

**CGA Legal**

*Your GST Knowledge Partner*



# **The GST Bulletin**

*Month: November 2020*

*Date of Issue: 11<sup>th</sup> December 2020*

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## GST Compliance Calendar- December 2020

Extended Due Date/ Relief Date	Statutory Due Date	Type of Return	Type of Taxpayer	Ref Notification
-	10-12-2020	GSTR-7-November 2020	TDS Deductor	
-	10-12-2020	GSTR-8-November 2020	E-Commerce Operator	
-	11-12-2020	GSTR-1 November 2020	Agg Turn > 1.5 cr or opted for Monthly Filing	NTN 83/2020-CT Dated 10-11-2020
-	13-12-2020	GSTR-6- November 2020	ISD	
-	20-12-2020	GSTR-3B November 2020	Agg Turn > 5 cr	NTN 82/2020-CT Dated 10-11-2020
-	20-12-2020	GSTR-5- November 2020	Non Resident Taxable Person	
-	20-12-2020	GSTR-5A-November 2020	OIDAR	
-	22-12-2020	GSTR-3B November 2020	Agg Turn<5 cr Cat A State*	NTN 82/2020-CT Dated 10-11-2020
-	24-12-2020	GSTR-3B November 2020	Agg Turn<5 cr Cat B State*	NTN 82/2020-CT Dated 10-11-2020
<b>31-12-2020</b>	31-12-2019	GSTR-9 FY 2018-19	Registered Person with Agg Turn > INR 2Cr Others- Option not to file	NTN 80/2020-CT Dated 28-10-2020
<b>31-12-2020</b>	31-12-2019	GSTR-9C FY 2018-19	Registered person with Agg Turn> INR 5Crs	NTN 80/2020-CT Dated 28-10-2020
-	31-12-2020	GSTR-9 FY 2019-20	Registered Person with Agg Turn > INR 2Cr Others- Option not to file	
-	31-12-2020	GSTR-9C FY 2019-20	Registered person with Agg Turn> INR 5Crs	

## GST Compliance Calendar- December 2020

### Notes:

Categories of Tax payers whose Aggregate Turnover is upto INR 5 crs for the purpose of filing GSTR-3B

**\*Cat A:** Regular Tax payers having an aggregate turnover of upto INR 5 crores whose principal place of business is in the States of 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

**\*Cat B:** Regular Tax payers having an aggregate turnover of upto INR 5 crores whose principal place of business is in the States of 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 and Kashmir, Ladakh, Chandigarh and Delhi

## GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications
1.	90/2020- CT dt 01.12.2020	<p><b>HSN code at Eight Digit Level in case of certain chemicals</b></p> <p>Seeks to notify that the registered persons supplying specified chemicals are required to mentioned HSN code at eight digit level in tax invoice.</p>
2.	89/2020-CT dt 30.11.2020	<p><b>Dynamic QR Code for B2C transactions deferred till 01-04-2021</b></p> <p>Seeks to waive penalty payable under section 125 of CGST Act for non-compliance of the provisions of QR Code as specified under Notification No. 14/2020 – Central Tax, between the period from 01-12-2020 to 31-03-2021, subject to the condition that the said person complies with the provisions of the said notification from the 01-04-2021.</p>
3.	88/2020- CT dt 10.11.2020	<p>Seeks to amend Notification 13/2020-Central Tax dated 21-03-2020 [E-Invoicing] regarding the reduction of eligibility of aggregate turnover limit to 100 cr from 500 cr for mandatory issue of e-invoice w.e.f. 01-01-2021.</p> <p>Thus, now if the aggregate turnover of the registered person exceeds Rs 100 crs in any of the preceding years starting from FY 2017-18 the e-invoicing is applicable.</p>
4.	87/2020- CT dt 10.11.2020	<p><b>Extension of Due Date of Filing ITC-04 for the Quarter July 2020 to September 2020</b></p> <p>Seeks to extend the time limit for furnishing the declaration in FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker, during the period from July, 2020 to September, 2020 till 30-11-2020.</p>
5.	86/2020- CT dt 10.11.2020	<p>Seeks to rescinds the Notification No. 76/2020-Central Tax, dated the 15-10-2020. <b>Since the due date of filing GSTR-3B has been inserted in Rule 61 vide NTN 82/2020- CT dt 10.11.2020, the aforesaid notification rescinded.</b></p>
6.	85/2020- CT dt 10.11.2020	<p>Seeks to notify that the <b>special procedure for payment of tax in case of registered persons opting for Quarterly filing of GSTR-3B.</b> Applicable from 01-01-2021.</p>

## GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications
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7. 84/2020- CT dt 10.11.2020
- Registered persons Eligible to opt for Quarterly Filing of GSTR-3B & Manner of Opting for Quarterly Scheme**
- The registered persons having an aggregate turnover of up to INR 5 Crs in the preceding financial year, and who have opted to furnish a return for every quarter, shall from January, 2021 onwards, furnish the return every quarter and pay the tax due every month in accordance with the proviso to section 39(7) of CGST Act, subject to the following conditions and restrictions namely: -
- the return for the preceding month, as due on the date of exercising such option, has been furnished:
  - where such option has been exercised once, such taxpayers shall continue to furnish the return as per the selected option for future tax periods, unless they revise the same.
- Also, a registered person whose aggregate turnover exceeds INR 5Cr during a quarter in a financial year shall not be eligible for furnishing of return on quarterly basis from the first month of the succeeding quarter.

Class of Registered Person	Deemed Option if furnished the return for the tax period October, 2020 on or before 30th November, 2020
Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR-1 on quarterly basis in the current financial year	Quarterly Return
Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR-1 on monthly basis in the current financial year	Monthly Return
Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly Return

Moreover, the registered persons referred to above, may change the default option electronically, on the common portal, during the period from the 5-12-2020 to 31-01-2021

## GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications
8.	83/2020- CT dt 10.11.2020	<p>Seeks to extend the time limit to furnish the details of outward supplies in FORM GSTR-1 for each of the tax periods till the 11th day of the month succeeding such month.</p> <p>Also, the time limit for furnishing the details of outward supplies in <b>FORM GSTR-1</b> for the class of registered persons required to furnish return for every quarter under proviso to section 39(1) i.e opting for <b>Quarterly Filing of GSTR-3B, shall be extended till the 13th day of the month succeeding such tax period.</b></p>
9.	82/2020- CT dt 10.11.2020	<p>Seeks to amend CGST Rules, 2017 vide Central Goods and Services Tax (Thirteenth Amendment) Rules, 2020. <b>Amendment in GSTR-1, GSTR-3B and GSTR-2A brought into force.</b></p>
10.	81/2020- CT dt 10.11.2020	<p>Seeks to appoint the 10-11-2020, as the date on which the provisions of section 97 of Finance (No. 2) Act, 2019 shall come into force.</p> <p>Thus the <b>provisions of Quarterly filing of GSTR-3B enabled in Sec 39.</b></p>
11.	80/2020- CT dt 28.10.2020	<p>Seeks to amend Notification No. 41/2020-Central Tax dt. 05.05.2020 to extend due date of <b>GSTR-9 and GSTR-9C</b> under Section 44 till <b>31.12.2020</b> for FY 2018-19.</p>
12.	79/2020- CT dt 15.10.2020	<p>Seeks to bring some changes in CGST Rules, 2017 vide <b>Central Goods and Services Tax (Twelveth Amendment) Rules, 2020.</b></p> <p>It also seeks to bring some changes in Forms prescribes in CGST Rules, 2017.</p>

## GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications						
13.	78/2020- CT dt 15.10.2020	<p>Seeks to amend Notification 12/2017-Central Tax dated 28-06-2017 to prescribe the <b>number of digits of HSN Code</b> w.e.f. 01-04-2021 which shall be as follows:</p> <table border="1"> <thead> <tr> <th>Taxpayers having aggregate turnover in the preceding financial year</th> <th>Number of Digits of HSN Code</th> </tr> </thead> <tbody> <tr> <td>Up to rupees five crores</td> <td>4</td> </tr> <tr> <td>more than rupees five crores</td> <td>6</td> </tr> </tbody> </table> <p>It also provides that a registered person having aggregate turnover upto 5 crores in the previous FY may not mention the number of digits of HSN Code in a tax invoice issued by him for supplies made to unregistered person i.e. B2C supplies.</p>	Taxpayers having aggregate turnover in the preceding financial year	Number of Digits of HSN Code	Up to rupees five crores	4	more than rupees five crores	6
Taxpayers having aggregate turnover in the preceding financial year	Number of Digits of HSN Code							
Up to rupees five crores	4							
more than rupees five crores	6							
14.	77/2020- CT dt 15.10.2020	<p>Seeks to amend Notification 47/2020-Central tax dated 09-10-2019 to prescribe the filing of <b>Annual Return for FY 2019-20</b> optional for taxpayers whose <b>aggregate turnover does not exceed two Crore.</b></p> <p>Thus, such taxpayers are at the option to file the Annual Return for FY 2019-20 as well.</p>						
15.	76/2020- CT dt 15.10.2020	<p>Seeks to specifies that the return in <b>FORM GSTR-3B</b> for each of the months from October, 2020 to March, 2021 shall be furnished electronically through the common portal, on or before the twentieth day of the month succeeding such month:</p> <p>Further, for taxpayers having an aggregate turnover of up to five crore rupees in the previous financial year, whose principal place of business is in the <b>*Category-I States and **Category II states</b>, the return in FORM GSTR-3B for the months of October 2020 to March 2021 shall be furnished electronically through the common portal, on or before the 22nd day of the month succeeding such month and 24th day of the month succeeding such month respectively.</p> <p>This Notification is rescinded vide NTN 86/2020- CT dt 10.11.2020</p>						



## GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications						
16.	75/2020- CT dt 15.10.2020	Seeks to extends the time-limit for furnishing the details of outward supplies in <b>FORM GSTR-1</b> by such class of registered persons having <b>aggregate turnover of more than 1.5 crore rupees</b> in the preceding financial year or the current financial year, for each of the months from <b>October, 2020 to March, 2021</b> till the <b>eleventh day of the month succeeding such month.</b>						
17.	74/2020- CT dt 15.10.2020	Seeks to prescribe the due date to furnish the details of outward supply of goods or services or both in <b>FORM GSTR-1</b> for the registered persons having <b>aggregate turnover of up to 1.5 crore rupees</b> in the preceding financial year or the current financial year, for the quarter <b>October 2020 to December 2020 and January 2021 to March 2021 to 13-01-2021 and 13-04-2021</b> respectively						
18.	06/2020- Integrated Tax dt 15.10.2020	<p>Seeks to amend Notification 05/2017-Integrated Tax dated 28-06-2017 to prescribe the <b>number of digits of HSN Code</b> w.e.f. 01-04-2021 which shall be as follows:</p> <table border="1"> <thead> <tr> <th>Taxpayers having aggregate turnover in the preceding financial year</th> <th>Number of Digits of HSN Code</th> </tr> </thead> <tbody> <tr> <td>Up to rupees five crores</td> <td>4</td> </tr> <tr> <td>More than rupees five crores</td> <td>6</td> </tr> </tbody> </table> <p>It also provides that a registered person having aggregate turnover upto 5 crores in the previous FY may not mention the number of digits of HSN Code in a tax invoice issued by him for supplies made to unregistered person i.e. B2C supplies.</p>	Taxpayers having aggregate turnover in the preceding financial year	Number of Digits of HSN Code	Up to rupees five crores	4	More than rupees five crores	6
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Up to rupees five crores	4							
More than rupees five crores	6							
19.	73/2020- CT dt 01.10.2020	<p><b>Special procedure for obtaining IRN for the Registered persons eligible for E-invoicing from 01.10.2020</b></p> <p>The registered persons required to prepare the tax invoice in the manner specified under rule 48(4) of the CGST Rules, 2017, who have prepared tax invoice in a manner other than the said manner, as the class of persons who shall, during the period from the 1st day of October, 2020 to the 31st day of October, 2020, follow the special procedure such that the said persons shall obtain an Invoice Reference Number (IRN) for such invoice by uploading specified particulars in FORM GST INV-01 on the Electronic Portal, within thirty days from the date of such invoice, failing which the same shall not be treated as an invoice.</p>						

## GST Updates – CBIC Circular

### Quarterly Return Monthly Payment Scheme

Circular No. 143/13/2020- GST, dated 10.11.2020,

CBIC clarified on Quarterly Return Monthly payment Scheme to be made applicable from 1<sup>st</sup> January, 2021.

The scheme has been discussed later in our article- *Quarterly Return Monthly Payment Scheme- A Step towards Ease of Business?*

## GST Updates – CBIC Instructions

### Standard Operating Procedure (SOP) for verification of taxpayers granted deemed registration

Date: 27.11.2020

CBIC has issued Standard Operating Procedure (SOP) for verification of taxpayers who have been deemed registration.

Rule 9 requires physical verification in cases where Aadhaar authentication has either not been opted for by the applicant or where such authentication has failed. In case the verification is not completed within 21 days, deemed registration is granted. Many such cases have been undertaken during 21st August, 2020 to 16th November, 2020.

SOP has been issued in respect of such cases in order to ascertain the genuineness of business being registered;

1. Physical Verification of premises - Principal Place of Business & Additional place of Business – Verification of details like Nature of Activity, Electricity bill, No of Employes, KYC updation in banks etc
2. Preliminary Financial Verification – ITR of the company, Capital employed, Loan funds , Own funds etc
3. Pending Physical verification Notice in REG-17 may be issued where GSTR-1 and GSTR-3B not filed for Aug 2020 or September 2020 or if there is variation of more than INR 1 Lac in Tax liability between GSTR-1 and GSTR-3B

CBIC has instructed all cases of deemed registrations to be checked and report to be submitted within 3 weeks.

## GST Technical Updates – GST Portal

### Update on auto-population of e-invoice details into GSTR-1

Date: 30.11.2020

Due to some unanticipated issues, there has been delay in auto-population of e-invoice details into GSTR-1. The Registered person are advised to file GSTR-1 for the months of Oct 2020 & Nov 2020. The details of e-invoices pertaining to periods of October and November, 2020, would be processed and made available in incremental manner from 13th December 2020 onwards. The processing and availability of complete data for the months of October and November, 2020 may take upto 2 weeks

The auto-population of e-invoice details pertaining to the period December, 2020 into GSTR-1 (in incremental manner on T+2 day basis) will start in the first week of December.

It may also be noted that the auto-population of details from e-invoices into GSTR-1 is only a facility for the taxpayers. After viewing the auto-populated data, the taxpayer shall verify the propriety and accuracy of the amounts and other data in each field, especially from the perspective of GSTR-1 and file the same, in the light of relevant legal provisions.

The e-invoicing concept has been discussed later in our article - *E-Invoicing – Concept, Process & Actionable*.

## GST Technical Updates – GST Portal

### Online filing of application (Form GST EWB 05) by the taxpayer for un-blocking of E-Way Bill (EWB) generation facility

Date: 28.11.2020

A facility has now been provided to the taxpayers on the GST Portal, from 28th November, 2020 onwards, to file an application online for unblocking of their EWB generation facility (in Form EWB-05), in case their EWB generation facility has been blocked on the EWB Portal.

So far taxpayers were applying to tax officials vide manual application, for unblocking of their EWB generation facility and tax officials were issuing orders online on GST Portal, in Form GST EWB 06. Now this facility is being discontinued.

To file an online application for unblocking EWB generation facility on GST Portal, a taxpayer need to:

- Login to the portal and navigate to **Services> User services> My Applications**
- Select application type as “**Application for unblocking of E-way bill**” and click **New Application**
- Submit application in **Form EWB-05**, with upload of up to 04 documents

The application so filed is populated to dashboard of jurisdictional tax official. The tax official can issue a Notice for personal hearing to the taxpayer. Then the taxpayer can file their reply to the notice online, along with supporting documents.

At conclusion of the proceedings, the Tax Officer can issue an order (in Form EWB-06) approving the taxpayer application for unblocking the EWB generation facility. After which their EWB generation facility will be restored for the duration specified in the order.

If the Tax Officer rejects the taxpayer’s application vide order in Form EWB-06, the EWB generation facility will remain blocked and the taxpayer shall be required to file their pending returns (in Form GSTR-3B / Statement in FORM CMP-08, so as to reduce the pendency to less than two tax periods), for restoration of the EWB generation facility.

Notice(s)/ Order issued by Tax Officer will be sent via SMS and mail to taxpayer and will be made available on the taxpayer dashboard (Services > User Services > View Additional Notices/Orders option).

## GST Technical Updates – GST Portal

### Auto-populated Form GSTR 3B (PDF) for the taxpayers, from the month of October 2020 onwards

Date: 11.11.2020

1. GSTN has earlier introduced Form GSTR-2B, a static statement with details of ITC available for a tax period, for the benefit of taxpayers.
2. GSTN has also introduced a facility to download pdf statement to taxpayers, who are filing monthly GSTR-1 statement, with system computed values of Table 3 of Form GSTR-3B.
3. In continuation of the return linkage project, GSTN has now introduced auto-populated Form GSTR-3B in PDF format, for benefit of the taxpayers. The auto-populated PDF of Form GSTR-3B will consist of:-
  - Liabilities in Table 3.1(a, b, c and e) and Table 3.2 from Form GSTR-1
  - Liability in Table 3.1(d) and Input Tax Credit (ITC) in Table 4 from auto-drafted ITC Statement from Form GSTR-2B.
4. This facility is made available in Form GSTR 3B dashboard from October 2020 tax period onwards.
5. This facility will become available for taxpayers who are registered as Normal taxpayer, SEZ Developer, SEZ unit and casual taxpayer.
6. The system generated PDF will be made available on GSTR-3B dashboard. Taxpayers will be able to access their Form GSTR-3B (PDF) through: **Login to GST Portal > Returns Dashboard > Select Return period > GSTR-3B> System Generated 3B.**

**Note: This facility has not yet enabled on the GST Portal.**

## GST Technical Updates – GST Portal

### **Withdrawal of EVC facility extended to companies for filing GSTR-1 and GSTR-3B.**

**Date: 23.10.2020**

The facility to file GSTR 3B and GSTR-1 with the EVC in lieu of DSC extended to the registered person, who are also registered under the Companies Act, 2013, shall be withdrawn w.e.f. 1st Nov. 2020. However, facility to file NIL returns through OTP verification, shall be continued for all types of registered persons in view of notification 58/2020- dated 1st July 2020.

## GST Technical Updates – GST Portal

### Filing NIL Form CMP-08 statement through SMS on GST Portal

**Date: 26.10.2020**

1. A Composition taxpayer may now file NIL statement in Form GST CMP-08 for a quarter, through an SMS, apart from filing it through online mode, on GST Portal.
2. To file NIL Form GST CMP-08 through SMS, the taxpayer must fulfil following conditions:
  - Taxpayer must be registered as composition taxable person (by filing Form GST REG-01) or the taxpayer might have opted for composition levy (by filing Form GST CMP-02).
  - Taxpayer must have filed all the applicable statement(s) in Form GST CMP-08 for the previous quarter(s).
  - Authorized signatory and his/ her phone number must be registered on the GST Portal.
  - There must not be any data in save stage, in online version of Form GST CMP-08, on the GST Portal.
3. NIL Form CMP-08 for a tax period must be filed by the taxpayer, if there is no:
  - outward supplies;
  - liability due to reverse charge (including import of services); and
  - other tax liability for the quarter, for which the statement is being filed.
4. Steps to File Nil Form GST CMP-08 through SMS are as below:
  - Send SMS to 14409 number to file Nil Form CMP-08 ie NIL space Return Type space GSTIN space Return Period. (For example for NIL Filing for Tax Period Apr-Jun 2020: NIL C8 07AQDPP8277H8Z6 062020).
  - Send SMS again on the same number 14409 with Verification Code to confirm filing of Nil Form CMP-08. (For Example: If Verification Code received here is 324961: CNF space Return Type space Code - CNF C8 324961)
  - After successful validation of "Verification Code", GST Portal will send back ARN to same mobile number and on registered e-mail ID of the taxpayer to intimate successful Nil filing of Form GST CMP-08.
5. All the authorized representatives for a particular GSTIN, with unique mobile number can file NIL Form GST CMP-08 through SMS.

## GST – Judicial Precedents

### 1. Classification of supply

Classification of supply - composite supply or not - supply of spare parts / accessories and repair service - principal supply is repair service - taxable at 18% or not?

In **Re: M/S. Vista Marine And Hydraulics [2019 (11) TMI 40- AAR Kerala]**, it is held that the supply of spares parts / accessories and repair service are distinct and separately identifiable supplies for which the rates are quoted differently and work orders are issued separately specifying the spares / accessories to be supplied and the services to be supplied and the rates applicable thereon as per the rates quoted in the Repair Rate Contract can't be considered as a composite supply. Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

### 2. Returns

Permission to Correct Form GSTR-1 - Enabling credit to recipient

**M/S. Sun Dye Chem Versus The Assistant Commissioner (St) , The Commissioner Of State Tax [2020 (11) TMI 108 - Madras High Court]**, the Court held that undoubtedly, the petitioner in this case has committed an error in filing of the details relating to credit. What should have figured in the CGST/SGST column has inadvertently been reflected in the IGST column. It is nobody's case that the error was deliberate and intended to gain any benefit, and in fact, by reason of the error, the customers of the petitioner will be denied credit which they claim to be legitimately entitled to, owing to the fact that the credits stands reflected in the wrong column. It is for this purpose, the High Court directed revenue to permit the Petitioner to re-submit GSTR-1.

**Comments:** It is welcome judgment. Now, registered person can use this decision to approach the Authority requesting them to rectify the GSTR-1 beyond the prescribed due date or else consider filing writ in another High Court.



## GST – Judicial Precedents

### 3. Import of Service - RCM

#### Service received from foreign entity through its branch in India – RCM of Direct Charge?

In **Re: M/S. IZ Kartex [2020 (11) TMI 528- AAAR West Bengal]**, the appellant IZ-KARTEX, Russia, has entered into a Maintenance and Repair Contract (hereinafter referred to as MARC) with Bharat Coking Coal Ltd (BCCL). As per the agreement, a foreign MARC-holder shall be entirely responsible for all taxes, duties, licence fees and such other levies imposed outside BCCL's country. The foreign supplier shall also be responsible for all taxes & duties in BCCL's country legally applicable during execution of the contract. The appellant raised invoices against BCCL inclusive of tax. Payment was not made till 2018 owing to problem in the payment channel which necessitated the appellant to open a branch in India in 2018 and they got registration under the Central Goods and Services Tax Act, 2017/ the West Bengal Goods and Services Tax Act, 2017 on 25.10.2018. The payment against first batch of invoices raised by them towards BCCL were received at the bank account of the branch, opened in India. The batch of invoices under MARC was raised in May, 2019. However, BCCL required them to revise the invoices by reducing the tax element paid by BCCL under reverse charge mechanism. According to the appellant, as per Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017, the recipient of service, i.e. BCCL is liable to pay the IGST on the services imported by them from the appellant under reverse charge mechanism.

The WBAAR in its Ruling **[2020 (7) TMI 140 - Authority For Advance Ruling, West Bengal]**, has held that supply of service to BCCL in terms of MARC is not import of service. The recipient is not, therefore, liable to pay GST on reverse charge basis in terms of Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017. The applicant, being the domestic MARC holder is liable to pay tax.

The AAAR West Bengal held that from the definition of 'fixed establishment', it is clear that the registered place of business cannot be termed a fixed establishment. Here, the domestic entity IZ-KARTEX is registered with GST authorities and hence, going by the definition, it cannot be termed a fixed establishment.

From the facts of the case the Russian company is raising bills on BCCL against supply of service. Hence, it is amply clear that the service is being provided by the appellant's foreign entity. Contrary to any material finding in the order of the Advance Ruling, it is clear beyond doubt that the conditions of import are satisfied in the present case.

Therefore the order of Advance Ruling is modified and GST is payable on such import of service by BCCL under reverse charge mechanism in terms of Notification No. 10/2017-Integrated Tax (Rate) dated 28.06.2017.

## GST – Judicial Precedents

### 4. Provisional Attachment of Bank Accounts

#### Release of freezed Bank Accounts of petitioner and family members and suspension and cancellation of importer exporter code (IEC) Number

In **Siddharth Mandavia Versus Union Of India And Others [2020 (11) TMI 111 - Bombay High Court]**, the petition has been filed seeking the following relief:

- for a direction to the respondents to unfreeze the 12 bank accounts of the petitioner and family members;
- for a direction to the respondents to unfreeze the Importer Exporter Code of the proprietorship firm of the petitioner by the name of 'M/s. XS Components.

In this regard, the Court held that the property including the bank account liable to or which has been provisionally attached must belong to the Taxable Person as defined under section 2(107) of the CGST Act to mean a person who is registered or is liable to be registered under sections 22 or 24 of the CGST Act . However, for the moment the Court may consider attachment of the bank accounts from the perspective of the taxable person i.e., the petitioner Mr. Siddarth Mandavia and his proprietorship firm M/s. XS Components - there is no allegation or any averment made by the respondents that any money belonging to the petitioner or to his firm have been credited into the joint accounts of the petitioner with his wife or with his minor son or into the account of his wife. As a matter of fact, respondent have stated that the reason for attachment of other bank accounts appears to be their link with the petitioner or his PAN. They being not the tax payers in this case, provisional attachment of their bank accounts therefore would not be justified.

Further in relation with the suspension and cancellation of IEC Number, the Court held that it is trite that when a law requires a thing to be done in a particular manner, it has to be done in that particular manner and recourse to any other manner is necessarily forbidden. Suspension and cancellation of importer exporter code number can be done only under Foreign Trade (Development and Regulation) Act, 1992 by the Director General of Foreign Trade or by his authorized officer for the reasons specified and in the manner provided in section 8 of the said Act. Respondents arrayed in this petition are neither the Director General of Foreign Trade nor his authorized officer.

## GST – Judicial Precedents

### 5. Registration

#### Wrong mention of reason for Cancellation of Registration under GST

In **Kala Imaging World Versus The Superintendent Central Tax And Central Excise [2020 (11) TMI 616 - Kerala High Court]**, the petitioner wrongly recorded the reason for cancellation of registration as discontinuance of business/ closure of business instead of transfer of business on account of amalgamation, merger, demerger, sale, lease or otherwise. On receipt of cancellation order, the petitioner on realizing the mistake, immediately contacted the respondent and sought for a change of the reason for cancellation of registration. The 1st respondent then informed him that the change of reason could not be carried out through the system, in an order that had already been passed cancelling a registration.

In this regard, the Court held that the respondent should take steps to change the reasons for cancellation of registration of the petitioner to 'transfer of business on account amalgamation, merger, demerger, sale, leased or otherwise' and issue a fresh order of cancellation of registration - the 1st respondent is directed to adopt a suitable procedure and issue the fresh order of cancellation of registration as indicated above to the petitioner within a period of one month from the date of receipt of a copy of this judgment.

### 6. Demand and Recovery

#### Wrong mode of communication of SCN to Petitioner – Violence of Principal of Natural Justice

In **M/S. Shri Shyam Baba Edible Oils Versus The Chief Commissioner & Another [2020 (11) TMI 749 – Madhya Pradesh High Court]**, the Court observed that as per rule 142(1), the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.

The State in its reply has provided no material to show that show-cause notice/order was uploaded on website of revenue. In fact, respondent fairly concedes that the show-cause notice/order was communicated to petitioner by Email and was not uploaded on website of the revenue.

**Held:** This Court has no manner of doubt that statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the demand order deserves to be and is struck down.

## GST – Judicial Precedents

### 7. Supply

#### Sale of certain share of residential flat - Supply of goods or not

In RE: **Sri. B.R. Sridhar [2020 (11) TMI 718 – AAR Karnataka]**, the applicant being the owner of an immovable property has entered into a Joint Development Agreement with M/s. Suprabhat Constructions, authorizing them to construct residential flats by incurring the necessary cost together with certain common amenities and upon the development of the said property, the applicant gets 40% share of undivided right, title and interest in the land proportionate to super built up area and 40% of car parking spaces.

In view of this, the applicant has sought advance ruling as to whether the total amounts received by the owner towards the advances or sale consideration of the flats fallen to his share of 40% in terms of the Joint Development Agreement and the subsequent Area Sharing Agreement, are not amenable for payment of GST, since Applicant has sold or agreed to sell or gifted, the flats after obtaining Occupancy Certificate and that Applicant has not received any part of the sale consideration prior to the said date of occupancy certificate, thus falling under Entry No.5 of Schedule III of CGST Act read with Notification No.11/2017-Central Tax (Rate) dated 28.06.2017 and the corresponding provisions of SGST Act.

In this regard, the AAR held that it is an admitted fact that the developer had the sole and exclusive right of marketing the entire project. The applicant is silent about the fact that whether the developer had executed any sale deeds on behalf of the applicant in respect of the applicant's share of units/flats. Thus if the applicant themselves or the developer on behalf of the applicant have sold the applicant's share of units/flats prior to issuance of completion certificate, then the transactions amount to supply of "Works Contract Service" are liable to GST - The time of supply in the instant case would be the time at which the constructed flats are handed over by the developer to the applicant. In the instant case the applicant claims / contends that they have received their share of units/flats after the issuance of Completion Occupancy certificate.

Thus, the amounts received by the applicant, either by himself or through his agents, towards sale of their share of flats are not exigible to GST, if and only if the entire consideration related to such sale of flats is received after the issuance of Completion Certificate, as the said activities are treated neither supply of goods nor supply of service in terms of schedule III of the CGST Act 2017 subject to Clause 5(b) of the Schedule-II of the CGST Act, 2017.

## GST – Judicial Precedents

### 8. Audit

#### Power to conduct audit/verification of documents and records under erstwhile Service Tax Law

In **Vianaar Homes Private Limited Versus Assistant Commissioner [2020 (11) TMI 150 - Delhi High Court]**, the revenue initiated Service Tax audit for Financial Year 2014-15 to 2016-17. The Petitioner challenged proceedings on the ground that with advent of GST, proceedings under Service Tax Law stand abrogated. The High Court held that proceedings were initiated when Service Tax law was in force. Further, as per proviso to Section 3 of the CGST Act, the Central Excise Officers are deemed to be officers under the CGST Act. Hence, the officers acted within their authority.

The Court further observed that Section 174(2)(e) of the CGST Act states that any investigation, inquiry, verification (including scrutiny and audit) may be instituted, continued or enforced. Therefore, revenue can initiate fresh proceedings post advent of GST. Basis this, the High Court dismissed writ petition.

**Comments:** Thus, the departmental audit under service tax can be conducted under GST tax regime. Furthermore, the department has the power to initiate the proceedings by way of enquiry and investigation. So, one cannot escape if there is a liability.

## Quarterly Return Monthly Payment Scheme- A Step towards Ease of Business ?

### Background :

The GST Council in its 42nd meeting held on 05.10.2020, had recommended that registered person having aggregate turnover up to INR 5 crores may be allowed to furnish return on quarterly basis along with monthly payment of tax, with effect from 01.01.2021. In order to give effect to the GSTC recommendations, the following notifications and circular were issued by CBIC;

Sl. No.	Notification/ Circular	Remarks
1.	NTN 81/2020 - Central Tax, dated 10.11.2020.	Notifies amendment carried out in sub-section (1), (2) and (7) of section 39 of the CGST Act vide Finance (No.2) Act, 2019.
2.	NTN 82/2020 - Central Tax, dated 10.11.2020.	Makes the Thirteenth amendment (2020) to the CGST Rules, 2017.
3.	NTN 84/2020 - Central Tax, dated 10.11.2020.	Notifies class of persons under proviso to section 39(1) of the CGST Act.
4.	NTN 85/2020 - Central Tax dated 10.11.2020.	Notifies special procedure for making payment of tax liability in the first two months of a quarter
5	Circular No. 143/13/2020- GST dated 10.11.2020	Quarterly Return Monthly Payment Scheme (QRMP) - GST

We discuss below the Salient features of the scheme

### Eligibility for the Scheme:

- Registered person who is required to furnish a return in FORM GSTR-3B, and who has an aggregate turnover of up to 5 crore rupees in the preceding financial year, is eligible for the QRMP Scheme.
- It is clarified that the aggregate annual turnover for the preceding financial year shall be calculated in the common portal taking into account the details furnished in the returns by the taxpayer for the tax periods in the preceding financial year. **This new Scheme will be effective from 01.01.2021.**
- Further, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter

## Quarterly Return Monthly Payment Scheme- A Step towards Ease of Business

### How to exercise option for QRMP Scheme

In terms of Rule 61A of the CGST Rules, a registered person can opt in for any quarter from first day of second month of preceding quarter to the last day of the first month of the quarter. In order to exercise this option, the registered person must have furnished the last return, as due on the date of exercising such option.

#### *Instance;*

- A registered person intending to avail of the Scheme for the quarter 'July to September' can exercise his option during 1st of May to 31st of July.
- If he is exercising his option on 27th July for the quarter (July to September), in such case, he must have furnished the return for the month of June which was due on 22/24th July.

**No need to Exercise option every Quarter** : Registered persons are not required to exercise the option every quarter. Where such option has been exercised once, they shall continue to furnish the return as per the selected option for future tax periods, unless they revise the said option.

### Deemed Option for the First Quarter of the Scheme – Jan 2021 to March 2021.

Class of Registered Person	Deemed Option if furnished the return for the tax period October, 2020 on or before 30th November, 2020
Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR-1 on quarterly basis in the current financial year	Quarterly Return
Registered persons having aggregate turnover of up to 1.5 crore rupees, who have furnished FORM GSTR-1 on monthly basis in the current financial year	Monthly Return
Registered persons having aggregate turnover more than 1.5 crore rupees and up to 5 crore rupees in the preceding financial year	Quarterly Return

## Quarterly Return Monthly Payment Scheme- A Step towards Ease of Business

### Deemed Option for the First Quarter of the Scheme – Jan 2021 to March 2021.

- The taxpayers who have not filed their return for October, 2020 on or before 30th November, 2020 will not be migrated to the Scheme. They will be able to opt for the Scheme once the FORM GSTR-3B as due on the date of exercising option has been filed.
- Registered persons are free to change the option as above, if they so desire, from 5th of December, 2020 to 31st of January, 2021. It is re-iterated that any taxpayer whose aggregate turnover has exceeded 5 crore rupees in the financial year 2020-21, shall opt out of the Scheme.

### Opting in/ out of the Scheme- Major Concerns Answered

- **Opt out of the Scheme:** The facility for opting out of the Scheme for a quarter will be available from first day of second month of preceding quarter to the last day of the first month of the quarter.
- **Opting out from Composition and Opting for QRMP:** All persons who have obtained registration during any quarter or the registered persons opting out from paying tax under Section 10 of the CGST Act during any quarter shall be able to opt for the Scheme for the quarter for which the opting facility is available on the date of exercising option.
- **Aggregate turnover crosses INR 5 Crs:** It is also clarified that such registered person, whose aggregate turnover crosses 5 crore rupees during a quarter in current financial year, shall opt for furnishing of return on a monthly basis, electronically, on the common portal, from the succeeding quarter. In other words, in case the aggregate turnover exceeds 5 crore rupees during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.
- **GSTIN Option Possible :** It is further clarified that the option to avail the QRMP Scheme is GSTIN wise and therefore, distinct persons as defined in Section 25 of the CGST Act (different GSTINs on same PAN) have the option to avail the QRMP Scheme for one or more GSTINs. In other words, some GSTINs for that PAN can opt for the QRMP Scheme and remaining GSTINs may not opt for the Scheme.



## Quarterly Return Monthly Payment Scheme- A Step towards Ease of Business

### Modus Operandi- QRMP Scheme

- **Furnishing of details of outward supplies under section 37 of the CGST**
  - ✓ File GSTR-1 on Quarterly basis by 13<sup>th</sup> of following month succeeding the quarter
  - ✓ Option to Furnish details of Outward supplies through Invoice Furnishing Facility- IFF subject to maximum of 50 lacs per month for first two months of the quarter
  - ✓ Details to be reflected in GSTR-2A/ 2B of the concerned recipient.
  - ✓ The details of invoices furnished using the said facility in the first two months are not required to be furnished again in FORM GSTR-1.
- **Monthly Payment of Tax**
  - ✓ Payment of tax due in each of the first two month through Form GST PMT-06 by the 25<sup>th</sup> of the month succeeding such month.
  - ✓ Taxpayers should select “Monthly payment for quarterly taxpayer” as reason for generating the challan.
  - ✓ Computation of tax in first two months of the quarter can be undertaken through any of the following methods;
    - **Fixed Sum Method-** Pre-filled challan in FORM GST PMT-06 for an amount equal to 35%. of the tax paid in cash in the preceding quarter where the return was furnished quarterly; or equal to the tax paid in cash in the last month of the immediately preceding quarter where the return was furnished monthly. Monthly tax payment through this method would not be available to those registered persons who have not furnished the return for a complete tax period preceding such month.
    - **Self-Assessment Method:** The said persons, in any case, can pay the tax due by considering the tax liability on inward and outward supplies and the input tax credit available, in FORM GST PMT-06. In order to facilitate ascertainment of the ITC available for the month, an auto-drafted input tax credit statement has been made available in FORM GSTR-2B, for every month.
  - ✓ In case the balance in the electronic cash ledger and/or electronic credit ledger is adequate for the tax due for the first month of the quarter or where there is nil tax liability, the registered person may not deposit any amount for the said month.

## Quarterly Return Monthly Payment Scheme- A Step towards Ease of Business

### Modus Operandi- QRMP Scheme

#### ▪ Quarterly filing of FORM GSTR-3B

- ✓ File GSTR-3B for each quarter, on or before 22nd or 24th day of the month succeeding such quarter
- ✓ In FORM GSTR-3B, they shall declare the supplies made during the quarter, ITC availed during the quarter and all other details required to be furnished therein.
- ✓ The amount deposited by the registered person in the first two months shall be debited solely for the purposes of offsetting the liability furnished in that quarter's FORM GSTR-3B.
- ✓ Any amount left after filing of that quarter's FORM GSTR-3B may either be claimed as refund or may be used for any other purpose in subsequent quarters.
- ✓ In case of cancellation of registration of such person during any of the first two months of the quarter, he is still required to furnish return in FORM GSTR-3B for the relevant tax period. Details to be reflected in GSTR-2A/ 2B of the concerned recipient.

#### ▪ Applicability of Interest

- ✓ If tax paid through Fixed Sum method as discussed above, no interest payable even if net tax liability higher than the amount actually paid.
- ✓ However Interest will be payable if there is any shortfall in tax payment if tax paid through Self Assessment method.
- ✓ In case FORM GSTR-3B for the quarter is furnished beyond the due date, interest would be payable as per the provisions of Section 50 of the CGST Act for the tax liability net of ITC.

### CGA Legal Comments

QRMP scheme has been hailed by the Government as a flagship scheme for Trade Facilitation. To our mind, it looks more like a 'Old wine in a new bottle'. One of the serious challenge will be to calculate the tax liability through two methods in each of the two months which will be a difficult task for SMEs.

## E-Invoicing – Concept , Process & Actionable

### Background

E-invoice will be created by Taxpayers on their own accounting/billing/ERP System. E-Invoice is only registration of already generated invoice on the government portal through IRP. The basic aim behind adoption of e-invoice system by tax departments is ability to pre-populate the return and to reduce the reconciliation problems

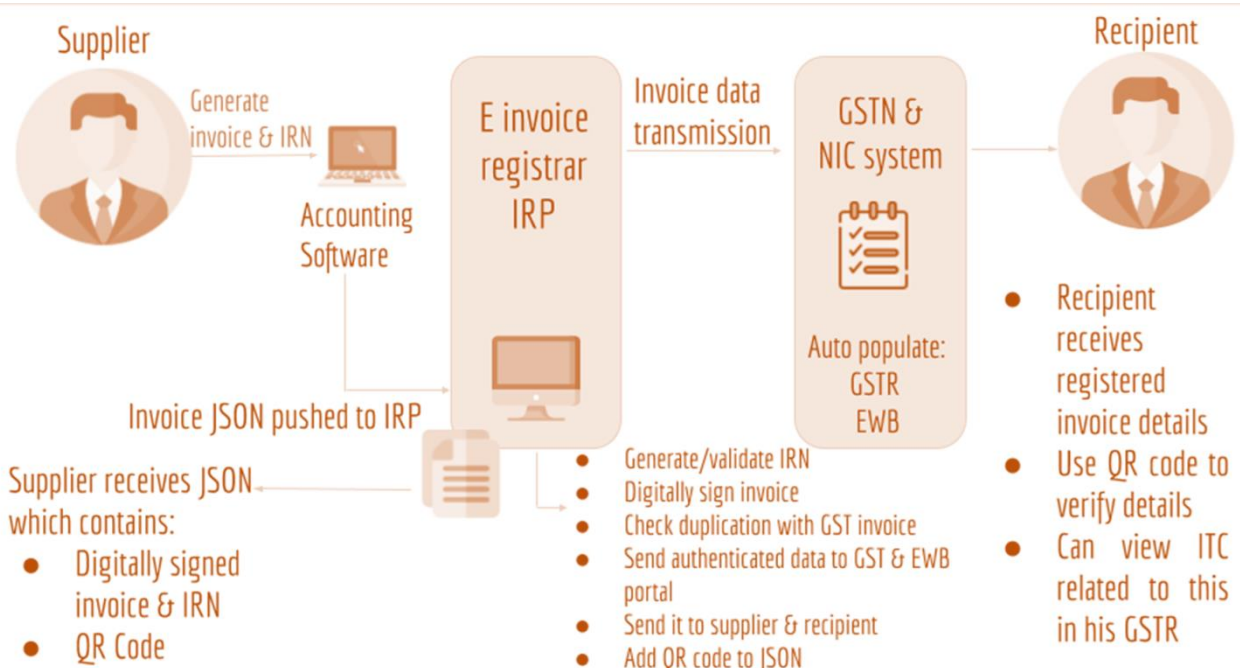
Ref NTN 88/2020-CT dt 10.11.2020 w.e.f. 01-01-2021, E-invoicing will be applicable for Registered persons whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds INR 100 cr.

### Exemption from E-Invoicing

Following registered persons shall be exempted from e-invoicing provisions;

- Special economic zones
- Insurance company, banking company, financial institution, non-banking financial institution,
- Goods transport agency,
- Passenger transportation service and
- Admission to exhibition of cinematograph films in multiplex screens

### Process Flow for E-Invoicing



## E-Invoicing – Concept , Process & Actionable

### Supplies for E-invoice has to be issued

- B2B Supplies
- Supplies to SEZ with/ without payment of tax
- Exports with/ without payment of tax
- Deemed Exports

### Type of Documents covered under E-invoicing

- Tax Invoice
- Debit Note
- Credit Note

### Modes of Registration of E-Invoice

- Offline Tools as available on IRP
- API Based
- Mobile App Based
- GSP Based

The list of GSPs, proposed methodology and JSON schemas can be viewed at the <https://einvoice1.gst.gov.in/>.

### Starting for E-Invoicing

1. Check the E-Invoice Enablement on <https://einvoice1.gst.gov.in/Home/Enablement>
2. Registering by Taxpayers on the E-invoice System
  - ✓ If a taxpayer is already registered on the e-way bill portal, he/she can use the same login credentials to Log-in to E-Invoice system.
  - ✓ If a taxpayer is not registered in the EWB portal then he/she can register on the e-invoice system, taxpayer needs to have the GSTIN issued under the GST system and mobile number registered with the GST system with him.
  - ✓ The first time GSTIN can register by clicking on the 'Registration' link-header. Then the user will be redirected to the 'e-invoice registration form'.

## E-Invoicing – Concept , Process & Actionable

### Starting for E-Invoicing

**3. API Registration:** The API integration helps the taxpayer to integrate their IT System with the APIs of e-invoice system so that IRNs can be generated directly without any manual intervention.

- ✓ If you have registered in the e-way bill portal (<https://ewaybillgst.gov.in>), then you can use the login credentials (username and password) of the e-way bill system to login to the e-invoice portal. If you have not registered in the e-way bill portal, then you can register in the e-invoice portal at option Registration.
- ✓ If you have already integrated with API under e-Waybill system, then you can use the same API credentials for e-Invoice system. If not, then select the option 'Application' under IP Whitelisting in API Registration menu.

### Actionable for Registered Person Eligible for E-Invoicing

**1. Contacting the Accounting System Vendors for Integration of Invoicing with E-Invoicing System:** Post 1st January, 2021, All Tax Invoices, Credit Notes and Debit Notes will be required to be registered with Invoice Registration portal (IRP) and IRN Number along with QR code may be mentioned on each of the above documents. Thus, it is imperative that the accounting system may be directly equipped with integration of the same. This requires technical customization by your respective accounting vendors.

#### 2. Intimation to Customers :

- ✓ In case we are eligible for E-invoicing, it is important we apprise our customers (specifically the large ones) about changes in our invoice formats well in advance so that in case if they have any concerns, it can be taken into account before hard coding the same in the system.
- ✓ In case E-invoicing is not applicable, it will be prudent to intimate the same to the customers to avoid any last minute glitches.

#### 3. Declaration from Vendors

As per rule 48(5) of CGST Rules, every invoice issued by a person to whom rule 48(4) applies [E-Invoicing is applicable] in any manner other than the manner specified in the said sub-rule [i.e. rule 48(4)] shall not be treated as an invoice. Thus, post 1st October, 2020, the invoice of the vendor to whom E-invoicing is applicable should mandatorily contain IRN (Invoice Reference Number). In case it does not have the same, it will not be a valid invoice and ITC cannot be availed on the same.

## E-Invoicing – Concept , Process & Actionable

### Actionable for Registered Person Eligible for E-Invoicing

**4. Redesigning of Invoice/ Debit Note & Credit Note :** Post 1st January, 2021, all the afore-mentioned documents need to have IRN & QR code. This requires redesigning of the documents to incorporate the above. If its requires sign off from the customers , it may also be undertaken in December, 2020 itself.

**5. Verification for E-Invoices for all Inwards :** Post 1st January, 2021, all Tax Invoices, Credit Notes and Debit Notes will be required to be registered with Invoice Registration portal(IRP) and IRN Number along with QR code may be mentioned on each of the above documents. The authenticity of the same can be checked through following public tools as available on public domain on govt site; [www.e-invoice1.gov.in](http://www.e-invoice1.gov.in)

- ✓ Verify Signed Invoice
- ✓ QR Code Verify App

In case of any Query or Training requirement, kindly contact our team for the same.



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