

GST Compendium

A monthly guide

July 2020



Editor's note

The government implemented the Goods and Services Tax (GST) on 1 July 2017 to mitigate the cascading effect of indirect taxes and put a simplified tax system in place with free flow of input credits. The role of the GST Council and the Central Board of Indirect Taxes and Customs has been remarkable during the course of these three years to gradually move towards achieving the aim of 'one nation one tax'.

Being a new regime, the GST has undergone several amendments along with clarifications and notifications over time. Further, several court orders, rulings of Authority for Advance Rulings (AARs) and Appellate AARs, and orders of the National Anti-Profiteering Authority (NAA) have also contributed to the evolution of this tax regime.

Our GST Compendium is an attempt to help our readers keep pace with the recent changes in the GST arena.

We hope you will find it informative and useful.

Vikas Vasal

National Managing Partner, Tax





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40th GST council meeting: Key recommendations/decisions

The Goods and Services Tax (GST) Council in its 40th meeting held on 12 June 2020 took various important decisions for trade facilitation. The Central Board of Indirect Taxes and Customs (CBIC) has now issued various notifications/orders to give effect to certain recommendations made by the GST Council:

Key changes notified

- **Rate of composition levy**

The CBIC has prescribed rates of composition levy for certain taxpayers, with effect from 1 April 2020, as under:

Category of registered persons	Rate of tax
Manufacturers, other than manufacturers of such goods as may be notified by the government	0.5%
Suppliers making supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration	2.5%
Any other supplier eligible for composition levy	0.5%
Registered persons not eligible under the composition levy but eligible to opt to pay tax under composition scheme	3%

- **Interest and late fees for delay in filing Form GSTR-3B**

For taxpayers having aggregate turnover of more than INR 5 crore in the preceding financial year

Tax period	Rate of interest
February, March and April 2020	Nil for first 15 days from the due date 9% thereafter till 24 June 2020

For taxpayers having aggregate turnover up to INR 5 crore in the preceding financial year

Tax period	Rate of interest
For taxpayers with principal place of business in Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union Territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	
February 2020	Nil till 30 June 2020
March 2020	Nil till 3 July 2020
April 2020	Nil till 6 July 2020
May 2020	Nil till 12 September 2020
June 2020	Nil till 23 September 2020
July 2020	Nil till 27 September 2020
Thereafter, 9% till 30 September 2020	

For tax period August 2020, the due date for return filing has been extended till 1 October 2020

For taxpayers with principal place of business in Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union Territories of Jammu, Kashmir, Ladakh, Chandigarh and Delhi

February 2020	Nil till 30 June 2020
March 2020	Nil till 5 July 2020
April 2020	Nil till 9 July 2020
May 2020	Nil till 15 September 2020
June 2020	Nil till 25 September 2020
July 2020	Nil till 29 September 2020
Thereafter, 9% till 30 September 2020	

For tax period August 2020, the due date for return filing has been extended till 3 October 2020

* Maximum late fee for Form GSTR-3B capped at INR 500 provided return is filed before 30 September 2020 and subject to fulfillment of prescribed conditions.

- **Waiver of late fees for delay in filing Form GSTR-1**

Month/Quarter	Late fee to be waived if GSTR-1 is furnished by
March 2020*	10 July 2020
April 2020*	24 July 2020
May 2020*	28 July 2020
June 2020*	5 August 2020
January to March 2020	17 July 2020
April to June 2020	3 August 2020

* taxpayers having aggregate turnover of more than INR 1.5 crore in the preceding financial year or current financial year

- **Revocation of cancellation of GST registration**

Application for revocation of cancellation of the GST registration can be made within a period of 30 days. In this regard, it has been clarified that for the purpose of calculating the period of 30 days for registered persons (who were served notice and where cancellation order was passed by 12 June 2020), **later of the following dates shall be considered:**

- Date of service of the said cancellation order; or
- 31 August 2020



CBIC extends date of compliance/completion of action under certain indirect tax laws

The government had issued Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (the Ordinance) to provide relief related to statutory and regulatory compliance deadlines in view of the COVID-19 pandemic.

The CBIC has now notified certain changes in the due dates of the following:

- Completion of proceedings;
- Issuance of any order, notice, intimation, notification or sanction or approval by any authority;
- Filing of any appeal, reply or application; and
- Furnishing of any report, document, return or statement.

Revised due dates

Central Excise Act, 1944; Customs Act, 1962; and Service Tax Act, 1994

Period covered earlier	Existing due dates	Revised period covered	Revised due date
20 March to 29 June 2020	30 June 2020	20 March to 29 September 2020	30 September 2020

Goods and Services Tax laws

Period covered earlier	Existing due dates	Revised period covered	Revised due date
20 March to 29 June 2020	30 June 2020	20 March to 30 August 2020	31 August 2020

The revised period and due date applicable to the GST laws would also apply to issuance of refund rejection order, where notice has already been issued.



CBIC issues clarification on applicability of GST on director's remuneration

The CBIC has issued a clarification on applicability of GST on director's remuneration paid by companies.

GST on remuneration paid by companies to the independent directors or non-executive directors:

- In respect of such directors, the services provided by them to the company shall be liable to GST. The remuneration paid to them shall be treated as consideration of their services. Accordingly, in such cases, the company is liable to discharge the applicable GST on a reverse charge basis (RCM).

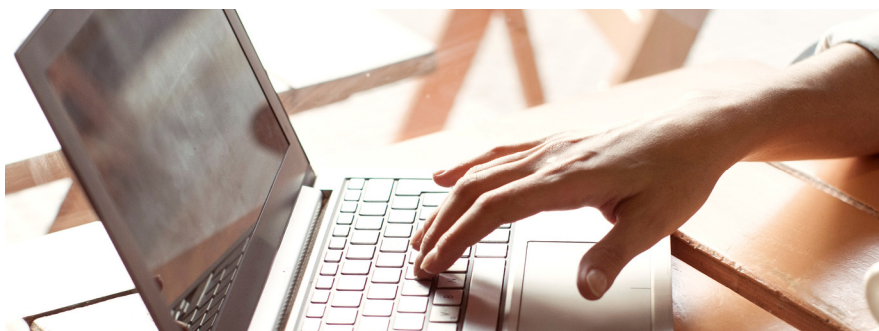
GST on remuneration paid by companies to executive directors

1. **Treated as salary in books of the company:** The part of director's remuneration, which has been declared as salary in the books of a company and on which tax has been deducted at source, shall not be liable to GST. This is because the same represents consideration of services by an employee to the employer in course of or in relation to his employment.
2. **Treated as professional or technical fees in books of the company:** The

part of director's remuneration, which is declared separately, other than salaries, in the company's accounts and subjected to tax at source as fees for professional or technical services shall be treated as consideration for providing services and is therefore liable to GST. Further, in such cases, the company shall be liable to discharge the applicable GST on RCM.

Retrospective amendment granting power to authorities to prescribe time-limit for claiming transitional credits

The transitional provisions have been retrospectively amended by the government thereby granting power to the authorities to prescribe a time limit and manner for availing transitioning credits under the GST law¹. In this regard, the CBIC notified that the said amendment shall be effective from 18 May 2020.



Special refund drive and drawback drive to benefit MSMEs/exporters during COVID-19

- To provide immediate relief to business entities, especially micro, small and medium enterprises (MSMEs), and address their cash flow concerns, the government had introduced a Special Refund and Drawback Disposal Drive to process and dispose of all pending refund and drawback claims on priority.
- Applicable between 8 April 2020 and 25 May 2020, the special drive was aimed at disposing of all the refund and drawback claims pending since 7 April 2020.
- According to recent data released by the CBIC, a total of INR 6.76 lakh claims of customs, IGST and drawback, worth INR 8,656 crore, were disbursed during the drive.

1. Notification No. 43/2020 – Central Tax 16 May 2020

Government cautions taxpayers on fake messages relating to GST refund

The government has issued an advisory cautioning taxpayers regarding circulation of fraudulent messages via WhatsApp, email and SMS, claiming to process GST refund. The link in these messages asks taxpayers to fill important information such as personal details, address, refund details and KYC verification.

In this regard, the government has alerted the taxpayers that such messages are fake. It has been reiterated that:

- Government has only notified www.gst.gov.in as the common portal under the GST law for refunds. Any other source, including portal with similar interface and message claiming to process GST refunds, is fraudulent.
- GST network does not ask for personal information, refund details and KYC verification through email, WhatsApp or SMS or through any other website.

In addition, the government has prescribed certain dos and don'ts for the taxpayers refunds.

Dos

Use only GST portal- <http://www.gst.gov.in> to claim refunds

For any information on refund or to check status of refund application, visit <https://www.gst.gov.in/help/refund>

Stay updated with news and update section on <http://www.gst.gov.in> for any official and authorised information. In case of any query or confusion, please call GST helpdesk 1800-103-4786

Don'ts

Reply to any message claiming to process GST refunds or fill any personal detail and other information on any platform other than the GST portal

Open any link or attachment in the message

Call at the number mentioned in the message



DGEP response on operating issues pertaining to SEZ and EoU

The Directorate General of Export Promotion (DGEP) has provided its response on various operational issues pertaining to special economic zones (SEZs)/export oriented units (EOUs).

Key responses are²:

- **Refund of input tax credit on supplies made to SEZs:** The DGEP has requested to provide a list of refunds not sanctioned beyond six months from the date of filing so that necessary actions can be taken.

- **Release of shipments from ports held due to lockdown:** Specific instances not yet resolved may be informed to the nodal officer of the customs zone for redressal.
- **GST on foreign currency conversion charges:** The DGEP has informed that the proposal to reduce/eliminate GST on foreign currency conversion charges is under review with the Tax Research Unit-I.

- **Physical submission of documents for customs clearance:** While the procedure of endorsement/validation of actions by officers, both at the end of SEZ and customs port, has been fully automated, the DGEP requested that specific instances may be provided so that concerned field formations can be informed.

2. Ministry of Commerce (SEZ Section) Letter no. K-43022/7/2020-SEZ(3145523) dated 15 May 2020

Other additional reliefs under GST³

- **Return verification through electronic verification code (EVC):** A registered person, who is also registered under the Companies Act, 2013, shall be allowed to furnish the return in Form GSTR-3B verified through EVC during 21 April 2020 and 30 June 2020.
- **File return through short messaging service (SMS):** A registered person, who is required to furnish nil return in Form GSTR-1 and Form GSTR-3B for a tax period, can file the said return through an SMS using the registered mobile number and the return shall be verified by a registered mobile number-based one time password facility.
- **Registration of insolvency resolution professional (IRP)/resolution professional (RP):** The IRP/RP shall be liable to take a new registration in each of the states or union territories where the corporate debtor was registered within 30 days of their appointment or by 30 June 2020, whichever is later.
- **Extension of due dates for filing annual return for FY 19:** The due date for furnishing annual return electronically for FY 19 has been extended to 30 September 2020.

CESTAT amends Customs, Excise and Service Tax (Procedure) Rules, 1982

The Customs, Excise and Service Tax (Procedure) Rules, 1982, among other things, lays down standard operating procedures for filing applications and submission of documents before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT).

The CESTAT has amended the Customs, Excise and Service Tax (Procedure) Rules, 1982, with immediate effect. Key changes notified are as under⁴:

Memorandum of appeal or cross-objections

- Every memorandum of appeal or cross-objection should:

- Contain the statement of facts and grounds of appeal or grounds for cross-objection concisely under distinct heads
- Be consecutively numbered and typed in double space
- Contain valid mobile numbers and email addresses of both the appellant and the respondent
- Every memorandum of appeal or cross-objection and the document filed along with the same should be accompanied by soft copies in two pen drives. Similarly, the soft copies of paper book (stored in two pen drives) should also be filed along with the paper book.

- Verification of memorandum of appeal or cross-objections or miscellaneous application filed on or after the date of this circular shall also state that the soft copy filed therewith are true copies of the original.

Application for stay

- Every application for stay shall be accompanied by three copies of the relevant orders, against which the appeal is filed, and the other documents, if any.
- The soft copies of the stay application, orders and the documents shall also be stored in the two pen drives and submitted along with the application.

3. Notification No. 38/2020 – Central Tax dated 5 May 2020 to Notification No. 42/2020 – Central Tax dated 5 May 2020

4. Notification No. 1 of 2020 dated 11 May 2020

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Key judicial pronouncements



Delhi High Court: Time limit prescribed to claim transitional credit is 'directory' in nature

The Delhi High Court (HC) has held that the time limit prescribed under the GST law to claim transitional credit is 'directory' in nature. The HC further stated that prescribing time limit would not result in the forfeiture of the rights in case the credit is not availed within the period prescribed.

The HC also held that the credit accrued and vested is the property of the taxpayer and is a constitutional right. Hence, the same cannot be taken away merely by way of delegated legislation by framing rules, in the absence of an overarching provision in the GST law.

Facts of the case

- The petitioners⁵ filed writ petitions⁶ before the HC asking it to direct the tax department to permit it to avail input tax credit (ITC) of accumulated credit as of 30 June 2017 beyond the period provided under the GST law.
- The petitioners also challenged the provision⁷ under the GST law for being arbitrary, unconstitutional and violative⁸ to the extent that it prescribes a time limit for claiming transitional credit.
- The petitioners contended that the time limit specified is procedural in nature,

and not a mandatory provision. Thus, the period provided therein cannot be enforced so as to deprive it from availing its vested right⁹.

Observations and order

- **CENVAT credit is a vested right:** The HC held that CENVAT credit accrued and vested is the property of the taxpayer and is a constitutional right¹⁰. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision under the GST law.

5. M/s Brand Equity Treaties Limited, M/s Micromax Informatics Ltd., M/s Developer Group India Private Limited and M/s Reliance Elektrik Works

6. W.P.(C) 11040/2018 and C.M. No. 42982/2018, W.P.(C) 196/2019 & CM APPL. 965/2019, W.P.(C) 8496/2019 and W.P.(C) 13203/2019

7. Rule 117 of the Central Goods and Services Tax Rules, 2017

8. Article 14 of the Constitution of India

9. Referred SC decision in the case of M/s SCG Contracts India Pvt. Ltd. vs. KS Chamankar Infrastructure Pvt. Ltd. [2019 SCC OnLine SC 226].

10. under Article 300A of the Constitution of India

- **Interpretation must be in consonance with purpose:** The HC stated that the purpose of the transitory provisions is to allow a smooth migration from the erstwhile service tax regime to the new GST regime and the interpretation must be in consonance with the said purpose. Further, the HC held that failure to claim credit within prescribed time would not result in the forfeiture of the rights.
- **Provision is directory in nature:** The HC read down the provision as being directory in nature, as it prescribes the time limit for transitioning of credit.
- **Provision is arbitrary and vague:** The HC further stated that the new provision¹¹ restricting the benefit only to taxpayers, whose cases are covered

by technical difficulties on common portal, is arbitrary, vague and unreasonable.

- **CENVAT credit cannot be availed in perpetuity:** The HC also observed that CENVAT credit cannot be availed in perpetuity and ruled that in terms of the residuary provisions of the Limitation Act, the period of three years should be the guiding principle. Thus, a period of three years from the appointed date would be the maximum period for availing such credit. Accordingly, the HC held that the petitioners shall be entitled to avail ITC accruing to them and permitted filing of relevant Form TRAN-01 on or before 30 June 2020 either manually or by opening the online portal.



Our comments

This is a landmark judgment by the Delhi HC that will not only help the petitioners but also other taxpayers unable to claim huge transitional credits due to reasons other than technical glitches on the GST portal.

However, as anticipated, the government has already filed a special leave petition in the apex court against this judgment and further the transitional provisions have been retrospectively amended granting power to the authorities to prescribe a time-limit and manner for availing transitioning credits under the GST law.



11. sub Rule (1A) to Rule 117 of the CGST Rules, 2017

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Decoding advance rulings



Ex-factory supply involving movement of goods terminating in other state liable to IGST: Telangana AAR

The Telangana AAR has, in a recent case, held that IGST is to be charged on ex-factory interstate supply wherein goods are made available by the applicant to the recipient at the factory gate. The AAR stated that the factory gate is not the point where movement terminates as the recipient subsequently assumes the charge for transportation of the goods up to the destination in another state. Further, the AAR stated that the place of supply must be determined with reference to the location where the movement of goods ultimately terminates as per the billing address. Accordingly, the AAR held that as the 'location of supplier' and the 'place of supply' fall under different states, the supply qualifies as inter-state supply.

Facts of the case

- The applicant¹² is a cement manufacturer in Telangana. It occasionally makes inter-state sale of cement on ex-factory/works basis from its plants in Telangana.
- The applicant sought an advance ruling from the Telangana AAR to understand the nature of tax to be charged on ex-factory inter-state supplies.

Observations and order

- **Movement of goods:** Movement of goods in case of ex-factory inter-state sales does not conclude at factory gate but terminates at the place of destination where the goods finally are destined as per the billing address¹³.

- **Place of supply:** The place of supply with respect to goods where the supply involves movement of goods whether by the supplier or by the recipient or by any other person authorised by him has to be determined with reference to the location where the movement of goods ultimately terminated.
- **Termination of movement of goods:** In the present case, the goods are made available to the recipient at the factory gate but this is not the point where movement terminates as the recipient subsequently assumes the charge for transportation of the goods up to the destination in another state. Thus, termination of the movement of goods evidently takes place at the

12. Section 2(52) and 2(102) of the CGST Act, 2017 respectively

13. Section 10(1) of the Integrated Goods and Services Tax Act, 2017

location (in a different state) to which the goods are consigned/destined and such movement is effected by the recipient or by transporter authorised by the recipient.

- **Inter-state supply on which IGST is to be charged:** As 'location of supplier' and the 'place of supply' fall under different states and the supply qualifies as inter-state supply, the applicant is liable to charge IGST in respect of ex-factory inter-state supplies.



Our comments

Under the erstwhile indirect tax regime, the general understanding/viewpoint was quite settled that the ex-factory sales does not conclude at factory gate but terminates at the place of destination where the goods are finally destined/consigned. However, there was some ambiguity/anomaly under the GST regime for determining the 'place of supply' in case of ex-factory sales. The present AAR is in line with the stance/position adopted under erstwhile tax regime and will hopefully clarify the matter. Even though advance ruling is applicable only to the applicant, the same acts as a guiding tool for other taxpayers with similar issues.



Key national anti-profiteering authority orders



Benefit to be passed at each stock keeping unit level and not at entity or branch level – NAA

The NAA recently upheld profiteering against a consumer products retailer for not passing on the commensurate benefit by way of reduced prices of its products when corresponding GGST rates on the products were reduced. The NAA stated that the benefits are to be passed on to recipients at each stock-keeping unit (SKU) level and not at entity or branch level.

Facts of the case

The applicant¹⁴ filed an application alleging that the respondent¹⁵ has not passed on benefit of reduction in the GST rates with respect of certain products¹⁶, which were reduced from 28% to 18% from 15 November 2017.

Respondent's contention

- **No mechanism for computing profiteering:** No calculation mechanism is given under the GST law to determine the amount of profiteering.
- **No time limit for passing on benefit:** The GST law does not specify a time limit to pass on benefits of reduced rate. Therefore, reasonable time should be given to undertake price reduction.
- **Wrong methodology:** Computation of benefit using single average price across the country and across customers for a product is erroneous. This is because prices may vary for different depot/customers according to their respective economic dynamics.
- **Inclusion of excess GST charged:** Excess price collected from customers also included the GST charged on the increased base price. As this amount has already been paid to the government, it could not be held as profiteered amount
- **Scope of investigation expanded:** While the complaint was initially filed only for one product, the Directorate General of Anti-Profiteering (DGAP) expanded the investigation to more than 250 products.
- **Violation of constitutional rights:** The DGAP has infringed the constitutional right to decide the selling price of the products by putting a cap on sale prices¹⁷.

14. M/s Local Circles India Pvt. Ltd.

15. M/s McNROE Consumer Products Pvt. Ltd.

16. Wild Stone Deodorant

17. of Article 19(1)(g) of the Constitution

DGAP's observation

- **No restriction on investigation:** The law does not restrict investigation to only the products against which the complaint is made.
- **Methodology to determine profiteering:** The GST law¹⁸ empowers the authority to determine the methodology and procedure for calculating the profited amount. Such methodology/procedure could vary from case to case, depending upon facts and circumstances of the case, as well as the nature of goods or services supplied.
- **Excess GST charged to be refunded:** If any supplier has charged more tax from the customers, such amount should either be refunded to eligible customers or deposited in Consumer Welfare Fund, regardless of whether such extra tax collected had been deposited in government account or not.
- **Freebies or discounts not considered:** Freebies and discounts provided to customer were not considered,

as profiteering is calculated on the transaction value¹⁹ and all such discounts, which do not form part of such value, cannot be included in the price of the product.

Observations and order

- **Benefits to be passed on to each recipient at SKU/unit level:** The NAA stated that the benefits are to be passed on to each recipient at each SKU level and not at entity/organisation/branch level.
- **Computation methodology:** NAA upheld DGAP's method of computing profited amount based on average pre-rate reduction base prices with actual post-rate reduction prices.
- **Profiteering upheld:** The NAA stated that as the respondent had increased the base prices after reduction in the GST rates, the anti-profiteering provisions²⁰ have not been complied. Accordingly, the NAA upheld²¹ profiteering charge against the respondent to extent of INR 21.85 crore (approximately).



Our comments

In most cases, authorities generally compare pre-GST base price of a product with post-GST base price, in case there is a reduction in the tax rates. If the post-GST price is higher, the same is construed as profiteering. However, various other aspects, such as festival offers, seasonal demands, increase in costs/overheads and freebies, impact pricing of a product. In the absence of a suitable methodology/mechanism under the GST law, the litigation relating to anti-profiteering may see an upward trend.

NAA upholds profiteering charge against FMCG giant

The NAA recently upheld profiteering against a FMCG giant engaged in health, hygiene, and home products for not passing on commensurate benefit by way of reduction in prices due to reduction in GST rates on its products. The NAA further stated that the computation of profited amount must be done at SKU level and not invoice or business vertical level.

Facts of the case

- The DGAP alleged that the assessee²², despite the reduction in GST rate from 28% to 18% with effect from 15 November 2017 on Dettol Hand Wash, had increased the base prices of his products and had not passed on the commensurate benefit of reduction in

GST rate by way of reduction prices.

- The DGAP stated that according to the pre and post reduction of GST rates and outward taxable supplies, the amount of net higher sales realisation due to increase in the base price despite reduction in rate from 28% to 18% the profited amount came to INR 65 lakh (approximately).

Observations and order

- **Increase in prices post GST rate reduction:** The NAA noted that the assessee had increased price post rate-reduction from 28% to 18% with effect from 15 November 2017. The authority rejected the assessee's justification about increase in costs

stating that costs could not have been suddenly increased on the intervening night of 14-15 November 2017 when the rate reduction has occurred, which could have forced an increase in prices exactly equal to the reduction in rate of tax.

- **Intention to deny benefit:** The NAA held that such an uncanny coincidence is unheard off and hence there is no doubt that the assessee has increased his price for appropriating the benefit of tax reduction with the intention of denying the above benefit to the consumers.
- **Computation methodology:** The NAA upheld DGAP's method of computing

18. Rule 126 of the Central Goods and Services Tax Rules, 2017

19. as per the provision of section 15 of the Central Goods and Services Tax Act, 2017

20. U/s 171(1) of the Central Goods and Services Tax Act, 2017

21. U/s Rule 133(1) of the Central Goods and Services Rules, 2017

22. M/s Reckitt Benckiser India Pvt Ltd

profiteered amount based on average base price of the product noting that DGAP has considered the details of the invoices and reconciled the same with GSTR-01. In addition, the NAA stated that the computation of profiteered amount must be done SKU wise and not invoice or business vertical-wise and the mathematical methodology adopted by the DGAP is logical, reasonable, and correct.

- **Different prices from different channels of distribution:** The NAA observed that the assessee has been charging different prices from different channels of distribution, i.e. CSD distributors, direct modern trade, e-commerce trade, indirect modern trade and super stockists. Therefore, the DGAP has calculated average base price of the product by considering a short period of 14 days.
- **Negotiation/agreement cannot override anti-profiteering provisions:** With respect to supplies to institutional distributor channel partner, the NAA stated that the same has been rightly included in the scope of investigation

as it is a normal commercial channel and any negotiation/agreement executed by the assessee while fixing prices with institutional distributor channel partners cannot override the anti-profiteering provisions.

- **Assessee's submission rejected:** The NAA rejected the assessee's submission that benefit of rate reduction was passed on by supplying additional quantity of the product free of cost, in absence of the assessee providing details, such as base price, final price and calculation, showing additional quantity being proportionate to rate reduction as also any advertisement or notice by which consumers were informed about passing on the benefit of tax reduction. The NAA also rejected the ground that the standing committee on anti-profiteering had failed to consider compliant within limitation period of two months.
- **Profiteering upheld:** The NAA upheld profiteering allegation to extent of INR 65 lakh (approx.) with interest.



Our comments

The NAA was formulated under the GST regime to ensure that the benefit arising due to reduction in tax rate/ITC is passed on to the ultimate consumers. However, as the law does not prescribe any mechanism/methodology to determine the quantum of benefits to be passed on to the consumers, many taxpayers have come under the scanner of anti-profiteering provisions, including various real estate, pharma, FMCG and restaurant companies .

Pursuant to the 35th meeting of the GST Council, the tenure of NAA, which was initially for two years, has been further extended by two more years. The extension was mainly due to the large pendency of complaints filed by the consumers. The NAA has to date passed more than 128 orders. At this juncture, it is imperative that to reduce the litigation and to effectively implement these provisions, the government should prescribe a detailed mechanism to be followed.



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Experts' column



Three years of GST: The journey so far

Manoj Mishra

Executive Director

E: manoj.mishra@in.gt.com

Dipti Nayak

Associate Director

E: dipti.nayak@in.gt.com

After much resistance and deliberations, the Indian government successfully implemented the momentous GST law on 1 July 2017. Despite opposition and political pressure, the government stood firm and resolute to implement nationwide

GST. It was a historical moment and the efforts have started showing worthy results as GST completes three years in India. This three-year journey has been an adventurous ride for the government as well as trade and businesses.

The GST was introduced in the country to mitigate various legacy issues, such as multiple taxation and cascading effects, input tax credit restrictions, interpretational issues, multiple compliances and complexities, under erstwhile legislations. These erstwhile issues have been resolved to a great extent after GST came in to effect. However, various new issues have emerged over these three years, leading to a rise in unprecedented complications, disputes and litigations.

Digitalisation and automation to ease compliance burden

The primary aim of the GST was to replace manual indirect tax compliances with digitalisation and system-driven automated compliances to ease the compliance burden of the taxpayers. However, the goal seems far from reality and the never-ending technical glitches on GSTN portal just add to the burden. In an endeavour to address these issues, the government took various measures, including the launch of IT grievance redressal mechanism and automated system with online and offline utilities. The government also plans to soon implement simple and single returns. In light of the current COVID-19

pandemic, the government has also offered several compliance relief measures to taxpayers. After some initial hiccups, there have been some improvements/required clarity and less portal issues, still a lot needs to be done on this front. At this juncture, it is imperative that the government resolves the issues related to the portal and avoids frequent changes in compliance procedures.

Positive results will hopefully start showing in the years to come and the primary agenda of GST, i.e. to provide uncomplicated/simple tax compliance regime, will be achieved. Revenue collections have witnessed an upward trend on month-on-month basis, barring a few exceptions/unforeseen events such as COVID-19. This proves that an increasing number of taxpayers are becoming compliant and adapting to GST. However, more needs to be done to truly achieve the primary objective of digitalisation and automation.

Advance ruling mechanism

Another important aspect that requires due consideration is the role played by state AARs, which were formed with an objective to impart required tax clarity to the applicant taxpayers. GST being a new-fangled law, there have been various instances where clarity on tax applicability/implications was required in advance to enable them to avoid ambiguity and future litigations. To address this issue, the state-wise AAR and appellate authorities have been formulated to provide required guidance on taxability. Even though the advance ruling is applicable only to the applicant, it also acts as a guiding tool for other taxpayers with similar issues. The AAR has dealt with various issues/applications and has been successful in providing clarity on important aspects. The speedy disposal of these applications has helped various taxpayers to undertake timely compliances and also to curb unwarranted future litigations. Undoubtedly, the AAR has played a very important role in handholding and has immensely assisted businesses in understanding the tax implications in advance so as to be GST compliant.

Though various tax ambiguities have been clarified by AARs, there has been creation of new ambiguities and confusion created by rulings pronounced by AAR. There have been cases wherein on the same issue, divergent views are expressed by different state AARs or where the tax position adopted by AAR has been contrary to the settled position under erstwhile legislations. The classic case of such controversial ruling was in case of M/s. Columbia Asia Hospitals Pvt. Ltd. wherein the Karnataka AAR/AAAR had held that activities, such as accounting and administrative work, performed by the employees at corporate office to its other distinct units shall be regarded as taxable supply, thereby chargeable to GST. Such cross-charges were not leviable to tax under erstwhile legislation and the settled position under the earlier law was unsettled by this ruling. Another recent example of such controversial/contrary ruling pertains to GST applicability on director's salary/remuneration wherein the Rajasthan AAR and Karnataka AAR has issued contrary rulings. Such contrary stands adopted by AARs have created confusion and chaos amongst the taxpayers instead of imparting required clarity. At this juncture, it is imperative that the centralised authority for advance ruling is made effective at the earliest so that such divergent views are settled and the ideology of 'one nation one tax' is achieved in the true sense.

Anti-profiteering provisions

The anti-profiteering provisions were made part of the GST law in order to ensure that the benefit of reduction in the tax rate on supply of goods/services or benefit of input tax credit is passed on to the ultimate consumer by way of a commensurate reduction in prices. The NAA was formulated for the tenure of two years to ensure that the due benefits have been passed by companies to ultimate consumers. However, this tenure has been further extended by two years due to large pendency of complaints filed by the consumers.

The NAA has till date addressed to more than 130 applications based on

the investigation reports submitted by the DGAP. Prima facie, the duty of NAA is to ensure that the due benefits are passed on to ultimate consumers. However, the end result seems to be contrary to the prime purpose of these provisions. In other words, the purpose to ensure passing on the benefit is not accompanied by a prescribed methodology/mechanism to determine the quantum of benefits to be passed on. It has been observed that in various cases the methodology adopted by the company is not accepted by the NAA, besides in each case a new methodology is being adopted by NAA/DGAP. Further, while determining the pricing and the benefits to be passed on, various external factors such as seasonal demands/offers, increase in costs and overheads etc. are not given enough weight. As a result of this ambiguity, many companies have come under the scanner of anti-profiteering provisions and there has been litigation and imposition of penalty by NAA.

At this juncture, it is imperative that due analysis of situation is done and some guidelines for calculating the quantum of benefits are formulated so that the companies can accordingly arrive at the pricing/quantum of benefits to be passed on. These random calculations that differ case-to-case have led to confusion amongst the and various writ petitions have been filed in high courts against the order of NAA. Due guidelines from authorities will go a long way to curb these litigations and will be beneficial for both companies and ultimate consumers.

Way forward and roadmap

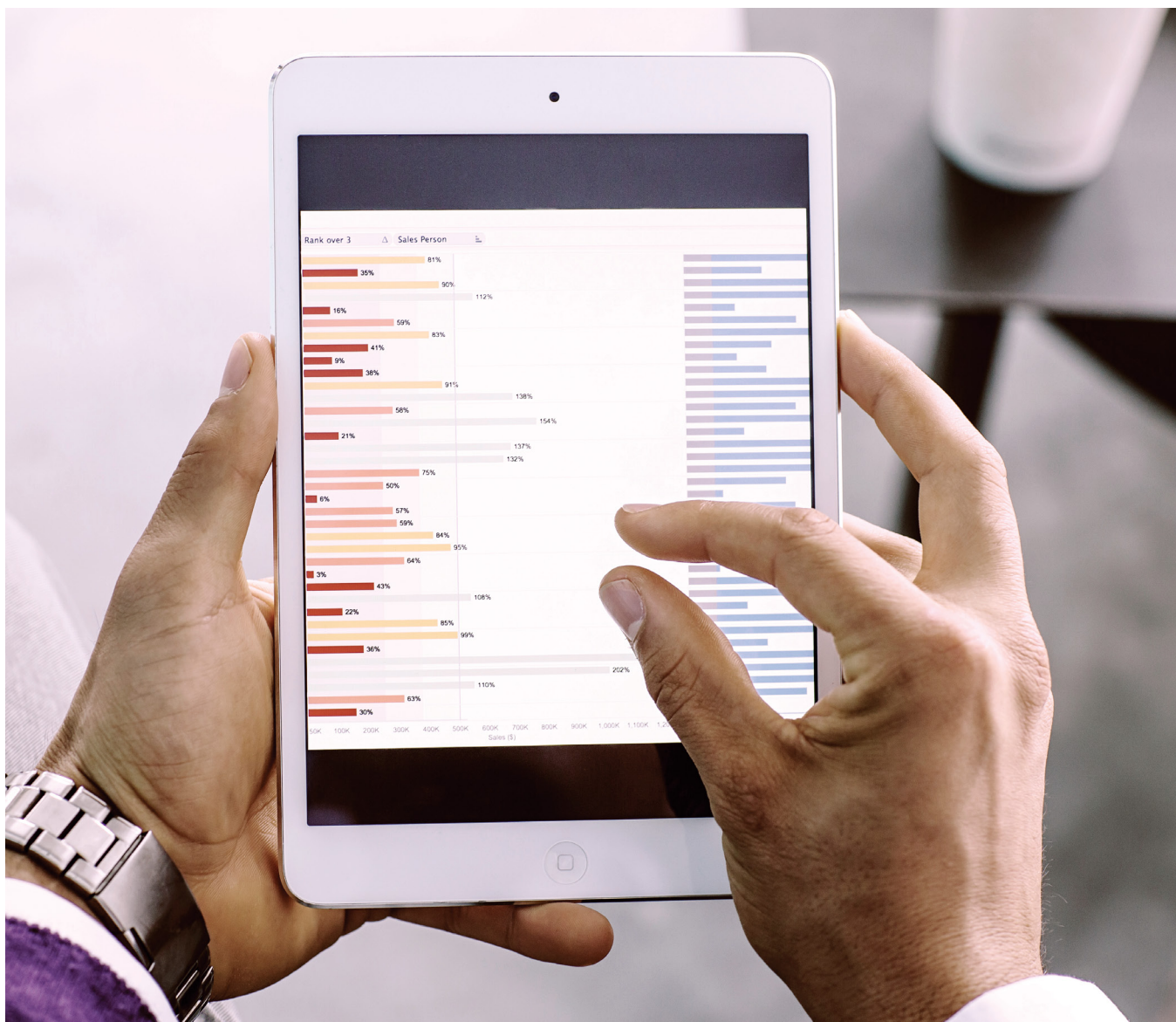
In a nutshell, there is an urgent need to simplify the compliance process, formulation of centralised authority for advance ruling to avoid divergent tax views and prescribing mechanism to arrive at the quantum of benefit to be passed on to consumer to comply with anti-profiteering provisions. Furthermore, formulation of state GST Tribunals is the need of the hour. The government should also make a gradual move towards two-three slab tax rate regime instead of present multiple tax slabs regime. The government may also consider

introducing a one-time amnesty scheme for GST.

The primary purpose and the fundamental principle for implementation of GST in India was to have a paradigm shift from complicated and fragmented tax

system to simplified tax regime. Indian indirect taxation system was one of the most complicated tax systems in the world and needed the revamp on urgent basis. GST was implemented to bring in a simplified tax regime so as to achieve 'one nation one tax'.

However, only time will tell whether this is truly achieved or not, as the GST is at a nascent stage and sufficient opportunity/time should be given for the law to settle down.



4

Issues on your mind



Whether director's salary is chargeable to GST based on recent ruling by Rajasthan AAR?

The Rajasthan AAR had stated that the remuneration/salary received by the directors of the company shall be liable to GST and the companies shall be liable to GST under reverse charge basis. However, contrary to this, Karnataka AAR has held that the remuneration of directors is not exigible to GST. Due to this divergent ruling, there has been ambiguity on GST implications on director's salary. However, recently, CBIC has issued a clarification on the subject matter and has held that the part of director's remuneration, which

has been declared as salary in the books of a company and on which tax has been deducted at source, shall not be liable to GST. The part of director's remuneration, which is declared separately, other than salaries, in the company's accounts and subjected to tax at source as fees for professional or technical services shall be treated as consideration for providing services and is therefore liable to GST. Further, it has been clarified that remuneration paid by companies to independent directors/non-executive directors shall be liable to GST. Hence, the matter has been sufficiently clarified and tax implications can be determined based on these guidelines.

What is the procedure for filing NIL return through SMS and the conditions to be fulfilled?

The government had recently announced various Goods and Services Tax (GST) relief measures for businesses in view of the COVID-19 pandemic. Among those, it announced facility of furnishing of return through short messaging service (SMS) for a registered person who is required to furnish NIL return in Form GSTR-3B for a tax period effective from a date to be notified later.

In this regard, the government has now rolled out the facility to file NIL GST return in Form GSTR-3B through SMS. The functionality of filing such NIL return

has already been made available on the GSTN portal.

Below is the procedure to file NIL returns by SMS:

- **Initiate NIL filing:** The taxpayer is required to send an SMS as **NIL<space>3B<space>GSTIN<space>Tax period** from the registered mobile number on **14409** to receive a code. so received is required to be communicated during the confirmation stage.

Illustrative message for filing NIL return for the month of May 2020: **NIL 3B 09XXXXXXXXXXZC 052020**

- **Confirming NIL filing:** For confirmation of filing, the taxpayer is required to send an SMS as **CNF 3B Code** from registered mobile number on **14409**. The taxpayer will receive Application Reference Number (ARN) through SMS stating that the return has been successfully filed. The taxpayer can use this ARN to track the status of return.

Example of confirmation message: **CNF 3B 123456**

- **For any help:** The taxpayer can send an SMS as **HELP 3B** on 14409 from registered mobile number.
- **Track status:** The status of the returns

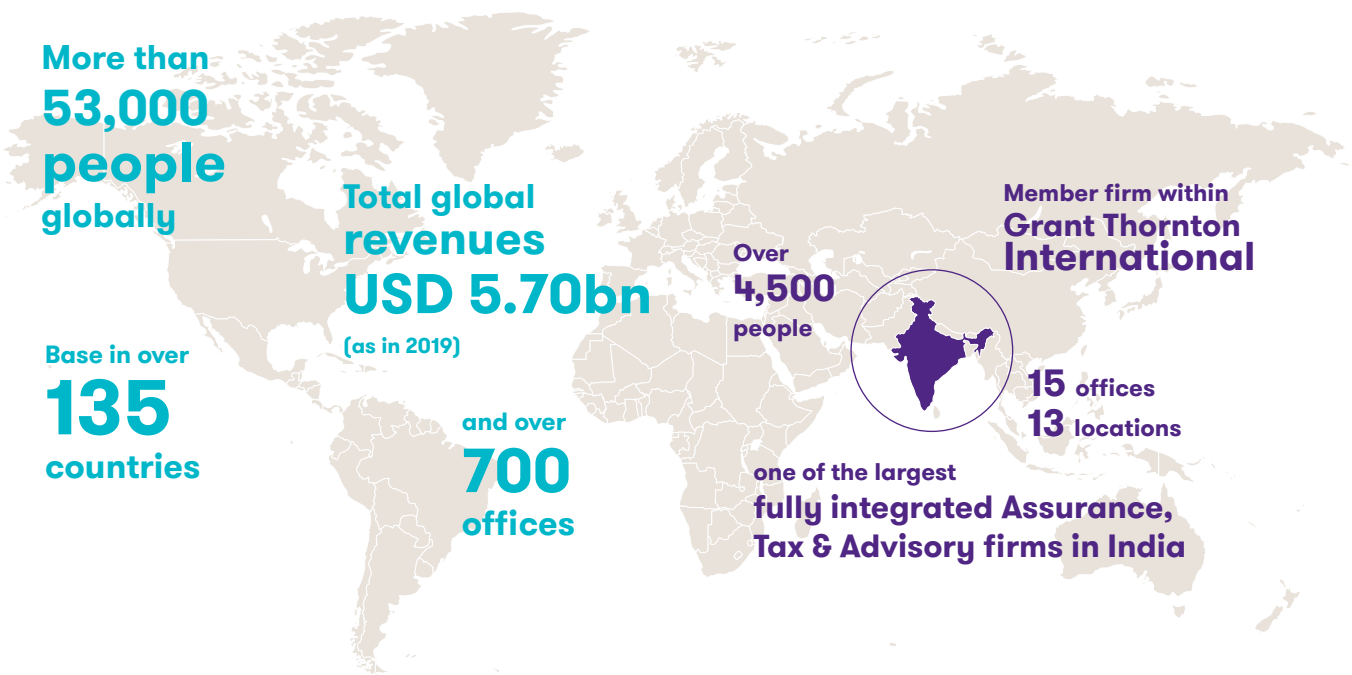
so filed can be tracked on the GST Portal by logging in to GSTIN account and navigating to Services Returns Track Return Status.

Whether the tenure of NAA be extended for further period after 2021?

The initial tenure of NAA was of two years which was further extended by two more years till 2021 as per the GST Council meeting recommendations. However, considering the large pendency of cases/applications and lockdown due to COVID-19, there is a possibility that the tenure may get extended.



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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, C V 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 - 600 018
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
M. G. Road
Kochi 682016
T +91 484 406 4541

KOLKATA

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

MUMBAI

16th Floor, Tower II
Indiabulls Finance Centre
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, 7th Floor
Sector - 16A
Noida 201301
T +91 120 485 5900

PUNE

3rd Floor, Unit No 309 to 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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