

# GST Update

Weekly Update  
23.02.2019

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 09.02.2019. It supplements the earlier GST Updates.
- No update was released for the week ended on 16.02.2019, since no circular/ notification was issued during that week.
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

- 3 Central Tax Circulars and one Central Tax Notification issued
- SOP on TDS by Law Committee, GST Council updated
- CBIC GST Application Newsletter for February issued by DG Systems and Data Management, CBIC
- 33<sup>rd</sup> GST Council Meeting held last week and adjourned to 24<sup>th</sup> February, 2019. The recommendations are also included in the presentation

## Last Date for GSTR-3B

- **Notification No. 09/2019 – Central Tax dated 20<sup>th</sup> February, 2019**
- Last Date for Return in FORM GSTR-3B for the month of January, 2019
  - Extended by two days to 22<sup>nd</sup> February, 2019
- Last Date for the return in FORM GSTR-3B for the month of January, 2019 for registered persons whose principal place of business is in the State of Jammu and Kashmir
  - Extended to 28<sup>th</sup> February, 2019.

- **Circular No. 89/08/2019-GST dated 18<sup>th</sup> February, 2019**
- A registered supplier is required to mention the details of inter - State supplies made to **unregistered persons, composition taxable persons and UIN holders** in Table 3.2 of FORM GSTR-3B. Further, the details of all inter-State supplies made to unregistered persons where the invoice value is up to Rs 2.5 lakhs (rate-wise) are required to be reported in Table 7B of FORM GSTR-1.
- Apportionment of IGST collected on inter–State supplies made to unregistered persons in the State where such supply takes place is based on the information reported in Table 3.2 of FORM GSTR-3B by the registered person

- **Circular No. 89/08/2019-GST dated 18<sup>th</sup> February, 2019**
- A number of registered persons have not reported such details in Table 3.2 of FORM GSTR-3B, however, the same have been mentioned in Table 7B of FORM GSTR-1 resulting in –
- (i) non-apportionment of the due amount of IGST to the State where such supply takes place; and
- (ii) a mis-match in the quantum of goods or services or both actually supplied in a State and the amount of IGST apportioned between the Centre and that State, and consequent non-compliance section 17(2) of the IGST Act, 2017.

- **Circular No. 89/08/2019-GST dated 18<sup>th</sup> February, 2019**
- Accordingly, instructions have been issued to registered persons making inter-State supplies to unregistered persons to report the details of such supplies along with the place of supply in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1 as mandated by the law.
- Contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provisions of section 125 of the CGST Act.

# Issue of invoices in Inter-State supplies

- **Circular No. 90/09/2019-GST dated 18<sup>th</sup> February, 2019**
- **Rule 46(n) of the CGST Rules** mandates that place of supply along with name of state has to be mentioned in the invoice
- A number of registered persons (**especially in the banking, insurance and telecom sectors, etc.**) are not mentioning the **place of supply along with the name of the State** in case of a supply made in the course of inter-State trade or commerce in contravention of rule 46(n).
- Instructions issued to all such registered persons to specify the place of supply along with the name of the State in the tax invoice. Contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provisions of sections 122 or 125 of the CGST Act

# Supply of warehoused goods while being deposited in a customs bonded warehouse

- **Circular No. 91/10/2019-GST dated 18<sup>th</sup> February, 2019**
- Supply of warehoused goods while deposited in custom bonded warehouses had the character of inter-State supply as per the provisions of IGST 2017
- During the period from 1st of July, 2017 to 31st of March, 2018 , the common portal did not have the facility to enable the taxpayer to report payment of integrated tax in FORM GSTR-1, for such supplies especially where the supplier and the recipient were located in the same State or Union territory. Hence taxpayers making such supplies have reported such supplies as intra-State supplies and discharged central tax and state tax instead of integrated tax accordingly.

## Supply of warehoused goods while being deposited in a customs bonded warehouse (Contd)

- **Circular No. 91/10/2019-GST dated 18<sup>th</sup> February, 2019**
- In view of revenue neutral position of such tax payment and that facility to correctly report the nature of transaction in FORM GSTR-1 furnished on the common portal was not available during the period July, 2017 to March, 2018, it has been decided that, as a one-time exception, suppliers who have paid central tax and state tax on such supplies, during the said period, would be deemed to have complied with the provisions of law as far as payment of tax on such supplies is concerned as long as the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax on such supplies.

## SOP on TDS

- <https://cbec-gst.gov.in/pdf/SOP-TDS-AS-ON-18-February-2019.pdf>
- Q 61 of the SOP by Law Committee, GST Council has been amended as on 18.02.2019
- Q 61. As a DDO I have deducted tax while making payment to various Vendors. I have deposited the amount in the appropriate Government A/c & also filed return within stipulated time. Have I discharged all my liabilities relating to TDS?
- Ans. Yes, as a system generated TDS certificate in FORM GSTR-7A mentioning therein the value on which tax is deducted, and amount of tax deducted and other related particulars shall be available for download from the portal by deductee. This shall be deemed to be sufficient compliance with the provisions of section 51(3) since such certificate cannot be generated/downloaded unless the deductor files the return.

# 33<sup>rd</sup> GST Council Meeting recommendations

- GST Rates for Real Estate Sector to be effective from 1<sup>st</sup> April, 2019
  - Effective GST rate of 5% without ITC on residential properties outside affordable segment;
  - Effective GST of 1% without ITC on affordable housing properties.
- **Definition of affordable housing:**
  - A residential house/flat of carpet area of up to 90 sqm in non-metropolitan cities/towns and 60 sqm in metropolitan cities having value up to Rs. 45 lacs (both for metropolitan and non-metropolitan cities).
  - Metropolitan Cities are Bengaluru, Chennai, Delhi NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurgaon, Faridabad), Hyderabad, Kolkata and Mumbai (whole of MMR).

# 33<sup>rd</sup> GST Council Meeting recommendations

- **GST exemption on TDR/ JDA, long term lease (premium), FSI:**
- Intermediate tax on development right, such as TDR, JDA, lease (premium), FSI shall be exempted only for such residential property on which GST is payable.
- Details of the scheme shall be worked out by an officers committee and shall be approved by the GST Council in a meeting to be called specifically for this purpose.

- [http://www.cbic.gov.in/resources//htdocs-cbec/gst/CBIC-GST-Newsletter\\_Feb-2019.pdf;jsessionid=0A226C18024EB4CFBD67618F05780854](http://www.cbic.gov.in/resources//htdocs-cbec/gst/CBIC-GST-Newsletter_Feb-2019.pdf;jsessionid=0A226C18024EB4CFBD67618F05780854)
- Newsletter by DG Systems and Data Management for February, 2019 issued
- Focus- Making sense of GST Data
- 50 FAQs issued to provide CBIC Officers step wise guide to access the desired GST data

- **New Functionalities on CBIC-GST Portal**
- Tax Officers can----
  - Download documents attached with refund application RFD-01A
  - See GSTR-2A
  - See ITC-04 on goods sent for job work
  - MIS report on Nil return filers – for a month as well as for different returns
  - MIS report on formation wise number of taxpayers available for a define period

- **New Functionalities on GST Portal**
- Tax Officers can----
  - File application for rectification of order passed by appellate authority (Section 161)
  - Allow or reject application for compounding of offence in CPD-02
- Taxpayer can
  - Furnish details of security/ surety in ASMT-05
  - Submit application for compounding in CPD-01
  - Upload statements/ supporting documents with RFD-01
  - File application for rectification of order passed by appellate authority



# GST Legal Updates

# Reasonable opportunity to rectify Tran-2 should be allowed

- **Optival Health Solutions Pvt Ltd Vs UOI reported in 2019-TIOL-448-HC-Kol-GST.**
- **Facts**
- Petitioners have sought a direction upon the respondents to allow them to revise/rectify their Form GST TRAN-2 electronically or manually - Petitioners contend that the present scheme of things does not allow rectification or revision of the TRAN-2 form and such a lacuna violates Article 14 of the Constitution; that an assessee should be allowed to revise or rectify TRAN-2 form particularly when TRAN-1 forms are allowed to be revised or rectified; that authorities must have similar provisions as akin to rule 120A of the CGST Rules, 2017.

# Reasonable opportunity to rectify Tran-2 should be allowed

- **The High Court held as under**
- Taxing statutes are to be strictly construed but such interpretation should not lead to a reckless or a mindless mechanical application of the statute. Form GST TRAN-2, at best, is an admission of the person filing the same with regard to the contents of the document. A person making an admission is entitled to prove that the admission was made by mistake or was untrue. If, a person making the admission is able to substantiate with cogent evidence that the admission was a mistake or was untrue, then such facts have to be taken into consideration for the purpose of deciding the evidentiary value of the admission and relevancy thereof. In other words, law permits a person making an admission, the liberty of explaining the same, if he so chooses - Form GST TRAN-2, at best, can be an admission allowing the authorities to inform the state of affairs of the petitioner in relation to the subject matter governed by such form

# Reasonable opportunity to rectify Tran-2 should be allowed

However, neither the Act nor the Rules of 2017 can be read to mean that the same excludes the right of a person making an admission to forfeit the opportunity to explain it. Neither the Act nor the Rules of 2017 forfeits the right of a person making an admission to substantiate that such admission was made by mistake or was untrue. Therefore, when such a person is seeking to correct form GST TRAN-2 on his own, an opportunity should be afforded to such person to correct the same - the authorities may retain the original GST TRAN-2 form for their assessment purpose and can confront the person seeking to revise the GST TRAN-2 with the form as originally filed and require explanation as to why such revision was required and whether such revisions are justified or not - such an enquiry can be held in the assessment proceedings - Authorities are directed to allow the petitioner to file a revised Form GST TRAN-2 either electronically or manually, in accordance with law, within four weeks

# Petitioners denied Bail in GST Fraud Case by the High Court



- **Vikas Goel and Another Vs CGST Commissionerate, Gurugram reported in 2019-TIOL-445-HC-P&H-GST;**
- **Facts**
- Petitioners are seeking grant of regular bail in arrest made by Director General of Goods and Services Tax Intelligence, Gurugram Zonal unit u/s 69 of CGST Act. Allegations by the department is that petitioners have made bogus billing and adjusted the amount without any transportation of the goods or sale of goods etc.; that only paper transactions were done and amounts have been adjusted and wrongly claimed relief is of more than Rs. 80 crores; that officer from the office of Director General of Goods and Services Tax Intelligence visited the registered premises of M/s Sriram Industries and said premises was found closed and on enquiry from the person available in the close vicinity, it was ascertained that the said premises was closed for the last five years; that premises was controlled and used by Vinay Kumar

# Petitioners denied Bail in GST Fraud Case by the High Court

- **Vikas Goel and Another Vs CGST Commissionerate, Gurugram reported in 2019-TIOL-445-HC-P&H-GST;**
- **Facts (Contd...)**
- Gupta, Director of M/s MICA Industries; that search was conducted leading to recovery and seizure of a large number of incriminating documents indicating evasion of CGST duty; that statements were recorded of Director of M/s MICA Industries and Proprietor of M/s Galaxy Metals Products; that further investigation was conducted from transporters etc.

## Any ISSUES/ queries?

- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
  - 1800 1200 232
  - [cbecmitra.helpdesk@icegate.gov.in](mailto: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\\_GoI](https://twitter.com/askGST_GoI)
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- [https://twitter.com/NACIN\\_OFFICIAL](https://twitter.com/NACIN_OFFICIAL)

**THANK YOU**