

GST NEWSLETTER

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GST Newsletter: Compiled And Edited By

INCORP INDIRECT TAX DIVISION

COMPILED BY

ARTICLE - CA MEET THAKKAR &
CA AVINASH PUNJABI
CASE LAWS - CA MILAN SHAH & CA URMI MEHTA
NOTIFICATIONS - NAVEENA KUMARI

EDITED BY
CA PRASANNA KS

ARTICLE

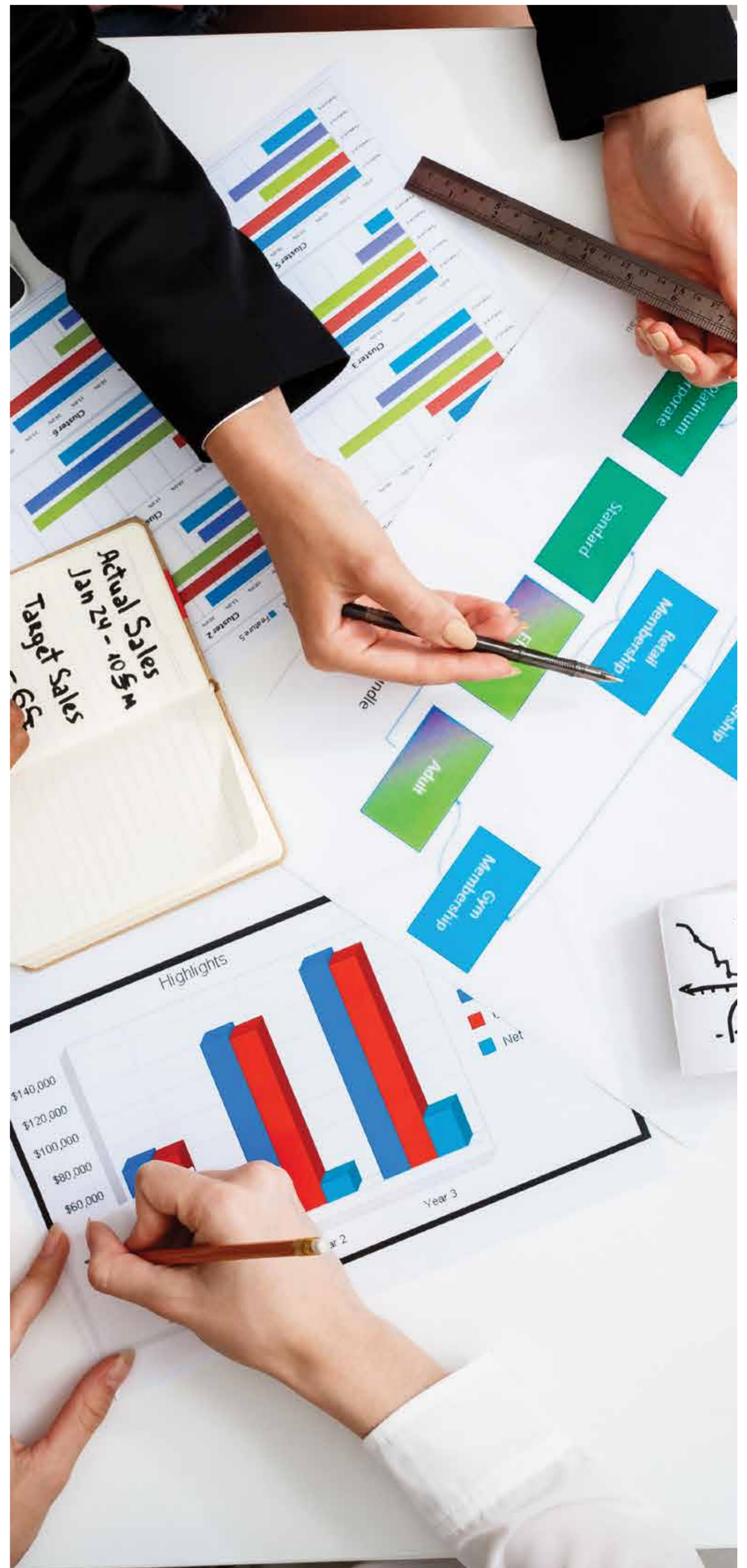
Litigation In GST – A Brief On Important Litigations And Steps To Handle A Notice


GST is still a law in its nascent stages with numerous changes and compliances that taxpayers are required to make on a periodical basis. While a substantial part of indirect taxes relates to return filing, tracking vendor data, analysing the input tax credit eligibility, preparing e-invoicing and e-way bills; tax assessments/litigation and departmental audits are also becoming as crucial to businesses as they involve the government and tax departments.

Herewith, we are providing a compilation of a few cases of importance :

✔ Carry Forward Of Transitional Credits From The Previous Indirect Tax System To GST Era

With the transition to GST from the erstwhile Indirect tax laws, the credit under earlier laws were allowed to be carried forward to GST for utilisation. However, the process was not easy or error-free. Credit worth hundreds of crores of taxpayers was stuck as they were unable to file the transitional credit form due to technical issues on the GST portal. **While small taxpayers were weary of the litigation costs involved as compared to the transitional credit they might lose; large taxpayers with substantial credits chose to file writ petitions in courts.** Eventually, various cases filed in High Courts were decided in favour of the taxpayers but the GST department didn't act upon the ruling by making amends on the portal. It took the Apex court's intervention to ensure that the vested right of taxpayers is allowed to them irrespective of whether they were party to any writ or redressal committee.





Thankfully, the Supreme Court in case of **Union of India vs. M/s Filco Trade Centre Pvt. Ltd. and Anr.** SLP (C) No. 32709-32710/2018 has directed the GST department to open the GST portal for a period of two months to enable taxpayer to claim the transitional credits by way of filing form Tran-1 and Tran-2.

The decision will help thousands of taxpayers who were struggling to get the credit with respect to transitional rights where were unclaimed due to technical glitches or non-technical reasons.

✔ **Pre-deposit Of Tax Through Electronic Cash Or Credit Ledger**

In case of **Jyoti Construction v. Deputy Commissioner of CT & GST [2021] 131 taxmann.com 104 (Orissa)**, the petitioner filed a writ petition before the Orissa HC against the Revenue 's rejection of their appeal on the grounds that the pre-deposit was paid by debiting the Electronic Credit Ledger and not from Electronic Cash Ledger.

In this case, the Orissa HC directed the petitioner to pay the pre-deposit from cash but it declined to answer as to how the amount which was debited from ECrL will be refunded to the appellant.

It's to be noted that in the erstwhile Service Tax era, pre-deposit could be paid through the reversal of credit and the same was also upheld in **M/s Dell International Services India Pvt. Ltd. vs Commissioner of Central Tax**.

Further, CBIC issued a circular (No. 172/04/2022 dated 6th July 2022) to clarify the use of electronic credit ledger for payment of pre-deposit which has been relied by many High courts in favour of tax payers. However, the tax fraternity is indecisive as the circular did not mention the specific term 'pre-deposit' in the clarification making it difficult to understand whether the revenue would allow payment of pre-deposit by way of debiting ECrL or not.

Generally, pre-deposit is the first step to any litigation. A condition like the one stated by the Orissa HC can discourage taxpayers to litigate on rightful matters. Moreover, if the status quo is maintained for long, taxpayers across the country may find justice to be expensive as now they would be required to pay the pre-deposit upfront in cash for filing any appeals. This impacts small, and medium industries which form a significant part of the economy the most. With the mammoth financial stakes involved in litigation, refusal to allow payment of pre-deposit through utilisation of credit would only make litigation expensive and unaffordable for a majority of the taxpayers of this country.

In a recent Right to Information (RTI) filed on a similar question, the Supreme Court replied stating that approx. INR 3,000 cores is currently lying with the Apex Court as a deposit. The amount itself speaks the stakes that are involved here.



✔ **Payment Of Interest Liability Under GST - Retrospective Amendments Under GST Law:**

With the passage of time, the lawmakers are realizing the lacunae in drafting the GST laws. Section 50 pertaining to levy of interest on delayed payment of tax had been a contentious provision since its inception. The tussle regarding the manner of computation of interest liability, i.e., on gross tax liability or net tax liability was litigated for long time which is evidenced from the contrary decisions pronounced by various High Courts.

The Hon'ble Telangana High Court at Andhra Pradesh in the case of **Megha Engineering & Infrastructures Ltd. vs. Commissioner of Central Tax, Hyderabad** held that the liability to pay interest under section 50 of the CGST Act, 2017 will not be limited to the net tax liability and instead, the interest would be payable on the gross tax liability including the portion of input tax credit available for set off. However, the Hon'ble Madras High Court differed in the case of **Refex Industries Ltd. vs. The Assistant Commissioner of CGST & Central Excise** wherein it was held that interest can be levied only on belated 'cash' component of tax but not on 'ITC' component available for set off.

The issue was finally resolved by the GST Council in its 31st Meeting held on 22.12.2018 whereby in-principle approval for amendment to be made in the section 50 of the CGST Act, 2017 was given so as to provide that interest should be charged only on the net tax liability of the taxpayer, after taking into account the admissible input tax credit, i.e. interest would be leviable only on the amount payable through the electronic cash ledger.

The government took considerable time to implement this amendment and give retrospective effect to it by way of insertion of proviso to section 50(1) in the Finance Act, 2021 and made it effective from 01.07.2017, but the same is yet to be notified. The government, however, has ensured that w.e.f. 01.06.2021, interest is liable to be paid only on the cash component of GST and not on the tax paid through ITC vide Notification No. 16/2021-Central Tax dated 01.06.2021.


✔ **What Is The Step Wise Process For Litigation Under GST?**

The general GST litigation process can be broadly summarized as under:

- **Analysing the Notice/ SCN/ Order.** After receiving the notice or show cause notice (SCN) from the GST department, it is important for the company to analyse it and verify the veracity of the requests or allegations.
- **Briefing the company and discussing the way forward:** The next step is to prepare the company brief and decide how to deal with the notice, and make a plan of action on handling the case.

- **Collating required data/ information/ reconciliations:** In order to prove your company's case, it's pertinent to start gathering evidence, documents, data and related information to be produced before the officials. Care has to be taken to ensure that the details provided favour the taxpayer and contribute to a positive outcome of the case.
- **Verifying and validating the aforesaid data/information:** After collecting the data, it is also necessary to verify and validate it so as to maintain accuracy. Irrelevant data and information should strictly be avoided. In fact, professional acumen is needed to identify what sort of information has to be submitted as supporting and what should not be.
- **Verifying and validating the aforesaid data/information:** After collecting the data, it is also necessary to verify and validate it so as to maintain accuracy. Irrelevant data and information should strictly be avoided. In fact, professional acumen is needed to identify what sort of information has to be submitted as supporting and what should not be.
- **Drafting suitable Reply/Appeal after in-depth research for legal precedence:** Once the information and documentation is in place, now you need to draft a suitable reply to the notice received. Drafting must be done with care and the focus must be on the language used. A well drafted reply / appeal not only ensures that the department's allegations are disproven but also mounts a good defence with facts and citations.



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- **Submitting the Reply/Appeal:** Once the reply or your appeal is ready, you need to submit it to the department. The replies are currently allowed to be submitted through both online and offline means. In some cases, such as refunds, the submission of replies is almost entirely online in the GST portal. However, in certain cases, off-line replies need to be filed, either by physical submission at the department office or through post.
 - **Appearance before Adjudicating Authority/Commissioner (A)/Tribunal:** The last part of the process is taking part through personal appearance or through authorized representative before the Adjudicating Authority to defend your case.
 - **Receipt of the order.** The outcome of the above steps results in either the notice being resolved by the jurisdictional officer or receiving an order from the authorities. A well-handled case will ensure a quick and favourable outcome to the taxpayer and sometimes, may also become a case precedent for other taxpayers to cite in their litigations.

Conclusion

Litigation is an expensive but crucial affair of any law especially tax laws. The costs of litigation extend to not just the taxes demanded, but also to possible interest and penalties, cost of pre-deposits to be kept till the adjudication, and of course the professional fees to be paid to your counsels. However, litigation cannot be shied away from even if the taxpayers have abided with the law. Litigation, when handled ably and professionally can help in speedy disposal of cases and reduce the costs involved. Further, the best method of avoiding litigations is to ensure that your businesses are fully compliant and have taken all the necessary steps to stay compliant.

CASE LAWS

Forest Permit Fee Is Liable Under RCM As Consideration For Tolerating An Act - Telangana AAR

Facts Of The Case

The Applicant M/s. Singareni Collieries Company Limited is entering into contracts with a host of vendors/suppliers for extraction of coal. Under rule (3) of State Forest produce transit rules they are liable to pay a certain amount to move the mined coal through the forest area as permit fee at the rate of Rs. 10 per ton of coal transported.

The applicant has sought advance ruling for:

- Whether they are obliged to pay GST on the forest permit fee under reverse charge mechanism?
- If GST is payable on forest permit fee paid by the Applicant, can such services received be classifiable under heading 9973 of Notification No. 11/2017 Central Tax (Rate) dated 28th June,2017 and thus be exigible to a lower rate of tax for the period prior to 1-01-2019?

Provision Of Law


As per Entry 5 of notification 13/2017, 'Services supplied by the Central Government, State Government, Union territory or local authority to a business entity *excluding*, -

- Renting of immovable property, and
- Services specified below -
 - Services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority;
 - Services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;
 - Transport of goods or passengers.

are taxable to reverse charge basis.

Ruling Of AAR

The learned Telangana AAR held that-

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- GST is payable on forest permit fee on reverse charge basis. The consideration received is taxable on reverse charge basis vide the service entry at Serial No. 5 of Notification No. 13/2017 dated: 28-6-2017. In the present case, forest department is collecting transit fee to allow the transit of vehicles carrying coal through the forest area, thus this is covered under entry 5(e) of the Schedule II to the CGST Act, 2017 wherein 'to do an act' is deemed to be a service.
 - The supply is to be classified as tolerating to do an act as discussed above and is to be treated as service as per entry 5(e) of the schedule II to the CGST Act, 2017. The forest department's act of allowing such vehicles through forest area are not classifiable under heading '9973' of Notification No. 11/2017 as the same relate to 'Leasing or rental services without an operator'.

Exemption On Medical Insurance Premium And Vehicle Insurance Services Provided To Metropolitan Water Supply And Sewerage Board - AAR Telangana

Facts Of The Case

The Applicant M/s. Hyderabad Metropolitan Water Supply and Sewerage Board have paid medical insurance premium taken to provide health Insurance to the employees, pensioners and their family members and Vehicle insurance Policy taken to provide Insurance to the vehicles owned by the Board. In their opinion they are exempt from paying GST in view of the Entry No. 3 of the Notification No. 12/2017 - Central Tax (Rate) as they are a local authority / Municipality.

Therefore, the applicant has sought advance ruling on the following:

- Is Medical insurance premium taken to provide health Insurance to the employees, pensioners and their family members, eligible for exemption?
- Is Vehicle insurance Policy taken to provide Insurance to the vehicles owned by the Board, eligible for exemption?



Provision Of Law

As per Serial no. 3 of Notification No. 12/2017, pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority “by way of any activity in relation to any function” entrusted to a municipality under article 243W of the Constitution of India is eligible for exemption from GST.

Under the Article 243W of Constitution of India, local authority or a Governmental authority may be entrusted with the responsibilities for:

- Preparation of plans for economic development and social justice.
- Performance of functions and implementation of schemes in relation to matters listed in 12th schedule.

Under the schedule 12 to Constitution of India, the relevant functions and schemes are as follows:

- Water supply for domestic, industrial and commercial purposes.

Ruling Of AAR

The learned Telangana AAR held that –

- The applicant is procuring medical insurance services to their employees and their family members. Thus, **there is no direct relation** between the insurance services procured by the applicant and the functions discharged by them under Article 243W read with schedule 12 to the Constitution of India. Therefore, these services do not qualify for exemption under Notification No. 12/2017.
- Vehicle insurance policies procured by the applicant for the vehicles owned by the board qualify for exemption if they are **directly used to provide services under Schedule XII of the Constitution**. However, if they are used for transportation of employees/board members/other persons they will not have direct relationship to functions discharged under Article 243W and therefore will not qualify for exemption under Notification No. 12/2017.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF OCTOBER 2022

✔ One Central Tax Notification. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to extend the due date of filing FORM GSTR-3B for the month of September, 2022	21/2022- Central Tax dated 21.10.2022

DUE DATES OF GST FOR THE MONTH OF NOVEMBER 2022

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7	8	9	GSTR-7, GSTR-8 10	* GSTR-1 11	12
* IFF(Optional) Oct 2022, GSTR-5 & GSTR-6 13	Generation of Form 2B 14	15	16	17	18	19
* GSTR-3B & GSTR-5A 20	21	22	23	24	25	26
27	28	29	30			

* Monthly returns for taxpayers with Annual Turnover more than Rs. 5 Crores or Taxpayer who has opted Monthly return option.

* Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return monthly payment option (QRMP).

Note-Option to File TRAN-1 and TRAN-2 will be open for 2 months up to 30th Nov 2022



CONTACT US

Mumbai Address

2nd Floor, Gita Building,
Sion Circle, Sion (East),
Mumbai – 400022

Bangalore Address

No.8, 3rd Floor,
VK COMMERCE, 3rd Main
Rajajinagar 6th Block, Opp.
IT Park, Bangalore - 560010

 +91 7738066622

 info@incorpadvisory.in

 www.incorpadvisory.in

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