

# THE GANDHIDHAM CHAMBER OF COMMERCE & INDUSTRY

(ESTD. 1953)

"CHAMBER BHAVAN", Plot No. 71, Sector 8, Post Box No. 58,

GANDHIDHAM - Kachchh - 370 201.

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No. GCCI / 481

Date: 24.10.2018

Shri Yogendra Garg,  
Additional Director General – GST &  
Additional Director General,  
National Academy of Customs,  
Indirect Taxation & Narcotics (NACIN),  
Center of Excellence, 3rd Floor,  
Tower 3 & 4, NBCC Plaza, Pushp Vihar,  
Saket, New Delhi 110 017

**Sub: Representation for the consideration of Detention Charges as part of Transportation  
Bill for GST purpose**


Dear Sir,

As discussed and suggested by you during an Open House Meet on 12.10.2018 at Gandhidham Chamber, we are forwarding herewith a detailed representation on the caption subject from The Tanker Owner & Operators Association for your consideration please.

We are of the opinion that the detention charges are part of the transportation services and hence should be clubbed as part of transportation services. It is therefore positively in the larger interest of transport fraternity to issue necessary clarification in this regard followed by incorporation of necessary provision in GST Act.

Thanking you.

Yours faithfully,

  
Dinesh Gupta  
President

Encl: As above

Copy to: Shri Pramod Vasave, Commissioner, GST, Gandhidham  
The President, The Tanker Owner & Operators Association, Gandhidham





# THE TANKER OWNERS & OPERATORS ASSOCIATION

"Tanker Asson. Complex" National Highway 8-A, Transport Nagar, GANDHIDHAM (Kutch) - 370 201.

Phone : 02836-221136

(NTC - G / 367 Dated : 10.09.1980)

Mukesh S. Mehta

President

M. 98252 25836

23/10/2018

To,  
President,  
The Gandhidham Chamber of Commerce & Industry  
'Chamber Bhavan' Plot No. 71, Sector- 8,  
Gandhidham—370201. (Kutch)

Sub.: Consideration of Detention Charges as Part of Transportation Bill for GST Purpose

Sir,

An open house meet was organized on GST at Chamber Bhavan on 12/10/2018 during which Additional Director General, GST, Shri Yogendra Garg, Commissioner of Central GST, Shri Pramod Vasave, Jt. Commissioner, Shri Zakir Hussain and Deputy Commissioner, Shri Sushil Kumar Sharma, were remained present and analyzed the difficulties faced by Commercial Fraternity in the implementation of GST and provided guidance.

Being port city, Gandhidham is transportation hub and hence many delegates from our Transport Association attended this open house meet to have solution of the problem which they encounter during the day to day working. One of the problem was highlighted and discussed about the inclusion of detention charges of vehicles along with transportation bill while computation of GST. Though service of transportation of goods by road continue to be exempted under the GST regime, the doubt is raised whether detention charges of the vehicle levied by the GTA from the Consignee shall be considered as a part of transportation service and receiver of service (consignee) shall pay GST on Reverse Charge Basis (for Un Registered GTA).

This problem crop up because some of GST officials/audit raised reservation on considering detention charges of vehicle as part of transportation in absence of clear cut provision under GST. In this regard, it is to clarify that as per Notification No. 11/2017, Central Tax (Rate) dated 28/06/2017 Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues Consignment Note by whatever name called. Here the definition regarding "**in relation to transport**" covers actual transportation of goods and other intermediate/ancillary service such as:

- Loading/Unloading
- Packing/Unpacking
- Trans-shipment
- Temporary Warehousing etc.

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President

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-:2:-

Here detention of vehicle is normally caused because of non-availability of space to unload the transported goods. In other words, during this period vehicle is used for temporary warehousing for cargo transported. The process of transportation is complete only when a goods in question is safely delivered to consignee. Hence, the detention charges for temporary warehousing of cargo transported, is a part of transportation service and this detention charges should be considered jointly as transportation service. Further, the word "etc" is used to cover all such eventualities.

However, to overcome dispute in this regard it is suggested that clear cut provision should be made in the rule by adding detention charges along with temporary warehousing.

Consignment Note is neither defined in the act nor in the notification No. 12/2017-Central Tax (Rate). Hence, guidance can be taken from the meaning ascribed to the term under the explanation of service in "relation to transportation of goods" by adding this component of detention charges.

It will not be out of place to mention here that detention charges are not the separate activity but the part of safe transportation of cargo. In other words, it is intermediate/ancillary service provided in relation to such transportation work like loading/unloading, packing/unpacking, trans-shipment, etc. and hence can be clubbed-up as part of transportation service when recipient of such service is required to make payment under reverse charge basis.

Transportation is a vital part of economy as any problem of transportation disrupts the entire business channel. Further, transportation is not only the growth engine but backbone for any country's economy and so far India is concerned, transportation is 14 % of GDP. The main problem faced by transport fraternity is that, it is being run by semi-literate persons who avoid communication with Government officials in case of dispute raised by them. It is therefore suggested that GST authority may please be requested to issue clear cut clarification about considering detention charges of the vehicle as part of the transportation service.

For, The Tanker Owners & Operators Association

  
Vice President,

JATIN S. AGRAWAL  
Vice President  
M. 98252 26777

HARESH J. MAHESHWARI  
Hon. Secretary  
M. 98252 26249

JITENDRA N. PATEL  
Hon. Jt. Secretary  
M. 98252 27857

SHAMJI B. BABARIA  
Treasurer  
M. 98252 35639



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No. GCCI / 462

Date: 24.10.2018

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Shri Yogendra Garg,  
Additional Director General,  
National Academy of Customs,  
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Center of Excellence, 3rd Floor,  
Tower 3 & 4, NBCC Plaza, Pushp Vihar,  
Saket, New Delhi 110 017  
M - 98680 52092

Sub: Blocked Credit U/s 17(5) (C) & (D) - GST

Dear Sir,

Further to Open House Meet on 12.10.2018 at Gandhidham Chamber and as advised to questioners, a detail representation on the caption matter received by Gandhidham Chamber is as under:

ITC of Plant and Machinery is allowed but ITC of new civil structure whether it is for furtherance of business is blocked in above mentioned section. One has to build factory premises first to carry out any production the secondary comes Plant and Machinery. Without any factory building no one can start commercial production irrespective of any commodity. Hence blocking such civil structure credit is hurting the industry in such tough time.

Specifically if talk about Kandla, Gandhidham Complex the entire land is lease hold and all the premises is on 30 or 60 years lease.

The construction of factory or building is itself temporary. We have dismantle the same and handover the empty land possession to lessee. We will be forced to pay GST on sale of scrape.


If we do not get ITC on factory premises or warehouse it is double whammy for us burden of taxation and no ITC.

Under this circumstance we request to grant ITC on civil structure of production unit and warehouses as it is for furtherance of business.

We request you to look in to this matter objectively and update us the progress and out-come of the same.

Thanking you.

Yours faithfully,

  
Dinesh Gupta  
President

Copy to: Shri Promod Vasave, Commissioner, GST, Gandhidham  
Shri Kishor P Ranwala, Gandhidham



# THE GANDHIDHAM CHAMBER OF COMMERCE & INDUSTRY

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No. GCCI / 483

Date: 24.10.2018

E-Mail: y.garg@nic.in

Shri Yogendra Garg,  
Additional Director General,  
National Academy of Customs,  
Indirect Taxation & Narcotics (NACIN),  
Center of Excellence, 3rd Floor,  
Tower 3 & 4, NBCC Plaza, Pushp Vihar,  
Saket, New Delhi 110 017  
M - 98680 52092

## Sub: Impact of GST on GTA (Goods Transport Agency)

Dear Sir,

Further to Open House Meet on 12.10.2018 at Gandhidham Chamber and as advised to questioners, a detail representation on the caption matter received by Gandhidham Chamber is as under:

**DEFINITION OF GTA :** Person who provides service in relation to transport of goods by road and issues consignment note\*, by whatever name called means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

**REGISTRATION :** As per Notification No. 5/2017- Central Tax dated 19/06/2017, a person who is only engaged in making supplies of taxable goods/services, where the total tax on which is liable to be paid on reverse charge basis by the recipient as the category of persons exempted from obtaining registration under GST

**EXEMPTION:** As per Notification No 12/2017 dated 28-06-2017, transport of following goods by a goods transport agency are exempt from GST

1. Agricultural produce;
2. Milk, salt and food grain including flour, pulses and rice;
3. organic manure;
4. Newspaper or magazines registered with the Registrar of Newspapers;
5. relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
6. Defence or military equipment;
7. Goods, where gross amount charged for the transportation of goods on a consignment transported in a single carriage is less than Rs. 1,500/-;



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:: 2 ::

8. Goods, where gross amount charged for transportation of all such goods for a single consignee does not exceed Rs.750/-;

Services by way of giving on hire

- a) To a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or
- b) To a goods transport agency, a means of transportation of goods.

## LIABILITY OF GTA TO PAY TAX

- a) In case person liable to pay freight is in Non-Taxable Territory then Service Provider will pay the tax
- b) If the Service Receiver are persons other than mentioned above
- c) If GTA opts for 12% of GST Rate

RATE OF TAX: Two Options for GTA:

- a) 5% with no ITC or;
- b) 12% with full ITC (As per the notification no 20/2017 dated 22nd August, 2017)

5% with full ITC for Service Recipient

## INPUT TAX CREDIT

Input Tax Credit available to Service Recipient on GST paid on GTA Service. However GTA cannot avail Input Tax Credit neither on Input nor on Capital Goods if GST paid by GTA @ 5% but full credit available on Inputs as well as Capital Goods to a GTA if GST paid @ 12%

\*\*\*\* GTA can opt for 12% GST with ITC or 5% GST with no ITC. However, the GTA has to give an option at the beginning of financial year.

Ambiguity after Notification No 20/2017 CGST rates dated 22nd August, 2017

Kindly clarify/enlighten on the transaction made by registered person who opted for 12% forward charge mechanism supplies the transport vehicle to any other goods transport agency. Whether it is Exempt?



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If yes,

Flow of transaction/GST

Mr. A buys truck and take ITC

Supplies under FCM @ 12 % GST as GTA  
(Take ITC)

Supplies to GTA (Exempt)  
(Reverse ITC as per Rule 42-43)

GTA to other under FCM @ 12% GST  
(No credit as received exempt supply)

- i) Reversal of Credit
- ii) 12% tax on GTA supplies

(Leads to double taxation)

If No,

Flow of transaction/GST

Mr. A buys truck and take ITC

Supplies under FCM @ 12 % GST as GTA  
(Take ITC)

Supplies to GTA @ 12 % GST  
(No Reversal of ITC)

GTA to other under FCM @ 12% GST  
(Take full credit of input supply)

Affecting the seamless credit decree

In the case where the registered person who opted for 12% forward charge mechanism gives the transport vehicle to any other goods transport agency, then such transaction is exempt from tax via notification no. 12/2017 but at the same time it is also noted that the registered person who supplies this transport vehicle to a GTA (exempt supply) is liable to reverse its Input tax credit as per the rule 42 & 43 of CGST

The above situation raised the following points which might be lead to definite complications in general trade of the country:

1. The option to opt for forward charge is applicable from 22nd August, 2017, while Services by way of giving on hire to a goods transport agency is exempt since inception



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:: 4 ::

2. No subsequent correction is made for such exemption
3. In this case the registered person is not able to take credit although after opting for forward charge (by way of reversal as per the rule 42 & 43, proportioned credit for exempt supply is to be reversed)
4. After receiving the hired vehicle, GTA further supplies the vehicle and charge 12% GST, in this transaction the GTA is not able to claim Input as there is exempt inward supplies
5. Seamless credit argument is somewhere failed in this type of transaction as some person is not able to take credit on account of exempted supply while the next person is supposed to pay tax at full rate without availing the input tax credit

We request you to look in to this matter objectively and update us the progress and out-come of the same.

Thanking you.

Yours faithfully,

  
Dinesh Gupta  
President



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No. GCCI / 484

Date: 24.10.2018

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Shri Yogendra Garg,  
Additional Director General,  
National Academy of Customs,  
Indirect Taxation & Narcotics (NACIN),  
Center of Excellence, 3rd Floor,  
Tower 3 & 4, NBCC Plaza, Pushp Vihar,  
Saket, New Delhi 110 017  
M - 98680 52092

Sub: Outstanding matters related to GST

Dear Sir,

This has reference to Open House Meet held on 12.10.2018 at Gandhidham Chamber regarding GST.

Due to compulsion of time limit, certain GST matters of our members could not be discussed during the meet and hence, we are submitting the same as under:

1. What is the GST rate for Solar Cell, Solar Panel and Solar Project in view of different judgements from Advance Ruling Authority of the states of Karnataka & Maharashtra?
2. Is supply of services by an office to branches in other states will be treated as "Supply" and will attract GST as per The Karnataka Authority of Advance Ruling (AAR)?
3. Will SEZ Act and Rules thereof be aligned with GST Act and Rules thereof by necessary amendments for smooth working of SEZ?
4. If we are providing services in Gujarat to a party registered out of Gujarat state not having GST no. of Gujarat in that case will IGST be applicable or CGST & SGST?

While filing GST return following points arises.

"As soon as we mention the party GST no. which out of Gujarat IGST slab automatically appears on the screen and POS - column appears out of Gujarat, whereas we are providing Service in Gujarat, if we select POS as Gujarat then tax slab comes as CGST & SGST."

Hence please clarify the tax slab and what would be the pos.

5. At present tent (Mandap) supply attracts 18% GST which seems to be on higher side. Hence, why not lump sum scheme apply to this?



6. Please clarify about applicability of TCS provisions under GST for travel portals who are also IATA agents.
7. To slash levy of 28% GST on cement being universal building material where the rates on other products such as paint, varnish & wall putty have been slash to 18% from 28%. So, why not cement also to be levied @ of 18% GST?
8. Issue related to Services availed by SEZ Unit from DTA Service Provider

As per Section 16 of IGST, any supply of Services to SEZ Unit will be ZERO Rated supply, see below text of IGST Bare Act :

16. (1) "zero rated supply" means any of the following supplies of goods or services or both, namely:—

- (a) export of goods or services or both; or
  - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
- (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- (3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—
- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or
  - (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.



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When DTA unit supply GOODS to SEZ Unit, he is supplying the Goods either under LUT @0% IGST or making full payment of IGST and claiming Refund. SEZ unit is arranging endorsement of Invoice of Goods supplied by Authorised Officer of Customs, KASEZ, Gandhidham. This endorsed Invoice become a valid document to prove that supply of goods was made to SEZ unit and accordingly DTA unit can either claim refund of IGST (if paid) or keep in his records for supplying Goods @0% IGST.

But when DTA Service Providers provide SERVICES to SEZ Unit, there is no endorsement of Invoices by Authorised Custom Officer in KASEZ.

So it is not rational provision.....

Many SEZ units are taking services from various shipping lines for Export and Import Containers. Normally every invoice amount is more than 1,25,000/-. So IGST is a BIG cost @ 18% on these types of Big value transaction. This Shipping lines are based in DTA.

They are normally supplying these services to SEZ unit under LUT @ 0% IGST and SEZ unit is getting these services for their Export and Import Business.

But when Supplier of Services ask for any endorsement from competent Authority, SEZ unit is helpless because there is no endorsement system of Invoice related to Services availed by SEZ Unit.

Since we are unable to give any endorsed copy of Invoice, sometime we are forced to make payment of IGST to service providers. This payment of IGST by SEZ unit to DTA service providers is heavy burden to SEZ unit and become cost because there is no REFUND PROCEDURE FOR SEZ UNIT in GST Act.

We request you to please provide us your valuable guidance on the above matters so that we can update our members accordingly.

Thanking you.

Yours faithfully,

  
Dinesh Gupta

President

Copy to: Shri Pramod Vasave, Commissioner, GST, Gandhidham