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ETHICS EDUCATION EXCELLENCE

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All India Federation of Tax Practitioners
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AIFTP INDIRECT TAX & CORPORATE LAWS JOURNAL

AIFTP NATIONAL EXECUTIVE COMMITTEE 2019

MEMBERS

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CHIEF-EDITOR'S COMMUNIQUE

This issue of the Indirect Tax & Corporate Laws Journal as usual incorporates the latest Notifications, timeline, Articles, Commercial News etc. We had tried in this issue to incorporate the effect of the GST amendments also. The issue also covers the Articles on RERA, FEMA etc. and we are receiving lot of queries on the various issues of Indirect Tax and are replying back with the help of the various fellow professionals.

Tax Laws particularly GST is vast subject and we had seen many amendments by way of Notification, Circulars etc. Various clarification are being issued by the Government but some times it is felt that the government is not working on the procedural aspect and all the Tax Professionals are facing lot of trouble on the issue of filing of return including Annual return. The case of annual return is very peculiar and the figures are not matching. AIFTP has given representation on this aspect including other aspect of Indirect Taxes and we expect clarity on this issue very soon.

We request all the Tax Professionals to kindly contribute by way of articles in this Journal and send their notes on the relevant topics so that we may publish the same. Small Article by Junior Professionals is also invited. Some query or case study based articles may also be sent for the benefit of all other Tax Professionals.

We request all the Tax Professionals who will be busy in the coming three months in Tax Audits and returns to take care of their health and have a enjoyable working time.

Regards,

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Membership of All India Federation of Tax Practitionersas on 16th, February 2019					
Life Members					
Zone	**Associate**	**Individual**	**Association**	**Corporate**	**Total**
Central	0	1048	25	0	**1073**
Eastern	6	1567	36	0	**1609**
Northern	0	1194	18	1	**1213**
Southern	1	1280	19	4	**1304**
Western	5	2332	37	5	**2379**
Total	**12**	**7421**	**135**	**10**	**7578**

PRESIDENT'S COMMUNIQUE

Dear Friends,

This is the 6th issue of AIFTP Indirect Tax & Corporate Laws Journal and I am grateful to all for the overwhelming response received. The popularity of the Journal is increasing and we are getting request for the hard copy even by the department. The credit goes to the various paper contributors, advertisers and all of you.

The budget has been presented by the Union Finance Minister Smt. Nirmala Sitaraman and vast changes has been made in the direct taxes as well as Indirect Taxes including GST. The amendments have been mentioned in the Finance bill and the impact of the amendments have to be understood. We had seen that even a minor amendment can have a vast implication on the taxability. Article on the amendments on Indirect tax in the budget have been incorporated in this Journal also.

Continuous activities in AIFTP are going on. Elections of various zones are in process. National Tax Conferences are scheduled at Kota and Varanasi in the month of October and November respectively. In the meanwhile we are going for a International Study Tour to Eastern Europe in the month of August / September, 2019.

Unfortunately in the last few months we have last two doyens of the Tax Profession and our Past Presidents namely Dr. N.M. Ranka, Sr. Advocate, Jaipur and Sh. S.K. Poddar, Advocate, Ranchi. We don't have words to mention their contribution in the AIFTP. They are the persons who had dedicated their life for AIFTP and throughout they were active and were key figures in all Conferences, Seminars etc. of AIFTP. They were friends, philosophers and guide to all. It's a big loss not only to us but to the entire Tax Profession.

The month of July is busy for all the Tax Professionals due to Income Tax return filing of non audit tax cases. The coming months shall also be very busy months for Tax Professionals.

Wish you all the best.

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23.07.2019

RECENT NOTIFICATIONS & CIRCULARS UNDER CGST ACT

Adv. Deepak Garg, Jaipur

NOTIFICATIONS - CENTRAL TAX

DATE	NOTIFICATION NO.	REMARKS
21-06-2019	25/209-Central Tax	Seeks to extend the date from which the facility of blocking and unblocking on e-way bill facility as per the provision of Rule 138E of CGST Rules, 2017 shall be brought into force to 21.08.2019.
28-06-2019	26/2019-Central Tax	Seeks to extend the due date of filing returns in FORM GSTR-7
28-06-2019	27/2019-Central Tax	Seeks to prescribe the due date for furnishing FORM GSTR-1 for registered persons having aggregate turnover of up to 1.5 crore rupees for the months of July, 2019 to September,2019.
28-06-2019	28/2019-Central Tax	Seeks to extend the due date for furnishing FORM GSTR-1 for registered persons having aggregate turnover of more than 1.5 crore rupees for the months of July, 2019 to September,2019
28-06-2019	29/2019-Central Tax	Seeks to prescribe the due date for furnishing FORM GSTR-3B for the months of July, 2019 to September,2019.
28-06-2019	30/2019-Central Tax	Seeks to provide exemption from furnishing of Annual Return / Reconciliation Statement for suppliers of Online Information Database Access and Retrieval Services("OIDAR services").

28-06-2019	31/2019-Central Tax	Seeks to carry out changes in the CGST Rules, 2017.
28-06-2019	32/2019-Central Tax	Seeks to extend the due date for furnishing the declaration FORM GST ITC-04
18-07-2019	33/2019-Central Tax	Seeks to carry out changes in the CGST Rules, 2017.
18-07-2019	34/2019-Central Tax	Seeks to extend the last date for furnishing FORM GST CMP-08

NOTIFICATIONS - CENTRAL TAX (RATE)

DATE	NOTIFICATION NO.	REMARKS
29-06-2019	11/2019-Central Tax (Rate)	Seeks to specifies retail outlets established in the departure area of an international airport, beyond the immigration counters, making tax free supply of goods to an outgoing international tourist, as class of persons who shall be entitled to claim refund.

CIRCULAR

DATE	NOTIFICATION NO.	REMARKS
28-06-2019	102/2019	Clarification regarding applicability of GST on additional / penal interest – reg.
28-06-2019	103/2019	Clarification regarding determination of place of supply in certain cases – reg.
28-06-2019	104/2019	Processing of refund applications in FORM GST RFD-01A submitted by taxpayers wrongly mapped on the common portal – reg.

28-06-2019	105/2019	Clarification on various doubts related to treatment of secondary or post-sales discounts under GST - reg.
29-06-2019	106/2019	Refund of taxes paid on inward supply of indigenous goods by retail outlets established at departure area of the international airport beyond immigration counters when supplied to outgoing international tourist against foreign exchange - reg.
18-07-2019	107/2019	which seeks to clarify various doubts related to supply of Information Technology enabled Services (ITeS services).
18-07-2019	108/2019	which seeks to clarify issues regarding procedure to be followed in respect of goods sent / taken out of India for exhibition or on consignment basis for export promotion.
22-07-2019	109/2019	Clarification on issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members.

REMOVAL OF DIFFICULTY ORDERS

DATE	NOTIFICATION NO.	REMARKS
28-06-2019	6/2019 - Central Tax	Seeks to extend the due date for furnishing FORM GSTR-9, FORM GSTR-9A and FORM GSTR-9C under section 44 of the Central Goods and Services Tax Act, 2017.

TIMELINE - GST

Adv. Abhay Singla
Sangaria (Hanumangarh)

A. GOODS & SERVICE TAX

Sr. No.	Particulars	Form	Period	Due Date
(i)	Monthly Summery GST Return	GSTR-3B	July, 2019	20th Aug 2019
	(a) Regular Taxpayers		Aug, 2019	20th Sep 2019
(ii)	Detail of Outward Supplies: -	GSTR-1		
	(a) Taxpayers with annual aggregate turnover up to Rs. 1.5 Cr.		April to June 2019	31st July 2019
			July to Sept 2019	31st Oct 2019
	(b) Taxpayers with annual aggregate turnover more than Rs. 1.5 Cr.		July, 2019	11th Aug 2019
			Aug, 2019	11th Sep 2019
(iii)	Quarterly statement for payment of tax for Composite taxable persons	CMP-08*	April to June 2019	31th July 2019
(iv)	Return for Non-resident taxable person	GSTR-5	Non-resident taxpayers have to file GSTR-5 by 20th of next month.	
(v)	Details of supplies of OIDAR Services by a person located outside India to Non-taxable person in India	GSTR-5A	Those non-resident taxpayers who provide OIDAR services have to file GSTR-5A by 20th of next month.	

(vi)	Details of ITC received by an Input Service Distributor and distribution of ITC.	GSTR-6	The input service distributors have to file GSTR-6 by 13th of next month.	
(vii)	Return to be filed by the persons who are required to deduct TDS (Tax deducted at source) under GST.	GSTR-7	Oct 2018 to July 2019	31st July 2019
			Aug 2019	10th Sept 2019
(viii)	Return to be filed by the e-commerce operators who are required to deduct TCS (Tax collected at source) under GST	GSTR-8	June 2019	10th July 2019
			July 2019	10th Aug 2019
(ix)	Details of inputs/capital goods sent for job-work. Quarterly Form	GST ITC-04	July 2017 to June 2019	31st Aug 2019
(x)	Annual GST return and GST Audit	GSTR-9/9A/9C	FY 2017-18	30th Aug. 2019
(xi)	Opt for composition scheme by service providers	CMP-02	FY 2019-20	31st July 2019

Note: ***** GSTR-4 has been discontinued from F.Y. 2019-20.

*****

GST IMPLICATIONS ON HEALTH CARE SERVICES

S Venkataramani, Chartered Accountant, Bangalore
Siddeshwar Yelamali, Chartered Accountant, Bangalore

I. Background

The health care service provided hospitals had its own set of litigations on applicability of tax under the erstwhile State Value Added Tax (for brevity, 'VAT') laws. There was huge tax demand made under the VAT laws in several States on implants / devices, consumables, surgical goods, medicines, etc, used in a hospital for treatment of inpatients /patients. The Hon'ble High Courts in the following judgements held that charges towards medicine, implant, stents, valves and other implants are integral to a medical services / procedure and does not tantamount to sale under the VAT laws:

1. International Hospital (P) Limited (WP 68 of 2014) - Honourable High Court of Allahabad
2. Fortis Health Care Ltd. And Another Versus State of Punjab And Others 2015 (2) TMI 1014 - Honourable High Court of Punjab and Haryana.

The erstwhile service tax law provided exemption to health care services by a clinical establishment, an authorised medical practitioner or para-medics vide Notification No. 25/2012-Service Tax dated 20.06.2012.

The applicability of Goods and Services Tax (for brevity, 'GST') law on health care service provided by hospitals, nursing homes etc. is to be carefully understood. On a general reading of the GST law, one may conclude that the services provided by hospitals, nursing homes etc. are exempt for levy of tax under the GST law. In this article an attempt is made to understand the applicability of tax under the Central Goods and Services Tax Act, 2017 (for brevity, "CGST Act") on certain health care services provided by hospitals.

II. Central Goods and Services Tax Act, 2017

A. Exemption

1. Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics is exempt vide Sl. No. 46 of the Notification 12/2017

Central Tax (Rate) dated 28.06.2017. Meaning of the terms which are to be read for the exemption purpose are given below:

a. Health Care Services is defined to mean "any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, ***but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma".***

b. Clinical establishment is defined to mean "a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy ***in any recognised system of medicines in India***, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases".

   It may be noted that a diagnostic center / laboratory carrying out diagnostic or investigative services of diseases are also covered within the meaning of clinical establishment.

c. Authorised medical practitioner is defined to mean a medical practitioner registered with any of the councils of the recognised system of medicines established or ***recognised by law in India*** and includes a medical professional having the requisite qualification to practice in any recognised system of medicines ***in India as per any law for the time being in force***.

d. Para-medic is not defined in the CGST Act, 2017. Para-medics, as per general meaning, are health care professionals - for instance nursing staff, physiotherapists, laboratory technicians etc. who supplement the work of the medical professional.

2. Services provided by way of transportation of a patient in an ambulance is exempt.

3. Whether charges towards implants / devices, consumables, surgical goods, medicines, etc charged for treating an '**in-patient**' in hospital is liable to tax under CGST Act, 2017?

In order to analyse the same, it is essential to understand the meaning of composite supply. Section 2 (30) of the CGST Act, 2017 defines composite supply to mean a supply made by a taxable person to a recipient ***consisting of two or more taxable supplies of goods or services or both***, or any combination thereof, ***which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.***

Inpatients receive medical facility as per the scheduled procedure and have strict restriction to ensure quality/quantity of items for consumption. The implants / devices, consumables, surgical goods, medicines etc., supplied to inpatients are indispensable items and would be a composite supply to facilitate health care services. Health service being the principal service, implants / devices, consumables, surgical goods, medicines etc., supplied to '**in-patients**' in the paper writers view is ***not taxable*** being health service provided by a clinical establishment. The Kerala Authority for Advance Ruling in the case of **Ernakulam Medical Center Pvt. Ltd. 2018 (10) TMI 511** held that supply of medicines and allied items provided by the hospital through the pharmacy to the in-patients is part of composite supply of health care treatment and hence not separately taxable.

Supply of medicines and allied items to the '**outpatients**' through the pharmacy attached to the hospital ***would be taxable***. The Kerala Authority for Advance Ruling in the case of Ernakulam Medical Center Pvt. Ltd. 2018 (10) TMI 511 held that the supply of medicines and allied items provided by the hospital through the pharmacy to the out-patients is taxable. The said ruling was upheld by the Appellate Authority for Advance Rulings in the same **case Ernakulam Medical Center Pvt. Ltd. 2019 (3) TMI 757**.

4. Whether room charges collected from patients admitted for treatment liable to tax under CGST Act, 2017?

   The room charges collected towards treatment would tantamount to composite supply; and health service being the principal service the same would not be taxable. The analogy of the Kerala Authority for Advance Ruling in the case of Ernakulam Medical Center Pvt. Ltd. 2018 (10) TMI 511 would be equally applicable to this situation also.

5. Whether supply of food to '**in-patient**' in hospital is liable to tax under CGST Act, 2017?

In Circular No. 32/06/2018-GST dated 12.02.2018 it is clarified that food supplied to the '**in-patients**' as advised by the doctor / nutritionists is a part of composite supply of healthcare ***and not separately taxable***. Other supplies of food by a hospital to patients ***(not admitted)*** or ***their attendants or visitors are taxable.***

6. Services by a veterinary clinic in relation to health care of animals or birds is exempt vide Sl. No. 46 of Notification 12/2017 Central Tax (Rate) dated 28.06.2017.

7. Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services and exempt - Circular No. 32/06/2018-GST dated 12.02.2018.

8. Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation is exempt vide Sl. No. 73 of Notification 12/2017 Central Tax (Rate) dated 28.06.2017.

B. Taxability:

a. **Hair transplant or cosmetic or plastic surgery:** On reading of the meaning of health care services in paragraph A 1 (a) supra it becomes clear that health care service of hair transplant or cosmetic or plastic surgery (***except*** when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma) is liable to tax under the CGST Act, 2017.

The said service would be liable to tax 18% (9% CGST + 9% SGST or 18% IGST) as the case maybe) under HSN 9993

b. **Premise provided on rent by hospital for non-residential purpose viz to canteen / pharmacy / parking:** Premise provided on rent for non-residential purpose is liable to tax at 18% (9% CGST + 9% SGST) under HSN 9972.

c. **Hostel rent:** Generally, many hospitals have hostels which are provided to trainees / students / staff. Accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt - Circular No. 32/06/2018-GST dated 12.02.2018. The Maharashtra Authority for Advance Ruling in the case of **Students Welfare Association 2019 (3) TMI 1473** held

that accommodation service in hostels including by Trusts having declared tariff below one thousand rupees per day is exempt.

Sl. No. 14 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2018 exemption to services by a hotel, inn, guest house, club or campsite, ***by whatever name*** called, for residential or lodging purposes, having value of supply of a unit of accommodation below Rs. 1,000/- per day or equivalent.

Therefore, if the value of supply of hostel rent is more than Rs. 1,000/- per day, then the same would be taxable in terms of Sl. No. 7 of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2018 as under:

Description	**GST Rate**
Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having value of supply of a unit of accommodation of Rs. 1,000/- and above but less than Rs.2,500/- per unit per day or equivalent.	CGST 6% + SGST 6%
Accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having value of supply of a unit of accommodation of Rs.2,500/- and above but less than Rs.7,500/- per unit per day or equivalent.	CGST 9% + SGST 9%
Accommodation in hotels including five star hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes having value of supply of a unit of accommodation of Rs.7,500/- and above per unit per day or equivalent.	CGST 14% + SGST 14%

An attempt has been made in this article to make a reader understand the outwards supplies impact for health care service under the GST law. This article is written with a view to incite the thoughts of a reader who could have different views of interpretation. Disparity in views, would only result in better understanding of the underlying principles of law and lead to a healthy debate or discussion. The views written in this article is as on June 09, 2019.

*****

SOME IMPORTANT ADVANCE RULINGS UNDER GST

CA Manoj Nahata,
FCA, DISA (ICAI)
Guwahati

1. Whether "Clinical Research" services provided by a person to entities located outside India is liable to CGST and SGST or IGST?

Held: CGST and SGST will applicable.

In the case of ***Clinthia Research Limited- AAR Maharashtra,***the applicant is a global clinical organization, providing comprehensive range of clinical research and support services by performing technical testing and analysis on the Drug/ Investigational product provided by sponsors located outside India and submits the final report to such foreign sponsors. The Applicant submitted that the clinical research services provided by them to the foreign sponsors would amount to export of service in terms of section-2(6) of the IGST Act, 2017. The GST provisions prescribed certain conditions to be fulfilled for export of services. The applicant satisfied all the conditions except one which is related to **Place of Supply.** As per section-13(3)(a) of the IGST Act, any services performed in respect of goods that are physically required to be made available by the recipient, the place of supply will be the location where the services are performed. The applicant contended that this provision will not be applicable to those cases where the service is provided **using** the goods provided by the recipient or in the cases where the goods sent by recipient are altered while providing the service. The applicant relied on the decision of Hon'ble Mumbai Tribunal in the case of *Principal Commissioner of C. Ex. Pune-1 v Advinus Therapeutics Ltd. 2017 (51) S.T.R. 298.* The applicant further submits that the service provided is not in respect of the goods given by the recipient. This is supported by the fact that the applicant is not required to return the goods back to those foreigners. The applicant concluded that as GST is a destination based tax, the services of the applicant should be treated as export of service as these are consumed by sponsors outside India.

The Authority found that the research is for conducting a study of the effect of such investigational product. The prime importance is their product itself. Without this product, the research cannot be completed. Therefore, it was concluded that the said

supply of research services is in respect of goods supplied by the sponsors. The sponsors would like to know the efficiency of the product and for which such testing is conducted.

Hence the Authority ruled that the supply of clinical research services to the entities located outside India is not eligible to be treated as export of service in terms of section-2(6) of the IGST Act. The services are liable to CGST and SGST as the Supplier of service and the place of supply is in the same state in terms of section-13(3)(a) of the IGST Act.

2. Whether a supplier is liable to GST on supply of services by way of renting dwelling units even if the recipient Commercial entity is using the dwelling unit for residential purpose of its employee?

Held: No

In case of ***Borbheta Esatate Pvt. Ltd. –AAR West Bengal,*** the applicant is renting dwelling units. It has executed agreements for leasing/renting of four dwelling units it owns at different locations in Kolkata. According to the agreements, all of these units are to be used for residential purpose. Three flats have been rented to individuals and one flat to a public limited company, where the employees of the company will stay. The question of fact on which Advance Ruling is sought, is that whether the supply of services by way of renting of dwelling house to the employees of a commercial entity for residence is exempt or not?

The Applicant argued that he is not liable to pay tax on leasing or renting of these dwelling units, as they are all let out for residential purpose, and services by way of renting of dwelling units for residence is exempted under Sl. No. 12 of Notification No. 12/2017-CT (Rate) dated 28-6-2017 as amended from time to time. Whereas the concerned officer from the Revenue stated that provisions under Sl. No. 12 of the Exemption Notification apply to renting of dwelling units for residential purpose. It should not be available when the dwelling unit is rented to a commercial entity like the public limited company.

The Authority found that the Applicant's service is classifiable as rental or leasing service involving own/leased residential property (SAC 997211). Applicability of Sl. No. 12 of the Exemption Notification depends upon whether the dwelling unit is used as residence. In the applicant’s case all the dwelling units are being used for residence, irrespective of the fact whether they are let out to individuals or a commercial entity. The Applicant's

service of renting/leasing out the dwelling units for residential purpose is, therefore, exempt under Sl. No. 12 of the Exemption Notification.

The Authority concluded that the supply of services by way of renting dwelling units is exempt from GST and accordingly, the applicant is not liable to GST.

3. Whether credit is admissible of the input tax paid on the purchase of motor vehicles for the supply of cabs on a renting basis to institutions?

Held: No

In case of ***Mohana Ghosh- West Bengal,*** the applicant supplies rent-a-cab service, as defined in the Finance Act, 1994. She referred to section 17(5)(a)(B) of the GST Act that allows credit of input tax paid on the purchase of motor vehicles when used for supplying passenger transportation service. The Applicant submitted that people take the car on rent for the transportation of passengers. Rent-a-Cab is, therefore, essentially associated with the transportation of passengers. GST paid on the purchase of motor vehicles for supplying rent-a-cab service should, therefore, be admissible in terms of section 17(5)(a)(B) of the GST Act.

The Authority stated that The GST Act has been amended with effect from 01/02/2019. Before amendment the provisions of section 17(5)(b)(iii) of the Act did not allow credit of GST paid on inputs for supply of rent-a-cab service, except under certain specific conditions that are not applicable in the applicant's case. Amended provisions of section 17(5)(b)(iii) of the GST Act do not contain reference to the rent-a-cab service. However, post-amendment, input tax credit shall not be available in respect of supply of the service of renting or hiring of motor vehicles in terms of section 17(5)(b)(i) of the GST Act, unless the inward and the outward supplies are of the same category, standalone or as an element of a taxable composite or mixed supply. Further, the Authority stated that Renting of any motor vehicle, however, is classified under SAC 9966. It is taxable under Sl. No. 10(i) of the Rate Notification. The recipient of this service is not a passenger. He is enjoying the service of having provided a motor vehicle, with or without a driver, for use in whatever way he likes for the duration of the renting period. It may remain parked for the entire duration of renting without actual transportation of any person. Even when any person - the recipient of the service or someone of his choice - is being actually transported, the consideration is paid not for the distance travelled, but for renting the cab. In the applicant's case the motor vehicles are given on rental basis to various institutions who clearly could not travel as a passenger. Furthermore, the applicant raises invoice on the duration of renting, which is a fixed number of hours in a calendar month.

In passenger transportation service (SAC 9964) the recipient of the service is a passenger and he pays the consideration for the distance travelled, whatever be the degree of control he enjoys over the vehicle. In renting or hiring of a motor vehicle (SAC 9966) the recipient is provided the right to use the vehicle over a specified duration, whether he is a passenger or not. Distance travelled is taken into consideration to recover the cost of fuel. But travelling a certain distance is not the essence of the service.

The Authority concluded that GST paid on the purchase of motor vehicles for supplying rent-a-cab service is not admissible for credit in terms of section 17(5)(b)(i) of the GST Act.

4. Whether an importer was again required to pay IGST on the component of ocean freight under RCM mechanism on deemed amount which would amount to double taxation of IGST on the deemed component of ocean freight of the imported goods?

Held: Yes

In the case of ***M/s. E-DP MARKETING PRIVATE LIMITED-AAR Madhya Pradesh***, the applicant intends to import crude soyabean oil on CIF basis (Cost + Insurance + Freight) which includes the component of ocean freight in the price of imported goods. Ocean Freight will not be paid by the applicant because, the seller is supposed collect the ocean freight while deciding the price of the goods payable by the applicant. The payment of ocean freight would be made by the seller located outside India. As per corrigendum issued on 30.06.2017 to the Notification No. 8/2017— Integrated Tax (Rate), dated 28th June, 2017, the importer of the goods is required to pay IGST on Reverse Charge Mechanism on the amount of deemed ocean freight equal to 10% of the value of goods imported. The issue raised by the applicant is on Applicability of Reverse Charge Mechanism on Ocean Freight when IGST is paid by the importer on Goods Imported on CIF Basis. It is submitted that at the time of import of said goods into India the applicant is required to pay aggregate customs duties on CNF/CIF value of the imported goods which is considered as an assessable value for the purpose of levying the import duties on such goods and which includes IGST component also. Since the CNF/CIF value of the imported goods includes the component of ocean freight therefore, the applicant is required to pay IGST on this ocean freight component also along with other duties of customs. This is a first incidence of payment of IGST on the component of ocean freight by the applicant. The Applicant stated that as per Notification No. 10/2017—Integrated Tax (Rate), dated 28th June, 2017, the applicant/importer is again required to pay IGST on the component of ocean freight incurred by them under RCM

mechanism. If this is paid by the applicant/importer, it will amount to double taxation of IGST on the same component of ocean freight of the imported goods which apparently illegal and against the basic principles GST of law.

The Authority found no ambiguity, regarding payment of IGST on ocean freight. As per existing law, IGST on ocean freight has to be paid by the importer under reverse charge mechanism, irrespective of the fact that such freight charges are included in the intrinsic CIF value. The applicant pleaded that the authority to levy and collect IGST on import of goods from outside India vests under the Customs Act only hence the levy of RCM on deemed value of ocean freight is without jurisdiction. The Authority observed that any question relating to constitutional validity of the Notifications issued is not within the ambit of the jurisdiction of the Appellate Authority in terms of section-97(2) of the GST Act.

Thus, the Authority concluded that in terms of prevailing provisions of the IGST Act, 2017 and the Rules made there under, the applicant is liable to pay IGST on ocean freight under RCM as provided under Notification No.10/2017-IT(R) read with Notification No.8/2017-IT(R).

5. Whether services provided under vocational training courses recognized by National Council for Vocational Training (NCVT) or Jan Shikshan Sansthan (JSS) is exempt either under Entry No.64 of the exemption list of GST Act, 2017 or under "Educational Institution" defined under Notification No. 22 C.T(R)?

Held: Certain services exempt under Sr. No.66 of Notification No. 12/2017 C.T(R) dated 28.06.2017

In the case of ***The Leprosy Mission Trust of India-AAR Maharashtra,*** the applicant is an NGO registered under section-12A of the Income Tax Act, 1961 and have Leprosy Referral Hospitals, Vocational Training Institutes, Research Laboratories, Advocacy and Research. The activities of the applicant are charitable in nature and within the meaning of section-2(15) of the Income Tax Act, 1961. The applicant contends that it is an "educational institution" under clause-(iii) of the Notification No. 22 C.T (R) dated 28th June, 2017 and is exempt from GST. Again it refers to the Entry No. 64 of the Notification No.12/2017 C.T(R) under GST, 2017 where exemption from tax is granted for services provided by training providers by way of vocational training courses certified by National Council for Vocational Training. Accordingly, the applicant seeks a ruling

on whether the services provided by way of vocational training courses are exempt either as Educational Institute or under Exemption list?

The Authority stated that the applicant is not a Central/State Govt., Union Territory or local Authority and therefore Entry no. 64 is not applicable to them. The Authority referred to Sr. No. 66 of the Notification No. 12/2017 C.T(R). Further reference was made to the definition of 'approved vocational education course' to determine whether the applicant qualifies as an Educational Institution or not. The applicant has been granted affiliation from National Council for Vocational Training in respect of vocational skills in respect of diesel mechanic, computer operator and programming assistance, welder and motor mechanic. The definition of 'approved vocational education course' defines it as a course run by an industrial training institute or an industrial training center affiliated to the NCVT or State Council for Vocational Training. Accordingly, the abovementioned services provided by the applicant attracts Nil rate of tax under Sr No. 66 of the Notification No. 12/2017 CT(R) dated 28th June,2019.

Hence, The Authority ruled that the services provided under vocational training courses recognized by National Council for Vocational Training (NCVT) or Jan Shikshan Sansthan (JSS) is exempt neither under Entry No.64 of the exemption list of GST Act, 2017 nor under "Educational Institution" defined under Notification No. 22 C.T(R). Vocational training courses pertaining to diesel mechanic, computer operator and programming assistance, welder and motor mechanic are only exempt under Sr No.66(a) of the Notification No.12/2017 C.T (R) dated 28.06.2017 as amended.

6. Whether the procedure to raise invoice from one state for imports received at another state, where the person does not have separate registration, and charging IGST is correct? Whether the person is allowed to do transactions from the place wherefrom invoices are issued and mention the GSTIN of the same state to dispatch goods from importing state?

Held: Yes

In the case of ***M/s Aarel Import Export Pvt. Ltd., AAR Maharashtra*** the applicant is an importer and exporter/trader of different products, having its head office at Mumbai. The applicant wishes to import Coke (processed product from Coking Coal) from Indonesia to Paradip Port in the state of Odisha. Goods would be stored at a rented Customs Warehouse (Ex-Bond) at Paradip Port. The applicant does not have a separate

establishment or place of operation in Odisha. The applicant endeavors to clear the goods from that warehouse in the name of Mumbai office using Maharashtra GSTIN, where the importation will be completed on payment of custom duties, if any, and IGST in the name of Mumbai head office and wish to sell the goods directly from Paradip Port to customer in Odisha and accordingly charge IGST to the customers by raising bill from Mumbai office and not Odisha.

The Authority found that as per the provisions of section-7(2) of the IGST Act, 2017 supply of goods imported into India shall be treated as supply of goods in the course of inter-state trade or commerce and liable to IGST (under section-5 of IGST Act) at the point when custom duties are levied on the goods. Again in case of goods imported into India, the place of supply shall be the location of the importer. In the present case, the place of supply is the location of the importer who is situated in the Maharashtra and hence the applicant will be clearing the goods by paying IGST using GSTIN of Mumbai, Maharashtra. Since the applicant has no establishment or GSTIN of Odisha, the applicant can clear the goods on the basis of invoices issued by Mumbai head office and therefore need not to take registration in Odisha. Answering to the second question, the Authority stated that the applicant can raise invoice upon the customers of Odisha in the GSTIN of the Mumbai, Maharashtra. The GSTIN of Mumbai Head Office shall be used in E-Way bills.

Note: Similar ruling was also issued earlier by the AAR Maharashtra in case of *M/S. Sonkamal Enterprises Pvt Ltd.*

7. Whether services provided by way of conservancy/solid waste management service to Conservancy Department of Municipal Corporation is exempt under GST?

Held: Yes

In the case of ***Indrajit Singh-AAR West Bengal***, the applicant is providing conservancy/solid waste management service to the Conservancy Department of the Howrah Municipal Corporation (hereinafter the HMC). The HMC, however, is deducting TDS while paying consideration for the above supply in terms of Notification No. 50/2018 - Central Tax dated 13-9-2018 and State Government Order No. 6284 - F(Y) dated 28-9-2018. The Applicant seeks a ruling on whether the above supply is exempted in terms of Sl. No. 3 or 3A of Notification No. 12/2017 - Central Tax (Rate) dated 28-6-

2017, as amended from time to time and if so, whether the notifications regarding TDS are applicable in his case.

The applicant contends that Sl. No. 3 of the Exemption Notification exempts from payment of GST any "pure service" (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution. The applicant is providing services to a municipal corporation which is a local authority. So his supply of services should be exempt from GST.

The Authority stated that the Central Government, in its Circular No. 51/25/2018-GST dated 31/07/2018, clarifies that the service tax exemption at serial No. 25(a) of Notification No. 25/2012 dated 20/06/2012 has been substantially, although not in the same form, continued under GST vide Sl. Nos. 3 and 3A of the Exemption Notification. Sl. No. 25(a) of the ST notification under the service tax exempts "services provided to the Government, a local authority or a governmental authority by way of water supply, public health, sanitation, conservancy, solid waste management or slum improvement and upgradation." The Applicant's eligibility under Sl. No. 3 or 3A of the Exemption Notification should, therefore, be examined from three aspects: (1) whether the supply being made is pure service or a composite supply, where supply of goods does not exceed more than 25% of the value of the supply, (2) whether the recipient is government, local authority, governmental authority or a government entity, and (3) whether the supply is being made in relation to any function entrusted to a panchayat or a municipality under the Constitution. Regarding first aspect, the Authority stated that describes the nature of the work as lifting and removing of daily garbage etc. accumulated from the vats, dumping yards, containers and other places on the roads, lanes and bye-lanes of HMC area. There is, however, no reference to any supply of goods in the course of executing the work. The vehicles used and the fuel consumed and the machinery used do not result in any transfer of property in goods to HMC. Therefore, the applicant's supply to HMC is a pure service. In respect of second aspect, it is clear that the recipient is a local authority as defined under section 2(69) of the GST Act. In respect of third aspect, it is found that Applicant's supply to HMC is a function mentioned under Sl. No. 6 of the Twelfth Schedule of the Constitution of India.

These notifications of TDS are applicable only if TDS is deductible on the Applicant's supply under section 51 of the GST Act. Section 51(1) of the Act provides that the Government may mandate, *inter-alia,* a local authority to deduct TDS while making payment to a supplier of taxable goods or services or both. As the Applicant is making an

exempt supply to HMC the provisions of section 51 and, for that matter, the TDS Notifications do not apply to his supply.
The Authority ruled that the Applicant's supply to the Howrah Municipal Corporation, as described in para 3.5, is exempt from the payment of GST under Sl. No. 3 of Notification No. 12/2017 - Central Tax (Rate) dated 28-6-2017. The provisions of section 51 and, for that matter, Notification No. 50/2018 - Central Tax dated 13-9-2018 and State Government Order No. 6284 - F(Y) dated 28-9-2018, to the extent they mandate and deal with the mechanism of TDS, do not apply to his supply.

8. Whether exemption under Sl. No. 3A of Notification No. 9/2017-Integrated Tax (Rate), dated 28-6-2017 as amended from time to time applies to the services provided to West Bengal Fisheries Corporation Ltd. for up-gradation of Jalda Kuti Landing Centre by protection to Mandarmani River and up-gradation of navigability by dredging of Mandarmani River?

Held: Yes

In the case of ***M/s.Dredging and Desiltation Company (P.) Ltd.-AAR West Bengal,*** the applicant has been awarded a contract from West Bengal Fisheries Corporation limited for up-gradation of Jalda Kuti Landing Centre by protection to Mandarmani River and upgradation of navigability by dredging of Mandarmani River in Purba Medinipur. The Applicant seeks a ruling on whether an exemption under Sl. No. 3A of Notification No. 9/2017-Integrated Tax (Rate) dated 28-6-2017 (hereinafter the Exemption Notification), as amended by Notification No. 2/2018 dated 25-1-2018 Integrated Tax (Rate) dated 25-1-2018, applies to the above supply.

The applicant stated that the recipient is a Government entity, as defined under clause 2 (zfa) of the Exemption Notification. Further, he stated that the work undertaken is in relation to a function entrusted to a Panchayat under Article 243G of the Constitution of India.

The Authority stated that The applicant's eligibility under Sl. No. 3A of the Exemption Notification should, therefore, be examined from three aspects: (1) whether the supply being made is a composite supply, where supply of goods constitutes not more than 25% of the value of the composite supply, (2) whether the recipient is government, local authority, governmental authority or a government entity, and (3) whether the supply is in relation to any function entrusted to a Panchayat or a Municipality under the Constitution.

The Applicant's supply involves the construction of spurs for providing protection against land erosion and improving navigability by dredging the channel. It is a works contract, intended to construct, improve/alter the immovable property, and involves the supply of goods such as granite stone, boulders, polypropylene gabions, nylon crates and filaments. It further involves supply of services like dredging, loading/unloading and transportation of the excavated material etc. It is, therefore, a composite supply of goods and services. It is also apparent from the documents that supply of goods constitutes about 11% of the value of the composite supply. The recipient is a Government entity as per Exemption Notification.The up-gradation of Jalda Kuti Landing Centre and the related work that has been awarded to the applicant has a direct nexus with fisheries development. It is, therefore, an activity in relation to the development of fisheries - a function listed under Sl. No. 4 of the Eleventh Schedule, and, therefore, entrusted to a Panchayat under article 243G of the Constitution of India.

The Authority ruled that Exemption under Sl.No. 3A of the Exemption Notification is, therefore, applicable to the applicant's supply of services.

9. Whether sweeping service to the Housing Directorate of Government of West Bengal is exempt from payment of GST in terms of Notification No 12/2017-CT (Rate) dated 28.06.2017?

Held: Yes.

In the case of ***M/s. NIS Management Ltd.-AAR West Bengal,*** the applicant is a service provider to the West Bengal Housing Board. The Board awarded the applicant the contract for deployment of personnel for services of plumbing, sweeping etc. The Applicant was required to charge GST on the entire bill, including sweeping service. The Directorate, however, has since raised an objection on GST being charged on sweeping service, which, in their opinion, is part of sanitation service listed under the Eleventh Schedule of the Constitution and, therefore, eligible for exemption under Sl. No. 3 of the Exemption Notification.

The concerned officer from the revenue submits that the above exemption is applicable to the government or local authority. The Board is neither Government nor Local Authority, but a statutory body created by the West Bengal Housing Board Act, 1972. The above exemption is, therefore, not applicable for supplies to the Board.

The Authority stated that the Exemption Notification cover the supply of certain services to the government, local authority, governmental authority, or government entity. The

service should be an activity *in relation to any function* entrusted to a Panchayat under Art 243G of the Constitution or to a Municipality under Art 243W of the Constitution. From the tender issued by the Board, it appeared that the Housing Directorate invited quotation for deployment of personnel for several services, including 'Sweeping Service'. The job description of a sweeper mentioned therein includes sweeping of the compound and common staircase and corridors of all floors of the buildings in the Housing Estate, cutting of jungles and bushes, cleaning and disposal of garbage, cleaning of the roof, surface drain cleaning, pit cleaning of sewerage system etc. It is, therefore, a bundle of activities that are classifiable under SAC 99853 as 'cleaning service'. It may be eligible for the above exemption if it also qualifies as a service for public health sanitation, being an activity under Sl No. 7 (public health sanitation, conservancy and solid waste management) of the Twelfth Schedule to the Constitution. 'Sanitation and similar services' are classified under SAC 99945. It includes sweeping and cleaning, but only with reference cleaning of a road or street. Sweeping of premises – public or residential – is not classified under 'Sanitation or similar service', Sweeping service that the Applicant supplies to the Housing Directorate cannot, therefore, be classified as an activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution.

The Authority ruled that Sweeping Service provided by the applicant to the Housing Directorate of the Government of West Bengal, cannot be classified as an activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution. The exemption under Sl No. 3 or 3A, as the case may be, of Notification No 12/2017-CT (Rate) dated 28.06.2017 and WB Govt Gazette Notification-1136-FT dated 28.06.2017 is not, therefore, applicable to such supplies.

10. Whether exemption from payment of GST is available to a society providing Security services and Scavenging services to various hospitals under the State Government as well as the Central Government in terms of Notification No 12/2017-CT(Rate) dated 28.06.2017 and West Bengal Government Gazette Notification-1136-FT dated 28.06.2017, as amended?

Held: No

In the case of ***Ex-Servicemen Resettlement Society-AAR West Bengal***, the applicant is supplying Security Guards & Scavenging Services to the medical colleges and hospitals of West Bengal without and also to the Central Govt. Cancer Institute. The Applicant

contends that the services provided by them are exempt by way of activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under Article 243W of the Constitution. The applicant further stated that no materials/equipment is supplied by them.

The concerned officer from the revenue submits that the above exemption is extended to Panchayats and Municipalities. The Applicant, being a private party, is not eligible for this exemption.

The Authority found that in order to come within the ambit of Exemption Notice, the service should be an activity in relation to any function entrusted to a Panchayat under Art 243G of the Constitution or to a Municipality under Art 243W of the Constitution.The Applicant's eligibility under Sl No. 3 or 3A of the Exemption Notification should, therefore, be examined from three aspects: (1) whether the service being supplied is pure service or composite supply, (2) whether the recipient is government, local authority, governmental authority or government entity, and (3) whether the services provided are classifiable as a function entrusted to a Panchayat or a Municipality under the Constitution.

Since no goods are supplied by the applicant while provisioning the services, the applicant’s services are classifiable as pure services. The supplies are made, according to the Application, to hospitals owned or managed by the government. It is, therefore, obvious that the recipient is government or governmental authority etc. A study of Article 243G and 243W of the Constitution of India makes it clear that "Security Services" provided to Government Hospitals and Medical Colleges, as institutions of Central/State/District/Local authorities, are clearly not covered under the either list. Also, the services which the Applicant bundled under the description 'Scavenging Services' do not come within the scope of Article 243G and 243W of the Constitution of India therefore, not exempt under Sl No. 3 of the Exemption Notification.

The Authority ruled that the benefit of exemption from the payment of GST is not available to the applicant under Notification No 12/2017-CT(Rate) dated 28.06.2017 and WB Govt Gazette Notification-1136-FT dated 28.06.2017, as amended, for the supply of Security Services and the bundle of service that he describes as 'Scavenging Services'.

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JUDICIAL PRECEDENTS UNDER GST LAW

Adv. Mukul Gupta
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1. **Sec. 47, 49, 50 of CGST Act, 2017:** The inputs available for outward supply is available in the clouds. Only when the payment is so made, the Government gets a right over the money available in the ledger. In case of delayed payment of tax, the liability to pay interest arises which cannot be escaped from. Since ownership of such money is with the dealer till the time of actual payment, the Government becomes entitled to interest upto the date of their entitlement to appropriate it. Court held that ITC can be used for payment of tax for filing of return only, when it is set-off with output liability. And thereby the interest is payable when the tax is not paid timely. ITC cannot be used to pay interest.
   Megha Engineering and Infrastructures Limited v. Commissioner CGST, 2019-VIL-175- TEL; 2019 (4) TMI 1319, TS-248-HC-2019 (TEL and AP)-NT, MANU/TL/0041/2019

2. Constitution Of India Article 226, Article 269A, Article 279A: Issue Decision of High Court Reference Validity of order of Single Bench directing the GST Council to adjudicate the representation filed by the taxpayer. The Division Bench of the High Court overruled the order passed by the Single Bench. It held that neither the Constitution of India nor any other Statute permits the GST Council to receive representations, conduct personal hearing and pass orders thereon with regards to matters on GST. The Court held that the adjudication of public grievance is not a function of the GST Council.
   Union of India v. Shiyaad and ors. 2019-VIL- 161-KER; (11.04.2019 - KERHC) MANU/KE/1157/2019

3. Sec 129 of CGST Act 2017: Transporter was carrying Xerox copy of lorry receipt with certain details mentioned manually, where the details were required as per the GST law. Since, lorry receipt is not a prescribed document to be carried during the movement of goods under GST law. Therefore, the court held that the authorities are not empowered to detain goods / vehicles on account of deficiency in lorry receipt. Basis the above, the Court held the detention order to be illegal.
   F.S. Enterprise V. State of Gujarat, 2019-VIL-154-GUJ; High court of Gujarat C/SCA/7063/2019

4. **Sec 130 of the CGST Act, 2017**: The taxpayer was owner of the goods (and not the hall-marker) which was evident from the delivery challan and issue voucher sent to hall-marker. Basis above, the Court observed that no intention to evade tax can be established against the taxpayer which is a pre-requisite for seizure under the given section (S. 130). Since the taxpayer was not being made a party to the proceedings, the seizure order at the hall-marker's premises was held as bad in law.
Josco Bullion Traders Private Limited v. Commissioner SGST, 2019-VIL-151-KER; W.P(C).No.18370 OF 2018

5. Sec. 140 of the CGST Act, 2017: The Court held that the taxpayer could not claim credit in requisite column of TRAN-1 due to unavailability of TRAN-2 at the time of filing. The Court directed the nodal officer to allow taxpayer to file TRAN-2 to enable it to claim credit.
Arvind Lifestyle Brands Limited v. UOI, 2019-VIL-187- KAR; Writ Petition No.19076/2019 (T - RES)

6. SECTION 130 CGST Act 2017: Where state tax officers had passed an order of confiscation on assesse and noting sheet was totally blank and there was nothing on record to indicate relevant dates on which proceedings took place, GST Authorities were directed to inform Court about what was practice of making noting of proceedings conducted by State tax officers. The respondent is asked to file affidavit- in- reply.
Mahalaxmi Rexine & Metal Traders v. State Tax Officer - [2019] 105 taxmann.com 264 (Gujarat); (18.04.2019 - GUJHC): MANU/GJ/1086/2019

7. Section 17(5) of the CGST Act 2017: The purpose of the Act is to make uniform taxation. The High Court was dealing with the issue of availability of ITC on construction of building used for further letting out. The High Court rejected the contention of the tax authorities and held that the property cannot be said to be used by the petitioner 'on his own account' where it lets out the same to various tenants for their use. GST will be paid as outward supply on sale of immovable property (before issuance of completion certificate) and also the rental of immovable property. The Court made it clear that ITC is available for rent out and not available for property used by self.
Safari Retreats Private Limited v. UOI, 2019-VIL-223-ORI; TS- 350-HC-2019(ORI) – NT

8. Sec. 140 of the CGST Act, 2017: Issues vis-à-vis transitional credit Issue Order Reference Denial of credit due to declaration of transitional credit amount in inapplicable column of TRAN-1. The Court relied upon the erstwhile jurisprudence on similar issue wherein the Courts allowed credit despite erroneous declarations in TRAN-1. The Court directed the GST Council to re-consider the issue.
Field Motor Private Limited v. UOI, 2019- VIL-167-ORI; WP (C) No.17282 of 2018

9. Section 54 CGST Act 2017: The GST law provide for re-credit of ITC on rejection of refund claim under GST RFD-PMT 03. However, GST portal did not have functionality regarding the same. The Court held that the revenue cannot deny re-credit of the amount on account of lack of mechanism on GST portal. Accordingly, the taxpayer was given option to take credit of the said amount manually in its return in case such amount is not credited electronically.
Garden Silk Mills Limited v. UOI, 2019- VIL-165-GUJ; MANU/GSCU/0028/2017

10. Sec. 50 of CGST Act, 2017 and Principle of Natural Justice: The Competent Authority had levied interest on the entire amount of GST liability inclusive of input tax credit availed by the assessee and passed a penalty order. The assessee filed a writ petition before High Court of Andhra Pradesh and Telangana challenging the order on the ground that the principles of natural justice had been violated. The assessee submitted that the recovery order had been passed without providing an opportunity of being heard.
The High Court of Andhra Pradesh and Telangana observed that the assessee had an alternative remedy to file an appeal before the Appellate Authority if it was of the opinion that the principles of natural justice had been violated while passing the above order. Hence, writ petition could not be filed where an alternative remedy was available to the assesse. Therefore, the High Court dismissed the writ petition filed by the assesse.

Kesoram Industries Ltd. v. Assistant Commissioner of Central GST & Central Excise - [2019] 106 taxmann.com 119 (Andhra Pradesh and Telangana)

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SECTION 17(5)(d) GST Act – BLOCKED CREDIT HOW FAR IS IT BLOCKED ?

Adv. Pradeep K Mittal

In this Article, an attempt has been made to amplify and explain the restrictions and prohibitions as contained under Section 17(5)(d) of Goods and Service Tax Act, 2017 (hereinafter called GST Act), which is popularly referred to as "blocked credits". In fact, in my humble view, neither in the previous regime i.e. Pre-GST regime nor in the GST regime, there is any embargo or prohibition as is sought to be canvassed in many quarters in the trade, industry and professional circle, which I will try to explain and submit with the help of various cases rendered by different Hon'ble High Courts. The relevant provisions of Section 16 and 17 of CGST Act, 2017 are reproduced herein-below:-

Section 16 Eligibility and conditions for taking Input Tax Credit

(1) Every registered person shall, subject to such conditions and restrictions, as may be prescribed and in the manner specified in Section 49, be entitled to take credit of input tax charged on any supply of goods or service or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be entitled to the electronic credit ledger of such person.

Section 17(5): Notwithstanding anything contained in sub- section (1) of Section 16 and sub-section (1) of Section 18, input tax credit shall not be available in respect of the following namely:-

> (d): goods or service or both received by a taxable person for construction of an immoveable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.
>
> Explanation: For the purposes of Clauses ©and (d) the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immoveable property.

2: The Section 17(5)(d) GST Act in laymen's parlance is also called "blocked credit". Hence, the question, therefore, arises for consideration is as to whether, in all

circumstances, wherever there is a emergence of "immoveable property", be it either at the "final stage" or at an "intermediate stage", no credit of (a) inputs (b) input service (c) or capital goods shall be allowed ?

3: Generally, it is commonly understood in the trade and professional circle, whenever there is a emergence of immoveable property, no ITC would be allowable by virtue of prohibition contained in Section 17(5)(d). First of all, let us understand, what is the meaning of word "immoveable property", which has not been defined in GST Act but in Section 3(26) of "General Clauses Act" in the following words. In fact, Transfer of Property Act, does not define exhaustively the expression "immoveable property". Hence, we have to fall back upon the definition as given in "General Clauses Act".

Section 3(26) of General Clauses Act:

"immoveable property" shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth".

4: Since I would be citing the cases dealing with the definition of
(a) inputs and (b) input services and hence, let us understand the meaning of words of "inputs" or "input service" as given in the Cenvat Credit Rules, 2004 (i.e. pre-GST regime). Rule 2(k) of Cenvat Credit Rules, 2004, define "input" – which is inclusive definition, inter-alia, reads as under:-

(k): "input" means:

(i) all goods used in the factory by the manufacturer of the final product; or
(ii)……..
(iii)…….
(iv) all goods use for providing any output service
but excludes:

(A) : light diesel oil, high speed diesel oil etc.etc.
(B): all goods used for :-
(i) construction of a building or a civil structure or a part thereof; or
(ii) laying of foundation or making of structures for support of capital goods;

5: The above is position subsequent to 1.4.2011. A question then arises for consideration as to whether despite a bar and exclusion as contained in (B) (i)(ii), can the Cenvat Credit (now ITC) could be availed on (a) input and (b) input services (c) capital goods used in constructing building or civil structure or part thereof – which undoubtedly

is a "immoveable property". Let us try to find answer with the help of many judgments of different Hon'ble High Courts and that of Hon'ble Custom Excise & Service Tax Appellate Tribunal.

5.1 : The Hon'ble Supreme Court in the case CCE vs. Solid and Correct Engineering Works MANU/SC/0237/2010 has defined "immoveable property" and has observed as under:-

> Applying the above tests to the case at hand, we have no difficulty in holding that the manufacture of the plants in question do not constitute annexation hence cannot be termed as immovable property for the following reasons:
>
> (i) The plants in question are not per se immovable property.
> (ii) Such plants cannot be said to be "attached to the earth" within the meaning of that expression as defined in Section 3 of the Transfer of Property Act.
>
> (iii) The fixing of the plants to a foundation is meant only to give stability to the plant and keep its operation vibration free.The setting up of the plant itself is not intended to be permanent at a given place. The plant can be moved and is indeed moved after the road construction or repair project for which it is set up is completed.

6: The Hon'ble High Court of Andhra Pradesh in the case of Commissioner of C. Excise, Visakhapatnam-II Vs. Sai Sahmita Storages (P) Ltd. MANU/AP/0510/2011 has held as under. In the present case, the company was engaged in providing taxable output service of " storage and logistic services" and Steel and Cement had been used for construction of warehouses and godowns.

> 9. There is no dispute, in these cases, that the assessee used cement and TMT bar for providing storage facility without which, storage and warehousing services could not have been provided. Therefore, the finding of the original authority as well as the appellate authority are clearly erroneous, which was correctly rectified by the CESTAT.

7: The Hon'ble High Court of Gujarat in the case of Mundra Ports & Special Economic Zone Limited Vs. CCE MANU/GJ/0260/2015 has held as under:-

The contention of Party/Assessee

According to him, either before the amendment made in the year 2009 or thereafter, the appellant was neither factory nor manufacturer and he has only constructed jetty by use of cement and steel for which he was entitled for input credit as jetty was constructed by the contractor, but the jetty is situated within the port area and the appellant is a service provider. According to the Appellant, his case is squarely covered by the judgment of DB of AP High Court in CCE Vs. Sai Sahmita Storages (P) Limited, MANU/AP/0510/201:2011 (270) ELT 33 (AP) wherein in paragraph 7, it has been clearly held that a plain reading of the definition of Rule 2 (k) would demonstrate that all the goods used in relation to manufacture of final product or for any other purpose used by a provider of taxable service for providing an output service are eligible for Cenvat Credit. It is not in dispute that the appellant is a taxable service provider of port under the category of port services. Therefore, the appellant was entitled for input credit and the decision of the Division Bench of the Andhra Pradesh High Court squarely applies to the facts of the case and answered the question on which the appeal has been admitted.

Contention of Department:

. 9. Mr. Ravani has also vehemently urged that since jetty was constructed by the appellant through the contractor and construction of jetty is exempted and, therefore, input credit would not be available to the appellant as construction of jetty is exempted service. The argument though attractive cannot be accepted. The jetty is constructed by the Appellant by purchasing iron, cement, grid etc. which are used in construction of jetty. The contractor has constructed jetty. There are two methods, one is that the appellant would have given entire contract to the contractor for making jetty by giving material on his end and then make the payment, the other method was that the appellant would have provided material to the contract and labour contract would have been given. The appellant claims that he has provided cement, steel etc. for which he was entitled for input credit and, therefore, in our opinion, the appellant was entitled for input credit and it cannot be treated that since construction of jetty was exempted, the appellant would not be entitled for input credit. The view taken contrary by the Tribunal deserves to be set aside.

Findings/Ratio of Judgment.

10. For the reasons given above, this Tax Appeal succeeds and is allowed. The denial of input credit to the appellant by the respondent is set aside. The

appellant would be entitled for input credit.

8: The Hon'ble Supreme Court in the case of Jayaswal Neco Ltd. Vs. CCE MANU/SC/0361/2015 has held as under:-

> 11. In the process, the court also explained that there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. In the opinion of the court, the expression "in the manufacture" takes within its compass, all processes which are directly related to the actual production. It noted that goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. The court further marked that drawing and photographic materials falling within the description of goods intended for use as "equipment" in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods".
>
> 13. Applying the aforesaid test to the facts of this case, it is apparent that the use of "railway tracks" is related to the actual production of goods and without the use of the said railway track, commercial production would not be possible.
>
> These railway tracks used in transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine for manufacture of pig iron. Secondly the system also helps in taking hot pigs from pig casting machine to pigs storage yard by the big wagon where hot pig iron are dumped for cooling and making ready for dispatchers. This Railway tracks are also used in handling of raw materials at wagon tippler to stacker reclaimer where stacking and reclaiming of raw material is taken place and required quantity is conveyed for further processing at stock house.
>
> 18. We find from the order of the Commissioner that in spite of taking note of the aforesaid use of the railway tracks and accepting the same as correct, the Commissioner denied the relief to the Appellant on an extraneous ground, i.e. railway tracks were used for other purposes as well, namely, apart from conveying hot metal and hot pigs, it was used for carrying raw materials and finished goods as well. This can hardly be a ground to deny the relief inasmuch as by incidental use of the railway tracks for some other innocuous purpose, it does not lose the character of being an integral part of the manufacturing process. The Commissioner has further observed in his order that the railway track is not

utilized directly or indirectly for producing or processing of goods or bringing about any change for manufacture of final product. This conclusion, obviously, is completely erroneous and amounts to misreading of the process. Such an error has occurred because the Commissioner did not keep in mind the principle of law laid down by this Court in M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd.'s case.

The Supreme Court held that "Railway Track" meant for movement of materials raw materials can be said to be used in the "manufacturing process".

9: The Hon'ble High Court of Chhattisgarh in the case of C&ST. Vs. Vimla Infrastructure India Pvt. Ltd. MANU/CG/0185/2018 has held as under:-

> 7. In the case at hand, the respondent has constructed a Railway Siding which is a Low Speed Track distinct from a running line or through route such as a main line or branch line. It is used for marshaling, stabling, storing, loading and unloading vehicles and other goods. The Railway Siding of the respondent are located at Silyari Railway Station and Bhupdeopur Railway Station. In raising construction of the Railway Siding, the Respondent has used MBC Sleeper, which, in turn, has been constructed by using MBC Railway Sleepers and RLS Rails.
>
> 8. The Respondent was issued show cause notice by the Commissioner on the ground that it has wrongly availed and utilized Cenvat Credit and inadmissible Input Service Tax in Central Excise duty paid on Inputs and Capital Goods which have been used for construction of Railway Siding as the goods which were neither the Input Service nor the inputs and Capital Goods for providing "Cargo Handing Services". The Commissioner eventually concluded that the Company cannot provide any 'logistic services' viz., "Cargo Handling Services" without the facility of "Private Railway Side.

9.1: The Hon'ble High Court dismissed the appeal of the Department while holding that the Respondent/assessee is entitled to Cenvat Credit for construction of "Railway Siding" which is admittedly immoveable property.

10: The Hon'ble CESTAT in the case of Milroc Good Earth Property & Developers Ltd. Vs. CCE & ST., Goa Manu/CM/0082/2019 has held as under:-

> Appellant had availed credit in respect of input services primarily of advisory nature and of consultancy service other than the construction service and

discharged the service tax on the services provided in the hotel like (i) accommodation in hotels (ii) restaurant service, (iii) health club and fitness centre service and (iv) other taxable service, other than the 119 listed services. He also filed the list of services along with the Appeal memo, on which the Appellant has availed the Cenvat Credit.

9. I have gone through the list of services on which the cenvat credit has been availed by the Appellant, the agreement as well as the invoices and I am of the view that none of these services are related to construction. These are the services which normally performed after the construction activity is over and therefore provisions of Section 65B ibid are not attracted in the facts of this case. The hotel construction is not the end activity of the appellants. Rather their end activities are providing various taxable services like accommodation, restaurant services, spa services and other related services in the said Hotel and they have availed credit in respect of these services which are other than construction service. They have, therefore, fulfilled the conditions specified in Rule 2 (1) ibid and thus the appellant is entitled to the credit of the same under the provision of Rule 3(1) ibid. The argument of Revenue that the services have been utilized for construction of the Hotel which is not excisable and therefore credit is not admissible, is unfounded. According to me, the credit in issue has been availed on input services which have been used for providingthe output services i.e. the services mentioned above and hence I find that the reasoning by the lower Authorities is devoid of any merit.

11: The Hon'ble Division Bench of Delhi High Court in the case of Vodafone Mobile Services Limited and Ors. Vs. CCE MANU/DE/3088/2018 has held as under:-

Aditya Cements Ltd. Vs. Union of India 2008 (221) ELI 362, a decision of Rajasthan High Court, considered whether the asessee was entitled to avail the credit on materials used for laying railway track (which is an immovable property emerging at intermediate stage) that was used for transporting of coal to the factory. The coal so transported was used for the manufacture of dutiable final product. The High Court held that the assessee was entitled to avail credit on material used in laying railway track materials. Ispat Industries Limited Vs. Commissioner of Central Excise 2006 (195) ELT 164, was a case where the High Court allowed credit of duty paid on angles, channels, plates, etc. which were used in erection, installation and commissioning of the machinery (immovable). The Revenue's appeal against this judgment was rejected by order dated 19.07.2007 in Central Excise Appeal No.187 of 2006, by the Supreme Court, In Llyods Steel Industries v. Commissioner of Central Excise

Manu/CM/0668/2004: 2004(64) RLT 732, the High Court allowed credit of cement and steel used for construction of foundation that were not excisable goods. The Revenue's appeal against the judgment was dismissed. Commissioner of Central Excise Vs. ICL Sugars Limited MANU/KA/2891/2011 (Kar.) was a Karnataka High Court decision, rejecting the Revenue's appeal holding that plates, etc, used for fabrication and installation of a storage tank would be admissible for credit. The Revenue's sole contention to deny credit was that the storage tank was an immovable property and once erected to the earth becomes non-excisable. Negating this contention, the High Court allowed the credit.

68. On the basis of the above reasoning, the Tribunal had denied Cenvat Credit to the assessee on the premise that the towers erected result into an immovable property, which is erroneous and contrary to the judgment of the Supreme Court in the case of Solid and Correct Engineering (supra). The towers which are received in CKD condition, are assembled/erected at the site subsequently giving rise to a structure that remains immovable till its use because of safety, stability and commercial reasons of use. The entitlement of CENVAT credit is to be determined at the time of receipt of goods. The fact that such goods are later on fixed/fastened to the earth for use would not make them a non-excisable commodity when received. Therefore, this question is answered in favour of the assessee and against the Revenue.

72. In the present case, it is not in dispute that the appellant is a taxable service provider providing passive telecommunication service. Therefore, the assessee is entitled for input credit. It is also clear that several High Courts in different contexts have taken a view that credit of excise duty and service tax paid would be available irrespective of the fact that inputs and input services were used for creation of an immovable property at the intermediate stage, if it was ultimately used in relation to provision of output service or manufacturing of final products.

73. The conclusion of CESTAT, denying the assessee Cenvat credit on the premise that the towers erected result in immovable property, is erroneous and plainly contrary to Solid and Correct Engineering (supra). The towers that are received in CKD condition, are erected at site, subsequently, giving rise to a structure that remains, safe and stable (commercial reasons of use). The fact that in the intermediate stage, an immovable structure emerged, is of no consequence, in the facts of the present case. It is a settled principle of law that entitlement of Cenvat Credit is to be determined at the time of receipt of the goods. If the goods

that are received qualify as inputs or capital goods, the fact that they are later fixed/fastened to the earth for use would not make them a non-excisable commodity when received. The CESTAT failed to consider the fact in the event antennae and BTS are to be re-located, the assessee also has to relocate the tower and the pre-fabricated shelters, thereby, implying that the towers and the pre-fabricated shelters, are not immovable property.

POST GST REGIME:

12: The Orissa High Court in the case of Safari Retreats (P) Ltd Vs. Chief Commissioner of Central Goods & Service Tax, 2019- TIOL-1088-HC-Orissa-GST, held on 17.4.2019 that if the assessee is required to pay GST on rental income arising out of investment (i.e. construction in the present case), he is eligible to have the ITC on the GST paid under Section 17(5)(d).

13: Even otherwise, there is no legal, valid and justifiable reason for not allowing the ITC of various (a) inputs, (b) input services and
(c) capital goods which have gone into the construction of immoveable property which has been let out for providing output service on payment of rent or license fee and the GST is paid thereon.

14: In my humble view, Section 17(5)(d) of GST Act, prohibit the taking of ITC of various construction materials which have gone into construction of (i) Administrative Building (ii) Township for residence of Staff and Worker (iii) Shed and Rest Rooms for persons who brought raw materials to the factory except where it is mandatorily required viz. in Sugar Industry (iv) Civil Construction for parking of Vehicles and (v) other civil construction which is totally unrelated to the manufacturing process. In other cases, in view of various judgments of different Hon'ble High Court and that of CESTAT, the assessee shall be entitled to ITC. In one case only, the Department had filed an appeal before the Hon'ble Supreme Court but there is no stay.

15: Hence, I am of the firm view that that the assessee is entitled to ITC on various materials, input services and capital goods which had been used in emergence of immoveable property but said immoveable property had been used either (i) manufacture of goods and (ii) provision of output service which is taxable and tax has been paid thereon. Therefore, there is absolutely no reason as to why the assessee should not take credit of tax paid on (i) inputs (ii) input service and (iii) capital goods which had gone into construction, fabrication and erection of immoveable property.

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AN OVERVIEW ON JOB WORK UNDER GST

- **S S Satyanarayana, Tax Practitioner, Hyderabad.**

1. Meaning of job work:

Job work activity is differently treated un the GST Scheme when compared to the earlier Sales Tax regium. Under the GST regium, the job work activity is considered as one in the nature of service and the use of material by the job worker is not relevant. The entire consideration received by the job worker is liable to tax under the caption providing of service and only the rate of GST varies.

Job work means processing or working on raw materials or semi-finished goods supplied by the principal manufacturer to the job worker. This is to complete a part or whole of the process which results in the manufacture or finishing of an article or any other essential operation.

As per Section 2(68) of CGST Act,2017 "Job work" means any *treatment or process* under taken by a person on goods belonging to another registered person.

For the purpose of this article, 'Principal' will be the person who sends the goods for job work.

Treatment or process include packing, labelling, testing, re-conditioning, re-packing, inspection etc.,

Schedule II clause 3 of CGST Act, 2017 considers any treatment or process applied to another person goods as a supply of services.

To determine the value of job work charges, value of goods sent by the principal shall not be included.

2. Registration:

If a job worker provides services of more than Rs. 20 lakhs, he is required to get himself registered under Section 22 of CGST Act, 2017. To avail the benefits under GST, a job worker may also voluntarily register as provided under Section 25(3) of CGST Act, 2017.

3. Job work procedure:

As per Section 143(1) - A registered person (hereafter in this section referred to as the "principal") may, under intimation and subject to such conditions as may be

prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall, -

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

(i) where the job worker is registered under section 25; or

(ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

As per Section 143(2) the responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

4. Transitional provisions:

As per Section 141 of CGST Act, if any goods sent for job work prior to 01/07/2017 for the purpose of further processing, testing and reconditioning etc., no tax shall be payable if goods returned within 6 months from 01/07/2017. The jurisdictional Commissioner of Central/State Taxes has the power to extend the period by another 2 months, if further sufficient cause is shown.

If not returned with in the period specified, the ITC can be recovered in accordance with Section 142(8)(a) of CGST Act, 2017 in the following manner :

a. ITC recovered through assessments/proceedings under earlier law (pre-GST) (Eg: Excise).
b. Where not recovered under (i), ITC would be recovered as arrears under GST law.

As per Section 141(4) of CGST Act, the principal and job worker should submit a declaration electronically in form TRAN-01 specifying the goods held in stock at job worker's premises.

5. Availment of ITC on goods sent for job work:

Under the scheme of GST the Principal is entitled to avail ITC in respect of the goods purchased by him and sent to job worker for processing purpose. The only condition is that the job worker should return back the processed goods to the principal in the prescribed period.

As per Section 19(2) of CGST Act, 2017 the principal can avail the ITC where goods are sent to job worker premises directly from the vendor location without coming to the principal's premises.

Principal can avail ITC on such goods sent to job worker, provided the supplier mentions -customer as the principal and consignee as the job worker on the invoice.

In case of goods imported from other countries and directly sent to the job worker from the Customswarehouse, the principal requires to raise a delivery challan under Rule 55 of CGST Rules, 2017. In such cases the principal would be eligible to claim ITC on imported goods.

6. Time limit for returning goods sent for job work:

As per Section 19(3) read with 143(3) of CGST Act, 2017 when inputs (goods) are sent for job work without payment of tax and neither received back within 1 year nor supplied from the job worker premises, it shall be deemed to be supplied by the principal to job worker as on the date when the goods were sent out for job work.

As per Section 19(6) read with 143(4) of CGST Act, 2017 when capital goods are sent for job work without payment of tax and neither received back with in a period of 3 years nor supplied from the premises, it shall be deemed to be supplied by the principal to job worker as on the date when the goods were sent out for job work.

Provided where inputs/capital goods sent directly to job worker, the period will be counted from *date of receipt of inputs/capital goods by the job worker.*

Section 19(7) of CGST Act, 2017 extends the benefit that the time limit of 1/3 years will not be applicable for moulds, dies, jigs and fixture or tools sent out to a job worker.

Through amendment of CGST act with effect from 1st February, 2019, the commissioner has been empowered to extend the time limit for return of goods sent on job work for a further period as given below:

- Inputs – additional period of 1 year (totally 2 years)
- Capital goods – additional period of 2 years (totally 5 years)

7. Consequence when goods not returned within time:

If the inputs or capital goods are not returned within time limit specified, the principal is liable to pay GST along with interest as if there is a supply of goods to the job worker and the provisions of the Act accordingly.

8. Waste and Scrap:

As per section 143 (5) of the CGST Act, 2017, waste generated at the premises of the job-worker may be supplied directly by the registered job-worker from his place of business on payment of tax, in such case GST is payable by job-worker, however, if job-worker is not registered than such waste may be cleared by the principal manufacturer and GST would be payable by the principal manufacturer

9. Rate of GST:

General rate of GST on job work service is 18%. However, following is the list of exempted job works and other rates prescribed by the Government on other job works. (**Notification No11/2017-Central Tax (Rate) dated 28th June, 2017)**

Exempted job works :

a) Slaughtering of animals
b) Services by way of pre-conditioning, pre-cooling, ripening, waxing, retail packing, labelling of fruits.
c) Cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products/agricultural produce
d) Services provided by the National Centre for Cold Chain Development under the Ministry of Agriculture, Cooperation and Farmer's Welfare by way of cold chain knowledge dissemination.

Taxable @ 5%:

a) Printing of newspaper, books, journals etc.
b) Textiles and textile products falling under chapter 50 to 63 in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975)
c) Printing of all goods falling under chapter 48 or 49 falling under 5%.
d) Tailoring services

Taxable @12%:

a) Manufacture of umbrella
b) Printing of all goods falling under chapter 48 or 49 where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer.

10. Documents:

The principal has to raise triplicate challan while sending goods to job worker retaining one copy with him and two copies of challan has to be sent to the job worker. One copy of challan for outward movement (principal to job worker) and the other copy of challan for return (job worker to principal).

Goods may move under the cover of challan issued either by job worker or principal or from one job worker to another job worker. (Rule 45 of CGST Rules,2017).

Goods returned by job worker in instalments cannot be endorsed in the delivery challan issued by the principal, job worker requires to raise a fresh challan.

Contents of Delivery Challan has to be as provided under Rule 55.

11. **Filing of ITC-04:**
When principal sends inputs or capital goods for job work, he is required to file ITC-04, intimating to the Department of goods sent for job work. The job worker need not file ITC-04. It may be noted that the Government by Notification Number 32/2019-Central Tax,dated 28-06-2019has extended the time for filing ITC-04 Return for the period of July, 2017 to June, 2019 till 31-08-2019.

12. Few Advance Rulings on Job Works :
Following Advance Rulings issued by the Authorities would be very useful to understand the scope and concept of Job Work under GST :

a. **AAR, Kerala in the case of M/s Irene Rubbers** :

The job worker, as a supplier of services, is liable to pay GST if he is liable to be registered. He shall issue an invoice at the time of supply of the services. The value of services would include not only the service charges but also the value of any goods or services used by him for supplying the job work services, if recovered from the principal.

The activity of job work carried out on the materials supplied by the principal falling under HSN 5702 & 5703 are taxable @ 5% vide Entry No. 26(i)(b), Notification No.11/2017-Central Tax (Rate).

b. **AAR, Kerala in the case of M/s KondodyAutocraft (India) (P.) Ltd**.

'Bus Body Building' on chassis, on job work basis is a 'service' covered under Heading 9988 taxable @ 18%.

The Applicant is engaged in bus body building on the chassis given by the customers on a job work basis. The customer purchases chassis and hands it over to the applicant's yard for fabricating the bus body. The applicant has sought an advance ruling on whether 'Bus Body Building' on job work basis on the chassis supplied by the customer is a supply of goods or services and the applicable GST rate?

The Authority for Advance Rulings, Kerala observed that chassis is a semi-finished good and any treatment done by any other party on the chassis provided by the principal is the activity of job work. As per the CGST Act, 2017 job-work means any treatment or process undertaken by the person on the goods belonging to some other registered person. The ownership of the chassis is not transferred to the job worker. The job worker can use his own goods for providing the service of job work. In this case fabrication of a bus body structure which is fixed on the chassis by job worker is a service covered under SAC 9988.

Therefore, 'Bus Body Building' on chassis, on job work basis is a supply of a 'service' covered under Heading 9988 and taxable @ 18% GST.

c. AAR, West Bengal in the case of M/s Ratan Projects & Engineering Co. (P.) Ltd.

Inputs consumed & not returned by job worker during the process of galvanizing not be treated as supplies.

The Applicant is a manufacturer of cable tray, angel ladder tray, etc., which are used for electrical works. It sends steel structures for galvanizing to a job worker along with furnace oil, zinc, nickel that are to be consumed in the galvanizing process. The Applicant has sought an advance ruling to determine whether despatch of consumable materials such as furnace oil, zinc are to be treated as supplies from the principal to the job worker, if they are not returned within the time prescribed under the CGST Act, 2017?

The Authority for Advance Rulings, West Bengal observed that the Applicant sends steel structures for galvanizing process which involves application of zinc coating to prevent them from rusting. It is an intermediate stage of manufacturing activity. 'Inputs' include intermediate goods attached, consumed or that are exhausted in the process of manufacturing the intermediate goods. The 'inputs' returned are not in their original physical forms vis-à-vis the goods like furnace oil, zinc, etc., that have been sent to the job-worker. These goods get consumed in the galvanizing process.

Therefore, the goods such as furnace oil, zinc, etc., that are entirely used up in galvanizing process, could not be physically returned and should not be treated as supplies from the principal to the job worker, if they are not returned within the time prescribed under the CGST Act, 2017.

13. Conclusion :

- Supply of goods by principal to job worker for job work – Not liable to GST, subject to compliance of provisions of sec 143.
- Supply of job work services by the job worker – Job work charges will attract GST.
- Return of processed goods back to the principal by the job worker – Not liable to GST, subject to compliance of provisions of sec 143.

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PROPOSED AMENDMENTS IN THE CENTRAL GOODS AND SERVICE TAX ACT, 2017 & INTEGRATED GOODS AND SERVICE TAX ACT, 2017 THROUGH THE FINANCE BILL (NO. 2), 2019

Adv. Prateek Gupta,
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Compilation and comparative presentation of amendments carried out through the Finance Bill (No. 2), 2019 which shall come into effect on the date of its enactment, unless otherwise specified. The amendments carried out in the Finance Bill, 2019 will come into effect from the date when the same will be notified, simultaneously with the corresponding amendments to the Acts passed by the States & Union Territories.

Proposed Amendments in the CGST Act, 2017 as underlined in Table:-

Section 2(4) – Definition of Adjudicating Authority		
Current Provisions	Proposed Amendments	Effect of Amendments
"adjudicating authority" means any authority, appointed or authorized to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in subsection (2) of section 171.	"adjudicating authority" means any authority, appointed or authorized to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, **the National Appellate Authority for Advance Ruling**, the Appellate Authority, the Appellate Tribunal and the Authority referred to in subsection (2) of section 171.	The definition of "adjudicating authority" in clause (4) of section 2 of the CGST Act is being amended so as to exclude "the National Appellate Authority for Advance Ruling" (which is being created by various amendments in Chapter XVII of the CGST Act) from the definition of "adjudicating authority".

Second proviso to section 10 – Composition Scheme		
Current Provisions	**Proposed Amendments**	**Effect of Amendments**
Second proviso to section 10(1): "Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. Of turnover in a	**Second proviso to section 10 (1):** "Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. Of turnover in a State or Union territory in the	A new sub-section (2A) is being inserted in section 10 of the CGST Act to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for the earlier composition scheme) having an annual turnover in preceding financial year up to Rs 50 lakhs.
State or Union territory in the preceding financial year or five lakh rupees, whichever is higher."	Preceding financial year or five lakh rupees, whichever is higher." **<u>Explanation: For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory."</u>**	Further, explanation is being added to section 10 to clarify that: I. For computing the aggregate turnover to determine eligibility for the composition scheme, value of exempt supplies services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account; and

Section 10(2)(d): The registered person shall be eligible to opt under sub- section (1), if— (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and	**Section 10(2)(d):** The registered person shall be eligible to opt under sub-section (1), if— (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; **~~and~~**	Ii. For determining the value of turnover in a State or Union territory to calculate tax payable, value of exempt supplies of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount; and value of the first supplies from 1st of April till the date when the taxpayer becomes liable for registration shall not be taken into account.
Section 10(2)(e): The registered person shall be eligible to opt under sub- section (1), if— (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:	**Section 10(2)(e):** The registered person shall be eligible to opt under sub-section (1), if— (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council; **and**	
After Clause (e) of Section 10(2):	**After Clause (e) of Section 10(2), the following clause (f) Shall be inserted:** The registered person shall be eligible to opt under sub-section (1), if— **"(f) he is neither a casual taxable person nor a non-resident taxable person:"**	

After sub section 10(2):	**After sub section 10(2), the following sub-section 2A shall be inserted:** **"(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions Of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub- section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. Of the turnover in State or turnover in Union territory, if he is not—** **(a) engaged in making any supply of goods or services which are not livable to tax under this Act;** **(b) engaged in making any inter- State outward supplies of goods or**	

	services; **(c) engaged in making any Supply of goods or services Through an electronic commerce Operator who is required to Collect tax at source under section 52;** **(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and** **(e) a casual taxable person or a non-resident taxable person.** **Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section."**	
Section10(3): The option availed of by a registered person under	**Section 10(3):** The option availed of by a registered person under	

sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).	sub- section (1) **or sub-section (2A), as the case** may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) **or sub-section (2A), as the case may be.**	
Section 10(4): A taxable person to whom the provisions of sub- section (1) apply shall not collect any tax from the recipient on supplies made By him nor shall he be entitled to any credit of input tax.	**Section 10(4):** A taxable person to whom the provisions of sub-section (1) **or as the case may be, sub-section (2A),** apply shall not collect any tax from the recipient on Supplies made by him nor shall he be entitled to any credit of input tax.	
Section10(5): If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis,	**Section 10(5):** If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) **or sub-section (2A), as the case may be,** despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74	

apply for determination of tax and penalty.	shall, mutatis mutandis, apply for determination of tax and penalty.	
After sub-section (5) of section 10:	**After sub-section (5) of section 10, the following Explanations shall be inserted:** ***Explanation 1.*— For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is Represented by way of interest or discount.** ***Explanation 2.*— For the purposes of determining the tax payable by a person under this section, the expression**	

	"turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:— **(i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and** **(ii) Exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.'**	

Second Proviso after sub-section (1) of Section 22: Persons liable for Registration		
Current Provisions	**Proposed Amendments**	**Effect of Amendments**
In sub-section (1) of Section 22, after the second proviso:	**In sub-section (1) of Section 22, after the second proviso, the following proviso shall be inserted:** **"Provided also that the Government may, at the request of a State and on the recommendations of the Council, enhance the aggregate turnover from twenty lakh rupees to such amount not exceeding forty lakh rupees in case of**	A proviso and an explanation is being inserted in section 22 of the CGST Act so as to provide for higher threshold exemption limit from Rs. 20 lakhs to such amount not exceeding Rs. 40 lakhs in case of supplier who is engaged in exclusive supply of goods.

	supplier who is engaged exclusively in the supply of goods, subject to such Conditions and limitations, as may be notified. ***Explanation.*— For the purposes of this sub-section, a person shall be considered to be engaged exclusively in the supply of goods even if he is engaged in exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount."** **i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and** **(ii) Exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.'**	

After sub-section (6) of Section 25: Procedure for Registration

Current Provisions	Proposed Amendments	Effect of Amendments
After sub-section (6)	**After sub-section (6) of Section 25 the following sub-sections 6A, 6B, 6C, 6D shall be**	A New sub-section is being

of Section 25:	**inserted:** **"6(A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:** **Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:** **Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, Registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.** **Registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration.** **(6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the Recommendations of the Council, specify in the said notification:** **Provided that if an Aadhar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government**	inserted in section 25 of the CGST Act to make Aadhaar authentication mandatory for specified class of new taxpayers and to prescribe the manner in which certain class of registered taxpayers are require to undergo Aadhaar authentication.

	may, on the recommendations of the Council, specify in the said notification. **(6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing committee of Association, Board of Trustees, authorized representative, authorized signatory and such other class of persons, in such manner, as the Government may, on the recommendation of the Council, specify in the said notification:** **Provided that where such person or class of persons have not been assigned the Aadhar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.** **(6D) The provisions of sub- section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.** **Explanation.—For the purposes of this section, the expression "Aadhaar number" shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016."**	

Insertion of New Section 31A: Facility of digital payment to Recipient.

Current Provisions	Proposed Amendments	Effect of Amendments
After Section 31:	**After section 31, Section 31A Shall be inserted:** **"31A. The Government may, on the recommendations of the Council, prescribe a class of registered persons who shall provide prescribed modes of electronic payment to the recipient of supply of goods or services or both made by him and give option to such recipient to make payment accordingly, in such manner and subject to such conditions and restrictions, as may be prescribed."**	A new section 31A is being inserted in the CGST Act so that specified suppliers shall have to mandatorily give the option of specified modes of electronic payment to their recipients of goods or services.

Section 39: Furnishing of Return

Current Provisions	Proposed Amendments	Effect of Amendments
Sub Section (1) of section 39: Every registered person, other than an Input Service Distributor or a non- resident taxable person or a person paying tax under the provisions of section 10 or, section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such form, manner and within such time as may be prescribed, a return,	**Sub Section (1) of section 39:** **''(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52 shall, for every calendar month or part thereof, furnish, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars, in such form and**	Section 39 of the CGST Act is being amended so as to allow the compositio n taxpayers to furnish annual return along with quarterly payment of

electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed. Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return for every quarter or part thereof, subject to such conditions and safeguards as may be specified therein. **Sub Section (2) of section 39:** A registered person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.	**manner, and within such time, as may be prescribed:** **Provided that the Government may, on the recommendations of the Council, notify certain class of registered persons who Shall furnish a return for every quarter or part thereof, subject to such conditions and restrictions as may be specified therein.** **Sub Section (2) of section 39:** **A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.''**	taxes; and other specified taxpayers may be given the option for quarterly or monthly furnishing of returns and payment of taxes under the proposed new return system.

Sub Section (7) of section 39: Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub- section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return. Provided that the Government may, on the recommendations of the Council, notify certain classes of registered persons who shall pay to the Government the tax due or part thereof as per the return on or before the last date on which he is required to furnish such return, subject to such conditions and safeguards as may be specified therein.	**Sub Section (7) of section 39:** **Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:** **Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:** **Provided further that every registered person furnishing return under sub-section (2) shall pay to the Government the tax due taking into account turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, and such other particulars during a quarter, in such form and manner, and within such time, as may be prescribed."**	

Section 44: Annual Return

Current Provisions	Proposed Amendments	Effect of Amendments
Sub Section (1) of section 44: Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non- resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before The thirty-first day of December following the end of such financial year.	**After Sub Section (1) of section44, the following proviso shall be inserted:** Every registered person, other Than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non- resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December. Following the end of such financial year. **"Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:** **Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner."**	New provisos are being inserted in sub-section (1) of section 44 of the CGST Act so as to empower the Commissioner to extend the due date for furnishing Annual return (prescribed FORM GSTR-9/9A) and reconciliation statement (prescribed FORM GSTR-9C).

Section 49: Payment of Tax, Interest, Penalty and other Amounts

Current Provisions	Proposed Amendments	Effect of Amendments
Sub Section (9) of section 49:	**After Sub Section (9) of section 49 the following sub section (10) And (11) shall be inserted:** **"(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for integrated tax, central tax, State tax, Union territory tax or cess, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act.** **(11) Where any amount has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger as provided in sub-section (1)."**	New sub-sections are being inserted in section 49 of the CGST Act to provide a facility to the registered person to transfer an amount from one (major or minor) head to another (major or minor) head in the electronic cash ledger.

Section 50: Interest on delayed payment of tax.

Current Sections	Proposed Amendments	Effect of Amendments
Sub Section (1) of section 50:	**Sub Section (1) of section 50, the following proviso shall be inserted:**	New proviso in sub-sections (1) is being inserted in

	"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger."	section 50 of the CGST Act so as to provide for charging interest only on the net cash tax liability, except in those cases where returns are filed subsequent to initiation of any proceedings under section 73 or 74 of the CGST Act.

Section 52: Collection of Tax at Source.

Current Sections	Proposed Amendments	Effect of Amendments
After Sub section (4) of section 52:	**After Sub section (4) of section 52, the following proviso shall be inserted:** **"Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the statement for such class of registered persons as may be specified therein:** **Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner."**	**After Sub section (4) of section 52:**
After Sub section (5) of section 52:	**After Sub section (5) of section 52, the following proviso shall be inserted:**	

	"Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual statement for such class of registered persons as may be specified therein: **Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner."**	**After Sub section (5) of section 52:**

Insertion of New Section 53A: Transfer of certain Amounts

Current Sections	Proposed Amendments	Effect of Amendments
After section 53:	**New Section 53A was inserted after section 53:** **Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union territory Goods and Services Tax Act, the Government shall, transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such Manner and within such time as May be prescribed."**	A new section 53A is being inserted in the CGST Act so as to provide for transfer of amount between Centre and States consequential to amendment in section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.

Section 54: Refund of Tax

Current Sections	Proposed Amendments	Effect of Amendments
After Sub section (8) of section 54:	**After Sub section (8) of section 54 the following sub section 54A Shall be inserted:** **The Government may disburse the refund of the State tax in such manner as may be prescribed."**	New sub-section (8A) is being inserted in section 54 of the CGST Act so as to provide that the Central Government may disburse refund amount to the taxpayers in respect of refund of State taxes as well.

Section 95: Definition of Advance Ruling

Current Sections	Proposed Amendments	Effect of Amendments
In clause (a) of Section 95: In this Chapter, unless the context otherwise requires, — (a) "advance ruling" means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in	**In clause (a) of Section 95:** In this Chapter, unless the context otherwise requires, — (a) "advance ruling" means a decision provided by the Authority or the Appellate Authority **"or the National Appellate Authority"** to an applicant on matters or on questions specified in sub- section (2) of section 97 or sub- section (1) of section 100 **"or of section 101C"**, in relation to the supply	New clause (f) is being inserted in section 95 of the CGST Act to define the "National Appellate Authority for Advance Ruling".

sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant; **After clause (e) of section 95:**	of goods or services or both being undertaken or proposed to be undertaken by the applicant; **After clause (e) of section 95, the following clause (f) shall be inserted:** **"(f) "National Appellate Authority" means the National Appellate Authority for Advance Ruling referred to in section 101A."**	

Section 101A: Constitution of National Appellate Authority for Advance Ruling.

Current Sections	Proposed Amendments	Effect of Amendments
After section 101:	**Insertion of Section 101A:** **(1) The Government shall, on the recommendations of the Council, by notification, constitute, with effect from such date as may be specified therein, an Authority known as the National Appellate Authority for Advance Ruling for hearing appeals made under section 101B.** **(2) The National Appellate Authority shall consist of—** **(i) the President, who has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;** **(ii) a Technical Member (Centre) who is or has been a member of Indian Revenue**	**After section 101:**

	(Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A; **(iii) a Technical Member (State) who is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the Additional Commissioner of State tax with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.** **(3) The President of the National Appellate Authority shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:** **Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Appellate Authority shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:** **Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Appellate Authority shall discharge the functions of the President until the date on which the President resumes his duties.** **(4) The Technical Member (Centre) and Technical Member (State) of the National Appellate Authority shall be appointed by the**	

	Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed. **(5) No appointment of the Members of the National Appellate Authority shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.** **(6) Before appointing any person as the President or Members of the National Appellate Authority, the Government shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.** **(7) The salary, allowances and other terms and conditions of service of the President and the Members of the National Appellate Authority shall be such as may be prescribed:** **Provided that neither salary and allowances nor other terms and conditions of service of the President or Members of the National Appellate Authority shall be varied to their disadvantage after their appointment.** **(8) The President of the National Appellate Authority shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall also be eligible for reappointment.** **(9) The Technical Member (Centre) or Technical Member (State) of the National**	

	Appellate Authority Shall hold office for a term of five Years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall also be eligible for reappointment. **(10) The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:** **Provided that the President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Government, or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.** **(11) The Government may, after consultation with the Chief Justice of India, remove from the Office such President or Member, who—** **(a) has been adjudged an insolvent; or** **(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or** **(c) has become physically or mentally incapable of acting as such president or member; or** **(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member; or** **(e) has so abused his position as to render his continuance in office prejudicial to the public interest:** **Provided that the President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and**	

	has been given an opportunity of being heard. **(12) Without prejudice to the provisions of sub-section (11), the President and Technical Members of the National Appellate Authority shall not be removed from their office except by an order made by the Government on the ground of proven misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court.** **Nominated by the Chief Justice of India on a reference made to him by the Government and such President or Member had been given an opportunity of being heard.** **(13) The Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or Technical Members of the National Appellate Authority in respect of whom a reference has been made to the Judge of the Supreme Court under sub- section (12).** **(14) Subject to the provisions of article 220 of the Constitution, the President or Members of the National Appellate Authority, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Appellate Authority where he was the President or, as the case may be, a Member.**	

Section 101B: Appeal to National Appellate Authority

Current Sections	Proposed Amendments	Effect of Amendments
	Insertion of Section 101B: **(1) Where, in respect of the questions referred**	

	to in sub- section (2) of section 97, conflicting advance rulings are given by the Appellate Authorities of two or more States or Union territories or both under sub-section (1) or sub- section (3) of section 101, any officer authorized by the Commissioner or an applicant, being distinct person referred to in section 25 aggrieved by such advance ruling, may prefer an appeal to National Appellate Authority: **Provided that the officer shall be from the States in which such advance rulings have been given.** **(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the applicants, concerned officers and jurisdictional officers:** **Provided that the officer authorised by the Commissioner may file appeal within a period of ninety days from the date on which the ruling sought to be appealed against is communicated to the concerned officer or the jurisdictional officer:** **Provided further that the National Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause prevented by a sufficient cause from presenting the appeal within the said period of thirty days, or as the case may be, ninety days, allow such appeal to be presented within a further period not exceeding thirty days.** ***Explanation.*— For removal of doubts, it is**	

	clarified that the period of thirty days or as the case may be, ninety days shall be counted from the date of communication of the last of the conflicting rulings sought to be appealed against. **(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.**	

Section 101C: Order of National Appellate Authority

Current Sections	Proposed Amendments	Effect of Amendments
	Insertion of Section 101C: **(1) The National Appellate Authority may, after giving an opportunity of being heard to the applicant, the officer authorized by the Commissioner, all Principal Chief Commissioners, Chief Commissioners of Central tax and Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories, pass such order as it thinks fit, confirming or modifying the rulings appealed against.** **(2) If the members of the National Appellate Authority differ in opinion on any point, it shall be Decided according to the opinion of the majority.** **(3) The order referred to in sub- section (1)**	

	shall be passed as far as possible within a period of ninety days from the date of filing of the appeal under section 101B. **(4) A copy of the advance ruling pronounced by the National Appellate Authority shall be duly signed by the Members and certified in such manner as may be prescribed and shall be sent to the applicant, the officer authorised by the Commissioner, the Board, the Chief Commissioner and Commissioner of State tax of all States and Chief Commissioner and Commissioner of Union territory tax of all Union territories and to the Authority or Appellate Authority, as the case may be, after such pronouncement."**	

Section 102 – Rectification of Advance Ruling

Current Sections	Proposed Amendments	Effect of Amendments
The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the	The Authority or the Appellate Authority, **"or the National Appellate Authority"** may amend any order passed by it under section 98 or section 101 **"or section 101C, respectively",** so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority, **"National Appellate Authority"** on its own accord, or is brought to its notice by the concerned officer, the	Section 102 of the CGST Act is being amended so as to allow the National Appellate Authority to amend any order passed by it so as to rectify any error apparent on

applicant or the appellant within a period Of six months from the date of the order: Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.	jurisdictional officer, the applicant **", appellant, the Authority or the Appellate Authority"** within a period of six months from the date of the order: Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.	the face of the record, within a period of six months from the date of the order, except under certain specified circumstance s.

Section 103 – Applicability of Advance Ruling

Current Sections	Proposed Amendments	Effect of Amendments
After sub section (1) of section 103:	**After sub section (1) of section 103, the following sub-section 1(A) shall be inserted:** **(1A) The advance ruling pronounced by the National Appellate Authority under this Chapter shall be binding on—** **(a) the applicants, being distinct persons, who had sought the ruling under sub-section (1) of section 101B**	Section 103 of the CGST Act is being amended so as to provide that the advance ruling pronounced by the National Appellate Authority shall be binding, unless there is a change in law or facts, on the applicants, being distinct person and all registered

	and all registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961; **(b) the concerned officers and the jurisdictional officers in respect of the applicants referred to in clause (a) and the registered persons having the same Permanent Account Number issued under the Income-tax Act, 1961."**	persons having the same Permanent Account Number and on the concerned officers or the jurisdictional officers in respect of the said applicants and the registered persons having the same Permanent Account Number.
Sub Section (2) of section 103: The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.	**Sub Section (2) of section 103:** The advance ruling referred to in sub-section (1) **"and sub-section (1A)"** shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.	

Section 104 - Advance ruling to be void in certain circumstances

Current Sections	Proposed Amendments	Effect of Amendments
Sub section (1) of section 104: Where the Authority or the Appellate Authority finds that advance ruling	**Sub section (1) of section 104:** Where the Authority or the Appellate Authority "or the National	Section 104 of the CGST Act is being amended so as to provide that advance ruling pronounced by the National

pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made: Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant. *Explanation.*—The period beginning with the date of such advance ruling and ending with the date of order under this sub- section shall be excluded while computing the period specified in sub- sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.	Appellate Authority" finds that advance ruling pronounced by it under sub- section (4) of section 98 or under sub-section (1) of section 101 "or under section 101C" has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio and thereupon all the provisions of this Act or the rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made: Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant. *Explanation.*–The period beginning with the date of such advance ruling	Appellate Authority shall be void where the ruling has been obtained by fraud or suppression of material facts or misrepresentation of facts.

	and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.	

Section 105 - Powers of Authority and Appellate Authority <u>"and National Appellate Authority"</u>

Current Sections	Proposed Amendments	Effect of Amendments
Sub section (1) of section 105: The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding- (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court under the Code of Civil	**Sub section (1) of section 105:** The Authority or the Appellate Authority **<u>"or the National Appellate Authority"</u>** shall, for the purpose of exercising its powers regarding- (a) discovery and inspection; (b) enforcing the attendance of any person and examining him on oath; (c) issuing commissions and compelling production of books of account and other records, have all the powers of a civil court	Section 105 (1) of the CGST Act is being amended so as to provide that the National Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of exercising its powers under the Act.

Procedure, 1908 (5 of 1908). **Sub section (2) of section 105:** The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section-196 of the Indian Penal Code (45 of 1860).	under the Code of Civil Procedure, 1908 (5 of 1908). **Sub section (2) of section 105:** The Authority or the Appellate Authority **"or the National Appellate Authority"** shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974), and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code (45 of 1860).	Section 105 (2) of the CGST Act is being amended so as to provide that the National Appellate Authority shall have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of exercising its powers under the Act.

Section 106 - Procedure of Authority and Appellate Authority "and National Appellate Authority."

Current Sections	Proposed Amendments	Effect of Amendments
Section 106: The Authority or the Appellate Authority shall, subject to the provisions of this	**Section 106:** The Authority or the Appellate Authority **"or the National Appellate Authority"** shall, subject to	Section 106 of the CGST Act is being amended so as to provide that the National Appellate

Chapter, have power to regulate its own procedure.	the provisions of this Chapter, have power to regulate its own procedure.	Authority shall have power to regulate its own procedure.

Section 168 - Power to issue instructions or directions

Current Sections	Proposed Amendments	Effect of Amendments
Sub section (2) of section 168: The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub- section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) Of section 37, sub-section (2) of section 38, sub- section (6) of section 39, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.	**Sub section (2) of section 168:** The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of Section 39, **"sub-section (1) of section 44, sub-sections (4) and (5) of section 52,"** sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub- section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.	Consequent to the amendments in section 44 and section 52 of the CGST Act, section 168 is being amended so as to specify that in respect of sub-section (1) of section 44 and subsections (4) and (5) of section 52, Commissioner Or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

Section 171 - Anti-profiteering Measure

Current Sections	Proposed Amendments	Effect of Amendments
After sub-section (3) of section 171:	**After sub-section (3) of section 171 the following section 3A Shall be inserted:** **"Where the Authority referred to in sub-section (2) after holding examination as required under the said sub-section comes to the conclusion that any registered person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to ten per cent. Of the amount so profiteered:** **Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority.** ***Explanation.*— For the purposes of this section, the expression "profiteered" shall mean the Amount determined on account of**	Section 171 of the CGST Act is being amended so as to empower the National Anti-Profiteering Authority (under sub-section (2) of section 171 of the Act) to impose penalty equivalent to 10% of the profiteered amount.

	not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or Services or both."	

Proposed Amendments in the IGST Act, 2017

Insertion of New Section 17A: Transfer of Certain Amounts

Current Sections	Proposed Amendments	Effect of Amendments
	After section 17, the following Section 17A shall be inserted: **"Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed."**	A new section 17A is being inserted in the IGST Act so as to bring into the Act, provisions for transfer of amount between Centre and States consequential to amendment in section 49 of the CGST Act allowing transfer of an amount from one head to another head in the electronic cash ledger of the registered person.

GLOSSARY OF TERMS AND THEIR INTERPRETATION AS USED IN ANNUAL RETURN & RECONCILIATION i.e. FORM GSTR-9 AND 9C

1. **FINANCIAL YEAR-** The period of twelve months from 1st April to 31st March of every calendar year in which business transactions / supply of goods or services or both are performed is termed as 'Financial Year'.
2. **GSTIN**- Goods and Services Tax Identification Number, is a unique number allotted for every registered entity in accordance to Chapter VI of the CGST/ SGST Act 2017, as per Sec. 25 every person who is liable to be registered under Sec. 22 or Sec. 24 shall apply for registration online on GST portal. GSTIN number is a 14 digit number, consisting of first two digits as State Code, nine digit PAN number of the person/assessee and last three digits the code of GSTN.
3. **LEGAL NAME-** The name of the person or business entity by which it is legally recognised for its legal status e.g. Pvt. Ltd., Ltd., LLP, Proprietorship, Partnership, Society, Trust etc. The person is registered under GST with its legal name.
4. **TRADE NAME-** The name by which business is commonly known in trade parlance. It may be the registered trade name of the person or the product in which it mainly deal. Example – Aditya Birla is the company name of the group while its one of the business entity is known as Pantaloons which is the trade name.

   It is a name which by user and reputation has acquired the property of indicating that a certain trade or occupation is carried on by a particular person[1].
5. **OUTWARD SUPPLY-** Outward supply in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, license, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business[2].

[1] The black laws dictionary 2nd ed.
[2] CGST Act 2017, S. 2 (83)

6. **INWARD SUPPLY-** Inward supply in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration[1].
7. **TAXABLE VALUE-** Final value on which tax is levied. Value of supply of Goods or Services used in determining amount of tax the tax-payer will pay[2].
8. **CENTRAL TAX -** Tax charged and levied under CGST Act under Sec 9[3] which means all the tax levied on inter-state supply of goods or services or both i.e. supplies made outside a state / UT, this tax is collected by Centre.
9. **STATE TAX-** Tax charged and levied under State Goods and Services Tax[4] which means all the tax levied on intra-state supply of goods or services or both i.e. supplies made within the State.
10. **UT TAX-** Tax charged and levied under Union Territory Goods and Services Tax[5].
11. **INTEGRATED TAX**- Tax levied under Integrated Goods and Service Tax[6]. This tax is levied on the supplies made inter-state i.e. when a supply is made from one state to another.
12. **CESS –** It is a type of additional tax levied on certain type of goods or services, it is a tax imposed by an Act or Ordinance passed by the Parliament for a specific purpose. Presently Cess is levied on specified luxury items only.
13. **UNREGISTERED PERSON-** A person who is not registered or is not liable for registration under GST including a person who is not liable to tax due to having turnover less than the threshold limit of minimum GST Turnover required for registration in GST as per Section 22 or due to some specific circumstances as envisaged in GST Law.
14. **REGISTERED PERSON-** Person who is registered under section 25 but does not include a person having a Unique Identity Number[7]. Every person liable to

[1] CGST Act 2017, S. 2 (67)
[2] The black laws Dictionary 2nd ed.
[3] CGST Act 2017, Sec. 2 (21)
[4] CGST Act 2017, Sec. 2 (104)
[5] CGST Act 2017, Sec. 2 (115)
[6] CGST Act 2017, Sec. 2 (58)
[7] CGST Act 2017, Sec. 2 (94)

tax must register in GST in its state or union territory in accordance to the procedure for registration provided under Sec 25 of CGST Law.

15. **B2C-** Business to Consumer. This is where the transfer or supply is from a registered entity (Business) to unregistered entity or person. (Final consumer).

16. **B2B-** Business to Business. This is where the transfer or supply is from a registered entity (Business) to another registered entity (other business).

17. **ZERO RATED SUPPLY** – Zero rated supply is the supply on which 0% of GST is to be discharged while making an outward supply of goods, e.g. Supply made for exports of goods or services under GST. Entity gets the ITC on inputs used for making such supplies subject to ITC restrictions under Sec 17.

18. **SEZ -** means each Special Economic Zone notified under the proviso to sub-section (4) of section 3 and sub-section (1) of section 4 (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone;[1] Business units under SEZ zones are subject to IGST in case of Receipt or Supply of Goods or Services. Section 3 (4) and Section 4 (1) deals with power with government to declare any area as SEZ. Supplies made to SEZ are treated as deemed exports.

19. **EXPORT-** It is defined as:

(1) "Export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India[2];

(2) "Export of services" means the supply of any service when,—

(i) The supplier of service is located in India;

(ii) The recipient of service is located outside India;

(iii) The place of supply of service is outside India;

(iv) The payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8[3];

[1] Special Economic Zone Act, 2005 Sec.2 (za)
[2] IGST Act 2017, Sec. 2(5)
[3] IGST Act 2017, Sec. 2(6)

To send, take, or carry an article of trade or commerce out of the country. To transport merchandise from one country to another in the course of trade[1]. Person/ business entity can perform a transaction of export under three methods i.e. with payment of tax (IGST), without payment of tax (LUT) and as per notification No 40/2017 by payment of 0.01% of IGST.

20. **DEEMED EXPORT- It** means such supplies of goods as may be notified under section 147[2]. Section 147 says, government can notify deemed export to goods where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

Supplies made to SEZ are deemed exports and is defined as:

(i) taking goods, or providing services, out of India, from a Special Economic Zone, by land, sea or air or by any other mode, whether physical or otherwise; or

(ii) Supplying goods, or providing services, from the Domestic Tariff Area to a Unit or Developer of SEZ; or

(iii) Supplying goods, or providing services, from one Unit to another Unit or Developer, in the same or different Special Economic Zone;[3]

21. **ADVANCES –** Moneys paid before or in advance of the proper time of payment. This word, when taken in its strict legal sense, does not mean gifts (advancements) and does mean a sort of loan; and when taken in its ordinary and usual sense, it includes both loans and gifts.[4]

Any payment made or received in advance by an assessee registered under GST for a specified supply of goods or services for which generally invoice is issued later.

22. **TAX INVOICE**- Bill issued with a proper serial number and details of the entity issuing the bill and receiving the goods, GSTIN details of the entities, Description of Goods or Services or both along with HSN Code / SAC Code, clear and proper description of due tax charged as per the type of supply i.e. intra state or interstate supply on it along with signature of the authorized person.

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[1] The black laws dictionary 2nd ed. State v. Turner, 5 Har. (Del.) 501.
[2] CGST Act 2017, Sec. 2 (39)
[3] Special Economic Zone Act, 2005 Sec.2 (m)
[4] The Black Laws Dictionary 2nd Edition

Information that must be on an invoice:

(a) Name, address and GSTIN of the supplier;

(b) A consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolized as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) Date of its issue;

(d) Name, address and GSTIN or UIN, if registered, of the recipient;

(e) Name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;

(f) HSN code of goods or Accounting Code of services;

(g) Description of goods or services;

(h) Quantity in case of goods and unit or Unique Quantity Code thereof;

(i) Total value of supply of goods or services or both;

(j) Taxable value of supply of goods or services or both taking into account discount or abatement, if any;

(k) Rate of tax (Central tax, State tax, Integrated tax, Union territory tax or Cess);

(l) Amount of tax charged in respect of taxable goods or services (Central tax, State tax, Integrated tax, Union territory tax or Cess);

(m) Place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;

(n) Address of delivery where the same is different from the place of supply;

(o) Whether the tax is payable on reverse charge basis; and

(p) Signature or digital signature of the supplier or his authorized representative

23. **<u>CREDIT NOTE</u>**- This document is issued by a registered person under sub-section (1) of section 34[1]. Credit Note is issued in cases where goods or services are returned after the delivery or issue of tax invoice.

[1] CGST Act 2017, 2(37)

24. **DEBIT NOTE-** This is a document issued by registered person under sub-section (3) of section 34[1]. Debit Note is issued in cases where goods or services are returned after the delivery or issue of tax invoice.

25. **AMENDMENTS** – It means changes. These are circumstances or changes with respect to transactions related to last financial year (2017-18) for which these changes are to be shown in the GSTR-9. These are concerned with debit note or credit note and reversal of excess ITC. Declarations made under wrong head previously filed under previous returns for particular periods can be corrected in GSTR-9.

26. **REVERSE CHARGE** - It means the liability to pay tax by the recipient of supply of goods or services or both instead of supplier of such goods or services or under sub section (3) or Sub- section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the integrated goods and Services Tax[2]. E.g. Purchase of goods by a registered entity from an un-registered dealer, on such type of transaction GST liability has to be discharged on reverse charge basis.

27. **EXEMPTED-** Supply which originally attracts the rate higher than nil rate but tax payable thereon is nil[3].

It means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply[4].

28. **NIL-RATED-** supply which attracts nil rate of tax i.e. 0% as per the tariff[5] and no ITC is allowed on such supply.

29. **NON- GST SUPPLY / NON-TAXABLE SUPPLY UNDER GST -** These are as per constitution which are:- Supply of Alcohol for human consumption, Crude

[1]CGST Act 2017, 2(38)
[2]CGST Act 2017, 2(98)
[3] Aditya Singhania, "GST practice manual with GST Audit: day to day tax practice guide for professionals", Taxman's, September 2018, P. 472 Para 4.14
[4] CGST Act 2017, S. 2(47) defined as exempted supply
[5] Aditya Singhania, "GST practice manual with GST Audit: day to day tax practice guide for professionals", Taxman's, September 2018, P. 472 Para 4.14

Oil, High Speed Diesel, Motor spirit (petrol), Natural gas and Aviation turbine fuel (ATF)[1].

It means a supply of goods or services or both which is not leviable to tax under GST Act or under the Integrated Goods and Services Tax Act[2].

30. **NO SUPPLY** - No Supply are considered supplies as per Schedule III[3] as provided under Section 7 of CGST Act, 2017. These are different from the list of Non-GST Supply.

31. **TURNOVER** – Turnover means total receipts made from its outward supply, by a registered dealer in a Financial Year.

Aggregate Turnover has been defined under CGST Act, 2017 which means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess[4].

32. **ITC- Input Tax Credit** means the credit of input tax which is available to an assessee regiserted under GST subject to certain restrictions as per GST Law[5].

33. **IMPORT-** It is defined as:

‘‘Import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India[6];

‘‘Import of services” means the supply of any service, where— (i) the supplier of service is located outside India; (ii) the recipient of service is located in India; and (iii) the place of supply of service is in India[7];

This means to bring goods into India from another country and are regulated by customs law[8].

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[1] Aditya Singhania, “GST practice manual with GST Audit: day to day tax practice guide for professionals”, Taxman’s, September 2018, P. 474 Para 4.14

[2] CGST Act, 2017 S. 2(78) as non-taxable supply

[3] CGST Act, 2017

[4] CGST Act 2017 Sec. 2(6)

[5] CGST Act 2017, 2(63)

[6] IGST Act, 2017 Sec. 2 (10)

[7] IGST Act, 2017 Sec. 2 (11)

[8] The black laws Dictionary 2nd ed.

34. **CAPITAL GOODS-** means goods which are essential part of a business for e.g. Plant and Machinery, Moulds, Dies, Factory Building, Trucks, Cranes, Power Generators etc., the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business[1].

35. **INPUTS**- It means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business[2] or for providing an outward supply under GST. Example raw material used for making product or material used in packing of goods.

36. **INPUT SERVICES**- It means any service used or intended to be used by a supplier in the course or furtherance of business[3].

37. **TRANSITION CREDIT** - Transition Credit is the ITC available in the credit / cash ledger of the previous indirect tax regime of taxation, which is transferred by the assessee in the GST regime in its credit / cash ledger after filling of TRAN-1 or TRAN-2 Form on the GST portal. Note: In some cases GST dept. has rejected the claim or has partially allowed the claim made in TRAN-1 or TRAN-2 by the assessee, in such cases proper declaration should be made while filling GSTR-9.

38. **REVISIONS** – This term is not defined under GST law with respect to GSTR - 9. This means any amendments or changes or corrections made in the Annual Return.

Note: One should not get confuse with the revision proceeding as defined under Civil Procedure Code and should differentiate on the basis of the two contexts used under GST law.

39. **REVERSAL OF CREDIT** – ITC which has been availed by the assesse, may be reversed by the GST dept., if it is found that the ITC availed by the assesse is wrongly claimed or the assessee was not entitled to take claim of such ITC. ITC wrongly claimed on goods and services can also be reversed while filing GSTR-9.

[1] CGST Act 2017, 2(19)
[2] CGST Act 2017, 2(59)
[3] CGST Act 2017, 2(60)

40. **UTILISATION OF ITC** - Utilisation of the balance available in the assessee's cash ledger and credit ledger can be used while discharging the liability of payment of due tax.

41. **ITC LAPSED** – This terms is specific to GST regime. It means the credit which was to be utilised towards payment of outward liability of GST is no more valid due to the reason that the outward supply falls under nil rated category, the assesse cannot take refund of the ITC accumulated in the credit ledger on making such supplies, it is lapsed and cannot be further validly used.

42. **INTEREST** – Interest leviable on amount of taxable turnover if the tax is not paid on time (18%) or ITC has been availed wrongly (24%).

43. **LATE FEE** – Additional fee payable if returns or tax is paid after the due date. This is in penalising nature.

44. **COMPOSITION TAX PAYERS (GSTR-4 & 9A)** – Assesse who are registered under GST under a special category known as Composition scheme. These assesse have to discharge their liability to pay GST on their total taxable turnover with the condition that no ITC can be claimed by the Buyers.

45. **HSN** – Harmonised Standard of Nomenclature. It is a universal code of classification of Goods as per their description. These are given on the Finance Ministry's website for reference in GST. These are unique type of series which is used to classify the goods based on their description. Currently under GST regime an assesse is liable to mention the HSN code up to 4 digits and in small category of dealers only up to 2 digits.

46. **UQC-** Unique Quantity Code. It is the Code as per which the Goods or Services can be measured i.e. Kg, Pcs, Ltrs, Pounds, Tons etc.

47. **DEEMED SUPPLY-** Under GSTR-9 deemed supply is with reference to section 143, e.g. Job Work (supply for further processing on the goods).

48. **REFUND SANCTIONED-** This refers to the case where refund of tax has been given by the authorities. The process of giving back refund is complete from authority's side.

49. **REFUND CLAIMED-** This is where the refund is asked for by the assesse. There may or may not be any revert from the authorities on this yet.

50. **REFUND REJECTED-** This is where person applied for refund by filing a prescribed form giving his reason for claim of refund, but as per the reasoning of tax authorities, the refund is not valid and hence, they have rejected it.

51. **REFUND PENDING-** This is where the refund is asked for by the person. There may be revert from the authorities on this. It is at pending stage.

52. **TRAN-I-** It is a form where every registered person entitled to take credit of input tax from the earlier tax regime of Central Excise, Service Tax and VAT etc. Under section 140[1] shall, within ninety days of the appointed day (1st July 2017), submit a declaration electronically in FORM GST TRAN-1[2].

53. **TRAN-II**- Form for transition in respect to ITC from old regime to the GST regime where it is to be used by GST Registered Person who were earlier not registered under old regime or those who do not have the documents/bills/proof of duty paid on old stock as on 1st July 2017.

54. **ISD**- "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of Central Tax, State Tax, Integrated Tax or Union Territory Tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office[3].

55. **RECONCILIATION STATEMENT -** Reconciliation Statement i.e. Form 9C is prescribed under Rule 80(3) in CGST Rules 2017, which refers to the reconciliation statements in respect to turnover/ tax/ input tax credit declared in the audited financial statement with the turnover/ tax/ input tax credit declared in the Annual Return (GSTR-9) made under accounting duly prepared and certified by Chartered Accountant or Cost Accountant.

56. **RECONCILIATION** -The term is used in returns with respect to matching the previously filed returns and accounting balances with the currently filed return/ Annual Return.

[1] Transitional arrangements for input tax credit
[2] CGST Rules, Chapter-14(1)
[3] CGST Act, 2017 Sec. 2(61)

57. **UNBILLED REVENUE (only used in Form 9C) -** These are those revenue which has been recognised in the books of accounts on accrual basis generally, but no invoice has been issued by the entity during the financial year[1].

58. **UNADJUSTED ADVANCES (only used in Form 9C) -** These are those advances made against the supply, which has been recognised in the books of accounts on accrual basis generally, but no invoice has been issued by the entity during the financial year[2].

59. **SAC (only used in Form 9B)** - Services Accounting Code are codes issued by the indirect tax authorities. This is to uniformly classify each services under GST. Similar to that of HSN, this does not applies to goods, it is restricted for services. The SAC codes can be used in invoices created by taxpayer for the services delivered.

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[1] Aditya Singhania, "GST practice manual with GST Audit: day to day tax practice guide for professionals", Taxman's, September 2018, P. 533 Para 4.14

[2] Aditya Singhania, "GST practice manual with GST Audit: day to day tax practice guide for professionals", Taxman's, September 2018, P. 542 Para 4.14

How to write a Reply to Show Cause Notice under GST

- **C. Sanjeeva Rao,**
Tax Advocate

Introduction:

Before resorting to the assessment, the GST authorities shall issue a show cause notice proposing the tax due to the department basing on the information submitted in compliance to the assessment notification. The GST authorities shall call for the objections, if any, and then the registered taxable person, in reply to the show cause notice has to file its objections in **GST CMP 06** (Annexure at the end of the article) accompanying with the additional information, records, documents etc. in support of the contentions contrary to the proposal made by the GST authorities.

What is meant by Show Cause Notice:

Show Cause means:

"Show" means as per English Oxford Living Dictionaries – source : Internet	Exhibit, display, demonstrate
"Cause" means as per English Oxford Living Dictionaries – source : Internet	Reason, justification, occasion

Show Cause Notice issued by the GST Authorities questioning the registered taxable person or taxable person, why the additional tax or penalty should not be levied or interest should not be charged; summing up the show cause = asking the registered taxable person to **show** the **reason** why the additional tax/penalty/interest should not be levied or charged.

Show Cause Notice is the first stage of litigation under any fiscal laws.
It can be issued by the GST Authorities under the following circumstances;

I. Section 73 of CGST Act, 2017

a) Tax is not deposited or short deposited;

b) Tax is erroneously refunded;
c) Input tax credit wrongly availed or adjusted or utilized;
d) Any nature of demand, fee, penalty or interest is to be proposed as a result of inquiry/investigation/inspection/audit etc.
e) For reasons other than fraud or willful misstatement or suppression of facts with an intention to evade tax.

II. Section 74 of CGST Act, 2017

a) Tax is not deposited or short deposited;
b) Tax is erroneously refunded;
c) Input tax credit wrongly availed or adjusted or utilized;
d) Any nature of demand, fee, penalty or interest is to be proposed as a result of inquiry/investigation/inspection/audit etc.
f) By reason of fraud or willful misstatement or suppression of facts with an intention to evade tax.

*Explanation 2: to Section 74: For the purposes of this Act, the expression "**suppression**" shall non-declaration of facts or information which is a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.*

*"**You may never know what results come of your action, but if you do nothing there will be no result**" – Mahatma Gandhi.*

1. Drafting of reply to Show Cause Notice:

While venturing to draft a reply to the show cause notice, three components should bear in mind:

a) Analysis of Show Cause Notice;
b) Evidence or information and Grounds to issue Show Cause Notice;
c) Identifying the missing points in the Show Cause Notice.

2. Time Limit for filing the reply of objections or compliance to show cause notice:

For any show cause notice, to submit objections in reply to show cause notice, an opportunity shall be provided to the registered taxable person. Allowing time to file the objection is affording an opportunity, to satisfy the principles of natural justice, or otherwise it shall be treated as denial of the opportunity. *Audi Alteram Partem* principle should be followed. The legislature had provided under the CGST Act, 2017 as three

months prior to issuance of order [(u/s. 73(10)] and six months prior to issuance of order [(u/s. 74(10)].

An opportunity of hearing shall be granted on receipt of a request in writing. The GST authorities can adjourn the personal hearing if sufficient cause is shown and for reasons to be recorded in writing, subject to maximum of three adjournments.

Where no notice is required to be issued:

For such periods other than those covered in the Notice u/s. 74(1) on the person chargeable with tax, along with a summary in Form GST DRC-02. This notice issued in place of a detailed notice for the period other than the ones covered in the notice issued as per Section 74(1).

3. <u>Certain Points to be noted carefully before submitting reply of objections to the show cause notice:</u>

a) After receiving the show cause notice, one should read the show cause notice like a student reads the question paper in the Examination Hall;

b) One should understand the contents of the show cause notice and note down the contents and jot down the point wise to enable to write the reply;

c) Ensure that all the points covered under the reply to the show cause notice, because the reply of the show cause notice is heart to the litigation. The authorities cannot go beyond the show cause notice.

d) It is most important, that the show cause notice is served on registered taxable person's registered email id.

e) Reply of objections should be written in simple and lucid language, don't use any argumentative words or language.

4. <u>The details should be given in a tabulated format:</u>

If possible, provide the details point by point in a tabulated format, for easy understanding and saving of the precious time of authorities.

5. <u>Reference or reliance on case laws:</u>

If registered taxable person is confident and believe in the case laws, then the relevant case law/s may be cited in the reply to the show cause notice. Before citing the case law/s one should think twice. Irrelevant case law/s should not be quoted or referred or mentioned in the reply, otherwise the same may cause loss to the registered taxable person.

Few case laws on the subject:

i) Santogen Silk Mills vs. CCE (2000) 157 ELT 208 – CESTAT, Mumbai

ii) Uma Nath Pandey & Ors vs. State of U.P. AIR 2009 SC 2375
iii) PGO Processors P. Ltd. vs. CE (2000) 122 ELT 26 – Raj HC
iv) Basudevi Garg vs. CC (2017) 48 STR 427 - Del HC
v) Jet Airways (P) Ltd. vs. CST, Mumbai (2016) 8 TMI 989- CESTAT
vi) CST, Mumbai vs. Traffic Manager, Mumbai Port Trust (2015) 37 STR 993 (Tribunal)
vii) Paradip Port Trust vs. CCE, BBSR-1 (2018) 11 TMI 1158, CESTAT, Kol.
viii) Subham Electricals vs. CST & ST, Rohtak – CESTAT (PB), New Delhi (Order No.51964/2015 dated 16-06-2015)

6. The above points are illustrative but not exhaustive; the reply may change on case to case basis and completely depending upon the factual situations.

Form GST CMP - 06
[See rule 6(5)]

Reply to the notice to show cause

1.	GSTIN	
2.	Details of the show cause notice	Reference no. Date
3.	Legal name	
4.	Trade name, if any	
5.	Address of the Principal Place of Business	
6.	Reply to the notice	
7.	List of documents uploaded	
8.	Verification	I _____ hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom. Signature of the Authorised Signatory Date Place

Note –

1. The reply should not be more than 500 characters. In case the same is more than 500 characters, then it should be uploaded separately.

2. Supporting documents, if any, may be uploaded in PDF format.

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TIMELINES OF COMPLIANCE UNDER THE COMPANIES ACT, 2013 FOR THE MONTH OF JULY, 2019

CS Anil Gupta

S. NO	FORM NAME	DUE DATE	FEES	PENALTY	APPLICABILITY
1	BEN-2 (Return to the Registrar in respect of declaration under Section 90)	On or before 31st July 2019	As per normal fees rules	Normal Additional Fees	Every company shall file a return of significant beneficial owners of the company and changes therein
2	NFRA-1	30 days from the date of deployment of form NFRA-1 on the MCA/ NFRA website i.e. 31-07-2019	As per normal fees rules	Normal Additional Fees	Companies whose securities are listed on any stock exchange in India or outside India; Unlisted public companies having paid-up capital of not less than Rs. 500 crores or having an annual turnover of not less than Rs. 1000 crores or having, in the aggregate, outstanding loans, debentures and deposits of not less than Rs. 500 crores, as on the 31st March of immediately preceding Financial Year: Insurance companies, banking companies, companies engaged in the generation or supply of electricity companies governed by any special Act.

IMPORTANT CASE LAWS, CIRCULARS AND NOTIFICATIONS ON FEMA AND ALLIED LAWS

CA. ANIL MATHUR
Chartered Accountant, Jaipur

CIRCULARS

1. A.P. (DIR SERIES) CIRCULAR NO. 35 dated 13-6-2019

1. Export-Import Bank of India (Exim Bank) has entered into an agreement dated April 05, 2019 with the Government of the Republic of Ghana for making available to the latter, a Government of India supported Line of Credit (LoC) of USD 150 million (USD One Hundred and Fifty Million only) for the purpose of financing strengthening of Agriculture Mechanization Services Centers in the Republic of Ghana. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under this agreement, goods, works and services of the value of at least 75 per cent of the contract price shall be supplied by the Seller from India and the remaining 25 per cent of goods and services may be procured by the Seller for the purpose of the eligible contract from outside India.

2. The Agreement under the LoC is effective from June 03, 2019. Under the LoC, the terminal utilization period is 60 months after the scheduled completion date of the project.

3. Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

4. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category- I (AD Category- I) banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

5. AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and advise them to obtain complete details of the LoC from the

Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400005 or from their website www.eximbankindia.in

6. The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

2. A.P. (DIR SERIES) CIRCULAR NO. 36, DATED 13-6-2019

1. Export-Import Bank of India (Exim Bank) has entered into an agreement dated December 31, 2018 with the Government of the Republic of Mozambique for making available to the latter, a Government of India supported Line of Credit (LoC) of USD 95 million (USD Ninety Five Million only) for the purpose of financing procurement of railway rolling stock including locomotives, coaches and wagons in the Republic of Mozambique. Under the arrangement, financing of export of eligible goods and services from India, as defined under the agreement, would be allowed subject to their being eligible for export under the Foreign Trade Policy of the Government of India and whose purchase may be agreed to be financed by the Exim Bank under this agreement. Out of the total credit by Exim Bank under this agreement, goods, works and services of the value of at least 75 per cent of the contract price shall be supplied by the Seller from India and the remaining 25 per cent of goods and services may be procured by the Seller for the purpose of the eligible contract from outside India.

2. The Agreement under the LoC is effective from June 03, 2019. Under the LoC, the terminal utilization period is 60 months after the scheduled completion date of the project.

3. Shipments under the LoC shall be declared in Export Declaration Form as per instructions issued by the Reserve Bank from time to time.

4. No agency commission is payable for export under the above LoC. However, if required, the exporter may use his own resources or utilize balances in his Exchange Earners' Foreign Currency Account for payment of commission in free foreign exchange. Authorised Dealer Category- I (AD Category- I) banks may allow such remittance after realization of full eligible value of export subject to compliance with the extant instructions for payment of agency commission.

5. AD Category – I banks may bring the contents of this circular to the notice of their exporter constituents and advise them to obtain complete details of the LoC from the Exim Bank's office at Centre One, Floor 21, World Trade Centre Complex, Cuffe Parade, Mumbai 400 005 or from their website www.eximbankindia.in.

6. The directions contained in this circular have been issued under section 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of 1999) and are without prejudice to permissions/approvals, if any, required under any other law.

3. A.P.(DIR SERIES) CIRCULAR NO. 37, DATED 28-6-2019

ANNUAL RETURN ON FOREIGN LIABILITIES AND ASSETS REPORTING BY INDIAN COMPANIES

1. Attention of Authorised Dealer Category – I banks is invited to A.P. (DIR Series) Circular No.133 dated June 20, 2012 which stipulated that all Indian companies which have received FDI and/or made FDI abroad (i.e. overseas investment) in the previous year(s) including the current year, should file the annual return on Foreign Liabilities and Assets (FLA) in the soft form which can be duly filled-in, validated and sent by e-mail to the Reserve Bank by July 15 of every year. The coverage was enhanced to reporting of inward and outward foreign affiliate trade statistics (FATS) and reporting by the limited liability partnerships (LLPs) through the subsequent circulars (A .P. (DIR Series) Circular No. 145 dated June 18, 2014, A.P. (DIR Series) Circular No.22, dated October 21, 2015, and A.P. (DIR Series) Circular No. 29, dated February 02, 2017).

2. With the objective to enhance the security-level in data submission and further improve the data quality, the present email-based reporting system for submission of the FLA return will be replaced by the web-based system online reporting portal. It would facilitate data submission by eligible entities (including the alternative investment funds (AIF) registered with the Securities and Exchange Board of India (SEBI) as also the reporting of foreign investment in the form of capital/profit share contribution received/transferred in case of

LLPs and investment by persons resident outside India in an investment vehicle and as defined in Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations 2017, dated November 7, 2017).

3. Following are the main features of the revised Foreign Liabilities and Assets Information Reporting (FLAIR) system:

(*a*) Reserve Bank would provide a web-portal interface https://flair.rbi.org.in to the reporting entities for submitting "User Registration Form" (containing entity identification and business user details, where LLPs and AIFs will no longer required to use dummy CIN). The successful registration on web-portal will enable users to generate RBI-provided login-name and password for using FLA submission gateway and would include system-driven validation checks on submitted data.

(*b*) The form will seek investor-wise direct investment and other financial details on fiscal year basis as hitherto, where all reporting entities are required to provide information on FATS related variables (it was mandatory only for subsidiary companies earlier). In addition, the revised form seeks information on first year of receipt of FDI/ODI and disinvestment.

(*c*) Reporting entities will get system-generated acknowledgement receipt upon successful submission of the form.

(*d*) They can revise the data, if required, and view/download the information submitted.

(*e*) Entities can submit FLA information for earlier year/s after receiving RBI confirmation on their request email.

(*f*) The existing mechanism of email-based submission of FLA forms will be discontinued.

4. Indian entities not complying with above, will be treated as non-compliant with Foreign Exchange Management Act, 1999 and regulations made thereunder.

5. These directions will come into force with immediate effect and would be applicable for reporting of information for the year 2018-19. AD Category-I banks may bring the contents of this circular to the notice of their constituents and customers concerned.

6. The directions contained in this circular have been issued under sections 10(4) and 11(1) of the Foreign Exchange Management Act (FEMA), 1999 (42 of

1999) and are without prejudice to permissions/approvals, if any, required under any other law.

CASE LAWS

APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE OF NEW DELHI
Board of Control for Cricket in India (BCCI)

vs.

Special Director, Directorate of Enforcement.

In MP-FE-251, 214, 224, 225 & FPA-FE-61, 56, 57 OF 2018 & OTHS
On MAY 17, 2019

Applicable Sections :
Section 13(1) 0f FEMA 1999, section 42(1) & (2) of FEMA 1999.
Decision :-
Pursuant to an agreement between Cricket South Africa (CSA) and BCCI, IPL - 2 was organized in South Africa, April-May, 2009 on payment of fixed fee by BCCI but Special Director by impugned order imposed penalty upon appellants i.e. BCCI and its officers for contravention of provisions of FEMA in those transactions, it was held that in impugned order, findings were arrived that transactions in question were capital account transaction, though there was no such allegation in show cause notice and if bank accounts were operated under heading of current account as claimed by appellants then no permission of RBI was necessary. Further penalty imposed upon appellants was also very excessive and without application of mind.

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DEALING IN FOREIGN EXCHANGE AND CURRENCY,

CA Paresh Shah
CA Mitali Gandhi

1. Introduction

Currency is a generally accepted form of money, including coins and paper notes, which is issued by a government and circulated within an economy. It is used as a medium of exchange for goods and services, currency is the basis for trade. In most of the cases, the central bank of a country has the sole right to issue money for circulation. In this article we will understand the FEMA laws related to Indian and foreign currency.

Foreign currency means any currency other than Indian currency as per Sec 2(m) of Foreign Exchange Management Act,1999(FEMA)

Foreign exchange means foreign currency and includes, —

(i) deposits, credits and balances payable in any foreign currency,

(ii) drafts, travellers cheques, letters of credit or bills of exchange, expressed or drawn in Indian currency but payable in any foreign currency,

(iii) drafts, travellers cheques, letters of credit or bills of exchange drawn by banks, institutions or persons outside India, but payable in Indian currency; (Sec 2(n) of FEMA)

1.1 Dealing in Foreign exchange

Dealing in Foreign Exchange is governed by Section 3 of the Foreign Exchange Management Act,1999 FEMA, which states that

Save as otherwise provided in this Act, rules or regulations made thereunder, or with the general or special permission of the Reserve Bank, no person shall—"

(a) deal in or transfer any foreign exchange or foreign security to any person not being an authorised person;

(b) make any payment to or for the credit of any person resident outside India in any manner;

(c) receive otherwise through an authorised person, any payment by order or on behalf of any person resident outside India in any manner.

Explanation.—For the purpose of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised person) without a corresponding inward

remittance from any place outside India, then, such person shall be deemed to have received such payment otherwise than through an authorised person;
(d) enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.
Explanation.—For the purpose of this clause, "financial transaction" means making any payment to, or for the credit of any person, or receiving any payment for, by order or on behalf of any person, or drawing, issuing or negotiating any bill of exchange or promissory note, or transferring any security or acknowledging any debt.

Various regulations are made to carry out the transactions which will otherwise be in violations of the Sec 3 as to making or receipt of any payments from PROI or their order by a Person in India.

1.2 Dealing in Foreign Exchange & Security

Clause (a) under section 3 may be read as under:
No person shall, deal in/transfer any foreign exchange/foreign security to a person not being an authorised person (AP);
Thus foreign securities or foreign exchange cannot be transferred to any person. Not only transfer, the prohibition extends to dealing with such foreign exchange or securities which will normally include sale, transfer, acquisition, borrowing or lending etc under its fold and the provision will apply to all the persons whether person resident in India (PRII) or person resident outside India(PROI).

i. Foreign exchange can be dealt in the following (illustrative list) ways by PRII and PROI. Besides these regulations, transactions cannot be carried out
   a) Borrowing and Lending in Foreign Exchange (Notification 3 of FEMA)
   b) Borrowing and Lending in Rupees (Notification 4 of FEMA)
   c) Foreign Exchange Management Deposit Regulation (Notification 5 of FEMA)
   d) Import and export of foreign currency mentioned below (Notification 6 of FEMA)
   e) Purchase/sale of Immovable Property Abroad (Notification 7 of FEMA)
   f) Earning foreign exchange outside India and bringing it back and depositing the same in Resident Foreign Currency Account (RFC) (Notification 10 of FEMA)
   g) By way of Gift from PROI or to PROI (Notification 11 of FEMA and Notification 5 respectively)

h) Foreign Direct Investment (for Companies and LLP, Notification 20(R) of FEMA)
i) Export of goods or services (Notification 23 of FEMA)
j) By way of Inheritance from PROI or to PROI

ii. Regulations regarding transfer of foreign securities are given in Notification 120 of FEMA which states that Foreign securities can be transferred between:
a) PROI and PRII in the form of Gift, Inheritance and sale
b) PRII and PRII by way of Inheritance and sale
c) PROI and PROI FEMA may not be applicable

Thus due to the presence of the above Notifications, Section 3 will not apply in such situations and transactions will be carried on in accordance with the respective regulations.

1.3 Making any Payment

Clause (b) under section 3 states that no person shall make any payment to or for the credit of any PROI in any manner;
Any person in India whether PRII or PROI cannot make any payment to PROI or to any other person (PRII or a PROI) for the credit of a PROI in rupees or foreign currency. As explained, Payer is a person in India hence it can be a PRII or PROI.
Thus a PRII/PROI (in India, Indian bank A/c) cannot make payment to PROI whose bank account could be in India or outside India.

In case of a PRII, payment of US$ 2,50,000 is allowed under Liberalised Remittance Scheme (LRS) to PROI to his Indian Bank Account or to foreign Bank Account located outside India , hence other payments will require scrutiny as to whether each of payment is authorised as a current A/c transaction in addition to LRS or it is a permitted capital A/c transaction of PRII.
PROI may transfer Rupees from Indian bank A/c to another PROI being gift to transferee or some other transaction as authorised under Notification 5 as permitted debits.
In an another case ,if a PRII purchases goods from PROI and request his friend who is PROI to make the payment from his bank account in India on his behalf then such a transaction is not permitted, as payment is being made from an Indian bank A/c of a PROI to a PROI for goods purchased by the PRII which is not permitted as per FEMA provisions relating to import of goods in to India..

1.4 Receipt of Payment

Clause (c) under section 3 states no person shall receive otherwise (than) through an AP, any payment by order or on behalf of any PROI in any manner;

Thus any person in India, whether PRII or PROI is not authorised to receive any payment from PROI or from any other person on behalf of a PROI. Also the definition includes in any manner which can mean actual payment or constructive payment. The above provision also includes Rupee transactions between two residents representing payment by order or on behalf of any non-resident unless it is through an Authorized Dealer and represented by way of corresponding inward remittance from outside India;

For example, if PRII sells goods to PROI and the PROI tells his brother who is a PRII to make the payment for the same. Such a transaction is not permitted under FEMA. Although the payment would be from a PRII to another PRII in Indian rupees, the same will not be permitted because the payment is on behalf of a PROI and not in accordance with regulations relating to Export of goods.

1.5 Financial Transaction

Clause (d) of section 3 states that no person shall enter into any financial transaction in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person..

The above clause states that any financial transaction undertaken by person in India cannot be settled through a consideration payable for any other transaction outside India either by the same person or any other person For Eg: if Mr Y (PROI) is traveling to India to meet his friend Mr X (PRII) and Mr Y requests Mr X to buy his flight tickets from London to India for him, who in turn would buy flight tickets of Mrs X(PRII) for her travel to London, due a month later. Such transaction is not permitted under FEMA.

An exception to the above clause would be payment made towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India (PROI) who is on a visit to India as provided in Notification 16 in respect of hospitality services by PRII.

1.6 It may be noticed that:

i. Item (i) and (iii) above includes reference to authorised dealer whereas (ii) and (iv) does not have any such reference
ii. Item (ii) and (iv) are dealing with payment or credit to PROI and financial transaction of PRII or PROI which has an effect of settling the transaction in India without consideration being paid or received in India

1.7 Clause b,c,d of section 3 do not apply to any transaction entered into in Indian rupees by or with:

i. A person who is a citizen of India, Nepal or Bhutan resident in Nepal or Bhutan;
ii. A branch situated in Nepal or Bhutan of any business carried on by a company or a corporation incorporated under any law in force in India, Nepal or Bhutan;
iii. A branch situated in Nepal or Bhutan of any business carried on as a partnership firm or otherwise, by a citizen of India, Nepal or Bhutan. (Notification 17 of FEMA)

The above exemption is obvious because Notification 6 and 17 permits free movement of Indian Rupees, Nepali Rupees and Bhutanese Rupees across the border of these 3 countries including overseas investment to Nepal and Bhutan in Rupees.

2. There are 2 types of transactions under FEMA:

i. Capital Account Transactions
ii. Current Account Transactions

Foreign Exchange can be drawn for Current or Capital Account Transaction

2.1. Capital Account Transaction

Capital Account transaction means a transaction which alters the assets or liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India of persons resident outside India, and includes transactions referred to in sub- section (3) of section 6; Sec 2 (e) of FEMA

It may be noted that contingent liabilities in India of PROI is not considered as capital account transaction

Section 6(3) contains ten sub clauses covering a wide range of transactions. For each of such categories RBI has issued separate notifications.

No.	Transactions specified under Sec 6(3)	Notf.No
1	Transfer/Issue of Foreign Security by a PRII	Notf.No.120
2	Transfer/Issue of Foreign Security by a PROI	Notf.No.20
3	Transfer/Issue of Security/Foreign security by branch, office or agency in India by PROI	Notf.No.2
4	Borrowing/Lending in Foreign currency in whatever form or by whatever name called	Notf.No.3
5	Borrowing/Lending in Rupees in whatever form or by whatever name called between a PRII and a PROI	Notf.No.4
6	Deposits between PRII and PROI	Notf.No.5
7	Export, Import or holding of currency or currency notes	Notf.No.6

8	Transfer of Immovable property outside India, other than a lease ≤ 5 years, by PRII	Notf.No.7
9	Acquisition/Transfer of Immovable property in India, other than a lease ≤ 5 years by PROI	Notf.No.21
10	Giving of a guarantee/surety in respect of any debt, obligation or other liability incurred: 1) by PRII owed to PROI or 2) by PROI	Notf.No.8

*PROI – Person Resident outside India; PRII – Person resident in India

Capital account transactions are generally prohibited unless permitted. They are regulated by RBI.

They are classified under the following heads, namely :-

i. Transactions, specified in **Schedule I**, of a person resident In India;

ii. Transactions, specified in **Schedule II**, of a person resident outside India.

Details of Schedule I and Schedule II can be found on: https://rbi.org.in/Scripts/BS_FemaNotifications.aspx?Id=155

About 25 Notifications have been issued by RBI to deal with the manner in which permissible Capital Account Transactions can be carried out.

2.2. Current Account Transaction

Current account transaction means a transaction other than a capital account transaction. Such transaction includes:-

i. Payments due in connection to foreign trade, other current business, services and other short-term banking facilities in the ordinary course of business;

ii. Payments due as interest on loans and as net income from investments;

iii. Remittances for living expenses of parents, spouse and children residing Abroad;

iv. Expenses in connection with foreign travel, education and medical care of parents, spouse and children;

(section 2(j) of FEMA)

Current Account transactions are freely permitted, unless prohibited. Any person may sell or draw foreign exchange to or from an AP if such sale or drawal is a current account transaction as per Section 5 of FEMA. They are regulated by Central Government. Current Account Transactions are divided into 3 categories:

Schedule I -Transactions which are prohibited

Schedule II -Transactions which require prior approval of the Central Government

Schedule III- Transactions which require prior approval of the RBI

Details of Schedule I, II, and III can be found on:
https://m.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=10193

2.3 A few current account transactions like private visit; gift/donation; going abroad on employment; emigration; maintenance of close relatives abroad; business trip; medical treatment abroad; studies abroad are subsumed in the Liberalised Remittance Scheme (LRS) limit i.e. of US$ 2,50,000. **In case of emigration, medical treatment abroad and studies abroad the actual expenses are permitted which may exceed the LRS limit**. An example to explain the same, let us consider 3 different situations:

i. The LRS limit has been exhausted and after that there are medical expenses to the tune of US$ 2,50,000 have emerged.
ii. Medical expenses in the year is of US$ 2,60,000 and no other expenses in that year.
iii. There are medical expenses in the year to the tune of US$ 2,00,000 in that year

In situation i) Though the LRS limit has been exhausted medical expenses will be allowed by AD, based on the estimate from the doctor in India or hospital/ doctor abroad. If the above expenses were expenses other than medical treatment, studies abroad and emigration then the same would require RBI approval since the LRS limit has been exhausted for that year.
In situation ii) Since medical expenses are allowed on actual basis the same would be allowed.
In situation iii) Medical expenses upto US$ 2,00,000 will be allowed and any other expenses like business trip, private visit, gift/donation, maintenance of close relatives abroad will be allowed upto the balance limit of LRS i.e. US$ 50,000 for that year

2.4 Drawal of foreign exchange by any person for the following purpose is prohibited, namely:-

i. Transaction specified in the Schedule I; or
ii. Travel to Nepal and/or Bhutan; or
iii. Transaction with a person resident in Nepal or Bhutan;

Provided that the prohibition in clause (iii) may be exempted by RBI subject to such terms and conditions as it may consider necessary to stipulate by special or general order. Rule 3 of FEM (CAT) Rules, 2000

2.5 Holding Assets Abroad

A person resident in India (PRII) shall not acquire, hold, own, possess or transfer any foreign exchange, foreign security or any immovable property situated outside India. —

Save as otherwise provided in this Act, as per Sec 4 of FEMA. Provisions concerning foreign assets and foreign securities are dealt in Notification 7 (Acquisition and transfer of immovable property outside India) and Notification 120 (Transfer or Issue of Any Foreign Security)

If there is any amount of foreign exchange due or has accrued to any PRII, such person shall take all reasonable steps to realise and repatriate to India such foreign exchange within such period and in such manner as may be specified by the Reserve Bank as per Sec 8 of FEMA

The law further provides that

Provisions of section 4 and section 8 shall not apply to the following cases (Sec 9 of FEMA):

(a)Possession of foreign currency or foreign coins by any person upto such limit as the Reserve Bank may specify;

(b) Foreign currency account held or operated by such person or class of persons and the limit upto which the Reserve Bank may specify;

(c) Foreign exchange acquired or received before the 8th day of July, 1947 or any income arising or accruing thereon which is held outside India by any person in pursuance of a general or special permission granted by the Reserve Bank;

(d) Foreign exchange held by a person resident in India upto such limit as the Reserve Bank may specify, if such foreign exchange was acquired by way of gift or inheritance from a person referred to in clause (c), including any income arising there from;

(e) Foreign exchange acquired from employment, business, trade, vocation, services, honorarium, gifts, inheritance or any other legitimate means upto such limit as the Reserve Bank may specify; and

(f) Such other receipts in foreign exchange as the Reserve Bank may specify

Thus one can observe that drawing of foreign exchange for any current account transaction is freely permitted whereas drawal of foreign exchange for Capital Account transaction is subjected to rules and restrictions under FEMA, except in the case of an Individual who is permitted to transfer upto US$ 2,50,000 LRS limit for any capital or current account transaction. Also, no restrictions under FEMA will apply to payments made from balance in Resident Foreign Currency Account (RFC).

Regulations to hold or transfer any currency or foreign exchange, is provided in **Notification No. FEMA 6 (R)/RB-2015 dated December 29, 2015** (hereinafter referred to as "FEMA 6") & **Notification No. FEMA 11(R)/2015-RB dated December 29, 2015** (hereinafter referred to as "FEMA 11").

Any foreign exchange due to a PRII must be realised and repatriated as per the provisions of **Notification No. FEMA 9 (R)/2015-RB dated December 29, 2015** (hereinafter referred to as "FEMA 9")

3.Export & Import of Currency

3.1 Export & Import of Indian Currency

i. A PRII

a) May take Indian currency notes outside India (except Nepal and Bhutan) upto Rs 25,000 per person or such amount subject to conditions as notified by RBI

b) Who had gone outside India (except Nepal and Bhutan) on a temporary visit may bring back Indian currency notes upto Rs 25,000 per person or such amount subject to RBI conditions

c) May take or send outside India (other than to Nepal and Bhutan) commemorative coins not exceeding two coins each
(Reg 3(1) of FEMA 6)

ii. A PROI (other than citizen of Pakistan & Bangladesh)

a) May take Indian currency notes outside India (except Nepal and Bhutan) upto Rs 25,000 per person or such other amount and subject to such conditions as notified by RBI.

b) May bring into India currency notes of India upto an amount not exceeding Rs.25,000 per person or such other amount and subject to such conditions as notified by RBI
(Reg 3(2) of FEMA 6)

iii. Reserve Bank may, on application made to it by a PROI/PRII allow to take or to send out of India or bring into India currency notes subject to terms and conditions.

iv. A PROI may hold, own, transfer or invest in Indian currency, if such currency, was acquired, held or owned by such person when he was resident in India or inherited from a person who was resident in India.
(Sec 6(5) of FEMA)

It may be observed that the limit of Rs 25,000 is on transfer of Indian currency for every person i.e. it's the limit is the same for a PRII and PROI

3.2 Export & Import of Foreign Currency

i. Except as otherwise provided in these regulations, no person shall, without the general or special permission of the Reserve Bank, export or send out of India, or

import or bring into India, any foreign currency. (Reg 5 of FEMA 6)

ii. Any person may send into India without any limit foreign exchange in any form other than currency notes, bank notes and travellers' cheques. Which means any transfer through banking channels is permitted without any limit (Reg 6a of FEMA 6)

iii. Any person may bring into India from any place outside India without limit foreign exchange (other than unissued notes), provided he makes a declaration to the custom authorities in currency declaration form (CDF) if aggregate value of the foreign exchange in the form of currency notes, bank notes or traveller's cheques brought in by such person at any one time exceeds US$10,000 and/or the aggregate value of foreign currency notes brought in by such person at any one time exceeds US$ 5,000. (Reg 6b of FEMA 6)

iv. Any person may send or take out of India:

a) Cheques drawn on foreign currency accounts
b) Foreign exchange obtained by him by drawal from an AP in accordance with the provisions of FEMA
c) Currency in the safes of vessels or aircrafts which has been brought into India or which has been taken on board a vessel or aircraft with the permission of the Reserve Bank

(Reg 7(2) of FEMA 6)

v. Any person may take out of India:

a) Foreign exchange possessed by him in accordance with FEMA regulations. Which would include foreign currency brought in by him and declared, balances in foreign currency bank accounts like NRE, RFC, EEFC account.
b) Unspent foreign exchange brought back by him to India while returning from travel abroad and retained in accordance with FEMA regulations; but the same shall be surrendered to AP within 90/180 days as per Notification 9 of FEMA

(Reg 7 (3) of FEMA 6)

vi. PROI may take out of India unspent foreign exchange not exceeding the amount brought in by him and declared in accordance with clause iii above (Reg 7(4) of FEMA 6)

vii. PRII may hold, own, transfer or invest in foreign currency, if such currency, was acquired, held or owned by such person when he was resident outside India or inherited from a person who was resident outside India. (Sec 6(4) of FEMA)

viii. If a PRII makes any foreign exchange payment from funds held in the Resident Foreign Currency Account(RFC) or Exchange Earner's Foreign Currency Account(EEFC) then the limits on Investment amount will not be applicable (Notf 10(R) of FEMA)

Question arises in cases where a person carrying foreign currency of more than US$ 10,000 forgets to declare or does not declare the same in the custom declaration form on arrival into India?

In such situations it would be assumed that the person has not received such money in accordance with FEMA and a penalty would be imposed for violating the FEMA regulations. Compounding facility may be available only if breach is technical in nature

3.3 Export and import of currency to or from Nepal and Bhutan

A person may:

i. Take/Send out of India, currency notes of India of denominations of Rs 100 or less. An individual travelling from India to Nepal or Bhutan can carry Reserve Bank of India notes of Mahatma Gandhi (new) Series of denominations Rs. 200/- and/or Rs. 500/- upto a total limit of Rs. 25,000;

ii. Bring into India from Nepal or Bhutan, Indian currency notes of denominations of Rs.100 or less;

iii. Take out of/Bring into India , from Nepal or Bhutan, currency of Nepal or Bhutan (Reg 8 of FEMA 6)

4. Other Remittances made by PRII in Indian Currency to or for a PROI

i. Payment made towards meeting expenses on account of boarding, lodging and services related thereto or travel to and from and within India of a person resident outside India (PROI) who is on a visit to India – no limit specified for such expense under Fema

ii. An individual resident in India may make a gift in Rupees to a Non-Resident Indian (NRI)/Person of Indian Origin (PIO), who is a close relative by way of crossed cheque/electronic transfer upto LRS limit

iii. A resident individual may grant loan in rupees to an NRI relative by way of crossed cheque/electronic transfer as per the provisions of Notification 4 of FEMA upto LRS limt

iv. A company which is a resident in India, can make payment in rupees to its non whole time director who is PROI and is on a visit to India for the company's work and is entitled to payment of sitting fees or commission or remuneration, and travel expenses to and from and within India, in accordance, with the provisions contained in the company's Memorandum of Association or Articles of Association or in any agreement entered into by it or in any resolution passed by the company in general meeting or by its Board of Directors.

v. A PRII can make payment in rupees to a PROI, by means of a crossed cheque or a draft as consideration for purchase of gold or silver in any form imported by such person subject to conditions (Reg,2,3,4&5 of Notification 16 of FEMA)

It can be observed from the above provisions that gifting and giving a loan to a Non resident come under the LRS limit but making payments for a PROI towards boarding, lodging, travel within India do not come under the LRS limit hence expenses incurred for boarding, lodging or travel purpose of PROI would be in addition to LRS limit

5. Realisation, Repatriation & Surrender of Foreign Exchange

A PRII to whom any amount of foreign exchange is due or has accrued shall take all reasonable steps to realise and repatriate to India such foreign exchange as per Section 8 of FEMA, and shall in no case do or refrain from doing anything, or take or refrain from taking any action, which would result in ceasing/delay of receipt of part or whole of the foreign exchange (Reg 3 of FEMA 9)

5.1 Manner of Repatriation

i. On Realisation of foreign exchange due, a person shall repatriate the same to India and –

a) Sell it to an AP in India in exchange for rupees; or
b) Retain/hold it in account with an AD in India to the extent specified by RBI; or
c) Use it for discharge of a debt or liability denominated in foreign exchange to the extent and in the manner specified by RBI. (Reg 4(1) of FEMA 9)

ii. A person shall be deemed to have repatriated the realised foreign exchange to India when he receives in India payment in rupees from the account of a bank or an exchange house (Western union, Money gram) situated in any country outside India, maintained with an AD. (Reg 4(2) of FEMA 9)

Thus each and every transaction of entitlements of the Foreign Exchange due to PRII is required to be eventually converted in to a receipt of the Foreign Exchange in India within the permitted time.

6. Period for Surrender of Realised Foreign Exchange

i. A person not being an Individual resident in India shall sell the realised foreign exchange to an AP within the period specified below:-
   a) Foreign exchange due or accrued as remuneration for services rendered, whether in or outside India, or in settlement of any lawful obligation, or an income on assets held outside India, or as inheritance, settlement or gift, within seven days from the date of its receipt;
   b) In all other cases within a period of ninety days from the date of its receipt

ii. Any person not being an individual resident in India who has acquired foreign exchange for any purpose mentioned in the declaration made by him to an AP under sub-section (5) of Section 10 (which states that an AP shall, before undertaking any transaction in foreign exchange on behalf of any person, require that person to make a declaration and give such information that there will be no contravention or evasion of the provisions of this Act or of any rule, regulation, notification, direction or order made thereunder.) of the Act does not use it for such purpose or for any other purpose for which purchase or acquisition of foreign exchange is permissible shall surrender such foreign exchange or the unused portion thereof to an AP within a period of sixty days from the date of its acquisition or purchase by him. (Reg 6(1) of FEMA 9)

iii. Where the foreign exchange acquired/purchased by any person other than an individual resident in India from an AP is for foreign travel, then, the unspent balance of such foreign exchange shall be surrendered to an AP -
   a. within ninety days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of currency notes and coins; and

b. within one hundred eighty days from the date of return of the traveller to India, when the unspent foreign exchange is in the form of travellers cheques. (Reg 6(2) of FEMA 9)

iv. A person being an individual resident in India shall surrender the received/realised/unspent/unused foreign exchange in any form to an AP within a period of 180 days from the date of such receipt/realisation/purchase/acquisition or date of his return to India, as the case may be. A resident Individual can open an Resident Foreign Currency Domestic Account (RFCD)with the unspent foreign exchange (Reg 7 of FEMA 9)

Time limit for realising and repatriating foreign exchange for a PRII who is individual is 180 days but for persons other than individuals it is only 90 days. A resident individual can deposit the unspent foreign exchange in a RFCD account, such a facility is not allowed to resident non individuals.

Any Income earned by an Individual on Investments made through LRS route or through funds in RFC account need not be repatriated back.

Provisions mentioned in FEMA 9 shall not apply to foreign exchange in the form of currency of Nepal or Bhutan and to the cases which are exempted under section 9 of FEMA.

7. Possession & Retention of Foreign Exchange

For the purpose of clause (a) and clause (e) of Section 9 of the Act, the Reserve Bank specifies the following limits for possession or retention of foreign currency or foreign coins, namely :-

i) Possession without limit of foreign currency and coins by an AP within the scope of his authority;

ii. Possession without limit of foreign coins by any person;

iii. A PRII can retain foreign exchange in the form of currency notes, bank notes and foreign currency travellers' cheques upto US$ 2000 or its equivalent in aggregate, provided that such foreign exchange

a) Was acquired by him while on a visit to any place outside India by way of payment for services not arising from any business in or anything done in India; or

b) Was acquired by him, from any person not resident in India and who is on a visit to India, as honorarium or gift or for services rendered or in settlement of any lawful obligation; or
c) Was acquired by him by way of honorarium or gift while on a visit to any place outside India; or
d) Represents unspent amount of foreign exchange acquired by him from an AP for travel abroad.

(Reg 3 of FEMA 11)

Thus there is a relaxation in Realisation and repatriation of the exchange in certain cases as referred above

7.1 Possession of foreign exchange by a PRII but not permanently resident therein

A PRII but not permanently resident therein may possess without limit foreign currency in the form of currency notes, bank notes and travellers cheques, if such foreign currency was acquired, held or owned by him when he was resident outside India and, has been brought into India in accordance with the regulations made under the Act.

Explanation : for the purpose of this clause, 'not permanently resident' means a person resident in India for employment of a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years (Reg 4 of FEMA 11)

8. Foreign Exchange for Travel

i. Drawal of foreign exchange for travel to Nepal and/Bhutan is not allowed
ii. Ticket held by the traveller should be for journey commencing not later than 180 days from the date of drawal of foreign exchange
iii. Payment in Indian currency notes for drawal of foreign exchange should not exceed 50,000 for a single journey/visit
iv. Amount of foreign currency, notes and coins sold to a traveller out of the overall permitted foreign exchange shall be within limits as set below:
a) US $ 3,000 to travellers proceeding to all countries other than those listed in (b) and (c).
b) US $ 5,000 to travellers proceeding to Iraq or Libya.
c) Entire permitted foreign exchange (upto US$ 2,50,000) released can be in the form of currency notes in case of travellers proceeding to Iran, Russian Federation and

other Republics of Common Wealth of Independent States. For travellers proceeding for Haj/ Umrah pilgrimage, full amount of entitlement (US$ 2,50,000) in cash or upto the cash limit as specified by the Haj Committee of India, may be released by the ADs and FFMCs

v. A drawal of upto US$ 2,50,000 can be made for all travel related purpose in a financial year including in currency as explained in above paragraphs. The amount other than in cash can be by way of debit card or a credit card including traveller's cheque within the overall limit of US$2,50,000. However the overall limit of US$ 2,50,000 shall not apply where payment is made out of funds held in RFC or EEFC account.

Conclusion:

Provisions regarding dealing of foreign exchange and currency it's receipt as well as payments and the settlement of each transaction as provided in 3(d) can only be done as per the provisions of FEMA, anything not mentioned in the Act or rules, regulations, notifications, orders issued under the Act shall not be permitted. One may review each transaction as to it's nature whether it's a current or a capital account transaction and if it is not permitted under the detailed regulation they may not enter into any such transaction else it would result in contravention of the provisions under FEMA.

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CASE LAWSAND NOTIFICATIONS/CIRCULARS ON REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016)

CA Sanjay Ghiya (D.I.S.A)
CA Ashish Ghiya (L.L.B, C.S)

CASE LAWS

MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY

JITENDRA BALU PETKAR V/S SHREE BALAJI ASSOCIATES

The applicant has booked a flat with the respondents however; the respondents have failed to deliver the possession of the flat as agreed. Hence, the applicant claims the refund of the money paid earlier to the respondents along with the interest. The applicant also wants to withdraw from the project of the respondents. After many hearings the respondent did not appeared before the authority. Therefore, there is no other option but to proceed ex-parte against the respondents On verification of the facts and documents produced before the authority by the complainants, the authority ordered that the respondents shall pay the complainant all the amounts received by them from the applicant along with interest from the respective dates of their payment in addition to the cost of complaint.

PRADNYA NIKHIL SABLE V/S KAMBAR CONSTRUCTIONS

The complainant alleged that she has booked the flat with the respondents but did not have the possession on the date as mentioned in the executed agreement for sale. The complainant claims the consideration paid to the respondents. The respondents contended that the local goon demanded ransom while construction of the flat. The goon also shot dead a fellow developer whereby the developer did not succumb to his illegal demands. The respondents pleaded that he did not get help form Police and Public Authorities and was terrified. Thereby, submitting the reasons beyond his control for not completing the project on time. After hearing both the sides, the authority decided that the respondent has failed to deliver the possession on the day specified in the agreement. The complainant is entitled to get back the amount of processing charges incurred against the home loan taken & the cost of complaint and the amounts paid already to the respondents along with interest at MCLR of SBI plus 2%.

KRISHNAN SANKARAN V/S VIHANG ENTERPRISES

The complainant, NRI, booked the apartment in August, 2011 but date of possession was not given till May 2014. Finally both party mutually settled the dispute. But the complainant may be allowed to still maintain his right to recourse with MahaRERA if the terms of their settlement are not upheld by the respondent. Accordingly, RERA allowed to complainant for withdrawal of plaint.

Mr. AMIT AGARWAL V/S M/S PUNE PROJECTS LLP

The complainant, who is a real estate agent, seeks directions to the respondent to pay commission on marketing done by him of a registered project. The complainant contends that the respondent has not paid the commission as per terms of the agreement. The respondent denies the contention of the complainant. The authority decides as there is no violation of the Act to entertain the complaint and the dispute between the complainant (agent) and the respondent is of civil nature; thereby it has no jurisdiction over the complaint. The plaint stands dismissed.

M/s APPLEANGELIC REALINFRA LLP V/S AYODHYA CONSTRUCTION Co.

The complainant invested in respondent's firm via his LLP, where the complainant was a partner earlier. The complainant was allotted a shopping area in the project of the respondent. Thereafter, the complainant got retired from the said firm. Further, he contends that the facts regarding the allotment of shopping area have been suppressed by the respondent while registration of the project under RERA. The respondent argued that as the complainant got retired, the allotment automatically got cancelled after payments made by the new partners. After hearing both the sides and on reviewing the records of the case, the authority decided that the complainant is not an allottee in the said project. Therefore, the dispute being of civil nature stands dismissed.

ATUL NARHAR DESHPANDE V/S BABASAHEB BHAGWAN ATKIRE

The complainant contended that the respondent has failed to hand over the possession of booked flat on agreed date. Therefore, claiming the refund of amount paid to the respondent along with interest. The respondent argued that the delivery of the possession of the flat of the complainant got delayed due the reasons beyond his control as he did not have the required approvals and permission in time from the

competent authority and the necessary environmental clearance is still awaited. On reviewing the causes of delay mentioned by the respondent, the authority held that though the respondent only had the N.A. Order of the competent authority. Yet he started to collect the installments of consideration from the complainant. Further, the authority held after taking into consideration that the competent authority has not acted as swiftly as they were expected to act, the respondent is exempted from complainant's claim of compensation but is held liable to refund the amount paid by the complainant along with interest. On disposal of the complaint with above order, the respondent wanted to exercise his right to appeal to Appellate Tribunal u/s 44 of RERA (Act). Further, as per notification dated 28.12.2017 Appellate Tribunal has been established under the Act but the procedure to file an appeal is yet to be determined. Accordingly, Execution of the Order is stayed till the end of appeal period.

RAJU VAZIRANI & ors. V/S TRANSCON SETH CREATORS PVT LTD

The complainants booked flats with the respondent but the respondent has failed to deliver the possession of the said flats as agreed. Also they alleged that respondent has changed the design of the building/project and reduced the number of flats to be allotted against his commitment in the concerned project. They further alleged that the respondent accepted 25% of cost without the execution of sale agreements. The respondent disputed the claim of the complainants and stated that complainants claim to provide them flats in "Auris Serenity" cannot be supported by the Allotment Letter issued and hence not justified. Considering the submissions made by the parties, the authority held that the complaint was made in respect of project "Auris Bliss" and complainants sought directions to respondent to execute ATS for project "Auris Serenity" which was registered in phases. Therefore, plaint was not maintainable.

JAYESH MAHALE & AMAR PANKE V/S RAVI OCHANNI

The complainant stated that they have taken the possession in year 2014 but they did not get the amenities as agreed in the agreement. He further stated that the said project is an ongoing registered project under RERA with more than 51% apartments has been shown booked. The authority directs the respondent to initiate steps for formation of legal entity of the allottees and to ensure that the project is completed in all respect. The complaint is disposed of ex-parte.

RAJASTHAN REAL ESTATE REGULATORY AUTHORITY

VIRENDER SINGH V/S GRJ DISTRIBUTERS AND DEVELOPERS PVT. LTD

The complainant has filed this complaint claiming the refund of entire amount with interest, which was paid by him to the respondent towards consideration of apartment bearing number 1004 in Tower-A 11 in their project "Avalon Royal Park", Alwar Bypass Road, Bhiwadi having RERA Registration No. RAJ/P/2017/068.The complainant contends that he purchased the above apartment in Avalon Royal Park and Builder Buyer Agreement was signed on 11.11.2013. As per agreement the possession of the apartment was to be handed over within 42 months from the date of Agreement with a grace period of 6 months that comes to 11.11.2017. But the respondent has failed to hand over the Apartment on the agreed date, hence respondents be directed to refund his money with interest as per provision of RERA. He also submitted that park facing charges amount Rs. 67,416/- earlier paid by him should be refunded.

During the process of hearing Respondent representative Mr. Ashish Ghiya sought time to file Affidavit regarding handing over of the possession of the apartment and stage of construction of the project. The complainant did not object for it and on next date of hearing Mr. Ashish Ghiya filed an Affidavit of respondent regarding handing over the possession of the apartment in alternative tower in the same project. The complainant has agreed to take possession of the apartment no. 1204, Tower Al in Avalon Royal Park with certain conditions. On next hearing date i.e. 24.05.2018, Mr. Ashish Ghiya filed an Affidavit of respondent Sh. Ajay Singhal duly authorized by the promoter Avalon Royal Park which stated that the respondent is ready to give the possession on or before 31st December, 2018 of an alternative unit having same layout, size & specifications.

In view of the affidavit filed by the respondent, now the complainant want to continue in the project and authority directed respondent to pay arrear of interest from 11.11.2017 to 31.05.2018 and also refund the park facing charges Rs. 67416/- within 45 days. Thereafter, monthly interest shall be paid by 10th of each month as prescribed under rule 17 of Rajasthan RERA Rules, 2017.The complaint is disposed off accordingly.

MADHYA PRADESH REAL ESTATE REGULATORY AUTHORITY
S.S.PAWAR V/S SATYENDRA NATHKOCHAR

The applicant has booked a flat and alleged that he applied for bank loan with SBI, who refused to sanction loan on ground that, the document of the co- promoter is forged and thus pleaded the refund of booking amount. The respondent/co- promoter stated that the other allottee got their loan sanctioned from LIC Housing Finance and are now the owners of the flats in the same project. Also, the applicant didn't deposit the balance amount in prescribed time period. The respondent added to his argument that the society has already been formed to maintain and look after the building of the project and the complaint shall be barred by limitation as he made the claim after 6 years. After verifying the facts of the case and term and condition of the allotment letter, it is clear that allottee can only get refund of any excess amount paid over the booking amount after re-allotment and the booking amount cannot be refunded. The claim of the applicant not getting loan from the bank is baseless, in absence of any evidence. Therefore, petition is dismissed.

JAFIR UDDIN SHAIKH V/S BHOPAL DEVELOPMENT AUTHORITY

The applicant has booked the flat with the respondent. As per the allotment letter, the estimated value of flat was Rs.43,16,680/-. The applicant paid Rs.4,31,670/-and due date of installments were provided in allotment letter. The applicant paid the 1st, 2nd, and 3rd installment. When 4th installment was due, the Bhopal Development Authority informed the applicant not to pay till the completion of the project. The respondent has never disclosed the date of completion, therefore he requested either BDA complete the project immediately or pay the compensation or interest along with principal amount. The respondent argued that in allotment letter, no possession date is mentioned therefore, applicant cannot claim that project is delayed by respondent. The project is registered under RERA (Act) and is going to be completed by August 2019. Intimation regarding the same has been given to applicant. The RERA (Authority) decided that respondent will intimate in writing, the possession date of flat which could not be extended after August 2019, if in case the work is not completed then the applicant is entitled for compensation.

NOTIFICATIONS/CIRCULARS

U.P. REAL ESTATE REGULATORY AUTHORITY
Letter No.-2011 /UP-RERA/2019-20
Date: 03.04.2019

To,
Director General,
Directorate of Institutional Finance,
Government of Uttar Pradesh,
Lucknow.

Subject: Section-4 (2) (I) (D) of Real Estate (Regulation and Development) Act, 2016 compliance with.

Sir, With reference to the above stated subject, I am directed to invite your kind attention to the following:

1- It has been provided in Section-4 (2) (I) (D) of Real Estate (Regulation and Development) Act, 2016 that "Seventy percent of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose: Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice, that the withdrawal is in proportion to the percentage of completion of the project."

2- It is obligatory both for the promoter and the bank to ensure strict compliance of the above stated provisions of the RERA Act.

3- It has come to the notice of U.P. RERA that some of the promoters are not complying with the statutory provisions of the law and withdrawing the amount from the designated account without submitting the requisite certificate with the bank or sometimes withdrawing amount in excess of the work done in the project.

4- It has also come to the notice of U.P. RERA that promoters require the allottees to deposit the amount in a collection account with the bank from which the bank is supposed to transfer 70% of the money deposited by the allottees into the separate/designated account (escrow account) on the standing instructions of the promoter and as per the provisions of RERA Act, however, some of the banks, especially the ones which have sanctioned loan to the promoter, arbitrarily adjust the entire amount deposited in the account against the outstanding loan of the promoter instead of transferring 70% of the money collected to the escrow account for the purposes of construction and payment of the cost of land of the project.

This is serious lapse on part of the bankers and violation of the mandatory provisions of the Act.

I am, therefore, directed to request you to kindly issue necessary instructions to all the Zonal Heads/Chief General Managers/General Managers/other concerned officers of the bank to strictly comply with the provisions of Section-4 (2) (I) (D) of Real Estate (Regulation and Development) Act, 2016. A line in confirmation will be highly appreciated.

Yours faithfully,
Abrar Ahmed
Secretary

U.P. Real Estate Regulatory Authority

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SOME IMPORTANT CASE LAWS, CIRCULARS & NOTIFICATIONS ON INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC)

ADV. ARPIT MATHUR
JAIPUR

CASE LAWS

State Bank of India vs. Jet Airways (India) Ltd.
(NCLT- MUMBAI)
CP NOS. 2205, 1968, 1938 (IB)(MUM.) OF 2019
JUNE 20, 2019

Relevant Sections:-
Section 7, 9, 234 & 235 of the Insolvency and Bankruptcy Code, 2016
Judgement:-
Corporate Debtor Jet Airways (India) Limited had huge outstanding debt, both financial and operational, Corporate Insolvency Resolution Process (CIRP) filed by State Bank of India against it was to be admitted. It was also held that this matter was of National Importance and Corporate Debtor company having more than 20,000 employees, its revival at earliest by a viable Resolution Plan was essential.

Pooja Electronics & Appliances vs. Brew Berrys Hospitality (P.) Ltd.
(NCLT- AHMEDABAD)
C.P. (IB) NO. 107/9/NCLT/AHM/2019
MAY 29, 2019

Relevant Sections:-
Section 9 of the Insolvency and Bankruptcy Code, 2016
Judgement :-
Application was made by operational creditor. Operational creditor supplied three split air conditioners of 2.2 ton capacity to corporate debtor. Air conditioner's were supplied by operational creditor to satisfaction of corporate debtor. When operational creditor approached corporate debtor for payment of outstanding bills corporate debtor admitted amount due to operational creditor but expressed its inability to make payments due to financial crisis. Since, there existed debt as well as occurrence of default and application filed by operational creditor to initiate CIRP was complete in all respect, said application was to be admitted.

Avon Clothing (P.) Ltd. *vs.* Siddarth Intercrafts (P.) Ltd.

(NCLT-Jaipur)
COMPANY PETITION (IB) NO. 05/JPR/2018
MAY 17, 2019

Relevant Sections:-
Section 5 (6), 9, 60 and 238A of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 **.**

Judgement :-
Corporate debtor issued purchase orders to operational creditor for supply of grey cloth. On account of non-payment of invoices, operational creditor through its authorized representative filed instant application to initiate Corporate Insolvency Resolution Process (CIRP) against corporate debtor. Corporate debtor raised dispute that supply of said goods was not in terms of order placed, claim raised in demand notice and claim in application were not in conformity instant application was not supported by certificate to be issued by bank and compliance of section 9(3)(c) was incomplete. It was noted that corporate debtor had nowhere disputed invoices or its contents prior to section 8 notice received. Moreover, post receiving notice, corporate debtor made part payment without raising notice of dispute to operational creditor and thus, dispute raised could be categorized as moonshine dispute. Since application was complete to initiate Corporate Insolvency Resolution Process (CIRP) against corporate debtor was to be admitted.

Registered office of corporate debtor was situated in Jaipur, Adjudicating Authority at Jaipur had territorial jurisdiction to entertain and try application section 9. Since default took place on or after 22-3-2017, instant application filed in 2019 to initiate CIRP against corporate debtor was within limitation period of three years and therefore to be admitted.

Venkatesan Sankaranarayanan *vs.* Tecpro Systems Ltd.

(NCLT - New Delhi)

C.A. NO. 503/PB OF 2019
COMPANY PETITION(IB) NO. 197/PB OF 2017
MAY 15, 2019

Relevant Sections:-
Section 31, read with sections 30 and 29A, of the Insolvency and Bankruptcy Code, 2016

Judgement :-

Adjudicating Authority is not expected to substitute its view with commercial wisdom of CoC nor should it deal with technical complexity and merits of resolution plan unless it is found contrary to provision of law. Resolution Professional (RP) of corporate debtor filed an application for acceptance of resolution plan approved by CoC. On perusal of said resolution plan, it was evident that provisions made in resolution plan in favour of operational creditors was more than amount which operational creditors could have received in event of liquidation of corporate debtor. In respect of compliance of section 30(2)(a), there was provision in resolution plan which provided payment of CIRP cost in priority over payments to any other creditors. Said resolution plan provided that corporate debtor company would continue as a going concern and operate in its normal course of business upon implementation of resolution plan. Further, RP had also certified that he had verified that resolution applicant, persons in management & control of company and other 'Connected Persons' were eligible to submit resolution plan and did not fall under any of category as mentioned in section 29A. RP had stated to have examined resolution plan and had confirmed that same had been approved by 89.92 per cent of voting share of financial creditors after considering its feasibility & viability and other requirements specified by Code and CIRP regulations. RP had further certified that except for providing performance security of Rs. 5 crores as stipulated by CoC, said plan complied with all provisions of Code and did not contravene any of provisions of law for time being in force. Therefore instant application filed by RP seeking approval of said resolution plan was to be admitted and resolution applicant was directed to provide performance security for an amount of Rs. 5 crores.

Industrial Services *vs.* Burn Standard Company Ltd.
(NCLAT – New Delhi)
COMPANY APPEAL (AT) (INSOLVENCY) NOS. 141, 142, 179 & 208 OF 2018
MAY 13, 2019

Relevant Sections:-

Section 31 of the Insolvency and Bankruptcy Code, 2016

Judgement :-

During resolution process and thereafter resolution applicant is required to ensure that corporate debtor company remains a going concern. Resolution plan approved by Adjudicating Authority does not provide revival of corporate debtor but closure

of corporate debtor and retrenchment of workmen of corporate debtor, same being against scope and intent of Insolvency & Bankruptcy Code and is in violation of section 30(2)(e) therefore that part of resolution plan which provides closure of corporate debtor is to be set aside and only rest part of resolution plan is to be upheld.

C. Mahendra International Ltd. *vs.* Naren Sheth
(NCLAT – New Delhi)
COMPANY APPEAL (AT) (INSOLVENCY) NO. 501 OF 2019
MAY 9, 2019

Relevant Sections:-
Section 29A, read with section 33, of the Insolvency and Bankruptcy Code, 2016.
Judgement :-
Applicant company was shareholder of company against which CIRP was admitted. Application of appellant was ineligible in terms of section 29A and since more than 270 days had already been passed and therefore order of liquidation was correctly passed.

During proceeding under Section 230, if any, objection is raised, it is open to the Adjudicating Authority (National Company Law Tribunal) which has power to pass order under Section 230 to overrule the objections, if the arrangement and scheme is beneficial for revival of the 'Corporate Debtor' (Company). While passing such order, the Adjudicating Authority is to play dual role, one as the Adjudicating Authority in the matter of liquidation and other as a Tribunal for passing order under Section 230 of the Companies Act, 2013. As the liquidation so taken up under the 'I&B Code', the arrangement of scheme should be in consonance with the statement and object of the 'I&B Code'. Meaning thereby, the scheme must ensure maximization of the assets of the 'Corporate Debtor' and balance the stakeholders such as, the 'Financial Creditors', 'Operational Creditors', 'Secured Creditors' and 'Unsecured Creditors' without any discrimination. Before approval of an arrangement or Scheme, the Adjudicating Authority (National Company Law Tribunal) should follow the same principle and should allow the 'Liquidator' to constitute a 'Committee of Creditors' for its opinion to find out whether the arrangement of Scheme is viable, feasible and having appropriate financial matrix. It will be open for the Adjudicating Authority as a Tribunal to approve the arrangement or Scheme inspite of some irrelevant objections as may be raised by one or other creditor or member keeping in mind the object of the Insolvency and Bankruptcy Code, 2016.

It was held that the liquidator is required to act in terms of the aforesaid directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the

members or the 'Corporate Debtor' or the 'creditors' or a class of creditors like 'Financial Creditor' or 'Operational Creditor' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority i.e. National Company Law Tribunal, Chennai Bench, in terms of the observations as made in above. On failure, as observed above, steps should be taken for outright sale of the 'Corporate Debtor' so as to enable the employees to continue.'

Ramco Systems Ltd. *vs.* Spicejet Ltd.
(NCLAT – New Delhi)

Relevant Sections:-
Section 5(21), read with section 9 of the Insolvency and Bankruptcy Code, 2016
Judgement :-
There was huge amount payable by respondent corporate debtor to appellant operational creditor. Appellant filed an application under section 9 to initiate insolvency resolution process against respondent. Adjudicating Authority dismissed application. It was found that demand notice under section 8(1) was issued by appellant, however, it was without attaching invoices relating to debt which was payable. Respondent had taken a plea that invoices had never been issued. There was nothing on record to suggest that invoices were forwarded by appellant or received by respondent.
Application under section 9 of IBC requires strict proof of debt and default, therefore, in absence of invoices actually forwarded by operational creditor showing debt which was payable by corporate debtor, Adjudicating Authority had rightly refused to entertain application.

Alchemist Asset Reconstruction Company Ltd.
vs.
Dugal Projects Development Company (P.) Ltd.
(NCLT - Mum.)
CP (IB) NO. 2527/MB/2018
MAY 8, 2019

Relevant Sections:-
Section 7 of the Insolvency and Bankruptcy Code, 2016
Judgement :-
Principal borrower took a land on lease from respondent. Principal borrower availed loan facilities from consortium of banks, as a security it deposited lease deed of said

land with bank and respondent-guarantor deposited title documents of said land with bank. When principal borrower failed to repay, lenders recalled loan facilities. Corporate guarantee issued by respondent guarantor had also been invoked. Banks filed recovery proceedings and DRT passed an order in favour of banks. CIRP application was filed against guarantor, guarantor raised a dispute that banks had already initiated execution proceedings and it was pending for execution of DRT order. Therefore instant application was not maintainable. Further, lease deed had already been legally terminated and banks were not having a security interest. Present proceedings were not concerned with validity of lease deed or existence of security interest upon an asset of guarantor but was only concerned with existence of debt and default. Further it would not make any difference whether bank had a secured interest on an asset belonging to guarantor or not as banks were having a security interest in assets of borrower company. Instant application to initiate CIRP against guarantor was to be admitted.

ICICI Prudential Real Estate AIF I
vs.
Sunshine Housing & Infrastructure (P.) Ltd.
(NCLT - Mum.)
CP (IB) NO. 4733 MB/2018
MAY 8, 2019

Relevant Sections:-
Section 5(8), read with section 7 of the Insolvency and Bankruptcy Code, 2016
Judgement :-
Petitioner/financial creditor invested Rs. 40 crores by subscribing to four thousand debentures of face value of Rs. 1 lakh each with a term of 42 months from First Tranche Closing date. Petitioner did not receive payment against investment, it sent notice to corporate debtor intimating about occurrence of 'event of default' and later on filed instant CIRP application. Corporate debtor admitted its inability to pay debt so claimed by petitioner as it had no funds. Existence of debt and default was reasonably established and also admitted by corporate debtor therefore instant CIRP application was to be admitted.

Andhra Bank *vs.* Sterling Biotech Ltd.
(NCLT - Mum.)
MA NOS. 951 AND 1519 OF 2019
CP (IB) NO. 490 (MB) OF 2018
MAY 8, 2019

Relevant Sections:-
Section 33 read with sections 12A and 29A of the Insolvency and Bankruptcy Code, 2016

Judgement :-
Adjudicating Authority may allow withdrawal of application under section 7, 9 or 10, on an application made by applicant with approval of ninety per cent voting share of CoC. Petitioner/financial creditor submitted application under section 12A for withdrawal of CIRP of corporate debtor coupled with onetime settlement (OTS) offer of financial debt. Said OTS proposal was from promoter of corporate debtor who was fugitive economic offender and thus, ineligible under section 29A. Union of India through MCA opposed said withdrawal application on pretext that promoters were wilful defaulter and after permitting withdrawal of CIRP process they would get management and control of corporate debtor company under guise of section 12A. Further, after getting application under section 12A, RP asked CoC to provide him details of OTS offer, sources of funds, time frame for payment to lender but, CoC did not submit any information to RP. Thus, section 12A application filed by financial creditor seeking withdrawal of CIRP initiated against corporate debtor was rejected. Meanwhile, 270 days of CIRP period ended, and sole resolution plan submitted by resolution applicant 'A' was also rejected by majority of CoC members. Since no resolution plan had been approved despite completion of CIRP period, order for liquidation of corporate debtor was to be passed.

P.K. Vaduvammal *vs.* Jaydev Constructions (P.) Ltd.
(NCLT- Chennai)
CP (IB) NO. 1461/2018
MAY 6, 2019

Relevant Sections:-
Section 8, 9, 61 and section 238A of the Insolvency and Bankruptcy Code, 2016

Judgement :-
Operational creditor supplied TMT bars to corporate debtor and raised invoices. Corporate debtor defaulted in paying outstanding amount. In response to demand notice under section 8, no reply was given by corporate debtor. Operational creditor thus, filed instant application to initiate CIRP against corporate debtor. Along with said application, operational creditor filed invoices and acknowledgements acknowledging outstanding amount to substantiate its claim. Since operational creditor had proved existence of debt and default, instant application to initiate CIRP was to be admitted.

Operational creditor supplied TMT bars to corporate debtor in year 2011 and raised invoices on various dates i.e. on 24.3.2014, 15.3.2016 and 26.3.2018 corporate debtor acknowledged debt but it failed to pay thus, instant application filed in 2019 was within limitation period of three years and thus same was to be admitted.

Ashapura Perfoclay Ltd. vs. Gajanan Oil (P) Ltd.
(NCLT - Mum.)
C.P. NO. 3504/I & BP/2018
MAY 6, 2019

Relevant Sections:-
Section 5(21) & 5(20) read with section 9 of the Insolvency and Bankruptcy Code, 2016
Judgement :-
Petitioner-operational creditor supplied 'bleaching Earth Gallion V2' to respondent-corporate debtor. In response to demand notice, respondent neither disputed debt nor made any payments towards such debt. Directors of petitioner passed resolution, authorising its representative to initial CIRP. Since debt claimed was against goods supplied by petitioner to respondent, debt was an operational debt as defined in section 5(21) and petitioner was an operational creditor under section 5(20). Contention of availability of alternative remedy of recovery by filing suit before civil Court was not acceptable. Instant CIRP petition was to be admitted against corporate debtor.

Anjani Gases vs. B.P. Projects (P.) Ltd.
(NCLT - Kolkata)
C.P. (IB) NO. 802/KB/2018
MAY 3, 2019

Relevant Sections:-
Section 5(6), read with section 9, of the Insolvency and Bankruptcy Code, 2016
Judgement :-
Operational creditor alleged that corporate debtor failed to pay due amount towards supply of oxygen cylinder, carbon dioxide cylinder etc. to operational creditor. In response to section 8 notice, corporate debtor alleged that there was nothing due from their side as it had already paid excess amount to operational creditor. It was also alleged that prior to issue of notice operational creditor had filed false FIR against corporate debtor which related to amount in question. Said FIR had been challenged by corporate debtor before High Court. Operational creditor had itself stated that he received reply from corporate debtor. therefore it was clear that corporate debtor had brought to notice

of operational creditor, pendency of dispute about amount of debt in question and there was pre-existing dispute so instant CIRP application was to be rejected.

Bonus Plastics (P.) Ltd. *vs.* Gopala Polyplast Ltd.
(NCLT - Ahd.)
C.P. (IB) NO. 08/9/NCLT/AHM/2019
MAY 2, 2019

Relevant Sections:-
Section 5(21), read with section 9, of the Insolvency and Bankruptcy Code, 2016 -
Judgement :-
Operational creditor was manufacturer and exporter of synthetic filament yarn, narrow woven fabric, polyester webbings etc. Operational creditor supplied polypropylene multifilament yarn to corporate debtor. Corporate debtor had only made part payment despite issuance of section 8 notice by operational creditor, corporate debtor had not made payment of outstanding amount nor raised any dispute. Subsequent to initiation of instant insolvency proceedings by operational creditor, corporate debtor approached operational creditor for settlement of outstanding amount In pursuance to same corporate debtor made payment of two instalments but failed to make payment of remaining amount. Since amount due to operational creditor from corporate debtor was in respect of supply of goods, amount claimed by operational creditor from corporate debtor would be operational debt. Execution of settlement agreement itself confirmed that operational debt was due and payable. Instant CIRP application filed by operational creditor being complete in all respect was to be admitted.

Asset Reconstruction Company (India) Ltd.
vs.
GPT Steel Industries Ltd.
(NCLT - Ahd.)
C.P. (IB) NO. 157/7/NCLT/AHM/2018
MAY 2, 2019

Relevant Sections:-
Section 7 of the Insolvency and Bankruptcy Code, 2016
Judgement :-
Bank assigned and transferred its financial debts outstanding from respondent corporate debtor to applicant asset reconstruction company. There being no payment of outstanding debt, applicant filed instant CIRP application under section 9 against corporate debtor. Corporate debtor raised objection that power of attorney executed by applicant in favour

of attorneyholder to proceed with insolvency proceedings against respondent was not supported by any Board resolution. Power of attorney in question was signed by two directors of applicant, CIRP petition filed by power of attorneyholder in instant CIRP application was proper. Since document filed by applicant proved that there was admitted debt and efforts made by corporate debtor to come out of financial obligations failed, instant CIRP application filed by applicant was to be admitted.

Bharti Airtel Ltd. *vs.* Vijaykumar V. Iyer
(NCLT - Mum.)
MA NO.219 & 230 OF 2019
CP NO. 298 & 302/IBC/NCLT/MB/MAH/2018
MAY 1, 2019

Relevant Sections:-

Section 9 of the Insolvency and Bankruptcy Code, 2016, read with regulation 7 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016

Judgement :-

Corporate debtor entered into Spectrum Trading Agreements 'STAs' with operational creditor to transfer right to use spectrum in favour of operational creditor. Since corporate debtor did not have financial capability, operational creditor furnished bank guarantees of 453.75 crores to Department of Telecommunication (DoT) on behalf of corporate debtor for consummation of transaction of spectrum trading. Said amount was withheld by operational creditor from total consideration of 4022.75 crores payable to corporate debtor under STA. Due to difference on certain points, there was a fall out of said STA and bank guarantee stood cancelled. Out of withheld amount of 453.73 crores, operational creditor retained 112 crores recoverable from corporate debtor in another transaction and balance amount was remitted to corporate debtor. It was a case of RP that stage of admission of claims had not reached, as stage ought to be Liquidation proceedings and operational creditor didn't have right for equitable set off at CIRP stage. It was noted that there is no specific bar or barrier in I&B Code that upto CIRP process only gross amount and claims are to be taken into account and netting is permissible only in case of start of liquidation. Also, operational creditor had lodged its claims in Form B which was a 'proof of claim by operational creditor except workmen and employees', under regulation 7 of IBBI (Insolvency Resolution Process of Corporate Persons) Regulations, 2016 wherein set-off of mutual credits or mutual debits were to be informed and accordingly to be claimed during CIRP. Submission of Form B by operational creditor had given an entitlement of netting off amount and thus, during CIRP operational creditor was legally entitled to set off 112 crores while making a payment of amount retained out of total consideration.

IMPORTANT CASE LAWS UNDER THE COMPANIES ACT, CIRCULARS & NOTIFICATIONS

CA. Manisha Maheshwari
Chartered Accountant, Jaipur

CASE LAWS

HIGH COURT OF KARNATAKA
Yashodhara Shroff *vs.* Union of India
WRIT PETITION NO. 52911 OF 2017 & OTHERS
JUNE 12, 2019

Subject:-

Disqualification of the directors

Relevant Sections:

Section 164 (2)(a) & section 167 (1) (a) of the Companies Act 2013

Decision:-

Where the disqualification of the petitioners is based by taking into consideration any financial year "prior to 01.04.2014 as well as subsequent thereto" while reckoning continuous period of three financial years under Section 164(2)(a) of the Act, irrespective of whether the petitioners are directors of public companies or private companies, such a disqualification being bad in law, the Writ Petitions are allowed and the impugned List is quashed to that extent only.

If the disqualification of the directors is based by taking into consideration three continuous financial years subsequent to 01.04.2014, irrespective of whether the petitioners are directors of public companies or private companies, they stand disqualified under the Act.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Aar Kay Chemicals (P.) Ltd. *vs.* A.P. Refinery (P.) Ltd.

Subject:-

Oppression and mismanagement

Relevant Sections:

Section 241, read with sections 242 and 59, of the Companies Act, 2013/ Section 397, read with sections 398 and 111, of the Companies Act, 1956.

Decision

Respondent group of companies consistently diluted shareholding of appellant in R-1 company from 57.14 per cent to 11.34 per cent by transferring 14.96 lakh shares of appellant 1 company in favour of their own company R-2 just within five days of appellant company acquiring 14.96 lakh shares in R-1 company and had also issued and allotted additional equity shares to their group companies. However, there was no resolution passed by Board of Directors authorizing transfer of equity shares to R-2 company and further, there was even no resolution of R-2 company deciding to purchase shares from appellant company. Further as regards to allotment of additional equity shares, reliance was placed by respondents on some 'letter of Authorization for Arbitration' signed by appellants where they agreed to exit R-1 and so it was not necessary to offer shares to them. However, there was nothing that such letter led to any follow up or resolution. Thus, picking up such letter and then saying that all appellants would not have interest and so need not be offered shares, could not be upheld. NCLT was justified in holding impugned transfer in favour of R-2 to be illegal and thus shares to be continued to stand in name of appellant company as if, they had never been transferred, and allotment of additional shares was to be held illegal.

CIRCULARS

GENERAL CIRCULAR NO. 7/2019 [F.NO. 01/22/2013-CL-V], DATED 27-6-2019

- The Ministry of Corporate Affairs has received representations from stakeholders expressing certain difficulties in filing e-form DIR-3 KYC in accordance with Rule 12A of the Companies (Appointment and Qualification of Directors) Rules, 2014. Requests have also been made for extension of period for filing such form.

- The matter has been examined and it is hereby informed that it is being proposed that every person who has already filed DIR-3 KYC will only be required to complete his/her KYC through a simple web-based verification service, with pre-filled data based on the records in the registry, for ease of verification by the person concerned. However, in case a person wishes to update his mobile no. or e-mail address, he would be required to file e-form

DIR-3 KYC, as this facility of updation is not being proposed in the web-based service. In case of updation in any other personal detail, e-form DIR-6 may be filed for updation of the same before completion of KYC through the web-based service.

- The amendment in the relevant rules including the amendment related to extension of time (allowing for adequate time) for completion of KYC through e-form DIR-3 KYC or the web-based service, as the case may be, is being notified shortly. Stakeholders are advised to take note of the same and file according to the revised notification.

NOTIFICATION

NOTIFICATION NO. G.S.R. 411(E) [F.NO. 1/13/2013-CL-V, PART-I, VOL.III], DATED 7-6-2019

COMPANIES (INCORPORATION) SIXTH AMENDMENT RULES, 2019 : Amendment in Rule 19, Form No. INC-11 & Form No. INC - 32 and substitution of Form No. INC-12.

NOTIFICATION NO. SO 2220(E) [F.NO.A-12023/04/2013-AD.IV], DATED 28-6-2019

SECTION 410 OF THE COMPANIES ACT, 2013 - NATIONAL COMPANY LAW TRIBUNAL AND APPELLATE TRIBUNAL - CONSTITUTION OF - NOTIFIED TECHNICAL MEMBER IN NCLAT

RULES

Companies (Incorporation) 6th Amendment Rules, 2019

- They shall come into force with effect from 15th August, 2019

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COMMERCIAL NEWS

CA Ribhav Ghiya, Jaipur

1. SC Cancels RERA Registration Of Amrapali; Asks NBCC To Take Over Noida Projects

In a major relief to thousands of homebuyers, the Supreme Court on Tuesday cancelled the registration of Amrapali group under Real Estate (Regulation and Development) Act 2016, and directed the National Building Construction Corporation take over its pending construction projects in Greater Noida and Noida. The bench of Justices Arun Mishra and U U Lalit found that Amrapali group had siphoned off homebuyers money with the connivance of Greater Noida and Noida authorities.

The Court has directed the Enforcement Directorate to initiate action under Prevention of Money Laundering Act and Foreign Exchange Management Act against Amrapali directors and authorities, and update the Court with progress of probe with periodic reports. The NBCC will complete the stalled Amrapali projects, with its commission fixed at 8 percentage. Homebuyers have to deposit remaining amount in escrow account.

The Court has protected the interests of homebuyers by saying that banks and financial institutions have to recover their dues from Amrapali assets other than project properties. Senior Advocate R Venkataramani has been appointed as court receiver in respect of the project properties. The Greater Noida Authority told the apex court Amrapali Group had five projects under its jurisdiction. Of this, four were vacant land and without any construction. Of the Rs 3,400 crore outstanding dues, the authority had received only Rs 363 crore from Amrapali Group. Homebuyers have filed several pleas seeking possession of around 42,000 flats booked in Amrapali Group projects.

The Court had reserved verdict on May 10 after Noida and Greater Noida authorities submitted that they lacked the expertise and resources to complete the projects. They had requested the court to hand over the project to a reputed builder under the supervision of a high-powered commitee constituted by the Court. Last March, the Court had allowed the Delhi Police to arrest Amrapali Group Chairman and Managing Director Anil Sharma and two directors, Shiv Priya and Ajay Kumar. Sharma, Priya and Kumar have been in the custody of Uttar Pradesh Police since last October and have been housed in a Noida hotel on an Apex Court directive. They have been accused of not cooperating with forensic auditors examining financial transactions by the company and its directors. The court had therefore directed them to be kept under police surveillance in

a hotel till investigation against the company was completed. (Story to be updated after receiving judgment)
**Reported by www.livelaw.com on 23rd July, 2019

2. DGGI Headquarters arrests one person for issuing Bogus Invoices without Supply of Goods

The Directorate General of GST Intelligence Hqrs. (DGGI Hqrs.) has arrested one person, namely, Shri Anupam Singla son of Shri Krishan Kumar Singla, permanent resident of Sirsa, Haryana, who had created about 90 fake firms for the purpose of issuing bogus invoices without the supply of goods thereon.

During the search conducted at the Delhi residence/offices of Sh. Anupam Singla, DGGI Hqrs. has recovered 110 debit/credit cards belonging to different persons; blank signed cheque books/ blank cheque books pertaining to 173 different bank accounts; blank bilty books belonging to various transporters; identity proofs of different persons; the number of mobile SIM cards; and other incriminating documents.

The firms opened by Sh. Anupam Singla issued invoices worth Rs. 7,672 Crore, including the circularly traded value, with a GST component of Rs. 660 Crore. The said firms have passed on fraudulent ITC to some of the well-established Traders and Cotton Yarn Spinners who have availed of the same to discharge their GST liability against their outward supplies, with an ulterior motive to defraud the Government Exchequer.

Thus, Sh. Anupam Singla has committed offences under the provisions of Sections 132(1)(b) and 132(1)(l) of the CGST Act, 2017, which are cognizable and non-bailable under Section 132(5) of the CGST Act, 2017 and are punishable under Section 132(1)(i) of the CGST Act, 2017. Consequently, Sh. Anupam Singla was arrested on 18.07.2019 under Section 69(1) of the CGST Act, 2017, following which he was produced before the CMM, New Delhi at Patiala House Courts.

The CMM has remanded Sh. Anupam Singla to judicial custody of 14 days on 19.07.2019. During the investigations conducted so far into the fake billing racket in the cotton industry, the DGGI Hqrs. has recovered an amount of Rs.32.60 Crore towards the GST evaded. Further investigations in the matter are in progress.
**Reported by www.taxscan.com on 19th July, 2019

3. 18% GST on flat owners on monthly RWA fee of over Rs 7,500

Flat owners will pay 18 per cent GST if their monthly maintenance fee to resident welfare associations (RWA) is more than Rs 7,500, said the Finance Ministry on Monday. RWAs have to collect GST on fees charged from members, if such payment is

more than Rs 7,500 per flat per month and the annual turnover of RWA by way of supply of services and goods exceeds Rs 20 lakh.

The Finance Ministry in a circular clarified an exemption from GST is available only if charges do not exceed Rs 7,500 per month per RWA member. "In case the charges exceed Rs 7,500 per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs 9,000 per month per member, GST @18 per cent shall be payable on the entire amount of Rs 9,000 and not on (Rs 9,000-Rs 7,500) = Rs 1,500," it said.

On how the tax liability would be calculated for a person who owns two or more flats in the housing society or residential complex, the Ministry said in such cases the ceiling of Rs 7500 per month per member shall be applied separately for each residential apartment owned by him.

"For example, if a person owns two residential apartments in a residential complex and pays Rs 15,000 per month as maintenance charges towards maintenance of each apartment to the RWA (Rs. 7500/- per month in respect of each residential apartment), the exemption from GST shall be available to each apartment," it said.

The Ministry further clarified that RWAs are entitled to take input tax credit (ITC) of Goods and Services Tax (GST) paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fillings etc.) and input services such as repair and maintenance services.

**Reported by www.buiness-standard.com on 22nd July, 2019

4. Uttarakhand likely to introduce 'Green Tax' for Tourists

The Uttarakhand State Government is likely to introduce compulsory 'Green Tax' for Tourists for visiting Uttarakhand soon.

Whether you are visiting the place for adventure sports, or going on a Char Dham Yatra, or even for those you are planning big fat wedding events with the Himalayas in the backdrop, everyone might end up adding the said compulsory tax.

The decision was made after Uttarakhand Environment Protection and Pollution Control Board (UEPPCB) highlighted the issue of increasing pollution in a meeting with Forest and Environment Minister Harak Singh Rawat. Uttarakhand is famous for Char Dham Yatra, which literally meaning 'journey to four centres'.

These four religious centres in Uttarakhand are represented by Badrinath (dedicated to Lord Vishnu), Kedarnath(dedicated to Lord Shiva), Gangotri (the holy origin of river Ganga) and Yamunotri (the holy origin of river Yamuna).

***Reported by www.taxscan.com on 9th July, 2019

5. CST & VAT / GST | HEADLINES | NEWS UPDATES | TOP STORIES CBIC enables Central Excise and Service Tax Duties payment collection from ICEGATE via NEFT/RTGS [Read Advisory]

The Central Board Indirect Taxes and Customs (CBIC) has enabled Central Excise and Service Tax Duties payment collection from ICEGATE via NEFT/RTGS. The CBIC has issued advisory and explained Steps for making and enabling payments through icegate portal. The payment module can be accessed from www.cbicpay.icegate.gov.in.

***Reported by www.taxscan.com on 3rd July, 2019

6. GST Council to decide on tax cut on EVs this week

The GST Council, chaired by FM Nirmala Sitharaman, will meet on July 25 and decide on lowering tax rates for electric vehicles, officials said. The 36th meeting of the Council, which will happen through video conferencing, is also likely to decide the valuation of goods and services in solar power generating systems and wind turbine projects for the purposes of levying GST. The Council, which has state finance ministers as members, in its meeting last month, had referred the issue relating to Goods and Services Tax (GST) concessions on electric vehicle (EV), electric chargers and hiring of electric vehicles, to an officers committee.

To push domestic manufacturing of e-vehicles, the Centre proposed to the Council to slash GST rates to 5 per cent from 12 per cent. GST rate for petrol and diesel cars and hybrid vehicles is already at the highest bracket of 28 per cent plus cess.

The Council will also consider tax structure for solar power projects. The Delhi High Court had in May asked the GST council to take a relook at the taxation structure following industry petition.

The government had earlier this year said that for the purpose of taxing solar power projects, 70 per cent of contract value would be treated as goods -- taxable at 5 per cent, and balance 30 per cent as services -- taxable at 18 per cent.

The solar industry has been pitching for a different ratio for splitting goods and services for levying GST.

Further, the Council may also look at taxation of lotteries. In the previous meeting, the Council had decided to seek legal opinion of the Attorney General for levying GST.

Currently, a state-organised lottery attracts 12 per cent GST, while a state-authorised lottery attracts 28 per cent tax.

***Reported by www.economictimes.indiatimes.com on 22nd July, 2019

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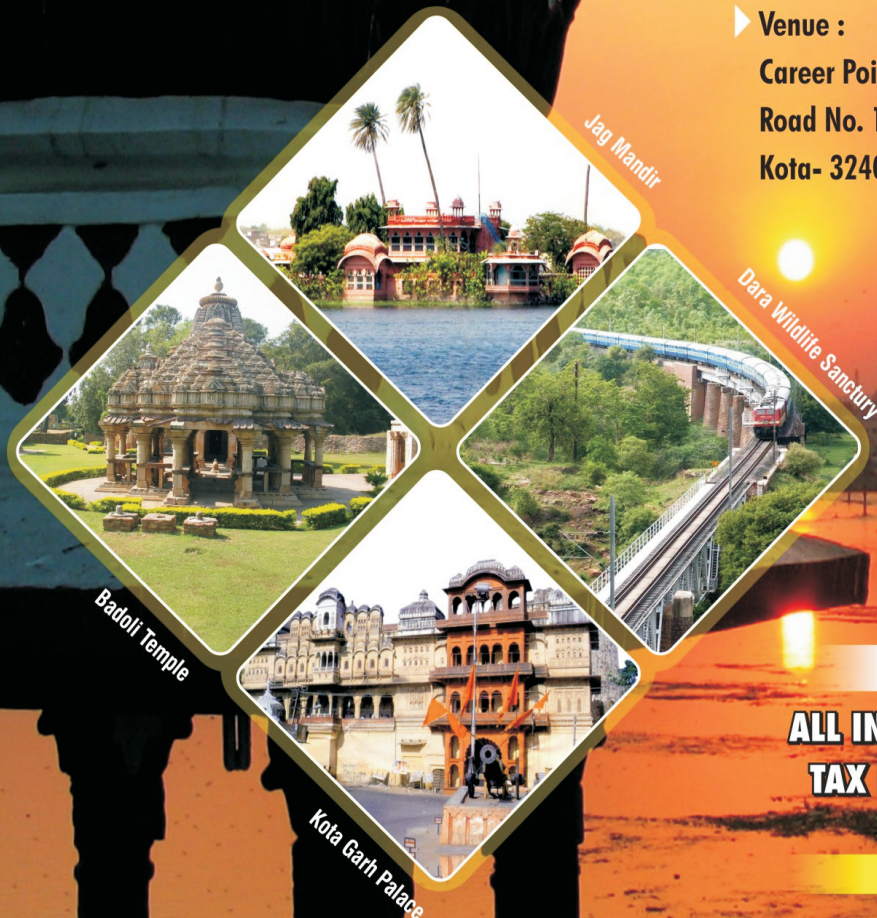
NATIONAL TAX CONFERENCE

2019

Date :
12th-13th October, 2019

Venue :
Career Point Tower Auditorium,
Road No. 1, Indraprastha Industrial Area,
Kota- 324005 (Raj)



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