

I. Findings of CAG Report

The CAG report acknowledged that:

- The roll out of GST has been a landmark achievement of the Government with respect to unifying multiple central and state taxes barring a few goods/sectors and availability of Input Tax Credit (ITC) across the entire value chain.
- Multiplicity of tax rates has been eliminated to a large extent.
- The objective of roll out of single IT based interface for taxpayer has been achieved to some extent

The CAG report further mentions that one significant area where the full potential of GST roll out has not been achieved is the roll out of the simplified tax compliance regime.

- Even after two years of roll out of GST, system validated Input Tax Credit through "invoice matching" is not in place and nonintrusive e-tax system still remains elusive.
- The complexity of return mechanism and the technical glitches resulted in roll back of invoice-matching, rendering the system prone to ITC frauds. Thus, on the whole, the envisaged GST tax compliance system is non-functional. The deficiencies in the GST system also point to a serious lack of coordination between the Executive and the developers.

IT audit of GSTN

- The CAG pointed out that in 16 cases, the key validations/functionality as existing in the rolled out modules were not found aligned to the applicable provisions. Of these 16 cases, the required validation was not included in the Software Requirement Specification (SRS) itself in seven cases, the validations were not built-in even though SRS was correctly framed in eight cases and the SRS provision included a condition not prescribed in the Act in one case.
- System design deficiencies like following were highlighted in the report □ There were no controls totals like check sums or record level totals in files shared with accounting authorities. □ The IGST algorithm was found to be defective picking up entries from wrong reports in IGST module.

To sum up the IT Audit findings:

- While acknowledging that GST is a completely new system being developed, in view of its magnitude and Pan-India impact, it is all the more necessary that due care is taken both in development and in testing of the system before roll out.
- The failure to map business rules correctly and the absence of key validations in the rolled out system points to inadequacies in the functioning of GSTN.

II. Public Consultation On Electronic Invoice Standards To Be Used Under GST System

In context of the decision of 35th GST Council to introduce electronic invoice from January 2020 the standards for electronic invoice to be used under GST System has been put in the public domain for consultation.

- The new system will lead to one-time reporting on B2B invoice data in the form it is generated to reduce reporting in multiple formats (one for GSTR-1 and the other for e-way bill) and to generate Sales and Purchase Registers (ANX-1 and ANX-2) and from this data to keep the Return (RET-1 etc.) ready for filing.
- GSTN, in partnership with ICAI, has drafted an e-invoice standard, (referring and considering the PEPPOL standard, which is based on UBL standard) that takes into account the requirement under tax laws and has features required for international trade.
- The e-invoice draft now placed in the public domain is in the following three parts:
 1. E-invoice schema
 2. Masters
 3. E-invoice template (compulsory fields are marked green and optional fields are marked yellow)
- Interested parties could share their feedback on www.gstn.org/e-invoice/feedback before or latest by 20th August 2019.

III. Department to Pay 9% Interest on Delayed IGST Refund: High Court of Gujarat – 10th July 2019 (Special Civil Application no. 15925 of 2018)

The Gujarat High Court in writ petition in M/S Saraf Natural Stone vs. Union of India, has held that the department is liable to pay simple interest on delayed payment of IGST refund @9% to the petitioner

The Court further held that the interest must be paid from the date of filing of GSTR-03 return.

IV. Miscellaneous Updates:

- Kerala Flood Cess made effective from the 1st day of August, 2019 vide Notification G.O.(P) No.97/2019/TAXES;
- The Finance (No. 02) Bill, 2019 gets Presidential Assent to become The Finance (No. 2) Act, 2019 and the same has been published in The Gazette on dated 1st August 2019;
- GST collection in July crossed Rs 1-lakh-crore mark after a slump in the month of June. As per data released by the government, the total collection under Goods and Services Tax was reported to be Rs. 1.02 lakh crore in July 2019.

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**36th GST Council Meet****Decisions taken in 36th GST Council meeting held on 27th July 2019****A. GST rate related changes on supply of goods and services (changes to be effective from 1st Aug 2019)**

- i. The GST rate on all electric vehicles be reduced from 12% to 5%.
- ii. The GST rate on charger or charging stations for Electric vehicles be reduced from 18% to 5%.
- iii. Hiring of electric buses (of carrying capacity of more than 12 passengers) by local authorities be exempted from GST.

B. Changes in GST law:

- i. Last date for filing of intimation, in Form GST CMP-02, for availing the option of payment of tax under notification No. 2/2019-Central Tax (Rate) dated 07.03.2019 (by exclusive supplier of services), to be extended from 31.07.2019 to 30.09.2019.
- ii. The last date for furnishing statement containing the details of the self-assessed tax in Form GST CMP-08 for the quarter April, 2019 to June, 2019 (by taxpayers under composition scheme), to be extended from 31.07.2019 to 31.08.2019.

Circular No.109/28/2019- GST dated 22nd July 2019**Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association from its members.**

- RWA shall be required to pay GST on monthly subscription/contribution charged from its members, only if such subscription is more than Rs. 7500/- per month per member and the annual aggregate turnover of RWA by way of supplying of services and goods is also more than Rs. 20 lakhs.
- RWAs are entitled to take ITC of GST paid by them on capital goods (generators, water pumps, lawn furniture etc.), goods (taps, pipes, other sanitary/hardware fittings etc.) and input services such as repair and maintenance services.
- Exemption from GST on maintenance charges charged by a RWA from its residents is available only if such charges do not exceed Rs. 7500/- per month per member. In case the charges exceed Rs. 7500/- per month per member, the entire amount is taxable.

<http://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-109.pdf;jsessionid=109F3F9B53D5A92EB8112F8DE0E74F7E>

Circular No. 108/27/2019-GST dated 18th July 2019**Clarification in respect of goods sent/taken out of India for exhibition or on Consignment basis for export promotion.**

- Such activity is in the nature of "sale on approval basis" wherein goods are sent / taken outside India for approval of the person located abroad. Such goods to be accompanied with a Delivery Challan.
- Activity of sending / taking specified goods out of India is not a zero-rated supply. Hence, execution of a bond or LUT, as per the provisions of the IGST Act is not required.
- In case such goods are sold fully or partially, within the stipulated period of six months, as per the provisions of Section 31(7) of the CGST Act, the sender shall issue a tax invoice in respect of such quantity of specified goods which has been sold abroad.
- In a scenario where such goods have neither been sold nor brought back, either fully or partially, within the stipulated period of six months, the sender shall issue a tax invoice on the date of expiry of six months from the date of removal, in respect of such quantity of specified goods which have neither been sold nor brought back.
- The sender can prefer refund claim even when the specified goods were sent/taken out of India without execution of a bond or LUT, if he is otherwise eligible for refund as per the provisions contained in section 54(3) the CGST Act read with rule 89(4) of the CGST Rules, in respect of zero rated supply of goods after he has issued the tax invoice.

<http://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-108.pdf;jsessionid=87B4B0D3404F73E64E45BFA25E8FF367>

Circular No. 107/26/2019-GST dated 18th July 2019

Clarification on issues related to supply of Information Technology enabled Services (hereinafter referred to as "ITeS services") such as call center, business process outsourcing services, etc. and "Intermediaries" to overseas entities under GST and whether they qualify to be export of services or otherwise.

- The supplier of services would not be treated as "intermediary" even where the supplier of services qualifies to be "an agent/ broker or any other person" if he is involved in the supply of services on his own account.
- A supplier of ITeS services supplies services, on his own account to his client or to some customer of his client, such supplier will not be categorized as an "intermediary" in terms of sub-section (13) of section 2 of the IGST Act.
- A supplier of ITeS services located in India arranges or facilitates the supply of goods or services or both by a client located abroad to the customers of client then such supplier of services would be treated as intermediary as per the provisions of IGST Act. Such services may include support services, during pre-delivery, delivery and post-delivery of supply.
- A supplier of ITeS services supplying back end services on his own account along with arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad and/or to his client's customer. Such a supplier would qualify as intermediary or not would be determined on case to case basis keeping in view which set of services is principal/main supply.

(<http://www.cbic.gov.in/resources/htdocs-cbec/gst/circular-cgst-107.pdf;jsessionid=DE0587DB26E39CF91B81B0DD183D5116>)

M/S Commercial Steel Engineering Corporation v. The State of Bihar and ors. - IN THE HIGH COURT OF JUDICATURE AT PATNA (Civil Writ Jurisdiction Case No. 2125 of 2019)

In a recent judgement, in the matter of **M/S Commercial Steel Engineering Corporation v. The State of Bihar through the Principal Secretary cum Commissioner, Department of Commercial Taxes, Govt. of Bihar, Patna and ors**, dated 27/06/2019 held that the transitional credit claimed by a dealer can't be treated as an avilment of the said credit when in fact an avilment of credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either avilment or utilization.

It was further held that any rejection of claim for transitional credit does not bestow any statutory jurisdiction upon the assessing authority to correspondingly create a tax liability when neither any such outstanding liability exists nor such credit has been put to use. The Hon'bl court while allowing the writ petition filed under Article 226 of Constitution of India held that the provisions underlying section 73 of 'the Bihar Goods and Services Tax Act' is self-eloquent and the legislative intent reflected from a purposeful reading of the provisions is that even a wrongly reflected transitional credit in an electronic ledger on its own is not sufficient to draw penal proceedings until the same or any portion thereof, is put to use so as to become recoverable.

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