



LEGAL UPDATES AND PRACTICAL ISSUES

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TURNOVER UNDER GST FOR THE PURPOSE OF AUDIT

- Every registered person whose aggregate turnover during a financial year exceeds two crore rupees has to get his accounts audited by a chartered accountant or a cost accountant and furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C.

**CAN THE TURNOVER BE DIFFERENT
UNDER INCOME TAX & GST FOR THE
PURPOSE OF AUDIT?**

Aggregate Turnover & Value of Taxable Supply

- *Section 2(6) “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;*
- *Section 15 “The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply”.*
- *Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business (Schedule-I).*

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- *Aggregate turnover may be different under GST & Income Tax. Supplies between related parties will constitute turnover even if there is no sale. GST doesnot recognise the concept of sale, however under Income Tax inter-state branch transfers shall not be included in the turnover.*



JOBWORK

Difference in treatment of GST in case of Job worker undertaking job work for registered person and unregistered person.

Section 2(68) “job work” means any treatment or process undertaken by a person on goods belonging to another *registered person* and the expression “job worker” shall be construed accordingly.

In case of silver and gold ornaments the job work shall be taxable at the rate of 5% if the services are provided to a registered person, in case of unregistered person the same shall be taxable at the rate of 18%.

REFUND OF TAX IN CASE OF INVERTED DUTY

In the case of refund, on account of **inverted duty structure**, **refund of input tax credit** shall be granted as per the following formula –

**Maximum Refund Amount = {(Turnover of inverted rated supply of goods)
x Net ITC ÷ Adjusted Total Turnover}**
- tax payable on such inverted rated supply of goods.

Explanation of the expressions –

(a) Net ITC shall mean ***input tax credit availed on inputs*** during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;

and

(b) Adjusted Total turnover shall have the same meaning as assigned to it in sub-rule (4).]

INPUT, INPUT SERVICE & CAPITAL GOODS

Section 2(59) *“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;*

Section 2(60) *“input service” means any service used or intended to be used by a supplier in the course or furtherance of business;*

Section 2(19) *“capital goods” means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;*



WHETHER GST IS PAYABLE ON PROVISION FOR
AUDIT FEES UNDER FORWARD CHARGE &
LEGAL FEES UNDER REVERSE CHARGE etc.?

The time of supply of services shall be the earliest of the following dates, namely:—

(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

(c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:--

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:



Provision for Audit fee or legal fee does not fall in any of the above mentioned conditions. Hence, no GST shall be payable on year end provisions.

COMPOSITE SUPPLY

A supply can be a supply of goods or supply of services, there cannot be both supplies simultaneously. Schedule II of CGST Act categorically specifies about MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES.

(a)Eg: A car meet with an accident, after inspection in garage an estimate of Rs. 300000.00 is provided, which constitutes Rs. 225000.00 for material and Rs. 75000.00 for labour. What will be the tax treatment in such case.

(b)Eg: Headlight is broken and new headlight if to be installed, Cost of new headlight is Rs. 8000.00 and labour charges of Rs. 1000.00. What will be the tax treatment in such case.?



IS THERE ANY DOUBLE TAXATION UNDER
GST WHICH MEANS IS CASCADING EFFECT
STILL THERE?

In the GST Regime, the service of transportation of goods by a vessel from a place outside India up to the customs station of Clearance in India (Import Ocean Freight) is taxable @ 5% (IGST).

Double Taxation in the GST Regime

As per Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules,

2007, the value of any imported goods shall include the transportation of the imported


goods up to the place of importation i.e. First Customs station in India. Further, the rule also provides an ad-hoc rate of 20% for determining the cost of such transportation, in case the cost of transportation is not ascertainable.

This results in the freight component getting added to the value of goods automatically and thus resulting in payment of Customs Duties (Basic Customs Duty, Cesses / Social

Welfare Surcharge) & IGST on the freight component as well.

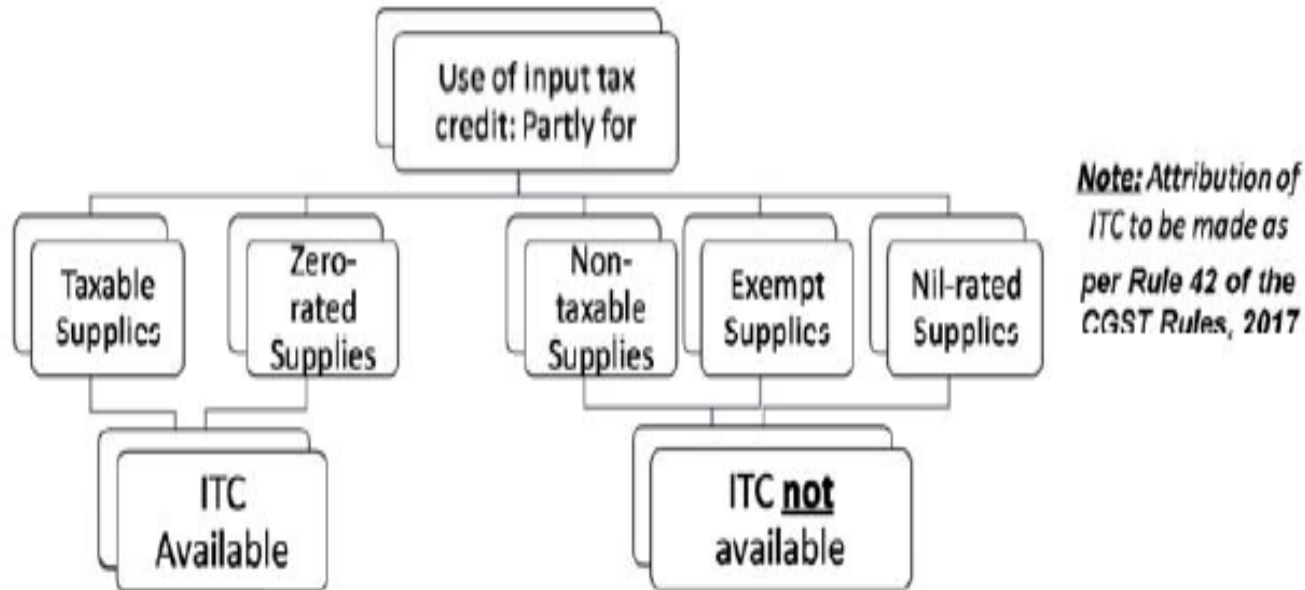
Therefore, the Freight Component on one hand suffers IGST @ 5% in the form of

Import of Services and on the other hand suffers Customs Duties & even IGST on the value of goods.



IF A PERSON IS EARNING INTEREST ON DEPOSITS OR LOANS (which is an exempt supply under GST) AS WELL AS MAKING TAXABLE SUPPLIES, DOES HE NEED TO REVERSE HIS ITC PROPORTIONATELY IN SUCH CASES ?

ITC on the Basis of use of Inputs




As per Rule 43(2), for the purposes of rule 42 and this rule, it is hereby clarified that the aggregate value of exempt supplies shall exclude: -
the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances;

Re-import of goods

Would GST be payable on goods not intended to be sold, taken out for participation in overseas exhibitions and trade fairs and brought back into India as these goods are meant for exhibition only ?


GST is not payable in such cases. Exporters will need exhibition participation letter and no foreign exchange involved letter from the concerned bank for the purpose of exchange control requirements. At the time of re-import, identity of goods imported with export goods needs to be established to seek exemption from import duty in accordance with Customs provisions. IGST will be exempted at the time of re-import in view of exemptions granted under Customs. **Notification 57/2016 Customs**



A person registered under composition scheme is supplying goods to the tune of Rs. 90 Lacs, however he is earning interest income of Rs. 85 Lacs on deposits also, which is supply of services though exempted, will that make him ineligible for composition scheme?

THE CENTRAL GOODS AND SERVICES TAX (REMOVAL OF DIFFICULTIES) ORDER, 2017 Order No. 01/2017-Central Tax

- it is hereby clarified that if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions specified therein. (ii) it is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.



Mrs. Anita Ambani (Housewife, owner of TILA House in Mumbai, engaged services of an architect and interior decorator from America for modification and renovation of her house. The fees agreed upon is 10 million USD. What are the implications of this transaction in GST?

Section 7(1)(b) of CGST Act 2017:

import of services for a consideration whether or not in the course or furtherance of business.

List of the Services Notified for Reverse Charge under section 9(3) of CGST Act

1. Description of supply of Service:

Any service supplied by any person who is located in a non-taxable territory to any person other than nontaxable online recipient.

Supplier of service:

Any person located in a non-taxable territory.

Recipient of service :Any person located in the taxable territory other than nontaxable online recipient.



SOME PRACTICAL PROBLEMS

DETERMINATION OF VALUE OF TAXABLE SUPPLY?

Vayu Ltd. provides you the particulars relating to goods supplied by it to Agni Ltd.

Particulars	Rs.
List price of the goods (Exclusive of Taxes and discounts)	76,000
Special packing at the request of customer to be charged to the customer.	5,000
Duty levied by local authority on the sale of such goods.	4,000
CGST and SGST charged in invoice.	14,400
Subsidy received from a NGO (The price of , 76,000 given above is after considering the subsidy)	5,000

Vayu Ltd. offers 3% discount of the list price of the goods which is recorded in The invoice for the goods.

Determine the value of taxable supplies made by Vayu Ltd.



DETERMINATION OF PLACE OF SUPPLY?

Determine the Place of supply for the following independent cases under the IGST Act, 2017.

a) Grand Gala Events, an event management company at Kolkata, organises two award functions for Kalyan Jewellers of Chennai (Registered in Chennai) at New Delhi and at Singapur.

b) Perfect Planners (Bengaluru) is hired by Dr. Kelvin (unregistered person based in Kochi) to plan and organise his son's wedding at Mumbai.

Will your answer be different if the wedding is to take place at Malaysia?



DETERMINATION OF VALUE OF SUPPLY?

Determine the value of supply and the GST liability, to be collected and paid by the owner, with the following particulars.

Rent on the commercial building	18,00,000
Maintenance charges collected by local society from the owner and reimbursed by the tenant	2,50,000
Owner intends to charge GST on refundable advance, as GST is applicable on advance	6,00,000
Municipal taxes paid by the owner	3,00,000

GST rates applicable on renting of business premises is as follows

CGST 9%
SGST 9%.



CALCULATION OF AGGREGATE TURNOVER?

Rakesh Dynamics having its head office in Chennai carries on the following activities with respective turnovers in a financial year.

Supply of petrol at Chennai	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	9,00,000
Supply of transformer oil at Chennai	2,00,000
Value of branch transfer from Chennai to Bengaluru without payment of consideration	1,50,000
Value of taxable supplies at Manipur branch	11,50,000

It argues that it does not have taxable turnover crossing threshold limit of Rs. 20,00,000 either at Chennai or Bengaluru and including turnover at Manipur branch. It believes that the determination of aggregate turnover is not required for the purpose of obtaining registration but it is required for determining composition levy. Decide based on the above facts

- a) The aggregate turnover of Rakesh Dynamics.
- b) All conditions that fulfil the requirements for registration under CGST Act, 2017 in the given circumstances.



DETERMINATION OF TIME OF SUPPLY?

8th September	Community hall booked for a marriage, Sum agreed Rs. 1,20,000, Advance Rs. 20,000 recorded in the books of account.
10th September	Advance amount credited in bank account.
2nd November	Marriage held in the Community hall.
18th December	Invoice issued for " 1,20,000 indicating the balance of f 1,00,000 payable.
22nd December	Balance 1,00,000 recorded in the books of account.
24th December	Payment 1,00,000 credited to the bank account



ADVANCE RULINGS IN GST

AAR holds Supply of Material & Allied Services as composite supply.

Where applicant who is a supplier of materials and allied services for erection of towers, testing and commissioning of transmission lines and setting up sub-stations collectively called Tower Package entered into two contracts for supply of materials at ex-factory price, and for supply of allied services like survey and erection of towers, testing and commissioning of transmission lines etc. and wants a ruling on whether he is liable to pay tax on freight bills, it is held that applicant supplies works contract service, of which freight and transportation is merely a component and not a separate and independent identity, and GST is to be paid at 18 per cent on entire value of composite supply, including supply of materials, freight and transportation, erection, commissioning etc.

Mere mentioning name of Aditya Birla on Cereal packs to be construed as bearing brand name; GST leviable : AAR

Subject goods proposed to be sold by applicant under Stream 1, i.e. goods processed and packed in house by applicant, where package of subject goods would merely have a declaration mentioning name and registered address of applicant as manufacturer, as per statutory requirement under subject statutory provisions cannot be considered as not bearing a brand name and accordingly it will not be eligible for exemption from GST. Further, goods proposed to be sold by applicant under Stream 2, i.e. goods procured in processed and packaged form from third party vendors, where package of subject goods would have a declaration mentioning name and registered address of manufacturer as per statutory requirement under the Subject Statutory Provisions as also declaration 'Marketed by- Aditya Birla Retail Ltd.' cannot be considered as not bearing a brand name, accordingly it will also not be eligible for exemption in terms of relevant entries to Exemption Notifications.

Supply of food and beverages in trains doesn't amount to services; considered as supply of goods: AAR.

A train is a mode of transport and hence cannot be called as a restaurant, eating joint, mess or canteen etc. Supply of goods, i.e., food, bottled water etc. on board of train shall be charged to GST on value of goods (excluding service charges) at applicable rates as pure supply of goods, as same has no element of service. Supply of newspaper is separately invoiced and hence, it shall be at Nil rate of GST. Supply of food and beverages (cooked/MRP/packed) to passengers/general public at rates fixed by Indian Railways/IRCTC at food stalls at Railway platforms does not have any element of service and, hence, same shall be considered as pure supply of goods and GST shall be charged on individual items at their respective applicable rates. Mere heating/cooling of beverages or similar other services are incidental and minimal required to supply of goods and such supply cannot be called composite supply.

Supply of motor vehicle as scrap after its usage in business would attract GST:AAR.

Disposal of scrap vehicles for consideration is a sale and section 7 explaining the expression supply covers supply of such as sale or disposal made for a consideration. Section 7, further, says that the supply has to be in the course or furtherance of business. With regard to this, it is seen that the applicant is in the business of having a cash management network involving transportation of cash. The disposal of the cash carrying vans is a transaction in connection with or incidental or ancillary to the business of having a cash management network. As and when the vehicles become scrap, they have to be disposed of and the proceeds therefrom to be identified as income for the business which is reflected in the profit and loss account of the business. Buying new assets and discarding the old and unusable assets is an activity in the course of carrying on the business. Hence, supply of motor vehicles as scrap after its usage is an activity of supply in course or furtherance of business and such transaction would attract GST.

Supply of EPC contract for construction of power plant would Be treated as 'Works Contract': AAR.

Supply of turnkey Engineering, Procurement and Construction(EPC) contract for construction of a solar power plant wherein both goods and services are supplied is a works contract and hence cannot be treated to be a Composite Supply in terms of section 2(30) of the Central Goods and Services Tax Act, 2017.

No credit of Krishi Kalyan Cess is allowed under GST: AAR

Non-availability of carry forward of credit with respect to KKC has been clarified to the Trade. In view thereof, accumulated credit by way of Krishi Kalyan Cess (KKC) as appeared in the Service Tax return of Input Service Distributor (ISD) on June 30, 2017 which is carried forward in the electronic credit ledger maintained by the company under CGST Act 2017, will not be considered as admissible input tax-credit.

GST: Recovery of food expenses from employees for canteen services provided by company falls under definition of 'outward supply' and therefore, taxable as supply of service under GST


- Section 7, read with section 2(83), of the Central Goods And Services Tax Act, 2017 - Supply - Scope of - Whether recovery of food expenses from employees for canteen services provided by company would come under definition of 'outward supply' as defined in section 2 (83) of Central Goods and Services Tax Act, 2017 and hence taxable as supply of service under GST - Held, yes

● **PRESS RELEASE ON TAXABILITY OF PERQUISITES**

- It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).

GST: Applicability of GST on separate contracts for supply of goods and services in case of Solar Plant.

- Applicant sought for advance ruling on whether in case of separate contracts for supply of goods and services for a solar power plant, there would be separate taxability of goods as solar power generating system at 5 per cent and services at 18 per cent. However impugned agreement contended to be for supply of goods was actually a works contract involving engineering, design, procurement and commissioning of solar power plant. Further, contract contended to be for supply of services was also one for executing a works contract involving a provision of goods as well as services. Thus, depending upon nature of supply, intra state or inter-state, rate of tax would be governed by entry no. 3(ii) of the Notification No. 8/2017 - Integrated Tax(Rate under the Intergrated Goods and Services Tax Act, 2017(IGST Act) or the Notification No. 11/2017 - Central Tax/State Tax (Rate) under the CGST Act and MGST Acts. The rate of tax would be 18 per cent under the IGST Act and 9 per cent each under the CGST Act and the MGST Act.



Thus, by entering into two contracts for one supply we cannot escape our liability. A supply has to be seen in totality. Parts are not supplied in isolation, there is further agreement for its maintenance and running also.

Interest charged by Del Credere agent on short term loan exempt from GST

- Service provided by applicant, Del Credere Agent by way of extending short term loans insofar as consideration is represented by way of interest, is covered under Sl. No. 27 of Notification 12/2017-CT(R) dated 28-6-2017 and Notification No. 12/2017 – ST(R) dated 30-6-2017 and hence exempted from payment of GST.
- The applicant reiterated that the role of the DCA is limited to order booking and guaranteeing payment. Supply of material is directly by the principal to the customer. Any delay in supply or any quality issue, it is principal who directly compensates the customer. DCA does not buy, store or sale any material of principal to any customer and therefore there is no transaction of any purchase or sale of goods in his books.
- when the buyer is not in a position to pay to principal on the due date, he approaches DCA to extend short term loan and the loan is extended by the DCA by making payment to the principal on behalf of the customer.

- Section 15(2)(d) of the CGST Act, 2017 and the Gujarat Goods and Services Tax Act, 2017 provides as follows:-
- *(d) interest or late fee or penalty for delayed payment of any consideration for any supply.*

It was observed that the interest received by the applicant is consideration towards loan extended to the customers and such interest is not towards the payment of consideration for supply of goods by the principal to the customers.

Keshyog Ayurvedic/Herbal Hair oil' and 'Keshyog Ayurvedic Shampoo' classifiable under Heading No. 30 as Ayurvedic medical preparation

- Classification of goods - Heading No. 30, read with Heading No. 33, of the Central Excise Tariff Act, 1985 - Keshyog Ayurvedic/Herbal Hair Oil and Keshyog Ayurvedic Shampoo - Period January, 2006 to March, 2007 - Assessee was engaged in selling goods called 'Keshyog Ayurvedic/Herbal Oil' and 'Keshyog Ayurvedic Shampoo' - Whether said products were classifiable under Heading No. 30 as Ayurvedic medical preparation and not under Heading No. 33 as preparations for use on hair - Held, yes

Reinstatement charges paid to Municipal Authorities for restoring dug-up patches attract 18% GST: AAR

- Applicant is engaged in business of generation, transmission and distribution of electricity which calls for laying and maintenance of power lines and other incidental work which required digging up of trenches. The Municipal Authorities grant the needful permissions, however, subject to charges for restoring the street or pavement which has been dug up. Thus, charges are recovered by the Municipal Authorities to restore that portion of the street or pavement which has been dug up. The restoration work can neither be equated to construction work nor to maintenance work as suo-motu undertaken by Municipal Authorities. Thus, recovering of charges for restoring patches which have been dug up by business entities/applicant cannot be equated to performing functions as envisaged under article 243W of the Constitution. Therefore, reinstatement charges would attract GST at the rate of 18 per cent

GST: Supply of goods made to international outbound passengers holding international boarding pass from retail outlet/duty free shops of applicant located in Security Hold Area of IGI International Airport, Terminal-3 liable to GST at applicable rates

- Section 9, read with section 2(56), of the CGST Act, 2017 and section 2(4), read with sections 2(5), 2(23), 2(56) and 16, of IGST Act and section 2(27) of the Customs Act, 1962 - Levy and collection of tax - Applicant was engaged in supply of goods made to international outbound passengers holding international boarding pass - Applicant was charging SGST/CGST on supply invoice issued to International passengers, however, he was of view that, its supply of goods to international passengers was a zero rated transaction, being 'export sale' within meaning of same under section 2(5) of IGST Act - It was observed that supply of goods may be taking place beyond Customs Frontiers of India as defined under section 2(4) of IGST Act, 2017, however, retail outlet/duty-free shops of applicant were located in Security Hold Area of IGI International Airport, Terminal-3, hence were within territory of India as defined under section 2(56) of the CGST Act, 2017 and section 2(27) of the Customs Act, 1962 - Thus, applicant was not taking goods out of India and hence its supply could not be called 'export' under section 2(5) of the IGST Act, 2017 or 'zero rated supply' under section 2(23) and section 16(1) of the IGST Act, 2017 - Whether thus, applicant was required to pay GST at applicable rates on supply from duty shops - Held, yes



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