



FOR MEMBERS /  
SUBSCRIBERS /  
VOL. 25 - NO. 4  
NOVEMBER 2021

# C.V.O.CA'S

## NEWS & VIEWS

From President's Desk...



**Dear Professional Colleagues and Readers,**

All religious festivals connect ancient stories to modern rituals and involve communities gathering to remember, commit and worship. Although due to current scenario, gathering may not be possible but every one celebrate it with whole heart. *The Nine colours of Nine Nights of Navratri brought positivity and happiness in our life.*

Diwali or Deepavali is one of the most prominent and famous Hindu festivals of India, celebrated with great gusto and fervor. In Sanskrit, word 'Deepavali' means "rows of lights" so this festival is also known as "Festival of Lights". People of all religion enjoy this festival by making vibrant rangolis, lighting lamps 'diyas', distributing sweets, exchanging gifts between friends and relatives and burning crackers. This festival of lights transcends religion and is unanimously celebrated by Indians worldwide.

Both festivals are reminder of the *Victory of Good Over Evil.*

In its fight against coronavirus pandemic, the nation has achieved a major milestone of administering 100 crores vaccine doses. With great hope it may turns to victory over pandemic. Soon it will be like a long awaited end to a sad tale and the beginning of a new era of happiness and peace. Truly said, "There is nothing permanent except CHANGE."

### ***Inflation impact on Indian Economy***

India is expected to grow at 7.2 per cent in 2021 but economic growth could decelerate next year, according to a United Nations report which said the recovery in the country is constrained by the ongoing human and economic cost of the COVID-19 pandemic and the negative impact of food price inflation on private consumption. It also noted that income and wealth inequalities in the country have widened, and "social unrest has increased".

Further, it said that in India, consumer inflation was already at 6 per cent before the pandemic. The COVID-19 shock caused a temporary dip in prices, but as the economy recovered and food prices accelerated, the country returned to a 6 per cent inflation rate in mid-2021.

### ***Elections of ICAI -Central Council and Western India Regional Council***

Every three years we get chance to elect our representatives for Central Council and WIRC, the election of which will be conducted on 3<sup>rd</sup> and 4<sup>th</sup> December 2021. In current scenario it is very much necessary to send best candidate to the Central council who can represent all of us before the government and can help out in forming policies which are necessary for the betterment of the society. It is very much necessary to elect best candidate in regional council also to represent us before central council. I request all the members to cast their votes to right candidates.

*Let's celebrate the festival in the true sense by spreading joy and light up the world of others. Have a happy, safe, and blessed Diwali! With the shining of diyas and the echoes of the chants, may prosperity and happiness of this festival of lights fill our lives.*

Thank you all..... Always in Gratitude

**"Happy Diwali to all"**



*CA Rahul Nagda*

CA Rahul Nagda

November 1, 2021



|  |                                       |    |
|--|---------------------------------------|----|
| Compatibility Mode .....                                     | CA Dinesh Shah (Chairman Comm.) ..... | 3  |
| Doctrine of Mutuality in Indirect tax .....                  | CA Chintan Rambhia.....               | 5  |
| ITC on Normal Losses .....                                   | CA Deep Chheda .....                  | 7  |
| Job Work and related compliance under GST .....              | CA Nitin Kenia .....                  | 10 |
| Refunds under GST and some Issues pertaining to Refund ..... | CA Mehul Gala .....                   | 17 |
| Challenges faced in Assessments and Audits .....             | CA Jayesh Gogri .....                 | 23 |
| "Dreamzz Unlimited": Stories that inspire.....               | CA Umesh Gala .....                   | 26 |
| Events in Retrospect: .....                                  |                                       | 31 |

### Managing Committee 2021 - 2022

**President** : CA Rahul Nagda  
**Vice President** : CA Ameet Chheda  
**Secretary** : CA Jeenal Savla  
**Jt. Secretary** : CA Vinit Gada  
**Treasurer** : CA Mehul Gala  
**Members** : CA Priti Savla  
                   CA Harsh Dedhia  
                   CA Gautam Mota  
                   CA Parin Gala  
                   CA Umang Soni  
                   CA Girish Maru  
                   CA Chintan Rambhia  
                   CA Viral Satra  
                   CA Hetal Gada

### News Bulletin Committee 2021 - 2022

**Chairman** : CA Dinesh Shah  
**Convenor** : CA Gautam Mota  
**Jt. Convenor** : CA Viral Satra  
**Invitee** : CA Jayesh Salia  
**Members** : CA Kirit Dedhia  
                   CA Meghna Makda  
                   CA Kushal Dedhia  
                   CA Jill Shah  
                   CA Pratik Maru  
                   CA Priten Shah  
                   CA Disha Gada  
                   CA Shreya Nagda  
                   CA Kimi Nagda  
                   CA Zalak Savla

**Disclaimer:** The views / opinions expressed in the articles are purely of the writers. The readers are requested to take proper professional guidance before abiding the views expressed in the articles. The publisher, the editor and the association disclaim any liability in connection with the use of the information mentioned in the articles.

## LIFE... T20... A GAME



CA Dinesh Shah

Email : swastikdns@hotmail.com



### FROM THE DESK OF CHAIRMAN

In the period of Cricket T20 fever, An Honest attempt is made to compare life to Game of T - 20 Cricket, FRIENDS has almighty created life for entertainment, like any game, as we humans have created for our entertainment. Life is a game of skills talent striving endurance with honesty, Similar to sports, we all strive, and the best one wins the game, but at the end of the day it is Game! Game !

Assuming Life span of 80 years, In 20:20 game of life. Even if life does not change exactly every 20 years, but it does roughly move in these phases. The first 20 years of our life are determined by and large with our karma of our past birth due to which we are born in particular form, country religion race or family. These factors affect us to the age of 20, which is in our childhood and adolescence.

The progress we make in the next 20 years from age 20 to 40, our youth and adulthood, are determined by our karmas of the first 20 years, particularly our parents guidance, or lack of it, education or lack of it, our cultural education in the family or lack it, The society where we are grown up etc., at the same time, the effects of karma of our last birth fade out and lessen their effects on us the result of those karma we have already enjoyed or suffered in the first 20 years of our life.

Similarly, the next 20 years, approximately from age 40 to 60 years of our adulthood and midlife, get affected by the karma of the past 20 years of our life; at the same time we gradually stop suffering or enjoying the benefits from our karma of our first 20 years of life. Be it developed in intellectual capacity, the friends we choose, the society we live in, our social activities, practicing and following religious philosophy, the books we read, the knowledge we gather, living cheerful and disciplined living, The wisdom developed from knowledge and learning from mistakes made in the past.

In the next 20 years from age 60 to 80 we are relatively free from the baggage of our first 60 years as we are freed from family and work responsibilities; we can overcome or enjoy our own karma of our past 20 years in our last days due to understanding and wisdom gained with age.

In this phase we have all the opportunity and very little reason not to redeem our lives. If we have done good, we enjoy the fruits; if we have collected bad karma knowingly or unknowingly due to anger greed, vices, revenge or over indulgences of our senses, we suffer. Many people however sleepwalk through life without understanding life or learning from mistakes. But those who wake up even late redeem their lives.

In the game of life we may have neither won nor lost, However in life generally we get extra time to score and win the lost ground,. The quality of the next life would depend on how we have played the game of life. The years after age 60 can be used effectively to win in a short time by redeeming ourselves from our sins by good acts.

We can not only improve our last days but also sow seeds for a better next birth. And if we play the game well we need not come back to play more games as we can retire as winners and achieve moksha

**!!!! TREAT OTHER THE WAY YOU WANT TO BE TREATED !!!!!**

**!!!! REMEMBER THE SOUL IS ON JOURNEY !!!!!**

*Thank you all..... Always in Gratitude*

*CA Dinesh Shah*





## DOCTRINE OF MUTUALITY IN INDIRECT TAX



CA Chintan Rambhia

Email : ca.chintanrambhia@gmail.com

Indirect tax is typically levied on any economic activities between two persons for a consideration. However, can such a tax be levied in case of members' clubs where there is no sale by one person to another for a consideration? Can indirect tax be levied even in case of supply to oneself? Will the answer differ if the said members' club is an incorporated entity or an unincorporated one? These aspects are discussed in this article.

### ➤ What is doctrine of mutuality?

Hon'ble Supreme Court in *Bangalore Club vs Commissioner of Income Tax* reported in [(2013) 5 SCC 509] set out the essential conditions for the doctrine of mutuality, which are as under:

- There must be complete identity of contributors to the fund and recipients the label or form by which organisation is known is of no significance.
- The action of the organisation must be in furtherance of its mandate for the benefit of its members. Determination of Mandate can be identified by the articles or MoA.
- When a club receives a surplus amount and if there is no direct benefit to the customers or members and such surplus amount is used for customers or members, that can be considered to be in furtherance of mandate;
- Impossibility of profits being derived by such contributions made by Members.

### ➤ Can Indirect tax be levied where doctrine of mutuality applies? (Pre GST regime)

There is a long history of litigation in the pre-GST regime where Revenue sought to levy tax even when doctrine of mutuality applied. The Hon'ble courts in *Young Men's Indian Association* [(1970)1 SCC 520]; *Ranchi Club Ltd vs Chief Commissioner of Central Excise and Service Tax* [(2012) 3 AIR Jhar R 255:(2012) 51 VST 369]; *High Court of Gujarat Ltd. Vs Union of India* [2013 64 VST 191] have consistently held that any sort of indirect tax cannot be levied where doctrine of mutuality can be applied.

Significantly not too long ago, Hon'ble Supreme Court in a now landmark judgment of *State of West Bengal & Ors vs Calcutta Club* [AIR 2019 SC 5310] upheld above judgments.

### ➤ Can Indirect tax be levied where doctrine of mutuality applies? (GST regime)

Similar long litigation was expected in the GST regime as well regarding applicability of GST when doctrine of mutuality applied. In expected lines, there were enough indications in the Rate notifications that government will try and levy GST on such transactions. Case in point being applicability of GST on maintenance fees collected by Residential Society above Rs 7,500/-.

Arguments can be made whether whatever activities a club/society is undertaking is merely as a pure agent for its members. Practically, in order to abstain from litigating such issue, GST is being levied on majority of transactions being carried out by a club/society considering the sheer amount of time it takes to resolve such an issue under litigation.

Noting the Hon'ble Supreme Court judgment *State of West Bengal & Ors vs Calcutta Club* [AIR 2019 SC 5310], Section 7 (1) (aa) was inserted in CGST Act with **retrospective effect and made applicable from 1<sup>st</sup> July 2017** vide section 108 of The Finance Act 2021 to overcome the said decision. The activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration shall also be considered as supply under GST Act and accordingly GST shall be applied.

Thus, on plain reading of the above section, it appears that the government's intention is clear. GST shall be levied on aforementioned transactions where doctrine of mutuality applies (whether or not entity is an incorporated entity or unincorporated). It should be noted that operability of section 108 of The Finance Act 2021 has not yet been notified as on the date of this article.

#### ➤ **Key points to deliberate:**

- **Whether interest and penalties can be made applicable?:** Many clubs or society or associations may not have undertaken GST registration. The amendment being a retrospective one, interest and penal consequences could be applicable under GST law. It is a settled law that no offence and penalties can be created where there is an interpretation issue. The need to insert the amendment from retrospective date can favour such an argument. Further, the extended period of limitation also cannot be invoked based on the retrospective amendment in absence of any intent to evade the tax (refer *K. SPINNING AND WEAVING MILLS LTD. v. UOI* 1987 (32) E.L.T. 234 (S.C.)).
- **Whether interest and penalties can be made applicable?:** The Hon'ble Supreme Court in the case of *Star India Pvt. Ltd. vs. Comm. of Central Excise* 2006 (1) STR 73 (S.C.) held that even the liability to pay interest would only arise on default and is really in the nature of a quasi-punishment. Such liability although created retrospectively may not entail the punishment of payment of interest with retrospective effect.
- **What about ITC of past periods?:** On plain reading of section 16 of GST Act, ITC may not be available to a club or association if it decides to make good the GST liability in view of the recent amendment. Argument can be made on the basis of doctrine of fairness in case of retrospective amendment and ITC can be claimed. However, this will be challenged by the Revenue.

#### ➤ **Conclusions**

Number of clubs and associations would not be very large. Thus, after introducing this retrospective amendment, any significant increase in the revenue coffers is highly unlikely. Further, taxation of such transactions might discourage the cooperative movement. Though the "retrospective effect" of the amendment is likely to be challenged in higher forums, the amendment might well be applicable from a prospective date.



## ITC ON NORMAL LOSSES



CA Deep Chheda

Email : deep@cbcandco.com

*“Seamless availability of Input Tax Credit has been one of the bedrock principles of Indirect taxation all over the world and GST Law in India is no exception. However, it is safe to say that availment and utilization of ITC under GST in India is anything but seamless.”*

Seamless availability of Input Tax Credit has been one of the bedrock principles of Indirect taxation all over the world and GST Law in India is no exception. The core idea behind allowing input tax credit is that the taxes paid on purchases should not become a cost for the dealers which would lead to cascading effect of taxes and ultimately increase the cost to the end consumer.

As simple as this logic sounds, the reality is a bit more complicated. In theory, the GST law allows for seamless ITC, however, there are a lot more restrictions which the taxpayers need to navigate through before availing and utilizing the ITC. Safe to say that availment of ITC under GST is anything but seamless.

While eligibility and conditions for availment have been prescribed in Section 16 of CGST Act, restrictions in availment of ITC have been laid down in Section 17 of the Act. The focus of this article is the 'Blocked credit' under Section 17(5) of CGST Act and specifically Clause (h) which denies input tax credit on inputs which are lost, stolen, destroyed, etc.

### ➤ Analysis of Section 17(5)(h)

As per Section 17(5)(h), ITC cannot be availed on goods which are:

- Lost;
- Stolen;
- Destroyed;
- Written off;
- Disposed by way of gift or free samples

On simple reading of the above it is evident that if any goods which are no longer available for use due to any of the above circumstances, then ITC will not be available on such goods.

However, there are various businesses wherein the inputs are lost under the normal process of manufacturing / supply which we generally term as 'Normal Loss'. Whether loss of inputs as normal loss also falls within Section 17(5)(h) and ITC should be denied on that as well?

### ➤ Principles of 'Noscitur A Sociis' and 'Ejusdem Generis'

'Noscitur a sociis' is a rule of construction and interpretation of law. It is a Latin term which means the 'meaning of an unclear or ambiguous word should be determined by considering the words with which it is associated in the context' i.e. the meaning and context of a word must be interpreted from the company it keeps.

Similarly, Principle of '*Ejusdem Generis*' is latin for "of the same kind." When a law lists classes of persons or things, concept of '*Ejusdem Generis*' is used to clarify such a list. For example, if a law refers to automobiles, trucks, tractors, motorcycles, and other motor-powered vehicles, a court might use *ejusdem generis* to hold that such vehicles would not include airplanes, because the list included only land-based transportation.

When we apply these principles to Section 17(5)(h) it appears that the circumstances mentioned therein are those which we do not face in day-to-day life. For eg. it does not happen every day that the goods are stolen while being transported or a raging fire destroys the goods in the go down every night.

Applying the principles of *Noscitur a Sociis* / *Ejusdem Generis* it is clear that the term 'lost' in clause (h) can be interpreted as goods which are lost due to abnormal/unusual circumstances which do not occur on a regular basis and may not be under the control of the taxpayer.

Whereas 'normal loss' is a part of the manufacturing/supply process and is already considered as an element of cost in the sale price of goods and therefore cannot be said to be an extraordinary circumstance which is beyond the control of the taxpayer.

### ➤ Erstwhile Law

*“Normal loss is an inherent part of the manufacturing process”*

Hon'ble Supreme Court in the case of **M/s Asahi India Safety Glass Ltd. - 2015-TIOL-129-SC-CX** has held that final goods are a cumulative result of the multiple processes the inputs go through during manufacturing and it would be impossible or commercially inexpedient to manufacture goods without the integral stages of manufacture. Therefore, when inputs have undergone the manufacturing process, the MODVAT credit should be allowed.

When inputs undergo the manufacturing process, they are worked upon and it leads to some 'normal loss' of these inputs which is integral to the entire process of manufacturing the final goods. Hence, relying on the judgement of the Hon'ble Supreme Court, it can be said that ITC should be allowed on such goods because they have gone through the manufacturing process and that 'normal loss' is an integral part of the process without which it may not be possible or commercially expedient to manufacture the goods.

Further, Division Bench of Hon'ble Madras High Court in the case of **M/s Rupa & Co. Ltd. - 2015-TIOL-2125-HC-MAD-CX** has specifically held that it is not possible that the quantity/weight of finished goods would be the exact same as the quantity/weight of the inputs used in manufacturing without there being any wastage or loss. Therefore, CENVAT credit shall be allowed on the entire quantity of inputs that have gone into the manufacturing. Relevant extract of the judgement is as follows:

*13. To say that what is contained in finished product is only a quantity of all the inputs of the same weight as that of the finished product would presuppose that all manufacturing processes would never have an inherent loss in the process of manufacture. The expression 'inputs of such finished product' contained in finished products' cannot be looked at theoretically with its semantics. It has to be understood in the context of what a manufacturing process is. If there is no dispute about the fact that every manufacturing process would automatically result in some kind of a loss such as evaporation, creation of by-products, etc., the total quantity of inputs that went into the making of the finished product represents the inputs of such products in entirety.*



16. Therefore, our answer to question (a) would be that the appellant was right in making a claim for CENVAT credit, with reference to the total quantity and the value of the inputs that went into the making of the fabric.

From the above judgements it is a settled principle that normal loss is a part of the manufacturing process and that CENVAT credit should not be denied on the same.

### ➤ Judicial Pronouncement under GST

Hon'ble Madras High Court once again had the opportunity to interpret whether input tax credit shall be allowed on 'Normal Loss', this time under GST Law. Relying on the above judgement in the case of M/s Rupa & Co. Ltd. (supra) it was held that normal loss of inputs is occasioned by consumption of inputs and is inherent to the process of manufacture itself. Therefore, ITC should be allowed on normal loss. Relevant extract of the judgement is as follows:

10. *The impugned assessment orders reject a portion of ITC claimed, invoking the provisions of clause (h) extracted above. This relates to goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. In my considered view, the loss that is occasioned by the process of manufacture cannot be equated to any of the instances set out in clause (h) above.*

11. *The situations as set out above in clause (h) indicate loss of inputs that are quantifiable, and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one which is inherent to the process of manufacture itself.*

15. *In the light of the discussion as above, I am of the view that the reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived, as such loss is not contemplated or covered by the situations adumbrated under Section 17(5)(h).*

Department has not yet filed any appeal in the Supreme Court against the aforesaid judgement.

### ➤ Conclusion

Several industries like textiles, marbles, crockery, chemicals, printing, electronics, pharmaceuticals, etc. suffer normal loss in their manufacturing process and it is almost inevitable to manufacture goods without having any wastage. On multiple occasions, even the Courts have held that manufacturing without normal loss is practically impossible.

Considering the principles of 'Noscitur A Sociis' and 'Ejusdem Generis', it can be said that circumstances mentioned in Section 17(5)(h) for reversal of ITC can be interpreted as those which cover extraordinary or unusual situations and do not cover 'normal loss' which is an ordinary part of the manufacturing process.

Further, relying upon the judgement of Hon'ble Supreme Court and Hon'ble Madras High Court in the erstwhile as well as GST regime, it can be safely concluded that taxpayers need not reverse any ITC on any 'normal loss' which is a part of the manufacturing process.



## JOB WORK AND RELATED COMPLIANCE UNDER GST



CA Nitin Kenia

Email : ndkenia@kkca.co

### What is job Work under GST?

- We can find the meaning of Job work under GST from definition contained in Section 2(68) of the CGST Act, 2017:
 

*“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.*
- Three elements required for treating anything as job work are as follows.
  - Two persons.
  - The goods should belong to a person normally we referred to him as Principal. He should be registered person.
  - Treatment or process to be undertaken on the said goods shall be by another person and we referred to him as job worker. He may be registered or not.

### Whether Contract Manufacturing and Packing, Re-packing, Testing & Inspection, Labelling etc. falls under Job work ?

- If principal is getting his goods manufactured through contract manufacturing is allowed to take benefit of these provisions provided ownership of the raw materials is with him while sending these goods to the job worker.
- Where principal sends his goods for testing or labelling to another person, the same will be treated as “treatment or process”.

### Job work Vs Manufacturing service

- For understanding distinction between Job work and manufacturing services let's read the entry (id) under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017 which says “Services by way of job work other than (i), (ia), (ib) and (ic) above” and CGST rate specified against that is 6 %.

Whereas entry (iv) read as “Manufacturing services on physical inputs (goods) owned by others, other than (i), (ia), (ib), (ic), (id), (ii), (iia) and (iii) above.” and CGST rate specified against that is 9 % wef 01/10/2019.

- As per definition of 'Job work' It means *any treatment or process undertaken by a person on goods belonging to another registered person*. Considering this it is clarified in Circular No. 126/45/2019 dated 22/11/2019 that Entry at item (id) covers only job work services i.e., services by way of treatment or processing undertaken by a person on goods belonging to another **registered** person. On the other hand, the entry at item (iv) specifically excludes the services covered by entry at item (id), and therefore, covers only such services which are carried out on physical inputs (goods) which are owned by persons **other than those registered** under the CGST Act.

### Job Work Vs Repair & Maintenance

- Repairs & maintenance and job work are two different concepts under GST. The intention of the principal along with the activity will define whether it is repair to such goods, or to undertake any 'process or treatment' on such goods. It is pertinent to note that Repairs & maintenance do not change the nature of the goods whereas Job work may result in a change of nature of the goods. Repairs & maintenance falls under HSN code 9987, whereas job work falls under HSN code 9988 which also indicates that there is a difference between the two. For difference between repairs & job work services one may refer to West Bengal AAR M/s. Bhanuka enterprises (No. 47/WBAAR/2018-19 dated 26/03/2019).

### The value of the job work charges for registration:

- **Where Principal is registered:**

As per explanation (ii) to section 22 of CGST Act, 2017, the value of the goods supplied by the principal is not supposed to be included in the aggregate turnover of the registered job worker. From this inference can be made that as the liability to discharge tax under Section 143 would lie on the principal, the job worker would not include the same in his value for the purpose of calculating the threshold limits.

- **Where Principal is unregistered:**

An unregistered job-worker receives goods from an unregistered principal then this benefit will not be available to him and value of the supply of goods of unregistered principal, after completion of job work, by the job-worker shall be treated as the supply of goods by him and the value of such goods shall be included in the aggregate turnover of the job worker.

### REGISTRATION

- The job worker shall be liable to be registered under GST in the State / Union territory, from where he makes a taxable supply of services, if his aggregate turnover in a financial year exceeds Rs. 20 lakh/ Rs. 10 lakh in special category States.
- As per Section 24(i) of the CGST Act, 2017, compulsory registration is required in case of making inter-state taxable supply irrespective of threshold limit. However vide Notification No. 10/2017 – Integrated Tax dated 13/10/2017, exemption from mandatory registration was granted in case of supply of services

- Consequence of both above is that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

### Whether procedure prescribed u/s 143 is mandatory?

The registered person (principal) is not obligated to follow the said provisions. It is his choice whether or not to avail of the benefit of these special provisions.

- **Benefit of Section 143**

The principal is allowed to send any inputs or capital goods **without payment of tax** to a job worker for job work and from there subsequently send to another job worker and likewise under the cover of delivery challan.

### Whether Semi-finished goods can be sent without payment of tax?

Where certain process is carried out on the input before removal of the same to the job worker, such product after carrying out the process to be referred as the intermediate product. As per the explanation provided in section 143 of the CGST Act, 2017, Such intermediate product can also be removed without the payment of tax. Therefore, both input and intermediate product can be cleared without payment of duty to job worker.

- **Filing of GSTITC-04**

- The principal is required to file Form GST ITC-04 by the 25th day of the month succeeding the quarter. The said form will serve as intimation as envisaged under section 143 of the CGST Act, 2017.
- The form is not required to be filed for the period July 2017 to March 2019. (Ref Notification 38/2019 CT dated August 31, 2019).
- the Form GST ITC-04 for the period April 2019 to June 2019 shall be filed with document-wise details of opening balance of goods available with the Job worker.
- Recommendation of 45th GST Council Meeting is implemented vide Notification No. 35/2021 – Central Tax dated 24/09/2021 by providing relaxation in requirements of filing this form w.e.f. 01.10.2021. Taxpayers Whose annual aggregate turnover in the preceding financial year is up to Rs. 5 crore will file this form annually and where turnover exceeds Rs. 5 crores it will be six monthly.

### Procedure for sending the goods under different situations:

- *By principal to the job worker* – The principal shall prepare delivery challan in triplicate, two copies of which may be sent to the job worker along with goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal.
- *From one job worker to another job worker* – Goods may move under the cover of a challan issued either by the principal or the job worker. Alternatively, the challan issued by the principal may be endorsed by the job worker indicating the quantity and description of goods being sent.



- *From the job worker back to the principal* – The job worker should send one copy of the challan received by him from the principal.
- *In piecemeal by the job worker* – A fresh challan is required to be issued by the job worker.

### **EWay bill:**

- Generation of e way bill for intra state movement by motorized vehicle in State of Maharashtra is compulsory where consignment value is above Rs. 100000/= whereas for interstate movement limit is Rs. 50000/=.
- Generation of e way bill is optional where consignment value is up to threshold limit.

However, It is mandatory to generate E way bill where goods are sent by a principal located in one state to a Job worker located in any other state irrespective of value of consignment (Ref third proviso to Rule 138 of the CGST Rules, 2017).

- *What value is to be provided in the E-way bill while returning goods from job worker after completion of job work?*
  - The consignment value will be transaction value determined u/s 15 of CGST Act, the transaction value includes the job work charges, therefore the consignment will be the value of goods + job work charges (including taxes).

### **ITC related:**

- **Where goods are sent from place of Principal**

As per Section 19(1) of CGST Act, 2017, the principal is allowed to take credit on inputs / capital goods sent to the job worker.

- **Where goods are directly sent by Supplier of Principal to job worker**

As per Sections 19(2) (Inputs) and 19(5) (Capital Goods) of CGST Act, 2017, the principal can also send goods directly to the place of job worker without receiving the said goods in his premises first and Input Tax Credit can also be availed in such cases though the principal has not received the goods.

- **Goods lost/destroyed at job worker place**

Where goods are sent to job worker and same are lost/destroyed due to some unavoidable circumstances, goods will not be returned by the job worker. In such eventualities section 17(5) (h) will be applicable and the principal will be required to reverse the credit on inputs or capital goods, and it will not be treated as deemed supply. Other view expressed in this is that since goods will not be returned back by Job worker within time limit provided in Section 143(1)(a) of The CGST Act, 2017 hence it will be deemed supply as per section 19(3) of the CGST Act, 2017.

- **Deemed supply**

In case goods are not returned in prescribed period and treated as deemed supply as per section 19(3) and the principal has to issue invoice and declare such supplies in his return for that particular month in which the time period of one year / three years has expired. **The date of supply** shall be the date on which such inputs or capital goods were initially sent to the job worker. Since **date of invoice** will be of current period, the job worker is eligible to avail the credit of the same. As per second proviso to section 16(2) of the CGST Act, 2017 the job worker has to pay the said amount to the principal. The same may be done by way of making payment in cash or returning the said goods as supply of the job worker. For this, the job worker has to raise his own tax invoice stating principal as buyer.

- **Job worker using his own material**

It is clarified in Circular number 38/12/2018 dated 26/03/2018 that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work and can claim ITC on such goods.

### **Procedure to be followed, conditions and restrictions**

- Inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a delivery challan issued by the principal.
- Delivery challan is required even if such inputs / capital goods are sent directly to a job-worker.
- The delivery challan shall be prepared in triplicate, in the following manner
  - (a) The original copy marked as ORIGINAL FOR CONSIGNEE;
  - (b) The duplicate copy marked as DUPLICATE FOR TRANSPORTER; and
  - (c) The triplicate copy marked as TRIPLICATE FOR CONSIGNER.

For further contents of delivery challan one may refer to Rule 55 of The CGST Rules, 2017.

- The details of following challans issued during a specified period shall be furnished in FORM GST ITC-04, on or before the 25th day of the month succeeding the said quarter and will be treated as intimation. Details required to be furnished by the principal are:-
  - (i) Goods dispatched to a job worker, and
  - (ii) Goods received from a job worker, or
  - (iii) Goods sent from one job worker to another, or
  - (iv) Goods directly supplied from the premises of job worker
- Details of delivery challan generated by the principal for the job work are also required to be furnished in Form GSTR-1 (Return of outward supplies).

### **Procedure when goods are directly sent to Job worker from Supplier or from custom station**

- The goods can be send from the place of business of the supplier to the place of business of the job worker with a copy of the invoice issued by the supplier in the name of the principal wherein the job worker's name and address will be mentioned as the consignee (ref rule 46(o) of the CGST Rules, 2017). The principal shall issue the challan and send the same to the job worker directly.

- In case of import of goods by the principal, which are then supplied directly from the customs station of import, the goods can be moved from the customs station of import to the place of business of the job worker with a copy of the Bill of Entry and the principal shall issue the challan.

### **Time limit for receiving back goods sent for Job work:**

- **Inputs/Semi-finished goods/capital goods**
  - The Inputs/ semi-finished goods sent for Job work must be received back within 1 year of goods being sent out. However Inputs after job work activities can be received back at **any of the place of business of the principal.**
  - In case the inputs are sent directly to a job worker, the period of 1 year shall be counted from the date of receipt of inputs by the job worker.
  - When such inputs are further sent by one job worker to another, then the entire process of job work from more than one job worker shall be considered for computing the period of 1 year.  
Such time limit for capital goods is 3 years.
  - The period of 1 year for Inputs/semi-finished goods and 3 years for capital goods shall, on sufficient cause being shown, be extended by Commissioner for a further period of 1 year/ 2 years respectively.

### **Consequences if Inputs/ Semi-finished goods / capital goods are not received back within time limit**

- If the inputs / semi-finished or capital goods are not received back within time limit as mentioned herein above then the same shall be treated as “supply” from the date the said inputs were sent out. The said supply shall have to be declared in FORM GSTR-1 and the principal shall be liable to pay the tax along with applicable interest.
- Value of such deemed supply will be the value declared in the challan by the principal while sending the goods to job worker i.e., without including cost of transportation and job work charges.
- **Moulds and dies, jigs and fixtures, or tools**
  - The principal can send moulds and dies, jigs and fixtures, or tools for job work purpose without payment of GST and the above time limit of 1 year / 3 years for receiving back the goods will not apply to moulds and dies, jigs and fixtures, or tools.
  - Amortization cost of moulds, jigs, fixtures and tools sent by principal to job worker shall be included in the value of job worker services only when the responsibility/ liability of procuring moulds, jigs, fixtures and tools is of job worker but supplied by principal as per section 15(2)(b) of CGST Act. (One may Refer Circular 47/21/2018 dated 08/06/2018)

### **Dispatching of goods directly from Job Worker premises**

- After the completion of job work, such goods can be directly supplied from the place of the job worker to the customer only if either the job worker is registered or the job worker is not registered but his place of business is declared as additional place of business by the principal. Such supply will be treated as the supply of goods by the principal and the value of such goods will not be included in the aggregate turnover of the registered job worker.

## Waste and Scrap

- **In case where Job Worker is registered**

It can be supplied by the job worker directly from his place of business, on payment of GST on the said waste / scrap.

- **In case where Job Worker is unregistered**

The waste / scrap generated should be returned to the principal along with the goods and such waste / scrap would be supplied by the principal on payment of tax. Alternatively, the principal may supply waste / scrap directly from premises of the job worker under his invoice on payment of tax.

## Reference material for Job work:

- **Sections:**Section 2(68) (Definition) / Section 22 (Registration) / Section 141 (Transitional provision) / Section 143 (Job work procedure) / Section 19 (ITC) of THE CENTRAL GOODS AND SERVICES TAX ACT, 2017
- **Rules :**Rule 45(Conditions and restrictions) / Rule 55 (Delivery challan) / Rule 138 (E Way Bill) of The Central Goods and Services Tax (CGST) Rules, 2017
- **Forms :**Form GST ITC 04 / Form GST Tran 1 / Form GST EWB 01
- **Circulars:**Circular No. 19/19/2017 dated 20th November 2017, Circular number 38/12/2018 dated 26/03/2018, Circular No.52/26/2018-GST-dated 9<sup>th</sup> August, 2018, Circular No. 88/07/2019-GST-dated 1<sup>st</sup> February, 2019, Circular No. 126/45/2019 dated 22/11/2019
- **Notifications:CGST:**Notification No. 32/2019 -Central Tax dated 28<sup>th</sup> June, 2019, Notification No. 38/2019 - Central Tax dated 31<sup>st</sup> August, 2019, Notification No. 35/2021 – Central Tax dated 24/09/2021, Notification No. 87/2020 - Central Tax dated 10<sup>th</sup> November, 2020.

**Notifications:INTEGRATED:**Notification No. 10/2017 – Integrated Tax dated October 13, 2017,

Notification No 02/2019-Integrated Tax dated 29<sup>th</sup> January, 2019

- **Rate Notifications : Rate notifications of IGST - Entry No.26 of Notification No. 8/2017- Integrated Tax (Rate) dated June 28, 2017 read with Notification No. 20/2017-Central Tax (Rate) dated August 22, 2017,Notification No. 39/2017- Integrated Tax (Rate] dated October 13, 2017,Notification No. 48/2017- Integrated Tax (Rate) dated November 14, 2017,Notification No. 1/2018- Integrated Tax (Rate) dated January 25, 2018, Notification No. 19/2019 – Integrated Tax (Rate) dated 30.09.2019, Notification No. 25/2019 – Integrated Tax (Rate) dated 22.11.2019, Notification No. 06/2021- Integrated Tax (Rate), the 30th September, 2021.**

**Rate notifications of CGST-** Entry No.26 of Notification No. 11/2017-Central Tax (Rate) dated June 28,2017 read with Notification No. 20/2017-Central Tax (Rate) dated August 22, 2017,Notification No. 31/2017-Central Tax (Rate) dated October 13, 2017, Notification No. 46/2017-Central Tax (Rate) dated November 14, 2017and Notification No. 1/2018-Central Tax (Rate) dated January 25, 2018, Notification No. 20/2019 – Central Tax (Rate) dated 30.09.2019, Notification No. 26/2019 – Central Tax (Rate) dt 22.11.2019,Notification No. 06 / 2021- Central Tax (Rate), the 30th September, 2021.





## REFUNDS UNDER GST AND SOME ISSUES PERTAINING TO REFUND



CA Mehul Gala

Email : mehultg@gmail.com

Timely refund mechanism is essential part of any taxation system, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business. The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Refunds under GST regime come with certain restrictions, limitations, time limits. To understand the same let us analyse Section 54 of the CGST Act, 2017, which is the main governing section pertaining to GST Refunds.

Section 54(1) of the CGST Act, 2017 states that “ Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from the relevant date in such form and manner as may be prescribed”

### Analysis of Section 54

Section 54(1) states that –

- Any person (whether registered or not)
- who has paid any tax and interest, if any, paid on such tax or any other amount
- can apply for the claim of such tax, interest (if any) or any other amount so paid.
- Application for refund has to be made before the expiry of two years from the relevant date.

**Relevant date** means –

- In case of Goods exported out of India –
  - Exported by sea or air – the date on which Ship or aircraft leaves India.
  - Exported by Road – the date on which goods pass customs frontier.
  - Exported by Post –the date of dispatch of goods by the post office concerned to place outside India.
- In case of Deemed Exports – date on which Return relating to deemed export is furnished.
- In case where Refund arises on account of Judgement, order or direction of Appellate Authority – date of communication of such judgement, order or direction.
- In case of Services exported out of India – date of receipt of payment in convertible foreign exchange or date of issue on Invoice whichever is later.
- In case of Inverted duty structure –date on which return for the period in which such claim arises has been furnished.
- In case of Refund to be claimed by any person other than the supplier – date of receipt of goods or services or both by such person.

- In any other case – the date of payment of taxes.

### **Now let us understand in which situations Refund claim arises –**

Refund claims in GST arises in following situations -

1. Export of goods or services.
2. Supplies to SEZs units and developers.
3. Deemed exports.
4. Refund of CGST & SGST paid by treating the supply as intra-State supply which is subsequently held as inter-State supply and vice versa.
5. Finalization of provisional assessment
6. Refund of accumulated Input Tax Credit on account of inverted duty structure
7. Refund of pre-deposit
8. Refunds to International tourists of GST paid on goods in India and carried abroad at the time of their departure from India
9. Refund of Excess Balance in Electronic Cash Ledger
10. Refund on account of assessment/provisional assessment/appeal/any other order.
11. Refund on account of any other ground or reason.

### **Exceptions, Withholding and Non-Payment of Refunds –**

Following are the exceptional circumstances, where Refund of unutilised input tax credit may not be allowed or Refund may be withheld or not paid by the Assessing officer: -

- > No refund of unutilised input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.
- > No refund of input tax credit shall be allowed, if the supplier of goods or services or both avails of duty drawback in respect of central tax or claims refund of the integrated tax paid on such supplies.
- > Refund may be withheld when the assessee has defaulted in furnishing any return;
- > Refund may be withheld when the assessee has defaulted in payment of any tax, interest or penalty and
- > The Proper Officer is authorised to deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law.

**Procedure for filing of GST Refund claims-**At present i.e., with effect from 26-09-2019 refund procedure is fully electronic. All steps of submission and processing in regard of refund shall be undertaken electronically. The GST Policy Wing issues a **Circular 125/44/2019** by which detail set of guidelines and processing of refund to be done electronically have been laid down.

> **Form GST RFD-01 and Documents-**

- a) The application shall be, inter alia, filled with statements/ declarations/ undertakings.
- b) Documents/ tax invoices shall be required for processing of the refund application be uploaded with the form.
- c) A comprehensive list of documents is provided at Annexure-A of the Circular.
- d) No other document needs to be provided at the stage of filing of the refund application except which are required and stated in Annexure-A.
- e) Ten Attachments maximum size of 5 MB may be uploaded with the Refund Application.
- f) Neither the refund application in FORM GST RFD-01 nor any of the supporting documents shall be required to be physically submitted to the office of the jurisdictional proper officer.

> **Application Reference Number (ARN) and Acknowledgement -**

- a) The Application Reference Number (ARN) will be generated only after the applicant has completed the process of filing the refund application in FORM GST RFD-01, and has completed uploading of all the supporting documents/ undertaking.
- b) The application shall be deemed to have been filed on the date of generation of the said ARN.
- c) The time limit of 15 days to issue an acknowledgement or a deficiency memo, as the case may be, shall be counted from the date of ARN.
- d) The acknowledgement (FORM GST RFD-02) for the complete application or deficiency memo (FORM GST RFD-03), as the case may be, would be issued electronically.

> **Refund Application for a tax period or by clubbing successive tax periods-**

Refund application may be filed for a tax period either monthly or quarterly. Quarterly return filers can only file refund application quarterly. The applicant may club successive tax periods with the refund application. Vide Circular No 135/05/2020 dated 31-03-2020 the restriction on bunching of refund claims across financial years shall not apply. For example, Refund Application can be filed by clubbing of months of March 2019 and April 2019 and for two quarters 4<sup>th</sup> quarter of 2018-19 and 1<sup>st</sup> quarter 2019-20.

> **For refunds of unutilized Input Tax Credit pertaining to exports without payment of tax, supplies made to SEZ Unit/SEZ Developer without payment of tax and accumulation due to inverted tax structure.**

- a) Form GSTR-2A shall have to be uploaded with refund application for the period for which the refund is claimed.
- b) The Applicant shall also upload the details of all the invoices on the basis of which input tax credit has been availed during the relevant period for which the refund is being claimed, in the format enclosed as Annexure-B.
- c) The proper officer shall not insist on the submission of an invoice (either original or duplicate) the details of which are available in FORM GSTR-2A.

> **Deficiency Memos**

- a) A Deficiency Memo shall be issued within 15 days from the date of generation of ARN.
- b) Once an acknowledgement has been issued in relation to a refund application, no deficiency memo, on any ground, may be subsequently issued for the said application.
- c) A fresh application would be filed after correction/rectification of deficiencies as pointed out.
- d) Once an application has been submitted afresh, pursuant to a deficiency memo, the proper officer will not serve another deficiency memo with respect to the application for the same period, unless the deficiencies pointed out in the original deficiency memo remain un-rectified, either wholly or partly, or any other substantive deficiency is noticed subsequently.

> **Provisional Refund Order/Final Refund Order**

- a) Ninety percent of provisional refund may be granted against claim for refund on account of zero-rated supply of goods or services or both.
- b) The provisional refund shall be issued within seven days from the date of acknowledgement through GST form GST RFD-04.
- c) The proper officer may issue final order for total refund in place of provisional refund within seven days from the date of acknowledgement through GST form GST RFD-06 if the proper officer is fully satisfied about the eligibility of a refund claim on account of zero-rated supplies, and is of the opinion that no further scrutiny is required.

> **Re Credit of the Rejected amount in Electronic Credit Ledger**

- a) Where any amount claimed as refund is rejected either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to electronic credit ledger by an order made in FORM GST – PMT 03.
- b) An undertaking in writing from the dealer shall be obtained from the dealer stating therein that he would not be filing an appeal against the said order rejecting the Refund application.
- c) In case the refund claimed is on account of ineligible ITC, the same shall have to be paid by the dealer by filing FORM DRC-03 before the amount is re-credited to Electronic Credit Ledger.

**List of Various Forms under GST for Refund purpose**

- GST RFD – 01 – Form of Application of Refund
- GST RFD – 02 – Acknowledgement of Receipt of Application of Refund
- GST RFD – 03 – Deficiency Memo issued by the GST Officer
- GST RFD – 04 – Provisional Refund Order
- GST RFD – 05 – GST Refund Payment advice
- GST RFD – 06 – Refund Sanction Order
- GST RFD – 07 – Order for complete adjustment of Sanctioned Refund
- GST RFD – 08 – Notice for Rejection of application of Refund
- GST RFD – 09 – Reply to Show Cause Notice



## After understanding the procedure for filing of Refund claim now let us take up some Issues in GST Refund mechanism –

**Restriction of claim of Refund to ITC reflecting in GSTR 2A** - During the start of the GST regime, Refund of ITC was allowed on the basis of submission of physical ITC related invoices irrespective of whether the same are reflecting in GSTR 2A or not. This was beneficial to the genuine dealers to claim refund of ITC, where the supplier has supplied the goods or service to the dealer, but hadn't uploaded the GST number of the buyer in his GSTR 1. However, some of the non-genuine dealers started taking benefit of the above provisions by claiming refund of ITC of bogus purchase bills/ non genuine transactions. Government on getting the knowledge of the same, restricted the claim of ITC in GSTR 3B from October 2019 by insertion of Rule 36(4). *As per Rule 36(4), ITC pertaining to invoices not uploaded by the supplier in GSTR 1 (thereby not reflecting in GSTR 2A of the dealer) shall be restricted to 20% of the eligible credit reflecting in GSTR 2A.* This limit of 20% was later on reduced to 10% and now has been brought down to 5%. As a result of the above, Department vide Circular No 139/09/2020- GST dated 10<sup>th</sup> June 2020, has restricted the refund claim of accumulated ITC to those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. As a result of the above restriction imposed by Circular, now Refund can be claimed only of those Invoices, details of which are reflecting in GSTR 2A. It may be noted here that there are no similar amendments in Sections or Rules governing refund. *Can department restrict your refund claim by issuing a circular restricting claim of ITC, when no such consequent amendment has been made to Section and Rules governing Refund?*

**Valuation of Zero-Rated Supplies** – As per amended Rule 89(4) of the CGST Rules, Value of Zero-rated supplies shall be limited to 1.5 times of like goods domestically supplied by the same or similarly placed supplier. The terms 'like goods' and 'same or similarly placed supplier' have not been explained / defined anywhere in the Rules. This opens up Pandora's box for zero-rated suppliers, especially those who are involved in 100% exports.

*Also, when there is separate Valuation mechanism provided by Section 15 which provide for Valuation of transactions, can department impose separate valuation mechanism for the purpose of Refund by inserting amendment to Rule pertaining to Refund. Section 54 empowers Government to make rules with respect to the form and procedure for application of Refund, then how can department restrict the refund by imposing valuation restrictions on export of goods.* Also, it may be noted that the above restriction of valuation as provided by Rule 89(4) does not govern the transactions of Exports made with payment of IGST. The above restrictions apply only to export transactions made without payment of IGST (ie Exports Under LUT).

**Refund of Input Services under Inverted Duty Structure**– Section 54(3) provides for Refund of Unutilised Input Tax Credit in case of Zero-Rated supplies and in case where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both.

It is important to note that Input tax credit has been defined under Section 2(63) to mean credit of **Input tax**. Input tax is further defined in Section 2(62) to mean tax charged on supply of goods or services or both made to any registered person.

Accordingly, if we replace the definition of Input tax credit in Section 54(3) it reads as “refund of unutilised tax charged on supply of goods or services or both is provided in two circumstances –

- (1) Zero Rated supplies
- (2) In cases where the credits have been accumulated on account of rate of tax on inputs being higher than rate of tax on output supplies.

Government has amended the Rule 89(5) which provides for Refund in case of Inverted Duty Structure vide Notification No 21/2018 dated 18<sup>th</sup> April 2018 to restrict the refund in case of Inverted duty structure only to refund of inputs and accordingly no refund of unutilised credit of Input Services is available. Also, this notification was amended retrospectively.

*The question here was that, whether the circumstance mentioned at Serial No 2 above is just a criteria or is a restriction in itself.*

Gujarat High Court in **VKC Footsteps India (P.) Ltd. v. Union of India (2020) 118 taxmann.com 81 (Gujarat)** held that 'input' and 'input service' are both part of the 'input tax' and 'input tax credit'. Therefore, as per provision of sub-section 3 of section 54, the legislature has provided that registered person may claim refund of 'any unutilised input tax', therefore, by way of rule 89(5) of the CGST Rules, 2017, such claim of the refund cannot be restricted only to 'input' excluding the 'input services' from the purview of 'Input tax credit'. Gujarat High Court judgement was a welcome judgment for many and all the dealers started claiming refund of Input Credit Services as well under Rule 89(5) on the basis of the above judgment.

Then there was this Madras High Court Judgement in case of **Tvl. Transtonelstroy Afcons Joint Venture v. Union of India (2020) 119 taxmann.com 324 (Madras)**, where it was held that Section 54(3)(ii) curtails a refund claim to the unutilised credit that accumulates only on account of the rate of tax on input goods being higher than the rate of tax on output supplies. In other words, it qualifies and curtails not only the class of registered persons who are entitled to refund but also imposes a source-based restriction on refund entitlement and consequently, the quantum thereof.

As a corollary, rule 89(5), as amended, is in conformity with section 54(3)(ii). Consequently, it is not necessary to interpret rule 89(5) and, in particular, the definition of Net ITC therein so as to include the words input services.

Government went into appeal against the Gujarat High Court decision in Supreme Court and now we have Supreme court decision in the case of **Union of India v. VKC Footsteps India Pvt Ltd.(2021) 130 taxmann.com 193 (SC)** where it has been held that Clause (ii) of the first proviso to Section 54(3) is not merely a condition of eligibility for availing of a refund but a substantive restriction under which a refund of unutilized ITC can be availed of only when the accumulation is relatable to an inverted duty structure, namely the tax on input goods being higher than the rate of tax on output supplies. There is therefore no disharmony between Rule 89(5) on the one hand and Section 54(3) particularly Clause (ii) of its first proviso on the other hand. *Explanation* (a) to Rule 89(5) in defining 'Net ITC' to mean ITC availed on inputs (goods) is, as a matter of fact, entirely in line with the main provision, Section 54(3).

*Now the Supreme court has clearly laid down the above issue in the favor of government, thereby now no refund of unutilized Input tax credit can be claimed in case of Services in case of Inverted duty structure.*

**There are few more issues relating to refund, however considering the length of the article I would be restricting to the above main three issues.**

I would like to conclude here by saying that Refund mechanism is an important part of GST implementation, and now the majority of the technical glitches, issues pertaining to portal have been streamlined by the government. It is very important that the refund applications are filed on timely basis with all the supporting documents so that timely refunds are disbursed by the government which in turn would help the dealers with their working capital inflows.



## CHALLENGES FACED IN ASSESSMENTS AND AUDITS



CA Jayesh Gogri  
Email : [jayeshgogri@gscintime.com](mailto:jayeshgogri@gscintime.com)

### Introduction:

When this article is being written, the most celebrated festival i.e., Diwali is approaching and celebration has begun by cleaning houses/offices, sharing gifts and bonuses. Even Department is not left out and has started cleaning the tax defaults of assesseees by gifting enquiry letters, show cause notices, demand notices etc. and carrying out GST audit, search, seizure etc. as bonus. From the time GST has been introduced, the rush of tax collection is at peak, and it continues till date. Let us see some of the recent challenges faced by assesseees during departmental inquest such as GST assessments and audits:

### Multiple tax authorities taking multiple actions:

Central Tax Authorities as well as State Tax Authorities are responsible for enforcing GST across Country. Thus, one of the prime objects of complete integration of major indirect taxes has been achieved through GST, however, it has also entailed cross jurisdiction i.e. both Central Government as well as State Government authorities are empowered to enquire and take legal action against every assessee. Already various wings are developed by each Tax Authority such as Audit wing, Investigation wing, Intelligence Wing, etc. The following is an illustrative list of the types of authorities and the types of legal recourse which can be taken on a single assessee:

Types of authorities:

- Central Jurisdictional Officer
- State Jurisdictional Officer
- Central Audit wing
- State Audit wing
- Directorate General of GST Intelligence (DGGI)
- Central Investigation wing
- State Investigation wing

Types of legal recourse:

- Enquiry
- Audit
- Investigation
- Summon
- Search & Seizure
- Assessment

So the moot point is, multiple tax authorities may take multiple actions on a single assessee for the same tax period. Just a reminder: Routine mails, letters, communications, automatic notices etc. are not even considered in the above list. Under GST Law, assessee needs to be prepared to attend various GST matters parallelly while carrying out routine statutory compliances. Is such a structure pragmatic? Whether the phrase 'One Nation, One Tax' is meant only for Government and not for assessee. Was State-wise registration under GST not enough, that even cross-jurisdiction is introduced by Government? Would such structure not affect India's international ranking for ease of doing business?

One may consider that as per recent Supreme Court's decision in the case of *Canon India 2021 (376) E.L.T. 3 (S.C.)*, the person who did the assessment can only undertake reassessment. Therefore, other officers are not authorised for re-assessment.

### **Department visiting for Service Tax Audit and examining GST aspects or vice versa:**

The powers to conduct an audit under GST law are governed by Section 65 of CGST Act, 2017 whereas the powers to conduct Service Tax audit are governed by Rule 5A of the Service Tax Rules, 1994. It is crucial to note that the provisions and scope of audit under both the enactments are different. Further, GST and Service tax Laws are two different spheres. For example, one transaction may be taxable under GST Law but not under Service tax law and *vice versa*.

### **Provisional attachment:**

Habitually, during the course of any audit/investigation, assessee are insisted to make tax payments immediately even before issuance of final audit report or initiation of adjudication proceedings. Officers carry an impression that wide powers are granted under GST Law, and therefore, they keep on pressurising the assessee to pay the tax immediately (even before crystallising such tax demand) otherwise Department takes the recourse of attachment of bank accounts. Earlier, time and again, the Courts in various cases including *New India Civil Erectors Private Limited 2020 (43) GSTL 17 (Bom.)*, *ICICI Bank 2015 (38) STR 907*, *Cleartrip Private Limited 2016 (42) STR 948*, have held that it is premature to attach the bank account of an assessee as without assessment there cannot be a tax which is payable. At this juncture it is pertinent to look at Section 83 of CGST Act, 2017 which provides that bank account can be attached provisionally in order to protect the interest of revenue, after initiation of assessment, inspection, search, seizure, arrest, demand and recovery. In this regard, it is worthwhile to note the observations made by Gujarat High Court in the case of *Jay Ambey Filament Private Limited 2021 (44) G.S.T.L. 41 (Guj.)* that "In the absence of any cogent or credible material, if the authority passes an order of provisional attachment under Section 83 of the CGST Act, then such action amounts to malice in law. Malice in its legal sense means such malice as may be assumed from the doing of a wrongful act intentionally but also without just cause or excuse or for want of reasonable or probable cause. Any use of discretionary power exercised for an unauthorized purpose amounts to malice in law. It is immaterial whether the authority acted in good faith or bad faith." Thus, looking at the observation of High Court, the powers under Section 83 of CGST Act, 2017 must be carefully used to protect the interest of revenue and not as a tool to pressurise the taxpayer for tax payment.

### **Documentation & formats:**

With changing times, Department is also becoming techno savvy which is crucial for timely completion of departmental proceedings. However, even in this technological era, assessee are asked to provide entire data including transactionwise details in Departmental formats which require substantial time & effort. In landmark judicial pronouncement of *EBiz.com Private Limited vs. Union of India and Anr. 2016 (338) ELT*



562 (Del.), Delhi High Court categorically held that in absence of any relevant provisions, assessee may only be asked to produce documents but not to create it and therefore, they shall not be insisted upon to provide information in a particular format.

### **Questioning eligibility of ITC at the stage of auditing refund claims:**

It is a well-settled law that every legal issue needs to be adjudicated separately. However, there are many cases where legal issues are clubbed. One such classic example is rejection of refund solely on the ground of ineligible ITC. Can eligibility of ITC be questioned at the stage of refund? It is important to distinguish two independent aspects i.e. availment of ITC and refund. In erstwhile regime, in the case of *Allied Chemical & Pharmaceuticals Pvt. Limited MANU/CE/0052/2019 (Tri - Delhi)*, it was observed that in absence of any show cause notice to disallow alleged ineligible credit, refund claim cannot be rejected. At this juncture, please note Section 73(3) of the CGST Act grants explicit powers to initiate separate proceedings to test validity of ITC. Therefore, in all departmental audit and assessment cases, one should analyse each legal issue independently and thoroughly to decide further course of action.

### **Mechanical assessments:**

Under the GST regime, many a times, provisions of GST Law are grossly ignored. Even while carrying out scrutiny, department is blindly relying on figures reported in various forms. Classic examples are assessments merely on the basis of mismatch of outward supplies as per GSTR-1 and GSTR-3B or mismatch of ITC as per GSTR-2A and GSTR-3B. Such mismatch tables are given prime importance over legal provisions. Departmental officers forget that GSTR-3B is a summary statement and more of payment discharge mechanism. In no way, such summary statement can directly be compared with GSTR-1.

Further, without legal validity, GSTR-2A has become an ultimate tool to determine the eligibility of ITC. All legal parameters as envisaged under CGST Act to avail ITC has been given a go-by. Further, to aggravate the issue, show cause notices are issued invoking extended period of limitation for fraud, wilful misstatement or suppression of facts to evade taxes vide Section 74 of CGST Act, 2017. Recently, Hon'ble Jharkhand High Court in the case of *NKAS Services Private Limited 2021 (10) TMI 880* has provided relief to the petitioner by stating that mere mismatch in GSTR-2A and GSTR-3B cannot be the sole basis for issuance of a show cause notice under Section 74 of CGST Act, 2017.

### **Conclusion:**

GST audits and assessments needs to be handled carefully considering frequent amendments; stringent provisions; immediate, mechanical and strict actions by Department. It is time for Government to put organised, efficient and effective processes in place, to achieve the object of "tax collection" and "ease of doing business" simultaneously.

Happy Diwali !!!





## "DREAMZZ UNLIMITED": STORIES THAT INSPIRE



CA Umesh Gala

Email : [umesh.gala@dhruvaadvisors.com](mailto:umesh.gala@dhruvaadvisors.com)

**"Life's battles don't always go the Stronger or Faster (wo)man.  
But sooner or later the (wo)man who Wins...  
...Is the (wo)man who Thinks s/he Can"**

### 1. Foreword:

This piece is being written on invitation from the CVO CA Association. In all humility, I admit that I am one amongst all of you. Nonetheless, as I connect the dots of my journey there are many learnings and wisdom which I will honestly share. The only objective being that some of these will resonate with younger professionals and help them in shaping their individual journey.

### 2. Childhood and upbringing:

Born on kartikpoornima in November 1964 as the youngest amongst 5 children. **My father, Khimjibhai of Kandagara, was an extremely simple, pious soul,** always likable, known for his deep integrity, noble thoughts and uncomplicated personality. **My mother, Ratanbai had a very sharp intellect, even sharper memory and took on the balancing role** as they brought us up as well as took care of my cousins from the extended family.

I have been lucky to be born with a proverbial 'silver spoon' (in relative terms), lived all throughout in Mumbai, a steady joint family business – known as 'Ghasswala family', servants and cooks in the house, cars at our doorstep, a second home bungalow bang on the beach, a few diversified financial and business investments and virtually no financial struggles. **And yet we were raised with utmost simplicity, fully grounded and focused on values and culture.**

We were looked upon for support by many of our relatives, etc. trying to get a foothold in Mumbai. My parents would extend financial and non-financial help freely and anonymously. **I was very close to my grandmother who took special care of the five of us.** She was extremely caring to all, offering money, toffees, food etc. to postmen, gas cylinder delivery guys etc. as also to all other visitors.

School education happened in an English convent in Andheri with most of the learning happening by my own. My parents trusted me for homework, studies and otherwise. I was extremely playful, good at most sports, not studious at all and yet did well in exams without much effort. A chance pilgrimage to Palitana, Sankheshwar, during 5<sup>th</sup> standard Diwali vacations with my mama's family provided early exposure to religion. Reading spiritual books and listening to many spiritual gurus sowed seeds of a spiritual track in life.

**First vision building happened through a gentleman named JB Shah (Shah Sir)** who took extra classes on modern algebra, geometry etc. in our school from 8th standard on an honorary basis. He was extremely well read, widely travelled all over the world and openly shared his deep insights with young minds. He inspired most of his students to study and settle in USA and more than 30 of my school batchmates are settled in USA, UK etc.

**Key learnings:**

- The qualities that we inherit from our parents form the core of our personality. Deepen the gratitude towards them to continue to derive their blessings and imbibe their virtues.
- The environment in which children are brought up leaves a deep and lasting imprint on children. As you bring up your kids, focus on the core values, culture, openness, transparency, sharing family struggles and ancestral history, etc.

**3. Getting serious with studies and career:**

Right till 10<sup>th</sup> standard, I wasn't serious with academics. During the summer vacations post 11<sup>th</sup> standard, became a summer intern for 2 months at Gala & Gala (a large CA firm in our community then). This strengthened my inspiration to become a CA. CA entrance after 12<sup>th</sup>, articleship with the same firm, intermediate exams and final CA exams all happened on a roll in first attempt and merit ranks all throughout.

As I write this, an event which has left deep imprint on my mind happened during my final CA exams. Hours before the Company law paper I had a nervous breakdown. For all exams, it was customary for me to pray and seek blessings of my mother who would put vasakshep (sandalwood powder) on my head. The nervousness was palpable as I entered the exam hall fearing the worst. As I opened the question paper, to my disbelief (and pleasantly so) it comprised of questions for which I was thoroughly prepared. My anxiety vanished almost instantaneously. Not only did I answer the paper well but went on to secure the highest marks at an All-India level and bag the SM Shah prize for best paper in Company Law. This event transformed my belief system that some invisible forces are taking care of me.

After securing 9<sup>th</sup> rank in final CA exams in 1986 at age of 21, my family and I were elated. Thanks to Shah Sir, I was keen to pursue MBA in USA. I had cleared my GMAT, TOEFL with good scores and had also secured admissions in a few good US universities. My dreams to go to the US were shattered as my mother stoutly denied permission. My assurances that I will come back after a few years were in vain. My gratitude towards her made me accept her desire and as events turned out Life had something else in store for me.

In November 1986, I joined a group pilgrimage to Rajasthan spanning 2 weeks visiting Jain temples and other historical places. On that trip I met Neena and our relationship culminated in marriage. She had decided to join in at the last moment in lieu of her mother. As I look back, it was God sent. Neena is extremely sharp, intelligent, truthful and multitalented. She has played a pivotal role in polishing my rough edges. She has been a friend, companion, critic and my strongest support all through my life journey. **Having a spouse whose larger goals, interests and thinking are aligned is a massive boon.**

**Key learnings:**

- One of the drawbacks of our education system is lack of vision building and mentorship. Getting a mentor to help with your vision building in life can pay enormous dividends.
- Life can have its own plans for you and therefore one needs to balance between planning and letting destiny take its shape. Focus on core thoughts, purpose, motives. As these take deeper roots, everything around the periphery will energise the core, the actions to achieve them will come from within and things will fall into place.

#### 4. Professional Career:

##### A. Phase 1- Partnership

The first phase of my professional career was a partnership stint with Gala & Gala for a period of 11 years from 1986 (post qualification) to 1997. I was entrusted to give shape to a corporate practice covering both tax and audit for a firm which had a traditional practice with SME clients.

Acquiring the knowledge base was the first part of the journey. I was active on the professional circuit in all the 3 forums viz- BCAS, WIRC and CTC, participating at these forums, being part of study circles covering tax, audit, accounting, company law, FEMA etc. Attending lecture meetings, RRCs, reading the professional journals almost end to end, leading study circles, writing articles etc. Became active at the CVO CA Association which also provided a wonderful platform to youngsters like me. All these helped me immensely to acquire the knowledge base necessary for a corporate practice. I exited the Firm in 1997 to set up my own practice. It wasn't a planned exit and to this day I share a very close bond with the senior partners. **I remain indebted to the Firm.** My new office inauguration soon after was done by senior partners of Gala & Gala.

##### Key learnings:

- The first 5-10 years for a professional are extremely crucial for acquiring the right knowledge base and creating your career map. Knowledge in varied fields acquired during these years helped create the base for a consulting and advisory practice.
- Anything done with sincerity and focus will reward you, often through channels unknown to you.

##### B. Phase 2 - Professional practice

Before I started my practice, Neena and me took a 2-month study cum pleasure trip to the US. This trip helped create the vision for my practice (partially realizing and fulfilling my dream of a seed sowed by Shah Sir).

I started my practice in the name of U.K Gala & Associates on Daserain October 1997 in Andheri with a handful of clients and a small team. During this time, I also became President of the CVO CA Association. At a BCAS International Tax RRC, 2 friends and me, casually ended up brain storming on doing something different. We short listed a few practice areas, which could catapult us to a different league and yet blend with our existing practices. We narrowed down on ESOPs, went about researching internationally on the same. I attended a conference in the US in 1999. In India, ESOP was a nascent subject and the first SEBI ESOP Guidelines came out in 1999. We were in the midst of dot com boom. ESOPs soon became the flavour of the season. We were ready with ideas and solutions and in the next few years had multiple inquiries and clients all over the country. This made us immensely popular and provided us the opportunity to work with some of the best brains and corporate clients.

Around the same time in 1999, I was approached by the CFO Director of listed pharma company to help them with their tax advice. Their existing advisor had joined a Big 4 firm and that provided the opportunity. The company has gone on to become India's largest, most profitable and most valued pharma company. A small relationship expanded year on year as the Company grew phenomenally over the last 2 decades. I got the opportunity to work as part of the team on some of the most complex, intricate, cutting-edge tax ideas and solutions which have been highly regarded and acclaimed across the fraternity. In a span of few years, similar tax advisory retainerships with other corporates took shape. **I remain indebted to the promoters who reposed faith in me despite being repeatedly sought by the bigger firms.** A niche boutique practice took firm roots.

In 2003 I was keen to move to a more centrally located office in Dadar. I had the opportunity to set up an office in Kamala city, a buzzing corporate centre that would have provided wings to grow the practice. I selected an office in Dadar (East) driven largely by 2 aspects (a) circumsppection of getting entangled in an ever-expanding practice (b) desire was to avoid travel time, so moving residence closer to the office was on the cards sooner or later. Matunga central was the likely destination as it ticked all boxes. We acquired residence in Matunga in 2004 and moved there in 2005. We met 2 of our spiritual Gurus during their chaturmas in Matunga.

All the years when I was in practice as a boutique firm, the revenue model was built around 1/3 principle. Corporate retainerships bringing in 1/3<sup>rd</sup> of the revenue, compliance practice the next 1/3<sup>rd</sup> and one-off advisory services serving the balance. By and large this model remained intact for almost 2 decades. My partners would largely take care of the compliance practice and relieving my time and energies to attend to the corporate clients. They would also assist me on a need basis on corporate tax and advisory side. **We grew with our clients expanding to a decent size as they reposed trust in us.** Newer clients came on their own largely by word of mouth.

#### **Key learnings:**

- It is important to get your strategy and model right.
- Reputation as a professional is built on your integrity and independence. Never ever compromise on them.
- As you build your practice, focus on giving exemplary services that will add significant value to your clients keeping their interests foremost. Pick clients who value your services and who can pay back in equal measure.

### **C. Phase 3 – Stint with Dhruva Advisors**

Managing the growth in practice, infrastructure and people requirements was becoming challenging and at times conflicting with spiritual goals. I was keen to lighten up. In the past I had refused lucrative offers from some of the Big 4 firms as I did not want to move out of my comfort zone and had hesitancy around their practice model not aligning with my temperament and goals. A close friend suggested me to consider Dhruva Advisors which was a boutique venture being built on a different model and offering best in class services. I reckoned that merger with Dhruva would help me focus on quality, take away load of practice management, offer the corporate clients a wider bouquet of services and most importantly enable the team to chase their career ambitions. Most of the corporate clients were also keen to continue relationship with me. Eventually, in 2016, I merged a part of the practice with Dhruva taking along a part of the team. Dhruva Advisors has been always maintained its Tier 1 status in India (by the International Tax Review) and has consistently bagged the India Tax Firm from 2017 to 2021. The team which moved to Dhruva has also grown in stature and competence enabling me to now lead and devote my time towards the knowledge and solutions practice at the Firm. **I thank the senior leadership of Dhruva for the opportunity.**

#### **Key learnings:**

- My stint at Dhruva reassured me and the team that the quality of services we were offering, the clients we serviced, our depth and commitment was on right track. Retaining focus is crucial.
- In taking crucial decisions, one should broaden perspective and take decisions in the best interests of everyone, our self-interest then automatically gets taken care of.

## 5. Other glimpses:

- I was fortunate to be honorary secretary of Kutchi Jain Foundation during the foundational years from 2008-12. The organization has implemented a one of its kind housing programme for needy members of our community. All of us need to pay back to society in the best way one can. **Giving can happen in many ways - by thoughts, words and deeds and by tan -man - dhan. Pay you must, how is a choice.**
- In 2001, I attended a meditation shibir which opened a new window in my inner journey. I have been able to continue meditation practices in the last 2 decades. Meditation has benefitted me in my spiritual journey as also the professional journey providing me deeper insights to everything I did. Since last 5 years, I am fortunate to be part of a team organising meditation courses under guidance of a senior Jain Acharya through 'Maun Sadhana Shibirs'. **Mediation can be one of the best investments (more so for a professional) with potential to pay back multi-fold during this lifetime and beyond.**
- Whatever good that has touched me has been due to countless blessings and support of many including the almighty, gurus, parents and family, my wife, teachers, fellow professionals, partners, colleagues, friends, clients, well-wishers and so many others from whom I have inherited, assimilated, learnt and imbibed. My deepest gratitude to all of them. **I have had a blessed existence and a higher power has taken care of me all throughout.**
- We come here with nothing (tangible) and shall leave with nothing (tangible). Between these 2 points, Life is all about intangibles that create us and that we in turn create. So, focus on the intangibles.
- A common thread running across my life has been a quest for deeper spiritual journey. **I firmly believe that the Only Journey is the Journey Within.** I pray to the Almighty to guide me in the Journey Within and to become desireless.
- **I thank the CVO CA Association for the opportunity provided to me to share my journey.**

*"...behind all the discernible laws and connections, there remains something subtle, intangible and inexplicable"*

*- Albert Einstein*





# EVENTS IN RETROSPECT

| Day & Date                                     | Committee          | Program Name                             | Speaker  | Attendance / Views |
|--|--------------------|--|--|--------------------|
| 14th October 2021<br>(From 5:00 PM to 6:15 PM) | Students Committee | Practical Understanding of Form 15CA/ CB | Chairman - CA Parth Savla<br>Speaker - Saloni Maru | 40+                |

