

# GST GUIDE



**10% Penalty to be imposed on Anti-Profiteered Amount.**

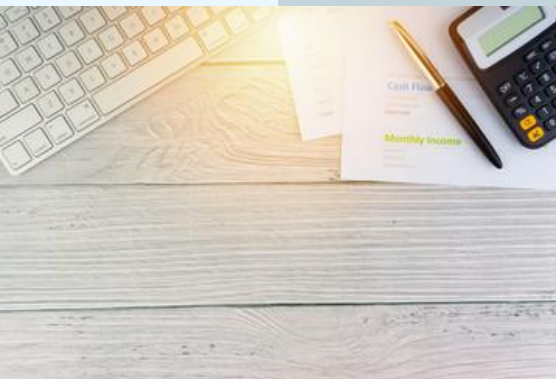
**Double taxation on Ocean Freight ultra virus – Gujarat High Court**

**Eligibility of ITC on Gifts given for Brand Reminder – Advance Rulings, Maharashtra**

**Get E-Invoice Ready with RAMA IRIS**

**GST Knowledge – TDS provisions**

# CONTENTS



- 1** Notifications, Circulars & Amendments to GST Laws
- 2** Recent Case Laws
- 3** Advance Authority Rulings (GST)
- 4** Updates on RAMA-IRIS GST Compliance Tool & GST Portal
- 5** GST Knowledge

# Notifications, Circulars and Amendments to Law/Rule



Details of the provisions are mentioned below:

Notification	Section of CGST Act	New Section or Amendment in new provision
01/2020- CT (To bring into certain provisions of the Finance (No.2) Act, 2019 to amend the CGST Act 2017	Sec.10 (Composition Levy)	New subsection 2A added to bring in an alternative composition scheme for supplier of services or mixed suppliers (not eligible for earlier composition scheme) having an annual turnover in preceding FY up to Rs. 50 Lakhs. It also clarifies that services that include extending deposits etc shall not be part of aggregate turnover. ( Finance Act Section 93)
	Sec. 22 (Registration)	Higher threshold limit exclusively for supply of goods from Rs.20 Lacs. to Rs. 40 Lacs. (Finance Act section 94)
	Sec.25 (Procedure for registration)	Mandatory Aadhaar submission or authentication for persons who intend to take or have taken registration under the said Act. (Finance Act section 95)
	New Sec. 31A	Supplier shall mandatorily offer facility for digital payments to his recipient. (Finance Act section 96)
	Sec. 44 (Annual Return)	The amendment empowers the commissioner to extend the due date for furnishing Annual return (Form GSTR9/9A) and reconciliation statement (Form GSTR-9C) (Finance Act section 98)
	Sec.49 (Payment of Tax, Interest Penalty and other amounts)	Provides for facility to the taxpayer to transfer an amount from one head to another in the electronic cash ledger. (Finance Act section 99)
	Sec 52 ( Collection of TCS)	The amendment empowers the commissioner to extend the due date for furnishing monthly and annual statement by the person collecting tax at source. (Finance Act section 101)
	New Sec 53A	Provides for transfer of amount in the electronic cash ledger between the Centre and States as a consequence of the new facility given to the tax payer under section 49. (Finance Act section 102)
	Sec.168 (Power to issue instruction or directions)	Consequent to amendment in section 52 and 44 sec.168 is being amended so as to specify that commissioner or joint commissioner shall exercise the power specified in said section with the approval board.
New Sub Sec.171(2A) (Anti-Profiteering Measure)	The section empowers the National Anti Profiteering Authority to impose penalty equivalent to 10% of the profiteered amount	

# Notifications, Circulars and Amendments to Law/Rule



Notification	New Section or Amendment in new provision
Notification No. 02/2020	Form GST TRAN01 – 31-Mar-20 Form GST TRAN02- 30-Apr-20
Notification No.03/2020	Taxpayer has option to transfer ITC balance as on <b>01.01.2020</b> (earlier 31-Oct-19 vide Notification No.62/2019) to new GSTIN in UT Jammu Kashmir or UT of Ladakh. The said Balance in electronic credit ledger shall be transferred to the UT Credit Ledger.
Notification No. 04/2020 (CT)	Extension on one-time amnesty scheme to file GSTR-1 from July,2017 to November,2019 till <b>17-Jan-20 (Earlier it was 10-Jan-20 as per notification no.74/2019)</b> The same would not be subject late fee liability.

**RAMA Says:** The Notification has notified some provisions of Finance (No. 2) Act, 2019 (23 of 2019) as mentioned above but an important amendment to section 50 of the CGST Act,2017 as amended in section 100 of the Finance (No. 2) Act, 2019 (23 of 2019) has been kept out of the provisions made applicable. Considering the uncertainty surrounding to the issue of Interest liability to be paid on gross or net, in the event of notice received by the taxpayer and if the amount involved is material the taxpayer may go for litigation.

# Recent Case Laws (GST)

## Taxing RCM on Ocean Freight is Ultra Virus and leads to double taxation

**Case Name-** Mohit Minerals Pvt Ltd Vs Union of India

**Date-**23-Jan-20

**Authority-**Gujrat High Court

**Fact of the case-** The writ-applicants (Mohit Minerals Pvt Ltd) had challenged the levy of the IGST on the estimated component of the Ocean Freight paid for the transportation of the goods by the foreign seller as sought to be levied and collected from the writ-applicants as the importer of the goods.

### **Matter Under Consideration-**

Various coal importers had challenged two notifications issued by centre on June 28,2017 by which IGST was levied on the estimated component of the ocean freight paid for the transportation of goods by the foreign seller, and this tax is recovered from importer of the goods.

### **Conclusion-**

The bench headed by Justice J B Pardiwala has held the two notifications ultra vires to the provisions of the IGST Act. "We have reached to the conclusion that no tax is leviable under the IGST Act, 2017, on the Ocean Freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India and the levy and collection of tax of such Ocean Freight under the impugned notification is not permissible in law"

The coal importers submitted before the high court that the IGST Can be levied on service

provider and service recipient, and not the importers, for they pay customs duty. The imposition of IGST Amounts to double taxation because it sought to tax the importers so far as ocean freight is concerned. The High Court also accepted the argument that both, the service provider and service recipient, are outside India and such a levy goes beyond the mandate of section 1 of the IGST Act, which extends to the whole of India and not outside India.

The taxability dispute on ocean freight has been finally decided by the Gujarat High Court, which held that taxing ocean freight is ultra vires and leads to double-taxation.

**RAMA Says:** The above Judgement brings a major clarification on double taxation of the Ocean Freight under GST for the Importers; however, it is still litigative as there is no clarification from the CBIC on the said issue and the Taxpayers can only take reference of the Gujrat High Court Case law.



# Advance Authority Rulings (GST)

## No ITC on expense of Gift items given as brand reminders (AAR Maharashtra)

Sanofi India Limited (GST)

### Summary of the case:

The Applicant is engaged in the manufacture of pharmaceutical goods and provides taxable services. The Applicant undertakes marketing and distribution expenses, with a view to promote their brand / products and to enhance their sales.

Whether Input Tax Credit (ITC) can be availed of GST paid on expenses incurred towards sales promotional scheme?

Whether ITC can be availed of GST paid on goods (viz. pens, note pads, keychains, etc.) given as brand reminders?

### Outcome of the Case:

- The Applicant has not submitted any contract / agreement in respect of the contractual arrangement but have provided only a Loyalty Program scheme as available on the Applicant's website. Accordingly, the promotional products are given voluntarily on certain conditions achieved by the distributors
- Distribution of promotional products is an assurance of giving away gifts on conditions being achieved by the customers.
- Applicant has not provided any discounts but given reward points against which promotional products can be purchased by the distributor
- If the contention is accepted that there is a contractual obligation under the scheme to increase the sale and for which the watch is being provided, then the same amounts to supply as per Section 7 of CGST Act as it is in the nature of barter. On the contrary, the Applicant has accepted that supply is without



consideration. Thus, the transaction is nothing but 'gift'.

- ITC should not be eligible on the GST paid on expenses incurred towards the Loyalty Program and the goods distributed as brand reminders.

**RAMA Says:** The above AAR comes as alarm for Taxpayers where promotional brand items are given as gifts. Taxpayers has to closely identify the ITC to be claimed on such brand items. The promotional schemes by the organisation shall be well documented in order to claim the ITC as same would be classified as business expense by the tax authorities. Further the group of companies has dragged Government and the Indirect Tax Department to Gujarat High Court over denying ITC on gifts and samples given to customers and clients. Their contention is that the procurement of gifts and distribution of free samples are in the course of business and hence denial of credit is a legitimate challenge.

# Advance Authority Rulings (GST)

## Case-2 GST not payable on recovery of 50% Insurance Premium from employees – AAR Maharashtra

Jotun India Pvt. Ltd.

### Summary of the case:

The Applicant has introduced parental insurance scheme for employees' parents. It is an optional scheme provided to the employees. As per this scheme, the Applicant initially pays the entire premium along with taxes to the insurance company. The insurance company issues the premium receipt in the name of the Applicant.

In case of the employees who opt for the parental insurance scheme, the Applicant recovers 50 per cent of the premium in one to three instalments from the salaries and the balance 50 per cent amount is borne by the Applicant.

Whether recovery of 50% of Parental Health Insurance Premium from employees amounts to 'supply of service' under Section 7 of the Central Goods and Services Tax Act, 2017?

### Outcome of the case:

- From the reading of the definition of 'supply' and 'business' as defined the CGST Act, we find that the activity undertaken by the applicant, like providing of Mediclaim policy for the employees' parent through insurance company, neither satisfies conditions of Section 7 to be held as "supply of service" nor it is covered under the term "business" defined under Section 2(17) of CGST ACT 2017.
- Applicant is not rendering any services of health insurance to their employees' parent and there is no supply of services in the

instant case of transaction between employer and employee.

- Further, in case of M/s. POSCO India Pune Processing Centre Pvt Ltd wherein facts were identical and similar to that of the facts of the Applicant, AAR Maharashtra ruled that, "they are not rendering any service of health insurance to their employees and hence, there is no supply of services in the instant case". Considering the similar nature of facts and earlier ruling, as referred above, the same ruling is confirmed in this matter also.

**RAMA Says:** Employee recovery for Canteen services as per Kerala AAR was liable to GST, whereas as per the above AAR premium amount recovered from employee does not tantamount to GST. Therefore, taxpayers need to closely analyse the taxability on the recoveries made from the employees.



# RAMA IRIS GST / Portal Updates

## GST Portal Updates

GST Statistics Feature is now available on portal for Public Viewing:

The screenshot shows the GST Portal interface. At the top, there is a navigation bar with 'Home', 'Services', 'GST Law', 'Downloads', 'Search Taxpayer', 'Help', 'e-Way Bill System', and 'New Return (Trial)'. Below this, the breadcrumb trail is 'Home > Downloads > GST Statistics'. The main content area is titled 'GST Statistics' and contains a table with columns for 'Registration', 'Return', and 'Tax Collection'. The 'Tax Collection' column is further divided into 'Tax Collection on GST Portal', 'Settlement of IGST to State/UTs', and 'IGST on Import'. The table lists data for the financial years 2017-2018, 2018-2019, and 2019-2020. Below the table, there is a 'Note' section with instructions on how to use the download links and details about the data provided.

Financial Year	Registration	Return		Tax Collection		
		GSTR-3B	GSTR-1	Tax Collection on GST Portal	Settlement of IGST to State/UTs	IGST on Import
2017-2018						
2018-2019						
2019-2020						
Year-wise Pre-GST regime revenue from taxes subsumed in GST						

**Note:**

- Click on relevant tab to download the file.
- Registration:** The State-wise data having details of active taxpayers at the close of last month. This excludes those tax payers whose registration has been cancelled but includes those tax payers registration was restored on application/appeal.
- Tax Collection:**
  - Tax data is divided into three parts viz. Tax Paid on GST Portal, IGST paid on Customs Portal and IGST settled to States/UTs.
  - July 2017 being first month, there was no settlement and hence there is no data under the same.

Soon we will put interactive tables which will enable users to view the data in tabular as well as graphical formats.

## RAMA IRIS Onyx – E Invoicing GST Tool

The E-invoice generation on voluntary basis is now active and so is RAMA iris GST tool “ Onyx for GST E-invoice is ready. Following are the Key Highlights of the tool :

- 1. Bulk Upload:** Bulk upload and generation IRN
- 2. Advanced Validations:** \*Business rules and advanced or custom validations to ensure data is valid as per Govt prescribed standards as well as your business practices
- 3. Invoice Templates:** \*Customize invoice templates and print and share invoices with customers and vendors
- 4. E-Way Bill and GST Returns:** \*Initiate E way bill operations and GST returns filings from IRN
- 5. Billing Module:** \* Integrated billing module
- 6. PAN Level Operations:** Manage multiple GSTINs and locations under GSTIN under single business hierarchy
- 7. Custom Views for Users:** User roles and access the data view and operations to users



# RAMA IRIS GST / Portal Updates



8. **Custom Filters:** Set your filters and preferences for viewing and downloading data
9. **Invoice Archiving:** Archive for signed invoices for audit and future reference.

## IRIS Peridot

Recent Updates:

### Snapshot

1. E-Waybill block status
2. Last filed GSTR 1

### Filing Status

1. Group the records financial year wise and sorted in reverse chronological order
2. Frequency of GSTR 1
3. Inclusion of CMP 08

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## TDS Provisions under CGST Act 2017

### 1. What is GST TDS and who is liable to deduct TDS?

As per section 51 of CGST Act, the following notified entities are required to collect TDS on payments made to goods or services suppliers in excess of Rs.2.5 lakhs: -

- Central and State Government Departments
- Local Authorities
- Government Agencies
- Entity controlled by Government companies
- An Authority/ Board/ any other body set up by an Act of Parliament / State Legislature with 50% or more participation by way of equity or control to carry out any function.
- Society established by Central Government/State Government/Local Authority under the Society Registration Act 1860
- Public Sector Undertakings

### 1. **Applicability of TDS Provisions**

TDS need to be deducted if total contract value is of value exceeding Rs.2.5 lakhs. TDS provision is applicable at time of payment released. Therefore, TDS is required to be deducted at time of making Advance payment (similar to Income Tax TDS provisions)

### 1. **When TDS Provisions is not Applicable**

- Supply from one Public Sector Undertaking (PSU) to another PSU
- Specified Authorities under Ministry of Defense
- Location of Deductor is different from Place of Supply & the Supplier



- Receipt of Exempted /Non-GST Goods or Services
- Reverse Charge
- Activities specified in Schedule III
- Cess payments

### **Rate of GST TDS**

- TDS is to be deducted @ 2% (1% CGST + 1% SGST) of taxable Goods & Services

**Value for computation of GST TDS :-** For computation of GST TDS, value of supply shall be taken excluding CGST /SGST /UGST for Intra State supply & IGST for interstate supplies.

**Due Date of Filing GST TDS return:-** GSTR 7 is required to be filed within 10 days after end of each month.

**Utilization of TDS Deducted:-** There will be automatic reflection in the electronic ledger of the deductee (supplier) once the deductor files his /her returns. The deductee can claim credit in electronic cash ledger which can be utilized for payment of taxes.

**Disclaimer:** The views expressed in various sections of the guide are based on understanding of the GST Laws and study of notifications, circulars, rulings and judgements issued by various competent authorities, however, in no case these should be considered as opinion expressed on a particular scenario that would require a deeper understanding of the transaction in consideration.

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RAMA is pool of Business, Process, Systems & Tax experts to provide comprehensive Risk, Assurance & Advisory services.

RAMA's IT arm is a **Microsoft Certified Partner** providing ERP Implementation & Consulting services.

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