

GOODS AND SERVICES TAX

Monthly Highlights of News, Legislative Reforms, Statutory Changes and Judicial Pronouncements Related to GST

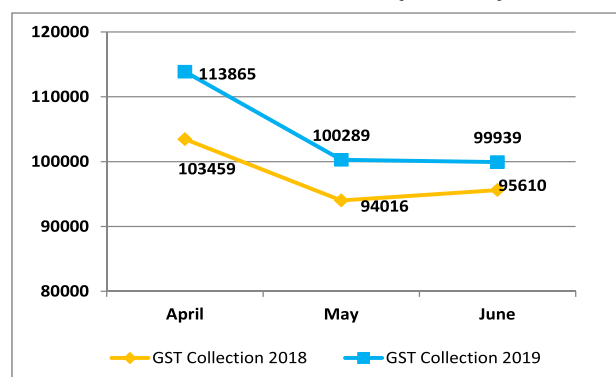
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GST collections fall below Rs.1 lakh crore for first time in FY 2019-20

Total gross GST revenue collected in the month of June, 2019 is Rs.99,939 crore of which CGST is Rs.18,366 crore, SGST is Rs.25,343 crore, IGST is Rs.47,772 crore and Cess is Rs. 8,457 crore. The Government has settled Rs. 18,169 crore to CGST and Rs. 13,613 crore to SGST from IGST as regular settlement. The total revenue earned by Central Government and the State Governments after regular settlement in the month of June, 2019 is Rs. 36,535 crore for CGST and Rs.38,956 crore for the SGST. The revenue during June, 2019 shows a growth of 4.52% over the revenue in the same month last year where it was Rs. 95,610 crore.

Source: PIB, 01/07/2019

Trends in GST Collection (Rs. Crore)



35th GST COUNCIL MEETING

The 35th GST Council meeting was held at New Delhi on 21st June 2019 under the chairmanship of Union Finance Minister Smt. Nirmala Sitharaman. This was the first meeting of the Council after the swearing in of the new Government. The meeting commenced with a resolution acknowledging the stellar role played by Shri Arun Jaitley and expressed its gratitude for the exemplary contribution made by him in making the GST Council a shining example of co-operative federalism. Speculations were rife that the Council would consider uniform GST rate for both state run and state promoted lottery. However, the Council forwarded this matter to the Attorney General (AG) for legal opinion. Other important issues that were discussed during the Council meeting were tax evasion, setting up an appellate tribunal for north-eastern states, extension



of the tenure of the National Anti-Profitteering Authority (NAA), extension of due dates of various returns, introduction of electronic invoices system, implementation of new return filing system etc.

New Return Filing System

Phase I (July-September, 2019): The new return system to be available for trial run.

Phase II (October 2019 onwards): New return form (GST ANX-1) to be made compulsory, large taxpayers to file this on monthly basis whereas small taxpayers to file this for the quarter October, 2019 to December, 2019 in January, 2020;

Phase III (October and November, 2019): Large taxpayers to continue to file GSTR-3B on monthly basis and will file first GST RET-01 for December, 2019 in January, 2020.

Phase IV (October, 2019 onwards): Small taxpayers to stop filing GSTR-3B and to start filing GST PMT-08. They will file their first GST-RET-01 for the quarter October,

2019 to December, 2019 in January, 2020;

Phase V (January, 2020 onwards): GSTR-3B to be completely phased out.

Matters referred to Fitment Committee

i. Electric Vehicles: On issues relating to GST concessions on electric vehicle, charger and hiring of electric vehicle, the Council recommended that the issue be examined in detail by the Fitment Committee and brought before the Council in the next meeting.

ii. Solar Power: In terms of order of the Hon'ble High Court of Delhi, GST Council directed that the issue related to valuation of goods and services in a solar power generating system and wind turbine be placed before the next Fitment Committee.

Lottery issue sent to AG for legal opinion

Assumptions were made that this Council meeting would consider uniform GST rate for both state run and state promoted lottery but the Council forwarded this matter to the Attorney General (AG) for legal opinion. Explaining the rationale behind seeking AG's opinion on taxing lotteries, Finance Minister, said the principle of taxation under GST is that, it should be one rate across the country, whereas in case of lotteries two different rates were charged. Hence a decision was taken to obtain clarity on Article 340 from the office of the AG. Currently, a state run lottery attracts 12 per cent GST while a state authorized lottery attracts 28 per cent. Earlier, the group of ministers could not reach a consensus on whether a uniform tax rate should be imposed or the current differential rate system be continued.

Tenure of NAA extended

The 35th GST Council has extended the anti-profiteering framework by another two years while also making the rules more stringent to ensure that companies pass on the benefit of lower taxes to consumers. The Council also approved imposing a penalty of up to 10 per cent of the profited amount on entities for not passing on benefits of GST rate cuts to consumers, as against the current norm of levying a maximum fine of Rs. 25,000. The National Anti-Profiteering Authority (NAA) came into existence on 30th November, 2017 under Section 171 of CGST Act, 2017 with tenure of two years, and now it has been extended to November 2021.

NOTIFICATIONS

Blocking of E-way bill for GST non-filers to be implemented from August, 2019

The CBIC has extended the date from which the non-filers of GST returns would be blocked from generating E-way bill to 21st August 2019. The Government, in a bid to curb tax fraud, had decided to block the taxpayers from generating e-way bill by defaulters. As per Rule 138E, if an assessee, who is a composition dealer, has not filed GST returns for two consecutive tax periods, e-way bill can-not be generated for making the supply to him. In the case of assesseees other than composition dealers the Government had decided to develop the e-way bill site in terms of the user interface since its inception.

Notification: 25/2019 (CT) dated 21/06/2019

CBIC introduces mechanism to verify IGST payments for exports

The CBIC has introduced a mechanism to verify the IGST payments for goods exported out of India. The circular amended the existing norms for claiming IGST refunds that is fully automated as provided under Instruction 15/2017-Customes dated 09/10/2017. The circular empowers the Customs Officers to conduct a thorough enquiry on all the risky or suspicious refund claims of exporters and to reject such claims of exporters who are adopting malpractices. 'It has come to the notice of the Board that instances of availment of IGST refund using fraudulent ITC claims by some exporters have been observed by various authorities. It is also seen that the exporters have availed ITC on the basis of ineligible documents or fraudulently and utilized that credit for payment of IGST on goods exported out of India.

Source: Circular No. 16/2019-Customs dated 17/06/2019

GST will applicable to the additional discount given by a company to a dealer

The CBIC issued a clarification on various doubts related to treatment of secondary or post-sale discounts for applicability of indirect tax. The circular noted that, where the discount is linked to specific activities to be done by the dealer such as advertisement, exhibition etc, it would qualify as a supply by the dealer to the company and the dealer would have to pay GST. Similarly, additional discount given for special reduced price to augment the sales will be liable to GST. It was also stated that, where any reduction in prices are allowed by supplier to dealers with the condition of the same being passed on by the dealers to the end customer, it would be added to the value of supply of dealer to consumer for payment of GST. The taxpayer will be eligible to claim ITC of the tax charged by the dealer only to the extent of the tax paid by the said taxpayer to the dealer.

Source: Circular No. 105/24/2019-GST, 28/06/2019

Extension of due dates

Particulars	Earlier	Extended
Filing of Form GSTR-9, 9A, 9C (Annual Return & Reconciliation statement)	30/06/2019	31 /08/2019
Form GST ITC-04 in relation to Job Work (July 2017 to June 2019)	-----	31/08/2019
GSTR-1Monthly (April, May, June)	-----	11 th day of next month
GSTR-1 Quarterly (April to June)	-----	31/07/2019
GSTR-3B (April to June)	-----	20 th day of next month
GSTR-7 (October 2019 to July 2019)	-----	31/08/2019
Filing of Form GST CMP-02 for availing Composition Levy	30/04/2019	31/07/2019

Source: Order No. 6/2019-Central Tax, Notification No. 32/2019-Central Tax, Notification No. 27/2019 and 28/2019-Central Tax, Notification No. 29/2019-Central Tax, Notification No. 26/2019-Central Tax.

Applicability of GST on additional/penal interest

The CBIC has clarified that any interest or late fee/penalty for delayed payment of any consideration charged by the supplier shall be included in the value of supply for the payment of GST. The interest component shall be considered for valuation purpose even if a separate invoice has been issued for extending the credit facility. However, if any third party is involved like any bank or any other person, other than the supplier himself, who extends credit facility, due to which transaction between supplier and recipient is executed then in such case the interest paid by the recipient would not be subject to GST as it gets covered by exemption allowed under Notification No. 12/2017-Central Tax (Rate), dated 28/06/2017.

Source: Circular No. 102/21/2019-GST

Exemption to non-resident suppliers supplying OIDAR Services from filing of GSTR-9 & GSTR-9C

The CBIC has exempted non-resident suppliers supplying Online Information Database Access and Retrieval Services (OIDAR) from a place outside to a person in India, from filing of Annual Return in form GSTR-9 and reconciliation statement in form GSTR-9C.

Source: Notification No. 30/2019-CT, dated 28/06/2019

■ Treatment of processing of refund applications which are wrongly mapped on the GST portal

The CBIC has issued a circular to clarify the doubts raised in respect of processing of refund applications submitted by taxpayers in Form GST RFD-01A which have been electronically transferred to the wrong tax authority. Where reassignment of refund applications to the correct jurisdictional tax authority is not possible on the common portal, the processing of refund claims should not be held up, rather it should be processed by the tax authorities to whom refund applications have been electronically transferred by the common portal. After processing of refund application, the refund processing authority may inform on the common portal about the incorrect mapping with a request to update it. This will ensure that all the subsequent refund applications are sent to correct jurisdictional tax authority.

Source: Circular No. 104/23/2019-GST

■ Determination of place of supply in special cases

i) **In case of services provided by the Ports:** It has been clarified that services ancillary or relating to the cargo handling shall not be deemed to be related to immovable property and place of supply for such services shall be determined as per Section 12(2) or Sec 13(2).

ii) **Services rendered on unpolished diamonds temporarily imported in India:** In case of cutting or polishing services on unpolished diamonds which are temporarily imported in India and are not put to use in India, the place of supply shall be location of recipient of services. Where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

Source: Circular No. 103/22/2019-GST

NEWS

■ Efforts to further simplify GST to continue: President Ram Nath Kovind

The government will continue to take steps for further simplification of the GST, President Ram Nath Kovind said on June 20. Addressing the joint sitting of both Houses of Parliament, the president said the indirect tax system is being made simple and effective. He said, with the implementation of GST, the concept of 'One country, One tax, One market' has become a reality, efforts to further simplify the GST will continue'.

Source: PTI, 20/06/2019

■ CBIC identifies 5,106 risky exporters

The government has identified 5,106 'risky exporters' so far who have claimed GST refunds based on bogus invoices, and would manually check their claims before issuing refunds. The CBIC, in a statement, also assured genuine exporters that their refund claims would be processed in an automated environment and issued in a timely manner. They issued an instruction to its Customs and GST officers to verify the correct availment of ITC by few exporters who are perceived as 'risky' on the basis of pre-defined risk parameters. The introduction of manual checks in IGST refunds is aimed at preventing unscrupulous exporters from defrauding the exchequer.

Source: PTI, 20/06/2019

■ Compulsory retirement for 15 CBIC officers under rule 56 (j)

The Central Government has ordered compulsory retirement of 15 Senior Indirect Tax Officers for charges of Corruption, Criminal Conspiracy, Disproportionate Assets Case etc. As per Rule 56(j) of Central Civil Services (Pension) Rules, 1972 provides for periodical review of the performance of government servants with a view to ascertain whether they should be retained in service or retired from service in public interest.

Source: The Economic Times, 18/06/2019

■ Cross-country offices of companies likely to be come under GST

The Centre will soon bring services provided by the office of a company in one state to an office in another state under the purview of the GST, the Economic Times reported. Those eligible can claim the ITC and a circular sanctioned by the GST Council which would enumerate the particulars would be sent out soon, the paper stated. Companies from the power, healthcare, liquor, and education sectors would, however, be exempt. The move came after the AAR Karnataka stated that human resource and payroll tasks carried out by companies across states would face GST and have invoices issued. The GST Council's law committee will, via the circular, clarify issues such as head office functions, payroll, procurement, distribution and management expenses, branch maintenance, etc.

Source: Economic Times, 25/06/2019

PARLIAMENT

■ Late fee of Rs. 5,231.41 Crore collected till 18th June 2019

As per GST laws, the late fee is an amount charged for delay in filing GST returns. It can be referred to as an overdue fine. When a registered dealer misses filing returns within the prescribed due date some amount of late fees is charged. It is computed by the system for the returns filed after the due date at Rs. 25/- day under CGST and SGST Act respectively, subject to a maximum of Rs. 5,000/- per return period. The total amount of late fee collected till 18th June 2019 is Rs. 5,231.41 Crore.

Ref: Lok sabha Qstn No.21, 24/06/2019

■ Why local bodies are allowed to levy Entertainment Tax along with GST?

The entertainment tax levied by the State has been subsumed under GST regime. However, the Constitution allows State governments to make laws with respect to "taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council" (Entry 62 of List II in the 7th Schedule of the Constitution).

Ref: Lok sabha Qstn No.358, 24/06/2019

KERALA

■ CGST Rule Amended: Kerala Flood Cess to be implemented from 1st August 2019

The Government of Kerala has declared that the Flood Cess will be implemented from 1st August, 2019. The State was compelled to extend the date of implementation twice due to the amendment required in the CGST rules. As per Section 15 of CGST and SGST Act, Cess should be included in the value of supply of goods or services or both. Which would lead to a

cascading effect. The State then approached the GST Council to make necessary amendments in the concerned rules. The 35th GST Council held on 21st June 2019 has taken a decision to amend CGST Rule 32A in favour of Kerala's request. The central government amended the CGST Rules, 2017 by insertion of a new rule 32A to provide that the value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act.

Source: Notification No. 31/2019-Central Tax, Kerala G.O.(P) No.96/2019/TAXES dated, 29/06/ 2019

■ **GST on Lotteries: Kerala Legislative Assembly passes Resolution**

The Kerala Legislative Assembly has passed a resolution against the GST Council's move to impose uniform tax rate on the State-run lotteries and other State lotteries run through private promoters. The resolution was moved by the Finance Minister Dr.Thomas Isaac. The Assembly unanimously urged the Centre to desist from the move and to continue the status-quo. Recently, the Group of Ministers suggested bringing a uniform GST rate for both kinds of lotteries while the GST rate on other state lotteries would be retained at 28 per cent or brought down to 18 per cent. The uniform rate will not only adversely affect the interest of the state but also boost the other state lottery mafia. The state-run lottery is the only mainstay of around 1.25 lakh families a member of which is a lottery ticket vendor. Further, the profit from lotteries is fully utilized for the benevolent activities for poor and needy people.

Source: Proceedings of KLA, 17/03/2019

■ **Whether the extension of Annual Return filing will affect Kerala's GST target?**

The 35th GST Council meeting has extended the due date of Annual Return (GSTR-9) to 31st August 2019. The question is whether this extension will adversely affect the revenue mobilization target set by Kerala. The Finance Minister Dr. Thomas Isaac claimed that the State would achieve 30 per cent growth in GST for the ensuing financial year from the existing 10 per cent growth. He firmly believes that it is achievable as he explained the rationale and the steps to be taken for this to happen. The Annual Return of 2017-18 will be

available from July 2019 onwards and that of 2018-19 would be available from December 2019 onwards. Then, the tax accounts would be subjected to scrutiny and the sales and purchase details of taxpayers will be matched to detect illegal or fraudulent ITC claims and deliberate suppression of turnover. The verification based on these documents has to be implemented in a time bound manner to expect major boost in tax collection. But the 35th GST Council extended the due date of filing annual return to 31st August 2019 from 30th June 2019. This extension of Annual Return due date will further delay Kerala's plans to achieve budget target of 30 per cent GST growth because the GST department can conduct the physical verification only after the annual returns have been filed.

■ **The Kerala High Court extends stay on Entertainment Tax for Cinema Tickets**

The Kerala High Court extends stay on collection of Entertainment Tax on Cinema Tickets by local bodies. With the implementation of GST in 2017, local bodies had stopped collecting entertainment tax. Later, the state government decided that local bodies could continue to collect the same as it's a major source of revenue for them. A government order with immediate effect was issued on 10th June 2019. However, the same could not be implemented due to the recent High Court order that had stayed local self-government bodies from collecting the tax on top of GST. The decision to impose 10 per cent tax was made after the GST on film tickets was reduced to 18 per cent from 28 per cent. Under the old tax regime, the local bodies had collected the entertainment tax. Post GST rollout, the same continued to be levied as per the provisions of Section 3 of the Kerala Local Authorities Entertainment Tax Act. Now, the Act has been amended to fix the entertainment tax at 10 per cent. A notification has been sent to all Gram Panchayat, municipality and corporation secretaries and theatre owners about the same. is the intention of this notification is to reduce the income loss faced by local self-government bodies due to the implementation of GST.

Source: Malayala Manorama, 13/06/2019

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