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# ICAI-GST

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A Newsletter from The Institute of Chartered Accountants of India on GST



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# President's Communication



**Dear Professional Colleagues,**

With the introduction of Goods and Services Tax (GST), India has witnessed historic and impactful economic reforms. GST is a comprehensive, multi-stage, destination-based indirect tax that is levied on every stage of value addition across the country. Since its introduction in the year 2017, the Government has been taking incremental efforts to simplify the various procedures for the benefit of all the stakeholders. One such effort is simplification in the process of filing of Form GSTR-1 and GSTR-3B with the launch of a new scheme, i.e. quarterly return filing along with monthly payment of tax (QRMP scheme). Also, the Government has recently amended the CGST Rules, 2017 to incorporate the due date of filing return in Form GSTR-3B for all the taxpayers in the rules itself. Earlier, separate notifications used to be issued for prescribing such due dates for a tax period.

With a view to keep a check on the defaulters, the GST Council has recommended the blocking of E-way Bill (EWB) for all the taxpayers irrespective of their Aggregate Turnover. Accordingly, EWB generation facility for such GSTINs will be blocked on EWB Portal after 01.12.2020 in case the taxpayer fails to file the GSTR-3B returns, for two consecutive tax periods or more. Further, with effect from 1st January 2021, Government has mandated e-invoicing for the taxpayers with aggregate turnover exceeding Rs. 100 Cr. (in any preceding financial year from 2017-18 onwards). Furthermore, the Government has recently notified 49 chemical based products in respect of which it is mandatory to mention 8 digit HSN code in the tax invoice issued by a registered person.

To support the initiatives of the Government, the Institute of Chartered Accountants of India through its GST & Indirect Taxes Committee has been regularly submitting suggestions on different aspects of GST to the Government. Recently, Myself along with Vice-Chairman, GST & IDT Committee appeared before the Public Accounts Committee (PAC) to

explain in detail the suggestions submitted by the ICAI to the PAC. The Committee has also submitted Pre-Budget Memorandum, 2021 to the Government. The key suggestions of the Memorandum were presented in detail by the Chairman, GST & IDT Committee in the online meeting convened by the Ministry of Finance. Also, a representation had been submitted for extending the due date of filing Annual Return and Reconciliation Statement for the Financial Year 2019-20 from December 31, 2020 to June 30, 2021 to which the Government has responded favorably by extending the due date till 28th February, 2021. Earlier also, the due date of filing Annual Return and Reconciliation Statement for Financial year 2018-19 has been extended by the Government from September 30, 2020 to December 31, 2020 when Committee had submitted a representation for the same.

I am pleased to note that GST & IDT Committee of ICAI has released four new publications on GST viz., 'Handbook on Finalisation of Accounts with GST Perspective', 'Handbook on Liability to Pay in Certain Cases under GST', 'Handbook on Returns and Payments under GST' and 'Practical FAQs under GST'. Further, the Committee has organised more than 1000 workshops, seminars, conferences on GST in the year 2020. Around 1.26 lakh participants benefitted by attending these programmes. In addition, 18 batches of online Certificate Courses and 20 Live Webcasts have been organized virtually which have been attended by approx. 2100 participants and 70,000 members respectively.

Best Wishes. Stay safe and stay healthy.

**CA. Atul Kumar Gupta**  
President, ICAI



# SUMMON, INSPECTION, SEARCH, SEIZURE AND ARREST – SUGGESTED PRACTICAL GUIDELINES FOR PROFESSIONALS

## Introduction:

The government introduced Goods and Services Law in 2017 with many objectives. The important aim was to have one market across the country for the consumers with same rate for the products across the country by reducing the cascading effect of taxes and to stop evasion of tax by bringing in technology and transparency in tax system in India.

Government of India is working relentlessly to achieve the benefits mentioned above and in this process has come down heavily on tax evaders and fake invoice syndicate with the help of legal provisions. These provisions also has its limitations and capable of being misused by the tax authorities and making the honest assessee succumb to the pressure and their unreasonable and sometimes illegal demands. The legal provisions and how a honest assessee can protect themselves and how tax professional can handle cases entrusted to them by their respective clients has been discussed in detail in the present article.

Under GST Act, the power to summon, arrest, search and seizure are associated with each other in one way or other. For a professional it is crucial to understand the circumstances in which such powers are exercised and what steps should be taken when such powers are exercised by Revenue.

## SUMMONS:

One must have clear idea that summons under Section 70 of the CGST Act, 2017 authorize the officer, with the power of civil court to issue summon, collect information, record statement on oath, etc. Due to applicability of Code of Civil Procedure, 1908 the proceedings are considered as judicial in nature and therefore, the statements given by any person in such summon will be admissible as evidence to the extent considered relevant under Section 136 of CGST act. The power of summon under CGST Act, 2017 is similar to Section 108 Customs Act, 1962 and Section 14 of Central Excise Act, 1944.

It has been observed that summon can be issued to any individual or any company with regard to any investigation, or any person who was associated with the person or company undergoing enquiry / investigation for any discrepancy. The power of summon under GST law is vast and gives right to the authority to investigate any assessee or any company/person associated with the assessee against whom the enquiry is undergoing to understand the discrepancy during the enquiry proceedings.

The summon notice are issued either to produce the documents / information with regard to any enquiry proceeding or also to provide personal oath statement. The courts have held that the presence of advocate is not required along with the taxpayer while the taxpayer is appearing in response to Summon. However, in one of the case, it has permitted that the authorized representative or advocate can be present at a viewing distance but not at hearing distance. The officers will require the person concerned to provide the documents and also require the Director of the company or any Key Managerial person to appear along with the documents. However, it is important for the professional to understand how the professional including Chartered Accountants can become the authorized representative to assist / represent the assessee undergoing summon notice before the officer, and when they are allowed to represent and when they are not allowed.

For this purpose, it is important to understand the definition of 'authorized representative' which has been defined in the Act itself. Broadly, it includes a relative, a regular employee, an advocate, a chartered accountant, a cost accountant, a company secretary, or any person with prescribed qualifications.

The only scenario, when the authorised representative specifically Chartered Accountant are not allowed to appear as an authorized representative, is when assessee or its representative i.e. Director or Employee or Partner is required to appear personally for examination on oath or an affirmation (e.g. in case of summons for recording of statement under an oath).

The professionals must understand the powers available with the authority under this section as the nature of statement recording is a judicial process and the statement recorded even in coercive nature by the assessee are considered admissible.

It must be empathized that at this level the summons are issued in large numbers and abuse of power is considered as one of the reason coupled with no supervision made by the higher authority on exercising of power over issuance of summon. When any such conditions arise before the assessee, then the professional associated must observe the safeguards available in order to protect the interest of the assessee.

It is highly advised that the assessee must cooperate with the authority in every proper, legal and possible way

during any of such proceedings which will not only save the assessee from hardship but also help to prove its bonafide before the court of law, if need arises. At this point it must be very clearly understood that, when summon is issued to assessee, he must not rush to court for interim relief but cooperate with authority and only when the tax authorities are going beyond the limits of law, i.e. either harass the assessee by taking undue advantage of their powers or use physical force or coerce the assessee to deposit the money with the tax department over and above what is legally required, then only the assessee should consider/ explore going to the courts for interim protection.

On being summoned, the first thing that the assessee face is to provide all information and documents. Therefore, it is very important that the assessee since the beginning keep its books of accounts and other relevant documents for example sale and purchase record, E-way Bill (wherever applicable) etc. in order, and take the professional help as the proper documentation is the main defense for the assessee.

Later, the assessee has to face numerous cross questions put before them by the tax officials. The assessee or his representatives must be fully aware about the documents and other related transactions regarding enquiry. The tax professionals must prepare the assessee about the anticipated and possible questions which may be asked by the tax authorities on oath. It not only gives an edge on facts but also a psychological advantage which help the assessee to give appropriate answers to the tax officials without getting nervous. Some of the suggested questions which are generally raised by the investigation team when the oath is being required in respect of the enquiry proceedings are as below:

1. What is the name and position in the company?
2. What are the other companies in which the director or employee of the company is related?
3. What is the process of sales which includes customer identification, order taking process till the time of collection from the party?
4. What is the process of purchase, right from vendor identification till the payment ?
5. Average days for collection / payment?
6. What was the process involved in the case against which the summon notice was issued?
7. What was the process of transportation of the goods in general? Whether the transportation was done by the company or customer or vendor to the company for whom investigation is open?
8. Can the transporter provide the confirmation when the goods are transported by the party?
9. What is the status of last sale/ purchase to the specific



## INSPECTION, SEARCH AND SEIZURE UNDER GST

party against whom the case is pending?

10. Pending payments which are as on date pending with the company?
11. Stock details, Registers, Godown wise details.

It is apposite to mention here that during the examination of assessee by the tax officials, tax professionals including advocates cannot help the assessee in answering the questions, so it is better that the assessee is prepared beforehand. Having said the same, Hon'ble Supreme court has allowed the presence of advocate during the statement recording time to facilitate the assessee. The presence of advocate or professional is considered morale booster for the assessee and adds to safeguard in case of manhandling or abuse by the authority. However, it is also mentioned that, the advocate/professional will be allowed to see what is happening but they cannot hear the conversation.

Once the tax officials have completed examining the assessee, they may ask the assessee to deposit possible evasion amount of tax as calculated by them, in form of tax and/or penalty and may ask to record the statement. It is tendency of the tax officials to frame the language of the statement in such manner which benefits the tax department in such situation, the assessee must not yield to the unreasonable demands of the tax officials as statement before tax official has evidentiary value and the same can be used as evidence against the assessee. In the case of Romesh Chandra Mehta v. State of West Bengal 110 ELT 324, Hon'ble Supreme Court has held that the statements given to the department during the proceeding after summon has evidentiary value and they are admissible as evidence in court proceedings. Further, tax officials may ask to deposit tax or penalty which assessee is otherwise not liable to pay as per the law. These are the situation where the assessee can move to the court and ask for relief from the jurisdictional High court.

Meanwhile, there are few points which tax professionals should kept in mind during the process of enquiry and investigation to give some comfort to their respective clients. First, summons must be issued in accordance with law with the proper DIN and just a telephonic call or a casual

letter should not be constituted as summons. Further, one should keep in mind that summons are not required/maintainable if information sought in the summons can be otherwise obtained through written correspondence and hence summons issued on such pretext must be resisted by tax professionals. Tax professionals must resist if tax officers without any reason start summoning top executives / directors from the company. Till all the documents are being provided and all answers are being given to the satisfaction of the tax officials, they must not summon top officials/directors from the assessee company. In respect of the same, various circulars/ guidelines are issued under previous Indirect tax regime of central excise and service tax:

1. F No. 208/122/89-CX.6 dated 13 October 1989 issued by CBEC has clarified that top management should not be summoned routinely.
2. F No. 137/39/2007-CX-426 Feb 2007 issued by CBEC has mentioned that even summon should not be issued to any employee if the department can get information by writing or telephonic conversation.
3. F. No 207/07/2014-CX-6 dated 20.01.2015 issued by CBEC has further mentioned that top management should not be routinely summoned if the answers can be given by other employees dealing with the issues.

In line with the said circular or guidelines, recently in August 2020 DGGI has issued guidelines in which it has been clarified that to mitigate the inconveniences faced by top executives of firms the officers must avoid excess summon to top management. The guideline clearly directed all the officers to not issue a summons to top executives of firms including PSUs.

Hon'ble Delhi High Court in National Building Construction Company Ltd. v. Union of India and ors decided on 16th November, 2018 W.P.(C) 1144/2016 has illustrated points when summon can be challenged by the assessee:

- Patent and gross misuse of power (Depends on Circumstances)
- Grave, Disproportionate hardship to the assessee
- Inconvenience to the person when a more convenient and acceptable mode for compliance is available,
- Malafide action (Depends on facts of case)

In *Sudhir Deoras v. CCE* [2012 (284) ELT 326 (Jhar.)], Hon'ble Jharkhand High Court has quashed multiple summons issued by revenue even after cooperation by the assessee.

In the case of *Romesh Chandra Mehta v. State of West Bengal* 110 ELT 324, Hon'ble Supreme Court has decided some of the crucial issues:

- Whether the statements made before officers are admissible in evidence or not?

- Whether or not the statement is protected by guaranteed under Article 20(3) (Nobody can be forced to give self-incriminating statement)?
- Do the statement made before the officer fall foul of Section 25 of evidence act as no statement in the case of any statement made before police are admissible as evidence?

While deciding the mentioned issue Hon'ble Supreme Court has held that the statements given to the department during the proceedings after summon has evidentiary value and they are admissible as evidence in court proceedings.

Hon'ble Court has further held that the provision of Article 20(3) and Section 25 of Evidence Act doesn't apply when the statements are recorded by the officer during investigation under GST law. This is said because police officer is entitled to file report under section 173 (closure report or charge sheet) of Criminal Procedure Code but such power is not present with central excise officers and other officers therefore these officers are not considered to be exercising the police powers. Therefore, the protection of Section 25 evidence act and Article 20(3) is not available under the GST law.

But the problem still persists because the power to record statement and its admissibility as evidence can lead to the coercive power to arrest; therefore it is difficult to state that the statement recorded is totally independent. Having discussed the rights of the assessee and precautions to keep in mind by tax professionals, one cannot overlook the power of the tax officers to arrest the assessee. To prevent such arrest, Tax professionals and assessee should take following steps which can reduce the threat of arrest significantly.

- Keep all the documents ready and cooperate with tax authorities to the extent possible.
- Consult tax professionals like CA and advocates before recording statement and also record the statement in presence of a CA or an advocate so that statement can be proof read and ambiguity in language / wrong facts can be corrected before signing the statement. .

Even if after all precautions and assistances the assessee is compelled to record a statement which he never intended then he must at the earliest retract from the statement in writing. Any unexplained delay in retraction can go against the assessee and also it weakens the case in the court of law. Retraction is the right made available to the assessee where if the statement is made in any coercion or in fear of arrest then the assessee can withdraw such statement.

In *Vinod Solanki v. Union of India and anr.*(2009) 233 ELT 157, assessee retracted the statement given before FERA authority which has similar principles as GST and Customs Act etc., but the FERA authority and tribunal rejected the retraction as it is not proved. The order was challenged before Hon'ble Supreme Court of India and court held that

Onus to prove retraction is on the department and not on the person retracting the statement.

We are aware that the tax officers have the power to arrest the assessee as per the provisions of Code of Criminal Procedure (Cr.P.C.). Next question is when arrest can be made by the tax officials.

The tax authority has power to arrest as per section 69 of GST Act. Under section 69 of CGST Act it is necessary that "Reasons to believe" leading to evasion by assessee must be present for action of arrest. Under GST Act it is not mandatory to write the reason to believe in case of arrest or in case of inspection, search and seizure. On similar terms under Section 148 of Income Tax Act, it is considered mandatory that the reason to believe must be in writing, by commissioner or joint commissioner, so that the authenticity of the action can be justified.

The power of arrest are given to the revenue because for any law to be regulated, maintained and followed, there must be powers provided to certain persons to conduct inspection, search, seizure and arrests to protect the interest of genuine taxpayers. These provisions are used by Officers only under exceptional circumstances and only as a last resort, to protect the Government Revenue. Further, to ensure that these provisions are carried out properly, the authorization of various Officers in the ranks of Commissioner are often required. The GST Act as provides four specific categories in which arrest can be made on the reasons to believe before the adjudication of the default. The four categories are inclusive of, case of supplying goods without invoice (clandestine removal), supplying invoice without goods (fake invoice), availing credit on fake invoice, availing ITC without receiving the goods and services, and collecting taxes and not paying to the Government beyond three months. .

If during course of investigation assessee has given a statement affirming evasion of taxes then the officer concerned can arrest as the same is one of the reason to believe apart from other documents to satisfy the reason to believe for the purpose of obtaining the permission from the Commissioner for arrest. Sometimes the investigation team may even compel the assessee to deposit GST immediately to avoid arrest.

During the exercise of power of arrest few important points must be kept in mind that 'Power of arrest' is not used other than to set the process of prosecution in motion and established the identity of person sought to be prosecuted under section 132, although in practice is seen that threats are meted out to taxpayers that may be arrested but will be let go if they agree to make payment of taxes without following the due process prescribed to make such tax demand. Commencement of prosecution proceedings is not required to be kept in abeyance until final disposal of tax demand on merits. And even though prosecution may commence the trial, but Magistrate is unlikely to conclude and pronounce sentence, if the Magistrate is of the opinion

that outcome of the tax demand appeal is likely to affect the finding necessary to support the prosecute itself. If Proper officer feels the need, then the procedure as prescribed in the due course of law will be followed. In view of the Proper Officer being empowered to arrest a person under section 69, it is important that the safeguards laid down in the law be followed as it involves infringement of freedom of the accused (not yet convicted). Certain offenses (listed in clause (a) to (d) of section 132(1)) where alleged evasion exceeds Rs.5 crore, is declared to be 'cognizable and non-bailable'. Offenses under (i) those specific clauses of lesser monetary value and (ii) all other clauses regardless of their monetary value, are declared to be 'non-cognizable and bailable. Offenses involving monetary value less than Rs.1 crore may still be prosecuted although section 132(1) does not prescribe the minimum sentence,

Bailable offenses are those offenses where the accused must be granted bail as a matter of right by the Proper Officer placing accused under arrest. Non-bailable offenses are those offenses where the accused must be produced before a Magistrate to determine remand under section 167 of Cr.PC or else, be released on bail. The expression 'non-bailable' is mistaken to be compulsory detention after arrest, which is not the case.

Persons who may be arrested are clearly laid down in section 69 which is limited to persons accused of (i) offenses specified in clause (a) to (d) under section 132(1) exceeding a value of Rs.2 crores or (ii) repeat offenses punishable under section 132(2) without any limit of monetary value. And in all other cases, when the lawful purpose of arrest is to identify the accused, accused may be arrested but immediately admitted on bail. All proceedings are subject to the 'due process' laid down in Cr.PC which may be referred for details.

In *Make My Trip India Pvt. Ltd. v. UOI*, 2016(44) STR 481(Delhi HC) affirmed in *Union of India v. Make My Trip (India) Pvt. Ltd.* 2019 (22) G.S.T.L. J59 (S.C.), it has been held that Power of arrest is disproportionate power to department and it should be exercised in very careful manner.

Needless to say that the landmark judgment of *DK Basu v. State of West Bengal*(1997) 1 SCC 416 in which Hon'ble Supreme Court issued guidelines for police officers while making arrest to uphold the fundamental rights of an individual and to prevent any misuse of power to arrest has to be followed by the tax officers as well.

Next question we need to answer is how to get bail in case of arrest which has been made under section 69 of the CGST Act? To understand this, first this is "both", i.e. offences under GST are both bailable and non-bailable depending on the type of offence and the volume of tax evasion under section 69 read with section 132 of the CGST Act. We have given below the relevant scenarios wherein the arrest are being made when the commissioner has reason to believe that person has committed the below offence:

S. no	Category of the alleged offenses for the purpose of arrest	Bailable or Non Bailable
1	In the cases of supplies any goods or services or both without issue of any invoice with the intention to evade tax (clandestine removal of goods)	If the amount of tax involved is above Rs. 2 crore, accused may be arrested but immediately admitted on bail, as this would be a 'non-cognizable and bailable' offense.
2	Issues any invoice or bill without supply of goods or services or leading to wrongful availment or utilisation of input tax credit or refund of tax Supplying invoice without supplying goods/service (fake invoice)	If the amount of tax involved is below Rs.2 crore but in respect of repeated offense, then such person may also be arrested as it would be a 'non-cognizable and bailable' offense
3	Avails input tax credit using such invoice or bill referred to in point no -2 or fraudulently avails input tax credit without any invoice or bill;	If the amount of tax involved is above Rs.5 crore, accused may be arrested and produced before Magistrate to determine admittance on bail as per section 167 of Cr.PC as this would be a 'cognizable and non-bailable' offense.
4	Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due	

Further, it is also provided that, where any person who is already convicted of an offence under Section 132 of CGST Act, 2017 if he is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

The stance towards the scope of power of arrest has been different before various High Courts in India. The power to arrest with the GST officer has been an argumentative issue. The Supreme Court in the matter of Union of India v. Sapna Jain (2019) 74 GST 218 (SC) has referred the matter to a three-judge bench on May 29, 2019, on the ground that different high courts have expressed conflicting views on such powers.

The Hon'ble Telangana High Court in P.V. Ramana Reddy v. Union of India decided on 18th April 2019 held that "person who is summoned under section 70(1) and person whose arrest is authorized under section 69(1) is not to be treated as the one accused of any offence until a prosecution is launched by way of a private complaint with the previous sanction of the commissioner. Accordingly, the provisions of the Code of Criminal Procedure, 1973 providing for anticipatory bail would not be applicable. However, the

remedy in such cases is to file a writ before the High Court seeking protection from arrest. Nonetheless, based on the facts of this case, no relief from arrest was granted."

It was further held that "the GST officer can initiate prosecution even before the completion of assessment or quantification of tax evaded and that the list of offences included in sub-section (1) of section 132 of CGST Act, 2017 has no correlation with assessment. The prosecutions for these offences do not depend upon the completion of the assessment."

The Hon'ble Madras High Court has taken different view on scope of power of arrest in Jayachandran Alloys (P.) Ltd. v. Superintendent of GST & Central Excise decided on 4th April 2019, held that "the power to punish set out in section 132 of the CGST Act would stand triggered only if it is established that an assessee has 'committed' an offence that has to be necessarily post-determination of demand due from an assessee, that itself has to necessarily follow process of an assessment."

#### INSPECTION:

Apart from power to arrest, the tax officers under GST has power of inspection, search and seizure as provided under section 67 of the GST Act. An inspection is a common procedure which enables GST officers to access any place of business or godown or warehouse or transport or any other place of business. Given the broad nature of the definition in section 2(85) of 'place of business', if the 'reason to believe' is that concealment is at such other places, inspection can extend not only to the 'registered place of business' but all other places that come within this definition. Please consider that place of business extends to such place where merely books of accounts are maintained, places where goods are merely stored, etc., and even the place of an agent of the person being inspected. Further, inspection during transit can be done even without authorization of Joint Commissioner. Inspection has lesser consequences when compared to a search. An inspection can be carried out by an officer with the written authorization of an officer of the rank of Joint Commissioner or above.

Joint Commissioner or an officer higher in rank can give such authorization only if he has reasons to believe that the person concerned has done one of the following actions:

- Suppression of any transaction relating to supply of goods or services or stock in hand
- Claimed excess input tax credit
- Contravention of any provisions of the Act or the Rules to evade tax
- Transporting or keeping goods which escaped payment of tax or manipulating accounts or stocks which may cause evasion of tax. Inspection can also be done of the conveyance, carrying a consignment of value exceeding specified limit. The person in charge of the conveyance has to produce documents/devices for verification and allow inspection.



## SEARCH AND SEIZURE:

The procedure of Search and Seizure is considered strict as compared to inspection. It is important for the professionals to understand that if the assessee cooperates during the inspection proceedings with the inspection team, then they may not convert the said inspection into search and seizure proceedings. However, if the inspection team has 'reason to believe' that any documents are kept at any other premises other than the place of business, then they may take the authorization from the relevant officer to conduct search and seize for the documents/ information/ computer system which are required for the proceedings.

It has been time and again decided through various cases that the material for reason to believe must be tangible i.e. there must be direct nexus with material and alleged tax evasion. If no material is present for search then court can call for file to see reasons. It must be noted by the professionals that the assessee has rights, and such rights can be utilized when court asks for the reasons for search conducted by the tax officials.

In *Dr. Nandlal Tahalyani v. Commissioner Of Income Tax*, [1988] 170 ITR 592 (Allahabad High Court) and *L.R. Gupta v. Union Of India*, [1992] 194 ITR 32 (Delhi High Court), both Hon'ble Allahabad High Court and Hon'ble Delhi High Court has held that non-tangible material for search is irrelevant and decision for search cannot be taken merely on the basis of gossip.

In the case of *Calcutta Discount Company v. Income Tax Officer*, the Supreme Court while dealing with the expression "Reason to Believe" in relation to the Income Tax Act, held that:

"The expression "Reason to Believe" postulates belief and the existence of reasons for that belief. The belief must be held in good faith: it cannot be merely pretence. The expression does not mean a purely subjective satisfaction of the Income Tax Officer: the forum of decision as to the existence of reasons and the belief is not in the mind of the Income Tax Officer. If it be asserted that the Income Tax Officer had Reason to Believe that income had been under assessed by reason of failure to disclose fully and truly the facts material for assessment, the existence of the belief and the reasons for the belief, but not the sufficiency of the reasons, will be justifiable. The expression therefore predicates that the Income Tax Officer holds the belief induced by the existence of reasons for holding such belief. It contemplates existence of reasons on which the belief is founded, and not merely a belief in the existence of reasons inducing the belief; in other words, the Income Tax Officer must on information at his disposal believe that income has been under assessed by reason of failure fully and truly to disclose all material facts necessary for assessment. Such a belief, be it said, may not be based on mere suspicion: it must be founded upon information"

In the case of *Ganga Saran and Sons v. ITO and other* (1981) 130 ITR 1 (SC), it was held that if there is no rational or intelligible nexus between the reasons and the belief, notice issued by the authority would be liable to be

struck down as invalid.

All search and seizure operation under GST must be conducted in accordance with the provisions of Criminal Procedure Code, 1973 (CrPC) which requires the presence of two or more independent witnesses and a record of entire proceedings.

During the search and seizure operation, any or all goods, documents, books, records or other things which would have value to the proceedings can be searched or seized. If it is not practical to seize a goods or object, then the goods or object can be detained. During the proceedings, the person being searched is allowed to take copies/ extracts of seized records. Finally, an inventory of the seized goods and documents must be prepared by the Officer and provided to the person from whom the goods or documents were seized.

All documents or objects taken during a search and seizure operation must be returned unless it is required for examination/enquiry/proceedings. If no notice is issued within a period of six months then all such goods are to be returned to the owner of the goods or documents. In some cases, the period of six months can be extended by Commissioner for another six months on sufficient cause.

Time and again it has come to notice that if illegal search is conducted by the authority and material has been collected, then they cannot proceed with such search and seizure. In *Jayanti Lal Patel and Dr. Balvinder Tomar v. ACIT*, 1998 233 ITR 588 Raj, Hon'ble Rajasthan High Court has held that no subsequent proceedings can be entertained from the material of illegal search because the very basis of these search stands on illegal grounds.

## CONCLUSION:

To conclude - during any action related to summon, search, seizure and arrest, any professional must ponder upon some of the crucial conditions.

- a) Every notice issued by authority should be dealt seriously and compliance and cooperation should be ensured by the assessee.
- b) The future implications of the notice must be understood considering the rights available to the assessee.
- c) Timely response to notice issued must be given from the side of assessee which should be factually correct.
- d) If the action of litigation is to be pursued while considering the rights of assessee it is necessary to anticipate the associated questions, evidences and arguments. It is necessary that both favorable and adverse decision must be well-thought-out by the professional while dealing such matters. It is necessary to undergo healthy interaction with departmental authorities.

Nevertheless it is crucial to associate with a professional who can practically assist the assessee in best possible manner at each stage of the notice.

*Contributed by CA. Kapil Mahani*

# COST CONTRIBUTION AGREEMENTS AND GST

Cost Contribution arrangements are vital for the functioning of a large business entity in a cost effective and profitable manner. Cost contribution is an arrangement for developing, producing or acquiring assets or rights by contributing specific amounts towards funding such acquisition in the ratio of defined interests of each participant (usually group companies). The participants then derive benefits from such acquired assets or rights in their pre defined ratio. Cost Contribution arrangements can either be for joint development or acquisition of tangible or intangible assets or for joint procurement of services.

However, many a times, implications of Goods and Services Tax ("GST") statutes are either ignored while devising such arrangements or in certain cases, drive such arrangements into a non viable zone. The arrangements are often not examined from the perspective of levy (Section 9 read with Section 7 of the Central GST Act, 2017) as well as Input Tax Credit (availment under Section 16 and reversal under Section 17 of CGST Act). For eg., a Manufacturer plans to install a mega Solar Power Generating Plant to cover part of electricity needs of three of its manufacturing plants operating in the same area. The Solar Power Generating Plant though would be set up as a single unit but, capable to fulfil the power needs of the three plants. This can be done under two types of arrangements, viz., cost contribution where all units are given part percentage of the cost and their derive electricity in the ratio of their contribution from such plant, or an arrangement where one of the units could set up the plant and charge the other two units for electricity supplied. But before we examine the GST implications thereof, it is important to examine the decision of Hon'ble Supreme court in the case of Gujarat State Fertilizers & Chemicals Ltd .....CITATION.

## Decision in the case of Gujarat State Fertilizers & Chemicals Ltd.

Gujarat State Fertilizers & Chemicals Ltd ("GSFC") and GACL were receiving Hydro Cynic Acid ("HCN") from M/s. Reliance Industries Limited through common pipeline, which was partially utilized in their factory for manufacturing of their final product and was shared between them in the ratio of 60 : 40. Since incineration process was also required to be undertaken, the charges, which were incurred on the said process, were also shared in the ratio of 50 : 50. It was also mentioned that an



agreement was arrived at between GSFC and GACL on the aforesaid basis. For installation of these facilities both the parties had contributed towards the investment. Since the said handling facilities are in the premises of GSFC, incineration also takes place at the said premises. The department alleged that GSFC was collecting 'incineration charges' from GACL and the said amount charged by GSFC from GACL amounted to providing 'Storage and Warehousing Services' falling under clause (zza) of sub-section (105) of Section 65 of the Finance Act, 1994.

### Held:

Hon'ble Supreme Court observed that GSFC and GACL are public sector undertakings and since HCN is to be received through pipeline, it was abundantly clear that in order to save the expenditure, both the parties agreed that there should be a common pipeline. As a process of transportation of HCN, once HCN is received through the said common pipeline, it comes first to GSFC's premises and from there it is diverted in the ratio of 60 : 40, meaning thereby that GSFC receives 60% of the HCN whereas GACL receives 40% of the supply in accordance with their respective requirement. As per the Agreement between the two parties, for transportation purpose, handling facilities were installed in the premises of GSFC. However, fact remains, for which there is no dispute, that for installation of these facilities both the parties had contributed towards the investment. The Hon'ble Court observed that handling facilities expenditure are thereof shared equally by both the parties. Once these facts are accepted, the Apex Court held that handling portion and maintenance including incineration facilities is in the nature of joint venture between two of them and the parties have simply agreed to share the expenditure. And thus, it was held that the payment which is made by GACL to GSFC is the share

of GACL which is payable to GSFC and by no stretch of imagination, it can be treated as common 'service' provided by GSFC to GACL for which it is charging GACL. The Apex Court held that the provision of service has not been established in the present case and the question of service tax does not arise.

### Learning from the decision – Contribution v Consideration:

Applying this principle in the context of GST law, it is possible to contribute and obtain benefits from common facilities provided certain pre requisites are satisfied. The parties should examine that their payments should not fall within the ambit of consideration wherein one party undertakes to provide certain supply and the other party(ies) are under an obligation to pay any amount against such supply. The obligation to provide such supply should be on some third party (for installing such common resource or amenity) and all parties contribute towards such common facility. It should not be a case wherein such common resource or amenity is installed in a single company, the control of expenses related to centralised facility, for later apportionment of common costs and expenses among companies that do not maintain the common equipment or structure. In such cases, the transaction may fall within the ambit of supply and the amount so paid to the Company maintaining the common facility or equipment would be liable to pay GST on such amount.

### Pre-essentials of a Cost Contribution Arrangement

To find out as to whether the cost sharing agreements qualify as a supply or not, there are certain very pertinent questions which are identified by the Hon'ble Apex Court and required to be tested:

- ▶ Is there any predefined facility for providing any service to a group company.
- ▶ Does such facility has been brought up under an agreement between the two parties
- ▶ Does cost of setting up such facility is shared in a predefined ratio (ratio in which they wish to derive the benefit from facility).
- ▶ Is there no value addition done by either of the parties for the other part in the entire arrangement or use of such facility
- ▶ Is there any privity of provision of any service by one part to another
- ▶ Is the indivisible facility installed capable of

fractional ownership from the start of construction and commissioning until subsequent operation and management

- ▶ Is any amount paid by one part to the other towards the operational cost of the facility at actuals? If yes, is it in the nature of contribution or consideration?

### Input Tax Credit

Input Tax Credit on common facility is also an area of concern. While, Input Tax Credit is available on the costs contributed, there are points which one must keep in mind before availing such Input tax Credit. The invoice for installation of such facility should be raised on each part in ratio of their contribution. In case single invoice is raised for the combined value, such Company would reverse the Input Tax Credit to the extent of cost recovered from the other part(s). In alternate, as per another school of thought, the amount recovered can also be seen as a supply to other entities and GST may be taxed on such supply. However, in such cases, Input Tax Credit would not be revised.

### Cost Contribution and concept of Mutuality

Cost Contribution Agreement is for procurement and not for supply. Both parties have come together for some common procurement and not for further supply of goods or services or both to third parties. Thus, in the humble opinion of the author, concept of mutuality can also be applied here. Someone cannot be called a supplier to the other part when both are pooling resources and obtaining procurement from such pooled fund. This is more important when Schedule I of CGST Act, 2017 does not cover all transaction without consideration within its ambit (mutual consideration is not consideration). Reliance may be placed on the decision of Hon'ble Supreme court in the case of State of West Bengal v Calcutta Club Limited [Civil Appeal No.4184 OF 2009].

### Does Cost Contribution amounts to co-ownership?

Cost Contribution Agreement can surely result in properties whereby no predefined components can be attributed to different parties and thus, such cases can fall within the ambit of co-ownership as defined under section 46 of Transfer of Property Act, 1882. The section provides that where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in

the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests. Thus, by virtue of this section, the contributors would become owners in their respective contribution ratio. Accordingly, while entering into a Cost Contribution Agreement, the entities must be cautious that their benefits are accrued in the ratio of shares contributed by them. In other case, they may enter into the domain of a supplier whose interest is being used by the other related person and this shall tantamount to supply.

### Cost Contribution is not reimbursement

Cost Contribution is not synonym to 'pure agent'. Pure Agent is a valuation concept and it is only a part of value of supply which has been carved out by the law as not taxable under GST. However, Common costs is a concept of Levy, whether it would be exigible to GST considering such contribution as consideration for supply. Accordingly, a difference must be carved out in terms of sharing of costs and reimbursements. Rule 33 of CGST Rules, 2017 lays down the pre requisites of a reimbursement and for being a pure agent.

### Cost Sharing Arrangement is not Cost Contribution Arrangement

Apportioning of costs means when the facility belonging to one person is used by another related person from whom the person intends to recover the costs of such facility and not the consideration of such use of facility. Even then, in my humble opinion, the same would not qualify as Cost Contribution and such cost sharing (may be called attribution as well) would be considered as a supply which shall be exigible to GST. For eg. A rent agreement for a furnished office is made in the name of the Parent company with the permission to sub-let. The subsidiaries are given permission by the Parent company to operate for which there is an attribution of cost to such subsidiaries. This attribution is not a Cost Contribution but a Cost attribution which is exigible to GST. At this stage, it is important to place reference to many decisions in past where Hon'ble Tribunal has given relief to assessee from levy of service tax on certain reimbursements of costs from other group entities:

- CCE v Emcure Pharmaceuticals Ltd. - Appeal No. ST/89674/13
- In re J M Financial Pvt Ltd (36) S.T.R. 151
- Reliance ADA Group Pvt Ltd v. CST [2016 (43) STR 372 (Tri. Mum)]



- Tata Technologies Limited Vs. CCE, Pune [2007 (8) STR 358];
- Kumar Beheray Rathi Vs. Commissioner of Central Excise, Pune [2014 (34) STR 139]

However, while placing reliance on any of the above judgements, proper examination of facts in each case is important. To understand the perils, one must look into the decision of Vishay Components India (P.) Ltd. v CCE, Pune [2017] 87 taxmann.com 164 (Mumbai - CESTAT)], wherein Hon'ble Tribunal had distinguished cost sharing from receipt of service.

Thus, Cost sharing has been found to be non taxable when it falls outside the purview of supply (service) which requires a clear establishment of liability of payment to a third part for a supply from each of the contributing entities and the group company is merely a conduit for making payment.

#### Conclusion:

While Cost Contribution Agreement are important to any cost-effective structure, it must not drift towards provision of supply by one group Company to others. The essence of the arrangement should both in letter and spirit acknowledge the provision of supply by a third party and should clearly lay down the contribution and benefit being derived from such common facility / equipment by each of such contributing entities. Any disconnect between the contribution and benefits being derived (Benefit test) would drift the transaction towards being a 'supply' and exigibility under GST. The contributors should not derive benefits from the facility of another entity and pay for use of such facility, nor there should be an obligation on such entity to own and operate such facility. Thus, every intra group facility arrangement requires proper examination to establish its taxability under GST.

**Contributed by CA. Gaurav Gupta**

# QUARTERLY RETURN MONTHLY PAYMENT SCHEME (QRMP)

The CBIC vide Circular No.143/13/2020- GST dt. 10th November, 2020 has issued the following clarification regarding QRMP Scheme:-

- **Eligibility for the Scheme**

In terms of Notf. No. 84/2020- CT, dt. 10.11.2020, a registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to 5 crore rupees in the preceding financial year, is eligible for the QRMP Scheme. It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. This new Scheme will be effective from 01.01.2021. Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

- **Exercising option for QRMP Scheme**

- Facility to avail the Scheme on the common portal would be available throughout the year. In terms of rule 61A of the CGST Rules, 2017 (hereinafter referred as CGST Rules), a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

For example: A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July.

If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.

- Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.
- For the first quarter of the Scheme i.e. for the quarter January, 2021 to March, 2021, in order to facilitate the taxpayers, it has been decided that all the registered persons, whose aggregate turnover for the FY 2019-20 is up to 5 crore rupees and who have furnished the return in FORM GSTR-3B for the month of October, 2020 by 30th November, 2020, shall be migrated on the common portal as below. Therefore, taxpayers are advised to furnish the return of October 2020 in time so as to be

eligible for default migration. The taxpayers who have not filed their return for October 2020 on or before 30th November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the FORM GSTR-3B as due on the date of exercising option has been filed.

Sl. No.	Class of registered person	Default Option
1	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on quarterly basis in the current financial year	Quarterly return
2	Registered persons having aggregate turnover of up to 1.5 crore rupees who have furnished FORM GSTR-1 on monthly basis in the current financial year	Monthly Return
3	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

Above default option has been provided for the convenience of registered persons based on their anticipated behaviour. However, such registered persons are free to change the option as above, if they so desire, from 5th of December 2020 to 31st of January, 2021. It is re-iterated that any taxpayer whose aggregate turnover has exceeded 5 crore rupees in the financial year 2020-21, shall opt out of the Scheme.

- Similarly, the facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.
- All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option.
- It is also clarified that such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

- It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.

- **Furnishing of details of outward supplies under section 37 of the CGST Act.**

- The registered persons opting for the Scheme would be required to furnish the details of outward supply in FORM GSTR-1 quarterly as per the rule 59 of the CGST Rule.
- For each of the first and second months of a quarter, such a registered person will have the facility (Invoice Furnishing Facility- IFF) to furnish the details of such outward supplies to a registered person, as he may consider necessary, between the 1st day of the succeeding month till the 13th day of the succeeding month. The said details of outward supplies shall, however, not exceed the value of fifty lakh rupees in each month. It may be noted that after 13th of the month, this facility for furnishing IFF for previous month would not be available. As a facilitation measure, continuous upload of invoices would also be provided for the registered persons wherein they can save the invoices in IFF from the 1st day of the month till 13th day of the succeeding month. The facility of furnishing details of invoices in IFF has been provided so as to allow details of such supplies to be duly reflected in the FORM GSTR-2A and FORM GSTR-2B of the concerned recipient.

For example, a registered person who has availed the Scheme wants to declare two invoices out of the total ten invoices issued in the first month of quarter since the recipient of supplies covered by those two invoices desires to avail ITC in that month itself. Details of these two invoices may be furnished using IFF. The details of the remaining 8 invoices shall be furnished in FORM GSTR-1 of the said quarter. The two invoices furnished in IFF shall be reflected in FORM GSTR-2B of the concerned recipient of the first month of the quarter and remaining eight invoices furnished in FORM GSTR-1 shall be reflected in FORM GSTR-2B of the concerned recipient of the last month of the quarter. The said facility would however be available, say for the month of July, from 1st August till 13th August. Similarly, for the month of August, the said facility will be available from 1st September till 13th September.

It is re-iterated that said facility is not mandatory and is only an optional facility made available to the registered persons under the QRMP Scheme.

- The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1. Accordingly, the details of outward supplies made by such a registered person during a quarter shall consist of details of invoices

furnished using IFF for each of the first two months and the details of invoices furnished in FORM GSTR-1 for the quarter. At his option, a registered person may choose to furnish the details of outward supplies made during a quarter in FORM GSTR-1 only, without using the IFF.

- **Monthly Payment of Tax**

- The registered person under the QRMP Scheme would be required to pay the tax due in each of the first two months of the quarter by depositing the due amount in FORM GST PMT-06, by the twenty fifth day of the month succeeding such month. While generating the challan, taxpayers should select "Monthly payment for quarterly taxpayer" as reason for generating the challan. The said person can use any of the following two options provided below for monthly payment of tax during the first two months –

(a) Fixed Sum Method: A facility is being made available on the portal for generating a pre-filled challan in FORM GST PMT-06 for an amount equal to thirty-five per cent. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly. For easy understanding, the same is explained by way of illustration in table below:

i. In case the last return filed was on quarterly basis for Quarter Ending March, 2021:

Tax paid in Cash in Quarter (January - March, 2021)		Tax required to be paid in each of the months - April and May, 2021	
CGST	100	CGST	35
SGST	100	SGST	35
IGST	500	IGST	175
Cess	50	Cess	17.5

ii. In case the last return filed was monthly for tax period March, 2021:

Tax paid in Cash in March, 2021		Tax required to be paid in each of the months - April and May, 2021	
CGST	50	CGST	50
SGST	50	SGST	50
IGST	80	IGST	80
Cess	-	Cess	-

Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month. A complete tax period means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

- (b) Self-Assessment Method: The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input

tax credit available, in FORM GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in FORM GSTR- 2B, for every month.

- The said registered person is free to avail either of the two tax payment method above in any of the two months of the quarter.
- It is clarified that in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month. Similarly, for the second month of the quarter, in case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the cumulative tax due for the first and the second month of the quarter or where there is nil tax liability, the registered person may not deposit any amount.
- Any claim of refund in respect of the amount deposited for the first two months of a quarter for payment of tax shall be permitted only after the return in FORM GSTR-3B for the said quarter has been furnished. Further, this deposit cannot be used by the taxpayer for any other purpose till the filing of return for the quarter.

#### • Quarterly filing of FORM GSTR-3B

Such registered persons would be required to furnish FORM GSTR-3B, for each quarter, on or before 22nd or 24th day of the month succeeding such quarter. In FORM GSTR-3B, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein. The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's FORM GSTR-3B. However, any amount left after filing of that quarter's FORM GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters. In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in FORM GSTR-3B for the relevant tax period.

#### • Applicability of Interest

- For registered person making payment of tax by opting Fixed Sum Method
  - i. No interest would be payable in case the tax due is paid in the first two months of the quarter by way of depositing auto-calculated fixed sum amount as detailed in para above by the due date. In other words, if while furnishing return in FORM GSTR-3B, it is found that in any or both of the first two months of the quarter, the tax liability net of available credit on the supplies made /received was higher than the amount paid in challan, then, no interest would be charged provided they deposit system calculated amount for each of the first two months and discharge their entire liability for the quarter in the FORM GSTR-3B of the quarter by

the due date.

- ii. In case such payment of tax by depositing the system calculated amount in FORM GST PMT-06 is not done by due date, interest would be payable at the applicable rate, from the due date of furnishing FORM GST PMT-06 till the date of making such payment.
- iii. Further, in case FORM GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

#### Illustration 1 –

A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that liability, based on the outward and inward supplies, for January was Rs. 40/- and for February it was Rs. 42/-. No interest would be payable for the lesser amount of tax (i.e. Rs. 5 and Rs. 7 respectively) discharged in these two months provided that he discharges his entire liability for the quarter in the FORM GSTR-3B of the quarter by the due date.

#### Illustration 2 –

A registered person, who has opted for the Scheme, had paid a total amount of Rs. 100/- in cash as tax liability in the previous quarter of October to December. He opts to pay tax under fixed sum method. He therefore pays Rs. 35/- each on 25th February and 25th March for discharging tax liability for the first two months of quarter viz. January and February. In his return for the quarter, it is found that total liability for the quarter net of available credit was Rs. 125 but he files the return on 30th April. Interest would be payable at applicable rate on Rs. 55 [Rs. 125 - Rs. 70 (deposit made in cash ledger in M1 and M2)] for the period between due date of quarterly GSTR 3B and 30th April

- For registered person making payment of tax by opting Self-Assessment Method Interest amount would be payable as per the provision of Section 50 of the CGST Act for tax or any part thereof (net of ITC) which remains unpaid / paid beyond the due date for the first two months of the quarter.
- Interest payable, if any, shall be paid through FORM GSTR-3B.
- Applicability of Late Fee - Late fee is applicable for delay in furnishing of return / details of outward supply as per the provision of Section 47 of the CGST Act. As per the Scheme, the requirement to furnish the return under the proviso to sub-section (1) of Section 39 of the CGST Act is quarterly. Accordingly, late fee would be the applicable for delay in furnishing of the said quarterly return / details of outward supply. It is clarified that no late fee is applicable for delay in payment of tax in first two months of the quarter.

# GST UPDATES

## Amendment in section 39 of the CGST Act, 2017

The Central Government vide Notf. No. 81/2020-CT dt. 10th November, 2020 has appointed the 10th day of November 2020, as the date on which the provisions of section 97 of the Finance (No. 2) Act, 2019 (23 of 2019) shall come into force. Therefore, the amendments in sub-sections (1), (2) and (7) of section 39 of the CGST Act shall come into force from 10th November 2020.

### Due date for FORM GSTR-1

The Central Government vide Notf. No.83/2020-CTdt. 10th November,2020 has notified the due dates for filing of Form-GSTR-1 w.e.f. 1st January, 2021 as under: -

SI. No.	Form GSTR-1	Due Date
1.	For Monthly Return Filers	11th day of the month succeeding such tax period
2.	For registered persons required to furnish return for every quarter under proviso to section 39(1)	13th day of the month succeeding such tax period

### Notification of class of persons under proviso to section 39(1).

The Central Government vide Notf. No.84/2020-CTdt. 10th November, 2020 has notified the registered persons, other than a person referred to in section 14 of the IGST, 2017 (13 of 2017), having an aggregate turnover of up to 5 crore rupees in the preceding financial year, and who have opted to furnish a return for every quarter, under rule 61A(1) of the CGST Rules, 2017 as the class of persons who shall, subject to the following conditions and restrictions, furnish a return for every quarter from January, 2021 onwards, and pay the tax due every month in accordance with the proviso to sub-section (7) of section 39 of the said Act, namely: -

- (i) the return for the preceding month, as due on the date of exercising such option, has been furnished:
  - (ii) where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.
- A registered person whose aggregate turnover crosses 5 crore rupees during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.
  - For the registered person falling in the column (2) of the Table below, who have furnished the return for the tax period October, 2020 on or before 30th November,

2020, it shall be deemed that they have opted under sub-rule (1) of rule 61A of the said rules for the monthly or quarterly furnishing of return as mentioned in column (3) of the said Table:-

TABLE

SI. No.	Class of registered person	Deemed Option
1.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR-1 on quarterly basis in the current financial year	Quarterly return
2.	Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR-1 on monthly basis in the current financial year	Monthly return
3.	Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly return

- The registered persons referred to in column (2) of the said Table, may change the default option electronically, on the common portal, during the period from the 5th day of December 2020 to the 31st day of January 2021.

### Notification of special procedure for making payment of 35% of tax liability in first two months

The Central Government vide Notf. No.85/2020-CTdt. 10th November, 2020 has notified the registered persons under proviso to section 39 (1) of the CGST Act, who have opted to furnish a return for every quarter or part thereof, as the class of persons who may, in first month or second month or both months of the quarter, w.e.f. 1st January, 2021, follow the special procedure such that the said persons may pay the tax due under proviso to section 39 (7) of the said Act, by way of making a deposit of an amount in the electronic cash ledger equivalent to, -

- (i) 35 % of the tax liability paid by debiting the electronic cash ledger in the return for the preceding quarter where the return is furnished quarterly; or
- (ii) the tax liability paid by debiting the electronic cash ledger in the return for the last month of the immediately preceding quarter where the return is furnished monthly:

Provided that no such amount may be required to be deposited-



- (a) for the first month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the tax liability for the said month or where there is nil tax liability ;
- (b) for the second month of the quarter, where the balance in the electronic cash ledger or electronic credit ledger is adequate for the cumulative tax liability for the first and the second month of the quarter or where there is nil tax liability:

Provided further that registered person shall not be eligible for the said special procedure unless he has furnished the return for a complete tax period preceding such month.

Explanation- "a complete tax period" means a tax period in which the person is registered from the first day of the tax period till the last day of the tax period.

### **New rules for Inward/Outward Supplies, GST Returns & New form GSTR 2B**

The Central Government vide Notf. No.82/2020-CT dt.10th November, 2020 has made the following amendments in the CGST Rules, 2017 :-

<b>Rule</b>	<b>Amendments</b>
Substitution of Rule 59 w.e.f. from the 1st day of January 2021: (Form and manner of furnishing details of outward supplies)	<p>"59. Form and manner of furnishing details of outward supplies.- (1) Every registered person, other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017), required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 for the month or the quarter, as the case may be, electronically through the common portal, either directly or through a Facilitation Centre as may be notified by the Commissioner.</p> <p>(2) The registered persons required to furnish return for every quarter under proviso to subsection (1) of section 39 may furnish the details of such outward supplies of goods or services or both to a registered person, as he may consider necessary, for the first and second months of a quarter, up to a cumulative value of fifty lakh rupees in each of the months,- using invoice furnishing facility (hereafter in this Notf. referred to as the "IFF") electronically on the common portal, duly authenticated in the manner prescribed under rule 26, from the 1st day of the month succeeding such month till the 13th day of the said month.</p> <p>(3) The details of outward supplies furnished using the IFF, for the first and second months of a quarter, shall not be furnished in FORM GSTR-1 for the said quarter.</p> <p>(4)The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include the—</p> <p>(a) invoice wise details of all –</p> <p>(i) inter-State and intra-State supplies made to the registered persons; and</p> <p>(ii) inter-State supplies with invoice value more than two and a half lakh rupees made to the unregistered persons;</p> <p>(b) consolidated details of all –</p> <p>(i) intra-State supplies made to unregistered persons for each rate of tax; and</p> <p>(ii) State wise inter-State supplies with invoice value upto two and a half lakh rupees made to unregistered persons for each rate of tax;</p> <p>(c) debit and credit notes, if any, issued during the month for invoices issued previously.</p> <p>(5) The details of outward supplies of goods or services or both furnished using the IFF shall include the –</p> <p>(a) invoice wise details of inter-State and intra-State supplies made to the registered persons;</p> <p>(b) debit and credit notes, if any, issued during the month for such invoices issued previously."</p>

### **Rescindment of Notf. 76/2020-CT dt. 15.08.2020.**

The Central Government vide Notf. No.86/2020-CT dt. 10th November, 2020 has rescinded Notf. 76/2020-CT dt. 15.08.2020 where in the due dates of furnishing the return in FORM GSTR-3B for October 2020 to March 2021 was prescribed.

### **Implementation of e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 100 Cr from 01st January 2021.**

The Central Government vide Notf. No.88/2020-CT dt. 10th November, 2020 has amended Notf. No-13/2020-CT, dt. the 21st March, 2020 to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 100 Crores from 1st January 2021 instead of Rs.500 Crores.

<p>Substitution of Rule 60 w.e.f. from the 1st day of January 2021: (Form and manner of ascertaining details of inward supplies.)</p>	<p>“60. Form and manner of ascertaining details of inward supplies.- (1)The details of outward supplies furnished by the supplier in FORM GSTR-1 or using the IFF shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the common portal, as the case may be.</p> <p>(2)The details of invoices furnished by a non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR 2A electronically through the common portal.</p> <p>(3)The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 65 shall be made available to the recipient of credit in Part B of FORM GSTR 2A electronically through the common portal.</p> <p>(4)The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the common portal</p> <p>(5)The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part C of FORM GSTR 2A electronically through the common portal.</p> <p>(6) The details of the integrated tax paid on the import of goods or goods brought in domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry shall be made available in Part D of FORM GSTR-2A electronically through the common portal.</p> <p>(7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every month, electronically through the common portal, and shall consist of –</p> <p>(i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;</p> <p>(ii) the details of invoices furnished by a non-resident taxable person in FORM GSTR-5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,-</p> <p>(a) for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;</p> <p>(b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;</p> <p>(c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter;</p> <p>(iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.</p>
	<p>(8) The Statement in FORM GSTR-2B for every month shall be made available to the registered person,-</p> <p>(i) for the first and second month of a quarter, a day after the due date of furnishing of details of outward supplies for the said month, in the IFF by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39, or in FORM GSTR-1 by a registered person, other than those required to furnish return for every quarter under proviso</p>

	to sub-section (1) of section 39, whichever is later; (ii) in the third month of the quarter, a day after the due date of furnishing of details of outward supplies for the said month, in FORM GSTR-1 by a registered person required to furnish return for every quarter under proviso to sub-section (1) of section 39.”												
Insertion of Sub-Rule (6) to Rule 61: (Form and manner of submission of monthly return)	<p>“(6) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in FORM GSTR-3B, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the twentieth day of the month succeeding such tax period:</p> <p>Provided that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep, the return in FORM GSTR-3B of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-second day of the month succeeding such month:</p> <p>Provided further that for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi, the return in FORM GSTR-3B of the said rules for the months of October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twenty-fourth day of the month succeeding such month.”</p>												
Substitution of Rule 61 w.e.f. from the 1st day of January 2021: (Form and manner of submission of monthly return)	<p>“61. Form and manner of furnishing of return.-(1) Every registered person other than a person referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return in FORM GSTR-3B, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner, as specified under –</p> <p>(i) sub-section (1) of section 39, for each month, or part thereof, on or before the twentieth day of the month succeeding such month:</p> <p>(ii) (ii) proviso to sub-section (1) of section 39, for each quarter, or part thereof, for the class of registered persons mentioned in column (2) of the Table given below, on or before the date mentioned in the corresponding entry in column (3) of the said Table, namely:–</p> <p style="text-align: center;"><b>TABLE</b></p> <table border="1"> <thead> <tr> <th>S. No.</th> <th>Class of registered persons</th> <th>Due Date</th> </tr> <tr> <th>(1)</th> <th>(2)</th> <th>(3)</th> </tr> </thead> <tbody> <tr> <td>1.1.</td> <td>Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.</td> <td>twenty-second day of the month succeeding such quarter.</td> </tr> <tr> <td>2.2.</td> <td>Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.</td> <td>twenty-fourth day of the month succeeding such quarter.</td> </tr> </tbody> </table>	S. No.	Class of registered persons	Due Date	(1)	(2)	(3)	1.1.	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	twenty-second day of the month succeeding such quarter.	2.2.	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	twenty-fourth day of the month succeeding such quarter.
S. No.	Class of registered persons	Due Date											
(1)	(2)	(3)											
1.1.	Registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.	twenty-second day of the month succeeding such quarter.											
2.2.	Registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.	twenty-fourth day of the month succeeding such quarter.											

	<p>(2) Every registered person required to furnish return, under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or the provisions of this Chapter by debiting the electronic cash ledger or electronic credit ledger and include the details in the return in FORM GSTR-3B.</p> <p>(3) Every registered person required to furnish return, every quarter, under clause (ii) of sub-rule (1) shall pay the tax due under proviso to sub-section (7) of section 39, for each of the first two months of the quarter, by depositing the said amount in FORM GST PMT-06, by the twenty fifth day of the month succeeding such month:</p> <p>Provided that the Commissioner may, on the recommendations of the Council, by Notf., extend the due date for depositing the said amount in FORM GST PMT-06, for such class of taxable persons as may be specified therein:</p> <p>Provided further that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner:</p> <p>Provided also that while making a deposit in FORM GST PMT-06, such a registered person may-</p> <p>(a) for the first month of the quarter, take into account the balance in the electronic cash ledger.</p> <p>(b) for the second month of the quarter, take into account the balance in the electronic cash ledger excluding the tax due for the first month.</p> <p>(4) The amount deposited by the registered persons under sub-rule(3) above, shall be debited while filing the return for the said quarter in FORM GSTR-3B, and any claim of refund of such amount lying in balance in the electronic cash ledger, if any, out of the amount so deposited shall be permitted only after the return in FORM GSTR-3B for the said quarter has been filed.”</p>
<p>Insertion of Rule 61A: (Manner of opting for furnishing quarterly return)</p>	<p>“61A. Manner of opting for furnishing quarterly return.- (1) Every registered person intending to furnish return on a quarterly basis under proviso to sub-section (1) of section 39, shall in accordance with the conditions and restrictions notified in this regard, indicate his preference for furnishing of return on a quarterly basis, electronically, on the common portal, from the 1st day of the second month of the preceding quarter till the last day of the first month of the quarter for which the option is being exercised:</p> <p>Provided that where such option has been exercised once, the said registered person shall continue to furnish the return on a quarterly basis for future tax periods, unless the said registered person,—</p> <p>(a) becomes ineligible for furnishing the return on a quarterly basis as per the conditions and restrictions notified in this regard; or</p> <p>(b) opts for furnishing of return on a monthly basis, electronically, on the common portal:</p> <p>Provided further that a registered person shall not be eligible to opt for furnishing quarterly return in case the last return due on the date of exercising such option has not been furnished.</p> <p>(2) A registered person, whose aggregate turnover exceeds 5 crore rupees during the current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the first month of the quarter, succeeding the quarter during which his aggregate turnover exceeds 5 crore rupees.</p>
<p>Amendment in Rule 62: (Form and manner of submission of statement and return)</p>	<p>(i) in sub-rule (1), the words, figures, letters and brackets “or paying tax by availing the benefit of Notf. of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019–CT (Rate), dt. the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dt. the 7th March, 2019” shall be omitted;</p> <p>(ii) in sub-rule (4), the words, figures, letters and brackets “or by availing the benefit of Notf. of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019–CT (Rate), dt. the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dt. the 7th March, 2019” shall be omitted;</p>

	(iii) in the explanation to sub-rule (4), the words, figures, letters and brackets “or opting for paying tax by availing the benefit of Notf. of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019– CT (Rate), dt. the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R.189 (E), dt. the 7th March, 2019.” shall be omitted;  (iv)sub-rule (6) shall be omitted.
Form GSTR-1	In FORM GSTR-1, in the Instructions, after serial number 17, the following instruction shall be inserted, namely:-  “18. It will be mandatory to specify the number of digits of HSN code for goods or services that a class of registered persons shall be required to mention as may be specified in the Notf. issued from time to time under proviso to rule 46 of the said rules.
Insertion of Form GSTR-2 Bafter FORM-2A	“FORM-2B [See rule 60(7)] Auto-drafted ITC Statement  (From FORM GSTR-1, GSTR-5, GSTR-6 and Import data received from ICEGATE)  Comment:-For detailed Form, the Notification may be referred

### Due Date for filing of Annual Return & Reconciliation Statement for the FY 2018-19 extended upto 31st December, 2020

CBIC vide Notf. No. 80/2020- CT dt.28th October, 2020 has further extended the time limit for furnishing of the Annual Return in Form GSTR-9 and Reconciliation Statement in Form GSTR- 9C specified under section 44 of the CGST Act read with Rule 80 of the CGST Rules, electronically through the common portal, for the financial year 2018-2019 till the 31st December, 2020.

### Annual Return related relaxation for MSME for 2019-20

The Central Government vide Notf. No.77/2020-CT dt. 15th October, 2020 has made the filing of Annual return optional under section 44 (1) of CGST Act for F.Y. 2019-20 also for those registered persons whose aggregate turnover is less than Rs 2 crores.

### HSN Code related changes

CBIC vide Notf. No.78/2020-CT dt. 15th October,2020 and Notf. No.06/2020- Integrated Tax dt. 15th October,2020 has amended Notf. No.12/2017-CTdt. 28th July, 2017 and

Notf. No.5/2017-Integrated Tax dt. 28th July, 2017 relating to HSN Code.

The revised requirement for mentioning HSN code, with effect from 1st day of April, 2021, shall be as follows: -

TABLE

S. No.	Aggregate Turnover in the preceding Financial Year	Number of Digits of HSN Code)
1.	Up to rupees five crores	4
2.	more than rupees five crores	6

Provided that a registered person having aggregate turnover up to five crores rupees in the previous financial year may not mention the number of digits of HSN Code, as specified in the corresponding entry in column (3) of the said Table in a tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.

### Amendments in Central Goods & Services Tax Rules,2017

The Central Government vide Notf. No.79/2020-CT dt. 15th October, 2020 has made the following amendments in the Central Goods & Services Tax Rules, 2017 :-

Rule	Amendments
Substitution of First Proviso to Rule 46: (Tax Invoice)	“Provided that the Board may, on the recommendations of the Council, by Notf., specify- (i) the number of digits of Harmonised System of Nomenclature code for goods or services that a class of registered persons shall be required to mention; or (ii) a class of supply of goods or services for which specified number of digits of Harmonised System of Nomenclature code shall be required to be mentioned by all registered taxpayers; and (iii) the class of registered persons that would not be required to mention the Harmonised System of Nomenclature code for goods or services”.

<p>Substitution of Rule 67A: (Manner of furnishing of return or details of outward supplies by short messaging service facility)</p>	<p>“Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in FORM GSTR-3B or a Nil details of outward supplies under section 37 in FORM GSTR-1 or a Nil statement in FORM GST CMP-08 for a tax period, any reference to electronic furnishing shall include furnishing of the said return or the details of outward supplies or statement through a short messaging service using the registered mobile number and the said return or the details of outward supplies or statement shall be verified by a registered mobile number based One Time Password facility.</p> <p>Explanation - For the purpose of this rule, a Nil return or Nil details of outward supplies or Nil statement shall mean a return under section 39 or details of outward supplies under section 37 or statement under rule 62, for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B or FORM GSTR-1 or FORM GST CMP-08, as the case may be.”</p> <p>Comment:- This amendment has been made to allow SMS Facility for filing of Nil Return in case of FORM GST CMP-08 also.</p>
<p>Substitution of Proviso in sub-rule (3) of Rule 80: (Annual Return)</p>	<p>“Provided that for the financial year 2018-2019 and 2019-2020, every registered person whose aggregate turnover exceeds five crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the said financial year, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”</p> <p>Comment:-The applicability of threshold of Rs.5 Crore for Filing GSTR-9C for the Financial Year 2019-20 also. Earlier the threshold of Rs. 5 Crore was applicable for F.Y. 2018-19 only.</p>
<p>Insertion of Proviso after the third proviso- Rule 138E : (Restriction on furnishing of information in PART A of FORM GST EWB-01)</p>	<p>“Provided also that the said restriction shall not apply during the period from the 20th day of March, 2020 till the 15th day of October, 2020 in case where the return in FORM GSTR-3B or the statement of outward supplies in FORM GSTR-1 or the statement in FORM GST CMP-08, as the case may be, has not been furnished for the period February, 2020 to August, 2020”</p> <p>Comment:- This amendment has been made to provide relaxation from the aforesaid restriction for the period specified.</p>
<p>Amendment in sub-rule (1A)-Rule 142: (Notice and order for demand of amounts payable under the Act)</p>	<p>(i) for the words “proper officer shall”, the words “proper officer may” shall be substituted;</p> <p>(ii) for the words “shall communicate”, the word “communicate” shall be substituted.</p>
<p>FORM GSTR-1:</p>	<p>In the said rules, in FORM GSTR-1, against serial number 12, in the Table, in column 6, in the heading, for the words “Total value”, the words “Rate of Tax” shall be substituted.</p>
<p>Changes in Form</p>	<p>(i) Substitution of New Form GSTR-2A in place of earlier one.</p> <p>(ii) Further, changes have been made in the following form:</p> <p>a) FORM GSTR-5, FORM GSTR-5A, FORM GSTR-9, FORM GSTR-9C,</p> <p>b) FORM GST RFD-01,</p> <p>c) FORM GST ASMT-16,</p> <p>d) FORM GST DRC-01, FORM GST DRC-02, FORM GST DRC-07, FORM GST DRC-08, FORM GST DRC-09, FORM GST DRC-24, FORM GST DRC-25:</p>

# QUIZ

**Q1. Which of the following statement is true for a Casual Taxable person (CTP).**

- (i) Registration mandatory
- (ii) Registration required only if turnover exceeds threshold limit of Rs. 20 lakhs/10 lakhs
- (iii) Registration not mandatory but may opt voluntarily
- (iv) Registration required only for supply of services not for goods

**Q2. Balance in Electronic Credit ledger can be utilized against which of the following liability?**

- (i) Output tax liability
- (ii) Interest
- (iii) Penalty
- (iv) All of the above

**Q3. What are the documents that need to be carried along with the goods being transported by the transporter?**

- (i) A copy of Invoice or Bill of supply or Delivery Challan
- (ii) Copy of E – way bill No. generated on the common portal
- (iii) Either (i) or (ii)
- (iv) Both (i) and (ii)

**Q4. At what rate should the tax be collected at source?**

- (i) Not exceeding 0.5%
- (ii) Not exceeding 1%
- (iii) Not exceeding 2%
- (iv) Not exceeding 3%

**Q5. What are the types of documents that are to be reported into the IRP under e-Invoicing?**

- (i) Invoices by the supplier
- (ii) Credit Notes and Debit Notes by the supplier
- (iii) Any document as required by law to be reported by the creator of the document
- (iv) All of the above

**Q6. With effect from 01st January 2021, E invoicing is mandatory for taxpayers having?**

- (i) Aggregate turnover more than Rs 500 crore in any preceding financial year from 2017-18 onwards .
- (ii) Aggregate turnover more than Rs 100 crore in any preceding financial year from 2017-18 onwards.

(iii) Aggregate turnover more than Rs 250 crore in any preceding financial year from 2017-18 onwards.

(iv) None of the above

**Q7. Who are the persons liable to furnish information return?**

- (i) Taxable person
- (ii) Income Tax Officer
- (iii) GST Network
- (iv) All the above

**Q8. Who should discharge the liability of GST on the scrap generated during job-work?**

- (i) Job-worker, if registered
- (ii) Principal, if job-worker is not registered
- (iii) Always principal
- (iv) (i) or (ii)

**Q9. What is the time limit for issue of order in case of other than fraud, misstatement or suppression?**

- (i) 30 months
- (ii) 18 months
- (iii) 5 years
- (iv) 3 years

**Q10. As per Quarterly Return Monthly Payment Scheme, which of the following is correct?**

- (i) Registered person having aggregate turnover upto 5 Crores may be allowed to furnish return on quarterly basis along with monthly payment of tax
- (ii) Where such option has been exercised once, they shall continue to furnish the return for future tax periods, unless they revise the same.
- (iii) The return for the preceding month, as due on the date of exercising such option, has been furnished.
- (iv) All of the above

The names of the first 5 members who provided all the correct answers of the last Quiz (August, 2020) within 48 hours are as under:-

Name	Membership No.
RAMESH KUMAR GUPTA	433045
ABHAY AJMERA	450438
NEHA RAJPUT	542565
TRUPTI SASTIKAR	193754
RITESH RANGANI	154253

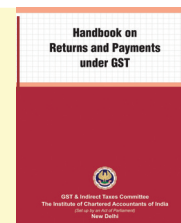
Please provide reply of the above MCQs in the link given below. The name of the first 5 members who provide all the correct answers within 48 hours of receipt of this Newsletter, would be published in the next edition.

Link to reply: [https://docs.google.com/forms/d/1IVNQzUrewUk2N\\_KvMXo6SyNQboC2sobPxp237VOIfNU/edit?usp=sharing](https://docs.google.com/forms/d/1IVNQzUrewUk2N_KvMXo6SyNQboC2sobPxp237VOIfNU/edit?usp=sharing)

# PUBLICATIONS

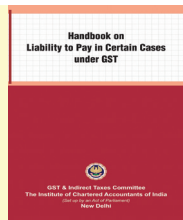
## Handbook on Returns and Payments under GST

The handbook aims to provide guidance to the readers on the subject matter 'Returns and Payments under GST'. It covers all the analysis of all the returns under GST and is updated with notifications, circulars or orders upto 30th November, 2020 issued by the Government from time to time along with Flowcharts, Diagrams, Illustrations etc. to make the reading and understanding easier.



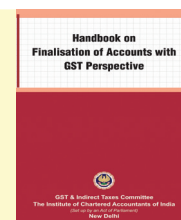
## Handbook on Liability to Pay in Certain Cases under GST

The handbook attempts to cover all aspects related to liability to pay in certain cases at one place and is intended to give general guidance to all stakeholders and also help them in resolving issues they may face during the course of their compliances under the GST.



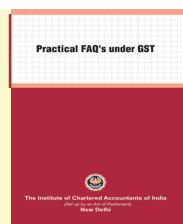
## Handbook on Finalization of Accounts with GST perspective

The Handbook explains the various precautions to be taken with GST perspective while finalising of accounts and is aimed at guiding the members. It contains topics like Audit approach to GST compliances, Review of Balance Sheet, CARO & Tax Audit etc.



## Practical FAQ's under GST

This Handbook is an attempt to cover practical aspects under GST by addressing the queries received in numerous webcasts organised during the lockdown period covering Concept of Supply, Levy of GST, Nature and Place of Supply, Input Tax Credit, Time and Value of Supply, Reverse Charge Mechanism, Interest, Late Fee and Penalty etc. To make the reading and understanding easier, important examples with calculation have been included in this publication.



### GST & INDIRECT TAXES COMMITTEE OF ICAI

## A ONE STOP DESTINATION FOR ALL INDIRECT TAXES

website: [www.idtc.icai.org](http://www.idtc.icai.org)



The GST & Indirect Taxes Committee of ICAI has launched its website viz. [www.idtc.icai.org](http://www.idtc.icai.org) to provide the users a well set platform for sharing and gaining knowledge on GST & other indirect taxes and easy accessibility to the GST & Indirect taxes Committee. The Committee works relentlessly towards keeping the members abreast with the latest changes in all the Indirect tax laws vide various mediums like, organising programmes, updating study materials, sending regular updates etc.

### Main features:

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- ❖ Upcoming events
- ❖ Details of Certificate Courses, Programme, Seminars etc. on GST/ Indirect Taxes
- ❖ Links of related important website
- ❖ Connect with GST & Indirect Taxes as a faculty / author of the publication etc.
- ❖ GST Tab newly created on website to provide consolidated GST information.

Your suggestions on the website are also welcome at [gst@icai.in](mailto:gst@icai.in)

Secretary  
GST & Indirect Taxes Committee  
The Institute of Chartered Accountants of India  
ICAI Bhawan  
A-29, Sector - 62, NOIDA (U.P.) India  
Telephone Direct - +91 120 3045 954  
Telephone Board - +91 120 3045 900 Ext. 954  
Website: <http://www.idtc.icai.org/idtc@icai.in>  
for help please visit: <http://help.icai.org/>

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