

GST

EMERGING LITIGATION!

CA Pritam Mahure and Associates

Are there any definite answers?

VAT
• 84



Excise
• 80 years



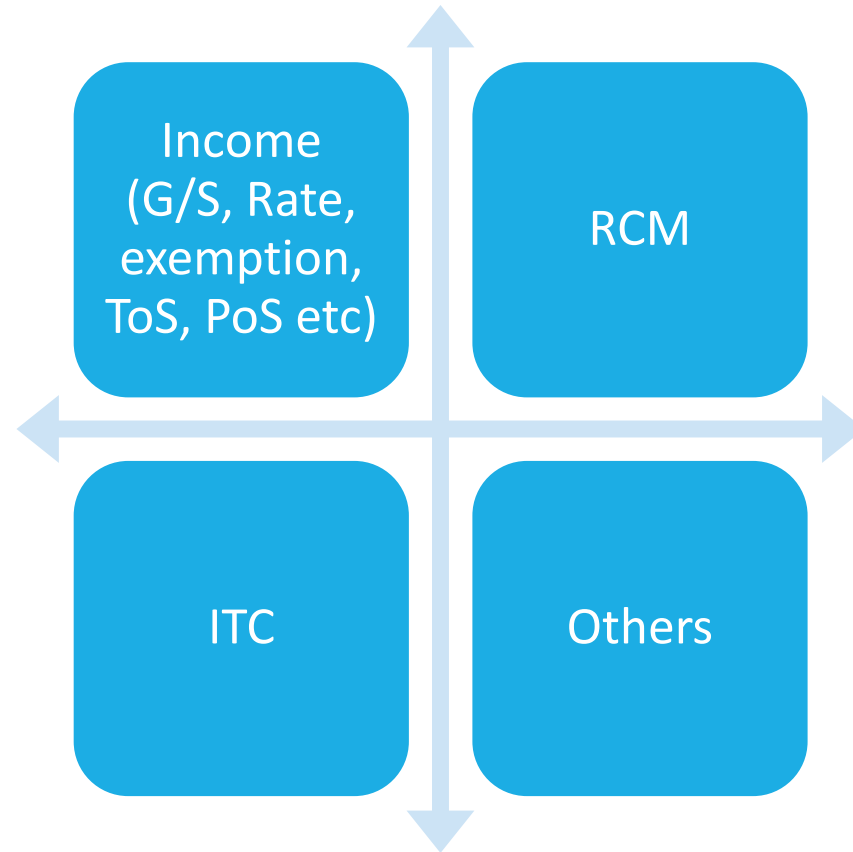
ST
• 29 years



GST
• ~7 yrs



How many questions?



Issues!

Its

- First time!
- Nth time!

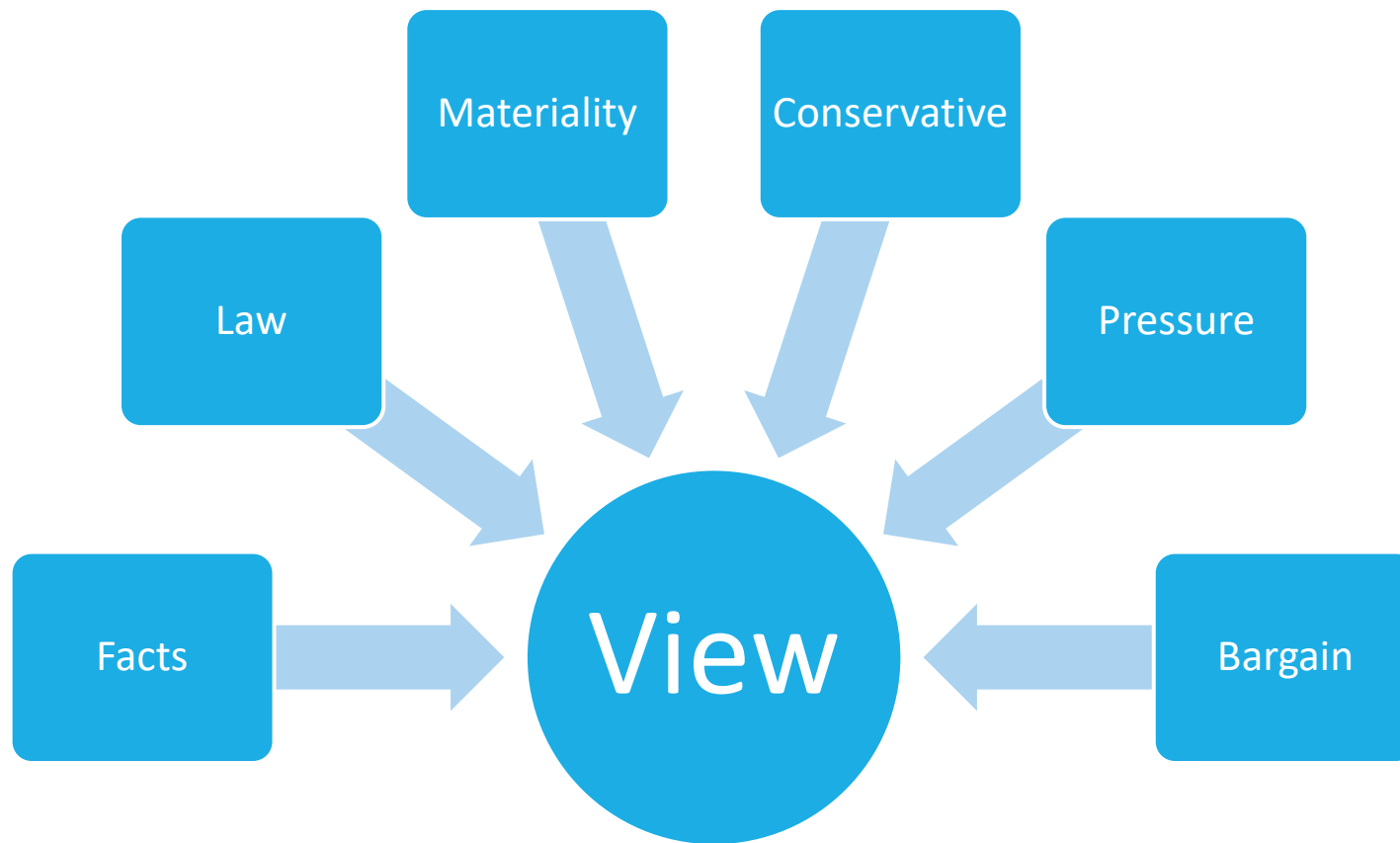
At stake!

- Revenue
- Expense

Approach

- Facts
- Law

How many answers?



Art. 265

Article 265

- *Taxes not to be imposed save by authority of law.—No tax shall be levied or collected except by authority of law.*

Key points

- No tax
- Shall be
- Levied or collected
- Except
- By Authority of Law

246A. Special provision with respect to goods and services tax.—

- (1) **Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State,** have power to make laws with respect to goods and services tax imposed by the Union or by such State.
- (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place **in the course of inter-State trade or commerce.**

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

Article 366 (12A) 'Goods and services tax'

- 'Goods and Services tax' means any tax on **supply** of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption
- Key points
 - Supply
 - 70 yrs – Manufacture/sale
 - Goods or services or both
 - Both?

SUPPLY!



9. Levy and Collection

- (1) Subject to the provisions of sub-section (2), there shall be **levied** a tax called the central goods and services tax on **all intra-State supplies** of goods or services or both, **except on the supply of alcoholic liquor for human consumption**, on the **value** determined under section 15 and at such rates, not exceeding twenty per cent., as may be **notified** by the Government on the recommendations of the Council and **collected** in such manner as may be **prescribed** and shall be **paid** by the **taxable person**.

Burden of proof!



Supply

- ?

ITC

- **Section 155 Burden of proof** — *Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on **such person**.*

Onus to prove 'supply' is on Authorities!

TVL Madura
Coats (P) Ltd
[2020 (42) GSTL
21 (Mad.)]

Para 14/15

- The Chartered Accountants have **certified that** the **transactions** in question were executed by the assessee and that they had been **reversed** ... In other words, the transactions became unfructified sales. ... the petitioners deny the sales in question, they cannot do anything more. **If the assessing authority** is of the **view** that **this** is a **false** statement, the **onus is on the authority**.

Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “**supply**” includes —

(a) all forms of **supply** of goods or services or both **such as** sale, transfer, barter, exchange, license, rental, lease or disposal made or **agreed** to be made **for a consideration** by a person **in the course or furtherance of business**,

(b) ...

(1A) Where certain activities or transactions, **constitute a supply** in accordance with the provisions of subsection (1), they shall be treated either as supply of goods or supply of services as referred to in **Schedule II**.

DAMAGES!



Bai Mamubai Trust [2019-TIOL-2158-HC-MUM-GST]

88. *In light of the preceding discussion, Issue No. (iii) i.e. Specifically, in the facts of the present Suit, where the plaintiff alleges that the Defendant is in **illegal occupation** of the Suit Premises: Whether there is any 'supply' of services within the meaning of the CGST Act? Whether payment of royalty for remaining in possession of the Suit Premises, either during the pendency of the Suit, or at the time of passing of the decree, falls within the definition of '**consideration**' for a '**supply**' chargeable to payment of GST under Section 9 of the CGST Act is **answered in the negative.**"*

Circular No. 178/10/2022

7. ... Further, such amounts do not constitute payment (or consideration) for tolerating an act, because **there cannot be any contract:**
(a) **for breach thereof**, or (b) for holding more stock than permitted under the mining contract, or (c) for **leaving the employment** before the agreed minimum period or (d) for doing something leading to the dishonour of a cheque.

7.1.3 It is **argued** that performance is the essence of a contract. **Liquidated damages** cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather **payments for not tolerating** the breach of contract.

7.1.4 In this background a **reasonable view** that can be taken with regard to taxability of liquidated damages is that where the amount paid as 'liquidated damages' is an amount **paid only to compensate** for injury, loss or damage suffered... Such payments do not constitute consideration for a supply and are **not taxable**.

KHARI!



BREAD?



Premium
Bake Rusk

200
g

MERE RUSK-E-...!

Particulars	Bread	Rusk
Description	Bread (branded or otherwise), except when served for consumption and pizza bread	Rusks , toasted bread and similar toasted products
Not. No.	2/2017-CT	1/2017-CT
Rate	Nil (Sr. No. 97)	5% (Sr. No. 100 of Sch. III)
Heading / SAC	1905	1905 40 00

BREAD?



KHARI?



KHARI!

Particulars	Rusk	Others
Description	Rusks, toasted bread and similar toasted products	Pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, .., sealing wafers, rice paper and similar products ...
Not. No.	1/2017-CT	1/2017-CT
Rate	5% (Sr. No. 100 of Sch. I)	18% (Sr. No. 16 of Sch. III)
Heading / SAC	1905 40 00	1905

CLASSIFICATION!



9. LEVY AND COLLECTION

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of **goods or services or both**, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and **at such rates**, not exceeding twenty per cent., **as may be notified** by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*

GOODS AND SERVICES!

Sec 2(52)

- **'Goods'** means every kind of movable **property** other than money and securities but **includes actionable claim**, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply

Sec 2(102)

- **'Services'** means anything other than **goods**, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

'ANY' – DOESN'T MEAN 'EVERYTHING'!

MRF Ltd [2018 (18)
GSTL 193 (Mad.)]

Para 43/45

CA Priam Mahure and Associates

- Hon'ble **Supreme Court** in *Government of NCT of Delhi v. Union of India* in C.A. No. 2358 of 2017 ... cites various judgments on the interpretation of the term **"any"** ... for the proposition that merely because the term "any" is used, it **does not mean** that the following phrase must be given a **wide interpretation**... It is further submitted that the Hon'ble Supreme Court has held that the term "any" need **not mean "every"** and **must be read contextually**.

KITS SUPPLY!



Goods



Services

WCS!



Goods



Services

ICE-CREAM?



ICE-CREME

Particulars	Goods	Services
Description	Ice cream and other edible ice, whether or not containing cocoa	(ii) Supply of 'restaurant service' other than at 'specified premises' ...
Not. No.	1/2017-CT	11/2017-CT
Rate	18% (Sr. No. 22 of Sch. III)	5% (Sr. No. 7 of Sch. III)
Heading / SAC	2105 00 00	Heading 9963 (Accommodation, food and Beverage services)

SCHEDULE II - ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

6. Composite supply

The following **composite supplies** shall be treated as a supply of **services**, namely :—

(a) Works contract as defined in clause (119) of section 2;

(b) Supply, by way of or as part of any **service** or in any other manner whatsoever, of goods, being **food** or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

CIRCULAR NO. 164 /20 /2021-GST

4.2 Ice cream parlors sell **already manufactured** ice-cream and they **do not have a character of a restaurant**. Ice-cream parlors **do not engage in any form of cooking** at any stage, whereas, restaurant service involves the aspect of cooking/**preparing** during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

CIR. NO. 177

*3.4 Considering the overall circumstances of the case, it is clarified that past cases of payment of GST on supply of ice-cream by ice-cream parlors @ 5% without ITC shall be treated as fully GST paid to avoid unnecessary litigation. Since the decision is only to regularize the past practice, no refund of GST shall be allowed, if already paid at 18%. **With effect from 6.10.2021**, the ice Cream parlors are required to pay GST on supply of ice-cream at the rate of **18% with ITC**.*



CLOUD KITCHENS!
[CIRCULAR 164 DATED 6.10.2021]

*Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under “restaurant service” ... and attract **5% without ITC***



INFORMATION

Dear Guests.

As per the prevalent GST rules, we are having to charge GST at the rate of 18%. Note momos fall under the **HSN code 2106** (Sale of Momos).

Our Momo production is done centrally in our factory to ensure taste, hygiene & consistency which means there is no cooking carried out at the outlets. Momos are garnished and served piping hot at the outlet. Therefore our sale has to be categorised under the said HSN code.

However, for other delicacies such as Sizzlers, Augratin, Momo Burgers we shall be charging only 5% GST as it does not fall under the category of Supply of Momos. For Beverages, tax rates are included in MRP for the respective soft drinks.

Understanding our guests' value and being a **#CustomerFirst** brand, we have **reduced our menu pricing by 10%** to ensure our guests don't be burdened. **This is not only a first time for us; it's possibly the first time a national brand has reduced its prices;** only to support it's consumers.

We hope to get your continuous support, as an organisation we believe that adhering to tax and GST laws is of utmost priority. We strongly feel the path to progress for us as a nation is not by evasion; instead by adherence.

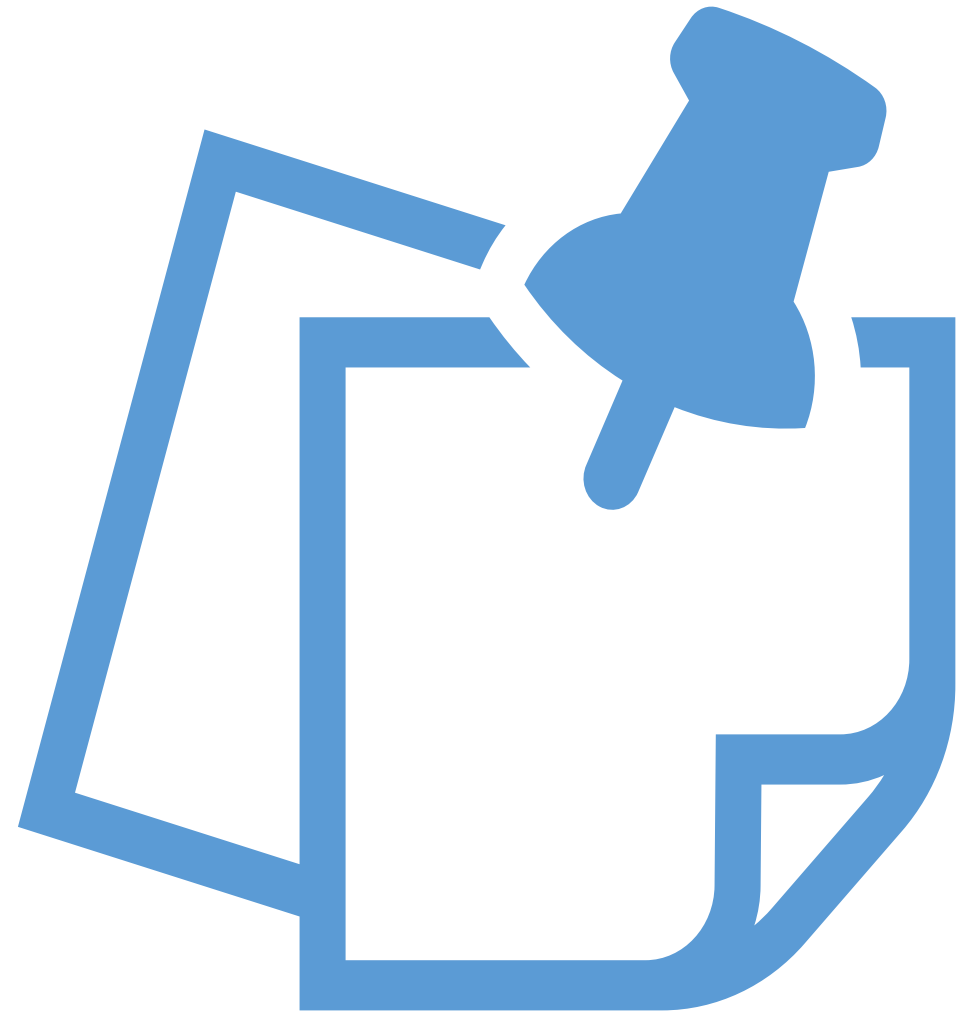
We are ready to address any further query or concern regarding this; do mail us at **knowmore@wowmomo.com**

Jai Hind

Regards

Team Wow! Momo

DECLARED
TARIFF!



NOT. NO. 11/2017-CT

Sl.	Ch./Section or Heading	Description of Service	Rate (Per cent.)	Condition
7	Heading 9963 (Accommodation, food and beverage services)	(ii) Supply of 'restaurant service' other than at 'specified premises'	2.5	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]
		(vi) Accommodation, food and beverage services other than (i) to (v) above	9	-

DEFINITIONS!

- *(xxxv) “Declared tariff” means charges for all amenities provided in the **unit of accommodation** (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit*
- *(xxxvi) “Specified premises” means premises providing ‘hotel accommodation’ services **having** declared tariff of any unit of accommodation **above seven thousand five hundred rupees** per unit per day or equivalent.*
- **Explanation:**
 - (a) For the removal of doubt, it is hereby clarified that, supplies covered by items (ii), (iii), (iv) and (v) in column (3) shall attract central tax prescribed against them in column (4) subject to conditions specified against them in column (5), **which is a mandatory rate** and shall not be levied at the rate as specified under this entry.*

EARLIER!

*(i) Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or other valuable consideration, provided by a restaurant, eating joint including mess, canteen, neither having the facility of air-conditioning or central airheating **in any part of the establishment, at any time during the year** nor having licence or permit or by whatever name called to serve alcoholic liquor for human consumption*

DECLARATION!

*“I/We hereby declare that though our aggregate turnover in **any preceding financial year** from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.”*

CIRCULAR NO. 27/01/2018-GST, DATED 4-1-2018

Sr.	Questions/Clarifications sought	Clarifications
1.	<p>...</p> <p>4. Same room may have different tariff at different times depending on season or flow of tourists as per dynamic pricing. Which rate to be used then?</p> <p>5. If tariff changes between booking and actual usage, which rate will be used?</p>	<p>...</p> <p>4. In case different tariff is declared for different seasons or periods of the year, the tariff declared for the season in which the service of accommodation is provided shall apply.</p> <p>5. Declared tariff at the time of supply would apply</p>

243W



SERVICES TO PMC!

3. Whereas, during the course of GST audit on records of the taxpayer for the period from _____, the auditors have noticed that the taxpayer is providing Security, Manpower and House Keeping services to _____ Municipality Corporation, _____ who are deployed for executing the various functions entrusted to the municipalities in terms of provisions of Article 243W of the Constitution of India. However, the auditors also noticed that some of the Security, House keeping personnel are deployed for providing services to office buildings of the _____ Municipal Corporation _____ which is a function not covered under the provisions of Article 243W of the Constitution. Accordingly, auditors have raised an objection

243W!

Sr. No.	Service Code	Goods	Rate
3	99	<p>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 [or a Government Entity]² by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution</p>	Nil

243W!

SR	Condition	Yes/ No
1.	Pure services (excluding works contract service or other composite supplies involving supply of any goods)	
2.	Provided to the Central Government, State Government or Union territory or local authority or a Governmental authority [or a Government Entity	
3.	By way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution	

E-INVOICE!



E-INVOICE

(a) Brief Fact of the Case : VIOLATION OF RULE-48(4)

(b) Grounds : VIOLATION OF RULE-48(4)

(c) Tax and other dues :

(Amount in Rs.)

Sr. No.	Tax Rate(%)	Turnover	Tax Period		Act	POS (Place of Supply)	Tax	Interest	Penalty	Others	Total
			From	To							
1	2	3	4	5	6	7	8	9	10	11	12
1	0	0.00	AUG 2023	DEC 2023	CGST	NA	0.00	0.00	25,000.00	0.00	25,000.00
2	0	0.00	AUG 2023	DEC 2023	SGST	NA	0.00	0.00	25,000.00	0.00	25,000.00
Total							0.00	0.00	50,000.00	0.00	50,000.00

E-WAY BILL!



E-WAY BILL

Summary of Show Cause Notice

(a) **Brief Fact of the Case :** On Scrutiny of E-way bill generated by the taxpayers as downloaded from MIS reports it was noticed that the taxpayer has generated multiple E-way bills with same invoice number

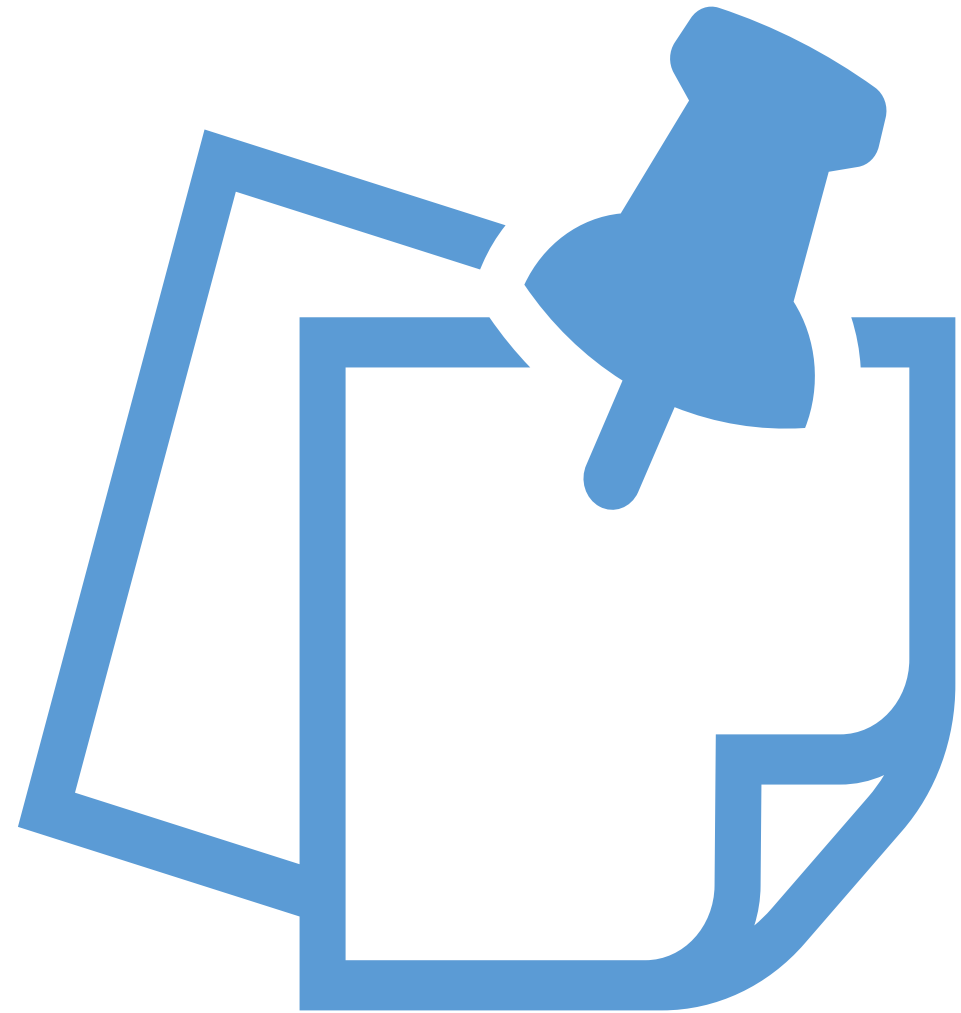
(b) **Grounds :** MISMATCH IN E-WAY BILL

(c) **Tax and other dues :**

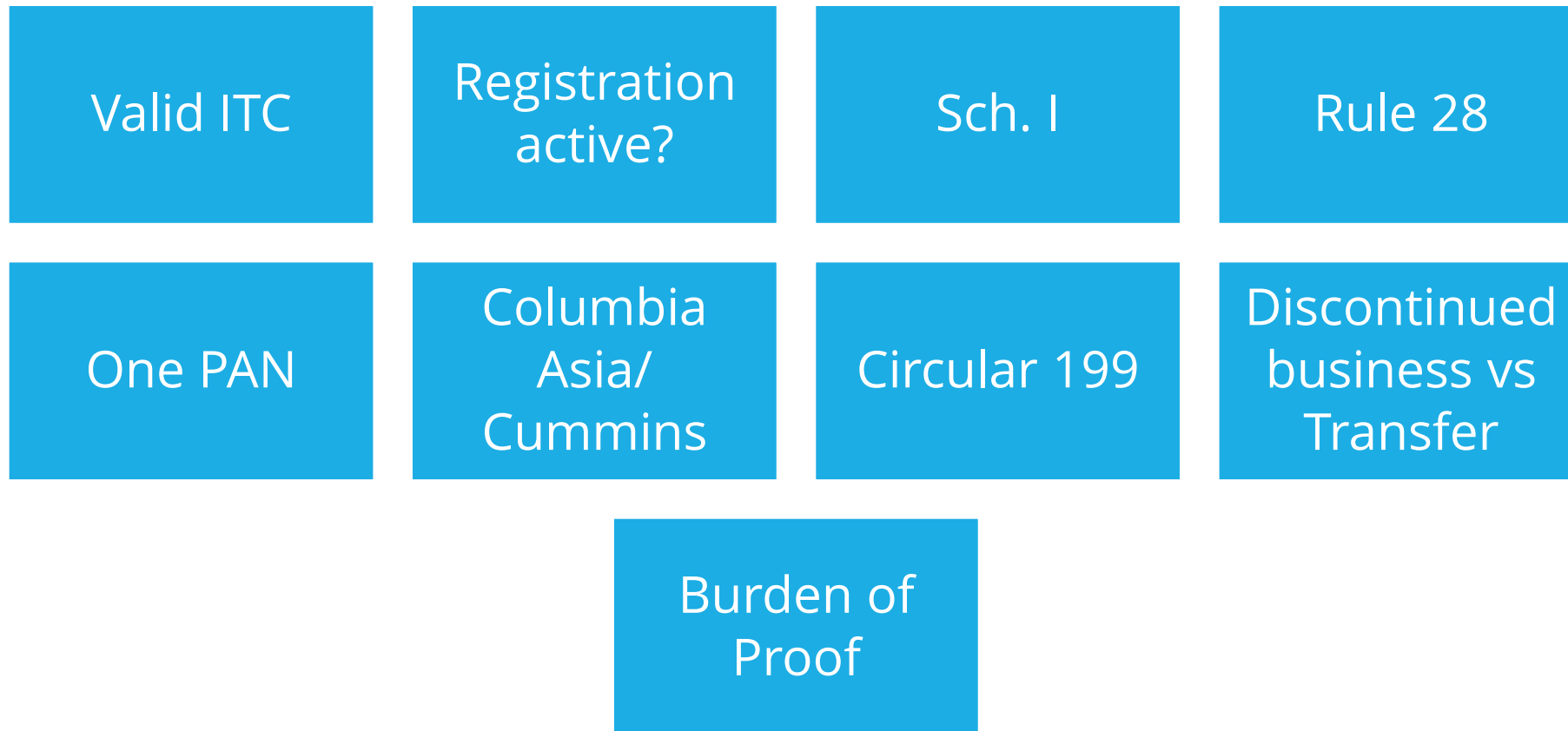
SECTION 126 OF CGST ACT, 2017

(1) No officer under this Act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

PENALTY U/S 122



WHAT ABOUT?



CIRCULAR 199

*“Accordingly, in cases where full input tax credit is available to a BO, the value declared on the invoice by HO to the said BO in respect of a supply of services shall be **deemed to be the open market value of such services, irrespective of the fact whether cost of any particular component of such services, like employee cost etc., has been included or not in the value of the services in the invoice.***”

SECTION 122 PENALTY

(1) Where a **taxable person** who—

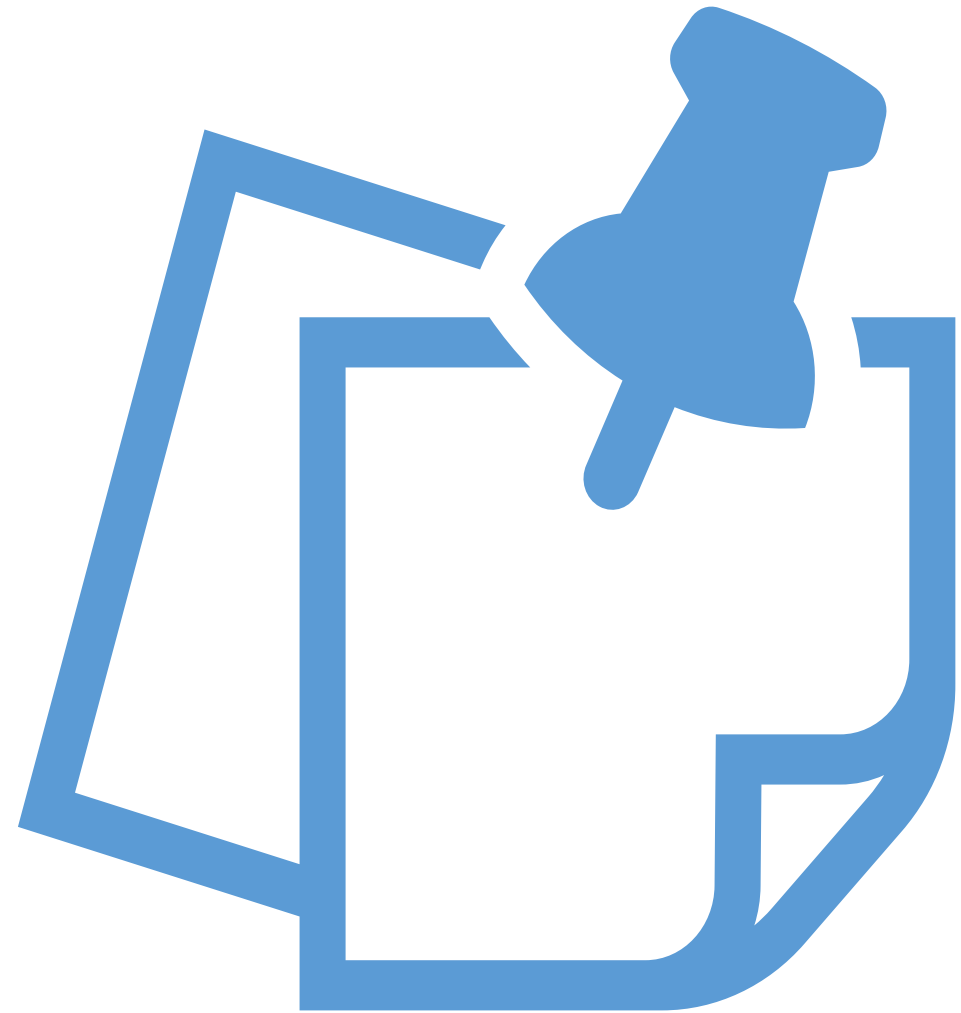
(i)....

(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;

(iii)..."

he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

RCM



RCM!

Thus, scrutiny of invoices show that M/s _____ have received digital marketing related services from service providers located in non-taxable territory (address of service providers mentioned on invoices/receipts as tabulated above) for the period

ITC



SECTION 140 (6)

*'A registered person, who was either paying tax **at a fixed rate or paying a fixed amount** in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of value added tax in respect of **inputs held in stock and inputs contained in semi-finished or finished goods held in stock** on the appointed day subject to the following conditions.*

WIP

The section 140(6) of the MGST Act refers the entitlement of credit of VAT in respect of the inputs contained in semi-finished or finished goods. Thus, as explained above the term the “inputs” means any goods other than the capital assets. Hence, it is crystal clear that the term “inputs” will not include the capital goods and therefore, the Builder and Developer shall not be entitled to claim the credit of VAT in respect of the capital goods that are held in the stock as on the 1st July 2017.

SEC 73-DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILED OR UTILIZED...

*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where **input tax credit** has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.*

SECTION 2 (62) INPUT TAX

in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act, but does not include the tax paid under the composition levy.

SEC. 16 (4)



VENDOR FILING AFTER DUE DATE

(4) A **registered person** shall not be **entitled to take** input tax credit in respect of any invoice or debit note for supply of goods or services or both **after** the [thirtieth day of November] following the end of financial year to which such invoice or [* * *] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any **invoice** or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been **uploaded by the supplier** under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

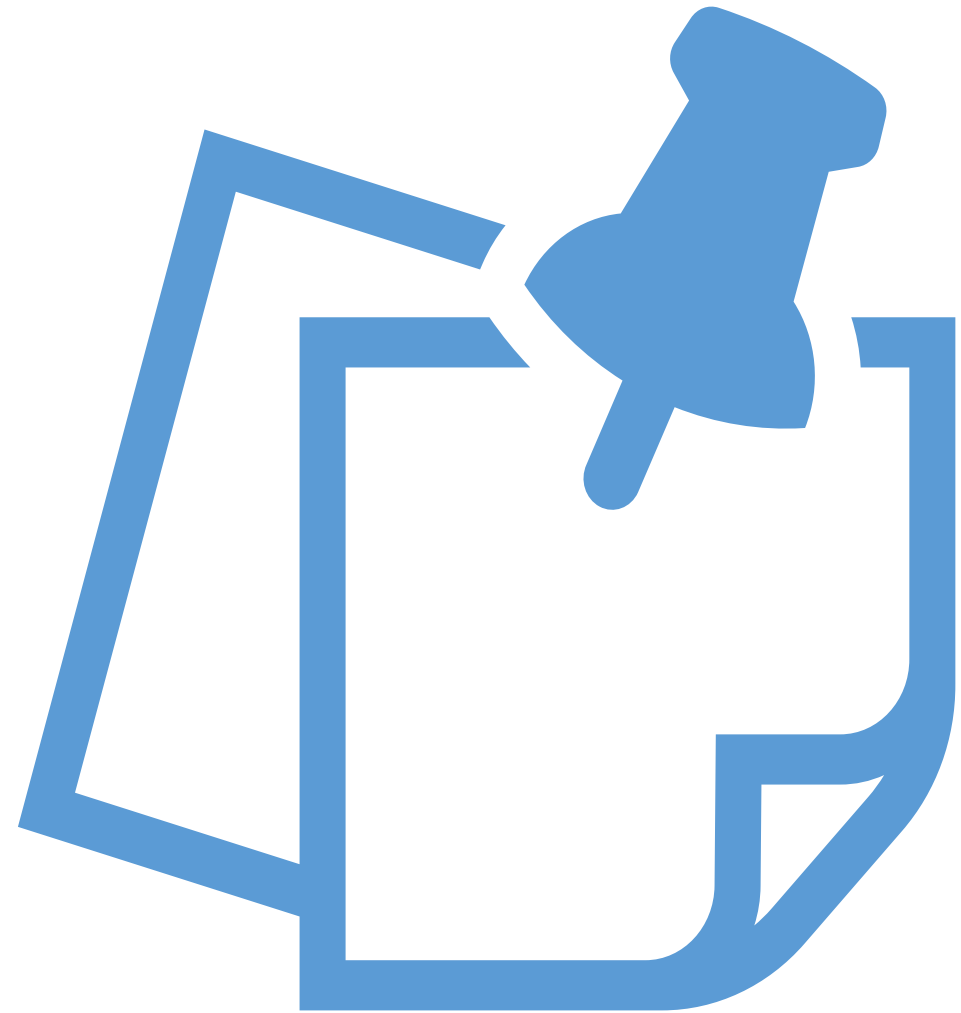
CREDIT – IS PROPERTY IN TERMS OF ART. 300A!

A B Pal Electricals
Pvt Ltd 2020 (33)
GSTL 0008 (Del)]

Para 8

- *We may further add that the **credit** standing in favour of an assessee **is “property”** and the assessee could not be deprived of the said property save by authority of law in terms of **Article 300A** of the Constitution of India.*

SEC. 16 (4)



BEYOND DUE DATE!

13.1 Since the assessee filed their GSTR-3B returns during the period 2018-19 and 2019-20 beyond the due date prescribed for availment of ITC under Section 16 (4) of the CGST Act 2017, I hold that the ITC of Rs. _____ availed by the assessee is inadmissible to them as per Section 16 (4) of the CGST Act 2017.

TAXPAYER FILING AFTER DUE DATE

(4) A **registered person** shall not be **entitled to take** input tax credit in respect of any invoice or debit note for supply of goods or services or both **after** the [thirtieth day of November] following the end of financial year to which such invoice or [* * *] debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any **invoice** or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been **uploaded by the supplier** under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.

SECTION

Can ITC be claimed without filing 3B?

'Entitled' vs 'Availed' vs 'Take'

Sec. 34 'shall declare the details of such credit note in the return'

Section 49 (2) '*...credit as **self-assessed in the return** of a registered person shall be credited to his electronic credit ledger...*'

SHREE HARI CHEMICALS 2006 (193) ELT 257 (SC) *...the word '**taken**' must be understood in its **proper perspective**. A person cannot take the benefit unless final order of assessment is passed.*

ITC SHOULD BE AVAILED ON SELF-ASSESSMENT!

**Bharti Airtel
Ltd**
[2021 (54)
GSTL 257 (SC)]

Para 46

- The **primary source** is in the form of agreements, invoices/ challans, receipts of the goods and services and **books of accounts** which are maintained by the assessee manually/electronically.
- ... books of accounts and record ... are **primary** documents and **source** material on the basis of which **self-assessment** is done by the registered person including about his eligibility and entitlement to get ITC and of OTL.
- Form **GSTR2A** is **only a facilitator** for taking an informed decision while doing such self-assessment.

'MISSION-IMPOSSIBLE' NOT POSSIBLE IN LAW!

Shekhar Resorts
Ltd. [2023 (68)
GSTL 225 (S.C.)]*

Para 7.1 to 7.3

* SVLDR
Scheme

CA Pritam Mahure and Associates

- **7.1** *As per the settled position of law, no party shall be left remediless and whatever the grievance the parties had raised before the court of law, has to be examined on its own merits [Sunil Vasudeva (supra) (para 31)].*
- **7.2** *... in the case of Calcutta Iron Merchants' Association (supra), **no law would compel a person to do the impossible...***
- **7.3** *In the case of Gyanichand (supra) it was observed ... that it would not be fair on the part of the Court to give a direction to do something which is impossible and if a person has been directed to do something which is impossible, and if he fails to do so, he cannot be held guilty.*

CREDIT – ENTITLEMENT TO BE DETERMINED AT THE TIME OF RECEIPT!

Vodafone Mobile Services Ltd [2019 (27) GSTL 481 (Del.)]*

Para 73

- Service Tax judgment
- Pending before SC

• *It is a settled principle of law that **entitlement of Cenvat credit** is to be determined **at the time of receipt** of the goods. If the goods that are received qualify as inputs or capital goods, the fact that they are **later fixed/fastened to the earth** for use would **not make them a non-excisable** commodity when received.*

ARTICLE 265 – STATE CANNOT RETAIN TAX AND DENY ITC TO BUYER!

Kirloskar Electric
Co. Ltd. [2018
(16) GSTL 564
(Kar.)]

Para 30

• **ITC cannot be ... denied** only because ITC claim is not made in respect of Sale Invoices which are not pertaining to same Tax Period, nor it can be denied on the ground that such claim is not made immediately...The **machinery provisions** of filing of Returns under Section 35 of the KVAT Act **cannot defeat the substantive claims** ...**Article 265** of the Constitution of India does not entitle the State to retain such tax paid by Selling Dealers and deny the claim of ITC credit or set off in the hands of the Purchasing Dealers



Auto Notices?

Rule 88C Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return

- (1) *Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, **the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—***
- (a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or*
 - (b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.*

¹[FORM GST DRC-01B

[See rule 88C]

PART-A (System Generated)

Intimation of difference in liability reported in statement of outward supplies and that reported in return

Ref No:

Date:

GSTIN:

Legal Name:

1. It is noticed that the tax payable by you, in accordance with the statement of outward supplies furnished by you in FORM GSTR-1 or using the invoice furnishing facility, exceeds the amount of tax paid by you in accordance with the return furnished in FORM GSTR-3B for the period<from><to> by an amount of Rs. The details thereof are as follows:

Form Type	Liability declared/ paid (in Rs.)				
	IGST	CGST	SGST/UTGST	Cess	Total
FORM GSTR-1 / IFF					
FORM GSTR-3B					
Difference in liability					

2. In accordance with sub-rule (1) of rule 88C, you are hereby requested to either pay the said differential tax liability, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part-B of FORM GST DRC-01B, and/or furnish the reply in Part-B of FORM GST DRC-01B incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, within a period of seven days.
3. It may be noted that where any amount remains unpaid within a period of seven days and where no explanation or reason is furnished by you or where the explanation or reason furnished by you is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79 of the Act.
4. This is a system generated notice and does not require signature.

88D. Manner of dealing with difference in input tax credit available in autogenerated statement containing the details of input tax credit and that availed in return.-

- (1) *Where the amount of input tax credit availed by a registered person in the return for a tax period or periods furnished by him in FORM GSTR-3B exceeds the input tax credit available to such person in accordance with the auto-generated statement containing the details of input tax credit in FORM GSTR-2B in respect of the said tax period or periods, as the case may be, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01C, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—*
- (1) pay an amount equal to the excess input tax credit availed in the said FORM GSTR-3B, along with interest payable under section 50, through FORM GST DRC-03, or*
 - (2) explain the reasons for the aforesaid difference in input tax credit on the common portal, within a period of seven days.*

FORM GST DRC-01C

[See rule 88D]

PART-A (System Generated)

Intimation of difference in input tax credit available in auto-generated statement
containing the details of input tax credit and that availed in return

Date: 23/01/2024

Ref No:

GSTIN:

Legal Name:

1. It is noticed that the input tax credit availed by you in the return furnished in FORM GSTR-3B exceeds the amount of input tax credit available to you in accordance with the auto-generated statement containing the details of input tax credit made available to you in FORM GSTR-2B for the period Dec 2023 by an amount of Rs. The details thereof are as follows:

Form Type	Input tax credit available / availed (in Rs.)				
	IGST	CGST	SGST/UTGST	CESS	Total
FORM GSTR-2B					
Form GSTR-3B					
Excess input tax credit availed					

2. In accordance with sub-rule (1) of rule 88D, you are hereby requested to either pay an amount equal to the said excess input tax credit, along with interest payable under section 50, through FORM GST DRC-03 and furnish the details thereof in Part-B of FORM GST DRC-01C, and/or furnish the reply in Part-B of FORM GST DRC-01C incorporating reasons in respect of that part of the excess input tax credit that has remained to be paid, within a period of seven days.

3. It may be noted that where any amount of the excess input tax credit remains to be paid after completion of a period of seven days and where no explanation or reason for the same is furnished by you or where the explanation or reason furnished by you is not found to be

Questions!



Thank you!

CA Pritam Mahure and Associates

Happy to Discuss

For suggestions: Pritam.Mahure@Lawgical.in / Sahil.Tharani@Lawgical.in / Sajana.Kumavat@Lawgical.in / +91 99206 44648 / 90988 90333

E-books on GST

E-books on How to be Future Proof

Smile please 😊