# Grey Areas in GST Law

## What is the issue?

The taxpayers are still figuring out some of the provisions of GST laws while the tax department has decided to focus on collecting revenues without completely understanding the basics of the laws.

## What is GST?

- GST is an indirect tax for the whole nation, which will make India one unified common market.
- It is a single tax on the supply of goods and services, right from the manufacturer to the consumer.
- It is a destination based tax which will be collected at the state where the goods are sold instead of the manufacturing states.
- The 101$^{st}$ Constitution Amendment Act, 2016, introduced GST in India which was implemented from 1$^{st}$ July 2017.
- The GST council is devised in such a way that the centre will have 1/3$^{rd}$ voting power and the states will have 2/3$^{rd}$ and the decisions were taken by 3/4$^{th}$ majority.

***Article 246A –*** *States have power to tax goods and services.*

***Article 279A*** *- GST Council to be formed by the President to administer & govern GST. Its Chairman is Union Finance Minister of India with ministers nominated by the state governments as its members.*

To know more about GST, click here

## What are the issues at present?

- **GST tribunals**-The GST tribunals are not yet completely functional and the taxpayers are forced to approach either the High Courts or the Authority for Advance Rulings (AAR) for justice.
- A majority of the AAR decisions appear to be pro-Revenue while the High

Courts can judge only on questions of law.

- **GST on services undertaken by trusts**- *In Jayshankar Gramin vs Adivasi Vikas Sanstha* case, the AAR looked at the exemption entry for charitable trusts in Serial No 1 of Notification No 12/2017 (Central Tax-Rate).
- The AAR held that it cannot be concluded as to whether the services provided to orphan and homeless children are specifically for advancement of educational programmes or skill development of orphan or homeless and hence it is subjected to GST.
- It is ironical that care or counselling of persons addicted to a narcotics drugs or alcohol is exempted from GST due to a specific insertion in Notification 12/2017 but the care or counselling done to destitute women is not.
- **GST on notice pay-** An issue that cropped up was whether service tax needs to be collected on notice pay that an employee has lost.

*Notice Pay means the amount that an employee who is eligible for severance benefits may receive for providing services during a notice period, which will be at least 30 calendar days prior to the eligible employee's separation from service date.*

- Initially it was ruled that this was chargeable to service tax under the logic that this was a service provided by the employer to the employee.
- Later, it was held to be non-taxable by different appellate authorities in several cases such as QX KPO Services Pvt Ltd, Central Excise & Customs,Anand Commissionerate, HCL Learning Systems vs CCE.
- As per a recent ruling of AAR in the *Bharat Oman Refineries case*, GST will be applicable on different employees' recoveries including telephone bills paid by companies, group insurance of the company employees, and payment of salaries in lieu of the notice period.
- For quitting the present job without serving the required notice period mentioned in the offer letter, 18% GST has to be paid on the entire notice pay.
- The AAR ruled that in the case of notice pay, the company is actually providing a service to an employee and hence GST should be applied on that.
- As employees are not registered GST payers, it is responsibility of the employer to pay GST through reverse charge mechanism on the recoveries from the employee.

- Some of the tax experts are of the opinion that the AAR ruling does not portray the correct position of law.

## References


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