

Contemporary issues & Audit provision under GST

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exceeding expectations

Integrity | Knowledge | Passion



AGENDA

- Contemporary Issues
- Proposed Amendments
- GST Audit



Anti-Profiteering



What is Anti-Profiteering ?

Section 171 of the CGST Act – Anti-profiteering measure:

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

Factors provided in section 171

Reduction in rate of tax

- Reduction in GST rate compared to pre-GST rate
 - ✓ Excise + VAT more than GST rate
 - ✓ Service tax more than GST rate
- Reduction in rate under GST regime
 - ✓ Reduction from 28% to 18%

Benefit of input tax credit

CST Benefit:	CST credit was not available in earlier regime
Entry tax/ Octroi:	Elimination of Entry tax / Octroi whose credit was not available in earlier regime
Service Benefit:	Non-reversal of service tax credit which was required earlier on account of trading of goods
VAT benefit:	Availability of VAT credit on purchase of goods which was not available to service providers
Capital asset benefit:	Availability of VAT credit on capital assets which was not available to service providers

Power of Authority

Powers of the authority includes

To order
reduction in
prices

To ensure that the amount
collected in violation is
refunded along with eighteen
percent interest

Imposition of
penalty

Cancellation of
registration

Major Companies facing anti-profiteering enquiry





Issues under anti- profiteering

Applicability at which level

What is the mechanism for determining the benefit accruing to the registered person?

Whether the benefit accruing to the registered person needs to be determined at the

- Transaction level;
- Product level basis;
- Entity level basis;
- GSTIN level.

Issues

- Whether GST law overrides contracts? Whether benefit needs to be passed on in case of
 - Tax inclusive contract
 - Firm price contract
 - Government tender/bid
- Whether benefit can be passed on by way of Provision of extra quantity at the same price
- Rate change 27.07.2018 : can the benefit not passed on to the customer at the time of sale be passed on later by floating new schemes?

Major Common issues

Can the concept of demand and supply be disregarded?

Steel Industry / Sugar Industry

Whether the benefit needs to be passed on to the customers when the registered supplier is incurring a loss?

Whether gradual increase in profit margins in the recent past be considered while computing anti-profiteering?

Impact of discontinuation of discount scheme immediately after reduction in the rate of tax

Need for Documentation and Challenges

- Maintaining relevant commercial documentation to reflect price changes across product lines (SKUs), segments, business verticals of the company.
- Policy for pricing decision is ratified by Management.
- Articulate, with proof, the methodology adopted in calculating and deploying the GST benefit in the Supply Chain.
- Other documentation to be maintained to support and evidence compliance with law.

Way Forward

Are You Prepared for
Anti-Profiteering
Provisions of GST

Calculation of Antiprofitteering benefit

Appropriate computation should be done considering various market factors and open issue

Negotiation with vendors

Appropriate negotiation should be done with the vendors to ensure maximization of benefits

Representation to Government & Consumer Awareness

*** Section 171 of CGST ACT**

Issues faced by Industry in the last year

Issues in taxability

Issues in
Transitional credit

Issues in
compliance

Issues in ITC

Issues not addressed in Proposed Amendment

Issues not addressed in Proposed Amendment

- Input tax credit of CVD paid on-
 - finalisation of provisional assessment done in pre-GST regime,
 - Non-fulfilment of conditions of EPCG/ advance authorisation.
- Whether salary and other general overheads to be included for the purpose of cross-charge?
- Time of Supply for ocean freight services- when is recipient liable to pay tax?
- Import of goods on lease – As Goods for Customs and/or as Service for GST?
- Centralised Registration for large service providers

Supplies made by SEZ Unit

- GST Law applies to SEZ units.
- Supplies made by SEZ units are leviable to tax under IGST Act
- Section 30 of SEZ Act –
 - (a) Any goods removed from SEZ to DTA shall be chargeable to duties of customs as leviable on such goods when imported.
- Bill of entry filed for removal of goods from SEZ to DTA.
- Section 2(62) –
 - “Input tax” in relation to a registered person, means the central tax, state tax, integrated tax, union territory tax charged on any supply of goods or services or both made to him and includes –*
 - (a) *the integrated goods and services tax charged on import of goods*
- Credit accumulation in the hands of SEZ unit- no refund mechanism where DTA clearance made

Proposed Amendments

Issues in Supply

Issues in Schedule II

Any transfer of title in goods is a supply of goods

- Transfer of assets to **unrelated person** without consideration **on which credit has not been taken?**
- Sale of personal effects – Old newspaper, furniture, etc. taxable as per above clause?

- Exchange of gold jewellery - Supply by unregistered person?
 - Press Release dated 13th July, 2017 clarifying not taxable

Proposed amendment in Schedule II

- Section 7 (1) (d) relating to Schedule II deleted
- sub-section (1A) under Section 7 introduced:
 - *(1A) Certain activities or transactions, when constituting a supply in accordance with the provisions of sub-section (1), shall be treated either as supply of goods or supply of services as referred to in Schedule II.*
- Retrospective amendment w.e.f. 01.07.2017

Issues in Schedule II

- Agreeing to do an act or tolerate an act or refrain from an act is deemed to be supply of services.
- MH AAR: Liquidated damages taxable as supply of service

➤ **Treatment of liquidated damages?**

Issues in Schedule III

Proposed amendments in Schedule III

Schedule III – Neither supply of goods nor supply of services

- **Merchant Trading:**
Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory.
- **In-bond sales :**
 - *Supply of warehoused goods to any person before clearance for home consumption;*
- **High seas sales:**
Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption

Issue of taxability of High Sea Sales

- Section 7(2) of IGST Act
 - Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce
- Circular No. 33/2017-Customs dated 1.8.17 – High Seas Sale:
 - No tax on high sea sales

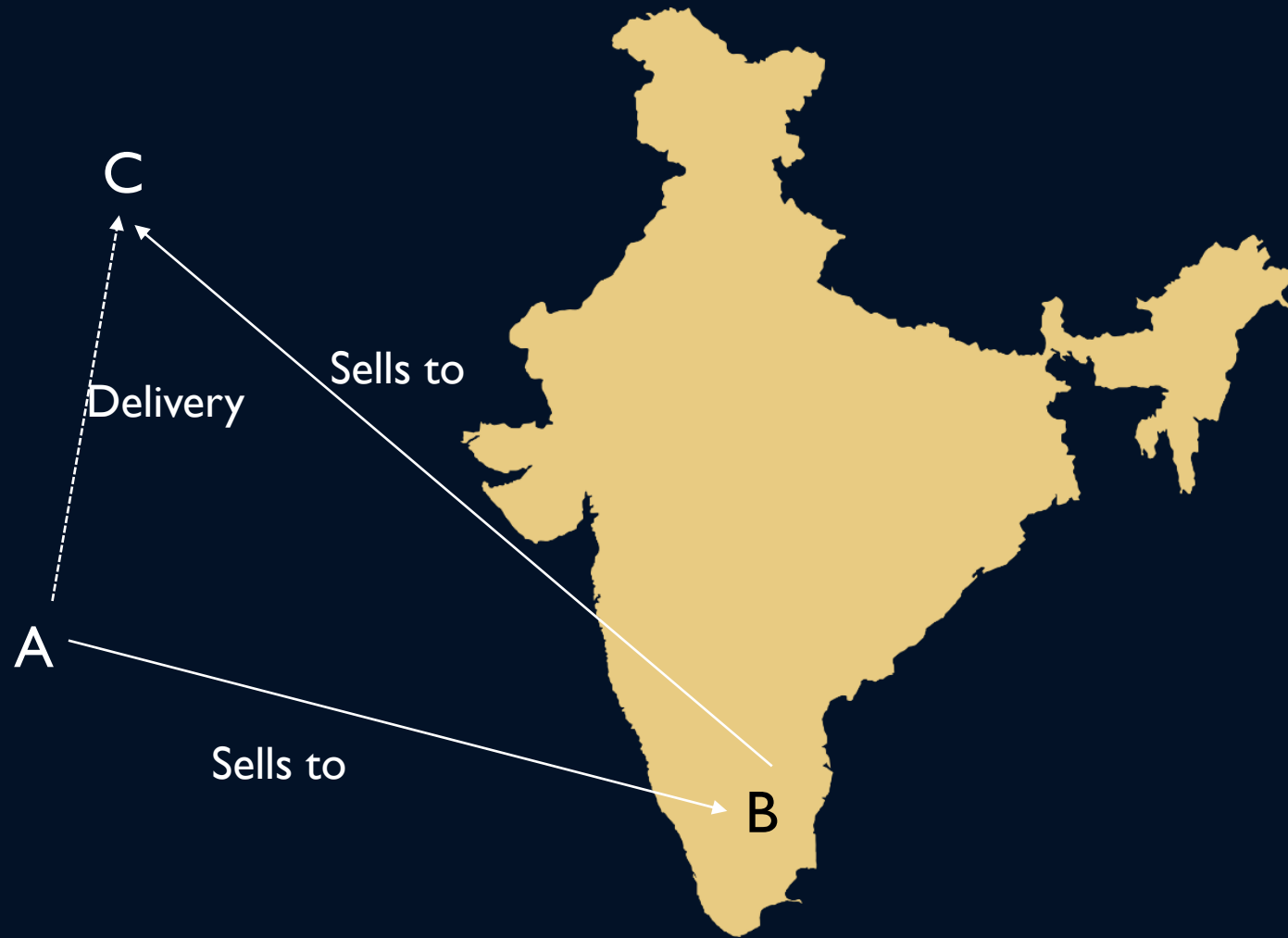
Whether tax payable in respect of High sea sales? If not, reversal of credit?

MH Advance Ruling in *BASF India Ltd*

Issue of taxability of In-Bond sales

- Inclusion of “warehouse” in the definition of ‘customs area’
 - Circular No. 46/2017-Customs dated 24.11.2017
 - In-bond sales liable to IGST
 - Levy twice?
 - Circular No. 3/1/2018-IGST dated 25th May, 2018
 - No tax on in-bond sales.
 - Effective from 01.04.2018
- Whether tax payable in respect of sales prior to 01.04.2018? If not, reversal of credit?

Merchant Trading – Taxable Supply?



Section 2(5) : "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Section 2(10) : "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India

Supply between B to C : whether taxable?

Issue of taxability of Merchant Trading

- Export of goods means 'taking goods out of India to a place outside India'.
- [Section](#) 7(5)(a) – supplier is located in India and place of supply is outside India. The section is needed to tax export transaction and grant refund of tax.
- Merchant Trading – The taxability, if any, will not fail for want of territorial nexus. Location of supplier/residence in India is sufficient nexus.
- AAR clarifying not liable to GST (Kerala AAR – M/s Synthite Industries Ltd.)

Whether supply under section 7(5)(a) read with [section](#) 10 and 11 of the IGST Act? If not, reversal of credit?

Scope of Exempt Supply u/s 17(3)

Proposed Explanation to Section 17(3):

For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule.

- Are Schedule III supplies covered under Section 17(2)?
 - Apportionment of credit involving both taxable and exempt supplies
- Whether the above amendment is only clarificatory in nature?

Issues in Unregistered Supplier procurements

Issues in transactions with URDs



- A person liable to be registered but has not obtained registration – Unregistered person?

Proposed amendment in Section 9(4)

- Reverse charge for purchases from unregistered persons to be restricted to
 - Notified **classes** of registered persons (recipient).
 - Specified **categories** of goods and services.

Section 10 : Composition Levy

Present position of law

No service provider other than those engaged in the supply of food by way of or part of a service is eligible to opt for the composition scheme.

Proposed Amendment

Benefit of composition levy extended to all suppliers whose value of services rendered does not exceed 10% of turnover in a State/UT in the preceding FY or 5 lakh rupees, whichever is higher.

All other service providers not fulfilling the criteria – cannot opt for the scheme

Issues in Time of Supply

Amendment to time of supply of goods S. 12(2)

- *“Time of supply of goods shall be the earlier of the following dates, namely:-*
 - (a) the date of issue of invoice by the supplier or the last date on which he is required, ~~under sub-section (1) of section 31~~, to issue the invoice with respect to the supply; or*
 - (b) the date on which the supplier receives the payment with respect to the supply”*

Amendment to time of supply of service S. 13(2)

“ ...

- *(2) The time of supply of services shall be the earliest of the following dates, namely:-
(a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under ~~sub-section (2)~~ of section 31 or the date of receipt of payment, whichever is earlier; or
(b) the date of provision of service, if the invoice is not issued within the period prescribed under ~~sub-section (2)~~ of section 31 or the date of receipt of payment, whichever is earlier*

”
...

- Issuance of invoice in the case continuous supply of goods & services are covered by sub-sections (4)&(5) of Section 31 respectively.

Issues in Compliances

Separate registration for SEZ – Pre Amendment

- As per Act, separate registration for different business verticals
- As per Rule, mandatory separate registration for SEZ

Proposed amendment in registration provisions

- Separate registration for different place of businesses
(subject to such conditions as may be prescribed).
- Definition of business vertical deleted
- Separate registration for SEZ incorporated in Act itself

Problems addressed

- Separate registration may be required by-
 - Units eligible for budgetary support benefit and units which are not eligible.
 - Unit making taxable supplies and units making exempt supplies.
 - PSUs facing difficulty in collection of data
- **GTA service provider – Can it opt for 12% and 5% simultaneously?**

Issues in Canteen supply

Canteen/Catering Services



- Incidence of 23% at the end of companies?
- Can caterer charge 5% basis circular?
- Circular binding on the department?

Amendment in Canteen/Catering services

- Explanation inserted in rate notification to include the services of caterer under 5% category.
- Earlier circular clarifying services of caterer under 5% withdrawn w.e.f. 27.07.2018 stating the contents are incorporated in the entry itself.
- Whether the said amendment can be said to be retrospective? If yes, from 01st July or 14th November 2017

Issues in ITC

Amendment to Section 16

- For the purpose of Section 16, it shall be deemed that the registered person has received services *‘where the services are provided by the supplier to any person on the direction of and on account of such registered person’*

Issue of retention money

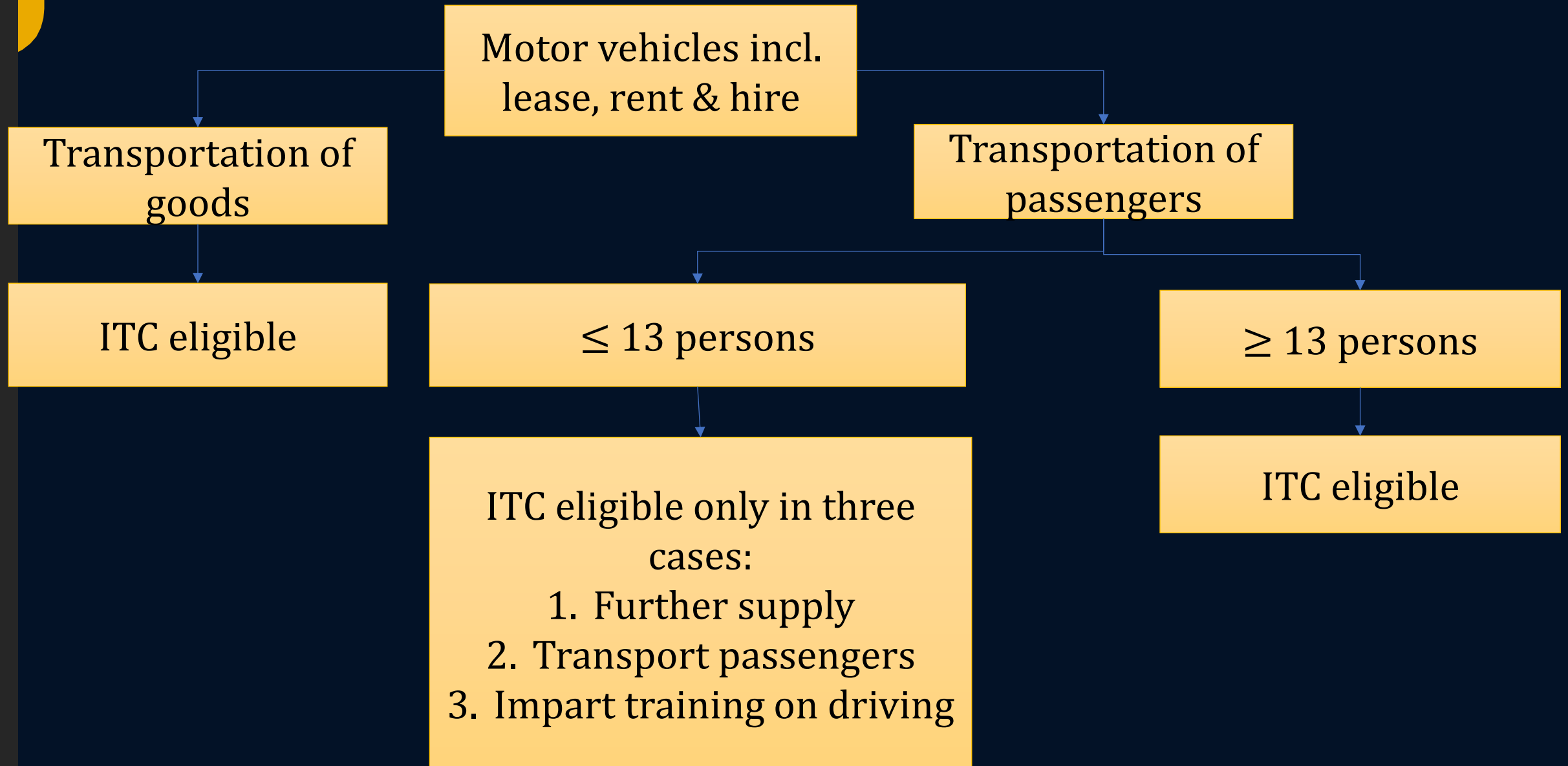
- Credit to be reversed if payment not made within 180 days of invoice.
- Interest @ 18% also payable
- Credit can be re-availed upon payment but interest not refundable.

Interest Liability

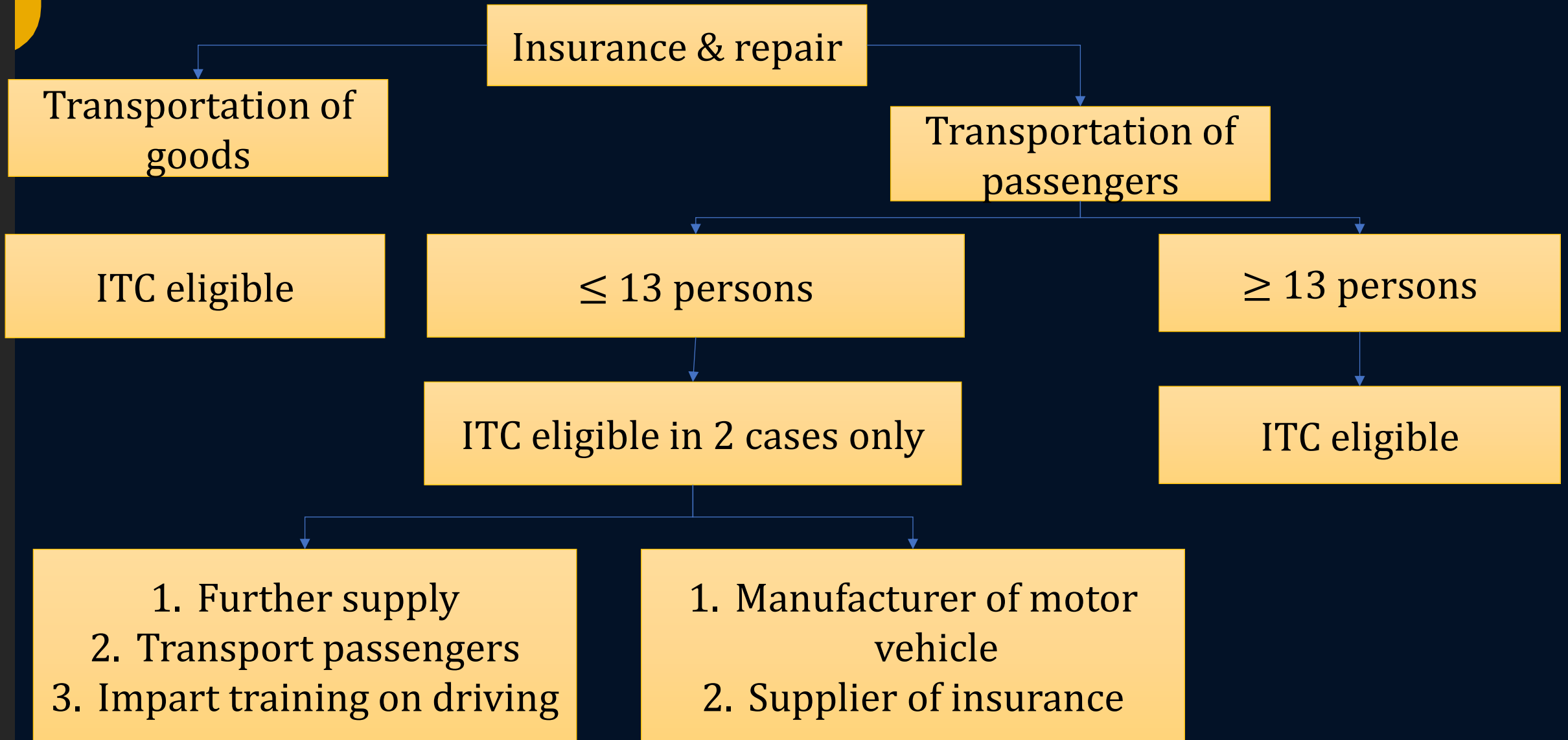
- No interest if consideration not paid within 180 days as per proposed amendment in the draft for public comments
- Whether interest implications to continue in such cases?

Proposed Amendments to Section 17(5)

Credit on motor vehicles



Insurance, repair and maintenance of motor vehicle



Other Changes in ITC

- Presently, ITC eligible for rent-a-cab, life insurance and health insurance **where Government notifies** the services as obligatory for an employer to provide to its employees under any law for the time being in force. (no such notification issued)
- After amendment - ITC in respect of goods and services obligatory for an employer to provide to its employees **under any law for the time being in force will be eligible**



Proposed Amendments to Order of Utilisation of Credit

Current Order of Utilisation

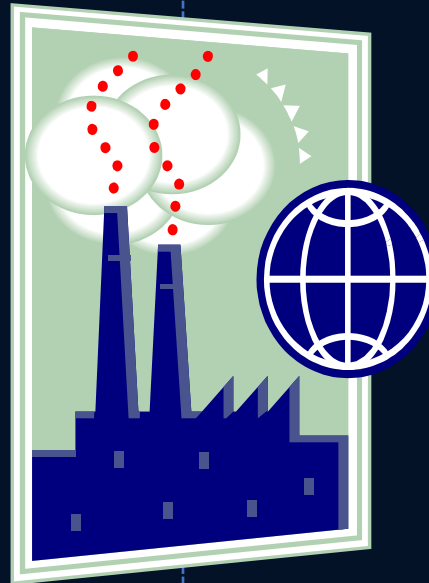
Inputs & Input Services

CGST+SGST

Local Purchases (Goods & Services)

IGST

Inter-State Purchases
(Goods & Services)



Output Supply

CGST+SGST/IGST

CGST

SGST

IGST

CGST then IGST

SGST then IGST

IGST-CGST-SGST



* **No cross utilization** between CGST and SGST

Proposed Amendments

- SGST/UTGST can be utilised for payment of IGST only if CGST credit is not available for payment of IGST.
- CGST, SGST and UTGST credit can be utilised towards payment of IGST, CGST, SGST or UTGST as the case may be only after IGST credit is utilised fully towards such payment (S. 49A).
- Government is empowered to prescribe the order and manner of utilisation of the ITC (S. 49B).

➤ Impact on State SGST incentives?

Issues in Credit Note/Debit Note

Issues in credit note/debit note

- Credit note/debit note to be linked to original invoice
- No explicit provision for consolidated debit note/credit note

Proposed amendment in Credit Note/Debit Note

- Option to issue consolidated credit / debit notes in respect of multiple invoices in a Financial Year
- No requirement of linking the same to individual invoices

Whether applicable for FY 2017-18?

Issues in Transitional Credit

Issues of transitional credit of cesses?

- Eligible CENVAT credit carried forward in return allowed to be transitioned under 140(1) in entirety
- Rule 117 makes reference to 'eligible duties and taxes' for Section 140
- Department disputing the credit of cesses carried forward.

Proposed amendment in Section 140

- Retrospective amendment w.e.f. 01.07.2017.
- Credit of 'eligible duties' to be allowed under Section 140(1).
- Eligible duties defined in Explanation 1 only to cover duties on goods and not tax on services.
- Eligible duties and taxes defined in Explanation 2 to cover tax on services also.
- Cesses not covered in either definitions.
- AEDTTA credit deleted from Explanation 1.

Proposed amendment in Section 140

- Credit of Cesses ? – Explanation 3
- Credit of Service tax ??

GST Audit

Way Ahead



Types of Audit

Section 35

- **Audit by CA/CMA for registered persons having turnover more than Rs. 2 Crores**

Section 66

- **Special Audit**

Section 65

- **Departmental Audit/Audit by tax authorities**

GST Audit – Audit by CA/CMA

Legal Provisions & requirement:

- Section 35(5) of CGST Act : Audit required for every registered person whose **turnover** during a financial year exceeds the prescribed limit.
- Rule 80 of CGST Rules : Audit required for every registered person whose **aggregate turnover** during a financial year exceeds two crore rupees

Illustration

Taxpayer A having total turnover of Rs 100 crore is inter-alia registered in Tamil Nadu. The turnover in the state of Tamil Nadu is Rs 1.5 crore.

Whether GST Audit required?

Scope of GST Audit

Two types of reports/certification
under GST Audit report:

Step I

- Financial reconciliation/
certification

Step II

- Legal Audit

GST Audit: Financial reconciliation/ certification

Step wise Step Process

Step 1

- Preparation of State wise Balance Sheet and Profit and Loss Account

Step 2

- Preparation of GST Annual Return

Step 3

- Preparation of Outward Reconciliation Statement

Step 4

- Preparation of inward Reconciliation Statement

Draft proposed report is most detailed tax audit report so far in India.

GST Audit: Legal Aspects

- GST Auditor has to verify and comment on compliance of provisions of entire GST law at business transaction level.
- Verifying the impact of changes in GST Law : Over 300 Notifications + several FAQs, Orders, Advance Rulings, Circulars, clarifications, flyers, press releases & tweets & Law is still evolving

Legal Audit involves . .

- Audit of tax implications on all business transactions and processes.
- Draft audit report available in public domain
- Form 9C and 9D prescribed
- Form 9C similar to CARO report
- Form 9D - Part A contains general information
 - Part B - 1. Requires validation of various transactions
 - 2. Identifying non-compliance
 - 3. Quantification of such non-compliance
- 24 Annexures are required to be filed

Legal Audit involves . .

- Identifying tax implications on transactions beyond books such as
 - Cross charge
 - Supplies between related parties like corporate guarantee / common building
 - Free Supplies between related parties/ distinct persons
- Verification of existing Classification for each and every transaction
 - Correctness of rate of tax
 - Availability of exemption Notification
 - Whether transaction is single supply / composite supply / mixed supply
- To identify the documentation requirements for GST compliances like raising of tax invoice, bill of supply, debit note / credit note, payment voucher, advance voucher, self-invoice etc., and to verify whether all the substantive and procedural requirements of GST Laws are being complied with or not.
- To scrutinise GST returns (GSTR-1 & GSTR 3B) and refund applications submitted/filed by respective plants.

Legal Audit involves..

- Verifying Schedule II implications
 - Works Contract vs Sale of Goods.
- Verifying implications on transaction with employees
 - Provision of various facilities and perquisite provides
 - Deductions from Salary
 - Welfare schemes

Legal Audit involves . .

- Verification of Nature of Supply of every business transaction
 - IGST vs CGST/SGST
 - Correctness of Place of Supply
 - B2B to B2C and vice versa
- Verifying tax implication on Cross Border Transactions
 - Transaction b/w various offices (H0 / B0 / L0)
 - Import and export related issues

Legal Audit involves . .

- Verifying correctness of Valuation of each transaction
 - FOC Material
 - Subsidy and Other financial assistance
 - Reimbursement vs Pure agent
 - Discounts / Schemes
- Verifying discharge of Reverse charge Liability on each transaction
 - Supplies mentioned under 9(3) - including ocean freight
 - Supplies under 9(4)
 - RCM on CIF import : A common

Legal Audit involves . .

- Verification of entire Input Tax Credit mechanism
 - Eligible vs Non Eligible Credit
 - Conditions of Credit
 - Compliance of Rule 42/43 mechanism
 - Retention Money / Reversal / Quality issues / Shortages etc
- Reporting various ratios such as Gross Profit/ Turnover in state, Cash payment/ Total payment
- Verification of documents such as tax invoice, bill of supply, debit note / credit note etc. are being complied with or not.

Legal Audit involves..

- Verification of Transitional Credit availed in Trans 1 Form
- Verifying the compliance of time of supply provisions.
- Implementation of Advance Ruling and Pending Litigation matters

In short, Auditor has

to verify and comment on compliance of provisions of entire GST law at business transaction level

- Taxability of Business Transaction
- Classification / Exemptions / abatements
- Mechanism of availing, reporting and utilising input tax credit in books & GST returns.
- Reversal of input tax credit
- Compliance with Anti-profiteering
- Transitional credit
- Impact of Advance Rulings / ongoing litigations
- Supplies without consideration/Related Party Transactions/Employees
- Valuation / Discounts
- Exemptions
- Documentation
- Determination of Place of supply and Time of Supply
- Reverse Charge Applicability
- Exports / Deemed Exports / SEZ etc

Challenges

Skill set required for handling 1st GST audit to ensure proper compliance with frequently changing GST law

To consider the past precedents on particular transactions vis-à-vis stand taken under GST

Identification & reporting of several transactions which may not appear in the financial accounts



Challenges in reconciliation of accounts which are prepared for entire financial year vis-à-vis GST (9 months)

Proper drafting & preparation of 1st GST Audit report which would become blue-print for future & departmental audit



Thank You