

# Tax optimization and recent trends under GST

**CA Ashish Chaudhary**

Partner- Hiregange & Associates LLP

24 July 2021



# Tax optimisation

- Levy – not to be levied where not leviable
- Increased ITC
- Increased ITC to the customer resulting in reduced cost of pricing
- Deferring liability – cash flow management
- Exemption – claiming vs foregoing – cost implications
- Refund strategy
- Services/goods – tax optimisation
- Customs exemption
- Benefit Schemes
- Reducing transaction cost

# Levy

- Exemption (beneficial) – MOTHER SUPERIOR ADORATION CONVET
- Understanding what is supply- what is not (land)
- Composite Vs Mixed Vs Non composite – segregation of suppliers: The petitioner supplies the instruments, the distributors supplies the re-agents. The HC in Abott Health care held that supplies are executed by different suppliers, hence they cannot be considered as composite/ mixed supply – 2020-TIOL-40-HC-MAD.
- Manufacturing of tools/ dies for foreign customer – if entire product is treated as goods, then POS would be in India and export benefit wouldn't be available. Assessee can plan to segregate design/ engineering services portion from the tool/ dies manufacturing process and take advantage of export of service benefit – Mahle IPL Ltd [2014 (036) STR 1118 (Tri. – Chennai)]
- Segregation of lower tax items from the works contract – Sand [5%]; Bricks [5%]; Gypsum [5%]; Granite/ Marble Blocks [12%]
- Cum tax - intermediary

# Levy

- Corporate Guarantee – non payment vs valuation – cost benefit
- Director guarantee – in the capacity of individual or directorship – RCM on company?
- Cost allocation within group companies – service contract – joint employment contract –explicit or implied contract (Franco India Pharmaceutical (P) Ltd. vs CST)–planning for charging vs non charging
- Sample items – in the nature of promotional items – buy 1 get 1 (Circular 92)
- Tax on take away by restaurant – 5% as restaurant viz a viz 5% as goods- Anjappar Chettinad
- Debit note for the past recoveries – amendment in 16 (4) – benefit to buyer
- Schedule II implications – Notice pay or liquidated damage
- Claiming reimbursement from foreign party on cost + basis – intermediary or own account
- Canteen cost recovery from employee – concessional food is part of salary – Bhimas Hotel Pvt Ltd
- Discount vs provision of service- auto distributor - T.V.Sundram Iyengar & Sons Pvt. Ltd (HC)

# Input Tax Credit

- Time limit- Bill of Entry – regularisation of AA defaults
- ITC on construction and pre-engineered articles:
  - “Plant and Machinery” vs “Plant OR Machinery” in 17 (5)
  - Segregation of lower tax items from the works contract – Sand [5%]; Bricks [5%]; Gypsum [5%]; Granite/ Marble Blocks [12%]
- Canteen credit – requirement under Shop & Establishment Act
- Alternative for Mediclaim insurance – managed through administrator
- Target achievement etc. – through advertisement agencies
- Gift vs promotional items – given along with product or on target achievement
- Employee working from home – FE?

# Input Tax Credit

- Rule 43 - once classified as exempt, provision does not provide for reclassification to taxable. better to avail and reverse in 3B. To avoid time limit issues
- Actual usage vs intention to use
- Exempt supplies + taxable supplies – partial export of exempted products – all common ITC
- Segregation or common billing – planning based on turnover percentage
- Turnover of securities - derivative transactions – 1% of profit?
- Mutual fund investment and redemption – ITC reversal - ACE CREATIVE LEARNING PVT LTD – Tri
- Blockage of ITC in one GSTIN and cash outflow of taxes in other – Transaction structuring;
- Input Tax Credit being distributed by ISD, there is no specific supplier of goods and services to file a refund application to claim the refund of Input Tax Credit distributed by ISD – Britannia (Guj HC)

# Input Tax Credit

- Sale of item at loss/scrap
- Stock written off – Ingersoll Rand (India) Ltd (Guj HC) – writing off under accounting is different from Central Excise
- ITC reversed on financial credit notes issued by suppliers due to non-payment within 180 days – Distinction between non-payment and no obligation for payment
- Service vendors – composition scheme – especially where buyer not entitled for ITC
- Rule 42 reversals: 5% reversal is required for common ITC, it has not been clarified whether such reversal is required in all cases or in cases only where the business has actually incurred some non-business expenditure. Logically it should only apply in latter case. In Jet Airways India Ltd. [2021-TIOL-293-CESTAT-MUM-LB], in a customs matter held that deeming fiction for valuation applies only where the expense is actual incurred. The analogy could be used for this case also.

# Refunds

- Inverted one to one correlation not required
- Exports – no unjust enrichment – doubtful transactions – export on payment of tax and ITC
- Refund of the transitional cess - Schlumberger Asia Services Ltd Vs CCE & ST
- Refund unclaimed on compensation cess although full exports – Circular No. 125- export on payment of tax. Cess refund on export on payment of IGST - Pitambra Books Private Ltd Vs UOI 2020 (34) G.S.T.L. 196 (Del.) held that circulars cannot take away vested right of taxpayer granted by Statute
- Time limit of 2 years for refund eligibility – Deficiency memo
- Refund under LUT vs IGST:
  - Proposed amendment – killer
  - ITC of CG and accumulated ITC – difficult to get ITC
  - Tax period clubbing for refund



# Refunds

- Export refund confined to 1.5 time of domestic sale – ultra vires – pending before Karnataka HC
- Payment received through PAY PAL- Refund can be applied
- Wherever there is delay in sanctioning 90% provisional refund within 7 days-Exporter should claim the interest.
- Holding & Subsidiary Company are not merely establishments of a distinct person in accordance with Item (b) of explanation 3 of clause (44) of Section 65B of the Finance Act. They are separate legal entities. Refund is eligible to subsidiary company.
- Refund of RCM paid on ocean freight – Gujarat HC – no time limit
- Refund application - Monthly/Quarterly/Annually based on the most profitable zero rated to total turnover ratio - scenario analysis
- Export on payment of IGST v/s otherwise – comparison based on refund admissibility/ liquidation of credits

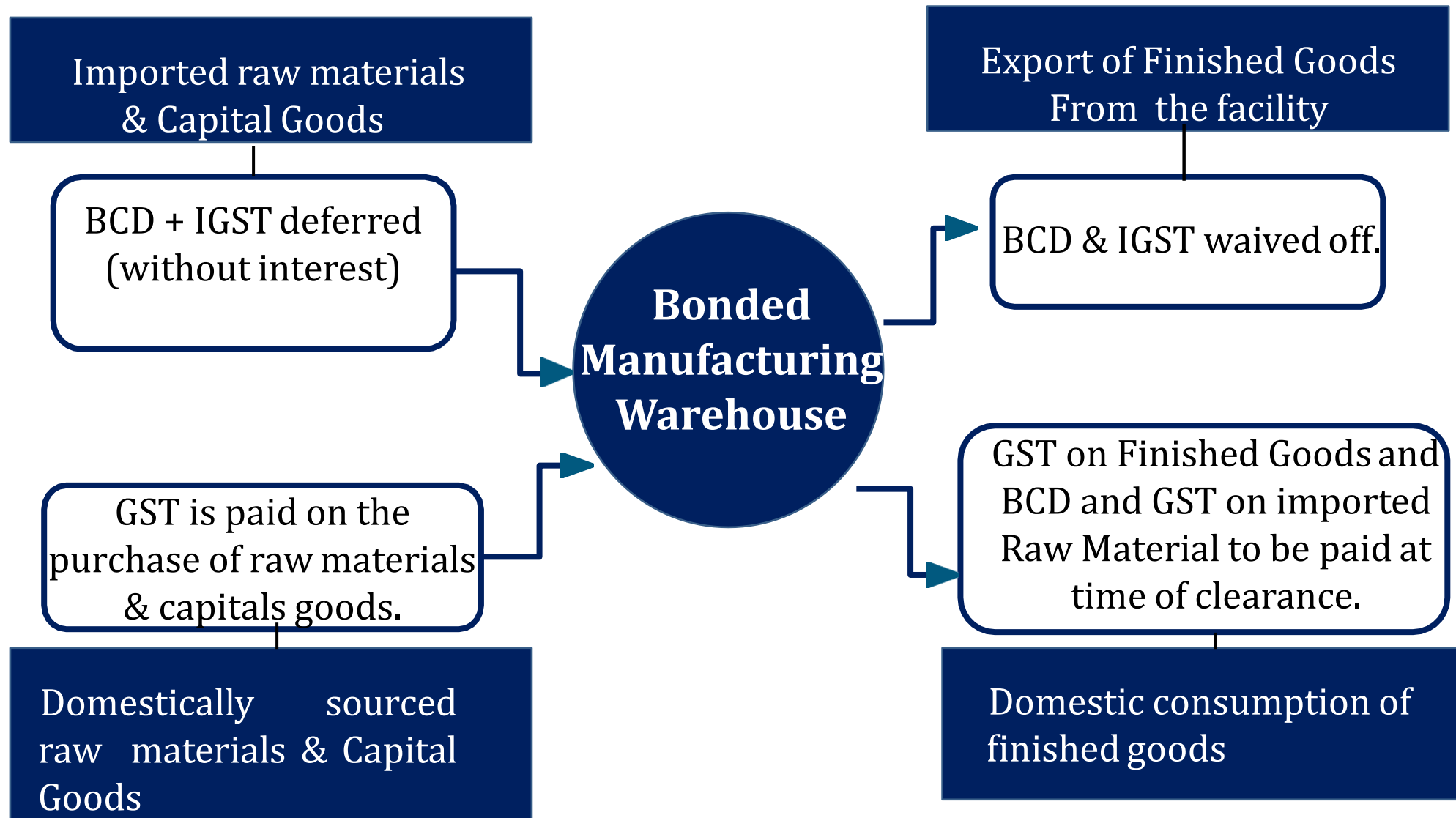
# Time of Supply & Valuation

- **Time of Supply**
  - Monthly billing – milestone
  - Vouchers issued for advance received
  - Debit Note for differential turnover
  
- **Valuation**
  - Transfer pricing optimization for inter unit – ITC blockage
  - Corporate Guarantee – non levy vs valuation challenge
  - Cross charge – CAS-4

# Reverse Charge Mechanism, Job Work

- **RCM**
  - RCM on motor vehicle – through employees
  - RCM from Govt –Sovereign function vis-à-vis public authorities function- Balmier Lawrey & co. Ltd. V. Partha Sarathi Sen Roy SC
  - Delayed payment – time limit for taking ITC?
- **Job Work**
  - Job work evaluation in stock transfer cases
  - Job work 18% - accumulation
  - Inverted – services to goods
  - Job work – transfer of material to Job worker for 12%

# MOOWR



# Biggest Advantage - Duty is deferred

Input/Output	Raw Materials/Capital goods/Other inputs into a Bonded Manufacturing Premises		Clearance from bonded manufacturing premises	
	From Foreign Country	From DTA	Clearance to Domestic Market	Export
<b>RM &amp; other inputs</b>	BCD + SWS + IGST are deferred	GST is levied Input tax credit available	Levy of BCD+SWS+IGST*	No BCD+SWS
				Zero rated
<b>Capital goods</b>	BCD+SWS+IGST are deferred	GST is levied Input tax credit available	Levy of BCD+SWS+IGST	No BCD+SWS
				Zero rated
<b>Finished goods</b>	Warehousing or other operations (like re-labelling or re-packaging, etc.) allowed. Duty deferred for 90 days for storage only.	Not a viable model No benefits	BCD+SWS on raw material (minus wastages) + IGST on finished goods	No BCD+SWS
				Zero rated so no IGST

**\* If cleared as such then interest is levied on duty deferred beyond 90 days**

**Note:** When bonded goods are exported, refund of input taxes or IGST payable on export can be availed

# Advantages of Bonded Manufacturing

- **Single Point of Approval** - Commissioner of Customs - single point of contact
- **Unlimited period of warehousing** - Capital and non-capital goods can remain warehoused until clearance or consumption
- **No geographical restriction** - New manufacturing facility can be set up or an existing facility can be converted into a bonded manufacturing facility irrespective of location
- **Reduced cost of compliance** - No application fee nor any incremental compliance cost other than setting up and maintenance of bonded warehouse
- **Easy Digital Compliance** - Records of manufacturing & other operations maintained digitally in a single format as specified in Annexure B

# Advantages of Bonded Manufacturing

- **Seamless warehouse to warehouse transfer** - Goods can be transferred from bonded facility to another facility without payment of duty
- **No fixed export obligation** - No limit on quantum of export or domestic clearances
- **Benefit of Other Schemes as well** - Various benefit like EPCG, Advance authorization etc., can also be claimed
- **Waste / destroyed goods** - Waste occurring on exporting from bonded warehouse shall not be liable for any payment of import duty if such waste is destroyed

# Who should go for it?

- If you are importing substantial quantity of raw materials;
- High raw material holding period;
- If you are importing machineries;
- Establishment of new plants or substantial expansions;
- Fluctuating, seasonal demand;
- Facing ITC accumulation coupled with Rule 96 (10) rider;
- Traders;
- If AIR of Duty Drawback is beneficial to any exporter, he need not look for this Scheme
- Fate of other export/ FTP schemes is unknown



# Benefit Scheme

- Benefits under FTP-SEIS, MEIS and benefit of BCD on imports
- DBK – Comparison between DBK – ITC & Advance license
- Concessional rate of duty in case of imports from preferential trade country
- Advance License, DFIA, EPCG Scheme
- Authorised Economic Operators- DPD
- CIF value of exports shall be considered as export turnover for the GST purposes not the FOB value as considered for Duty Drawback.



# Recent Trends

# Recent Trends in GST

Clarification on extension of limitation order for various activities/compliances under GST law;

Categories of activities	of	Clarification issued in the circular
Proceedings need to be initiated or compliances need to be done		Actions to be governed only by statutory mechanism and time limit provided/extensions granted under the statute. SC Orders would not apply.
Quasi-Judicial proceedings by tax authorities.		Authorities continue to hear and dispose proceedings in quasi-judicial functions such as refunds, revocation of cancellation of registration, adjudication proceedings of demand notices, etc. and appeals filed and pending.
Appeals by taxpayers		Any Appeal to be filed before Commissioner (Appeals), AAAR, Tribunal and courts or revision or rectification of order, time line would be extended as per Supreme Court's order.

# Dynamic QR Code

- For entities with T/o > INR 500 Crore only
- Effective from 1<sup>st</sup> Dec 2020, penalty for non-compliance waived up to 30<sup>th</sup> September 2021 – 28/2021-CT(R) dated 30<sup>th</sup> June 2021.
- For B2C transactions only, different from e-invoice QR code
- UIN not considered as registered party, consider as B2C.
- Separate bank a/c & IFSC code can be provided along with UPI ID
- B2C customer outside India – need not have DQR. RBI guidelines to apply.
- Issues/queries w.r.t QR code clarified via Circulars
  - 146/2/2021-GST dtd 23<sup>rd</sup> February 2021
  - 156/12/2021-GST dtd 21<sup>st</sup> June 2021

# Recent cases

- **Difference in 2A Vs 3B** – No legal sanctity – Amendments proposed by way of S.43A and S.16(2)(aa) are sufficient prove to say no legal basis. Already challenged in Chhattisgarh High Court in **Bharat Aluminum Company Ltd.** Rule 36(4) also challenged in various high courts such as Gujarat, Delhi and Calcutta
- **Interest on wrongly claimed ITC** – Even after amendment, circular and press release, department forcing payment of interest on gross amount. In wrongful ITC claims, under Section 50(3). In **F1 Auto Components** Madras HC observed that Section 50(3) interest won't apply on erroneous ITC claims.
- **GST on RWA** – Apart from principle of mutuality argument, CBIC had issued circular clarifying that if contribution exceeds INR 7500 then, whole consideration taxable. Recently in **Greenwood Owners Association Madras HC**

# Recent cases

- **Intermediary services** – In **Dharmendra M. Jani Mumbai HC** rendered a split judgement. Matter to be placed before CJI.
- **Certified copies of orders** - Mere delay in furnishing certified copy of order, should not come in way of Petitioner's appeal. **Orissa HC in M/S Shree Udyog**
- **DGGI Officers** - Empowered to issue summons under GST. Gujarat HC in **Yasho Industries Ltd**
- "On account of non-extension of the validity of the e-way bill by assessee or the transporter, no presumption can be drawn that there was an intention to evade tax."- **Satyam Shivam Papers Pct. Ltd.**

# THANK YOU

*For any clarification, contact*  
*[ashish@hiregange.com](mailto:ashish@hiregange.com)*  
*8510950400*

