

NATIONAL JUDICIAL ACADEMY



NATIONAL WORKSHOP FOR HIGH COURT JUSTICES ON THE REGIME OF GOODS AND SERVICES TAX

[P-1236]

16th & 17th January, 2021

Programme Report

Programme Coordinators:

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The National Judicial Academy organized an online National Workshop for High Court Justices on the Regime of Goods and Services Tax on 16th and 17th January, 2021 which was attended by 29 participants. The objective of the workshop was to provide insights into various integral concepts of Goods and Services Tax legislations, existing and potential areas of conflict and the jurisprudential evolution in the area. Mr. D.P. Nagendra Kumar, Mr. N. Venkataraman, Mr. K. Vaitheeswaran, Mr. V. Sridharan and Mr. Sujit Ghosh were the resource persons for the programme.

Presentation by e-Committee of the Supreme Court on eCourt Services

The various achievements of the e-Committee of the Supreme Court of India were highlighted in the sessions. The participants were given a demonstration of the National Judicial Data Grid (NJDG) and JUSTIS App. The judges were also informed about the various Electronic Case Management Tools (eCMT) and the benefits of the NJDG platform in court and case management. The functioning of virtual courts for traffic challan cases was also explained. Thereafter, the NSTEP app, e- pay portal and e-filing alongwith the various facilities provided in the e- Sewa Kendras were discussed.

Session 1- GST: Constitutional Perspectives

The session was initiated by focusing upon the history of the indirect tax regime in India. The main stages in the development of the indirect tax jurisprudence culminating in enactment of the Goods and Services Tax (hereinafter GST) legislations were highlighted. The challenges which arose in enactment of the Goods and Services Tax were highlighted *i.e.* conversion from origin to destination based taxation; compensation to States; protection of revenue at the Centre and State level; uniformity in taxation; mechanism for inclusion; and exclusion of items under the ambit of 'goods' and 'services'. Thereafter Article 246A of the Constitution of India was stressed upon as the provision enabling the levy of GST. It was opined that Article 246A is a perfect example of co-operative federalism wherein the States and the Center have compromised and to implement a unified single levy. The provision defines the power of taxation and field of taxation. The formation of the GST Council was also discussed; and it was stated that the entire operability of the law is undertaken by it. GST Council is the forum which frames all the rules, concessions, notifications etc. and all the decisions are taken through voting wherein the States and Center have specific vote share. Further, the judgments of the Supreme Court in *Skill Lotto Solutions Pvt. Ltd. v. Union of India* (AIR 2021 SC 366) and *Union of India and Another v. Mohit Mineral Private Ltd* [(2019) 2 SCC 599] were discussed in detail.

Session 2 - Concept of Supply: Mixed and Composite Supply

Section 7 of the Central Goods and Services Act, 2017 was elaborated upon in the session, and the main elements as provided in the Section were highlighted *i.e.* 'supply for consideration' and 'in furtherance of business'. It was stated that even a barter transaction is included in the definition of 'supply' irrespective of the fact that the transaction involves no monetary consideration. Furthermore, the exceptions provided in the Schedules to the Act were discussed during the session. The situation involving supply of goods from head office to its branch offices outside the country was also discussed to identify whether it would constitute supply or not. The definition of composite supply provided under section 2(30) of the CGST Act was emphasized along with the concepts of principal supply and ancillary supply. Thereafter, the speaker compared the taxes paid in pre and post GST era for supply of goods through truck from one State to another. The speaker also highlighted potential issues regarding payment of GST in situations of supply of goods and beverages in hotels and restaurants; supply of food in airlines; rentals; healthcare services; renewable energy devices and their installation; and education sector.

Session 3- Valuation, Time and Place of Supply

Section 15 of the CGST Act was highlighted as the edifice of the Act. It was stated that valuation is important since it determines the amount on which the tax would be levied. It was stated that the legislation lays down the standards for valuation between related parties and unrelated parties. Thereafter, the various heads included in the price for the purpose of valuation and potential issues arising thereof were discussed. The exceptions to the above rule were also highlighted which included 'discount'. Section 12 & 13 of the CGST Act were also discussed regarding 'time of supply' of goods and services. The difference between 'advance' and 'deposit' was also elaborated and it was stated that such distinction affects the valuation. The situations involving supply of partial consignments of goods at different time; supply of different parts of the good at different times and the consequent effect on the tax payable, was deliberated upon during the course of the session.

Session 4 -Input Tax Credit

The session was initiated by elaborating upon Input Tax Credit (ITC) *i.e.* the credit given for value addition in the chain; and is the credit of tax already been paid on inputs earlier in the chain. The concept of ITC seeks to prevent the malady of cascading of taxes. The scope of the right of ITC as a privilege or as a vested right was discussed. The eligibility criteria for tax credit provided under Section 16 of the CGST Act was discussed and the definition of business provided under Section 2 (17) was highlighted. The conditions necessary for ITC credit were elaborated upon, including presence of tax invoice, actual payment, payment by person taking the credit to vendor or service provider etc. The credit is recorded in 'Electronic Credit Ledger' and is matched to prevent wrongful claim of such credit. It was stated that the ITC credit is not available for certain goods and services which are provided in Section 17(5). The provision for refund of unutilized credit *i.e.* Section 54 and the issue of transitional credit were deliberated upon. The dichotomy of views of the various High Courts on the issue of refund of unutilized tax credit for input services was elaborated with reference to the judgments in *Tvl. Transtonelstroy Afcons Joint Venture v. Union of India* 2020 (43) GSTL 433 and *VKC Footsteps India Pvt. Ltd. v. Union of India* 2020 (43) G.S.T.L. 336.