



**MEMORANDUM  
TO  
43<sup>RD</sup> GST COUNCIL MEETING  
TO BE HELD IN VIDEO  
CONFERENCING @ NEWDELHI  
ON 28.05.2021 @ 11.00 AM**

**INDIRECT TAXES**



**BUILDERS' ASSOCIATION OF INDIA  
MUMBAI**

**(All India Association of Construction Contractors and Builders)**

G-1/G-20, 7th Floor, Commerce Centre, J. Dadajee Road, Tardeo, Mumbai - 400034  
**E-Mail: [baihq.mumbai@gmail.com](mailto:baihq.mumbai@gmail.com)**

# **GOODS AND SERVICES TAX**

## **INDIA SHOULD BECOME A SELF CONTENT NATION.**

- Dependency on other countries for Technology to be reduced considerably.
- Urbanisation of population in some way to be curbed.
- Large people organizations should be encouraged to move to smaller towns.
- Smaller towns to be developed with better social infrastructure.

**THE FOLLOWING RECOMMENDATIONS BY GST COUNCIL WILL REVIVE THE CONSTRUCTION INDUSTRY WHICH IS PIONEER AND PRIMARILY SUPPORTING THE NATION BUILDING IN A LARGER WAY.**

## **RELIEFS SPECIFIC TO COVID – PANDEMIC SITUATION**

Coronavirus has given the whole world biggest jolt of century in every aspect may it be economical, emotional, labour employment or anything. Each and every one has to work on some extremely innovative ideas to come out of the situation and bringing the countries back to growth trajectory. In India Construction Industry is one of the biggest in terms of GDP Contribution, Taxes Collection and Labour Employment. Since last one year there is huge impact on the construction industry because of coronavirus, resulting in reduction in pace of work and ultimately resulting into labour un employment. Inspite of all the odds this industry has potential to quickly recover and back on track within a short span of time. There fore some of the relief measures as suggested by our members which are very specific to Covid Period are being put forth before your office and also we expect the implementation of same will give huge boost to the industry in short period.

1. In present scenario, Health Infrastructure has seen the tremendous pressure and looking at the situation it will continue to rise unless and until some concrete solution for this virus emerges. Health Infra needs to be boost with immediate effect.

Therefore rate of GST on all health infrastructures can be reduced from existing 12% to 5% for a specific period of time with an option of refund of excess ITC on Inputs and Input Services both. It will immediately reduce the financial outlay of the Government of India and will pace the work on Health Infra.

2. Infrastructure sector like Road, Rails, Ports etc in the country is also one of the biggest labour employment sector. Now, it is time to accelerate the pace in this sector at double digit growth in next 3-5 years, to achieve the multiple goals. The government of india has also planned a huge outlay on Infrastructure sector. Reduction in rate of GST from 12% to 5% in this sector will also bring growth in this sector and in terms labour employment will be generated which will multiply the growth of India.

## I. RELAXATION IN THE PROVISIONS OF GST ACTS

**We are thankful to the Government for the waiver of late fees and reduced rate of interest for delayed payment of GST.**

### **COMPLIANCES UNDER GOODS AND SERVICES TAX ACT:**

We would like to bring to your kind notice that the Government has extended due dates for filling of monthly returns under GST for various periods including April and May, 2021 and also has given relaxation in form of waiver of late fees for late filling of returns and reduced rate of interest for delay in deposit of tax with the Government. We request that *the Government may kindly extend the above concession limit upto the turnover of Rs.50.00 crores.*

a. The following time limits for filing of Forms may also be extended by the Government:

- i. Filing of returns for APRIL, MAY AND JUNE may be extended to 31<sup>st</sup> July, 2021.
- ii. Applying for registration on becoming liable to be registered.
- iii. Opting out of composition on crossing the threshold of composition.

*b. Interest waiver for delay remittance of GST amount during Covid Pandemic Period.*

*c. Reasonable Time may be allowed to extend the e-way bill non-blocking to four months.*

*d. Interest waiver for mismatch of ITC difference between GST returns vs GST portal.*

*e. A suitable composition scheme may be enacted to benefit the small contractors.*

## II. ISSUES RELATED TO TAXABILITY, VALUATION AND RATES

### **1. Scope of immovable property**

**Issue:** Section 2(119) of CGST Act, 2017 defines works contract. The definition is reproduced below:-

*“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*

Definition of works contract covers only immovable property. Hence, any works executed on movable property has to be classified under composite supplies or mixed supply, as the case may be.

**Suggestion:** Execution of works includes multiple activities in its ambit and to classify it either as mixed or as composite supply is an onerous task and prone to lots of litigations. Therefore, we request you to include the composite contracts in relation to movable properties also in the ambit of works contracts.

## 2. Interest, late fees, penalty

**Issue:** Section 15(2) (d) of CGST, SGST Acts stipulates that the value of supply shall include ‘**interest or late fee or penalty for delayed payment of any consideration for any supply**’. Such amounts are brought under taxation for the first time under GST. This is certainly an additional costing and burden to any Industry. Instead of easing the business, such provisions burden the business.

**Suggestion:** We request you to remove clause (d) from Section 15(2) of CGST, SGST Acts with retrospective effect from 01.07.2017.

## 3. Lower GST Rate for contractor to builders of residential projects

**Issue:** GST rate of 5% without input tax credit for non-affordable housing sector and a GST rate of 1% without input tax credit for the affordable housing sector.

As per Notification No.11/2017-Central tax (Rate) dated 28.6.2017, the rates applicable on the works contract service provided by a contractor to a promoter for construction of a real estate project will be 12% or 18% depending upon whether such work contract service is provided for construction of affordable residential apartments or residential apartments other than affordable residential apartments. The promoter is restricted from claiming input tax credit of taxes charged by the works contractor.

The promoter charges 5% or 1% GST for non-affordable and affordable houses in a project respectively, from a buyer of Residential property.

If the promoter gives the construction contract to a contractor on works contract basis, then the contractor will charge 12% or 18% GST on the total contract value.

Since the promoter cannot take input tax credit of GST charged by the contractor, the promoter's cost of project is inflated by 12% or 18%, as the case may be. Due to this, the real estate developers would be inclined to increase the prices of residential units sold by them.

**Suggestion:** The Government should bring down the GST rate of 5% and 1% for the contractors executing works contract for affordable and non-affordable residential projects, so that the real estate developer does not suffer a loss of profit and the prices of units in the residential real estate sector does not go up.

## 4. Accumulation of credit at subcontractor level

**Issue:** Considering the representations of the Industry, Notification No. 01/2018 – Central tax (Rate) dated 25.01.2018 was issued for extending the lower GST rate of 5% & 12% to the Sub-Contractors that was earlier applicable for Main Contractors only.

There is a need to clarify that this benefit of 5%/12% is applicable to all Sub-Contractors and that it is not restricted to Sub-Contractor providing services to Main contractor alone. Also it should be extended to all Sub-contract works whether done wholly or partly of the Main Contract works.

There is a need to incorporate the wordings in the notification under GST as it was in serial no. 29 (h) of Notification No. 25/2012-ST dated 20.06.2012 namely

***“Services provided by Sub-contractor by way of Works contract to another contractor providing Works contract services which are exempt”.***

Otherwise it is likely that it leads to higher tax of 18% in the hands of various Sub-Contractors and huge accumulation of credit at respective subcontractors end and ultimately becoming additional cost for the Main contractor as well.

**Suggestion:** We request you to extend the GST rate of 5%/12% to all subcontractors providing services in relation to works contract as specified in Sr. No. 3(iii), (vi) and (vii) by duly amending the Notification similar to 29(h) of Notification 25/2012-ST dated 20.06.2012.

#### **5. To continue Exemption under GST for Supplies/ Services**

**Issue:** Exemption to service of construction and other works in relation to roads, bridges, tunnels, Ports, irrigation works, canals, dams, Power Projects, Pipelines, Conduit or plants for water supply/treatment, civil or other original works to Government etc. was granted for the period 2015-2020 vide Notification No.09/2016-ST under Service tax regime.

Under GST, such exemptions granted till 2020 during service tax regime should have been continued.

**Suggestion:** Allow and continue the exemption benefit as granted vide Notification No.25/2012 dated 20.06.2012-S.T. with retrospective effect from 01.07.2017. GST of 18% / 12% as proposed is an additional burden on such ongoing Projects.

#### **6. Lower rate benefits should be extended to pure labour services**

**Issue:** For some specified services, lower rate of 12% has been prescribed for activities in the nature of works contract only i.e. services along with material component.

**Suggestion:** In tune of Government’s intention, we request you to extend the lower rate benefits to pure labour services also if the work is being done for contractors getting the 12% benefit.

#### **7. PPP Hybrid Annuity Model (HAM) and EPC contractors to be treated as Government entity for the purpose of GST**

**Issue:** In case of HAM and EPC projects, the Government is delegating the limited authority with full responsibility to the contractors. The contractors are executing the entire work and maintenance for the entire contract period normally around six years. As per the tender conditions, the contractors have to do the work like the way in which Government itself is organizing the work. But the Government is holding the full power and authority during the entire project period.

**Suggestion:** These contractors are to be treated as Government entity for all the purposes of GST.

#### **8. Clarification over Concessional rate @ 12% for Railway, Metro and Mono Rail Residential Apartments for staff and office complexes**

**Issue:** As per Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017 and its amendment Notification No. 01/2018-Central Tax (Rate) dated 25.01.2018, the Output GST payable for Composite supply of Works Contract Service pertaining to Railways including Metro or Monorail is Concessional rate @ 12% as applicable.

Now, the issue is whether the construction of staff quarters for railway or metro employees or office/administrative structure for railway or metro will also be covered under this category or it will be covered under sub -para “vi” of Para 3 of Notification No. 11/2017 of CGST Rates as amended.

**Suggestion: A clarification is sought on this specific subject so as to have similar levy. As on date almost 50 locations are decided for Metro Operations all over india with a huge outlay. Clarification over this issue will ease the compliances for a number of contractor working for metros in India.**

## **9. Operation and Maintenance Contracts for Roads and construction sector**

**Issue:** The works contract are chargeable at 12% and the services other than those specified are charged at 18%. Various Government departments hold the view that the services are also liable at 12% and do not reimburse the GST claim of 18%.

**Suggestion:** GST Council may clarify on the applicability of GST rates for Operation and Maintenance contract of Road and construction sector.

## **10. Higher rate of tax on Cement**

**Issue:** Cement, is the principal INPUT in Infra Works which is being taxed @ 28% under GST. As most of the Works contract services provided to Government are being charged to GST @ 12%, higher rate of GST on cement is resulting in huge accumulation of credit. Further, due to restriction of refund on claiming such accumulated and unutilized credit, it is ultimately resulting in increase in cost of the Main contractor.

**Suggestion:** We request you to reduce the rate of GST on Cement from 28% to 18%.

# **III. TRANSITIONAL ISSUES – CREDITS AND TAXABILITY**

## **1. Notices issued for claiming credit under Section 140(3).**

**Issues:-** Contractors have been receiving notices for justifying the eligibility of their claim of excise duty paid on stock, claimed under Section 140(3) of The CGST Act, 2017. For your reference, Section 140(3) is reproduced below:-

*(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012— Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:—*

Section 140(3) allows claim of credit to works contractor providing works contract service and availing benefit of notification No. 26/2012-Service Tax, dated the 20<sup>th</sup> June, 2012, and works contractor availing such benefits are builders. So department is questioning the works contractors to clarify the allowability of their claim.

We would like to draw your attention to the other scenarios envisaged under Section 140(3) viz:

1. A registered person, who was not liable to be registered under the existing law, or
2. who was engaged in the manufacture of exempted goods or provision of exempted services, or
3. a first stage dealer or
4. a second stage dealer or
5. a registered importer or
6. a depot of a manufacturer

A works contractor, is eligible to claim credit of excise duty paid on stock under other scenarios also to be specific, it was providing exempted services in erstwhile regime. Department, without considering this fact, is issuing notices to works contractors asking them to clarify assuming that if they are not builder then, they cannot claim credit of excise duty paid on their stock. This tendency is making life of works contractors extremely difficult.

**Suggestion:-** We request you to issue clarifications prescribing specific instances in which the department may initiate proceedings without harassing genuine taxpayers in the industry.

## **2. Credit of inputs held in work in progress.**

**Issue:-** Section 140(3) allows credit to works contractors availing benefit of Notification No. 26/2012,-Service tax, dated the 20<sup>th</sup> June, 2012. The section is reproduced in the previous note above.

This provision allows credit of eligible duties on inputs held in stock, inputs contained in semi-finished goods and inputs contained in finished goods.

In case of builders, the stock majorly consist of under construction structures which are known as work in progress. Taking a view that semi-finished goods differs from work in progress, department has denied the carry forward of credit of eligible duties on inputs held in work in progress as on the appointed day.

**Suggestions:** In order to resolve the issue, we request you to issue a clarification that the credit u/s 140 is allowed for inputs held in work in progress stock also to both contractors and builders.

## **3. Settlement of GST claims**

**Issue:** It is observed that project owners are taking time to amend/re-negotiate the existing contracts due to change in cost and till then the invoices are kept under hold.

Public sector customers / Government agencies are not accepting the bills raised by the Construction Contractors. Due to non-settlement of claims, the working capital position of all the Construction Contractors is severely affected.

Further it is also their contention that advances towards mobilization, equipment and inputs are not towards supply of service and hence GST is not applicable on such advances.

On account of above issues bills are held up and the contractors are facing severe financial hurdles to keep continuity of work flow.

Various Government, Local authority, Governmental authority / Government Undertakings are expressing their inability to settle claims on account of GST differential for the reason that they do not have any specific direction from the Government to do so.



**Suggestion:** We request you to guide all the Government departments on national level on the applicability of GST and we also request you to issue a clarification directing all the Government departments to settle and release payment to contractors across India based on adoption of some common formulae.

#### **4. Settlement of VAT Regime issues**

**Issue:** Various State Governments and Governmental organizations are reluctant to reimburse the GST on output services even now. For instance, on the introduction of GST on 1<sup>st</sup> July 2017, there were contracts entered into prior to GST Regime and the work was rendered post GST regime. The agreement with Government departments have a clause for increase in taxes, but the officials passing the Work bills are not willing to pay the GST claim. This is because in the pre GST Regime, the Government contracts are exempted from Service Tax since they fall under infrastructure category.

**Suggestion:** We request GST Council to advise the State Governments to reimburse the GST Claims of works contractors without any further delay. We are in the fourth year of GST and any delay is affecting the industry.

### **IV. INPUT TAX CREDIT**

#### **1. Exclusion of ‘Any other civil structure’ from the definition of ‘Plant and Machinery’**

**Issue:** The credit of goods and services used for construction of an immovable property is blocked except if it is used for construction of plant and machinery. The term plant and machinery is defined in explanation to Section 17 as:-

For the purposes of this Chapter and Chapter VI, *the expression “plant and machinery” means apparatus, equipment, and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes—*

- (i) land, building or any other civil structures;*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises.*

Use of the term “Other civil structures” in the exclusion list of “Plant and Machinery” may lead to numerous disputes on the eligibility of credit on various plant and machineries as in most cases, various plant and machineries require civil works to support their operation.

**Suggestion:** We humbly request you to include other civil structures in the definition of plant and machinery. Explanation to Section 17 defining plant and machinery may be amended for this purpose.

#### **2. Loss of input tax credits because of non-compliance by vendors and sub-contractors.**

**Issue:** As per section 42 of GST Act 2017, input tax credit availed on provisional basis under section 16 should be matched with GSTR 1 of the vendor. However, if the same is not matching then, the credit availed is required to be reversed with interest by the recipient.

*Section 42(3) & (5) prescribes that, Where the input tax credit claimed by a recipient in respect of an invalid supply is in excess of the tax declared by the supplier for the same supply or the outwards supply is not declared by the supplier in his valid return, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.*

*The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient in such manner as may be prescribed in his return for the month succeeding the month in which the discrepancy is communicated.*

### **ITC Restrictions based on GSTR – 2B**

While filing GSTR-3B the amounts such as eligible inputs, input reversal, etc are restricted up to excess of 5% of GSTR-2B Values.

**Suggestion :** Punishing the recipient for the mistake of supplier is not reasonable. Therefore, we request you that this hardship should be removed. Input tax credit should be allowed on the strength of the original tax invoice.

### **3. Non availability of Credits on mobilization advances**

**Issue:** GST is payable on mobilisation advances received from Government. If the same contract is subcontracted and mobilisation advances are paid to subcontractors, GST is again charged by such subcontractors and it is not available as credit till the time it is adjusted from the advance.

In infrastructure projects, there is huge time gap between receipt of mobilization advance and adjustment of such advances. This is leading to blockage of huge funds and less availability of the funds for actual procurement of goods and services.

Such time gaps are also leading to cash payment of GST during the time of initial phase of the project and also at the end resulting in accumulation of unutilized credit at the time of completion of the project.

Further, Construction Industry is not allowed to claim refund of such accumulated and unutilized credit. Therefore, it is leading to increase in cost of the infrastructure projects.

**Suggestion:** Credit Should be allowed on GST paid on Mobilisation Advances to Subcontractor for infra projects.

### **4. Input Credit eligibility for Corporate Social Responsibility (CSR) expenses**

**Issue:** Fulfillment of CSR is a statutory obligation under the provisions of Companies Act. Therefore, credit on expenditure incurred for such activities shall be allowed.

When services are received through our Sub contractors, while fulfilling CSR as mandatorily prescribed by the Government, all types of input tax credit shall be allowed unconditionally. Similarly, when the CSR Activities are executed by ourselves, it shall be considered as 'for the purposes of business'. Presently under GST, the Act and Rules are totally silent on this issue.

It is requested to consider incorporation of suitable provisions under GST which motivates the Industry for effective participation in social responsibilities.

**Suggestion:** We request you to make necessary amendments in GST Act for allowing credit on CSR with retrospective effect from 01.07.2017.

## 5. Anomalies in reversal of credit under Section 17(3)

**Issue:** Section 17(3) of CGST Act, 2017 provides that the value of exempt supply shall include transactions in securities, sale of land and sale of building. Since these are Non-GST supplies, reversal of ITC as stipulated under section 17(3) is a burden on the industry. It is therefore proposed for considering amendment / deletion of Section 17(3) of the said Act.

Further, reversal of 5% credit is stipulated where goods or services or both are used for purposes other than business. Similar reversal of credit is stipulated on Capital Goods under Rule 43 of CGST Rules, 2017. These are stipulated for the first time under GST which is a huge burden on the industry.

**Suggestion:** We request you to carry out necessary amendments for mitigating the burden on account of stipulated provisions under GST for reversal of Credits.

## V. ITC ON IMMOVABLE PROPERTY

### 1. Credit restrictions on works contract resulting in immovable property

**Issue:** GST is built on the foundation of a liberal credit regime i.e. to allow credit of all goods and services with minimal restrictions. Section 17(5) of the GST Act provides that no credit would be available for:

*‘(c) Works contract services when supplied for construction of immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;*

*(d) goods and services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account including when such goods or services or both are used in the course or furtherance of business;*

**Explanation:** *For the purposes of clauses (c) and (d), the expression ‘construction’ includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property;’*

The above-mentioned credit restrictions would have significant impact in terms of the procurements of goods or services or works contract services for commercial/business purposes such as malls, business parks, warehouses, etc. meant for leasing or factories, plants, units for manufacturing and production, etc.

Such restrictions on credits of taxes paid in the construction phase would be against the basic principle of GST and the industry is expecting a much more liberal credit regime for the construction services acquired in relation to business assets and commercial property.

**Suggestion:** The Government has implemented a number of policies such as Make in India and made a lot of initiatives to support Start-ups to promote GDP of the nation. The set up for any

business requires huge amount of investment in construction of structure and other infrastructure facilities. At present, the amount of GST paid on such investment is not allowed as credit to the recipient. This demotivate the start-ups to have their own business which is against the Government policy and therefore we request you to make necessary amendment under Section 17(5) and block the credit on construction which is used for non-business purpose only.

## **2. Allowing ITC for immovable property on own account**

**Present Law:** Input Tax Credit (ITC) is the core concept of GST as GST is destination based tax. No ITC is available for goods/services for construction of immovable property on their own account. Even if such goods/services are used in the course of furtherance of business, ITC will not be available (Sec.17(5)(c)).

**Suggestion:** In this Covid epidemic period, if the Government allows ITC for the above building owners, *the corporate and high net worth concerns having surplus funds will come out with new constructions* which will give additional cash inflow to the system. It will give benefit to the real contributors to the society. The ITC set off period may be restricted to 3 to 5 years to arrest the extra revenue loss to the exchequer. Though the exchequer may loose small amount of tax revenue, the real contribution to the society will be multifold.

## **VI. REVERSAL OF ITC FOR NON PAYMENT OF COSIDERATION WITHIN 180 DAYS - ISSUE**

**Present Law:** Second and third provision to Section 16(2)(d) of the CGST Act, 2017 and Rule 37 of CGST Rules, 2017 provides for reversal and reavilment of ITC on account of non payment of consideration to the supplier within 180 days.

As everyone is aware about the current pandemic situation, which is continuing since March 2020, when lockdown was declared in India. A number of relief measures were proposed by Government of India through Atam Nirbhar Bharat Packages over a period of time. Inspite of all Positive efforts by Government of India, Contractors are still struggling for working Capital needs and sometimes unable to make all ends meet. Looking at the current economic situation we request you to increased the time limit of 180 days to 365 days for a limited period of time, so as to relieve the aggrieved industry.

**Suggestion:** In this hard financial crisis situation, the 180 days norms to be removed or increased to 365 days. *This provision is to be suitably modified and make the comforts to the buyers and suppliers to fix the payment terms mutually.*

## **VII. TIME OF SUPPLY- GST ON ADVANCES**

**Issue:** Section 13 of the CGST Act indicates the provisions for determining the time of supply in respect of services.

As per the recommendation made by the GST Council in its 23rd meeting, exemption have been granted on payment of GST on advance receipt of goods, however, in case of services, the same is still continued and GST is payable on receipt of advances.

In case of long term advances of contracts, where mobilization advance is paid to the contractors and the recovery of such advances is also done proportionately from the invoices being raised this provision results in blockage of working capital.

**Suggestion:** We request you to exempt service providers from the liability of paying tax on receipt of advances.

## VIII. REGISTRATION

### 1. Registration of Works Contract services – Interstate Supply

**Issue:** Works Contractors, having a principal place of business in one State may undertake execution of works across India in many States. The registration provisions require the works contractor to obtain registration in each such State even though he has no place of business in those States. If the strict interpretation is taken then, mere installation works also attract registration requirement and they may have to take multiple registrations.

**Suggestion:** Kindly issue a clarification that a works contractor based on one State can execute works contract in any State by way of IGST billing without separately registering in all other States with suitable adjustment of ITC.

### 2. Additional Registration

**Issue:** As per Recent Amendment in Rule 9 of CGST Rules, 2017, time limit is increased for grant of GST registration from 3 to 7 working days. Presently we are struggling up to start transportation of machineries and preliminary site materials to newly awarded projects in other States until issue of registration by GST official which normally takes 15 days.

**Suggestion:** If the application with Aadhar Authentication of Authorised Signatory is submitted, the provisional registration and e-Way Bill facilities should be allowed immediately to enable us to start the initial site preparation related works at the earliest in the newly awarded projects in any State.

## IX. PAYMENT OF TAXES AND REFUNDS

### 1. Refunds of excess credit available for contractors

**Issue:** Works contract is a deemed service under GST. Works contract include both material and service portion. Majority of Government works contract are chargeable to tax at 12%, whereas the purchase of approximate all construction materials is at 18% and Cement is 28%. In addition all the services utilized in such contracts are also taxable at 18%. Therefore in many contract cases there is always a possibility of GST input is much more than the GST output and the excess input credit is increasing month on month.

A refund mechanism in place as per Section 54 is not sufficient for the contractors, because it bars the refund of Input Services and Capital Goods as well. Therefore calculation mechanism debar the contractors from claiming refund of Excess Input tax credit.

Secondly, in present scenario a contractor has to register in each state where he wants to execute any work. So, the registration is for limited period and continues till project is in execution. It is normal in construction industry that a reasonable expenditure is incurred after the completion of project as part of Operation and maintenance activity inbuilt in project. Because of which credit gets accumulated as outward supply for the same has already been done in past. In such cases too, refund provisions should be extended to the contractor.

**Suggestion:** Contractors to be allowed to claim refund in case of excess taxes available on account of ITC of Input Services and Inputs both.

## 2. Refund out of Cash Ledger

Presently, owing to excess credits and further deduction of TDS (which is credited to electronic cash ledger), contractor have to file refund of electronic Cash ledger. The revenue departments take a long time to process the same and a lot of documents are asked by the department like GSTR – 7, balance sheet, 3B returns, GSTR 1 Returns, Verification of clients etc. These verifications cause unnecessary delay and some time takes 3 to 6 months in processing the refund of cash ledger.

We request that a clarification is required to be issued specifically mentioning what details are required and such refunds should be administered automatically without intervention of administrative officers. There is no risk to department also because all deductors are Governemnts or Government entities and while filling refund the contractor is debiting his Electronic Cash Ledger with similar amount.

## X. TDS ISSUES

### 1. Deduction of TDS under Section 51

**Issue:** TDS at the rate of 2% is required to be deducted from payments made to contractors by Government employers. The credit of TDS deducted will be available to the contractor in its electronic credit ledger.

Most of the works contract services provided to the Government is taxed at the rate of 12%. Tax on inputs may range from 5% to 28%. In this scenario, the credits available is more than the output tax liability.

Therefore, the Government contractors will have excess input tax credits and by deduction of TDS, contractors will also have balance in their electronic cash ledger. This will lead to blockage of working capital.

**Suggestion:** We humbly request that the Government may come up with a “No Deduction Certificate” through online for such cases.

### 2. TDS deduction @ 2% on JV Infra projects is leading to accumulation of credit

**Issue:** Government departments requires to deduct GST-TDS (CGST @ 1% & SGST @ 1%) as per Section 51 of the CGST Act, 2017. Works Contract business formed under Joint Ventures (JVs) and Special Purpose Vehicles (SPVs) are to be exempted from GST-TDS because these types of entities

actually not carrying business directly and no GST liabilities are going to arise (Output GST & Input GST will be set off) and the GST-TDS which is deducted by Government clients are accumulated in Cash Ledger.

Generally, Joint Ventures (JV) execute big infrastructure projects as they possess requisite qualifications and upon awarding the Contract, works are executed by JV Partners at their end. The margin in the hands of JV is miniscule, insignificant which is primarily to meet the administrative cost.

Since there is miniscule value addition in the hands of JV, the TDS deducted by Government @ 2% (which represents a huge amount) and is getting accumulated leading to additional fund blockage, that too in the background of non-availability of input tax credit refund in such situation.

**Suggestion:** This affects the cash flow and getting refunds are also delayed.

We request you that rate of TDS on infra projects should be considered for:

- a) reduction from existing 2% to 0.1% (0.05% CGST+0.05% SGST);
- b) allowing to passing of TDS credit to the subcontractors.

### **3. Delay in remittance of TDS by Government Departments**

**Issue:** The Government departments deduct the TDS on the bills passed and pay the GST TDS in the month in which they make the payment. TDS deducted is not properly remitted to the departments within the time frame but the amount is recovered in our bills and lying with the departments. We are forced to make the payment to comply the law by filing the returns within due date. Otherwise, we are forced to pay interest. The time gap between Government payment and contractor payment leads to working capital block in GST payment.

**Suggestion:** Clear instruction may be issue for payment of tax of TDS in the month of receipt of invoice from the contractors. Further the filling of TDS claim by deductee should be allowed on invoice wise and not on monthly basis.

### **4. Non deduction of TDS on works contract advances:**

**Issue:** GST is payable on mobilisation advances received from Government. If the same contract is subcontracted and mobilisation advances are paid to subcontractors, GST is again charged by such subcontractors and it is not available as credit till the time it is adjusted from the advance.

In infrastructure projects, there is huge time gap between receipt of mobilization advance and adjustment of such advances.

**Suggestion:** Due to various practical issues faced by the contractors , **TDS deduction may be deferred for all kind of advances to contractors.**

## **XI. ADVANCE RULING**

### **Advance Ruling Time Limit (Sec. 98 (6))**

Section 98 (6) of CGST Act, 2017 says *“The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.”*

Practically no advance ruling orders issued within 90 days. It takes more than one year to get advance ruling orders. It leads to unable to correct filing of GST Returns, additional cash outflow impacts, creating issues with departments, etc.

If the order passed within the time limit as per the Act, it helps to resolve critical issues at the earliest.

## XII. E-INVOICES

Many of the assesses do not have software facilities to generate e-Invoices and it has many complicated issues to generate json files. Everyone depends on software providers and also requires to adopt services from GST Suvidha provider. It is more burden for the assesses.

The government should provide an application (Form Based) to generate e-invoices easily which enables to easy generation of e-Invoice and reduce the dependency on Software providers.

E – Invoice generation specifically in case of Government Contractors should be allowed 15 days time from the date of Tax Invoices. As per the contract condition monthly RA bills to be submitted at the end of each month and it takes some time to prepare the same. Further, it is a regular practice to submit Tax invoice with contractee and then on verification of this sometimes amendments are marked by contractee and payment is processed. In such scenarios, now contractor has to issue E – Invoice then corresponding Debit or Credit note for the same invoice after some time for partial amount. If E – Invoice facility is allowed upto 15 days of tax invoice, then this anomaly can be very well brought in control.

## XIII. IMMUNITY SCHEME

### **New taxation immunity scheme to be announced**

Keeping the enormous practical difficulties during transition to GST mechanism in to consideration, new taxation Immunity scheme will be announced suitably. The genuine regular tax payers should be convinced properly.

1. It may be proposed an one time measure for suitably waiving interest, penalties for all returns including GSTR 9, 9A, 9B and 9C filed for FY 2017-18 to 2019-20.
2. Also liberal view shall be taken for Time limit for taking input tax credit (ITC) pertaining to FY 17-18 to FY 2019-20 be allowed with extended due date of filing of the corresponding Annual Return and Audit Report.
3. Further time limit for amending transactions of 2017-18 to 2019-20 in GSTR 1 shall be allowed as it facilitates reflection of such amended details in GSTR 2A of the recipient.

## XIV. DIESEL AND PETROL UNDER GST NET

**Present Law:** The taxability of Diesel and petrol are under VAT regime. In Construction industry Diesel is the major consumption item, which ranges around 6%-10% of Gross Work done. Currently it is taxed under VAT regime and no ITC is allowed to construction industry of the taxes paid on



GST.

**Suggestion:** These are required to be brought under GST regime for accelerating the construction industry on growth path. Input Tax credit may be allowed suitably.

## XV. OTHER MISCELLANEOUS ISSUES

Retrospective amendment should be done for deleting the GST liability on reverse charge mechanism (RCM) basis in case of procurement of goods or services or both from unregistered persons (Section 9(4) of CGST etc.,).

Necessary amendments should be made to Schedule I of CGST Act 2017 so as to exclude the administrative and other activities provided by the corporate office or head office to its branches.

## XVI. BUILDERS AND DEVELOPERS ISSUES

1. Developer is required to maintain Project-wise record of purchase from Registered and Unregistered person. This will have a significant impact on compliance cost. **Hence this requirement should be removed in the provision of the GST Act.**

2. Developer is presently liable to pay tax @ 18% even in the case of Purchase of goods or services from Unregistered Person (URP) which may be otherwise taxable at lower rate of tax. E.g. – Sand, Bricks, etc. **Hence this Section is required to be amended to provide that tax is payable only at the respective rate of goods.**

3. Provision is silent on implications on purchase of exempted supply from Unregistered Person (URP). However, in FAQs (Part II), it was clarified by CBIC that the same is to be included in the calculation of the threshold limit. This will further increase the cost of Project, as no ITC of the same is available.

4. Further, provision is also silent on the offset of purchase from a Registered person exceeding prescribed threshold in a given Financial Year against shortfall in subsequent Financial Year(s).

**Suggestion:** This provision requires clarification and amendment.

### 5. Deemed valuation of land:

The reduced rate of 1% without input credit on construction of Affordable housing and 5% on construction of other than Affordable housing is the effective rate after considering 33% deemed deduction for the value of the land.

This one third deemed deduction on account of transfer of Land or Undivided Share of land is irrespective of the actual value of the land transferred. However, the said deemed deduction is not available when there is no transfer of land or undivided share of land.

The critical issue here is that in Metros, the value of the land exceeds the cost of construction. In such a scenario, only 1/3rd deemed deduction is not justified.

This provision requires amendment and the additional option to adopt for actual transfer value of

land is to be allowed instead of 1/3rd deemed deduction.

## **6. Credit note within 6 months from end of Financial Year**

Under GST regime, the taxpayer can adjust his tax liability if he declares the details of Credit Note in the Return filed latest by the month of September Return following the end of the Financial Year in which such supply was made, or the date of furnishing of the relevant Annual Return, whichever is earlier.

However, in Real Estate sector, construction service is a 'continuous supply of service' requiring 3 to 5 years for completion. Significantly, due to this stipulation of time limit of September Return, Developers' get only six months after end of the Year to issue Credit Notes. The aforesaid provision remains a practical and unworkable challenge for Builders / Developers to avail the benefit of reduction of tax liability on account of Credit Note issued after 6 months from the end of Financial Year.

In view of the above, the GST paid on flat(s) cancelled is either required to be borne by the Developer or the Buyer. Hence the time period stipulated needs to be liberalized /extended considering the peculiar nature of this Industry / Sector.

7. Developer transfers certain percentage of developed area to Land owner as a consideration against transfer of Development Rights. Developer is required to discharge tax at applicable rate i.e. either at effective rate of 1% (Affordable housing), 5% (Residential) or 12% (Commercial), depending upon the nature of the premises so transferred. However, tax is required to be discharged on total amount charged to Independent buyers for similar premises which is nearest to the date of transfer of TDR / FSI, after deduction of value of land i.e. 1/3rd of total consideration.

The value of construction service provided by developer to the land owner should be either equal to the value of land or the construction cost incurred. Also, the value for individual flats to the buyer may not be compared with value of flats given in bulk to the land owner.

In the case of a JDA, the Developer's role is like a Works Contractor for the land owner and hence, GST, if any shall be leviable only on the cost of construction and not on the total amount charged to Independent buyers for similar premises which are nearest to the date of transfer. The provision in the GST Act is required to be amended.

8. In case of Residential premises, due to liability on unsold premises after the cut-off date, it is imposing additional cost burden on the Developer, which is difficult to foresee at the time of commencement of construction. Further, no clarity has been provided as to whether the Developer is required to consider all unsold flats in a Project, (including those which have been transferred to Land owner) or only those unsold flats which belong to him. Though, logically Developer should be liable to pay Tax only on those unsold flats which remained unsold with him. This requires clarification from the Government to avoid possible future litigation.

9. There should be no GST on Land Development Rights. Development rights are nothing but a form of land. Land is State Subject and liable for stamp duty. GST on Land development rights should be removed.

10. The condition of 80% is not practical and it should be removed or should be capped at 50% and if in a year purchase in excess of prescribed limit (Presently 80%) should be given set off in next year – which is presently not available. More clarification is also required regarding Interest Cost, Water Charges and other charges by Municipal Corporation and the like.

11. The rate of 5% on Non Affordable Housing will increase the burden of an effective GST (As ITC Not Allowed) and will defeat the purpose of Housing for all. The rate of Non Affordable Housing should be capped at 3% or less.

12. The rate on Commercial Projects is presently fixed @ 12% The concept of Affordable housing should be extended to Affordable Commercial Sector also. The Carpet area up to 340 Sq. ft. (Value of Rs.45 Lacs) should be treated as “Affordable Commercial”.

13. Looking at the rising cost of land as also the cost of construction, the value for Affordable housing should be enhanced to Rs.75 lacs. The definition of “Affordable Housing“ also needs to be revised and threshold for Affordable houses should also be enhanced.

14. In Income tax if the finished apartments is held as stock in trade and itis not sold for the period up to two years from the end of the financial year in which the certificate of completion of construction obtained then the annual value shall be taken as nil. The period of two years to be increased to five years.

15. When the builder provide construction service to the Land owner, the clarification is required, whether GST is chargeable at 18% or 5%.

\* \* \* \* \*