

NATIONAL JUDICIAL ACADEMY



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

18th -19th September, 2021

Programme Coordinators:

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The National Judicial Academy organized a two day [Online Mode] Workshop for High Court Justices on the Regime of Goods and Services Tax [*hereinafter*, GST] from 18th to 19th September 2021. The workshop discussed normative concerns relevant to the development of indirect taxes, from a system of distinct multiple taxation to one of broad uniformity athwart diverse tax domains and jurisdictions. The discussions explored and considered potential areas of conflict and litigation significant to this statutory transferal, the constitutional advancement in the area and the adjudicative and socio-judicial trepidations that ascended thereby.

Session 1- GST: Constitutional Perspectives

The speaker provided an insight into various provision of the GST Act, whereby the glimpse of pre and post GST era was discussed immaculately. The session further highlighted the relevant discipline which attract the law of GST and its ancillary subjects responsible for contemporary development which are directly linked with the tax jurisprudence in post GST. It was put forth during the course of discussion, that services have standard rates, on the contrary, rates applicable to goods are not uniform. A reference was made to *Union of India vs. VKC Foodsteps private limited (Civil Appeal No 4810 of 2021)* whereby, the speaker highlighted the observation made by the apex court while upholding the validity of rule 89(5) of CGST rule 2017 under GST law. The session threw light upon article 246A of the constitution and emphasized that it provides source and field of legislations for central and state government simultaneously. A reference was made to the doctrine of equivalence and reverse neutrality. It was further accentuated that

court should restrain while determining the GST rate, as it is a prerogative of the GST council. A reference was made to Article 279 to emphasize that harmonized structure of goods and services tax and development of a harmonized national market reflect and encourage the co-operative federalism. The word “*Subject to*” and “*Notwithstanding*” were also interpreted with reference to Article 246. The doctrine of judicial deference and occupied field were discussed at length while interpreting the constitutional perspective of GST law.

Session 2- Concept of Supply: Mixed and Composite Supply

The restrictive and expansive definition of the term “supply” across different jurisdictions like EU, Malaysia, Australia and India were discussed at the commencement of the session. In connection to supply a reference was made to the case *Databank Systems Ltd v Commissioner of Inland Revenue (NZ)* (1987) 9 NZTC 6213 whereby it was held that “supply” means “to furnish or provide” – a voluntary act of provision is necessary. The speaker opened the deliberation while elaborating the supply provisions with multiple rate for goods and services. A reference was made to notification no. 1/2017-CTR and no. 11/2017-CTR. The model of composite supply in relation to “two or more taxable supplies” & “naturally bundled” were explained with reference to Sec. 2(30) of the CGST Act. The concepts of “Principal supply” “Predominant element” “Deemed supply” “Incidental & Ancillary supply” were discussed at length. The speaker referred to Sec. 2(74) of the CGST, Act vis-à-vis supply of particular which attract the high rate of tax. It was discussed that freight did not form part of sale price for VAT or CST unless the transaction was pertaining to FOR basis. A reference was also made to various domestic and foreign pronouncements such as; *Indian Hotels and Restaurant Association (2014) 34 STR 522*, *Hotel East Part Vs. Union of India (2014) 35 STR 433*, *Manthena Satyanarana Raju Charitable Trust Vs. Union of India (2017) 3 GSTL 213*, *Torrent Power Ltd. Vs. Union of India (2020) 34 GSTL 385 (Guj.)* *Trade only plant sales limited v. The Commissioner of Customs and Excise LON/03/593(VTD 18847)*, *HMRC vs. Middle Temple [2013] UKUT 0250 (TCC*,

Tumble Tots UK Ltd [2007] EWHC 103 Ch(High Court of Justice) and Card Protection Plan vs. Commissioners of Customs and Excise [Case C-349/96] (ECJ)

Session 3- Valuation, Time & Place of Supply

The session commenced by underlining that the taxable event in GST is “Supply” i.e., supply of goods and service. The levy of tax on the quantum of tax on any supply of goods or services would be a function of two variables viz., rate of tax and value of tax. When these two variables are multiplied quantum of tax is reached. Subsequently, while discussing the value of supply it was highlighted that a supply need not essentially be sale supply only. The supply can be for barter, lease, gifts, heavy discounted prices, deferred payments etc.. It was underlined that to arrive at a value three things are very important- firstly, price of goods fixed in the market, secondly, cost of goods i.e., cost of production of goods and lastly, value of goods. It is substantial to comprehend that GST is charged on value and not on the price or cost. Thereafter, Section 15 of the Central Good and Services Act, 2017 (CGST) was discussed with illustrations. It was reiterated that the scheme of GST is ‘Destination Tax’ which means where the consumption takes place and not the place where the origin took place. It is important to remember that GST is eventually borne by the customer. Every tax statute has three major ingredients viz., the incident of tax, the measure of tax and the machinery to collect the tax so that, the levy can be completed. The purpose is to capture certain level of value addition at the supplier’s stage. While discoursing the relevance of ‘time of supply’ it was emphasized that time of supply is based on supply of goods or services, invoicing, payment and contractual milestones. Aspects of forward charge and reverse charge with respect to time of supply of goods as under Section 12 CGST Act, 2017 and time of supply of services under Section 13 CGST Act, 2017 were also highlighted. Significance of the ‘point of supply’ was emphasized. While deliberating the change in rate of tax, Section 14 of CGST Act, 2017 was discussed. It was highlighted that when the rate of tax changes then the point of supply rule should be referred to determine whether the new rate will apply for the supply or

the old rate. The discussion further accentuated that the place of supply provisions are relevant in determining the nature of supply whether it is local or interstate and to identify the state to which the GST paid will be apportioned. Later part of the session discussed the nature of supply under Section 7 and 8, IGST Act, 2017 along with relevant illustrations.

Session 4 -Input Tax Credit [ITC]

The session initiated by highlighting that Input Tax Credit [*hereinafter* ITC] is of critical importance in GST. It is substantial to appreciate that the concept of ITC is concurrent in other laws as well but in altered forms. For instance, ITC in Excise Law took the form of MODVAT [Modified Value Added Tax] and CENVAT [Central Value Added tax] credit. VAT [Value Added Tax] Law too has ITC. However, there are substantial variances between the concept of ITC in the aforementioned statutes and GST. It was stressed that the two prominent judgments of the Supreme Court - *Eicher Motors Ltd. v. Union of India* (1998) 2 SCC 361 and *Dai-Ichi Karkaria v. Union of India* (2000) 4 SCC 57 must be referred since, in these judgments the Supreme Court has laid down certain basic principles which may not be entirely applicable to the altered scenario of GST but have relevance and considerable importance. The discussion further focused on relevant sections pertaining to ITC. Subsequently, basic provisions allied to eligibility for taking ITC was also discoursed. It was emphasized that whatever may be the period of credit which is granted to the purchasing dealer by his supplier, the time limit set by the statute is 180 days from the date of issue of invoice by the supplier to the purchaser of goods and services. Therefore, if the payment is not paid by the purchasing dealer within 180 days he loses the benefit of ITC. Thereafter, the latest judgment of *Union of India and Ors v. VKC Footsteps India Pvt. Ltd.* 2021 SCC OnLine SC 706 was discussed at length with especial reference to the interpretation of a proviso. It was underscored that the said judgment connotes how a proviso has to be interpreted in tax matters and the various methods of interpreting a proviso. The

session concluded by accentuating that although tax matters are complex in nature but the fundamentals remain the same. Prudent application of these fundamentals by judges has given us eloquent judgments.
