E LEGAL NEWS LETTER

DELHI GST PROFESSIONALS GROUP

FIFTH EDITION: MAY 2025

LEGAL NEWS LETTER

DELHI GST PROFESSIONALS GROUP

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@ Praveen Khandelwal

MESSAGE FROM PATRON IN CHIEF PRAVEEN KHANDELWAL (MP)

Namaskar ji,

How do I begin, I have no words to express my happiness for the work you all are doing under the guidance of my friend Sushil Verma, you call SV Sir. What an unimaginable GST Moot Tribunal you all set up at Constitution Club, New Delhi on 5th May 2025 under the aegis of CAIT. As I have already expressed, I had never seen such an amazing work by any Association and that too without any consideration. Well, the exemplary leadership this Group is providing to the rest of the country will be very beneficial for all younger professionals – Advocates, CAs or Company Secretaries – and I want that to happen. From all over India CAIT affiliated Associations and their professionals kept calling CAIT Team congratulating the unparalleled deliberations that they had never experienced. Well-done, DGST Team and you all deserve a salute for taking this bold initiative.

I never felt that the proceedings were before a moot Tribunal, I thought it was a real High Court like proceedings, the Judges questioning both the parties well prepared in facts and in law, the appellants counsels, who were all first timers, not giving any leeway and sticking to their legal and factual issues and the Government Counsel, SV, firing all cylinders and showing no sympathy for the young professionals. And over 200 professionals in formal dresses sitting and standing were wonder struck and watched the proceedings unfold in a deafening silence. I did not see any one moving from their seat till I was there.

Surely, I want this to continue whatever the cost and effort it may require on my part, on the part of the CAIT and on the part of SV and his team. This is professional service this Group must take lead in and do a wonderful education spread all across – even if many of you have to travel, spend days and train youngsters in far flung areas of India where such formalized training facilities do not exist. Remain on the move.

I spoke to SV. He told me on 7th June there is a second moot GST Tribunal on "Input Tax Credit Mechanism" and for a full day. And 6 new CAs and Advocates are added to be trained after interviews. And he further told me that 4 more GST Moot Tribunals will take place on topics like Refunds, Works Contracts, Supply and valuation and Penalties and Prosecution. I could only say such an initiative and effort can create history and it is creating. OF COURSE I SHALL CHAIR THESE SESSIONS TOO AND AM LOOKING FORWARD TO IT.

And the most astonishing issue is that there is no charge to any one and our Group is managing on its own even for break-fast, lunch and infrastructure. Such an pro-bono approach and by professionals is beyond imagination of most in this field.

For the young lawyers and CAs, I can only say what they made us experience through their maiden arguments was something unimaginable. Well prepared, well dressed, well-groomed and precise and forceful arguments were a treat to watch. They were not over-awed by such a momentous occasion and were answering to the Bench as clearly and as fearlessly as was required notwithstanding whether the case they were handling was bad or good. That is being professional.

Another highlight of this experience was the respect this Group has for the senior members of the fraternity and equally important is that how the senior members motivated the team. Shri H.C. Bhatia was indeed very gracious to praise all of you and it was an amazing experience to watch him speak and laud the efforts of this Group. I would like to say a big Thank You to him.

Well E Newsletter is again on time notwithstanding the busy schedules all the Team Members had due to various events happening. It is indeed such a beautiful piece and I do read most of it as all other in India read.

Before concluding I would be failing if I do not say about the exemplary organizing capacity and leadership of Narender Ahuja, Group Convenor. Well done Narender ji. Keep adding value to this field as much as you can.

PRAVEEN KHANDELWAL.

@ SV

MESSAGE FROM EDITOR IN CHIEF

Dear Friends,

DGST Group – I must say Zindabad because you all have done something what others could not even visualize. The passion, the enthusiasm, the preparedness, the legislative drafting, the training, the opening and closing of arguments, the dress, the humbleness and arguing power- displayed by the new Arguing Counsels keep the audience of over 200 professionals on the edge. Not a soul moved for five hours. And the Bench Members – Rajesh Khurana ji, K P Singh ji and Dr. Rakesh Kumar ji – looked far better Tribunal Members than I have ever experienced. Absolutely kind, ready with facts and with law and showed no favor to either party. Their grilling power indeed taught all of us the court craft that these Moot Tribunals should be doing. Well, all the nine counsels did such an amazing work that I personally could not have foreseen when this concept swept my mind and we started to execute this idea. Congratulations.

And our Patron in Chief PK Sir, on his own, did not allow me to host this first Moot Tribunal. He was so much enthusiastic that he virtually ordered me that SV this first Moot Tribunal CAIT will host wherever DGST Group wanted. And all of us chose Constitution Club and on 5th May 2025 all of you indeed created history, if I may say so.

And our friend Vineet Singhal, CA by profession came on his own to host this entire proceeding beautifully on You Tube and where thousands of professionals have already experienced this epic event.

My special thanks to Renu Sharma, Rashmi Jain, Vikas Mittal, B. B. Dewan and Narender Ahuja to organize such a wonderful infrastructure and Court room along with beautiful Trophies and Certificates. The treatment given to Guests was exemplary as this Group should always do.

And we all were blessed by PK Sir in the best possible manner, And H C Bhatia Sir was an icing on the cake – such beautiful words he spoke for the work you all do and motivated all of us. A big salute to them!

In my view the entire mix of professionals Advocates, CAs, ICWAs, Companies Secretaries and traders came from all across India – and this is the spirit of this Group. No discrimination between professionals and education is the only focus we all have together.

Well, five more Moot Tribunals, get ready for an exciting five months further.

E Newsletter – ready in time.

SV

@NARENDER AHUJA

MESSAGE FROM CONVENOR

Dear Readers,
Greetings of the day.
This group is achieving something that others could not think of. After the successful organizing of a Mega Conference on 05.04.2025 at The New Delhi Convention Centre, New Delhi, we organize 1st ever GST Moot Tribunal. We got an overwhelming response for this GST Moot Tribunal as it was attended by more than 200 professionals including CAs, Advocates & professional from other fields.

We had discussed 9 live GST Appeals where the 9 first time professionals argued their matters relating to the suo-moto Cancellation of GST registration by the proper officers. Our mentor and soul of the Group, SV sir, has trained all the 9 appellants. They were called upon in his office to give an immense training.

All the appellants did a wonderful job and drafted their appeals beyond expectations. The appellants were as confident in their arguments as they were appearing for a long time.
All credit goes to the SV sir who took this initiative to trained young and other professionals who wish to start their litigation practice.

This Moot Tribunal was sponsored by the Confederation of All India Traders (CAIT) and our group was only a knowledge partner. The CAIT led by their General Secretary, Sh. Praveen Khandelwal Ji who is also the patron in chief of our group did a remarkable job to spread the knowledge to the various cities. The Event was attended by various prominent personalities from CAIT including its President Sh. Vipin Ahuja ji and Secretary Sh. Ashish Grover Ji.
CA Vineet Singhal took the initiative to record the event and put it on you tube, which was watched by over 800 persons across the country.

I wish to thank the whole team of the CAIT and all the professionals who took their time out of their busy schedule to make this mega event a grand success. I salute the vision of SV sir who whole heartedly work hard for this event and trained the young professionals including me.
I wish to special thanks to the participants who came across from different parts of the country to attend the event in large numbers and didn't move from their chair for the larger part of the day.

LONG LIVE DGPG.

@NARENDER AHUJA

@Sushil K. Verma
Advocate

''Delay in Filing Appeal Can Only Be Condoned By Way Of an Exception and Not by way Of A Rule"

The Courts are clear now that when a litigant applies to condone the delay in the filing of an appeal, then they should also explain why the appeal was not filed within the limitation period itself. In other words, an explanation of the delay from the period when the limitation ended is not sufficient. They have to explain why the appeal was not filed before the expiry of the statutory period of limitation provided under the law and that is tough now.

The laws of limitation are founded on public policy, in order to prevent the cruelty of long dormant claims. However, Section 5 of the Limitation Act 1963 (Act) provides for a discretionary power to the courts to condone the delays, as a matter of concession, if a party provides a *"sufficient cause"* that hindered them from filing the appeal or application on time.
The law of limitation is founded on public policy. It is enshrined in the legal maxim "interest reipublicae ut sit finis litium" i.e. it is for the general welfare that a period of limitation be put to litigation. The object is to put an end to every legal remedy and to have a fixed period of life for every litigation as it is futile to keep any litigation or dispute pending indefinitely. Even public policy requires that there should be an end to the litigation otherwise it would be a dichotomy if the litigation is made immortal vis-a-vis the litigating parties i.e. human beings, who are mortals.

Section 3 of the Limitation Act in no uncertain terms lays down that no suit, appeal or application instituted, preferred or made after the period prescribed shall be entertained rather dismissed even though limitation has not been set up as a defence subject to the exceptions contained in Sections 4 to 24 (inclusive) of the Limitation Act.

The appeal which is preferred after the expiry of the limitation is liable to be dismissed. The use of the word 'shall' in the aforesaid provision connotes that the dismissal is mandatory subject to the exceptions. Section 3 of the Act is peremptory and had to be given effect to even though no objection regarding limitation is taken by the other side or referred to in the pleadings. In other words, it casts an obligation upon the court to dismiss an appeal which is presented beyond limitation. This is the general law of limitation.

The exceptions are carved out under Sections 4 to 24 (inclusive) of the Limitation Act Section 5 which empowers the courts to admit an appeal even if it is preferred after the prescribed period provided the proposed appellant gives 'sufficient cause' for not preferring the appeal within the period prescribed. In other words, the courts are conferred with discretionary powers to admit an appeal even after the expiry of the prescribed period provided the proposed appellant is able to establish 'sufficient cause' for not filing it within

time. ***The said power to condone the delay or to admit the appeal preferred after the expiry of time is discretionary in nature and may not be exercised even if sufficient cause is shown based upon host of other factors such as negligence, failure to exercise due diligence etc.***

The Supreme Court has consistently held that It may also be important to point out that though on one hand, Section 5 of the Limitation Act is to be construed liberally, but on the other hand, Section 3 of the Limitation Act, being a substantive law of mandatory nature has to be interpreted in a strict sense.

The Courts have always held that it must be borne in mind that while construing 'sufficient cause' in deciding application under Section 5 of the Limitation Act, that on the expiry of the period of limitation prescribed for filing an appeal, substantive right in favor of revenue accrues and this right ought not to be lightly disturbed. The revenue treats the matter closed and can recover from the defaulting tax payer.

And we lawyers must remember that to condone the delay beyond the statutory limitation is discretionary power vested in the appellate courts or tribunals or authorities. The Supreme Court) way back in 1962) in the case of Ramlal, Motilal And Chhotelal vs. Rewa Coalfields Ltd (A.I.R. 1962 SC 361) has emphasized that even after sufficient cause has been shown by a party for not filing an appeal within time, the said party is not entitled to the condonation of delay as excusing the delay is the discretionary jurisdiction vested with the court. ***The court, despite establishment of a 'sufficient cause' for various reasons, may refuse to condone the delay depending upon the bona fides of the party.***

Many of us take the hardship that may be caused to the tax payer if delay is not condoned notwithstanding the pre-deposit made, such an argument is also not sufficient for seeking condonation. In Maqbul Ahmad and Ors. vs. Onkar Pratap Narain Singh and Ors., it had been held that the court cannot grant an exemption from limitation **on equitable consideration or on the ground of hardship**. The court has time and again repeated that when mandatory provision is not complied with and delay is not properly, satisfactorily and convincingly explained**, it ought not to condone the delay on sympathetic grounds alone.**

Also one person's delay condoned on a particular ground does not mean that this would set as a precedent for this law of limitation. In this connection, a reference may be made to Brijesh Kumar and Ors. vs. State of Haryana and Ors.(A.I.R. 1935 PC 85 5 2014) the Supreme Court further laid down that if some person has obtained a relief approaching the court just or immediately when the cause of action had arisen, other persons cannot take the benefit of the same by approaching the court at a belated stage simply on the ground of parity, equity, sympathy and compassion.

We must be careful to be not to be over enthusiastic even if the High Court allows the condonation of delay. Supreme Court can turn such delay condonation if the High Court did not exercise the discretion carefully keeping in view the strict law of limitation. In Lanka Venkateswarlu vs. State of Andhra Pradesh & Ors. where the High Court, despite unsatisfactory explanation for the delay of 3703 days, had allowed the applications for condonation of delay, the Supreme Court held that the High Court failed to exercise its discretion in a reasonable and objective manner. High Court should have exercised the

discretion in a systematic and an informed manner. **The liberal approach in considering sufficiency of cause for delay should not be allowed to override substantial law of limitation. The Court observed that the concepts such as 'liberal approach', 'justice-oriented approach' and 'substantial justice' cannot be employed to jettison the substantial law of limitation.**

We lawyers should also keep in mind that merits of the case have no connection with the applications for condonation of delay as the authority has not gone into the merits at all and higher courts cannot examine such issues that are not examined below. It has also been settled vide State of Jharkhand & Ors. vs. Ashok Kumar Chokhani & Ors.

(6 (2011) 4 SCC 363 , that the merits of the case cannot be considered while dealing with the application for condonation of delay in filing the appeal.

In Basawaraj and Anr. vs. Special Land Acquisition Officer the Supreme Court held that the discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. The expression 'sufficient cause' as occurring in Section 5 of the Limitation Act cannot be liberally interpreted if negligence, inaction or lack of bona fide is writ large. **It was also observed that even though limitation may harshly affect rights of the parties but it has to be applied with all its rigour as prescribed under the statute as the courts have no choice but to apply the law as it stands and they have no power to condone the delay on equitable grounds.**

Para 12 of the decision clearly informs us the harshness of any inaction on the part of the litigant or the professionals where the meritorious matter may be done with and equity will have not role to play whatsoever.

"Paragraph 12 reads as under: "12. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The Court has no power to extend the period of limitation on equitable grounds. "A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim dura lex sed lex which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute."

And in para 15 the law was crystallized and we lawyers must always remember this para while drafting applications for condonation of delay:
"15. The law on the issue can be summarised to the effect that where a case has been presented in the court beyond limitation, the applicant has to explain the court as to what was the "sufficient cause" which means an adequate and enough reason which prevented him to approach the court within limitation. In case a party is found to be negligent, or for want of bona fide on his part in the facts and circumstances of the case, or found to have not acted diligently or remained inactive, there cannot be a justified ground to condone the delay. ***No court could be justified in condoning such an inordinate delay by imposing any condition whatsoever. The application is to be decided only within the parameters laid down by this Court in regard to the condonation of delay. In case there was no sufficient cause to prevent***

a litigant to approach the court on time condoning the delay without any justification, putting any condition whatsoever, amounts to passing an order in violation of the statutory provisions and it tantamounts to showing utter disregard to the legislature."

The biggest violator of law of limitation is the Government and its agencies and the Courts are now taking a strict view about the callous attitude of such agencies when they take condonation as granted. In a recent judgement delivered in December 2024, *State of Madhya Pradesh v. Ram Kumar Choudhary* (the Supreme Court (**SC**) refused to condone the delay of the state party citing its callous attitude.

SUPREME COURT AND GOVERNMENT MACHINERY – A CURIOUS CHROLONOLOGY

The lenient approach of the courts while dealing with state parties can be traced back to *Collector Land Acquisition v. Mst. Katiji* given by the SC. Taking a sympathetic view towards government entities, the court acknowledged the impersonal machinery and bureaucratic delays. While the SC justified its approach by emphasizing the collective cause of the community, it inadvertently opened the floodgates for future prayers for condonation based solely on the inefficiencies inherent in governmental machinery.

Relying on this, the Andhra High Court, in *Government of AP v. Sathaiah,* attributing the entire delay *"institutional"*, went on to list down factors which the courts are "*bound"* to consider while adjudging such cases. Further, the SC's judgement in *State of Haryana v. Chandra Mani and Others,* relying on the same, condoned the delay on grounds of "*impersonal machinery and inherited bureaucratic methodology."*

WE ALL KNOW THAT condonation of delay being a discretionary power, the party has to explain *"sufficient cause"* while praying for the same. While there are no fixed criteria for granting it, **delays caused by gross negligence, deliberate inaction or lack of bona fides are generally not excused**. While drafting applications for such condonation of delays, we must keep these issues in mind and keep away from defending such matters that the Courts may not lend a considerate ear at all.

When there are delays on the part of the revenue – whether in filing applications or cross objections carefully read whether delay can be condoned as per law and if yes than examine the reasons given. Strongly challenge such impersonal machinery issues, negligence, red-tapism in moving files up and down and vehemently argue before the Court that delay cannot be condoned on such grounds.

Now the apex court has almost taken a consistent approach of not allowing condonation of delays on such flimsy grounds and there are a number of judgments to support such an approach. And we as lawyers must carefully read these judgments and try to the cases of the Government dismissed on this ground alone.
In Commissioner of Wealth Tax, Bombay v. Amateur Riders Club, Bombay, delay of 264 days in filing the SLP was refused to be condoned, noting the limits to the argument of *"proverbial red tape."* The principle was further followed in *Pundlik Jalam Patil (D) By LRS v. Exe. Eng. Jalgaon Medium Project & Another* wherein the SC, setting aside High Court's order to condone a delay of 1,724 days, ruled that the law of limitation is the same for citizens and governmental authorities. Similarly, in *Postmaster General and others v. Living*

Media India Limited, an application for the condonation of delay of 427 days in filing an SLP was dismissed, warning against the anticipated benefit for government departments.

In the 2020 case of *State of Madhya Pradesh v. Bherulal* the court strongly criticized bureaucratic inefficiency and refused to condone a 663-day delay going so far as to suggest that if government machinery is incapable of adhering to limitation periods, a separate extended timeline for filing might as well be established for government authorities

The Supreme Courts and High Courts now have explicitly rejected the argument of "*special leeway to government entities,"* since it would result in setting a wrong precedent. In *Ram Kumar*,(referred to in second para of this article) the SC not only refused to condone a delay of 1,788 days on part of the Government but also imposed costs, citing the callous attitude of the state machinery.

In Postmaster General and others v. Living Media India Limited, (2012) 3 SCC 563, this Court, while dismissing the application for condonation of delay of 427 days in filing the Special Leave Petition, held that condonation of delay is not an exception and it should not be used as an anticipated benefit for the government departments. In that case, this Court held that unless the Department has reasonable and acceptable reason for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process cannot be accepted.

THE KEY PRINCIPLES WE MUST KEEP IN MIND AS LAWYERS.
In the case of Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy & Others, (2013) 12 SCC 649, the Supreme Court made the following observations:

"21. From the aforesaid authorities the principles that can broadly be culled out are:
21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.
21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.
21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are:

22.1. (a) An application for condonation of delay should be drafted with careful concern and not in a haphazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2. (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3. (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.
22.4. (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a nonchalant manner requires to be curbed, of course, within legal parameters."

To be continued in part 2

SV

@Narender Ahuja

GST AUDIT – LAW AND PROCEDURE

We all know that the GST is based on Self-Assessment tax structure. When a registered tax payer files his returns u/s 39 of the CGST Act, 2017, it is presumed that the he has correctly discharged his tax liability by declaring the correct output tax liability and by availing the correct input tax credit.

The Self-Assessment Tax is defined u/s 59 which clearly says that: -

Every registered person shall assess the tax payable by him under this Act and furnish the return for each of the tax period as specified under section 39 of the Act.

There are provisions of "**Scrutiny of Returns**" u/s 61 under which the notice in ASMT -10 can be issued for detailed enquiry of the returns filed by the tax payers. It has very limited scope as the ASMT -10 can be issued for scrutiny of the returns. Its means the department can only assess the tax payer based on the returns filed by him.

There are also provisions of search and seizure u/s 67 of the Act under which the department can search the premises of the taxable person. The scope of section 67 is vast as the search can be done not only on the registered person but on the taxable person. The taxable person is defined in section 2(107) of the Act as the person who is registered or liable to be registered under section 22 or section 24.

Besides the above provisions of the Act, the Act also consists of the provisions of the Audit under GST. Section 65 deals with the Audit by the Tax Authorities while section 66 deals with the special audit.

The purpose of all these provisions described above is to determine the tax short paid, tax erroneously refunded or input tax credit wrongly availed by the tax payer.

All these proceedings must be initiating within the time limit framed under section 73 and 74 of the Act.

We will discuss below the various provisions regarding the audit like when, where and how can the audit be conducted by the tax authorities

Whatever actions is taken by the tax authorities, they must initiate proceedings under section 73 or section 74 of the Act to recover the tax. The tax authorities must follow the rules made

under these sections to recover the tax from the taxable person. Before we discussed the provisions of both the audits defined under this Act, we will go through the definition of the Audit which is given u/s 2(13) of the CGST Act, 2017 as

"Audit means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or rules made thereunder or any other law for the time being in force to verify the correctness of the turnover declared, taxes paid, refund claimed or input tax credit availed and to assess his compliance with the provisions of this Act or the rules made thereunder"

Now we will discuss the provisions of the Audit laid down in section 65 and section 66 read with rule 101 and rule 102 of the CGST rules 2017

Section 65 - Audit by Tax Authorities

Normal Audit as it is called is conducted by the tax authorities at the place of the business of the registered person or in their office. The procedure for conducting the audit under section 65 is followed as per the rule 101 of the CGST rules 2017.

Manner of conducting Audit

The Commissioner or any other officer authorised by him, by way of general or specific order, may undertake audit of the any registered person for such period at such frequency and in such manner as may be prescribed. Rule 101 (1) prescribed that the period of audit may be a financial year or part of the year or multiple financial year.

Place of Audit

The audit may be conducted at the business place of the registered person or in their office.

Prerequisite of the Audit

The registered person shall be informed by way of notice u/s 65 (2) in ADT -01 not less than 15 working days prior to the conduct of the audit in such manner as may be prescribed. It means the authorities must inform the tax payers at least 15 days in advance and must mention the details of the documents required for the audit. The tax payer is duty bound to follow the instructions laid down I the said notice within the stipulated time.

Time Limit

As we read above that there is a time limit to issue notice u/s 61, 73 and 74 but there is no time limit mentioned in section 65. The Act is silent on this issue.

There is a time limit to finish the audit u/s 65(3) of the Act, which is 3 months from the date of commencement of the audit. This time limit can be extended for a further period of not exceeding 6 months if the commissioner is of the view that the audit cannot be completed within the period of 3 months. The reason for extending the time period from 3 months to 6 months must be in writing.

The commencement of the audit shall mean the date on which the records and documents called for by the authorities under sub section 3 of section 65 in ADT 01 are made available by the registered person or the actual institution of the audit at the place of business whichever is later.

Furnishing of Documents and providing the facility to conduct the audit

Once the audit is commenced by the authorities, the Registered Tax Payer is duty bound to provide the officer the facility to verify the books of accounts or other documents as he may require to examine. The registered tax payer must also ensure to provide all the relevant information and assistance for timely completion of audit.

Findings during the Audit & Opportunity of being hear

During the audit, the authorised officer with the assistance of the other officers of his team verify the documents based on which the books of the account has been made and the returns have been furnished, tax has been paid, input tax credit has been availed. The authorised officer then records his finding.

He then informs the registered person within the period of 30 days, about the discrepancies, if any noticed during the audit. The registered person shall file his reply.

The Honorable ANDHRA PRADESH HIGH COURT IN THE M/S PBL TRANSPORT CORPORATION PVT. LTD. VS THE ADDITIONAL COMMISSIONER(ST) [2024 TAXONATION 121 (ANDHRA PRADESH)], THE STATE OF ANDHRA PRADESH held that the registered person should be given an opportunity and his reply must be considered before submission of final audit report. The audit report submitted without considering the reply filed by the registered person deserve to be quashed.

Observation of Audit and issuance of order

1. After considering the reply filed by the registered person, the authorised officer will make his observation and will issue the order of the audit in ADT-02.
2. Where the audit conducting under sub section 1 of section 65 results in detection of tax short paid or erroneously refunded or input tax credit wrongly availed or utilised, the proper officer may initiate the action under section 73 or section 74.
3. Accordingly, the notice under section 73 or 74 will be issued along with the DRC 01 to show cause why the tax short paid or tax erroneously refunded or input tax credit wrongly availed should not be recovered from the registered person along with the applicable interest and penalty.

Special Audit – Section 66

1. Now we will discuss about the special audit. The special audit is defined u/s 66 of the Act. The special audit is conducted when during the scrutiny of the returns, inquiry, investigation or any other proceedings, any officer not below the rank of the Assistant Commissioner, having regards to the nature and complexity of the case and the interest of the revenue, is of the opinion that the value is not correctly declared or the

Input tax credit is not correctly availed, he may with the prior approval of the Commissioner, direct such registered person by written communication to get his accounts audited by any chartered accountant or cost accountant nominated by the Commissioner.

2. The chartered accountant or the cost accountant so nominated shall furnish the report of the audit to the assistant commissioner within a period of 90 days. The time period of 90 days can be extended for a further period of 90 days if the assistant commissioner on the application filed by the registered person or the chartered accountant or cost accountant. The reason mentioned in the application must be clearly mentioned.

3. The provisions of sub section 1 of section 66 shall have effects notwithstanding that the accounts of the registered persons have been audited under any provisions of this Act or any other law for the time being in force.

4. The registered person shall be given an opportunity of being heard in respect of the material gathered or discrepancies found in the audit conducted as per the above provisions before passing any adverse order against him.

5. The expenses of the audit including the remuneration of the chartered accountant or cost accountant shall be determined and paid the Commissioner and shall be the final.

6. Where the special audit conducted above results in the detection of short payment of tax or erroneously refunded or input tax credit wrongly claimed or utilized the action will be taken under section 73 or 74 of the Act.

CAN THE AUDIT OF A FIRM/COMPANY BE CONDUCTED AFTER CANCELLATION OF THE REGISTRATION

The cancellation of the registration does not affect the liability to pay the tax. It is clearly mentioned in sub Section 3 of section 29 that the cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

On the contrary sub section 1 of section 65 says that the Commissioner or any other officer authorised through a general or specific order may conduct audit of any registered person. The firm/company after the cancellation of its registration becomes an unregistered firm and the there is no provision of conducting the audit of an unregistered firm/company.

In a leading judgment in the matter of M/s Ashoka Fabricast Pvt. Ltd. [2024 TAXONATION 1146 (RAJASTHAN)] the Hon`ble High Court held that the right to audit u/s 65 accrues when the taxpayer was registered. After cancellation of the registration this right does not extinguish. The Hon`ble High court was of the view that the registration, for the years for which the audit was supposed to be conducted, was active.

However The Honorable Madras High Court in matter of M/s Tvl. Raja Store vs Assistant Commissioner [2023 TAXONATION 1276 (MADRAS)] took the similar view that the audit cannot be conducted of an unregistered firm. The tax authorities can only initiate proceedings of the determination of tax u/s 73 and section 74 of the Act.

The various courts have their divergent views on this issue. In my opinion the audit can be conducted for the periods for which the registration was active.

CAN THE AUDIT BE CONDUCTED U/S 65 WHEN THE PROCEEDINGS U/S 73 OR 74 ARE ALREADY INITITATED.

The proceedings of sections 73 and section 74 are different from section 65. These sections are for determination of tax short paid, erroneously refunded or input tax credit wrongly availed. Basically, these sections are initiated for recovery of tax from the registered person. Section 65 governs for the detailed audit of the books of accounts. The reason behind conducting the audit is to know the correctness of the books of accounts other relevant documents kept by the registered person also the recovery of the tax if any become due to the audit. Both the actions seem to be interconnected to protect the interest of the revenue. Hence the audit can be conducted even when the proceedings of section 73 of section 74 are already initiated against the registered tax payer.

The Allahabad High Court in the matter of Rising India vs Commissioner of commercial tax and 2 others **[2023 TAXONATION 802 (ALLAHABAD)]** took the similar view and held that nothing was pleaded by the petitioner which may lead the court to a conclusion that the audit conducted is either not permissible or is not warranted, either in lieu of the earlier proceedings suffered by the petitioner under section 74 of the Act or otherwise.

CAN THE AUDIT BE CONDUCTED AFTER THE TIME PERIOD FOR INITIATING THE PROCEEDINGS U'S 73 AND 74 COMES TO AN END.

Once the time limit to initiate proceedings under section 73 and 74 to determine the tax has elapsed, the purpose of the audit u/s 65 will be a waste of paper as the authorities in these conditions can not recover the tax from the defaulter. Hence in my opinion the audit should be conducted within the time limit of section 73 and 74.

Can Audit be conducted when the search is in place by the different authority

Section 65 of the CGST Act empowers tax officers to conduct GST Audits and lays down the procedure for conducting audit proceedings. Section 67 of the CGST Act authorizes tax officers to inspect any place of business of a taxable person and provides a procedure for carrying out the search, seizure, and inspection. Such provisions have led to the initiation of proceedings like assessment, scrutiny, search, seizure, investigation, etc. which if conducted simultaneously, would lead to a multiplicity of notices and duplication of efforts by assesses in responding to authorities. There have been instances where a taxable person has received notices from different wings of GST departments for the same period. Whether multiple

proceedings can be conducted simultaneously for the same tax period is a moot question that has not been dealt with within the four corners of the law.

In this regard, various courts have from time to time given a digressing opinion on the validity of parallel proceedings under GST laws. Recently, the issue of an investigation conducted by the Anti-Evasion wing, Range Oce of GST Department, and proceedings conducted by the Audit Department came up for consideration before the Calcutta High Court. After receiving adverse order from the single-member bench, the Assessee filed an appeal before the Division Bench, wherein it has been held that parallel proceedings cannot be conducted by three wings of the Department for the same period. Since audit proceedings have already commenced, the Anti-Evasion wing and Range Officer were restrained to further proceed in their proceedings initiated against the Petitioner for the same period. [M/s R.P. Buildcon Private Limited Vs the Superintendent]. Similarly, the Calcutta High Court in the case of M/s Ideal Unique Realtors Limited Vs Anr. Vs UOI has held that no parallel proceedings can be initiated without the ongoing proceedings being taken to the logical end. Another positive decision was rendered by the Delhi High Court in the matter of M/s Watermelon Management Services Private Limited Vs The Commissioner, Central Tax, GST Delhi (East) & Anr, wherein in case of simultaneous investigations, the Commissioner, Delhi GST was directed to hand over the investigation to DGGI, who was further instructed to conclude the investigation within three months.

Despite these positive reliefs from various High Courts, there are divergent views taken on the same issue. For instance, the Kerala High Court in the case of M/s Suresh Kumar P.P. Vs DGGI has held that Audit is a routine procedure to be carried out by the Department under Section 65 of the CGST Act and is, therefore, independent of an investigation conducted under Section 67 of the CGST Act. Accordingly, carrying out two proceedings (audit and investigation) at the same time was held not to be illegal and defective. Moreover, such a decision passed by Kerala High Court has been armed by the Supreme Court in the case of M/s Suresh Kumar P.P. Vs DGGI, wherein the Apex Court has held that audit and investigation proceedings can be initiated simultaneously by different authorities.

The diverse rulings passed by different courts on this issue are yet another example of unpredictable and inconsistent views taken by the judiciary on matters which are crucial and save the taxpayer from the hassles of answering to different authorities for the same period. The hassle created by parallel proceedings has always been a contentious issue under the erstwhile indirect tax regime as well wherein different wings of tax authorities for the same period were issuing notices to taxpayers. Under the service tax regime, a return scrutiny system was introduced, wherein there was preliminary scrutiny of all returns, and detailed manual scrutiny of select returns identified based on risk parameters to be done by the Division/ Range offices. To avoid duplicity of scrutiny, a Circular was issued by the CBEC wherein it was clarified

that audit and detailed manual scrutiny for a select Assessee cannot be conducted for the same period at the same time.

Given the lack of clarity under GST laws on conducting parallel proceedings and conflicting views taken by various courts about the validity of multiple/ parallel proceedings has resulted in confusion among taxpayers and calls for clarification by GST Authorities on the same at the earliest.

CONCLUSION

The legislature intends to empower tax authorities to prevent tax evasion and establish checks and balances for the smooth execution of provisions of GST laws. However, under the garb of tax evasion, and fulfilling 'targets', taxpayers are often harassed and have to undergo undue hardships. Such parallel proceedings initiated by different tax authorities are denying promised ease of doing business and increasing frivolous litigations in the same period which not only creates logistic issues but also increased the litigation cost for the Assessee which can be 10 easily avoided. The CBIC must provide clarity concerning the validity of parallel proceedings initiated by the audit wing and investigation wing to bring uniformity to multiple proceedings undertaken by such tax authorities

To sum up the above discussion, I would say that the audit u/s 65 can be conducted at any stage till the time the registration of the person or so. was active and it must be conducted well within the time limit mentioned in section 73 and 74. If the audit is not conducted well within the time period mentioned in theses sections, this will be a wastage of time and will not be fruitful.

Disclaimer

The author assumes no liability or responsibility for any act done on behalf of this article. These views are shared only for the purpose of knowledge.

Narender Ahuja

@CA Yugal Goyal

REGISTRATION UNDER GST:

Under the CGST Act, 2017, the levy has been defined under Section 9, which provides on what supplies of goods or services or both, tax has been levied and how it has been collected and shall be paid by the **taxable person**. While reading the CGST Act, we need to understand and differentiate between where the law uses the word taxable person and where registered person has been used. Both taxable person and registered person are defined under the CGST Act as under:

> *"**Section 2(94): "registered person"** means a person who is registered under section 25 but does not include a person having a Unique Identity Number;*
> ***Section 2(107): "taxable person"** means a person who is registered or liable to be registered under section 22 or section 24;"*

Since one such example is who can avail the input tax credit. Section 16 provides the *eligibility and conditions for taking input tax credit.* Section 16 (1) states that every ***registered person*** shall, subject to such conditions, be entitled to input tax credit. Therefore, only a registered person can get the entitlement to input tax credit. Like this there are many more examples like issuing tax invoice under Section 31, issuing credit and debit notes under Section 34 and so on.

Therefore, it is very important to analyze the registration requirement for every person, and if such a person is required to get himself registered under the CGST Act, the person must apply for registration. Otherwise, such a person might be deprived of the benefits and other mandatory compliance requirements, which later on result in the levy of a huge amount of tax, interest, and penalties.

Compliance under any law always starts from understanding the registration requirements prescribed therein. Why, when, and who are required to get registration under GST? In this article, I will provide a legal glimpse of these requirements, mainly Sections 22, 23, and 24 of the CGST Act, 2017, along with CGST Rules, 2017.

Section 22 provides provisions for Persons liable for registration; Section 23 provides for Persons not liable for registration, and Section 24 states about compulsory registration in certain cases.

Before we proceed towards a discussion on registration under GST, I would like to draw your attention to the points below:-

- It is important to note that GST is payable irrespective of registration. However, *if registered, then it can be collected from the recipient.*
- As per **Section 122(1)(xi)** of the CGST Act, where a taxable person who is liable to be registered under this Act but fails to obtain registration, he shall be liable to pay a penalty of 10,000 INR or an amount equivalent to the tax evaded, whichever is higher.

As per **Section 22** of the CGST Act, 2017, every supplier who makes a taxable supply i.e., supply of goods and/or services which are leviable to tax under the Act, and his aggregate turnover exceeds the threshold limit of Rs. 20 lakhs shall be liable to register himself in the state or union territory from which the taxable supply is made. In the case of 4 special category states, namely, Nagaland, Manipur, Tripura, Mizoram, this threshold limit for registration liability is Rs. 10 lakhs.

However, in terms of Section 23(2) of the CGST Act, read with **Notification No. – 10/2019 – Central Tax dated 07.03.2017,** any person who is engaged in ***exclusively supply of goods*** is required to take registration only when his aggregate turnover in the financial year exceeds Rs. 40 lakhs. But this relaxation is applicable if:

- Such person is not required to take compulsory registration under Section 24 of the CGST Act;
- Such person is not engaged in making supplies of the following goods *(7 types of goods)*:
    - Ice cream and other edible ice;
    - Pan Masala;
    - Tobacco and manufactured tobacco substitutes;
    - Fly ash bricks; Fly ash aggregates; Fly ash blocks;
    - Bricks of fossil meals or similar siliceous earths;
    - Building bricks;
    - Earthen or roofing tiles.
- Such person is not engaged in making intra-state supplies in the State of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand *(11 states).*

Further, **Section 24** of the CGST Act mentions certain categories of persons who are liable to registration irrespective of aggregate turnover. The following categories of persons are required to obtain compulsory registration under the CGST Act:

- Persons making any inter-State taxable supply;
- Casual taxable persons [Section 2(20) of CGST Act] making taxable supply;
- Non-resident taxable persons [Section 2(77) of CGST Act] making taxable supply;
- Persons who supply goods or services or both on behalf of other registered taxable persons, whether *as an agent or otherwise;*

Note: Agent here refers to "agent" who supplies goods to the customers under his invoice on behalf of the principal (Para 3 of schedule I of the CGST Act which refers to deemed supply of goods by principal to agent where the agent undertakes to supply goods on behalf of the principal) and it does not cover within its ambit, all types of agents like those who act as intermediary. This matter has also been clarified in the Circular No. 57/31/2018-GST dated 04.09.2018 and Circular No. 73/47/2018-GST, dated 05.11.2018.

- Persons who supply goods and/or services, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
- Every person supplying *online information and database access or retrieval services* from a place outside India to a person in India, other than a registered taxable person;
- Every person supplying *online money gaming* from a place outside India to a person in India;
- Persons who are required to pay tax under reverse charge;
- Persons who are required to deduct tax under section 51 (Tax Deduction at Source);
- Electronic commerce operators (under Section 9(5) of the Act);
- Input service distributor *(mandatory w.e.f 01.04.2025)*;
- Every electronic commerce operator who is required to collect tax at source under section 52; and
- Such other person or class of persons as may be notified.

On the other hand, **Section 23** of the CGST Act provides that, following persons are ***not required*** to take registration:

- An agriculturist [as defined under Section 2(7) of the CGST Act] in respect of supply of produce out of cultivation of land;
- Any person *exclusively* making a supply of goods and/or services that ***are not liable to tax or wholly exempt*** from tax;
- Notified categories of persons under Section 23(2).

It means the above-mentioned persons would not require to take registration, even if their turnover exceeds the threshold limits.

It is important to note that the Central Government has notified various persons under Section 23(2), the details mentioned hereunder:

- Notification No. 5/2017–CT dated 19.06.2017 (as amended): Persons only engaged in making supplies of taxable goods or services or both, which are liable to GST under reverse charge, are not required to take registration. ***Provided that nothing contained in this notification shall apply to any person engaged in the supply of metal scrap, falling under Chapters 72 to 81 in the first schedule to the Customs Tariff Act, 1975.*** Therefore, the person engaged in the supply of scrap has to take registration in accordance with the provisions of Section 22(1).

- Notification No. 7/2017–Integrated Tax dated 14.09.2017 (as amended): Job-workers engaged in making inter-State supply of services to a registered person except those who are liable to be registered under section 22(1) of the CGST Act, 2017 or persons opting for voluntary registration or persons

engaged in making inter-State supplies of services in relation to jewellery, goldsmiths' and silversmiths' wares and other articles.

- Notification No. 10/2017–Integrated Tax dated 13.10.2017 (as amended): Persons effecting ***inter-State supplies of taxable services*** – where the aggregate value of supplies on PAN-India basis does not exceed Rs. 20 Lakhs in a year (Rs. 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura).

- Notification No. 3/2018–Integrated Tax dated 22.10.2018: Categories of persons effecting ***inter-State taxable supplies of handicraft goods*** – where the aggregate value of supplies on a PAN-India basis does not exceed Rs. 20 Lakhs in a year (₹ 10 Lakhs for special category States- Manipur, Mizoram, Nagaland and Tripura). Provided such persons shall be required to obtain PAN and generate an e-way bill in accordance with Rule 138 of the CGST Rules, 2017.

- Notification No. 56/2018-Central Tax dated 23.10.2018: Categories of ***casual taxable persons making taxable supplies of handicraft goods***- where the aggregate value of supplies on a PAN-India basis does not exceed Rs. 20 Lakhs in a year (Rs. 10 Lakhs for special category States-Manipur, Mizoram, Nagaland, and Tripura).

Let's discuss the meaning of Aggregate turnover. The term 'aggregate turnover' is defined under **Section 2(6)** of the CGST Act. It includes the aggregate value of:

- All taxable supplies; [defined in Section 2(108) of CGST Act]
- All exempt supplies; [defined in Section 2(47) of CGST Act]
- Exports of goods and/or services [defined in Section 2(5) and 2(6) of IGST Act] and
- All the interstate supplies [defined in Section 7 of the IGST Act] of persons having the same PAN.

The above is computed on an all-India basis. Further, the aggregate turnover excludes all types of GST. Moreover, the value of inward supplies on which tax is payable under reverse charge is not taken into account.

Note I: Transfer of goods to its branch in a different state is also includible in 'aggregate turnover', reason being own branch in s different state is considered as establishment of distinct person under Section 25 of the CGST Act, and to a different state, such transfer is an inter-state supply of goods.

Note II: For calculating the threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Further, supply of goods by a registered job worker, after completion of job work, **shall be treated as the supply of goods by the "principal"** referred to in

section 143 (i.e., Job work procedure) of this CGST Act. *The value of such goods shall not be included in the aggregate turnover of the registered job worker.*

Now, what happens to **registration obligations in the case of the transfer of a business?** Section 22 (3) and 22(4) of the CGST Act provides as under:

Section 22(3) states that if a taxable person transfers business on account of succession or otherwise to another person **as a going concern**, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

This means that the Registration Certificate issued under section 22 of the CGST Act is not transferable to any other person.

Section 22(4) of the CGST Act provides in a case of transfer under sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an Order of a High Court, the transferee shall be liable to be registered with effect from the date on which the Registrar of Companies *issues a certificate of incorporation* giving effect to such Order of the High Court.

Disclaimer: *This article is for informational purposes only and does not constitute legal advice. The views expressed are solely those of the author. Readers should consult a qualified legal professional for advice specific to their situation.*

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@CA Rashmi Jain

Understanding and Implementing HSN Codes under GST: Compliance, Challenges & Best Practices

What is HSN?

The Harmonized System of Nomenclature (HSN) plays a pivotal role in India's Goods and Services Tax (GST) regime. Originally developed by the World Customs Organization (WCO), HSN is a globally recognized system for classifying goods in a standardized manner. While GST law itself does not contain a dedicated commodity classification tariff, these classifications are found within rate notifications. This makes it essential for businesses to identify the correct classification from one of the six schedules to determine the applicable GST rate. Proper classification is not only necessary for accurate tax payment but also impacts input tax credit eligibility, customer invoicing, and audit outcomes.

Under GST, goods are classified under Chapters 1 to 98, and services are categorized under Chapter 99. The classification of services is prescribed through the Scheme of Classification of Services, annexed to Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017. Since there is no standalone schedule of commodity classifications in GST law, these notifications and the rules of interpretation provided under the Customs Tariff Act, 1975, serve as guiding principles for correct classification. This includes applying the Section Notes, Chapter Notes, and the General Explanatory Notes from the Customs Tariff Schedule when determining the correct HSN code.

The structure of HSN codes can be 4, 6, or 8 digits, depending on the type of transaction and the taxpayer's turnover.

Businesses with a turnover up to ₹5 crore must use 4-digit HSN codes for B2B transactions, whereas those with turnover above ₹5 crore are required to report 6-digit codes. Importers and exporters must use 8-digit codes, which correspond directly to the Customs Tariff. A practical example is HSN 19053100, which represents "Sweet biscuits" — 19 indicating the food chapter, 05 for bakery products, 31 for biscuits, and 00 as the specific identifier.

Challenges in Compliance and Implementation

It is critical to ensure that the HSN code is correctly mentioned on invoices, e-invoices, and GSTR-1 filings. Misclassification can result in short payment of tax, rejection of input tax credit, and customer disputes. For composite supplies — for example, a combo pack of perfume and chocolate — the HSN code of the principal supply must be used. In mixed supplies, the code that attracts the highest rate of tax should be applied. For instance, a combo of an 18% soap and a 28% cosmetic would be taxed at 28%, using the cosmetic's HSN code.

These nuances emphasize the need for changes in accounting software to correctly handle composite and mixed supplies.

The classification of goods and services must be determined not merely based on logical assumptions but using established rules of interpretation. Rule 3(a) of the Customs Tariff states that if goods can be classified under multiple headings, the more specific one should be used. Rule 3(b) mandates classification based on the material that gives the item its essential character, while Rule 3(c) advises choosing the heading that appears last if other methods fail. For example, a laminated Kraft paper box and plain Kraft paper may share some similarities, but due to processing and added functionality, they could fall under different classifications.

Challenges in implementing HSN codes arise from ambiguities in product identity. For example, "Hajmola" can either be classified as an ayurvedic medicament (5%) or a confectionery product (18%). Similarly, surgical gloves could be considered latex articles or medical accessories. These interpretive dilemmas highlight the importance of understanding trade, technical, or scientific meanings of terms, as prescribed in the Customs Tariff.

Supplier status can also influence classification. For instance, a restaurant that purchases aerated beverages at 28% GST plus 12% cess might be allowed to apply only 5% GST when reselling the beverage as part of a meal combo under the composition scheme. Similarly, a medicament that is taxable at 5% when sold retail could be tax-exempt when administered in a hospital setting. These examples demonstrate how classification can change based on context and the nature of supply.

Exemptions also play a critical role in determining tax rates. Notifications that prescribe exemptions can apply either to the supplier or the supply. For example, charitable services provided by an entity registered under Section 12AA or 12AB of the Income Tax Act are exempt under Chapter 99. However, such exemptions are not optional — if a supply qualifies for an absolute exemption, GST must not be charged. Collecting tax on exempted supplies is against the law and could result in penalty and loss of credibility.

Consequences of misclassification

The consequences of misclassification are severe and multi-dimensional. Charging a higher rate could lead to loss of customers and revenue, while charging a lower rate might attract tax demands, penalties, and interest. Incorrect claims of exemption could lead to complete denial of input tax credit, especially if the tax authority deems the exemption inapplicable. Furthermore, wrong classification could impact eligibility under the Foreign Trade Policy, such as duty drawback and other export benefits. If the reverse charge mechanism (RCM) is triggered incorrectly, it may result in unintended liabilities for the recipient of the supply.

Best Practices

To avoid these issues, best practices must be adopted. Each supply — whether it's a regular sale, transfer, by-product, or scrap — should be classified separately. The Customs Tariff should be referred to meticulously, and expert consultation is strongly advised. Companies must read notifications prescribing tax rates in full and follow explanatory notes strictly. It's also crucial to note that HSN codes can differ for inputs and outputs due to manufacturing processes. For example, desiccated coconut, though derived from coconut, may fall under a different classification due to the change in form and use.

Automated GST software with integrated HSN validation features can minimize errors. Training teams on HSN mapping and changes in GST rate notifications is another effective step. Tools like the official GST HSN Finder portal and the CBIC's online tariff publications are valuable for staying updated.

In conclusion, proper implementation of HSN codes under GST requires more than just matching a product to a code. It demands a thorough understanding of legal interpretations, supply context, exemption conditions, and ongoing tax updates. Businesses that proactively adopt compliance measures — from system integration to expert consultations — can avoid costly mistakes, improve operational clarity, and build trust with customers and tax authorities alike.

Advisories Issued by GSTN from 01.05.2025 to 31.05.2025–

Summarised by CA Renu Sharma

Serial no.	Date	Advisory
1	01.01.2025	Gross and Net GST revenue collections for the month of Apr, 2025
2	01.01.2025	Reporting of HSN codes in Table 12 and list of documents in table 13 of GSTR-1/1A
3	01.01.2025	Advisory for Biometric-Based Aadhaar Authentication and Document Verification for GST Registration Applicants of Sikkim
4	06.05.2025	Invoice-wise Reporting Functionality in Form GSTR-7 on portal-reg
5	08.05.2025	Updates in Refund Filing Process for various refund categories-Reg
6	08.05.2025	Updates in Refund Filing Process for Recipients of Deemed Export
7	14.05.2025	Advisory on Appeal withdrawal with respect to Waiver scheme
8	16.05.2025	Advisory on reporting values in Table 3.2 of GSTR-3B

Circulars from 01.05.2025 to 31.05.2025

Summarised by CA Renu Sharma

Date	Circular no.	Matter

No Circular issued

Instruction from 01.05.2025 to 31.05.2025

Date	Instruction No.	Matter
02.05.2025	Instruction No. 04/2025-GST	Grievance Redressal Mechanism for processing of application for GST registration
02.05.2025	Instruction No. 05/2025-GST	Timely production of records/information for audit


ID SERVICE TAX
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