

Gist of CFI Meeting with Shri Pankaj Kumar Singh, Additional Secretary & other GST Council Senior Officials held on 19th January 2024, GST Council Secretariat, New Delhi



CFI members had an opportunity to meet **Shri Pankaj Kumar Singh, Additional Secretary, Smt Ashima Bansal, Joint Secretary, Smt B. Sumidaa Devi, Joint Secretary** and **Shri Kshitendra Verma**, Director respectively from GST Council at an Interactive meeting held on 19th January 2024 at GST Council Secretariat, New Delhi.

CFI members participated in the meeting comprised of **Mr. Sanjay Hindlekar**, Head – Corporate Indirect Taxation, L&T Ltd., **Mr. Vikas Garg**, Head VP –F&A, Tata Projects Ltd., **Mr. Kamlesh Vishwakarma**, Sr. VP–A&F, ITD Cementation India Ltd., **Mr. Piyush Verma**, General Manager- Taxation, HCC Ltd., **Mr. Sandeep Shetty**, Sr. G.M.- A & IDTax, IRB Infrastructure Developers Ltd., **Mr. Akchhya Kumar Singh**, Associate Vice President, Adani Road Transport Ltd., **Mr. Shiv Rawat**, Deputy Director and **Mr. Ashok Bawa**, Accounts Executive, CFI

While expressing its gratitude to Additional Secretary and other senior GST Council officials for sparing their valuable time (approx. 90 minutes) to meet Federation delegation, CFI members submitted a detailed Memorandum on GST Issues impacting infrastructure construction industry. Memorandum is attached.

GST Council officials, though impressed by the raised issues, during approximately 90 minutes discussion advised the members to submit revised memorandum alongwith relevant documents and agreed to consider / review crucial issues.

Major issues raised by members include:

A. Road Projects

1. **GST on Annuity Payments under HAM Projects:** The approach of recognizing the transaction in the Books of accounts does not render the transaction taxable unless and until the point of taxation or levy of tax arises under the tax laws. It is a settled principle in law that accounting entries cannot determine the taxability of any transaction or lead to any implications under the tax laws. Therefore, GST cannot be demanded merely on the basis of the amount mentioned in the Books of accounts unless the point of taxation or time of supply arises in the GST regime. **Suggestion:** Issue a suitable clarification on the time of supply of GST in case of annuity payment under HAM contracts.

Additional Secretary, GST Council has informed the members that this issue is under active consideration.

2. GST on Toll, Operate & Transfer (TOT) Projects: CFI request to provide a suitable clarification on TOT Projects as the project awarded by Central (NHAI) or State Government or Co/Corporations set up by state Govt's are without considering any impact of GST @ 18%.
3. GST on Built, Operate & Transfer (BOT) Projects. CFI seeks clarification on BOT Projects as members are subjected to double taxation and are unnecessarily dragged in avoidable multiple litigation and harassment causing drain of their resources. Taxability should not be bind to BOT projects, feels the members.





B. Input tax credit ('ITC')

(1) Eligibility of ITC under Section 16 (2) (c) of the Act:

Suggestion: ITC availment should not be denied on account of non-payment of taxes/ non-reporting of invoices by the seller. If taxpayer has paid the tax to seller and he has valid copy of invoice in his possession and he has actually received the goods/ services, he should be allowed to avail the ITC. Department should proceed to recover the amount from the defaulter.

(2) Section 54 – GST Refund of accumulated ITC (Accumulation of ITC leading to increase in working capital costs): The Government should allow refund of accumulated ITC for Companies into project, at the closure of the project / substantial completion of the project, say 90%, subject to such controls, as may be deemed fit.

(3) Interest on reversal of ITC due to failure to pay vendors within 180 days: Interest should not be charged for failure to pay vendors within 180 days and simple reversal of ITC is sufficient since vendors have already deposited GST and there is no revenue loss to the government.

(4) Disallowance of ITC in respect of Motor car, Aircraft, Vessels and its general insurance, servicing, repair & maintenance where the same used only for business purpose and no personal use is involved- Ineligible credits under section 17(5): Generally, large Companies use aircraft available for their directors to facilitate their business-related travel. The aircraft is used by senior management for business purpose only and not for personal purpose. The expenses incurred in relation to such aircraft are in the course/ furtherance of business. Similarly, Vessels are used exclusively for construction of platform in deep sea on which ITC is blocked. **On this point, feedback from GST Council officials was that entire section 17(5) is under reconsideration and it may be modified in near future.**

(5) No relaxation for eligible ITC complied with the conditions under Section 16(2) of the Act, if the ITC availed beyond the time limit specified under Section 16(4) of the Act: In addition, there are numerous cases wherein the supplier has paid his due tax after September of next

financial year, however, the recipient has availed the credit with the permissible time limit as prescribed u/s 16(4). In such cases, ground formations have been denying the eligible ITC to the recipients. **Suggestion:** An appropriate clarification be issued to clarify that recipient can avail ITC even if the tax is paid by the supplier after the time prescribed u/s 16(4)

D. GST paid on advance received towards provision of service; the following points were highlighted

a) There is discrimination between goods and services as there is no GST on advance received for goods while advance received n Works Contract Services suffers GST

b) GST so paid on advance is not immediately available as credit to the recipient (wherever credit is eligible)

c) Where projects are executed through Joint Ventures/ sub-contractors through back to back arrangement there is significant blockage of ITC due to timing difference and GST paid on advances through cash:): In case of advance received by JV and so as the member (in such back-to-back arrangement), both are paying the taxes on the same transaction twice, resultantly, JV will have to discharge the taxes on advances in cash instead of ITC, because JV will not be receiving the ITC to that extent from the JV partners / sub-contractors in such back-to-back arrangement/pass through. Such portion of ITC underutilised due to cash payment of taxes on advances, leading to a situation of accumulation of ITC in JV for which no refund can be claimed as per the GST provisions as of now. Resultantly, blockage of funds followed by a write-off of unutilised ITC in JV books.

Suggestion: Like goods, for services also time of supply provisions should be relaxed. Alternatively, it is suggested that appropriate amendment should be made enabling availment of credit on tax paid in respect of advance. Consequently, receipt voucher to be included in the list of eligible documents for availing ITC.

E. GST - TDS is an unnecessary hassle for taxpayers: The primary purpose of introduction of GST TDS is to trace the supply transaction to control Tax evasion. However, all Government Organizations already have mechanism whereby reimbursement of taxes is paid only based on proof of payment. Therefore, there is no necessity for separate GST TDS mechanism. GST TDS provisions are against ease of doing business and has negative impact on the working capital and profitability of the company. GST TDS mechanism is not present in any other countries who has implemented GST. Therefore, in line with the practice followed by other countries as well as to simplify GST law, it is necessary to withdraw GST TDS mechanism with immediate effect.

On this issue, Council officials were in agreement to the suggestion of amending the TDS return form (GSTR-07) to be filed by the deductors to add invoice wise details in their return filing.

F. Parallel Proceedings:

1. **Multiple GST authorities / wings are assessing, inquiring, conducting investigation, etc. of the same tax period / subject matter, which is in complete violation of Section 6(2)(b) of CGST Act, 2017:** State as well as Centre's various wings of the Department keep approaching the assessee for details/information regularly. These duplication of proceedings / parallel proceeding needs to be avoided and as far as possible only the jurisdictional office (either Centre or State) should engage with the assessee for all matters.

Council officials informed to members that suitable guidelines issued to state GST Authorities on this issue.

2. **GST Authorities are just blindly issuing SCN on the queries of C&AG and CERA, not taking into cognizance the submissions being made.** Central Govt and GST council be requested to clarify the issue of Multiple audits by various wings of central Government, CAG and State Governments. It will avoid unwanted litigation with Government, reduce cost compliances and result in ease of doing business in India.

- G. Mechanism of ITC distribution through ISD:** Distribution of ITC based on scientific method will ensure that attributable ITC is correctly passed on instead of adhoc amounts on the basis of turnover. Further, turnover of previous year may not appropriately represent the ITC attributable to units in the current year (especially in the project business).

Suggestion: Relaxation should be provided to distribute the ITC based on any other scientific method available. For e.g., based on area occupied, actual utilisation etc. The criteria for credit distribution should not be restricted only to the turnover. Clarification to be provided that base value of the amounts in respect of taxes distributed can be allocated as financial debit notes. Even in cases where allocation is done on basis other than the turnover.

- H. Section 2(6)(v) of IGST Act (Export of Services – merely establishments of distinct person):** The service providers from India (IT service, Engineering services etc.) execute contracts with foreign customers both in off-site and on-site models. Indian companies are executing large EPC projects abroad and are required to provide engineering services in the process from India through Branch office set up in destination country. Contracts are executed with foreign customer with pre-identified share of work however entire payment may get collected by Branch and subsequently transferred to India in foreign exchange to safeguard against anti-avoidance challenges in the destination country. While in substance this model is similar to having Subsidiary company in foreign country, and service is being provided directly to client and not to Branch, due to condition (v) in above definition, field formations are denying benefit of exports to such transactions. Intent of the condition is to safeguard against export benefit in cases where actual transaction are amongst domestic entities by introducing artificial third person. Further, it unreasonably discriminates the transaction based on entity's structure of subsidiary or branch. Similar to goods, in case of services also where place of supply is outside India and foreign currency is earned, export benefit should be granted.

Members observed that sometimes state concerned authorities without proper verification of GSTN, issued show cause notices to them despite several interactions with them.