

# GST Update

Weekly Update  
25.01.2020

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 11.01.2020. No update was issued on 18.01.2020. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications, except the provisions related solely to SGST provisions. Similar parallel provisions in State Laws may be referred to as required

- **Notification No. 05/2020 – Central Tax dated 13.01.2020**
- CBIC hereby authorises –
  - a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and
  - b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax,

as the Revisional Authority under section 108 of the CGST Act, 2017.

# Staggering of filing of returns

- <https://pib.gov.in/newsite/PrintRelease.aspx?relid=197579>
- PIB Press release dated 22.01.2020
- The last date for filing of GSTR-3B for the taxpayers having annual turnover of Rs 5 crore and above in the previous financial year would be 20<sup>th</sup> of the month.
- Thus, around 8 lakh regular taxpayers would have the last date of GSTR-3B filing as 20<sup>th</sup> of every month without late fees.
- The taxpayers having annual turnover below Rs 5 crore in previous financial year will be divided further in two categories.

- The tax filers from 15 States/ UTs, i.e., Chhattisgarh, Madhya Pradesh, Gujarat, Daman and Diu, Dadra and Nagar Haveli, Maharashtra, Karnataka, Goa, Lakshadweep, Kerala, Tamil Nadu, Puducherry, Andaman and Nicobar Islands, Telangana and Andhra Pradesh will now be having the last date of filing GSTR-3B returns as 22<sup>nd</sup> of the month without late fees. This category would have around 49 lakh GSTR-3B filers who would now have 22<sup>nd</sup> of every month as their last date for filing GSTR-3B returns.
- For the remaining 46 lakh taxpayers from the 22 States/UTs of Jammu and Kashmir, Laddakh, Himachal Pradesh, Punjab, Chandigarh, Uttarakhand, Haryana, Delhi, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand and Odisha having annual turnover below Rs 5 crore in previous financial year will now be having last date of filing the GSTR-3B as 24<sup>th</sup> of the month without late fees.

# SOP for exporters

- **Circular No.131/1/2020-GST dated 23.01.2020**
- **Standard Operating Procedure (SOP) to be followed by exporters**
- To mitigate the risk of ITC being taken on fake invoices, the Board has taken measures to apply stringent risk parameters-based checks driven by rigorous data analytics and Artificial Intelligence tools based on which certain exporters are taken up for further verification. Overall, in a broader time frame the percentage of such exporters selected for verification is a small fraction of the total number of exporters claiming refunds. The refund scrolls in such cases are kept in abeyance till the verification report in respect of such cases is received from the field formations. Further, the export consignments/shipments of concerned exporters are subjected to 100 % examination at the customs port.

## SOP for exporters (Contd)

- The exporters whose scrolls have been kept in abeyance for verification would be informed at the earliest possible either by the jurisdictional CGST or by Customs.
- To expedite the verification, the exporters on being informed in this regard or on their own volition should fill in information in the format attached as Annexure 'A' to this Circular and submit the same to their jurisdictional CGST authorities for verification by them. If required, the jurisdictional authority may seek further additional information for verification. However, the jurisdictional authorities must adhere to timelines prescribed for verification.

## SOP for exporters (Contd)

- Verification shall be completed by jurisdiction CGST office within 14 working days of furnishing of information in proforma by the exporter. If the verification is not completed within this period, the jurisdiction officer will bring it the notice of a nodal cell to be constituted in the jurisdictional Pr. Chief Commissioner/Chief Commissioner Office.
- After a period of 14 working days from the date of submission of details in the prescribed format, the exporter may also escalate the matter to the Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax by sending an email to the Chief Commissioner concerned (email IDs of jurisdictional Chief Commissioners are in Annexure B).
- The Jurisdictional Pr. Chief Commissioner/Chief Commissioner of Central Tax should take appropriate action to get the verification completed within next 7 working days.



## SOP for exporters (Contd)

- In case, any refund remains pending for more than one month, the exporter may register his grievance at [www.cbic.gov.in/issue](http://www.cbic.gov.in/issue) by giving all relevant details like GSTIN, IEC, Shipping Bill No., Port of Export & CGST formation where the details in prescribed format had been submitted etc.
- All such grievances shall be examined by a Committee headed by Member GST, CBIC for resolution of the issue.



# GST Portal Updates

- **Refund**

- Taxpayers while filing refund application will now be given an alert, if they wish to file NIL refund application or not, so that they do not inadvertently file NIL refund claim. It may be noted that once refund is filed, taxpayers can't change the particulars of the refund application, even if they have some refund amount to be claimed, in the same refund category for the selected month. Therefore, the message for filing NIL refund is made clearer, so that mistakes are reduced.

- Now correct Form number will be shown to UIN/Embassy Taxpayers in Draft and Final copy of Form GST RFD-10.

- Now debited amount (while filing refund application) will be credited back to Taxpayer's ITC ledger, when deficiency memo is issued second time by the tax officer (other conditions of the refund application remaining same).

# Status of Annual Return filing

## Status of Annual Return Filing for FY 2017-18 for Regular Taxpayers as on 24<sup>th</sup> January 2020

S. No.	Category	No. of Taxpayers	Remarks
01	Number of Regular Taxpayers during FY2017-18	92,58,899	
02	Out of 01 above, number of taxpayers who have filed all due GSTR-3B & GSTR-1 Returns	67,64,361	Filing of all GSTR-1 and GSTR-3B is a must to become eligible to file GSTR-9
03	Out of 02 above, number of taxpayers who have filed GSTR-9	29,90,817	<b>44.41%</b> of those who can file GSTR-9 have filed the same
04	Number of taxpayers eligible to file GSTR-9C	12,41,764	Those whose Annual Turnover during FY 2017-18 was more than Rs 2 Crores
05	Out of 04, number of taxpayers who have filed GSTR-9C	2,46,547	<b>19.85 %</b> of those eligible to file
<b>Status of Composition Taxpayers' Annual Return Filing for FY 2017-18 as on 24<sup>th</sup> January 2020</b>			
06	Composition Taxpayers eligible to file GSTR-9A during FY 2017-18	19,04,629	
07	Out of 06 above number of taxpayers who have filed GSTR-9A	7,32,609	<b>38.46%</b> of eligible taxpayers have filed GSTR-9A so far



# GST Legal Updates

# Supreme Court rejects review Petition in the case of Mohit Minerals

**Case of Mohit Mineral Pvt Ltd Vs UOI reported in 2020-  
TIOL-23-SC-GST**

The Hon'ble Supreme Court in the above referred case held as under

Application for oral hearing is rejected. The present review petition is devoid of merits & so merits being dismissed.

The case pertained to the challenge to the Compensation Cess being levied by the Government under GST.

## Supreme Court rejects review Petition in the case of Mohit Minerals



- Brief on the earlier decision of the Hon'ble SC in case of Mohit Mineral-
- Finance Act, 2010 with effect from 01.07.2010 levied Clean Energy Cess which was in the nature of a duty of excise on the production of coal and was being collected at the time of removal of raw coal, raw lignite and raw peat from the mine to the factory - Clean Energy Cess was repealed by Taxation Laws (Amendment) Act, 2017 - Section 18 of the Constitution (One Hundred and First Amendment) Act, 2016 enabled the Parliament to levy a cess for five years to compensate the States for the loss of revenue on account of GST- State compensation cess is "with respect to" goods and services tax, it is a tax -When Constitution provision empowers the Parliament to provide for Compensation to the States for loss of revenue by law , the expression "law" used therein is of wide import which includes levy of any cess - The Compensation to States Act, 2017 is not beyond the legislative competence of the Parliament -The Compensation to States Act, 2017 does not violate Constitution (One Hundred and First

# Supreme Court rejects review Petition in the case of Mohit Minerals

Brief on the earlier decision of the Hon'ble SC in case of Mohit Mineral

Amendment) Act, 2016 nor is against the objective of Constitution (One Hundred and First Amendment) Act, 2016 - The Compensation to States Act is not a colourable legislation - Principle is well settled that two taxes/imposts which are separate and distinct imposts and on two different aspects of a transaction are permissible as "in law there is no overlapping - Levy of Compensation to States Cess is an increment to goods and services tax which is permissible in law - Clean Energy Cess and States Compensation Cess are entirely different from each other, payment of Clean Energy Cess was for different purpose and has no bearing or connection with States Compensation Cess - Giving credit or set off in the payment is legislative policy which had to be reflected in the legislative scheme - Compensation to States Act, 2017 or Rules framed thereunder does not indicate giving of any credit or set off of the Clean Energy Cess already paid till 30.06.2017 - The Apex Court held that the petitioner is not entitled for any set off of payments made towards Clean Energy Cess in payment of Compensation to States



# Gujarat High Court sets aside IGST on Ocean Freight



**Case of Mohit Minerals Pvt Ltd Vs Union of India reported in 2020-TIOL-164-HC-Ahm-GST**

## **Facts**

In all the captioned writ-applications, the writ-applicants have challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the writ-applicants as the importer of the goods.

The Central Government has introduced the Notification No.8 of 2017 – I Tax (Rate) dated 28th June 2017, wherein vide Entry No.9, the Central Government has notified that the IGST at the rate of 5% will be leviable on the service of transport of goods in a vessel including the services provided or agreed to be provided by a person located in a non-taxable territory to 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

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## **Facts**

customs stations of clearance in India.

The Central Government, thereafter, issued the Notification No.10 of 2017 – Integrated Tax (Rate) dated 28th June 2017, by which the Central Government has notified that for the said category of service provided at Serial No.10 to the said Notification, the importer as defined in clause 2(26) of the Customs Act located in the taxable territory shall be the recipient of service.

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**Case of Mohit Minerals Pvt Ltd Vs Union of India reported  
in 2020-TIOL-164-HC-Ahm-GST**

## **Operative part of the decision of the Hon'ble High Court**

In the case on hand, there is no challenge to the competence of the Legislature in enacting Section 5(3) of the IGST Act which empowers the Government to notify the goods or services upon which tax is liable to be paid by the recipients. The issue in the present case is, when the statutory provision empowers collection of tax from the recipient of goods or services, then whether the delegated legislation by way of notification can stipulate imposition of tax on a person who is neither the supplier nor the recipient of service. Thus, this decision is of no avail to the respondents.

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## **Operative part of the decision of the Hon'ble High Court**

In All India Federation of Tax Practitioners v. Union of India, (2007)7 STR 625 (SC), the Supreme Court heard an appeal filed by the All India Federation of Tax Practitioners against a Division Bench judgment of the Bombay High Court upholding the legislative competence of the Parliament to levy service tax vide the Finance Act, 1994, and the Finance Act, 1998. The Bombay High Court took the view that the service tax would fall in Entry 97 of List I of the 7th Schedule to the Constitution. The issue before the Supreme Court was one concerning the constitutional status of levy of service tax and the legislative competence of the Parliament to impose service tax under Article 246(1) read with Entry 97 of List I of the 7th Schedule to the Constitution.

The issue that arose in the appeal before the Supreme Court questioned the competence of the Parliament to levy service tax on the

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## Operative part of the decision of the Hon'ble High Court

practicing Chartered Accountants and Architects having regard to Entry 56 of List II of the 7th Schedule to the Constitution and Article 276 of the Constitution of India. The challenge was rejected by the Supreme Court relying upon the aspect theory and it was held that the Parliament has the competence to impose tax on the services rendered by the professionals. The ratio of this decision is also of no avail to the respondents as the pivotal issue in the case on hand is, whether the delegated legislation can travel beyond the scope of the powers conferred by the parent legislation.

In *Phulchand Exports Limited v. O.O.O. Patriot*, (2011)10 SCC 300, the Supreme Court in para 21 has referred to and relied upon the decision in the case of *Johnson v. Taylor Brothers and Company Limited*, 1920 AC 144 (HL) in the context of determination of rights of the sellers and buyers under the Indian Contract Act, 1872. *Johnson (supra)* referred to by the

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## Operative part of the decision of the Hon'ble High Court

Supreme Court explains the nature of a CIF contract. Johnson (supra) lays down the following :

- (i) To make out an invoice of the goods sold.
- (ii) To ship at the port of shipment goods of the description contained in the contract.
- (iii) To procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract.
- (iv) To arrange for an insurance upon the terms current in the trade.
- (v) To send forward and tender to the buyer the shipping documents namely the invoice, bill of lading and policy of assurance.

The view taken in Johnson (supra) is that in a CIF contract, the seller is obliged to procure a contract of affreightment under which the goods would be delivered at their destination.

# Gujarat High Court sets aside IGST on Ocean Freight



## Operative part of the decision of the Hon'ble High Court

In our opinion, such observations, on the contrary, supports the case of the writ-applicants that in a case of CIF contract, the contract for transportation is entered into by the seller, i.e. the foreign exporter, and not the buyer, i.e. the importer, and the importer is not the recipient of the service of transportation of the goods.

In view of the aforesaid discussion, we have reached to the conclusion that no tax is leviable under the IGST Act, 2007, 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 and the levy and collection of tax of such ocean freight under the impugned Notifications is not permissible in law.

# Gujarat High Court sets aside IGST on Ocean Freight



## Operative part of the decision of the Hon'ble High Court

In the result, this writ-application along with all other connected writ-applications is allowed. The impugned Notification No.8/2017-Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the Notification No.10/2017-Integrated Tax (Rate) dated 28th June 2017 are declared as ultra vires the IGST Act, 2017, as they lack legislative competency. Both the Notifications are hereby declared to be unconstitutional. Civil Application, if any, stands disposed of.

After the judgment is pronounced, Mr. Nirzar Desai, the learned standing counsel appearing for the Union of India, made a request to stay the operation, implementation and execution of the judgment.

Having taken the view that the impugned Notification and the Entry No.10 therein are ultra vires the IGST Act, 2017, we decline to stay the operation of our judgment.



## 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**