

NATIONAL JUDICIAL ACADEMY



**NATIONAL JUDICIAL CONFERENCE FOR HIGH COURT
JUSTICES ON THE REGIME OF GOODS AND SERVICES TAX
[P-1153]**

1ST - 3RD MARCH, 2019

**COORDINATOR: MS. ANKITA PANDEY, FACULTY, NATIONAL JUDICIAL
ACADEMY, BHOPAL**

List of Resource Persons

S. No.	Name	Designation
1.	Mr. V. Sridharan	Co-founder & Senior Advocate, Lakshmikumaran & Sridharan Attorneys
2.	Mr. S. Ganesh	Senior Advocate
3.	Mr. N. Venkataraman	Senior Advocate
4.	Mr. Sujit Ghosh	Advocate

PROGRAMME SCHEDULE

Day 1 1st March, 2019 Friday	Session 1 10:00 AM – 11:30 AM Indirect Taxes – Historical Perspective <ul style="list-style-type: none"> • <i>Need for the Constitution Amendment</i> • <i>Salient Features of the Constitution Amendment</i> • <i>Discussions on the 101st Amendment and insights into Article 246A, 269A and 279A</i> 	T E A	Session 2 12:00 Noon – 01:30 PM Overview of GST Features of GST <ul style="list-style-type: none"> • <i>Tax on Supply</i> • <i>Inter-State vs Intra-State</i> • <i>Credit Mechanism</i> • <i>Differential Rates</i> • <i>Valuation</i> 	L U N C H	Session 3 02:30 PM – 04:00 PM Concept of Supply <ul style="list-style-type: none"> • <i>Natural Meaning</i> • <i>Activities specified in Schedule 1</i> • <i>Activities specified in Schedule 2</i> • <i>Activities specified in Schedule 3</i> 	
	Session 4 10:00 AM – 11:30 AM Classification: Mixed/ Composite Supply <ul style="list-style-type: none"> • <i>Discussions on the General Rules of Interpretation, an overview of the Customs Tariff and HSN Explanatory Notes, GST Schedules</i> • <i>Explaining the concept along with various examples of mixed/ composite supply</i> 		B R E A K		Session 5 12:00 Noon – 12:30 PM Valuation: Time & Place of Supply <ul style="list-style-type: none"> • <i>Section 15 of CGST Act & Valuation Rules</i> • <i>Concept of open market value, valuation in case of stock transfer, related parties</i> • <i>Relevance of time of supply and time of supply for goods/ services</i> • <i>Meaning of place of supply and determination of place of supply of goods/ services</i> 	B R E A K
12:30 PM – 01:30PM Leading cases under the GST regime						
Day 2 2nd March, 2019 Saturday						

Day 3 3rd March, 2019 Sunday	Session 7 10:00 AM – 11:30 AM GST: Constitutional Perspective	Session 8 12:00 Noon – 01:30 PM Anti-profiteering
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**P-1153: NATIONAL JUDICIAL CONFERENCE FOR HIGH COURT JUSTICES ON
THE REGIME OF GOODS AND SERVICES TAX**

A three day conference was organized at the NJA for High Court Justices from 1st to 3rd March, 2019. The Conference was conceived to provide insights into the recent legislation – the GST Act, 2017. The aim was to provide a forum for deliberating normative issues relevant to the evolution of indirect taxes from a regime of distinct and multiple taxation to that of substantial uniformity across diverse tax domains and jurisdictions, i.e. federal and state; to explore and comprehend potential areas of conflict and litigation consequent to this legislative shift; the constitutional evolution in the area; and the adjudicative and socio-judicial inferences that may arise thereby.

DAY 1

Session 1 – Indirect Taxes: Historical Perspective

Speaker – *Mr. Sujit Ghosh*

The speaker began the discussion by stating that sovereign always wanted to collect taxes in any form possible and that one of the oldest tax known to be in existence is municipal tax. In fact, the power to collect and retain tax was realized to maintain the sovereign power of the state. The history of the US and Canadian federal and taxation structure was discussed. In this regard, reference was made to the Indian context wherein it was realized that if states are deprived of the power to impose and collect tax it would result in complete dependence of the state on the centre which would ultimately turn down their sovereignty. Therefore, equivalent division of taxes was implemented. Further, the problem of rate war, multiplicity of taxes and creditable margin resulting in profitless margin were highlighted. Overall the cost of doing business was going up due to multiplicity of taxes and its ability to defray taxes and claim credit was going down. In this regard, it was emphasized that the aim of bringing about GST was to ensure free flow of credit. In order to change the system a constitutional amendment was needed. At the same time a convergence between the states and the centre had to be built so that the states were convinced that they are in no way giving up their power to collect and retain tax.

Session 2 – Overview of GST

Features of GST

Speaker – *Mr. Sujit Ghosh*

The session opened to an elaborate discussion on some of the basic features of the GST regime in India were highlighted, such as: (i) GST is based on the principle of destination based consumption taxation as against the principle of origin based taxation; (ii) GST is applicable on “supply” of goods or services as against the concept of tax on the manufacture of goods or on sale of goods or on provision of services; (iii) It is a system of dual GST (CGST and SGST) with the Centre and the States simultaneously levying it on a common base; (iv) An Integrated GST (IGST) is levied on inter-State supply (including stock transfers) of goods or services. This would be collected by the Centre so that the credit chain is not disrupted; (v) Exports are to be zero rated; (vi) Input Tax Credit is given a broad base by making it available in respect of taxes paid on any supply of goods or services or both; (vii) An anti-profiteering clause has been provided in order to ensure that business passes on the benefit of reduced tax incidence on goods or services or both to the consumers; (viii) Provision for penalties for contravention of the provision of the proposed legislation have been made.

Session 3 – Concept of Supply

Speaker – *Mr. Sujit Ghosh*

The speaker began the session with a reference to section 7 of the CGST Act and stated that the definition of supply is inclusive in nature and that supply must be for a consideration and for a business purpose. As per section 7 (1) (a) ‘supply’ includes transactions such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. It was further asserted that CGST is leviable on all intra-State ‘supplies’ on the value of the goods and/or services, thus the taxable event under GST regime is ‘supply’. In other words, if an activity is covered as per section 7 of CGST Act within the scope of ‘supply’ then only GST will be leviable on the same. The speaker also deliberated upon the activities/transactions mentioned under Schedule I, II and III of the CGST Act.

DAY 2

Session 4 – Classification: Mixed/Composite Supply

Speakers – *Mr. S. Ganesh, Mr. N. Venkataraman & Mr. Sujit Ghosh*

The session began with the introduction of the concepts of mixed and composite supply. It was iterated that composite supply means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply. Mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. The speaker briefly explained the distinction between ‘Composite Supply’ and ‘Mixed Supply’. A composite supply is a naturally bundled supply while mixed supply is not naturally bundled in ordinary course of business. A supply can be mixed supply only if it is for a single price, while a supply can be composite supply even if separate prices are charged. The speaker further shared the example of mobile and its battery and stated that it would be treated as a composite supply as these are naturally bundled goods.

Session 5 - Valuation: Time and Place of Supply

Speaker – *Mr. N. Venkataraman*

The session was dedicated to the understanding of time and place of supply which is very important in determining the tax liability on the supply of goods or services or both. In this regard, section 12(2) of the CGST Act which deals with time of supply of goods and section 13(2) which deals with time of supply of services were discussed in detail. The time of supply under GST is the point in time when the particular goods and/or services were supplied or deemed to be supplied to the recipient. The rate of GST, taxable value, and due date are determined based on the time of supply. Under GST, the taxes are liable to be paid at the time of supply. The discussion also extended to the supplies across various jurisdictions. Further, the speaker went to explain the valuation of taxable supply which is mentioned under section 15 of CGST Act. Clause (3) interprets that if there is any discount provided in the invoice state GST will be payable only on the discounted price and not the original price. It was also stated that the discount can happen in two ways, first at the time of purchase while second at the time of accelerated sale.

Session 6 – Input Tax Credit

Speakers – *Mr. S. Ganesh, Mr. N. Venkataraman & Mr. Sujit Ghosh*

The speaker initiated the session with the basics of input tax credit. It was stated that the object of input tax credit is to obviate the cascading effect of multi leveling of tax and that it would be no exaggeration to say that if a dealer was disabled from getting input tax credit in respect of the taxes that he paid on his goods or he was in some way prevented from enabling his customer from getting input tax credit then it would be an attack on GST system as the whole concept of GST is based on input tax credit and that is to be followed efficiently and satisfactorily. The provisions relating to input tax credit are found under sections 16-21 of the CGST Act. It was explained that input, capital goods and input services are defined to mean goods/services 'used or intended to be used' by a supplier "in the course or furtherance of business". The term 'used' indicates that goods/ services are already put to use and 'intended to be used' indicates that goods/ services will be used in future. It was emphasized that eligibility to claim credit will arise only if there is actual usage or intention to use the goods or services. Thus, in case actual usage or intention to use is missing, credit availability on such goods or services could be questionable.

DAY 3

Session 7 – GST: Constitutional Perspective

Speaker – *Mr. V. Sridharan*

The session began with an elaborate discussion highlighting the history of indirect taxation in India. The speaker discussed the position of taxation pre and post 1950. Further, relevant provisions of the Central Sales Tax Act, 1956 particularly section 3, 4, 5, 6 and 9 were discussed with reference to the constitution of India. The session further continued with discourse upon distribution of revenue. In this regard, the speaker elaborated upon the Constitution (Eightieth Amendment) Act, 2000 by which Article 272 was repealed and Constitution (101st Amendment) Act, 2016, by which Goods and Service Tax was introduced in India. Under the Constitution (101st Amendment) Act, 2016, Entry 84 of List I, Entry 52, 55, 54 of List II was omitted. The session went on to have an elaborate discussion on Articles 246, 246A, 248, 253, 254, 268, 268A, 269, 269 A, 279 A, 286, 366(12A) and 366(29A) of the Constitution of India.

Session 8 – Anti Profiteering

Speaker – *Mr. V. Sridharan*

The session began with the assertion that anti profiteering measures are a deterrent for trade and industry to enjoy unjust profit arising out of implementation of Goods and Services Tax in India. That is to say it would obligate businesses to pass on the benefit arising out of GST implementation to their customers. It was further stated that section 171 provides that it is mandatory to pass on the benefit due to reduction in rate of tax or from input tax credit to the consumer by way of commensurate reduction in prices. In addition, Rules 122-127 of the CGST Rules relating to duties of the Anti-Profiteering Authority were also discussed. The Authority will determine the method and procedure for determining whether the reduction in rate or the benefit of input tax credit has been passed on by the seller to the buyer by reducing the prices.