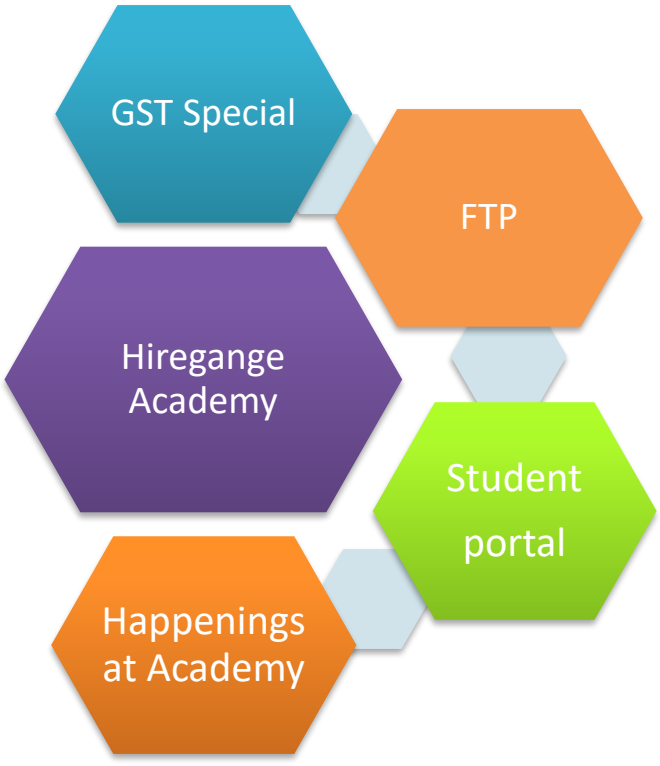
Hiregange Academy

- Empowering Knowledge & Employability

Going Beyond!!!
May 2019



Reach us at:
Hiregange Academy
#1010, 1st floor, 26th main,
(Above Corporation Bank)
4th 'T' Block, Jayanagar,
Bangalore 560 041
Mob. – 9740083407
lalitha@hiregangeacademy.com
www.hiregangeacademy.com

Compendium

Indirect Tax Basket

- GST Special
  - GST - ITC on construction of immovable properties – Orissa High Court
  - GST – Construction service - Actual land deduction
  - Note on analyzing whether vendors can be suggested to opt for the new scheme for paying tax @ 6% under GST
  - Few challenges in annual return
- FTP
  - Benefit under FTP for service providers – SEIS scheme
  - GST FTP Benefits for Exporters

- Look out for
  - Happenings at Academy

GST - ITC on construction of immovable properties – Orissa High Court

The Constitutional (101) amendment Act 2016 clearly states in the Statement of Objectives for ushering in GST that it is to remove the cascading effect of taxes and allow the seamless flow of the tax credit across the supply chain. It means that it should avaoid tax on tax.

Conceptually, GST is levied on ONLY value addition at each stage of supply chain starting from manufacture or import and till the last retail level. This is with a facility of the Input credit ('ITC' for short) of taxes paid on the procurements (goods/services) made and allowing to utilise for payment of GST on the output. Any restrictions on ITC availment would result in the cascading effect of taxes and disturb the aforesaid object of GST. In case of export of goods or service, no tax is to stick with the value of supplies to make Indian exports comeptitive. The buildings/ factories/ shops are vital for conduct of businesses as much as machines, raw material or services.

Past Judgements:

In the landmark judgment of Dai Ichi Karkaria -1999(112) ELT 353(SC) it was observed that Cenvat credit once eligible is denied only if it is aviled illegally or irregularly. In the Jawahar Mills case 2001(132) ELT 3(SC) it was observed in regard to what is a plant & machinery that the principles of the decisions in Income Tax (more developed law) could be used as precedent in Central Excise. In Income tax a theathre (Anand Thetre), sanitary fittings and pipelines (Taj Mahal Hotel) building for power generation (KPC) were considered as a plant.

Normally, taxes paid on all business procurements are allowed as ITC but some are specifically restrictioned/blocked.

One among them is the ITC on goods/services used for 'construction of immovable property' which is specifically restricted under section 17(5)(d) of CGST Act, 2017 which reads as under:

"(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business"

In terms of the above restriction, the prevailing understanding is that ITC on goods/services used for the construction of immovable properties is allowed only if the immovable property is meant for sale/transfer and in all other cases, ITC is not allowed. That is to say, if the immovable property is not sold but let out, ITC is not available on the goods/services used for construction even though the supplier is made liable for payment of GST on the lease rentals. This provision was challenged before Hon'ble High court of Orissa which declared its verdict recently reported in Safari Retreats Pvt Ltd Vs C.C Of CGST 2019-TIOL-1088-HC-ORISSA-GST. In this background, an attempt has been made in this article to explain the Orissa High Court decision and its implication.

Facts of the case:

Petitioner is mainly engaged in the construction of shopping malls for the purpose of letting out. For this purpose, the Petitioner has purchased various materials/services like Cement, steel, architectural services, etc., on which applicable GST has been charged by the vendors. Petitioner is desirous of availing the ITC of GST charged on the aforesaid procurements and utilize towards the payment of GST on the lease rentals.

However, the revenue department had advised to deposit the GST on the lease rentals without taking the ITC in view of the restrictions placed under Section 17(5)(d), ibid and warned of penal consequences for availing ITC.

Contentions raised by the Petitioner:

The petitioners has contended that Section 17(5)(d) of the CGST Act, 2017 is to be read down for the purpose of interpretation to enable benefit to the assessee or to the person who has paid GST. Further it has to be interpreted in continuity of the transaction since rent income is arising out of the Malls which are constructed after paying GST on different items inter alia on the following grounds:

- GST has been introduced with the object of avoiding the cascading effect of various indirect taxes, therefore, the denial of ITC on goods and services used for further supply of services on which GST is payable is not correct as there is no break in the tax chain
- If an immovable property is sold after issuance of completion certificate there is a break in the tax chain as there is no GST liability, therefore, the denial of ITC in case of property sold after completion certificate may be valid as there is a break in the tax chain.
- However, the position is completely different if the immovable property is constructed for the purpose of letting out of the same as the tax chain will not get broken. Therefore, the denial of ITC is completely arbitrary, unjust and oppressive.
- To grant an input tax credit to a builder who sells the building where completion certificate has not been issued at the time of sale while denying it to a person like the Petitioner is patently and egregiously arbitrary and discriminatory under Article 14 of the Constitution.
- Such an interpretation of Section 17(5)(d) of both CGST and OGST Act leads to double taxation, i.e., firstly, on the inputs consumed in the construction of the building and secondly, on the rentals generated by the same building.
- It would also be violative of the Petitioners' fundamental right to carry on business under Article 19(1)(g) of the Constitution as it would impose a wholly unwarranted and unreasonable and arbitrary restriction which would render buildings now constructed for letting out uncompetitive, by imposing the burden of double taxation of GST on such buildings
- As the shopping mall is intended for letting out, the same shall not be considered as constructed 'on his own account' therefore the restriction under 17(5)(d) shall not be applied.

Other areas covred by the article:

This article also throws light on the following:

- Revenue department contentions:
- HC Decision:
- Impact of the decision:
- Possible Course of action:
- Conclusion:

To read the full article, click here

- **CA Madhukar Hiregange and**
- **CA Vaenkata Prasad**

GST – Construction service - Actual land deduction?

Valuation is the measurement of value on which any tax has to be paid. The typical construction contract is the composition of three components namely

- Land or an undivided portion of land in case of apartments
- Materials/goods like cement, steel etc.,
- Services like labour in construction, designing etc.,

Before GST is introduced, different indirect taxes were levied on the above mentioned three components. State government levied VAT on materials portion, the Central government levied service tax on service portion. Due to practical difficulties in arriving the exact value of each component and taxing such component by at full rate by the respective Government, every state VAT law used to provide the composition rates. Similarly, service tax law also used to prescribe the deemed valuation by way of abatements.

After the introduction of GST w.e.f. 01.07.2017, the bifurcation of materials and service components are not warranted as such composite contracts are now fully deemed as services. However, with the presence of the third component i.e. sale of land which was kept outside the GST, need arises to prescribe the mechanism to identify the land value from the total amount received and taxing only the net of land value. For this reason, GST law (vide Notification No. 11/2017- Central tax (Rate) dated 28.06.2017 as amended provides that GST rate applicable is 18% on 2/3rd of the total amount received which was formulated as (total amount received – 1/3rd of such total amount which was deemed as land value). Thus, making the effective rate as 12% of the total amount received from the customer. The GST rates are referred as 18% while explaining the implications of actual deduction of land v. 1/3rd deemed deduction of land, readers may note that w.e.f. 01.04.2019, the rate is revised to 7.5% (effective rate of 5%) in case of non-affordable residential apartments and 1.5% (effective rate of 1%) in case of affordable residential apartments subject prescribed conditions. The analysis would be relevant even after 01.04.2019 as there is no changes in the provisions for land deduction.

For example, the amount received from the customer is 4,500/- per sq. ft then the GST shall be paid at 18% of 3,000 (4,500-1,500) which indirectly means 12% on 4,500. The 1,500 arrived as 1/3rd of 4,500 and same was deemed as value collected from customer towards the sale of land or an undivided portion of land.

While providing the rate, the law, in fact, a delegated notification deemed that 1/3rd of the total amount is the amount collected towards the sale of land or an undivided portion of land. Now the question arises whether such deemed value of land is to be mandatorily followed? On a plain reading of the notification, the answer is yes, as the law provides for deemed value and has not given any scope to deduct the actual land thereby making the actual land value irrelevant while applying the above referred rate of 12%.

Mandatory deduction towards land @1/3rd might be sufficient or even be on the higher side if the project is located in the suburban or rural areas. However, in the metros, premium or semi-premium localities where land value is almost 60-90% of the unit value, this deduction is not sufficient. The law should have provided the mechanism to reduce the value of land in the prescribed manner and it should have been left to the option of the builder to pay tax at the reduced rate of 12% if he is unable to value the land. In many southern States, traditionally builders execute two agreements

- One is sale deed conveying the title of land (undivided portion in case of apartments).
- Other is 'construction agreement' popularly known as work order which is entered to undertake the construction

work on the land which was already conveyed to such customer through the above referred agreement

There is a clear identification of consideration towards land but the GST law does not recognise these values to deduct from the total amount and uniformly fixes that land value as 1/3rd. The readers may note that there are advance rulings stating that though there exists separate agreement for sale of land/undivided share land, the GST shall be paid on the total value including the amount charged towards land thereby implying that deemed deduction of 1/3rd is mandatory in all cases and actual value of land is to be ignored. In Re: Kara Property Ventures LLP 2019-TIOL-86-AAR-GST; In Re: Sanjeev Sharma 2018 (13) G.S.T.L. 395 (A.A.R. - GST)

Whether such deeming value of land amounts to taxing the land component?

Undoubtedly, the GST is not applicable on the sale of land. That being a case, the question is whether land can be subjected to GST indirectly through an artificial valuation of construction. More so considering the settled jurisprudence that one cannot achieve by indirect means what one is not permitted to do directly.
Judicially, the Courts have permitted the Governments to prescribe a larger value not exclusively limited to the particular nature of the tax. in this regard, the decision of Hon'ble Apex court (larger bench) in case of Commissioner v. Grasim Industries Ltd 2018 (360) E.L.T. 769 (S.C.) held that measure of the levy will not be controlled by the nature of the levy. So long a reasonable nexus is discernible between the measure and the nature of the levy and measure/valuation would operate in their respective fields.

When there is availability of actual value of land or can it be Challenged?

Authors are of the view that the 1/3rd deemed deduction of land can be challenged on the ground that Government can devise the formula for capturing the taxable portion of composite contract consists of both taxable (labour & materials) & non-taxable components (land) only when there is no bifurcation is available. It should not be made universal or apply in all cases of composite contracts. That is to say Government cannot override or ignore the identified components while providing for deemed valuation or so called formula. This is more specifically when the agreements/records of assessee clearly capture the taxable component. In this regard, ratio of Hon'ble supreme court decision in case of Wipro Ltd v. Assistant Collector Of Customs 2015 (319) E.L.T. 177 (S.C.) can be referred wherein it was held that

"We are also of the opinion that when the actual charges paid are available and ascertainable, introducing a fiction for arriving at the purported cost of loading, unloading and handling charges is clearly arbitrary with no nexus with the objectives sought to be achieved. On the contrary, it goes against the objective behind Section 14 namely to accept the actual cost paid or payable and even in the absence thereof to arrive at the cost which is most proximate to the actual cost. Addition of 1% of free on board value is thus, in the ***circumstance, clearly arbitrary and irrational and would be violative of Article 14 of the Constitution. (Para 31)***

No doubt, rulemaking authority has the power to make Rules but such power has to be exercised by making the rules which are consistent with the scheme of the Act and not repugnant to the main provisions of the statute itself. Such a provision would be valid and 1% F.O.B. value in determining handling charges, etc., could be justified only in those cases where actual cost is not ascertainable. (Para 32)

34. In the present case before us, the only justification for stipulating 1% of the F.O.B. value as the cost of loading, unloading and handling charges is that it would help Customs authorities to apply the aforesaid rate uniformly. This can be a justification only if the loading, unloading and handling charges are not ascertainable. Where such charges are known and determinable, there is no reason to have such a yardstick. We, therefore, are not impressed with the reason given by the authorities to have such a provision and are of the opinion that the authorities have not been able to satisfy as to how such a provision helps in achieving the object of Section 14 of the Act. It cannot be ignored that this provision as well as Valuation Rules are enacted on the lines of GATT guidelines and the golden thread which runs through is the actual cost principle. Further, the loading, unloading and handling charges are fixed by International Airport Authority."

Further decision in case of Federation of Hotels & Restaurants Association of India v. UOI 2016 (44) S.T.R. 3 (Del.) wherein while dealing with the Rule 2C of service tax (determination of value) Rules, 2006 it was clearly held that "It also requires to be kept in mind that the ready reckoner formula is useful where an assessee does not maintain accounts in a manner that will enable the assessing authority to clearly discern the value of the service portion of the composite contract. It hardly needs emphasis that when during the course of assessment proceedings an assessee is able to demonstrate, on the basis of the accounts and records maintained by it for that purpose, that the value of the service component is different from that obtained by applying Rule 2C the assessing authority would be obliged to consider such submission and give a decision thereon."

The authors view therefore is that the actual deduction of land is permissible when it is supported by the sufficient evidence and the 1/3rd deduction is not always mandatory and can be challenged.

- CA. Madhukar N Hiregange
- CA. Venkata Prasad

Note on analyzing whether vendors can be suggested to opt for the new scheme for paying tax @ 6%

Introduction:

To ease out the GST compliances for the MSME sector, the Government has introduced a new scheme of tax for the suppliers of goods or services who are not covered under the existing composition scheme u/s 10 of the CGST Act, wherein the GST shall be discharged at a flat rate of 6% and annual returns need to be filed with monthly payment of taxes. This scheme could be recommended to the vendors of registered persons who are not in a position to avail ITC for various reasons, which could be due to ineligibility of the credit u/s 17(5) of the Act (i.e. blocked credits) or for the reason that such procurement is used for making exempt supplies, etc. This note is a basic understanding of the said scheme, which can be evaluated by the Company to see if a vendor opting for such scheme would reduce costs for the Company so that a recommendation can be made to the vendor to evaluate the said option.

The following industries could evaluate to see if proposing their vendors to choose the above scheme would benefit them by way of reduction in cost:

1. Health care
2. Education
3. Real estate industry not eligible to claim credits
4. Restaurants paying tax @ 5% not eligible for credits
5. Persons supplying other exempt goods/services, etc.

Brief of the new scheme: (Notification No.02/2019 – Central Tax (Rate) dated 07.03.2019)

Who can opt: Persons

1. Supplying goods or services or both,
2. Having an aggregate turnover of up to Rs. 50 lakh in the preceding financial year (FY). For computing aggregate turnover for determining eligibility to pay tax @ 6%, value of supply of exempt service by way of extending deposits loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account., and
3. Not eligible to pay tax under section 10(1) of the Act i.e., all the below persons whose value of supply of services does not exceed 10% of turnover or 5 lakhs, whichever is higher
   - A manufacturer,
   - Trader, and a
   - Person supplying food as part of service (entry 6(b) of Schedule II to the Act, example: restaurant, canteen, etc,) (For calculating the above turnover, the exempt services by way of extending deposits loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.)

Supply of what: Goods or services or both

Rate of tax: 6% (3% CGST & 3% SGST)

Value: Turnover from the date on which liability to take registration arises under the Act. Example, in Telangana if aggregate turnover exceeds Rs. 20 lakh liability to registration is attracted. Hence liability @ 6% will arise from Rs. 20,00,001 up to the turnover in the FY.

Required form: Intimation to be filed in Form GST CMP-02 by selecting the category as "Any other supplier eligible for composition levy"

Time limit for opting

- For an existing taxpayer, 30th Apr '19 in terms notification 9/2019 dated 29.03.2019 and 2/2019 ibid, read with circular No. 97/16/2019-GST dated 05.04.2019.
- For a new registration: In case of a new taxpayer, in Form GST REG-01 to intimate the option of payment of central tax @ 6%.

Effective Date: 1st Apr '19

Other conditions:

1. Not engaged in making supplies not leviable to GST example: petrol, liquor, etc.
2. Not engaged in making inter-State supplies
3. Should not be a casual taxable person or a non-resident taxable person
4. Not engaged in making any supply through an electronic commerce operator who is required to deduct TCS under section 52 of the Act.
5. Not engaged in supply of products such as Ice cream, other edible ice, Pan masala, Tobacco and its substitutes.
6. In case of multiple GST registrations under a single PAN where one registration has opted for the 6% scheme, then the other GST registrations under the same PAN would also have to pay @ 6%.
7. Not to collect any tax from the recipient and not entitled to any ITC.
8. Issue a bill of supply instead of tax invoice
9. Disclaimer on the bill of supply needs to be mentioned as 'taxable person paying tax in terms of notification No. 2/2019-Central Tax (Rate) dated 07.03.2019, not eligible to collect tax on supplies'.
10. RCM under section 9(3) and 9(4) has to be paid at applicable rate.

Returns: Notification No. 21/2019 Central Tax dated 23.04.2019

- Every supplier shall pay the self-assessed tax in the Form GST CMP-08 of the CGST Rules, 2017 by the 18th of the month following the quarter and
- Every supplier shall file a return for every financial year in the Form GSTR-4 of the CGST Rules, 2017 by the end of 30th April following the end of the financial year.

- CA Shilpi Jain
- CA Monika MOtta

Few challenges in GST Annual Return

CA Madhukar Hiregange
and CA Mahadev R

Introduction

All GST registered persons other than composition dealers are required to file the annual return in form GSTR-9. Those with aggregate turnover exceeding Rs.2 crore need to file the audit reconciliation report in form GSTR-9C. The due date for both is 30th June 2019. The online utility including offline excel utilities of forms have also been made available for tax payers. Though there are instructions provided in the forms to enable filing of these forms, there are few issues wherein the tax payers could struggle due to lack of clarity. In this article, we have highlighted few issues in GST annual return with possible solutions which could be helpful to professionals in guiding the tax payers.

Disclosure of information as per books of accounts or returns

There is a confusion as to whether the disclosure of liabilities should be as per the financial statements or as per the GST returns filed by the assessee. Certain changes were made to the GSTR-9 form in December 2018 with an intention of allowing the assessees to discharge additional liabilities as well. There are instructions provided at the end of the form. Instruction no.3 states that the additional liability may be declared in the return even though the same is not part of GSTR-1 or GSTR-3B. Instruction no.4 states that the details in part II of the form shall have details of supplies for which payments are made through form GSTR-3B. Due to these two instructions, there is a doubt on declaration of additional liabilities, if any.

Considering the intention of the law makers, it would be wise for the tax payers to disclose the additional liabilities in part II itself. This could include schedule I transactions as well wherein GST not discharged earlier and RCM transactions not considered for discharging the taxes. As there could be differences between GSTR-3B disclosures and the figures as per the books of account, proper reconciliations to be prepared along with reasoning for the differences. This would be helpful even in filing of GSTR-9C audit report. Differential tax to be discharged through cash in form DRC-03 only. [This may not further the objective of avoiding cascading of taxes]

Disclosure of credit notes details

Subject to conditions of Section 34 of CGST Act 2017, credit notes could be issued and deduction can be claimed by the assessee from the GST liabilities. There could be possibility of non-disclosure of credit notes in the same financial year 2017-18 or by September 2018 which is the time limit. The question arises is whether deduction from GST could be claimed by the assessee through annual return or not.

The time limit for adjustment of liability against a supply made in a financial year is end of September of subsequent year. Therefore, there cannot be any doubt as to ineligibility of deduction in liability through credit note disclosure in annual return.

However, there could be instances wherein the assessee could not disclose and claim the deduction due to absence of liabilities till September of subsequent year.

In such cases, the option of refund could be explored by the tax payer as per GST circular no.26/26/2017. Similar issues could be there in case of debit notes as well. If the debit notes are issued in respect of supplies made in FY 2017-18, then the details could be disclosed in part II or part V as applicable.

Discharge of additional liabilities through ITC before annual return

After understanding that additional liabilities can be discharged through annual return through cash/ bank only through DRC-03. There could be scenarios wherein there would be good amount of credit lying in electronic credit register. The dilemma existing for the tax payers is whether the credit balance can be utilised for payment of additional liabilities before filing annual return to avoid payment in cash/ bank.

Section 39(9) of CGST Act 2017 allows assessees to rectify any errors in the returns filed before September of subsequent year. However, there is no restriction as to discharge of any additional liabilities after September.

Therefore, the assessee should be allowed to pay the tax utilising the credit instead of waiting for annual return filing and payment through cash. This could be questioned by the department. Considering the amount involved and factors such as cashflow, increased interest for waiting till filing of annual return, litigation cost, the assessee needs to take a call for following this approach.

Lapse of ITC in case of imported goods

Part III of the annual return requires disclosure of total amount of IGST paid in case of import of goods including SEZ procurements in table 8G. Table after this i.e, table 8H requires disclosure of IGST credit claimed out of IGST paid as shown in table 8E. If amount in 8E is more, differential amount is un-availed ITC.

It is interesting to note that the possibility of claim of such ITC in April to September of subsequent year is not being considering in the annual return form. Such differential amount is being considered as lapsed ITC in table 8K.

This seems to be an unintentional error in the annual return form. There is no time limit for claim of ITC in case of import of goods on the basis of bill of entries. The restriction is only on invoices and debit notes in Section 16. It is expected that this issue would be resolved soon. In case, it is not done, the option available for the assessee is to disclose the amount of equal to ITC claimed in FY 2017-18 in case of imported goods in table 8E which can be equal to 8F as well so that no amount is shown as 'lapsed' credit. This would ensure no loss of credit.

Claim of missed out ITC

The due date for claim of ITC on inward supply of goods and services for FY 2017-18 extended up to due date of filing GSTR-3B returns for the month of April 2019 subject to conditions that entries are found in GSTR-2A. The question which could arise is whether such credits can be disclosed in annual return and utilised for discharging any additional liability.

Instruction no.3 to annual return states that any unclaimed credit cannot be claimed through annual return. Therefore, the assessee are required to claim the credit only through GSTR-3Bs filed in FY 2018-19.

Conclusion

Being the first annual return, confusion bound to exist. The best method for the assessee could be to have a regular and thorough reconciliations between the books of account (GSTIN wise) and GSTR-3B & GSTR-1 returns filed for FY 2017-18. Reasons for differences should also be ascertained.

Benefit under FTP for service providers – SEIS scheme

Introduction

SEIS [Services Export Incentive Scheme] is one of the export incentive scheme of DGFT in chapter 3 of Free Trade Policy 2015-20 of India. This scheme aims to incentivize service exporters of India with the objective to encourage and maximize export of notified services from India. A large number of service providers have not been claiming this benefit due to either lack of awareness or have doubts on it being sanctioned easily. It is available in normal course in most parts of India except for some officers still working in opaque manner seeking rent. Under the present regime this may also disappear/ reduce drastically as it did in the VAT & service tax.

Ethical professionals could escalate to the next level and DGFT at Delhi if they are faced with any difficulty.

Eligibility

Service providers of notified services, located in India, shall be rewarded under SEIS. Only services rendered in the manner as per Para 9.51(i) and Para 9.51(ii) of this policy shall be eligible. The notified services and rates of rewards are listed in Appendix 3D

Such service provider should have minimum net free foreign exchange earnings of US$15,000 in year of rendering service to be eligible for Duty Credit Scrip. For Individual service providers and sole proprietorship, such minimum net free foreign exchange earnings criteria would be US$10,000 in year of rendering service.

Payment in Indian rupees for service charges earned on specified services, shall be treated as receipt in deemed foreign exchange as per guidelines of Reserve Bank of India. The list of such services is indicated in Appendix 3E.

Net Foreign Exchange = Gross Earnings of Foreign Exchange minus Total expenses / payment / remittances of Foreign Exchange by the IEC holder, relating to service sector in the financial year.

In order to claim reward under the scheme, service provider shall have to have an active IEC at the time of rendering such services for which rewards are claimed.

Ineligible categories under SEIS.

Foreign exchange remittances other than those earned for rendering of notified services would not be counted for entitlement. Thus, other sources of foreign exchange earnings such as equity or debt participation, donations, receipts of repayment of loans etc. and any other inflow of foreign exchange, unrelated to rendering of service, would be ineligible.

Further DGFT also clarified via trade notice that, supplies by DTA unit to SEZ units are not considered for SEIS scheme and also services of software development export are not eligible under this scheme which is an immense surprise. The commerce ministry should immediately rectify this anomaly as the infra structure used by that industry is the same as it is for other service providers!!

Conditions

Transfer of export performance from one IEC holder to another IEC holder shall not be permitted. Thus, a shipping bill containing name of applicant shall be counted in export performance / turnover of applicant only if export proceeds from overseas are realized in applicant's bank account and this shall be evidenced from e - BRC / FIRC.

Utilization of the scrip

SEIS scrip can be utilized / debited for payment of custom duties in case of EO defaults for Authorizations issued under Chapters 4 and 5 of Foreign Trade Policy. Such utilization /usage shall be in respect of those goods which are permitted to be imported under the respective reward schemes. However, penalty / interest shall be required to be paid in cash.

Duty credit scrips can also be used for payment of composition fee under FTP, for payment of application fee under FTP, if any and for payment of value shortfall in EO under Para 4.49 of HBP 2015-20.

The scrips is freely transferable in the open market.

Audit/Examination by DGFT

Regional Authority may call for original documents in selected cases for further examination in detail. In case any discrepancy and/ or over claim is found on such examination, the applicant shall be under obligation to rectify such discrepancy and/or refund over claim in cash with interest at the rate prescribed under section 28 A A of the Customs Act 1962, from the date of issue of scrip in the relevant head of account of customs within one month. The original holder of scrip, however, may refund such over claim by surrendering the same scrip whether partially utilized or fully unutilized, without interest.

If an applicant is found to have mis-declared the Item description under any ITC HS Code, appropriate action under FT (D&R) Act, would be taken. It would be the responsibility of applicant to maintain such documents, certificate etc. for a period of at least three years from the date of issuance of scrips or the completion of scrutiny under Risk Management System (RMS) initiated by the RA whichever is later.

Professional Opportunities

The professionals with knowledge of the FTP could provide services to industry as under:

1. Identify the services where FTP benefits are available,
2. Ensure that timely & proper application is made and followed up,
3. Provide explanation if any for officers of DGFT,
4. In case of delays claim the interest,
5. Represent in case of rejection,
6. Conduct a review of the claims and amounts obtained whether in line with the policy to avoid any demands later. [This could be part of the indirect tax review audit – covering Customs, FTP and GST].

-Venkatanarayan G.M. LLB

ICAI BGM (latest release as on 18th April 2019

For Volume I, click here

For Volume II, click here

GST/ FTP benefits for exporters

In these times of Global trade wars with President Trump taking aggressive stand and not making a differentiation between developing countries and USA, exporters of goods and services have to be competitive.
The Ministry of Commerce and the Ministry of Finance are not working in a well co–ordinated manner leading to some intended benefits not reaching the exporter. Delays in benefits as well as the denial of just refund or inordinate delay plays havoc with the working capital of the exporter. This also leads to a higher cost of exports.

Some of the common areas where one finds issues leading to either no claim or erroneous claim or tips to enable incentives to be cashed have been examined in this article as under:

1. Duty Drawback & GST Refund are mutually exclusive. Even then, in respect of one shipping bill, both benefits can be claimed simultaneously after 01.10.2017.
2. There is an understanding the inputs credit is not available where output is not taxable or at nil rate.

Inputs & Input services used in the production of an intermediate product are eligible for credit & refund if it is subsequently captively used in exporting the finished product. This benefit is available even if the intermediate product is exempted from GST (Ex. Electricity) or even if the intermediate product manufactured in a separate factory. In the earlier central excise regime hon'ble Supreme Court confirmed this. Escorts Ltd Vs CCE 2004 (171) ELT 145 (S.C) & Hindustan Sanitaryware & Industries VS CCE 2002 (145) E.L.T 3 (S.C)
Quantum of usage of intermediate product for the finished product is not relevant as long as the factum of usage is established. Eligibility of credit& refund is determined on the basis of turnover of export only.The above logic is equally applicable in respect of intermediate product used in clearances of goods to SEZ.

3. GST compensation cess is also eligible for refund if it is used in export/SEZ supplies. The same is clarified in Para 5 of Circular No. 45/19/2018-GST, dated 30-5-2018. (Example: Rs. 400 per MT paid on coal purchases).
4. Restrictions of export with payment of IGST in terms of 96(10) is clearly ultra-virus to Section 54 of the GST Act. Courts are expected to strike down this Rule.
5. EOU's are entitled to file a Bill of Entry with payment of IGST on their imports & without payment of BCD. Both are exclusive one is creditable & other is non creditable. Customs Department should not insist on the importer either to opt for exemption of both or payment of both taxes. EOU's are allowed to export with payment of IGST only when it pays IGST at the time of import.
6. If EOU pays the BCD at time of import it would become a cost to importer. So presently all EOU's filing the Bill of Entry without payment of BCD & IGST. Since EOU opted for IGST exemption on import they are forced to file monthly ITC refund application with the officer, they have to undergo all hassles instead of export with payment of GST. The understanding of the customs department is wrong to our understanding. Representation by export bodies may find relief.
7. Goods may be Non-GST goods still it would be treated as Zero rated supply once the goods are exported.
8. Goods may be exempt from GST (Ex:- Fish, prawn, agriculture produce) still it would be treated as Zero rated supply once the goods are exported & ITC would be refunded.

9. The exporter should be allowed to claim the refund of GST paid on Capital goods also. There are industries completely Capital intensive industries into exports, their working capital is blocked to the extent of ITC on Capital Goods. To this extent, law should be amended.
10. Condition of receipt of convertible foreign exchange is not required for exporter of goods for the purpose of GST.
11. Receipt of consideration in INR is allowed wherever it is permitted by RBI.
12. 'Place of Supply' for intermediary has to be changed & law has to be amended. It maybe represented to avoid countless disputes already there (from October 2011 onwards) and many more in the offing.
13. In case of intermediary service being exported, it maybe examined whether the SEIS scheme can be claimed.
14. There are cases where IGST refund is not sanctioned within time (seven days) without fault of exporter & when there is no error code (SB; 000). In that case, exporter can file the application for interest on delay in disbursing the amount. If this is done by most exporters- no genuine case would see any delay.
15. 90% of ITC shall be granted as refund within 7 days on a provisional basis. Otherwise, the exporter should be eligible for interest for such delay. This issue is pending before the Court in the case of Saraf Natural Stone v. Union of India - 2018 (19) G.S.T.L. J74 (Guj.)
16. Even if the exporter not opted for MEIS benefit in the shipping bill, the same has to be granted by DGFT in terms of various High Court orders. Pasha International Vs CC 2019 (365) E.L.T. 669 (Mad.)
17. Old arrears whatever liability of excise duty, service tax either under forward charge or reverse charge can be paid through CGST credit as per Circular No. 42/16/2018-GST, dated 13-4-2018. The benefits available in case of recovery of tax should be equally applicable even if the assessee paid the amounts on his own.
18. Once the particular amount for supply of goods or service is billed to SEZ Unit, whether it is consumed in SEZ or consumed outside of SEZ premises it is treated as Zero rated supply only & eligible for the export benefit
19. Seller of goods in DTA to SEZ Unit is eligible for Duty Drawback benefits. The procedure prescribed in SEZ Act, 2005 has to be followed. Tax invoice issued in terms of GST Law will be treated as bill of export for refund claim.
20. Expenditure incurred for maintenance of foreign branch office would not be considered as an import of service in hands of Head Office located in India.
21. Now SEZ Units & EOU's are eligible for benefits MEIS Scrips.
22. Out & Out sales, international trading sales, merchant trading sales, sale of goods when they are in Customs Bonded Warehouse & high sea sales are not liable for GST & Credit reversal is also not required as it is not exempted turnover.
23. Proportionate Credit reversal for MEIS & SEIS Scrips exempted sales required only for common credit i.e office overheads, not for entire goods & services used in production floor or factory.
24. Presently the GST officers are rejecting the ITC refund claims to SEZ Units saying there is no specific provision in GST law for allowing ITC refund to SEZ Units. As per department, only supplier to SEZ is entitled to claim the refund. However, it is implied in the law that the SEZ Unit is also entitled to claim the refund of ITC as they are also the exporter of goods. SEZ Unit cannot be put in disadvantageous position as against a DTA Unit.

25. There are Capital Goods (equipments which are embodied in the technical building) which are ineligible for credit can be procured through EPCG Scheme so that IGST is exempted & exporter can save some cost.
26. In case of domestic invalidation of EPCG scheme, ensure always supplier is only going for refund of GST on such invalidation because there are some cases the buyer is not eligible for credit of GST on such goods therefore ineligible for refund even under deemed export notification also. If the supplier is opting for refund the question of eligibility of credit in the hands of the supplier would not come as it is output tax refund.
27. Compliance of conditions in the case of sale of goods to Merchant Exporter is sine qua non for exemption otherwise supplier would saddle with huge demand.
28. Even if exporter purchases one transaction with the benefit of Merchant Exporter Notification, he is completely debarred for the option of export with payment of IGST.
29. Credit review has to be done in order to optimize the credits & minimize the tax cost especially for export community.
30. EOU can have the option to procure the goods without payment of GST - under deemed export of goods. Advance authorization Vs Duty drawback benefits needs to be examined and chosen wisely. There are number of cases Duty Drawback under All Industry Rate is always beneficial than Advance authorization.
31. EOU - benefit of customs duty exemption vs drawback benefit to be examined - if drawback benefit is more, examine the option of coming out of EOU to be examined.

-CA Madhukar N Hiregange
-CA Anil Kumar Bezawada

Practical Guide on new scheme of taxation for Real Estate under GST

Original
https://hiregange.com/assets/articles/34991-real-estate-booklet_10apr-19_har.pdf

Updated
https://hiregange.com/assets/articles/d16ef-real-estate-booklet_ha.pdf

Happenings at Academy

Upcoming Events

Topic	Date	Venue & Brochure link
One day Workshop on Career Guidance and Employability Skills	*22nd June 2019*	*Hiregange Academy (A division of Empower Education Foundation), No.33, Second Floor 26th Main, 36th Cross Road, 4T Block, Jayanagar, Bangalore - 560041. (Opposite to Taaza Thindi, above Just Books)* https://hiregange.com/assets/events/47daa-career-guidance-workshop-june-22nd-2019.pdf

Concluded Events

Topic	Date	Venue
One day workshop on Career Guidance and Employability Skills	*21st May 2019*	*Hiregange Academy (A division of Empower Education Foundation), No.33, Second Floor 26th Main, 36th Cross Road, 4T Block, Jayanagar, Bangalore - 560041. (Opposite to Taaza Thindi, above Just Books)*

We are encouraged by our readers and the complements received. In our endeavour to improve our quality we request you to give two minutes time to give feedback.

-Thanking you,
Newsletter team

Write us at-
https://docs.google.com/a/hiregangeacademy.com/forms/d/1LprDBXql1Ld0rG7cn8p-dMW-lhkQRPcZtN6bwSXrr0/edit?usp=drive_web

A practical guide to "GST Audits and Certification"

A Practical Guide to

GST Audits and Certification

Relevant for FY 2017-18 and FY 2018-19 GST Audits

CA Madhukar N Hiregange
Shri B.S.V. Murthy, *Advocate*
CA Mahadev R
CA Ravi Kumar Somani

Technical Reviewer: **CA Yogesh Virmani**

SECOND EDITION

HIGHLIGHTS

- Commentary updated till May 2019 along with analysis on GST Audit/Certification (Form GSTR 9C), Annual Returns (Form GSTR 9), GST Management Reviews, and Customs Audit for FY 2017-18 & FY 2018-19.
- Practical illustrations, suggested formats, tables, etc. on GST Audit/Certification.
- Coverage of other 8 key reconciliations viz., GSTR 2A to 3B, GSTR 1 to 3B, etc.
- GST Review Program, Internal Control Questionnaires, Checklists for ease in GST Audit.
- Standard formats for offer letter, acceptance, engagement letter, management representation letters etc.
- List of GST accounting entries to be passed for ease in financial reporting.
- Insights on key year-end activities & relationship between GSTR 1, GSTR 3B & GSTR 9.
- Common errors and important aspects of GST Audit.
- Discussion on relevant Accounting & Auditing Standards for GST Audit.

BLOOMSBURY

Bloomsbury Professional India

Visit http://bit.ly/GSTAudit for Free Online Updates and Important information

A Practical Guide to

GST Audits and Certification

JUNE 2019

ABOUT THE BOOK

The book has been written with a perspective to enable the taxpayers to ensure compliance with the applicable laws. The vast experience of the four authors in consulting, adjudicating, judging and implementation of indirect taxes would help the professionals implement GST provisions and getting the audit done in an easier way while providing value to their clients/ employers.

The book is divided into 8 parts as follows:

Part 1 – Overview of GST [with focus on supply, ITC, valuation, place of supply, classification, etc].

Part 2 – Concept and types of audit under GST [including roles and responsibilities of the auditor].

Part 3 - Audit Process, Methodology & Approach [Ideal step by step audit process starting with risk assessment and ending with reporting].

Part 4 – Audit Standards, Accounting Standards and Guidance Note relevant for GST Audit, Annual Return and Mandatory Certification.

Part 5 –Detailed concepts of areas to focus while conducting GST Audit [verification of documents/transactions after evaluation of internal control, reconciliations with tips to mitigate demand].

Part 6 – Step by step approach in the filing of annual return [including detailed instructions and checklist].

Part 7 – Step by step approach in the mandatory certification of reconciliation statement [including detailed instructions and checklist].

Part 8 - Customs Audit, year-end action points for taxpayers and other GST certifications.

Appendices containing the gist of important notifications, guidance notes, standards, forms of audit under GST, and important templates for ready reference of professionals.

KEY FEATURES

- Comprehensive guidance for conducting different types of GST audits with a focus on Form GSTR 9 & GSTR 9C [for FY 2017-18 & FY 2018-19].
- Includes provisions of key auditing and accounting standards relevant to GST.
- Includes practical tables giving Step by Step approach with internal control questionnaires, checklists, review program and reconciliation statements for:
  - filing annual return with checklist and enabling formats
  - audit certification
- Detailed discussion on 8 key reconciliation statements including ITC, outward supplies, etc.
- Extensive list of common errors to be avoided in GST.
- Covers bird's eye view of legal concepts and key procedures of GST at a glance.
- Ready reference appendices to important notifications, accounting entries, guidance notes on audit, etc.
- Extensive discussion on professional approach to GST audit using the internal control questionnaire and sample audit program.
- Covering important tools/techniques for optimization of tax, ITC, year-end actions, etc. to avoid future disputes and adding value.
- Visit http://bit.ly/GSTAudit for Free Online Updates and Important information.

ISBN 978-93-89385-28-5
₹1295
www.bloomsbury.com

A Practical Guide to GST Audits and Certification

SECOND EDITION

CA Madhukar N Hiregange
Shri B.S.V. Murthy, *Advocate*
CA Mahadev R
CA Ravi Kumar Somani