

NATIONAL JUDICIAL ACADEMY



WORKSHOP FOR HIGH COURT JUSTICES ON THE REGIME OF GOODS AND SERVICES TAX (P-1197)

JANUARY 4 & 5, 2020

PROGRAMME REPORT

Submitted by

Ms. Shruti Jane Eusebius, Research Fellow

OBJECTIVE

The workshop for High Court Justices on the regime of Goods and Services Tax (GST) was organised by NJA with the objective of providing insights into the Central Goods and Services Tax Act, 2017 (CGST Act); and to deliberate upon normative issues relevant to the evolution of indirect taxes, from a regime of distinct and multiple taxation to one of substantial uniformity across diverse tax domains and jurisdictions i.e., Federal and State. The potential areas of conflict and litigation consequential to this legislative shift, the constitutional evolution in the area and the adjudicative and socio-judicial consequences that result thereby were explored in the workshop.

RESOURCE PERSONS

1. Hon'ble Mr. Justice Vibhu Bakhru, Judge, Delhi High Court
2. Mr. S. Ganesh, Senior Advocate
3. Mr. V. Lakshmikumar, Founder and Managing Partner, Lakshmikumar & Sridharan attorneys
4. Mr. Sujit Ghosh, Advocate
5. Mr. K. Vaitheeswaran, Advocate & Tax Consultant

SESSION 1

Theme: Constitutional Perspectives of GST: A Brief Overview; & Anti-Profiteering

Speakers: Mr. S. Ganesh, Mr. Sujit Ghosh and Mr. K. Vaitheeswaran

Chair: Hon'ble Mr. Justice Vibhu Bakhru

The speaker threw light on the systems of GST in various countries and the introduction of GST in India. The complexity of the tax system and the multiplicity of taxes were highlighted as the reasons for the introduction of GST in India. The main objectives of the GST emphasised were – revenue generation, tax reform, elimination of cascading effect, equitable taxation, simpler system and one market. The 101st constitutional amendment was discussed to highlight the major features of the GST system. The major features of the GST system were explained. The judgment of the Supreme Court in *Union of India v. Mohit Mineral Private Limited* (2018 Indlaw SC 915) was discussed to examine the contours of the power under Article 246A. The creation of the GST Council, its role in achieving harmonisation between the Centre and the States and in creation of a common policy document for entire country. The speakers also examined the scope of the powers of the High Court to review decisions of the GST Council.

The speaker dwelt on the concept of Anti-profiteering and discussed the provisions of the Anti-Profiteering Rules, 2017. The creation of the Anti-Profiteering Authority under the Anti-Profiteering rules and its powers were discussed. The challenges in the methodology and procedure for determination of anti-profiteering were discussed. The lack of a definition of the term anti-profiteering was identified as a crucial challenge in determination of the same.

SESSION 2

Theme: Concept of Supply

Speakers: Mr. S. Ganesh, Mr. Sujit Ghosh and Mr. K. Vaitheeswaran

Chair: Hon'ble Mr. Justice Vibhu Bakhru

The speaker dwelt on supply as a single taxable event in CGST Act. The definition of supply was discussed and the ingredients to constitute supply were explained. The various nature of activities that are included in the scope of the term supply were emphasised upon. The activities included in schedule 1 were discussed. The case of *Durga Projects and Infra Structure Private Limited* (Order No. AAR KAR ADRG 17/2019) was discussed to throw light on the applicability of GST on transfer of land development rights. It was stated that GST would not be applicable to arrangements that are not for business purposes or are personal nature involving supply of goods. The term 'business' as defined in Section 2(17) of the CGST Act was discussed; and it was stated that the term was very wide and would include any organised activity

Such as trade, commerce. Furthermore any activity in connection with or incidental to business involving supply would also be business. The term would include any activity falling within the scope of the term as defined irrespective of volume, frequency, regularity or consistency of the activity. The issue was raised as to the taxability of supply made without consideration and the case of *Columbia Asia Hospital Limited* (Advance Ruling No. KAR ADRG 26/2018 dated November 13, 2018) was discussed in this regard. The items listed in Schedules 2 and 3 were discussed and the cases of *Safari Retreats Private Limited v. Chief Commissioner of Central Goods & Service Tax* [W.P.(C) No. 20463 of 2018 decided on April 17, 2019] and *In Re Caltech Polymers Pvt Ltd.* [Order No. CT/7726/2018-C3 dated September 29, 2018] were discussed. The speakers were of the view that the term 'supply' as defined in the GST Act was

very wide and would be subject to much interpretation and could potentially give rise to litigation. Comparison was made between the concept of supply in India, Australia and New Zealand. The cases of *Landboden-Agrardienste GmbH & Co. KG v. Finanzamt Calau* ([1998] BVC 70) and *Jürgen Mohr v. Finanzamt Bad Segeberg* ([1996] BVC 293) were discussed in this regard.

SESSION 3

Theme: Classification: Mixed/ Composite Supply

Speakers: Mr. S. Ganesh, Mr. Sujit Ghosh and Mr. K. Vaitheeswaran

Chair: Hon'ble Mr. Justice Vibhu Bakhru

The speaker stated that transactions where two or more supplies are combined can be either missed supply or composite supply. The classification of these transactions has significant consequences in terms of rate and the lack of clarity on the same led to litigation. Hence, the GST Act specifically defines these terms. As per Section 2(30) of the GST Act, composite supply is a supplies that are naturally bundled, with one of these supplies being the principal supply (predominant element). Such supply need not have a single price but the supply has to be together. Principal supply in composite supply transactions would be the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. The rate of tax applicable to the principal supply would be the rate of tax for the entire supply. In contrast, mixed supply is any other combination of supply at a single price. The rate applicable to the item in the supply which attracts the highest rate of tax would be the rate of tax for the entire supply. The advance ruling in the case of *Switching Avo Electro Power Ltd.* (Appeal Case No.

04/WBAAAR/Appeal/2018) was discussed. The test for determining composite supply was discussed.

SESSION 4

Theme: Valuation: Time & Place of Supply

Speaker: Mr. V. Lakshmikumaran and Mr. Sujit Ghosh

Chair: Hon'ble Mr. Justice Vibhu Bakhru

The speaker distinguished between the terms 'consideration' and 'value' and emphasised on 'supply for consideration' as the taxable event attracting GST. Consideration is relevant to qualify as a taxable event but is not relevant for valuation purposes. The term is defined in Section 2(31) of the CGST Act to cast a wide net to attract tax liability on supply. However, 'value of taxable supply', which is the value on which tax is levied, is provided in Section 15 of the CGST Act. The value as determined in Section 15 is the transaction value (i.e. the price paid or payable) and several elements including subsidy, taxes, incidental expenses, interest etc. are added back into the value of the supply. The case of *Commissioner of Sales Tax vs Rita Sales Corporation* [(1986) 61 STC 240] was discussed with regard to inclusion of discounts and reimbursements in the value of supply. Time and place of supply is a relevant factor to determine liability to pay tax under the CGST Act. The provisions of Chapter IV of the CGST Act were discussed to delineate the provisions regarding time and place of supply. In GST, the supply is taxable at the time when the price is paid or is payable, and the pre-condition for such taxability is that the transaction must be between unrelated parties and the price is the sole consideration for the supply. 'Transaction Value' as the value of supply liable to tax and the inclusions in the transaction value were explained. The Determination of Value of Supply,

CGST Rules, 2017 (Valuation Rules) and its applicability was discussed and it was stated that Valuation Rules are to be referred when the consideration is wholly or partly not in money; in related party transactions; when there is reason to doubt truth or accuracy of the transaction value declared; and in cases of business transactions by money changer. In such cases the value of supply would be the open market value; and when there is no open market value, the value of supply shall be the consideration in money plus equivalent value of goods. The provisions of Rule 27 of the GST Rules was discussed. It was stated that the recipient of the supply is absent from the definition of the term 'supply' in Section 7 of the CGST Act and the issue would potentially arise with regard to taxability of supplies made to self.

SESSION 5

Theme: Input Tax Credit

Speaker: Mr. V. Lakshmikumaran and Mr. Sujit Ghosh

Chair: Hon'ble Mr. Justice Vibhu Bakhru

The speaker dwelt on input tax credit as a mechanism to reduce cost of business and to bring down price. The provisions relating to eligibility and conditions for claiming input tax credit were discussed at length. The exceptions under Section 17(5) of the CGST Act where credit could not be claimed were discussed. The conditions for availing Input tax credit under Section 16(2) of the CGST Act were explained. The provisions relating to matching, reversal and reclaim of input tax credit and output tax credit and annual return (Sections 42 to 44 of the CGST Act). The provisions of Rule 36 of CGST Rules 2017 was discussed. Input tax credit was emphasised as a statutory right.
