

# GST Update

Weekly Update  
01.08.2020

# Background



- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 25.07.2020. 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

- <https://pib.gov.in/PressReleasePage.aspx?PRID=1642870>
- PIB Press release dated 1<sup>st</sup> August 2020
- The gross GST revenue collected in the month of July 2020 is ₹ **87,422 crore** of which CGST is ₹ **16,147 crore**, SGST is ₹ **21,418 crore**, IGST is ₹ **42,592 crore** (including ₹ **20,324 crore** collected on import of goods) and Cess is ₹ **7,265 crore** (including ₹ **807 crore** collected on import of goods).
- The government has settled ₹ **23,320 crore** to CGST and ₹ **18,838 crore** to SGST from IGST as regular settlement. The total revenue earned by Central Government and the State Governments after regular settlement in the month of July, 2020 is ₹ **39,467 crore** for CGST and ₹ **40,256 crore** for the SGST.

# GST Revenue collection for July 2020 (Contd)

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## E-Invoice

Notification No. 60 & 61/2020 – Central Tax both dated 30<sup>th</sup> July 2020

(Earlier E-invoice Notifications no. 68, 69, 70, 71 & 72/2019 –Central Tax all dated 13<sup>th</sup> December 2019; Notification No. 13/2020– Central Tax dated 21<sup>st</sup> March 2020)

# E-invoice introduction

- **Notification No. 61/2020 – Central Tax dated 30<sup>th</sup> July 2020 ( Amends Notification No. 13/2020– Central Tax which shall come into force from 1<sup>st</sup> October 2020)**
- E-invoice to be made effective only for those whose aggregate turnover in a financial year exceeds five hundred crore rupees
- w.e.f 1<sup>st</sup> October 2020
- Exemptions- Special Economic Zones (SEZs); Insurer or a banking company or a financial institution, including a non-banking financial company; goods transport agency; supplier of taxable service supplying passenger transportation service; A registered person supplying services by way of admission to exhibition of cinematograph films in multiplex screens

- **Notification No. 60/2020 – Central Tax dated 30<sup>th</sup> July 2020**  
(CGST Rules 2017 amended)
- Format/Schema for e-Invoice viz Form GST INV-01 notified under rule 48(4) of the CGST Rules 2017
- 0..1: It means that reporting of item is optional and when reported, the same cannot be repeated.
- 1..1: It means that reporting of item is mandatory but cannot be repeated.
- 1..n: It means that reporting of item is mandatory and can be repeated more than once.
- 0..n: It means that reporting of item is optional but can be repeated more than once if reported.

- **Invoice Reference Number (IRN) ( Mandatory)**
  - A unique reference number for the invoice.
  - However, the supplier will not be populating this field. The registration request may not have this field populated. The Invoice Registration Portal (IRP) will generate this IRN and respond to the registration request.
  - e-invoice is valid only when it has the IRN. Hence, a mandatory field.
- **Supply type ( Mandatory)**
  - Code to identify type of supply.
  - B2B: Business to Business; B2C: Business to Consumer; SEZWP: To SEZ with Payment; SEZWOP: To SEZ without Payment; EXPWP: Export with Payment; EXPWOP: Export without Payment' DEXP: Deemed Export



- **Document Type** ( Mandatory)
  - Code for type of Document:
    - INV for Invoice, CRN for Credit Note, DBN for Debit note.
- **Document number and date** ( Mandatory)
  - Number – 16 digit as per CGST Rules
  - Date Format "DD/MM/YYYY"
- **Supplier Information** ( Mandatory)
  - Supplier Legal Name: Legal Name, as appearing in PAN of the Supplier
  - GSTIN of Supplier
  - Supplier Address; Supplier Place;
  - Supplier State Code; Supplier PIN Code

- **Recipient Information ( Mandatory)**
  - Recipient Legal Name; as per PAN
  - GSTIN of the Recipient, if available. URP: In case of exports or if supplies are made to unregistered persons
  - Place of Supply (State Code)
  - Recipient Address; Recipient Place
  - Recipient State Code
- **Invoice Item Details ( Mandatory)**
  - Item List
  - Document Total
  - Total Taxable Value (sum of the taxable values of all the items in the document); Total Invoice Value in INR

- **Other Optional, Conditional mandatory Details**
- **Additional Currency Code ( Optional)**
  - Additional currency, if any, in which all invoice amounts can be given, along with INR. List published under ISO 4217 standard; [https://www.icegate.gov.in/Webappl/CUR\\_ENQ](https://www.icegate.gov.in/Webappl/CUR_ENQ)
- **Reverse Charge (Whether the tax liability payable is under Reverse Charge)**
  - Y
- **IGST Applicability despite Supplier and Recipient located in same State/UT**
  - N ; To report the scenarios where the supply is chargeable to IGST despite the fact that the Supplier and Recipient are located within same State/UT

- **Document Period** (Optional)
- **Preceding Document / Contract Reference** ( Optional)
- **Receipt / Contract References** (Optional)
  - Receipt Advice Reference (for user to provide number of their receipt advice to their customer, in lieu of advance)
  - Tender or Lot/ PO/ Contract/ Project/ External references
- **Supplier Trade Name** ( Optional)
- **Recipient Trade Name/ PIN Code/ Phone/ Email/** ( Optional)
- **Payee Information** ( Payee name, Bank A/c, Mode of payment, terms etc)( Optional)
- **Delivery Information** ( Ship to / Despatch from )( Optional)

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- **Extra Information (Optional)**
  - Tax Scheme (specify the tax/levy applicable – GST) (Mandatory)
  - Port code / SB No. & Date; e-Commerce Operator's GSTIN ; etc
- **E-way Bill Details ( Optional)**
  - Transporter ID ; Mode of Transportation
  - Distance of Transportation ( Mandatory if this section is selected)
  - Transporter Name ; Transport Document Number/ type;
  - Vehicle number/ type( ODC/Regular)



## Legal Updates

# Constitutional validity of section 13(8)(b) of the IGST Act

- **Material Recycling Association of India Vs Uoi**
- IGST - Petitioner is an association comprising of recycling industry engaged in manufacture of metals and casting etc. for various upstream industries in India - the members also act as agents for scrap, recycling companies based outside India engaged in providing business promotion and marketing services for principals located outside India - members also facilitate sale of recycled scrap goods for their foreign principals in India and other countries - members not only deal with goods sold by foreign principal to customers in India but also facilitate sale of goods by foreign principals in non-taxable territory to their customers, who are also located in non-taxable territories –



## Constitutional validity of section 13(8)(b) of the IGST Act (Contd)

- Petitioner has challenged the constitutional validity of section 13(8)(b) of the IGST Act and to hold the same as ultra vires the Articles 14, 19, 265 and 286 of the Constitution of India with a direction to the respondent to refund IGST paid on services provided by the members of the petitioner association and to their clients located outside India - petitioner submits that members of the petitioner association receives only the commission upon receipt of sale proceeds by its foreign client in convertible foreign exchange and thus the transaction entered into by the members is one of export of service from India; that, therefore, IGST cannot be levied on the members who are engaged in the transaction of export of services as the same is covered u/s 16(1) of the IGST Act, 2017 which provides for 'zero-rated supply'.

# Constitutional validity of section 13(8)(b) of the IGST Act (Contd)

- **Hon'ble Gujarat High Court Held-**
- Parliament has exclusive power under Article 246A to frame laws for inter State supply of goods or services - the basic underlying change brought in by the GST regime is to shift the base of levy of tax from point of sale to the point of supply of goods or services –
- Petitioner has tried to submit that the services provided by a broker outside India by way of intermediary service should be considered as 'export of services' but the legislature has thought it fit to consider such intermediary services; that the place of supply would be location of the supplier of services –

# Constitutional validity of section 13(8)(b) of the IGST Act (Contd)

- -Upon a conjoint reading of section 2(6) and 2(13) which defines 'export of service' and 'intermediary service' respectively, then the person who is intermediary cannot be considered as exporter of services because he is only a broker who arranges and facilitates the supply of goods and services or both - in such circumstances, the respondent no. 3 have issued Notification no. 20/2019-IT(R) where exemption is granted in IGST rates from payment of IGST in respect of services provided by intermediary in case the goods are supplied in India - It, therefore, appears that the basic logic or inception of section 13(8)(b) of the IGST Act, 2017 considering the place of supply in case of intermediary to be the location of supply of service is in order to levy CGST and SGST

## Constitutional validity of section 13(8)(b) of the IGST Act (Contd)

- There is no distinction between the intermediary services provided by a person in India or outside India - only because the invoices are raised on the person outside India with regard to the commission and foreign exchange is received in India, it would not qualify to be export of services, more particularly when the legislature has thought it fit to consider the place of supply of services as place of person who provides such service in India - There is no deeming provision as tried to be canvassed by the petitioner, but there is a stipulation by the Act legislated by the Parliament to consider the location of the service provider of the intermediary to be place of supply
- Similar situation was existing in service tax regime w.e.f 1st October 2014 and as such same situation is continued in GST regime also

## Constitutional validity of section 13(8)(b) of the IGST Act (Contd)

- Therefore, this being a consistent stand of the respondents to tax the service provided by intermediary in India, the same cannot be treated as 'export of services' under IGST Act, 2017 and, therefore, rightly included in section 13(8)(b) of the IGST Act to consider the location of supplier of service as place of supply so as to attract CGST and SGST - contention of the petitioner that it would amount to double taxation is also not tenable in eyes of law because the services provided by the petitioner as intermediary would not be taxable in the hands of recipient of such service, but on the contrary a commission paid by the recipient of service outside India would be entitled to get deduction of such payment of commission by way of expenses and, therefore, it would not be a case of double taxation ...

## Constitutional validity of section 13(8)(b) of the IGST Act (Contd)

- If the services provided by intermediary is not taxed in India, which is a location of supply of service, then, providing such service by the intermediary located in India would be without payment of any tax and such services would not be liable to tax anywhere - contentions raised on behalf of the petitioner are not tenable in view of the notification 20/2019-IT(R) issued by the GOI whereby Entry no. 12AA is inserted to provide Nil rate of tax granting exemption from payment of IGST for service provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory i.e. India - accordingly, it cannot be said that the provision of section 13(8)(b) read with section 2(13) of the IGST Act are ultra vires or unconstitutional in any manner - it would, however, be open for the respondents to consider the representation made by the petitioner so as to redress its grievance in suitable manner - Petition is disposed of accordingly: High Court

# Refund of unutilized ITC even in respect of “input services”

- **VKC Footsteps India Pvt Ltd Vs Uoi**
- GST - Petitioner is engaged in the business of manufacture and supply of footwear which attracts GST @5% and the majority of the inputs and input services procured by them attract GST @12% or 18% - in spite of utilisation of credit for payment of GST on outward supply, there is accumulation of unutilized credit in electronic credit ledger - Respondents are allowing refund of accumulated credit of tax paid on inputs such as synthetic leather, PU polyol etc. but refund of accumulated credit of tax paid on procurement of 'input services' such as job work service, goods transport agency service etc. is being denied - petitioners have, therefore, challenged validity of amended rule 89(5) of the CGST Rules, 2017 to the extent it denies refund of input tax credit relating to Input services.

# Refund of unutilized ITC even in respect of “input services” (Contd)

- **Hon’ble Gujarat High Court Held** : It appears that rule 89(5) of the Rules and more particularly the explanation (a) thereof, provides that Net Input Tax Credit shall mean "input tax credit" availed on "inputs" during the relevant period other than the "input tax credit" availed for which refund is claimed under sub-rule (4A) or (4B) or both - therefore, the grievance of the petitioner is that only the "inputs" is referred to in Explanation (a) to sub-rule (5) of Rule 89 of the CGST Rules, 2017 and, therefore, "Input Tax Credit" on "Input services" are not eligible for calculation of the amount of refund by applying rule 89(5) -



# Refund of unutilized ITC even in respect of “input services” (Contd)

- Thus, it results in violation of provisions of sub-section 3 of Section 54 of the CGST Act, 2017 which entitles any registered person to claim refund of "any" unutilized input tax credit - section 7 of the Act provides that "scope of supply" includes all forms of supply of goods or services, therefore, for the purpose of calculation of refund of accumulated "input tax credit" of "input services" and "capital goods" arising on account of inverted duty structure is not included into "inputs" which is explained by the Circular 79/53/2018-GST dated 31.12.2018 wherein it is stated that the intent of law is not to allow refund of tax paid on "input services" as part of unutilised "input tax credit" –

# Refund of unutilized ITC even in respect of “input services” (Contd)

- ..... Therefore, as per provision of sub-section 3 of Section 54 of the CGST Act, 2017, the legislature has provided that registered person may claim refund of "any unutilised input tax", therefore, by way of Rule 89(5) of the CGST Rules, 2017, such claim of the refund cannot be restricted only to "input" excluding the "input services" from the purview of "Input tax credit".
- .....the intent of the Government by framing the Rule restricting the statutory provision cannot be the intent of law as interpreted in the Circular No. [79/53/2018GST](#) dated 31.12.2018 to deny the registered person refund of tax paid on "input services" as part of refund of unutilised input tax credit.

# Refund of unutilized ITC on input services (Contd)

- Explanation (a) of Rule 89(5) of the Rules is held to be contrary to the provisions of section 54(3) of the Act –
- Net ITC should mean "input tax credit" availed on "inputs" and "input services" as defined under the Act - Respondents are directed to allow the claim of the refund made by the petitioners considering the unutilised input tax credit of "input services" as part of the "net input tax credit" (Net ITC) for the purpose of calculation of the refund of the claim as per rule 89(5) of the Rules for claiming refund under sub-section 3 of section 54 of the Act - Petitions are allowed.



**THANK YOU**