

## Editor's Desk



The GST regime is entering into a new phase from 2020. With all the annual returns and GST Audits completed, the department will start its scrutiny and assessments; and soon thereafter the litigation will start. Till now the litigations are mostly preemptive or related to initial phase of GST such as TRAN-1, searches, fake Invoices etc. Now the actual litigation will start, where the department will try to question each and every treatment/classification made by the taxpayer and this time they are ready. They have a very strong analytical support from the software backend provided by GSTN and DGRAM. There are various reports being generated by the department through these portals and softwares, based on which the assessments will be conducted.

However the overall number of scrutiny and assessment will be very small (as contemplated by the departmental sources) still whatever shall be the size, the scrutiny shall be very tough. Professionals and businessman need to understand this and file their Annual returns and GST Audits with utmost care as these documents will form the very base on which the department will rely heavily in the whole process. In cases where the GST Annual return has been made optional, even there if there are any reconciliation issues then the annual return must be filed irrespective of the fact that the entity is small.

Apart from this all the business processes and system processes need a careful realignment looking into the legal position. System has to be robust enough in order to mitigate any risk arising out of the complex GST law and structure. A careful system audit is the need of the hour for every entity.

This audit and realignment is also required keeping in view the new return forms that are going to be live w.e.f. 01.04.2020. The department is constantly reaching all the stakeholders to comment upon any issues in the matter. Thus everyone should start exploring these forms and identify any probable issue to suitably highlight it.

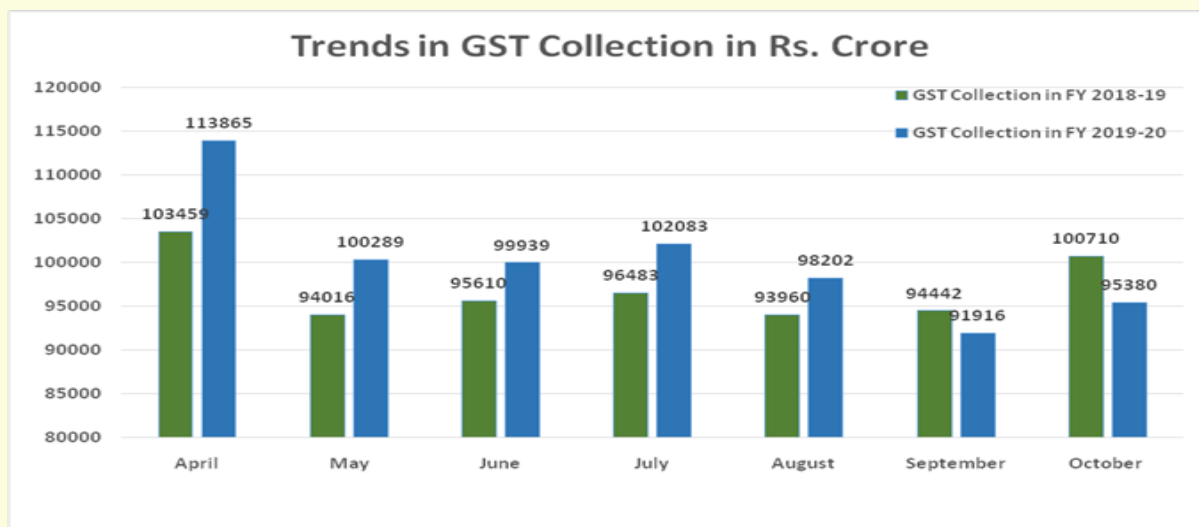
In the end, I would like to wish Happy New Year in advance. Hope this year 2020 will bring all sorts of joy and happiness to everyone's life.

**CA RANJAN MEHTA**

## GST REVENUE COLLECTIONS 2019

1. The gross GST revenue collected in the month of October, 2019 is ₹ 95,380 crore of which CGST is ₹ 17,582 crore, SGST is ₹ 23,674 crore, IGST is ₹ 46,517 crore (including ₹ 21,446 crore collected on imports) and Cess is ₹ 7,607 crore (including ₹ 774 crore collected on imports). The total number of GSTR 3B Returns filed for the month of September up to 31<sup>st</sup> October, 2019 is 73.83 lakh.
2. The government has settled ₹ 20,642 crore to CGST and ₹ 13,971 crore to SGST from IGST as regular settlement. The total revenue earned by Central Government and the State Governments after regular settlement in the month of October, 2019 is ₹ 38,224 crore for CGST and ₹ 37,645 crore for the SGST.
3. The revenue during October, 2019 is declined by 5.29% in comparison to the revenue during October, 2018. However, during April-October, 2019 vis-à-vis 2018, the domestic component has shown 6.74% growth while the GST on imports has shown negative growth and the total collection has grown by 3.38%.
4. The chart shows trends in revenue during the current year.

*“The revenue during October, 2019 is declined by 5.29 per cent in comparison to the revenue during October, 2018. However, during April-October, 2019 vis-A-vis 2018, the domestic component has shown 6.74 per cent growth while the GST on imports has shown negative growth and the total collection has grown by 3.38 per cent,” the Finance Ministry said*



Source: [pib.gov.in/](http://pib.gov.in/)

### Provisional ITC of 20% is a Favor or Pitfall?

The CBEC vide its notification (No. 49/2019- Central Tax, dated: 09.10.2019), brought amendments in Input Tax credits. This declaration of CBEC is pivotal for all those regular tax payers who are not serious for reconciliation of GSTR-2A and delay the same as year end exercise.

Now, there is limitation to claim provisional ITC in GSTR-3B only to the extent of 20% of eligible credit available, in respect of invoices and debit notes not uploaded by supplier in the GSTR-2A. Overall, the taxpayers can avail full ITC in respect of those invoices or debit notes, details of which are uploaded by supplier and plus 20% of eligible credit in respect of those invoices or debit notes, which are not uploaded by the supplier. This makes GSTR-3B a valid return.

With respect to Circular No. 123/42/2019-GST, dated: 11.11.2019, issued by CBIC, it states tries to explain various point subject to which of ITC can be availed by recipient, in following cases:

*1. The calculation of 20% be calculate at supplier level or aggregate level?*

**CBEC:** The restriction imposed is not supplier wise. The credit available under rule 36(4) is linked to total eligible credit from all suppliers against all supplies whose details have been uploaded by the suppliers. The calculation would be based on only those invoices which are otherwise eligible for ITC. Accordingly, those invoices on which ITC is not available under any of the provision (say under sub-section (5) of section 17) would not be considered for calculating 20 per cent of the eligible credit available.

*2. What are the invoices/debit notes on which restriction under Rule 36(4) of the CGST Rules shall apply?*

**CBEC:** The restriction under this rule is imposed only in respect of those invoices/debit notes, details of which are required to be uploaded by the supplier u/s 37(1) and which have not been uploaded. Also Taxpayers can avail full ITC in respect of IGST paid on import, documents issued under RCM, credit received from ISD etc, which are outside the sphere of section 37(1), provided eligibility conditions of ITC complied with.

*3. How much ITC will be claim when invoices/debit notes have not been uploaded by the suppliers?*

**CBEC:** The amount of ITC in respect of invoices/ debit notes whose details have not been uploaded by the supplier shall not exceed 20% of the eligible input tax credit available to the recipient in respect of invoices or debit notes details uploaded by the supplier as on the due date of filing of GSTR-1 return of the suppliers for the said tax period.

Though this is a valuable amendment, if we look at it by for economy perspective, but certain issues are there which requires further clarification by CBIC. Some of the issues which arise after this announcement are:

1. This rule does not distinguish between genuine cases where the mismatch is due to fault of the supplier and non-genuine cases where bogus credits are claimed?
2. What if the missing invoices are reported belatedly by the suppliers, whether this rule operate period wise? And what in case of missing invoices, the eligible amount will be re-calculated and incremental amount be permitted for availment?
3. What shall be the consequences if the credit availed in excess of the given 20% rule?
4. ITC availed through GSTR-3B which is a monthly return while invoices may be uploaded quarterly (in case of turnover less than 1.5 crores), the recipient shall have to wait for another three months to take credit if it exceeds 20% cap?
5. The rule does not specify the period to be covered, example, X issues invoice to Y in Nov 2019, where Y claims ITC in Nov 2019, but X uploads it in September 2020 return, then how this 20% clause will apply monthly, quarterly or annually?
6. What is to be done when supplier made amendment in his invoice in subsequent month, but recipient availed the input tax credit on the basis of original details. This will create difference in GSTR-2A and actual credit availed by recipient?
7. What in case of scrutiny in future years, where it is found that credit was not eligible and department may ask to reverse the ineligible credit, and reversal will reduce the eligible credit which may lead to more reversal and increase in interest thereon.

### ***Refund of Tax***

The CBEC issued master circular No. 125/44/2019-GST dated 18<sup>th</sup> Nov, 2019 which has clarified various issues being faced by taxpayers in getting refunds. It is important to note that w.e.f 26<sup>th</sup> Sept 2019, refund procedure has been made fully automatic at the portal and board withdraws its all circular issued for manual processing of refund.

Now, the applications for the following types of refunds shall be filed in FORM GST RFD-01 on the common portal and same shall be processed electronically:

- a. Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- b. Refund of tax paid on export of services with payment of tax;
- c. Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax;
- d. Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- e. Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- f. Refund to supplier of tax paid on deemed export supplies;
- g. Refund to recipient of tax paid on deemed export supplies;
- h. Refund of excess balance in the electronic cash ledger;
- i. Refund of excess payment of tax;
- j. Refund of tax paid on intra-State supply which is subsequently held to be inter State supply and vice versa;
- k. Refund on account of assessment/provisional assessment/appeal/any other order;
- l. Refund on account of “any other” ground or reason.

The Board vide this circular 125/44/2019-GST, clarified following doubts of taxpayers, summarized as follows:

#### ***1. Processing of re-fund application***

- If in case, refund applications is electronically transmitted to the *wrong jurisdictional officer*, then Jurisdictional Officer reassign it to the correct officer as soon as possible but not later than 3 working days from the date of generation of the ARN.
- Grant of refund would be sanctioned on the basis of provisionally accepted input tax credit (ITC), i.e., basis credit claimed in return filed in Form GSTR

3B, as the online functionality of Forms GSTR 2 and GSTR 3 remains unimplemented

- Registered persons opting to file FORM GSTR-1 on *quarterly basis* then refund can only be apply on quarterly basis or clubbing successive quarterly only.
- Other registered tax payers, may file a refund claim for a tax period or by clubbing successive tax periods, but cannot be spread across different financial years.
- Jurisdictional officer found certain deficiency, he shall issue a ***deficiency memo*** in GST RFD-03, within 15 days from the filing of application by generating an ARN. Once deficiency memo has been issued the amount would be re-credited automatically and a new refund application to be submitted by the taxpayer.
- Once the deficiency memo is issued the proper officer will not serve another deficiency memo with respect to the application for the same period unless the original deficiency remains unrectified.
- Refund applications under all heads (CGST, SGST, IGST, and Compensation Cess), which was previously being disbursed by separate authorities shall be disbursed by single tax officer
- Comprehensive and exhaustive list of all documents to be provided along with the refund application has been prescribed

## ***2. Refund of Unutilised ITC***

- Form GSTR-2A copy required to be uploaded for the relevant period in which invoice is auto-populated and refund to be clarified with.
- Restriction upto 20% of eligible ITC in respect of invoices not uploaded by supplier in GSTR-1, would also be applicable in case of refund of utilised ITC. Self-certified copies of such invoices not uploaded by supplier required to be submitted along with refund application.
- The supplier shall be eligible for refund of unutilised ITC of CGST, UGST, SGST, IGST, Compensation Cess, even if supplier avails drawback of duties rebated under any of these laws.

3. If in case, final refund amount to be ***sanctioned*** is less than the amount if refund sanction provisionally, the officer issue show cause notice u/s 54 of CGST Act, in FORM GST RFD-08, requiring the applicant to show cause as to why :

(a). The amount claimed should not be rejected as per relevant provisions of law; and

(b). The amount erroneously refunded should not be received u/s 73 and 74 of CGST Act, as the case may be, along with interest and penalty, if any.

#### 4. Refund of deemed exports

- In case of refund of *deemed exports* (vide notification 48/2017- Centre tax dated 18.10.2017), refund is sought by the supplier of deemed export supplies, the documentary evidence specified in Notification No 49/2017- Centre Tax, required to be furnished which includes an undertaking that the recipient of deemed export supplies shall not claim the refund in respect of such supplies and shall not avail ITC on such supplies, as the case may be.

#### 5. Refund for Zero rated supply

- In case where exporter has *not submitted LUT* before affecting zero rated supplies, the substantive benefits of zero rating should not be denied on such grounds. The delay in furnishing LUT may be condoned and the facility for export under LUT may be allowed on ex post facto basis and refund of ITC can be availed.
- In case of value *differ* in GST invoice and shipping bill, then during the processing of the refund claim, the value of goods declared in GST invoice and value in corresponding shipping bill/bill of export should be examined and “lower of the two value” should be taken into account while calculating the eligible amount of refund.
- In case of *error been made* in declaring the export of services on payment of IGST for zero rated supplies made to SEZ developer or SEZ units, the it has been clarified by CBEC that tax periods commencing from 01.07.2017 to 30.06.2019 such registered persons would be allowed to file the refund in FORM GST RFD-01, subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in GSTR-3B filed for the corresponding tax period.

#### 6. Refund of TDS and TCS

- Tax deducted/ collected (TDS/ TCS) and deposited under incorrect heads leading to excess balance in the account of deductor/ collector may be claimed as refund of excess balance in electronic cash ledger by the deductor/ collector. Such excess tax deducted/ deposited can be adjusted for discharging output liability or can be claimed as refund by the deductee.



## ***7. Refund under EPCG Scheme***

- Exporter receiving capital goods under the EPCG Scheme is not covered under the exclusion prescribed under Rule 96(10) of the CGST Rules, and such exporters shall continue to be eligible to claim refund of integrated tax paid on exports

### **Conclusion**

This master circular is a grateful measure to put rest concerns of trade in securing refunds. It led to clear approach for refunds and also mitigates sanctioning authorities concerns towards correct approach in numerous situations. The circular places an arduous restriction of filing corrected refund application after issuance of deficiency memo, within the limitation of period of two years provided under the CGST Act. This restriction would need to be closely monitored. This circular overall consolidates previous circulars on the issue of refund, refund on unutilised ITC, claim of compensation cess etc.

Overall, this move indicates the Government's objectives of transitioning GST related processes to an online platform effectively.



## ***JUDICIAL DECISIONS***

### **Case 1 : SUTHERLAND GLOBAL SERVICES PVT LTD VS ASSTT. COMM. OF CGST AND C.EX., CHENNAI [2019-TIOL-2516-HC-MAD-GST]**

Input Tax Credit (ITC) - Transition of GST - Accumulated credit of Education Cess, Secondary and Higher Education Cess and Krishi Kalyan Cess- Credit continues to be available till such time it is expressly stated to have lapsed - No notification/instruction expressly provided that credit accumulated would lapse - Assessee to carry forward credit without any move whatsoever to state that credits could not be so carried forward, since they had lapsed- Authorities cannot now take stand that such credit unavailable for use - Available credit as on date of transition available to an assessee for set off- Intention clear that credit reflected in earlier returns permitted to be transitioned, except if specifically barred - No bar for transitioning of EC, SHEC, and KKC into GST regime shown and assessee satisfying all conditions both under section 140(1) and 140(8) of CGST Act, 2017 - Embargo placed by rule 3(7)(b) of Cenvat Credit Rules, 2004 long gone with introduction of GST- Explanation (3) to Section 140 inserted by Section 28 of CGST(Amendment)Act, 2018 and which clarifies that expression 'eligible duties and taxes' excludes any cess not specified in Explanation (1) or (2) not yet notified - Order denying credit of said cess set aside- Section 140 of CGST Act, 2017.

### **Case 2: Jay Bee Industries Vs Union of India & Others [2019-TIOL-2677-HC-HP-GST]**

**HELD** - It is not in dispute that there were glitches in the system which led to filing of petitions before various High Courts of the Country and these Courts have granted the relief to the taxpayers by directing the authorities to open the portal and/or receive the manually filed Forms and/or approach the Nodal Officers appointed by the Government in this regard - it has been held that GST is a new progressive levy - One of the progressive ideal of GST is to avoid cascading taxes. GST Laws contemplate seamless flow of tax credits on all eligible inputs - The input tax credits in TRAN-1 are the credits legitimately accrued in the GST transition - The due date contemplated under the laws to claim the transitional credit is procedural in nature - Therefore, in view of the GST regime and the IT platform being new, it may not be justifiable to expect the users to back up digital evidences. Bench has no reason to doubt the claim of the petitioner that it had made genuine efforts for filing the returns online, but such attempts failed because of technical glitch. In the catena of judgments cited, it has been judicially recognized that GST system is still in a "trial and error phase", as far as its implementation is concerned and because of this the Courts had been approached by the dealers facing genuine difficulties in filing returns, claiming input tax credit through the GST portal - As a matter of fact, the Court acknowledged the procedural difficulties in claiming input tax credit in the TRAN-1 Form and the Court permitted the respondents "either to open the portal so as enable the petitioner to file the TRAN-1 electronically for claiming the transitional credit or accept the manually filed TRAN-1 and to allow the input credit claimed after processing the same, if otherwise eligible in law" -

**Case 3: Alfa Group Vs Assistant State Tax Office [2019-TIOL-2701-HC-KERALA-GST]**

**GST** - During the relevant period, certain goods belonging to the petitioner were detained in a parcel godown, on grounds that the value quoted in the invoice accompanying the goods was low, compared to the **Maximum Retail Price** of the goods - It was also alleged that the **HSN** code of the goods was incorrect - The petitioner claimed that the reasons given in the detention order did not justify detention of goods u/s 129 or u/s 130 - Hence the present writ was filed, seeking directions to release the goods.

**Held** - It is found that none of the reasons stated in the order justify the detention of the goods - No provision under the **GST Act** mandates that the goods should not be sold at prices below the **MRP** declared - Nothing exists in the detention order to show that on account of the alleged wrong classification of the goods, there was any difference in the tax rate adopted by the assessee - When the scheme of the **GST Act** is to facilitate free movement of goods after self-assessment by the assessee, the **Revenue** cannot resort to arbitrary and legally unwarranted detention of goods in the course of transit - Such actions erode public confidence in the tax administration system and the economy - Hence the detention order merits being quashed and the **Revenue** authorities concerned are directed to release the goods belonging to the petitioner - Suitable instructions may also be issued to field formations to refrain from resorting to such unwarranted detention of goods: **HC**

- Writ petition disposed of: **KERALA HIGH COURT**

## GST Returns Due Dates for December 2019

<b><i>GST Forms</i></b>	<b><i>Particulars</i></b>	<b><i>Due Dates</i></b>
GSTR- 1 (November 2019)	Details of outwards supplies of taxable goods/or services affected (Turnover > Rs 1.5 crores)	11 <sup>th</sup> December 2019
GSTR-3B (November 2019)	Summary of outward supplies with ITC is declared and payment of tax is affected by taxpayer (all registered person)	20 <sup>th</sup> December 2019
GSTR-5	Return for Non-Resident foreign taxable person	20 <sup>th</sup> December 2019
GSTR- 6	Return for an Input Service Distributor(ISD)	13 <sup>th</sup> December 2019
GSTR-7	Return for authorities deducting tax at source (TDS)	10 <sup>th</sup> December 2019
GSTR-8	Filed by E-commerce operators liable to deduct TCS	10 <sup>th</sup> December 2019
GSTR-9 (2017-2018)	Annual Return for Normal Registered Taxpayer	31 <sup>st</sup> December 2019
GSTR-9A (2017-2018)	Annual Return for Composition Dealer	31 <sup>st</sup> December 2019
GSTR-9C (2017-2018)	Annual Return for Registered persons getting accounts audited from CA	31 <sup>st</sup> December 2019

This publication contains information for general guidance only. It is not intended to address the circumstances of any particular individual or entity. Although the best of Endeavour has been made to provide the provisions in a simpler and accurate form, there is no substitute to detailed research with regard to the specific situation of a particular individual or entity. We do not accept any responsibility for loss incurred by any person for acting or refraining to act as a result of any matter in this publication. This is a private circulation for clients and professionals only.

Source: Notifications and circular issued by CBIC.

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