



Indirect Tax Compendio

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Newsletter from Mukesh Manish & Kalpesh, Chartered Accountants

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Article

Interpretation of 'Governmental Authority' - SC settles issue

1. In a significant legal judgment, the Supreme Court has clarified the interpretation of the term 'Governmental Authority'. The issue came up for consideration before the Hon'ble Supreme Court against an appeal by the Department against a favorable decision rendered by the Hon'ble Patna High Court.
2. **The brief facts issue in dispute was whether IIT Patna and NIT Rourkela constituted Governmental Authority for them to be eligible to avail the exemption notification.**
3. For ease of reference, the definition of the phrase Governmental Authority prior to and post the amendment in the Finance Act has been tabulated below:-

<i>Definition under Notification 25/2012</i>	<i>Amended vide Notification. 2/2014-S.T., dated 30-1-2014</i>
<i>2(s) "governmental authority" means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W of the Constitution;</i>	<i>2(s) "governmental authority" means an authority or a board or any other body; (i) Set up by an Act of Parliament or a State Legislature; or (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;</i>

Question of law

4. The Question of law before the Hon'ble Supreme Court was whether the phrase 'relating to 90% participation by equity or control' is to be read for both the clauses 'set up by Act of Parliament' and 'established by the Government' or the phrase is applicable only for **the latter clause**.

Decision of the Court

5. The Court decided the matter in favor of the assessee on various principles.

a) Strict interpretation

6. The court in principle applied the theory of strict interpretation and emphasized that that when the language of a statute is clear and unambiguous, there is no need to resort to rules of interpretation.
7. Negating the argument put forth by the Department, the court held that a harmonious construction is only required when a provision is ambiguous or lacks clarity.
8. The court explains that statutory interpretation should respect the ordinary, natural, and grammatical meaning of words.

b) Meaning of phrase 'or'

9. The Hon'ble Court also emphasized that the English grammar plays a role in interpreting legal text. The Court, quoting ***Justice GP Singh's Principles of Statutory Interpretation***, affirmed the principle that the word "or" is normally disjunctive. Further, the Court affirmed that principle that that **one does not read "or" as "and" in a statute unless one is obliged.**
10. If the word "or" were to be interpreted as "and," it would defeat the purpose of redefining "governmental authority" in the first place.

c) Interpretation of Semi-colon

11. The Court also noted that the use of a semicolon and commas in the clause's punctuation suggested separate parts, making it clear that the phrase 'with 90% or more participation by way of equity or control' is to be read only with established by the Government.

d) Department's reliance on Dilip Kumar

12. The Department had also relied on the landmark decision of M/s Dilip Kumar to argue that in case of ambiguity, the interpretation in favor of the Department must be taken. The Court held that once there is no ambiguity in the wording of the law, there's no need to favor an interpretation that benefits the Government.

13. To summarize, the ruling of the Hon'ble Court provides a legal analysis of the interpretation of the phrase 'Governmental Authority' under the Finance Act.

e) Whether the decision of the Court holds significance under the GST Regime.

14. In the Author's view, the decision of the Court will also be relevant to understand the scope of the phrase 'Government authority' under the GST Act.

15. Under the Rate and Exemption Notification and the definition present under Section 2(16) of the IGST Act, 2017 (prior to substitution by The Finance Act, 2023 dated 31-03-2023), the definition of 'Governmental Authority' is similar to the definition of the phrase which was under consideration before the Hon'ble Supreme Court.

16. Hence, under the GST regime also, the interpretation to the phrase 'Governmental authority' will be as under.

Governmental authority means

1. an authority or a board or any other body set up by an Act of Parliament or a State Legislature

2. an authority or a board or any other body established by Government with 90% or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution;

17. Further, few Advance ruling authorities had not followed the decision of the Patna High Court citing that the matter was pending for consideration before the Hon'ble Supreme Court.

18. In the case of IN RE : NATIONAL INSTITUTE OF DESIGN - 2021-VIL-203-AAR, the AAR had held that condition of 90% participation is applicable to both the clauses.

19. In light the decision of the SC, these decisions require reconsideration.

20. Further, suppliers who have not claimed exemption for such contracts can re-review their positions for the future and also examine if refunds can be claimed for past supplies.

Key Rulings and Insights

1. M/s. Triveni Glass Limited (SC)

Facts of the case

- ↳ **The question of law is whether tinted glass sheets should be classified as "goods or wares made of glass" under the Rate Notification or as an unclassified item, for the purpose of levy of Sales Tax under UP Trade Tax Act, 1948.**
 - ↳ M/S Triveni Glass Limited, the appellant, manufactures various types of glass, including tinted glass.
 - ↳ The Notification on rate of tax on sale of goods, dated 07.09.1981 issued by the UP State Government specifies that all products and items made from glass fall within the scope of Entry IV and are subject to a 15% tax rate.
 - ↳ Nevertheless, specific items such as plain glass panes and optical lenses, are excluded from this category and are instead subject to a 10% tax rate under the residuary clause.
 - ↳ The appellant argued that they should be subject to a lower tax rate under the residuary clause, at 10%, as it is essentially the same as plain glass, with the only distinction being color.
 - ↳ The Hon'ble Supreme Court underlined the clear and unambiguous nature of the notification and the need to interpret exemptions strictly, with any vagueness benefiting the revenue.
 - ↳ It was also noted that when the assessee is contending that an item/product falls under the residuary category, the burden to prove the same falls on the assessee.
 - ↳ The Hon'ble Court observed that "Tinted Glass Sheets" are different from "Plain Glass Sheets" and consequently, manufacturers of Tinted Glass were obligated to pay a 15% sales tax on these products.
- ### Key insights
- ↳ The decision of the Hon'ble Court has again established the clear position that any exemption has to be claimed only if the conditions provided under the notification are followed strictly (in black and white).
 - ↳ In case where ambiguity exists, the burden of proof for claiming exemption will lie on the assessee and after Dilip Kumar's case, assessee may not be able to claim exemptions as a matter of right.
 - ↳ **Citation:** Civil Appeal No. 3773 of 2011

2. M/s. Shapoorji Pallonji and Company Pvt. Ltd (SC)

Facts of the case

- ↳ **The question of law was whether IIT Patna and NIT Rourkela constituted Governmental Authority for them to be eligible to avail the exemption under Service Tax Exemption notification.**
 - ↳ As per Section 2(s) of the Finance Act, as amended vide Notification 02/2014 – S.T, "governmental authority" means an authority or a board or any other body;
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by Government, with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;
 - ↳ The Question of law before the Hon'ble Supreme Court was whether the phrase 'relating to 90% participation by equity or control' is to be read for both the clauses 'set up by Act of Parliament' and 'established by the Government' or the phrase is applicable only for the latter clause
 - ↳ The Court decided the matter in favor of the assessee on various principles.
 - ↳ The court in principle applied the theory of strict interpretation and emphasized that when the language of a statute is clear and unambiguous, there is no need to resort to rules of interpretation.
 - ↳ Further, the Court affirmed the principle that one does not read "or" as "and" in a statute unless one is obliged.
 - ↳ The Court also noted that the use of a **semicolon** and commas in the clause's punctuation suggested separate parts, making it clear that the phrase 'with 90% or more participation by way of equity or control' is to be read only with 'established by the Government'.
- ### Key insights
- ↳ Under the Rate and Exemption Notification and the definition present under Section 2(16) of the IGST Act, 2017 (prior to substitution by The Finance Act, 2023 dated 31-03-2023), the definition of 'Governmental Authority' is similar to the definition of the phrase which was under consideration before the Hon'ble Supreme Court.
 - ↳ Hence, the decision of the Court will also be relevant to understand the scope of the phrase 'Government authority' under the GST Act.
 - ↳ The suppliers who have not claimed exemption for such contracts can re-review their positions for the future and also examine if refunds can be claimed for past supplies.
 - ↳ **Citation:** Civil Appeal No. 3991/2023

3. M/s. Ganpati Overseas (SC)

Facts of the case

- ↳ **The question of law revolves around allegations of under-invoicing of imported goods from Hong Kong and the subsequent imposition of penalties by Customs authorities in India.** The Supreme Court examined the rejection of invoice prices, the burden of proof in under-valuation cases, and the reliance on foreign export declarations.
- ↳ The Hon'ble Apex Court emphasized that the burden of proving that the goods were undervalued to evade full import duty was on the customs department.
- ↳ Normally, the duty is levied on the transaction value but if there are suspicions of undervaluation, the department has to prove that the transaction value does not reflect the current market price. It cannot blindly accuse of undervaluation without any supporting document or information.
- ↳ The transaction value (the price actually paid or payable for the goods) should be the primary basis for customs valuation, and other valuation methods should only be considered if there is concrete evidence to doubt the accuracy of the declared transaction value.
- ↳ The court clarified that a customs officer is not a police officer and that statements made under Section 108 of the Customs Act are admissible in evidence. However, these statements must be recorded in a fair and unbiased manner, free from duress or coercion.
- ↳ Thus, it was held that the department as well as the adjudicating authority were not justified in rejecting the import invoice price of the goods as not correct and enhancing the price by straight away invoking Rule 8 of the Customs Valuation Rules when there was no evidence before them to do so.

Key insights

- ↳ The decision of the Hon'ble SC once again brings the importance of burden of proof.
- ↳ Mere reliance on statements may not discharge the department of their obligation of burden of proof and the Department must make a strong case to allege undervaluation
- ↳ The Courts observations on Section 108 are also important as many statements are recorded under coercion and the admissibility of these statements, if not retracted, becomes the fulcrum in the matters at the subsequent stages.
- ↳ **Citation:** Civil Appeal Nos. 4735 - 4736 of 2009

4. M/s. Tirumala Constructions (SC)

Facts of the case

- ↳ **The question of law was whether the State Legislatures had the competence to amend their respective VAT Acts beyond the one-year window provided by Section 19 of the Constitution (101st Amendment) Act .**
- ↳ Section 19 of the 101st Constitution Amendment Act established a one-year deadline for revising existing tax laws to align with the new constitutional provisions, taking into account the introduction of the GST regime.
- ↳ It was noted that Section 19 is the source which enables Parliament and the State Legislatures to amend the existing laws.
- ↳ With regards to the amendments made to State VAT acts after the one-year timeframe, Telangana and Gujarat's high courts had previously invalidated such amendments on the grounds of insufficient legislative competence, while the Bombay High Court upheld the amendments.
- ↳ Examining the objectives of Section 19, the Hon'ble Court emphasized that Section 19 was undeniably transitional in nature, i.e, operative, for a limited duration.
- ↳ Nevertheless, Section 19 was enacted as part of the constituent power. It has the same force as the rest of the constitutional amendment and is not a mere Parliamentary enactment.
- ↳ It was concluded that the State Legislatures no longer held authority over the subject matter and the power to amend the VAT Act ceased on July 1, 2017, when the GST regime was introduced.
- ↳ Thus, the Hon'ble Court upheld the decisions of Telangana and Gujarat's High courts to struck down the amendments as void. The judgment of the Bombay High Court, which upheld the amendment to the Maharashtra Act, was set aside to the extent to which the amending provisions introduced a mandatory pre-deposit of 10% of the disputed tax liability.

Key insights

- ↳ The decision of the Hon'ble SC paves the way in many cases where amendments have been carried out in the State VAT enactments, for which the State Government do not have the constitutional backing.
- ↳ **Citation:** Civil Appeal No. 1628 of 2023

5. M/S. Indian Herbal Store Pvt. Ltd. (Del HC)

Facts of the case

- ↳ **The Question of Law is whether Rule 89(4)(C) of the CGST Rules, which provides for calculation of the admissible refund of ITC, is applicable on refund in respect of exports made prior to the date of the amendment (23.03.2023) but applied for after the amendment.**
- ↳ The case also discusses the Constitutional validity of Rule 89(4)(C) of the CGST Rules.
- ↳ Rule 89(4) of the CGST Rules contains a formula for computing the maximum amount of refund admissible in respect of exports made without payment of tax under a bond or a letter of undertaking in accordance with Section 16(3) of the IGST Act.
- ↳ Rule 89(4)(C) of the Rules defines the expression "turnover of zero-rated supply of goods".
- ↳ By virtue of Amendment to the rule, the refund of ITC is restricted by capping the value of the export turnover to 1.5 times the value of similarly placed domestic supplies.
- ↳ Consequently, regardless of the actual value of goods exported and the proceeds obtained from exports, the value of exports will be deemed as 1.5 times the value of the goods domestically supplied if the value of such domestic supplies is lower than the actual value of exports.
- ↳ With respect to application of the amendment, the Hon'ble Court observed that the right for refund of the accumulated ITC stands crystalized on the date when the subject goods are exported.
- ↳ In terms of Section 54(1) of the CGST Act, and the explanation thereto, the limitation for applying for refund in respect of the export of goods and/or services begins from the date when the goods and/services are exported.
- ↳ Thus, it was observed that the amended rule is not applicable for calculation of refund claimed by the petitioner in respect of exports made before the amendment.

Key insights

- ↳ This ruling provides a welcome relief to many refund applications which have been filed for the past period
- ↳ Without questioning the correctness of the value at the time of export, the authorities were rejecting the FOB value of export.
- ↳ The High Court has clearly now stated that the amendment will apply for export shipments after the date of the rule being inserted.
- ↳ The filing of the refund claim will not be determinative of the application of the rule.
- ↳ **Citation:** W.P.(C) 9908/2021

6. Best Crop Science Pvt. Ltd. (Del HC)

Facts of the case

- ↳ **The main issue revolves around the validity of the Seizure Notice issued pursuant to order of prohibition under first proviso to Section 67(2) of the CGST Act.**
 - ↳ As per the said proviso, an order of prohibition is issued when it is not practicable to seize the goods. Instead of physically seizing the goods, the taxpayer is directed not to part with or deal with the said goods.
 - ↳ Section 67(7) provides that where no notice of seizure is given within six months of the seizure of the goods, the goods shall be returned to the taxable person.
 - ↳ In the case in hand, the prohibition order was passed on 26-08-2022 pursuant to search on 05-05-2022. Thereafter the goods were seized on 21-9-2022.
 - ↳ On 01.03.2023, a demand cum show cause notice was issued.
 - ↳ The petitioner contended that the show cause notice was beyond the period of six months prescribed under Section 67(7); hence the same is liable to be quashed.
 - ↳ The Hon'ble High Court held that when the show cause notice was issued beyond six months from such order, as per Section 67(7), goods alone are liable to be returned. The notice as such would not become invalid.
- ### Key insights
- ↳ The Hon'ble High Court has read Section 67(7) in the clear perspective as the section only envisages the scenario of return of goods where SCN is not issued.
 - ↳ The provision *ipso facto* does not deem that the SCN itself is required to be issued within six months of the commencement of the seizure proceedings.
 - ↳ **On expiry of six months, an assessee can demand release of goods if no SCN is issued.**
 - ↳ **The period for issuance of SCN is however governed only under the provisions of Section 73 and Section 74 of the Act as Section 67 itself does not create an independent code for issuance of an SCN.**
 - ↳ **Citation:** W.P.(C) 238/2023 & CM APPL. 900/2023

7. Sakthi Steel Industries India Pvt. Ltd (AP HC)

Facts of the case

- ↳ **The question revolves around whether the cancellation order passed based on the fact that the registration of the petitioner and its parent company emanates from same premises is valid.**
- ↳ The petitioner had obtained GST registration in Andhra Pradesh by obtaining lease of part of the property owned by its parent company. This was done for the purpose of maintaining proper supply chain, to have better control and operational efficiency on cost, and for convenience of operations.
- ↳ Thus, the company operated from this premises of its parent company.
- ↳ The registration of the petitioner was cancelled on the basis that the petitioner and parent company operated from the same premises, and the petitioner's business location was unsuitable for its operations.
- ↳ The Hon'ble High Court highlighted that in the Show Cause Notice, the nature of fraud, wilful misstatement and suppression of facts have to be sufficiently described so as to give an opportunity to the taxpayer.
- ↳ The Hon'ble court noted that, to the Show Cause Notice issued, the petitioner had submitted its reply with requisite particulars to the best of its ability.
- ↳ Further in the reply, the petitioner had avouched that the complete details of the purchases and sales can be verified at any point of time if the need arises.
- ↳ It was observed that mere commonality of the location of the petitioner and parent company itself is not sufficient to hold that the petitioner has committed fraud in obtaining registration and involved in bill trading, without the scrutiny of the relevant records.
- ↳ It was emphasized that mere issuance of the show cause notice devoid of requisite particulars does not amount to proper compliance of the requirement.
- ↳ Thus, the cancellation order was set aside.

Key Insights

- ↳ Obtaining GST registration has become a cumbersome process as many requirements not specified in the law are sought by the officers.
- ↳ The Act nowhere specifies that more than one company should not operate under the same premises. This decision sets the precedence for various cases where registration is denied for reasons not provided under the Act.
- ↳ **Citation:** WP No.17500 of 2023

8. Delhi Metro Rail Corporation Ltd (Delhi HC)

Facts of the case

- ↳ The question is whether the prescribed limitation of two years for refund under Section 54 of the CGST Act will be applicable to amount paid under mistake of law.
- ↳ The petitioner had provided the service of preparation of Detailed Project Report for development of Metro Rail Project. GST on the service amounting to ₹2,90,520/- (calculated at 18%) was deposited under Form GSTR-3B of August 2017.
- ↳ However, the petitioner was thereafter informed that the services provided were not exigible to GST.
- ↳ On 02.05.2022, the petitioner filed an application for refund for the GST wrongly paid. However, the refund was denied on the ground that the application was filed after expiry of two years from the relevant date.
- ↳ The petitioner's contention is that retaining the amount paid under a mistake would amount to collection of tax without the authority of law and thus, violates Article 265 of the Constitution of India.
- ↳ Referring to the precedents, the Hon'ble High Court observed that the period of limitation for applying for a refund would not apply where GST is not chargeable and the amount has been deposited under a mistake of law.

Key insights

- ↳ The decision of the High Court though favorable requires a deeper analysis as many landmark decisions such as M/s Mafatlal Industries have not been considered.
- ↳ Mafatlal Industries had held that only when the provision is struck down as unconstitutional, the period of limitation does not get attracted.
- ↳ However, in case of mistake of interpretation of the statutory provisions, the claim for refund will be governed by the Central Excise Act itself. Hence, the question which requires to be addressed in these cases is whether the tax was paid due to an incorrect analysis of law or due to constitutional incongruity?
- ↳ **Citation:** W.P.(C) 6973/2023

9. M/s Vivo Mobile India Private Ltd (All HC)

Facts of the case

- ↳ **The Question of law revolves around whether ITC claimed cumulatively for the periods from February 2020 to August 2020 is in violation of Rule 36(4) of the CGST Rules, 2017; and Whether CBIC circular No. 123/42/219-GST dated 11.11.2019 can be relied upon to deny such cumulative claim of ITC.**
- ↳ For the period from February to August in 2020, the Rule 36(4) provided entitlement of 10% additional ITC against Tax Invoice or Debit Note.
- ↳ The petitioner argued that the revenue ought to have looked at the figures of ITC available as per GSTR-2A as they stood in September 2020, being the month when the petitioner was bound to file its return for the tax period August 2020.
- ↳ The tax authorities argued that ITC was available to petitioner for each month including the months of February 2020 to August 2020 based on the details fed by suppliers on GSTR-1.
- ↳ They authoritied relied on CBIC Circular No. 113 dated 11.11.2019, to argue that cumulative adjustments were only permissible up to the date of their suppliers' GSTR-1 declaration. Consequently, a tax demand, along with penalties and interest, amounting to Rs. 235.52 Crores was raised under Section 74(9) of the GST Act.
- ↳ The Hon'ble High Court observed that, the condition in Rule 36 (4), i.e., eligible ITC would not exceed 10% of the actual eligible credit, filed on GSTR-1 would have to be seen cumulatively i.e., with all additions made, taken together.
- ↳ It was noted that the first proviso to Rule 36(4) dissolves the preexisting monthly partitions of tax periods from February 2020 to August 2020 and deems the entire period as one tax period for the limited purpose of applicability of Rule 36(4) of the Rules.
- ↳ For the tax period September 2020, the petitioner and all registered persons were permitted to file their monthly return on form GSTR-3B, with cumulative adjustment of ITC for the disputed period February 2020 to August 2020, by preserving to them the benefit arising under Rule 36(4) on the increased figure of eligible ITC, as it stood at the time of filing of return for the month of September 2020, on a cumulative basis.
- ↳ The court observed that Input Tax Credit is a substantive right conferred upon taxpayers under Section 16 of the GST Act, and that a circular, even when in effect, cannot be enforced in contradiction to the statutory provisions.

Key insights

- ↳ The decision of the Court is a landmark decision on the protection of the rights of the assessee for availing the ITC.
- ↳ The Court notes that once all conditions which are substantial are satisfied, there must not be a subsequent denial of ITC for want of procedural non-compliances.
- ↳ This decision will therefore provide support for many live litigation cases.
- ↳ **Citation:** Writ Tax No. - 433 of 2021

10. In Re: M/s. Geekay Wires Limited (AAR, Telangana)

Facts of the case

- ↳ **The question of law is whether ITC availed/utilized should be reversed when inputs and finished goods were destroyed due to a fire accident.**
- ↳ The Applicant is engaged in the manufacturing of steel nails and for that purpose, they procure various raw materials such as steel wire rod, copper wire, paper tape etc.
- ↳ Due to fire accident, all the inputs/raw materials and finished goods held in stock were destroyed. ITC on those inputs as well as on input consumed in the finished goods were availed already.
- ↳ AAR noted that Section 17(5) does not allow to claim ITC on goods which are destroyed and held that Section 17(5) has to be interpreted in the context of Sections 17(2) and 18(4) in accordance with the principle 'ex-visoribus actus'.
- ↳ As such, AAR held that when the taxable supplies are not made, input tax credit is not available under Section 17(2) and 17(5)(h). If the input tax credit is already utilized such credit needs to be paid back as given under Section 18(4).
- ↳ As a result, AAR ruled that the input tax credit to the extent of manufactured goods destroyed or inputs destroyed is not available to the applicant and the same needs to be paid back/reversed.
- ↳ Further, when the goods destroyed are sold as scrap and output tax liability is paid, even then ITC, it was held, is not available since scraps are merely destroyed goods. As such, ITC has to be reversed if already availed/utilized.

Key insights

- ↳ The position relating to reversal of ITC for goods sold as scrap has been a subject matter of interpretation. While the ruling by the authority is only binding on the applicant, this proposition will be used by the Department to propose to deny ITC for many assessee and hence will be a subject matter of dispute. Assessee who has already availed ITC may review the positions taken in this respect.
- ↳ **Citation:** A.R.Com/04/2023 and TSAAR Order No.15/2023

Notifications, Circulars and Other Developments

GST Council Recommendations

Important recommendations

- ↳ **The 52nd Council meeting proposed various recommendations.**
- ↳ **The council recommended changes relating to rate of tax and clarifications on certain issues. These are covered subsequently in the Notifications and circulars portion.**

Amnesty scheme

- ↳ The GST council proposed to introduce an amnesty scheme under GST for filing of appeals.
- ↳ Accordingly, all orders passed until 31st March 2023 where the Assessee has not filed any appeal, can now file the appeal under the scheme.
- ↳ The scheme has been announced (***Notification No. 53/2023-Central Tax dated November 02, 2023***) and the salient features thereof are
 - The scheme will be open until January 31, 2024,
 - Appeal is to be filed by paying higher pre-deposit of 12.5%.
 - Part of (20%) of the pre-deposit is to be paid through Electronic Cash Ledger
 - No refund shall be granted on account of the notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court
 - The scheme will not apply to the following cases
 - i. Where the order has been passed on or after March 31, 2023
 - ii. An order where there is no demand of tax involved.
 - iii. An order only for a penalty.
 - iv. An order only for interest.
 - v. An order for rejection of refund.
 - vi. Cases of cancellation of registration.

GST Council Recommendations (Contd.)

ISD – To be made compulsory

- ↳ Legal amendments recommended by the GST Council concerning Input Service Distributors (ISD):
- ↳ Mandatory implementation of ISD procedure for the distribution of input tax credit (ITC) for input services procured by the Head Office (HO) but attributed to both HO and Branch Offices (BOs) or exclusively to one or more BOs.
- ↳ Amendments are proposed in Section 2(61) and Section 20 of the CGST Act, 2017, along with changes to Rule 39 of the CGST Rules, 2017.

GST Rules and Notifications – Key Highlights

1. New Valuation Rules for Guarantee

- ↳ Rule 28 of the CGST rules amended.
- ↳ New method prescribed for taxation of Corporate Guarantee:
- ↳ When a supplier provides a corporate guarantee to a banking company or financial institution for a related recipient, the value of this service is deemed to be **one percent of the guarantee amount** or the actual payment, whichever is greater.
- ↳ This rule ensures that even if no direct payment is made for the guarantee service, a minimum value of one percent of the guaranteed amount or the actual payment is assigned for GST calculation.
- ↳ Open questions
 - **Whether amendment prospective or retrospective**
 - **Whether Corporate Guarantee were taxable prior to this Rule**
 - **If taxable, can value stated in this rule be taken for the past transactions**
 - **Whether GST is payable every year under this deeming fiction or payable only once.**

Rate Notifications (w.e.f. 20.10.2023)

2. Amendments to Rate Notification on Services

(Notification 12/2023 (CT-Rate))

- ↳ **Services of 'Transport of Passengers' and 'Renting of Motor Vehicles' – Additional condition inserted for discharging tax @ 5%.**
- ↳ Existing Scenario - Two options for Service providers offering these services:
 - (i) Pay 5% output tax, but no ITC shall be taken on input service **(However ITC available when the motor vehicle is taken/hired from another operator, i.e., input services in the same line of business)**
 - (ii) Pay 12% output tax and avail full ITC
- ↳ New condition - Where the providers of 'passengers transport services (motor cabs) and 'rental of motor cabs' chooses to pay GST @ 5%, the ITC available in respect of input services in the same line of business is restricted to 5%.
- ↳ Implication - To fall under the category of 5% tax, such service providers can claim ITC only upto 5% even when the input tax paid for input service in the same line of business is 12%.
- ↳ **Amendment relating to specified actionable claims**
- ↳ Gambling, betting and lottery are now removed from Scheme of Classification of services, pursuant to the decision of 51st GST Council meeting to tax 'specified actionable claims' as goods.

3. Amendments to Exemption Notification on Services

(Notification 13/2023 (CT-Rate))

- ↳ The following 5 services provided to Government Authority are now exempted from levy of GST:
 - a. Water Supply
 - b. Public Health
 - c. Sanitization Conservancy.
 - d. Solid Waste Management
 - e. Slum Improvement and Upgradation.

4. Amendment to Notification on ineligible services for refund

Notification 15/2023 (CT-Rate)

- ↳ Existing Scenario – Refund of unutilised ITC is not allowed in case of construction of a complex, building, civil structure, except where entire consideration is received after issuance of completion certificate or first occupation. In other words, no refund of unutilised ITC was available for services under Entry 5(b) of Schedule II of the CGST Act.
- ↳ Amendment – The scope of ineligibility of refund of unutilised ITC on construction service is amended. The ineligibility is restricted to such construction where the amount charged from the recipient of service **includes the value of land**.
- ↳ Implication – Now, refund on account of inverted duty structure may be claimed for unutilised ITC when the service is purely for construction without sale of land.

5. Amendment to Notification on services provided through ECOs

Notification 16/2023 (CT-Rate)

- ↳ Existing Scenario – As notified under Section 9(5) of the CGST Act, services provided by way of transportation of passengers by an Omnibus was payable by the Electronic Commerce Operator (ECO) through which such services are provided.
- ↳ Amendment and implication – New clause inserted to specifically exclude the provision of Omnibus Service by a Company (as defined under the Companies Act, 2013) through ECO, from the purview of the ECO notification.
- ↳ Implication - GST on Omnibus service provided through ECO by a **company** is payable by the Company under Forward Charge, and not payable by the ECO.

6. Amendment to Rate and Exemption Notification on Goods

Notification 17 & 18/2023 (CT-Rate)

- ↳ Molasses – Rate reduced from 28% to 5%
- ↳ Spirits for Industrial Use – 18%
- ↳ Food preparation of millet flour, in powder form, containing at least 70% millets by weight:-
 - When **pre-packaged and labelled** – 5%
 - Other than pre-packaged and labelled – Exempt

GST Circulars

Receipt of INR in special vostro account – Condition of export satisfied

(Circular 202/14/2023-GST)

- Board has clarified that when Indian exporters, engaged in exporting services, receive their export earnings in **Indian Rupees (INR) from the Special Rupee Vostro Accounts maintained by** correspondent banks in the partner trading country, it is deemed to meet the requirements specified in sub-clause (iv) of clause (6) of section 2 of the IGST Act, 2017.
- **This recognition is subject to compliance with the conditions and restrictions outlined in the Foreign Trade Policy of 2023, as well as the existing RBI Circulars. It should be noted that this acknowledgment does not affect any necessary permissions or approvals under other applicable laws.**
- In summary, when these conditions are met, the receipt of export proceeds in INR through Special Rupee Vostro Accounts aligns with the provisions of the IGST Act, 2017.

Circular clarifying POPS for certain services

a) Transport related services

- With the omission of Section 13(9) in the IGST Act, effective from 01.10.2023, there's uncertainty regarding the determination of the place of supply for transportation services of goods, including mail and courier, when either the service provider or the recipient is located outside India.
- It has been clarified by the Board that after the amendment takes effect, the place of supply for transportation services of goods, excluding mail and courier, with foreign supplier or recipient locations will be governed by the default rule under section 13(2) of the IGST Act. **This means that if the location of the recipient is available, the place of supply will be the recipient's location. If the recipient's location is not readily available, the place of supply will be the supplier's location.**
- Additionally, it was clarified that service of transportation of goods by mail or courier was not previously covered by sub-section (9) of section 13. Therefore, the place of supply for such services will continue to be determined under the default rule of section 13(2) of the IGST Act. In this case, if the recipient's location is known, the place of supply will be the recipient's location; if not, it will be the supplier's location.

b) Advertising related services

- ↳ Advertising companies procure space on hoardings/billboards for corporate clients.
- ↳ Two common scenarios exist: (i) sale of space or rights to use space on hoardings/structures, and (ii) advertising services involving specific locations.
- ↳ In Case (i), the place of supply is determined by the location of the hoarding/structure, as it's considered an immovable property under Section 12(3)(a) of the IGST Act.
- ↳ In Case (ii), when the vendor provides advertising services without selling space or rights to use space on immovable property, the place of supply follows Section 12(2) of the IGST Act for advertising services.
- ↳ In both cases, the place of supply is contingent on the nature of the transaction and the immovable property involved.

Co-location services

- ↳ Co-location services are categorized as "Hosting and IT infrastructure provisioning services" under SAC-998315.
- ↳ These services encompass more than just providing physical space; they also include network connectivity, security, backup, and monitoring services, vital for business interaction through web interfaces.
- ↳ Co-location services are not solely renting immovable property; they involve various IT-related services.
- ↳ The place of supply for co-location services doesn't rely on Section 12(3)(a) of the IGST Act, but on Section 12(2), determined by the location of the recipient.
- ↳ When an agreement only provides space with basic infrastructure, and the recipient is responsible for managing servers and hardware, it's considered renting immovable property.
- ↳ In such cases, the place of supply follows Section 12(3)(a), determined by the location of the immovable property.
- ↳ The nature of the service agreement dictates how the place of supply is determined for co-location services.

Circular clarifying on issues pertaining to taxability of personal guarantee and corporate guarantee in GST – Circular 204/16/2023-GST

- ↳ The first clarification pertains to personal guarantee given by the Directors of the company for securing credit facilities for their companies, when made without consideration
- ↳ As per RBI guidelines, no payment, including commission or brokerage fees, can be given to a director for providing a personal guarantee to a bank on a company's credit limits.
- ↳ Since no consideration can be provided to the director, the open market value of this transaction is considered zero, and therefore, no tax is applicable on this service provided by the director to the company.
- ↳ In some situations, a director's guarantee may still be needed despite their reduced management role. If remuneration is paid to them, it becomes the taxable value of the service.
- ↳ The second clarification pertains to **Corporate guarantee extended by the company.**
- ↳ The circular clarifies that providing a corporate guarantee between related companies is considered a supply of service, even without any consideration.
- ↳ The same applies when a holding company offers a corporate guarantee for its subsidiary.
- ↳ The taxable value for such services is determined under rule 28 of CGST Rules. To ensure consistency, a new sub-rule (2) was added to rule 28 via Notification No. 52/2023 dated 26.10.2023.
- ↳ This sub-rule will govern the taxable value for services involving corporate guarantees, irrespective of the recipient's ability to claim full Input Tax Credit (ITC). However, it does not apply to personal guarantees provided by directors.

Clarifications regarding applicability of GST on certain services – Circular 206/18/2023

1. Same Line of Business (Passenger Transport and Renting of Motor Vehicles):

i. In transport service under SAC 9964/9966, ITC is available only when there is procurement of "same line of business". The query is whether leasing of motor vehicles without operators will qualify as same line of business	Same line of business include transport of passengers (SAC 9964) or renting of motor vehicle with operator (SAC 9966). It does not include leasing (SAC 9973), which is taxed differently.
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2. GST on Electricity Reimbursement:

ii. Is GST applicable on reimbursement of electricity charges by real estate companies, malls, etc., to their lessees?	Yes, if electricity is supplied bundled with renting, it's part of a composite supply and taxed accordingly.
iii. What if these companies supply electricity as a pure agent or charge the same amount as the State Electricity Boards?	In such cases, they are not taxed on electricity supply.

3. GST on Job Work for Barley to Malt:

iv. Does job work for processing barley into malt attract 5% or 18% GST?	It attracts 5% GST as job work in relation to food products.
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4. DMFTs and GST Exemptions:

v. Are District Mineral Foundations Trusts (DMFTs) eligible for the same GST exemptions as Governmental Authorities?	Yes, DMFTs set up by State Governments are considered Governmental Authorities and get the same GST exemptions.
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5. Horticulture Supplies to CPWD:

vi. Are supplies of pure services and composite supplies for horticulture work to CPWD exempt from GST?	Yes, they are exempt under Notification no 12/2017-CTR.
vii. What specific conditions apply for the exemption of horticulture supplies to CPWD?	The supply must involve pure services and composite supply with goods not exceeding 25% of the total value and must be related to functions entrusted to Panchayats and Municipalities.

GST Advisories – Portal updates

1. e-Invoice JSON download functionality Live on the GST e-Invoice Portal

- With effective from October 3, 2023, the e-Invoice JSON download feature is available on the GST Portal. This update brings added convenience and ease to taxpayers' e-Invoice handling.
- To download the e-Invoice generated and received, users need to visit the e-Invoice portal (<https://einvoice.gst.gov.in>) and log in using their GST portal credentials. After logging in, users will find the e-Invoice JSON download icon.

2. Facility of enrolment for supply of goods through e-commerce operators by GST unregistered suppliers

- As per recent amendments to the CGST Act, suppliers of goods through e-commerce operators (ECOs) who are not engaged in inter state supply can be exempted from mandatory registration under the CGST Act. This requires an enrollment number post-PAN validation.
- The GSTN has established the necessary functionality for the enrollment of unregistered persons supplying goods through ECOs in a single State/UT. The portal also provides for APIs to validate the demographic details of the said suppliers and to track and report the supplies by such persons.

3. Advisory for Persons supplying Online Money Gaming services or OIDAR Services - Form GST REG-10 and Form GSTR-5A

- The recent amendments on Online Gaming require persons outside the taxable territory supplying online money gaming to a person in the taxable territory to register for GST and pay taxes on such supplies. Since GSTN is in the process of developing new registration and amendment functionalities, the following procedures are suggested until the functionalities are available:
 - Registration (Form GST REG-10):
 - a) Persons engaged in online money gaming should identify themselves as such in Form GST REG-10, and new registrations or amendments should be made accordingly.
 - b) The applicants can use the existing Form GST REG-10 to apply for registration and upload a PDF copy of the information provided in Row 2(ii) in the 'Documents Upload' section.
 - Return (Form GSTR-5A):
 - a) Those involved in online money gaming must provide details of their supplies in Tables 5D and 5E of Form GSTR-5A.
 - b) However, until these new tables are implemented, the details of such supplies should be furnished in the existing Tables 5 and 5A of Form GSTR-5A.

**Indirect Tax
Compliance Calendar
for November 2023**

November 2023

Important Due Dates under Indirect Tax

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

Important Due Dates under Indirect Tax

Due Date	Description
10 November 2023	<ul style="list-style-type: none">↳ Filing of GSTR-7 - By Tax Deductor for the month of October 2023↳ Filing of GSTR-8 - By E-Commerce Operator for the month of October 2023
11 November 2023	<ul style="list-style-type: none">↳ Monthly filing of GSTR-1 for the month of October 2023 (Regular taxpayers)
13 November 2023	<ul style="list-style-type: none">↳ IFF by Taxpayers under QRMP Scheme for the month of October 2023↳ Filing of GSTR-5 - By Non-Resident Taxable Persons for the month of October 2023↳ Filing of GSTR-6 - By Input Service Distributor for the month of October 2023
20 November 2023	<ul style="list-style-type: none">↳ Filing of GSTR-3B (Regular Taxpayers) for the month of October 2023↳ Filing of GSTR-5A by OIDAR Service Providers for the month of October 2023
22 / 24 November 2023	<ul style="list-style-type: none">↳ Filing of GSTR-3B under QRMP Scheme
25 November 2023	<ul style="list-style-type: none">↳ GST PMT-06 - Challan for depositing GST for the month of October 2023 by taxpayers who have opted for QRMP Scheme for the quarter October – December 2023.
28 November 2023	<ul style="list-style-type: none">↳ Filing of GSTR-11 - Statement of Inward supplies by persons having Unique Identification Number (UIN) for claiming GST refund.
30 November 2023	<ul style="list-style-type: none">↳ Last date to claim ITC of FY 2022-23↳ Last date to report ITC reversal opening balance

Key Connects

Rahul Jain, Partner:
E-Mail: rahul.jain@m2k.co.in
Mob No.: +91 97908 78922

Kalpesh Jain, Partner:
E-Mail: kalpesh@m2k.co.in
Mob No.: +91 95001 17061

Office Address:

M/s Mukesh Manish & Kalpesh
Chartered Accountants,
7th Floor, Briley One,
No. 30/ 64 Ethiraj Salai, Egmore,
Chennai – 600 008, Tamil Nadu, India
Tel: +91 44 4263 9000 | www.m2k.co.in

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