



# ICSI - GST

A Newsletter from The Institute of Company Secretaries of India



Monthly Newsletter

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## GOODS AND SERVICES TAX

**A Progressive Reform towards Economic Growth**



**THE INSTITUTE OF  
Company Secretaries of India**

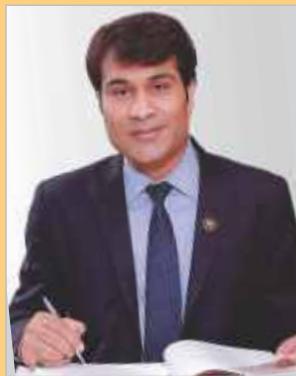
**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
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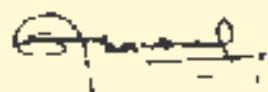
# MESSAGE FROM PRESIDENT

**I**n the vision of leading the Nation towards comprehensive growth and development in all spheres of life including encouragement of robust economy, the Government of India is heading for cutting edge transformation under vision New India by year 2022. In view to make us the most acquiescent and evidently growing super power in the coming future, India is witnessing a plethora of reforms in the contemporary governance. Inter-alia, the roll out of Goods and Services Tax is momentously perceived as one of the big ticket indirect tax reforms since independence, building India as a progressive and inclusive economy worldwide.

Under the watchword of “One Tax and One Market”, GST regime ensures the real spirit of cooperative federalism in the country. GST recompenses the country under various facets including the creation of unified common national market, making India a manufacturing hub, boosting investment and exports, broadening the tax base, reducing the multiplicity of taxes, increasing compliance and generating more employment by increased economic activities in the country. This illustrative list of the awards subsumed under GST is indeed directing us towards the wide-ranging development of the Nation.

Presently, with the successful enactment of this crucial tax reform, government is looking forward for the precisely spirited application of GST throughout the country, so that the directed value for this unified tax reform could be reached to the outermost areas of the country casing each and every single stakeholders of the tax structure of the Nation.

As Governance Professionals, Company Secretaries are apt to ensure the qualified and proficient application of each and every provision of the reform. Therefore, to advance the professional excellence of practitioners ensuring optimum realization of opportunities under GST and in our committed support towards the effective implementation of GST, the Institute come up with GST Newsletter to apprise the members, professionals, students and populace as a ready reckoner of GST and latest development taking place in the GST regime with the growing time. The Institute is happy to release the latest in the series, the December edition of the ICSI GST Newsletter.



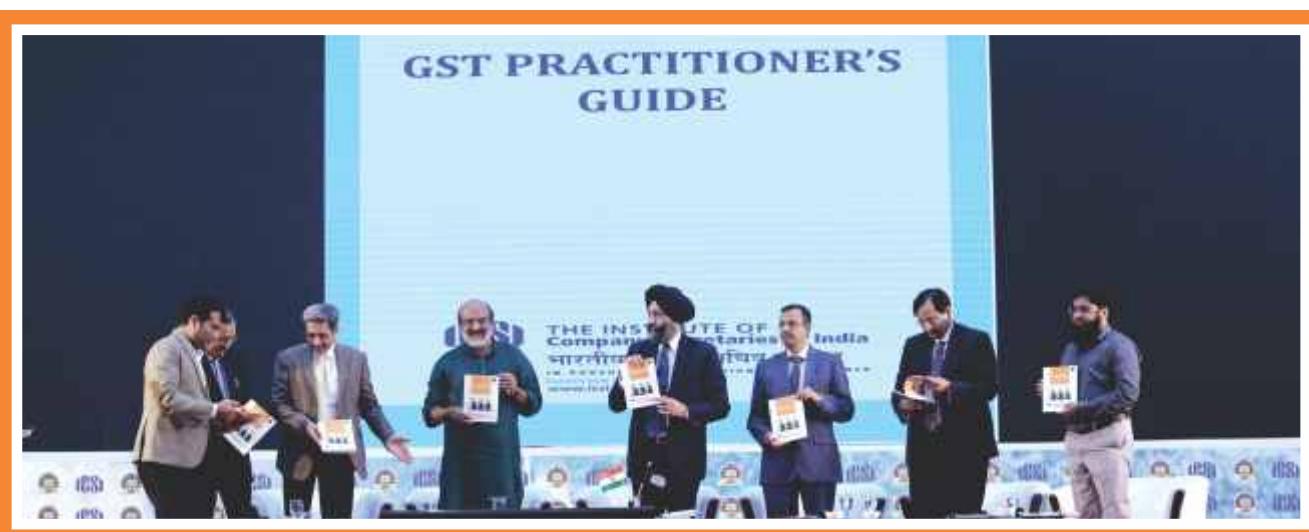
CS (Dr.) Shyam Agrawal  
President, ICSI

# GLIMPSES : 45<sup>TH</sup> NATIONAL CONVENTION



## *Interactive session on Goods and Services Tax*

Left to right :Mr. Jai Kumar Mittal, CEO, JK Mittal & Associates , Dr. T.M. Thomas Isaac, Minister for Finance, Government of Kerala, Mr. Gurinder Singh, Head, L & T Power, Vadodara, Mr. B. Sriram, Partner, Ernst & Young, Mr. Ambarish Datta, Managing Director & CEO, BSE Institute Ltd. and Founder Director, BFSI Sector Skill Council of India, Mr. Abbas Mohammad Surve, Tally Solutions Private Limited



Release of GST Practitioner's Guide at the gracious hands of Dr. T.M. Thomas Isaac, Minister for Finance, Government of Kerala in the presence of CS(Dr.) Shyam Agrawal, President, ICSI



*Release of GST Educational Series at 45th National Convention at Trivandrum in presence of CS (Dr.) Shyam Agrawal, President, ICSI and CS Nesar Ahmad, Past President, ICSI*



CS (Dr.) Shyam Agrawal, President, ICSI presenting Shaheed ki Beti Certificate to Dr. T.M. Thomas Isaac, Minister for Finance, Government of Kerala

## 1. GST filing may be tweaked to simplify it: GSTN Chairman

- The government is considering a proposal to tweak the way people file their GST returns
- The move, to customise the form as per the varying requirements of the taxpayer, is expected to significantly simplify the filing process
- The newly-appointed chairman of the GST Network (GSTN), said instead of having a standard form for everyone, users can be asked a few questions upon signing in and then the best suited form can be displayed as per their transactions and nature of business

## 2. GST Network launches new facility for exporters to claim refunds

- GST Network introduced a utility Table 6A in Form GSTR1 for exporters to claim refunds
- An exporter can claim refund of Integrated GST tax paid at the time of export by filling the details of shipping bill and tax paid GST invoice in his Form GSTR1 in the relevant month

## 3. CAIT Secretary General nominated for GST Panel

- Traders body CAIT's Secretary General has been nominated to be a part of the government's GST panel
- The panel which has been constituted with approval of Union Finance Minister includes other members like Research Director of Centre for Legal Policy, CEO of Federation of Indian Exporters Organisation and Laghu Udyog Bharti President

## 4. Panel begins review of GST laws to remove glitches

- A committee of government officials has started a review of the GST laws, signalling there is no reluctance to make the regime smoother for businesses, especially for the smaller players
- The committee headed by GST Chief Commissioner for Karnataka, is looking at the entire gamut of issues

## 5. Individuals to help out with GST returns at seva kendras

- The government plans to tap the Central Board of Excise and Customs' vast network of 4,500 GST seva kendras to help small businesses and individuals, who have to comply with the new regulations and file returns
- In the process, it will also deploy thousands of individuals who are undergoing skill training, to become return filers and help others
- The return filers will be on the lines of tax return preparers, who help individuals file I-T returns

6. **Only 50 items left in highest GST slab, list slashed three-quarters to ease tax burden**
  - The highest Goods and Services Tax bracket was slashed three-quarters with only 50 items being retained in the 28 per cent slab
  - The GST Council, at its 23rd meeting, moved 178 items out from the list of 228
  - It also decided to reduce the tax rate for all restaurants, barring those in luxury hotels, to 5 per cent, without any input tax credit
7. **Revised GST rates: Over 200 goods to be cheaper**
  - A number of goods including daily-use products like toiletries and furniture become cheaper with the revised GST rates for over 200 items
  - The Council also recommended that the eligibility threshold for the composition scheme be raised to Rs 1.5 crore from Rs 1 crore, and manufacturers, restaurants and traders under the scheme be levied a uniform 1 per cent tax from the earlier differential tax slabs
8. **Finance Minister signals further GST rate cuts**
  - Finance minister signalled further cuts in GST rates and appealed to businesses to pass on the benefit of the recent reductions to consumers
  - The minister, however, qualified that the rate cuts will be presaged on revenue collections
9. **GST: changes in the returns filing process**
  - Up to November 15, 2017 when the decisions took effect, the GST system required businesses to submit at least three forms to file their returns
  - The GSTR-1 dealt with the invoice-wise details of supply, GSTR-2 dealt with the receipts of goods, and GSTR-3 was an overall summary derived from the two previous forms
  - Now, the GST Council has decided that, in order to ease the compliance burden on businesses, companies would be allowed to only file the GSTR-1 form, up to March 31, 2018
  - The Council has set up a committee to look into how to make the GSTR-2 form easier, following which it will be brought back into the system
  - The Council also decided to extend the usage of the summary GSTR-3B form, meant to make life easier for those unfamiliar with the filing process, till March 31, 2018 from the earlier December 31, 2017 deadline
10. **No GST on advance taken by FMCG companies**
  - In a big relief to all FMCG companies and others that take advance from dealers before they supply goods, no GST would be levied on such advance
  - The department of revenue has issued a notification allowing the relaxation after the same was approved in the GST Council meeting in Guwahati
  - The notification exempts all taxpayers from payment of tax on advances received in case of supply of goods
  - However, service providers would continue to be required to pay GST on advances
11. **Exporters can manually file GST refund claims: CBEC**
  - The government has allowed exporters to manually file before tax officers claims

- for GST refunds as it looks to fast-track clearance of dues
- Now exporters of services who paid IGST and those making zero rated supplies to SEZ units as well as those merchant exporters who want to claim refunds for input credit can approach their jurisdictional commissioner with their refund form

## **12. Cabinet nod for GST anti-profiteering body**

- Union Cabinet cleared the proposal to set up the National Anti-profiteering Authority, which will take steps to ensure that consumers get the benefit of reduced prices under the new indirect tax regime
- According to a government release, the Anti-profiteering Authority will be headed by a senior officer of the level of Secretary to the Government of India with four Technical Members to be deputed from the Centre and States

## **13. Highest GST filing in October, Punjab tops the list in compliance**

- Over 4.3 million businesses have filed first set of returns for October, notching up the highest monthly filing by the due date since the new tax rolled out on July 1, 2017
- That's around 56% of the registered taxpayers
- The last date for filing GSTR-3B, the initial sales returns, was November 20 for the previous month
- Around 56% of the registered taxpayers had filed their GSTR-3B returns for October by November 20, 2017
- Punjab saw over 73% taxpayers filing GSTR-3B returns, the highest among all the states

## **14. Badri Narain Sharma named GST anti-profiteering body Chairman**

- Badri Narain Sharma, a Rajasthan cadre IAS officer of 1985 batch, has been appointed the first chairman of the National Anti-profiteering Authority (NAA)
- NAA will have a two-year tenure that can be extended by the GST Council
- Chairman will be assisted by four senior officials of the rank of joint secretary and above who have been appointed as technical members in the authority

## **15. October GST collections down to Rs 83,346 crore as compared to Rs 92,000 crore in September**

- A finance ministry statement said the total collection on GST for October slipped by almost 10 per cent to Rs 83,346 crore as compared to Rs 92,000 crore in the previous month
- In a major rejig of GST rates, Finance Minister on November 10 announced a 10 per cent cut in tax on over 200 goods ranging from chocolates to cosmetics to artificial fur coats and wrist watches
- According to the finance ministry said Rs 10,806 crore was released to states from the revenue collected from levy of cess on luxury and sin goods, in July and August
- A compensation of Rs 13,695 crore for September and October is being released.

## **GST LAWS FROM JULY TO NOVEMBER, 2017- OVERVIEW OF AMENDMENTS AND SCRUTINY OF IMPORTANT ISSUES\***

### **1.1 INTRODUCTION:**

The necessary steps are being taken for the effective implementation of GST by the GST Council from time to time on the basis of representations received from various Institutions, Associations and Trade bodies related to difficulties faced by the Registered Taxpayers and consumers.

GST has been a hot topic of discussion everywhere from last one year, specially Electronic News channels and printed Newspapers. Suddenly, every common man became expert of GST Laws and without knowing much about GST, they always posted their views/comments on social media and I love to read some of the comments to know what is going on and level of understanding of common man as far as GST Laws are concerned. Those who can rightly interpret the GST Laws like Tax experts and professionals generally avoid social media. Being a professional, we have freedom to express the truth of GST Laws because we read, somehow understand GST Laws also! And we are common man, service provider and consumer too. Therefore, I thought to write this Article that what happened in the previous five months after the appointed date of GST implementation.

From July to November, 2017, GST Council held five meetings (19<sup>th</sup> to 23<sup>rd</sup> meeting) and GST Council took a lot of decisions related to GST Returns and particularly GST Rates on various goods and services. Some of the decisions taken by the GST Council require amending GST Laws and soon the Central Government may move legislative amendments to accept the recommendations of GST Council. In this Article, focus is on practical difficulties faced by the professionals and business communities on some of the important decisions taken by GST Council.

### **1.2 OVERVIEW OF DECISIONS TAKEN BY GST COUNCIL FROM 19<sup>TH</sup> MEETING TO 23<sup>RD</sup> MEETING:**

#### **1.2.1 19<sup>th</sup> Meeting:**

19<sup>TH</sup> GST Council meeting was held on 17<sup>th</sup> of July, 2017, which was first meeting after the implementation of GST on 1<sup>st</sup> July, 2017. The following decisions taken on 19<sup>th</sup> GST Council meeting:

- Changes in rate of compensation cess on cigarettes.

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*\*Contributed by Mr. P.K.SINGH, CS, CA, Author, and Member ICSI GST Core Advisory Group*

- Suggestions of various members of GST Council and Chairperson observed that the suggestions on members should be given in writing in two to three days and which could be considered by the Fitment Committee.

### **1.2.2 20<sup>th</sup> Meeting:**

20<sup>th</sup> meeting of GST Council was held on 5<sup>th</sup> August, 2017 and Council had decided:

- Approval of decisions of the GST Implementation Committee for post-facto approval.
- Approval of e-Way Bill Rules.
- Recommendation of Fitment Committee (Goods) and Fitment Committee (Services).
- Job work of all kinds of textiles will be taxed at 5%. Earlier some types of job work were taxed at 18%.
- Rates on tractor parts brought down to 18%.
- Government given work contracts like roads, bridges, canals will now be taxed at 12% with credits which was earlier 18%.
- Proposals regarding changes in Central Sales Tax Rules.
- Amendments to CGST and SGST Rules.
- Constitution of Standing Committee of Anti-Profiteering. Anti-profiteering mechanism will get kick started by appointing state wise committees.
- Development of e-Way Bill system by NIC.
- GST on profit petroleum and clarification of cost petroleum.
- Payment process for TDS deducted under GST.
- Amendment of the procedure and conduct of business regulation of GST Council.
- Review of ceiling rate of the Compensation Cess on Motor Vehicles.
- Special provisions in GST in case of supplies to/from Nepal and Bhutan.
- Modification in Form REG 13 to remove mandatory requirement of PAN for Embassies/ Consulates and Other UN Organizations.
- Taxation of rectified Spirit/Extra Neutral Alcohol under GST.
- Exemption from IGST on Temporary import of Goods.

### **1.2.3 21<sup>st</sup> Meeting:**

21<sup>st</sup> meeting of GST Council was held on 9<sup>th</sup> September, 2017 and Council had decided:

- Due date of GSTRs 1,2,3,3B,4, and 6 announced.
- Last date for filing TRAN 1 extended upto 31st Oct 2017. TRAN 1 filed earlier can be revised.

- Window for Composition option to be re-opened.
- Handicraft artisans with annual earnings of upto Rs 20 lakh will not require GST registration.
- Khadi sold through KVIC stores exempted.
- The Council decided to form a 3-member inter-ministerial team to look at the functioning of GSTN to address issues faced by users while uploading GST returns.
- Businesses selling branded food are deregistering their brands to evade tax as unbranded food is not taxed. The fitment committee proposed to the GST Council to consider May 15, 2017, as the cut-off date for considering a brand as registered for the purpose of levy of GST, irrespective of whether or not the brand is subsequently deregistered.
  - Rate for branded goods reduced to 5% from 12%.
  - Tax rates reviewed and reduced for 40 items.
  - GST on Works Contract for Government reduced to 12%
  - No change in Cess on Cars with engines less than 1200cc petrol or 1500cc diesel. Cess on Mid segment cars increased by 2%, Cess on Large cars increased by 5%, Cess on SUV increased by 7%. No change for Hybrid cars.
  - A committee of Ministers has been formed to look into technical issues being faced by the GST-Network, the IT backbone and portal for registration and tax returns under the GST regime.

#### **1.2.4 22<sup>nd</sup> Meeting:**

22<sup>nd</sup> meeting of GST Council was held on 6<sup>th</sup> October, 2017 and Council had decided:

- GST rates on Job Work services were rationalized and changes on GST rates on 27 goods.
- No GST on advance received in case of Supply of Goods.
- If a dealer who makes supplies of goods and services referred to in clause (b) of paragraph 6 of Schedule II of CGST Act and / or also receives interest income or makes supply of any exempt service, (s)he will not be ineligible for the Composition Scheme under Section 10 provided all other conditions are met. Further, in computing his aggregate turnover in order to determine his eligibility for composition scheme, interest income and value of supply of any exempt services shall not be taken into account.
- The services provided by a GTA to an unregistered person (under GST law) including unregistered casual taxable person other than the recipients liable to pay tax on GTA services under reverse charge shall be exempted from GST.
- Leasing of vehicles purchased and leased prior to 1.7.2017, shall be taxed at 65% of the applicable GST + Cess rate. This reduced rate would be applicable for a period of 3 years with effect from 1st July 2017.
- Sale/supply of vehicles by a registered person, who had procured the vehicle prior to 1st

July 2017 and has not availed input tax credit of central excise duty, VAT or any other taxes paid on such vehicles, would be taxed at 65% of the applicable GST + Cess rate. This reduced rate would be applicable for a period of 3 years with effect from 1st July 2017.

- Sale by way of auction etc. of used vehicles, seized and confiscated goods, scrap etc. by Central Government, State Government, Union Territory or a local authority, to any person, to be subjected to GST under reverse charge under section 9 (3) of the CGST Act.
- Transport of passengers by motor cab/ renting of motor cab:-
  - (i) GST of 5% without ITC and 12% with full ITC available to transport of passengers by motor cab/ renting of motor cab shall be extended to any motor vehicle;
  - (ii) ITC of input services shall be allowed in the same line of business at GST rate of 5%.
- Works contract services involving predominantly earth works (that is, constituting more than 75% of the value of the works contract) supplied to Central Government, State Governments, Local Authority, Governmental Authority or Government Entity shall be taxed at 5%.
- To expand the existing definition of *Governmental Authority* so as to include any authority set up to carry out any functions entrusted to a Panchayat under Article 243G of the Constitution.
- Supply of service or goods by a Government Entity to Central Government, State Government, Union Territory, Local Authority or any person specified by them against consideration received from them in the form of grants, shall be exempted.
- GST shall be levied @ 12% on works contract services in respect of offshore works contract relating to oil and gas exploration and production (E&P) in the offshore area beyond 12 nautical miles.
- GST shall be levied @ 12% with ITC or 5% without ITC for transportation of natural gas through pipeline.
- Exemption to annuity paid by NHAI (and State authorities or State owned development corporations for construction of roads) to concessionaires for construction of public roads.
- Upfront amount (called as premium, salami, cost, price, development charges or by any other name) payable in respect of service, by way of granting of long term lease of thirty years, or more) of industrial plots or plots for development of infrastructure for financial business, provided by the State Government Industrial Development Corporations/ Undertakings or any other entity having 50% or more ownership of Central Government, State Government, Union Territory to (a) industrial units or (b) developers in any industrial or financial business area, may be exempted from GST .
- The services provided by Overseeing Committee members to RBI shall be taxed under the reverse charge mechanism under section 9(3) of the CGST Act, 2017.

- The reverse charge mechanism under sub-section (4) of section 9 of the CGST Act, 2017 and under sub-section (4) of section 5 of the IGST Act, 2017 shall be **suspended till 31.03.2018** and will be reviewed by a committee of experts.
- Some other technical changes/ amendments shall be made in notifications issued under CGST, IGST, UTGST and SGST Acts.

### 1.2.5 23rd Meeting:

23rd meeting of GST Council was held on 10th November, 2017 and Council had decided:

- Changes in GST/IGST rate and clarifications in respect of GST rate on certain goods and changes recommended in Composition Scheme and its eligibility upto Rs.1.5 Cr.
- All stand-alone restaurants irrespective of air conditioned or otherwise, will attract 5% GST without ITC. Food parcels (or takeaways) will also attract 5% GST without ITC.
- Restaurants in hotel premises having room tariff of less than Rs.7500 per unit per day will attract GST of 5% without ITC.
- Restaurants in hotel premises having room tariff of Rs.7500 and above per unit per day (even for a single room) will attract GST of 18% with full ITC.
- Outdoor catering will continue to be at 18% with full ITC.
- GST on services by way of admission to "protected monuments" will be exempted.
- The rate of GST on job work services in relation to manufacture of those handicraft goods in respect of which the casual taxable person has been exempted from obtaining registration, shall be reduced to 5% with full ITC.
- The existing exemption entries with respect to services provided by Fair Price Shops to Central Government, State Governments or Union territories by way of sale of food grains, kerosene, sugar, edible oil, etc. under Public Distribution System (PDS) against consideration in the form of commission or margin, is being rationalized so as to remove ambiguity regarding list of items and the category of recipients to whom the exemption is available.
- In order to maintain consistency, entry at item (vi) of Sr. No.3 of notification No. 11/2017-CT(R) will be aligned with the entries at items (ii), (iii), (iv) and (v) of SI.No.3. [The word "services" in entry (vi) will be replaced with "Composite supply of Works contract as defined in clause 119 of Section 2 of CGST Act, 2017"].
- It is proposed to place- (i) permanent transfer of Intellectual Property other than Information Technology software in the goods rate of 12%; and (ii) permanent transfer of Intellectual Property in respect of Information Technology software in the goods rate list of 18%.
- It is proposed to clarify that credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter-State supply of such aircraft engines, parts & accessories by way of inter-state stock transfers between distinct persons as

specified in section 25 of the CGST Act, notwithstanding that credit of input tax charged on consumption of such goods is not allowed for supply of service of transport of passengers by air in economy class at GST rate of 5%.

- Processed products such as tea (i.e. black tea, white tea etc.), processed coffee beans or powder, pulses (de-husked or split), jaggery, processed spices, processed dry fruits, processed cashew nuts etc. fall outside the definition of agricultural produce given in notification No. 11/2017-CT(R) and 12/2017-CT(R) and therefore the exemption from GST is not available to their loading, packing, warehousing etc.
- A suitable clarification is being issued that (i) services provided to the Central Government, State Government, Union territory under any insurance scheme for which total premium is paid by the Central Government, State Government, Union territory are exempt from GST under Sl. No. 40 of notification No. 12/2017-Central Tax (Rate); (ii) services provided by State Government by way of general insurance (managed by government) to employees of the State government/ Police personnel, employees of Electricity Department or students are exempt vide entry 6 of notification No. 12/2017-CT(R) which exempts Services by Central Government, State Government, Union territory or local authority to individuals.
- These changes will come into force with effect from 14/15th November, 2017, to be effective from 00:00 hrs on 15th November, 2017.

### **1.3 SCRUTINY OF IMPORTANT ISSUES:**

The GST Council took several decisions after 1<sup>st</sup> July in its five meeting held after the implementation of GST as per the representations made by various Institutions, Associations, State Governments and Trade Bodies etc.. Some of important issues arise after reading the above overview is discussed hereunder:

#### **1.3.1 Suspension of Reverse Changes Mechanism (RCM) under Section 9 (4) of CGST Act, 5(4) of IGST Act and 7(4) of the UTGST Act:**

- The GST Council decided and the CBEC has notified suspension of RCM till 31 March, 2018 under Section 9(4) of the CGST Act, 2017/ Section 7(4) of the UTGST Act, 2017/ Section 5(4) of the IGST Act, 2017. Central Government has to amend the provisions of respective Sections if suspension to be extended further.
- The said Notifications have been the effective from date of notifications so date of notifications was on 13<sup>th</sup> October, 2017. It means that the said provisions has been suspended with effect from 13<sup>th</sup> October, 2017 and prior to date of notifications i.e. 01.07.2017 to 12.10.2017, the transactions of Registered Suppliers from unregistered as per provisions of the above mentioned sections are taxable. Therefore, GSTR 3B, and GSTR 2 for the month of July to October, 2017 comes under purview of above mentioned sections and November, 2017 to March, 2018 the sections mentioned above are suspended and so they

are not required to be complied with by the suppliers.

- It is to be noted that provisions of Section 9(3) of CGST Act, 5(3) of IGST Act and 7(3) of UTGST Act and 9(3) of respective SGST Act is applicable to all the suppliers and all the goods or services notified under the said section, the provisions of RCM is applicable. Some of the suppliers whose turnover is Rs.1.5 Crores and below, believe that RCM is suspended and they are not complying with the provisions of sub section 3 of Section 9, 5 of IGST Act and 7 of UTGST Act. In this regard, the Government clarified that suspension of RCM for convenience of large taxpayers and survival of unregistered taxpayers, till 31 March, 2018, will provide an opportunity to such taxpayers with more time to be familiar with the compliance requirements. Meanwhile the Government will also be able to streamline the relevant procedures. In fact large/ registered businesses were reluctant to make compliance/ pay tax on behalf of small/ unregistered businesses and they were avoiding doing business with them. This will benefit small businesses and substantially reduce compliance costs.
- It may also be noted in this regard that there is no change on reverse charge provisions under Section 9(3) of CGST/ SGST Acts, Section 7(3) of UTGST Act and Section 5(3) of the IGST Act, relating to GTA, Legal Services provided by an Advocate, etc. and for that reason it's just a partial suspension of RCM only. This is responsibility of the professionals to advise properly to their clients and list the transactions where RCM is applicable.
- It is likely that provisions related to 9(4) of CGST Act, 5(4) of IGST Act and 7(4) of UTGST Act will be amended by the Central Government either in the budget session of Parliament or thereafter. Accordingly the respective Section of State GST will also be amended by the Respective State Government.

### **1.3.2Changes recommended in Composition Scheme:**

- The changes recommended in the Composition Scheme also require to amend the respective Section and provisions in GST Laws.
- Important changes by GST Council regarding Composition Scheme are:
  - (i) Tax rate @ 1% will be charged under composition scheme for manufacturers and traders on Taxable Turnover excluding exempt supply of goods.
  - (ii) Composition dealer will be allowed to make supply of services up to Rs. 5 Lakhs per annum within overall limit of composition dealer.
  - (iii) Eligibility for composition dealer will be increased to Rs.1.5 Cr. per annum. This change recommended by the GST Council will be implemented only after the necessary amendment of CGST Act and SGST Act.
- Section 10 of Central Goods and Services Tax Act, 2017 (CGST Act), states that a person may opt to pay tax at such prescribed rate if his aggregated turnover in the preceding financial year does not exceed fifty lakh rupees. Further, as per First Proviso to Section 10, the Central Government has been granted the powers to notify such higher amount, not exceeding one

crore rupees as the ceiling limit for person to opt for composition scheme.

- Further, the Central government vides Notification No. 8/2017 – Central Tax dated 27<sup>th</sup> June, 2017 notified that an eligible registered person, whose aggregate turnover in the preceding financial year did not exceed seventy five lakh rupees may opt to pay, tax under the composition levy.
- In the 22<sup>nd</sup> GST Council meeting held on 6<sup>th</sup> October, 2017, the Central Government has revised the maximum limit for purpose of composition levy to Rs.1.00 Cr. and further in its 23<sup>rd</sup> GST Council meeting, the eligibility for composition dealer was increased to Rs.1.50 Cr. per annum. This change recommended by the GST Council will be implemented only after the necessary amendment of CGST Act and SGST Act.
- The major issue is how to determine these eligibility criteria of Rs.1.50 Cr. In other words, how to determine Annual Turnover. The Annual Turnover is not defined in GST Laws. Only the definition of Aggregate Turnover is given and the same is defined in Section 2(6) of the CGST Act,2017 as “ Aggregate Turnover” 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.
- The Government should define the “Annual Aggregate Turnover” or “Annual Turnover”.
- Another issue regarding composition scheme to be noted is that the composition scheme has been extended to persons who are otherwise eligible for availing the composition scheme and are providing any exempt service (such as extending deposits to banks for which interest is being received), while Section 10(2)(a) of the CGST Act restricted any person who is engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II from opting for the composition levy. To deal with this situation, Government has to amend the GST Law.
- The Government needs to clarify all the issues and also about the inclusion and exclusion from the Annual Aggregate Turnover or Aggregate Turnover for the purpose of computation of eligibility of composition supplier. Whether Exempt Services and Exempt Goods should be excluded or included while determining turnover should be clearly mentioned.

### **1.3.3 Changes in chargeability of tax in case of Advance Receipt:**

- Section 12 of CGST Act, 2017 deals with Time of Supply of Goods and Section 13 of CGST Act, 2017 deals with Time of Supply of Services.
- As per Section 12 of the GST Act, The time of supply of goods shall be the earlier of the following dates, namely:-
  - (a) the date of issue of invoice by the supplier or the last date on which he is required,

under sub-section (1) of section 31, to issue the invoice with respect to the supply; or (b) the date on which the supplier receives the payment with respect to the supply.

Therefore, it is flawless that GST on Supply of Goods is payable at time of receipt of advance, if the amount is received before issue of invoice.

- The Central Government issued Notification No. 40/2017 - Central Tax, dated 13/10/2017, giving relief to small businesses. As per this Notification, Registered Persons (other than composition suppliers) whose turnover during last Financial Year was less than 1.5 Cr, are not required to pay GST on outward supply of goods, at time of receipt of advance.
- Further for relief of other suppliers the Central Government issued Notification No. 66/2017 - Central Tax, dated 15/11/2017, and **extended the benefit to all taxable persons (other than Composition suppliers)**. Therefore, now all taxable persons (except composition suppliers) are required to pay GST on outward supply of Goods at time of issue of invoice or the last date on which they are required to issue the Invoice. The concept of advance received of payment is no longer required to follow. This leads to amend the respective section mentioned above.
- Registered person whose turnover did not exceed Rs.1.5 Cr. should remember that tax will be levied on the advance receipt of payment from 01.07.2017 to 12.10.2017 and if amount is received as advance from 13.10.2017, it is not liable to GST on the basis of advance receipt, it will be taxable only when the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply.
- In case of persons having turnover of more than Rs.1.50 Cr. during last Financial Year, GST is payable on advance received on outward supply of Goods, if advance is received during the period 01/07/2017 to 14/11/2017. GST is not payable on advance if it is received on or after 15/11/2017.
- It is to be noted that this relief is not available on outward supply of services. GST is payable on advance received in case of outward supply of services.
- It is to be further noted that it is also not available if tax is payable on reverse charge. In case of reverse charge, GST will be payable at time of payment, if payment is made before receipt of goods.

#### **1.3.4 Changes in GST Rates and its Applicability of Old Rate and New Rate:**

- There is ambiguity to applicability of GST Rates changed several times by GST Council. The confusion is about which rate applies, the old rate or new rate from the date of change of rate. Section 14 overrules on Section 12 and 13. To pass advance of change of provisions of non taxability in case of advance received of payment, the provisions of this section to also be amended.
- Section 14 of CGST Act explains the treatment of Change in rate of tax in respect of supply of goods or services. The provisions of Section 14 state:

Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:

- (a) in case the goods or services or both have been supplied before the change in rate of tax, --
  - (i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
  - (ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
  - (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the goods or services or both have been supplied after the change in rate of tax,
  - (i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
  - (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
  - (iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice: Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

**Explanation:-** For the purposes of this section "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date, on which the payment is credited to his bank account, whichever is earlier.

While considering the above provisions and subject to **exception of change of provisions of advance receipt (as discussed earlier in this article)**, time of supply has to be determined in the following manner:

#### 1.3.4.1 Supply is completed before the change in rate of tax:

Invoice issued before the date of change in tax rate	Payment received before the date of change in tax rate	Time of supply	Applicable rate of tax
No	No	Earliest of the date of invoice or payment	New rate of tax
Yes	No	Date of issue of invoice	Old tax rate
No	Yes	Date of receipt of payment	Old tax rate

#### 1.3.4.2 Supply is completed after the change in rate of tax:

Invoice issued before the date of change in tax rate	Payment received before the date of change in tax rate	Time of supply	Applicable rate of tax
Yes	Yes	Earliest of the date of invoice or payment	Old rate of tax
Yes	No	Date of receipt of payment	New rate of tax
No	Yes	Date of issue of invoice	New rate of tax

#### 1.3.5 Concessional rate of 0.1% on Supplies to Merchant Exporter:

The Central Government vide Notification No. 40/2017-Central Tax (Rate) dated October 23, 2017 has provided for a concessional rate of 0.1% on supply of taxable goods to merchant exporters. However, the concessional rate would be applicable on fulfillment of specified conditions therein like:

- ✓ Supplier shall supply the goods to the registered recipient on a tax invoice;
- ✓ Recipient shall export the said goods within a period of 90 days from the date of issue of tax invoice by the supplier; Recipient shall indicate the GSTIN of the supplier and the tax invoice number issued by the supplier in respect of the said goods in the shipping bill or bill of export;
- ✓ Recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce;
- ✓ Recipient shall place an order on supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the supplier etc.

It has been specifically provided that the supplier shall not be eligible for the above-mentioned exemption if the registered recipient fails to export the said goods within a period of 90 days from the date of issue of tax invoice.

#### 1.4 STATE/UNION TERRITORY (UT) CODE LIST OF GST:

It is important for businesses to know about the GST State/UT code list to get the knowledge of the State/UT in which person is registered on the basis of GSTIN. The 15 digit GSTIN comprises of - first 2 digits signifying the State/UT code; 10 digit PAN number; 1 digit signifying number of registrations; and 2 digits having default and checksum values. In this regard, the State/UT code list under GST State/UT and name of the State/UT listed out:

Name of State/UT	Code	Name of State/UT	Code
Jammu & Kashmir	01	West Bengal	19
Himachal Pradesh	02	Jharkhand	20
Punjab	03	Orissa	21
Chandigarh	04	Chhattisgarh	22
Uttarakhand	05	Madhya Pradesh	23
Haryana	06	Gujarat	24
Delhi	07	Daman & Diu	25
Rajasthan	08	Dadra & Nagar Haveli	26
Uttar Pradesh	09	Maharashtra	27
Bihar	10	Andhra Pradesh	28
Sikkim	11	Karnataka	29
Arunachal Pradesh	12	Goa	30
Nagaland	13	Lakshadweep	31
Manipur	14	Kerala	32
Mizoram	15	Tamil Nadu	33
Tripura	16	Puducherry	34
Meghalaya	17	Andaman & Nicobar Islands	36
Assam	18	Telangana	36
		Andhra Pradesh (New)	37

## 1.5 CONCLUSION:

GST Council has recommended several structural changes in GST Laws to proactively resolve the problems faced by the taxpayers with a special focus to ease the burden of compliances on



small and medium businesses. GST Council has taken several decisions in favor of business communities and predicted that many more will be taken in upcoming months. As mentioned above, some of the decisions taken by the GST Council require amending the GST Laws and believing that in upcoming months more provisions of GST Laws will be amended through Parliament on the basis of recommendation of GST Council. As a businessman and professional, it is not easy to remember all the changes and its effective date of applicability, which is the reason; it is very difficult to say about the correctness of Returns/forms filed or to be filed by the Registered Taxpayers.

I firmly believe that filing of GSTRs are delayed by registered taxpayers and professionals represented on behalf of registered taxpayer, because of lot things need to be clarified by the Government and proper guidelines required to be issued in this regard to amendments notified so far. Still taxpayers and professionals ( on behalf of Taxpayers) filing returns are committing mistakes and it is advisable that revised returns concept must be continued till March,2018 for all types of Returns. At the same time, it is advisable that more devotion on GST laws require from professionals to justify their services provided or to be provided to their clients. Regarding GST Professionals, particularly Company Secretaries have more advantages as a GST practitioner because of their course curriculum, interpretation and representation skills of laws, practical knowledge of rigorously MCA filings and filings of forms/returns related to other laws which is an added advantage to understand the requirements of Information Technologies in GST regime.



# IMPACT OF GST ON IMMOVEABLE PROPERTY AND CONSTRUCTION SECTOR\*

Real Estate sector in India has been identified by the Government as one of the dominant sectors economy.

- 1 The consumers have been empowered by the implementation of Real Estate Regulation Act, 2016.
- 2: In this part of Article, an attempt has been made to explain as to how various taxes has impacted the residential sector during Pre-GST regime and how the GST would impact this Sector post GST regime.

**Real Estate Transaction VAT Rates**

	Bengaluru	Mumbai	Chennai	Gurugram
<b>VAT</b>	4.0%	1.0%	2.0%	4.0%
<b>Service Tax</b>	4.5%	4.5%	4.5%	4.5%
<b>Stamp Duty</b>	5.7%	5.0%	7.0%	6.0%
<b>Registration Charges</b>	1.0%	1.0%	1.0%	0.5%
<b>Total Taxation</b>	15.2%	11.5%	14.5%	15.0%

3: GST on under-construction flats and properties will be taxed at 12% which includes 6% SGST plus 6% CGST in case the value of land has been included. The government has also allowed deduction of land value equivalent to one-third of the total amount charged by a developer, thus, making the effective tax rate as 18%. In other words, it could be said that the effective rate of GST for under construction property would be 12% where the value of land is included and 18% where the value of land is not included.

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*\*Contributed by Mr. Pradeep K Mittal, L.L.B., FCS, and Member ICSI GST Core Advisory Group*

## GST Impact on Construction Materials Tax Rates

Materials	VAT	GST
Cement	20-24%	28.00%
Iron rods and pillars	20%	18.00%
Paint, wall fittings, plaster, wallpaper and ceramic tiles	20-25%	28.00%
Sand lime bricks and fly ash bricks	6.00%	5.00%

4: The study carried out is an effort to assess the impact of GST on various issues connected with the real estate sector. The following issues have been taken up for this impact study:

1. Basic overview of the new tax regime under GST
  - a. The past
  - b. Scheme of taxation under GST
  - c. Valuation

5: In the present Article, I will cover (i) Basic Overview (ii) Scheme of Taxation in GST and (iii) Valuation - whether materials such Steel, Cement, Marble/Tiles supplied by Principal to be included in the "Transaction Value" or not?

### BASIC OVERVIEW OF NEW TAX REGIME UNDER GST

6: The Hon' Karnataka High Court in the case of K. Raheja Corporation Vs. State of Karnataka, which treated a Developer as a "Works Contractor", to tax the transfer of property in goods while constructing the real estate property. The law laid down by the Hon'ble Supreme Court in K. Raheja's case (141) STC 298) was a subject matter of challenge before the Hon'ble Supreme Court in the case of Larsen and Toubro Limited & Another vs. State of Karnataka & Another.

However the same was upheld in the year 2013 which paved the way for all the states in the country to start recovering indirect taxes in the form of VAT from the builders. The Hon'ble Supreme Court, while delivering the judgment made a very critical remark that in such cases, the position of works contract would only arise from the date the agreement is being entered into with the prospective customer.

7: As far as service tax is concerned, in the Finance Act, 2010, an explanation was added w.e.f. 1-7-2010, which meant that any construction of a complex by a builder during or after construction shall be deemed to be service taxable under the Act. This came with an exception that if no sum is received from the prospective buyer before the grant of completion certificate by the authority, then it would not be service taxable under the act.

## SCHEME OF TAXATION UNDER GST:

- 8: The “Works Contract” as well as sale of under construction property have been classified as a ‘service’ under Clause (b) of Schedule II attached to the CGST Act. This is the most positive sign for the construction and real estate sector as this would take care of major valuation related issues dealing with splitting the total agreement into value towards material and labour.
- 9: As far as construction of complex is concerned, a significant change that is now visible is that apart from the requirement of completion certificate from the competent authority, there is also a reference of “first occupation” as an alternative option. This would suggest that the moment first occupation (though may not be as per law) is proved by anyone, any subsequent bookings would not be subject to GST. Invariably, it is seen that, on all many occasions, the Regulatory Authorities are extremely reluctant to issue “Completion Certificates”. However the said term “first occupation” has not been defined and, therefore, leaving a scope for little ambiguity - the possession could be actual possession or symbolic possession and hence calls for “clarification” from the Government.
- 10: Now, in the GST regime, the following rates have been prescribed.  
Two relevant entries are as below:-

Sr. No.	Description of Services	GST Rate
1	Construction of a complex, building, civil structure or a part thereof, intended for sale to a buyer, wholly or partly. [The value of land is included in the amount charged from the service recipient.	12% With Full ITC but no refund of overflow of ITC
2	Composite supply of Works Contract as defined in Clause (119) of Section 2 CGST Act read with Clause 5 (b) of Schedule-II attached to CGST Act.	18% With Full ITC

- 10.1: One can safely conclude that effectively, a 33% abatement has been considered for the purpose of land.
- 11: It may be appreciated that 12% rate allows full Input Tax Credit (hereafter called “ITC”) without any refund of overflow. This would suggest that the Government foresees a situation where the developer would be paying Input Taxes at 18% and 28% which may lead to excess Input Tax credit balances in comparison to output tax at the rate of 18%. Such out-flow of taxes would only be available for set off against the future projects. suggest that the Government foresees a situation where the developer would be paying Input Taxes at 18% and 28% which may lead to excess Input Tax credit balances in comparison to output tax at the rate of 18%. Such out-flow of taxes would only be available for set off against the future projects.

## VALUATION

12: Though valuation is very exhaustive and comprehensive topic and presently, I would be covering a limited issue as to whether the costs of (a) Steel, and (b) Cement, is liable to be included in the "transaction value" for the purpose of calculation of GST payable thereon. Other critical issues of "Valuation" would be covered in the subsequent issues/parts as would be appearing in future

12:1: The Section 15 of CGST Act, inter-alia, deals with the valuation of supplies of either Goods or Services, for the purpose of levy of Tax and the same are reproduced below:-

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

**(2):The value of supply shall include:-**

(a): any taxes, duties, cesses, fees, and charges levied by any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Act and the Goods and the Service Tax (Compensation to States) Act, if charged separately by the supplier:

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

13: Since "Transaction Value", as appearing in Section 15, has not been interpreted by any judicial fora, therefore, we may seek the help of judicial pronouncements under Section 4 of Central Excise Act, 1944, which is in para-materia, with Section 15(1)(2)(a)(b) and (c) of CGST Act. The Supreme Court in the case of Purolator India Limited Vs. CCE MANU/SC/0988/2015, while defining the words "actually paid or payable" has observed as under:- "The expression 'actually paid or payable for the goods, when sold' only means that whatever is agreed to as the price for the goods forms the basis of value, whether such price has been paid, has been paid in part, or has not been paid at all. The basis of 'transaction value' is, therefore, the agreed contractual price".

## COST OF FREE SUPPLIES:

14: A question arises as to whether value of "free of supplies" by the Principal/Developer, made to the "Contractor" would be liable to be included in the "transaction value" for the purpose of levy of GST?

**Free supplies may, however, inter-alia, include:-**

a) Cement (b) Steel (c) Sand (d) Construction materials  
e): Imported Marbles/Tiles (f) Articles to be used / applied in the project

15: Section 15 (2) (b): it provides that the transaction value will include the amount which the supplier is liable to pay but it has been paid by the recipient of supply -

which could be in the form of (i) durable and returnable packing (ii) advertisement expenses and (iii) sales promotion expenses etc. Thus, in a contract, the obligation undertaken by the supplier for making the supply of goods needs to be determined. In case, any amount has been incurred by the recipient of supply in connection with the supply, the same would be included in the "transaction value".

However, the issue of free supply made by the principal do not fall within the four corner of Section 15(2)(b) as he is not incurring any amount, which under the contract, the contractor (i.e. service provider) is liable to incur.

- 16: The Supreme Court in the case of Steel Authority of India Limited Vs. CCE - MANU/SC/1401/2015 has observed as under:- "It is undeniable that under Section 4 of the Act, the excise duty is to be paid on the 'transaction value' and such a transaction value has to be seen at the time of clearance of the goods. When the goods were cleared, the excise duty was paid taking into consideration the price that was actually charged and was reflected in the invoices raised for the said purpose. The Department cannot plead that as on that date, this was not the price charged. No doubt, when the differential payment is made at a later date, further amount towards excise duty becomes payable as a result of said differential in price."
- 17: Upon the conjoint reading of the above two judgments i.e. Purolator India Limited (supra) and Steel Authority of India Limited (supra), it makes manifestly clear that the "transaction value" is a contract price or agreed price, becomes value for the purpose of payment of Excise Duty now GST. It requires no elaboration that in the Tender Documents" or "Letter of Intent", price is well defined and would clearly specify the items and, therefore, sum total of those items would be "Transaction Value". If we analyze the ratio laid down in Steel Authority of India Limited (supra), it is manifestly clear that the Supreme Court has viewed that the "price actually charged and/or as shown in the Invoice, shall be "transaction value" over which the Excise Duty shall be calculated and payable. However, the situation may differ in case the Principal/Government, while supplying the material is raising issuing invoice/debit note to the Contractor in respect of materials supplied.
- 18: The Board in its circular Letter F. No. 354/81/2000-TRU dated 30.06.2000 has clarified the position as under:-
  - 6 It may also be noted that where the Assessee charges an amount as price for his goods, the amount so charged and paid or payable for the goods will form the assessable value. If, however, in addition to the amount charged as price from the buyer, the Assessee also recovers any other amount by reason of sale or in connection with sale, then such amount shall also form part of the transaction value for valuation and assessment purposes. Thus if Assessee splits up his pricing system and charges a price for the goods and separately charges for packaging, the packaging charges will also form part of assessable value as it is a charge in connection with production and sale of the goods recovered from the buyer ...

7 It would be seen from the definition of 'transaction value' that any amount which is paid or payable by the buyer to or on behalf of the Assessee, on account of the factum of sale of goods, then such amount cannot be claimed to be not part of the transaction value. In other words, if, for example, an Assessee recovers advertising charges or publicity charges from his buyers, either at the time of sale of goods or even subsequently, the Assessee cannot claim that such charges are not includable in the transaction value. The law recognizes such payment to be part of the transaction value that is assessable value for those particular transactions.

20: The Three Member Bench of the Hon'ble Custom Excise Service Tax Tribunal in the case of M/s. Bhayana Builders (P) Ltd. and Ors. etc. etc. vs. CST, Delhi and Ors. MANU/CE/0343/2013, has laid down the following ratio.

14: We are compelled to conclude that goods and materials, supplied/provided/used by the service provider for incorporation in the construction, which belong to the provider and for which the service recipient is charged towards the value of such supply/provision/use and the corresponding value whereof was received by the service provider, to accrue to his benefit, whether independently specified as attributable to the specific material/goods incorporated or otherwise, would alone constitute the gross amount charged., This is not to say that an exemption Notification cannot enjoin a condition that the value of free supplies must also go into the gross amount charged for valuation of the taxable service. If such intention is to be effectuated the phraseology must be specific and denuded of ambiguity.

15. In conclusion we answer the reference as follows:

(a) The value of goods and materials supplied free of cost by a service recipient to the provider of the taxable construction service, being neither monetary or non-monetary consideration paid by or flowing from the service recipient, accruing to the benefit of service provider, would be outside the taxable value or the gross amount charged, within the meaning of the later expression in Section 67 of the Finance Act, 1994; and

(b) Value of free supplies by service recipient do not comprise the gross amount charged under Notification No. 15/2004-ST : MANU/DSTX/0036/2004, including the Explanation thereto as introduced by Notification No.4/2005-ST.

21: Following Larger Bench judgment of Bhayana Builders (P) Ltd, the Hon'ble Tribunal in the case of CCE, Vs. Sonali India (03.01.2014 - CESTAT - Delhi) : MANU/CE/0094/2014, has held as follows:

The short question required to be decided is as to whether allowing the claim of abatement of 67% in terms of said notification, the value of tanks and pumps supplied free by M/s. IOCL (Indian Oil Corporation Limited) have to be included or not. It was held that value is not required to be included.

**Stamp Duty & Registration Charges:**

22: As far as "Valuation" is concerned, the provisions of Section 15(2)(a) of the CGST Act talks about inclusion of any taxes, duties, cesses, fees and charges levied under any other law (other than GST) in the "assessable value" while discharging the GST liability. Now, a question arises as to whether "stamp duty" and/or "registration charges" collected from the buyer would also be subjected to GST or not? From the language of Section 15(1)(a), it is manifestly clear that such charges are bound to be taxed under GST. These charges shall be required to be included.

23: At the same time, we may have to take note of the judgment of the Supreme Court in the case of M/s. Burn Standard Company Ltd. and another vs. UOI MANU/SC/0403/1991 and this judgment is prior to 2000 when the concept of "Transaction Value" (as in Section 15 of CGST Act) has been introduced for the first time under Section 4 Central Excise Act, 1944 and hence not required to be considered:-  
The "free supply items" like wheel-sets etc. in the process of manufacturing become part of the complete wagon and loose their identity. It hardly matters how and in what manner the components of the wagon are procured by the manufacturer, so long as the appellant is manufacturing and producing "wagons", it is liable to pay duty of excise on the normal value of the wagon.

24: The procedural formalities required to be followed would be that the Principal/Government shall be buying the materials either from the manufacturer or trader who would be raising invoice in the name of the Principal/Government (as a buyer) and the "consignee" would be "Contractor" who would be working at the site of works. The materials so supplied by the Principal/Government would be used by the Contractor and the "Contractor" as a Service Provider would be, from time to time, raising Running Account Bills/Invoices of the "Transaction Value" (Section 15 CGST Act) i.e. sum total of materials/services used in the "works contract", as certified by the Engineer of the Principal/Government. However, reiterating at the cost of repetition, the value of materials (i.e. cement, steel, marbles, tiles etc.etc.) shall not form part of the "Transaction Value".

25: However, the law is evolving and by and large there is consensus on the above view except singular view that Section 15(2) (b) of CGST Act, would include the value of cement, steel and other materials supplied by Principal/ Government.



# REFUND CLAIM: EXPORTS WITH PAYMENT OF INTEGRATED TAX\*

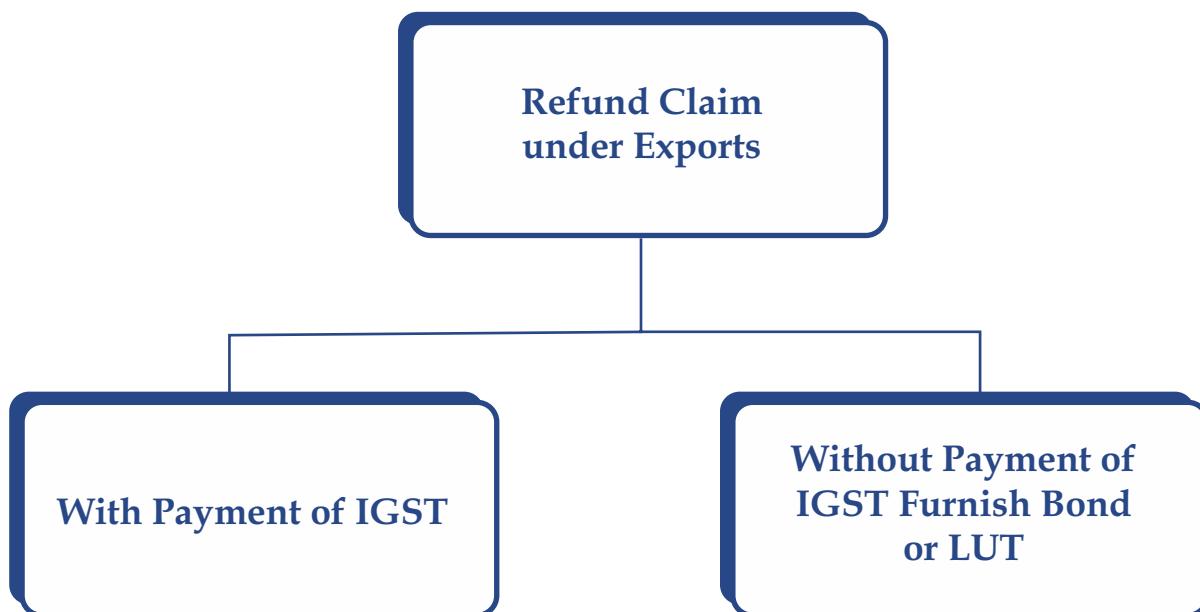
## Introduction:

Exports are considered as Zero rated supplies. As per section 16(1) of IGST Act “Zero rated supply” means any of the following supplies of goods or services or both namely:-

- (a) Export of goods or services or both; or
- (b) Supply of goods or services or both to Special Economic Zone developer or a Special Economic Zone unit.

As Per Section 16(3) of IGST Act, a registered person making zero rated supply shall be eligible to claim refund under either of following options, namely:-

- (a) he may supply goods or services or both under bond or letter of undertaking, subject to conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or
- (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with provisions of Section 54 of CGST Act or rules made thereunder.



*This article deals with refund claim under the option Exports made with Payment of IGST*

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\*Contributed by Ms. Payal Kataria, FCS, and Special Invitee, ICSI-GST Core Advisory Group

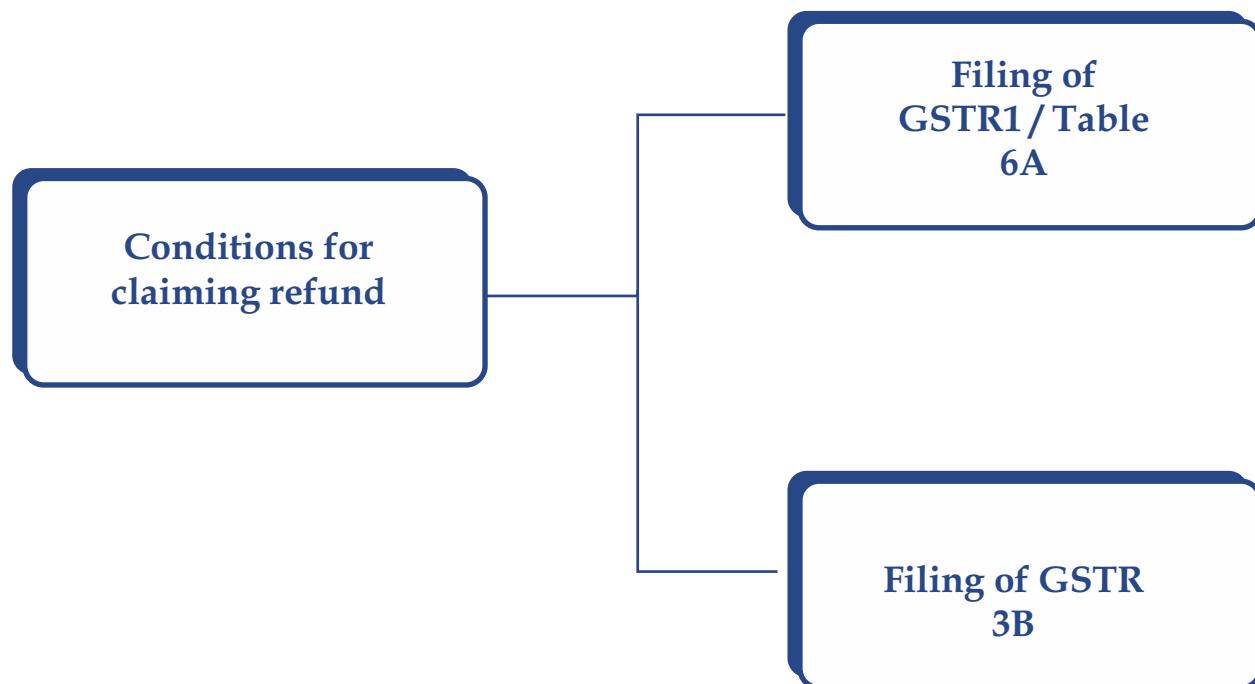
Since the roll out of GST, Exporters had been worried and concerned about their refunds. Exports with payment of IGST Integrated tax were blocking their working capital and Government was extending date of filing Form GSTR 1, causing more hassles in getting refunds. Reason being, refund payment cannot be made unless both forms GSTR 1 and GSTR 3B are filed.

To solve this genuine problem of Exporters, Government came with a solution to allow filing of Table 6A of GSTR 1 separately from the month of August, 2017 onwards. For the month of July 2017, refund process for exporters has already been started as filing of GSTR 1 and GSTR 3B had been done.

#### Basic Conditions for claiming Refund with Payment of IGST

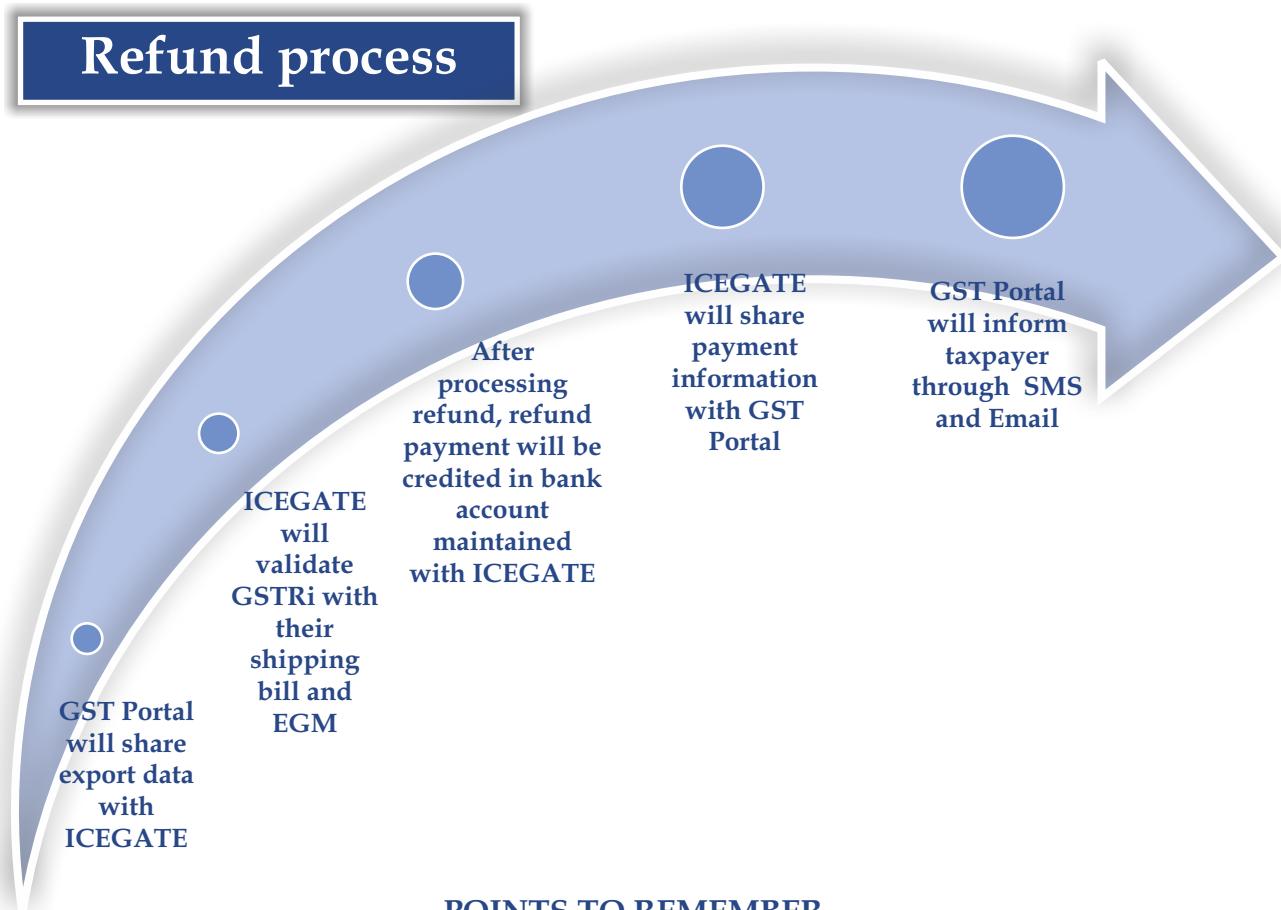
Logically it is valid that unless return showing export details and payment of taxes has been made, refund cannot be claimed. Therefore Exporters should file the relevant return and pay taxes timely, to get timely refunds.

Thus it is obligation of exporter to file GSTR-1, providing Export details in Table 6A of GSTR-1 along with shipping bill details having Integrated Tax levied and file GSTR-3B of the relevant tax period for which refund is to be paid.



## REFUND PROCESS

For claiming refund with payment of IGST, there is not any requirement of filing separate application for refund. Shipping bill is considered as refund application. Once Exporters comply with all conditions for claiming refunds, GST Portal will share export data declared under GSTR 1 along with validation that GSTR 3B has been filed for relevant tax period with ICEGATE. Thereafter custom system will validate data provided in GSTR 1 with shipping bill and Export General Manifest and credit the refund payment in bank Account Maintained with ICEGATE. Further ICEGATE will intimate GST Portal about refund payment information and GST portal in turn will inform concerned taxpayer through email and SMS.



## POINTS TO REMEMBER

- Once table 6A is filed separately then at the time of filing GSTR 1, Table 6A will be auto populated in non-edit mode
- Table 6A can be filed in sequence only e.g., first file for August thereafter September and onwards.
- Table 6A cannot be revised however amendment in 6A can be made using table 9 in form GSTR 1 of subsequent tax period.
- If shipping and invoice details are missed in one tax period, these missed details can be shown in subsequent month and refund for the same can also be claimed in that month.

# GST QUIZ\*

## Q1. Participation of ITC value chain in composition scheme

- a) With participation
- b) Without participation
- c) Either a or b
- d) None of the above

## Q2. Taxes paid on

- a) Transaction value
- b) Manufacturing cost
- c) Both A and B
- d) None of the above

## Q3. ITC available

- a) In the course or  
Furtherance of business
- b) Other than business exp
- c) Only A
- d) None of the above

## Q4. Input tax credit availability

- a) On receipt of goods
- b) On payment of taxes paid  
by supplier to Government
- c) Taken to manufacturing  
site or availed services
- d) None of the above

## Q5. IGST is levied by

- a) Centre
- b) State
- c) Union Territory
- d) Both a and b

# Understanding GST\*



1

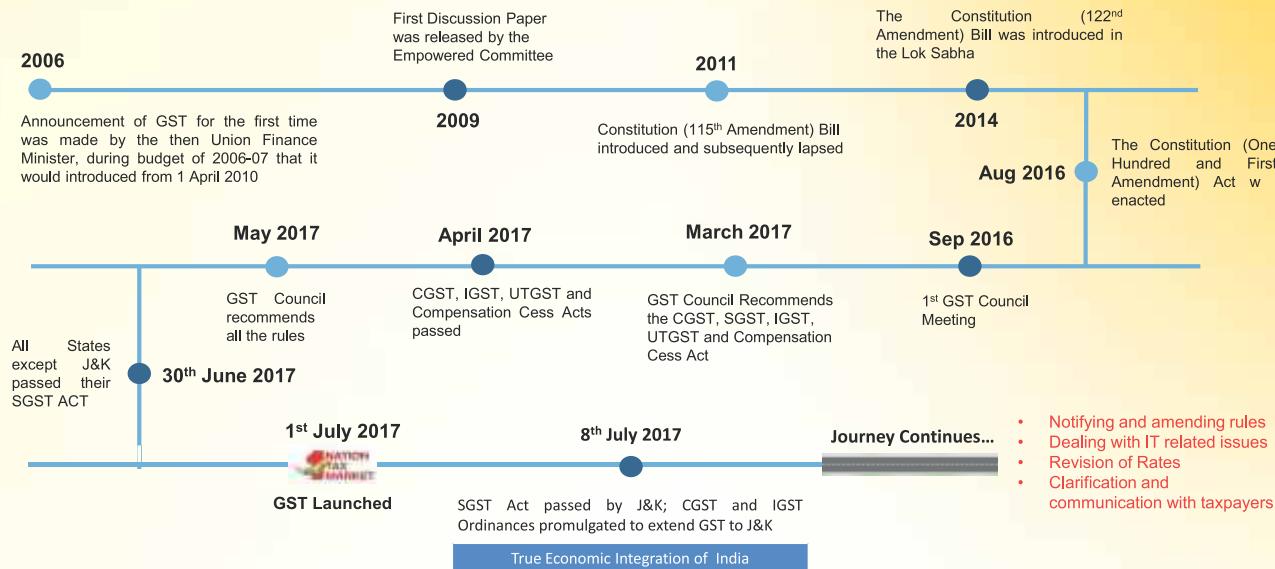
*Update PPT on GST  
(As on 15<sup>th</sup> November 2017)*

*This presentation is for education purposes only and holds no legal validity*

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\*Source - <https://cbec-gst.gov.in/pdf/15112017-updated-PPT-on-GST.pdf>

# The Journey to GST



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## GST Law from a Constitutional Perspective (1/2)



### Definition of GST

Article 366(12A)

**“Goods and services tax”** means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption

SI No	Definition	Article	Definition
1.	Goods	366(12)	Includes all materials, commodities, and articles [Pre Existing Definition]
2.	Service	366 (26A)	Anything other than goods [Introduced vide 101 <sup>st</sup> Constitutional Amendment Act]
3.	State	366(26B)	With reference to articles 246A, 268, 269, 269A and Article 279A includes a Union territory with Legislature. [Introduced vide 101 <sup>st</sup> Constitutional Amendment Act]

**“Goods and Services tax”** law while having unique principles, has significant elements of prior Central and State laws; and is also inspired by VAT/GST legislation of EU, Australia, Malaysia etc. along with International VAT/GST guidelines of OECD

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## GST Law from a Constitutional Perspective (2/2)



- ❖ Bill passed by Rajya Sabha on 03.08.2016 & Lok Sabha on 08.08.2016
- ❖ Notified as Constitution (101st Amendment ) Act, 2016 on 08.09.2016
- ❖ Key Features:
  - Concurrent jurisdiction for levy & collection of GST by the Centre & the States – Article 246A
  - Centre to levy & collect IGST on supplies in the course of inter-State trade or commerce including imports – Article 269A
  - Compensation for loss of revenue to States for five years on recommendation of GSTC – Clause 19
  - GST on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas & aviation turbine fuel to be levied from a later date on recommendations of GSTC

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## Existing Indirect Tax Structure in India



### Central Taxes

- Central Excise duty
- Additional duties of excise
- Excise duty levied under Medicinal & Toilet Preparation Act
- Additional duties of customs (CVD & SAD)
- Service Tax
- Surcharges & Cesses

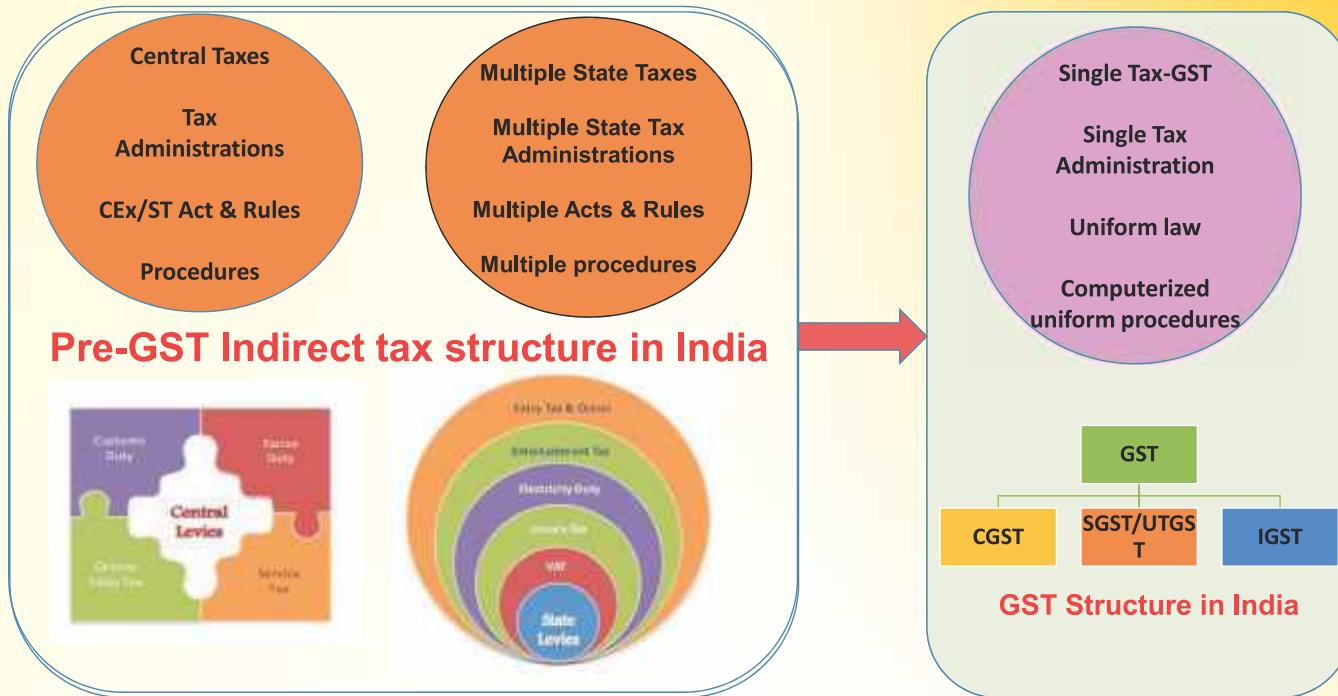
### State Taxes

- State VAT / Sales Tax
- Central Sales Tax
- Purchase Tax
- Entertainment Tax (other than those levied by local bodies)
- Luxury Tax
- Entry Tax (All forms)
- Taxes on lottery, betting & gambling
- Surcharges & Cesses

GST

Constitution amended to provide concurrent powers to both Centre & States to levy GST  
(Centre to tax sale of goods and States to tax provision of services)

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## Outside GST !



Alcohol for human consumption

Power to tax remains with the State



Five petroleum products – crude oil, diesel, petrol, natural gas and ATF

GST Council to decide the date from which GST will be applicable



Tobacco

Part of GST but power to levy additional excise duty with Central Government



Entertainment tax levied by local bodies

Power to tax remains with local bodies

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- Chairperson – Union FM
- Vice Chairperson - to be chosen amongst the Ministers of State Government
- Members - MOS (Finance) and all Ministers of Finance / Taxation of each State
- Quorum is 50% of total members
- States - 2/3 weightage and Centre - 1/3 weightage
- Decision by 75% majority
- Council to make recommendations on everything related to GST including laws, rules and rates etc.

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## GST Council - Decisions (1/5)

- Threshold limit for exemption to be Rs. 20 lac (Rs. 10 lac for special category States except J&K)
- Compounding threshold limit to be Rs. 1 Crore with -

Categories	Tax Rate
Traders	1%
Manufacturers	2%
Restaurants	5%

- Turnover limit recommended to be raised to Rs. 1.5 Cr in 23<sup>rd</sup> GST Council meeting - to be notified after necessary amendment in the Act
- Government may convert existing Area based exemption schemes into reimbursement based scheme – Already notified by Centre on 05.10.2017
- Four tax rates namely 5%, 12%, 18% and 28%
- Some goods and services would be exempt
- Separate tax rate (3% or 0.5%) for precious metals

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## GST Council - Decisions (2/5)



- Cess over the peak rate of 28% on specified luxury and sin goods
- To ensure single interface – all administrative control over
  - 90% of taxpayers having turnover below Rs. 1.5 cr would vest with State tax administration
  - 10% of taxpayers having turnover below of Rs. 1.5 cr. would vest with Central tax administration
  - taxpayers having turnover above Rs. 1.5 cr. would be divided equally between Central and State tax administration
- Power under the IGST Act shall also be cross-empowered on the same basis as under CGST and SGST Acts with few exceptions
- Power to collect GST in territorial waters delegated to the States
- Eighteen rules on composition, registration, valuation, input tax credit etc. have been recommended and notified

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## GST Council - Decisions (3/5)



- Exemption from registration
  - to suppliers of services making inter-State supply upto Rs. 20 lacs
  - to suppliers providing services through an e-commerce platform provided their aggregate turnover does not exceed Rs. 20 lacs
- Exemption from Section 9(4) – Reverse Charge on purchase from unregistered persons
- No requirement on payment of tax on advance received for supply of goods by all taxpayers
- Exemption from tax for supplies from GTA to unregistered person
- Suspension of TCS / TDS provisions/ E way bill system till 31.03.2018
- Introduction of E-Wallet Scheme for exporters from 01.04.2018 and till then relief for exporters in form of broadly existing practice

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## GST Council - Decisions (4/5)



- All taxpayers to file monthly GSTR-3B & pay tax on monthly basis
- Taxpayers with turnover upto Rs. 1.5 Cr to file quarterly GSTR – 1 returns
  - Monthly for other taxpayers
- Time period for filing GSTR-2 and GSTR-3 for the months of July, 2017 to March 2018 would be worked out by a Committee of Officers
- Late fee already paid but subsequently waived off to be re-credited to their Electronic Cash Ledger under “Tax” head instead of “Fee” head
- From October 2017 onwards, the amount of late fee payable by a taxpayer
  - whose tax liability for that month was ‘NIL’ will be Rs. 20/- per day instead of Rs. 200/- per day
  - whose tax liability for that month was not ‘NIL’ will be Rs. 50/- per day instead of Rs. 200/- per day

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## GST Council - Decisions (5/5)



- Facility for manual filing of refund application
- Facility for manual filing of application for advance ruling
- Supply of services to Nepal and Bhutan exempted from GST if payment not received in foreign convertible currency – such suppliers to be eligible for input tax credit
- Centralized UIN to be issued to every Foreign Diplomatic Mission / UN Organization by the Central Government

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## Main Features of the GST Act (1/5)



- Concurrent jurisdiction for levy & collection of GST by the Centre (CGST) and the States (SGST)
- Centre to levy and collect IGST on supplies in the course of inter-State supplies & imports
- Compensation for loss of revenue to States for five years
- All transactions and processes only through electronic mode – Non-intrusive administration
- PAN Based Registration
- Registration only if turnover more than Rs. 20 lac (Rs. 10 lacs for special category States except J&K)

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## Main Features of the GST Act (2/5)



- Option of Voluntary Registration
- Composition threshold shall be Rs. 100 lakh
  - Composition scheme shall not be available to inter-State suppliers, service providers (except restaurant service) and specified category of manufacturers
- Deemed Registration in three working days
- Input Tax Credit available on taxes paid on all procurements (except few specified items)

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## Main Features of the GST Act (3/5)



- Credit available to recipient only if invoice is matched (two months time for matching)
- Set of auto-populated Monthly returns and Annual Return
- Composition taxpayers to file Quarterly returns
- Automatic generation of returns
- GST Practitioners for assisting filing of returns
- GSTN and GST Suvidha Providers (GSPs) to provide technology based assistance

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## Main Features of the GST Act (4/5)



- Tax can be deposited by internet banking, NEFT / RTGS, Debit / credit card and over the counter
- Concept of TDS for certain specified categories (*to be brought in force wef 01/04/18*)
- Concept of TCS for E-Commerce Companies (*to be brought in force wef 01/04/18*)
- Concept of e-way bill (*to be brought in force in staggered manner wef 01/01/18 & at national level wef 01/04/18*)
- Refund to be granted within 60 days
- Provisional release of 90% refund to exporters within 7 days

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## Main Features of the GST Act (5/5)



- Interest payable if refund not sanctioned in time
- Refund to be directly credited to bank accounts
- Comprehensive transitional provisions for smooth transition of existing tax payers to GST regime
- ⊕ □ Special procedures for job work
- System of GST Compliance Rating
- Anti-Profiteering provision – National Anti-Profiteering Authority being set up
  - Standing Committee on Anti-Profiteering to be set up
  - State level Screening Committee to be set up

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## Benefits of GST (1/2)



1 Reduction in Cascading of Taxes	Decrease in Inflation
2 Overall Reduction in Prices	Ease of Doing Business
3 Common National Market	Decrease in “Black” Transactions
4 Benefits to Small Taxpayers	
5 Self-Regulating Tax System	
6 Non-Intrusive Electronic Tax System	

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## Benefits of GST (2/2)



- 7 Simplified Tax Regime
- 8 Reduction in Multiplicity of Taxes
- 9 Consumption Based Tax
- 10 Abolition of CST
- 11 Exports to be Zero Rated
- 12 Protection of Domestic Ind. - IGST

More informed consumer

Poorer States to Gain

Make in India

21



## Goods and Service Tax Network



- ❑ Incorporated in March 2013 as Section 25 private limited company with paid up capital of Rs. 10 crore
- ❑ Equity Holders
  - Central Government - 24.5%
  - EC and all States together - 24.5%
  - Financial Institutions – 51%
- ❑ To function as a Common Pass-through portal for taxpayers-
  - submit registration application
  - file returns
  - make tax payments
- ❑ To develop back end modules for 28 States (MODEL –II)
- ❑ Infosys appointed as Managed Service Provider (MSP)
- ❑ Appointed multiple GST Suvidha Providers (GSPs)

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## Role of CBEC



- ❑ Role in Policy making: Drafting of GST Law, Rules & Procedures – CGST, UTGST & IGST Law
- ❑ CBEC is responsible for administration of the CGST and IGST law.
- ❑ Assessment, Audit, Anti-evasion & enforcement under CGST, UTGST & IGST Law
- ❑ Levy & collection of Central Excise duty on products outside GST – Petroleum Products & Tobacco
- ❑ Levy & collection of Customs duties
- ❑ Developing linkages of CBEC - GST System with GSTN
- ❑ Training of officials of both Centre & States
- ❑ Outreach programs for Trade and Industry
- ❑ Director General of Safeguards, CBEC has been mandated to conduct detailed enquiry on anti-profiteering cases

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# SECTORAL ANALYSIS\*



**GST**  
SECTORAL SERIES

## IT/ITES



Directorate General of Taxpayer Services  
**CENTRAL BOARD OF EXCISE & CUSTOMS**  
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## FAQ: IT/ITES

**Question 1:** Whether software is regarded as goods or services in GST?

**Answer:** In terms of Schedule II of the CGST Act 2017, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 2 .

**Question 2:** What are the implications of recognising the development, design, programming, customisation, adaptation, upgradation, enhancement, and implementation of information technology software as a service?

**Answer:** The primary implication is that the place of supply rules applicable to services would apply in determining taxability of the supply of software services. The same would be applicable in situations of supply of services involving a temporary transfer or permitting the use or enjoyment of any intellectual property right. The other implication is that the supplier of software services would not be eligible for the composition scheme.

**Question 3:** 'A' is a dealer in Computers and Computer parts having turnover of Rs. 1 lakh in a year. Does 'A' have to register under GST?

**Answer:** Every supplier located in a State or Union territory, whose aggregate turnover in a financial year exceeds twenty lakh rupees, is liable to be registered under GST. This limit of turnover for a special category State is ten lakh rupees. 'A', whose aggregate turnover is only Rs. 1 lakh in a year, is therefore not liable to registration.

**Question 4:** The registered person 'B' receives small portions of software code from individuals which he then integrates and supplies as a package to clients. These individuals are having small turnover of Rs. 5 to 10 lakh, and therefore are not registered in GST. Whether there is any liability on 'B' in respect of services provided by such individuals?

**Answer:** If the supplies are made by unregistered suppliers, GST is liable to be paid by the recipient, who is a registered person, under section 9(4) of the CGST Act, 2017. Therefore, in this case 'B' is liable to pay GST on services provided by these individuals. 'B' can claim credit of this tax paid by him on reverse charge.

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*Source:* <http://www.cbec.gov.in/resources/htdocs-cbec/gst/sectoral-faq-it-ites.pdf>

**Question 5:** What is the rate of tax on IT services?

**Answer:** The rate of GST on IT services is 1%.

**Question 6:** Whether exports of software services attract GST?

**Answer:** Exports and supplies to SEZ units and SEZ developers are zero-rated in GST. Zero-rating effectively means that no tax is payable on exports but the exporter/supplier is entitled to the input tax credit on inputs/input services used in relation to exports. The exporters have two options for zero rating, which are as follows:

- (1) To pay integrated tax on supplies meant to be exported and get refund of tax so paid after the supply is exported.
- (2) To make export supplies under a bond or letter of undertaking and claim refund of taxes suffered on inputs and input services in relation to such exports.

**Question 7:** How do I determine whether IT services provided by me constitute export of service?

**Answer:** The supply of any service is considered an export of service, where the following conditions are met:

- (1) the supplier of service is located in India
- (2) the recipient of service is located outside India
- (3) the place of supply of service is outside India
- (4) the payment for such service has been received by the supplier of service in convertible foreign exchange and
- (5) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 1 of the IGST Act, 2017.

**Question 8:** How do I determine the place of supply of IT/ITES services?

**Answer:** Place of supply of IT/ITES services is the location of the recipient in terms of section 12 and 1 of the IGST Act, 2017. However, if the recipient is not registered and his address is not available on the records of the supplier, the place of supply would be the location of the supplier.

**Question 9:** How to determine the location of the recipient?

**Answer:** Location of the recipient of service is defined in section 2(14) of the IGST Act. A recipient of services is treated as located outside India if his place of business where he receives services is outside India or, if he does not have a place of business, his usual place of residence is outside India.

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**Question 10:** Would I be liable to pay GST on reverse charge even if the foreign supplier of software from whom I buy for use in my firm registered under GST was to accept the payment in Indian Rupees?

**Answer:** Yes, you would be liable to pay GST. A supply is treated as an import of service if the following conditions are satisfied:

- (1) the supplier of service is located outside India
- (2) the recipient of service is located in India and
- (3) the place of supply of service is in India.

The place of such supply would be taken to be the location where the firm is registered (in GST) and the supplies would attract integrated tax (IGST). The factum of which currency was used to pay the consideration is immaterial.

**Question 11:** I am an Indian Company who makes software and sells it outside the country. I have hired a firm (not a related party 'C' located abroad to facilitate the supply of software in Europe and the USA. Would I be liable to pay GST on the payments that I make to this entity abroad?

**Answer:** No. In this case, 'C' is covered by the definition of 'intermediary' section 2(1) of the IGST Act, 2017. The place of supply of such intermediary service is location of the supplier in terms of section 1(1) of the IGST Act, 2017. As 'C' is located outside India, GST is not payable in this case.

**Question 12:** What factors determine the location of 'C' (in question 11) as being outside India?

**Answer:** In terms of section 2(1) of the IGST Act, 2017, the location of a service provider is to be determined by applying the following steps sequentially:

- (1) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business
- (2) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment
- (3) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply and
- (4) in absence of such places, the location of the usual place of residence of the supplier.

The location of 'C' is to be determined by applying the criterion from (2), (3), or (4), or as the case may be.

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**Question 13:** I am an agent in India of a foreign IT/ITES provider (principal located outside India). For agency services, I bill the principal in convertible foreign exchange. Whether GST liability arises in this case?

**Answer:** You are an intermediary and the place of supply of the service provided by you to the principal is in India irrespective of the mode of payment. Hence, GST is payable on the services provided by you as an intermediary to the principal.

**Question 14:** I have more than one SEZ unit in different States do I need to take separate registrations? Also, I have two SEZ units in one State. Can I take a single registration?

**Answer:**

- (1) Yes. Under GST, every entity shall take GST registration in each State from which it makes taxable supplies. However, a single registration can be taken for all your SEZ units within a State, whether located in one SEZ or more than one SEZ.
- (2) A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State (Refer Rule (1) of CGST Rules, 2017).

**Question 15:** I have a unit in the DTA and another in the SEZ can I take a common registration?

**Answer:** No. A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State, shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State (Refer Rule (1) of CGST Rules, 2017).

**Question 16:** If I supply a laptop bag along with the laptop to my customer, what would be the rate of tax leviable?

**Answer:** If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary. Therefore, it is a composite supply and the rate of tax would be that applicable to the laptop.

**Question 17:** I am obtaining online database access services from a company abroad over the net, would I have to pay tax on reverse charge?

**Answer:** The recipient, if registered, has to pay the applicable IGST on reverse charge basis. If the recipient is not registered, the matter is treated as an online information and database access or retrieval service (OIDAR) and the OIDAR service provider is liable to take registration and pay tax.

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**Question 18:** When would it be construed that I have made a supply of services involving temporary transfer or permitting the use or enjoyment of any intellectual property right?

**Answer:** Generally, the **End User Licence Agreement** (EULA) is the legal contract between a software application author or publisher and the user of that application governing the usage. The agreement is renewable and/or could be amended from time to time. To find out as to whether there is an element of supply involved when software is delivered to its customer, the terms and conditions of EULA are material.

The contract for supply therefore assumes significance in this test to decide whether or not there has been 'temporary transfer or permitting the use or enjoyment of any intellectual property right'.

**Question 19:** What special provisions are attracted in GST with regard to associated enterprises?

**Answer:** An enterprise which participates, either directly or indirectly, through one or more intermediaries, in the management, or control or capital of the other enterprise is an associated enterprise. In the context of GST, associated enterprise is particularly relevant in the case of supply of services, where the supplier is located outside India. In such cases, the time of supply will be the earlier of date of entry in the books of account of the recipient of supply or the date of payment – thus, within 'associated enterprises', the levy under GST is attracted once such book entries are made even if no actual payment takes place or no invoice is issued.

**Question 20:** What would be the tax liability on replacement of parts (no consideration is charged from a customer under a warranty and whether the supplier is required to reverse the input tax credit?

**Answer:** As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the input tax credit on the parts/components replaced.

**Question 21:** An Original Equipment Manufacturer (OEM) has an obligation to provide repair services to their customers in the warranty period. This activity is outsourced by OEM to 'D', who bills the OEM for the services he provides to the customer. What is the tax liability of 'D'?

**Answer:** 'D' is providing service to the OEM. GST is payable on the value of any supplies made by 'D' to OEM i.e. in respect of bills raised by 'D' on the OEM.

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**Question 22:** How will the defective parts be sent to the mother warehouse/repairing centre for repair by the downstream repairing centres? What is the tax liability?

**Answer:** The defective parts shall be sent for repair on a delivery challan accompanied by such e-way bill as may be prescribed. GST shall be chargeable on the repair amount, including the cost of parts, charged by the repairing centre.

**Question 23:** What is the tax liability in a scenario where supplies are made from multiple locations (in different States) of the supplier to the recipient under a single contract?

**Answer:** Delivering services from various locations and integrated pricing for the contract as a whole is the norm in IT/ITES industry. Normally the contract or agreement with the recipient is entered into by one of the branches (let us say Main Branch). Therefore, in such cases of service delivery from multiple locations of the supplier to the recipient, the supply could be visualized as consisting of two distinct supplies. First supply- the different branches of the supplier located across different States are making the supply to the main branch which entered into a contact or an agreement with the recipient for the supply of such service. Second supply- main branch is making a supply to the customer. GST is to be levied accordingly. In such a scenario, the main branch would get input tax credit of GST paid by the other branches on supplies made by them to the main branch.

**Question 24:** In the scenario envisaged in previous question, the main branch is said to be entitled to ITC of the GST paid by the other branches. Thus, it is a revenue neutral situation. What are the valuation guidelines for such services?

**Answer:** The second proviso to rule 2 of the CGST Rules, 2017 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods and services.

**Question 25:** Can payment of IGST on reverse charge basis on import of goods/services be done through book entry or ITC?

**Answer:** No. GST payable on reverse charge basis is to be discharged through cash only. Rule 4 of the CGST Rules, 2017 refers.

**Question 26:** Is the requirement of transferring of credit through ISD mechanism mandatory?

**Answer:** The ISD provision under the CGST Act, 2017 is not mandatory. It only provides the manner of distribution of ITC wherever the business entity wishes to distribute the ITC as an Input Service Distributor.

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**Question 27:** What is the format for invoices to be issued in the case of reverse charge payment of GST?

**Answer:** No separate format for any type of invoicing including self-invoicing has been prescribed. The contents of the invoice have been prescribed in Rule 46 of the CGST Rules, 2017.

**Question 28:** I am a software provider, registered at Mumbai. I supply software to my clients in Bangalore - would I be required to take a registration in Karnataka?

**Answer:** No. The supplies would be treated as inter-State supplies and IGST is chargeable on the same.

**Question 29:** I am an exporter of services. Would I be entitled to refund after the 1st of July (appointed day) ?

**Answer:** For exports upto 30th June, 2017 refund may be claimed under the provisions of the Chapter V of the Finance Act, 1994. Exports made on and after 1st July would be eligible for refund under the GST law.

**Note:** Reference to CGST Act, 2017 includes reference to SGST Act, 2017 and UTGST Act, 2017 also.

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## SECTORAL ANALYSIS\*



# GST

SECTORAL SERIES

### Gems & Jewellery



Directorate General of Taxpayer Services

CENTRAL BOARD OF EXCISE & CUSTOMS

[www.cbec.gov.in](http://www.cbec.gov.in)

### FAQ: Gems & Jewelery

**Question 1:** Whether advertising and communication material(banners/hoardings/posters)provided to distributors would be treated as supply in the course of business by the company thereby not requiring any reversal of ITC.

**Answer:**

- (a) Where the material is provided free of cost:  
This would not amount to a supply and hence no tax is payable on such transaction and in such a case credit availed by the company would need to be reversed in accordance with section 17(5) of the CGST Act, 2017.
- (b) Where the material is provided for a consideration:  
This would amount to a normal supply.

**Question 2:** Currently Banks do not pay any VAT on import of precious metals. Banks/nominated agencies pay only customs duty on imports. In the new regime of GST, will the Banks have to pay IGST while importing?

**Answer:** Yes, 3% IGST is payable on all imports of precious metals in addition to the basic customs duty. IGST paid can be taken as input tax credit by the banks.

**Question 3:** Banks import gold / silver on consignment basis wherein the ownership of the metal is with the supplier of the bullion which maybe an overseas entity. Is the overseas entity required to have GST registration because currently they do not file returns and are governed by multi-nation treaties?

**Answer:** This amounts to an import in accordance with the definition of the word "import" in the IGST Act, 2017 which provides that "bringing into India of any goods from any place outside India" is an import of the goods. What is material in this definition is the mere act of bringing into India; the ownership is not material for determining whether an import has taken place. Banks, being registered entities, would be liable to pay IGST on such imports but not the overseas entities since they are not effecting the import.

1



\* Source: <http://www.cbec.gov.in/resources//htdocs-cbec/gst/sectoral-faq-gems-jewellery.pdf>

**Question 4:** Gold and silver imported by banks/nominated agencies on consignment basis are lying in stock as on 1st July. Clarification is required on how to charge the customers in transition phase from VAT to GST. Will customers be liable to pay GST rates?

**Answer:** GST is payable @ 3% with effect from 01.07.2017.

**Question 5:** Banks lend gold in physical form for a period not exceeding 6 months. Banks receive interest on the gold ounces disbursed and the same is converted into Rupees after calculation of interest on the ounces and the USD/INR conversion. Will the same methodology continue in case of GST as well wherein Banks shall pay a provisional GST (i.e. IGST/SGST/CGST) on ongoing market prices and pay the final GST as and when the prices are fixed?

**Answer:** Yes, Banks may avail of the benefit of provisional assessment provided under section 60 of the CGST Act, 2017.

**Question 6:** Banks pay provisional VAT currently at the time of delivery of gold on the basis of ongoing market prices. When customer fixes the price of metal, Banks pay actual VAT on the maturity date of the Gold Loan. Banks must be allowed to set-off the excess provisional GST paid to the government against future fixation of prices. In case of excess payment, the same should be refunded on Pan - India basis and not on the basis of States.

**Answer:** Banks may claim refund in accordance with the provisions of section 54 of the CGST Act, 2017. Interest is payable in such cases as provided in section 56 of the CGST Act, 2017. In this connection, section 60(5) of the CGST Act, 2017 may be referred to.

**Question 7:** When we are selling Gold, Diamond or Silver Jewellery to the end consumer (Customer) like a Gold Chain weighing 10gm at a total value of Rs. 30,000/- (gold value is Rs. 28000/- and making charges on that gold chain is Rs 2000/-), can we charge GST @3% on the total value or @3% on the gold value and @5% on making charges?

**Answer:** GST is payable at the rate of 3% of the total transaction value of jewellery, whether the making charge is shown separately or not.

2

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3



**Question 8:** When we issue gold as raw material to our Job Worker for Job Work and he returns that gold as finished goods, what GST treatment will be done and how to calculate the value?

**Answer:** The job worker, if registered, would be required to pay GST at the rate of 5% on job charges only. The jewellery manufacturer would in turn take credit of GST paid on such job work and may utilize the same for payment of GST on his outward supply of manufactured jewellery. However, if the job worker is exempted from registration, the jewellery manufacturer would be required to pay GST on his input supply from the job worker [of jewellery made out of precious metal given by him] on reverse charge basis. Nonetheless, he would be eligible to avail input credit of the tax so paid under reverse charge mechanism.

**Note:** Reference to CGST Act, 2017 includes reference to SGST Act, 2017 and UTGST Act, 2017 also.



PD, PP&S/BM/37

December 13, 2017

**Dear Student,**

As you are aware, the Institute has entered into the Golden Jubilee Year which was marked by the inauguration of the Golden Jubilee Celebrations by the Honble Prime Minister, Shri Narendra Modi on 4<sup>th</sup> of October, 2017.

The Prime Minister of India, Shri Narendra Modi, in his address to the CS fraternity conveyed the need of the hour for the CSs to play an active role in producing a new business culture. Shri Narendra Modi shared that nearly 19 lakh new citizens have come under the scope of indirect taxes following the implementation of GST. He emphasised that a small trader or a big trader, everyone should adopt the honest tax system inbuilt in the GST and it was also the duty of, CSs to encourage the business community in this regard. The Prime Minister asked the ICSI to take the responsibility to train one lakh youth about small-small things related to GST so that they can help small businesses and traders in their area linking them with GSTN, in filing returns after receiving a short term training.

The Institute has taken up this opportunity given to us by the Honble Prime Minister. **Consequently, the Institute joined hands with National Skill Development Corporation (NSDC) to organize a Training Program on GST for our students.** The Institute is inviting its interested students for taking up this Training Programme being organized all across the nation through the NSDC.

**About the Course - GST Accounts Assistant:**

This program is aimed at training candidates for the job of a Goods & Services Tax (GST) Accounts Assistant, in the BFSI Sector/Industry and aims at building the key competencies amongst the learners about GST. With access to around 500 Training Centre, the course will be accessible across India. The course will enable the students to help the small/big size business entities, traders and others in understanding GST and help them in filing their taxes and maintaining the proper systems/data for the same. This will open a source of earning for the students.

After completing this programme, participants will be able to:

- Compute tax liabilities namely GST, making to the Government, filing of returns and maintaining records of the same for audit purpose
- Fill the form and register under GST
- Make payment electronically of such amount of tax liability
- Fill-up the tax return form in the prescribed format with relevant transaction details.
- File periodic GST Returns independently

The Course detail is attached to this mailer. The interested students may confirm their willingness for the GST Course by filling up the form at: [www.goo.gl/tE6MDU](http://www.goo.gl/tE6MDU) latest by December 28, 2017.

For more information please speak to the following helpline number: +91 120 408 2125 (ICSI) or 88000-55555 (NSDC)

We look forward to your active participation to enhance your skills and get benefitted from the same.

Best Regards

**CS (Dr.) Shyam Agrawal**

President



### Motto

“ सत्यं वद । धर्मं चर ।  
Speak the truth. Abide by the law. ”

### Vision

“ To be a global leader in promoting  
good corporate governance ”

### Mission

“ To develop high calibre professionals facilitating  
good corporate governance ”



**THE INSTITUTE OF  
Company Secretaries of India**  
**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament

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