

**THE INSTITUTE OF  
CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)



◆◆ **INDIA** ◆◆



**REPUBLIC DAY**

**Issue No. 01**

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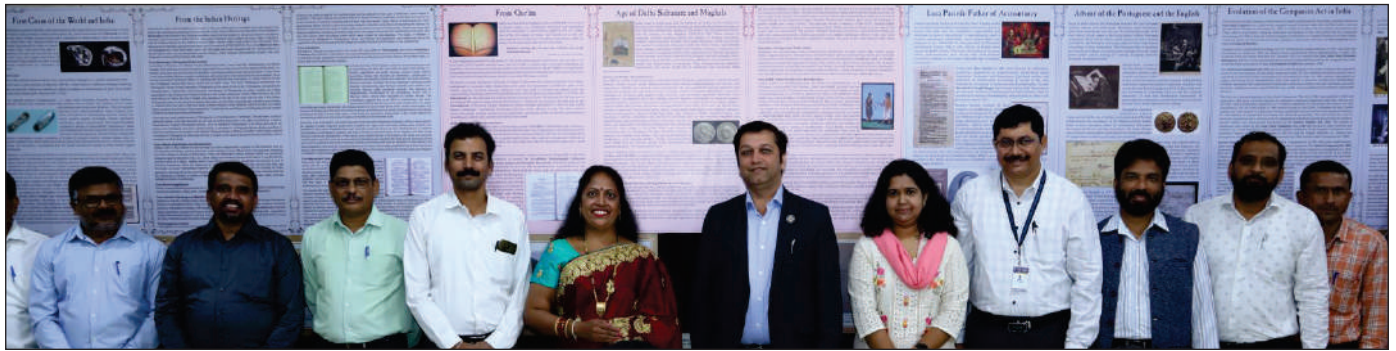
**NEWSLETTER**

**PUNE BRANCH  
OF WIRC OF ICAI**

(Subscribers copy not for sale)



# Inauguration of Accountancy Museum



Ness Wadia College of Commerce



PDEA's Annasaheb Magar College



Rayat Shikshan Sanstha's S. M. Joshi College



Progressive Education Society's Modern College



Marathwada Mitramandal's College of Commerce (MMCC)



## Chairman's Communique

Dear Members,

### **Wish you all very Happy Republic Day!**

The year 2021 is over with lots of programmes including educational, non educational, sports activities, health awareness, CSR activities etc. with social distancing and following all the norms.



CA. Sameer Ladda  
Chairman  
Pune Branch of WIRC of ICAI

### **I would like to present executive summary for the year 2021.**

Pune Branch of WIRC of ICAI has worked on the **E-Square** theme in the year 2021 i.e. **Ethics, Expansion, E-Governance and Expertise**. All 4 E of E-Square are self-explanatory itself about our work and the vision.

As we know as a CA has assured image in the society we reached out to various sections of the society to make awareness of our contribution to the nation as a partner in the nation building process.

In the interest of the members and students we have not only worked on academic development but also tried to give the all-round package in order develop the academic as well as non-academic skill, to enhance the formal and informal networking among members. We are very much sure that due to various non-cpe informal events, relations between the members are strengthening which may lead for formal networking, mergers between the members.

Youngsters expressed their feelings that "Now Pune Branch is giving us all round package instead of study only"

#### **• In this year we interacted with the following stake holders**

- Cooperative Commissioner
- Sugar Commissioner
- Principal Chief Commissioner of Income-tax
- Corporator & Former President (Standing Committee), PMC, Pune
- Chief Investment Officer & Equity Fund Manager, PPFAS Mutual Fund
- Hon. Minister state for Cooperation
- Additional Commissioner, SGST, Pune
- Poona Merchants Association
- Savitribai Phule Pune University
- Indian Defence Warriors
- MIT World Peace University
- Maharashtra State Cooperative Election Authority, Maharashtra State, Pune
- Director of Agricultural Marketing Maharashtra State, Pune
- Deputy Registrar of Co-operative Societies Audit, Maharashtra State, Pune
- Hon. Principal Commissioner, CGST
- Saheb, Minister of State in the Ministry of Finance, Member of Parliament, Rajya Sabha
- Police Department in Pune
- Colleges of Pune

#### **• To understand the expectations from the stake holders and to demonstrate our efforts we interacted with following dignitaries.**

- Shri. Anil Kawade (IAS) - Cooperative Commissioner
- Shri. Shekhar Gaikwad (IAS) - Sugar Commissioner
- Ms. Chhavi Anupam, Principal Chief Commissioner of Income-tax
- Smt. Ashwini Nitin Kadam, Corporator & Former President (Standing Committee), PMC, Pune
- CA. Rajeev Thakkar, Chief Investment Officer & Equity Fund Manager, PPFAS Mutual Fund
- Dr. Vishwajeet Kadam, Hon. Minister state for Cooperation

- Shri. Dhananjay Akhade, Additional Commissioner, SGST, Pune
- Shri. Popatlal Ostwal, President - Poona Merchants Association
- Shri. Ashok Lodha, Vice President - Poona Merchants Association
- Prof. Dr. R. M. Chitnis, Pro Vice Chancellor - MIT World Peace University
- Dr. N. T. Rao, Vice Chancellor - MIT World Peace University
- Dr. Parag Kalkar, Dean, Faculty of Commerce & Management
- Wing Commander Suresh Karnik, VrC - Indian Defence Warrior
- Captain UDAY PARASHURAM SATHE, VrC - Indian Defence Warrior
- LT GEN (RETD) V A BHAT - Indian Defence Warrior
- Major General AJAY PAL SINGH, VSM - Indian Defence Warrior
- Lt Col Santosh Pawar (Retd) - Indian Defence Warrior
- Hon'ble Shri Jagdish Patil, IAS, Maharashtra State Cooperative Election Authority, Maharashtra State, Pune
- Shri. Satish Soni, Director of Agricultural Marketing Maharashtra State, Pune
- Shri. Tanaji Kawade, Deputy Registrar of Co-operative Societies Audit, Maharashtra State, Pune
- Dr. P. L. Khandagale, Addl. Commissioner of Co-operation and Registrar of Co-operative societies, Maharashtra State, Pune
- Smt. Krishna Mishra, Hon. Principal Commissioner, CGST
- Mr. Somnath Jadhav, PI-Crime
- Shri. Amitabh Gupta, IPS, Police Commissioner, Pune City
- Dr. Bhagwat Kisanrao Karad Saheb, Minister of State in the Ministry of Finance, Member of Parliament, Rajya Sabha

• **Pune ICAI has participated and done the activities for professionals and common man and society at large**

1. **Blood Donation Camps:** Various Blood Donation Camps were arranged where 225 Donors
2. **CSR Activities:** Mega Tree Plantation arranged at Taljai Forest Area, Taljai Mandir Road, Pune where planted 610 Trees, Health Check Up Camp, Programmes on Health Awareness, Virtual Programme on "Ultimate Fitness & Self Defense", Distribution of Educational Kit & Food Grains to needy people etc.
3. **Swachha Bharat Abhiyan:** Conducted the Swachh Bharat Abhiyan drive to clean the largest bus depot in Pune.
4. **Felicitation of Indian Defence Warriors:** Felicitated 5 Indian Defence Warriors on the occasion of Independence Day.
5. **Vertical Garden:** Setup of Vertical Garden at branch
6. **Accountancy Museum with Commerce Colleges of Pune:** Historic event of Inauguration of Accountancy Museum with 5 Commerce Colleges of Pune
7. **We Care:** Visited some of the senior members those who have crossed their Age of 75 years to come together and pay our respects to our seniors.
8. **Programmes on Financial and Tax Literacy Drive of the ICAI:** Organised 8 programmes on Financial and Tax Literacy Drive of the ICAI for Officials & staff from Police Department, For Various College Students, For MBA Students & Faculties of Sadhu Vaswani Institute of Management Studies, For officials & staff of Economic Offence Wing & Cyber Crime, Pune, For Shareholders & staff of Bhagini Nivedita Sahakari Bank Ltd.
9. **Covid Related Efforts:** Vaccination Drive for Pune ICAI Chartered Accountants, Senior Members and their immediate relatives, Task Force, Plasma Donation Camp, Virtual Programme on "COVID 19 Awareness & Care", Distribution of Masks, Interactive Meets with Officials of JITO Pune Chapter for the tie up of Quarantine Center etc.
10. **Inauguration of Study Circles:** Inauguration of 2 study circles i.e. Pune East & Pune North CPE Study Circle
11. **Sports Activities :** Chess & Carrom Competition for Members & Students, CA Inter Firm Cricket Tournament 2021, Box Cricket, Debate Competition, Quiz Contest – Kaun Banega Chatur Chanakya, Quadriology Shots for CA Students etc.
12. **MOU with SPPU & Other Colleges :** To conduct TEL (Train, Earn & Learn) Programmes & Other Activities with Savitribai Phule Pune University & Other Colleges done MOU.
13. **Career Counselling Programmes :** 57 Programmes conducted on Career Counselling at various colleges where more than 18,000 students were participate
14. **Industrial Training :** Arranged industrial Training for Students at Credit Suisse, Investment Banking Company.

15. **Industrial/Educational Visits** : Organised Industrial/Educational Visits for CA Students at Various Industries & Forts etc.
16. **CFO Meet** : CFO Meet with CMIB of ICAI organised physical cum virtual mode in the month of August which was inaugurated by Shri. Chandrashekhar Tilak – Economist
17. **Students Activities**: More than 100 students' activities educational & non educational carried out during the year
18. **Incubation Centre** : Inauguration of Incubation Centre of Committee on MSME and Startup, ICAI
19. **Membership Drive**: We had sent Mass SMS, email with procedure link to activate their membership. We are glad to inform we could cater to more than 1200 Members with the help of Regional Office.

During the first lock down due to Covid 19 in the last academic year Pune branch was the first in all over India who has conducted virtual conference and we are feeling proud to say that Pune Branch is the first who had done first physical cum virtual seminar after the lockdown situation came under the control.

- **Total Programmes** – Total 358 Programmes held during the year for Members & students. Out of which 96 were CPE Programmes & 262 were Non CPE Programmes
- **Total CPE Hours Generated** – 333 CPE Hrs. generated 96 CPE Programmes & in total 135829 CPE Generated by Pune Branch
- **National Conferences** – 5 National Conferences conducted during this year with Central Committees as follows :-
  1. 3 Days Virtual National Conference for Women CAs – 1292 Women CAs Attended
  2. National Conference on Information Technology – 490 Members Attended
  3. Virtual National Conference on Capital Market and Investments – 2550 Members Attended
  4. Three Days Virtual National Conference on Indirect Taxes – 212 Members Attended
  5. VCM on National Conference on Direct Taxes – 1750 Members Attended
- **Speakers** - More than 500 members has given their contribution in branch activity as a speaker either in cpe events or in non cpe events. Out of them 44 are first time speaker and 20 are women speakers

#### **Publication at ICAI by Pune Study Group Members**

- Registration of Charitable & Religious Institutions for Income tax Exemption
- Technical Guide on Taxation of HUFs
- Technical Guide on Virtual ITAT Proceedings
- Technical Guide on Reconstitution of Firms
- Technical Guide on Appeal before CIT(A) - Part I

#### **Representations to Various Stakeholders**

- In Respect of Cooperative Societies Including Urban Cooperative Banks
- To Infosys for IT Online Portal Related Queries
- To Commissioner Cooperation - Maharashtra for Mahashankar Website Issues & Audit Panel Related Queries Issues Faced by the CA
- To Hon. MP, GST Council, Pune for Union Budget 2021 Proposal to dispense with the requirement of Audit & Certification of a Reconciliation Statement by a CA
- To Hon. Deputy Chief Minister & Finance Minister for Union Budget 2021 Proposal to dispense with the requirement of Audit & Certification of a Reconciliation Statement by a CA
- To Hon. MP, GST Council, Pune for Union Budget 2021 Proposal to dispense with the requirement of Audit & Certification of a Reconciliation Statement by a CA
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- To SPPU, Pune for Change in Timings or Dates of B. Com Final Year Exams
- To Commissioner of Cooperation & Registrar of Co-operative Societies for Amendments in the MCS Act 1960



- To Maharashtra State Co-operative Election Authority for Challenges in Conducting the Election of the Societies
- To The Hon. Inspector General of Registration & Chief Controlling Revenue Authority, Govt. of Maharashtra, for ease the process of adjudication of deemed conveyance and consider the Permanent Alternative Accommodation Agreement as additional instrument U/s 4 of Maharashtra Stamp Act, 1958

### **Special Milestones of the Pune Branch In this year**

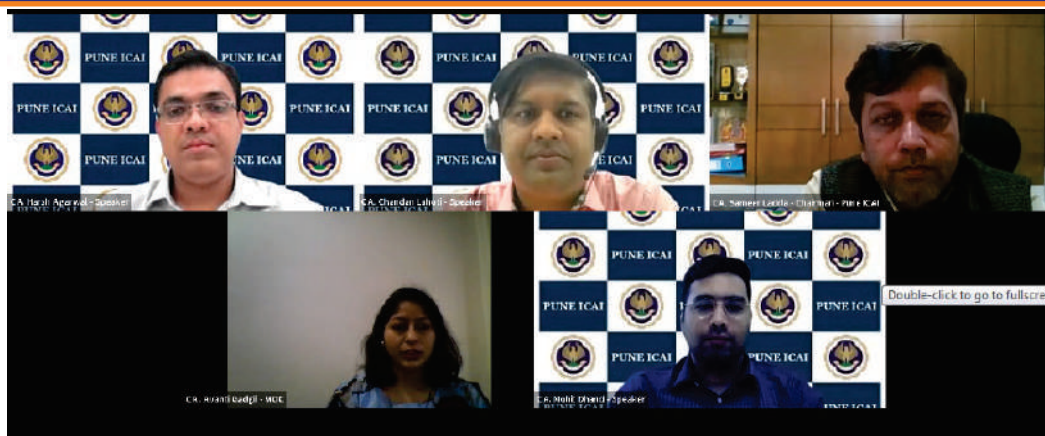
- "Kaun Banega Chatur Chankya season 2.0" This is unique event innovated in last academic year by Pune Branch. On demand of the members across the region this event was organized by Pune branch for the members of wirc. But surprisingly not only members of wirc but members across the nation participated in this KBCC season 0.2 across the nation. This year final round was played physically in the Pune. Out of 400 participants CA. Amar Ahuja from Indore won this award game.
- Virtual Debate Competition for members across the region :- Total No. of Participants 18 Members
- First time Box Cricket Tournament for members and students :- Total Teams participated 13
- Pune Branch Ganesh Festival Season 2.0 :- performed by 6 CAs.
- Welcome to ICAI for newly qualified members about 150 attended
- Event of 15<sup>th</sup> August :- 1st time in the history of Pune Branch arranged Unique Programme of Felicitation to 5 Indian Defence Warriors
- Promotions in members for increasing the voting for elections of RCM and CCM sent mass sms, mass email & circulated e-banner
- Published Gallery of Past Chairmen of Pune ICAI on the website
- Sharing Experience and guidance from Past Chairman of the Branch published in e-newsletters
- Infrastructure Development
  - External and Internal painting work after almost 10 years
  - Water proofing of the building and all the issues of linkages resolved
  - Many other things for beautification of premises like set up of vertical garden, planted additional trees,
  - Replaced of old chairs for ITT Labs after almost 10 years
  - Installed sensor door at administrative floor
  - Replaced of old manual taps with automatic/sensor taps for students & members use during the events

**A big thank you to all members & speakers for your continuous support and mentorship over the last year have been so valuable to me, and I value the time you've taken to guide me so highly.**

CA. Sameer Ladda,  
Chairman, Pune ICAI



## **2 Days Awareness Programme on "Audit Maturity Model (AQMM)"**



**Speakers :- CA. Chandan Lahoti, CA. Mohit Dhand, CA. Harsh Agarwal**

## Government Supplies and Exemptions under GST

Contributed by :- CA. Pritam Mahure

Email :- [capritam@gmail.com](mailto:capritam@gmail.com)

### Government supplies and exemptions under GST – CA Pritam Mahure<sup>1</sup>

Government is omnipresent and it is engaged even in certain activities which are now a familiar terrain of private sector entities. In the present era (as compared to initial decades after Independence), a fundamental question that can be raised is whether the Government is expected to be engaged in such activities as its role is "Less Government and More Governance". However, these types of questions are a separate topic of discussion.

In the context of GST, the issue that needs attention is whether GST is applicable on Government supplies (under forward charge or reverse charge mechanism).

Any service<sup>2</sup> when provided to business entities are liable to GST (unless exempt or if the transaction does not qualify as 'supply' itself). However, that said, it may be noted that most of the services provided by the Central Government, State Government, Union Territory or Local Authority are exempt from tax.

#### Supply vis-à-vis 'Government'

GST is leviable on the activity of 'supply'. As per section 7 of CGST Act, 2017, the term 'supply' includes:

- a. *All forms of 'supply' of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made*
- b. **For a 'consideration'**
- c. **By a 'person'**
- d. **In the course or furtherance of 'business'**

However, before we delve deep into the topic, it is critical to understand how the GST legislation encompasses the activities of Government. Thus, let us understand.

#### What is Government/ LA?

The term 'Government' and Local Authorities (LA) is defined in the GST legislation as below:

<sup>1</sup> The author was assisted by **Pooja Sharma (As. Mgr.)** and **Pranita Shinde** (Exec. at CA Pritam Mahure and Asso.)

<sup>2</sup> Except specified services such as renting of immovable property, speed post, life insurance etc. Further, a basic question that is raised is when Government is engaged

Act	Section	Definition
CGST Act, 2017	2 (53)	<i>„Government“ means the Central Government</i>
IGST Act, 2017	2 (9)	<i>„Government“ means the Central Government</i>
Maharashtra GST Act, 2017	2 (53)	<i>„Government“ means the Government of Maharashtra</i>
UTGST Act, 2017	2 (6)	<i>„Government“ means the Administrator or any Authority or officer authorised to act as Administrator by the Central Government</i>
CGST Act, 2017	2 (69)	<p>(69) "local authority" means –</p> <p>(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;</p> <p>(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;</p> <p>(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;</p> <p>(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006 (41 of 2006);</p> <p>(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;</p> <p>(f) a Development Board constituted under article 371 [and article 371J] of the Constitution; or</p> <p>(g) a Regional Council constituted under article 371A of the Constitution</p>

As regards, meaning of the term 'Government' the CBIC in its FAQ<sup>3</sup> has clarified that "Therefore, the Central Government means the President and the officers subordinate to him while exercising the executive powers of the Union vested in the President and in the name of the President. Similarly, State Government means the Governor or the officers subordinate to him who exercise the executive powers of the State vested in the Governor and in the name of the Governor."

<sup>3</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [GST Sectoral Series on \_Government Services']



## What is 'Government' or not a 'Government'?

Particulars	Whether Government?	Reference
A statutory body, corporation or an authority created by the Parliament or a State Legislature <sup>4</sup>	No	CBIC FAQ No. 3 <sup>5</sup>
Corporations formed under the Central or a State Act	No	CBIC FAQ No. 9 <sup>6</sup>
Companies registered under the Companies Act, 1956/2013	No	CBIC FAQ No. 9 <sup>7</sup>
Autonomous institutions set up by the State Acts	No	CBIC FAQ No. 9 <sup>8</sup>
Regulatory bodies formed by the Government <sup>9</sup>	No	CBIC FAQ No. 10 <sup>10</sup>

## Whether Government is a 'person'?

The term 'person' is defined under section 2(84) to include:

(j) a local authority;

<sup>4</sup> It is a settled position of law (Agarwal Vs. Hindustan Steel AIR 1970 Supreme Court 1150) that the manpower of such statutory authorities or bodies do not become officers subordinate to the President under article 53(1) of the Constitution and similarly to the Governor under article 154(1) [CBIC in its FAQ on '\_Government Services']

<sup>5</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [Question no. 6 / Page 4 of GST Sectoral Series on '\_Government Services']

<sup>6</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [Question no. 6 / Page 4 of GST Sectoral Series on '\_Government Services']

<sup>7</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [Question no. 6 / Page 4 of GST Sectoral Series on '\_Government Services']

<sup>8</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [Question no. 6 / Page 4 of GST Sectoral Series on '\_Government Services']

<sup>9</sup> Examples of regulatory bodies are - Competition Commission of India, Press Council of India, Directorate General of Civil Aviation, Forward Market Commission, Inland Water Supply Authority of India, Central Pollution Control Board, Securities and Exchange Board of India

<sup>10</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [Question no. 6 / Page 4 of GST Sectoral Series on '\_Government Services']

(k) Central Government or a State Government; ...

Thus, 'Central Government', 'State Government' or 'Local Authority' are considered as a 'person' for the purposes of GST legislation.

## Is Government engaged in 'Business'?

The term 'business' is defined under section 2(17) (i) in inclusive manner and inter-alia, it includes:

(i) **any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;**

It can be observed that the services provided by the Government are brought under the ambit of the definition of the term '*business*' under section 2(17) of the CGST Act, 2017, however, the same is qualified by the words "*in which they are engaged as **public authorities***".

### **What is meant by the term 'Public Authorities'?**

In the context of the term "Public Authorities", reference can be made to the FAQ<sup>11</sup> issued by CBIC wherein its clarified that "... A regulatory body, also called regulatory agency, is a **public authority** or a governmental body which exercises functions assigned to them in a regulatory or supervisory capacity. These bodies do not fall under the definition of Government..."

Thus, in cases where the Government is engaged as a 'public authority' then the liability of GST may trigger (subject to fulfilment of other conditions such as transaction qualifying as 'supply' etc).

Further, way back in 2006 (i.e. approx. 15 years ago!), the CBIC (then named as CBEC) had issued a clarification on "*Applicability of service tax on fee collected by Public Authorities while performing statutory functions /duties under the provisions of a law*". The said clarification stated as under:

"2. ... The Board is of the view that the activities performed by the **sovereign/public authorities** under the provision of law are in the nature of **statutory obligations** which are to be fulfilled in accordance with law. The fee collected by them for performing such activities is in the nature of **compulsory levy** as per the provisions of the relevant statute, and it is deposited into the Government treasury. Such activity is purely in public interest and it is undertaken as mandatory and statutory function. These are **not in the nature of service** to any particular individual for any consideration. Therefore, such an activity performed by a sovereign/public authority under the provisions of law does not constitute provision of taxable service to a person and, therefore, no service tax is leviable on such activities.

<sup>11</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [Question no. 10 / Page 5 of GST Sectoral Series on 'Government Services']

3. However, if such authority **performs a service**, which is **not in the nature of statutory activity** and the same is undertaken for a **consideration not in the nature of statutory fee/levy**, then in such cases, service tax would be leviable, if the activity undertaken falls within the ambit of a taxable service."

Additionally, reference can also be made to the judgment of the H'ble Delhi Tribunal in the case of EPFO where it was held as under:

"11. ... The true test is **functional**. Not how the legal person is born, but why it is created. There are various factors which will suggest a body could be "**a public authority**" these are (a) it is linked to the Government or its function could be described as governmental, (b) it provides a public service, (c) the State regulates, supervises and controls its performance, (d) it is subject to judicial review or is publicly accountable for its action, (e) performs charitable objectives, (f) vested with statutory powers, with powers to enforce its order by punitive consequences, (g) the legislature specifically intended by an Act to cover its functions and responsibilities. In general, without any possible dispute, it can be stated that a public authority is one which has a legal mandate to govern, or administer a part some aspect of public life.

12. The Hon'ble Supreme Court in *Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy* reported in (2013) 8 SCC 345 examined the scope of terms "State"/ "other authorities" under Article 12 of the Constitution. The observations of the Apex Court are:

"21. A public authority is a body which has public or statutory duties to perform, and which performs such duties and carries out its transactions for the benefit of the public, and not for private profit. Article 298 of the Constitution provides that the executive power of the Union and the State extends to the carrying on of any business or trade. A public authority is not restricted to the Government and the Legislature alone, and it includes within its ambit, various other instrumentalities of State action. The law may bestow upon such organisation the power of eminent domain. The State in this context, may be granted tax exemption, or given monopolistic status for certain purposes. The "State" being an abstract entity, can only act through an instrumentality or an agency of natural or juridical persons. The concept of an instrumentality or agency of the Government is not limited to a corporation created by a statute, but is equally applicable to a company, or to a society. In a given case, the court must decide, whether such a company or society is an instrumentality or agency of the Government, so as to determine whether the same falls within the meaning of the expression "authority", as mentioned in Article 12 of the Constitution, upon consideration of all relevant factors.

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<sup>11</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [Question no. 10 / Page 5 of GST Sectoral Series on 'Government Services']

24. When we discuss "pervasive control", the term "control" is taken to mean check, restraint or influence. Control is intended to regulate, and to hold in check, or to restrain from action. The word "regulate", would mean to control or to adjust by rule, or to subject to governing principles."

#### **How to read 'in the course or furtherance' of business?**

As per Section 7 of CGST Act, a transaction will qualify as a 'supply', if, *inter-alia*, it is 'in the course or furtherance of business'. Thus, it may be stated that a transaction, *ipso facto*, would not amount to 'supply' unless it 'in the course of or furtherance of business'.

However, the inherent challenge of interpretation of this clause is whether supply should be 'in the course or furtherance of business' of the supplier or of the recipient or 'business' perspective (i.e. activity specific than supplier or recipient perspective).

For eg. Government may provide services to a charitable organisation. Herein the question that may arise is whether Government is providing service 'in the course or furtherance of' their business (say as public authorities). However, it may be noted that the recipient in the instant case (charitable organisation) is not in the 'business'. Further, sometimes the activity may in itself be an activity 'in the course or furtherance' of that service industry.

In such cases, one prominent view is that the term 'in the course or furtherance of business' is used in the GST Act from the perspective of 'supplier'. Similar view was adopted by CBIC in its Press Note dated 13th July 2017 on the gold ornaments wherein it clarified '*Even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se.*'



Herein, again the fundamental question will arise whether Government is really engaged in that activity to regulate or 'in the course or furtherance of business'.

### **What is a 'sovereign' function?**

The CBEC in the Education Guide for Service Tax (dated 20 June 2012) at Para 4.1.7 has clarified (in the context of 'support services') that *"Thus services which are provided by government in terms of their **sovereign** right to business entities, and **which are not substitutable in any manner by any private entity**, are not support services e.g. grant of mining or licensing rights or audit of government entities established by a special law, which are required to be audited by CAG under section 18 of the Comptroller and Auditor-General's (Duties, Powers and Conditions of Service) Act, 1971 (such services are performed by CAG under the statute and cannot be performed by the business entity themselves and thus do not constitute support services.)"*

### **Specific enablement in Section 7 for excluding activities of Government**

Section 7(2) of CGST Act, it provides that notwithstanding anything contained in sub-section (1), -

...

*"b) such activities or transactions undertaken **by the Central Government, a State Government or any local authority** in which they are engaged as **public authorities**, as may be notified by the Government on the recommendations of the Council, shall be treated **neither as a supply of goods nor a supply of services.**"*

The aforesaid specific clause i.e. Section 7 (2) (b) of CGST Act, 2017 reiterates that unless exempted the supply by Government, may be liable to GST. At present, two notifications have been issued under CGST Act using this enablement under Section 7 (2) (b) of CGST Act, 2017<sup>13</sup>.

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<sup>11</sup> [www.cbic.gov.in](http://www.cbic.gov.in) [Question no. 10 / Page 5 of GST Sectoral Series on 'Government Services']

The H'ble Bombay High Court in the case of Builders Association of Navi Mumbai observed that *"The CIDCO is one such authority. It is entirely for the legislature, therefore, to exercise the powers conferred by sub-section (2) of Section 7 of the GST Act and issue the requisite notification. Absent that notification, merely going by the status of the CIDCO, we cannot hold that the lease premium would not attract or invite the liability to pay tax in terms of the GST Act."*

## Government services taxability – A bird's eye view

Transaction	Supplier	Recipient	GST	Reference
G2C <sup>15</sup>	Government	Individual	No	Except specified services such as speed post etc - Refer sr. no. 6 of Not. No. 12/2017-CT (R)
G2B <sup>16</sup>	Government	Business entity	Yes	However, no if covered under Not. No. 12/2017-CT (R)
G2G <sup>17</sup>	Government	Government	No	Entry of Not. No. 8 of 12/2017-CT (R) [Except specified services such as speed post etc]

### What are the services exempted from GST?

The following table gives a summarized view of the key exemptions provided at Not. No. 12/2017-CT (R) vis-à-vis Government functions:

Sr. <sup>18</sup>	Particulars
4.	Services by governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution
5.	Services by a Governmental Authority] by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution
6.	Services by the Central Government, State Government, Union territory or local authority excluding the following services – (a) services by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government Union territory (b) services in relation to an aircraft or a vessel, inside or outside the precincts

<sup>14</sup> 2018 (12) G.S.T.L. 232 (Bom.) - Notice issued in 2018 (18) GSTL J169 (SC)

<sup>15</sup> Government to Consumer

<sup>16</sup> Government to Business

<sup>17</sup> Government to Government

<sup>18</sup> Sr. No. as per Not. No. 12/2017-CT (R)

of a port or an airport; (c) transport of goods or passengers; or (d) any service, other than services covered under entries (a) to (c) above, provided to business entities.
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Other relevant sr. no. from Not. No. 12/2017-CT (R) are 7, 8, 9, 9C, 9D, 34A,42, 47, 47A, 61, 62, 63, 64, 65, 65B etc. It may also be noted that exemption could be available to Government under certain other entries of Not. No. 12/2017-CT (R) as certain activities such as "Services by way of renting of residential dwelling for use as residence" are exempt based on nature of services i.e. irrespective of service provider (whether private individual or Government).

**What are the relevant judicial pronouncement from erstwhile ST regime?**

Case/ Citation	Activity	Observations	ST applicable?
Karnataka State Warehousing Corporation <sup>19</sup>	Storage and warehousing services for fertilizer	Records and copies of relevant statutes not indicating fertilizers stored as per statutory mandate and appellant performing statutory function Appellant not discharging sovereign function Charges received at commercial rates Collection of amount towards arranging loading and unloading not shown as statutory fee	Yes
Research Design & Standards	Assessee providing	Consideration paid in nature of commercial	Yes

<sup>19</sup> 2010 (19) S.T.R. 32 (Tri. - Bang.) - Affirmed in 2011 (23) STR 126 (Karnataka High Court)

Organization <sup>20</sup>	technical support to manufacturers and other operators of equipment to be used in Indian Railways	consideration Just because organisation giving service is constituted under statute of Parliament, activity does not become statutory function.	
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Karnataka Government Insurance Department <sup>21</sup>	Insurance business in respect of vehicles owned by Government departments and commercial concerns	Therefore, it is paragraph 3 of the said circular squarely applies which makes it very clear that if a Government authority performs a service which is not in the nature of statutory activity and the same is undertaken for a consideration not in the nature of statutory fee/levy, then in such cases, service tax would be leviable.	Yes
Maharashtra State Seed Certification Agency <sup>22</sup>	Certification services which are required in case of sale and specified varieties of seeds through intermediaries or in market	Activity not to be considered mandatory and statutory function provided by sovereign/public authority	Yes
Chhattisgarh State Indl. Dev. Corpn. Ltd. <sup>23</sup>	Leasing Government land and collecting	Even if these charges are statutorily prescribed, they remain consideration for	Yes

<sup>20</sup> 2011 (24) S.T.R. 301 (Tri. - Del.) - Stay Order

<sup>21</sup> 2012 (26) S.T.R. 521 (Kar.)

<sup>22</sup> 2015 (37) S.T.R. 655 (Tri. - Mumbai)

<sup>23</sup> 2016 (44) S.T.R. 642 (Tri. - Del.). Also, 2018 (17) G.S.T.L. 593 (Chhattisgarh)

	charges for maintenance of street light and repair and maintenance of roads, etc	rendition of service	
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Tamilnadu State Marketing Corporation Ltd. <sup>24</sup>	Grant of licence/privilege by Tamilnadu State Marketing Corporation Ltd. to private parties to run a bar adjacent to its retail vending shops, sell eatables,	Said activity assigned and performed cannot be treated as sovereign function or statutory right	Yes
Karnataka Industrial areas Dev. Board <sup>25</sup>	Services such as Renting of Immovable Property Services, Construction of Commercial etc	Appellant, KIADB, established by enactment of Karnataka Industrial Areas Development Act, 1966 for the purpose of establishing industrial areas and for promoting rapid and orderly development of industries in the State of Karnataka is a statutory body performing statutory functions and exercising statutory powers	No
Maharashtra Industrial	Management, Maintenance and	Fee collected for performing activity in	No

<sup>24</sup> 2019 (25) G.S.T.L. 539 (Mad.) - Notice issued in 2019 (26) GSTL J123 (SC)

<sup>25</sup> 2020 (40) G.S.T.L. 33 (Tri. - Bang.)

Development Corporation <sup>26</sup>	Repair services	nature of compulsory/statutory levy as per provisions of relevant statute, deposited into Government treasure.  Activity undertaken mandatory and statutory functions	
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Sukhmani Society For Citizen Services <sup>27</sup>	Facilitation of issue of different kinds of licenses, permissions and registrations by Govt. of Punjab such as Registration of birth and death, marriages	Such activities are in the nature of statutory functions of the Government. Service of facilitation has been rendered to Govt. departments, which are engaged not in business but in rendering public services	No
EPFO <sup>28</sup>	Assessee a statutory authority created for specified welfare function, performing statutory functions as mandated by Act of Parliament	Exemption granted vide Notification No. 9/2010-S.T., to have no relevance to decide assessee's tax liability during present disputed period, under pre-negative list based tax regime.  No taxable element in such transaction	No
Dy. Commissioner of Police, Jodhpur <sup>29</sup>	Security services	Activities undertaken by police for which charges	No

<sup>26</sup> 2014 (36) S.T.R. 1291 (Tri. - Mumbai) - Affirmed in 2018 (9) GSTL 372 (Bombay High Court)

<sup>27</sup> 2017 (47) S.T.R. 172 (Tri. - Chan.)

<sup>28</sup> 2017 (4) G.S.T.L. 294 (Tri. - Del.) - Maintained in 2018 (18) GSTL J215 (SC)

		have been recovered, not in nature of business activity <sup>30</sup>	
IN RE: Mysore City Corporation <sup>31</sup>	Scrutiny fee, building licence fee, etc., collected by municipal corporation	Building licence fee, scrutiny and completion report fee collected for discharging statutory function <sup>32</sup>	No

It may be noted that the judgment in the context of erstwhile Service Tax legislation may not be directly applicable in the GST regime as the legal provisions could be different. Further, heavy reliance on the erstwhile Service Tax Circular 89/7/2006 dated 18.12.2006 could be litigious proposition.



## Conclusion and way forward

It can be observed that Government supplies have too many dimensions and before a business entity determines whether GST is payable under RCM or not, effectively it has to go through numerous judgments, notifications etc.

Thus, as the taxpayer facilitation measure the Government should explore to provide a comprehensive list of services with real-life examples and applicability of GST thereon.

<sup>29</sup> 2017 (48) S.T.R. 275 (Tri. - Del.) - Maintained in 2018 (11) GSTL J133 (SC)

<sup>30</sup> It may be pertinent to note that the CBIC in its FAQs on 'Government Services' have clarified that "Services provided by Police or security agencies of Government to PSU/private business entities are not exempt from GST. Such services are taxable supplies and the recipients are required to pay the tax under reverse charge mechanism on the amount of consideration paid to Government for such supply of services"

<sup>31</sup> 2010 (18) S.T.R. 127 (Commr. Appl.)

<sup>32</sup> It may be pertinent to note that the CBIC in its FAQs on 'Government Services' have clarified that "Regulation of land-use, construction of buildings and other services listed in the Twelfth Schedule to the Constitution which have been entrusted to Municipalities under Article 243W of the Constitution, when provided by governmental authority are exempt from payment of tax."



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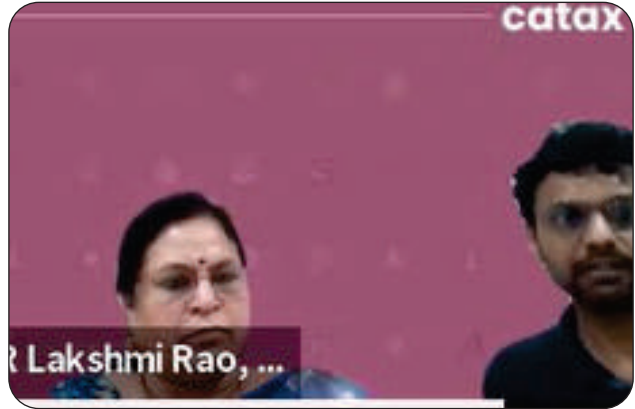


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