

Challenges and Resolutions under GST law

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The GST law has changed the tax incidence, tax computation, tax structure, Input tax credit utilization, Refund mechanism,etc. as compared to the Erstwhile Indirect tax structure. There are decisions pending before the courts which were challenged in the erstwhile indirect tax structure like overlapping of tax on various transactions,ineligibility of input Tax credit, disputes on classification, valuation etc. Even under the GST law lot of litigated issues are pending before the courts and certain decisions of the courts have led to chaos to the assessee for implementing such decisions in the course of his business.

Transitional credit

- Some of the business entities have missed it to claim benefit of transitional credit or could not file the transitional credit form due to technical glitches. They have approached to the High court to extend the time limit for filing transitional credit or allow to file it manually. Various High Courts (including Karnataka High Court) have granted relief to the taxpayers by directing the authorities to open the portal and/or receive manually filled forms and/or approach the Nodal officers appointed by the Government in this regard. Based on decision **of Brand Equity Treaties Ltd Vs. Union of India (2020) Delhi HC**, the applicant was permitted to revise Trans-1 Form on or before 30.6.2020 and transition the entire credit subject to department verifications. It was directed to open the online portal so that revised Trans-1 can be filed electronically or to accept the same manually. Even in the case of **Amber Industrial Corporation Vs Union of India & ANR**, 2020- TIOL-1046-HC- PC the respondents are directed to permit petitioner to upload TRANS-1 on or before 30.6.2020 and in case the Department Authority rejects the same then the applicant can avail the input tax credit in GSTR 3B of July 2020 on multiple occasions. Based on the above decisions on transitional credit, some of the applicants have already filed the applications for the claim of missed transitional credit manually. The issue is pending before the higher jurisdictional Courts and the decisions are awaited...

Clubbing Tax periods for filing Refund Applications

- There was clarification issued in 37/2018 in point 11 that in many scenarios, exports may not have been made in that period in which the inputs or input services were received, and input tax credit has been availed. Similarly, there may be cases where exports may have been made in a period, but no input tax credit has been availed in the said period. The above referred rule, taking into account such scenarios, defines relevant period in the context of the refund claim and does not link it to a tax period. In this regard, it is hereby clarified that the exporter, at his option, may file refund claim for one calendar month / quarter or by clubbing successive calendar months / quarters. The calendar month(s) / quarter(s) for which refund claim has been filed cannot spread across different financial years. Therefore, the applicant has to cumulatively file in the respective year for claiming the refund. If the above issue was not resolved, the exporter was forced to work on a rebate mode to extinguish/utilize the ITC accumulated through months in which he does not have exports. As per Circular 135/05/2020-GST dated 31/3/2020, the restrictions on clubbing of tax periods across the financial year has been removed and therefore there is no bar in section54(3) to claim refund by clubbing different months across successive financial

years. Therefore, the applicant can file the refund application by clubbing different months across successive financial years. The GSTN has its own piece of teething conflicts and it is always great challenge for the businesses all over the country because of technical glitches and frequent amendments in the GST law. The above amendment was not activated or customized in GSTN portal for filing the consolidated Refund applications across different financial years. On 27th August it has been activated in the GSTN Portal and therefore Refund Application in GST RFD-01 can be filed for the periods relating to different Financial Years in a single Refund Application. Therefore, Refund Applications can be filed across the Financial Years.

GST Appellate Tribunal

- The GST Appellate Tribunal has not yet been constituted nor notified by the Government u/s 109(1) of the Act. In the absence of Appellate Tribunal, the appellant is unable to file any appeal against the order of Joint Commissioner of Commercial Taxes (Appeal) at this point in time. The constitution of Appellate Tribunal is not yet constituted due to order of Madras High Court in case of ***Revenue Bar Assn. v. Union of India.***

Interest

- As per section 50(1) of CGST Act 2017, every person who is liable to pay tax in accordance with the provisions of the Act or the rules made thereunder but fails to pay tax or any part thereof to the Government within the prescribed period shall for the period for which the rate or any part thereof remains unpaid pay on his own interest at such rate not exceeding 18 % as may be notified by the Government on the recommendations of the council. The GST Council in its 39th Meeting gave in principle approval to the following amendments in the GST Acts that amendment of Section 50 of the CGST Act to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit. In simple terms interest would be leviable only on the amount payable through electronic cash ledger. The above recommendation will be made effective only after the necessary amendment in the GST Act are carried out. This amendment was eagerly awaited to see whether this amendment has retrospective effect as it can save some of the assessee who has already paid interest on net basis and not on gross basis accordingly. Vide Notification 63/2020 – Central Tax dated 25.8.2020, Proviso is added to section 50 of CGST Act which state that interest liability for delayed payment of GST is to be charged on the Net Cash Tax Liability with effect from 01.9.2020. Vide Press release dated 26.8.2020 the CBIC clarifies that while Notification is issued prospectively due to certain technical limitations, no recoveries shall be made for the prior period of 01.9.2020. Therefore, interest on delayed payment of GST will be on net liability though lot of judicial pronouncements has given different ruling on the above issues.

- **IGST on Ocean Freight**

- The levy of IGST on ocean freight was challenged before Gujurat High Court on transportation of goods by vessel. The petitioner's submission was that Notification No. 8/2017-Integrated Tax (Rate) and Entry 10 of Notification No. 10/2017- Integrated Tax (rate) are *ultra vires* the IGST Act, 2017. The challenge was on following grounds as IGST has been paid on entire value of imports inclusive of ocean freight, it cannot be asked to pay tax on ocean freight all over again under a different notification and in case of CIF contracts, since both service providers and recipient are outside the Indian territory, no tax thereon can be collected even under reverse charge mechanism. There is chaos over applicability of IGST on ocean freight under reverse charge though many of the assessee are continuing to pay under reverse charge mechanism and claimed the input tax credit by setting off with other liabilities. Vide the case of *Mohit Minerals Private Limited Vs Union of India* 2020 VIL 36 Gujarat (HC) dated 23.1.2020 wherein it is held that the payment of IGST on ocean freight under reverse charge is held unconstitutional. Before AP High Court, the Petitioner has challenged the above notification and has claimed the refund of IGST paid on ocean freight charges. It was challenged in Bharat Oman Refineries Vs Union of India 2020-VIL-397-GUJ and the respondents are directed to sanction the refund and pay the requisite amount of IGST already paid by the writ applicant pursuant to Entry 10 of Notification No 10/2017 dated 28.7.2017 having been declared *ultra vires*. Therefore, there are different views on payment of IGST on ocean freight as whether it will be challenged before Supreme Court or whether the assessee should stop paying IGST on ocean freight under reverse charge.

Challenged Rule 36(4) Restricting Input Tax credit

There is restriction imposed vide Rule 36(4) of the CGST Rules 2017. The Rule state that Input tax credit to be availed by a registered person In respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent (10% w e f 1.1.20). of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37. This Rule has been challenged in various courts. This Rule restricts the Input tax credit up to 20%/10 of value of Invoices in respect of Invoices/debit notes whose details have not been uploaded by the suppliers. The availment of input tax credit is restricted over and above the amount reflected in GSTR 2A despite having valid tax Invoice. The Rule 36(4) is challenged on the ground that it finds the reference in section 43A of CGST Act which is yet to be notified and override section 41, 42 and 43 of the CGST Act 2017. Even it is challenged on the ground that introduction of Rule 36(4) is *ultra vires* to sections 38(1) and 42(3) of the CGST Act.

Intermediary Services

There are different school of thoughts towards levy of tax on Intermediary services. One school of thought is that place of supply shall be the location of the intermediary. Since the supplier and the place of supply is within the state but in view of the fact that the recipient is outside the country, IGST becomes applicable. With reference to the provisions of Section 8(2), it restricts the supply of services under Section 12 i.e when the supplier and recipient are in India. It does not cover the situation when the supplier is in India and recipient is outside India, but the place of supply is in India. Therefore, based on Section 7(5)(c) which states that Supply of goods or services or

both in the taxable territory, not being an intra-State supply and not covered elsewhere in this section shall be considered as Inter- state supply and accordingly IGST can be levied. The other school of thought is that under section 8 of IGST Act 2017 when the location of supplier and the place of supply happens to be in the same state such supplies are deemed to be intra state supply and therefore CGST and SGST can be levied. The recent verdict of Gujarat High Court in the matter of Material Recycling Association of India Vs Union of India & Others (TS-586-HC-2020(Guj-NT) held that as per section 13(8)(b) of IGST Act 2017 if the supplier who is providing intermediary services to a person located outside India, the place where the services are deemed to have been supplied is the place where the supplier is located. Such transactions will be treated as intra state supply and the supplier is required to pay CGST and SGST as the location of supplier is the place of supply of Intermediary Services. Some business entities would have already paid IGST on such intermediary services in lieu of SGST/CGST as there was ambiguity towards the levy of tax on intermediary services.

Inverted Duty Structure

- Rule 89(5) of CGST Rules 2017 relating to refund of input tax credit on account of inverted duty structure has been challenged. Section 54(3)(ii) provides that refund of any unutilized input tax credit may be claimed by the registered person in case where credit has been accumulated on account of rate of tax on **Inputs** being higher than the rate of tax on output supplies. Therefore, allowing the refund of tax paid on inputs is challenged on the ground that it is unreasonable, irrational, discriminatory and there is no apparent justification for excluding the tax paid on input services from the purview of net input tax credit for computing the refund amount under Inverted Duty Structure. Vide Notification No. 21/2018- CT dated 18.04.2018, the CGST Rules were amended retrospectively to provide that taxpayers would not be entitled to claim refund of taxes paid on input services. The Gujrat High Court in case of **VKC Footsteps India Private Limited Vs Union of India & Others 2020-VIL-340-Guj dated 24-7-2020** held that the registered person is entitled to claim refund of taxes paid on inputs as well as input services. In case the refund of input tax credit availed on input services is restrained then it will lead to blockage of funds/working capital and affect the cost competitiveness of small business entity especially in the current pandemic situations.

The global economic shut down due to Covid-19 has raised the concerns among the trade and industry. During this phase, there may possibly be reduction in tax revenues for both center and states. In the phase of country lockdown, the Government has made certain amendments under the GST law including the relaxations for extension of dates, waiving of interest, late fee and penalty in certain instances but simultaneously the challenges to GST are getting added with different judicial decisions, multiple advance rulings and awaited clarifications. Therefore, it is imperative to understand the implications of the challenges which is affecting almost every aspect of the operations in the business.