



All India Federation of Tax Practitioners

(Indirect Tax (GST) Representation Committee)

(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)

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Ref. No.

Date. 28.05.2020

To,

Smt. Nirmala Sitharaman,
Union Finance Minister, Govt. of India,
North Block, New Delhi-110001

The Chairman, CBIC,
Govt. of India, North Block,
New Delhi - 110001

The Pr. Commissioner (GST-1),
GST Policy Wing, Deptt of Revenue,
North Block, New Delhi-110001

Respected Madam / Sirs,

Sub.: Representation on issues relating to GST

All India Federation of Tax Practitioners established in 1976 is an Apex body of Advocates, Chartered Accountants and Tax Practitioners consisting of more than 9000 individual members spread across all States and Union Territories who are practicing Direct & Indirect Taxes. Most of the leading Senior Advocates, Chartered Accountants and Tax Practitioners are from different parts of the country and 135 leading Tax Professional Associations / Tax Bar Associations from 18 States are Associate Members of this unique Federation.

Since the implementation of GST, the Federation has actively organized National Tax Conferences in each of its 5 zones throughout the Country to deliberate upon different aspects and issues of GST Law and to analyse different provisions of the Act, Rules, Notifications, Circulars etc. We have made series of representations and suggestions to the State & Central Govt., including to the GST Council, from time to time. Many of our suggestions are accepted by the Govt. at different levels. Till date we have submitted multiple representations and you are now well versed with our activities and objects.

During the lockdown period we are continuing with our education activities to keep our members updated with latest information and updates on direct & indirect tax laws by organising several webinars, in each of our 5 zones across India, with participation going up to 1000 members on few of the occasions.

Adapting to the fast changing requirements of today's times, an E-publication was released by the Federation for the benefit of its members on "Vivaad se Vishwas" scheme under the Direct Tax Laws by Advocate Vipul Joshi. It was released by Hon'ble Justice P. P. Bhatt (President, ITAT). The publication is available free on our website www.aiftponline.org.

An ongoing drive for contribution to the PM CARES Fund, by federation through its members, continues to be the top priority in the fight against corona pandemic.

We highly appreciate and welcome the timely announcement of major procedural relief measures under Indirect Taxes and GST by your Honour and followed by issue of



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Circulars No. 136/06/2020 and 137/07/2020 by CBIC on the initial stage of the spread of Corona and the lockdown declared by our visionary Prime Minister throughout the Country to contain the disease.

None the less, the members of our Federation and other stake holders are still facing various difficulties, which are detailed hereunder, in various compliances and on legal issues under GST which need your immediate attention and kind consideration for remedial action.

1. Interest on Net Cash Liability

We welcome the decision of the GST Council, chaired by your Honour, to amend the law from retrospective effect to calculate interest on cash tax liability instead of gross tax liability which was causing a great hardship to the taxpayers. In this regard, we would like to draw your kind attention that the date of payment of tax by the taxpayer should be taken as the date of credit to the electronic cash ledger and not the date of filing of 3B to determine the period of delay for calculating the amount of interest. By filing 3B, the liability is only procedurally offset, but nonetheless, the tax is already deposited to the Government by the taxpayer, by making payment as provided in section 49 of CGST Act which reads as under:

The clause (a) of Explanation to section 49, provides that the date of credit to the account of Government in the authorised bank shall be the date of deposit in the electronic cash ledger.

In view of the above, the date of credit in the electronic cash ledger should be considered as date of payment of tax and not the date of filing of return 3B for the purpose of determination of period of delay for which interest is payable. This needs to be clarified by CBIC by a suitable circular to avoid litigation in future.

2. Annual return (GSTR 9) and the Reconciliation Statement (GSTR 9C) for financial year 2018-19 - amendments in the utility and extension of due date.

The due date for filing of Annual return and Reconciliation Statement for F.Y. 2018-19 is extended to 30.09.2020 However, Form GSTR-9 and 9C available on GSTN portal have not been suitably amended to capture the following information:

1) Adjustments for ITC and outward tax liability relating to F.Y. 2017-18 made in 3B of F.Y. 2018-19 and reported in GSTR9 of F.Y. 2017-18 in table no 10, 11, 12, and 13 must find place in GSTR9 of F.Y. 2018-19 also in order to arrive at total turnover for the F.Y. 2018-19 but there is no table for such reporting in the existing form available on GSTN portal.

Likewise, in table 8 of GSTR-9 for reconciliation of ITC as per GSTR-2A, a separate row to show adjustment of ITC of 2017-18 made in 2018-19 be provided to arrive at total amount of ITC for 2018-19 claimed by the taxpayer.

2) The form GSTR 9 for F.Y. 2018-19 does not provide table to show RCM liability paid in F.Y. 2018-19 for earlier period or for current year paid in F.Y. 2019-20. The same needs to be provided to capture this information:

3) In existing forms, no table is provided to show tax paid by DRC 03, the same





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needs to be provided in GSTR-9 and GSTR-9C.

- 4) Some of the tables were made optional in GSTR9 and GSTR-9C for 2017-18. Whether the same will remain optional for 2018-19 also needs clarification. Whether Form-9 will remain optional for taxpayers having turnover less than 5 Crore as was done for 2017-18 for turnover less than 2Crore.

We, therefore, represent to amend the respective forms and make the revised utility available on GSTN portal. Thereafter, minimum 'four months' time be allowed to the taxpayer to upload the same. Further, due to present national lockdown in the country time left with the business and their professionals has been reduced to prepare and file such forms. We, therefore, represent to extend the due date up to 31.12.2020.

Further, our past experience shows that GSTN provides the final utility to up load the various forms at the eleventh hour, just few days before the due date fixed for filing the said forms leaving very little time with the taxpayers to file the same causing undue pressure on the taxpayers and their professionals.

We, therefore, represent that sufficient time should be provided to the taxpayers and the professionals to upload the forms after final utility is made available on the portal and no change of any sort should be allowed thereafter. In case any change is necessary, the due date must be suitably extended by the tax authorities Suo moto without awaiting any request from the taxpayers.

3. STAR RATING / GRADING

We suggest to start providing star rating/ gradation to the existing tax payers as provided in the Act as well as on the lines of Customs. Such tax payers having five star rating may be allowed to claim ITC on the basis of their books and records subject to final matching as per section 41 and 42 of the CGST Act.

Further, their refund claims should also be processed within the time prescribed and on priority basis and their rating status not be changed downward without issue of notice and giving an opportunity of being heard by the competent authority in this behalf.

The large tax payers or star tax payers contribute largely for the growth of economy of the Country and are assets for the Nation. They should be given due respect as desired by Hon'ble Prime Minister and not be considered as tax evaders or avoiders in the normal circumstances. The Government must have mechanism for continuous dialogue with them to resolve their difficulties relating to tax matters and other administrative issues.

4. Tax Payers facing Corporate Insolvency Resolution Process

A special procedure has been prescribed for registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 and are undergoing the corporate insolvency resolution process (CIRP), so as to enable them to comply with the provisions of GST Laws during the CIRP period. At this juncture, we represent that some beneficial provision should also be made in the Act or Rules for allowing ITC to their recipient of goods or services.



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Further, for current transactions, their recipients should have the option to pay tax on such suppliers behalf so that their ITC is not being denied for non-payment of tax by such defaulters.

5. Bunching of Refund Claims and Time Limit of Application for Refund:

Bunching of refund claims has been allowed on optional basis across financial years to facilitate exporters vide circular no 135/05/2020-GST dated 31.03.2020. At the same time, the time limit provided for making refund application in such cases may also be extended accordingly.

Further, in many cases, refund applications having made within time are being rejected for technical reasons and thereafter fresh applications are required to be filed within the prescribed time. In such cases, the fresh application may be allowed, even if it is made late as original applications were already filed in time, but were rejected for technical reasons. For making fresh application in place of such rejected application, there should not be any condition to make it within the prescribed time particularly when it is rejected in the last month when getting time barred. This being a practical problem of the business needs consideration to facilitate the issue of refund in appropriate cases.

6. Deferment of E-invoice and QR Code:

A decision has been taken to defer e invoice and QR Code to 1st Oct 2020. It is also decided to exempt certain class of registered persons (insurance company, banking company, financial institution, non-banking financial institution, GTA, passenger transportation service etc.) from issuing e-invoices or capturing dynamic QR code. In future, whenever implemented, it should be made applicable for B 2 B and B 2 C taxable supplies only exempting exempt and non taxable supplies such as interest from FD, share dividends etc. for which generally no invoice is issued by the supplier.

7. Interest on refunds:

It has been decided by Govt. to defer E-wallet scheme. However, it is observed in many cases that the refunds are not being processed well within the prescribed time although position has been improved than earlier. Further, no interest is paid to the tax payers as per provision of the law, for delay in issue of refunds. It is therefore represented that the refund utility of GSTN should be designed to auto calculate the interest on delay in granting refund as is being done by the income tax department invariably in each case to issues refund with due interest. Further, the delay in grant of refund must be monitored by high level committee to prevent repetitions and the officer concerned be made personally responsible/accountable for delay in issue of refund and for non-payment of interest thereon in future.

8. Release of refunds applied upto 20.03.2020 (before lockdown)

The refund applications filed in the month of March, 2020 before National Lockdown have not been processed so far in almost all cases even after lapse of 2 months may be due to unavailability of staff in Govt. offices. However, due to complete closer of business activities during Corona spread, there is financial crunch with the taxpayers to carry on their business. We therefore represent for an immediate



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direction to the concerned officer to release the refund with interest without much further delay as assured by Hon'ble F.M. in a press conference. Now there is relaxation of lockdown and Govt offices have also commenced functioning.

9. Continuation of existing system of furnishing FORM GSTR-1 & FORM GSTR-3B till September, 2020-amendments in utility required.

It has been decided to continue with present system of R1 and 3B till 30th September, 2020. It is also proposed to link R1 and 2A with 3B.

We strongly represent amending the existing form 3B and R1 to allow adjustment of turnover disclosed in earlier tax period and also allow to fill negative figure in each table to make it complete return and separate table should be provided in 3B to claim ITC for missed invoices.

At present in 2A, data is on real time basis and reduces the amount of ITC for any amendment or credit note in 2A of the respective month. However, no table is provided in 3B to adjust the amount of ITC as per 2A for credit notes or amendment in invoices in respect of which no ITC is claimed. In the new return Form RET 3, this facility has been provided.

We therefore represent for providing of such tables for adjustment of tax liability as well as for ITC of earlier periods in 3B separately.

At present, no utility is provided for uploading details of inward supply in GSTR 2. We suggest that along with 3B, a separate Annexure may be provided for invoice wise details of ITC claimed which can be matched with R1 by the GSTN and any mismatch thereof may be communicated to both supplier and the recipient with a facility to accept or reject.

This will enable the department to identify the wrong credit of ITC as well as non-reporting of invoices by erring suppliers and to take actions against the erring persons. This will also help the department to protect the interest of genuine and honest tax payers.

10. Restrictions on Passing of ITC in case of new Registration:

It is proposed for restrictions to be imposed on passing of the ITC in case of new GST registrations, before physical verification of premises and Financial KYC of the registered person.

In the VAT system, many states had system of granting registration upon visiting the place of business although sometimes it was misused also. This system may be implemented in select supplies where the department presumes tax evasion instead of inspecting all premises in case of new registration. In fact, in vat regime, some States prepared list of tax evasion prone commodities and made it subject to single point levy of tax. Based on the experience of the department in GST in select cases, there may be need for some restriction in grant of registration. But there should not be any restriction on passing of ITC to genuine buyers.

We therefore represent that the department can take all the precautions while granting registration but once the registration is granted, no restriction should be





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Ref. No.

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imposed for passing of ITC to the recipient who after verifying proposed Know Your Supplier obtains inward supply by paying tax and, thereafter, should not be at the mercy of the department for claiming ITC.

The Government must adhere to the basic principles of taxation of GST. The provisions of the law must be followed. It must promise to genuine tax payers to protect their legitimate claim of ITC. Instead of restriction on ITC, the Government should concentrate on recovery of tax from the erring suppliers, who despite collection of tax, does not deposit to the Government. It is the basic responsibility of the department to recover the legitimate tax from the suppliers and protect the interest of genuine tax payers.

11. Appeals during non-constitution of the Appellate Tribunal:

The GST law provides for appeals to Tribunal but till date no Appellate Tribunal is constituted. Meanwhile, appeals are kept pending by the Appellate Authorities for want of Tribunal. Instructions may be issued to dispose off all such appeals judiciously. As of now, Act is amended to start limitation from the date of constitution of the Tribunal but no provision is made for the stay of recovery of disputed taxes. Moreover, the limitation of further 30 days may be granted to file appeal and obtain stay.

We also suggest the number of Tribunals should be increased, so that after every 1000 KM, there is at least one Tribunal. The present Tribunals hearing VAT matters are fully equipped to take up the task of GST. Few benches out of total present strength can be made available for functioning as GST Tribunal. Under present circumstances, for at least 12 months, people may not be able to travel long distance, facility of flexible e-filing should be started.

We represent that necessary instructions be issued to keep the recovery in abeyance till the Tribunals are fully functional.

We request that urgent attention be given to above issues for the benefit of all stakeholders.

With highest regards,

For All India Federation Of Tax Practitioners

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