

ISSUES UNDER RECENT AMENDMENTS IN GST

Group Leader: CA Yash Dhadda
Chairman: CA Ashit Shah

Agenda for Today

Sec. 16(2)(aa) and amended Rule 36(4)

Interest and linking of restrictions on mismatch and delay in filing of returns

Recovery of Self-assessed Tax reported in GSTR-1 but not in GSTR-3B

E-Commerce Aggregators and Restaurants

Retrospective Amendment in Section 7(1)(aa)

Interplay of Section 129(6) read with Section 107(6) of the Act

SECTION 16(2) READ WITH RULE 36(4)

Eligibility and Conditions for taking ITC – Section 16

Changes:

16 (2) Notwithstanding anything contained in this section, **no registered person shall be entitled** to the credit of any input tax in respect of any supply of goods or services or both to him **unless**

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37

Effective Date:

- 1st January, 2022

Rule 36(4)

Up to 31.12.2021

- [(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility], shall not exceed [5 per cent.] of the eligible credit available in respect of invoices or debit notes the details of which have been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility].]

From 01.01.2022

- —(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-
 - (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
 - (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B⁵ under sub-rule (7) of rule 60.¶;

Rule 60

- RULE [60. Form and manner of furnishing details of inward supplies. —
- (1) The **details of outward supplies furnished by the supplier in FORM GSTR-1** or using the IFF shall be **made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A**, in FORM GSTR-4A and in FORM GSTR-6A through the common portal, as the case may be.
- (7) An **auto-drafted statement containing the details of input tax credit** shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of

Implication

GSTR-2A

- System-generated (auto-populated) statement reflecting inward supplies (purchase-related transactions)
- It is dynamic and is updated continuously
- Doesn't provide bifurcation of eligible input tax credit and ineligible input tax credit
- When Supplier files return of any previous period, then ITC will be reflected in the GSTR – 2A of the previous period for which it is filed.

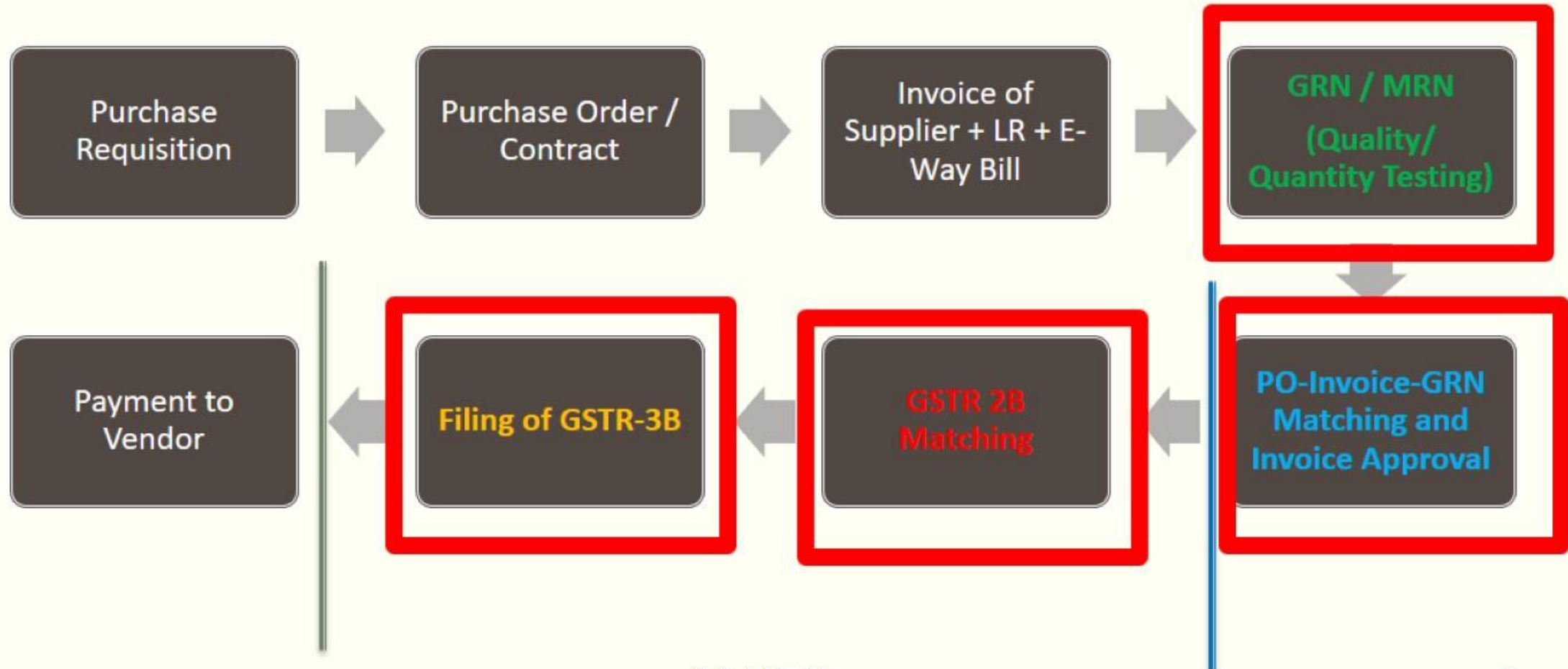
GSTR-2B

- System-generated (auto-populated) statement reflecting input tax credit details.
- It is a static documents on the 14th of the succeeding month
- Briefly bifurcates the eligible and ineligible input tax credit.
- When Supplier files return, of any previous period then ITC will be reflected in the GSTR – 2B of the current period in which it is filed.

Time Zones for “MATCHING” of ITC

1-7-17 to 8-10-19	9-10-2019 to 31-12-2021	1-1-2022 onwards
<p>GSTR-2A / 3B matching was not mandatory</p> <p>All notices for reversal of ITC are invalid</p>	<p>GSTR-2A/ 3B matching was required up to extent of 120 % / 110% or 105%</p> <p>Matching could have been done on gross basis post-facto</p>	<p>GSTR-2B / 3B matching is mandatory now.</p> <p>The matching has to be on individual invoice level but not on gross level</p>

How does a Manufacturing Plant / Service Supplier Works?



Case Study 1

- Supplier: B
- Recipient: AZ
- Invoice Date: 28.01.2022
- ITC claimed in GSTR-3B by AZ : Jan 2022
- ITC reflected in GSTR-2B later due to:
 - Said invoice has been missed in GSTR-1 for Jan 2022 and it has been uploaded in GSTR-1 for Feb 2022 filed on 10.03.2022 or;
 - GSTR-1 for Jan 2022 has been filed on 14.02.2022 and such invoice has been reported therein.

Issues:

- Whether post facto reflection of ITC in GSTR-2B is a valid compliance as per Section 16(2)(aa) read with Rule 36(4)?
- If GSTR-1 for the month of January 2022 is filed by the B after 12.10.2022, then whether AZ shall be debarred from claiming ITC in terms of Section 16(4) of the Act?

CONDITION PRECEDENT OR SUBSEQUENT?

Section 16(2)

- (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him **unless**, —
 - (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
 - [(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]
 - (b) he has received the goods or services or both.
- [Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —
 - (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
 - (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]
- (c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39 :

Tullow India Operations Ltd – 2005 (189) ELT 401 (SC)

- Exemption subject to production of essentiality certificate from Director General of Hydrocarbons at time of importation of goods under Notification No. 121/99-Cus. –
- Conditions referred to in Section 25(1) of Customs Act, 1962 as regard time when such certificate is to be produced would mean those which were within control and power of importer - If it is not within power and control of importer and depends upon acts of other public functionaries, non-compliance of such condition, subject to just exception cannot be held to be a condition precedent which would disable it from obtaining benefit therefrom for all times to come. [para 30]
- Exemption Notification - Interpretation of - Eligibility criteria deserves a strict construction, although construction of a condition thereof may be given a liberal meaning - Exemption notification cannot be construed in a way which would prove to be oppressive in nature. [paras 36, 39]

Case Study 1

- Whether ITC to be availed in GSTR-3B to be matched with that appearing in GSTR-2B on claim of ITC in GSTR-3B for Dec 2021 or for earlier periods also?
- Invoice issued by supplier on 30.11.2021 but not furnished in GSTR-1.
 - If such ITC has already been claimed in GSTR-3B up till 31.12.2021, treating it to be falling within tolerable limit of 5% as per old Rule 36(4) then whether same can be denied?
- Whether ITC can be taken in GSTR-3B for any month filed after 01.01.2022 if the same falls within 5% of eligible ITC reflected in GSTR-2A?

RETROSPECTIVE OR PROSPECTIVE ?

Prospective or Retrospective?

- **Hitendra Vishnu Thakur v. State of Maharashtra, 1994 AIR 2623, 1994 SCC (4) 602** it was stated that the ambit and scope of an amending Act and its retrospective operation as follows
- A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.
- **Memon Abdul Karim Haji Tayab Vs. Dy. Custodian-General 1964 AIR 1256, 1964 SCR (6) 780**
- "It is well settled that procedural amendments to a law apply in absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the action may have begun earlier or the claim on which the action may be based may be of an anterior date."

Osram Surya (P) Ltd - 2002 (142) E.L.T. 5 (S.C.)

- Modvat - Duty paying documents - Availment of credit within six months of the issue of duty paying documents - Amendment to Rule 57G of the Central Excise Rules, 1944 introduced by Notification No. 28/95-C.E. (N.T.) providing such time limit of six months is prospective in nature - Amendment does not take away any vested right but merely introduces limitations for availment of credit - Amendment is not retrospective in operation since it does not cancel the credit nor does it effect the right of the persons who have already taken credit - In the absence of challenge to the validity of the Rules, the pleas that time limit cannot be applied to credit accrued prior to the amendment and introduction of amendment to rule is arbitrary, not available. [1999 (106) E.L.T. 3 (S.C.) distinguished]. [paras 7, 8, 9]

Eligibility and Conditions to claim ITC

- **SECTION 16.** Eligibility and conditions for taking input tax credit. — (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.
- **Section 49:(2)** The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with [section 41 or section 43A], to be maintained in such manner as may be prescribed.

Section 16(2)

- (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him **unless**, —
 - (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
 - [(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]
 - (b) he has received the goods or services or both.
- [Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —
 - (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
 - (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]
- (c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39 :

Rule 36(4)

Up to 31.12.2021

- [(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility], shall not exceed [5 per cent.] of the eligible credit available in respect of invoices or debit notes the details of which have been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility].]

From 01.01.2022

- —(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-
 - (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
 - (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B²⁰ under sub-rule (7) of rule 60.¶;

Case Study 1

Whether this amendment will affect the eligibility of claim of ITC in GSTR-3B for inward supplies

- Under RCM from registered person?
- Imports of goods where tax is paid on Bill of Entry?
- Credit Notes issued under Rule 34
- ITC from ISD

Section 16(2)

- (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him **unless**, —
 - (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
 - [(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;]
 - (b) he has received the goods or services or both.
- [Explanation. — For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services —
 - (i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
 - (ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]
- (c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and
- (d) he has furnished the return under section 39 :

Procedural or Substantive Change in Rule?

Up to 31.12.2021

- [(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility], shall not exceed [5 per cent.] of the eligible credit available in respect of invoices or debit notes the details of which have been [furnished] by the suppliers under sub-section (1) of section 37 [in FORM GSTR-1 or using the invoice furnishing facility].]

From 01.01.2022

- —(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-
 - (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
 - (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B²³ under sub-rule (7) of rule 60.¶;

Case Study 1

- For refunds of unutilized ITC, comparison of ITC to be done with GSTR-2A or GSTR-2B?

Circular No 135/05/2020-GST, dated 31-3-2020
Guidelines for refunds of Input Tax Credit under Section 54(3)

5.1 In terms of para 36 of circular No. 125/44/2019-GST, dated 18-11-2019, the refund of ITC availed in respect of invoices not reflected in FORM GSTR-2A was also admissible and copies of such invoices were required to be uploaded. However, in wake of insertion of sub-rule (4) to rule 36 of the CGST Rules, 2017 vide notification No. 49/2019-GST, dated 9-10-2019, various references have been received from the field formations regarding admissibility of refund of the ITC availed on the invoices which are not reflecting in the FORM GSTR-2A of the applicant.

5.2 The matter has been examined and it has been decided that the refund of accumulated ITC shall be restricted to the ITC as per 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. Accordingly, para 36 of the circular No. 125/44/2019-GST, dated 18-11-2019 stands modified to that extent.

OTHER ISSUES

GSTR-2A- Views from Courts

- **Bharti Airtel Ltd. vs. Union of India [TS-555-SC-2021-GST]**
- GSTR-2A is only a facilitator for taking an informed decision while doing self-assessment - Non-operability of the same does not deprive the assessee of any benefits: SC
- **NKAS SERVICES PVT LTD Vs THE STATE OF JHARKHAND- 2021-TIOL-2079-HC-JHARKHAND-GST**
- + Court finds that upon perusal of GST DRC-01 issued to the petitioner, although it has been mentioned that there is mismatch between GSTR-3B and 2A, but that is not sufficient as the foundational allegation for issuance of notice under Section 74 is totally missing and the notice continues to be vague.

LEVY ON INTEREST AND LINKING OF RESTRICTIONS ON MISMATCH AND DELAY IN FILING OF RETURNS

Advisory on Interest on GST Portal

Dashboard
Returns
GSTR-3B
Filing of Tax
English

Breakup of tax liability
HELP

Period	Integrated Tax (₹)	Central Tax (₹)	State/UT Tax (₹)	CESS (₹)	Action
October 2021	1,00,000.00	40,000.00	40,000.00	4,00,000.00	
August 2021	40,000.00	8,000.00	8,000.00	20,000.00	-
July 2021	5,000.00	3,000.00	3,000.00	0.00	-
June 2021	2,000.00	0.00	0.00	0.00	+ -

SAVE

Verification

☐ I/We hereby solemnly affirm and declare that the information given herein above is true and correct (in respect of Form GSTR-3B) to the best of my knowledge and belief and nothing has been concealed therefrom.

BACK
TAX LIABILITY BREAKUP, AS APPLICABLE
PREVIEW DRAFT GSTR-3B
FILE GSTR-3B WITH EVC
FILE GSTR-3B WITH DSC

Advisory on Interest on GST Portal

Auto-population of system computed interest in next GSTR-3B

5. **System computation of interest** :After filing this GSTR-3B, the system will compute the interest liability on the basis of the values declared in this GSTR-3B. This computation will be done in accordance with the provisions of the Section-50 of the Act, **as amended**.

Interest will be computed for each tax-period as per the following formula :

$$\text{Interest liability} = \text{Tax liability} \times \frac{\text{Number of days since the Due date till the actual date of filing GSTR-3B}}{\text{Number of days in the year}} \times \text{Rate of interest}$$

Depending on the number of tax-periods declared by the taxpayer in the tax-period wise break-up, the interest liability for each tax-period will be calculated separately as per this formula. The interest values for different periods will then be added, and the total interest liability will be computed for each head by the system.

Section 50

- SECTION 50. Interest on delayed payment of tax. — (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council :
- [Provided that the interest on **tax payable in respect of supplies made during a tax period and declared in the return for the said period** furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.]

Case Study-2

- ABC Pvt Ltd. is an entity engaged in manufacture of goods. ABC made sales of Rs. 10 Cr on which tax of Rs. 1.8 Cr was payable. It had an ITC of Rs. 1.35 Cr in its ECL. ABC did not have sufficient funds to pay the complete tax liability payable in cash. The assessee was suggested 2 options by a consultant:
- To delay filing of GSTR-3B for the month of November 2021 and file the same on 20th January 2022.
- To file GSTR-3B for November 2021 without reporting the sales in GSTR-3B for November and report the sales of Rs. 10 Cr in GSTR-3B for December 2021 to be filed by 20th January 2022.

Case 2

- a) What should be the interest liability in both cases?
- b) The GST portal gives an auto-populated computation of interest while filing of GSTR-3B. It asks Tax Liability Break Up (Voluntary) wherein taxpayer can give the details that the sales reported in GSTR-3B for the current tax period pertains to which tax period.

When sales of Rs. 10 Cr with tax of 1.8 Cr is entered with tax period as November in GSTR-3B for December 2021, interest is calculated on gross liability of 1.8 Cr.

Whether the approach is correct in line with provisions of S. 50 of the Act?

Section 50

- SECTION 50. Interest on delayed payment of tax. — (1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council :
- [Provided that the interest on **tax payable in respect of supplies made during a tax period and declared in the return for the said period** furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.]

Refex Industries Ltd- 2020 (034) GSTL -588 (Mad HC)

- Specific question for resolution to be whether in cases where credit due to assessee, payment by way of adjustment may still be termed 'belated' or 'delayed'.
- Use of word 'delayed' connotes situation of deprivation, where State deprived of funds representing tax component till such time return filed accompanied by remittance of tax. Availability of ITC connotes enrichment of State.
- Section 50 of Central Goods and Services Tax Act, 2017 specifically intended to apply to State of deprivation cannot apply in situation where State is possessed of sufficient funds to credit of assessee.
- Proper application of Section 50 ibid to be one where interest levied on belated cash payment but not on ITC available with Department to credit of assessee. Latter being available with Department, hence neither belated nor delayed.

Eicher Motors Ltd. v. Union of India — 1999 (106) E.L.T. 3 (S.C.)

- Supreme Court Bench categorically held that available credit is as good as tax paid.
- By ignoring the available credit and providing to levy interest upon that component of tax which the assessee seeks to remit by adjustment of credit, the Department is enriching itself doubly - on the one hand, holding in its coffers the available credit and on the other, seeking the payment of interest upon the same sum.

Case 2

- Can department recover the interest without giving SCN in following situation:
 - If the sales of Rs. 10 Cr is not reported in GSTR-1 of November 2021,
 - If the sales of Rs. 10 Cr is reported in GSTR-1 of November 2021,

What will be the manner of notice/order/Form for recovery?

- Which option should ABC take up in your view considering overall scheme of compliance under GST?
 - Cancellation of registration (Rule 21)
 - Blocking of e-way bill (Rule 138E)
 - Blocking of filing of GSTR-1 if GSTR-3B is not filed (Rule 59(6))

Section 75(12)

- (12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Recovery of Interest

- **M/S RAJKAMAL BUILDER INFRASTRUCTURE PRIVATE LIMITED vs UOI- Guj HC**
- Thus, the aforesaid provisions make it abundantly clear that notwithstanding anything contained in section 73 or Section 74, if there is any amount of interest payable on tax and which had remained unpaid, the same has to be recovered under the provisions of Section 79.
- Section 79 is with respect to recovery of tax. Section 79 provides for the modes of recovery.
- Rule 142 makes it clear that the order referred in subrule (5) shall be treated as the notice for recovery.
- From the aforesaid, we have reached to the conclusion that the notice should have been issued in Form GST DRC 07. The Notice should specify the amount of tax, interest and penalty payable by the person chargeable with tax.

Refex Industries Ltd- 2020 (034) GSTL -588 (Mad HC)

- At paragraph 29, the Hon'ble Judge holds that the liability to pay interest under Section 50 is auto-matic.
- However, since the petitioner in that case had raised disputes with regard to the period for which the tax had allegedly not been paid, as well as the quantum of tax remaining unpaid in excess of ITC, all being questions of fact, he was of the view that such matters would have to be resolved after hearing the assessee
- . He categorically states *'therefore in my considered view though the liability fastened on the assessee to pay interest is an automatic liability, quantification of such liability certainty needs an arithmetical exercise after considering the objections if any, raised by the assessee.'*
- The objections raised in that case are thus factual and relate to disputed questions of fact as noted by me in the earlier portion of this paragraph.

Section 73

- **SECTION 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts. —**
- (1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

Which is least risky?

- **Non furnishing of GSTR-1 if GSTR-3B of last tax period is not filed**

- Rule 59(6): Notwithstanding anything contained in this rule, -

- (a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B [for the preceding month];

- **Cancellation of Registration for difference in GSTR-1 and GSTR-3B**

RULE 21. Registration to be cancelled in certain cases. — The registration granted to a person is liable to be cancelled, if the said person, -

- (f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or

RECOVERY OF SELF-ASSESSED TAX REPORTED IN GSTR-1 BUT NOT IN GSTR-3B

Section 75 - Recovery Proceedings

75(12) - Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Explanation - For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39

Kabeer Reality Pvt Ltd vs Union of India – 2020 (33) GSTL 27 (MP)

- Recovery of Government dues - GSTR-1 Return filed by petitioner but GSTR-3B Returns, which are to be paid on GST portal based on self-assessed transaction value shown in GSTR-1 Returns by the petitioner, not filed - Consequently, no revenue actually transferred to Government and on the other hand, persons/tenants, to whom the petitioner has issued invoices, would avail GST credit - Procedure contemplated under Chapter XV of Central Goods and Services Tax Act, 2017 followed as Section 79(1)(c) falls in Chapter XV ibid –
- Petitioner itself having quantified its tax liability under GSTR-1 Returns, Section 73 as well as Section 78 ibid not applicable - Notice rightly issued by Department by invoking Section 79(1)(c) ibid to the tenants of petitioner. [paras 28, 30, 31, 33, 34, 36]

Case Study 3

AB Ltd. reported an exempt supply as taxable supply in B2Cs section in GSTR-1 wrongly and observed the mistake before filing of GSTR-3B for the said month. Hence tax was not paid in GSTR-3B. The assessee was not aware of option to amend B2Cs sales in GSTR-1 hence no amendment was made.

- Can department initiate recovery proceedings directly without procedure of S. 73 and 74?
- As per the SOP issued by CBIC, jurisdictional officer shall given an opportunity of being heard before initiating recovery. In case he/she is not satisfied with the explanation, will there be any notice or order before initiation of recovery? Will DRC-07 be issued in such case?
- Whether an appeal can be filed against the recovery made in given Section? What shall be an appealable order in given case?
- In case the supply was taxable but was not reported in GSTR-3B due to omission or interpretation misunderstanding, can one seek option of payment of tax in instalments under the law? Can interest be paid in instalment?

Procedure laid down for Recovery by Department

- The proper officer may send a communication (with DIN) to the registered person to pay the amount short paid or not paid, or to explain the reasons for such short payment or non-payment of self-assessed tax
- A reasonable time shall be allowed for payment
- If the taxpayer is able to **justify the differences, or is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer,** or pays the amount such short paid or not paid, then there may not be any requirement to initiate proceedings for recovery under section 79.
- If said registered person either fails to reply, or fails to make the payment within the time prescribed or such further period as allowed, then the proceedings for recovery may be initiated by the proper officer.
- Further, where the said registered person **fails to explain the reasons for such difference/short payment of tax to the satisfaction of the proper officer,** then the proper officer may proceed for recovery of the said amount as per provisions of section 79.

Rule 142. Notice and order for demand of amounts payable under the Act

CHAPTER XVIII

DEMANDS AND RECOVERY

[142. Notice and order for demand of amounts payable under the Act.-(1) The proper officer shall serve, along with the

(a) notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof electronically in **FORM GST DRC-01**,

(b) statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02**,

specifying therein the details of the amount payable.

[(1A) The[proper officer may]³²⁷, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, [communicate]³²⁸ the details of any tax, interest and penalty as ascertained by the said officer, in **Part A of FORM GST DRC-01A.**]³²⁹;

Rule 142. Notice and order for demand of amounts payable under the Act

(5) A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

(6) The order referred to in sub-rule (5) shall be treated as the notice for recovery.

SECTION 121. Non-appealable decisions and orders.

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely :—

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under this Act; or
- (d) an order passed under section 80

SECTION 80. Payment of tax and other amount in instalments.

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed :

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery.

RESTAURANT SERVICES THROUGH ECOM

Section 9(1) &(5) and Notification

Notification No. 17/2021-Central Tax (Rate) dated 18th November, 2021

In exercise of the powers conferred by sub-section (5) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies that in case of the following categories of services, the tax on intra-State supplies shall be paid by the electronic commerce operator -

“(iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.”

‘Specified premises’ means premises providing ‘hotel accommodation’ services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.”.

Case Study 4

M/s Tasty Treat is a cloud kitchen which is supplying restaurant services through Electronic Commerce Operators only. It has no physical outlet where customers can visit, sit and eat. Till 31.12.2021, it is registered under GST and was paying tax at 5% GST Rate. Now it has following issues:

- Whether it can surrender its GST Registration with effect from 01.01.2022?
- Whether is it legally required to show the details of outward supplies on or after 01.01.2022 in its GST Returns as tax on same shall be payable by Eco?

Section 9(1) &(5) and Notification

SECTION 9. Levy and collection. — (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be **paid by the taxable person.**

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and **all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services :**

Notification No. 17/2021-Central Tax (Rate) dated 18th November, 2021

“(iv) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.”

Section 29

- SECTION 29. Cancellation [or suspension] of registration. — (1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, —
 - (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
 - (b) there is any change in the constitution of the business; or
 - [(c) the **taxable person** is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25 :]

(107) “taxable person” means a person who is registered or liable to be registered under section 22 or section 24

Section 22: Person Liable for Registration

- **SECTION 22. Persons liable for registration.** — (1) Every **supplier** shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees :

SECTION 23. Persons not liable for registration.

- (1) The following persons shall not be liable to registration, namely :—
 - (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act

SECTION 24. Compulsory registration in certain cases. — Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, —

- (iv) person who are required to pay tax under sub-section (5) of section 9

Definition of supplier – S. 2(105)

(105) “supplier” in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

SECTION 37. Furnishing details of outward supplies

(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, **the details of outward supplies of goods or services or both effected** during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed :

Rule 59(4): The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the

-
- (a) invoice wise details of all -
 - (i) inter-State and intra-State supplies made to the registered persons; and
 - (ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;
- (b) consolidated details of all -
 - (i) intra-State supplies made to unregistered persons for each rate of tax; and
 - (ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;
- (c) debit and credit notes, if any, issued during the month for invoices issued previously.

Who will Issue Invoice?

Circular No: 167 / 23 /2021 - GST

9.	Would 'restaurant service' and goods or services other than restaurant service sold by a restaurant to a customer under the same order be billed differently? Who shall be liable for raising invoices in such cases?	Considering that liability to pay GST on supplies other than 'restaurant service' through the ECO, and other compliances under the Act, including issuance of invoice to customer, continues to lie with the respective suppliers (and ECOs being liable only to collect tax at source (TCS) on such supplies), it is advisable that ECO raises separate bill on restaurant service in such cases where ECO provides other supplies to a customer under the same order.
10.	Who will issue invoice in respect of restaurant service supplied through ECO - whether by the restaurant or by the ECO?	The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.

Circular No: 167 / 23 /2021 - GST

11.	Clarification may be issued as regard reporting of restaurant services, value and tax liability etc in the GST return.	<p>A number of other services are already notified under section 9(5). In respect of such services, ECO operators are presently paying GST by furnishing details in GSTR 3B.</p> <p>The ECO may, on services notified under</p>
		<p>section 9 (5) of the CGST Act,2017, including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies for the time being.</p> <p>Besides, ECO may also, for the time being, furnish the details of such supplies of restaurant services under section 9(5) in Table 7A(1) or Table 4A of GSTR-1, as the case maybe, for accounting purpose.</p> <p>Registered persons supplying restaurant services through ECOs under section 9(5) will report such supplies of restaurant services made through ECOs in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.</p>

Case Study : 4

- Whether supplies effected by Tasty Treat through ECo are exempted supplies or non GST Supplies or no Supplies or Taxable Supplies?

Definitions under Section 2

(47) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

(78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

(108) “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act

Case Study No 4

- If M/s Tasty Treat can claim ITC in respect of supplies effected by it through Electronic Commerce Operator? Whether it can use such ITC in its other line of business to be conducted under same GSTIN?

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

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

SECTION 16. Eligibility and conditions for taking input tax credit. — (1) Every **registered person** shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to **take credit of input tax charged on any supply of goods or services or both to him** which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

Notification 11/2017-CT(Rate)

Rate of GST on intra-State supply of specific services with Service Code Tariff (SAC)

In exercise of the powers conferred by sub-section (1) of section 9, sub-section (1) of section 11, sub-section (5) of section 15 and sub-section (1) of section 16 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, and on being satisfied that it is necessary in the public interest so to do, hereby notifies that the central tax, on the intra-State supply of services of description as specified in column (3) of the **Table below, falling under Chapter, Section or Heading of scheme of classification of services as specified in column (2), shall be levied at the rate** as specified in the corresponding entry in column (4), subject to the conditions as specified in the corresponding entry in column (5) of the said Table :-

Sl. No.	Chapter, Section or Heading	Description of Service	Rate (per cent)	Condition
(1)	(2)	(3)	(4)	(5)
		(ii) <i>Supply of 'restaurant service' other than at specified premises</i>	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation No. (iv)]

Notification 11/2017-CT(Rate)

- (iv) Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,—
- (a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and
 - (b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

RETROSPECTIVE AMENDMENT IN SECTION 7(1)(AA)

Sec 7(1)(aa)

- **SECTION 7. Scope of supply.** — (1) For the purposes of this Act, the expression “supply” includes —
- [(aa) 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.
- Explanation. — For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

Meaning and Scope of Supply – Section 7

Changes:

Omitted

Schedule-II: ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

The following shall be treated as supply of goods, namely :—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

Effective Date:

- 1st July 2017

Impact:

- The above paragraph becomes redundant with insertion of Section 7(1)(aa)

Case Study -5

Friends Ltd is a club which was not paying GST on the amount received from its members owing to the concept of mutuality. Now with retrospective amendment in scope of supply, it has following questions to ask?

- Whether it is required to pay GST on the amount collected from its members as membership fees with effect from 1-7-2017 or from 1-1-2022?
- Since GST is an indirect tax and members may not pay the amount of tax for transactions concluded prior to 1-1-2022. Will that be a valid ground to not pay GST?
- Whether club will be required to pay interest and penalty for delayed payment of tax?
- Whether club will be able to claim ITC considering the provisions of Section 16(4) and 18(1) of the CGST Act 2017?

Is Club required to pay tax from retrospective effect?

Invalidating Court Ruling is Valid?

- National Agricultural Co-operative Marketing Federation of India Ltd. & Anr.v UOI
 - Making a retrospective amendment is not like overruling the Court's decision.
 - If the invalidity pointed by the Court is removed, then it is a valid law.

Members will not pay tax

- J.K. Jute Mills Co. Ltd. v. The State of Uttar Pradesh: AIR 1961 SC 1534
 - SC held: it is no doubt true that a sales tax is, according to accepted notions, intended to be passed on to the buyer, But it is not an essential characteristic of a sales tax that the seller must have the right to pass it on to the consumer, nor is the power of the Legislature to impose a tax on sales conditional on it making a provision for sellers to collect the tax from the purchasers.

Liability to pay interest and penalty?

- Any penalty should not be levied for the non-payment of tax prior to this retrospective amendment as held in the case of
 - **Rama Vision Limited vs CCE, Meerut (S.C) 2005 (181) ELT 201 (SC)**
 - Penalty – Not imposable when the levy is revalidated or charge to duty is created with retrospective effect
 - **Star India Private Limited vs CCE, Mumbai & Goa (S.C) 2006 (1) S.T.R. 73 (S.C.)**
 - It is well established that while it is permissible for the legislature to retrospectively legislate, such retrospectivity is normally not permissible to create an offence retrospectively.
- 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 could not entail the punishment of payment of interest with retrospective effect

Case Study -5

- Through this amendment whether partners of the partnership shall also be liable to pay GST on the remuneration earned by them from the partnership firm which is taxed under IT Act as “Profit and Gains from Business or Profession”?

Sec 7(1)(aa)

- **SECTION 7. Scope of supply.** — (1) For the purposes of this Act, the expression “supply” includes —
- [(aa) 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.
- Explanation. — For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

Relevant Material

- FAQ on CBIC's Website
- Q 79 :Salary by partnership firm to Partners as per Income Tax Act liable to GST?

Salary will not be liable for GST

- **Cadila Healthcare Limited: 2021 (50) G.S.T.L. 205 (Tri. - Ahmd.)**
- It is also observed that the impugned activities of the appellant are undisputedly its obligation as a partner as per partnership deed. **There is no separate contract of services between the appellant and the partnership firm. Therefore, the remuneration received by the appellant is merely a special share of profits in terms of the partnership deed.** Therefore, such remuneration cannot be considered as consideration towards any services between two persons, and, hence, not liable to Service Tax.

Partnership Basics

- **Section 4 of the Indian Partnership Act 1932:**
- "Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.
- The Hon'ble Supreme Court in the case of **Regional Director, Employees State Insurance Corpn. v. Ramanuja Match Industries (1985] 1 SCC 218** while dealing with the question, whether there could be a relationship of master and servant between a firm on the one hand and its partners on the other, indicated that under the law of partnership there can be no such relationship as it would lead to the anomalous position of the same person being both, the master and the servant. A
- In **CIT v. R M Chidambaram Pillai 1976 (11) TMI 2 - SUPREME Court**, it was held that a contract of employment requires two distinct firms, viz., employer and employee. A firm is not a 'legal person,' though it has some attributes of a personality. In Income tax law, a firm is a unit of assessment, by special provisions, but is not a full person. **Salary paid to partner is only profit known by a different name.** In strict law, there cannot be a contract of service between a firm and one of its partners, since contract of employment requires two distinct persons, viz., employer and employee. A man cannot be his own employer.

Partnership Basics

- The remuneration paid to partners is nothing but it is basically a part of profit which is given only for extra human efforts.
- Remuneration is given to working partners only and not to dormant partners because they provide their services to the business and in return they receive extra profit in form of remuneration.
- Thus, it cannot be said that the remuneration given to partners, is salary. It may be considered a case of different form of distribution of profit.
- It is also a transaction in money and, hence may not be covered under the definition of services.

E-WAY BILL AND VEHICLE INTERCEPTION

Detention and Seizure– Section 129

Changes:

Current Provision	New Provision
(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twentyfive thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;	(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and , in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty
(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;	(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher , and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;”;
(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed	No Change

Detention and Seizure– Section 129

Changes:

Current Provision(New Provision
(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances	Omitted (Provisional Release on execution of Bond and furnishing security)
(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).	(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure , specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice , for payment of penalty under clause (a) or clause (b) of sub-section (1).
(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.	(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.	No Change

Detention and Seizure– Section 129

Changes:

Current Provision	New Provision
(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130	<p>“(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):</p> <p>Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:</p> <p>Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer</p>

Section 107(6) & (7)

- (6) No appeal shall be filed under sub-section (1), unless the appellant has paid —
- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,] in relation to which the appeal has been filed.

[Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.]

- (7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

Case Study 6

Goods of M/s A Ltd were being carried in a conveyance owned by the Transporter M/s T. The said conveyance was intercepted non compliance of the provisions of Rule 138 of the CGST Rules and penalty as mentioned under Section 129(1)(a) amounting to Rs 10 lacs (200% of the tax payable of Rs 5 lacs as mentioned in the tax invoice) was levied by passing an order in MOV-09 on 10.01.2022. M/s A Ltd, paid 25% of disputed penalty i.e. Rs 2.5 lacs and filed appeal on 20.01.2022. M/s A Ltd requested the proper officer to release the goods and vehicle provisionally on the basis of Section

However the proper officer, in the light of amended Section 129(6) of the Act denied to release the goods and proceeded to sale the goods and conveyance to recover the penalty of Rs 10 lacs. M/s A Ltd has following questions:

- a) Whether in-spite of filling appeal within 15 days from date of MOV-09, can proper officer deny to release the goods and vehicle so detained?
- b) Whether proper officer can sale goods before disposal of appeal?
- c) Whether proper officer can sale the goods and vehicle without vesting of property in their hands?
- d) If M/s A would have given bank guarantee of Rs 7.5 lacs and pre-deposit of Rs 2.5 lacs at the time of filing appeal, in that case whether proper office is correct in not releasing the goods and vehicle?

SECTION 130. Confiscation of goods or conveyances and levy of penalty

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

WHAT TO UPLOAD?

Section 44

Up till 31.07.21

- **44. (1)** Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.
- **(2)** Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 **shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement,** reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

From 01.08.21

- **SECTION [44. Annual return.** — Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable **person shall furnish an annual return which may include a self-certified reconciliation statement,** reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed :
- Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section :

Audited AFS are not available because audit not done?

Rule 80

Up till 31.07.2021

- (3) Every registered person [other than those referred to in the proviso to sub-section (5) of section 35,] whose aggregate turnover during a financial year exceeds two crore rupees shall
- get his accounts audited as specified under sub-section (5) of section 35 and
- **he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C*,**
- electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

From 01.08.2021

- (3) Every registered person, other than those referred to in the second proviso to section 44, an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, whose aggregate turnover during a financial year exceeds five crore rupees,
- **shall also furnish a self-certified reconciliation statement as specified under section 44 in FORM GSTR-9C along with the annual return referred to in sub-rule (1),**
- on or before the thirty-first day of December following the end of such financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.]

What is the Portal asking for?

Upload Relevant DocumentsHelp ?

• Indicates Mandatory Fields

• File with PDF or JPEG format is only allowed

• Maximum 2 files and 5 MB for each file allowed

Balance sheet *

Choose File No file chosen

Profit & loss statement/Income & Expenditure Statement *

Choose File No file chosen

Other Document 1, if any

Choose File No file chosen

Other Document 2, if any

Choose File No file chosen

SAVE

Verification

☐ I hereby solemnly affirm and declare that the information given herein above is true and correct and nothing has been concealed therefrom. I am uploading this self-certified reconciliation statement in FORM GSTR-9C. I am also uploading other statements, as applicable, including financial statement,

Thank You

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