brand Name of Another person by way of Assignment Deed

While hearing the case between M/s. Kusum Industries and Commissioner of Central Excise & ST, Customs Excise and Service Tax Appellate Tribunal (CESTAT) recently held that SSI exemption under the Excise law can be granted if assessee is using the brand name of another person by way of assignment deed.

CESTAT Delhi - M/s. Kusum Industries vs Commis-

sioner of Central Excise & ST, Jaipur - Appeal No. E/876,2986/2010, E/59167-59168/2013 -DB - dt. 25.01.2018

Read More

Revocation of Customs Broker License is too grave for Non-Declaration of details of Imported Goods in Bill of Entry

A division bench of New Delhi CESTAT, in M/s KVS Cargo v. Commissioner of Customs (Gen) New Delhi, held that revocation of Customs Broker license is too grave for non-declaration of details of imported goods correctly in the bill of entry. The Tribunal observed that evoking the CB license would be too grave a penalty to be imposed for the above violation. Final justice laid down by the CESTAT in this appeal was the penalty of Rs.50,000/- on the appellant, in addition to forfeiture of the whole amount of security deposit.

CESTAT Delhi - Appeal No.C/51579/2017 - dt. 23.01.2018

Read More

Tax Arrears of deceased Assessee can't be Recovered out of Personal Properties of Wife

Two-judge bench of the Gujarat High Court comprising Justice Akil Kureshi and Justice



A.Y. Kogje in the case of Meena Krishna Agarwal Versus Assistant Commissioner decided that Tax Arrears of a deceased assessee cannot be recovered out of the personal properties of wife.

The recovery was stayed solely on ground that the properties held by wife did not come to her through inheritance from her husband, but was purchased out of her source of income. Needless to say, properties of deceased tax payer inherited by legal heirs, would be liable for dues of such taxpayer.

Gujarat High Court - MEENA KRISHNA AGARWAL vs ASSISTANT COMMISSIONER - SPECIAL CIVIL APPLICATION NO. 3969 of 2014 - dt. 15.01.2018

Read More

SSI Exemption available If Assessee using Brand Name of Another person by way of Assignment Deed

While hearing the case between M/s. Kusum Industries and Commissioner of Central Excise & ST, Customs Excise and Service Tax Appellate Tribunal (CESTAT) recently held that SSI exemption under the Excise law can be granted if assessee is using the brand name of another person by way of assignment deed.

The Tribunal observed that, observed that during the course of investigation certain

goods were found having the brand name of NASCPL from the assessee's unit, in such circumstances the assessee cannot absolve their liability of using the brand name of another person, therefore, using the brand name of another person on the said goods found in their factory.

CESTAT Delhi - Appeal No. E/876,2986/2010, E/59167-59168/2013 -DB - dt. 25.01.2018

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GST

Goods can't be Detained for Mere Non-Compliance of GST Rules when Transaction is Non-Taxable Supply

The Kerala High Court, in M/S Indus Towers Limited Vs. The Assistant State Tax Officer, held that the power of detention contemplated under Section 129 of the SGST Act can be exercised only in respect of goods which are liable to be confiscated under Section 130 of the SGST Act.

The Judgment, on careful reading of Sections 129 and 130 of CGST Act, holds that when transaction is not a taxable supply, procedural infraction under Rules 55 (transportation without invoice) and 138 (information to be furnished prior to transportation of goods and generation of e way bill)does not give



The consequence for violation can only be penalty as prescribed and not detention of goods.

Kerala High Court - W.P. (C) No. 196 of 2018 - dt., 17.01.2018

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Allahabad HC directs to Re-Open the Facility to file TRAN-1 in GST Portal

A division bench of the Allahabad High Court, today directed the Government to re-open the Goods and Services Portal in order to enable the tax payer to file TRAN-1. The order was granted by Justice Bharati Sapru and Niraj Tiwari, on a petition filed by M/S Continental India Private Limited, who was unable to file GST TRAN-1 due to technical glitches in the GST portal.

The order is a sign of relief to those tax payers who could not file TRAN 1 on last date due to technical glitches of GSTN. Petitions are filed before various High courts by tax payers who are aggrieved of same problem of not being able to file TRAN 1 on due date due to problems of GST Network.

Allahabad High Court - Writ Tax No. 67 of 2018 - dt. 24.01.2018

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GST is not Taxpayer-Friendly: Bombay HC directs Govt to Fix Technical Glitches in GSTN Soon

While hearing a petition filed by M/s Abicor and Binzel Technoweld Pvt. Ltd, a two-judge bench of the Bombay High Court asked the Government to resolve the technical glitches in the Goods and Services Tax Network (GSTN) soon.

“The regime is not tax friendly. We hope and trust that those in charge of implementation and administration of this law will at least now wake up and put in place the requisite mechanism. This is necessary to preserve the image, prestige and reputation of this country, particularly when we are inviting and welcoming foreign investment in the State and the country. We hope and trust that such petitions are rarity and the Court will not be called upon to administer the implementation of the law, leave alone monitoring and supervising the working of the individual officials, howsoever high ranking he may be,” the bench said.

Following Allahabad Highcourt, it is the turn of Highcourt of Mumbai to alert the government to have a proper system in place for implementation and admin-

istration of GST. The mention by the Honourable Highcourt regarding setting up of a Grievance Redressal Mechanism is very much the need of the hour. Most of the matters reaching high-court, are on procedural issues and can be addressed by the government itself through a makeshift arrangement for addressing grievance.

Bombay High Court - WRIT PETITION (L) NO. 2230 OF 2018 - dt. 06.02.2018

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GSTN comes within the ambit of RTI Act

The Central Information Commission (CIC) Friday held that the Goods and Services Tax Network (GSTN) will come well within the purview of the Right to Information (RTI) Act.

“Keeping in view the facts of the case and the submissions made by both the parties, it is evident that a sketchy information as available on its website had been furnished by the Respondent. However, it is appalling to learn that an important, significant and critical area concerning the implementation of GST Network still required streamlining and consolidation which needs to be attended to forthwith in the larger public interest,” CIC said.

Once again GSTN is dragged to court, this time not for anything related to implementation of GST, but on account of not providing certain documents relating to GSTN on request made under RTI. The available information in public domain shows HR Policy had not been finalized, the detailed norms including delegation of powers for discharge of GSTN functions was under preparation, the rules/regulations and manual etc. to be used by its employees for discharging their functions was also under preparation, the annual statement of accounts and balance sheet was available till the period 2013-2014 only and that it was reflected that on completion of manual, rules and regulations, recruitment etc., an arrangement shall be put in place with the consultation of all the stake holders of the Company including tax payers.

So, the message is, the tax payer has the bonus of relief in knowing the entire internal management of company itself is worse than implementation of GSTN.

Central Information Commission - Appeal No.:-CIC/DOREV/A/2017/167279-BJ - dt. 21.02.2018

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Levy of IGST on Ocean Freight: Gujarat HC issues Notice to Govern- ment

The Gujarat High Court, while admitting a petition challenging the levy of Integrated Good and Services Tax (IGST) on Ocean Freight payable on transportation of goods by a vessel, has sent notice to the Central Government. A bench comprising Justices Akil Khureshi and Justice B N Karia was hearing a writ petition wherein the petitioner challenged the constitutional validity of the Notification No. 10/2017-Integrated Tax [Rate] dated 28th June 2017, as per which they were asked to pay tax at the prescribed rate all over again on the ocean freight.

*Gujarat High Court - SPECIAL CIVIL APPLI-
CATION No. 726 of 2018 - dt. 09.02.2018*

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Sales Tax

Trade Discount offered to Customers is Deductible from Turnover

A three-Judge bench of the Supreme Court has categorically held that the trade discount given to customers do not form part of the taxable turnover under the Karnataka Value Added Tax Act even if the same was allowed without the support of an invoice. “Above all, it must be remembered that taxable turn-

over is turnover net of deductions. All trade discounts are allowable as permissible deductions,” a bench comprising Chief Justice Deepak Misra, Justice A M Khanwilkar, and Dr. D Y Chandrachud said.

*Supreme Court - CIVIL APPEAL NOS.357-367
OF 2018 - dt. 06.02.2018*

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Discounts and Rebates would not form part of ‘Sale Price’

In M/s. Universal Cylinders Limited v. Commercial Tax Officer, a two-judge bench of the Supreme Court last day ruled that the ‘sale price’ does not include normal trade practices like discount or rebates under the Rajasthan Sales Tax Act, 1994.

The Court held that “Section 2(39) of the Rajasthan Sales Tax Act, which defines “sales price”, clearly indicates that it is the price which is either paid or payable to a dealer as consideration for the sale. The definition itself makes it clear that any sum by way of any discount or rebate according to the practice normally prevailing in the trade shall be deducted and shall not be included in the sale price”.

*Supreme Court - CIVIL APPEAL NO(S). 2431
OF 2018 - dt. 23.02.2018*

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The Judgment would be equally relevant when it comes to interpretation of Section 15 of CGST Act, since transaction value is the price actually paid or payable for the said supply of goods or services or both.

Transporting Goods to Unregistered Person not prohibited under GST, Tax Evasion can't be suspected: Kerala HC

The High Court, while quashing an order of the Kerala GST authorities, has held that the goods cannot be seized merely for the reason that the goods were intended to be supplied to an unregistered firm. The Court held that transporting goods to an unregistered person is not prohibited under the GST regime.

Kerala High Court- M/s Age Industries Pvt Ltd v. Asst State Tax Officer- WP(C).No. 1680 of 2018- dt. 18.01.2018

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GST: HC asks Govt to Take Measures to Correct Errors by April 24

After blaming the Central Government for technical glitches in the Goods and Services Tax (GST) regime, the High Court today asked the Government to wake up and take

measures to address the issues of the taxpayers.

Bombay High Court- M/s Abicor and Benzel Technoweld Pvt Ltd

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Date of Presentation of Cheque is the Date of payment of Service Tax: CESTAT Quashes Interest Demand

CESTAT held that held that the date of presentation of the cheque is the date of payment of service tax. Accordingly, the bench quashed a demand for interest for the delay in payment of service tax.

CESTAT Delhi- M/s. DB Corp Ltd v. CCE- Excise Appeal No. 51781 of 2017- SM- 07/03/2018

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No Service Tax on Reimbursed Expenses: SC

Supreme Court held that service tax cannot be levied on reimbursed expenses prior to 14th May 2015.

Supreme Court- UOI v. M/S. INTERCONTINENTAL CONSULTANTS AND TECHNOCRATS PVT. LTD- CIVIL APPEAL NO. 2013 OF 2014- 07/03/2018

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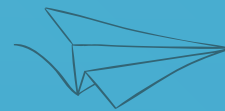
The levy has been struck down by High-court of Delhi on ground that Rule 5 is ultravires the provisions of Section 67 of Finance Act, 1994 and same has been upheld by the Supremecourt . Amendment to Section 67, introduced from 14.05.2015, to include reimbursements in meaning of consideration is to held as prospective in nature.

No Service Tax on Value of Materials Supplied Free of Cost by Service Recipient during Construction

In a ruling in favor of the construction industry, a two-judge bench of the Supreme Court, last day held that service tax cannot be levied on the value of goods/material supplied free of cost by a service recipient during construction.

Supreme Court- COMMISSIONER OF SERVICE TAX v. M/S. BHAYANA BUILDERS (P) LTD. ETC- CIVIL APPEAL NOS. 1335-1358 OF 2015- dt. 19.02.2018

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CASE BRIEFS

Direct Tax

Sale consideration of Floor developed under Joint Venture is Not Business Income: HC Quashes Addition against Former CBDT Official

Quashing an order passed by the Revenue against IRS Manjith Singh, former CBDT official, High Court clarified that the sale consideration of a floor developed under a Joint Venture Agreement is taxable as Long Term Capital Gain (LTCG) and not as business income under the provisions of the Income Tax Act, 1961.

Calcutta High Court- Commissioner Of Income Tax, Kolkata-X V. Surjeet Kaur- ITA NO.383 OF 2008- dt. 05.01.2018

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Penalty won't attract on Rejection of an Application under PMGK Scheme: HC

A division bench held that penalty under section 271AAC of the Income Tax Act, 1961 would not attract when an application filed under the Pradhan Mantri Garib kalyan (PMGK) was

rejected by the tax department for gullible mistake arising out of confusion about options to make declaration under the said scheme.

Delhi High Court- Virag Tiwari V. Principal Commissioner of Income Tax-21 & Others- WP(C) NO. 6312/2017- dt. 12.03.2018

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No Separate Search Warrant required to Brothers who are Involved in Common Business: HC

High Court ruled that no separate search warrant is required to brothers who are involved in common business and also upheld the addition made by the Assessing Officer.

Delhi High Court- Vinod Kumar Gupta v. Deputy Commissioner of Income Tax- ITA 1003/2017- dt. 12.03.2018

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Transfer Charges, Non-Occupancy Charges etc collected by Co-operative Societies from Its Members are Exempt from Income Tax: SC

A two-judge bench held that the transfer



charges, non-occupancy charges and common amenity fund charges and certain other charges, collected by Co-operative Societies from Its members are not subject to income tax since the principle of mutuality applies to all these cases.

Supreme Court- Income Tax Officer, Mumbai v. Venkatesh Premises Cooperative Society Ltd- CIVIL APPEAL NO.2706 OF 2018- 12-03-2018

Read More

IT Deduction available for Incentive Bonus: HC

High Court has ruled that the incentive bonus given to employees is eligible for deduction under Section 37 of the Income Tax Act 1961.

Allahabad HC- Commissioner Of Income Tax, Moradabad & Anr- INCOME TAX APPEAL No. - 600 of 2012- 20.02.2018

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Capital Gain Exemption allowed on the basis of Certificate from Tahasildar can't be treated as 'erroneous': ITAT

While quashing a Revisional assessment, Income Tax Appellate Tribunal (ITAT) ruled that capital gain exemption allowed by the Assessing Officer (AO) on the basis of the certificate from Tahasildar cannot be treated as erroneous.

ITAT Delhi- Smt. Sangeeta Jain Fashion Club Global v. Pr. C.I.T-II, New Delhi- ITA No. 3888/DEL/2017- 15-02-2018

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Transfer of Capital Assets by a Company to Step down 100% Subsidiary Company would not attract Capital Gain Tax: ITAT

Income Tax Appellate Tribunal ruled that transfer of capital assets by a company to step down 100% subsidiary company would not attract Capital Gain Tax.

ITAT Kolkata- M/s. Emami Infrastructure Limited v. ITO- I.T.A No. 880/Kol/2014-28.02.2018.

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Hiring of Vehicles not subject to TDS prior to Amendment in Sec 194-I: HC

High Court held that the hiring of vehicles does not attract Tax deduction at Source (TDS) under the provisions of Section 194C of the Income Tax Act.



Kerala High Court- The Commissioner of Income Tax-1, Cochin V. M/S. Pioneer Peresonalised Holidays Pvt.Ltd- dt. 26.02.2018

Read More

Sharing of Cost b/w Husband and Wife Irrelevant for S. 54F: ITAT Denies Capital Gain Exemption to Wife since Husband is Legal Owner as per Sale Deed

Income Tax Appellate Tribunal (ITAT) recently held that the sharing of cost between husband and wife is not a ground to allow capital gain exemption under section 54F of the Income Tax Act 1961 to both of them upon transfer of jointly owned property. The bench further denied the benefit of the provision to the wife as the sale deed recognizes only Husband as the legal owner of the transferred property.

ITAT Bangalore- Shri Raghuram P Nambyar v. Asst. Commissioner of Income Tax- I.T. A. No.2007/Bang/2016- dt. 02.03.2018

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Date of Possession Not Material for deciding the Period of Holding to Compute STCG/ LTCG: ITAT

Income Tax Appellate Tribunal (ITAT) has ruled that date of possession is not material fact for deciding the period of holding to Compute Short Term or Long Term Capital Gain.

ITAT Mumbai- ACIT v. Shri Michelle N. Sanghvi- ITA No.3973/Mum/2016- Dt. 13.02.2018

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Salaried Persons not required to maintain Books of Accounts: ITAT

ITAT ruled that a salaried Person is not required to maintain books of accounts unless he is engaged in Business or Profession.

ITAT Kolkata- DCIT v. Subhas Chandra Agarwala & Sons (HUF)- I.T.A No. 1470/Kol/2015- dt. 19.02.2018

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No TDS Liability since Commission to Foreign Agent is not subject to Income Tax in India: ITAT

Income Tax Appellate Tribunal (ITAT) recently ruled that there is no Tax Deducted at Source (TDS) liability in the hands of the Assessee since commission to the foreign agent is not subject to Income Tax in India.



ITAT Kolkata- M/s Bengal Tea & Fabrics Ltd v. DCIT- ITA No.1667/Kol/2016- dt. 28.02.2018

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Sinking Fund collected from Tenant for Maintenance and Repairs of Property not part of Rental Income: ITAT

ITAT held that the receipt of sinking fund from tenant for maintenance and repairs of property not taxable as rental income under the head “Income from House Property” under the Income Tax Act.

ITAT Mumbai- ITO v. Altius Management Advisors P. Ltd- ITA No. 4259/Mum/2015- 28.02.2018

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HC Reads down S. 206AA of Income tax Act: Says Provisions of DTAA prevails

The High Court, has read down the provisions of section 206AA of the Income Tax Act, 1961 which mandates deduction of tax at source (TDS) at twenty percent on payments to non-residents since the provision of DTAA would prevail over the said provision.

Delhi High Court- DANISCO India Private Limited v. UOI- W.P.(C) 5908/2015- 05.02.2018

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S. 80G Deduction allowable in the Year of Actual Payment even without Donation Receipt: ITAT

Income Tax Appellate Tribunal (ITAT) held that the deduction under Section 80G of the Income Tax Act 1961 is allowable in the year of actual payment even without the necessary donation receipt.

ITAT Ahmedabad- General Capital and Holding Company Pvt. Ltd vs Income Tax Officer- ITA No. 538/Ahd/2016- dt. 12.02.2018

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Receipt from Sale of Agricultural Land after developing into Plots is Business Income: ITAT

Income Tax Appellate Tribunal held that the sale of agricultural land after developing the same into different plots is subject to tax as ‘Business Income’ under the provisions of the Income Tax Act, 1962.

ITAT Jaipur- Ramswaroop Saudagar v. ITO- ITA No. 329/JP/2017- dt. 20.02.2018



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Notice served on Lawyer is Valid If Assessee was not available to receive the same on Several Occasions: SC

Supreme Court recently that a notice served on the authorized representative can be termed as valid if the Assessee was not available to receive the notice sent by post on several occasions.

Supreme Court- Income Tax Officer v. Dharam Narain- CIVIL APPEAL NO(S). 2262 OF 2018- dt. 19.02.2018

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TDS u/s 194H not applicable to Cash Discounts given to Customers for purchasing Goods in Bulk: ITAT

ITAT ruled that assessee not required to deduct Tax at source (TDS) at the time of giving cash discounts to its customers for purchasing goods in bulk.

ITAT Kolkata- EPCOS India Pvt. Ltd v. ITO- ITA No.688 & 1325/Kol/2014- dt. 02.02.2018

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Society consists of Urologist Doctors eligible for 12A Registration: HC

High Court held that a society consists of urologist doctors eligible for registration under Section 12A of the Income Tax Act.

Chhattisgarh High Court- Commissioner of Income Tax Central Revenue v. Chhattisgarh Urology Society- TAXC No. 159 of 2017- dt. 17.01.2018

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Society engaged in implementing Welfare Scheme of State Govt to provide Mid-day-Meals in Schools eligible for Tax Exemption: HC

High Court recently ruled that society engaged in implementing welfare scheme of the State Government to provide mid-day-meals to students in schools is eligible for Registration under section 12A of the Income Tax Act for getting tax exemption.

Allahabad High Court- Commissioner Of Income Tax v. Shri Balaji Samaj Vikas Samiti- INCOME TAX APPEAL No. - 49 of 2014- 09.02.2018

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All Apartments received under Development Agreement would become “One House” for the purpose of s. 54 Exemption: ITAT



ITAT held that all apartments received under a development agreement would become one house for the purpose of granting exemption under section 54F of the Income Tax Act even though the same are independent units.

ITAT Hyderabad- Sudhir Naik HUF and others vs. Income Tax Officer- ITA No. 1463/Hyd/16- dt. 31.01.2018

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Conversion of Un-garbled Pepper to be fit for Human Consumption is not 'Production' for granting IT Deduction: HC

High Court ruled that conversion of un-garbled pepper to be fit for human consumption would not amount to 'production' for the purpose of deduction under section 10B of the Income Tax Act.

Kerala High Court- Nishanth Export v. ASSISTANT COMMISSIONER OF INCOME TAX- I.T.A.No.13 of 2009- dt. 25.01.2018

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Re-classification of Discounts and Marketing Expenses as Capital Expenditure: ITAT Asks Flipkart to

pay 55 crores for Stay

The Income Tax Appellate Tribunal (ITAT), Bangalore bench has refused to stay a demand of Rs 110 crore on Flipkart, wherein India's largest online retailing platform was asked to pay tax by the Revenue by disallowing the claim for expenses under the head discounts and marketing expenses incurred by the Company.

Bangalore ITAT- M/s. Flipcart India Pvt. Ltd v. ACIT- ITA No.202/Bang/2018- dt. 06.02.2018

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Furniture and Fixtures purchased along with New House will get Benefit of s. 54F If they are Integral part of Purchase: ITAT

Income Tax Appellate Tribunal (ITAT) held that the exemption under section 54F of the Income Tax Act 1961 can be extended to furniture and fixtures purchased along with the new house if the same is an integral part of the purchase.

Abmedabad ITAT- Rajat B Mehta v. ITO- ITA No. 19/Abd/16- dt. 09.02.2018

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Hospital isn't an 'Industrial Undertaking' for the purpose of Carry Forward of Unabsorbed Depreciation in case of Amalgamation: ITAT

ITAT ruled that since the hospital is not an 'industrial undertaking' within the meaning of section 72A of the Income Tax Act, the set off of unabsorbed depreciation is not allowable.

ITAT Bangalore- M/s. Healthcare Global Enterprises Ltd Vs. The Joint Commissioner of Income Tax- ITA Nos. 1900/Bang/2016-15.12.2018

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Booking of Flat with Builder can be treated as 'Construction of Flat' for the purpose of Sec 54: ITAT

Income Tax Appellate Tribunal, followed the circular issued by the Central Board of Direct Tax (CBDT), ruled that booking of flat with the builder has to be treated as construction of flat for allowing the benefit of Section 54 of the Income Tax Act 1961.

ITAT Delhi- ACIT v. Vineet Kumar Kapila- I.T.A. No. 6868/DEL/2015- dt. 07.02.2018

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Sec 50C not applicable in Case of a Right to Purchase a Building: ITAT

Income Tax Appellate Tribunal (ITAT) recently held that the provisions of Section 50C of the Income Tax Act is not applicable in a case where the capital asset was not land or building but it is a right to purchase a building.

ITAT Delhi- Sh. Anil Jain v. DCIT- ITA No. 3777/Del/2013- dt. 16.01.2018

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Payment for acquiring 'Copyrighted Article' is not Royalty: ITAT Lays down Guidelines for Taxation of Royalty payments to Non-residents

Income Tax Appellate Tribunal (ITAT) laid down certain guidelines for taxation of royalty payments to non-residents and held that payment for acquiring the copy of the software for the copyrighted article cannot be considered as royalty.

Mumbai ITAT- DDIT v. Reliance Communications Ltd- I.T.A.s/ 837/ Mum/ 2007 - 02.02.2018

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Registration cannot be denied to a Charitable Society for Non-submission of Form 10B: ITAT

Income Tax Appellate Tribunal (ITAT) ruled that registration under section 12AA of the

Income Tax Act 1961 cannot be denied to a charitable society on the ground of non-submission of form 10B.

ITAT Lucknow- B.C. Sharma Memorial Society vs Commissioner of Income Tax (CIT), Lucknow- ITA No.588/Lkw/2016-08.01.2018

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CBDT Notifies Scheme for Centralized Issuance of E-Notice

CBDT has notified the Centralized Scheme for Issuance of E-Notice for the purpose of income tax assessment as per which, the Centralised Communication Centre shall issue the notice to any person requiring him to furnish information or documents for the purpose of verification of information in his possession.

CBDT Notification dt. 22nd February 2018

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CBDT releases Explanatory Note to the Provisions of the Finance Act, 2017

The circular provides for a brief note on the amendments made in the year regarding the change in the Act, rate structure etc.

CBDT Circular No. 2/2018 dt. 22nd February 2018

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No Action against 'Start Up's if its Valuation Report of Unquoted Shares is rejected

CBDT clarified that no action will be taken against Start Ups if its valuation report of unquoted shares is rejected by the Assessing Officer.

CBDT Circular 6th February 2018

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NOTIFICATIONS & CIRCULARS

LUTs shall be continued to be accepted by GST Officials

The advice of Special Secretary & Member, CBEC vide DO Letter dated Feb. 6 to all Chief & Principal Commissioners said that “a few field offices have requested clarification as to whether LUT for exports would be accepted by Customs or GST Officials. It is clarified that LUT would have to be accepted by GST Officials.”

CBEC - Letter No. 450/17/2017-Cus-IV - dated 06.02.2018

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GSTO/AC authorized to process Refund claims under Delhi GST Act

The State Government of Delhi recently assigned Assistant Commissioner and the Goods and Services Tax Officer (GSTO) to process the refund claims under the Delhi Goods and Services Tax Act, 2017. As per the order published on 8th February 2018, GSTO/AC can approve refund up to Rs. 10 Lakhs of

Tax (including SGST, CGST, IGST, and Cess) to a taxpayer if any, paid by such taxpayer in excess of the amount due from him.

Govt of NCT - Order No. 01/2018 - dt. 08/02/2018

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CBEC Launches Tax Dispute Online Tracking System

The Central Board of Excise and Customs (CBEC), the apex indirect tax body, is all set to introduce Tax Dispute Online Tracking System in order to check litigations and proceedings and to provide speedy disposal of tax matters.

Directorate of Legal Affairs - User Manual - TDOTS Module

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Superintendents of Central Tax can issue Show Cause Notice under CGST and IGST Acts

The Central Board of Excise and Customs



(CBEC) notified proper officer under the Central Goods and Services Tax Act, 2017 and under the Integrated Goods and Services Tax Act, 2017 as per which, the Superintendents of Central Tax shall also be empowered to issue show cause notices and orders under section 74 of the CGST Act.

CBEC - Circular No. 31/05/2018 - GST - dt. 09/02/2018

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Clarifies Levy of GST in respect of certain Services

The Central Board of Excise and Customs (CBEC), issued a clarification regarding the imposition of Goods and Services Tax (GST) in respect of certain services. Hostel accommodation services do not fall within the ambit of charitable activities as defined in para 2(r) of notification No. 12/2017-CT(Rate). However, services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent is exempt. Thus, accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt.

Finance Ministry - Circular No. 32/06/2018 - GST - dt. 12/02/2018

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No Cess on Old and Used Motor Vehicles

In a notification, the Central Board of Excise and Customs (CBEC) exempted old and used cars from the levy of GST Compensation Cess. The notification was issued to give effect to the decision made by the GST Council, the apex body under the new tax regime, to cut GST rates on used cars. The Council, also cess on various items.

Finance Ministry - Notification No. 1/2018 - dt. 25/01/2018

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INTERNATIONAL CASE BRIEFS

The game of *s duplicate bridge*, which is characterised by a physical element that appears to be negligible, is not covered by the concept of ‘sport’ and hence not eligible for exemption as a sports activity

Comments : The basis for decision was examination of question Whether to qualify as sports, should there be significant physical element. The Court finds that, in the context of VAT exemptions, which are to be interpreted strictly, the interpretation of the concept of ‘sport’ appearing in the directive is limited to activities satisfying the ordinary meaning of that concept’, which are characterised by a not negligible physical element. While admitting that *duplicate bridge* involves logic, memory and planning, and may constitute an activity beneficial to the mental and physical health of regular participants, the Court finds that the fact that an activity promotes physical and mental health is not, of itself, a sufficient element for it to be concluded that that activity is covered by the concept of ‘sport’ within the meaning of that same provision.

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Digital versions of newspapers are not entitled for exemption as regular newspaper under UKVAT

Comments : Newspapers are zero rated under almost all tax regimes. Under UK VAT, the issue was whether e versions of newspapers are entitled for same exemption as hardcopy of newspaper. The counsel for tax payer argued on giving purposive interpretation to exemption and also to construe provisions in accordance with technological advancements. The counsel also argued that zero rating should be extended to digital versions, also on account of fiscal neutrality. While appreciating the above arguments, the Judge had held that digital versions of Newspapers are not entitled for zero rating as regular newspaper. The judge has observed that principle of purposive interpretation cannot give effect to perceived wider policy where words used by Parliament do not bear that meaning. The issue will soon catch up in India, as we have digital versions of all prominent newspapers.

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Feedback From Industry

For Government contracts, the payment of tax at the point of raising bill/completion of work is posing difficulty since bills submitted to government is passed with substantial delay of almost 6 to 18 months.

Composition scheme should be extended to service providers. This would help many small contractors having turnover of up to 1.5 crore.

In respect of Government Contracts, government is not revising contract value factoring the GST component;

Government to rectify problems of GST Portal

No proper mechanism to arrive at quantum of credit eligible on inputs forming part of work in progress as on 30.06.2012.

GST Return formats should be modified and made simple

Reverse mechanism should not be reintroduced.

Credit eligibility should not be made subject to cross matching of invoices;

Overall implication
-Beneficial

Anti profiteering measures to be made applicable considering the impact of GST on industry as a whole.



Expert Opinion



Ramakrishna Sangu

Chartered Accountant, Visakhapatnam.

ISSUE 1 : TRANSITIONAL CREDIT FOR BUYERS

Accordingly Sec 140(3) of CGST Act provides as below:
A registered person who was providing works contract service and was availing of the benefit of notification No. 26/2012—Service Tax, dated the 20th June, 2012, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to conditions prescribed.

Similarly Sec 140(3) of SGST Act Provides for transitional credit of VAT and Entry paid Tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

Therefore Builders and works contractors are eligible for transitional credit u/s. 140(3). Any person engaged in construction and selling of residential units can claim ITC of Eligible duties in the following manner:

- Cement, steel, iron etc.. lying



on stock as on 30th of June, 2017

- Cement, Steel etc.. Consumed in the construction of Buildings (under construction) which are either partly or wholly used to be sold in GST regime.

Therefore builders can use the provisions of Section 140 (3) for claiming transitional input tax credit of excise duty, VAT and Entry Tax paid on goods lying in stock or in under construction flats provided they have supporting documentary evidence namely central excise invoice in the case of excise duty and VAT invoice in the case of VAT to be carried forward and further such goods should have been procured on or after 1.7.2016.

It may be noted here that transitional credit will be available only to the extent of such goods which are incorporated in construction of flats which are being sold under the GST regime.

But it is understood that the Department objects to such credit on ground that the materials used in work in progress constructions have formed part of immovable property and hence not qualified to be called as 'inputs'. Unless, the issue is represented before appropriate forum

including GST council and benefit of closing credit on buildings under construction as on 30.06.2017 is extended to builder, the impact on sector is going to be massive. It may be noted that most builders have been forced to pass on benefit of closing stock credit in form of reduced rate to buyers. Now since same has been done, the withdrawal of benefit will prove damaging to the industry as a whole.



ISSUE 2 :

LAND OWNER PORTION

Under the GST Law, the government clarified that the builder shall be liable to pay GST on land owner share of flats only at the time of handing over of flats to the land owner. However, the value on which GST is to be paid on land owner share still requires clarity. Further under GST Law the land owner shall be liable to pay GST for providing services of transfer of right to use land to the builder by means of Development Agreement, however the same shall be payable at the time of receipt of his share of flats from the builder. This relaxation is not



applicable in case builder pays any consideration in money i.e. in such cases the land owner shall be liable to pay GST on receipt of such additional consideration.

Both under erstwhile law and GST law, when a land owner sells his share of flats received from builder before the building gets occupancy certificate the same shall be liable to service tax/GST by availing the credit of tax charged by the builder.

Under the GST, under the following cases what is the value on which GST is payable will be a challenge which needs to be addressed by the Government:

1. What is the value on which the land owner is liable to pay GST when transfer the right to use land by means of development agreement with the builder;
2. What is the value on which the builder is liable to pay GST with respect to the flats handed over to the land owner;





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PARTING

SCR-EWB-ALLS

Way back in 1993, after my successful completion of the physical endurance test, I was asked to opt for three choices of places for my posting as an Inspector of Central Excise & Customs, and was promptly posted to the fourth one.

Cursing my destiny, I joined at Karur Range, which turned out to be a miniature Manchester. Those were the sunset days of semi - physical control regime, where the clearance of excisable goods were to be effected under the cover of a Gate Pass (GP), that too, authenticated by an officer. On a retrospect, I feel thoroughly ashamed to have made the Managing Director of a textile mill (who incidentally employed and fed more than 1000 families) to wait at my table, for getting the signature on the GPs.

S. Jaikumar

Advocate & Country-Head,
Swamy Associates
jk@swamyassociates.com



The crowing glory of those (in)glorious days of Inspector Raj, were the power to conduct “road patrols”. We used to randomly stand along the highways on odd-hours and stop vehicles upon discretion and check them for the documents and goods, which were giving us (at least to me) a grand ego-massage.

But, in these last 25 years, the Central Excise law and its administration had got completely liberated from the shackles of an iron fist into a fine and a decent self-policing administration. This progress has not only invested trust in the minds of the taxpayer but has also rationalized the mindset of the taxmen, to respect the taxpayer as the true stakeholder of the economy.

GST, which is hailed to be another milestone, rather a revolution in the Indian tax administration, with its tall claims of doing away with all/any interface with the department is all set

to roll – out its much anticipated E-Way Bills (EWB) with effect from 1st April 2018.

After a painful miscarriage on its virgin introduction months back, the Government is now all set to re-introduce the EWB, hopefully with a better preparation this time. With the whole nation in sheer anxiety and despair, this EWB, unless implemented with utmost caution and assurance, may turn out to be the worst ever catastrophe under the GST regime, ahead of the jaundiced RCM under Section 9(4).

All of us had already started witnessing a spate of “flash seizures”, across the country, even before its official inaugural. GST, being more of a web-based tax regime, is aimed to considerably reduce the human interface, that too, on crucial avenues like “returns” and refunds”. I can only wish and pray that this EWB remained to be a proper regulatory proposition rather than a feedstock for the unleashed desperate.



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