

CGA Legal
Your GST Knowledge Partner



The GST Bulletin

Month: April 2021

Date of Issue: 10th May 2021

In this Issue.....

S. No.	Particulars
1	GST Compliance Calendar – May 2021
2	GST Updates
	❖ Notifications
	❖ Relaxation of Compliance in GST due to Second Outbreak of Corona Virus
	❖ GST Technical Updates
3	GST – Legal Precedents

GST Compliance Calendar - May 2021

Extended Due Date/ Relief Date	Statutory Due Date	Type of Return	Period	Type of Taxpayer	Particulars of Compliance	Ref Notification
03-05-21	18-04-21	GST CMP-08	Jan-March 2021	Composition Taxpayers	Interest: Nil from 19-04-2021 -03-05-2021 and 9% from 04-05-2021-18-05-2021 and 18% from 19-05-2021	NTN 08/2021-CT dated 01-05-2021
05-05-21	20-04-21	GSTR-3B	March 2021	Registered person with an aggregate turnover of more than 5 crores	Late Fees- Nil till 05-05-2021. Beyond that INR 20 in case of Nil Return and INR 50 in case of others Interest: 9% from 21-04-2021 -05-05-2021 and 18% from 06-05-2021 onwards	NTN 09/2021-CT dated 01-05-2021 NTN 08/2021-CT dated 01-05-2021
05-05-21	20-04-21	GSTR-3B	March 2021	Registered person with an aggregate turnover of upto 5 crores and opted for Monthly Scheme	Late Fees- Nil till 20-05-2021. Beyond that INR 20 in case of Nil Return and INR 50 in case of others Interest: Nil from 21-04-2021 -05-05-2021 and 9% from 06-05-2021-20-05-2021 and 18% from 21-05-2021 onwards	NTN 09/2021-CT dated 01-05-2021 NTN 08/2021-CT dated 01-05-2021

GST Compliance Calendar - May 2021

Extended Due Date/ Relief Date	Statutory Due Date	Type of Return	Period	Type of Taxpayer	Particulars of Compliance	Ref Notification
07-05-21	22-04-21	GSTR-3B	Jan 2021- March 2021	Taxpayers who are under QRMP Scheme [State A]	<p>Late Fees- Nil till 22/05/2021. Beyond that INR 20 in case of Nil Return and INR 50 in case of others</p> <p>Interest: Nil from 23-04-2021 -07-05-2021 and 9% from 08-05-2021-22-05-2021 and 18% from 23-05-2021 onwards</p>	<p>NTN 09/2021-CT dated 01-05-2021</p> <p>NTN 08/2021-CT dated 01-05-2021</p>
09-05-21	24-04-21	GSTR-3B	Jan 2021- March 2021	Taxpayers who are under QRMP Scheme [State B]	<p>Late Fees- Nil till 24/05/2021. Beyond that INR 20 in case of Nil Return and INR 50 in case of others</p> <p>Interest: Nil from 25-04-2021 -09-05-2021 and 9% from 10-05-2021-24-05-2021 and 18% from 25-05-2021 onwards</p>	<p>NTN 09/2021-CT dated 01-05-2021</p> <p>NTN 08/2021-CT dated 01-05-2021</p>
31-05-21	10-05-21	GSTR-7	April 2021	TDS Deductor	Where time limit of filing of return falls between 15-04-21 to 30-05-21 then it shall be extended till 31-05-21	NTN 14/2021-CT dated 01-05-2021
31-05-2021	10-05-21	GSTR-8	April 2021	E-Commerce Operator		

GST Compliance Calendar - May 2021

Extended Due Date/ Relief Date	Statutory Due Date	Type of Return	Period	Type of Taxpayer	Particulars of Compliance	Ref Notification
26-05-21	11-05-21	GSTR-1	April 2021	Registered person with an aggregate turnover of more than 5 crores or whose turnover is less than INR 5 Crores and opted for Monthly Scheme		NTN 12/2021-CT dated 01-05-2021
28-05-21	13-05-21	Details of Outward Supplies through Invoice Furnishing Facility	April 2021	Taxpayers who are under QRMP Scheme		NTN 13/2021-CT dated 01-05-2021
31-05-21	13-05-21	GSTR-6	April 2021	ISD	Where time limit of filing of return falls between 15-04-21 to 30-05-21 then it shall be extended till 31-05-21	NTN 14/2021-CT dated 01-05-2021
	20-05-21	GSTR-3B	April 2021	Registered person with an aggregate turnover of more than 5 crores	Late Fees- Nil till 04-06-2021. Beyond that INR 20 in case of Nil Return and INR 50 in case of others Interest: 9% from 21-05-2021-04-06-2021 and 18% from 05-06-2021 onwards	NTN 09/2021-CT Dated 01-05-2021 NTN 08/2021 CT Dated 01-05-2021

GST Compliance Calendar - May 2021

Extended Due Date/ Relief Date	Statutory Due Date	Type of Return	Period	Type of Taxpayer	Particulars of Compliance	Ref Notification
	20-05-21	GSTR-3B	April 2021	Registered person with an aggregate turnover upto 5 crores and opted for Monthly Scheme	Late Fees- Nil till 19-06-2021. Beyond that INR 20 in case of Nil Return and INR 50 in case of others Interest: Nil from 21-05-2021 - 04-06-2021 and 9% from 05-06-2021-19-06-2021 and 18% from 20-06-2021 onwards	NTN 09/2021-CT Dated 01-05-2021 NTN 08/2021 CT Dated 01-05-2021
31-05-21	20-04-21	GSTR-5	March 2021	Non-Resident Taxable Person		
31-05-21	20-05-21	GSTR-5	April 2021	Non-Resident Taxable Person	Where time limit of filing of return falls between 15-04-21 to 30-05-21 then it shall be extended till 31-05-21	NTN 14/2021-CT dated 01-05-2021
31-05-21	20-04-21	GSTR-5A	March 2021	OIDAR		
31-05-21	20-05-21	GSTR-5A	April 2021	OIDAR		

GST Compliance Calendar - May 2021

Extended Due Date/ Relief Date	Statutory Due Date	Type of Return	Period	Type of Taxpayer	Particulars of Compliance	Ref Notification
	25-05-21	GST PMT-06	April 2021	Taxpayer who is opting for QRMP Scheme has to deposit tax using form GST PMT-06 by the 25th of the following month, for the first and second months of the quarter	Interest: Nil from 26-05-2021 -09-06-2021 and 9% from 10-06-2021- 24-06-2021 and 18% from 25-06-2021 onwards	NTN 08/2021-CT Dated 01-05-2021
31-05-21	30-04-21	GSTR-4	FY 2020-2021	Composition Dealer		NTN 10/2021-CT Dated 01-05-2021
31-05-21	25-04-21	ITC-04	January -March 2021	Registered person sending goods for Job work		NTN 11/2021-CT Dated 01-05-2021

Notes

❖ Cumulative Application of Rule 36(4) for April 2021 & May 2021:

As per Notification No. 13/2021-Central Tax dated 01-05-2021, for the purpose of taking ITC as per Rule 36(4) of CGST Rules, the condition for taking ITC shall apply cumulatively for the period April and May, 2021 and the return in FORM GSTR-3B for the tax period May, 2021 shall be furnished with the cumulative adjustment of input tax credit.

❖ Extension of Time Limit of specified compliances falling between 15.04.2021 to 30.05.2021 till 31.05.2021 in exercise of powers under section 168A of CGST Act:

As per Notification 14/2021-Central Tax dated 01-05-2021, in view of the spread of pandemic COVID-19 across many parts of India, the Government, on the recommendations of the Council, hereby notifies that:

GST Compliance Calendar - May 2021

Notes

(i) where, any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 15-04-2021 to the 30-05-2021, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended upto the 31-05-2021, including for the purposes of—

- a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or
- b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

but, such extension of time shall not be applicable for the compliances of the following provisions of the said Act, namely: -

- (a) Chapter IV;
- (b) sub-section (3) of section 10, sections 25, 27, 31, 37, 47, 50, 69, 90, 122, 129;
- (c) section 39, except sub-section (3), (4) and (5);
- (d) section 68, in so far as e-way bill is concerned; and
- (e) rules made under the provisions specified at clause (a) to (d) above :

Provided that where, any time limit for completion of any action, by any authority or by any person, specified in, or prescribed or notified under rule 9 of the Central Goods and Services Tax Rules, 2017, falls during the period from the 1st day of May, 2021 to the 31st day of May, 2021, and where completion of such action has not been made within such time, then, the time limit for completion of such action, shall be extended upto the 15th day of June, 2021;

(ii) also, where, any time limit for completion of any action, by any authority or by any person, specified in, or prescribed or notified under rule 9 of the CGST Rules, 2017, falls during the period from the 01-05-2021 to the 31-05-2021, and where completion of such action has not been made within such time, then, the time limit for completion of such action, shall be extended upto the 15-06-2021.

GST Compliance Calendar - May 2021

Notes

- ❖ **State 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
- ❖ **State 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.	08/2021-CT dt. 01.05.2021	<p>Seeks to provide relief by lowering of interest rate for the month of March 2021 and April, 2021</p> <p>Seeks to amend Notification No. 13/2017-CT dated 28-06-17 to provide relief by lowering of interest rates on payment of tax on filing of Form GSTR-3B for the month of March 2021 and April 2021.</p> <p>It also seeks to lower the interest on payment of tax for composition taxpayer in Form CMP-08 for the Quarter ending March, 2021.</p> <p>This notification shall be deemed to have come into force with effect from the 18-04-2021.</p>
2.	09/2021-CT dt. 01.05.2021	<p>Seeks to provide waiver of late fees for the taxpayers for the month of March 2021 and April 2021</p> <p>Seeks to amend Notification No. 76/2018-CT dated 31-12-18 to provide waiver of late fees on filing of Form GSTR-1 and Form GSTR-3B for the month of April 2021 and May 2021.</p> <p>This notification shall be deemed to have come into force with effect from 20-04-2021.</p>
3.	10/2021-CT dt. 01.05.2021	<p>Extension of the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.05.2021</p> <p>Seeks to amend Notification No. 21/2019-Central Tax dated 23-04-2019 to extend the due date for filing FORM GSTR-4 for financial year 2020-21 to 31.05.2021.</p> <p>This notification shall be deemed to have come into force with effect from the 30-04-2021.</p>
4.	11/2021-CT dt. 01.05.2021	<p>Extension of the due date for furnishing of FORM ITC-04 for the period Jan-March, 2021 till 31st May, 2021.</p> <p>Seeks to extend the due date of filing of Form ITC-04 for the period from 01-01-2021 to 31-03-2021 till 31-05-2021.</p>

GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications
5.	12/2021-CT dt. 01.05.2021	<p>Extension of the due date of furnishing FORM GSTR-1 for April, 2021 till 26-05-2021</p> <p>Seeks to extend the due date of furnishing FORM GSTR-1 for April, 2021 till 26-05-2021</p>
6.	13/2021-CT dt. 01.05.2021	<p>Seeks to amend CGST Rules, 2017 by insertion of Second proviso to Rule 36(4) of CGST Rule, 2017 & insertion of proviso in Rule 59(2) of CGST Rules, 2017.</p> <ul style="list-style-type: none"> • Insertion of Second proviso to Rule 36(4) of CGST Rule, 2017: For the purpose of taking ITC as per Rule 36(4) of CGST Rules, which restricts availment of ITC to 105% of the ITC reflected in GSTR-2A is to be applied cumulatively for the period April and May, 2021 and the return in FORM GSTR-3B for the tax period May, 2021. • Insertion of proviso in Rule 59(2) of CGST Rules, 2017: A registered person may furnish details of outward supplies using Invoice Furnishing Facility, for the month of April, 2021, using IFF from the 01-05-2021 till the 28-05-2021.
7.	14/2021-CT dt. 01.05.2021	<p>Seeks to extend specified compliances falling between 15-04-2021 to 30-05-2021 till 31-05-2021</p> <p>(i) Where the time limit of any of the following actions fall between 15-04-2021 to 30-05-2021, the due date of the same would get extended to 31-05-2021:</p> <ul style="list-style-type: none"> • Due date for completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action by any authority, commission or tribunal, under the provisions of the Acts • Filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above.

GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications
7.	14/2021-CT dt. 01.05.2021	<p>(ii) also, under the provisions of GST registration, where the time limit for action by authorities relating to issuance of notice in Form GST REG-03, rejection order in Form GST REG-05 or grant of registration in Form GST REG-06 falls between 01-05-2021 to 31-05-2021, the said date stands extended to 15-06-2021.</p> <p>(iii) Where a SCN of refund has been issued and the date of reply to the same falls between 15-04-2021 to 30-05-2021, then the department can issue refund order within 15 days from the date of reply or 31-05-2021 whichever is later.</p> <p>This notification shall come into force with effect from the 15-04-2021.</p>
8.	01/2021-IT dt. 01.05.2021	<p>Seeks to provide relief by lowering of interest rate for the month of March 2021 and April, 2021</p> <p>Seeks to amend Notification No. 06/2017-IT dated 28-06-17 to provide relief by lowering of interest rates on payment of tax on filing of Form GSTR-3B for the month of March 2021 and April 2021.</p> <p>It also seeks to lower the interest on payment of tax for composition taxpayer in Form CMP-08 for the Quarter ending March, 2021.</p> <p>This notification shall be deemed to have come into force with effect from the 18-04-2021.</p>
9.	07/2021-CT dt. 27.04.2021	<p>Allowing the Companies to furnish FORM GSTR-3B and FORM GSTR-1/ invoice furnishing facility ("IFF"), verified through Electronic Verification Code instead of DSC till 31-05-2021</p> <p>Seeks to allow the Companies to furnish FORM GSTR-3B and FORM GSTR-1/ invoice furnishing facility ("IFF"), verified through Electronic Verification Code ("EVC") instead of DSC, during the period from 24-04-2021 to 31-05-2021.</p>

Relaxation of Compliance in GST due to Second Outbreak of Corona Virus

❖ Relaxation in Interest and Late Fee

As per Notification No. 8/2021-Central Tax dated 01-05-2021 and Notification No. 09/2021-Central Tax dated 01-05-2021, for the purpose of compliance for the period March 2021 and April 2021 the following relaxations are given in **GSTR-3B**:

S. No.	Type of taxpayer	Interest Rate			Late fees waived if filed within
		15 days delay	Next 15 days	After 30 days	
1.	Turnover more than 5 crore in the preceding FY	9%	18%	18%	15 days from due date
2.	Turnover upto 5 crores and have opted for monthly return filing	Nil	9%	18%	30 days from due date
3.	Turnover upto 5 Crores and under QRMP Scheme	Nil	9%	18%	30 days from due date
4.	Composition taxpayer	Nil	9%	18%	30 days from due date

❖ Other Relaxations

S. No.	Form	Period	Actual Due Date	Extended Due Date	Reference Notification
1.	GSTR-1	April 2021	11-05-21	26-05-21	NTN 12/2021-CT Dated 01-05-2021
2.	GSTR-4	FY 2020-2021	30-04-21	31-05-21	NTN 10/2021-CT Dated 01-05-2021
3.	Invoice Furnishing Facility	April 2021	13-05-21	28-05-21	NTN 13/2021-CT Dated 01-05-2021

Relaxation of Compliance in GST due to Second Outbreak of Corona Virus

S. No	Form	Period	Actual Due Date	Extended Due Date	Reference Notification
4.	ITC-04	Jan-21 to Mar-21	25-04-21	31-05-21	NTN 11/2021-CT Dated 01-05-2021
5.	GSTR-7	April 2021	10-05-21	31-05-21	NTN 14/2021-CT Dated 01-05-2021
6.	GSTR-6	April 2021	13-05-21	31-05-21	NTN 14/2021-CT Dated 01-05-2021
7	GSTR-8	April 2021	13-05-21	31-05-21	NTN 14/2021-CT Dated 01-05-2021
8.	GSTR-5	March 2021	20-04-21	31-05-21	NTN 14/2021-CT Dated 01-05-2021
9.	GSTR-5	April 2021	20-05-21	31-05-21	NTN 14/2021-CT Dated 01-05-2021
10.	GSTR-5A	March 2021	20-04-21	31-05-21	NTN 14/2021-CT Dated 01-05-2021
11.	GSTR-5A	April 2021	20-05-21	31-05-21	NTN 14/2021-CT Dated 01-05-2021
12.	All other due dates for filing appeal, proceedings, reply to notice etc. falling between 15-04-2021 to 30-05-2021			31-05-21	NTN 14/2021-CT Dated 01-05-2021

Relaxation of Compliance in GST due to Second Outbreak of Corona Virus

❖ Restriction u/s 36(4) on claiming ITC to apply cumulatively for April 2021 to May 2021

As per **Notification No. 13/2021-Central Tax dated 01-05-2021**, for the purpose of taking ITC as per Rule 36(4) of CGST Rules, which restricts availment of ITC to 105% of the ITC reflected in GSTR-2A is to be applied cumulatively for the period April and May, 2021 and the return in FORM GSTR-3B for the tax period May, 2021.

GST Technical Updates – GSTN

Updates in Forms GSTR-1, GSTR-3B and Matching Offline Tool for taxpayers in QRMP Scheme

Date: 13-04-2021

I. The salient points related to filing of Form GSTR-1 Statement & auto-population of liability in Form GSTR-3B for taxpayers under QRMP Scheme for the quarter Jan-Mar., 2021, are summarized below:

a) Before filing Form GSTR-1, taxpayers may note the following:

Period	Type of Statement	If in saved state	If in submitted state	After filing
Jan & Feb 2021	IFF	RESET to delete the saved records and then add these details in Form GSTR-1 (Quarterly) before filing	File IFF before filing Form GSTR-1 (Quarterly)	Invoices filed in IFF in Jan and Feb need not be entered again in Form GSTR-1. If these are entered again, portal will give an error at save stage itself.

b) Liability in Table-3 [except 3.1(d)] of Form GSTR-3B, for the taxpayers under QRMP Scheme, will be auto-populated on the basis of IFF filed, if any, for the Jan and Feb months and quarterly Form GSTR-1 for the Quarter. Liability on account of inward supplies attracting reverse charge in Table 3.1 (d) is auto-populated from the taxpayer's FORM GSTR 2B. The System computed liability will also be made available in PDF format on taxpayer's GSTR-3B (Quarterly) dashboard.

Note: Data in Saved/ Submitted stage in Form GSTR-1 or in IFF, will not be auto-populated as Liability, in Table-3 of Form GSTR 3B.

II. Matching Offline Tool

The Matching Offline Tool has been updated for taxpayers under QRMP Scheme. In the Matching tool dashboard page, an option to select the quarter has been provided and in the purchase register, quarters Apr-Jun, Jul-Sep, Oct-Dec and Jan-Mar have been added to the tax periods.

GST Technical Updates – GSTN

New features of Form GSTR-2B & GSTR-3B made available to taxpayers under QRMP Scheme

Date: 13-04-2021

The new features related to filing of Statement/ Returns by taxpayers under QRMP Scheme, for the quarter Jan-Mar., 2021, are summarized below:

- **Auto Generation of Form GSTR-2B, for the QRMP taxpayers:**
 - a) Form GSTR-2B contains details of filed IFFs (for Month M1 & M2) & filed Form GSTR 1 (for Month M3).
 - b) Form GSTR 2B has two sections of ITC i.e. ITC available and ITC not available (which flows from the supplier's filed IFF & Form GSTR-1, imports etc). It also contains tax liability of the taxpayer (which flows from the taxpayers own filed IFF & Form GSTR-1).
 - c) Taxpayers can view and download their system generated Quarterly Form GSTR-2B for Jan-March, 2021 quarter, by clicking on Auto-drafted ITC statement for the quarter on 14th April, 2021, by selecting the last month of the quarter (M3).

- **Auto-population of ITC in Form GSTR-3B for the QRMP taxpayers**
 - a) Figures of ITC available and ITC to be reversed will now be auto-populated in Table 4 of Form GSTR-3B, for the QRMP taxpayers, from their system generated quarterly Form GSTR-2B.
 - b) On the GSTR-3B dashboard page, an additional button 'System computed GSTR-3B' has also been provided, by clicking which system computed Form GSTR-3B can be downloaded in PDF format.
 - c) Taxpayer can edit the auto-drafted values as per their records and save the updated details.

GST Technical Updates – GSTN

Clarification on reporting 4-digit/6-digit HSNs

Date: 12-04-2021

GST helpdesk is in receipt of some tickets at helpdesk wherein it was reported that certain 6-digit HSN codes are not available in HSN Master/ not accepted on e-invoice/e-Way bill portals.

- In this regard, it may be noted that specific 6-digit HSNs, as available in the HSN/Customs Tariff (with corresponding description of goods) are allowed in the system. It also follows that the declaration of HSN at 4/6 Digits has to be out of valid HSN codes only.
- However, there are instances that some taxpayers are trying to report truncated first 6-digits out of an otherwise valid 8-digit HSN; which are actually not available in Tariff at 6-digit level and with no corresponding description of goods; these are invalid and hence not being allowed in the System.
- Taxpayers may, therefore note that based on the harmonious interpretation of the Notifications, as referred above, read with Customs Tariff Act, 1975, as made applicable to GST; the number of digits of HSN, as specified vide Notifications No. 12/2017 & 78/2020 (Central Tax), are the minimum number of digits of HSN to be mentioned on the invoice.
- Further, if the HSN of any Goods/Service is otherwise valid but not accepted on GST Portal / e-invoice Portal / e-way Bill portal, taxpayer may raise a ticket on GST Self-Service Portal: <https://selfservice.gstsystem.in/> > Report Issue > Type 'HSN' in 'Type of Issue/Concern' search box > Select relevant sub-category, e.g. 'e-Invoice – IRP – HSN Code related'

GST Technical Updates – GSTN

Payment of Tax by Taxpayers under QRMP Scheme, for the month of March, 2021

Date: 08-04-2021

GSTN has issued advisory for payment of Tax for all taxpayers who are under QRMP Scheme. As per the Advisory;

Payment of Tax for first two months of a quarter (M1 & M2 ie for January and February month for Jan-March Quarter):

- While generating the challan, taxpayers must select “Monthly payment for quarterly taxpayer” as reason for generating the challan.
- They can choose either of the following two options to generate the Challan:
 - ✓ **35% Challan (Fixed Sum Method):** For taxpayers opting for this method, portal will generate a pre-filled challan in Form GST PMT-06, for an amount equal to 35% of the tax paid in cash, in the preceding quarter, if the return was furnished quarterly or equal to the tax paid in cash in the last month of the immediately preceding quarter, if the return was furnished monthly.
 - ✓ **Challan on a self-assessment basis (Self-Assessment Method):** These taxpayers can pay tax due by considering the tax liability on inward and outward supplies and the input tax credit as available, in FORM GST PMT-06.

Note: The aforesaid options are not available for payment of tax for third month (M3) of the quarter to persons availing QRMP Scheme

Payment of Tax for third month of a quarter (M3 i.e. for March month for Jan-March Quarter):

For third month of the quarter (M3), taxpayers can click button ‘Create Challan’ in Payment Table 6 of Form GSTR-3B and file GST-PMT-06 Challan, for depositing any amount towards their tax liability

GST Technical Updates – GSTN

Auto-population of e-invoice details into GSTR-1

Date: 06-04-2021

For the month of March, 2021, the auto-population of e-invoices into GSTR-1 (of March, 2021) is still in progress and is likely to take some more time.

Hence, notified taxpayers who are reporting e-invoices, are hereby advised not to wait for the complete auto-population, and instead proceed with preparation and filing of GSTR-1 for March, 2021 (by the due date), based on actual data as per their records.

Technical Updation in E-way Bill Portal

- e-Way Bill cannot be generated with only SAC codes(99) for Services, minimum one HSN code belonging to Goods is mandatory.
- Vehicle type ODC is provisioned for transport mode 'Ship'
- Transporters are provided with Report of e-Way bills based on assigned Date

GST – Judicial Precedents

1. Supply

Supply of internet downloaded software is supply of goods or services

In **Re: M/s. SPSS South Asia Pvt. Ltd. [2021 (4) TMI 87 - Authority for Advance Ruling, Karnataka]**, the Applicant is a Private Limited Company, registered under the GST Act, 2017 and is an authorized reseller for various IBM SPSS Software in India. The applicant is a pure trader in such software and does not develop/ modify any software prior to selling it to a customer. The applicant has sought advance ruling in respect of the following question:

“Does the supply of licenses for internet downloaded software fall within the ambit of Notification No. 47/2017-Integrated Tax (Rate) & Notification No.45/ 2017-Central Tax (Rate) both dated 14th November 2017,”

HELD: The software supplied by the applicant is a pre-developed or pre-designed software and made available through the use of encryption keys and hence it satisfies all the conditions that are required to be satisfied to cover them under the definition of 'goods'. Further the goods which are supplied by the applicant can't be used without the aid of the computer and has to be loaded on a computer and then after activation would become usable and hence the goods supplies is “Computer Software” and more specifically covered under “Application Software”. Further the Explanatory Notes to the Scheme of Classification of Services stipulates that the services of limited end-user licence as part of packaged software are excluded from the SAC 997331 that covers Licensing services for the right to use computer software and databases. Hence, the supply made by the applicant is covered under “Supply of goods” and the said supply is covered under tariff heading 8523.

The Notification No.45/2017- Central Tax (Rate) dated 14.11.2017 and Notification No. 47/2017-Integrated Tax (Rate) dated 14.11.2017 stipulates the rate of CGST / IGST @ 5%, if the goods of computer software is supplied to public funded research institutions subject to fulfillment of the conditions prescribed under column 4 of the said notification. In the instant case the applicant is supplying computer software to National Institute of Science Education and Research, Bhubaneswar, a public funded research institution, under the administrative control of Department of Atomic Energy (DAE), Government of India. Further the said institute has also furnished a certificate as required to fulfill the required condition.

Therefore, the Notification 45/2017-Central Tax (Rate), dated 14.11.2017 or Notification 47/2017- Integrated Tax (Rate), dated 14.11.2017 applies to the transaction / supply of the applicant.

GST – Judicial Precedents

2. Supply

Whether leasing of pathway by way of shared access of the Non-residential property is taxable under GST?

In **Re: M/s. Chennai Metro Rail Limited [2021 (4) TMI 933 - Appellate Authority For Advance Ruling, Tamilnadu]** the appellant has stated that they had acquired a portion of the property (including the land which is now leased out to the owner) for public purpose from Dr. K. Prema, (hereinafter referred to as the Landlady) on payment of adequate compensation. As per clause 4 of the agreement entered into between the appellant and Dr. K. Prema, Dr.K. Prema is entitled to use the pathway out of the acquired land for shared access purpose for 35 years.

The Appellant made an application to original authority on the following question:

Whether leasing of pathway to a person to her/his dwelling unit by CMRL is taxable under GST?

The Original Authority has ruled that the leasing of pathway by the appellant to Dr. Prema (lessee) by way of shared access of the Non-residential property held by the appellant is taxable under GST.

Aggrieved by the above decision, the Appellant has filed the present appeal.

Held that: It is not a lease of the pathway but only rights are granted to the landowner by the appellant for the shared access. It is seen that the grant of access to the pathway is a right given by them to the landowner. This activity of agreeing to grant rights for shared access of the pathway is an “act of agreeing to tolerate an act” and is classifiable under SAC 999794 under “other miscellaneous services/Agreeing to tolerate an act’ and is taxable to 9% CGST and 9% SGST as per SI.No.35 of Notification 11/2017 CT(Rate) dated 28.06.2017 as rightly held by the Lower Authority.

GST – Judicial Precedents

3. Supply

Whether the activity of supply of different types of Pre-Paid Instruments (PPI's) i.e. Pre-Paid vouchers is supply of goods or supply of service

In **Re: M/s. Kalyan Jewellers India Limited** [2021 (4) TMI 885 –Appellate Authority for Advance Ruling, Tamil Nadu], the Appellant is in the business of manufacturing and trading of Jewellery Products. As a part of sales promotion the Appellant introduced the facility of different types of Pre-Paid Instruments (PPI's) viz., Closed System PPIs, Semi-closed System PPIs, Open System PPIs through its retail outlets, third party PPI issuers and online portals to their Customers and these are generally called “Gift Vouchers/Gift Cards” in trade practice.

The Appellant has sought Advance Ruling on various questions like these vouchers to be treated as supply of goods or supply of service, the time of issue of PPI's, applicable rate of tax for such supply.

The Authority for Advance Ruling ('AAR') held that PPIs are vouchers and issuance of vouchers is supply of goods. Time of supply of such vouchers shall be date of issuance of vouchers if vouchers are specific to particular goods. Paper vouchers will fall under HSN 4911 (as other printed material attracting GST of 12 percent) and electronically loaded magnetic cards will fall under HSN 8523 (attracting GST of 18 percent).

Aggrieved by the AAR, the Applicant preferred appeal before the AAAR on the ground that vouchers are in nature of actionable claim which are not exigible to GST under Sl. No. 6 of Schedule III of the CGST Act.

Held that: vouchers are means for advance payment of consideration for future supplies of goods or services. Vouchers, being an instrument used as consideration to settle an obligation, is type of money. GST law recognizes vouchers as means of payment of consideration towards future supply of goods or services. Accordingly, the AAAR modified ruling passed by the AAR and held that GST shall be levied at the rate of underlying goods / services (not based on its medium viz. paper / cards). Further, time of supply of vouchers will be determined as per applicable provisions.

GST – Judicial Precedents

4. Input Tax Credit

ITC on goods and services for laying of transfer pipeline, construction of refrigerated storage tank and construction of Fire Water reservoir

In Re: M/s. M/S. Shiv Energy Private Limited [2021 (4) TMI 882 - Authority for Advance Ruling, Tamil Nadu], The applicant Company's primary business comprises of supply of Liquefied Petroleum Gas (LPG) in Bulk and in cylinders to domestic/ other Business' segments. They import LPG from outside India and store/ processes the same at various terminals located in India. The applicant has sought Advance Ruling on the following questions:-

- 1) *Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline for transporting Propane/Butane from Jetty to the Terminal.*
- 2) *Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for construction of refrigerated storage tank at Terminal.*
- 3) *Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services for construction of Fire Water reservoir which is a part of fire fighting system.*
- 4) *Whether the applicant is eligible for availment of input tax credit of GST paid on goods and services procured for construction of foundation/structural support through piling.*

Held that it is seen that the applicant sources Pipes on own account and the same is laid as a "Works Contract" including the foundation. Section 17(5) restricts the credit on such goods received for construction & Works Contract service received except when such 'goods/Works Contract' services are availed in respect of 'Plant and Machinery' and Explanation, which defines 'Plant and Machinery' restricts credit on the 'Pipelines laid outside the factory'.

The Explanation specifies that apparatus, equipment, and machinery fixed to earth by foundation, used for making outward supply of goods is 'Plant and Machinery' and there are specific exclusions, which include 'Pipelines laid outside the factory premises' The Act clearly states what constitutes 'Plant and Machinery' and in that what is excluded. It is evident that the intention of the GST Law is to exclude 'Pipelines laid outside the factory premises' from the definition of 'Plant and Machinery'.

GST – Judicial Precedents

4. Input Tax Credit

ITC on goods and services for laying of transfer pipeline, construction of refrigerated storage tank and construction of Fire Water reservoir

Therefore, the applicant is not eligible for availment of input tax credit of GST paid on goods and services for laying of transfer pipeline and the foundation and structural support for such pipeline for transporting propane/Butane from jetty to the Terminal as pipelines laid outside the factory premises as being restricted under Section 17(5) of the act read with the Explanation thereof.

Refrigerated storage tanks - Held that:- The Explanation in Section 17 of the Act defines. 'Plant and Machinery' as an apparatus, equipment, machinery fixed to earth by the foundation or structural support used for making outward supply and excludes land building and civil structure. So we find that the moot point to be decided is whether the 'refrigerated storage tank' falls under the class of apparatus, equipment, machinery and the proposed foundation or structural support claimed falls under the 'foundation' or 'civil structure' - the Propane/Butane is stored, processed and maintained in refrigerated storage tanks before being dispatched to the end customers as per their requirements. Refrigerated storage tanks are constructed in a manner which can facilitate storage of Propane/ Butane and maintain its characteristics. It is built with certain equipment along with the concrete inputs to enable it to perform the said functions. The refrigerated storage tanks are built for a specific purpose of safe storage of Propane/ Butane. Therefore, refrigerated storage tanks may qualify as an apparatus or tin equipment. Thus, the same rightly get covered under the definition of Plant and Machinery and ITC is eligible on the same.

Eligibility of credit of tax paid on construction of water tank to follow the fire protection measure at Terminal - Held that:- The applicant has stated that water tanks are part of fire fighting system which are required to be maintained as per Draft OISD standard. In Page No. 24 of said standard. 'Fire Water System' is prescribed under 'Fire protection system for LPC Terminal'. Water Storage is stated as main component of 'Fire Water Systems' Thus, the water storage tanks with the necessary equipment are to be maintained in the Terminal as a 'Fire Protection System for LPG Terminal' and therefore they are constructed in the course of business. Therefore, the applicant is eligible for availment of input tax credit of GST paid on goods and services for setting up of Fire Water reservoir (tank) including the structural support thereon subject to the condition that the tanks are capitalized in their books of accounts as 'Plant and Machinery' and not as immovable Property" and the applicant are not eligible to avail input credit of goods and services used for 'Pile foundation' and input credit on goods and services used for such pile foundation.

GST – Judicial Precedents

5. Demand and Recovery

Can the amount of rebate claims be adjusted against the interest on delayed payment of goods and services tax?

In **CMI Limited Vs CCE & ST- Faridabad-I** [2021 (4) TMI 307 - CESTAT Chandigarh], The appellants are in appeals against the impugned orders wherein the amount of rebate claims had been adjusted against the payment of goods and service tax for the period September 2017 as it is alleged that the same was paid later on, therefore, the amount of rebate claim was adjusted against the interest on delayed payment of goods and service tax by the appellant.

Held that:- Admittedly, in the case in hand, the appellant has disputed the interest liability and the same has not been adjudicated, in that circumstances, the recovery of interest from the appellant is not in terms of law and the said recovery cannot be made - there are no merits in the impugned orders, the same are set-aside.

6. Transitional Provisions

Transition of TDS Credit accumulated under VAT Regime

In **M/S. DMR Constructions Versus The Assistant Commissioner, Commercial Tax Department, Rasipuram, Namakkal District** [2021 (4) TMI 261 – Madras High Court], The common factual position is that petitioner, in the era of TNVAT, accumulated credit of TDS and have also been permitted to carry forward the same from year to year. The petitioner sought transition of the accumulated TDS into their respective accounts for set off against output tax - GST liabilities. This has been denied.

Held that: Any deduction made towards anticipated tax liability would assume the character of tax and will not change or fluctuate depending on whether it is held as credit or whether it is an adjustment against tax liability. To attribute such fluctuating character to an amount would distort the scheme of taxation and cause much difficulty in the interpretation on the various ancillary provisions. The interpretation of the provision must be such that it lends itself to certainty in its conclusion.

The petitioners held to be entitled to transition TDS under the TNVAT Act in terms of Section 140 of the TNGST 2017 - Petition allowed.

GST – Judicial Precedents

7. Valuation

Pure agent services or not

In **Re: M/S. Karnataka State Warehousing Corporation** [2021 (4) TMI 88 – Authority for Advance Ruling, Karnataka], the applicant provides the services, in relation to facilitation of handling & transport, loading & unloading of agricultural produce through Handling & Transport (H&T) contractors to the depositors (Government/quasi-government/public sector companies/private companies) who use the services of the applicant, for storing of agricultural produce, such as Food Corporation of India, and collects supervisory charges from its depositors an amount equivalent to the actuals charged by the said H&T contractors plus 8% on the said charges towards the said service.

In view of the above, the applicant sought advance ruling, on classification of their services mentioned supra, in respect of the following question:

Whether 'supervisory charges' under clause 28(b) of the Office order on charges of KSWC charged to Food Corporation of India (FCI) by the Corporation towards supervision of loading, transportation and unloading of agricultural produce like Rice, wheat etc., at the rate of 8% on the amount billed by 'Handling and Transportation' Contractors is chargeable to tax under the CGST/ KSGST Acts, 2017, If yes, at what is the applicable rate of tax and the HSN/ SAC code applicable thereto?

Held that: The applicant indubitably is pure agent of the recipient FCI. The applicant is involved in provision of services to supervise handling and transportation of agriculture produce, belonging to the FCI, from railhead to warehousing station and hence procures the services from H&T contractors for the said purpose. Now we proceed to examine the classification of the supply of the said services of the applicant - the Explanatory Notes to the Scheme of Classification of Services stipulates that SAC 999799 includes "Other services". In the instant case, the services provided by the applicant i.e. supervision services are squarely covered under other services and the said supervisory services are exigible to GST at the rate of 9% CGST and 9% KGST or at 18% IGST respectively.

GST – Judicial Precedents

8. Detention of Goods and Vehicle

Detention of goods and vehicle simply with a view to conduct inquiry relating to alleged wrongful availment of input tax credit.

In case of **H.R. Enterprises, Gurpreet Singh Vs State of Rajasthan** [2021 (4) TMI 234 – Rajasthan High Court], in spite of having all requisite/prescribed documents while in transit, the respondent detained the goods along with vehicle. Petitioner stated that in spite of the fact that the requisite documents were produced before the respondent on 11.03.2021 itself, he firstly directed the petitioner to remain stationed with the vehicle and goods loaded therein for the purpose of physical verification. He firstly issued notice in MOV-2 and, thereafter on 15.03.2021, got extension to complete inspection from the competent authority, simply with a view to conduct inquiry relating to alleged wrongful availment of input tax credit.

It is the argument of the petitioners that such fishing and roving inquiry in relation to availment of input tax credit and suspicion about the purchase transaction is not within the domain of respondent No.2, while exercising powers under Section 68 of the CGST Act, 2017 while goods are in movement. It is argued by learned counsel for the petitioners that such inquiry, if at all, is necessary, the same is permissible to be done by regular Assessing Officer and not by the Anti-Evasion Officer or any check-post in charge or flying squad.

Held that:- This Court is of prima facie view that the provisions of Sections 67, 68 and 129 of the Act of 2017 are required to be interpreted.

As is evident in the present case, if a Check Post Officer or Anti Evasion Officer intercepting the goods and vehicle while in transit, is permitted to carry on such fishing and roving inquiry, it would impede, rather retard free flow of trade resulting in unnecessary and unwarranted harassment to the carrier of goods, so also to the consignor/consignee - Upon perusal of detention memo, so also Physical Verification Report, this Court finds that it is an admitted case of the respondent that all the documents prescribed under law were available and goods, including its weight, was found in order. Even, genuineness of the goods in transit per se is not in dispute inasmuch as, documents and e-way bill/other documents in relation to transit depicting the goods in quantity and the nature of goods on physical examination was found to be in accord.

GST – Judicial Precedents

9. Search and Seizure

Validity of concurrent proceedings by Central and State authorities

In **Anurag Suri Vs DGGSTI** [2021 (4) TMI 73 – Orissa High Court], DGGSTI undertook search at the Petitioner's premises and seized certain documents. DGGSTI also issued summons to the Petitioner under Section 70 of the CGST Act, 2017.

The State Tax Department initiated proceedings and issued SCN under Section 74 of the Odisha Goods and Services Tax Act, 2017 ('OGST Act') for recovery of tax short paid and Input Tax Credit ('ITC') wrongly availed. The authorities also passed order confirming these demands despite specific intimation of the Petitioner that the records were seized by DGGSTI and proceeding has been initiated thereto.

Held that it may be noted that the period of enquiry as far as Central tax authority is concerned is from July, 2017 to June, 2018 whereas state tax department has issued a show cause notice specific for March, 2018 and, therefore, there is also an overlapping of the periods.

The Court quashes the show cause notice and orders passed by state tax department and directs that till the conclusion of the proceeding initiated against the Petitioner by the DGGSTI, no coercive action be taken against the Petitioner by the state tax department.

GST – Judicial Precedents

10. Advance Rulings

Limitation period for appeal before Appellate Authority for Advance Ruling

In case of **M/s. N.M.D.C., Vs Authority for Advance Ruling**, [2021 (4) TMI 174 – Karnataka High Court], the Petitioner sought advance ruling which was decided vide order dated September 21, 2019. It filed an application on January 23, 2020 under Section 102 of the CGST Act for rectification of advance ruling.

This application was disposed-off vide order dated March 23, 2020 holding that there was no error apparent on face of record. The Petitioner preferred an appeal on June 22, 2020 before the Appellate Authority for Advance Ruling ('AAAR') which was held time-barred being filed beyond 30 days.

The Petitioner challenged the order passed by AAAR on the premise that limitation period should be counted from date of rectification order and not from original order basis Doctrine of Merger.

The High Court held that since application for rectification of mistake was summarily dismissed (for not having an error apparent on face of record), Doctrine of Merger will not apply. It further held that time limit for filing appeal before the AAAR was 60 days and the AAAR cannot condone delay beyond such period. Therefore, the Court held that the AAAR was correct in rejecting appeal on ground of limitation.

GST – Judicial Precedents

11. Demand and Recovery

Can GST be demanded from buyer for the default of seller of non-payment of taxes to the government?

In **M/s. D.Y. Beathel Enterprises Vs State Tax Officer** [2021 (3) TMI 1020 – Madras High Court], the petitioners are traders in Raw Rubber Sheets.

According to them, they had purchased goods from one Charles and his wife Shanthi.

The specific case of the petitioners is that a substantial portion of the sale consideration was paid only through banking channels. The payments made by the petitioners to the said Charles and his wife, included the tax component also. Charles and his wife are also said to be dealers registered with the very same assessment circle.

Based on the returns filed by the sellers, the petitioners herein availed input tax credit. Later, during inspection by the respondent herein, it came to light that Charles and his wife, did not pay any tax to the Government. That necessitated initiation of the impugned proceedings. There is no doubt that the respondent had issued shows cause notices to the petitioners herein. The petitioners submitted their replies specifically taking the stand that all the amounts payable by them had been paid to the said Charles and his wife Shanthi and that therefore, those two sellers will have to be necessarily confronted during enquiry.

Unfortunately, without involving the said Charles and his wife Shanthi, the impugned orders came to be passed levying the entire liability on the petitioners herein. The said orders are under challenge in these writ petitions.

Held that: Analyzed the provision of Section 16 of the CGST Act, 2017, and noted that the assessee must have received the goods and the tax charged in respect of its supply, must have been actually paid to the Government either in cash or through utilization of ITC, admissible in respect of the said supply. Therefore, if the tax had not reached the kitty of the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer.

Observed that, the Respondent has not taken any recovery action against the Seller. When it has come out that the Seller has collected tax from the Petitioner, the omission on the part of the Sellers to remit the tax must have been viewed very seriously and strict action ought to have been initiated against the Sellers.

GST – Judicial Precedents

11. Demand and Recovery

Can GST be demanded from buyer for the default of seller of non-payment of taxes to the government?

Noted that the Respondent took a stand that there was no movement of goods. Held that, if there was no movement of the goods, the examination of Sellers became more necessary and imperative. However, the Respondent did not ensure the presence of Sellers in the enquiry even when the Petitioners insisted on the same. Hence, the Impugned order suffers from certain fundamental flaws.

Quashed the Impugned order due to non-examination of Sellers in the enquiry and non-initiation of recovery action against Sellers in the first place and remitted back the matter to the Respondent.

Directed Respondent to hold the enquiry afresh where Sellers will have to be examined as witnesses and to initiate recovery action against Sellers.



Contact Us

CA. Chitresh Gupta

Team CGA Legal

Chitresh.gupta@gstexperts.net

Mobile : 9910367918

DISCLAIMER:

The views expressed in this Bulletin are personal view of the presenter. This Bulletin includes general information about legal issues and developments in the law of GST in India. Such materials are for informational purposes only and may not reflect the most current legal developments. These informational materials are not intended, and must not be taken, as legal advice on any particular set of facts or circumstances. We disclaim all liability in respect to actions taken or not taken based on any or all the contents of this presentation to the fullest extent permitted by law.

