

Best Business Practices- Tax/ Cost Optimisation

CA Madhukar N Hiregange

Coverage Today

- Best Practices – GST Council – Industry wish list
- Best Practices for Industry/ Trade
- Tax / Cost optimisation - Stagewise:
 - COI, Levy,
 - Classification, Exemption,
 - ITC, JW,
 - POS & TOS, Valuation
 - Q/A – 15 Minutes +_.

Best Practices- Council- Industry wish

- **GST Council**- In house training at field/ circle/ divn.[why not for Dy. Com, Comm?] Exam maybe conducted for posts where knowledge of GST at higher level needed.
- Use Bulk SMS, Bulk Mails
- Start using simple data analytics- excel.
- **Industry:** Drafting by OTHER THAN THE TAX ADMINISTRATOR - law today made for the evader,
- Bona fide- no restriction based on supplier non compliance
- Rest. u/s 16(4), u/s 17(5), u/r 36(4), u/r 86A – unreasonable provisions
- Revising returns enabled

Best Practices- Industry wish

- Focus on those out of net- rather than complicated returns to curb evasion
- Align to international best practice- Intermediary with CFE
- Clarity for land value
- Concessions w/o ITC
- RCM in residential complex
- Refund restriction- Inverted Duty St- Inputs services + Capital Goods
- Export Refunds

Best Practices For Industry

- I. Internal Personnel to have understanding of GST – well trained; updated regularly; Maker checker of all original entries
- II. Internal Audit by professionals with expertise in GST for 2 years to prevent errors with focus on controls
- III. Avoiding disputes in future (or investigation, scrutiny, 9C / Revenue audit) – Compliance- Disclosure
- IV. Optimising taxes – structuring transactions- Planning
- V. Optimising Credits/ Benefits – Refunds
- VI. Automation of processes – ensuring completeness of reports

Protection in COI

- **Art- 14 – Right to equality before law**
- **Art. 19 – Freedom of speech etc.**
- **Art-246 – State powers- list II- Sale of IP**
- **Art 265 – No tax w/o authority of law**
- **Art. 300A – Depriving of property (attachment) as per procedure- garnishee order – LL not paying GST.**
- **Many others...**

Registration Options- self & vendors

- Even if export to be registered to avail ITC
- All vendors Registered under regular scheme
- Fixed Place of Business – Technology Site Office, Manpower supplier, Rental..
- Multiple Location – Compliance Nightmare?
- Incurring expenses at unregistered places?
- ISD registration possibility

CLASSIFICATION

A. GOODS- GST

SCH + CTA

B. SERVICES-

SAC + SOC

Terms of agreement-
WO/ PO/ SOW

Classification -
independent

Composite, Non, Mixed

Rules + Old Class-
Customs/ CE + ST

- Interpretative rules - for classification in HSN - General Interpretative Rules.
- CTA provides a similar set of six rules - instrument for classification.
- Used to determine applicable tax rate & coverage in exemption.
- Order - Rule 1 and if it is not possible, recourse is taken to rule 2, 3 and 4 in that same order in which the rules are set out.
- Case laws to confirm

EXEMPTION CLAIM- GUIDING PRINCIPLES

- No intention to be read into (no baggage) - strictly applied , Normal ordinary meaning
- Expressions not interpretable for latter (ST Vs GST) if defined in GST
- Certificate issued by Statutory body is binding
- Minor procedural lapses not to lead to denial
- By way of has less coverage than in relation to
- Simultaneous availment of exemptions
- Circulars, press notes, trade notices ONLY in line (beneficial maybe)

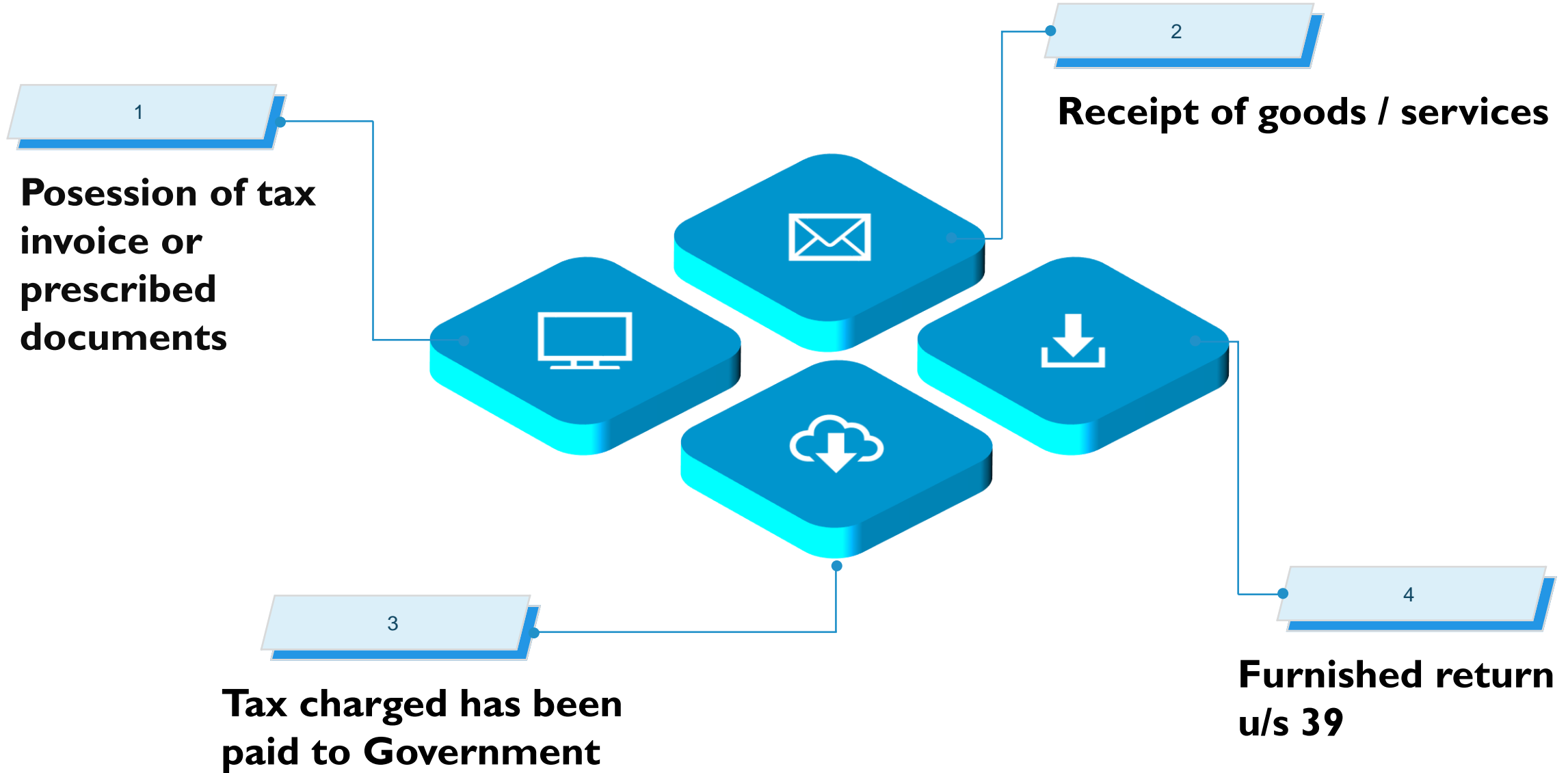
Transactions for some industry

- Hospital – renting among related companies, letting out to Doctors – surgery facility,
- Educational Institution – revenue share , renting among related
- Religious/ Charitable Organisation – renting of mandap, building of temples, churches etc.
- Government - Exempted real estate services by – not covered- to covered.

Input Tax Credit - Philosophy

- System of input tax credit was introduced in Indian taxation system to avoid cascading effect - ***LK Jha Committee Committee in 1974.***
- Pre-GST – it is Cenvat Credit, Post GST – Input Tax Credit.
- Modvat Credit is an indefeasible right subject to satisfaction of vesting conditions - ***Eicher Motors Ltd. Vs UOI - 1999 (106) ELT 3 (SC) & Dai Ichi Karkaria - 1999(112) ELT 353(SC)***
- Section 16(1) of CGST Act, 2017 entitles a registered person to take credit of input tax.
- Input tax credit under GST – a concession or right ?
- Section 16(2) of CGST with non-obstante clause provides vesting conditions for availing Input Tax Credit -

Input Tax Credit – 16(2)



Input Tax Credit

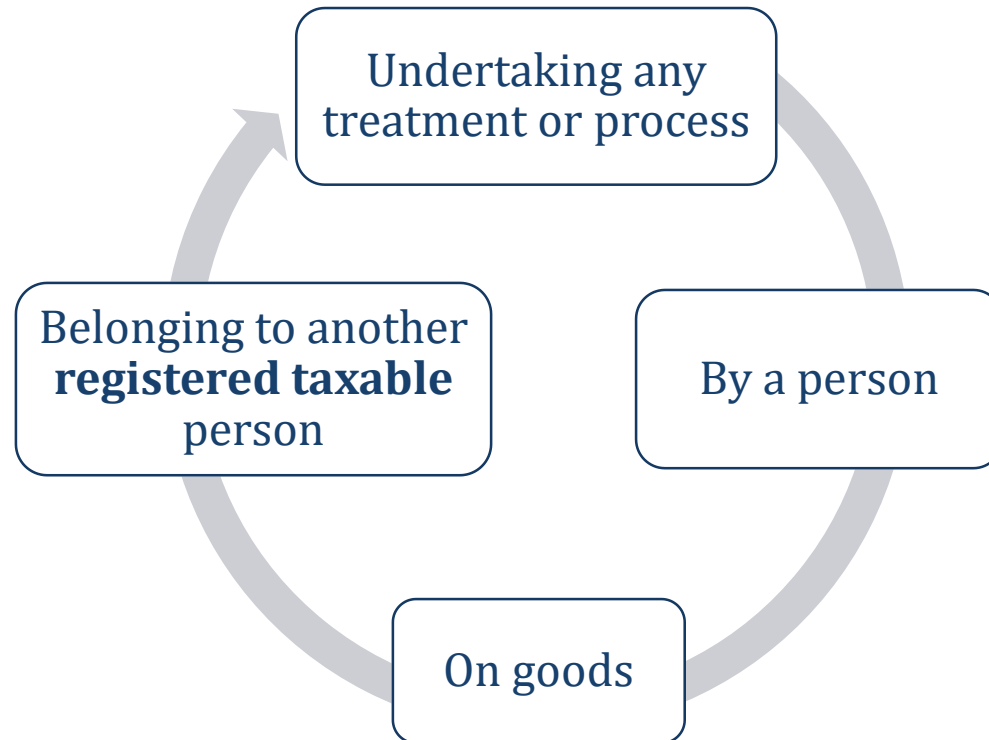
- Other ancillary conditions provided are –
 - Payment to supplier within 180 days
 - Unjust enrichment (depreciation on ITC)
 - Time limit till earliest of
 - due date of filing September month return following the end of financial year or
 - filing of annual return for respective financial year
- In Budget 2020, it is proposed to amend the time limit for availment of input tax credit in respect of debit notes based.

Specific ITC

- Unregistered site
- Dumpers, Trucks used for transportation of material not barred
- Consequently the leasing, hiring, insurance, parts, maintenance
- WCT for plant & machinery- lift, hoist, escalator, A/C plant?
- Orissa HC- Safari Retreats- read down 17 (5)
- Bank charges – certificate
- Rule 42/43 reversal
- ST c/f reversal till new scheme- not required.
- New Scheme Reversal

Impact – Job work

Job-work under GST under Section 143:



Prior Intimation

- Delivery Challan
- E-way bill (if > Rs. 50,000)

No definition under existing law under CE & Custom
- Defined only in Jobs done in 214/86 CE dt.25.03.1986 and CCR, 2004

PLACE OF SUPPLY- GOOD & SERVICES

- One may register in multiple places though not required
- One may not pay- assuming it is export as foreign currency received
- One may pay RC on imports when it is not liable
- One may raise invoice –IGST on State A instead of State B.
- One may raise IGST Invoice for intrastate supply or vice versa.
- Receiver may not get credit

POS- SOME UNCLEAR ISSUES

- Tax payable based on place of performance, location of Immovable property – Customer not registered there.
- Rental – No Fixed Establishment- IGST?
- Storage & Warehousing is a value added service – Not immovable property ? – Therefore IGST?
- Not possible Customer to go for ISD registration

Time of Supply

- Deemed Concept – Pay Early - Cash Flow
- Late payment – Interest Liability
- TOS different for arm length normal supply; continuous supply; reverse charge; voucher; interest/ late fee/ penalty.
- If supply to associated enterprises or in case of suppression/ fraud

Valuation

- Once it is settled that GST is to be paid, necessary to decide -
 - On what value the tax is to be paid.
- The ‘Transaction Value’ that is the actual price paid or payable for supply.
- Conditions: supplier & recipient are not related & price is the sole consideration.
- Includes & excludes : supplies by customer, taxes X Discounts..

Rule 33- Pure Agent

- Pure agent= contractual agreement to be pure agent
 - ❖ Does not hold title to goods or services
 - ❖ Does not use for his own interest &
 - ❖ Receives on actual amount + amount for his services on own a/c.
- Conditions:
 - ❖ Supplier authorised to make payment to 3rd party
 - ❖ Separately indicated in Invoice
 - ❖ Are in addition to own service.

**Not Only a reimbursement
Transaction**

RESOURCES

cbic.gov.in, hiregange.com; hiregangeacademy.com & idthc@icai.in

Legal Dictionaries,

Old Case Law precedents- Raghuraman ++

Books: Practical Guide to GST Audits – (Nov- 2019)May 2020; Practical Guide to GST on Real estate, Textiles, Compendium of Issues and solutions, Abridged compendium,

Online professional sites – LinkedIn, Tax Guru, Caclub ...

THANK YOU



For any clarification

madhukar@hiregange.com