

# GST Update

Weekly Update  
21.09.2019

# Background

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 14.08.2019. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications, except the provisions related solely to SGST provisions. Similar parallel provisions in State Laws may be referred to as required

# Notifications and Circulars



- 37<sup>th</sup> Meeting of the GST Council held at Goa
- Three CBIC Press release issued on the decisions taken at the GST Council's 37<sup>th</sup> Meeting

# Decisions taken by GST Council in its 37<sup>th</sup> meeting on 20.09.19

## Law and Procedure Related Changes.

The GST Council, in its 37th meeting held today at Goa, recommended the following:

1. Relaxation in filing of annual returns for MSMEs for FY 2017-18 and FY 2018-19 as under:
  - a. waiver of the requirement of filing FORM GSTR-9A for Composition Taxpayers for the said tax periods; and
  - b. filing of FORM GSTR-9 for those taxpayers who (are required to file the said return but) have aggregate turnover up to Rs. 2 crores made optional for the said tax periods.
2. A Committee of Officers to be constituted to examine the simplification of Forms for Annual Return and reconciliation statement.
3. Extension of last date for filing of appeals against orders of Appellate Authority before the GST Appellate Tribunal as the Appellate Tribunals are yet not functional.

# Decisions taken by GST Council in its 37<sup>th</sup> meeting on 20.09.19 (Contd)

## Law and Procedure Related Changes.

4. In order to nudge taxpayers to timely file their statement of outward supplies, imposition of restrictions on availment of input tax credit by the recipients in cases where details of outward supplies are not furnished by the suppliers in the statement under section 37 of the CGST Act, 2017.

5. New return system now to be introduced from April, 2020 (earlier proposed from October, 2019), in order to give ample opportunity to taxpayers as well as the system to adapt and accordingly specifying the due date for furnishing of return in FORM GSTR-3B and details of outward supplies in FORM GSTR-1 for the period October, 2019 - March, 2020.

# Decisions taken by GST Council in its 37<sup>th</sup> meeting on 20.09.19 (Contd)

## Law and Procedure Related Changes.

6. Issuance of circulars for uniformity in application of law across all jurisdictions:

a. procedure to claim refund in FORM GST RFD-01A subsequent to favourable order in appeal or any other forum;

b. eligibility to file a refund application in FORM GST RFD-01A for a period and category under which a NIL refund application has already been filed; and

c. clarification regarding supply of Information Technology enabled Services (ITeS services) (in supersession of Circular No. 107/26/2019-GST dated 18.07.2019) being made on own account or as intermediary

## Law and Procedure Related Changes.

7. Rescinding of Circular No.105/24/2019-GST dated 28.06.2019, ab-initio, which was issued in respect of post-sales discount.
8. Suitable amendments in CGST Act, UTGST Act, and the corresponding SGST Acts in view of creation of UTs of Jammu & Kashmir and Ladakh.
9. Integrated refund system with disbursal by single authority to be introduced from 24<sup>th</sup> September, 2019.
10. In principle decision to link Aadhar with registration of taxpayers under GST and examine the possibility of making Aadhar mandatory for claiming refunds.
11. In order to tackle the menace of fake invoices and fraudulent refunds, in principle decision to prescribe reasonable restrictions on passing of credit by risky taxpayers including risky new taxpayers.

## **(A) Miscellaneous CHANGES IN GST RATES / ITC ELIGIBILITY CRITERIA:**

Rate reduction sector wise:

### **Hospitality and tourism (lodging)**

1. To reduce the rate of GST on hotel accommodation service as below: –

Transaction Value per Unit (Rs) per day GST

Rs 1000 and less - Nil

Rs 1001 to Rs 7500 - 12%

Rs 7501 and more. - 18%



# Decisions taken by GST Council in its 37<sup>th</sup> meeting on 20.09.19 (Contd)

## (A) Miscellaneous CHANGES IN GST RATES / ITC ELIGIBILITY CRITERIA:

Rate reduction sector wise:

### Outdoor catering

2. To reduce rate of GST on outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs 7501 **from present 18% with ITC to 5% without ITC.** The rate shall be mandatory for all kinds of catering.

Catering in premises with daily tariff of unit of accommodation is Rs 7501 and above **shall remain at 18% with ITC.**

## **(A) Miscellaneous CHANGES IN GST RATES / ITC ELIGIBILITY CRITERIA:**

Rate reduction sector wise:

**Job work service:**

**For diamond related services**

3. To reduce rate of GST **from 5% to 1.5%** on supply of job work services in relation to diamonds.

**For engineering related services other than bus body bldg.**

4. To reduce rate of GST **from 18% to 12%** on supply of machine job work such as in engineering industry, except supply of job work in relation to bus body building which would remain at 18%.

## (A) Miscellaneous CHANGES IN GST RATES / ITC ELIGIBILITY CRITERIA:

Rate reduction sector wise:

Exemption sector wise:

### **Warehousing:**

Exempt warehousing of agri and related products.

5. **To exempt prospectively** services by way of storage or warehousing Miscellaneous pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco, betel leaves, tendu leaves, rice, coffee and tea.

## **(A) Miscellaneous CHANGES IN GST RATES / ITC ELIGIBILITY CRITERIA:**

### **Transportation:**

6. To increase the validity of conditional exemption of GST on export freight by air or sea by another year, i.e. till 30.09.2020.

### **Insurance:**

7. To exempt “BANGLA SHASYA BIMA” (BSB) crop insurance scheme of West Bengal Government.

8. To exempt services of “life insurance business provided or agreed to be provided by the Central Armed Paramilitary Forces” (under Ministry of Home Affairs) Group Insurance Funds to their members under the respective Group Insurance Schemes of these Central Armed Paramilitary forces.

## Export Promotion:

9. To exempt services provided by an intermediary to a supplier of goods or recipient of goods when both the supplier and recipient are located outside the taxable territory provided by Indian pharma companies to foreign service recipients, as the place of effective use and enjoyment of a service.

10. To issue a notification under Section 13(13) of IGST Act notifying the place of supply of specified R&D services (such as Integrated discovery and development, Evaluation of the efficacy of new chemical/ biological entities in animal models of disease, Evaluation of biological activity of novel chemical/ biological entities in in-vitro assays, Drug metabolism and pharmacokinetics of new chemical entities, Safety Assessment/ Toxicology, Stability Studies, Bio Equivalence and Bio Availability Studies, Clinical trials, Bio analytical studies) provided by Indian pharma companies to foreign service recipients, as the place of effective use and enjoyment of a service i.e. location of the service recipient.

# Decisions taken by GST Council in its 37<sup>th</sup> meeting on 20.09.19 (Contd)

## **Export Promotion:**

11. To clarify that the place of supply of chip design software R&D services provided by Indian companies to foreign clients by using sample test kits in India is the location of the service recipient and section 13(3)(a) of IGST Act, 2017 is not applicable for determining the place of supply in such cases.

12. To allow the registered authors an option to pay GST on royalty charged from publishers under forward charge and observe regular GST compliance.

13. To notify grant of liquor licence by State Governments against payment of license fee as a “No supply” to remove implementational ambiguity on the subject.

14. To exempt services related to FIFA Under-17 Women’s World Cup 2020 similar to existing exemption given to FIFA U17 World Cup 2017.

# Decisions taken by GST Council in its 37<sup>th</sup> meeting on 20.09.19 (Contd)

## **(B) RATIONALIZATION/ TRADE FACILITATION MEASURES:**

### **Securities Lending Service**

15. To allow payment of GST on securities lending service under reverse charge mechanism (RCM) at the merit rate of 18% and to clarify that GST on securities lending service for period prior to RCM period shall be paid on forward charge basis. IGST shall be payable on supply of these services and in cases where CGST/SGST/UTGST have been paid, such taxpayers will not be required to pay tax again.

### **Renting of Vehicles**

16. To allow RCM to suppliers paying GST @ 5% on renting of vehicles, from registered person other than body corporate (LLP, proprietorship) when services provided to body corporate entities.

## (C) CLARIFICATIONS:

17. To clarify the scope of the entry ‘services of exploration, mining or drilling of petroleum crude or natural gas or both’.

18. To clarify taxability of Passenger Service Fee (PSF) and User Development Fee (UDF) levied by airport operators.

It is proposed to issue notifications giving effect to these recommendations of the Council on **1st October, 2019**.





# GST Legal Updates

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

**Case of Revenue Bar Association Vs Union of India in Writ Petition No.24117 & 24118 of 2018.**

## **Facts**

Writ Petition is filed under Article 226 of the Constitution of India, for issuance of a writ of declaration, to declare Chapter XVIII of the Tamil Nadu Goods and Services Tax Act, 2017, more particularly, Sections 109 and 110 of the Tamil Nadu Goods and Services Tax Act, 2017 relating to constitution of the Appellate Tribunal and qualification, appointment and condition of services of its members as void, defective and unconstitutional, being violative of Articles 14, 21, 50 of the Constitution of India, and doctrines of separation of powers and independence of judiciary, which are parts of the basic structure of the Constitution and further contrary to the principles laid down by the Hon'ble Supreme Court in Union of India Vs. R.Gandhi (2010) 11 SCC 1.

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

**Case of Revenue Bar Association Vs Union of India in Writ  
Petition No.24117 & 24118 of 2018.**

**Issues which arose for consideration before the Hon'ble High  
Court**

(i) whether the exclusion of advocates from being considered for appointment as a Judicial Member in GST Appellate Tribunal, is violative of Article 14 of the Constitution of India.

(ii) Whether Section 110 (b)(iii) which makes a member of the Indian Legal Service, eligible to be appointed as a Judicial Member of the appellate tribunal, contrary to the law laid down by the Hon'ble Supreme Court in Union of India Vs. R.Gandhi reported in 2010(11) SCC 1.

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

**Case of Revenue Bar Association Vs Union of India in Writ  
Petition No.24117 & 24118 of 2018.**

**Issues which arose for consideration before the Hon'ble High  
Court**

(iii) whether the composition of the National Bench, Regional Benches, State Bench and Area Benches of the GST Appellate Tribunal, which consists of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), by which the administrative members outnumber the judicial member is violative of Articles 14 and 50 of the Constitution of India and the judgments of the Hon'ble Supreme Court of India

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

**Case of Revenue Bar Association Vs Union of India in Writ  
Petition No.24117 & 24118 of 2018.**

**The Hon'ble High Court held as under**

On the first issue

The High Court held that even though Constitutional validity of Section 110 (1) (b) cannot be struck down on the ground of non-inclusion of advocates as being eligible for being considered for appointment as Judicial Member to the Appellate Tribunal under the CGST or TNGST, yet the court **was of the opinion that the Union of India must evaluate as to why it is making a departure from the existing practice.**

Advocates are eligible to be appointed as Judicial Members in the ITAT which is the oldest Tribunal in the country.

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

**Case of Revenue Bar Association Vs Union of India in Writ  
Petition No.24117 & 24118 of 2018.**

**The Hon'ble High Court held as under**

Lawyers are eligible for appointment as Judicial Member in the Customs Excise Service Tax Appellate Tribunals. The Counsel is justified in contending that when the constitution provides that lawyers are eligible to be appointed as Judges of the High Court, then there is no reason to exclude them from being considered for appointment as Judicial Members. No reasons were given by government for excluding Lawyers from the zone of consideration.

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**Case of Revenue Bar Association Vs Union of India in Writ  
Petition No.24117 & 24118 of 2018.**

**The Hon'ble High Court held as under**

Keeping in mind the existing practice in appointing lawyers to various Tribunals as Judicial Members and the various issues that are likely to arise while adjudicating disputes under the CGST Act, the High Court recommended that the Parliament should reconsider the issue regarding the eligibility of lawyers to be appointed as Judicial Members in the Appellate Tribunal.

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

**Case of Revenue Bar Association Vs Union of India in Writ  
Petition No.24117 & 24118 of 2018.**

Deciding the second issue the HC held that the challenge to appointment of a person, who is or has been a member of Indian Legal Service and has held a post not less than Additional Secretary for a period of three years, is no longer res integra. The issue stands settled. Paragraph No.120 in Union of India Vs. R. Gandhi reported in 2010(11) SCC 1, categorically states that a person who has held a position under the Indian Legal service cannot be considered for appointment as judicial members. This dictum of the Hon'ble Supreme Court would apply to the appellate tribunal constituted under the CGST and TNGST also. The Members of Indian Legal Service cannot be considered for appointment as Judicial Members



# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional



## Case of Revenue Bar Association Vs Union of India in Writ Petition No.24117 & 24118 of 2018.

On the third issue the HC held that all the tribunals regardless of the fact that they are tribunals constituted under Article 323-A, 323-B or under any statute, are a part of justice delivery system and for effective justice delivery system, there is a need of an independent impartial tribunal. As stated earlier all the cases coming before the CGSTAT or TNGSTAT deals with adjudication of cases against the State. In such circumstances to have more number of members who are expert members (not Judges) will raise a reasonable apprehension in the minds of the assessee that they might not get fair justice and that the decision making, might be more oriented towards the State.

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

## Case of Revenue Bar Association Vs Union of India in Writ Petition No.24117 & 24118 of 2018.

The High Court further observed that Hon'ble Supreme Court of India, in R.K. Jain Vs. Union of India, reported in 1993 (4) SCC 119, Union of India Vs. R. Gandhi reported in 2010(11) SCC 1 and Madras Bar Association Vs. Union of India, reported in 2014 (10) SCC 1, more or less echoed the same feelings.

It also observed that Article 50 of the Constitution of India which provides for separation of the judiciary from the executive, must be interpreted in such a way that the dominance of the departmental / technical members, cannot overwhelmingly outweigh the judicial members

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional



## Case of Revenue Bar Association Vs Union of India in Writ Petition No.24117 & 24118 of 2018.

The Court can take judicial notice of the fact that now the tribunals are taking over the subjects which were initially being dealt with / adjudicated by Courts. These subjects were adjudicated by Judicial Officers. Viewed in this angle, tribunals which primarily decide disputes between State and citizens cannot be run by a majority consisting of non-judicial members.

Thus, law has been settled by the Hon'ble Supreme Court, insofar, as the creation of alternative institutions which would exercise judicial function, would be that the alternative institutional mechanism must not be less effective than the High Court. The Parliament, therefore only has the power to set up an alternative institutional mechanism, insofar as such institution offers an effective mechanism which is no less effective than a High Court.

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To be as effective as a High Court, would not be limited to having powers akin to High Court, it would also include the ability to exercise judicial function akin to a High Court, in the sense of being impartial and independent.

The principle which emerges is that while deciding issues as to whether the decision making process by the adjudicating authority or the appellate authority was just, fair and reasonable and to decide issues regarding interpretation of notifications and sections under the CGST Act a properly trained judicially mind is necessary which the experts will not have. The number of expert members therefore cannot exceed the number of judicial members on the bench.

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

**Case of Revenue Bar Association Vs Union of India in Writ  
Petition No.24117 & 24118 of 2018.**

In the result the High Court held as under

- (i) Section 110(1)(b)(iii) of the CGST Act which states that a Member of the Indian Legal Services, who has held a post not less than Additional Secretary for three years, can be appointed as a Judicial Member in GSTAT, is struck down.
- (ii) Section 109(3) and 109(9) of the CGST Act, 2017, which prescribes that the tribunal shall consists of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), is struck down.

# Madras HC holds constitution of GST Appellate Tribunal as Unconstitutional

**Case of Revenue Bar Association Vs Union of India in Writ  
Petition No.24117 & 24118 of 2018.**

In the result the High Court held as under

(iii) The argument that Sections 109 & 110 of the CGST Act, 2017 and TNGST Act, 2017 are ultra vires, in so far as exclusion of lawyers from the scope and view for consideration as members of the tribunal, is rejected. However, we recommend that the Parliament must consider to amend section for including lawyers to be eligible to be appointed as Judicial Members to the Appellate Tribunal in view of the issues which are likely to arise for adjudication under the CGST Act and in order to maintain uniformity in various statutes.

## Any ISSUES/ queries?

- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
  - 1800 1200 232
  - [cbecmitra.helpdesk@icegate.gov.in](mailto:cbecmitra.helpdesk@icegate.gov.in)
- GSTN Help Desk
  - <https://selfservice.gstsystem.in/> - Grievance redressal portal
  - Help Desk Number: 0120-4888999

# Any ISSUES/ queries?

- Twitter Handles
- For General Questions
- [https://twitter.com/askGST\\_Gol](https://twitter.com/askGST_Gol)
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- [https://twitter.com/NACIN\\_OFFICIAL](https://twitter.com/NACIN_OFFICIAL)



**THANK YOU**