

GST Update

Weekly Update
28.12.2019

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 21.12.2019. 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/ Circulars

- Six Central Tax notifications issued
- Two CBIC Circulars issued
- One Removal of Difficulties (ROD) order issued

Last Date for GSTR-3B

- **Notification No. 73/2019 – Central Tax dated 23rd December, 2019** (Deemed to have come into force with effect from the 20th Day of December, 2019)
- Last date for return in FORM GSTR-3B for the month of November, 2019 to be furnished electronically through the common portal,
 - Extended to 23rd December, 2019 (From 20th December, 2019)

Due dates for GSTR-9, GSTR-9A and GSTR-9C

- **ROD Order No. 10/2019-Central Tax dated 26th December, 2019**
- Extends the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31st January, 2020
- The annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 31st January, 2020

Due date for GSTR-1

- **Notification No. 76, 77 & 78 /2019 – Central Tax, dated 26th December, 2019**
- For the taxpayers, having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or current financial year, and having principal place of business in the State of Assam, Manipur or Tripura, for the month of November, 2019
 - Last date for GSTR-1 extended to 31st December, 2019
- For the taxpayers, having principal place of business in the State of Assam, Manipur or Tripura, for the month of November, 2019,
 - Last date for GSTR-3B extended to 31st December, 2019, and
 - Last date for GSTR-7 extended to 25th December, 2019

Late Fees for GSTR-1

- **Notification No. 74/2019 – Central Tax dated 26th December, 2019** (deemed to have come into force with effect from the 19th day of December, 2019)
- Amends the Notification No. 4/2018 – Central Tax dated 23rd January, 2018
- Late fee payable under section 47 of the CGST Act shall stand waived for the registered persons who failed to furnish the details of outward supplies in FORM GSTR-1 for the months/quarters from July, 2017 to November, 2019 by the due date but furnishes the same in FORM GSTR-1 between the period from 19th December, 2019 to 10th January, 2020.

Late Fees for GSTR-1 (Contd)

- As per the Notification No. 4/2018 – Central Tax (read with corresponding SGST notifications)-
- Late fees leviable
 - Rs. 50/- per day
 - Rs. 20/- per day , where there are no outward supplies in any month/ quarter

subject to a maximum amount of Ten thousand rupees

- Now all taxpayers who file their pending GSTR-1s by 10th January, 2020 have been given waiver of the late fees.

- **Blocking of E-way Bills for non-furnishing of GSTR-1**
- With effect from the 11th January, 2020, in rule 138E, after clause (b), the following clause shall be inserted, namely:-
 - *“(c) being a person other than a person specified in clause (a), has not furnished the statement of outward supplies for any two months or quarters, as the case may be.”*
- Thus, E-way bill generation shall be blocked if GSTR-1s are not filed for any two months or quarters, as the case may be

- **Amendment to Rule 36(4)**
- Effectively ITC shall not exceed now 10%(Earlier 20%) of the eligible credit reflected in GSTR-2A
- Rule 36(4) the CGST Rules, 2017
 - Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers in their GSTR-1 under section 37(1), shall not exceed 10 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under section 37(1).

- **Blocking of ITC Ledger**
- Rule 86A inserted- Conditions of use of amount available in electronic credit ledger.-
- Debit of ITC ledger may be disallowed if ...
 - ITC availed on the strength of tax invoices/ debit notes etc issued by non-existent person or without receipt of goods or services or both;
 - Person availing ITC is non-existent or is not in receipt of tax invoice/ debit note etc
- Above restrictions may be removed if conditions for disallowing debit of electronic credit ledger no longer exist, OR after expiry of a period of one year from the date of imposing such restriction.

- **Circular No. 129/48/2019 – GST dated 24th December, 2019**
- Section 46 of the CGST Act read with rule 68 of the CGST Rules, 2017 requires issuance of a notice in FORM GSTR-3A to a registered person who fails to furnish return under section 39 or section 44 or section 45 requiring him to furnish such return within fifteen days.
- Further section 62 provides for assessment of non-filers of return of registered persons who fails to furnish return under section 39 or section 45 even after service of notice under section 46.
- No separate notice is required to be issued for best judgment assessment under section 62 and in case of failure to file return within 15 days of issuance of FORM GSTR3A, the best judgment assessment in FORM ASMT-13 can be issued without any further communication

SOP in case of non-filers of returns (Contd)

- Following guidelines are hereby prescribed to ensure uniformity-
- System generated message would be sent to all the registered persons 3 days before the due date to nudge them about filing of the return for the tax period by the due date.
- Once the due date for furnishing the return under section 39 is over, a system generated mail / message would be sent to all the defaulters immediately after the due date to the effect that the said registered person has not furnished his return for the said tax period; the said mail/message is to be sent to the authorized signatory as well as the proprietor/partner/director/karta, etc.

SOP in case of non-filers of returns (Contd)

- Five days after the due date of furnishing the return, a notice in FORM GSTR-3A (under section 46 of the CGST Act read with rule 68 of the CGST Rules) shall be issued electronically to such registered person who fails to furnish return under section 39, requiring him to furnish such return within fifteen days;
- In case the said return is still not filed by the defaulter within 15 days of the said notice, the proper officer may proceed to assess the tax liability of the said person under section 62 of the CGST Act, to the best of his judgment taking into account all the relevant material which is available or which he has gathered and would issue order under rule 100 of the CGST Rules in FORM GST ASMT-13. The proper officer would then be required to upload the summary thereof in FORM GST DRC07;

SOP in case of non-filers of returns (Contd)

- For the purpose of assessment of tax liability under section 62 of the CGST Act, the proper officer may take into account the details of FORM GSTR-1, FORM GSTR-2A, information available from e-way bills, or any other information available from any other source, including from inspection under section 71;
- In case the defaulter furnishes a valid return within thirty days of the service of assessment order in FORM GST ASMT-13, the said assessment order shall be deemed to have been withdrawn in terms of provision of section 62(2) of the CGST Act. However, if the said return remains unfurnished within the statutory period of 30 days from issuance of order in FORM ASMT-13, then proper officer may initiate proceedings under section 78 and recovery under section 79 of the CGST Act;

SOP in case of non-filers of returns (Contd)

- In deserving cases, based on the facts of the case, the Commissioner may resort to provisional attachment to protect revenue under section 83 of the CGST Act before issuance of FORM GST ASMT-13.
- Further, the proper officer would initiate action under section 29(2) of the CGST Act for cancellation of registration in cases where the return has not been furnished for the period specified in section 29.

Document Identification Number (DIN)

(Circular No. 122 dated 05.11.2019 and 128 dated 23.12.2019)

Generation and quoting of DIN on communication to taxpayers

- **Circular No. 122 dated 05.11.2019**
- Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the CBIC to tax payers and other concerned persons
- To begin with, w.e.f 8th November, 2019, DIN was used for any search authorisation, summons, arrest memo, inspection notices, and letters issued in the course of any enquiry
- This would create digital directory for maintaining a proper audit trail of such communication
- Recipients would get digital facility (<https://www.cbicddm.gov.in/MIS/Home/DINSearch>) to verify the genuineness of such communication

Generation and quoting of DIN on communication to taxpayers (Contd)

- The digital platform for generation of DIN is hosted on the Directorate of data management (DDM)'s online portal www.cbicddm.gov.in
- Any specified communication which does not bear DIN and is not covered by the exceptions mentioned in the circular no. 122/2019-GST shall be treated as invalid and shall be deemed to have never been issued.

Generation and quoting of DIN on communication to taxpayers (Contd)

- **Exceptions:**
- DIN is mandatory, however, in following circumstances, communications may be issued without auto generated DIN
- Reasons to be recorded in concerned file and the communication shall state that it has been issued without DIN
- Following exigencies-
 - Technical difficulties in generating DIN
 - When communication is required to urgently issued and the authorised officer is outside office
- Such communications issued without DIN shall be regularised with in 15 days(By post facto approval of superior officer, generating DIN after such approval



Directorate of Data Management

Central Board of Indirect Taxes & Customs
Department of Revenue,
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Extension of DINs to all communications

- **Circular No. 128 dated 23.12.2019**
- W.e.f 24.12.2019, all communications (including e-mails) sent to taxpayers and other concerned persons by any office of CBIC would require generation and quoting of DIN
- Standardised formats of search authorisation, summons, arrest memos, inspection notices etc have been uploaded on the DDM site. These will be available for download w.e.f 01.01.2020.



GST Legal Updates

Provisional Attachment not permissible u/s 83 when proceedings u/s 62, 63, 64, 67 or 74 of CGST Act not pending.

Case of Kushal Ltd Vs UoI reported in 2019-TIOL-2943-HC-AHM-GST

Facts

The petitioner-company manufactures and sells paper and paper waste and is also engaged in trading in various commodities. The petitioners were also duly registered under the GST Acts and regularly filed returns and discharged tax liability - The petitioner claimed to have entered into transactions on as is where is basis in the relevant year. The goods were purchased from registered persons under the GST Acts on payment of tax and were in turn sold to other registered persons. ITC was claimed of tax paid on purchases which was utilized towards payment of output tax liability and differential tax amount was paid through electronic cash ledger. Thereafter search proceedings were conducted at the petitioner's

Facts

74 of CGST Act not pending

premises whereupon enquiry was made into the trading transactions and evidence regarding sales and purchases was called for. The petitioners claimed that since the goods were sold on as is where is basis, there was no evidence of their movement. While it was not disputed that the goods were purchased from registered vendors who had paid the taxes due. Later, summons were issued to the petitioner & statements were recorded. The petitioners submitted the documents as called for and claimed there to be no evasion of GST. The Revenue officers visited the petitioner's premises again for scrutiny of the same transactions whereupon the second petitioner was called to the commissionerate and was arrested immediately. The second petitioner was later granted bail u/s 167(2) of the CrPC 1973.

Provisional Attachment not permissible when u/s 83 when proceedings u/s 62, 63, 64, 67 or 74 of CGST Act, not pending

Facts

The second petitioner was later granted bail u/s 167(2) of the CrPC 1973 - The petitioner claimed to have been issued no notice u/s 73 or 74 of the GST Acts. It was also claimed that no proceedings were pending u/s 62, 63, 64, 67, 73 or 74 of the GST Acts, yet the Revenue provisionally attached the petitioner's bank accounts in exercise of powers u/s 83, which in such circumstances, was wholly without jurisdiction.

Provisional Attachment not permissible when u/s 83 when proceedings u/s 62, 63, 64, 67 or 74 of CGST Act, not pending

Decision of the High Court

A reading of Section 83 of the CGST Act makes it clear that a sine qua non for exercising powers under this provisions is that proceedings should be pending u/s 62, 63, 64, 67 or 74 of the CGST Act. Presently, the proceedings u/s 67 are no longer pending and pursuant to search, proceedings under any of the other sections mentioned in Section 83 were not initiated. In these circumstances, on the date when the orders of provisional attachment came to be passed, the basic requirement for exercising powers u/s 83 have not been satisfied. Hence the provisional attachment is not in consonance with the provisions of Section 83 and cannot be sustained. In such circumstances, it is also not necessary to enter into merits of the petitioner's contentions and the same are left open to be raised in appropriate proceedings before the appropriate forum - Hence the orders attaching the petitioner's bank accounts are unsustainable and merit being quashed.

Any ISSUES/ queries?

- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
 - 1800 1200 232
 - 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_GoI
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- https://twitter.com/NACIN_OFFICIAL

THANK YOU