



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.....

Date: 27.08.2020

To,

1) The Hon'ble Prime Minister
Govt of India, South Block,
New Delhi- 110001

2) The Hon'ble Finance
Minister
Ministry of Finance,
Govt of India, North Block,
New Delhi - 110001

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

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

5) GST Council, 5th
Floor, Tower- II,
Jeewan Bharti Building,
Janpath, New Delhi -
110001



Hon'ble Madam/sir,

Sub: Representation on various GST issues

All India Federation of Tax Practitioners, having registered office at Mumbai is an Apex Body of Tax Practitioners being Advocates, Chartered Accountants and Tax Practitioners having more than nine thousand members across the Country practicing before the Income-tax Appellate Tribunal, Sales Tax Appellate Tribunal and GST Appellate Authorities having Benches and jurisdiction in various parts of India. I am proud to say, many Senior Advocates and Senior Councils of various High Courts and the Supreme Court are our members and till date more than seven members of our Association

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have been elevated as Judges of various High Courts. The object of the AIFTP is to take up various causes and act as a conduit and facilitator amongst the Tax Practitioners, Revenue Authorities, the Central Government and the Members of the Hon'ble Appellate Tribunals, High Courts and the other cogs in the wheels of dispensation of Justice in the fields of tax jurisprudence and to identify and overcome the impediments that may hamper the proper and effective functioning of the provisions of law. We have in the past taken up various issues and have made numerous representations across various fora for the mutual benefit of both the general public and the Revenue Authorities. AIFTP functions through five zones namely East, West, South, North and Central.

About 136 professional associations are our members. We have always been at forefront in representing Direct and Indirect Tax issues faced by our members before various authorities including the Central Government.

We have Central Representation Committees for Indirect tax and Zonal Representation Committees at each zone.

The Indirect Tax Representation Committee of AIFTP has submitted various suggestions on GST Law since its inception and many of these suggestions have been accepted from time to time.

The members of our federation and other stake holders are 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. Govt. Companies, bodies corporate, Corporations etc. to declare that they are Govt. entities in Tender documents etc.

Various Notifications such as 11/2017- CT (Rate) dt.28.06.2017 and 31/2017-CT (Rate) dt.13.10.2017 has been issued by CBIC which refers to Govt. Entity which is to be understood as an entity having minimum Govt. control of 90%. However, the taxpayer has no means to ascertain this 90% control.

We, therefore, represent that GST Council should direct the Govt. Entities to declare in the Tender/Work-order/Agreements while awarding contracts to the Contractors that they are Govt. Entities to save Contractors of the severe hardships at later stages during Departmental Audit under GST.



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2. Secretariat of GST Council.

As of now the Secretariat of GST Council is consisting of Govt. Officials only such as:-

1. Secretary Revenue as ex- officio secretary to GST Council.
2. Chairman CBIC as permanent invitee to all proceedings of GST Council.
3. Additional Secretary to GST Council at level of Additional Secretary to Govt. of India.
4. Four posts of Commissioner in GST Council Secretariat at level of Jt. Secretary to Govt. of India.
5. GST Council is manned by officers taken on Deputation from Central & State.

These officials of the secretariat make recommendations to the GST Council which are favorable to Govt. and are far from ground realities considering the economic situations in the country.

We therefore, represent that GST Council should have its Independent Secretariat which should include representatives from Trade Bodies, Professional bodies, Trade Associations etc. so that experts from various fields can make recommendation to elected Finance ministers/ other ministers of states and Centre instead of having only Govt.'s point of view on issues relating to practical aspect of business, legal position and compliance difficulties which will help in developing good and simple Law useful in economic development of the country in right direction.

3. Formation of Tribunals.

GST Tribunals need to be formed immediately without any further delay as it is not possible for most of the taxpayers to always move to the High Courts for their grievances being a costly affair and there is always an uncertainty of decisions likely to come differently from different judges from different courts. Formation of Tribunal will help to get justice from an independent authority at reasonable cost and will save litigant from adverse decisions taken against the taxpayers by proper officers and first appellant authority.

4. Limitation of two years period to claim Refund to be done away with.

As provided in section 54 of CGST Act, 2017 the regd. Person can claim refund due by making application within two years from the

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relevant date although Govt. can make recovery of tax dues from the tax payer within 3 years from the date of Annual Return as per section 73(10).

This discrimination is not fair and regd. person should also be allowed to claim the refund within 3 years and, therefore, law needs to be amended. We therefore, represent that this issue be taken up in GST Council meeting and Council to recommend to increase the time limit to claim refund as time of 2 years creating great hardship to the assessee.

Particularly for FY 2017-18, many taxpayers could not file refund application within two years for the reason that law was new, people were trying to understand the same as even Govt. was issuing notifications/Circulars one after the other clarifying the procedure for issue of refunds and even the GST Portal was not ready to accept the refund application online and therefore Govt. had to allow filing of applications manually. Both Govt. as well as professionals, consultants and taxpayers were in the process of learning. The Government extended time for filing of GSTR 3B from July 2017 to Jan 2020 without any late fee.

Taking into consideration all such practical issues faced by Authorities and the Taxpayers, we represent that Govt. should consider to give one more opportunity to extend this period of two years for 2017-18 to 3 years so that regd. persons can claim their legitimate refunds for which Govt. has no right to retain the same by fixing time limit of 2 years. Immediate decision should be taken in this matter.

5. Reconsideration of amendment made in section 140 retrospectively to deny benefit of transitional credit.

We are aware that matter of Transitional Credit is pending before Supreme Court but we represent that the same be considered once again by GST Council which consists of elected representatives, FM of States and Centre that tax already paid by taxpayers on purchases/inputs in erstwhile tax laws if denied to the tax payers will be a total injustice with them and it will be case of double taxation on the same transaction. Govt. have all powers, money and can engage senior lawyers to contest the matter in the Supreme Court and may win the case also but even going to the Supreme Court by Govt. is against the assurance given by Late Hon'ble Finance Minister Sh. Arun Jaitley and recommendations given by two expert committees formed under chairmanship of eminent economists of the country Sh. Parthsarathi Shourie and Sh. Damodaran that no retrospective amendments will be made as explained below:





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1) **Statement of Finance Minister Late Sh. Arun Jaitley on 18.07.2014 in Lok Sabha in his reply to the debate on the National Budget:**

"One thing we have made very clear; no retrospective tax creating fresh liabilities will be imposed."

The sovereign right of the government to undertake any retrospective legislation is unquestionable. However, this power has to be exercised with extreme caution and judiciousness, keeping in mind the impact of each such measure on the economy and the overall investment climate.

2) ***An expert committee headed by one of the most respected economists of India – Mr. Parthasarthy Shome examined the matter in detail, and stated:***

The Committee concluded that retrospective application of tax law should occur in exceptional or rarest of rare cases, and with particular objectives: first, to correct apparent mistakes/anomalies in the statute; second, to apply to matters that are genuinely clarificatory in nature, i.e. to remove technical defects, particularly in procedure, which have vitiated the substantive law; or, third, to "protect" the tax base from highly abusive tax planning schemes that have the main purpose of avoiding tax, without economic substance, but not to "expand" the tax base....

3) ***To address fall in confidence of public and investors, the government appointed a committee headed by another eminent Indian Mr. Damodaran. The remit of this committee was generally to examine issues which contributed to this decline, the committee squarely addressed the question of retrospective taxation and had the following to say:***

It has often been said that death and taxes are equally undesirable aspects of human life. Yet, it can be said in favour of death that it is never retrospective. Retrospective taxation has the undesirable effect of creating major uncertainties in the business environment and constituting a significant disincentive for persons wishing to do business in India. While the legal powers of a Government extend to giving retrospective effect to taxation proposals, it might not pass the test of certainty and continuity.

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This is a major area where improvements should be attempted sooner rather than later."

*This government will not ordinarily bring about any change retrospectively which creates a fresh liability. At this juncture I would like to convey to this august house and investors community at large that we are committed to provide a **stable and predictable taxation regime** that would be investor friendly and spur growth"*

We represent that elected representatives need to reconsider that there being no loss to the revenue, it will be justified in giving an opportunity to Registered persons their legitimate right to file their transitional claims, which they are otherwise entitled to and to accept the claims already filed particularly when various High Courts of the Country have taken liberal view. It should not be made a prestige issue by CBIC and Govt. officers. There have been many clarifications by CBIC on various issues on account of technical problems. This is a technical problem of public at large and must be resolved in favour of public. The State cannot enrich itself by such disallowances.

We once again represent that amendment u/s 140 should be made prospective otherwise it will be a bad name for the present Govt. and an injustice to the taxpayer by collecting double tax on the same transaction without there being any loss to Govt. **We request Hon'ble Prime Minister to look in to this matter personally for the benefit of tax payers. Under Direct tax, the Hon'ble PM has announced major changes. The same liberal view should be taken in the matters relating to Indirect taxes.**

6. Waiver of Late Fee on filing of GSTR-9 FY 2017-18.

Due to many technical glitches in making the final utility of Form GSTR-9 available on GSTN Portal, the due date for filing of GSTR-9 was extended, by revenue, to 5th Feb. 2020 vide Notification No. 6/2020 CT dated 3rd Feb. 2020. However, in many cases GSTR-9 could not be filed by 05th Feb, 2020 for various reasons. This being the 1st year of introduction of GST Law, we request for the waiver of late fee on delayed filing of GSTR-9 as has been done by waiver off late fee for filing GSTR 3B from 01.07.2017 to Feb, 2020.

Further, while calculating the period of delay, lockdown period from 15.03.2020 to 31.08.2020 should not be counted, if at all late fee is to be levied in view of Hon'ble Supreme Court's order in suo Moto W.P. (Civil) No. 3/2020 dated 23.03.2020 relating to time barring issues.



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(Indirect Tax (GST) Representation Committee)

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

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Date.....

7. Extension of Due Date for furnishing form GSTR-4 for FY 2019-20.

Every registered person opting composition has to file GSTR 4 on or before 31st Aug, 2020 vide Notification No.59/2020 – Central Tax Dt.13th July, 2020. This is a new form and has been made available on GST Portal recently and our members engaged in compliances are in the process of collecting data to fill the different tables and trying to understand the same. Many members have reported that they are finding difficulties in filling the data and while uploading the same errors are shown by the portal which is taking time to remove such errors and therefore it is very difficult to submit the said form by 31st Aug, 2020. Further due to corona pandemic and partial lockdown in many states there is shortage of staff as public transports are no functioning.

In view of the above, we represent that the due date may please be extended by 3 months.

We humbly request you to please consider the above issues in the interest of taxpayers at large.

With Highest Regards,

For All India Federation of Tax Practitioner

CA H.L.Madan

(CHAIRMAN- Indirect Tax Representation Committee)



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