

# GST Update

Weekly Update  
11.01.2020

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 04.01.2020. 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

# Late fees for GSTR-1

- **Notification No. 04/2020 – Central Tax dated 10<sup>th</sup> January, 2020**
- Extends the one-time amnesty scheme to file all FORM GSTR-1 from July 2017 to November, 2019 till 17<sup>th</sup> January, 2020; Amends the Notification No. 4/2018 – Central Tax dated 23<sup>rd</sup> January, 2018
- Late fee payable under section 47 of the CGST Act was 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 19<sup>th</sup> December, 2019 to 10<sup>th</sup> January, 2020.
- Now the last date has been extended to 17<sup>th</sup> January, 2020

- **Instruction F.No.275/65/2013-CX.8A (Pt.) dated 7<sup>th</sup> January, 2020**
- Any order/judgment, whether interim or final, in favour of Revenue passed by Hon'ble High Courts may be informed to Commissioner (Legal), CBIC and any order in favour of Revenue passed by Hon'ble Supreme Court may be informed to Principal Commissioner (Directorate of Legal Affairs), CBIC, so that the same may be circulated and may be considered before finalizing defence of the Revenue in the Writ Petitions.
- The said favourable orders would be subsequently, uploaded on CBIC website on fortnightly basis under "Legal Affairs."

## 2nd National GST Conference held for streamlining GST system and plugging revenue leakages

- [http://www.gstcouncil.gov.in/sites/default/files/Press-Dynamic/GSTC-Press-Release\\_2nd\\_GST\\_Conf\\_07012020\\_0.pdf](http://www.gstcouncil.gov.in/sites/default/files/Press-Dynamic/GSTC-Press-Release_2nd_GST_Conf_07012020_0.pdf)
- Press release F.No.: 827/CCT Conference/GSTC/2019 dated 7<sup>th</sup> January, 2020 by GST Council Secretariat
- The 2<sup>nd</sup> National GST Conference of the Commissioners of State Tax and Chief Commissioners of Central Tax was held on 7.1.2020 which was focused streamlining GST system and plugging revenue leakages
- Both tax administrations came together formally to build synergy and to share their knowledge and best practices with intent to bring about uniformity in tax administrations

## 2nd National GST Conference held for streamlining GST system and plugging revenue leakages Contd)

- The following measures were decided for necessary action:
  1. To constitute a Committee of Centre and State officers to examine and implement quick measures in a given time frame to curb fraudulent refund claims including the inverted tax structure refund claims and evasion of GST. The Committee will come out with detailed SoP within a week, which may be implemented across the country by January end.
  2. Considering fraudulent IGST refund claims, it was explored to link foreign exchange remittances with IGST refund for risky and new exporter.
  3. All major cases of fake Input Tax Credit, export/ import fraud and fraudulent refunds shall also be compulsorily investigated by investigation wing of the Income Tax Department.

## 2nd National GST Conference held for streamlining GST system and plugging revenue leakages Contd)

- The following measures were decided for necessary action:
  4. MoU would be signed among CBDT, CBIC and GSTN to exchange data through API, from CBDT to GSTN and CBIC and vice-versa. It was decided that this data should be shared on quarterly basis, instead of being shared on yearly basis.
  5. To explore access to banking transactions including the bank account details by GST system, in consultation with RBI and NPCI. It was also explored to make GST system aligned with FIU for the purpose of getting bank account details and transactions and also PAN based banking transaction.
  6. To share data of cases involving evasion and fraudulent refund detected by CBIC with CBDT and vice versa, so that proper profiling of these fraudsters could also be done

## 2nd National GST Conference held for streamlining GST system and plugging revenue leakages Contd)

- The following measures were decided for necessary action:
  7. It was also explored to provide for that there should be single bank account for foreign remittance receipt and refund disbursement.
  8. A self-assessment declaration to be prescribed by suitable amendments in GSTR Forms in case of closure of businesses.
  9. To undertake verification of unmatched Input Tax Credit availed by taxpayers.





# GST Legal Updates

# Authority for Advance Rulings does not have jurisdiction to go beyond issues referred

## Case of Abbott Healthcare Pvt Ltd Vs CST reported in 2020-TIOL-40-HC-KERALA-GST

### Facts

It is the case of the petitioner that as per the business model operated by it in the State of Kerala, it places its diagnostic instruments at the premises of unrelated hospitals, laboratories etc. for their use for a specified period without any consideration - The petitioner also enters into Reagent Supply and Instrument Use Agreements with various hospitals, laboratories etc, whereunder, the arrangement between the parties is for the supply of medical instruments to the hospital/laboratory concerned, for their use, without any consideration for a specified period and for the supply of specified quantities of reagents, calibrators, disposables etc. at the prices specified in the agreement, through its distributors on

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Facts...Contd...

payment of applicable GST. It is stated that, as per the agreement, while the supply of instruments is by the petitioner, the supply of reagents, calibrators and disposables are effected by its distributor, who purchases the said products from the petitioner on principal to principal basis. When the distributor supplies the reagents, calibrators and disposables to the hospitals/laboratories concerned, the distributor discharges the applicable GST on the price charged for supply of the said products. In other words, there is no direct sale/supply of the reagents, calibrators and disposables by the petitioner to the hospitals/laboratories in question. When a consignment of instruments was being transported to a laboratory

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### Facts - Contd

without any consideration, pursuant to the agreement entered into between the parties, the same was seized by the Assistant State Tax Officer, Kozhikode, on the ground that the goods were not accompanied with a tax invoice but were being transported under a delivery challan. Although the detained goods were subsequently released consequent to the petitioner furnishing a bank guarantee and a bond as provided under the CGST Act and Rules, the petitioner thought it appropriate to obtain an Advance Ruling from the Authority for Advance Ruling and which held that - 2018-TIOL-186-AAR-GST held that the placement of specified medical instruments to unrelated customers like hospitals, laboratories etc.,

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for their use without any consideration, in the backdrop of an agreement containing minimum purchase obligation of products like reagents, calibrators, disposables etc. for a specified period constituted a "composite supply". that the principal supply in the said composite supply was of the transfer of right to use goods for any purpose which was liable to GST under Sl.No.17(iii). Heading 9973 of Notification No. 11/2017 Central Tax (Rate) dated 28.06.2017; that supply of reagents, calibrators, disposables etc., became taxable at the rate of tax applicable to the instruments, namely, 18% [9% CGST + 9% SGST]. The appellate authority for Advance Ruling upheld this order, hence the petitioner is before the High Court.

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The Hon'ble High Court held as under

There was no occasion for the AAR to go into the issue of whether the supply effected was a composite supply or not and, therefore, its findings on the said issue are at any rate legally untenable - The concept of enhancement of utility of the instrument through the supply of reagents/calibrators/disposables, while relevant for the purposes of valuation of the supply of instruments, cannot be imported into the concept of composite supply under the GST Act - A distinction has to be drawn between the nature of a supply and the valuation thereof - While clubbing of two independent supplies may be resorted to for the purposes of valuation of each of those

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The Hon'ble High Court held as under -

supplies, there is no scope of clubbing of two independent supplies so as to notionally alter the very nature of each of those supplies as they existed in fact, at the relevant point in time.

Transactions envisaged under the agreement entered into between the petitioner and its customer hospitals/laboratories militate against viewing them as a composite supply. Firstly, the supplies are made by two different taxable persons; the supply of instrument being by the petitioner and the supply of the reagents, calibrators and disposables being by his distributor, who purchases it from him on principal to principal basis.

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Although it could be argued that there is a relationship between the said persons that influences the valuation of the supply, the same does not take away from the fact that the supplies are, in reality, made by two different taxable persons. Secondly, the two supplies do not answer to the description of being "naturally bundled and supplied in conjunction with each other in the ordinary course of business". In fact, the business model followed by the petitioner appears to have held the field for a considerable period of time and would show that in the ordinary course of business, the supplies are not Bundled.



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A finding as regards composite supply must take into account supplies as effected at a given point in time on "as is where is" basis - Where the same taxable person effects a continuous supply of services coupled with periodic supplies of goods/services to be used in conjunction therewith, one could possibly view the periodic supply of goods/services as composite supplies along with the service that is continuously supplied over a period of time - matters will have to be decided based on the facts in a given case and not in the abstract as was done by the AAR - Matter remitted back to the AAR for a fresh decision on the query raised before it by the petitioner company - AAR shall pass fresh orders in the matter, after hearing the petitioner, within a period of six weeks.

# Circulars cannot prevail over Statute

## Case of Precot Meridian Vs Vs CC reported in 2020-TIOL- 29-HC-MAD-GST

### Facts

The assessee-company exports cotton. During the relevant period, the assessee exported cotton through seven shipping bills and paid an amount towards IGST. The assessee claimed to have paid such tax before making export, on account of which, it is liable to receive refund of input tax credit. The assessee wrongly availed higher duty drawback, but later rectified the mistake by repaying the same with interest and then sought refund of the IGST paid. The Revenue relied on Circular No.37/2018 -Customs and rejected the refund claim on grounds that the assessee wrongly claimed higher duty drawback and then suo motu reversed the same without sanction from the Department. Hence having relinquished the

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right to receive refund of IGST, the assessee was not entitled for it - The Revenue also claimed that the entire system is computerised and cannot be operated manually - Thereby, once an exporter drew higher duty drawback, the system automatically scrolls out IGST refund. Hence the present petition was filed, seeking that directions be issued to disburse the refund amount.

### Decision of the Hon'ble High Court

Considering the findings of the Apex Court in Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries it is clear that Circulars cannot prevail over the statute. Circulars are issued only to clarify the statutory provision and it cannot alter or

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prevail over the statutory provision. In such circumstances, it is clear that the explanation of provisions of drawback has nothing to do with the IGST refund. Hence, Circular No.37/18-Customs , dated 09.10.2018 is not applicable in the present case. Hence the Revenue is directed to refund the amount of IGST paid by the assessee for the goods exported from India which are zero rated supplies, within a period of six weeks from receipt of a copy of this order:

## 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\\_GoI](https://twitter.com/askGST_GoI)
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- [https://twitter.com/NACIN\\_OFFICIAL](https://twitter.com/NACIN_OFFICIAL)

**THANK YOU**