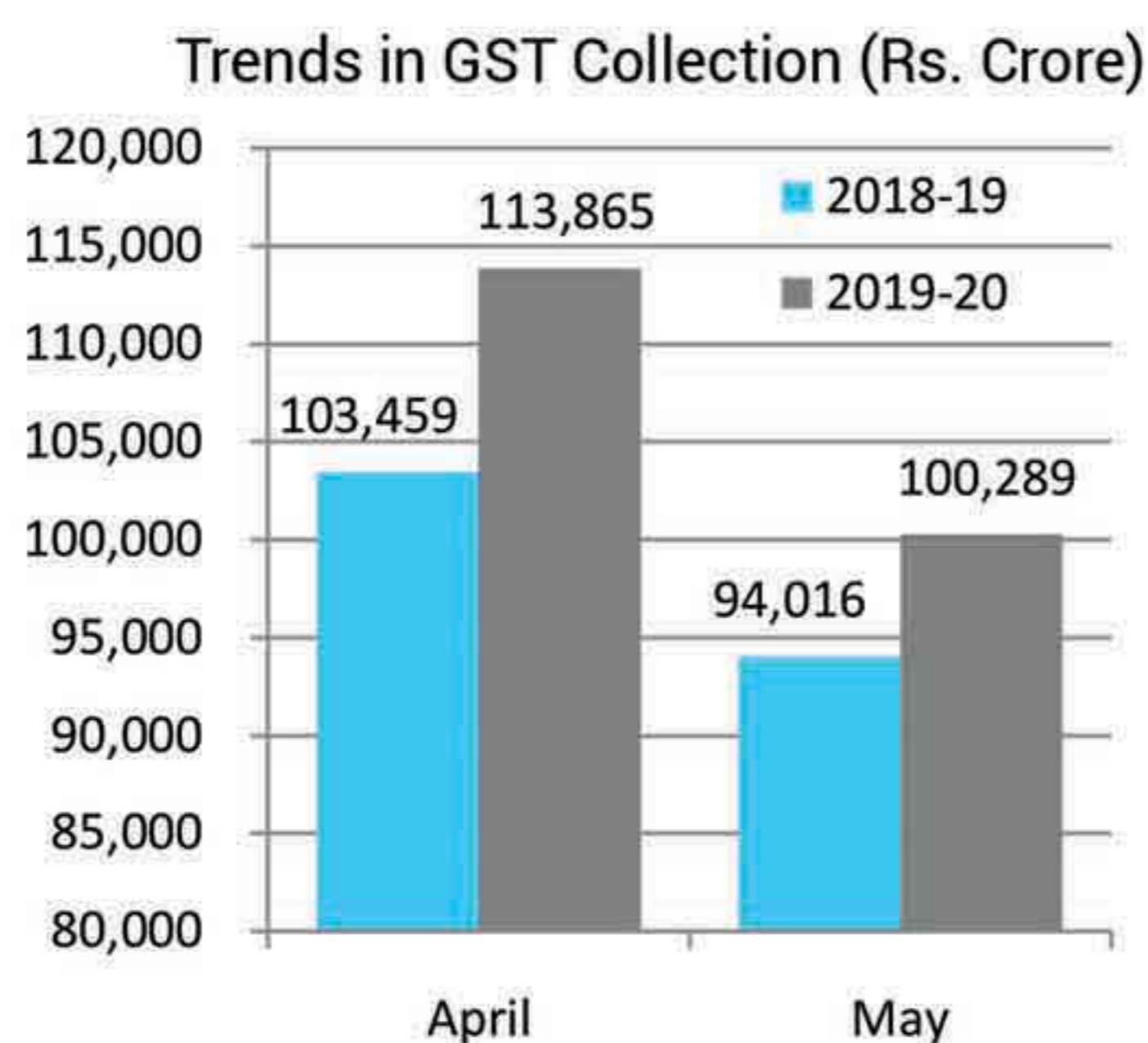


# GOODS AND SERVICES TAX

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

May 2019  
Vol. 2, Issue 5

## GST collection at Rs.1 lakh crore in May, 2019



The Government collected a little more than Rs.1 lakh crore in May, an improvement of 6.7% from the same month a year ago, but below the growth rate needed to avoid compensation. The gross GST collected in May is Rs.1,00,289 crore of which CGST is Rs.17,811 crore, SGST is Rs. 24,462 crore, IGST is Rs. 49,891 crore and Cess is Rs.8,125 crore. An amount of Rs.18,934 crore has been released to states as GST compensation for the months of February-March, 2019. A total of 72.45 lakh GSTR-3B returns were filed in May, higher than 72.13 lakh in April.

### Implementation of Kerala Flood Cess might be delayed

The state's decision to levy 1 per cent Kerala Flood Cess (KFC) for B2C transactions from July 1, 2019 might be delayed due to the amendment required in the CGST Rules. The 32<sup>nd</sup> GST Council meeting held on 10<sup>th</sup> January, 2019 approved Kerala's demand to levy calamity cess under Article 279, 4 (a)(f) of the Constitution. With regard to the implementation of KFC Government of Kerala issued a notification on 25/05/2019, under this essential goods drawing 2.5 per cent SGST, are exempted from the purview of KFC. However, services attracting 2.5 per cent SGST such as economy air travel and all other goods and services drawing 6, 9 and 14 per cent SGST would attract one per cent KFC. Apart from this, gold and silver which attract 1.5 per cent SGST will have a levy of 0.25 per cent cess. According to Section 15 of CGST and SGST Act, cess should be included in the value of supply of goods or services or both. The above said notification states that the customers are required to pay GST on cess also. It is clear that there is a cascading effect, which is against the spirit of GST. Hence it is necessary to make amendments in existing rules, so that KFC would be legally effective. Under rule 61 of the Kerala GST Rules 2017, all taxable person liable to pay the cess should file a monthly return in form 'KFC- A' on or before the due date for filing of GSTR-3B return.

Ref: G.O. (P) No. 80/2019/Taxes, dated 25/05/2019 & G.O. (P) No. 82/2019/Taxes, dated 31/05/2019

## STATUTORY CHANGES

### Return filing deadline extended till 20 June in parts of Odisha

The Government has extended the deadline for filing summary sales return for April by a month making the deadline June 20, 2019 for the districts of Odisha that were recently hit by the cyclone. Also the due date for filing final sales return or GSTR-1 for April for taxpayers having aggregate turnover more than Rs 1.5 crore, have been extended to June 10, 2019.

Source: Notification No: 23/2019 & 24/2019-CT, dated 11/05/2019

### GST on real estate: Exercise of option

The date for exercising the option for residential real estate project to either stay at old GST rate (8% or 12% with ITC) or to avail new GST rate (1% or 5% without ITC) is being extended to 20/05/2019 from 10/05/2019.

Source: Notification No. 19/2019-CT (Rate) dated 10/05/2019

### Still confused about GST on real estate sector?

A number of issues have been raised regarding the new GST structure for real estate sector implemented from 1st April 2019. In view of the above, Tax Research Unit (TRU) of Finance Ministry has compiled a list of Frequently Asked Questions (FAQs) to understand more on the tax structure of real estate sector. The volume I, containing 42 and volume II, with 27 FAQs were published through CBIC's website.

Source: F. No. 354&355/32/2019-TRU of CBIC, 07/05/2019 & 14/05/2019

## GST COUNCIL

### ■ Constitution of GST Implementation and Monitoring Committee

The Government has constituted a GST Implementation and Monitoring Committee (GIMC) to examine and review the operational issues of the GST. The GIMC shall work under CBIC Chairman, Special Secretary GST Council, CEO of GST etc were also be part of the committee. The committee will examine, review and follow up all operational issues which includes, inter alia, integration and automation of refund, enforcement module, data analytics, annual return, new return system, Single interface refund disbursement, unification of cash ledgers, sharing of data on offence cases between the Centre and States, blocking of e-way bill, etc.

Source: GST Council, Office Memorandum dated 29/05/2019

### ■ Constitution of working sub-group on policy issues for generation of e- invoice

The Committee of Officers on generation of e-invoice has decided to constitute a working sub-group to examine and recommend on the business process and policy & legal aspects for generation of e-invoice. This sub-group shall consist of Shri Upender Gupta (CBIC), Shri Manish Kumar Sinha (CBIC), Shri Ritvik Pandey (DoR), Shri Prakash Kumar (GSIN) and Shri Dheeraj Rastogi (GST Council). The sub-group will examine policy aspects of generation of e-invoice, including inter alia invoice format, modification, cancellation of invoice, threshold turnover for invoice generation from the portal, immediate steps for B2B supplies with a high threshold turnover etc.

Source: GST Council, Office Memorandum dated 23/05/2019

### ■ Constitution of working sub-group on technical issues for generation of e- invoice

Committee of Officers on generation of e-invoice constituted a sub-group to examine and recommend on all technical aspects for generation of e-invoice. This sub-group shall consist of Dr. Pramod Kumar Verma (Chief Architect, UIDAI), Shri P. V. Bhatt (NIC Bangalore), and Shri Nitin Mishra (GSTN). The sub-group shall examine and recommend all technical aspects of generation of e-invoice, including inter alia generation, viewing, downloading, backward & forward integration, system requirement, data format, mode of generation like APP based, mobile, SMS, off-line and on-line invoice integration with portal etc.

Source: GST Council, Office Memorandum dated 23/05/2019

### ■ Modified list of Committee members on Exports

Committee on exports which was constituted to look at the issues of export sector has been partially modified under the convenorship of Revenue Secretary. The other members include (i) Chairman, CBIC, (ii) Member (Customs), CBIC, (iii) Member (Inv), CBIC, (iv) Pr. DG/DG. DGFT, DG, DGEP, CBIC (Member Secretary), (v) Joint Secretary (Customs), CBIC and (vi) Pr. Commissioner GST Policy Wing, CBIC. Special Secretary of GST Council and Commissioners of State GST departments of Gujarat, Karnataka, Maharashtra, Tamil Nadu, Uttar Pradesh and West Bengal were also included in the revised list.

Source: GST Council, Office Memorandum dated 28/05/2019

## NEWS

### ■ CBIC launches new project for online writing of APARs

Online writing of Annual Performance Appraisal Report (APARs) in SPARROW for IRS officers has been implemented with effect from 2016-17. As part of CBIC's constant endeavor for better HR management, online writing of APARs has now been launched for over 46,000 Group B & C officers of CBIC, working in its various formations all across the country. The project has been inaugurated by the Chairman of CBIC on 15/05/2019. The Directorate General of Human Resource Management (DGHRM), the HR arm of CBIC is the implementing Agency for this ambitious project. This Project leverages modern technology for enhancing the overall efficiency and morale of the huge workforce working in Central GST and Customs formations of CBIC.

Source: PIB, 15/05/2019

### ■ Finance Commission may not recommend extension of GST Compensation after 2020-21

Reportedly, the request of the State Governments to extend the period of GST compensation beyond five years is likely to be rejected by the 15<sup>th</sup> Finance Commission. According N.K. Singh, chairman of the Commission, the tax buoyancy will take care of the current shortfall in revenue in some states. To compensate these states, an additional tax by the name GST compensation cess is levied which will be for a period of 5 years from the date of implementation of GST. As GST is a consumption-based tax, the real problem with states is that the guaranteed compensation will end in 2020-21 and some of the states are worried as they are not able to achieve that degree of growth.

Source: Live mint, 21/05/2019

### ■ New returns form to be rolled out in July, 2019

The new simplified returns filing format is finally ready to be rolled-out after being deferred twice. Under the new format, taxpayers will be required to file one monthly return, except small taxpayers and a few exceptions. Those with no purchases, no output tax liability and no input tax credit in any quarter of the financial year will have to file one 'Nil' return for the entire quarter while taxpayers with turnover of up to Rs. 5 crore in the last fiscal can file quarterly return with monthly payment of taxes on self-declaration basis. The format was first expected to be implemented by January 2019 and then on a pilot basis in April 2019 but the switch reportedly got delayed because the back-end, the GSTN, was not yet ready for it.

Ref: Business Today, 16/05/2019

### ■ CDBT again defers furnishing of GST and GAAR details till March 2020

The income tax department deferred for the second time the requirement for companies to include in their tax audit reports the details of GST and General Anti-Avoidance Rules (GAAR). The reporting requirement of these details in income tax audit form has been kept in abeyance till March 31, 2020 - meaning that all income tax audit reports need not include details on GST and GAAR till March 2020. Business entities having a turnover

of more than Rs. 1 crore and professionals with gross receipts of more than Rs. 50 lakh have to comply with the tax audit requirements. The CBDT in an order, said the Board has received representations that implementation of reporting requirements under clause 30C (pertaining to GAAR) and clause 44 (pertaining to GST compliance) of the Form No 3CD may be deferred further.

Source: PTI, 14/05/2019

### ■ Automated refund for exporters by June, 2019

The GSTN is working to make the process of seeking tax refund by all exporters faceless by June, 2019. It would make the process faster and also help in eliminating fake refunds, an official told PTI. In GST regime, every person making a claim of refund on account of 'zero-rated' supplies has two options. Either he can export without payment of integrated tax under Bond/ LUT and claim a refund of accumulated ITC or he may export on payment of integrated tax and claim refund thereof. Currently, the facility of automatic refund is available only for those exporters who have paid IGST while exporting goods. Since the GSTN are integrated with Customs, hence, refunds are generally transferred to the bank accounts of such exporters within a fortnight.

Source: PTI, 13/05/2019

### ■ B2B invoices likely to be generated on GST portal by September, 2019

All invoices for business-to-business sales by entities beyond a specified turnover threshold will have to be generated on GST portal by September 2019, a move aimed at curbing the menace of fake invoices and evasion of GST. Besides, it would make the returns filing process easier for businesses as invoice data would already be captured by a centralised portal. The revenue secretary is monitoring the progress of implementation of electronic or e-invoice project for which an officers' committee has already been set up under Dr. Rajeev Renjan.

Source: PTI, 05/05/2019

### ■ GST may not reduce deficits of State Governments, study report.

The GST regime is not likely to reduce the deficits of state governments significantly, says a study by S&P Global Ratings credit analyst Yee Farn Phua. In the report titled 'Public Finance System Overview: Indian States' noted that the passage of the GST bill in 2017 is a major overhaul of tax structure and will help to widen the tax base and improve revenues of state governments. However, states will continue to run large deficits because a significant part of this imbalance is from the expenditure side. States are unable to cut expenditures because of large and growing expenditure mandates for the social sector as well as capital spending. Therefore, the revenue-expenditure gap will remain large.

Source: PTI, 07/05/2019

### ■ Free software will be given to MSMEs for filing returns

As per directions of GST Council, GSTN has partnered with some software companies for providing free software to the Micro, Small and Medium Enterprises (MSMEs), with annual turnover under Rs. 1.5 Cr. This facility is made available to the active normal taxpayers,

SEZ units and taxpayers who have opted for composition scheme. There are eight products to choose from, these are available as a cloud based version as well as a downloadable version that installs on desktop or laptop. This software allows a taxpayer to run his daily business by providing day to day billing and accounting features, along with facility for return filing for their GST related compliances.

Source: <https://www.gst.gov.in/newsandupdates/read/282,dated28/05/2019>

## KERALA

### ■ Kerala to physically verify Taxpayers

Kerala State GST Department decided to start verification of registered dealers manually to determine the genuineness of the documents and thereby curb tax evasion. Under the VAT regime, there used to be an element of integrity in the registration data base due to pre-registration visit by assessing authority. But in GST, pre-registration visits by the proper officer may not always be practical because of the three day deadline. This leads to the manipulation of data. Hence, it is decided to conduct a post-registration inspection in the premises of tax payer based on certain risk parameters. The list of categories of migrated and new tax payers to be visited for verification are given below;

1. All migrated and new tax payers having transactions in plywood and arecanut.
2. All migrated tax payers who have not filed any return since migration.
3. 'Nil' filers since migration.
4. All tax payers who have defaulted in filing GSTR 3B for a period more than three return periods.
5. All tax payers who have filed 'Nil' returns in the case of GSTR 3B since the date of registration.
6. Those who have not filed returns since registration.

The circular reminded that the officials should be more careful when dealing with evasion prone commodities like Lottery, Iron and Steel, Flooring materials, Glass, Timber, Hill produce, Plywood, Arecanut etc. The department also prepared a check list and Standard -Operating Procedure for visit to the taxable person's premises.

Source: Circular No.4/2019 dated 07/05/2019

## LEGAL UPDATES

### ■ Supreme Court upholds Telangana HC Judgment: GST evaders can be arrested

*P.V Ramana Reddy Vs. Union of India &Ors.*

The Supreme Court has dismissed a plea challenging Telangana High Court judgment that held that a person can be arrested by the competent authority in cases of GST evasion. The Division bench of the Telangana High Court, in April, had dismissed a batch of writ petitions seeking protection from arrest for alleged tax evasion. The challenge was against the summons issued by GST Superintendent of Hyderabad, under the CGST Act, 2017. The bench observed that Sub Section 1 of Section 69 of the Act empowers the Commissioner to order the arrest of a person, when such a person is believed to have committed a cognizable and non bailable offence.

The Court also did not favor the argument raised by the petitioners that since all the offences under the Act are compoundable under Sub Section 1 of Section 138 of the CGST Act, 2017, subject to the restrictions contained in the proviso thereto and that therefore, there is no necessity to arrest a person for the alleged commission of an offence which is compoundable. The court also had observed that the furthering of enquiry/ investigation is not the only object of arrest. Then the petitioners approached the Supreme Court with the Special Leave Petition, the vacation bench of Chief Justice Ranjan Gogoi and Justice Aniruddha Bose, dismissing the SLP, said that it is not inclined to interfere.

### ■ Delhi HC directs GST Council to review Tax Structure for Solar Projects

In an Interim Order, the Delhi High Court has directed GST Council review the Tax Structure of Solar Projects. The Petition was filed by the Solar Power Developers Association (SPDA) that challenges the new tax formulation structure for solar projects. In its 31st GST Council Meeting, the Council has decided that, GST rate of 5% has been prescribed on renewable energy devices & parts for their manufacture (bio gas plant/solar power based devices, solar power generating system (SGPS) etc). Other goods or services used in these plants attract applicable GST. Certain disputes have arisen regarding GST rates where specified goods attracting 5% GST are supplied along with services of construction etc and other goods for solar power plant. The division bench comprising of Justice S. Muralidhar and Justice I.S Mehta said that, "considering the ramifications of the prayer of the Petitioners, it is directed that that the present petition be placed for consideration before the GST Council at its next meeting". The Court also directed that, "Preparatory, to the above step the Petitioners will be called before the CBIC through their authorized representatives for a consultative meeting within the next four weeks. If necessary, the concerned Ministry will also be invited to the consultative meeting and the deliberations of that meeting also be placed before the GST Council".

### ■ ITC allowable on debt settlement: AAR West Bengal *Senco Gold Ltd, In re*

The AAR held that the companies are eligible to claim the Input Tax Credit (ITC) even if the liability to pay for inputs between them, including tax, is discharged through adjustments in their books. The applicant sought for an

advance ruling whether the credit is allowable on debt settlement through book adjustment from the franchise. The authority noted that the 'consideration', as defined under section 2(31), provides the scope and ambit for modes of payment. It includes, in relation to the supply of goods or services, any payment, made or to be made, whether in money or otherwise, and also the monetary value of any act or forbearance. This definition of 'consideration' cast the net so wide that almost no form of payment is excluded. "For example, a mix of money and monetary value of the goods offered together with it is a valid 'consideration'. Similarly, if the payee owes the payer a debt, and accepts a reduction in such a debt liability as a valid form of payment, that should also be regarded as a valid 'consideration' for a supply. "Unless the law specifically restricts the recipient from claiming the ITC when consideration is paid through book adjustment, credit of input tax cannot be denied on this ground alone. Rule 19(8) of the West Bengal VAT Rules, 2005, specifically provided that credit of input tax would be available only if the payment was made by account payee cheque or account payee draft or through electronic banking clearance when such payment exceeded rupees twenty thousand in a day. No such restriction is apparently provided under the GST Act," it said.

### ■ Relief for flat buyers, rules PLC to attract 12% GST: *AAR West Bengal*

*Bengal Peerless Housing Development Company Limited, In re*

The Authority for Advance Rulings (AAR) has held that services such as preferential location charge will be eligible for concessional rate of GST for under-construction units, while no tax will be levied on those sold after completion. Some builders have been levying higher GST on preferential location charges (PLC) and other add-on services. Bengal Peerless Housing Development Company Limited, a joint venture of the West Bengal Housing Board and Peerless General Finance and Investment Company Limited, had approached AAR on whether such services would qualify as a composite supply and can avail a reduced rate of 12% GST. The authority has held that the applicant is providing service of construction of a dwelling unit in a residential complex with services relating to PLC, parking charges. It is a composite supply, construction service being the principal supply and hence, entire value would be taxable at 12%, it held.

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