

# GST Compendium

## A monthly guide

March 2021



# Editor's note

The Union Cabinet has approved the Production Linked Incentive (PLI) Scheme for telecom and networking products effective from 1 April 2021. This is an important milestone under the Aatmanirbhar Bharat Abhiyan, which aims to make India a global hub for the manufacturing of telecom equipment. As per the press release, the scheme's target is to bring investments of more than INR 3,000 crore.

Considering the difficulties faced by the businesses, the due date for filing the annual return for the financial year 2019-20 has been further extended to 31 March 2021.

The Supreme Court has accepted the special leave petition (SLP) filed against the decision of Madras High Court denying the refund of the input tax credit for input services under the inverted duty structure. In a similar matter, the Gujarat High Court had allowed the refund stating that the GST provisions are ultra vires and need to be read down to the extent it denies refund of ITC on input services. In view of the contrary judgments, the verdict of the apex court is keenly awaited by the industry to take a final view on this subject.

The Gujarat High Court (HC), in a batch of petitions filed before it against undue coercion exercised by the tax officials, has proposed to direct the Central Board of Indirect Taxes and Customs (CBIC) to issue certain guidelines to the revenue regarding recovery during a search under the GST law. While passing the interim order, the Gujarat High Court has mentioned that it does not intend to discourage or lower down the morale of officers but only wants to bring it to their notice that they should act and perform their duties within the four corners of the law.

The Madhya Pradesh Authority for Advance Rulings (AAR) has held that the input tax credit (ITC) in respect of demo vehicles used by the authorised car dealer for the furtherance of business shall not be available. Interestingly, the Maharashtra AAR and the Kerala AAR had earlier allowed the ITC on demo vehicles. A due clarification from the government on this issue will help in resolving it.

In this edition, we have shared our perspective on various incentives available under the Foreign Trade Policy.

We hope you will find this edition informative and interesting.

**Vikas Vasal**

National Managing Partner, Tax





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## PLI Scheme for telecom and networking products to come into effect from 1 April 2021

After the success the Production Linked Incentive (PLI) Scheme related to mobile and component manufacturing announced in April 2020, the Cabinet has now approved a PLI Scheme for telecom and networking products, **effective 1 April 2021**.

This is another component of Aatmanirbhar Bharat to make India a global hub of manufacturing telecom equipment, including core transmission equipment, 4G/5G next-generation radio access network and wireless equipment, access and customer premises equipment (CPE), internet of things (IoT) access devices, other wireless equipment and enterprise equipment such as switches, routers.

### Key features of the scheme

- **Offset import of telecom equipment:** The core component of this scheme is to offset the huge import of telecom equipment worth more than INR 50,000 crore and reinforce it with Made in India products both for domestic markets and exports.
- **Eligibility:** The eligibility for the scheme will be subject to achievement of a minimum threshold of cumulative incremental investment and incremental sales of manufactured goods net of taxes.
- **Base year:** Financial year 2019-20 (FY20) shall be treated as the base year for computation of cumulative incremental sales of manufactured goods net of taxes.
- **Minimum investment:** The minimum investment threshold for MSME has been kept at INR 10 crore and others at INR 100 crore. Once qualified, the investor will be incentivised up to 20 times of the minimum investment threshold enabling them to utilise their unused capacity.
- **Incremental production:** This scheme will lead to incremental production of around INR 2.4 lakh crore with exports of around INR 2 lakh crore over five years.

## Incentive structure

Years	MSMEs	Others
1	7%	6%
2	7%	6%
3	6%	5%
4	5%	5%
5	4%	4%

The scheme is expected to bring investments more than INR 3,000 crore and generate direct and indirect employment as well as taxes.



## Cabinet approves PLI Scheme for IT hardware

The Union Cabinet has approved a PLI Scheme for IT Hardware to make India a global hub for electronics system design and manufacturing (ESDM). This is another component of Atmanirbhar Bharat.

The scheme proposes PLIs to boost domestic manufacturing and attract large investments in the value chain of IT hardware. The target segments under the proposed scheme include laptops, tablets, all-in-one PCs and servers.

### Key features of the scheme

- **Incentive structure:** The scheme shall extend an incentive of 4% to 2%/1% on net incremental sales of goods (over base year i.e. 2019-20) manufactured in India and covered under the target segment, to eligible companies, for a period of four years.
- **Employment generation:** The scheme has an employment generation potential of over 1,80,000 (direct and indirect) over 4 years.
- **Domestic value addition:** The scheme will provide impetus to domestic value addition for IT hardware, which is expected to rise to 20% - 25% by 2025.

- **Enhance ESDM:** The scheme will enhance the development of electronics ecosystem in the country. India will be well positioned as a global hub for ESDM on account of integration with global value chains, thereby becoming a destination for IT hardware exports.
- **Cost of scheme:** The total cost of the proposed scheme is approximately INR 7,350 crore over 4 years, which includes an incentive outlay of INR 7,325 crore and administrative charges of INR 25 crore.

## Cabinet approves PLI Scheme for pharmaceuticals

The Union Cabinet has approved a PLI Scheme for pharmaceuticals from 2020-21 to 2028-29. The scheme will benefit domestic manufacturers, help in creating employment and is expected to contribute to the availability of a wide range of affordable medicines for consumers.

The objective of the scheme is to enhance India's manufacturing capabilities by increasing investment and production in the sector and contributing to product diversification to high-value goods in the sector. One of the further objectives of the scheme is to create global champions out of India that have the potential to grow

in size and scale, using cutting-edge technology and thereby penetrate the global value chains.

### Key features of the scheme

- **Target groups and incentives:** The manufacturers of pharmaceutical goods registered in India will be grouped based on their global manufacturing revenue (GMR) to ensure wider applicability of the scheme across the pharmaceutical industry and at the same time meet the objectives of the scheme. The qualifying criteria for the three groups of applicants will be as follows:

	GMR	Quantum of incentive
A	More than or equal to INR 5000 crore	INR 11,000 crore
B	Between INR 500 crore (inclusive) and INR 5000 crore	INR 2,250 crore
C	Less than INR 500 crore	INR 1,750 crore

## Category group and incentive scheme

Category	Pharma goods	Rate of incentive	
		Rate	Year
Category 1	Biopharmaceuticals; complex generic drugs; patented drugs or drugs nearing patent expiry; cell-based or gene therapy drugs; orphan drugs; special empty capsules like HPMC, pullulan, enteric, etc.; complex excipients; phyto-pharmaceuticals; other drugs as approved.	10% of incremental sale value	First 4 years
		8% of incremental sale value	5th year
		6% of incremental sale value	6th year
Category 2	Active pharmaceutical ingredients/key starting materials/drug intermediates.	10% of incremental sale value	First 4 years
		8% of incremental sale value	5th year
		6% of incremental sale value	6th year
Category 3	Repurposed drugs; autoimmune drugs, anti-cancer drugs, anti-diabetic drugs, anti-infective drugs, cardiovascular drugs, psychotropic drugs and anti-retroviral drugs; in vitro diagnostic devices; other drugs as approved; other drugs not manufactured in India.	5% of incremental sale value	First 4 years
		4% of incremental sale value	5th year
		3% of incremental sale value	6th year

- Duration:** The duration of the scheme will be from FY21 to FY29. This will include the period for processing of applications (FY21), optional gestation period of one year (FY22), incentive for 6 years and FY29 for disbursal of incentive for sales of FY28.
- Promotion of employment:** The scheme is expected to generate employment for both skilled and unskilled personnel, estimated at 20,000 direct and 80,000 indirect jobs as a result of growth in the sector.
- Increased investment:** The scheme is expected to bring in investment of INR15,000 crore in the pharmaceutical sector.
- Value addition:** The scheme is expected to promote the production of high-value products in the country and increase the value addition in exports. Total incremental sales of INR 2,94,000 crore and total incremental exports of INR1,96,000 crore are estimated during six years from 2022-23 to 2027-28.

## Sanction of pending IGST refund claims for shipping bills filed up to 31 March 2021

CBIC noticed several pendency in sanctioning of refund claims of Integrated Goods and Services Tax (IGST) due to non-transmission of data from GSTN to ICEGATE systems because of mismatch in returns filed in Form GSTR-1 and GSTR-3B.

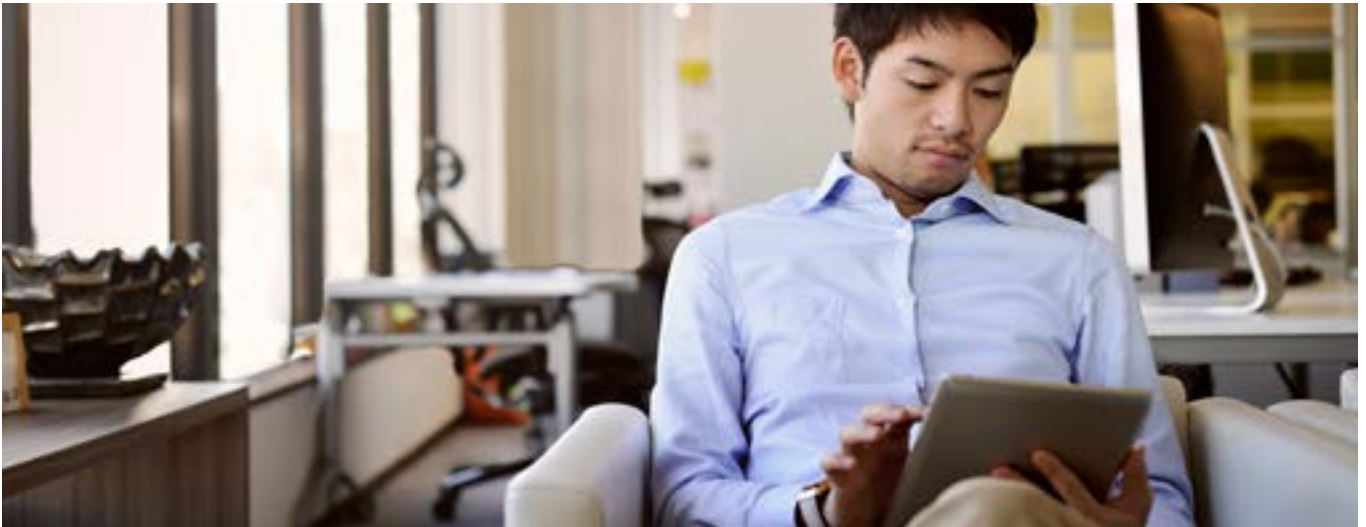
In order to overcome this refund blockage, the CBIC has extended the time limit for sanction of pending IGST refunds for the shipping bills filed during the financial year 2019- 20 and 2020- 21 (i.e. shipping bills filed /to be filed up to 31 March 2021). Further, it has allowed refunds subject

to undertakings/submission of CA certificates by the exporters and post refund audit scrutiny.

The CA certificate should evidence no discrepancy between IGST amount refunded on exports and actual IGST amount paid on export of goods and shall be furnished as under:

Period	Due date
April 2019 to March 2020	31 March 2021
April 2020 to March 2021	30 October 2021





## Extension of alternate mechanism for resolving invoice mismatch errors in shipping bills

The Central Board of Indirect Taxes and Customs (CBIC) had observed that there are numerous shipping bills with invoice mismatches between the GST returns data and customs data that is presented along with the bills. This is resulting in an SB005 error and blocks the Integrated Goods and Services Tax (IGST) refund disbursement, which is otherwise fully automated, except for the refund scroll generation. To address the issue, the CBIC had provided a facility for resolving invoice mismatch errors with officer interface as an alternative measure.

However, it noticed that the quantum of shipping bills pending on account of such errors being committed by the trade have come down significantly, but still, it is occurring in some cases resulting in the holdup of IGST refunds. Therefore, as a measure of trade facilitation, it has been decided to keep the officer interface available permanently to resolve such errors on payment of a specified fee by the exporter.

The exporter may avail the facility of correction of Invoice mismatch errors (error code SB-005) in respect of all past shipping bills, irrespective of their date of filing, by following the procedure as provided. Such facility shall be available subject to payment of INR 1,000/- as a fee towards such rendering of service by customs officers for correlation and verification of the claim **effective from 17 February 2021**.

## Due date for furnishing annual return for FY20 further extended

Pursuant to the recommendations of the GST Council, the CBIC has further extended the due date for furnishing the annual return for the financial year 2019-20 from 28 February 2021 to **31 March 2021**.



## Amendments in IEC related provisions under the Foreign Trade Policy, 2015-2020

The Directorate General of Foreign Trade Policy (DGFT) has recently notified certain amendments in the provisions related to Importer-Exporter Code (IEC) under the Foreign Trade Policy, 2015-2020.



Key changes are as under:

Particulars	Provisions
Online application for IEC	Application process for IEC and updation in IEC is completely online. IEC can be generated by the applicant as per the procedure detailed in the handbook of procedure. The application can be filled online on the DGFT web portal ( <a href="https://www.dgft.gov.in">https://www.dgft.gov.in</a> ).
Updation of changes	An IEC holder has to ensure that details in its IEC are updated electronically every year during April to June
Confirmation of no changes	In cases where there are no changes in IEC details, same also needs to be confirmed online
Deactivation in case of non updation	An IEC shall be deactivated, if it is not updated within the prescribed time. Once deactivated, the IEC may be activated on its successful updation. This would, however, be without prejudice to any other action taken for violation of any other provisions of the FTP
Flagging for scrutiny	An IEC may be also be flagged for scrutiny. IEC holder(s) are required to ensure that any risks flagged by the system is timely addressed, failing which the IEC shall be deactivated.

## CBIC issues standard operating procedure for suspension of GST registrations

The provisions pertaining to registrations under the Goods and Services Tax law were recently amended to provide for immediate suspension of registration of a person on the observance of certain discrepancies/anomalies, which indicate a violation of the provisions of the GST law to safeguard the interest of the revenue.

The amendment provided that registration shall be suspended where a comparison of the returns furnished by a registered person, with the details of outward and inward supplies furnished, show significant differences or anomalies indicating contravention of the provisions of the GST law. The said person shall be intimated in Form GST REG-31, electronically on the common portal or by sending an email communication, highlighting the said differences and

anomalies. Further, the said person shall be required to explain within 30 days as to why his registration should not be cancelled.

In this regard, till the time an independent functionality for Form REG-31 is developed on the portal, the CBIC has issued certain guidelines for implementation of the provision of suspension of registrations as under:

Particulars	Guidelines
Issue of notice/intimation in Form GST REG-17	Notice/intimation shall be made available to the taxpayer on their dashboard on common portal in Form GST REG-17. The taxpayers will be able to view the notice in the <b>“View/Notice and Order”</b> tab after logging in.
Reply to notice to be filed in Form GST REG-18	The reply to the jurisdictional officer against the notice for cancellation of registration sent shall be filed in Form GST REG-18 online through the portal within <b>thirty days</b> from the receipt of notice/intimation.
List of taxpayers to whom notice is issued shall be sent to nodal officers	After the issuance of Form GST REG-31 via email, the list of such taxpayers would be sent to the concerned nodal officers of the CBIC/ states. Also, the system-generated notice can be viewed by the jurisdictional proper officers on their dashboards for suitable actions.
Creation of task on the dashboard of the proper officer	Upon receipt of reply from the said person or on expiry of thirty days (reply period), a task would be created in the dashboard of the concerned proper officer under <b>“suo moto cancellation proceeding”</b> .
Order for dropping proceedings to be issued in Form GST REG-20 or cancellation of registration in Form GST REG-19	Proper officer, post the examination of the response received from the said person, may pass an order either for dropping the proceedings for suspension/cancellation of registration in Form GST REG-20 or cancellation of registration in Form GST REG-19.



Particulars	Guidelines
Change in GSTIN status	Based on the action taken by the proper officer, the GSTIN status would be changed to <b>“Active”</b> or <b>“Cancelled suo moto”</b> as the case maybe.
Revocation of suspension	It is advised that in case the proper officer is prima-facie satisfied with the reply of the said person, he may revoke the suspension by passing an order in Form GST REG-20. Post such revocation, if need be, the proper officer can continue with the detailed verification of the documents and recovery of short payment of tax, if any.
Initiation of cancellation proceedings in Form GST REG-17	After detailed verification or otherwise, if the proper officer finds that the registration of the said person is liable for cancellation, he can again initiate the proceeding of cancellation of registration by issuing notice in Form GST REG-17.

## DGFT proposes to introduce online e-Certificate Management System for Imports

As a part of its IT revamp, the Directorate General of Foreign Trade Policy (DFGT) has proposed to introduce new modules (online e-Certificate Management System) for processing certain applications **effective from 22 February 2021 onwards**.

The following types of applications are required to be submitted online through the importer/exporter’s dashboard on

the DGFT website (<https://dgft.gov.in> Certificate Management System):

I Card (as under ANF-2B)	Free Sale and Commerce Certificate (as under ANF-2H & 2I)
End-User Certificate (as under ANF-2J)	Status Holder Certificate (as under ANF-3C)

All such certificates will be issued electronically with a QR code and a Unique Document Identification Number (UDIN) for electronic verification. Any submission, communication, clarification, correction as well as approval of submitted applications would be electronic. However, attested paper copies of the certificates may be requested from the jurisdictional DGFT RA concerned when required.

## CBIC issues guidelines regarding procedure to be followed during search operation

As per the GST provisions, the proper officer in case of specified reason may authorise any officer to inspect any places of business of the taxable person or such other persons. In this regard, the government has issued instructions/guidelines related to authorisation of search warrant, presence of independent witnesses, recording of details in panchnama, custody of documents during search, etc.

### Key guidelines issued

- **Valid reasons for search:** The officer issuing authorisation for search shall have valid and justifiable reasons for authorising a search.
- **Search warrant:** The premises of a person cannot be searched on the authority of a search warrant issued for the premises of some other person. In case of search of a residence, a lady officer to be part of the search team.
- **Witnesses during search:** The search shall be made in the presence of two or more independent witnesses, who would preferably be respectable inhabitants of the locality, and in their absence, the inhabitants of any other locality.
- **Personal search:** The officers conducting the search shall first identify themselves by showing their identity cards to the person in-charge of the premises. Also, before the start and after the conclusion of search, the officers as well as the independent witnesses shall offer their personal search.
- **Search authorisation:** The search authorisation shall be executed before the start of the search, which is to be showed to the person in charge of the premises to be searched. Signature of person in charge of the premise and witnesses with date and time to be obtained on the body of the search authorisation.
- **Panchnama:** A panchnama containing truthful account of the proceedings of the search to be necessarily made with a list of documents/goods/things recovered and should include such details as mentioned.
- **Documents seized:** The person from whose custody any documents are seized may be allowed to make copies thereof or take extracts therefrom for which he/she may be provided a suitable time and place to take such copies or extract therefrom.



## CBIC issues clarification on applicability of dynamic QR code

CBIC had notified that from 1 December 2020, the B2C (registered person to customer) invoices issued by taxpayers having aggregate turnover more than INR 500 crore shall have a dynamic quick response (QR) code. Further, based on the recommendations of the GST Council, the CBIC had waived the penalty payable for

non-implementation of QR code from 1 December 2020 to 31 March 2021, subject to the condition that the said person complies with the aforesaid provisions from 1 April 2021.

In this regard, the CBIC has now issued certain clarifications on applicability of QR code.



### Key aspects clarified:

Particulars	Guidelines/clarifications
Applicability	QR code shall be applicable to a tax invoice issued to an unregistered person by a registered person (B2C invoice) whose annual aggregate turnover exceeds INR 500 crore in any of the financial years from 2017-18 onwards.
Non-applicability	QR code is not applicable to an invoice issued in following cases:  Where the supplier of taxable service is: <ul style="list-style-type: none"> <li>• An insurer or a banking company or a financial institution, including a non-banking financial company;</li> <li>• A goods transport agency supplying services in relation to transportation of goods by road in a goods carriage;</li> <li>• Supplying passenger transportation service;</li> <li>• Supplying services by way of admission to exhibition of cinematograph in films in multiplex screens</li> </ul> OIDAR supplies made by any registered person to an unregistered person
Parameters/details required in QR Code	QR code shall contain the following information: <ul style="list-style-type: none"> <li>• Supplier GSTIN number</li> <li>• Supplier UPI ID</li> <li>• Payee's Bank a/c number and IFSC</li> <li>• Invoice number &amp; invoice date,</li> <li>• Total invoice value and</li> <li>• GST amount along with break up, i.e. CGST, SGST, IGST, CESS, etc.</li> <li>• Should be able to be scanned for making digital payment</li> </ul>
Cross-referencing of payment, made without use of dynamic QR code	In cases where the supplier, has digitally displayed the dynamic QR code and the customer pays for the invoice using any mode like UPI, credit/debit card or online banking or cash or combination of various modes of payment, with or without using dynamic QR code, the supplier can provide a cross reference of payment (transaction ID, date and time, mode of payment) on the invoice.  In case of cash payment without using dynamic QR code, the supplier can provide cross reference of the amount paid in cash along with date of payment on the invoice.

Particulars	Guidelines/clarifications
Generation/printing of dynamic QR code on B2C prepaid invoices	<p>If cross-reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of dynamic QR code.</p> <p>In cases other than pre-paid supply i.e. where payment is made after generation/issuance of invoice, the supplier shall provide dynamic QR code on the invoice.</p>
Suppliers using e-commerce portal	<p>In case, the supplier is making supply through the e-commerce portal or application, and the said supplier gives cross-references of the payment received in respect of the said supply on the invoice, then such invoices would be deemed to have complied with the requirements of dynamic QR code.</p> <p>In cases other than pre-paid supply, i.e. where payment is made after generation/issuance of invoice, the supplier shall provide dynamic QR code on the invoice.</p>



## GSTN issues advisory on reconciliation statement to be filed in Form GSTR-9C

The reconciliation statement to be filed in Form GSTR-9C requires the tax rate wise declaration of transactions for the concerned financial year. In this regard, the Goods and Services Tax Network (GSTN) has issued an advisory on

reconciliation statement to be filed in Form GSTR-9C.

As per the advisory, tax amount pertaining to tax rates 1%, 1.5% and 7.5% in Section III (table 9 and 11) and

Section V of the Form GSTR-9C may be made in row/under label others of the said tables, wherever applicable.

# 2a

## Key judicial pronouncements



### SC directs the revenue to file affidavit on technical glitches faced by taxpayer while claiming transitional credits

#### Facts of the case

The revenue had filed a special leave petition (SLP) against the order of Punjab & Haryana High Court (HC) on assertions made by a taxpayer<sup>1</sup> that it was facing technical glitches and problems while filing and uploading Form GST TRAN-01 on the GST portal.

#### Supreme Court (SC) order

The SC directed that the revenue shall file an affidavit within four weeks meeting the assertion that due to technical glitches and problems faced, the taxpayer was not able to fill and upload Form GST TRAN-01 on the GST portal.

Further, the SC observed that the factual assertions made in the writ petitions in this regard will be dealt with concretely and expressly and if required, by taking the help of experts.



#### Our comments

The technical glitches on the GST portal and issues in filling/uploading data have been major reasons due to which many taxpayers have been unable to avail transitional credits under the GST. Considering that various matters are pending at the high court level on the said issue, this is a welcome move by the SC and shall hopefully help resolve the matter.

1. National Engineering Co.

## SC issues notice against SLP filed challenging Madras HC's decision denying refund of input services under IDS

### Facts of the case

- The petitioner<sup>2</sup> had filed writ before the Madras High Court (HC) challenging the constitutional validity of the provisions relating to refund in case of inverted duty structure (IDS) under the GST law to the extent it allows refund of input tax credit (ITC) of inputs and not input services.
- The Madras HC had rejected the petitioner's contentions upholding the constitutional validity and held that the relevant provisions are in conformity with the parent statute.

The petitioner had filed an SLP challenging the said order of the Madras HC before the Supreme Court.

### Supreme Court's interim order

The SC has accepted the SLP filed by the petitioner and issued notice to the revenue.

Further directed that no coercive steps shall be taken.



### Our comments

Interestingly, the Gujarat HC in the case of M/s VKC Footsteps India Private Limited had allowed refund of ITC in respect of input services under the IDS. It had held that the relevant provisions under the GST law are contrary and ultra vires and need to be read-down to the extent it denies refund of ITC on input services.

Considering the contrary judgments, the verdict of apex court will only enable the matter to attain finality.

## Gujarat HC issues notice to CBIC regarding guidelines to be followed during search under GST

### Facts of the case

- The Gujarat High Court (HC) in a batch of petitions<sup>3</sup> filed before it against undue coercion exercised by the tax officials has proposed to pass an interim order and direct the CBIC as well as the Chief Commissioner of Central/State Tax of the State of Gujarat to issue certain guidelines to revenue regarding recovery during search under the GST law by way of suitable circular/instructions.
- Guidelines proposed by the Gujarat HC are as under:
  - **No recovery at the time of search:** No recovery in any mode by cheque, cash, e-payment or adjustment of input tax credit should be made at the time of search/inspection proceedings under any circumstances.
  - **Voluntary payment:** Even if the assessee comes forward to make voluntary payment by filing Form DRC-03, the assessee should be asked/advised to file such Form

DRC-03 on the next day after the end of search proceedings and after the officers of the visiting team have left the premises of the assessee.

- **Complaint/grievance filing facility:** The facility of filing complaint/grievance after the end of search proceedings should be made available to the assessee, if the assessee was forced to make payment in any mode during the pendency of the search proceedings.
- **Strict actions against officers:** If complaint/grievance is filed by assessee and the officer is found to have acted in defiance of the afore-stated directions, then strict disciplinary action should be initiated against the concerned officer.

### Gujarat HC interim order:

- On a further hearing the Gujarat HC has put CBIC to notice as to why the guidelines as stated above should not be issued by way of circular/instructions.
- Further, it stated that it does not intend to discourage or lower down the morale of all the officers. It only wants to bring it to their notice that they should act and perform their duties within the four corners of law. They should not take law in their hands.
- Further stated that it shall be open for the officers to conduct the search proceedings but strictly in accordance with law.

2. TVL. Essa Garments Private Limited  
3. M/s Bhumi Associate

# CBIC is not bound to reply to petitioner's representation and cannot give legal opinion: Delhi HC

## Summary

The Delhi High Court (HC) pursuant to a writ filed before it has held that there is no mandate in law on the CBIC to reply to each and every representation made to it. Further, clarified that if in doubt as to the legal position, instead of seeking legal counsel opinion the petitioner cannot turn to the CBIC to give legal opinion.

## Facts of the case

- The petitioner<sup>4</sup> prayed for a direction to the CBIC, to reply to the representation/communication through which petitioner sought clarification<sup>5</sup> on issues arising out of interception/detention and seizure/confiscation proceedings<sup>6</sup> by the Karnataka authorities.
- The Sales Tax Officer, Delhi had cancelled the petitioner's registration. Therefore, a similar direction is also sought to the officer to take up the representation of the petitioner and pass a speaking order deciding the same within a reasonable time.

## Delhi HC's observations and ruling<sup>7</sup>

- **No mandate under law:** The HC observed that there is no law mandate provided under the law on the CBIC to reply to each and every representation made/communication sent to it.
- **Seeks legal opinion:** The HC observed that the communication sent by the petitioner is in the nature of seeking legal opinion from CBIC.
- **No obligation:** There is no such obligation on the CBIC to provide clarification. Further, it observed that the counsel for the petitioner has not cited any authority holding so, to advise the petitioner on, the authority under which goods in movement are intercepted, detained and/or procedure to be adopted thereafter and the scope of verification of documents etc.
- **Seek legal opinion from counsel/advisors:** The HC stated that if petitioner is in doubt as to the legal position, instead of seeking legal opinion from its advisors/advocates, it cannot turn to the CBIC to give legal opinion.
- **Direction to Sales Tax Officer:** The HC disposed the petition and further directed the officer to decide the application for revocation of registration filed by the petitioner<sup>8</sup> within four weeks.



## Our comments

In the present case, Delhi HC has stated that CBIC is not legally bound to address the representations made by the business concerns and has advised the petitioner to obtain legal opinion from its advisor/advocate. Interestingly, recently the Madras HC has directed the CBIC to decide representation made by Uber India on taxability of motorcycle transportation.

It is a common practice amongst the businesses to file representations before the government to obtain clarification in respect of certain tax matters or to obtain exemptions/benefits. Even though the present decision states that CBIC is not legally bound to address representation, in common parlance, it has been observed that CBIC has always been proactive in addressing to various representations made by business concerns.

4. Maa Laxmi Associates

5. w.r.t. Section 168 of the CGST Act, 2017

6. U/s 129 and 130 of the CGST Act, 2017

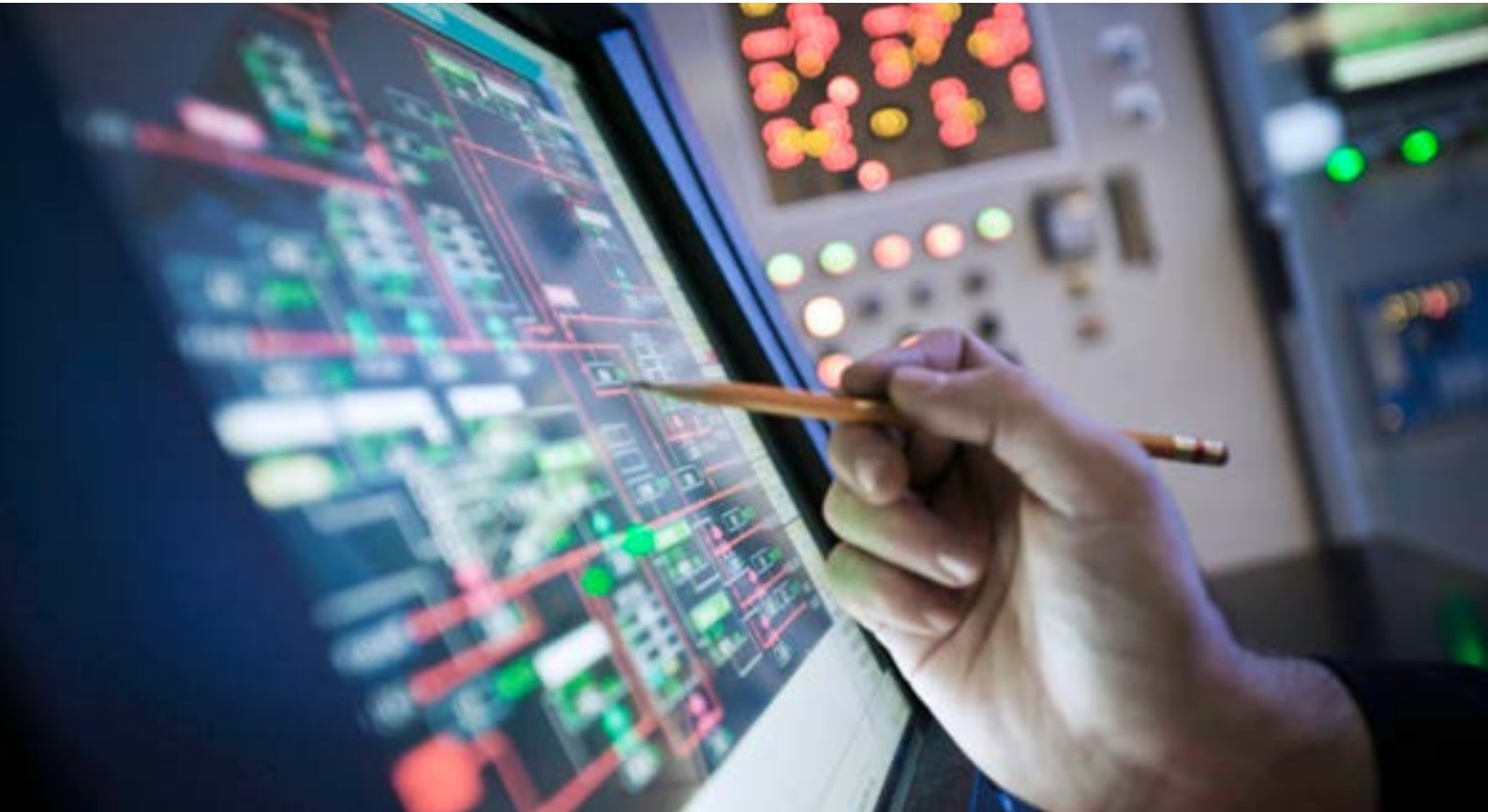
7. Order dated 11 February 2021 against W.P.(C) 1. No.1867/2021

8. U/s 30 of the CGST Act, 2017



# 2b

## Decoding advance rulings



### Input tax credit on demo vehicles disallowed: Madhya Pradesh AAR

#### Summary

The Madhya Pradesh Authority for Advance Ruling (AAR) in a recent case has held that even though the demo vehicles are used for the furtherance of business of the applicant they are not eligible for input tax credit (ITC). The AAR stated that the demo vehicles do not get covered under the exceptions provided under GST law i.e. for further supply or transportation of passengers or for imparting training for driving. Therefore, it disallowed the ITC on demo vehicles.

#### Facts of the case

- The applicant<sup>9</sup> is an authorised dealer of KIA for sales and services of vehicles.
- It purchases vehicles from the supplier against tax invoices after paying tax and capitalises the demo vehicles in the books of accounts. It is of the view that the demo vehicles which are used in the course or furtherance of business may therefore be entitled for availing ITC.
- It had sought an advance ruling before the Madhya Pradesh AAR to understand whether ITC on motor vehicles purchased for demo purpose can be availed as the same shall be capitalised in books.

#### Madhya Pradesh AAR's observations and ruling<sup>10</sup>

- **ITC debarred:** The relevant provisions<sup>11</sup> under the GST law debar the applicant from taking ITC on demo vehicles, except in certain situations.
- **ITC in respect of motor vehicles:** Under the GST law, ITC shall be available in respect of motor vehicles which are further supplied as such or which are used for transportation of passengers or which are used for imparting training on driving of such vehicles.
- **No further supply:** By subsequent sale of demo vehicle after one or two year, it cannot be said that the demo vehicle is for further supply.

9. M/s Khatwani Sales and Services LLP  
10. MP AAR Order No. 13/2020 dated 23 July 2020  
11. Section 17(5)(a) of the CGST Act, 2017

- **Sale of used or second-hand vehicle:** The sale in subsequent year of demo vehicle on which depreciation has been charged is to be treated as a sale of used/second hand vehicle and not a sale of a new vehicle.
- **Charging of depreciation cannot affect ITC eligibility:** The AAR has stated that even if the applicant is not charging depreciation on the demo vehicle that will not affect the applicability of the relevant provisions under the GST law according to which it is not eligible for ITC on demo vehicles.
- **ITC not available:** Even though the demo vehicles are for furtherance of business of the applicant even then they are not eligible for ITC as they do not get covered under the exceptions provided under GST law, i.e. for further supply or for transportation of passengers or for imparting training for driving.



### Our comments

The availability of input tax credit on demo vehicles has been a matter of extensive litigation since its inception. In a similar matter, the Maharashtra AAR<sup>12</sup> and the Kerala AAR<sup>13</sup> had allowed the ITC on demo vehicles. Whereas, contrary to this, interestingly, the ITC had been disallowed by the Haryana AAR in the case of M/s BMW India Pvt. Ltd.

The demonstration of the vehicle is a common business practice and an integral part of the marketing of any vehicle, hence, it very well qualifies to be input. In such a case, in the spirit of GST, tax credits should have been allowed.

A due clarification from the government on this issue will surely help mitigate future litigation on this account.



12. M/s Chowgule Industries Private Limited  
13. M/s A M Motors



# Key National Anti-profiteering Authority orders



## Responsibility to pass on the benefit cannot be shifted to any other person, including the franchisor: NAA

### Summary

The National Anti-profiteering Authority (NAA) has in the case of a famous fast-food restaurant franchisee upheld profiteering on the ground that the respondent had increased the base prices of different items to make up for the denial of input tax credit (ITC) after the GST rate reduction.

### Facts of the case

- An application was filed alleging profiteering in respect of restaurant service supplied by the respondent<sup>14</sup> despite reduction in the GST rate from 18% to 5% effective from 15

November 2017 by way of not making a commensurate reduction in price<sup>15</sup>.

- The case was further referred to the Directorate General of Anti-Profiteering (DGAP). It observed that the increase in base prices was more than 9.64% (i.e. by more than what was required to offset the impact of denial of ITC) in respect of 115 items sold and computed profiteering to the extent of INR 6.86 lakh.

### NAA's observations and ruling<sup>16</sup>

- **Increase in base prices of 133 items:** The respondent had increased

base prices in respect of 133 items (97.08% of 137 items supplied by him). The lower rate of 5% GST has been charged on increased base prices. Therefore, the cum-tax price paid by the consumers was not reduced commensurately for all items supplied despite reduction in the GST rate.

- **Deliberate intention to withhold data:** The respondent has not submitted data requested by DGAP with malafide intentions. Therefore, such deliberate action to withhold data cannot be allowed to go scot-free and hence this is a fit case for computation of profiteered amount

14. M/s Subwest Restaurant LLP (franchise of M/s Subway Systems India Pvt. Ltd.)

15. In terms of Section 171 of the CGST Act, 2017

16. NAA Order No. 99/2020 dated 11 December 2020

based on the available records i.e. based on product-wise menu price list of pre- and post-rate reduction period.

- **Increased base prices to make up for denial of ITC:** The analysis of the details of item-wise outward taxable supplies made revealed that the respondent had increased the base prices of different items to make up for the denial of ITC after the GST rate reduction.
- **Responsibility to pass on benefit cannot be shifted:** It was the respondent who had been availing ITC and not the franchisor. Hence, it is the responsibility of the respondent to comply with the anti-profiteering provisions and the same could not be

shifted to any other person, including the franchisor.

- **Anti-profiteering upheld:** The respondent had increased the base prices by more than 9.64% i.e. by more than what was required to offset the impact of denial of ITC in respect of 115 items sold during the period. Thus, it is apparent that the respondent has resorted to profiteering as the commensurate benefit of reduction in tax rate from 18% to 5% has not been passed on by him to the extent of INR 6.86 lakh.



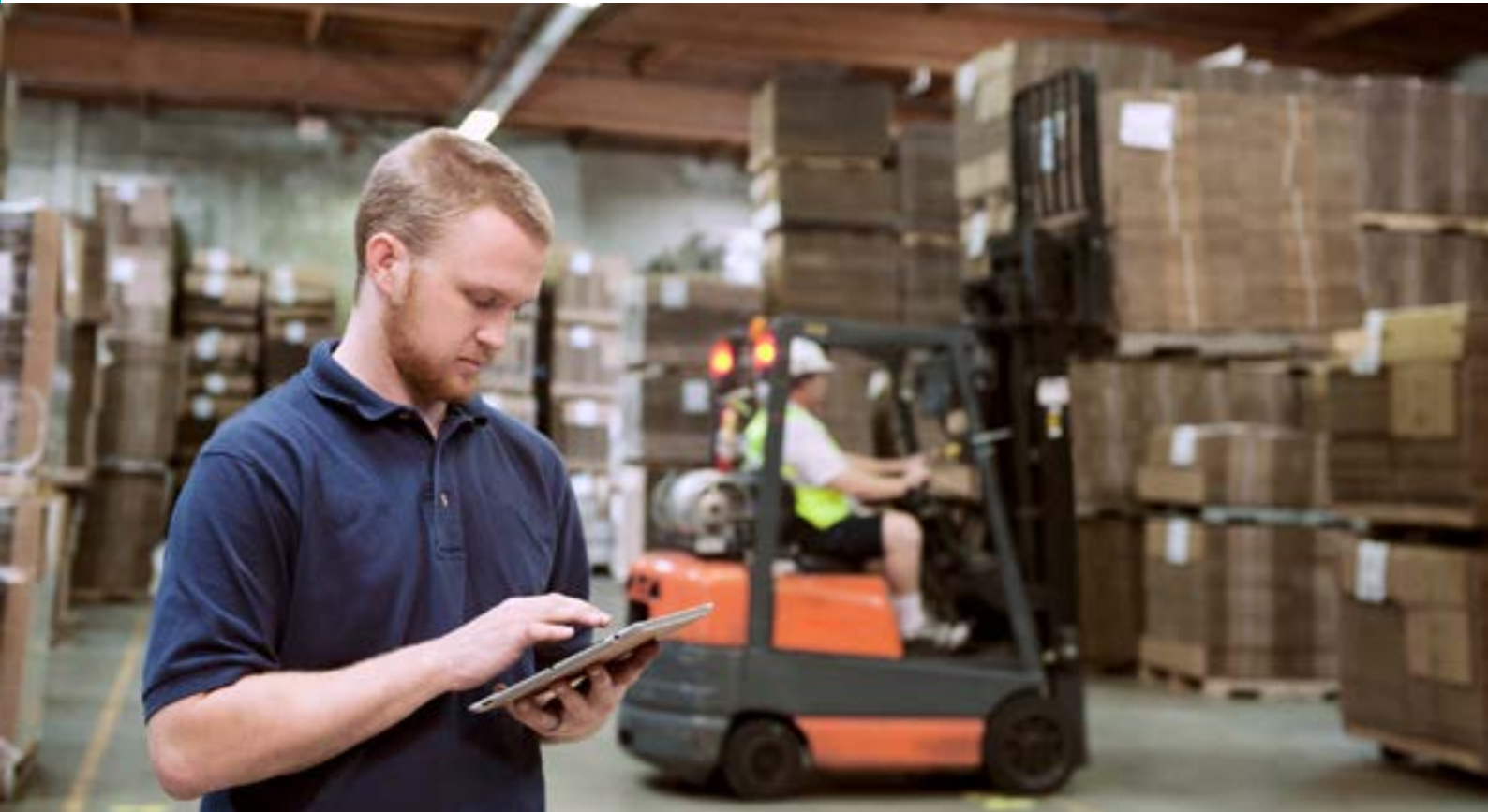
#### Our comments

The GST law does not prescribe a mechanism/methodology to determine the quantum of benefit to be passed on. Therefore, the non-availability of the prescribed mechanism is one of the major reasons for non-compliance with anti-profiteering provisions. Various matters pertaining to the constitutionality of the anti-profiteering provisions are pending with the Delhi High Court. The verdict of HC in this regard is still awaited.



# 3

## Experts' column



### Incentives under Foreign Trade Policy – A stalemate

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#### Introduction

At present, the landscape of incentives (other than refunds/remission of duties) received by the Indian exporters (of both goods and services) is hazy -- thanks to the expiry of the Foreign Trade Policy 2015-20 and the introduction of Remission of Duties and Taxes on Export Products Scheme (RoDTEP), which came into effect from 1 January 2021. Over a period of time, many changes have been made in the policy

but the incentives of exporters were not affected.

In the ensuing paragraphs, we will discuss the liquidity crunch due to the fact that RoDTEP rates have not been announced and the Merchandise Export from India Scheme (MEIS) and Service Export from India Scheme (SEIS) scrips are not being issued.

#### Incentivising the exports

Exports play a very important role in any economy as they are the key indicator of economic development and the key contributor to ensuring the balance of payments. So, any economic policies and reforms undertaken by the government should focus on incentivising these. It gives Indian products and services a competitive edge in the global markets.

The custom duties incurred by the exporters are currently reimbursed through duty drawback. The Goods and Service Tax (GST) incurred on inputs purchased locally and imports used for the manufacture of exported goods can be availed as a refund under the GST Act. However, certain taxes are still not refunded currently and are forming part of the cost of exported products/services.

#### Background

The Agreement on Subsidies and Countervailing Measures Agreement is signed by various member countries of the World Trade Organization (WTO). The objective of the agreement is to impose multilateral disciplines on subsidies that distort international trade. As the name suggests, the agreement deals with procedures



regarding subsidies and also the remedies available to a country to offset the loss caused by the subsidised imports.

Para 3.1 of the agreement prohibits grant of following subsidies by any member country:

- Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance;
- Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

However, Article 27 of the agreement exempts the applicability of the above provisions to the developing countries with per capita gross national product (GNP) up to USD 1000 per annum. Since India has crossed the per capita GNP of USD 1000 per annum, the USA argued that India cannot provide subsidies on export performances. The WTO on hearing the case has directed India to honour the agreement and withdraw the benefits granted on export performances, such as MEIS.

### MEIS and SEIS

MEIS and SEIS are the export incentives granted by the Government of India under Chapter 3 of the Foreign Trade Policy 2015-20. Under these schemes, the reward shall be eligible on exports of notified goods/services to notified countries as mentioned in the appendix

to the FTP. The incentive is offered in the form of transferable scrips, which can be either utilised for payment of basic customs duty and additional customs duty on import of inputs or goods, including capital goods or can be sold in the market for cash to potential buyers. The value of incentive ranges between 3% to 7% for the notified goods/services and is calculated on the realised free on board value of goods/foreign exchange earned on services. Though the WTO agreement restricts the incentives on the export of goods, the government wants to revisit both MEIS and SEIS with a new set of scheme and eligibility. However, currently, the MEIS scrips have not been issued since April 2020. Further, there has been a cap of INR 2 crore per importer-exporter code fixed as the maximum MEIS eligibility for the period from September to December 2020. This has really hurt the cash flow and working capital of the exporters. Similarly, the SEIS scrips are also not being sanctioned due to a lack of funds. The setback in the economy due to the COVID-19 pandemic has added to the woes of the exporters.

### RoDTEP

RoDTEP is a WTO-compliant export promotion scheme, under which the exporters will be reimbursed with the central, state and local levies incurred on the manufacture of an exported product that were not reimbursed earlier, such as electricity duty, mandi tax, and stamp duty. This

reimbursement would ensure that the cost of exports does not include any tax components. The RoDTEP scheme was approved by the cabinet on 13 March 2020 and is effective since 1 January 2021. However, the rates under the scheme are yet to be announced. Hence, this has created uncertainty in the export market and the price of products could not be fixed.

### Conclusion

While MEIS and SEIS schemes are additional incentives for the export of goods and services, RoDTEP will only pay back the exporters the tax cost on goods that is not currently reimbursed under the other laws. Since the scheme only reimburses the tax cost, certain sectors such as footwear and textiles could end up with less cash flow, thereby leading to less competitiveness in the international market.

As the incentive rates are yet to be notified, the government must consider the current global situation and factors surrounding the export market to provide a competitive advantage for Indian exporters. The government is in the process of collating the data from the trade to fix the RoDTEP rates. However, basis the sample analysis out of few industries, we understand that the non-reimbursable taxes range between 1% and 2%, and in some industries, these are even less than 1%. Therefore, the government should think of matching the existing MEIS rates, or at least ensuring that the RoDTEP rates are not very less compared to MEIS. This can be announced with a sunset clause also, if needed. This will go a long way in helping goods manufactured in India to compete with other countries. As far as services are concerned, the government should continue to provide the existing SEIS benefit as it is not under the WTO scanner.

(Krishnan Ramamurthy contributed to this article)

# 4

## Issues on your mind



### What are the guidelines issued by DGFT in regard to cyber fraud complaints?

The Indian exporters are becoming victims of email spoofing/phishing cyber frauds wherein the exporters are neither in possession of the exported goods nor they receive payment. In this regard, the DGFT has informed that such problems can be largely resolved by implementing security protocols such as Sender Policy Framework (SPF), Domain Keys Identified Mail (DKIM) and Domain-Based Message Authentication, Reporting and Conformance (DMARC). SPF, DKIM and DMARC are protocols for standard email signature, which meet various safety issues and all three must be implemented to ensure the best possible deliverability. All three prove the sender

is legitimate, that their identity has not been compromised and that they're not sending email on the behalf of someone else.

The DGFT has also suggested that better password practices be followed on both the sender's and the receiver's email IDs and to avoid this completely, exporters may like to confirm bank details by another channel such as a secure voice line<sup>17</sup>.

### What is fixed sum method under the quarterly returns and monthly payment of tax (QRMP) scheme? How is payment to be made under the said scheme?

Effective 1 January 2021, an option to make payment by fixed sum method has been provided to taxpayers under

the QRMP scheme for making payment of tax for the first two months of each quarter .

### Key features of the method are provided below:

- A pre-filled challan in Form GST PMT-06 for an amount equal to 35% 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 shall be generated<sup>18</sup>.

17. DGFT Trade No. 36/2020-21 dated 4 January 2021

18. As per advisory issued by GSTN dated 3 February 2021

- For generating the challan, the taxpayers need to select the Reason for **Challan>Monthly Payment for Quarterly Return> 35% Challan**
- For the months of January and February 2021, in the last quarter of FY21, the auto-populated challan generated under 35% challan would contain 100% of the tax liability discharged from electronic cash ledger for December 2020 (and not 35%).
- The taxpayers are not required to deposit any amount for the first two months of a quarter, if:
  - Balance in electronic cash ledger/electronic credit ledger is sufficient for tax due for the first/second month of the quarter; or
  - There is NIL tax liability



### How to change the filing frequency under the QRMP scheme?

To change the filing frequency on the portal the taxpayers need to navigate: **Services > Returns > Opt-in for Quarterly Return**. The filing frequency either monthly or quarterly can be selected as per timelines mentioned in the below table<sup>19</sup>:

Effective quarter	Period during which filing frequency can be selected	Last date for selecting the filing frequency
January–February– March	1 November to 31 January	31 January
April – May – June	1 February to 30 April	30 April
July – August – September	1 May to 31 July	31 July
October – November –December	1 August to 31 October	31 October

### How to register digital signature certificate (DSC) on GST portal?

The GSTN has issued a user guide providing the detailed procedure to be followed by the taxpayers for registration of the DSC on the GST portal. DSC registration is PAN-based and only Class 2 and Class 3 DSC are accepted at the GST portal.

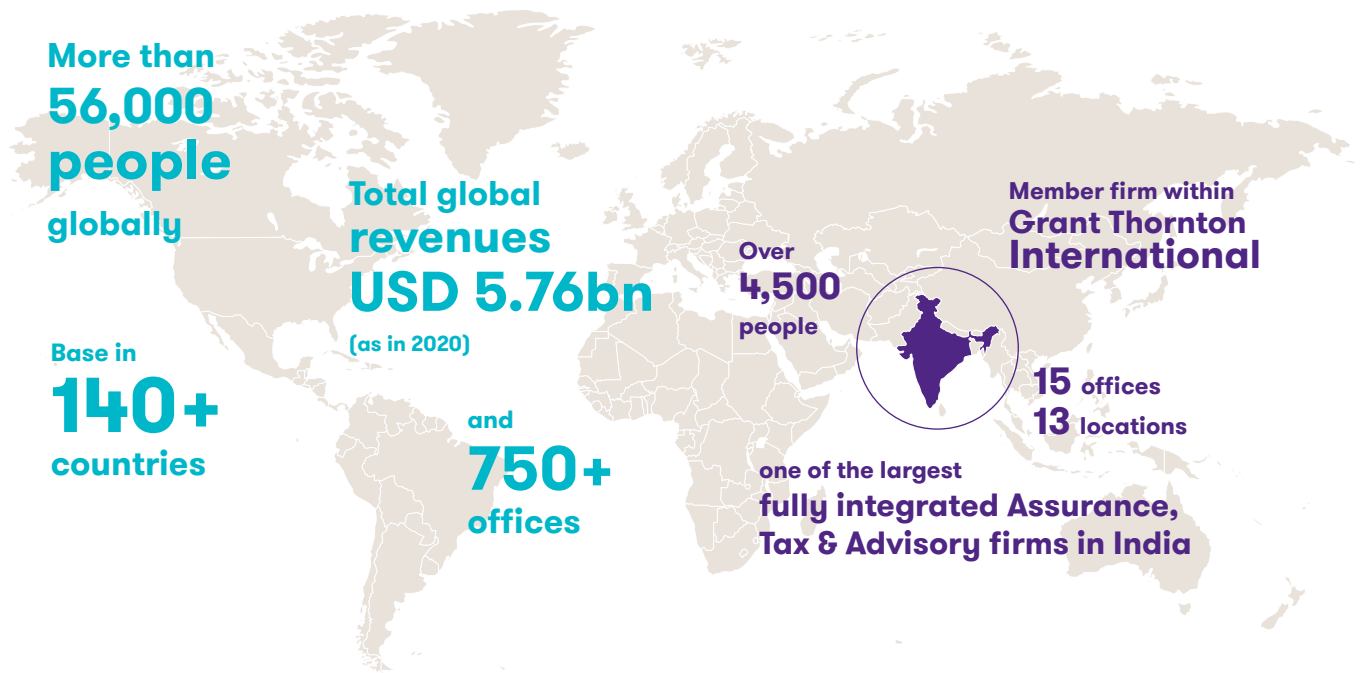
Steps to be followed for DSC registration:

- **Install emSigner:** The taxpayers need to download and install the emSigner utility from the register DSC page on the GST portal.
- **New Registration:** Click on **Register Now** > Select the **Temporary Reference Number (TRN)** option and click the **Proceed** button. The taxpayers need to enter the OTP received on the mobile number or email ID. After the OTP is accepted the taxpayers need to click on **Services > User Services > Register/Update DSC**.
- **Existing registration:** Login into the GST portal and go to **My Profile Link>Register/DSC link**. The Register Digital Signature Certificate page is

displayed. In the PAN of Authorised Signatory drop-down list, select the PAN of the authorised signatory that needs to be registered. The taxpayers need to select **I have downloaded and installed the Signer** checkbox>**Proceed**>Select the certificate>**Sign**. Post this a message will be displayed **Your DSC has been successfully registered**.

<sup>19</sup>. As per FAQs on QRMP Scheme issued by GSTN dated 18 February 2021

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