

GST Compendium

A monthly guide

February 2021



Editor's Note

The GST revenue collections for January 2021 have touched an all-time high of nearly INR 1.20 lakh crore, which is 8% higher than the figure in the same month last year. This is a positive sign and signals an improvement in the business activity.

Finance Minister Nirmala Sitharaman presented the first Digital Union Budget 2021-22 on 1 February 2021 amidst the pandemic and high fiscal deficit. The Budget has largely maintained a status quo on the tax rates, providing a big relief to the industry and households.

The key highlights from an indirect tax perspective include automatic expiry of all new condition-based customs exemption notification on 31 March after two years from the date of exemption; removal of the mandatory requirement of GST Audit by professionals and replacing it with self-certification process; and mandatory requirement of earning in convertible foreign exchange to claim export benefits. Further, with the proposal to remove more than 400 exemptions and implementation of distortion-free revised custom duty structure from 1 October 2021, the customs duty regime is set for an overhaul.

On the judicial front, the Supreme Court has dismissed the special leave petition (SLP) filed by the Revenue against an order passed by the Delhi High Court allowing the reopening of the portal to enable the applicant to claim transitional credits. The time prescribed for claiming transitional credits under the GST has been a matter of dispute and litigation since its implementation and needs to be addressed on priority.

In another important ruling, the Gujarat Authorities for Advance Ruling (AAR) has held that the GST is applicable on the recovery of notice pay from employees leaving the company without completing the notice period as per the terms of the appointment letter. The ruling is in contrast with the Madras High Court judgment under the erstwhile Service Tax regime. The Madras HC had held that in case of notice pay recovery, the employer cannot be said to have rendered any service per se much less a taxable service. Further, the court had observed that the employer has merely facilitated the exit of the employee upon imposition of a cost on him for the sudden exit. Even though the advance rulings are applicable only to the applicant, this ruling by Gujarat AAR has certainly sparked controversy. It would be good if the government clarifies its position on the subject.

In this edition, we have shared our perspective on the proposal to remove the mandatory requirement of GST Audit under the Union Budget 2021.

We hope you will find this edition informative and interesting.

Vikas Vasal

National Managing Partner, Tax





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01. Important amendments/updates



Key indirect tax proposals announced in the Union Budget

Finance Minister Nirmala Sitharaman presented the first Digital Union Budget 2021 on 1 February 2021. Highlights of the key indirect tax proposals are as under:

A. GST

- Input tax credit (ITC) cannot be availed unless reported by the supplier of goods and services as the supplies in the GST returns
- Mandatory requirement of GST Audit has been dispensed and replaced with a self-certification process
- Retrospective amendment (effective from 1 July 2017) to clarify that the interest to be charged on a net basis
- Mandatory pre-deposit of 25% penalty before filing an appeal against the

order passed for the seizure of goods in transit

- Seizure and confiscation of goods in transit to be a separate proceeding from the recovery of tax
- Provisional attachment of assets to protect revenue would remain valid even after one year from the date of the order
- Supply of goods or services to SEZ developer/unit shall be a zero-rated supply only when the said supply is for authorised operations
- Earning in convertible foreign exchange is a mandatory requirement to claim export benefits
- Only notified class of taxpayers or notified class of goods or services

eligible for zero rated supplies on payment of integrated tax (IGST)

B. Customs

- Any new condition-based custom duty exemption notification to automatically expire on **31 March** on completion of two years from the date of exemption
- Grant of power to Commissioner (Appeals) to issue summons and order seizure of goods
- Investigation related to evasion of customs duties has to be completed within two years; it could be extended by one more year
- Goods attempted to be exported for claiming wrongful export benefits would be liable to be seized

- Fraudulent credit availed on the exported goods would be liable to a penalty equal to five times of the refund amount
- Common electronic portal proposed to set up to facilitate registration, filing bill of entries, shipping bill, amend

the filed documents by the customs authorities, etc.

- Procedural changes to anti-dumping and countervailing duty

C. Other proposal

Withdrawal of benefit to procure goods

under Form C for the goods not specified under Central Sales Tax Act (such as mining, for generation/distribution of electricity)

FAQs on Aadhaar-based authentication for GST registration

The Goods and Services Tax Network (GSTN) has made the functionality for Aadhaar authentication and e-KYC (where Aadhaar is not available) available on the GST portal from 6 January 2021 for the existing taxpayers¹.

The government has also issued frequently asked questions (FAQs) in relation to Aadhaar authentication for the existing taxpayers (regular and composition)².

Key aspects clarified

- **Mandatory Aadhaar authentication requirement:** It is not mandatory for every authorised signatory, promoter or partner to get Aadhaar authenticated for a new GST registration. The Aadhaar authentication is based on the constitution of business (COB), e.g. in the case of a company, one director and primary authorised signatory (PAS) would be required to undergo Aadhaar authentication.
- **Taxpayers excluded from Aadhaar authentication:** Aadhaar authentication is not required for the following types of the constitution of businesses:

- Government department
- Public sector undertaking
- Local authority
- Statutory body

- **Aadhaar authentication for the existing taxpayer:** For existing taxpayers, a pop-up message window is displayed when they login to state that Aadhaar authentication facility is available and whether they would you like to authenticate. The taxpayer can click on Yes option for getting Aadhaar authentication done.

- **Aadhaar authentication link:** Once the taxpayer clicks on the send Aadhaar authentication link, an authentication link is shared on GST registered mobile number and e-mail IDs of the promoters/partners and authorised signatories. This link will be valid for 15 days only. If the link gets expired, then the taxpayer can send the link again.

- **Reminder for Aadhaar authentication:** Once the Aadhaar authentication link has been sent, no pop-up message would appear on the screen on logging in to the GST portal. However, until the authentication is

completed, the taxpayer will receive three email reminders for Aadhaar authentication: the 5th, 10th and 15th day.

- **Documents required for KYC:** The taxpayer can select any of the following documents for e-KYC (The document type should be PDF or JPEG and maximum size should be 2 MB):
 - Aadhaar enrolment number
 - Passport
 - EPIC (Voter ID Card)
 - KYC Form
 - Certificate issued by the competent authority
 - Others
- **Rejection of e-KYC by tax official:** If the tax official rejects the e-KYC documents uploaded by the taxpayer, then the taxpayer will again get the same pop-up on logging in to the GST portal from the same day when the tax official rejected the documents.

Liberalised authorised economic operator package launched for MSMEs

The Central Board of Indirect Taxes & Customs (CBIC) has taken a new initiative to introduce its flagship liberalised micro small and medium enterprises (MSMEs) authorised economic operators (AEOs) package³. The flagship package is a voluntary compliance programme, which enables swifter customs clearance for accredited stakeholders in the global supply chain viz. importers, exporters, logistic service providers, custodians, etc.

Key benefits of the initiative

1. Relaxed compliance criteria for MSMEs with a valid certificate from their line-ministry
2. The MSMEs that have filed a minimum of 10 customs clearance documents in one year and have a clean compliance record for over two years can now apply for the AEO scheme
3. Simplified documentary requirements
4. Grant of AEO status within only 15

days from electronic submission of complete documents for AEO Tier T1

5. Reduction in bank guarantee requirements
6. Various benefits for approved AEOs such as facility of:
 - Direct port delivery (DPD) of imported containers
 - Direct port entry (DPE) of their export containers
 - High level of facilitation in customs clearance of their consignments

1. GSTN advisory dated 7 January 2021

2. CBIC FAQs dated 7 January 2021

3. Press Release dated 7 January 2021 issued by Ministry of Finance

thereby ensuring shorter cargo release time

- Exemption from bank guarantees
- Priority for refund/rebate/duty drawback
- Client relationship manager at the

customs port as a single point of interaction

7. Deferment of payment of customs duty and no need to pay before the clearance of the imported goods by customs

8. Exports to certain countries are accorded facilitation by the foreign customs administration with whom India enters into a mutual recognition agreement/arrangement for Tier 2 AEOs

Maharashtra Goods and Services Tax Department to issue separate GST circulars and not adopt CBIC circulars

The Maharashtra Goods and Services Tax Department (MGSTD) had issued a trade circular⁴ regarding deemed adoption of GST circulars issued by the CBIC. It was decided to adopt the GST circulars issued by the CBIC in order to ensure uniformity in implementation of the Maharashtra Goods and Services Tax Act, 2017 (MGST Act) unless a separate circular on the same subject is issued by the MGSTD.

In order to maintain the integrity of

communication and so also to avoid confusion caused as to which circular instructions are to be followed in case where there are circulars issued by CBIC as well as circulars issued by the MGSTD, the MGSTD has decided to withdraw the said trade circular **effective from 12 January 2021**⁵. Henceforth, whenever CBIC issues any circular, MGSTD, on its examination, would issue a separate circular regarding its applicability for the implementation of the MGST Act.

It is further clarified that circulars issued by CBIC till withdrawal of the said circular⁶ are deemed to have been adopted for the implementation of MGST Act unless MGSTD has issued separate circular on the same subject. The MGSTD has further clarified that actions taken on the basis of circulars adopted by the MGSTD would remain valid.

GSTN issues advisory on auto population of e-invoice details in Form GSTR-1

The GSTN has issued an advisory in respect of auto-population of details of e-invoice in Form GSTR-1 (details of outward supply)⁷. Certain key aspects clarified under the advisory are as under:

Key aspects clarified:

- **Rectification of few details not auto populated:** While pulling the e-invoice data for the month of December 2020 into Form GSTR-1, details of some invoices were not populated into GSTR-1. This inadvertent gap is being rectified on priority and details of those invoices will be pushed to Form GSTR-1 shortly.

- **Taxpayers to file Form GSTR-1 based on actual data:** The GSTN has advised that the taxpayers should not wait for the auto-population as mentioned above and proceed with preparation and filing of Form GSTR-1 for the month of December 2020 (before the due date) based on actual data as per their records.
- **Modification/deletion of auto-populated data:** The taxpayers may modify/delete only those documents where the details auto-populated from e-invoices are not as per the actual documents issued. Such edited

documents will be treated as if they were not auto-populated but uploaded separately by taxpayer.

- **Facility to download excel sheet of auto populated data:** An additional facility of consolidated excel download of all documents auto-populated from e-invoices is available in Form GSTR-1 dashboard. This file includes details of cancelled documents also. However, any subsequent modifications made to the auto-populated documents (in GSTR-1 tables) would not be reflected in this Excel file.

4. Trade Circular No. 39T of 2019 dated 5 July 2019

5. Trade Circular No. 01T of 2021 dated 12 January 2021

6. Trade Circular No. 39T of 2019 dated 5 July 2019

7. GSTN advisory dated 11 January 2021

Himachal Pradesh (Legacy Cases Resolution) Scheme, 2019 further extended till 21 March 2021

- The government of Himachal Pradesh had introduced a legacy dispute resolution scheme — the Himachal Pradesh (Legacy Cases Resolution) Scheme, 2019 (the Scheme) — for the settlement of legacy cases pertaining to the erstwhile Central Sales Tax Act, 1956 and Himachal Pradesh VAT Act, 2005.
- The last date for filing and acknowledgement of declaration under the Scheme was last extended up to 21 January 2021. In this regard, considering that the economy is still reviving from the effects of COVID-19 pandemic and in the interest of various stakeholder as well the state government, the last date of filing and acknowledgement of declaration has been further extended up to **21 March 2021**⁸.



Punjab One Time Settlement of Outstanding Dues, 2021

Summary

The government of Punjab has introduced a scheme for settlement of unpaid taxes under the Punjab Value Added Tax Act, 2005 or the Central Sales Tax Act, 1956 called the Punjab One Time Settlement of Outstanding Dues, 2021 (Scheme). The Scheme is effective from **15 January 2021**.

Key features of the Scheme

Relevant Acts

- The Punjab Value Added Tax Act, 2005 (VAT Act)

- The Central Sales Tax Act, 1956 (CST Act)

Applicability

- The Scheme shall be applicable for assessments completed till 31 December 2020 under the relevant Act.
- No application for settlement of dues under the Scheme shall be entertained after 30 April 2021.

Eligibility

- Any person whose assessment has been made under the relevant Act

shall be eligible to apply and avail the benefits under this Scheme.

- Any person whose case is pending before any of the Appellate Authorities⁹, shall be eligible to apply and avail benefits under this Scheme, provided that the applicant shall submit declaration that once the dues are settled under the Scheme, the applicant shall withdraw such a case within a period of seven days from the date of communication of order of settlement and shall submit the proof thereof to the notified authority-cum-excise and taxation officer.

8. Notification No. EXN-F(10)-7/2019-Vol-I Dated 21st January, 2021

9. i.e. Commissioner (Appeals) or Tribunal or High Court or Supreme Court

Waiver

Outstanding dues (after reduction of additional statutory declaration forms, if any in case of CST Act) (in INR)	Waiver of	
	Tax	Interest and penalty
Up to 10,000	90%	100%
10,001 -50,000	90%	100%
50001 - 1 lakh	90%	100%
1,00,001 - 5 lakh	0%	100%
5,00,001 - 10 lakh	0%	0%
10,00,001 and above	0%	0%

Procedure

Relevant forms	Particulars
Form OTS-1	Separate applications for each assessment year to be filed and accompanied with the proof of payment of 100% of the determined tax under the relevant Act and additional original statutory Forms, if any
Form OTS-2	Acknowledgement to be issued by the office of the assistant excise and taxation commissioner concerned
Form OTS-4	An order of settlement shall be passed by such officer if satisfied with the self-assessed tax determined and paid
Form OTS-3	Deficiency notice shall be issued if any deficiencies are found with the directions to complete the deficiencies within seven days from the date of service of notice

Other key aspects

- In case dealer has deposited 25% of additional demand¹⁰ for the entertainment of appeal, waiver shall be 25% of additional demand or sum total of waiver¹¹ whichever is higher.
- No refund shall be given in respect of 25% of additional demand already deposited by the dealer.
- An order of settlement passed under the relevant Act shall not be reopened
- in any proceeding by way of review or revision or any other proceeding under the relevant Act.
- Any determined amount paid by the applicant under the Scheme shall not be refundable.
- No appeal against the settlement order shall lie before any of the appellate authorities¹².
- If any tax shown as paid in the assessment order is later found to be actually unpaid, then the same shall be recoverable along with applicable interest and penalty.

GST System Statistics as on 24 January 2021

Sr. No	Particulars	Statistics (as on 24 January 2021)
1	Registered taxpayers	1.25 crore
2	Total returns filed	60.78 crore
3	Total number of payment transactions	17.33 crore
4	Total invoice uploaded	1129 crore
5	Payment through the portal (excluding IGST on imports)	30.42 lakh crore
6	E-way bill	165 crore
7	Highest returns transactions in a day	23.86 lakh
8	Highest payment transactions in a day	9.55 lakh

10. as pre-requisite under sub-section (5) of section 62 of the Punjab VAT Act, 2005

11. as specified in the Table given below the Form OTS-1

12. i.e. Commissioner (Appeals) or Tribunal or High Court or Supreme Court

2a. Key judicial pronouncements



SC dismisses SLP against Delhi HC's direction of reopening portal for allowing filing of Form TRAN-01

Summary

The Supreme Court (SC) recently dismissed a special leave petition (SLP) filed by the Revenue against the order of the Delhi High Court (HC) directing the Revenue to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically, or to accept the same manually.

Facts of the case

- The petitioner¹³ is engaged in the business of selling and construction of immovable properties. It had claimed that due to technical glitches in the system, it could not file Form GST TRAN-01 on time.
- Therefore, it filed writ petition before the Delhi HC seeking a direction to the Revenue to open the portal so as to enable the assessee to file its claim of transitional credit in Form TRAN-01.
- The HC had directed the Revenue to either open the online portal so as to enable the petitioner to file the Form TRAN-1 electronically, or to accept the same manually. Further, the HC directed to process the petitioner's claim in accordance with law once the Form GST TRAN-1 is filed.
- The Revenue had filed a SLP against the direction of Delhi HC requiring Revenue to open the portal, thereby allowing the assessee to file Form GST TRAN-01 before the Supreme Court (SC).

The SC Order

- The SC has dismissed the SLP filed by the Revenue on the grounds that there is delay of 238 days in filing the SLP which has not been satisfactorily explained.
- Further stated that it could not find any merit in the SLP.

13. Aagman Services Private Limited & ORS.



Our comments

The time limit prescribed for availing the transitional credit under GST has been the matter of dispute and extensive litigation and needs to be addressed on priority.

It is interesting to note that the Delhi HC¹⁴ had held that the time limit prescribed under the GST law for claiming transitional credit is directory in nature. The tax department had filed an SLP against the order of

Delhi HC arguing that the time limit prescribed for availing transitional credit is mandatory, rational and reasonable. Contrary to this, the Madras HC in another case¹⁵ had held that transitional credit is mandatory and not directory and such credit must be availed within the stipulated time.

Assessee to pursue remedy to file writ before HC for challenging validity of GST prosecution provisions: SC

Summary

The Supreme Court (SC) has dismissed a writ petition challenging constitutional validity of certain provisions of the GST law and directed the petitioners to pursue remedy before the High Court (HC). Further clarified that the grievance in regard to the conduct of investigation can appropriately be addressed before competent forum.

Facts of the case

- The petitioner¹⁶ filed a writ petition before the Supreme Court challenging the constitutional validity of certain provisions under the GST law¹⁷ relating to power on inspection, search and seizure, arrest, summons, punishment of certain offences, etc.
- It further sought a direction that investigations against it are illegal and deemed ultra vires¹⁸ on the basis that the Revenue investigation was void ab initio for non-compliance of the procedure for investigation¹⁹.

SC's observations and ruling²⁰

- **Efficacious remedy:** The petitioners have an efficacious remedy in the form of proceedings²¹ to challenge the constitutional validity of the provisions of the statute which are placed in issue.

- **Benefit of considered view from HC:** Following the course of action prescribed shall be beneficial as the SC will then have the benefit of a considered view emanating from the HC.
- **SC to be solicitous in exercising certain powers:** The SC must be solicitous in exercising salutary constitutional safeguard²² where a breach of fundamental rights is the issue.
- **Well-established remedies:** There is regime of well-established remedies and procedures under the laws of criminal procedure. Revenue legislation also provides its own internal discipline.
- **Relegate petitioner to file petition before HC:** Therefore, the SC relegated the petitioner to the remedy of a petition²³ before the HC so that the court has the benefit of the considered view of the jurisdictional HC.



Our comments

The challenge to vires of the provisions relating to arrest and prosecution under the GST law has been a matter of extensive litigation. It is pertinent to note that in the present case, the SC has denied to entertain the writ filed before it on the ground that the petitioners have an efficacious remedy in the form of proceedings to challenge the constitutional validity of the provisions of the statute under Article 32 and following the prescribed course of action shall be beneficial as the SC will then have the benefit of a considered view emanating from the HC. Therefore, it has directed the petitioner to approach the jurisdictional HC in respect of the matter.

It would be interesting to note that the Delhi HC²⁴ had recently agreed to examine the constitutional validity of the provisions conferring power to arrest to the authorities and has issued notices. However, in another writ filed before the Delhi HC²⁵, the division bench has upheld the validity of the said provisions pertaining to arrest and prosecution under the GST law and refused any interim relief to the petitioner.

14. M/s Brand Equity Treaties Ltd

15. M/s P. R. Mani Electronics Devendra Dwivedi

16. Sections 67(1) (Power of inspection, search and seizure), Section 69 (Power to arrest), Section 17. Section 70(1) (Power to summon persons to give evidence and produce documents), Section 132 (Punishment for certain offences) and Section 135 (Presumption of culpable mental state) of the CGST Act, 2017

18. To Article 20(3) and 21 of the Constitution

19. enunciated in Chapter XII of the Code of Criminal Procedure 1973

20. Writ Petition(s) [Criminal] No(s). 272/2020 dated 7 January 2021

21. under Article 226 of the Constitution

22. Under Article 32 of the Constitution

23. Under Article 226 of the Constitution

24. against a petition filed by Arun Gupta

25. against a petition filed by Dhruv Krishan Maggu

SC admits Revenue's SLP challenging the Gujarat HC order striking down levy of IGST on ocean freight

Facts of the case

- The petitioner²⁶ is engaged in importing non-coking coal from Indonesia, South Africa and the US and supplying it to various domestic industries, including power, steel, etc. in India.
- It had filed a writ petition before the Gujarat High Court (HC) challenging the legality and validity of the relevant provisions under the GST law requiring to pay Integrated Goods and Services Tax (IGST) under reverse charge mechanism on the value of goods imported including ocean freight.
- The HC had quashed the levy of IGST on ocean freight paid on imported goods. The HC further declared

the relevant notifications issued by the government in this regard to be ultra vires the GST law due to lack of legislative competency.

- The Revenue had filed an SLP before the Supreme Court to contest the findings of the Gujarat HC that IGST is not leviable on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.

SC's interim order

The SC has issued notice to the parties and has granted time till 8 weeks.



Our comments

The levy of IGST on ocean freight has been a matter of extensive litigation since its inception.

The Gujarat HC had quashed the levy of IGST on ocean freight paid on imported goods. The HC had further declared relevant notifications issued by the government in this regard to be ultra vires the GST law for lack of legislative competency. The judgment was in line with the HC's earlier decision, where the court had struck down the notification imposing service tax under reverse charge mechanism on ocean freight. The HC in another case²⁷ had directed the petitioner to file an application to claim refund of IGST paid on the component representing ocean freight before the competent authority.

Considering that the SC has admitted the SLP filed by the Revenue, the taxpayers may have to wait for the SC's verdict in this regard.

26. Mohit Minerals Pvt. Ltd.
27. M/s Gokul Agro Resources Ltd.

2b. Decoding advance ruling



GST applicable on recovery of notice pay from employees exiting company: Gujarat AAR

Summary

The Gujarat Authority for Advance Ruling (AAR) in a recent case held that the GST is applicable on recovery of notice pay from employees leaving the company without completing notice period as per appointment letter. It further noted that acceptance of offer letter for employment reflects that employee not only has understood the exit condition i.e. failure to serve the notice period would entitle the applicant to recover notice pay from the agreed portion of salary to compensate loss to it, but has also accepted it. Thus, held that this transaction of the employer agreeing to the obligation of tolerating an act

(quitting without any advance notice) on the part of the employee, for payment of a sum (notice pay), will be a declared service leviable to the GST.

Facts of the case

- The applicant²⁸ is a 100% export oriented unit (EOU) engaged in the manufacturing of pharmaceuticals products.
- It enters into a contract with the employees at the time of employment wherein it has been clearly mentioned that either parties shall serve a three months' mandatory notice to terminate this contract. In case, if any employee doesn't serve the notice period after

tendering the resignation, then as per contract condition, the applicant is entitled to recover the notice pay from the agreed portion of salary to compensate the loss to the applicant.

- The applicant sought an advance ruling before the Gujarat AAR to understand whether the applicant is liable to pay GST on recovery of the notice pay from the employees who are leaving the company without completing the notice period.

Gujarat AAR observations and ruling²⁹

- **Consideration for tolerating an act:** The notice pay is a sum mutually

28. M/s Amneal Pharmaceuticals Pvt. Ltd.

29. Advance Ruling No. KAR ADRG 54/2020 dated 15 December 2020

agreed between the employer and the employee for breach of contract. It can be regarded as a consideration to the employer for tolerating the act of the employee to not serve the notice period, which was the employee's agreed contractual obligation.

- **Part of terms and conditions of employment:** The condition to pay an amount as notice pay in lieu of notice period for the employer to agree to let go an employee, normally forms part of the terms and conditions of employment.
- **Condition understood and accepted by employee:** The employee has understood and accepted the condition that in the contingency of his inability to provide the prescribed notice period, he can exercise the option of paying the notice pay as the consideration for the employer to agree to the

obligation of letting him go, which the employer is bound to do as it is part of the terms and conditions already agreed to and settled between them.

- **Employer agreeing to the obligation of tolerating an act of the employee shall be a declared service:** The transaction of the applicant (employer) agreeing to the obligation of tolerating an act (quitting without any advance notice) on the part of the employee, for payment of a sum (notice pay), will be a declared service³⁰.
- **Notice pay recovery liable to GST:** The applicant is liable to pay GST @ 18% under the entry of services not elsewhere classified, on recovery of notice pay from the employees who are leaving the company without completing the notice period as specified in the contract entered between them.



Our comments

The services rendered by the employee to employer in the course of employment have been kept outside the purview of tax under the GST regime as well the erstwhile service tax regime.

The ruling is in contrast with the Madras HC judgment in the case of GE T&D India Limited (formerly Alstom T&D India) under erstwhile Service Tax regime. The Madras HC had held that in case of notice pay recovery, the employer cannot be said to have rendered any service per se much less a taxable service. Further, the court had observed that the employer has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit.

Even though the advance rulings are applicable only to the applicant, this ruling by Gujarat AAR may lead to litigation unless due clarification is issued by the government on the tax position.



30. Clause 5(e) to Schedule II to CGST Act 2017,

2c. Key National Anti-profiteering Authority orders



Every product on which rate is reduced is required to be investigated: NAA

Summary

The National Anti-profiteering Authority (NAA) recently upheld profiteering against a multiplex on the ground that it had increased the base prices of its products, and thereby did not pass on the benefit of reduction in the GST rate on restaurant services by way of commensurate reduction in prices of products sold by it.

Facts of the case

- An application was received alleging profiteering against respondent³¹ in respect of supply of restaurant services despite of a reduction in the GST rate from 18% to 5% effective from 15 November 2017.
- It was alleged that the respondent had increased the base prices of its items and did not pass on the benefit of reduction in the GST rate by way of commensurate reduction in prices³².
- The Directorate General of Anti-Profiteering (DGAP) observed that lower GST rate of 5% had been charged on the increased base prices after 15 November 2017. The charging of lower tax on enhanced base prices had resulted in the customers having to pay more than the commensurate price. Hence it was clear that the benefit was not passed on to them by the respondent.
- The DGAP computed that the respondent had increased base prices by more than 9.70% i.e. by more than what was required to offset the impact of denial of input tax credit (ITC) in respect of 1434 items (out of total of 1650 items) sold during the same period. Thus, the DGAP computed profiteering amounting to INR 3.85 crore.

NAA's observations and ruling

- **Increase in base prices:** The NAA observed that the base prices of 1434 products have been increased more than their commensurate prices effective from 15 November 2017, which established that because of the increase in base prices the cum-tax prices paid by the consumers were not reduced commensurately in spite of reduction in the GST rate.

31. M/s Inox Leisure Pvt. Ltd.

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

- **Incremental ITC:** The ratio of ITC to the net taxable turnover computed for determining the impact of denial of ITC was approximately 10.22%. Thus it was apparent that the respondent has resorted to profiteering as the commensurate benefit of reduction in the rate of tax from 18% to 5% has not been passed on by him.
- **Higher net sale realisation:** Based on the pre- and post-tax reduction the GST rates the impact of denial of ITC and the details of outward supplies (other than zero rated, nil rated and exempted supplies), the NAA observed that there amount of net sale realisation was higher due to increase in the base price of the service despite reduction in the GST rate.
- **No restriction under law as regards investigation:** The NAA stated that there is no provision under the GST law which provides that the investigation shall be limited to the products against

which complaint has been received. On the contrary every product on which the rate of tax has been reduced is required to be investigated by the DGAP.

- **All products supplied are required to be investigated:** The GST law empowers the NAA to examine all such cases in which the benefit of tax and ITC is required to be passed on. Since the account of ITC is kept for all the products in one common ledger/register the same cannot be apportioned product-wise hence, all the products being supplied by the respondent are required to be investigated to determine whether the benefit of tax reduction after duly considering the denial of ITC has been passed or not.
- **Profiteering upheld:** Therefore, the NAA confirmed profiteering to the extent of INR 3.11 crore.



Our comments

In the present ruling, the NAA has highlighted an important aspect that it has been empowered to determine methodology and procedure and not to prescribe it. Therefore, the NAA has reiterated that considering that facts of every business is different and the mathematical methodology adopted in one case cannot be applied to the other sector. The Delhi High Court recently heard a batch of writ petitions filed challenging the constitutional validity of the anti-profiteering provisions and directed clubbing of all the questions on constitutional validity in the writ petitions. The hearing was postponed as there was no consensus between the tax department and the companies that had approached the court. It will be interesting to see the verdict of the HC.



03. Experts' column



Removal of GST Audit under Budget 2021 is more than what meets the eye

Authors

Krishan Arora

Partner, Tax

Karan Kakkar

Associate Partner, Tax

Introduction

As part of the indirect tax proposals announced by Union Finance Minister Srimati Nirmala Sitharaman during her Budget speech on 1 February 2021, there was a proposal to eliminate the mandatory requirement of furnishing a reconciliation statement [GSTR-9C],

duly audited by a practicing chartered accountant or cost accountant and to provide for filing of the annual return [GSTR-9] on self-certification basis along with a reconciliation statement. The section-wise analysis of the amendment has been summarised in below table:

Section	Existing provision	Proposed provision	Effect of change
Section 35(5) of CGST Act, 2017	Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.	Sub-Section 5 to Section 35 to be omitted vide Clause 101 of the Finance Bill, 2021.	Removal of mandatory requirement of certification of annual accounts along with submission of reconciliation statement by specified professionals.
Section 44 of CGST Act, 2017	<p>1. Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.</p> <p>Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:</p> <p>Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</p> <p>2. Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.</p>	<p>Section 44 has been substituted vide Clause 102 of the Finance Bill, 2021. Revised Section is as follows:</p> <p>Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:</p> <p>Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:</p> <p>Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.</p>	<p>As a consequential amendment to the removal of requirement of certification by specified professionals under Section 35(5) of CGST Act, 2017, the government has proposed to introduce the requirement of self-certification of reconciliation statement to be submitted along with annual return.</p> <p>Furthermore, a new proviso to Section 44 of the CGST Act, 2017 has been introduced in order to empower the commissioner to exempt any class of registered persons from filing annual return.</p>

The requirement of filing reconciliations of outward supplies and input tax credit declared in GST returns vis-a-viz financial statements would still be there in a prescribed manner, however, the onus has been shifted on the assessee to ensure that the taxes are accurately paid and the eligible input tax credit is availed, resulting in the introduction of a pure self-assessment regime.

The possible intention behind the amendment

The government had received constant critical feedback from the industry that was highlighted by the GST Council in its 39th meeting held on 14 March 2020. The feedback cited the excessive compliance cost and burden associated with filing complex and tedious forms/reconciliations while undertaking the GST Audit along with various technical glitches on the GSTN portal. Furthermore, another critical pain point associated with the same was that the said comprehensive reconciliation activity had to be undertaken twice by the assessee - once as per the requirements of a qualified professional and the same process had to be repeated from scratch at the time of departmental GST Audit conducted by tax officials. The cost-benefit analysis of conducting a professionally-certified GST Audit in terms of tax dues which were discharged as the result of the GST Auditor's recommendations has not been very encouraging for the government from a revenue standpoint.

The domino effect of the self-assessment regime

While the above amendment introduced by the government may be viewed by industry taxpayers (especially micro, small and medium enterprises) as a measure of relief, which could significantly ease the burden of compliances in terms of time and cost, there may be a flip side to this which needs to be discussed.

The government has done away with the requirement of an extra set of professional minds verifying and reviewing not only the reconciliations prepared between supplies reported in the GST returns and annual accounts but also facilitating assessee in adopting tax compliant positions, thereby keeping the questioning minds of departmental officials at bay.

The so-called self-assessment regime could lead to taxpayers becoming complacent, thereby causing tax leakages and gaps in compliances. This would invite the unwanted ire of the tax officials bombarding assessee with constant notices and inquiries upon detection of discrepancies by way of

departmental audits and scrutiny. This would further open the flood gates of heavy demands raised by departmental officials in terms of taxes, interest and penalty on past assessment periods as provisions with regard to other GST Audits are still intact viz. audits by department officials under Section 65 of the CGST Act, 2017 and special audits under Section 66 of the said act. The authorities may also scrutinise the GST returns under Section 61 and may initiate appropriate action, including those under Section 65, Section 66 or Section 67 of such act.

Under this regime, the department officials would conduct audit proceedings and detection of tax not/short paid or erroneously refunded or input tax credit wrongly availed/utilised, would be done by them at the very first instance as the middle layer of checks by way of the GST Audits by professionals would be removed.

Being the first-level checker of the accounting and GST records of the assessee, reviews/assessments/penal provisions would be enforced more strictly and frequently by departmental authorities. Furthermore, they would be more vigilant while conducting audits/assessments and might issue deficiencies/queries about minute matters, which ordinarily might not catch their attention. The taxpayers would be at the mercy of departmental officials, who may impose strict penal provisions in view of the frequent lapses. Another consequence could also be a rise in litigation for taxpayers.

Mentioned below are some of the penal provisions that could be enforced by departmental authorities during the course of audits/assessments/reviews:

- Section 73 of CGST Act: Issuance of show cause notices in non-fraud cases involving demand of penalty up to 10% of tax amount;
- Section 74 of CGST Act: Issuance of show cause notices in fraud cases involving demand of penalty up to 100% of tax amount;
- Section 35(6) of the CGST Act, 2017 for failure to account for supplies made by taxpayers;
- Section 67 of the CGST Act, 2017

for inspection, search and seizure in multiple cases in order to conduct in-depth investigation;

- Section 122 of the CGST Act, 2017 with regard to issuance of tax invoices with wrong particulars/issuing invoices in violation of provisions of law, wrongful availment of input tax credit, short payment of GST, suppression of turnover etc. Quantum of penalty involved under said section is INR 10,000 or an amount equivalent to the tax evaded, whichever is higher
- Section 125 of the CGST Act, 2017 is the residual penalty clause wherein the general penalty amounts to INR 25,000
- Section 89 of the CGST Act, 2017: In case, any private company is unable to pay its dues (tax, interest and penalty), the authorities have been empowered to hold directors of the company liable for the same.
- Section 132 of the CGST Act, 2017: Specifies punishment for certain offences committed or caused to be committed or obtaining any benefits arising out of said offences. Some of the said offences involve supplies made without issue of a tax invoice, fraudulent availment of input tax credit, production of fake records, etc. Said offences entail imprisonment ranging between a period of 6 months to five years depending on the quantum of tax evaded or input tax credit wrongly availed or utilized or refund wrongly taken.
- Section 137 of the CGST Act, 2017: Gives the power to deem guilty and proceed against any person in charge of the Company, provided such person was in charge of the operations of the company at the time the offence was committed.
- Rule 21 of CGST Rules, 2017: The GST registration can be cancelled, if:
 - The registered person avails input tax credit (ITC) in violation of relevant provisions under GST law; or
 - Furnishes details of outward supplies in Form GSTR-1 which is in excess of outward supplies declared in Form GSTR-3B for one or more

tax periods; or

- Violates the restrictions on use of amount in electronic credit ledger (as per provisions of new Rule 86B).

- Rule 21A of CGST Rules, 2017: GST Registration shall be suspended where a comparison between GST returns and details of outward supplies (GSTR -1) & inward supplies (based on details of supplies furnished

by suppliers), show significant differences indicating contravention of provisions of GST law

Conclusion

In view of the above, it would be ever so critical to have a robust mechanism of keeping a regular self-check on the GST positions and compliances undertaken by assessee considering the complete onus of maintaining the status of a bona fide taxpayer would be on them.

It is thus suggested that companies/taxpayers should adopt the following measures to be equipped in the best possible manner to stay GST-compliant during this self-assessment regime:

- Conduct monthly/quarterly GST compliance reviews, wherein the GST returns filed during the relevant

period are reviewed thoroughly so that inconsistencies could be rooted out at the initial stage and corrective action are taken swiftly.

- Conduct quarterly/annual GST health checks, wherein all the tax positions adopted by the company can be vetted thoroughly and lapses, if any, can be resolved without delays
- Review documents regularly. This would involve a review of sample documents prepared and maintained by the company for GST, such as agreements with customers/suppliers, tax invoices, bill of supply, receipt vouchers, bill of entry, FIRC's/

BRCs (in case of exports).

- Prepare monthly/quarterly reconciliations between supplies reported in the GST returns and monthly/quarterly trial balance.
- Conduct monthly/quarterly review of input tax credit registers to assess the eligibility of input tax credit availed as per provisions of GST law.

(Sikander Arora and Mansi Jain contributed to the article)



04. Issues on your mind



What is an Invoice Furnishing Facility (IFF)? What is the procedure for using the facility?

An IFF facility has been provided to taxpayers under the Quarterly Return Monthly Payment (QRMP) Scheme³³. The taxpayers who have opted for quarterly filing frequency under the scheme can file their details of outward supplies (B2B invoices only) for first two months of a quarter (M1 and M2 respectively of a quarter) in IFF. The IFF is a facility similar to Form GSTR-1, and it allows filing of details of B2B invoices. The option to upload details in IFF can be availed till 13th of the subsequent month.

Any invoices remaining to be furnished, can be filed using the IFF in the subsequent month IFF or in the quarterly Form GSTR-1. Any IFF which is not filed till the due date of 13th of the

subsequent month will expire³⁴.

Procedure to use IFF:

- To file the IFF form for M1 and M2 of the month, the taxpayers need to login to GST Portal and navigate to Returns > Services > Returns Dashboard > File Returns and then select the Financial Year & Return Filing Period (M1/M2 of a quarter) and click on SEARCH button to file the IFF forms for M1 or M2 month.
- IFF is an optional facility provided to taxpayers under QRMP Scheme to pass on Input Tax Credit (ITC) to their recipients for M1 and M2 months of a quarter. However, filing of Form GSTR-1 for M3 month of a quarter is mandatory.
- The records uploaded in IFF by the supplier will reflect in Form GSTR-

2A/2B of the recipient.

- Supplier taxpayers can also upload details in their IFF, through JSON file, generated using Returns Offline Tool.
- The records filed in IFF need not be filed again in Form GSTR-1 of that quarter.
- Only the details saved in IFF can be deleted/edited using the RESET button. Once submitted or filed, these details can't be deleted.

What is the difference between Invoice Registration Portal (IRP)-generated QR Code and self-generated dynamic QR Code?

An IRP-generated Quick Response (QR) Code is required on B2B and export invoices, credit and debit notes. In case of B2B and export supplies, taxpayers are required to prepare invoice by

33. Quarterly filers of Form GSTR-1 and Form GSTR-3B returns as per sub-rule (2) of Rule-59 of the CGST Rules, 2017

34. Advisory issued by GSTN dated 6 January 2021

uploading specified particulars in Form GST INV-01 on IRP and upon obtaining Invoice Reference Number (IRN)³⁵. The portal will also return a QR Code, which contains key particulars of the invoice including IRN. While the 64-character IRN need not be printed on the invoice, the QR Code generated by IRP shall be printed on the invoice issued to the buyer.

On the other hand, a self-generated dynamic QR Code is required on B2C invoices. Entities with aggregate turnover of more than INR 500 crore in a financial year are mandatorily required to include QR Code on their B2C invoices³⁶. It was also specified that a dynamic QR Code made available to buyer through digital display (with payment cross-reference) shall be deemed to be having QR Code. In this case, the QR Code is generated

by the supplier. Today, many shops have static QR code, which is scanned by the buyer but he/she has to enter the amount to be paid to the shop (in the mobile payment App) at the payment counter. The dynamic QR Code, on the other hand, will have the payment details and thus scan and pay in one go will be possible³⁷.

What is the procedure for making applications to seek policy/procedure relaxation under the Foreign Trade Policy (FTP)?

As a part of IT revamp of the organisation, the Directorate General of Foreign Trade (DGFT) has decided to introduce a new module (online e-PRC System) for seeking policy/procedure relaxation³⁸.

From **25 January 2021** onwards, all

applications seeking policy/procedure relaxation are mandatorily required to be submitted online through the exporter's dashboard on the DGFT website and manual submission shall no longer be allowed³⁹.

To apply online the taxpayers need to <https://dgft.gov.in> → **Services** → **Policy Relaxation Committee** to access the new e-module. The entire process is designed to be paperless and contactless and any PRC submission, communication, clarification, correction as well as the approval on submitted applications would be electronic. For any help and guidance on this new process, the help manual & FAQs can be accessed at <https://dgft.gov.in> → **Learn** → **Application Help & FAQs**.



35. As per Rule 48(4) of CGST Rules (inserted vide Notification No. 68/2019 – Central Tax Dated 13-12-2019)

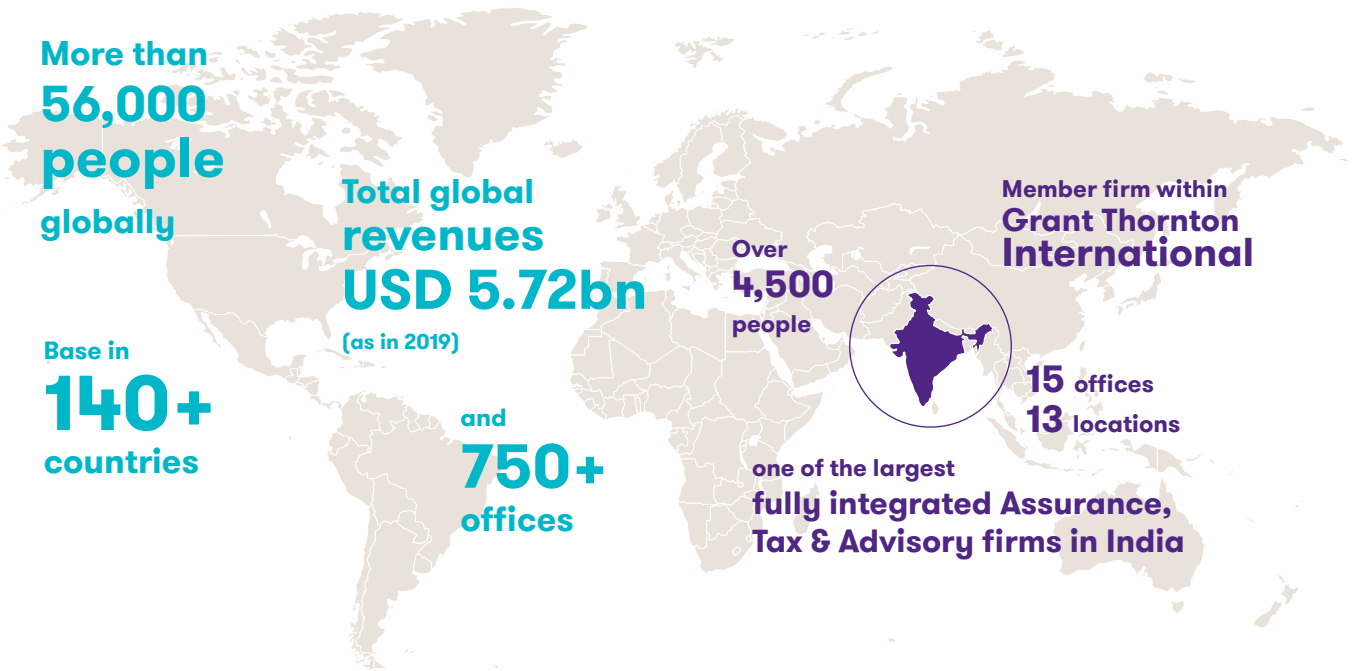
36. Notification No. 14/2020-Central Tax dated 21st March, 2020

37. Advisory issued by GSTN on e-invoicing updated upto 1 January 2021

38. in terms of Para 2.58 of FTP

39. DGFT Trade Notice No. 38/2020-21 dated 15 January 2021

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Contact us

To know more, please visit www.grantthornton.in or contact any of our offices as mentioned below:

NEW DELHI

National Office,
Outer Circle, L 41,
Connaught Circus,
New Delhi - 110001
T +91 11 4278 7070

NEW DELHI

6th Floor, Worldmark 2,
Aerocity,
New Delhi - 110037
T +91 11 4952 7400

AHMEDABAD

7th Floor, Heritage Chambers,
Nr Azad Society,
Nehru Nagar,
Ahmedabad - 380015

BENGALURU

5th Floor, 65/2, Block A,
Bagmane Tridib, Bagmane
Tech Park, CV Raman Nagar,
Bengaluru - 560093
T+91 80 4243 0700

CHANDIGARH

B-406A, 4th Floor,
L&T Elante Office Building,
Industrial Area Phase I,
Chandigarh - 160002
T +91 172 4338 000

CHENNAI

7th Floor, Prestige Polygon,
471, Anna Salai, Teynampet,
Chennai - 600018
T +91 44 4294 0000

DEHRADUN

Suite No 2211, 2nd Floor,
Building 2000, Michigan Avenue,
Doon Express Business Park,
Subhash Nagar,
Dehradun - 248002
T +91 135 2646 500

GURGAON

21st Floor, DLF Square,
Jacaranda Marg,
DLF Phase II,
Gurgaon - 122002
T +91 124 462 8000

HYDERABAD

7th Floor, Block III,
White House,
Kundan Bagh, Begumpet,
Hyderabad - 500016
T +91 40 6630 8200

KOCHI

6th Floor, Modayil Centre Point,
Warriam Road Junction,
MG Road
Kochi - 682016
T +91 484 406 4541

KOLKATA

10C Hungerford Street,
5th Floor,
Kolkata - 700017
T +91 33 4050 8000

MUMBAI

11th Floor, Tower II,
One International Center,
SB Marg Prabhadevi (W),
Mumbai - 400013
T +91 22 6626 2600

MUMBAI

Kaledonia, 1st Floor, C Wing,
[Opposite J&J Office],
Sahar Road, Andheri East,
Mumbai - 400 069

NOIDA

Plot No 19A, 2nd Floor,
Sector - 16A,
Noida - 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 309-312,
West Wing, Nyati Unitree,
Nagar Road, Yerwada
Pune - 411006
T +91 20 6744 8800

For more information or for any queries, write to us at contact@in.gt.com



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