



# ICAI-GST

33<sup>rd</sup> Edition

NEWSLETTER  
September 2022

A Newsletter from The Institute of Chartered Accountants of India on GST

## 5 YEARS OF GST

75  
आज़ादी का  
अमृत महोत्सव

HOW  
TO REPLY  
TO SCN?

### CAPACITY BUILDING PROGRAMMES FOR GST OFFICERS

- Analysis of Financial Statements with GST Perspective
- GST in Entertainment Industry
- GST in Hospitality Industry



GUIDANCE  
ON  
CLAUSE 44 OF  
INCOME TAX  
AUDIT  
REPORT

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)

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# President's Communication



Dear Professional Colleagues,

As India celebrates its 75 years of Independence this year through "Azadi Ka Amrit Mahotsav", Goods and Services Tax (GST), one of the most significant tax reform since independence, has completed glorious 5 years of introduction in India on 1<sup>st</sup> July, 2022.

Recently, the 47<sup>th</sup> meeting of GST Council was held where a lot of pertinent issues were discussed and resolved, e.g., rate rationalization to remove inverted duty structure on certain goods and services, withdrawal of exemptions on pre-packaged and pre-labelled retail pack in terms of Legal Metrology Act, including pre-packed, pre-labelled curd, lassi and butter milk and other rate changes. In pursuance of the decisions taken in the above-mentioned meeting, various Notifications and Circulars have been issued providing clarifications with regard to the applicability of GST. The Council also directed that the Group of Ministers be set up to re-examine the issues in its terms of reference based on further inputs from States and submit its report within a short duration on Casino, Race Course and Online Gaming. A Group of Ministers have also been set up to address various concerns raised by the States in relation to constitution of GST Appellate Tribunal and make recommendations for appropriate amendments in CGST Act.

As on 31<sup>st</sup> August, 2022, the GST system saw 1.39 crore registered taxpayers, 94.54 crore return filings, 295.43 crore generation of e-way bills, 1580 crore uploading of invoices. These statistics highlight that GST law has come

a long way since it was introduced.

The GST and Indirect Taxes Committee of ICAI has been proactive in taking up the initiative of capacity building programmes for State GST officers. It has been regularly conducting capacity building programmes for the Central/ State Government officers in various States like Goa, Orissa, Maharashtra, Rajasthan, Bihar, Madhya Pradesh and the feedback received from the participants encourage us to take up more such initiatives in the near future.

The Committee has revised its various Handbooks like "Handbook on Accounts & Records", "Handbook on Interest, Late Fee & Penalty" and "Handbook on Registration under GST" to keep the stakeholders updated with the amendments taking place in these areas. Revision of more Handbooks is underway and at the same time some new publications which will be immensely useful for the readers are also being developed by the Committee.

I am happy to present to you the 33<sup>rd</sup> edition of the GST Newsletter hoping that you will find it useful in fulfilling your professional endeavours.

Let's be proud of ourselves for being a part of a great nation!

With Best Wishes,

CA. (Dr.) Debashis Mitra  
President, ICAI



"वित्तीय ज्ञान"  
ICAI  
का अभियान

# REPLY TO SCN FOR REVERSAL OF ITC- NON-PAYMENT OF TAX BY THE SUPPLIER

## Introduction

One of the burning issues which is often litigated in GST law since its inception is the reversal of input tax credit (ITC) by the recipient due to non-payment of output tax liability by the supplier.

As per section 16(2)(c) of the CGST Act, 2017 one of the conditions to claim ITC is that the output tax collected by the supplier from the recipient in respect of the supply has actually been paid to the Government exchequer, either

- o In cash, or
- o Through the utilisation of admissible ITC

However, several Show Cause Notices (SCNs) are being issued by the GST Department to the recipient of supply for the recovery of output tax liability in the form of reversal of ITC due to non-payment of such tax by the supplier to the government.

## Grounds of Defence

Being a litigated issue, it becomes important to understand the grounds of defence that may be taken when replying to such SCNs. Following court decisions and other points may be referred while drafting such grounds of defence:

### (A) Decisions of the Hon'ble Supreme Court and several Hon'ble High Courts:

#### (1) Decision of the Hon'ble Madras High Court

It may be noted that reliance may be placed on the judgment of the Hon'ble Madras High Court in the case of M/S. D.Y. BEATHEL ENTERPRISES VERSUS THE STATE TAX OFFICER (DATA CELL), (INVESTIGATION WING) COMMERCIAL TAX BUILDINGS, TIRUNELVELI, (2021), where it was held that, "When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him. In the case on hand, the respondent does not appear to have taken any recovery action against the seller / Charles and his wife Shanthi, on the present transactions. Thus, the impugned order suffers from certain fundamental flaws. It has to be quashed for more reasons than one.

- a) Non-examination of Charles in the enquiry
- b) Non-initiation of recovery action against Charles in the first place

Parallely, the respondent will also initiate recovery action against Charles and his wife Shanthi."

The facts of the case are such that the petitioners/assessee, being raw rubber sheets traders, had purchased goods from suppliers, namely, Charles and his wife Shanthi. A substantial portion of the sale consideration was only paid

through banking channels and the payments made by the petitioners to the supplier included the GST component as well. Thereafter, relying on the GST returns filed by the suppliers, the assessee had availed ITC of the GST paid by them. Subsequently, on an inspection by the GST Department, it was discovered that the suppliers had defaulted in payment of output tax collected from the assessee. The department without taking any action of recovery of tax from the defaulting suppliers, issued a SCN to the assessee and passed an order imposing the demand of entire output tax on the assessee.

In the above judgment, it should be noted that the Hon'ble High Court has acknowledged the provisions of section 16(2)(c) of CGST Act, 2017, which specifically states that one of the conditions of availment of ITC by the recipient is that the supplier has actually paid the tax collected to the government. However, given the facts of the present case, the said Court held that the Department could not demand GST from the recipient without first examining the supplier and initiating recovery action against the supplier for the amount of output tax liability defaulted since the order demanding entire tax liability from the buyer would be in contravention of the principle of natural justice.

#### (2) Decision of Hon'ble Chhattisgarh High Court

It is imperative to note the judgment of the Hon'ble CHHATTISGARH High Court in the case of M/s. BHARAT ALUMINIUM COMPANY LIMITED VERSUS UNION OF INDIA AND OTHERS (2021), where it was held that, "the petitioner has come out with the purchases made, but it did not tally/match with 2A ITC shown by the seller meaning thereby the seller may not have filed return to remove the same. When the physical verification was offered to be made by petitioner it was not accepted. It is stated that for the recovery of like nature from the buyer, the action can only be available in the exceptional circumstances."

In the above judgment, it may be noted that the assessee submitted that in case of default of payment of tax by the seller, the recovery shall be made from the seller and only in exceptional circumstances, it can be from the recipient, therefore, the ITC which was claimed by the assessee cannot be denied for the reason that the seller has not uploaded their invoices on time.

#### (3) Decisions of Hon'ble Delhi High Court

It is pertinent to take cognizance of the judgments of the Hon'ble Delhi High Court in the case of ON QUEST MERCHANDISING INDIA PVT. LTD., SUVASINI CHARITABLE TRUST, ARISE INDIA LIMITED, VINAYAK TREXIM, K.R. ANAND, APARICI CERAMICA, ARUN JAIN (HUF), DAMSON TECHNOLOGIES PVT. LTD., SOLVOCHEM, M/S. MEENU TRADING CO., & MAHAN POLYMERS VERSUS GOVERNMENT OF NCT OF

DELHI & ORS. & COMMISSIONER OF TRADE & TAXES, DELHI AND ORS., (2017). The aforementioned judgments have put forth following principles:

- Treatment of both the parties, the guilty purchaser and the innocent purchaser at par is a violation of Article 14 of the Constitution i.e., “Equality before law and the State shall not deny to any person equality before the law or the equal protection of the laws.” Therefore, by treating unequals equally, the respective legislative provisions turn out to be violative of Article 14 of the Constitution.
- In the present situation, the purchaser has been asked to do something that is impossible, i.e., to predict or anticipate whether the selling dealer has or has not deposited the tax collected to the Government.
- ITC cannot be denied to the recipient in the absence of any material evidence in the hands of the Department of collusion between the supplier and the recipient to defraud the Department. Therefore, penalizing the recipient for the fault of a third party, i.e., the defaulting supplier, in the absence of any collusion between the two is unjust and where the purchaser is bonafide and there is absence of mala fide intention, connivance or wrongful association of the purchaser with the supplier, the reversal cannot be sought from purchaser.
- As long as the purchasing dealer, at the time of entering into the transaction with the selling dealer, has taken all the necessary steps to verify that the selling dealer has a valid registration and a tax invoice has been issued in accordance with the law, he cannot be reasonably expected to keep a track of whether the supplier has indeed deposited the tax so collected or whether he has lawfully adjusted such tax against eligible and available ITC.

#### **(4) Decision of the Hon’ble Bombay High Court and Doctrine of Impossibility**

It is significant to note the judgment of the Hon’ble Bombay High Court in the case of “INDIAN SEAMLESS STEEL AND ALLOYS LTD. VERSUS UNION OF INDIA, wherein it was held that “it is also a well settled principle of law that the law does not compel a man to do that which he cannot possibly do and the said principle is well expressed in legal maxim “lex non cogit ad impossibilia” which is squarely attracted to the facts and circumstances of the present case.”

Reliance may be placed on the Doctrine of Impossibility and the applicability of legal maxim of Lex non Cogit Ad impossibilia, which mentions that law cannot compel a man to do anything vain or impossible or to do something which he cannot possibly perform, since the recipient cannot be expected to keep a track of whether the supplier has indeed deposited the tax so collected and therefore, the benefit of ITC ought not be denied to the recipient taxpayer on account of default of the supplier, over whom such recipient taxpayer does not exercise any control.

#### **(5) Decision of the Hon’ble Punjab and Haryana High Court**

It may be noted that reliance may be placed on the judgment of the Hon’ble Punjab and Haryana High Court in the case of GHERU LAL BAL CHAND VS. THE STATE OF HARYANA (2011), wherein it was held that “Denial of Input credit on the ground that dealers from whom materials have been purchased failed to deposit full tax in the State treasury - Held that:- Once the law defines the registered dealer and tax-paid goods, the assessee, i.e., purchasing dealer, produced the bill issued by the registered dealer then his burden is discharged and he cannot be held responsible or he cannot be forced to go around from pillar to post to collect the material in order to get the rebate. To conclude, no liability can be fastened on the purchasing registered dealer on account of non-payment of tax by the selling registered unless it is fraudulent, or collusion or connivance with the registered selling dealer or its predecessors with the purchasing registered dealer is established.”

Therefore, as per the said judgment, the necessity of the differentiation between honest and dishonest taxpayers has to be acknowledged by the law. In the aforesaid case, it was held that the Law cannot anticipate a possibility of a virtually impossible eventuality and it clearly puts forward the principle that the liability can be fastened to a person who either acts fraudulently or has been a party in collusion with the offender. Law ought not put an onerous responsibility on the innocent taxpayer otherwise it may not pass the test of validity considering the touchstone of Articles 14 and 19 of the Constitution of India.

#### **(6) Decisions of the Hon’ble Calcutta High Court and Hon’ble Delhi High Court and violation of Article 14 of the Constitution of India**

It is significant to note the judgment of the Hon’ble High Court of Delhi in the case of BHARTI TELEMEDIA LTD. VS. UNION OF INDIA & ORS. (DELHI HIGH COURT) W.P.(C) no 6293/2019 and the judgments of Hon’ble Calcutta High Court in the case of M/S. LGW INDUSTRIES LTD & ORS., RAJ METAL INDUSTRIES & ANR., VICTORIA GLOBAL & ANR., SURYA ALLOY INDUSTRIES LTD. & ANR., M/S. TASHI AIR PRIVATE LTD. & ANR. VERSUS UNION OF INDIA & ORS. (2021), wherein writ petition was filed challenging the constitutional validity and vires of section 16(2)(c) of the CGST Act, 2017 and the petitioner/ assessee challenged on the ground that section 16(2)(c) of the CGST Act, 2017 is ultra-virus and violative to Article 14 of the Constitution of India. It was held that the Department has been vested with all the powers to recover any revenue lost owing to non-payment of taxes by defaulting suppliers, therefore, the ITC cannot be denied to the recipient for the default on the part of supplier.

#### **(7) Decision of the Hon’ble Madras High Court**

It is to be noted that reliance may be placed on the judgment of the Hon’ble The Madras High Court in the case of M/S. SHRI RANGANATHAR VALVES PRIVATE LIMITED V. ASSISTANT COMMISSIONER (CT), (FAC), Velandipalayam Assessment Circle, Coimbatore, wherein it was held that “This issue has been dealt with in the case

of ASSISTANT COMMISSIONER (CT) , PRESENTLY THIRUVERKADU ASSESSMENT CIRCLE, KOLATHUR, CHENNAI VERSUS INFINITI WHOLESAL LTD. [2016 (9) TMI 1431 - MADRAS HIGH COURT] wherein it has held that Input TaxCredit cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchaser is able to prove that the seller has collected tax and issued invoices to the purchaser. As such, restriction of the amount of Input Tax Credit on this ground, cannot be sustained and requires re-consideration.”

Therefore, as per the aforesaid judgment, it was held that Input Tax Credit restriction in the hands of buyer, on the ground of tax collected but remaining unpaid to the Government by the seller “cannot be sustained” and “requires re-consideration” while disposing the writ in respect of restriction of the amount of ITC claimed.

### **(8) Decision of Hon’ble Supreme Court**

It is imperative to note the judgment of the Hon’ble Supreme Court in the case of COMMISSIONER OF CENTRAL EXCISE, JALANDHAR VERSUS M/S. KAY KAY INDUSTRIES, (2013), wherein it was held that “When all the conditions precedent had been satisfied, to require the assessee to find out from the departmental authorities about the payment of excise duty on the inputs used in the final product which have been made allowable by the notification would be travelling beyond the notification, and in a way, transgressing the same - This would be practically impossible and would lead to transactions getting delayed.”

### **(B) Press Release dated 04.05.2018 issued by the Central Board of Indirect Taxes & Customs (CBIC)**

Reliance may be placed on the Press Release dated 04.05.2018(Refer page 1 of said Press Release), wherein it was announced that – “No automatic reversal of credit: There shall not be any automatic reversal of input tax credit from buyer on non-payment of tax by the seller. In case of default in payment of tax by the seller, recovery shall be made from the seller however reversal of credit from buyer shall also be an option available with the revenue authorities to address exceptional situations like missing dealer, closure of business by supplier or supplier not having adequate assets etc.”

### **(C) Minutes of the 28<sup>th</sup> GST Council Meeting dated 21.07.2018**

It is significant to take into cognizance, the minutes (Refer page 20 of said Minutes) of the 28<sup>th</sup> GST Council meeting dated 21.07.2018, wherein it was mentioned that “There would be no automatic reversal of input tax credit at the recipient’s end where tax had not been paid by the supplier. Revenue administration shall first try to recover the tax from the seller and only in some exceptional circumstances like missing dealer, shell companies, closure of business by the supplier, input tax credit shall be recovered from the recipient by following the due process of serving of notice and personal hearing.”

### **(D) Forms GSTR-1, GSTR-2 and GSTR-3 kept in**

### **abeyance and no full-proof mechanism on GST Portal for invoice-level matching and acceptance**

The condition to claim input tax credit as provided in section 16(2)(c) of CGST Act, 2017 was legislated with the underlying objective that the ITC of the recipient shall be intrinsically linked to the discharge of tax by the supplier through the earlier envisaged return filing system of GSTR-1, GSTR-2 and GSTR-3, however, the same was never made functional. Now, due to the suspension of GSTR-2 and GSTR-3 and the introduction of GSTR-3B, the recipients have no full-proof mechanism to confirm whether their suppliers are discharging the correct output tax liability. Therefore, the conundrum still stands as to how a recipient of supply may ensure that the supplier has actually paid the output tax liability collected from him that corresponds to the input tax credit sought to be claimed by such recipient since no such purchase invoice-level matching and acceptance was made operational.

It may be argued that the GST portal is being continuously upgraded and enabling functionalities are being made available to enable the recipient of supply to know the return filing status of GSTR-3B of the supplier through their GSTR-2A/2B, nevertheless it is still not full-proof evidence of whether the supplier has indeed paid GST on the supplies in question. The expectation that the recipient ought to monitor the actual payment of GST collected by each of their vendors is not only onerous but also impractical and impossible.

Even though, GSTR-2A is not a full-proof tool for a recipient to check whether the supplier has paid GST, it may be resorted to for such verification in the absence of any specific tool for purchase invoice-level matching and acceptance. For the period after the introduction of GSTR-2A, even using the functionalities made available such as that of mentioning supplier’s GSTR-3B filing status in the recipient’s GSTR-2A/2B and making available other GST reports, ascertaining by the recipient whether tax collected by supplier in respect of the impugned transaction has been actually paid is not conclusive.

The ITC reversal mechanism as laid down in section 41 read with rules is kept in abeyance. The facility to furnish GSTR-2 and GSTR-3 forms is also not available. Accordingly, there is no system-based matching of the ITC being carried out presently. Therefore, the recipient of the supply has no means to ensure that the tax actually levied in respect of supplier has in reality been paid to the Government and the practical application of such erstwhile provisions of sections 41, 42, 43 and 43A cannot be sought without the supportive administrative mechanism or functionalities available on the GST Portal.

### **(E) Unavailability of any window or facility in the hands of the recipient to ascertain whether his supplier’s supplier has discharged his tax liability, burden of proof on recipient is unjust**

The GST Department has been issuing SCNs to the recipient of a supply even in a case where the supplier’s supplier has defaulted in discharging the tax collected

from his recipient of supply (i.e., the immediate supplier of the concerned recipient), and that the immediate supplier avails such corresponding disputed input tax credit (i.e., against which the output tax liability has not been discharged by his supplier) to discharge his output tax liability collected from the concerned recipient. Therefore, in the case of the concerned recipient of supply, the input tax credit becomes disputed and claiming the same may be objectionable even though he cannot exercise any control over the actions of his immediate supplier or his supplier's supplier in discharging their output tax liability. Also, since there is no window or facility available in the hands of the recipient to ascertain whether his supplier's supplier has discharged his output tax liability, the requirement of burden of proof as provided u/s 155 of CGST Act to ascertain the fulfilment of the condition to claim ITC as laid out u/s 16(2)(c) by an innocent recipient is unjust and practically impossible. Therefore, the subsequent denial of ITC to such a recipient on the actions or inactions of such preceding chain of suppliers is violative of principle of natural justice and the innocent recipient may invoke the legal maxim *Lex non Cogit Ad impossibili* in the defence to reply to such SCNs.

#### **(F) Violation of Article 300A of the Constitution of India**

The recipient may invoke the defence of violation of his constitutional right by virtue of Article 300A of the Constitution of India i.e., No person shall be deprived of his property save by the authority of law. The article protects an individual from interference by the State and dispossess a person of the property unless it is in accordance with the procedure established by law. Several High Courts have acknowledged the petitioner's submission of a ground of defence stating violation of the recipient's constitutional right to Article 300A in regard to department's action of forceful recovery of tax by means of reversal of ITC from the recipients in case of non-payment of taxes by the supplier.

#### **Other Considerations**

Prospective applicability of newly substituted Section 41(2) of CGST Act, 2017 (Section 105 of Finance Bill 2022, yet to be notified):

The Finance Act, 2022 has newly substituted section 41(2) of CGST Act, 2017, that is yet to be notified and such an amendment shall come into effect prospectively from the date of notification. As per the aforesaid section, it has been provided that:

"The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed."

Therefore, the newly substituted section 41(2) read with section 16(2)(c) of CGST Act, 2017 is applicable prospectively, where it is stated to reverse such ITC along with payment of applicable interest in respect of which the output tax liability has not been paid by the supplier. Since, the applicability of this section is prospective in nature, the Department cannot invoke this section to demand reversal of ITC from the recipient of supply in the event of non-payment of output tax liability by the supplier for the period before its applicability. It is to be noted that such reversed input tax credit can be re-availed once the supplier discharges the output tax liability. CBIC shall provide rules, mechanism and framework for the reversal of such ITC by the recipient in case the supplier has not discharged the taxes.

#### **Conclusion**

(1) Considering the above, it is more important than ever for the recipient of supply to undertake and ensure a thorough background check of the supplier and to keep in place a robust system of Know-your-supplier (KYS) before entering into any purchase transactions. To safeguard the interest of the recipient, he would be well advised to look into the possibility of acquiring an undertaking/indemnity from high-risk vendors (i.e., vendors filing GST returns irregularly) to ensure their interests are protected in case of any future demand from the GST authorities.

(2) Another pertinent question which requires in-depth consideration by the CBIC and GST Council is enumerated hereafter. The proviso to newly substituted section 41(2) of CGST Act, 2017, which is yet to be notified, and is applicable prospectively states that the recipient of the supply may re-avail the ITC earlier reversed on the subsequent payment of the output tax liability by the supplier. However, since its applicability is prospective in nature, for the period prior to the applicability of the aforesaid section, there is a requirement to plug the loophole in GST legislation to allow the recipient of supply the benefit to reclaim such ITC reversed in case the Government is able to recover the tax amount from the defaulting seller by initiating recovery proceedings as provided u/s 79 of CGST Act, 2017.

(3) In recent times, the tax authorities have resorted to an alternate action plan of blocking the input credit as per the rule 86A of CGST Rules, 2017, thereby restricting the buyer to avail the input credit if there is mismatch in credit details on account of default or error made by the supplier. Hence, the said issue may be taken up by the GST Council for a detailed deliberation and a proper resolution may be provided to the industry.

(4) Therefore, there are some school of thoughts who state that tax liability should be demanded from the supplier instead of the recipient, for the fault of the supplier, unless proper investigation and recovery proceedings are initiated against the defaulting supplier.

A brief summary of case laws cited in the Article are mentioned as follows:

S.No.	Name of the Case Law	Brief Inference of Case Law
1.	Hon'ble Madras High Court in the case of M/S. D.Y. BEATHEL ENTERPRISES VERSUS THE STATE TAX OFFICER (DATA CELL), (INVESTIGATIONWING) COMMERCIAL TAX BUILDINGS, TIRUNELVELI, (2021)	The Department could not demand GST from the recipient without first examining the supplier and initiating recovery action against the supplier.
2.	Hon'ble CHHATTISGARH High Court in the case of M/s. BHARAT ALUMINIUM COMPANY LIMITED VERSUS UNION OF INDIA AND OTHERS (2021)	It is stated that for the recovery of like nature from the buyer, the action can only be initiated in the exceptional circumstances.
3.	Hon'ble Delhi High Court in the case of ON QUEST MERCHANDISING INDIA PVT. LTD., SUVASINI CHARITABLE TRUST, ARISE INDIA LIMITED, VINAYAK TREXIM, K.R. ANAND, APARICI CERAMICA, ARUN JAIN (HUF) , DAMSON TECHNOLOGIES PVT. LTD., SOLVOCHEM, M/S. MEENU TRADING CO., & MAHAN POLYMERS VERSUS GOVERNMENT OF NCT OF DELHI & ORS. & COMMISSIONER OF TRADE & TAXES, DELHI AND ORS., (2017),	<p>(1) By treating unequals, i.e., innocent recipient and defaulting supplier, equally, the respective legislative provisions become violative of Article 14 of the Constitution.</p> <p>(2) The purchaser has been asked to do something that is impossible.</p> <p>(3) ITC cannot be denied to the recipient in the absence of any material evidence in the hands of the Department of collusion between the supplier and the recipient to defraud the Department.</p> <p>(4) So long as the purchasing dealer has taken all the necessary steps to verify that the selling dealer has a valid registration and a tax invoice, he cannot be reasonably expected to keep a track of whether the selling dealer has indeed deposited the tax.</p>
4.	The Hon'ble Bombay High Court in the case of "INDIAN SEAMLESS STEEL AND ALLOYS LTD. VERSUS UNION OF INDIA	Doctrine of Impossibility and the applicability of legal maxim of Lex non Cogit Ad impossibilia, which mentions that law cannot compel a man to do anything vain or impossible or to do something which he cannot possibly perform.
5.	Hon'ble Punjab and Haryana High Court in the case of GHERU LAL BAL CHAND VS. THE STATE OF HARYANA, (2011)	Law ought not put an onerous responsibility on the innocent taxpayer otherwise, law may not pass the test of validity considering the touchstone of Articles 14 and 19 of the Constitution of India.
6.	Hon'ble High Court of Delhi in the case of BHARTI TELEMEDIA LTD. VS. UNION OF INDIA & ORS. (DELHI HIGH COURT) W.P.(C) no 6293/2019 and the judgments of Hon'ble Calcutta High Court in the case of M/S. LGW INDUSTRIES LTD & ORS., RAJ METAL INDUSTRIES & ANR., VICTORIA GLOBAL & ANR., SURYA ALLOY INDUSTRIES LTD. & ANR., M/S. TASHI AIR PRIVATE LTD. & ANR. VERSUS UNION OF INDIA & ORS. (2021)	The petitioner/assessee challenged on the ground that section 16(2)(c) of the CGST Act, 2017 is ultra-virus and violative to Article 14 of the Constitution of India.
7.	Hon'ble The Madras High Court in the case of M/S. SHRI RANGANATHAR VALVES PRIVATE LIMITED V. ASSISTANT COMMISSIONER (CT), (FAC), Velandipalayam Assessment Circle, Coimbatore	ITC cannot be disallowed on the ground that the seller has not paid tax to the Government, when the purchaser is able to prove that the seller has collected tax and issued invoices to the purchaser.
8.	Hon'ble Supreme Court in the case of COMMISSIONER OF CENTRAL EXCISE, JALANDHAR VERSUS M/S. KAY KAY INDUSTRIES, (2013)	Requiring the assessee to find out from the departmental authorities about the payment of excise duty on the inputs used in the final product would be travelling beyond the notification, and in away, transgressing the same - This would be practically impossible.



# PARTNERING WITH GOVERNMENT - TOWARDS MAKING GST A GOOD & SIMPLE TAX

Being a partner in nation building, the Institute of Chartered Accountants of India (ICAI), through its GST & Indirect Taxes Committee, has rendered unflinching support to the Government in ushering in the GST regime in India. The GST and Indirect Taxes Committee of ICAI has been actively engaged in representation on GST policy making and implementation as also has been supporting the Government in GST knowledge dissemination amongst all stakeholders through its technical publications, e-learning initiatives, newsletter, certificate courses, seminars, conferences etc.

## Collaborating with State Governments

The GST & Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has been making consistent efforts in reaching out to State Governments and discussing ways and means through which the Committee can provide proactive support to them in the policy making and implementation of GST.

CA. Rajendra Kumar P, Chairman and CA. Umesh Sharma, Vice-Chairman of the GST & Indirect Taxes Committee along with other central council members have been meeting law makers, Commissioners of State GST and other senior officers of State Governments to apprise them of the various initiatives taken by the GST & Indirect Taxes Committee with regard to GST and impress upon them the expertise of the Committee in reinforcing the capacity building of their officers. During the year, the Committee has organized Capacity Building Programmes for the officials of the GST Departments in the States of Madhya Pradesh, Bihar, Odisha, Rajasthan, Maharashtra and Goa training about 1000 GST officers.

**Meetings with Legislators:** A Two-Day Capacity Building Programme on GST organised by the Committee on 19<sup>th</sup> & 20<sup>th</sup> September 2022 for the officers of the Commercial Taxes Department, Goa was inaugurated by **Dr. Pramod Sawant, Hon'ble Chief Minister of Goa**. The Chief Minister appreciated the contribution made by ICAI in GST knowledge dissemination and also directed the Department to enter into a **MOU with ICAI** for such capacity building initiatives.



CA. Rajendra Kumar P, Chairman, GST & Indirect Taxes Committee presenting bouquet to Hon'ble Chief minister of Goa, Dr. Pramod Sawant at the inauguration of Capacity Building Programme organised on 19<sup>th</sup> & 20<sup>th</sup> of September 2022.

CA. Rajendra Kumar P Chairman, GST & IDT Committee along with CA. Ranjan Kumar Prusty, Chairman, Bhubaneswar Branch of ICAI met Mr. Niranjan Pujari, Hon'ble Finance Minister, Government of Odisha on 27<sup>th</sup> July 2022. The Finance Minister was very appreciative of the Capacity Building Programmes organized by the Committee for the Commissionerate of CT & GST, Government of Odisha.



CA. Rajendra Kumar P, Chairman, GST & IDT Committee in a meeting with Mr. Niranjan Pujari, Honourable Finance Minister, Government of Odisha on 27<sup>th</sup> July 2022.

CA. Rajendra Kumar P along with CA. Mangesh Pandurang Kinare, Central Council Member and CA. Gaurav Kenkre, Chairman, Goa Branch of WIRC of ICAI met with Hon'ble Chief Minister of Goa, Dr. Pramod Sawant on 5<sup>th</sup> July, 2022. The Chief Minister was happy to note the initiatives taken by the ICAI in building the capacities of the officers of the GST Departments of various State Governments. He appreciated the contribution made by the ICAI in GST policy making and implementation.



CA. Rajendra Kumar P, Chairman, GST & IDT Committee and CA. Mangesh Pandurang Kinare, Central Council Member in a meeting with Dr. Pramod Sawant, Honourable Chief Minister of Goa on 5<sup>th</sup> July, 2022.

Further, the Five-Day Capacity Building Programme organised by the Committee from 25<sup>th</sup> to 29<sup>th</sup> April, 2022 for the officers of the Commercial Taxes Department, Bihar was inaugurated by Hon'ble Deputy Chief Minister of Bihar, Mr. Tarkishore Prasad. The Deputy Chief Minister appreciated the contribution made by ICAI in GST knowledge dissemination.



CA. Rajendra Kumar P, Chairman, GST & IDT Committee presenting memento to Mr. Tarkishore Prasad, Hon'ble Deputy Chief Minister of Bihar at Capacity Building Programme for Commercial Taxes Department, Bihar on 25<sup>th</sup> April, 2022. Also seen in picture are Dr. Pratima, IAS, Commissioner, Commercial Taxes Department, Bihar (on left) and CA Ram Shankar, Vice- Chairman Patna Branch (on right).

**Meetings with functionaries of the State Governments:**  
The details of the various meetings held with Commissioners of State GST and other senior officers of State Governments during the year are given hereunder:



CA. Rajendra Kumar P, Chairman, GST & Indirect Taxes Committee, CA. Mangesh Pandurang Kinare, Central Council Member and CA. Gaurav Kenkre, Chairman, Goa Branch of WIRC of ICAI in a meeting with CA Ruchika Katyaj IAS, Commissioner of State Taxes, Goa on 5<sup>th</sup> July, 2022



CA. Rajendra Kumar P, Chairman, GST and Indirect Taxes Committee presenting bouquet to Mr. Anurag Rastogi, IAS, Additional Chief Secretary to Government of Haryana Excise & Taxation Department in a meeting on 22<sup>nd</sup> June 2022.



CA. Rajendra Kumar P, Chairman, GST and Indirect Taxes Committee presenting bouquet to Mr. Siddharth Jain, IRS, AETC (GST) Government of Haryana in a meeting on 22<sup>nd</sup> June 2022.



CA. Rajendra Kumar P, Chairman, GST and Indirect Taxes Committee, CA. Prakash Sharma, CCM and CA. Rohit Ruwatia Agarwal, CCM presenting bouquet to Dr. Ravi Kumar Surpur, IAS, Commissioner, Commercial Taxes Department, Rajasthan on 21<sup>st</sup> June 2022.



CA. Rajendra Kumar P, Chairman, GST and Indirect Taxes Committee and CA Sushil Kumar Goyal, CCM in meeting with Ms. Rakhi Biswas, TCS, SSG Commissioner of Taxes & Excise, Tripura on 17<sup>th</sup> June, 2022



CA. Rajendra Kumar P, Chairman, GST and Indirect Taxes Committee presenting bouquet to Dr. Ahmed Iqbal, Commissioner of State Tax, Uttarakhand. To his left is CA Rajesh Gupta, Chairman Dehradun Branch of CIRC of ICAI



CA. Umesh Sharma, Vice-Chairman, GST and Indirect Taxes Committee presenting the Committee's publication to Mr. Milind Torawane IRS, Chief Commissioner State Tax, Gujarat. Also, seen in the picture is CA Bishan R Shah, Chairman, Ahmedabad Branch of WIRC of ICAI - Meeting date- 13.5.2022



CA. Umesh Sharma, Vice-Chairman, GST and Indirect Taxes Committee presenting the Committee's publication to Mr. Rajeev Kumar Mital, Commissioner, GST, Maharashtra. Also, seen in the picture are CA Murtuza, Chairman, WIRC of ICAI and other managing Committee members of WIRC - Meeting date-4.5.2022



CA. Rajendra Kumar P, Chairman, GST & Indirect Taxes Committee along with CA. Bisworanjan Sutar, Chairman, Bhubaneswar Branch, CA. Abhijit Patra, Chairman, Cuttack Branch, CA. Satyananda Routray, Past Chairman, Cuttack Branch and CA. Lalit Kumar Mahavar, Secretary, Cuttack Branch presenting GST publications to Mr. Sushil Kumar Lohani, Commissioner of CT and GST, Odisha on 15.02.2022.



CA. Rajendra Kumar P, Chairman, GST and Indirect Taxes Committee in a meeting with Dr. Rathan Kelkar IAS, Commissioner of State Taxes, Government of Kerala and CA. Cherianji Samuel, Chairman, Trivandrum Branch on 17.03.2022



CA. Rajendra Kumar P, Chairman, GST and Indirect Taxes Committee and CA. Hans Raj Chugh, CCM in a meeting with Mr. Ankur Garg, Commissioner of SGST, Govt of NCT of Delhi on 10.03.2022



CA. Rajendra Kumar P, Chairman, GST & Indirect Taxes Committee, CA. Abhay Chhajed, CCM, CA. Kirti Joshi, Chairman, Indore Branch, CA. Krishnan, Past Chairman, Bhopal Branch in a meeting with Mr. Lokesh Kumar Jatav, Commissioner, Commercial Taxes, Madhya Pradesh on 02.03.2022.

Chairman, GST & IDT Committee, ICAI also met Thiru. K Phanindra Reddy, IAS, Commissioner of Commercial Taxes, Tamil Nadu on 16<sup>th</sup> February, 2022.

### Capacity Building Programmes for GST Departments of Central/State Governments:

The Committee has organised/facilitated following outreach events ranging from one-day to five-days for the capacity building of the officials of the Department of Commercial Tax/GST of Central and State Governments. Key topics covered in the programmes were reading and analysis of Financial Statements of Commercial and Non-commercial entities, scrutiny and analysis of returns under GST, adjudication and enforcement provisions under GST, audit under GST, analysis of Financial Statements with GST perspective, GST in Real Estate Industry and analysis of Financial Statements of a real estate company with GST perspective, GST in Banking, Insurance and Telecom Industry.

All the programmes have received very positive feedback from the participants.

#### (1) Department of Commercial Tax, Government of Madhya Pradesh

A One Day Capacity Building Programme on GST for Department of Commercial Tax, Madhya Pradesh was organised at Indore on 18<sup>th</sup> April, 2022 which was attended by 178 officials. Mr. Lokesh Jatav, Commissioner, Department of Commercial Tax, Madhya Pradesh inaugurated the Capacity Building Programme. Further, another One Day Capacity Building Programme on GST was organised at Bhopal on 19<sup>th</sup> April, 2022 which was attended by 196 officials. Mr. R P Srivastava, Deputy Commissioner, Department of Commercial Tax, Madhya Pradesh inaugurated the training programme at Bhopal. Officers from the level of Assistant Commercial Tax Officer to Joint Commissioner attended both the programmes.



Chairman, GST and Indirect Taxes Committee addressing officials of Department of Commercial Tax, Madhya Pradesh at Indore. Mr. Lokesh Jataw, Commissioner, Department of Commercial Tax, Madhya Pradesh is sitting in the center with Vice- Chairman, GST & IDT Committee on his right.



Mr. R P Srivastava, Deputy Commissioner, Department of Commercial Tax, Madhya Pradesh is lighting the lamp at One Day Capacity Building Programme on GST for Department of Commercial Tax, Madhya Pradesh at Bhopal on 19<sup>th</sup> April, 2022.

## (2) Commercial Taxes Department, Government of Bihar

A tailor-made five-day Capacity Building Programme on GST for Commercial Taxes Department, Bihar was organised from 25<sup>th</sup> to 29<sup>th</sup> April, 2022 with special focus on service sectors which was attended by around 100 officials from the level of Assistant Commissioner to Joint Commissioner. **Mr. Tarkishore Prasad, Hon'ble Deputy Chief Minister of Bihar** inaugurated the training programme.

**(3) Commissionerate of CT & GST, Government of Odisha:** Capacity Building Programmes on GST were organized for the officials of the Commissionerate of CT & GST, Odisha at Bhubaneswar on 27<sup>th</sup> & 28<sup>th</sup> July, 2022 and 23<sup>rd</sup> & 24<sup>th</sup> May, 2022, which were attended by 180 and 211 officials respectively from the level of Commercial Tax and GST Officer to Additional Commissioner. Mr. Sushil Kumar Lohani, Commissioner of CT and GST, Odisha inaugurated both the capacity building programmes.



Mr. Sushil Kumar Lohani, IAS, Commissioner, CT & GST, Odisha inaugurating the Capacity Building Programme at Bhubaneswar on 27<sup>th</sup> July 2022



Chairman and Vice-Chairman, GST and Indirect Taxes Committee, presenting bouquet to Mr. Sushil Kumar Lohani, IAS, Commissioner, CT & GST, Odisha at Two Day Capacity Building Programme on GST for Commissionerate of CT & GST, Odisha on 24<sup>th</sup> May, 2022.

**(4) Commercial Taxes Department, Government of Rajasthan:** The Committee facilitated a Three-day Capacity Building Programme on GST for the officials of the Commercial Taxes Department, Government of Rajasthan from 21<sup>st</sup>-23<sup>rd</sup> July 2022. More than 50 SGST officials attended the programme.



CA. Rajendra Kumar P, Chairman, GST and Indirect Taxes Committee inaugurating the Capacity Building Programme at Jaipur on 21<sup>st</sup> July 2022

**(5) Department of Goods and Services Tax (LTU Division), Government of Maharashtra:** A Two Day Capacity Building Programme on GST was organized for the officials of the Department of Goods and Services Tax, Maharashtra (LTU Division) at Mumbai on 12<sup>th</sup> & 13<sup>th</sup> July, 2022 which was attended by 51 officials. Majority of delegates were Deputy Commissioners and Joint Commissioners. Mr. Shoukat Ali Shaikh, Additional Commissioner, Department of Goods and Services Tax, Maharashtra inaugurated the Capacity Building Programme.



Mr. Shoukat Ali Shaikh, Additional Commissioner, Commercial Tax, Maharashtra inaugurating the Capacity Building Programme at Mumbai on 12<sup>th</sup> July, 2022.

Further, based on the request received from LTU Division of Department of Goods and Services Tax, Maharashtra, the Committee shall be organizing One Day Capacity Building Programmes focusing on services, for the officers of LTU Division on 4<sup>th</sup> August, 2022, 25<sup>th</sup> August, 2022 and 7<sup>th</sup> September, 2022.

### (6) CGST Commissionerate, Goa

A Two Day Capacity Building Programme on Accounting aspects related to GST was organised on 6<sup>th</sup> September, 2022 for the officials of the CGST Commissionerate, Goa. The programme was inaugurated by Mr. V Soundararajan, IRS, CGST Commissioner, Goa. 95 officials attended the programme.



Chairman, GST & IDT Committee, CA. Purushottamlal Hukamichand Khandelwal, CCM and CA Gaurav Kenkre, Chairman of WIRC of ICAI presenting bouquet to Mr. V Soundararajan IRS, Commissioner of CGST, Goa

### (7) Bihar Finance Service, Bihar

A Two-Day Capacity Building Programme on GST for the officers of Bihar Finance Service was organised on 15<sup>th</sup> and 16<sup>th</sup> September, 2022 which was inaugurated by Sri Sanjay Kumar Mawandia, Special Commissioner. 32 officials gained knowledge from the programme.



Chairman, GST & Indirect Taxes Committee, Dr. K. Ojha, Faculty Head (Accounts), BIPARD, Mr. Sanjay Kumar Mawandia, Special Commissioner State Tax and Ms. Seema Bharti, JCST, HQ Commercial Taxes Department, Bihar, Patna at the inauguration of the Two-Day Capacity Building Programme on GST for Officers of Bihar Finance Service at Patna on 15<sup>th</sup> & 16<sup>th</sup> September 2022.

### (8) CGST Commissionerate, Indore

A One-Day Capacity Building Programme on GST was organised on 16<sup>th</sup> September, 2022 for GST & Central Excise (Audit) Commissionerate in Indore, Madhya Pradesh. The session was inaugurated by Mr. Neerav Kumar Mallick, Commissioner (Audit), CGST, Indore. 51 officials attended the programme.



Chairman, GST & Indirect Taxes Committee presenting bouquet to Mr. Neerav Kumar Mallick, Commissioner (Audit), CGST, Indore. Also seen in picture are CA. Anand Jain, Chairman, Indore Branch of CIRC of ICAI (on right) and CA. Kirti Joshi, Regional Council Member, CIRC, ICAI (on left) at the inauguration of the One-Day Capacity Building Programme on GST for CGST Commissionerate (Audit) Indore on 16<sup>th</sup> September 2022.

### (9) Department of Commercial Taxes, Goa

A Two Day Capacity Building Programme on GST was organised on 19<sup>th</sup> and 20<sup>th</sup> September, 2022 for the officials of Department of Commercial Taxes, Goa. The programme was inaugurated by the chief guest **Dr. Pramod Sawant, Hon'ble Chief Minister, Goa**. Dr. Pramod Sawant in his address at the programme commended the efforts of ICAI in organising the training for the officers of the State Taxes, Goa. He further wanted such sessions to continue on a periodical basis and directed the Department to enter into a **MOU with ICAI** for capacity building initiatives. **CA. (Dr.) Debashis Mitra, President, ICAI** also graced the programme with his virtual presence and apprised the Chief Minister about the various initiatives being taken by the Institute. 85 officers ranging from Assistant State Tax Officers, Deputy Commissioners of State Tax and Additional Commissioners of State Tax attended the programme.



The Hon'ble Chief Minister, Goa inaugurated the Two-Day Capacity Building Programme on GST for Department of Commercial Taxes, Goa on 19<sup>th</sup> & 20<sup>th</sup> September 2022 at Goa. The President, ICAI graced the occasion through his virtual presence.

### Enriching the GST policy and implementation

GST & Indirect Taxes Committee of ICAI is known for supporting the Government, through its rich intellectual and technical prowess, in establishing a fair and simple indirect tax regime in India. The Committee has always been a front runner in providing qualitative, innovative and thoroughly researched technical inputs/suggestions to CBIC, GST Council and GSTN during pre and post



Chairman, GST & Indirect Taxes Committee felicitating Shri Sanjay Kumar Agarwal, Member, Central Board of Indirect Taxes & Customs in a meeting on 22<sup>nd</sup> July 2022.

implementation phases of GST.

The Committee regularly submits Pre and Post Budget Memoranda, representations on pertinent policy and procedural issues and other suggestions as are considered necessary or whenever called for by the Government.

As a part of policy outreach to establish rapport and strengthen relations, the office bearers of the Committee regularly interact/engage with the senior officials of the Government. Recently, the Chairman met Mr. Sanjay Kumar Agrawal, Member, Compliance Management, CBIC on 22<sup>nd</sup> July, 2022 to apprise him of the various initiatives taken by the Committee with regard to GST.

Following suggestions/ representations have been made by the Committee to the Government in the recent past:

- **Suggestions on Draft Form GSTR-3B**

The GST & Indirect Committee of ICAI developed an online utility for seeking suggestions from members and other stakeholders on draft Form GSTR-3B. More than 550 suggestions were received from all over India, which were then examined and discussed by the members of the Committee and experts with a view to submit relevant and useful suggestions to the CBIC. Finally, 29 suggestions were submitted and explained in a personal meeting with Principal Commissioner, GST Policy Wing, CBIC.

- **Suggestions on Removal of Difficulty Order, 2022**

Section 172 of the Central GST Act empowers the Central Government to make such provisions, by issuing a general or special order, as may be necessary for the purpose of removing the difficulty arising in giving effect to any provisions of this Act. The power to issue such order was set to expire on 30.06.2022. Therefore, GST & Indirect Taxes Committee has shared certain suggestions on matters for which removal of difficulty orders can be issued by the Government.

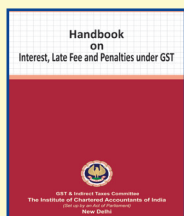
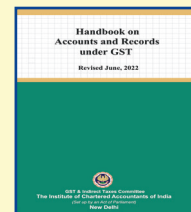
- **Suggestion to include Chartered Accountants as a Technical Member of Goods and Services Tax Appellate Tribunal (GSTAT)**

The GST & Indirect Taxes Committee has sent a request to the Convenor of Group of Ministers on GSTAT to include Chartered Accountants as Technical Member of GST Appellate Tribunal. In the request, emphasis has been laid on the competency of the Chartered Accountants being professionals par excellence and having the highest expertise in the requisite field.

## REVISED PUBLICATIONS

### Handbook on Accounts & Records under GST

The handbook aims to provide guidance to the readers on topic “Accounts & Records”. It explains the provisions of GST law relating to accounts and records and has been revised to incorporate the recent changes made by the Government. The provisions related to the chosen topic are collated, explained and analysed in the handbook for easy comprehension of all the interested stakeholders.

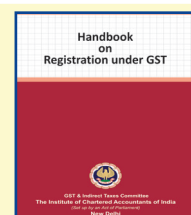


### Handbook on Interest, Late Fee and Penalty under GST

Interest, late fees, Late and penalties are important facets of any taxation law. This handbook attempts to cover all aspects related to interest, late and penalties as applicable under the GST law. The provisions relating to interest, late fees and penalties have undergone many changes in the recent past and therefore, the Handbook has now been revised to incorporate the recent amendments made by the Government.

### Handbook on Registration under GST

The provisions relating to registration under GST laws have undergone many changes in the recent past due to which GST & Indirect Taxes Committee of ICAI has revised its ‘Handbook on Registration under GST’ to incorporate the recent changes made by the Government through notifications, circulars etc. This handbook is an attempt to update the knowledge base of the stakeholders regarding registration under GST.



# GUIDANCE NOTE ON INCOME TAX AUDIT REPORT-CLAUSE 44

Commonly referred to as the GST Clause, clause 44 of the Tax Audit Report(Form 3CD) required to be filed under section 44AB of the Income Tax Act, 1961 seeks to obtain information relating to the total value of expenditure incurred in respect of entities registered under GST as well as unregistered entities. The expenditure in respect of registered entities is to be further bifurcated into goods or services exempt from GST, entities falling under composition scheme, other registered entities and total payment made to registered entities.

The said clause 44 was first introduced in respect of the filings to be done for FY 2017-18. However, its implementation was deferred and now it has been made applicable from FY 2021-22.

In view of the above, the Direct Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has released the much awaited and thoroughly revised edition of its flagship publication 'Guidance Note on Tax Audit under section 44AB of the Income-tax Act, 1961 - AY 2022'.

Clause 44 and the guidance related thereto has been presented hereunder for ready reference of the readers:

## [Clause 44]

### 1. Break-up of total expenditure of entities registered or not registered under GST:

Sl. No.	Total amount of Expenditure incurred during the year	Expenditure in respect of entities registered under GST				Expenditure relating to entities not registered under GST
		Relating to goods or services exempt from GST	Relating to entities falling under composition scheme	Relating to other registered entities	Total payment to registered entities	
1	2	3	4	5	6	7

1.1 A question may arise whether the above information is to be given in respect of each and every head of expenditure or only the total expenditure is to be given. Here, guidance may be taken from the heading of the table which starts with the words "Breakup of total expenditure" and hence the total expenditure including purchases as per the above format may be given. It appears that head-wise / nature wise expenditure details are not envisaged in this clause.

1.2 Depreciation under section 32, deduction for bad debts u/s 36(1)(vii) etc. which are not expenses should not be reported under this clause in any of

the Columns from 3 to 7.

1.3 Schedule III to the CGST Act, 2017 lists out activities or transactions which are treated neither as a supply of goods nor a supply of services and thus expenditure incurred in respect of such activities need not be reported under this clause in any of the columns from 3 to 7. For example, Para (1) of the Schedule III covers "Services by an employee to the employer in the course of or in relation to his employment" and thus, remuneration to employees need not be reported.

1.4 It may be noted that any expenditure that is incurred, wholly and exclusively for business or profession of the assessee qualifies for the deduction under the Act. Registration or otherwise of the payee under the GST Act has no relevance in considering allowability of expenditure.

1.5 The format as per clause 44 of Form 3CD requires that the information is to be given as per the following details:

- Total amount of expenditure incurred during the year
- Expenditure in respect of entities registered under GST

C. Expenditure related to entities not registered under GST

1.6 The reporting in respect of B above, i.e., the expenditure in respect of entities registered under GST is further sub-classified into four categories as follows:

- Expenditure relating to goods or services exempt from GST
- Expenditure relating to entities falling under composition scheme
- Expenditure relating to other registered entities

d) Total payment to registered entities

- 1.7 Expenditure relating to goods or service exempt from GST (Column 3): Here, the value of all inward supply of goods or services which are exempt from GST is to be given.

Section 2(47) of the Central Goods and Service Tax Act, 2017 (hereinafter referred to as CGST Act, 2017) defines exempt supply as follows:

“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 the Integrated Goods and Services Tax Act, and includes non-taxable supply;”

To ascertain what are exempt supplies, the following notifications issued under the CGST Act, 2017 and the Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as IGST Act, 2017) are relevant:

- (A) Notification No.1/2017 CT (R), which prescribes rates for intra-State supply of goods
- (B) Notification No.2/2017 CT (R), which prescribes intra-State supply of goods which are exempt
- (C) Notification No.11/2017 CT (R), which prescribes rate for intra-State supply of services
- (D) Notification No.12/2017 CT (R), which prescribes intra-State supply of services which are exempt
- (E) Notification No.1/2017 IT (R), which prescribes rates for inter-State supply of goods
- (F) Notification No.2/2017 IT (R), which prescribes rates for inter-State supply of goods which are exempt
- (G) Notification No.8/2017 IT (R), which prescribes rates for inter-State supply of services
- (H) Notification No.9/2017 IT (R), which prescribes rates for inter-State supply of services which are exempt

- 1.8 Further, the definition of exempt supply also includes non-taxable supply. The term “non-taxable supply” has been defined in section 2(78) of the CGST Act, 2017 as follows:

“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”

As per the above definition “non-taxable supply” includes supply of goods or services which are not leviable to tax under the CGST Act, 2017 or under the IGST Act, 2017.

- 1.9 As per section 9 of the CGST Act, 2017 / 5 of the

IGST Act, 2017, the following supplies are not leviable to GST:

- (i) supply of alcoholic liquor for human consumption
- (ii) supply of petroleum crude, high speed diesel oil, motor spirit, natural gas and aviation turbine fuel

Hence, the above supplies, being not leviable to GST, are exempt supplies.

- 1.10 Expenditure relating to entities falling under composition scheme (Column 4): Levy of tax under composition scheme is governed by section 10 of the CGST Act, 2017. While reporting the expenditure under this head, the following should be considered:

- a) A composition dealer cannot charge GST in the invoices.
- b) A composition dealer cannot make inter-State supply.
- c) A composition dealer can issue only bill of supply and not a tax invoice.
- d) The composition dealer should have mentioned the following words at the top of the bill of supply issued by them.

- 1.11 In case of ineligible input tax credits which are blocked under section 17(5) of the CGST Act, 2017 or in case of purchases from persons registered under composition levy, it is a normal practice of the small and medium taxpayers not to mention the GSTIN of the said suppliers in their accounting software. Hence, a suitable remark / reference in this regard by the tax auditor may be included in the report. Expenditure relating to other registered entities is furnished in Column 5. Value of all inward supplies from registered dealers, other than supplies from composition dealers and exempt supply from registered dealers, are to be mentioned here.

- 1.12 The language used in sub-heading of Column 6 is total ‘payment’ to registered entities. The word ‘payment’ should harmoniously be interpreted as ‘expenditure’ as the combined heading of columns (3), (4), (5) is ‘Expenditure in respect of entities registered under GST’. Hence, the total expenditure in respect of registered entities i.e., sum total of values reported in columns (3), (4) and (5) should be reported in Column 6.

- 1.13 Expenditure relating to entities not registered under GST (Column 7): The value of inward supply of goods and/or services received from unregistered persons should be reported here. It should be ensured that the total of columns 6 and 7, tallies with the amount mentioned in column (2) except to the extent of expenditure/ allowance mentioned in para 1.2. and 1.3. The auditor may retain the reconciliation



prepared by the assessee for verification.

- 1.14 In the table under clause 44, the language used is “expenditure in respect of”. Since, the word used is ‘expenditure’, it is necessary that the capital expenditure should also be reported in the format prescribed. Separate reporting of capital expenditure will provide ease in reconciliation.
- 1.15 This report may be prepared for an entity as a whole or for a branch thereof, as may be audited and accordingly the information in these columns may

have to be filled up consolidating the expenditure incurred under various GST registrations.

- 1.16 In order to verify the details filled in, the tax auditor needs to obtain from the assessee the required details in the below tabular format (an illustrative format which may be modified by the Tax auditor according to the facts and circumstances). The Tax auditor should verify the details furnished with the underlying document on a test check basis and retain the same as part of his working papers.

Expenditure head	Name of the entity to whom payment is made	GSTIN of the entity	Value debited to expenditure account	Value for which input tax credit is taken	Total amount paid to the vendor	Reason for NIL GST	General Remarks, if any
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- 1.17 An appropriate disclosure should be made by the Tax auditor in Form 3CA/3CB, as the case may be, for the view taken by the assessee in relation to the meaning of “Total expenditure” and the method of filling up the appropriate columns. If the assessee is not in a position to give the details as required in clause 44, an appropriate disclosure/disclaimer may be made by the auditor in Form 3CA/3CB. Where the assessee has provided reason for not being able to provide details, the same may be reported, if found appropriate.

## ANNOUNCEMENT

# ONLINE ASSESSMENT TEST OF CERTIFICATE COURSE ON GST

The next Assessment Test of Certificate Course on GST has been scheduled online on 16<sup>th</sup> October 2022 from 11.30 am to 12.30 pm. To appear in the aforesaid Assessment Test, please follow the steps given hereunder:

- (i) Log-in at ICAI Digital Learning Hub by using your SSP portal credentials and click on product “Certificate Course on GST Eligibility Batch” which has already been assigned in dashboard of eligible members and follow the process given in detailed instructions to subscribe to the product. It may be noted that the last date for subscribing to the product is 6<sup>th</sup> October 2022 (5.30 pm).
- (ii) After you subscribe to the product, complete your face registration at “Assessment Certificate Course on GST\_Oct\_2022” which would be available in your dashboard under “My Products” on any date but not later than 7<sup>th</sup> October 2022 till 5:30 pm. Face registration can be done by expanding the node “Assessment Certificate Course on GST\_Oct\_2022”, by clicking it and pressing “Launch”.
- (iii) Complete your face authentication by visiting “Assessment Certificate Course on GST\_Oct\_2022” which would be available in your dashboard under “My Products” after 24 hours of face registration but not later than 10<sup>th</sup> October 2022 till 5:30 pm.
- (iv) Participate in the Mock Test scheduled on 11<sup>th</sup> October 2022 for 30 minutes at any time between 11:30 am to 3:30 pm.
- (v) On 16<sup>th</sup> October 2022 i.e., on the day of Assessment Test, log-in by 11:00 am to avoid any difficulties.

Please go through the aforesaid instructions carefully to avoid any last-minute issues.

In case of any difficulty, you may write to us at [gst@icai.in](mailto:gst@icai.in) or call at 0120-3045954 or message us on WhatsApp at 9212256643/9818240634.

Noida

5<sup>th</sup> Sep, 2022

GST & Indirect Taxes Committee

The Institute of Chartered Accountants of India

## ANNOUNCEMENT

# CERTIFICATE COURSE ON GST-NEW BATCHES

The GST & Indirect Taxes Committee of ICAI is organizing a physical batch of Certificate Course on GST as under:

## 1. Ahmedabad

<b>Duration</b>	The duration of the Course is 10 days. The sessions will be organised on weekends (Saturday and Sunday) starting from 8 <sup>th</sup> October, 2022 as under:			
	8 <sup>th</sup> October 9 <sup>th</sup> October	Saturday & Sunday	05 <sup>th</sup> November 06 <sup>th</sup> November	Saturday & Sunday
	15 <sup>th</sup> October 16 <sup>th</sup> October	Saturday & Sunday	12 <sup>th</sup> November 13 <sup>th</sup> November	Saturday & Sunday
	22 <sup>nd</sup> October 23 <sup>rd</sup> October	Saturday & Sunday		
<b>Venue</b>	Ahmedabad Branch of WIRC of ICAI, "ICAI Bhawan" 123, Sardar Patel Colony, Near Usmanpura Underbridge, Naranpura, Ahmedabad-380014 Gujarat			
<b>Time</b>	10.00 am to 5.30 pm			
<b>Fees</b>	Rs. 14,000 /- plus GST			
<b>Registration Link</b>	<a href="https://learning.icai.org/committee/gst/ahmedabad-physical-batch/">https://learning.icai.org/committee/gst/ahmedabad-physical-batch/</a>			
<b>Details about the Course</b>	<a href="https://idtc.icai.org/about-certificate-course.html">https://idtc.icai.org/about-certificate-course.html</a>			
<b>CPE Hours</b>	30 Structured CPE hours (25 hours after attending the sessions and 5 hours after passing the Assessment Test)			

## 2. Chennai

<b>Duration</b>	The duration of the Course is 10 days. The sessions will be organised on weekends (Saturday and Sunday) starting from 15 <sup>th</sup> October 2022 as under:			
	15 <sup>th</sup> October 16 <sup>th</sup> October	Saturday Sunday	05 <sup>th</sup> November 06 <sup>th</sup> November	Saturday Sunday
	22 <sup>nd</sup> October 23 <sup>rd</sup> October	Saturday Sunday	12 <sup>th</sup> November 13 <sup>th</sup> November	Saturday Sunday
	29 <sup>th</sup> October 30 <sup>th</sup> October	Saturday Sunday		
<b>Venue</b>	P. Brahmaya Memorial Hall, ICAI Bhawan, 122 Mahatma Gandhi Road, Nungambakkam, Chennai – 600034			
<b>Time</b>	10.00 am to 5.30 pm			
<b>Fees</b>	Rs. 14,000 /- plus GST			
<b>Registration Link</b>	<a href="https://learning.icai.org/committee/gst/chennai-physical/">https://learning.icai.org/committee/gst/chennai-physical/</a>			
<b>Details about the Course</b>	<a href="https://idtc.icai.org/about-certificate-course.html">https://idtc.icai.org/about-certificate-course.html</a>			
<b>CPE Hours</b>	30 Structured CPE hours (25 hours after attending the sessions and 5 hours after passing the Assessment Test)			

The registration window has been opened for ICAI members and the same shall be on first-come-first-serve basis. Registration will be closed once the batch size reaches its full capacity.

For any questions or doubts, the FAQs for the Course, which are self-explanatory, may be referred to. For any further clarifications, members may write to us at [gst@icai.in](mailto:gst@icai.in).

# GST QUIZ

1. **In which of the following cases, a del-credere agent (DCA) would fall under the ambit of 'agent' under Para 3 of Schedule I of the CGST Act?**
  - a) Where the invoice for supply of goods is issued by the supplier to the customer, either himself or through the DCA
  - b) Where the invoice for supply of goods is issued by the DCA in his own name
  - c) No condition is applicable on DCA to be treated as agent under para 3 of Schedule I
  - d) The concept of DCA is not recognised in GST law
2. **Within how many days, after a certificate of registration in Form GST REG-06 has been made available on the common portal and a GSTIN has been granted, the registered person is required to furnish bank account details on the common portal?**
  - a) Within 45 days from the date of grant of registration or the date on which return under section 39 is due to be furnished, whichever is earlier
  - b) Within 15 days from the date of grant of registration or the date on which return under section 39 is due to be furnished, whichever is earlier
  - c) Within 30 days from the date of grant of registration or the date on which return under section 39 is due to be furnished, whichever is earlier
  - d) Within two months from the date of grant of registration or the date on which return under section 39 is due to be furnished, whichever is earlier
3. **Aadhar authentication is required to be undergone in which of the following cases?**
  - a) For filing of application for revocation of cancellation of registration under rule 23
  - b) For filing of refund application under rule 89
  - c) For refund under rule 96 of the IGST paid on goods exported out of India
  - d) All of the above
4. **Place of Supply in case of maintenance, repair or overhaul service in respect of ships and other vessels, their engines or other components or parts supplied to a person for use in the course or furtherance of business**
  - a) Location of Supplier of service
  - b) Location of the Recipient of service
  - c) Location where maintenance, repair or overhaul service took place
  - d) Destination of ship or vessel
5. **Which of the following conditions need to be satisfied for being considered as a Pure Agent under Rule 33 of CGST Rules, 2017?**
  - a) The supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient
  - b) The payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service
  - c) The supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account
  - d) All of the above
6. **Jolly purchases a television set costing Rs. 85000 from an electronic shop in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept Rs. 78000 instead of his quote of Rs. 81000, (the old TV can be sold for Rs. 8000). The value of supply in this case would be**
  - a) Rs. 78000
  - b) Rs. 85000
  - c) Rs. 70000
  - d) Rs. 81000
7. **What is the turnover limit applicable for e-invoicing with effect from 01.10.2022?**
  - a) Rs. 50 crore
  - b) Rs. 20 crore
  - c) Rs. 10 crore
  - d) Every registered person needs to issue e-invoice irrespective of the turnover
8. **The time period within which an application for refund can be made, shall not be applicable in case of**
  - a) Excess balance in e-cash ledger
  - b) In case of refund of unutilised ITC on account of inverted duty structure
  - c) In case of refund on account of deemed exports
  - d) None of the above
9. **The option to pay tax and interest before issuance of SCN so as to avoid the issuance of SCN and penalty in cases where tax has not been paid/ short paid/ erroneously refunded / ITC wrongly availed / utilized is available in which of the following cases?**
  - a) Reasons other than fraud/ wilful misstatement or

suppression of facts to evade tax

- b) Reasons of fraud/ wilful misstatement or suppression of facts to evade tax  
 c) Either (a) & (b)  
 d) No such option is available to the taxpayer

**10. In how many days is a liquidator required to intimate the Commissioner of his appointment?**

- a) Liquidator is not required to intimate the Commissioner about his appointment  
 b) Liquidator is only required to intimate after the liquidation process is over  
 c) 15 days  
 d) 30 days

The names of first 5 members who provided the most correct answers of the last Quiz (December, 2021) are given below:

Name	Membership No.
AKSHAY VERMA	443477
KAMAL GARG	547788
N K Bharath Kumar	223407
RAJESH KHATRI	406131
Vatsal Shah	175077

Please provide reply of the above MCQs in the link given below. The name of the first 5 members who provide all the correct answers within 48 hours of receipt of this Newsletter, would be published in the next edition.

Link to reply: [https://docs.google.com/forms/d/e/1FAIpQLSe7QGcZ0k93cKv5N-GEEdGHmqu5kXxglE002aRntZqDWWXKucng/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLSe7QGcZ0k93cKv5N-GEEdGHmqu5kXxglE002aRntZqDWWXKucng/viewform?usp=sf_link)



### GST & INDIRECT TAXES COMMITTEE OF ICAI

## A ONE STOP DESTINATION FOR ALL INDIRECT TAXES

website: [www.idtc.icai.org](http://www.idtc.icai.org)



The website of GST and Indirect Taxes Committee of ICAI viz. [www.idtc.icai.org](http://www.idtc.icai.org) provides the users a well-set platform for sharing and gaining knowledge on GST and other indirect taxes and easy accessibility to the committee. The committee works relentlessly towards keeping the members abreast with the latest changes in all the indirect taxes laws vide various mediums like organising programmes, updating publications, sending regular updates, etc.

### Main features:

- ❖ Regular GST / Indirect Taxes Updates
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- ❖ Recordings of Live Webcasts / E-lectures on GST
- ❖ E-learning on GST
- ❖ Upcoming events
- ❖ Details of Certificate Courses, Programme, Seminars etc. on GST/ Indirect Taxes
- ❖ Links of related important website
- ❖ Connect with GST & Indirect Taxes as a faculty / author of the publication etc.

Your suggestions on the website are welcome at [gst@icai.in](mailto:gst@icai.in)

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