

GST Update

Weekly Update
10.08.2019

Background



- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 03.08.2019. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

Notifications and Circulars

- No notification/ circulars issued during the last week
- FAQs on Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) released by CBIC
- Finance Act, 2019 passed and received the assent of President on 1st August, 2019

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019

It shall come into force w.e.f a date to be notified

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019

- **Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019**
- Dispute Resolution cum Amnesty Scheme for legacy cases of Central Excise, Service Tax and Cess.
- *GST has just completed two years. An area that concerns me is that we have huge pending litigations from pre-GST regime. More than Rs. 3.75 lakh crore is blocked in litigations in service tax and excise. There is a need to unload this baggage and allow business to move on. I, therefore, propose, a Legacy Dispute Resolution Scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations.*

Nirmala Sitharaman (Minister of Finance) Budget Speech

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (Contd)

- A dispute resolution cum amnesty scheme for resolution and settlement of legacy cases.
 - covers past disputes of taxes which have got subsumed in GST namely Central Excise, Service Tax and Cesses
- The scheme to be available from a date to be notified.
- **Taxes/Cesses covered under the Scheme**
- The Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made there under and
- Twenty Six other Acts and Rules covered

Sabka Vishwas (Legacy Dispute Resolution) Scheme 2019 (Contd)

- **Objectives**

- One time measure for liquidation of past disputes of central excise and service tax
- To provide an opportunity of voluntary disclosure to non-compliant taxpayers.

- **Cases covered under the Scheme**

- A show cause notice or Appeals arising out of a show cause notice pending as on the 30th June, 2019
- An amount in arrears
- An enquiry, investigation or audit where the amount is quantified on or before 30th June, 2019
- A voluntary disclosure

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

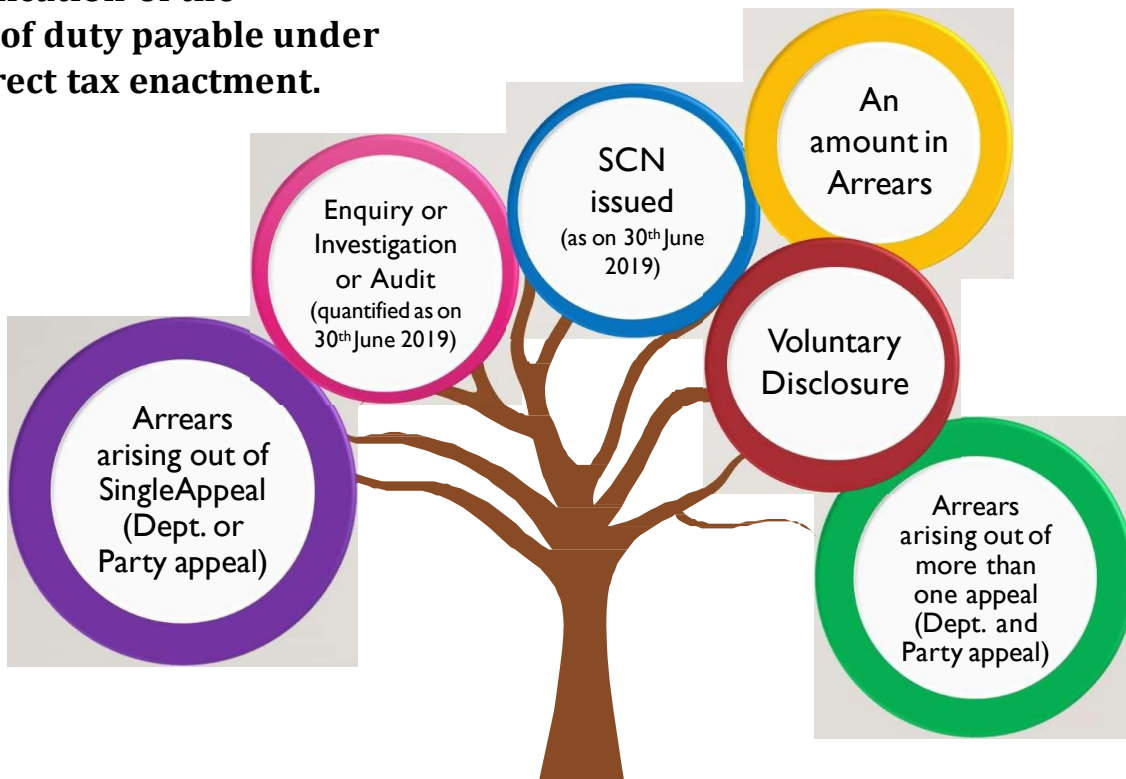
- **Exclusions from the Scheme**
- Cases in respect of excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944 (this includes tobacco and specified petroleum products; Ch.24-Tobacco; Ch.27-Coal)
- Cases for which the taxpayer has been convicted under the Central Excise Act, 1944 or the Finance Act, 1944
- Cases involving erroneous refunds
- Cases pending before the Settlement Commission

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

- **Eligibility**
- Any person falling under the following categories is eligible, subject to other conditions under the Scheme, to file a declaration:
 - Who has a SCN for duty or one or more appeals arising out of such notice pending and where the final hearing has not taken place as on 30.06.2019.
 - Who has been issued SCN for penalty and late fee only and where the final hearing has not taken place as on 30.06.2019.
 - Who has recoverable arrears pending.
 - Who has cases under investigation and audit where the duty involved has been quantified and communicated to party or admitted by him in a statement on or before 30th June, 2019.
 - Who want to make a voluntary disclosure.

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

“Quantified” means a written communication of the amount of duty payable under the indirect tax enactment.



“Audit” means any scrutiny, verification and checks and will commence when a written intimation from the Central Excise officer regarding conducting of audit is received.

“Enquiry or investigation”, under any of the indirect tax enactment, shall include the following actions, namely:—

- (i) search of premises;
- (ii) issuance of summons;
- (iii) Letters asking for production of accounts, documents or other evidence;
- (iv) recording of statements.

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

SL. NO:	LEVEL OF PENDENCY	DUTY / TAX / CESS AMOUNT INVOLVED	RELIEF IN TAX/DUTY/CESS LIABILITY GRANTED	TAX/DUTY/CESS PAYABLE FINALLY	OTHER RELIEFS
1.	Amount Pending as <u>Dispute on Account of Show Cause Notice / Appellate Authority as on 30th June 2019</u>	up to Rs. 50 Lakhs	70%	30%	PENALTY / INTEREST AND PROSECUTION ARE WAIVED
		Above Rs. 50 Lakhs	50%	50%	
2.	The Show Cause Notice is <u>only for Penalty / Late Fee</u> and the Tax is either paid or NIL. Penalty is imposed for Partners etc.,	Penalty / Late Fee	Entire Penalty or Late Fee	NIL	
3.	Amount on account of Arrears (where no further appeals filed) or all appeals lost.	upto Rs. 50 Lakhs	60%	40%	
		Above Rs. 50 Lakhs	40%	60%	
4.	Amount were assessed and declared as self-admitted liabilities but not paid.	upto Rs. 50 Lakhs	60%	40%	
		Above Rs. 50 Lakhs	40%	60%	
5.	Amount Quantified in any Audit, Enquiry, investigation etc.,	upto Rs. 50 Lakhs	70%	30%	
		Above Rs. 50 Lakhs	50%	50%	
6.	Voluntary Disclosure		NIL	100%	

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

- Scope of tax relief covered under section 124(1) (b) with respect to SCN for late fee and penalty only where the amount of duty in the said notice has been paid or is NIL.
 - The tax relief shall be the entire amount of late fee or penalty
- Cases of appeal before the appellate forum (Commissioner (Appeals) /CESTAT) where appeal has been heard finally on or before the 30th day of June, 2019
 - No, the person will not be eligible
- Scope under the scheme when adjudication order determining the duty/tax liability is passed and received prior to 30.06.2019, but the appeal is filed on or after 01.07.2019
 - No, such a person shall not be eligible

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

- Coverage of SCNs under the Scheme with respect to main noticee vis-à-vis co-notice: In case of a SCN issued to an assessee demanding duty and also proposing penal action against him as well as separate penal action against the co-noticee/s specified therein, if the main noticee has settled the tax dues, the co-noticee/s can opt for the scheme for the waiver of penalty.
- Treatment of Pre-deposit: Any amount paid as pre-deposit at any stage of appellate proceedings under the indirect tax enactment or as deposit during enquiry, investigation or audit, shall be deducted while issuing the statement indicating the amount payable by the declarant.

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

- **Benefits available under the Scheme**
- Total waiver of interest, penalty and fine in all cases • Immunity from prosecution
- In cases pending in adjudication or appeal, a relief of 70% from the duty demand if it is ₹ 50 Lakh or less and 50%, if it is more than ₹ 50 Lakh. The same relief is available for cases under investigation and audit where the duty involved is quantified on or before 30th June, 2019.
- In case of an amount in arrears, the relief is 60% of the confirmed duty amount if the same is ₹ 50 Lakh or less and it is 40% in other cases.
- In cases of voluntary disclosure, the declarant will have to pay full amount of disclosed duty.

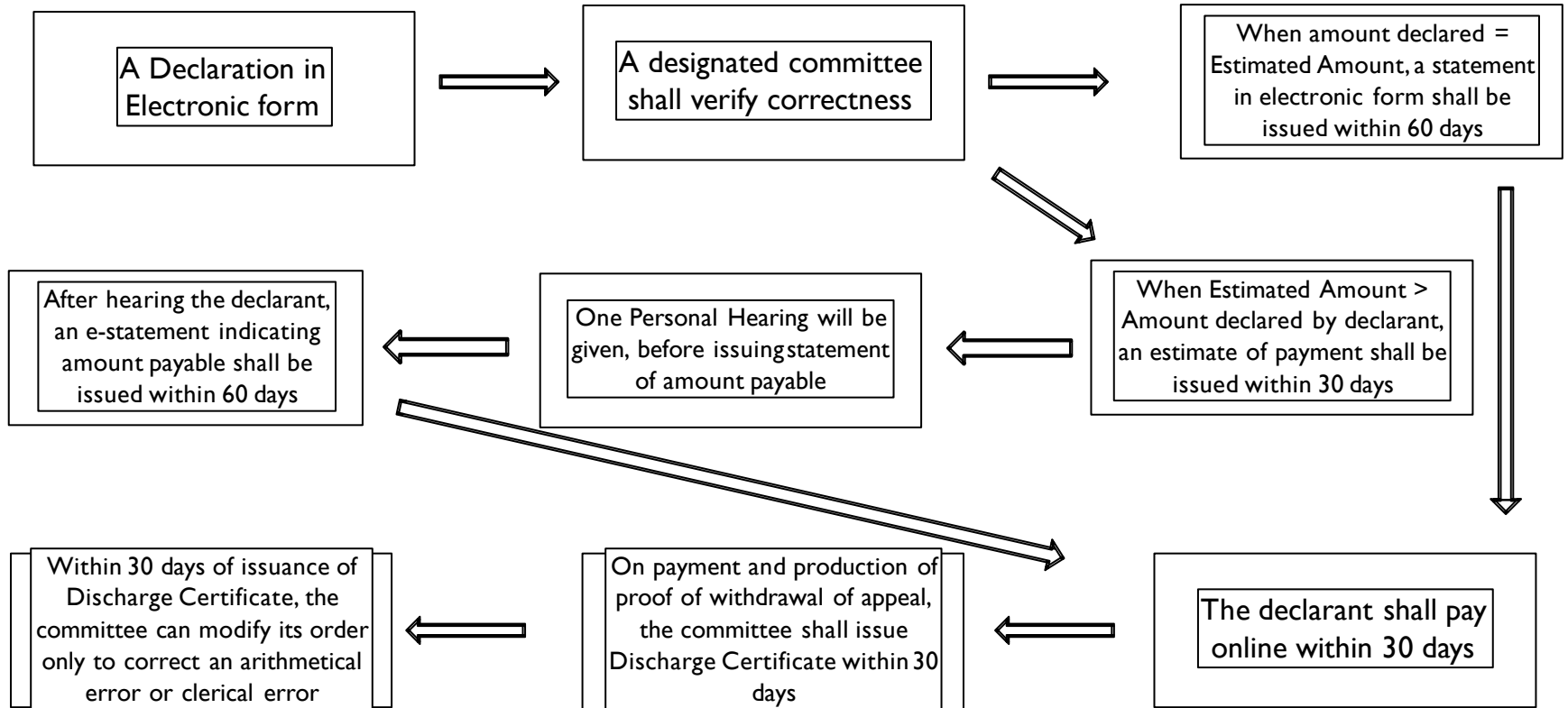
Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

- Where the declarant has filed an appeal or reference or a reply to the SCN against any order or notice giving rise to the tax dues, before the appellate forum, other than the Supreme Court or the High Court, then, such appeal or reference or reply shall be deemed to have been withdrawn.
- In case of a writ petition or appeal or reference before any High Court or the Supreme Court, the declarant shall file an application before such High Court or the Supreme Court for withdrawing such writ petition, appeal or reference and after withdrawal of such writ petition, appeal or reference with the leave of the Court, he shall furnish proof of such withdrawal to the Designated Committee.

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)

- No input tax credit for any amount paid under the Scheme can be taken
- The amount under the Scheme cannot be through the input tax credit account under the indirect tax enactment or any other Act
- In cases where pre-deposit or other deposit already paid exceeds the amount payable as indicated in the statement of the designated committee, the difference shall not be refunded.
- Where any material particular furnished in the declaration is subsequently found to be false, within a period of one year of issue of the discharge certificate, it shall be presumed as if the declaration was never made and proceedings under the applicable indirect tax enactment shall be institute

Sabka Vishwas Scheme, 2019 (Legacy Dispute Resolution) (Contd)



A TYPICAL FLOW CHART OF SEQUENCE OF PROCESSES

Finance Act, 2019 (GST Provisions)

Finance Act, 2019

- Finance Act, 2019 received the assent of the President of India on 1st August, 2019
- However, sections 92 to 112(Pertaining to CGST Act, 2017) and section 114(IGST Act, 2017) of the Finance Act, 2019 **shall come into force at a later date to be notified** by the Central Government. (After all the States also carry out legislative changes in their respective SGST Act(s))
- Section 113, 115 and 116 of the Finance Act, 2017 shall come into effect retrospectively w.e.f 1st July, 2017

Amendment to CGST Act, 2017

- **Section 2(4):** ‘Adjudicating Authority’ amended to exclude ‘the National Appellate Authority for Advance Ruling’
- **Section 10:** Amendment to introduce composition scheme for service providers (Up to Rs. 50 lacs)
- **Section 22:** Increase in threshold limit for registration in respect of goods to Rs. 40 lacs
- **Section 25:** Aadhaar authentication for new and existing registrants
- **Section 31A:** Specified suppliers to mandatorily give the option of electronic payment to the recipients of supply of goods or services or both made by them
- **Section 39:** Provide for new return system and allow composition taxpayers to furnish annual return along with quarterly payment

Amendment to CGST Act, 2017 (Contd)

- **Section 44:** Empowers the “Commissioner or Joint Secretary posted in the Board” to extend the due date furnishing Annual Return prescribed (FORM GSTR9/9A) and reconciliation statement (FORM GSTR-9C)
- **Section 49:** Provide for transfer of an amount from one head to another head in the electronic cash ledger
- Such transfer shall be deemed to be a refund from the electronic cash ledger under this Act. Any amount that has been transferred to the electronic cash ledger under this Act, the same shall be deemed to be deposited in the said ledger.
- **Section 50:** Charging interest only on the net cash tax liability, except in proceedings under section 73 or 74
- Interest on late payment of tax shall be calculated on net cash liability (gross liability less credit available), and not gross tax liability

Amendment to CGST Act, 2017 (Contd)

- **Section 52(4&5):** Empowers the “Commissioner or Joint Secretary posted in the Board” to extend due date of monthly/ annual statement of TCS
- **Section 53A:** Provides for consequential transfer of amount between Centre and States, due to section 49 (Transfer of an amount from one head to another head in the electronic cash ledger
- **Section 54(8A):** Provides that the Central Govt may disburse refund amount to taxpayers in respect of refund of State taxes i.e disbursement of refund by single authority

Amendment to CGST Act, 2017 (Contd)

- **Section 95(f):** To define the “National Appellate Authority (NAA)” for Advance Ruling
- **Section 101A, B & C:** To introduce provisions relating to ‘National Appellate Authority (NAA) for Advance Ruling’
- **Section 102:** Power to NAA to rectify any error apparent on the face of the record
- **Section 103:** AR pronounced by the NAA shall be binding PAN wise
- **Section 104:** AR pronounced by NAA to be void in certain cases
- **Section 105:** NAA to have powers of Civil Court under the Code of Civil Procedure, 1908
- **Section 106:** NAA to regulate its own procedure

Amendment to CGST Act, 2017 (Contd)

- **Section 168:** Commissioner or Joint Secretary shall exercise the powers specified in respect of section 44(1) and section 52(4&5)
- **Section 171:** To empower National Anti-profiteering Authority to impose penalty equivalent to 10% of the profiteered amount. However, no penalty shall be levied if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority

Amendment to IGST Act, 2017

- **Section 17A:** Provisions for consequential transfer of amount between Centre and States, in view of inter-operability of amounts in different heads of cash ledger under section 49 of CGST Act)

Retrospective Amendment to CGST / IGST/UTGST Act(s)

- **Section 113, 115 & 116 of the Finance Act, 2019**
- Retrospective Amendment in Notification No.2/2017-Central Tax (Rate) dated 28th June, 2017
- Following Entry 103A inserted-
- “Uranium Ore Concentrate” falling in chapter 26 exempted retrospectively w.r.t 1st July, 2017
- Corresponding amendment in IGST Act as well as UTGST Act also done retrospectively (Section 115 and 116 of Finance Act, 2019)

Customs Exemptions (IGST) in Finance Act, 2019

- **Notification No. 86/2018 – Customs dated 31st December, 2018**
- Vehicles etc.- imported by Tourists under Triptyque or carnet de passage (Original Customs Notification No. 296/76-Customs, dated 2nd August, 1976)
- Exempted from Integrated Tax and Compensation Cess retrospectively w.e.f 1st July, 2017
- From 1st January, 2019, it was already exempted vide Notification no. 86/2018 dated 31st December, 2018



GST Legal Updates

Curtailment of incentives under Package Scheme of Incentives due to introduction of GST

Case of K.M Refineries and Infraspaces Pvt Ltd Vs UOI reported in 2019-TIOL-1735-HC-MUM-CT

Facts: Assessee-company deals in manufacture of Vegetable Oil and Allied Oil products. Fired by the enthusiasm created by the Government scheme intending to have industries at disperse places all over Maharashtra under 'New Package Scheme of Incentives, 1993', it set up a factory unit at village Dabha, Tahil Nandgaon Khandeshwar, District Amravati with the hope that the incentives offered under the Incentive Scheme would offset the increased cost of production and the assessee would be able to compete with other similar industries in marketing its products at affordable rates.

Under the Incentive Scheme, monetary and other incentives in the nature of tax subsidy or tax exemption at the rates prescribed in the scheme and other benefits were given.

Curtailment of incentives under Package Scheme of Incentives not permissible due to introduction of GST

Facts....Contd...

The document of Incentive Scheme required that the Eligibility Certificate be issued by the Implementing Agency and invariably the Implementing Agency would be the concerned District Industries Centre headed by an officer of the rank of General Manager.

The assessee made an application for issuance of the Eligibility Certificate which was issued on 20th March 2017 and it was valid for nine years. Under the Incentive Scheme, the date from which the Eligibility Certificate shall take effect for availing of the sales tax incentives was to be specified by the Commissioner of Sales Tax. The Commissioner prescribed the effective date, but, while doing so, curtailed the validity period by about three years by his order passed on 10th August 2017. The assessee was aggrieved. In its writ petition, the assessee has also raised the issue of tax policy change reducing the benefits under the Scheme which violated the principle of promissory estoppel.

Curtailment of incentives under Package Scheme of Incentives not permissible due to introduction of GST

The Hon'ble High Court inter alia held as under

The doctrine of promissory estoppel clearly apply here and would forbid the Government from taking any decision of not completely implementing the Incentive Scheme or reducing the incentives to the detriment of the Petitioner and to that extent the decision would have to be held as illegal. Once a promise has been solemnly given with an intention that it would be acted upon and which has been indeed acted upon and liabilities suffered by the promisee, the State cannot be permitted to backtrack on the promise and change its position so as to cause loss to the promisee. There can be an exception to the application of the principle of promissory estoppel, but, the facts and circumstances necessary for exempting the Government from its liability do not exist on record and the reply of the State also does not convincingly point out any such exceptional facts and circumstances warranting toning down or withdrawing of its promise, much to disadvantage of the Petitioner.

Curtailment of incentives under Package Scheme of Incentives not permissible due to introduction of GST

The Hon'ble High Court inter alia held as under

If the State has to reverse its promise, it must demonstrate specifically the facts and circumstances showing that enforcing of the promise against it would be highly iniquitous. The Government cannot change its stand merely upon its ipse dixit. There must be in existence justifiable facts and circumstances to change the decision or otherwise the State must give full effect to the decision, which in the present case is to be found in the Incentive Scheme. This is essence of the rule of law.

The Respondents are directed to implement the Incentive Scheme as amended up-to-date with a discretion to modify the scheme so as to bring it in line with the new tax structure under the General Sales Tax scheme, but without reducing or restricting the benefits as conferred upon the Petitioner under the Incentive Scheme within a period of eight weeks from the date of receipt of this Judgment.

High Court upholds power of Revenue to demand Service Tax post introduction of GST

Case of Aravali Minerals and Chemicals Industries Vs Union of India and Ors reported in 2019-TIOL-1711-HC-RAJ-ST

Facts: Petitioner impugning that the SCN issued to it for recovery of service tax is not legally valid as w.e.f 01.07.2017, the legal regime has changed with introduction of GST which by section 174 repealed the Finance Act, 1994.

The Hon'ble High Court held as under

Section 174(2)(c) of CGST Act, 2017 prima facie seems to preserve the levy insofar as any liability to pay tax was incurred by the individual or concern. Court is of the opinion that the present writ petition cannot be maintained. It is open to the Writ petitioner to raise all contentions including levy and extent of levy of service tax before the adjudicating officer concerned. Writ petition is disposed of

Any ISSUES/ queries?

- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
 - 1800 1200 232
 - cbecmitra.helpdesk@icegate.gov.in
- GSTN Help Desk
 - <https://selfservice.gstsystem.in/> - Grievance redressal portal
 - Help Desk Number: 0120-4888999

Any ISSUES/ queries?

- Twitter Handles
- For General Questions
- https://twitter.com/askGST_Gol
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- https://twitter.com/NACIN_OFFICIAL

THANK YOU