

No. MCS/149/2016-18
R.N.I. No. MAHENG/2012/47041
Total Pages: 144



A Monthly Journal of
The Chamber of Tax Consultants

Price ₹ 100/- per copy

The Chamber's Journal

YOUR MONTHLY COMPANION ON TAX & ALLIED SUBJECTS

March-2017

Vol . V | No. 6

COMPLIANCES, ROLE OF IT & JUDICIAL DECISIONS RELEVANT IN GST (PART-II)



- Direct Taxes
- Other Laws
- International Taxation

Other Contents

- Indirect Taxes
- The Chamber News

- Best of the Rest
- Corporate Laws
- Economy & Finance

Log on to the Chamber's revamped website

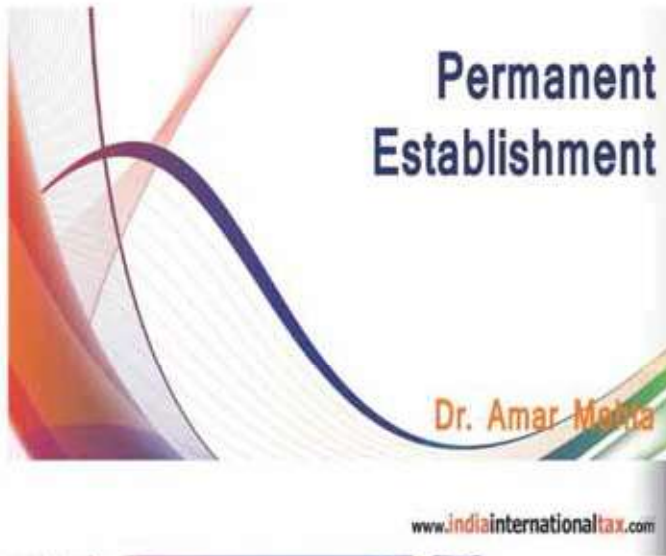
www.ctconline.org

Online Payment for Programmes
can be done through Website



One *Team*
Mission

- ARTICLE 5 OF TAX TREATIES (PERMANENT ESTABLISHMENT)
- ARTICLE 7 OF TAX TREATIES (BUSINESS PROFITS)



- Over 1000 pages of Commentaries on Article 7
- 700 to 800 pages on Article 5
- 50 odd case studies, and
- Over 3000 slides in presentation format explaining each of the chapters.

Prominent Features :

1. In-depth research and technical analysis of technical issues
2. Monthly review and update.
3. Helps to substantially boost the subscribers' turn-around time for research and preparation of opinions, memos, reports, submissions, etc.
4. The Commentary covers several hundred court decisions from India and overseas.
5. Chapter-wise presentations which are efficiently cross-referenced with the Commentary.
6. The presentations are prepared with the view to facilitate efficient and easy appreciation of various concepts, intricate aspects and issues.
7. Commentary and Presentation are expected to significantly cut-down time-cost (and requirement for team bandwidth) for those important tasks.

For further details relating to subscription to Taxsutra portals
contact - sales@taxsutra.com with promo code "CTC2017"

www.taxsutra.com / www.tp.taxsutra.com / www.idt.taxsutra.com
www.lawstreetindia.com / www.orange.taxsutra.com / www.greentick.taxsutra.com

Editorial.....	<i>K. Gopal</i>	5
From the President	<i>Hitesh R. Shah</i>	7
Chairman's Communication	<i>Vipul Choksi</i>	10
1. SPECIAL STORY : Compliances, Role of IT & Judicial Decisions relevant in GST – Part II		
1. Provisions of Registration under GST.....	<i>Ankit Chande</i>	11
2. Registration – Migration Aspects.....	<i>Kush Vora</i>	18
3. Returns and Matching.....	<i>Archit Agarwal</i>	25
4. Provisions related to Payment and Refund.....	<i>Umesh Sharma</i>	33
5. Role of IT in GST.....	<i>Alok R. Jajodia</i>	42
6. Assessments & Audits under GST Law	<i>Chirag Mehta & Hemant Regmi</i>	51
7. Demands and Recovery (Section 66 to 78)	<i>Parth Badheka</i>	60
8. Offences and Penalties	<i>Jayesh Gogri</i>	68
9. Difficult issues under the GST Law and relevant national and international judicial precedents.....	<i>Ishaan Patkar</i>	77
10. Landmark decisions in Indirect Tax Law & their relevance to Model GST Law	<i>V. Lakshmikumaran</i>	84
11. Case Laws Index		91
2. DIRECT TAXES		
• Supreme Court	<i>B. V. Jhaveri</i>	92
• Tribunal.....	<i>Jitendra Singh & Sameer Dalal</i>	95
3. INTERNATIONAL TAXATION		
• Case Law Update.....	<i>Tarunkumar Singhal & Sunil Moti Lala</i>	98
4. INDIRECT TAXES		
• Central Excise and Customs – Case Law Update	<i>Hasmukh Kamdar</i>	110
• VAT Update.....	<i>Janak Vaghani</i>	112
• Service Tax – Statute Update.....	<i>Rajkamal Shah & Naresh Sheth</i>	113
5. CORPORATE LAWS		
• Company Law Update.....	<i>Janak C. Pandya</i>	115
6. OTHER LAWS		
• FEMA.....	<i>Mayur Nayak, Natwar Thakrar & Pankaj Bhuta</i>	118
7. BEST OF THE REST	<i>Ajay Singh</i>	121
8. THE LIGHTER SIDE	<i>Ninad Karpe</i>	126
9. THE CHAMBER NEWS	<i>Hinesh R. Doshi & Haresh P. Kenia</i> ...127	



The Chamber of Tax Consultants

3, Rewa Chambers, Ground Floor, 31, New Marine Lines, Mumbai – 400 020

Phone : 2200 1787 / 2209 0423 • Fax : 2200 2455

E-Mail: office@ctconline.org • Website : <http://www.ctconline.org>.

The Chamber's Journal

Editor & Editorial Board 2016-17

Editorial Board

Chairman
V. H. Patil

Editor
K. Gopal

Asst. Editors
Heetesh Veera
Manoj Shah
Paras K. Savla
Yatin Vyavaharkar

Members
A. S. Merchant
Keshav Bhujle
Kishor Vanjara
Pradip Kapasi
Vipul Joshi

Chairman
Vipul Choksi

Ex-Officio
Hitesh R. Shah
Ajay R. Singh

Journal Committee 2016-17

Chairman
Vipul Choksi

Vice Chairman
Bhadresh Doshi

Ex officio
Hitesh R. Shah • Ajay R. Singh

Convenors
Bhavik Shah • Mandar Telang • Toral Shah

Past President Office Bearer
Vipin Batavia Haresh Kenia

Managing Council Member
Ashok Sharma

Members
Anish Thacker Keertiga Sharma
Atul Bheda Kush Vora
Bakul Mody Lakshit Desai
C. N. Vaze Mitesh Kotecha
Chintan Gandhi Nikita Badheka
Dharan Gandhi Pankaj Majethia
Dhaval Talati Paresh Vakharia
Harsh Kapadia R. K. Sinha
Janak Pandya Rajkamal Shah
Janak Vaghani Rakesh Upadhaya
Jayant Gokhale Sanjeev Lalan
Kalpesh Katira Vinodkumar Jain

Managing Council 2016-17

President

Hitesh R. Shah

Vice President
Ajay R. Singh

Jt. Hon. Secretaries
Hinesh R. Doshi
Haresh P. Kenia

Hon. Treasurer
Parag S Ved

Imm. Past President
Avinash B Lalwani

Members

Amit Purohit Paras S Savla
Ashok L. Sharma Paresh P Shah
Bhavesh R Vora Parimal B. Parikh
Hemant R. Parab Rahul K. Hakani
Keshav B. Bhujle Shailesh M. Bandi
Ketan L. Vajani Sujal Shah
Kishor Vanjara Vikram Mehta
Mahendra Sanghvi Vipul B. Joshi
Vipul Choksi

K. Gopal – **Editor**

DISCLAIMER

Opinions, views, statements, results, replies, etc., published in the Journal are of the respective authors/contributors. Neither The Chamber of Tax Consultants nor the authors/contributors are responsible in any way whatsoever for any personal or professional liability arising out of the same.

Non-receipt of the Review must be notified within one month from the date of publication, which is 12th of every month.

No part of this publication may be reproduced or transmitted in any form or by any means without the permission in writing from The Chamber of Tax Consultants.

READER'S SUGGESTIONS AND VIEWS: We invite the suggestions and views from readers for improvement of The Chamber's Journal. Kindly send your suggestions on office@ctconline.org.

ADVERTISEMENT RATES

Per Insertion

Fourth Cover Page (Colour)	₹ 15,000
Second & Third Cover Page (Colour)	₹ 13,500
Ordinary Full Page (B&W)	₹ 7,500
Ordinary Half Page (B&W)	₹ 3,500
Ordinary Quarter Page (B&W)	₹ 1,750
(Special discount on bulk inside colour pages)	

DISCOUNT

25% for 12 insertions
15% for 6 insertions
5% for 3 insertions

Full advertisement charges should be paid in advance.

MEMBERSHIP FEES & JOURNAL SUBSCRIPTION (REVISED FEES AND SUBSCRIPTION FROM 2017-18)

Sr. No.	Membership Type	Fees	Service Tax 15%	Total
1.	Life Membership Additional Optional subscription charges for Annual Journal	₹ 12000 1200	1800 0	13800 1200 ₹ 15000
2.	Ordinary Members Entrance Fees Annual Membership Fees, including subscription for Journal	₹ 500 2200	75 330	575 2530 ₹ 3105
3.	Associate Membership Entrance Fees Membership Fees including Subscription for Journal	₹ 1000 5000	150 750	1150 5750 ₹ 6900
4.	Student Membership Entrance Fees Journal Subscription	₹ 250 700	38 0	288 700 ₹ 988
5.	Non-members Journal Subscription	₹ 2100	0	₹ 2100



CA Kush Vora

Registration – Migration Aspects

A. Introduction

GST will be one of the biggest reforms India would be experiencing in coming days. To effectively implement GST with effect from 1st July, 2017, it is very essential that existing taxpayers be migrated efficiently on to the new portal of GST. In this regard, Government is taking all possible steps and proactive measures to ensure smooth migration of existing taxpayers to GST (steps such as issuing Frequently Asked Questions, displaying power point presentations on GST migration, setting up help-desks, conducting workshops, etc.). We all know that migration of existing VAT dealers, Excise and Service Tax assesseees has already commenced in full force and there is already huge hue and cry amongst the industry with respect to the same. We would first deal with the legal provisions based on the Revised Model GST Law and would then look at the procedural aspects regarding migration.

B. Legal Provisions

Let us first look at the legal provisions which enables migration of existing assesseees to the GST regime. We would then dwell with the procedural aspects in relation to the migration.

Section 166 of Revised Model GST Law (released in November 2016) and Rule 14 of Draft Registration Rules (released in September 2016) deals with migration of existing taxpayers to GST.

PAN based registration

The draft Law provides that every registered person under earlier law (say respective State VAT, Service Tax, Central Excise) having valid PAN shall on the appointed day (assuming 1st July, 2017) be issued provisional GST registration certificate in Form GST REG-21.

Therefore, it becomes imperative that the registration certificate under earlier law should be linked with the PAN of the person. The Service Tax and Central Excise numbers are issued based on PAN and accordingly no PAN related issues should crop up while migration. However, VAT registration number are not PAN based and accordingly, issue may arise if the department does not have correct PAN details of the dealers. However, Maharashtra VAT department had recently initiated a drive under new automation system wherein PAN of all the dealers were called for. Accordingly, it would be important for every person to verify their respective

PAN details with the authorities who would be granting the provisional registration under GST and get the same updated if need arises.

Validity of provisional registration certificate

The provisional registration certificate issued in Form GST REG-21 shall be valid for a period of 6 months (extendable for such further period as may be notified). During the period of 6 months or as extended, every person will be required to submit application in Form GST REG-20 electronically along with the documents as prescribed.

Therefore, the Trade has ample time (minimum of 6 months from appointed day) to comply with the detailed documentation and other procedural formalities.

Verification by proper officer

The said application i.e. Form GST REG-20 will be forwarded to proper officer electronically and he may check the same and grant final registration certificate in Form REG-06 if application and documents are found to be correct and complete. However, if the information furnished is found to be incorrect or incomplete, the proper officer may cancel the provisional registration by issuing order in Form GST REG-22 after giving show cause notice in Form GST REG- 23 and affording an opportunity of being heard.

Considering the enormous number of persons to be migrated to GST, one would really need to wait and watch as to how each and every application is verified by the proper officer and final registration is granted. There may be some level of delay in granting of final registration. However, it may just be of procedural importance since the GSTIN would be issued and activated for the purpose of payments, return filing, etc.

Cancellation of provisional registration

Section 166(6) of revised model GST Law read with Rule 14(4) of draft registration rules

provides for *suo motu* cancellation if a person is not liable to obtain registration under GST. Form GST REG-24 is prescribed for this matter.

For instance, many assesseees would have obtained service tax registration for the purpose of renting of immovable property and such persons would automatically be granted provisional registration under GST. However, there may be a case wherein the rent income may not cross the proposed threshold limit of INR 20 lakhs. In such a case, person can apply for cancellation of provisional registration in manner prescribed.

C. Actual GST migration process

While the draft legal provisions with respect to migration looks very simplistic, the actual migration process is quite tedious and time consuming. Various FAQ's, user guides, slide shows have been issued by the Government on GST enrollment in order to guide the Trade, practitioners. The detailed process flow and practical issues faced while filling up the GST forms are narrated hereunder:

Step 1: Obtaining GST Provisional ID & Token Number from existing tax administrators

The process of providing provisional IDs was initially started (in the month of November 2016) by State VAT authorities through their respective online portal. Subsequently from January 2017, Service Tax & Central Excise authorities have also started providing the provisional IDs through the ACES portal.

Typically, the taxpayers are asked to provide or update their mobile number and e-mail address and based on the same, an 'one-time password' ('OTP') is being generated and subsequently provisional ID & token is made available. It would be advisable to insert/update the details of the authorised person of the respective entity only since all future

VAT/ service Tax, excise related SMS's shall be received on the updated number.

Further, since the provisional IDs are being generated in a phased manner, persons who have recently obtained registration under any of the earlier laws shall be granted with the provisional ID in a later phase.

In any other cases, if the provisional ID's are not reflected for some or the other reason, the nodal officer pertaining to each dealer/ assessee should be contacted for. However, in majority of the cases, the nodal officers are also unable to comment on the way forward because of limited knowledge on the subject. In such cases, one will have to really wait until some clarity is received or fresh instructions have been issued to deal with such problems.

Step 2: Logging into GST portal with the provisional ID & creating User Name & Password

With the help of Provisional ID & Token, one needs to logon to www.gst.gov.in under the link 'first time login' and proceed to creating user name and password for GST in the following manner:



Many issues such as late receipt of OTP, late intimation of OTP by client/ authorised person to the practitioner/person filling up the Form are reported which may lead to expiry of session. Accordingly, it would be advisable to co-ordinate with various delegates involved in the process and keep handy the answers to the security questions.

Further, Security Questions are warranted for future contingencies i.e. in cases where user ID or password is misplaced or lost. Accordingly, the answers filled/screenshot

should be saved so that same can be retrieved as and when required.

Step 3: Filling up the detailed form along with attachments

Once the user name and password has been created, the enrollment form appears after logging in. The enrollment form is bifurcated into 8 tabs and is very well designed and well-structured so as to make it as user friendly as possible. The form has to be filled up serially i.e. one cannot proceed to 2nd tab without filling all the details in the 1st tab. Although one will have to refer the actual form so as to know the exact details required, the possible issues occurring under each tab have been cited below, for ready reference.

1. Business Detail: This page consists of prefilled details such as 'Legal name of the business' and 'PAN' which is fetched from VAT/Service Tax/ Excise database. Incorrect details in the database in erstwhile system will lead to issues under GST. Accordingly, it becomes imperative to verify the name and business and PAN as per earlier law.

Further, proof of constitution such as partnership deed, ROC certificate, etc. has to be attached. In case of proprietary concerns, feedback has been received from GST helpdesk that VAT/CST certificate is to be attached. The practical difficulty usually faced in most of the proprietary concerns is to locate the VAT/CST certificate. In such cases, one may be required to apply for duplicate VAT/CST certificate from the VAT department.

2. Partner/Promoter details: Details of all partners/directors/proprietor is asked; such as first name, middle name, date of birth, gender, mobile number, Director Identification Number, PAN, passport

number- mandatory in case of foreign citizen, Aadhaar number-mandatory for E-signing, residential address and photograph.

3. **Authorised Signatory details:** In addition to the details as mentioned in Point 2, board resolution for authorizing the person to be authorised signatory or declaration letter of authorisation is to be scanned and attached. The specimen of declaration is provided in draft Form GST REG-20. The mobile number and e-mail address inserted in Step 2 is auto filled up in this page. Further, it is important to note that the form warrants for Digital Signature of authorised person only.
4. **Place of business:** Details of principal place of business (within the such as address, e-mail address, mobile number, nature of possession, nature of business activity, proof of place of business is asked for under this section.
5. **Additional place of business:** Details of additional place of business such as branches, warehouses, etc. within the State has to be inserted in this part. There is a pre-filled column under this part which does not allow to insert place of business outside the State.
6. **Goods & Services:** The details of goods and services (5 major goods and services

dealt in) are to be inserted under this section. For goods, Harmonized System of Nomenclature ('HSN') are required which are akin to Excise Tariff or Custom Tariff codes. Although it was proposed that HSN would not be mandatory initially, the form makes it a mandatory column and has to be compulsorily filled in. Further, for services, Service Accounting Code ('SAC') as prevailing under Service Tax registration is to be filled up.

7. **Bank Accounts:** Details of all bank accounts are to inserted under this section along with scanned copy of passbook or bank statement. As per Point 36 of FAQ on migration, maximum of 10 bank accounts can be inserted.
8. **Signature:** The form has to be authenticated with the Digital Signature Certificate ('DSC') or by way of E-Signature of authorised signatory mentioned in Point 3 above. As per Point No. 37 of FAQ, DSC is mandatory for enrollment by companies, foreign companies, Limited Liability Partnership ('LLP') and Foreign Limited Liability Partnership ('FLLP'). For others, signing with DSC is optional. One will be required to register under 'Register your DSC' tab before signing the application. Others may use facility of E-signature to sign the application which requires verification through Aadhaar Number.

The scanned documents as required under the Form are tabulated hereunder for easy reference:

Category	Documents	Format	Size
Proof of Constitution of Business	<ul style="list-style-type: none"> • Proprietor – VAT/CST/Service Tax certificate • Firm – Partnership Deed • Company – Registration Certificate 	PDF or JPEG	1 MB
Partner/Director	Photograph	JPEG	100Kbs
Authorised Signatory	Proof of Appointment (Board Resolution)	PDF or JPEG	100kbs
	Photograph	JPEG	100kbs

Category	Documents	Format	Size
Principal place of business	<ul style="list-style-type: none"> • Own Premise – Property receipt/Electricity bill • Rented premise – Rent Agreement + Property receipt/Electricity Bill • Others – NOC of consent or + Property receipt/Electricity Bill 	PDF or JPEG	100kbs
Bank Account	First page of Bank Passbook or Bank Statement	PDF or JPEG	500kbs

Step 4: Generation of Application Reference Number ('ARN')

Once the above details are filled, the application needs to be submitted and on successful submission of the application, ARN will be generated in couple of hours. However, in some cases, ARNs are not generated on account of certain error which is sent at the registered e-mail address. One of the common errors noticed is on account of PAN validation. The details of the partners, promoters, authorised signatory are being presently matched with details as per CBDT database. It is interesting to note that in many cases, even if the records filled in GST form are matching as per 'Know Your Jurisdiction' under Income Tax, still the ARNs are not being generated. In such cases, one should contact GST helpdesk, State VAT department, Service Tax department, etc. and send formal mails to support their contention. However, unfortunately, in majority of the cases, satisfactory responses are not being received from the helpdesks as well.

D. Challenges in GST migrations

Based on the process flow mentioned above, we can very well conclude that uploading one successful GST application is quite tedious and time consuming affair with lots of to and fro from the client. Some of the key challenges that are currently faced are summarised hereunder:

- *System & technical issues:* Very often, there have been cases where page session is expired by the time OTPs

are received by the practitioners. Accordingly, OTPs should be swiftly passed by the management to the practitioners so as to avoid page expiry.

Further, as mentioned earlier, there may be cases where PAN details are not correctly migrated from erstwhile system to GSTN. In such cases, modifications will have to be made from the system within and lot of time will have to be spent on this.

- *Time consuming process:* Further, factors such as inserting OTPs multiple times, restriction on file size, absence of pre-filled columns makes the GST migration time consuming. Accordingly, there should be relaxation on some of points and less validations so as to encourage timely migration of existing taxpayers.
- *HSN Codes & SAC Codes:* The small traders or businessmen may not have HSN codes readily. In such cases, he would be required to contact his immediate importer or manufacturer so as to get the HSN codes and insert it in the GST migration form.

Further in relation to SAC, normal query is observed as to whether SAC of 'reverse charge categories' such as Goods Transport Agency, Rent-a-Cab services, legal services are to be inserted or not. Since the details of reverse charge mechanism under GST is yet to be notified, a common view that is

normally being followed is not to insert the SAC of reverse charge category presently.

- *Assesses having Centralised registrations:* At present under Service Tax, concept of centralised registration is in place. However, all such assesseees may be required to obtain State wise GST registration if supply of services from each State crosses the threshold limit prescribed for registration. This may pose a grave administrative challenge to large scale service providers operating on PAN India basis. Further, it would require duplication and re-insertion of many details such as details of directors, constitution, SAC codes, etc. Some clarification is expected by the Government to cover such typical scenarios.
- *Passing of resolutions to authorise persons for GST:* GST migration provides for attaching scanned copy of board resolution authorising a person for GST. However, it would be interesting to see if companies are authorised under Companies Act and under other regulations to pass a resolution in relation to the Law which is not enacted as on date. Further, one may also need to analyse whether such resolutions could be termed as void *ab-initio*.
- *Business planning under GST:* The GST migration process warrants for various information in relation to principal place of business, additional place of business, etc. Various business dynamics are likely to undergo a change with country being introduced to destination based tax and unified indirect tax regime. There may be cases wherein several businesses may decide to close several non-operative branches/depots across the country and instead prefer conducting business from one single location. However, since final law has not been enacted as on date it becomes difficult for a businessman to plan his activities under GST and therefore GST migration is being delayed till the time law is passed.
- *Sharing of information to GSTN:* Logging on to GST portal and furnishing sensitive information (such as place of businesses, personal details of promoters, details of top 5 commodities/services dealt by) may be a cause of concern. Further, 51% of equity under GSTN is held by the non-Government financial institutions. Serious issues have been raised by few Ministers within the Government itself in relation to funding to GSTN and we are likely to witness the issue being raised up to courts. Accordingly, it would be interesting to see how things unfold in future on this front. With all such controversies surrounding GSTN, a businessman is currently perplexed as to whether it would be wise to share his sensitive data in hands of private players and that too in connection to the law which has still not been enacted.
- *Legal backing to GST migration:* The larger and fundamental question arises to one's mind is that in absence of actual GST law in place, what is the legal backing for the entire process of GST migration. CBEC on its website have displayed Section 166 of Revised Model GST Law and Rule 14 of draft Registration Rules. However, the moot question arises whether this is enough to initiate GST migration. Some interesting and possible arguments are summarised hereunder:
 - One may argue that the Model GST Law is published in public domain for the purpose of discussion and deliberations. The same is not even at a Bill

stage. It is still uncertain whether these bills would be introduced as Money Bill or Finance Bill. Accordingly, unless these become CGST, SGST & IGST Act, GST migration has little or no legal force. At present there appears to be no statutory provision which enables GST migration.

- Further, appointed day has to be notified by way of Notification in Official Gazette which is in line with Section 1 of proposed Model GST Law. Therefore, in absence of appointed date, GST migration cannot take place.
- Furthermore, in absence of any statutory provisions under GST, for the interim period, there should have been enabling provision under existing law (say State VAT, Service Tax, Central Excise) which provides for granting of provisional IDs and other procedural aspects. However, the same have also not been provided for.
- Interestingly one may also look at the fundamental rights granted upon by the Constitution. This is to say that Article 21 of the Constitution deals with 'Right to Privacy' wherein it is stated that no person should be deprived of his personal liberty except according to the procedure established under law. Therefore,

in absence of established law and procedures thereon, sharing of sensitive data may be a concern and accordingly challenges on fundamental grounds may also be explored in extreme situations.

Majority of these issues may be put to rest on the day when GST Act comes into existence. Till that time, the above arguments may be of theoretical relevance unless severe harassments or penalties are imposed on specific person.

E. Conclusion

It should be borne in mind that GST warrants for PAN India level migration with inclusion of State departments who have been following their own procedures and policies for so many years. In this regard, it should be appreciated and complimented that the Government has already thrown open the GST portal to the public in November 2016 itself so that people can get used to the new systems (particularly registrations). However, many a times, we are experiencing cases of severe follow ups with frequent calls from department in relation to GST migration leading to frustration amongst the Trade. The main idea behind this is to simply avoid last minute rush and avoid crashing of websites. However, a taxpayer friendly approach should be adopted and due care should be taken while transforming to GST era. Further, in the interest of the nation, the Trade along with various professional bodies should join the hands of the Government in ensuring smooth migration of GST.



Thinking should become your capital asset, no matter whatever ups and downs you come across in you life.

— Dr. A. P. J. Abdul Kalam