

The logo for CGA Legal, featuring the text "CGA LEGAL" in blue capital letters. The text is centered between two curved, reddish-brown lines that sweep upwards from the bottom corners towards the top corners, creating a stylized 'C' shape.

CGA LEGAL

THE GST BULLETIN

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YOUR INDIRECT TAX KNOWLEDGE PARTNER

About The GST Bulletin

The GST Bulletin is a Weekly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm. The Newsletter is intending to keep its readers updated with all important legal and judicial updates in Goods & Services Tax and other Indirect Tax laws. The Newsletter also has a special column of GST Compliance Calendar for the month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below;
<https://www.cgalegal.co.in/home/newsletters.php>

Other Offerings from Team CGA Legal

- **CGA Legal GST Compliance Calendar:** Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- **CGA Legal Meet:** Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website
www.cgalegal.co.in

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GST Update - CBIC Circulars

Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd

Circular No. 180/12/2022-GST dated 09-09-2022

In accordance with the directions of Hon'ble Supreme Court, the facility for filing TRAN-1/ TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the common portal by an aggrieved registered assessee will be made available by GSTN during the period from 01.10.2022 to 30.11.2022. In this regard, CBIC hereby clarifies the following:

- The applicant may file declaration in FORM GST TRAN-1/TRAN-2 or revise earlier filed TRAN-1/TRAN-2 duly signed or verified through electronic verification code on the common portal. In cases where the applicant is filing a revised TRAN-1/TRAN-2, a facility for downloading the TRAN-1/TRAN-2 furnished earlier by him will be made available on the common portal.
- The applicant shall at the time of filing or revising the declaration in FORM GST TRAN-1/TRAN-2, also upload on the common portal the pdf copy of a declaration in the format as given in Annexure 'A' of this circular.
- Pursuant to the order of the Hon'ble Apex Court, once the applicant files TRAN-1/TRAN-2 or revises the said forms filed earlier on the common portal, no further opportunity to again file or revise TRAN-1/TRAN-2, either during this period or subsequently, will be available to him.
- It may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/ appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/ appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.

GST Update - CBIC Circulars

Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd

Circular No. 180/12/2022-GST dated 09-09-2022

- The declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ returns/ invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the common portal.
- For detailed guidelines, kindly follow the link below:

<https://taxinformation.cbic.gov.in/view-pdf/1003122/ENG/Circulars>

GST Update - CBIC Instruction

Guidelines for Launching Prosecution under CGST Act, 2017

Instruction No. 04/2022-23 [GST – Investigation] dated 01-09-2022

CBIC has issued instruction prescribing detailed guidelines for launching prosecution under GST Law. Important highlights of these Instruction are as under:

- Sanction of prosecution has serious repercussions for the person involved, therefore, the nature of evidence collected during the investigation should be carefully assessed. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt.
- Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than Five Hundred Lakh rupees. However, in following cases, the said monetary limit shall not be applicable:
 - Habitual evaders
 - Arrest Cases
- In case of Public Limited Companies, prosecution should not be launched indiscriminately against all the Directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it.
- Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law.
- For details guidelines, kindly follow the below link:

<https://taxinformation.cbic.gov.in/view-pdf/1000439/ENG/Instructions>

GST Update – GST Technical Updates

New Functionalities made available for Taxpayers on GST Portal

Dated : 12-09-2022

❖ Registration

1. Enabling CORE Amendment Link for Taxpayers who failed to Update Bank account

- If the taxpayers failed to update their bank account details on the GST Portal, within specified period, post grant of registration, they were previously barred from filing an application for core amendment in their Registration details. To handle such scenarios, filing of core amendment applications, pending bank account updation, has been enabled on the Portal for newly registered taxpayers.

❖ Returns

1. Changes implemented in Form GSTR-3B

- As per section 9(5) of the CGST Act, 2017, Electronic Commerce Operators (ECOs) are required to pay tax on supply of certain services notified by the government, such as, Passenger Transport, Accommodation, Housekeeping & Restaurant Services, made through them.
- For reporting of such supplies, a new Table 3.1.1 has been added in Form GSTR-3B from the tax period July 2022 onwards as Notified vide Notn. No. 14/2022 – Central Tax, dated 05th July, 2022, wherein both, ECOs and registered persons making such supplies, are required to furnish details of these supplies.
- The Government vide Notification No. 14/2022 – Central Tax dated 05th July, 2022 has notified few changes in Table 4 of Form GSTR-3B for enabling taxpayers to correctly report information regarding ITC availed, ITC reversal and ineligible ITC in Table 4 of GSTR-3B.

GST Update – GST Technical Updates

.....Continued from above

- The Notified changes of Table 4 of GSTR-3B have been incorporated in GSTR-3B and are available on GST Portal since 01.09.2022. The taxpayers are advised to report their ITC availment, reversal of ITC and ineligible ITC correctly as per new format of Table 4 of GSTR-3B at GST Portal for the GSTR-3B to be filed for the period August 2022 onwards.
- The amended Table 4 of GSTR-3B is reproduced below:

Details	Integrated Tax	Central Tax	State/UT Tax	Cess
(A) ITC Available (whether in full or part)				
(1) Import of goods				
(2) Import of Services				
(3) Inward supplies liable to reverse charge (other than 1 & 2 above)				
(4) Inward supplies from ISD				
(5) All other ITC				
(B) ITC Reversed				
(1) As per rules 38, 42 and 43 of CGST Rules and Section 17(5)				
(2) Others				
(C) Net ITC Available (A) – (B)				
(D) Other Details				
(1) ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period				
(2) Ineligible ITC under section 16(4) and ITC restricted due to PoS Provisions				

GST Update – GST Technical Updates

.....Continued from above

2. Late fee waiver up to 28th July, 2022, for delayed filing of return in Form GSTR-4 (Annual) for the FY 2021-22

- Late fee waiver up to 28th July, 2022, for delayed filing of return in Form GSTR-4 (Annual) for the FY 2021-22
- If a taxpayer had filed Form GSTR-4 earlier with payment of late fee, the same has been refunded by the system and credited to the electronic cash ledger of the concerned taxpayers.

3. Generation of GSTR-11 based on GSTR-1 / 5 for UIN holders

- UIN holders file details of inward supplies in Form GSTR-11 on quarterly basis and subsequently claim refund for the relevant quarter through Form GST RFD-10. To facilitate UIN holder and to authenticate their refund claims, auto-population of Form GSTR-11, on basis of filed GSTR-1 / 5, had been enabled on the Portal earlier.
- In these fields, details of inward supplies received on RCM basis, from Form GSTR-1/5 filed by suppliers, auto-populated in Form GSTR-11 of UIN, has been disabled on the Portal.

4. HSN based validation implemented in Form GSTR-9

- Government has made it mandatory to report HSN at minimum of 4-digit level for taxpayers having turnover up to Rs 5 Crore and at 6-digit level for taxpayers having turnover more than Rs 5 Crore.
- Accordingly, a validation has been implemented on the Portal for taxpayers with AATO up to Rs 5 Crore and for taxpayers with AATO of Rs 5 Crore or more, to declare HSN at 4 digit or 6 digits respectively, in Table -17 of Form GSTR-9, for FY 2021-22.

GST Update – GST Technical Updates

.....Continued from above

5. Changes in HSN length validation in Form GSTR-1

- In Phase-1, AATO based validation was implemented on the Portal to ensure that taxpayers with AATO of up to Rs 5 Crore had to report minimum 2 digit HSN and with more than Rs 5 Crore had to report minimum 4 digit HSN in Table 12 of GSTR-1
- In Phase-2, the minimum length of HSN to be entered in Table 12 of Form GSTR-1, for Taxpayers having AATO greater than Rs 5 Crore has been raised from 4 to 6 digits, for both online and offline mode, on the portal.

❖ Refund

1. Filing for Refund in Form RFD-01 for exports without payment of tax

- The taxpayers are required to upload the details of invoices in Statement 3 while filing for Refund in Form RFD-01 under Category “Refund of unutilized ITC on account of Exports (Without payment of Tax)”.
- As per Para 47 of Circular No. 125/44/2019-GST, dated 18.11.2019, if the export value declared on the shipping bill is different than the value declared in the tax invoice, the lower of the two values would be considered for processing of refund of unutilized input tax credit on account of export of goods made without payment of tax.
- Therefore, a column “FOB value” has been added in Statement 3 format for the taxpayers to declare the value while filing for refund.

❖ Front Office

1. Updation of Statistics on GST Portal

- A statistical report on five years of GST has been made available on the GST Portal under Downloads > GST Statistics section.

GST News

GST collection may top Rs 1.5 lakh Crore from October: Revenue secretary Tarun Bajaj

Date: 14-09-2022

The Finance Ministry expects goods and services tax (GST) collections to top the Rs 1.5 lakh crore mark from October.

Collection from GST has been trending at over Rs 1.4 lakh crore in the past six months consecutively but has not crossed the Rs 1.5 lakh crore mark yet on a consistent basis.

The August collection of Rs 1.43 lakh crore is up 28 per cent on year but lower than Rs 1.49 lakh crore in July. Only once the collection crossed the Rs 1.5 lakh crore mark a record Rs 1.67 lakh crore mopped in April 2022.

Read more at:

<https://economictimes.indiatimes.com/news/economy/finance/gst-collection-may-top-rs-1-5-lakh-crore-from-october-revenue-secretary-tarun-bajaj/articleshow/94207095.cms>

GST – Judicial Precedents

1. Supply

Levy of GST on canteen services for employees

M/s. Troikaa Pharmaceuticals Limited [AAR Gujarat]

Held: The AAR held as under:

- In view of clarification issued vide Circular No. 172/04/2022-GST dated July 6, 2022 ('Circular 172'), prerequisites provided from employer to employee under contractual agreement is not subjected to GST basis Entry (i) to Schedule III of the CGST Act. Accordingly, canteen facility for the Applicant's own employees is not leviable to GST even where the applicant recovers some amount for the same.
- Contractual labour employed by the applicant will not qualify as its 'employee'. These are rather employed by the Contractor who pays their wages and supplies manpower supply service to the Applicant. Since employer-employee test is not fulfilled in this situation, supply of canteen services to contractual labour from the Applicant is not ousted from levy of GST basis Entry (i) to Schedule III. Thus, these services qualify as outward supply of the Applicant.
- ITC on these services availed in respect of employees is eligible in view of mandate under Section 46 of the Factories Act, 1948 ('Factories Act'). The mandate under the Factories Act is not applicable on the applicant for contractual labour and hence ITC is barred thereon.

2. Admissibility of Advance Ruling Application

Whether Advance ruling application can be admitted during inquiry or investigation?

M/s Srico Projects Private Limited vs. Telangana State Authority for Advance Ruling [Telangana High Court]

Held: Advance ruling application cannot be admitted on the issue which is pending or decided in any proceeding. However, inquiry or investigation does not come within the ambit of the word 'proceeding'. Moreover, as per the facts of the present case, inquiry/ investigation started after filing of the advance ruling application hence cannot be rejected.

GST – Judicial Precedents

3. Payment of Tax

Whether interest to be levied despite the availability of credit in cash/credit ledgers if no payment was made in GST

M/s India Yamaha Motor Private Limited, v. the Commissioner of CGST & Central Excise [Madras High Court]

Facts: M/s India Yamaha Motor Private Limited (“the Petitioner”) herein filed a monthly return in Form GSTR 3B for the month of July 2017 but noticed that there was an inadvertent error whereby the data pertaining to its plant at Faridabad was included instead of data pertaining to the Chennai plant. This swap resulted in a short disclosure of liability for the period July to October 2017 leading to the levy of interest. Thereafter, the Petitioner had filed a grievance petition before the Revenue department (“the Respondent”) seeking modification of the return for the month of July 2017 that had not been immediately disposed of/addressed by the Respondent.

The Petitioner had admittedly not filed monthly returns from the month August to October 2017, on the premise that the proper ascertainment of tax liability for the aforesaid months would be dependent upon the adjudication of its grievance petition.

Thus, the specific issue raised relates to the levy of interest u/s 50 of the Act in a situation where the petitioner has not filed its returns of turnover for a particular period and the remittance of taxes for the aforesaid periods is admittedly belated.

The petitioner argues that no interest need be levied on the strength of the balances lying to its credit in the ECR and ECrR.

Held: In a case where Goods and Services Tax (“GST”) Liability has not been remitted, interest under Section 50 of the Central Goods and Services Tax Act, 2017 (“the CGST Act”) is leviable even if the taxpayer has adequate credit balance in his cash ledger or credit ledger. Mere availability of sufficient amount in Electronic credit ledger cannot be presumed to mean debiting of such ledger.



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