

# **GST LITIGATION – CURRENT TRENDS & PRACTICAL SOLUTIONS**

**SAURABH DIXIT, ADVOCATE**



“

A tax is a fine for doing well, a fine is a tax for doing wrong.....

Mark Twain

”



# TOPICS

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COMMON ITC  
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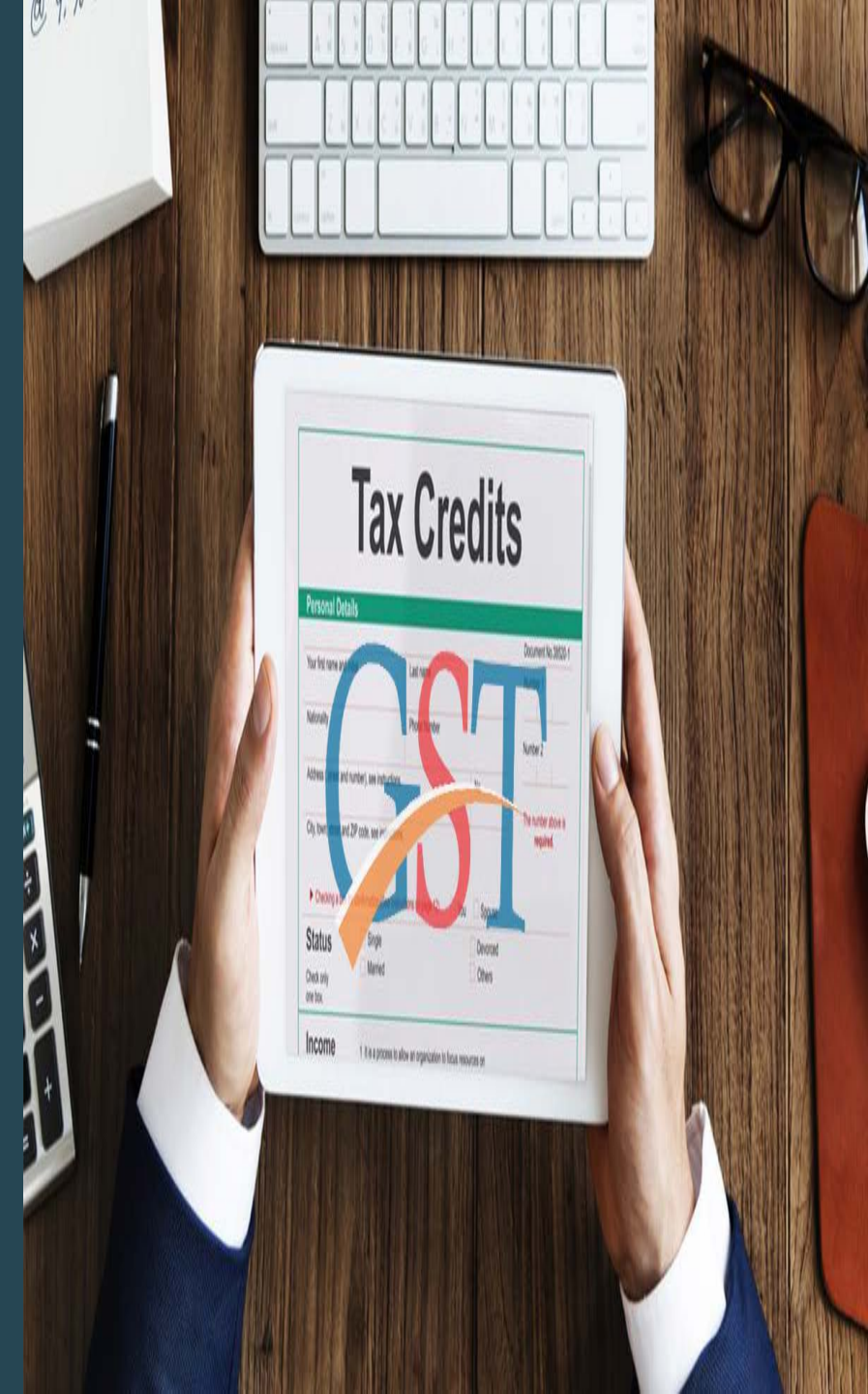
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QUESTION &  
ANSWER



# COMMON ITC DENIAL/RECOVERY ISSUES



# COMMON ITC DENIAL/RECOVERY ISSUES

**Vendor declared fake- GSTIN cancelled prospectively or retrospectively**

**Vendor having procured fake invoices**

**Non payment of GST by vendor**

**Non filing of GST returns by vendors**

**GST returns amended later on by vendor**

**Table 8A of GSTR9 : GSTR3B ITC (reversals to be considered + only for past )**

**Rule 88D & Part A of DRC01C (mismatch between GSTR2B and GSTR3B)**

**Section 17(5)**



# COMMON ITC RECOVERY REASONS

**Section 16(4)-  
M.Trade Link  
2024(19)  
CENTAX131  
(Ker.)**

**Payment not  
made within 180  
days to vendor**

**Temporary V/s.  
Permanent ITC  
reversal in  
GSTR3B**

**Rule 42/43  
compliances**

**Shares and  
security sale-  
Rule 42/43  
compliances**

**Free gifts/ finished  
goods damaged or  
validity expired**



# HOW GST DEPARTMENT DETECTS FAKE INVOICE TRAIL





**Multiple GSTIN registrations for a given address**

**Multiple GSTIN for a given PAN**

**GSTIN using incomplete or wrong addresses**

**Mismatch between the quantum or transactions and the e-way bills generated. If there are no e-way bills or less e-way bills generated compared to the details of transactions as per the GST returns.**

**PAN involved in any “fake invoice” fraud or any other GST frauds appear as either in GSTR1A or GSTR 2A.**

**Tax payers using sensitive commodities**

**Mismatch between the premises declared and the volume of goods transacted.**

**Common e mail, common mobile numbers, common address, common authorised signatories, common promoters for multiple GSTIN**

**Abnormal ITC utilisation (for example above 95%)**



**CIRCULAR NO. 171/03/2022-GST DATED. 06.07.22 ISSUED BY**  
**CBIC FOR CLARIFICATION AND PENAL PROVISION FOR**  
**FAKE INVOICES:**

**ITC reversal and imposition of penalty under Section 122(1A) to any person who get benefit of the transaction**

**Person who only issue Tax invoice without supply of goods and services liable only penal action under Section 122(1)(ii) of CGST Act, 2017**



## RELEVANT CASE LAW



**M/s. Econ Gill Coffee Trading Pvt. Ltd (Civil Appeal No. 230 of 2023 dated. 13.03.2023) 2023 (3) TMI 533 - SUPREME COURT**

**Over and above the invoices and payment details the purchasing dealer has to produce further material like the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods including actual physical movement of the goods, alleged to have been purchased from the concerned dealers.**



# GSTR1 AND GSTR3B



**Rule 88C and Part A of DRC01B (mismatch between GSTR1/IFF and GSTR3B)**



**GSTR1 can be blocked for failure to respond to above notice**



**GSTR9 and GSTR9C – payments can be made**



**CN cannot be beyond 30<sup>th</sup> November of subsequent FY**



**Do not avail ITC instead of raising CN for discounts/sales return etc.**



# REFUNDS

**Rule 96(10)-  
Hon'ble  
Gujarat High  
Court  
judgement to  
be dictated on  
24.6.24**

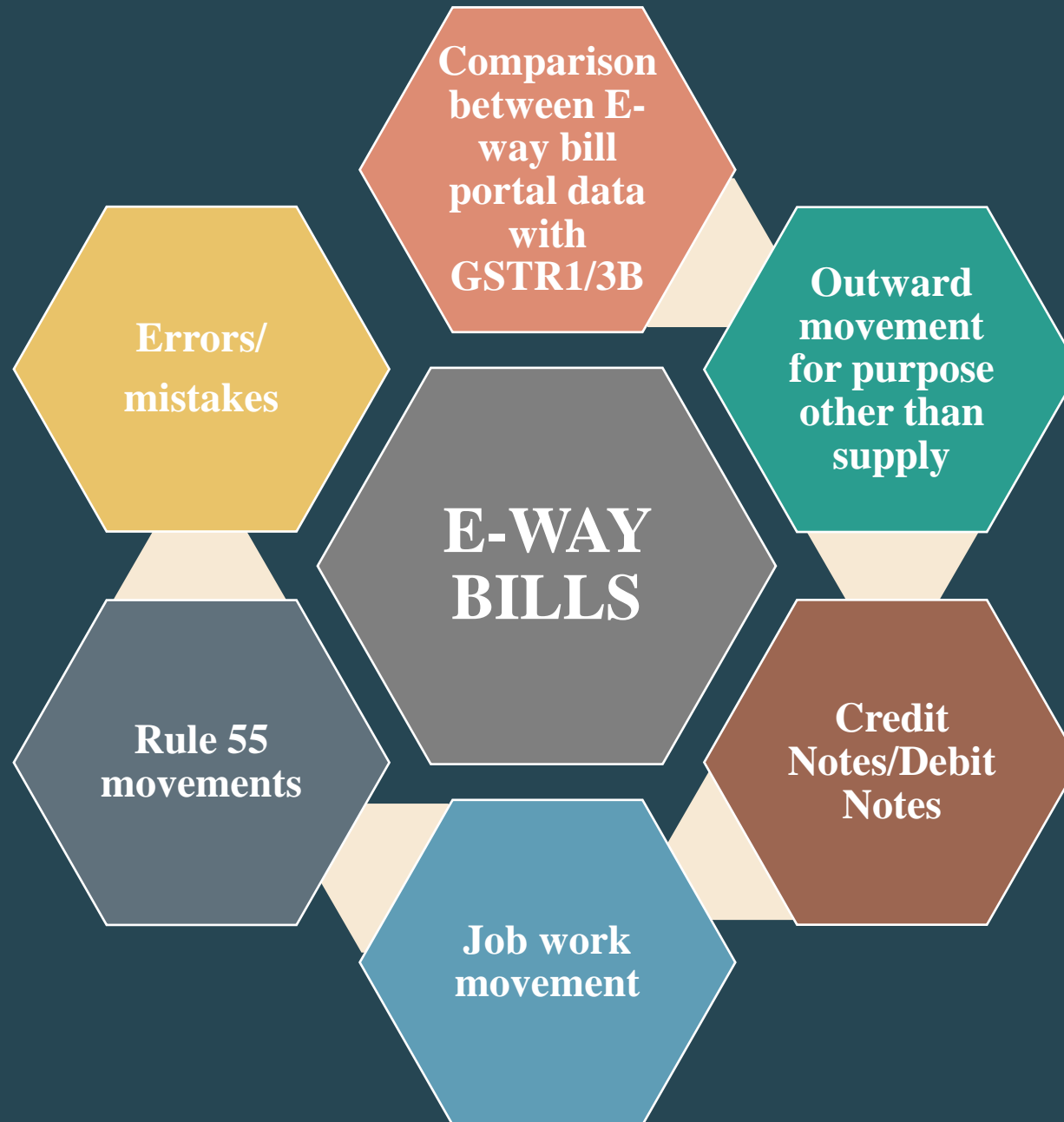
**M/s. Filatex  
India Ltd.  
Gujarat HC  
order**

**Aadhar  
Authentication  
Rule 89  
readwith Rule  
10B**

**Rule 89(1) –  
Rule 89(4) –  
Rule 89 (4A) –  
Rule 89(4B)**

**Rule 96B  
compliances –  
how to claim  
re-credit of  
ITC**





# **E-invoices**

**Turnover above  
Rs. 5 crores from  
July 17 till date,  
any FY**

**B2C(QR  
Code)**

**Credit  
Note/Debit  
Note**

**Rule 48(4) ITC can be  
denied to receiver since  
manual invoice is not a  
valid document**

**Seek  
indemnity**

**Penalty for  
non-compliance  
of E-Invoice  
requirements**

**Verify from  
vendor if they  
require E-invoice**



# ISD V/s. Cross Charge

**Popular understanding that either one is sufficient**

**Mandatory to be registered as ISD after Finance Act, 2024 - relevant provisions to be notified**

**Cross charge and ISD works in different spheres**

**What about inputs / capital goods?**

**Mere passing ITC as ISD does not absolve GST levy of Supply**

**Valuation Rule 28**

**CBIC Circular No. 199/11/2023-GST dt.17.07.23**





# ISSUES GENERALLY RAISED DURING GST AUDIT

❖ *Most of the above*

❖ *RCM liabilities – time of supply*

❖ *Place of supply- CGST/SGST Or IGST or Export / non-taxable*

❖ *CBIC Flyer No. 3, dated 1-1-2018 in respect of “supply”, has clarified:*

*“For a supply to attract GST the place of supply should be in whole of India. place of supply of any goods or services is determined based on Sections 10, 11, 12 and 13 of IGST Act 2017.”*

❖ *Remittance received from overseas customer through banking channels- foreign bank charges- RCM*

- *The 47<sup>th</sup> GST Council Meeting 28-29 June 2022 – Agenda item No.83*

- *CBIC FAQ dt.3.6.18 issue no.29*



# ASSIGNMENT OF LONG TERM LEASE RIGHTS

**Schedule III Item No.5 “Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.”**

**Schedule III Item No.6 “Actionable claim”?**

**Hon’ble Gujarat HC interim stay in the case of Suyog Dye Chemie Pvt Ltd R/Special Civil Application No. 17792 of 2023**

**Hon’ble Mumbai HC judgment in the case of Builders Association of Navi Mumbai writ Petition No. 12194 Of 2017, Decided On 28-3-2018 (special leave petition is dismissed by SC)**



# ASSIGNMENT OF LONG TERM LEASE RIGHTS

**DGGI and State  
GST enforcement  
investigations**

**Land value  
should exclude  
building value  
quantum**

**GIDC land rate  
basis**

**Capital Gains  
Income Tax  
payment**



# ASSIGNMENT OF LONG TERM LEASE RIGHTS

**Stamp duty paid  
= State Govt.  
recovered levy on  
immovable  
property  
transfer- can it be  
again subjected  
to GST as  
service?**

**ITC eligible to  
recipient?**



**ANY QUESTIONS**



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**THANK YOU!**

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