

# Interplay of GST law with other laws

---

BY:  
ADV. (CA.)  
SHIVASHISH KARNANI

SUNDAY, MAY 30, 2021

7.30 PM TO 9.00 PM

**FEDERATION OF INDIAN PROFESSIONALS**

# Relevancy to understand interplay

---

- GST law is a transaction based law and deals only with the “tax” part of it.
- Transactions are regulated by other laws and regulations.
- Transactions are undertaken in a “eco-system”.
- Accordingly, it is essential to understand the eco-system.
- Any advice given only considering “GST law” is unidirectional and incomplete.

# List of laws (not exhaustive) having bearing on GST law

---

- The Constitution of India
- The Indian Contract Act, 1872
- The Sales of Goods Act, 1930
- The General Clauses Act, 1897
- The Transfer of Property Act, 1882
- The Limitation Act, 1963
- RBI directions issued under various statutes.
- The Customs Act, 1962
- The Income Tax Act, 1961
- The Indian Evidence Act, 1872

*We would understand interplay of selected provisions contained in above laws.*

# Constitutional law interplay with GST law

---

- ❑ Article 246A grants concurrent jurisdiction to Central and State governments w.r.t. levy of GST;
- ❑ Article 246A is notwithstanding Article 246 of the Constitution;
- ❑ Finance Act, 2016 introduced “equalisation levy” borrowing powers from Article 246 read with entry no. 97 and 92C of list I of Seventh Schedule of the Constitution.
- ❑ There are certain subjects which are overlapping since both GST law and equalisation levy seeks to tax consideration of certain set identical of services dealing with online space. **Illustratively**, advertisement services, provision of e-books, movie, etc.
- ❑ To the extent of aforesaid overlapping, equalisation levy seems unconstitutional since the subject matter squarely falls under GST law (Article 246 read with Entry no. 97 is subject to Article 246A and entry no. 92C was never notified and was later omitted).

# Contract law interplay with GST law

---

- ❑ S. 62/63 of Indian Contract Act provides for novation, rescission, alteration, dispensation or remission of performance.

## Case 1:

- ❑ In case of Continuous supply of services, invoice needs to be raised before the due date of payment as mentioned in the Contract. **Illustratively**, internal audit services, rental services, etc.
- ❑ There is no extension provided by government during lockdown from raising of such invoices.
- ❑ In case invoice is issued belatedly, interest consequences follow.
- ❑ If both the parties to contract agrees, alternation/remission of performance to raise “invoices” can be agreed upon in writing.

## Case 2:

- ❑ Similarly, as per S. 15, transaction value is *price* actually paid or *payable*. Even after the execution of supply, supplier may remit or dispense with part of price. In that case, credit note can be issued by supplier.

# Contract law interplay with GST law

---

- ❑ S. 73 of Indian Contract Act deals with compensation for **loss or damage** caused by breach of contract. Provision envisage for restitution of the injured party;
- ❑ Para 5(e) of II Schedule states, “*Agreeing to the obligation to refrain from an act, to tolerate an act or a situation or to do an act*”.
- ❑ Damages (including liquidated) are paid for **restitution** which is “**not a service**”. Refer **Bai Mamubai Trust v. UOI - 2019-TIOL-2158-HC-MUM-GST** for reliance.
- ❑ There is no “**agreement**” to tolerate an act or a situation. *Instead agreement is to “deter” such acts leading to toleration or situation.*
- ❑ Reliance can be placed on foreign jurisprudence which is also ever evolving.

# Contract law interplay with GST law

---

- ❑ There can be “conditions to a contract” and “consideration for the contract”. Refer S.8 of Contract Act which states that the acceptance of proposal can be by performance of “conditions” or acceptance of any “consideration”. As such, there is difference between these two terms.
- ❑ There are clauses which essentially fits into the “conditions to a contract” instead of “consideration for the contract”. **Illustratively**, software service provider insisting for making available of laptop from recipient of software services to provide services. S. 15(2)(b) seeks to add such amount in value of supply.
- ❑ S. 15(2)(b) to that extent doesn’t seems to be correct.
- ❑ In the case of **Repc Home Finance Ltd. (Service Tax Appeal No. 511 of 2011-LB)**, it was observed by CESTAT that the foreclosure charges are not a consideration for performance of lending services but are imposed as a condition of the contract to compensate for the loss of expectations interest when the loan agreement is terminated pre-maturely.

# Sales of Goods Act interplay with GST law

---

- ❑ As per S. 10(1) of IGST Act, place of supply of goods where movement is involved whether by supplier or recipient or any other person, shall be the “location” at the time when delivery “terminates” for delivery to the recipient;
- ❑ Specially confusion galore in case of “ex-works sales” where supplier & recipient are in 2 different States. Various question regarding ITC availability in case of registered recipient and E-way bill requirement in case of unregistered recipient arises which needs clarity. Refer **Kun Motor Co. Pvt. Ltd. v. CST- 2018-TIOL-2903-HC-KERALA-GST.**
- ❑ As per S. 2(2) of Sales of Goods Act, delivery means voluntary transfer of possession.
- ❑ In case of ex-works sales, even though there is voluntary transfer of possession which tantamount to delivery but S. 10(1) of IGST Act adds a rider i.e. “termination” and also recognises movement by “recipient”.
- ❑ Termination can be said to be at the location of recipient place of business which also goes with the intent of the GST law and also Sales of Goods Act.



# General Clauses Act interplay with GST law

---

- ❑ The definition of local authority under General Clauses Act and GST law are *pari materia*.
- ❑ This implies that the interpretations made by Constitutional Courts on the meaning of word “local authority” under General Clauses Act can also be applied under GST law.
- ❑ In the landmark case of **Union of India & ors. vs R. C. Jain & ors., 1981 AIR 951**, DDA was considered to be a local authority for the purpose of Payment of Bonus Act by referring to the words “... *or other authority*” as mentioned in the definition.
- ❑ It is specifically provided that DDA has all the essential attributes of a MCD by applying “functional test”. Some of the attributes of local authority are separate legal existence, not a mere governmental agency, defined area, certain degree of autonomy, governmental functions, etc.
- ❑ Accordingly, view prevails that services by DDA are exempt as per entry no. 6 to 9 of Notification no. 12/2017- CT (Rate) as amended.

# General Clauses Act interplay with GST law

---

- ❑ S. 169(3) states that any communication if sent by post, shall be *deemed* to have been received at the expiry of the normal period required for delivery.
- ❑ However, requirement of proper addressing, pre-paying and posting needs to be read into above provision as per S. 27 of General Clauses Act. This section raises a *presumption of law*.
- ❑ Any communication returned with a postal endorsement “refused” or “not available in the house” or “house locked” or “shop closed” or “addressee not in station,”, in that case also due service is presumed (**State of M.P. v. Hiralal and Ors. (669 1996 SCALE (1)SP35)**).
  - ❑ As such, evidence along with affidavit needs to be adduced to prove non-service.

# General Clauses Act interplay with GST law

---

- ❑ S. 35(5) has been “omitted” by Finance Act, 2021.
- ❑ S. 44 has been “substituted” to provide that annual return to include self-certified reconciliation statement.
- ❑ S. 6 of General Clauses Act deals with repeal of a provision/statute. Effect of repeal is to “abrogate” completely as if provision had never been existed. However, the same is subject to savings clause provided in statute. In the case of **Shree Bhagwati Steel Rolling v. Commissioner of Central Excise (2016) 3 SCC 643** it was observed that,
  - ❑ *“On a conjoint reading of the three expressions “delete”, “omit”, and “repeal”, it becomes clear that “delete” and “omit” are used interchangeably, so that when the expression “repeal” refers to “delete” it would necessarily take within its ken an omission as well. This being the case, we do not find any substance in the argument that a “repeal” amounts to an obliteration from the very beginning, whereas an “omission” is only in future”.*
- ❑ Accordingly, if the notification is issued (even though prospective in line with Finance Act, 2021), no certification of reconciliation statements would be required for FY 2020-21 as well [Press release post GST council meeting also clarifies the same].

# Transfer of Property Act interplay with GST law

---

- ❑ Taxes on “land” is a State subject as per entry no. 49 of list II of Seventh Schedule.
- ❑ Sale of “land” is not liable to GST (para 5 of schedule III).
- ❑ Can “development rights” which qualifies as “benefits to arise out of land” be considered as “land”?
- ❑ Land is not defined under GST law. Attention invited to S. 3(26) of General Clauses Act, S. 2(f) of Registration Act, 1908, S. 3(a) of Land Acquisition Act as per which “benefits” to arise out of land is also considered as land. These provisions are interpreted in the various cases such as **Girnar Traders vs State of Maharashtra – (2011) 3 SCC 1**, **S.N. Chandrasekhar vs State of Karnataka – (2006) 3SCC 208**, **Dena Bank vs B.B.P.Parekh & Co. – (2000) 5 SCC 694**.
- ❑ All the jurisprudence suggest that the development rights forms part of land. Accordingly no GST can be leviable on “transfer” of development rights.
- ❑ Transfer of “Development rights” are difference from lease (S. 105 of Transfer of Property Act), etc.

# Limitation Act interplay with GST law

---

- ❑ Timeline under provided under GST law is sacrosanct. Refer **Singh Enterprises vs CCE, Jamshedpur : 2008 (221) E.L.T. 163 (S.C.)**, **CCE vs Hongo India Pvt. Ltd. 2009 (236) E.L.T. 417 (S.C.)**.
- ❑ Recently Supreme Court in exercise of powers conferred by Article 141 read with Article 142 extended period of limitation period in *all judicial and quasi judicial proceedings*. Also mentioned in the press release issued post GST council meeting.
  - ❑ Not applicable to application seeking condonation of delay. Refer **Sagufa Ahmed & Ors. (Civil Appeal Nos.3007-3008 of 2020)**.
- ❑ Refund on account of unconstitutional levy- Section 17(1)(c) of Limitation Act can be applied. Timeline would be 3 years as per entry no. 137 to schedule to Limitation Act. Refer **Mafatlal Industries Limited vs. Union of India [1997 (89) E.L.T. 247 (S.C.)]**. Illustratively, IGST on ocean freight.

# RBI Directions interplay with GST law

---

- ❑ Mandatory directions (including notifications/circulars) are issued in exercise of powers conferred under Banking Regulation Act, 1949 / Foreign Exchange Management Act, 1999, etc.
- ❑ Para 4(b) of Notification no. FEMA 22(R)/2016-RB list down activities which can be undertaken by a branch office (“BO”) / liaison office (“LO”). Representation and acting as an buying/selling agent (i.e. activities in the nature of “Intermediary”) can be undertaken by BO and not by LO.
- ❑ Even further para 2(e) of aforesaid notification defines liaison office as *“Liaison Office’ means a place of business to act as a **channel of communication** between the principal place of business or Head Office or by whatever name called and entities in India but **which does not undertake any commercial /trading/ industrial activity, directly or indirectly, and maintains itself out of inward remittances received from abroad through normal banking channel”***.
- ❑ LO cannot earn any profit, sell assets at more than its books value, no value of intangibles, etc.
- ❑ “Course” or “furtherance” of business cannot be interpreted to take into account “activities” which lead to “closure of business”.

# RBI Directions interplay with GST law

---

- ❑ RBI master circular no. DBR. No. Dir. BC. 11/13.03.00/2015-16 dated 01.07.2015 deals with the guarantees and co-acceptances.
- ❑ Para 2.2.9 of aforesaid circular provides for guidelines relating to **personal guarantees of directors** for the credit facilities, etc. granted to corporates, public or private. Few relevant paras are extracted below:
  - ❑ *Banks should take personal guarantees of directors for the credit facilities, etc. granted to corporates, public or private, only when absolutely warranted after a careful examination of the circumstances of the case and not as a matter of course”.*
  - ❑ ***The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that **no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly.** This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits.***
- ❑ As such, there cannot be any “open market value” or “value of supply of like kind and quality”.

# Customs Act interplay with GST law

---

- ❑ Finance Act, 2021 widened the scope of Customs Act.
- ❑ Confiscation of goods entered for exportation under *wrongful claim* of remission or refund of any duty or tax. **Illustratively:**
  - ❑ Refund of IGST in violation of Rule 96(10) of CGST Rules, 2017.
- ❑ Penalty upto 5 times of the amount of refund in case any person has obtained any invoice by *fraud, collusion*, etc. to utilize Input Tax Credit for discharging any duty or tax **on goods, under claim of refund of any duty or tax. Analysis:**
  - ❑ Refund should have been claimed in respect of **same goods**, liability of which is discharged utilizing invoice obtained by fraud. One to one linking is essential.
- ❑ The scope of confiscation is wider than penalty provision.
- ❑ These provisions essentially confers dual jurisdiction on the same issue which is irregular.



# Income Tax Act interplay with GST law

---

- ❑ Concept of mutuality is applies under both the laws.
- ❑ S. 28(iii) of Income Tax Act states that, “*income derived by a trade, professional or similar association from **specific services** performed for its members*”.
- ❑ S. 108 of Finance Act, 2021 seeks to add clause (aa) and explanation in Section 7 which states that,
  - ❑ “*the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration*”.
  - ❑ *Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;*”.

# Income Tax Act interplay with GST law

---

- ❑ It was observed by **Hon'ble Supreme Court (Civil Appeal No. 4184 of 2009)** that,:
  - ❑ *“What is of essence, therefore, in applying this doctrine is that there is no sale transaction between two persons, as one person cannot sell goods to itself”*.
  - ❑ *“In view of the mutuality and in view of the activities of the club, if club provides any service to its members may be in any form including as mandap keeper, then it is not a service by one to another in the light of the decisions referred above as foundational facts of existence of two legal entities in such transaction is missing”*.
- ❑ As such it seems that only specific supply of goods or services and not general services (receipts of which form part of the common fund) would be taxable even after aforesaid amendment in GST laws.
- ❑ Refer *Dublin Corporation vs. M'Adam (Surveyor of Taxes)*, (1887) 2 Tax Cas. 387 (D)], *Calcutta Stock exchange vs CIT* (1956) 29 ITR 687, *CIT vs Bankipur Club* 226 ITR 97 (SC).

# Income Tax Act interplay with GST law

---

- ❑ As per Section 2(15) of Income Tax Act, *"charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and **preservation of monuments** or places or objects of artistic or historic interest, and **the advancement of any other object of general public utility.***
- ❑ As per notification no. 12/2017- CT (Rate) charitable activities are specifically mentioned without any leeway.
- ❑ Whether activities which relates to “preservation of monuments” and not specifically covered by aforesaid notification be considered as not in the “course of furtherance of business” and thus not liable to be taxed under GST law?

# Evidence Act interplay with GST law

---

- ❑ S. 69 states that proper officer may summon “any person” for recording of statement, etc.
- ❑ S. 136 states that the statement shall be relevant for the purpose of proving in any prosecution in certain specified cases.
- ❑ S. 138 of the Evidence Act grants opportunity for cross examination of witness.
- ❑ It has been held in various judgments that opportunity of cross examination if not granted **leads to violation of principle of natural justice** and order/demand simply relying on statements cannot be sustained due to lack of evidentiary value. Refer Hon’ble Supreme Court judgment in the case of **Andaman Timber Industries vs. CCE (2015) 62 taxmann.com 3/52 GST 355(SC)**.

There are other laws also like  
CPC, CrPC, Information  
Technology Act...

---

**SHIVASHISH KARNANI, ADVOCATE**

**[B.COM(H), CA, LL.B.]**

**SHIVASHISH.ADVOCATE@GMAIL.COM**

**+91-9818472772**