

NATIONAL JUDICIAL ACADEMY, BHOPAL



Workshop for High Court Justices on the Regime of Goods and Services Tax

[P-1252]

01th to 02nd May 2021

Programme Report

Programme Coordinators

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The National Judicial Academy organized a two day [Online] Workshop for High Court Justices on the Regime of Goods and Services Tax [*hereinafter*, GST] from 01th to 02nd May 2021. The said workshop was conceived to deliver acumens into the GST Act, 2017 and deliberate upon normative concerns pertinent to the development of indirect taxes, from a system of discrete multiple taxation to one of extensive equivalence transversely diverse tax domains and jurisdictions. The discussions reconnoitered and categorized prospective areas of conflict and litigation substantial to this legislative transferal, the constitutional evolution in the area and the adjudicative and socio-judicial concerns that arise thereby. The discourse expounded discussion on the themes like- GST: Constitutional Perspective; Concept of Supply; Classification: Mixed/ Composite Supply; Valuation: Time & Place of Supply and; Input Tax Credit.

Session- 1

GST: Constitutional Perspectives

Speakers: Mr. V. Sridharan & Mr. D.P. Nagendra Kumar

The session initiated with a brief history of indirect taxes in India. Tax law prior to 1950's was debated. The case of *King v. Dominion Engineering Co. Ltd.*, AIR 1947 PC 94 which laid down that in matters of an ordinary retail sale for cash across the counter of a shop, the stages of agreement, appropriation of the goods to the contract, delivery, payment of the price and passing of the property are altogether essentially concurrent. Nonetheless in other complex transactions for the sale of goods to be produced or manufactured these periods may be spaced in time through several means. Importance was placed on Article 246 of the Constitution of India which allocates legislative powers including taxation, between the Parliament of India and the State Legislatures. Subsequently, the new provision of Article 246A- Power to Impose GST was particularised. While discussing the *101st Constitutional Amendment*, the meaning of *Service, State, Goods and Supply* was elaborated. The session additionally discussed levy & collection of GST in the course of Inter-State trade & commerce under Article 269A. GST Council under Article 269A and recommendations that can be made by the Council was deliberated. The concept of Central State Service and Value Added Tax was also considered. Objectives behind the indirect tax reforms i.e., widening the tax base, rationalising the rate structure – few rates, low rates, enhancing international

competitiveness of Indian goods and services, enhancing equity of the tax system, simplifying the tax laws and processes to optimise tax collections and reduce compliance cost and strengthening the fiscal autonomy of the States was expounded.

Session- 2

Concept of Supply: Mixed and Composite Supply

Speakers: Mr. N. Venkataraman & Mr. K. Vaitheeswaran

The session commenced by discussing the emerging trends in GST, gaps in the legislations and how the GST law is interpreted by the courts in the sense in which the concept has been developed. It was highlighted that for a judge exercising Article 226 in the High Court or in a tax appeal there are five principles in GST . These five principles should be the background material whenever a case comes before them a judge for disposition. *First principle*, the source of taxation in the Constitution of India has always been under Article 245 or Article 246 whereas, GST is one unique Article in the Constitutional architecture that is Article 246A. Therefore, whenever there is an issue regarding the source of power the judges should go by Article 246A since it is meant only to sub serve the interest of GST. *Second principle*, is the fields of taxation. In GST law the field of taxation is not found in List I or List II because it is a concurrent levy or a simultaneous levy which cannot be put in both the lists therefore, the field of legislation has also been conceived into Article 246A as goods and services. In other words the field of taxation is found in the Article and not in the Entries. *Thirds principle* is the power of taxation which is normally either to the union or centre whereas since GST is not a concurrent taxation power but a simultaneous taxation power. So the power to tax is given both to the Union and to the State, except in the case of inter-state export and import where union alone has the power to taxation. *Fourth principle* is what is the charge of taxation that will alone determine the scope of levy. In GST the charge is supply of goods and supply of services. Therefore, the starting point for any judge deciding a GST matter is they need to know the history of supply tax. Supply is a terminology which is all pervasive and all encompassing. *Fifth principle*, the disputes on this entire law will normally revolve around two baskets in the future i.e., output tax liability issues and input tax credit. These five principles can be borne in mind whenever Article 226 comes for consideration and any issue or trend can be traced through these five principles. It was highlighted that GST is the law dependent on 4Ts

namely, Transformation, Technology, Transparency and Treatment. Whenever, a Writ Petition comes before the justices they will have the occasion to trace it to anyone of the 4Ts. Thereafter, the meaning of Composite supply under Section 2(30) and Mixed supply under Section 2 (74) of the CGST Act along with case laws was elaborated. It was highlighted that rate applicable to goods would apply to the composite supply in terms of Section 8(1). Pre-GST laws with respect to freight was also discussed. Some cases that were discussed in the context of composite supply included- *Abbott Healthcare Pvt. Ltd. Vs. CCT* (2020) 74GSTR 37 (Ker.) and *Torrent Power Ltd. vs. Union of India* (2020) 34GSTL 385 (Guj.).

Session- 3

Valuation: Time & Place of Supply

Speakers: Mr. V. Lakshmikumaran & Mr. Sujit Ghosh

The session commenced by discussing fundamentals of a valid levy i.e., taxable event, taxable person, rate of tax, measure of tax and that valuation is an integral part of levy. This was followed by an expounded discussion on Section 15 of CGST Act that provides what value of supply includes under Section 15(1), what value does not include under Section 15 (3), valuation under Rule 27 of CGST Rules- value of supply when consideration is not wholly in money, Rule 28 of CGST Rules- value of supply to distinct or related person, Rule 29 of CGST Rules- value of supply through agent, Rule 30 of CGST Rules- value determined based on cost and Rule 31 of CGST Rules- residual method. While discussing the relevance of time of supply certainty in terms of date on which liability to pay tax was highlighted and it was underlined that time of supply is based on – supply of goods and services, invoicing, payment and contractual milestones. This was followed by discussion on section 12 and 13 CGST Act, 2017 with respect to forward charge and reverse charge of CGST Rules. Further, Section 13 was elaborately deliberated to comprehend how to connect the scheme of sections to calculate valuation. It was indicated that value of supply shall include incidental expenses charged by supplier to recipient, interest, late fee or penalty for delayed payment and subsidies directly linked to prices except when provided by the Government. Likewise, when supply is between related persons or price is not the only consideration, value is to be determined on the basis of- open market value; value of like kind and quality of goods/ services; cost plus method and residual method. Provided where the recipient is eligible

for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods and services. It was highlighted that pre-sale discount and post-sale discount are to be excluded from value of supply.

The session further discussed the relevance of place of supply and emphasised that place of supply provisions are relevant in determining the nature of supply i.e., local or interstate and identify the state to which the GST paid will be apportioned to. Nature of supply both inter-state supply and intra-state was also discussed. Subsequently, place of supply of services under section 12 and 13, IGST Act was underlined.

Session- 4

Input Tax Credit

Speakers: Mr. V. Lakshmikumaran & Mr. Sujit Ghosh

The session discussed fundamentals of Input Tax Credit (*hereinafter ITC*) and expounded that credit is a statutory right and unless the conditions are met there is no right over it. Once the credit is allowed it constitutes a vested right. Eligibility and conditions to avail ITC under Section 16 was discussed. Further, Limitation prescribed for claiming credit under Section 16 (4), apportionment of credit and blocked credits under Section 17 (1) & 17 (2) & 17 (5) along with pre-conditions of claiming credit under Section 16(2) inter alia Section 16(2) (c) where the seller has paid tax to the government as well as Rule 36 (4) where credit to be restricted in respect of invoices which have been uploaded by supplier was discussed. Transfer of credit in case of merger, amalgamation etc. was briefly elaborated. While discussing refund of utilised credit framework Section 54 and Rule 89 were highlighted.

The session concluded by emphasising that while judges decide they should keep in mind the larger objective of the introduction of GST Act and keep in view the 4Ts as explained in session 2 above.