

A photograph of a desk setup. On the left, a small green plant in a glass jar sits on a dark surface. A desk lamp with a white shade is positioned above it. In the center, a laptop is open. To the right of the laptop, a pen lies on the desk. The background is a plain, light-colored wall.

Burning issues in GST, Provisions in Finance Bill 2020 & Latest HC Judgements

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Burning Issues of MSME in GST

Interest payable on Gross or Net Liability?

Consider a situation for Jan 2020:

Turnover of outward supply	10 Crore
Turnover of Inward Supply	12 Crore
Output Tax Liability	1.80 Crore
Input Tax Credit	2.16 Crore [36(4) Compliant]
Due date of filing Return of Jan 2020, 20 th Feb 2020	

As Accountant was not available 3B was filed late by 5 days. RTP is ready to pay late fees for delay in filing GSTR-3B. Any other consequences for RTP?

If Interest is presumed as payable on Gross = Interest liability = Appx 45,000

If Interest is presumed as payable on Net = Interest liability = NIL

Interest payable on Gross or Net Liability?

Legal provisions : *Interest on delayed payment of tax*

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

Interest payable on Gross or Net Liability?

Legal Provisions

- 2(87) “prescribed” means prescribed by rules made under this Act on the recommendations of the Council;
- 31st GST council meeting – Interest on net basis was prescribed
- Whether such amendment is prospective or retrospective ?
- Whether CBIC is final Interpretation Authority?

Interest payable on Gross or Net Liability?

CBIC View :

- It is incorrect to presume that the ITC amount was already with the Government treasury
- ITC is successfully availed only when the return is filed and not before.
- One of the conditions for availment of ITC was that of filing of returns under Section 39.

Section 75(12)

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

Interest payable on Gross or Net Liability?

CBIC View :

Section 79

- 79 (1) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely.....

(Attachment of Bank account is one of the listed mode)

- Once a delayed payment of tax was made, liability to pay interest on the same becomes automatic, for which no separate proceedings need to be initiated for determining such interest liability

Interest payable on Gross or Net Liability?

Practical Issues

- Portal does not allow to file returns without payment
- Portal issues – 1,50,000 fellow GST citizens
- OTP / DSC issues
- Paid Challan not getting updated in cash ledgers on due date
- No facility for installment even if law provides
- Too many simultaneous compliances

Interest payable on Gross or Net Liability?

Legal Issues

- Where is loss to Revenue if offset is carried out after due date
- Interest is always compensatory – SC
- 31st GST Council meeting – Interest on Net basis
- Law already amended in 2019 Budget – Amendment not yet notified
- In Maharashtra Notified from 1st January 2020 – Later on de notified by way of Ordinance
- 3B is a Return – retrospective amendment from 1st July 2017
- Whether ITC not as good as the tax paid? Many judgments to support this view

Interest payable on Gross or Net Liability?

Legal Issues

- Though ITC may not be off-setted on Portal on due date , offset is already carried out in records statutorily required to be maintained U/s 35. Is this not sufficient compliance?
- If Portal is not allowing offset without filing return, can tax payer be penalized by way of Interest that too on gross liability?
- Can Department collect Interest without following Principal of Natural Justice ?– Section 73 & 74
- Self assessed Interest vs Interest computed by Department. Limited Application of section 79

Interest payable on Gross or Net Liability?

Judiciary view:

- Landmark Lifestyle v. Union of India – High Court accepted the contention of assessee to pay tax on net liability - Stay till next hearing
- Megha Engineering & Infrastructures Ltd.– Review Petition accepted by HC against own order
- Amar Cars Private Limited – High court has stayed recovery of Interest on gross basis
- Bharat bhai Manilal Patel Vs. State of Gujarat - Stay on Gross interest.
- Refex Industries Limited

Interest payable on Gross or Net Liability?

Madras High Court decision of Refex Industries Limited

The specific question for resolution before me is as to whether in a case such as the present, where credit is due to an assessee, payment by way of adjustment can still be termed 'belated' or 'delayed'. The use of the word 'delayed' connotes a situation of deprivation, where the State has been deprived of the funds representing tax component till such time the Return is filed accompanied by the remittance of tax. The availability of ITC runs counter to this, as it connotes the enrichment of the State, to this extent. Thus, Section 50 which is specifically intended to apply to a state of deprivation cannot apply in a situation where the State is possessed of sufficient funds to the credit of the assessee. **In my considered view, the proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee.** The latter being available with the Department is, in my view, neither belated nor delayed.

Interest payable on Gross or Net Liability?

Whether Proviso to Section 50(1) is prospective or retrospective?

“The above proviso, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus, in my view, be read as clarificatory and operative retrospectively.”

Interest payable on Gross or Net Liability?

Whether the interest on delayed filing of the returns arises automatically or on assessment after considering the explanation offered by the assessee?

Whether unilateral attachment of Bank account is permitted without any notice for non payment of Interest?

- Madras HC in Daejung Moparts Pvt Ltd
- Difference of opinion amongst 2 judges
- View of Third Judge

“A careful perusal of sub Sections (2) and (3) of Section 50 thus would show that though the liability to pay interest under Section 50 is an automatic liability, still the quantification of such liability, certainly, cannot be by way of an unilateral action, more particularly, when the assessee disputes with regard to the period for which the tax alleged to have not been paid or quantum of tax allegedly remains unpaid

Therefore, in my considered view, though the liability of interest under section 50 is automatic, quantification of such liability shall have to be made by doing the arithmetic exercise, **after considering the objections of the assessee.**”

Blocking of Credits in Electronic Credit Ledger

Rule 86A : Conditions of use of amount available in electronic credit ledger

W.E.F 26th December 2019

Who can block credits?

The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner

Any Prerequisite before blocking of credits ?

Should have **reasons to believe** that credit of input tax available in the electronic credit ledger has been **fraudulently availed or is ineligible**

Blocking of Credits in Electronic Credit Ledger

4 specified Instances for Reason to believe :

- a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-
- i. issued by a registered person who has been found **non-existent** or not to be conducting any business from any place for which registration has been obtained; or
 - ii. **without receipt** of goods or services or both; or
- b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the **tax charged in respect of which has not been paid to the Government**; or
- c) the registered person availing the credit of input tax has been found **non-existent** or not to be conducting any business from any place for which registration has been obtained; or
- d) the registered person availing any credit of input tax is **not in possession of a tax invoice or debit note** or any other document prescribed under rule 36,

Blocking of Credits in Electronic Credit Ledger

Any Safeguards to protect Interest of Tax payer ?

Officer has to record reason in writing for blocking

Power of Officer:

not allow debit of an amount equivalent to such credit in electronic credit ledger for discharge of any liability under section 49 or for claim of any refund of any unutilised amount.

Impact

ITC will be blocked and therefore not available for Offset / Payment

How to Unblock?

The Commissioner, or the officer authorised by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit. Maximum Time limit – 1 year

Blocking of Credits in Electronic Credit Ledger

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Blocking of Credits in Electronic Credit Ledger

Maximum Period for which such ITC can be blocked

One year from the date of blocking

Any SCN / Notice/E-mail to be served before blocking?

No

Issues

- Eicher Motors decision – ITC is a vested right
- Dai Icchi Karkaria – ITC is indefeasible right
- Section 76 - Tax collected but not paid to Government – SCN but for Rule 86A no such notice. Which crime is bigger?

Rule 36(4) – Cap on ITC

Notification No. 49/2019- CT dated 9th October, 2019

9th October 19 to 31st December 19 – 120% of ITC appearing in 2A

1st January 19 onwards – 110% of ITC appearing in 2A

Tax payer can avail actual ITC or 110%/120% as above which ever is lower

Writ have been filed in Gujarat HC

PIL filed in Supreme court by Mohini Bipinbhai Patel

Arbitrary – No linkage between ITC appearing in 2A and ITC denied

Recent & Future GST Trends

- Proposed GST Returns – Provisional Credits
- B2B E-Invoice
- QR code based B2C Invoices
- Aadhar based verification of Tax payer to weed out Dummy Tax Payers
- Cash rewards to encourage customers to seek invoice
- Re engineering of GST rates to avoid inverted duty structure.
- 60 Lakh Tax payer added



GST Related Provisions in Finance Bill 2020

Transitional Credits – Section 140

Changes:

140. (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law **within such time and** in such manner as may be prescribed:

- Similar changes made in all sub sections of Section 140(2)
- within such time and in such manner as may be prescribed – Changes made in Section 140(3) to 140(9)

Impact:

- Govt taken power to prescribe time limit & manner for transitional credit in terms of sec 140 w.e.f 01.07.2017

Transitional Credits – Section 140

Possible Reason for amendment

- Is it to reopen Tran-1 or
- Is it to nullify adverse court judgement – Guj HC?
- To Validate Rule 117 of CGST Rule

Amendment is retrospective from 1st July 2017

Penalty – Section 122

Wrongdoer &
Beneficiary both liable
for 100% penalty

Original Position

Person Committing following offences shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on

- (i) supplies any goods or services or both without issue of any invoice** or issues an incorrect or false invoice with regard to any such supply
- (ii) issues any invoice or bill without supply of goods or services** or both in violation of the provisions of this Act or the rules made thereunder;
- (vii) takes or utilizes input tax credit without actual receipt of goods** or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- (ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder

Amendment

Any person who retains the benefit of a above transactions and at whose instance such transaction is conducted, shall also be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on

Prosecution – Section 132

- Fraudulent availment of input tax credit without invoice or bill is **cognizable and non-bailable offence u/s 132**

Criminal Procedure code

- *"bailable offence" means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence*
- *"cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, **arrest without warrant***
- *"non-cognizable offence" means an offence for which, and "non-cognizable case" means a case in which, a police officer has **no authority to arrest without warrant***

Prosecution – Section 132

Original Position	Amendment
Whoever commits any of the following offences shall be liable for prosecution	Whoever commits, or causes to commit and retain the benefits arising out of , any of the specified offences shall be liable for prosecution
Clause (c) of Specified offences avails input tax credit using such invoice or bill referred to in clause (b);	avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill

Reason for Change

- To nail real culprits behind bogus billing / Kingpin / Beneficiary
- Dissuade bogus ITC claims by Recipient

Adverse Impact

- Mere claiming of ITC without Invoice may lead to Prosecution (subject to limit of 2-5 Crore)

Changes in Section 122 and 132 effective from
Date to be notified

Underlying Invoice and Debit Note Delinked

Changes

Section 16(4) of CGST act amended to give clarity that time limit for debit note is independent of Underlying Invoice.

Impact

Time limit of taking ITC on Debit note will be counted from date of Debit note irrespective of date of underlying invoices

Changes effective from

Date to be notified

Tax Invoice – Section 31

Changes

- Government can now notify the categories of services or supplies in respect of which tax invoice shall be issued and to make rules regarding the time and manner of its issuance.
- Government can now specify the categories of services in respect of which
 - any other document issued in relation to the supply shall be deemed to be a tax invoice; or
 - tax invoice may not be issued

Impact

- Government can now prescribe rules for E-Invoice
- Some concession may now be given to few category of services from Invoicing requirements

Cancellation and Revocation of Cancellation

Cancellation Registration

- Now Cancellation of Registration taken on Voluntary Registration is possible (earlier possible by way of Rule)

Time limit for Revocation of Cancellation of Registration enhanced

Original Provision

- If Registration is cancelled by department then tax payer can apply for revocation of such cancellation **within 30 days** from service of such cancellation order

Amendment

If Sufficient cause is shown by Tax Payer to :

- Additional commissioner or Joint Commissioner then time limit for application for cancellation will be 60 days (30+30)
- Commissioner then time limit for application for cancellation will be 90 days (30+30+30) days

Removal of Difficulty Order – Section 172

Vide powers were given to Government to pass orders to remove any difficulty in giving effect to any of the provision of the act

- Earlier time limit was 3 years from 1st July 2017
- Revised time limit is 5 years from 1st July 2017
- Similar Changes in IGST Act, Compensation to States Act, UT GST Act.

Impact

Till 30th June 2022, Government can make changes before approval of Parliament

Sch II – CGST Act

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, ~~whether or not for a consideration~~, such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, ~~whether or not for a consideration~~, the usage or making available of such goods is a supply of services;

Word whether or not for a consideration is removed w.e.f. 1st July 2017

Sch II – CGST Act

Rationale for Retrospective Removal

- Transaction without consideration is not a supply unless mentioned in Sch I
- Therefore such transaction if without consideration would not be supply at all
- Sch II is meant for characterization / classification of supply transaction into either goods or services.
- Sch II can't characterize transaction which is not a supply at all.

Consequential changes

Section 2 – Definition

Definition of Union Territory to include UT of Laddakh and UT Dadra and Nagar Haveli and Daman and Diu (Newly merged)

Section 10(2) – Composition Scheme

Following Persons are excluded from the ambit of Composition Scheme

- (I) **Services** not leviable to tax under the Act.
- (II) Interstate Outward supply of **Services**
- (III) Outward supply of **Services** through E commerce Operator

Section 51 – GST TDS

Power Government to make rules to provide for the form and manner in which a certificate of tax deduction at source shall be issued

Provision for late fees for delay in Issuance of TDS certificate removed

Consequential changes

Section 109 – GSTAT

Setting up of Tribunal for UT of Jammu Kashmir and UT of Laddakh

Changes in Section 2, 10, 51 & 109 effective from

Date to be notified

Refund of Cess on Tobacco Products

Original Position

NN 3/2019-Compensation Cess (Rate) dated 30th Sep 2019

Prohibits Inverted duty refund of accumulated credit of Compensation Cess on Tobacco Products w.e.f. 1st Oct 2019

Amendment

Notification is given retrospective effect from 1st July 2017

Impact

No Inverted duty Refund of compensation cess on Tobacco Product from 1st July 2017



Recent Landmark High Court Judgements in GST

Mohit Minerals Vs UOI – Guj (HC)

Facts:

- The Writ Applicant is importing goods on the CIF basis. Transportation of goods in a vessel is the obligation of the foreign exporter. The foreign exporter enters into contract with the foreign shipping line for availing the services of transportation of goods in a vessel. The obligation to pay consideration is also of the foreign exporter.
- The Writ Applicant discharge Customs duty on the imported products at the time of each import and such CIF value includes the value of ocean freight on which customs duty is demanded and paid. The writ-applicant is also liable to pay IGST on Ocean Freight in terms of Notification No.8/2017-Integrated Tax (Rate) and Notification No.10/2017 -Integrated Tax (Rate) and accordingly the **writ-applicant is compelled to pay IGST twice on ocean freight.**

Mohit Minerals Vs UOI – Guj (HC)

Relevant Legal Provisions (Extract):

Section 5(3) of IGST act reads as under:

- Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis **by the recipient of such goods or services or both** and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both
- **“Recipient”** is defined as a person liable to pay consideration, where the consideration is payable for the supply or the person to whom the services are rendered, where no consideration is payable for the supply of service.

Mohit Minerals Vs UOI – Guj (HC)

Relevant Legal Provisions (Extract):

Notification No.8/2017-Integrated Tax (Rate) and Notification No.10/2017 - Integrated Tax (Rate) both dated 28 June 2017 – Sr. no. 10

Services subject to reverse charge:	Person liable to pay GST on reverse charge:	IGST Rate
Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.	5%

Mohit Minerals Vs UOI – Guj (HC)

Submission of Writ Applicant

- IGST levy could not be imposed twice under the same Act.
- When the goods are imported and IGST is levied and collected on the value of goods (coal), which includes the Ocean Freight, the Ocean Freight cannot be taxed as a separate supply as it is part of Composite supply of Coal.
- Deeming fiction for the 'value of taxable service' as 10% of the CIF value of the imported goods via delegated legislation is illegal. Entry 10 of Notification No.10/2017 -Integrated Tax (Rate) is ultra vires to the act.
- Liability to pay reverse charge is on recipient and Importer is not at all recipient

Mohit Minerals Vs UOI – Guj (HC)

Submission of UOI

- **There are two separate taxable events.** levy on the Ocean Freight draws power under Section 5 of the IGST Act, 2017, and that the levy on the import of goods is under Section 3(7) of the Customs Tariff Act, 1975.
- Merely because of the imposition of the levy if the business become uneconomical or may cause any hardship, the same cannot be a ground for striking down the said levy.
- In order to see that the tax is suffered by both, i.e. the Indian Shipping Lines and the Foreign Shipping Lines on the inward transportation goods, the importers are sought to be made liable to pay tax on the service of inward transportation of import cargo, as it was not possible to collect it from the foreign shipping lines entering into a contract with a foreign supplier for transportation of goods to India. notification is not arbitrary and is aimed at providing level playing field to the Indian Shipping Lines.

Mohit Minerals Vs UOI – Guj (HC)

Ruling of GUJ HC

Writ Applicant is not a Recipient

- **Writ-applicant could be said to have neither availed the services of transportation of goods in a vessel nor he is liable to pay the consideration of such service.** Hence, the writ-applicant is not the 'recipient' of the transportation of goods in a vessel service as per Section 2(93) of the CGST Act.
- Section 5(3) provides power to the Government to specify the categories of supply on which the tax shall be paid by the recipient of the supply. The section does not further provide that the Government may also specify the **Any other person** (other than the recipient of supply) liable to pay tax.

Mohit Minerals Vs UOI – Guj (HC)

Ruling of GUJ HC

Entire Transaction is outside India

In the present case, the entire transaction takes place outside the taxable territory, i.e. outside India. The supplier is located outside India, the recipient of the supply is located outside India, the contract for the supply has been entered into outside India, the payment for the supply has been made outside India, the goods have been handed over to the supplier outside India and the transportation, for the most part, takes place outside India. **The mere fact that the transportation of goods terminates in India, will not make such supply of transportation of goods as taking place in India.**

Time of supply for payment is not determinable.

the time of supply of services in case where the tax is payable under the reverse charge basis is the earliest of the date of payment entered in the books of accounts of the recipient or the date of debit in the bank account or sixty days from the date of issue of invoice by the supplier. Thus, a person other than a recipient of supply cannot determine the time of supply as per the provisions of **Section 13(3) of the IGST Act**

Mohit Minerals Vs UOI – Guj (HC)

Ruling of GUJ HC

Determination of the value of supply not possible:

- The value of supply is the **price actually paid or payable** for the said supply and where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply. Thus, a person other than the supplier or the recipient of the supply will not be able to determine the value of supply as such person will not be knowing the price actually paid or payable for the supply.

Writ Applicant is not eligible for ITC if paid:

- In the case of ocean freight services, **the importer of goods is not the recipient of supply of ocean freight services** and may not be able to avail the input tax credit, which is sought to be recovered under the impugned notifications. Thus, the impugned notifications are not in conformity with the object of laws relating to the Goods and Services Tax, i.e. credit shall be available at each stage and the burden of tax shall only be on the customer.

Mohit Minerals Vs UOI – Guj (HC)

Ruling of GUJ HC

Double Taxation:

Double taxation, by way of delegated legislation, when the statute does not expressly provide, is not permissible

Sum and Substance of Ruling:

IGST Notification levying tax on supply of service of transportation of goods by a person in a non-taxable territory to a person in a non-taxable territory from a place outside India upto the customs station of clearance in India and making the petitioner, i.e. the importer, liable for paying such tax, are **ultra vires the provisions of the IGST Act.**

Way Forward?

Whether Import should stop paying IGST on Import of Services or pay and claim ITC?

Paresh Nathalal Chauhan v. State of Gujarat [Guj HC]

Facts:

- Search conducted by GST authorities on residential premises of Writ Applicant on 11th Oct 19 and went on till 18th Oct 19. On 11th October officers asked the parents of the petitioner to present the petitioner; whereupon they had made a phone call to him and stated that he was not picking up the phone and later on Writ Applicant was not traceable.
- Officers had stayed at the premises and had examined the phone calls that were received by the family members and had recorded their phone calls. They had also recorded statements of the family members of the petitioner on 11.10.2019. The record further reveals that the officers who had arrived on the previous day as well as the panchas were relieved by new set of officers and panchas and this cycle continued till 18.10.2019. It appears that thereafter they have been questioning the family members of the petitioner on a day to day basis till 18.10.2019.
- **Family members of the petitioner were at the mercy of the authorised officer and were confined to the searched premises and kept under surveillance and were not permitted to leave the premises without the permission of the authorised officer**

Paresh Nathalal Chauhan v. State of Gujarat [Guj HC]

HC Remarks / Ruling

- Sub-section (2) of section 67 of the GST Acts empowers the proper officer to search and seize goods, documents, books or things secreted at a place. Thus, an authorization is issued qua a place and not a person
- Exercise of search power is a serious invasion is made upon the rights, privacy and freedom of the tax payer, the power must be exercised strictly in accordance with law and only for the purposes for which the law authorises it to be exercised
- Strictures were passed against State Commissioner for shielding wrongdoing of his sub ordinate officers.

Paresh Nathalal Chauhan v. State of Gujarat [Guj HC]

HC Remarks / Ruling

- Sub-section (2) of section 157 of the GST Acts says that no suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under the Act for anything which is done or intended to be done in good faith under the Act or the rules made thereunder. An action like the present one which is not contemplated under any statutory provision and which infringes the fundamental rights of citizens under article 21 of the Constitution of India may not be protected under this section.
- Fact of the case suggest the authorisation was for search and seizure of goods liable to confiscation, documents, books or things and the concerned officer converted it into a search for a person and an investigation, which is not otherwise backed by any statutory provision, such unauthorised action of concerned officers may tantamount to an offence under Indian Penal Code

Pitambar Books Pvt Ltd Vs UOI and Others [Delhi HC]

Facts:

- Writ Applicant is a Exporter of Goods without payment of IGST. Petitioner has made Purchases and availed ITC from November, 2017 to June, 2018. Actual export started only from July 2018 onward.

Bone of contention:

- Petitioner has been deprived of the benefit of availing refund claim of the unutilised input tax credit upto June, 2018
- Exporter of goods, has a substantive right to claim refund of “unutilised input tax credit” and same is denied by way of circular no. 125/2019

Pitambar Books Pvt Ltd Vs UOI and Others [Delhi HC]

Relevant Legal Position (Extract)

Circular no. 125/44/2013/GST dated 18th November, 2019

- The applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, **however, cannot spread across different financial years.....**

Circular no. 37/11/2018 dated 15th March 2018

- *It is hereby clarified that the exporter, at his option, may file refund claim for one calendar month/quarter or by clubbing successive calendar months/quarters. the calendar month(s)/ quarter(s) for which refund claim has been filed, **however, cannot spread across different financial years."***

Pitambar Books Pvt Ltd Vs UOI and Others [Delhi HC]

Relevant Legal Position (Extract)

- Article 286(1) of the Constitution of India which provides that no law of state shall impose, or authorise the imposition of tax on the supply where said supply takes place in the course of export out of the territory of India.
- 54(3) of the said Act provides that a registered person claiming refund of any “unutilised input tax credit” at the end of any tax period, may make an application before the expiry of two years from the relevant date as enabled by Section 54(1).
- Rule 89(4)(F) of CGST rules define the term “relevant period” as the period for which the claim has been filed.
- GST Portal Refund Application form and Rule 89(4) formula restricts the computation of the refund as it captures only “ ITC availed during the relevant period”

Pitambarra Books Pvt Ltd Vs UOI and Others [Delhi HC]

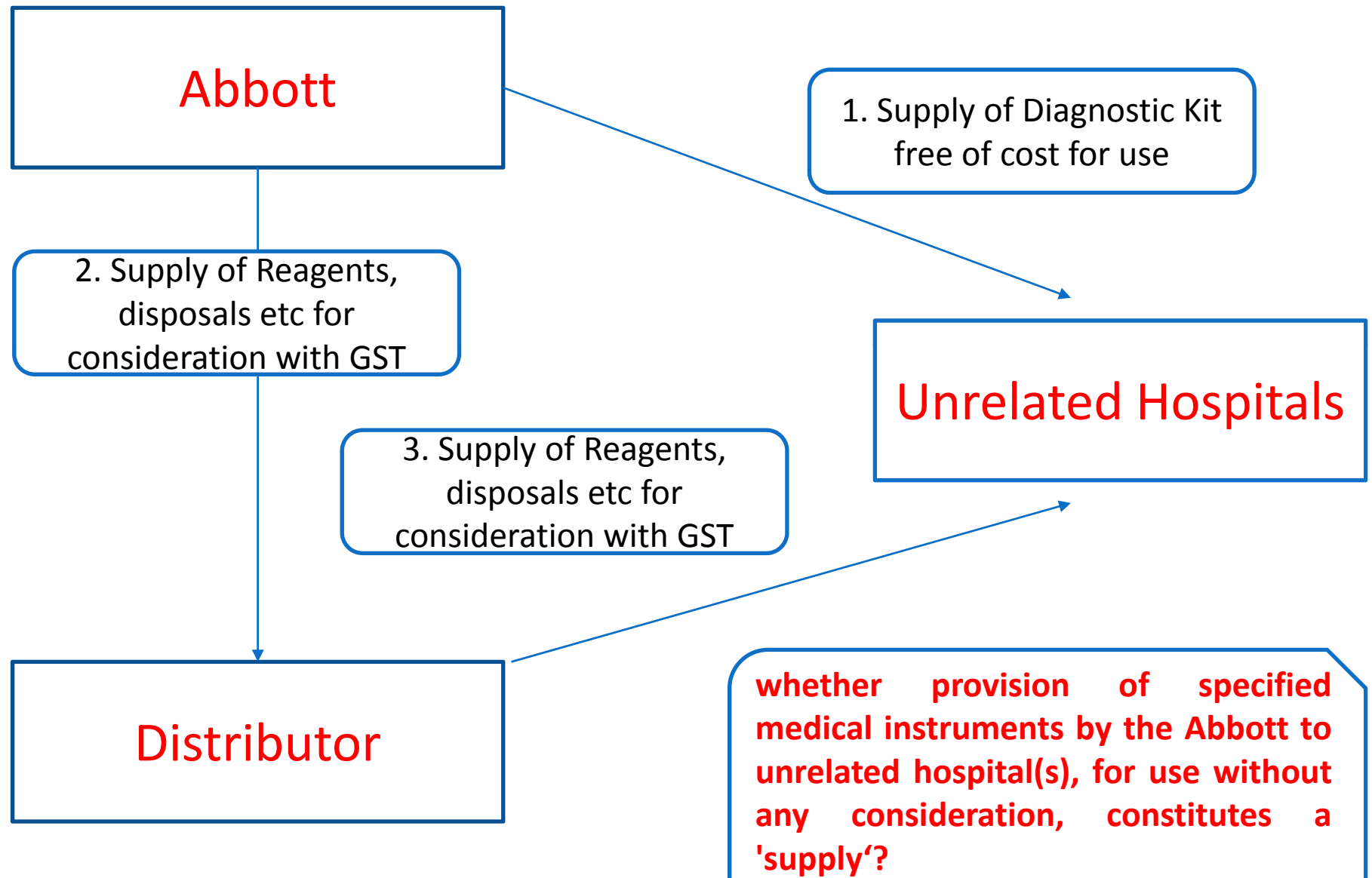
Delhi HC remarks:

- **Restriction pertaining to the spread of refund claim across different financial years is arbitrary.** There is no rationale or justification for such a constraint.
- In exports, availability of the rotation of funds is essential for the business to thrive. Moreover, businesses do not run according to the whims of the executive authorities
- The business world cannot be told when to place orders for exports; when to manufacture the goods for export; and; when to actually undertake the exports

Delhi HC Ruling:

- **Delhi HC stayed the rigour of paragraph 8 of Circular** No. 125/44/2019-GST dated 18.11.2019 till next hearing and also directed government to either open the online portal so as to enable the petitioner to file the tax refund **electronically, or to accept the same manually within 4 weeks from date of Order**

Abbott Healthcare Private Limited (Kerala HC)



Abbott Healthcare Private Limited (Kerala HC)

Facts:

- The petitioner enters into **Reagent Supply and Instrument Use Agreements** with various hospitals, for the supply of medical instruments to the hospital, for their use, without any consideration for a specified period and for the supply of specified quantities of reagents, calibrators, disposables etc. at the prices specified in the agreement, through its distributors on payment of applicable GST
- **Value of instruments** compared to the total turnover of supply of reagents, calibrators and disposables by the distributor over the contract period, is small and **would only be around 20% of the turnover of supply of reagents, calibrators etc.**
- The agreement entered into between the parties also contains a **clause** which provides that if the hospital fails to purchase specified **minimum quantum** of reagents, calibrators etc., then the petitioner is entitled to recover from the hospital an amount equal to the deficit in the actual purchases, vis-a-vis, the minimum purchase stipulated under the contract.
- Reagents etc. is subject to 5% GST.

Abbott Healthcare Private Limited (Kerala HC)

AAR

- That the placement of specified medical instruments to unrelated customers like hospitals, laboratories etc., for their use without any consideration, in the backdrop of an agreement containing minimum purchase obligation of products like reagents, calibrators, disposables etc. for a specified period constituted a **'composite supply'** of the transfer of right to use goods for any purpose which was liable to GST @ 18% [9% CGST + 9% SGST].

AAAR

- Ruling of AAR was upheld

Abbott Healthcare Private Limited (Kerala HC)

View of Abbott:

- The supply effected by the petitioner is of an instrument which is **independent** and distinct from the supply of reagents, calibrators and disposables by the distributor, and hence, the two supplies have to be treated as independent, and not as a composite supply.
- The supply of the instrument cannot be seen as the **Principal supply** in a deemed composite supply, since the value of the instrument supplied during the contract period constitute only about 20% of the value of the reagents/calibrators/disposables supplied during the same contract period.

Abbott Healthcare Private Limited (Kerala HC)

View of Revenue:

- It is apparent that the instrument supplied by the petitioner **cannot function** without the reagent/calibrator/disposables supplied by the distributor of the petitioner.
- When both supplies are taken together instrument being the principal supply, and the reagents constituting the **incidental supply**. Minimum purchase commitment is deferred consideration of right to use.

Abbott Healthcare Private Limited (Kerala HC)

Held by HC:

As per Section 2(30) of the CGST Act, "composite supply" means:

- "a supply made by a **taxable person** to a recipient consisting of **two or more taxable supplies** of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply."
- **Concept of a composite supply would not be attracted in cases where there was more than one supplier**
- Finding as regards composite supply must take into account **supplies as effected at a given point in time on "as is where is" basis**. In particular instances where the same taxable person effects a continuous supply of services coupled with periodic supplies of goods/services to be used in conjunction therewith, one could possibly view the periodic supply of goods/services as composite supplies along with the service that is continuously supplied over a period of time.

Abbott Healthcare Private Limited (Kerala HC)

Held by HC:

- AAR went beyond the terms of reference in embarking upon an enquiry as to whether the supplies effected under the agreement between the petitioner and the customer hospitals/laboratories, constituted a composite supply.
- Matter reminded back to AAR for fresh orders.

Questions / Thanks

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