

JULY  
2020

# GUWAHATI

## @ ICAI

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### What's Inside:

*01 | Chairman Speaks*

*02 | From the desk of the Editor*

*03 | Some important Advanced Rulings under GST*

*09 | Guwahati Branch Activities*

*11 | Managing Committee*

*12 | Keep in touch*



MONTHLY E-NEWSLETTER OF  
THE GUWAHATI BRANCH  
OF EIRC OF ICAI



## Chairman Speaks...

Dear Esteemed Colleagues

I trust this communication will find you safe and healthy.

Things are not moving as it should have been. The economy is facing challenges all around and needs a booster dose to cope up with the present scenario. Industrial production is in negative, jobs badly impacted, cash flows are negative, tax collections are showing a downward trend. India may be unlocking, but we are still relocking and yet to overcome the crises. Let's all explore the opportunities, think beyond, transcript the challenges, develop innovative ideas and put back the economy on track. We being the ultimate financial professionals have the impetuous to perform and contribute to build a strong India.



Covid is not sparing the members, and we need to be very cautious and take all necessary precautions to keep ourselves safe while discharging our professional obligations. ICAI has considered the difficulties being faced by Members in the time of pandemic and has decided to grant Medical Financial Assistance to the Members and their dependents suffering from CORONA. To avail this help members/dependents may file request in prescribed Application Form-cum-Undertaking hosted on the website of the ICAI at the CABF Portal at the link <https://cabf.icaai.org/> . The application is to be accompanied with the CORONA positive report and is available only for the cases of hospitalization. Financial assistance will be up to INR 1.5 Lakhs and will be returnable to CABF in full, if it is not utilized for treatment of CORONA.

Friends, our Branch is now functioning and operating as per guidelines. Few student activities like Orientation & ITT Classes have been allowed on online mode and Branch has already initiated and announced a batch. Considering the ongoing COVID-19 pandemic and in the interest of wellbeing of students & members and to mitigate their hardships, it has been decided to open Additional Examination Centres throughout the country for November. 20 examinations and I am pleased to share that 10 new Centres has been added in North East. More-over, the free virtual classes by BOS for the students is again a welcome step. Students must come forward and take advantage of the same.

Best Wishes,  
CA. Sharad Agarwalla  
Chairman, Guwahati Branch of EIRC of ICAI



## *From the desk of the Editor...*

Dear Elite Members,

*“Change is inevitable. Let us embrace the change and transform ourselves into winners!”*

Indeed, the month of July posed many changes and challenges, as the world tried to accept the new normalcy of all aspects. With new guidelines and regulations in this pandemic era, the winners will be those who accept the present scenario and move forward with confidence and conviction. No matter how tough a situation might be, we Chartered Accountants are looked upon by the world as intellectual warriors who can convert any block of hurdle into a stepping stone of success.



As the world is moving towards getting “unlocked”, it's indeed a great opportunity to unlock ourselves once again and bounce back to our duty with renewed vigour and also with more alertness and safety. New professional opportunities have started emerging and it is high time that we grab all the lemons and squeeze them into lemonade and make the most of it.

Yes, the pandemic has not ended. But it certainly has not ended the human's spirit to rise after every fall and grow persistently. And it is this tough time during which we can harness the disguised opportunities flowing around us and capitalize on it. The adversities we are facing now actually compel us to reveal our best selves and cause us to shine our light to dispel the darkness. As the new world is moving towards getting more “unlocked”, and vaccines are probably under the pipeline, we must ask ourselves that how can we ‘unlock’ our potential professionally and personally? And how can we shed our ‘traditional’ way of doing things and unlock noble, new ways to grab more opportunities.

Yes, times are tough. But so we are! Tough enough to convert any ‘terrible’ time into a transformative and terrific period!

CA. Ankit Jallan

Editor, Guwahati@ICAI



# Some important Advanced Rulings under GST



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## 1. Whether an unregistered person under GST providing road transport services by his own truck can be treated as GTA for RCM under GST?

Held: Yes

In the case of **Uttarakhand Forest Development Corporation-AAR Uttarakhand**, applicant is a Govt. body constituted under Act of State Assembly of Uttarakhand State. The applicant is sole agency for removal and sale of forest produce from the entire forest area in Uttarakhand. The applicant after felling trees gets timber transported to its sale depots. For this purpose, the applicant hires truck transporter from open market accordingly as per availability of vehicles and get transported to its sales depot from road head. Due to unique nature of goods, the applicant itself fills Form 2.1 for transportation of goods. Thereafter the goods are handed over to transporter with signed Form and the transporter has liability to transport goods safely to the destination sales depot of applicant. Further transporters do not issue any consignment note. The applicant had sought an advance ruling on whether the payment made to truck transporters attracts GST under RCM?

The Authority stated that the applicant itself fills Form 2.1 for transportation of goods from one place to another. Thereafter the goods are handed over to transporter with signed Form. The transporter has liability to transport goods safely to the destination sales depot of applicant. The purpose of issuing consignment note indicates that the lien on the goods has been transferred to the transporter and the transporter becomes responsible for the goods till its safe delivery to the consignee. If the argument that for being treated as goods transport agency issuance of consignment note is must is accepted then there will be no need to pay GST by a person providing service of goods transport merely on a ground that he is not issuing consignment note. And this will open an avenue for evasion by the service providers. This must not have been the intention of the legislature to not tax the service providers who were





not issuing consignment notes. Thus, the form filled by the applicant may be treated as consignment note and thus the services procured from unregistered person for transportation of goods fall under the definition of GTA and the applicant is liable to pay GST on the same under RCM.

## 2. Whether tariff value of room is applicable in case entire villa is given on rent to a customer on daily basis?

Held: No.

In the case of ***M/s Isprava Hospitality (P.) Ltd.-AAR Maharashtra***, the applicant is engaged in the activity of giving luxurious villa on rent to its clients. Each villa consists of two to six rooms and is offered to clients on per day basis for entire villa. The per day rent of an entire villa will be more than seven thousand five hundred at any given point of time in a year. The applicant sought an advance ruling on whether the tariff value of room will determine the tax rate applicable on the supply of service by way of renting villa? The applicant also sought whether the either entire villa shall be considered as one unit or each room available in the Villa shall be considered as one unit?

The applicant contended that judicial forums has interpreted different meaning to the term 'Per Unit' considering the context in which the term is used in the law and understanding the intention of the legislature. The applicant also stated the case law of ***The Travel & Tourism Association of GOA, Mandovi Hotels (P.) Ltd., Fomento Resorts and Hotels Ltd., Averina International Resorts Ltd. v. Union of India, The Commissioner of Income Tax, Panaji GOA*** wherein it was held that the term 'any unit of residential accommodation' referred under the said Act, refers to 'hotel room' and per se does not support the construction that 'a unit' must be determined on the basis of 'beds' or 'occupancy'. Further held that any such construction might amount to stretching the expression beyond its natural meaning or even beyond setting in which it is placed. It also referred the case of ***Kamal Kishor Agarwal Ramnath Bhimsen Charitable Trust*** wherein Hon'ble Advance Ruling Authority of Chhattisgarh held that the term 'Per Unit' as provided under the Notification No. 11/2017-Central Tax (Rate) notified under the CGST Act, means 'per bed in the hostel room'.

The Authority stated that the applicant has no intention to rent out the rooms inside the Villa, individually and therefore there is no question of the individual rooms being treated as 'per unit'. The Authority also mentioned that both the case laws referred by the applicant are not applicable in the applicant's case as the subject matter of both the cases were not similar to the present case. It observed that the 'pattern of renting' in relation to usage of the property provides the context' or 'perspective' in determination of unit of accommodation. In a hotel,



a room constitutes 'a unit' whereas in a hostel, a bed may constitute 'a unit', as tariff is also declassified accordingly. In the present case the applicant themselves have mentioned that rent is proposed to be offered to clients on per day basis for entire villa. The two different clients will not be able to book the same villa and there will be no option of booking particular room of the villa. Interested clients need to book the entire villa. Thus, it is crystal clear that villa is 'indivisible unit' in applicant's business parlance, and the declared tariff is only for the villa as a whole. Hence, the expression "per unit" in the present case will be the entire villa.

### 3. Whether services extended by charitable trust to women surviving violence in relation to legal and medical aids are liable to GST under RCM?

Held: Not liable to tax.

In the case of **M/s Swayam-AAR West Bengal**, the applicant is a charitable trust registered under section-12A of the Income Tax Act, 1961. It extends legal, medical, psychological and financial support to the women and their children surviving violence and abuse. The applicant also facilitates training programmes and workshops for the survivors. It sought an advance ruling on the taxability of the above services.

The applicant submitted that it facilitates access of the women survivors to legal aids. Depending upon the financial circumstances of the survivor, it often provides support in the form of reimbursement of the court fee, lawyers' fee or medical expenses, including hospitalization or psychiatric counseling. Such financial support is also extended to paying the remuneration of the trainers and charges of the facilitators for trainings and workshops. It further submits that it does not charge anything on the survivors for the services it extends.

The Authority stated that the applicant is apparently assisting the women survivors in various ways to get back on their feet. Such survivors of sexual and other violence need services like legal aid, medical assistance, and vocational training. The recipient of such services is, therefore, not the applicant but the survivor woman. The applicant makes payments not to the supplier of the services, but as financial support *in the form of reimbursement to the recipient survivor*. It is, therefore, not liable to pay GST based on reverse charge mechanism on such payments. Also, the applicant does not charge any consideration for facilitating the legal aid and other assistance, as a result of which activities of the applicant does not result in 'supply' of service as defined under section 7 (1) of the GST Act. Hence, the applicant is not liable to pay tax thereon.

### 4. Whether interest/penalty collected for delay in payment of monthly subscription by the members forms a supply under GST??

Held: Yes



In case of *M/s. Ushabala Chits Private Limited–AAR Andhra Pradesh*, the applicant is a company engaged in conducting chit auctions. They register the members and conduct auction in respect of each chit each month. The company will be collecting subscriptions from members by dividing the prize money with number of members. In order to maintain discipline the applicant charges interest/penalty by whatever name called, from the members paying subscriptions belatedly. The interest /penalty has no element of services except that it is in an auction in money inasmuch as it is collected as a part of subscription for delay. The applicant sought an advance ruling on the taxability of the interest/penalty collected from the members.

The applicant contended that the interest/penalty collected from the members is not liable to GST. As per Sch-III of the CGST Act, 2017, Actionable claims are neither supply of goods nor supply of services and since the prize money is being paid to the winner subscriber is an actionable claim, it is not a supply within the meaning of GST. Further, as per section-15(2)(d) of the CGST Act, 2017, value of supply includes interest or late payment or penalty for delayed payment of any consideration. Therefore, the interest, penalty or late fees are considered as part and parcel of the consideration towards the execution of activity. Accordingly, the interest/penalty collected for delay in payment of subscription charges would be treated as a part of subscription charges, which are not chargeable to GST. The applicant also referred Circular No.102/21/2019-GST dated 28.06.2019 issued by the CBIC wherein it was clarified that in cases involving interest or penal interest on delayed payment of EMI are not leviable to GST as the said amount is treated as part of Actionable Claim and being interest on deposit extended.

The Authority stated that section-15(2)(d) the interest, late fee or penalty charged from customer shall be added to the transaction value and hence it shall be taxable at the rate at which such goods/ services are taxable. The classification of interest, late fee or penalty cannot be different from the classification of goods or services. The additional amount being charged on delayed payment termed as Interest, late fee or penalty on the amount delayed in specified time cannot be bifurcated as **such additional payment do not have its own classification. It is taking colour from original supply i.e., supply of financial and related services.** It is evident that the additional amount charged from the subscriber is in the nature of penalty. After examining the concerned Acts and Rules, it may be concluded that chit amount is not an actionable claim and it defines under Section 3 of Transfer of Property Act, 1982. Hence, the additional amount being charged in delay of payment by whatever name called should be classified as principal supply and the classification of the same cannot differ from the original supply. Hence the additional amount charged on delayed payment shall be



taxed as per original supply i.e. *supply of financial and related services* and are taxable @ 12% under GST.

**5. Whether leasing of lodge house to a person for the purpose of sub leasing the same for residential purpose is exempt from GST?**

Held: No

In case of ***M/s Lakshmi Tulasi Quality Fuels-AAR Andhra Pradesh***, the applicant is having Petrol bunk and engaged in supply of petroleum oils and lubricants. Further, the applicant is the absolute and sole owner of a building. It had entered into a lease agreement with a company engaged in the business of running, managing and operating the day to day affairs of residential premises and sub-lease of such residential premises to individuals (including students) for the purpose of long stay accommodation. As per the terms of the lease agreement, the lessee has the right to sub-lease the aforesaid property during the lease term to any third party with prior intimation to the applicant for the purpose of long stay accommodation. The applicant sought an advance ruling on whether the lease rentals received from the Co. is exempt from GST?

The applicant contended that it is eligible for the exemption from payment of GST granted under Notification No. 9/2017 dated 28.06.2017.

The Authority stated that the lessee had the rights to deploy branding strategies on the Total Property and use all entrances, exterior walls, areas and structures on the total property, at its own costs and expense. Further, it examined from the agreement between the Lessor and Lessee that there were 73 rooms in the building with all amenities like exhaust fans, geysers, lights and fittings, curtain rods, sanitary fittings, curtain rods etc., provided by the Lessor. Though the applicant claims that it has rented out residential dwelling for use as residence, it appears that the premise is a non-residential property. Considering the number of rooms and amenities provided in it, boarding and hospitality services extended to the inmates and all the clauses of the agreements discussed above, it appears that the building was constructed for the purpose of running a lodge house. It is clear that the lessee is engaged in commercial activity of renting of rooms in the dwelling and providing boarding and hospitality services to the inmates. Therefore, the lessor has rented out her dwelling for commercial activity, and supply of such services is taxable @ 18% under GST.





## 6. Whether supply of print on flex is classifiable as supply of goods or services?

Held: Classified as Goods

In case of **M/s Sree & Co.-AAR Andhra Pradesh**, the applicant is engaged in the business of flex banner printing. The applicant gets image done on computer software from customers for different sizes and print the same on flex as flex banners and deliver the same to its customers. At times, the applicant is required to provide design and charge the customer for consolidate value of design and print; and bill them for composite supply value. These flex banners are used for both commercial and non-commercial purposes such as birthday, marriage and political purpose. It had sought an advance ruling on whether supply of print on flex is classifiable as supply of goods or services?

The applicant submitted that the flex banners supplied by them are as per design or requirements of customers and same cannot be used for any other purpose, the same falls under composite supply of goods. The applicant further admits that they are paying tax @18% on supply as goods. It referred to the ruling passed by **Hon'ble Telangana State Authority for Advance Ruling** by **A.R.Com/5/2017 dated 30-5-2018**.

The Authority stated that as per section-7 of CGST Act, 2017 read with Schedule -II Sl.No.1 (a) of CGST Act, 2017 which reads as under:

### 1. Transfer

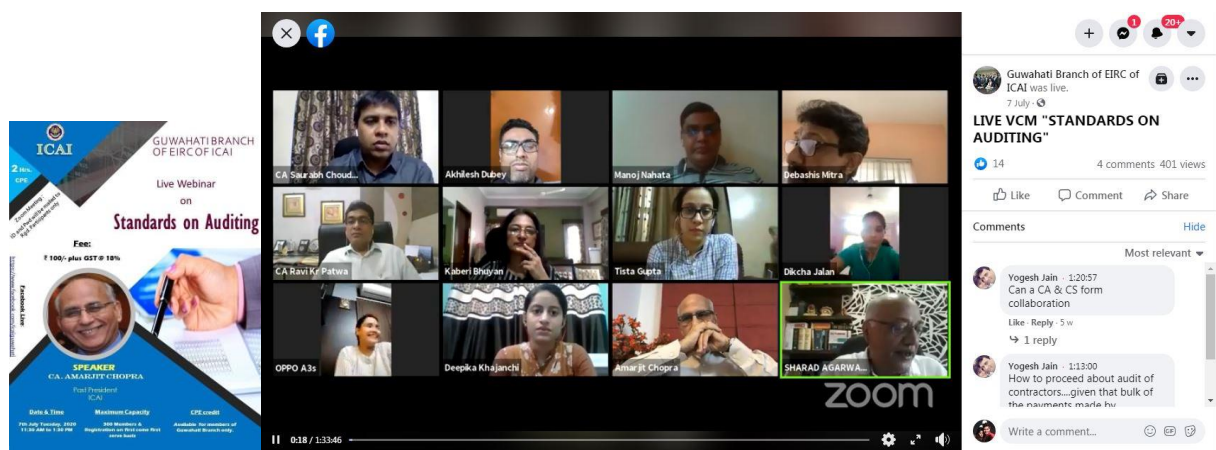
*(a) any transfer of the title in goods is a supply of goods."*

From the plain reading of the above, it is obvious that the applicant is transferring the title in goods to his customers in the form of printed flex material and it amounts to nothing but supply of goods only. Hence, the supply of print on flex is classifiable as supply of goods under GST.

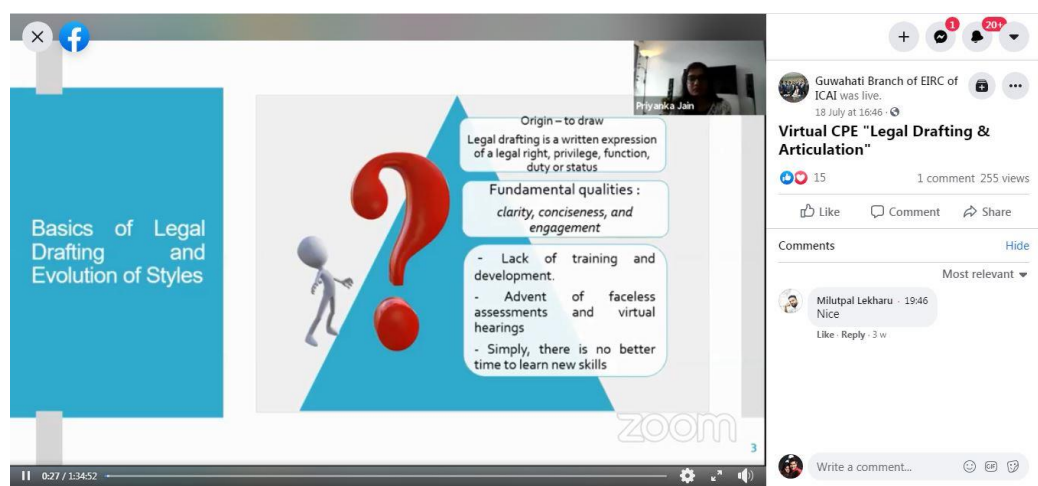


# Guwahati Branch Activities

## CPE Events



ICAI Guwahati conducted a Webinar on “Standards of Auditing” with CA. Amarjit Chopra



ICAI Guwahati conducted a CPE Webinar on “Legal Drafting and Articulation” with Adv. Priyanka Jain



## Upcoming Events



ICAI Guwahati is conducting a CPE Webinar on “Code of Ethics” by CA A P Singh on 13.08.2020

**Happy 74th Independence Day**

The Institute of Chartered Accountants of India  
**CIRC, NIRC, SIRC & EIRC**  
jointly organises

**Live Performance on Independence Day and Post Independence Day**

**15<sup>th</sup> August 2020 – 3pm to 6pm**  
**16<sup>th</sup> August 2020 – 3pm to 6pm**

Live Performance will showcase  
1. Dance 2. Short play 3. Recitation  
4. Pantomime 5. Instrumental Music  
6. Other performance

To view visit YouTube Channels of EIRC, SIRC, NIRC, CIRC

**15<sup>th</sup> INDEPENDENCE DAY in India**

All the regions of ICAI are jointly organising Independence Day e-Celebrations. Do tune in!

**Guwahati Branch of EIRC of ICAI**

**9 CPE Hours**

Special Address by  
President ICAI CA Atul Gupta

**GST MANTHAN**

3 DAY MEGA WEBINAR  
SERIES ON VARIOUS ISSUES  
CONFRONTING GST  
COMPLIANCES WITH EMINENT  
SPEAKERS

**21<sup>st</sup>, 22<sup>nd</sup> & 23<sup>rd</sup> August 2020**  
Time: 5.00 PM to 8.00 PM

Fee Rs.400/- + GST

CA Rohini Aggarwal, Delhi  
CA Bimal Jain, Delhi  
CA Venugopal Gella, Bangalore  
CA Jatin Harjani, Jaipur  
CA Vikash Banka, Kolkata  
CA D.S. Agarwala, Kolkata

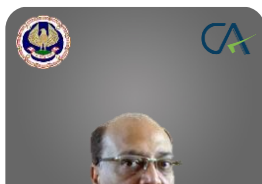
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Guwahati Branch of ICAI is conducting a 3 Days Marathon Webinar Series on GST with expert Faculty from all across the country.



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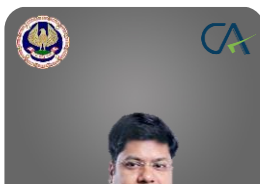
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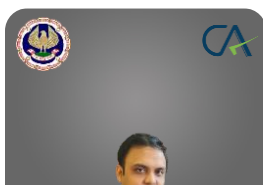
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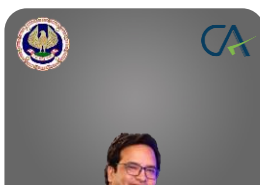
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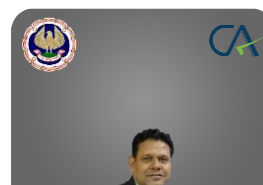
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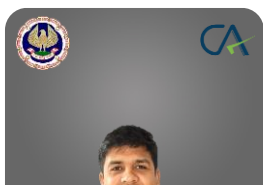
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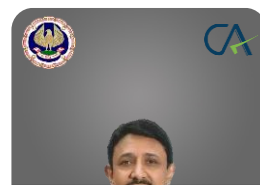
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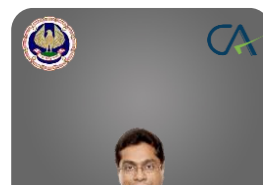
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## Keep in touch!

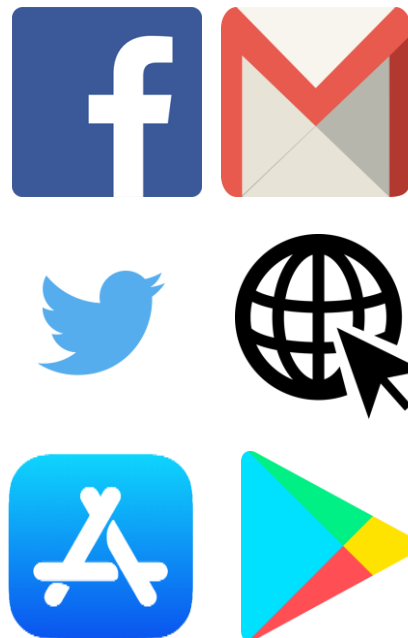
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Send in your articles along with a short bio and a picture!

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