



**The Malad  
Chamber of Tax  
Consultants**

MNW/175/2021-23

**43<sup>rd</sup>  
YEAR**

**MCTC Bulletin**

"Every Passing Minute is Another Chance to Turn it Around"

E-mail: [maladchamber@gmail.com](mailto:maladchamber@gmail.com)

Website: [www.mctc.in](http://www.mctc.in)

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October, 2022

## President's Communiqué



Dear Professional Colleagues,

Diwali, the most awaited festival of lights is around the corner. It symbolizes the victory of light over darkness, good over evil and knowledge over ignorance. Each of us has a vision of good and evil. We, as professionals with our knowledge, must encourage our family, clients and society to move towards the good. It will infuse new energies and hopes in everyone's life to achieve bigger and better goals. This would be a first step to making the world a better place.

I also request you to kindly participate in the 'Gift a Membership' drive of the chamber and help spread the benefits of the chamber to as many tax professionals as possible. I urge you to Gift the Chambers Life Membership to the Deserving candidates in your office this Diwali in appreciation of their contribution. Benefits of MCTC Membership are printed in the bulletin.

In its endeavor to spread knowledge and in line with the year's theme of spreading awareness about the activities of the Chamber across various forums, MCTC organized its 5th Educational Programme - **GYAN YAGNA**, a Series of Webinar on GST in Gujarati jointly with AIFTP- West Zone, All Gujarat Federation of Tax Consultants (AGFTC), GSTPAM, The Southern Gujarat Commercial Tax Bar Association – Surat, Central Gujarat Chamber of the Tax Consultants – Baroda and All District Local Associations of Mofussil area. Out of the total of 5 lectures to be held in the series, 2 have been held till date. Members have given positive feedback on the ongoing Series. Details of lectures held and to be held are printed in the bulletin.

The Chamber is hosting its 16th Dr. Bharat D. Vasani Saraswati Sanman Samarambh in November physically this year to felicitate and inspire deserving candidates for their outstanding academic performance. Members are requested to kindly send the details of qualifying candidates in the form printed in this bulletin and also to attend the said program.

The Chamber is also partnering **Malad Walkathon 3.0** which is a theme based Walkathon to be held on 4th December, 2022. It is one of the unique events organized for the benefit of MCTC members and their family. Looking forward for active participation. Registration link and further details are printed in the bulletin.

*"All the lights of the world cannot be compared even to a ray of the inner light of the self."*

*Wishing all members and your family a very Happy Diwali and a Prosperous New Year.  
May you enjoy this festive season with your loved ones and create memories that stay with you forever.*

Regards

**CA UJWAL THAKRAR**

President

**Request: Members please send your Mobile No. & Email ID to update list of life members  
Please send message on 7039006655 or email to [maladchamber@gmail.com](mailto:maladchamber@gmail.com)**

For Queries & Submission of Forms for Membership/Seminar please contact any of the following Office Bearers:

Name	Designation	Contact Nos.	E-mail
CA Ujwal Thakrar	President	9819946379	ujwalthakrar@gmail.com
CA Khyati Vasani	Vice President	9833288584	khyativasani@yahoo.com
Adv. Jaideep Sonpal	Hon. Treasurer	9892005352	sonpalconsultants@gmail.com
Shri Jitendra Fulia	Hon. Secretary	9820997205	jitendradfulia@rediffmail.com
Shri Rajen Vora	Hon. Secretary	9819807824	vora.rajen@gmail.com

**Life Membership Fees ₹ 2,500**



## Life-Membership Benefits

# THE MALAD CHAMBER OF TAX CONSULTANTS

SINCE 1978

### Benefits of MCTC Membership:

- Life Membership subscription
- Access to knowledgeable and insightful Study Circle meetings on Direct Tax, Indirect Tax and Allied Laws
- Access to joint workshops on various topics held with WIRC, GSTPAM, CTC, and other associations.
- Access to RRC, IRRC, Sports tournaments and other social and cultural events.
- Access to monthly Bulletins having insights about various case laws and regular events of MCTC.
- Networking Opportunities with like minded members

**Life Membership Fees : Rs. 2,500/-**

**Scan the QR Code to download Membership Form**

**Adv. Rinav Khakhar | CA Pratik Satyuga**  
Convenors  
Membership & Public Relation Committee



#### Bank Account Details:

HDFC Bank Ltd - Marve Road, Malad West Branch,  
Account No. - 00471000136285 | IFS Code: - HDFC0000047

**CA Ujwal Thakrar**  
President  
MCTC

Contact us: [maladchamber@gmail.com](mailto:maladchamber@gmail.com) | [www.mctc.in](http://www.mctc.in)



## The Malad Chamber of Tax Consultants

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Malad (West), Mumbai- 400064. E-mail: [maladchamber@gmail.com](mailto:maladchamber@gmail.com). Mobile: 7039006655.

**Admin Office:** C/o. Brijesh Cholera : Shop No. 4, 2nd Floor, The Mall, Station Road, Malad (W), Mumbai-400 064

### MEMBERSHIP FORM



Date:..... /..... /.....

To,  
The Hon. Joint Secretaries,  
The Malad Chamber of Tax Consultants, Mumbai.

Dear Sirs,

Being eligible to practice under the Direct and/or Indirect Taxes Laws, I hereby apply for admission as a member of *The Malad Chamber of Tax Consultants* with the following particulars:

1. NAME OF MEMBER MR/MRS/MISS: .....
2. FATHER'S / HUSBAND'S NAME: .....
3. QUALIFICATIONS: .....
4. MEMBERSHIP NO., if any (with name of the association): .....
5. PERSONAL DATA: .....
- DATE OF BIRTH:...../...../..... BLOOD GROUP:.....
- SPOUSE'S NAME: ..... SPOUSE'S DATE OF BIRTH...../...../.....
- MARRIAGE ANNIVERSARY:...../...../.....
- PROFESSION:  ADVOCATE  CA  ITP  ICWAI  ICSI  GSTP/STP
6. OFFICE NAME:.....
- OFFICE ADDRESS: .....
- PIN CODE: ..... STATE:..... TEL. NO: ..... FAX NO: .....
- MOBILE NO: ..... EMAIL ID: .....
7. RESIDENTIAL ADDRESS: .....
- PIN CODE: ..... STATE: .....
- TEL. NO: ..... FAX NO: ..... MOBILE NO: .....
8. COMMUNICATION TO BE SENT TO:OFFICE  RESIDENCE
- The amount of ₹ 2,500/- by Cheque/Draft No. .... dated ..... /...../..... drawn on .....
- .....
9. Bank Detail for Online Payment  
Beneficiary Name: The Malad Chamber of Tax Consultants.  
Bank Name: HDFC Bank Ltd. – Marve Road, Malad West Branch, Account No. 00471000136285;  
IFS Code: HDFC0000047.
10. Kindly register on this google form link also for faster processing of membership - <https://bit.ly/mctc-e-regn>

#### UNDERTAKING

I, do hereby declare that whatever stated herein above is true to the best of my knowledge and belief. I also undertake to abide by the Rules, Regulation and Constitution of the Association, as amended from time to time.

.....  
(Signature)



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### FOR OFFICE USE ONLY FOR MEMBERSHIP APPLICATION

Issued Acknowledgement Slip No..... Dated..... / ..... / .....

Accepted by the Managing Committee in the Meeting held on...../ ..... / .....

Cheque No. .... Dated ..... / ..... / ..... for ₹ 2,500/- Bank

#### NOTES

1. Please attach educational qualification certificate for eligibility to practice taxlaws.
2. Please write / type in CAPITAL LETTERS.
3. Cheques should be drawn in favour of "The Malad Chamber of TaxConsultants".
4. Outstation remittance should be by Demand Draft payable at Mumbaiionly.
5. Please tick (✓) whereverapplicable.
6. The form should be completed in allaspects.
7. The membership application is subject to acceptance by the Managing Council.

**For Query and Submission of forms for Membership please contact any of the following office bearers.**

Name	Designation	Contact No.	E-Mail
CA Ujwal Thakrar	President	9819946379	ujwalthakrar@gmail.com
CA Khyati Vasani	Vice President	9833288584	khyativasani@yahoo.com
Adv. Jaideep Sonpal	Hon. Treasurer	9892005352	sonpalconsultants@gmail.com
Shri Jitendra Fulia	Hon. Secretary	9820997205	jitendradfulia@rediffmail.com
Shri Rajen Vora	Hon. Secretary	9819807824	vora.rajen@gmail.com

**Please send the completed application form to the following address:**

**The Malad Chamber of Tax Consultants**

**C/o. Brijesh Cholera & Co.**  
Chartered Accountants  
Shop No. 4, 2<sup>nd</sup> Floor,  
The Mall, Station Road,  
Malad (West), Mumbai-400097



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2. NAME OF INTRODUCED MEMBER MR /MRS /MISS: .....
3. FATHER'S/HUSBAND'S NAME: .....
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DATE OF BIRTH: ..... / ..... / ..... BLOOD GROUP: .....
- SPOUSE'S NAME: ..... SPOUSE'S DATE OF BIRTH ..... / ..... / .....
- MARRIAGE ANNIVERSARY: ..... / ..... / .....
- PROFESSION:  ADVOCATE  CA  ITP  ICWAI  ICSI  GSTP/STP
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The amount of ₹ 2,500/- by Cheque/Draft No. .... dated ..... / ..... / .....  
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11. Kindly register on this google form link also for faster processing of membership - <https://bit.ly/mctc-e-regn>

#### UNDERTAKING

I, do hereby declare that whatever stated herein above is true to the best of my knowledge and belief. I also undertake to abide by the Rules, Regulation and Constitution of the Association, as amended from time to time.

.....  
(Signature)

## Forthcoming Events

Dear Members,

With the festive seasons approaching, we are having our Saraswati Sanman Samarambh (physical event) in November 2022 (date and venue to be announced) in which we will be awarding the 16th Dr. Bharat D. Vasani Saraswati Sanman Trophies to the children of MCTC members for outstanding performance in passing exams of SSC/HSC with 75% marks & above & students who cleared post graduation professional exams like CA., C.S., C.W.A., MBBS, MBA, Engineers during Academic year 2021-2022.

We request the members / their children to kindly submit the one **passport size photo, mark sheet** and details in the following form by 13th November, 2022.

You are requested to kindly inform either of the Secretaries once you send the email.

### Form for 16th Dr. Bharat D. Vasani Saraswati Sanman Trophies

Member's Name:-

Email ID:-

Mob.No.:-

#### Details of Student

FIRST NAME

MIDDELE NAME

SURNAME

Student Name:-

AGE:-

Name Of Exam Cleared:-

Year of Exam:-

Percentage:-

Name of School:-

College/Institution:-

Please mail to [maladchamber@gmail.com](mailto:maladchamber@gmail.com) with scan copy of marksheet and Photo on or before 13th November, 2022

Please inform Mr. Jitendra Fulia 9820997205 or Mr. Rajen Vora 9819807824 once you send the details

**NOTE:-** Application should be complete in all respect and the Form with the marksheet should reach us before the due date.

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## DIRECT TAXES - Law Update

**Haresh P. Kenia**



### 1. **CBDT notifies Rule 132 and Form No. 69 for re-computation of Income under section 155(18) after disallowing deduction for Surcharge and Cess**

The Central Board of Direct Taxes, in exercise of the powers conferred by section 295, read with section 155 (18) of the Income-tax Act, 1961, vide notification no G.S.R. 733(E), dated 28-9-2022, gives Income-tax (32nd Amendment) Rules, 2022. It amends the income tax rules and inserts New Rule 132C. It also inserts Form 69 and form 70. It came into force from the 1st day of October 2022.

Form 69 being application for re computation of income under sub-section (18) of section 155 of the Act. and Form-70 being intimation by assessee furnishing the details of payment of tax in to the Assessing Officer within thirty days from date of making the payment.

Form 69 is prescribed requesting assessing officer to re computation of total income of the previous year without allowing the claim for deduction of surcharge or cess, which has been claimed and allowed as deduction under section 40 in the said previous year. This form is to be furnished on or before the 31st day of March 2023.

The Assessing Officer shall, on receipt of the application in Form No. 69, recompute the total income by amending the relevant order and issue notice under section 156 specifying the time period within which amount of tax payable, if any, is to be paid, —

- (i) for the assessment year relevant to the previous year referred to in sub-rule (1); and
- (ii) for the assessment years subsequent to the assessment year referred to in clause (i), if the order for such assessment year results in variation in carry forward of loss or allowance for unabsorbed depreciation or credit for tax under section 115JAA or section 115JD.

### 2. **Extension of Timeline for filing of various Reports of audit for the assessment year 2022-23- Section 119 Instruction to Subordinate Authorities**

The Central Board of Direct Taxes (CBDT), in exercise of its powers under Section 119 of the Act, vide CIRCULAR NO. 19/2022 [F. NO. 225/49/2021/ITA-II], dated 30-9-2022, extends the due date of furnishing of report of audit under any provision of the Act for the Previous Year 2021-22, which was 30th September, 2022 in the case of assesses referred in clause (a) of Explanation 2 to sub-section (1) of section 139 of the Act, to 7th October, 2022. This is on consideration of difficulties faced by the taxpayers and other stakeholders in electronic filing of various reports of audit under the provisions of the Income-tax Act, 1961

### 3. **Guidelines for Compounding of Offences Under the Income-tax Act.**

In conformity with the Government's policy of facilitating Ease of Doing Business and decriminalisation of offences, CBDT has taken steps in this direction and issued revised Guidelines for Compounding of offences under the Income-tax Act, 1961 dated 16-9-2022 with reference to various offences covered under the prosecution provisions of the Act.

The CBDT vide LETTER F.NO. 285/08/2014-IT (Inv. V)/196, DATED 16-9-2022, in supersession of all earlier Guidelines on this subject, including the last Guidelines of the Board issued vide F. No. 285/08/2014IT (Inv. V)/147, dated 14th June 2019, the following Guidelines are issued, henceforth, for compliance by all concerned.

The guideline contains the following features:-

- Compounding Provision
- Compounding is not a matter of right
- Applicability of these Guidelines to prosecutions under IPC
- Classification of Offences
- Eligibility Conditions for Compounding
- Offences not to be compounded
- Relaxation of time
- Authority Competent to Compound an Offence
- Compounding Procedure
- Compounding Charges
- Compounding fee

Readers may refer to complete text of the notification for further details

#### 4. CBDT Order for extension of time limit to file ITR-A under section 170A

ORDER under Section 119-F. NO. 370142/41/2022-TPL, dated 26-9-2022 As Corrected by Corrigendum F.NO. 370142/41/2022-TPL,dated 27-9-2022.

CBDT vide order F. NO. 370142/41/2022-TPL, under section 119 of the Income-tax Act, 1961, issued on 26.09.2022 extends the time limit for filing of modified return of income in ITR-A under section 170A of the Act to 31.03.2023 where the order of business reorganisation of the competent authority was issued in the period between 1st April, 2022 and 30th September, 2022.

The Finance Act, 2022 has inserted section 170A in the Income tax Act, 1961 with effect from 1st April, 2022 relating to effect of order of tribunal or court in respect of business reorganisation which provides that the entities going through such business reorganization, may furnish modified return of income for any assessment year to which such order of business reorganisation is applicable. The section further provides that such modified returns shall be furnished within a period of six months from the end of the month in which such order of business reorganisation was issued by the competent authority.

In this regard, Rule 12AD was notified vide notification no 110 / 2022 dated 19.09.2022 which comes into force with effect from 01.11.2022. As per the Notification dated 19.09.2022, ITR form in ITR-A is notified for this purpose. This has reduced the time available to furnish the modified return in ITR-A for successor companies in cases where the order of business reorganisation of the competent authority was issued in the period between 1st April, 2022 and 30th September, 2022.

This has resulted in genuine hardships and provided inadequate time to the successor companies in furnishing the modified return of income under section 170A. Hence, in order to provide relief to such successor companies/business entities, the Board has decided to extend the due date to furnish the modified return of income in ITR-A under section 170A to 31st March 2023 in all the cases where the order of business reorganisation of the competent authority was issued in the period between 1st April, 2022 and 30th September, 2022.

#### 5. FAQs on Form 3CD filing errors and suggests resolution

CBDT has issued 5-page FAQs on the filing of Tax Audit Report Form 3CA-CD/3CB-CD on 27.09.2022, 3 days before the due date of filing of Form 3CA-3CD/3CB-3CD, which has been uploaded on the e-filing portal. The message displayed on the portal suggests referring to the same for error-free filing.

The clarifications contain 13 questions covering various types of errors which a user may encounter while uploading the tax audit form and the probable resolutions to those errors.

Readers may refer to complete text for further details



## DIRECT TAX CASE LAWS

Compiled by CA Rupal Shah  
(Partner at RHDB & Co LLP)



### Checkmate Services (P) Ltd. vs. CIT-1.

Citation: [2022] 143 taxmann.com 178, Supreme Court, 12 October 2022

**Allowability of Employees Contribution for assessment years prior to AY 21-22 paid after due date under the Act, but before filing of return. - Section 43B(b) does not cover employees' contributions to PF, ESI etc deducted by employer from salaries of employees.**

#### Facts:

In the years under consideration, AO had ruled that the appellants had belatedly deposited their employees' contribution towards the EPF and ESI, considering the due dates under the relevant acts and regulations. Consequently, such sums received by the appellants constituted "income". Those amounts could not have been allowed as deductions under Section 36(1)(va) and the right to claim such sums as allowable deduction while computing the income was lost forever.

The Assessee's plea of allowing these amounts under section 43B(b) was rejected by ITAT and also by the Gujarat High Courts.

Noticing a division of opinion on the issue, with the High Courts of Bombay, Himachal Pradesh, Calcutta, Guwahati and Delhi favouring the interpretation beneficial to the assesses on the one hand, and the High Courts of Kerala and Gujarat preferring the interpretation in favour of the Revenue on the other, Supreme court granted special leave to appeal in all these cases.



**Held**

The words "any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees" in section 43B (b) cover only employers' contributions to these funds to be borne and paid by employer out of his income, and not employees' contributions to these funds deducted by employer out of employees' income/salary. The former are sums which are liabilities of the employer to be borne by him out of his own income. The latter are sums deducted from others' income and held in trust by him and deemed to be his income under section 2(24)(x) unless deposited with concerned authorities on or before the due date as defined in Explanation (now Explanation 1) below section 36(1)(va) i.e. due dates under the relevant employee welfare legislation like PF Act, ESI Act etc.

While introducing Section 2(24)(x), the Parliament intended that amounts not earned by the assessee, but received by it, - whether in the form of deductions, or otherwise, as receipts, were to be treated as income.

The non-obstante clause has to be understood in the context of the entire provision of Section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability.

That, however, cannot apply in the case of amounts which are held in trust, as it is in the case of employees' contributions- which are deducted from their income. They are not part of the assessee employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law.

The non-obstante clause in section 43B cannot be interpreted as overriding section 36(1)(va) and cannot be interpreted to mean that employer will get deduction in respect of employees' contributions deducted from their salaries and deposited by employer after the due date u/s 36(1)(va) but on or before the due date u/s 43B ie due date of filing ITR.

The Supreme Court has also held that, even prior to insertion of Explanation 2 in section 36(1)(va) and Explanation 5 in Section 43B by the Finance Act, 2021 w.e.f. 1-4-2021, section 43B will not apply to employees' contributions to PF, ESI etc.

Consequently, grounds raised by the Assessee are dismissed.



## WHETHER CONSTITUTION OF INDIA PERMITS LEVY OF GST ON EXPORT OF GOODS OR SERVICES?

**Compiled by CA Bhavin Mehta**



The export-import trade of the Country is of great importance to the nation's economy, the Constituent Assembly of our Country may well have thought it necessary to restrict imposition of tax on the supply of goods or services or both where such supply takes place outside India or in the course of import of the goods or services or both into, or export of the goods or services or both out of the Indian territory.

The power to legislate the levy of tax on supply of goods or services is derived from the constitutional provision. The relevant constitutional provisions in relation to exports are discussed below:

1. **Article 286** provides restriction to States on imposition of tax on supply of goods or services or both in the course of the import of goods or services or both into the territory of India. Similarly, it also places, restriction on imposition of levy of tax on supply of goods or services or both out of the territory of India. Article 286 is reproduced below for immediate reference:

"286. Restrictions as to imposition of tax on sale or purchase of goods-

- (1) No law of a State shall impose, or authorize the imposition of, a tax on the supply of goods or of services or both, where such supply takes place –
  - (a) Outside the State; or
  - (b) In the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.
- (2) Parliament may by law formulate principles for determining when a supply of goods or of services or both in any of the ways mentioned in clause (1).

Clause (1) of article 286 provides that State does not have power to impose tax on supply of goods or services or both which takes place outside the **State** or is in the course of import into India or exports outside the territory of India.

The restriction applies to State and not to Parliament. Therefore, does it mean the Parliament has power to impose GST on exports or goods or services or both? For this we require to examine Article 246A, a special provision providing taxing powers, and Article 269A, which is in respect of levy and collection of GST in course of inter-State trade or commerce.

2. By the Constitution (One Hundred and First Amendment) Act, 2016, Article 246A is inserted in the Constitution as special provision providing taxing powers to the Union and State with respect to GST.

“246-A. Special provision with respect to the goods and service tax –

- (1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws, with respect to goods and services tax imposed by the Union or by such State.
- (2) Parliament has exclusive power to make laws with respect to goods and service tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation – The provisions of this article, shall, in respect of goods and service tax referred to in clause (5) of article 279-A, take effect from the date recommended by the Goods and Service Tax Council.”

The Article 246A has provided legislative competence to the Centre and States to make laws with respect to GST. It further provides that the Parliament has exclusive power to make laws with respect to inter-State supply of goods or services or both. The Article 246A begins with non-obstante clause stipulating that notwithstanding anything contained in Article 246 and 254, the Parliament and, subject to inter-state supply of goods or services or both, the State legislature have power to make laws with respect to GST. In order to understand Article 246A, it is imperative to understand Article 246 and 254.

“246. Subject matter of laws made by Parliament and by the Legislatures of States –

- (1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the “Union List”).
- (2) Notwithstanding anything in clause (3), Parliament and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the “Concurrent List”).
- (3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule (in this Constitution referred to as the “State List”).
- (4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List. “

Article 246 demarcates the powers to Parliament to make laws in respect of Union List and Concurrent List and gives powers to States to make laws in respect of State List and Concurrent List.

“254. Inconsistency between laws made by Parliament and laws made by the Legislature of States-

- (1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament, which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.
- (2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State.

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

Article 254 deals with the issues of inconsistency or repugnancy of laws made by the Parliament and the State Legislatures.

3. None of the aforesaid three lists of the Seventh Schedule provides taxing powers with respect to Goods and Service Tax. Hence, it becomes necessity of inserting a new article, namely, Article 246A, providing concurring taxing powers to Centre and States with respect to GST. In respect of inter-State supply of goods or services or both, the power to make laws lies with Centre alone. The Article 246A provides for taxing power in respect of GST for intra-State and inter-State supplies. However, the Article 246A does not to determine the intra-State or inter-State trade or commerce. To determine inter-State supply of goods or services, support can be taken from clause (1) of Article 286, which provides that no State has power to impose tax on supply of goods or services, ‘outside the State’. This implies the

supply of goods or services 'outside the State' can be classified as inter-State supply and supply of goods or services within the State would qualify as intra-State supply. Further, Article 269A classifies the supply of goods or services in the course of import into the territory of India as inter-State supply.

4. The **Article 269A** is inserted by the Constitution (One Hundred and First Amendment) Act, 2016, is reproduced below:
- “269A – Levy and collection of goods and service tax in course of inter-State trade or commerce
- (1) Goods and service tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.
- Explanation – For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.
- (2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.
- (3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.
- (4) Where an amount collected as tax levied by a State under article 246A has been used for payment of tax levied under clause (1), such amount shall not form part of the Consolidated Fund of State.
- (5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or services, or both takes place in the course of inter-State trade or commerce.
5. The explanation to clause (1) of article 269A provides deeming fiction, whereby supply of goods or services in the course of import into India shall be deemed to be inter-State trade or commerce. However, the deeming fiction does not extend to “Exports” of goods or services or both, out of the territory of India. Further, clause (5) of Article 269A, gives power to Parliament to formulate (i) the principles for determining the place of supply and (ii) the principles for determining supply of goods or services or both in the course of inter-State trade or commerce. In other words, article 269A, provides machinery powers to determine the place of supply and inter-State trade or commerce of supply of goods or services or both.
6. On conjoint reading of Article 246A, Article 269A and Article 286, it can be derived that supply of goods or services or both outside the State as well as supply of goods or services or both in the course of import into India, would qualify as inter-State supply. Supply of goods or services or both within the State would be considered as intra-State supply. Neither article 246A nor article 269A gives taxing powers for export of goods or services or both, out of the territory of India.
7. Clause (5) of Article 269A and clause (2) of Article 286 provides for delegated powers to Parliament to determine the principles of supply of goods or services or both. The clause (5) of Article 269A gives power to formulate principles, when the supply of goods or services or both would be considered in inter-State trade or commerce. Whereas, clause (2) of Article 286 gives power to formulate principles, where the supply of goods or services or both is outside the State, or in the course of import into India, or export out of the territory of India. It may be noted that the principles for determining the place of supply under clause (5) of Article 269A and clause (2) of Article 286 shall be in accordance with clause (1) of Article 286. The place of supply cannot be beyond the provision contained in clause (1) of Article 286. Clause (2) of Article 286 does not give independent power to Parliament to determine whether the supply of goods or services has taken place outside the territory of India or not.
8. Neither clause (5) of article 269A nor clause (2) of article 286 can create fiction by itself, with respect to exports of goods or services out of India. In other words, the provision under clause (5) and clause (2) cannot consider the supply of goods or services out of the territory of India, as intra-State or inter-State supply, otherwise, clause (1) of Article 286 would be reduced to a mere redundancy. If the entry doesn't empower parliament to levy tax, parliament does not have power to artificially formulate the provision which would alter the entry. Just because clause (2) of Article 286 empowers parliament to formulate the provision of supply, they cannot determine, the transaction which is normally understood as exports, as inter-state or intra-state supply.
9. Further, Article 265 of the Constitution provides “No tax shall be levied or collected except by authority of law”. Article 366(28) defines Taxation and Tax reads “taxation includes the imposition of any tax or impost whether general or local or special and ‘tax’ shall be construed accordingly”. Any compulsory exaction of money by Government amounts to imposition of tax which is not permissible except by or under the authority of a law. Clause (1) of Article 286 provides that no law of State shall impose or authorize the imposition of tax on export of the goods or services or both out of, the territory of India. In broad sense, artificially treating export of goods or services or both outside India as deemed to have provided in India, is also imposition of tax, which is not permissible.
10. Further, as discussed in the preceding paragraphs, the taxing power in respect of GST is provided in Article 246A, which also does not provide power to levy tax on export of goods or services. The table below may give brief idea about the powers under article 246A, 269A and 286.

Article 246A	Article 269A	Article 286
Taxing power for intra-State supply to both Centre and State. Taxing power for inter-State supply to Centre alone	Supply of goods or services or both, in the course of import into India, shall be deemed to be inter-State trade or commerce	Clause (1): No State has power to impose tax on export of goods or services or both. This does not mean this clause gives power to Centre to impose tax on exports.
Does not give power to determine the mechanism for intra-State supply or inter-State supply	Parliament to devise the mechanism to determine the inter-State supplies. Parliament to formulate the principles for determining the place of supply of goods or services or both	Clause (2): Parliament to formulate the principles, where the supply of goods or services is outside the State, or in the course of import into India, or export out of the territory of India.
Does not give taxing power for export of goods or services or both.	Unlike supply of goods or services in the course of import, there is no deeming fiction for export of goods or services out of India	Formulation of principles or mechanism to determine the place of supply in respect of export of goods or services out of India does not mean that, it empowers the Parliament to impose tax on exports.

11. The scheme of the IGST Act contemplates transactions of intra-state supply, inter-state supply and exports & imports. Section 2(5) of the IGST Act, 2017 define “export of goods” **to mean taking the goods out of India to a place outside India**. The terms “place of supply” is used in clause (a) of sub-section (5) of section 7 of the IGST Act. As per the said clause, when the supplier is located in India and the place of supply is outside India, such supply is an inter-State supply. This is to enable exports of goods and services so that they can be made zero-rated, i.e. practically no tax on outward supply and refund of taxes paid at input stage. The place of supply in respect of goods is provided in section 11 of the IGST Act. Clause (b) of section 11 provides **the place of supply of goods exported from India shall be the location outside India**. The provision of IGST Act, in respect of export of goods is in consonance with Article 286.

12. Export of service is defined in section 2(6) of the IGST Act, 2017, which reads as under:

2(6) “export of services” means the supply of any service when, -

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment of such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

The place of supply for export of services is provided in section 12 and section 13 of the IGST Act. Section 13, is relevant for export of service, where either the supplier of service or the recipient of service has to be in India. If both the supplier and the recipient are outside India, Section 13 does not apply.

13. The place of supply of service under section 13 is not determined on the basis of destination based consumption principles. The table below provide place of supply against the corresponding sub-sections of section 13:

Sub-section	Place of Supply
(2)	Location of Recipient
(3)	Location where the service is performed
(4)	Location of immovable property

(5)	Location where event is held
(8)	Location of Supplier
(9)	Destination of Goods
(10)	Location where passenger embarks
(11)	First scheduled point of departure
(12)	Location of recipient

14. Before coming back to discussion on place of supply, it is necessary to understand the concept of “service”. **Encyclopedia Britannica**, in its article on “services marketing”, has explained the nature of service in the following words:
- A service is an act of labour or a performance that does not produce a tangible commodity and does not result in the customer's ownership of anything.
  - Services can be distinguished from products because they are intangible, inseparable from the production process, variable, and perishable.
  - Services are inseparable from their production because they are typically **produced and consumed simultaneously**.
  - Finally, services are perishable because they cannot be stored.
15. Production and consumption of service being simultaneously, recipient of service and consumer of service is no different person. Ordinarily, the destination of consumption of service shall be at the location of recipient service. The Apex Court in **All India Federation of Tax Practitioners - 2007 (7) S.T.R. 625 (S.C.)** noticed that Economics holds the view that there is no distinction between the consumption of goods and consumption of services as both satisfy the human needs (para 4 of the Judgment). In Paras 6 and 7 the Hon'ble Court held as under:
- “6. At this stage, we may refer to the concept of “Value Added Tax” (VAT), which is a general tax that applies, in principle, to all commercial activities involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer.
7. In the light of what is stated above, it is clear that Service Tax is a VAT which in turn is destination based consumption tax in the sense that it is on commercial activities and is not a charge on the business but on the consumer and it would, logically, be leviable only on services provided within the country. Service tax is a value added tax.”
16. The service provider undertakes an activity through which he makes value addition to whatever thing he starts with. In absence of value addition through some activity, there cannot be any service. There is no difference between manufacture of marketable excisable goods and providing of marketable/saleable services in the form of an activity undertaken by the service provider for consideration, which correspondingly stands consumed by the service receiver. It follows that service tax being a tax on an activity is also destination based value added tax. Therefore, it can be derived that when the service is consumed outside India, the destination of service is outside India.
17. The Hon'ble Supreme Court has taken the view that Service Tax is a value added tax which in turn is destination based consumption tax in the sense that it taxes non-commercial activities and is not a charge on the business, but on the consumer, then, it is leviable only on services provided within the country. Thus, any services provided to a person located outside taxable territory should be considered as export of service.
18. However, the place of supply provision contained in section 13 of the IGST Act does follow the above principles of destination based consumption. It categories place of supply on the basis of performance, location of supplier, location of immovable property, etc., which in the opinion of author, is not constitutionally permitted, as discussed above in the preceding paras. The Parliament is only entitled to formulate the rules for services provided outside the territory of India. Formulation of principles or rules will not give taxing power in respect of export of goods or services.

**Conclusion:** Though Gujarat High Court in the case of Material Recycling Association of India has upheld the levy of GST on intermediary service, in the opinion of author, the Constitution does give right to the Central legislation to impose GST on export of services. The Place of Supply of Services under section 13 of the IGST Act has to be read down.



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Saturday 15/10/2022	Issues regarding Input Tax Credit under GST	Adv. (CA.) Abhay Desai Baroda
Friday 11/11/2022	Development in GST & Recent Trend in Judicial pronouncements	CA. Jigar Shah Ahmedabad
Saturday 12/11/2022	Search proceedings under GST	CA. Punit Prajapati Ahmedabad
Saturday 19/11/2022	Classification of supply under GST	Adv. Bharat Sheth Bhavnagar

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