

GST **GUIDE**



ITC restriction of 20% against invoices not uploaded by suppliers

Due Dates for various GST Returns prescribed

Retrospective amendment of rule 61 to consider GSTR3B as a return u/s 39(1)

Recovery from Employees is not Chargeable to GST – AAR, Maharashtra

Supplies made to Foreign Going Vessels are not Exports and liable to GST – AAR, West Bengal.

Supply by Duty Free Shops at international Airport to outbound passenger constitutes exports – Bombay High Court

CONTENTS



- 1** Notifications, Circulars & Amendments to GST Laws
- 2** Advance Authority Rulings (AAR / AAAR)
- 3** Important Decisions by Courts
- 4** Updates on RAMA-IRIS GST Compliance Tool & GST Portal
- 5** GST News

Notifications, Circulars and Amendments to Law/Rule



Sr. No.	Not. No.	Description	Due Date
1	44/2019-CT Dt. 09-Oct-19	Due date prescribed for GSTR 3B for Oct-19 to Mar-20	20 th of the succeeding month
2	45/2019-CT Dt. 09-Oct-19	Due date prescribed for GSTR 1 (Quarterly) for – Oct-19 to Dec-19 Jan-20 to Mar-20	31-Jan-20 30-Apr-20
3	46/2019-CT Dt. 09-Oct-19	Due date prescribed for GSTR 1 (Monthly) for Oct-19 to Mar-20	11 th of the succeeding month
4	48/2019-CT Dt. 09-Oct-19	Extension of due date to furnish GST Returns for “Jul-Aug 2019” by Registered person having principal place of business in State of Jammu & Kashmir and having Turnover exceeding Rs.1.5 Crores.	GSTR1 – 11-Oct-19 GSTR3B – 20-Oct-19 GSTR7 – 10-Oct-19
5	50/2019-CT Dt. 24-Oct-19	Extension of due date for filing Form GST CMP 08 for Quarter Jul-Sept 19	22-Oct-19
6	47/2019-CT Dt. 09-Oct-19	Taxpayers having aggregate turnover of less than Rs.2 crores shall have the option to furnish Annual Return in respect of Financial Year 2017-18 and 18-19. The said return shall be deemed to be furnished on due date if it has not been furnished before the due date.	
7	51/2019-CT Dt. 31-Oct-19	Jammu & Kashmir state has been notified now as Union Territory of Jammu & Kashmir and Union Territory of Ladakh.	

RAMA SAYS:-

The waiving of Annual return for small taxpayers was much awaited by MSME taxpayers. But the language of the notification says that if Annual Return is not filed by the taxpayers having aggregate turnover of less than Rs.2 crores, it will be deemed as filed within due date.

Said deeming fiction has been created so as to apply the time limits, given under law from the due date of furnishing the annual return, for issuance of show cause notices as well as adjudication orders.

Notifications, Circulars and Amendments to Law/Rule

Amendment in CGST Rules, 2017 (Notification 49/2019-CT Dt. 09-Oct-19)

1. Cap on Availment of Input Tax Credit

A new rule 36(4) is inserted in CGST Rules which requires that ITC in GSTR 3B shall be availed only after matching the same with GSTR 2A. The summarized form of the rule is as below.

- Eligible ITC of Books if reflecting in GSTR 2A can be availed 100% in GSTR 3B
- Eligible ITC of Books which is not reflecting in GSTR 2A shall not be availed in excess of 20% of amount of (1) i.e. the eligible matched credit.

That is to say, Credit can be claimed up to maximum of 120% of the “eligible credit” available in GSTR-2A for the month. Refer the following example: -

Sr No.	Particulars	Before said Notification	After Said Notification
A	Eligible ITC available in Purchase register	28,000	28,000
B	Total ITC available in GSTR-2A	20,000	20,000
C	ITC ineligible in GSTR-2A	2,000	2,000
D = (B-C)	Net eligible ITC as per GSTR-2A	18,000	18,000
E=(A-D)	ITC not available in GSTR-2A	10,000	10,000
F	Actual ITC (As Per GSTR-2A)	18,000	18,000
G	Provisional ITC	10,000	Lower of E and 20% of Di.e. 3,600
H=(F+G)	ITC that can be taken in GSTR-3B of Oct-19	28,000	21,600
I	ITC not allowed in GSTR-3B of Oct-19	None	6,400 (28,000-21,600)

RAMA SAYS:-

Referring to the above example, the provisional ITC of the taxpayers have been restricted to 20% of the total inputs available in 2A. It will have significant impact on cash flow of the companies.

Now the companies need to check vendors past history and the type of return filers (Quarterly or monthly) before dealing with them. This amendment has introduced another set of compliance on a monthly basis.

Notifications, Circulars and Amendments to Law/Rule

2. **GSTR3 & GSTR 3B:**

Rule 61 has been amended retrospectively with effect from 01-Jul-17 to notify that the return furnished in form GSTR3B would be considered as a return specified in section 39 (1) of the CGST Act, 2017. The assessee would not be required to file Form GSTR3 where the returns are required to be filed in Form GSTR3B.

RAMA SAYS:-

The amendment to the rule 61 was done to nullify a recent judgement of Gujarat High Court which held that GSTR3B cannot be considered as a return as envisaged under section 39 of CGST Act, 2019 and therefore the due date for claiming ITC in terms of returns filed under section 39 is not yet expired.

ITC unclaimed till 23-Apr-19 but subsequently claimed based on the Gujarat High Court decision may now face challenges.

3. **Other Amendments in Rules: -**

Sr. No.	Particulars	Description
1	Suspended Registration	Registered person whose registration has been suspended shall not make any taxable supply during such suspension and would not be required to file any return u/s 39. Further he shall not issue Tax invoice and would not tax the outward supplies made by him during such suspension.
2	TRAN -1 / 2	Rule 117 has been amended extending due date for filing TRAN forms. TRAN 1 – 31-Dec-19 TRAN 2 – 31-Jan-20
3	Refunds	Concept of consolidated payment advice from a single authority for disbursement of refund has already been made operational. Consequent changes have been made in Rule 91.
4	New Form DRC-01A prescribed	Before issuing SCN (Show Cause Notice) u/s 73 or u/s 74, proper officer is required to provide details of any tax, interest and penalty ascertained by him in PART A and Assessee may provide his submissions on this in PART B.

Notifications, Circulars and Amendments to Law/Rule

Circulars:

Sr. No.	Circular No.	Summary of Contents
1	110/29/2019-GST Dt. 03-Oct-19	Upon fulfilment of certain conditions, it is allowed to file a re-claim for refund for which assessee has already filed NIL refund application.
2	111/30/2019-GST Dt. 03-Oct-19	<p>Allow to file a fresh refund application, in case a favourable order received by registered person in appeal or in any other forum, under the category "Refund on account of assessment/ provisional assessment/ appeal/ any other order".</p> <p>The registered person shall be required to give following details:</p> <ul style="list-style-type: none"> – Type of order (appeal/any other order) – Order No. – Order date and – the order issuing authority. <p>Further, the registered person would also be required to upload a copy of order.</p>
3	112/31/2019-GST Dt. 03-Oct-19	Retrospective withdrawal of Circular no. 105/24/2019 dated 28-Jun-19 related to treatment of secondary and post sales discount.
4	113/32/2019-GST Dt. 11-Oct-19	Clarification regarding GST rates & classification of certain goods - Classification and/or taxability of leguminous vegetables such as grams when subjected to mild heat treatment, Almond milk, Mechanical Sprayer, imported stores by the Indian Navy, goods imported under lease, parts for the manufacture solar water heater and system & parts and accessories suitable for use solely or principally with a medical device.
5	114/33/2019-GST Dt. 11-Oct-19	Clarification on scope of support services to exploration, mining or drilling of petroleum crude or natural gas or both. A few services particularly technical and consulting services relating to exploration also fall under heading 9983. Therefore, following entry has been inserted under heading 9983 with effect from 01-Oct-19.
6	115/34/2019-GST Dt. 11-Oct-19	Clarification on issue of GST on Airport levies. PSF (Passenger service Fees) and UDF(User Development Fees) charged by airport operators are consideration for providing services to passengers. Thus, Such services provided by an airport operator to passengers are liable to GST.

Notifications, Circulars and Amendments to Law/Rule

Circulars:

Sr. No.	Circular No.	Summary of Contents
7	116/35/2019-GST Dt. 11-Oct-19	No GST shall be applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor.
8	117/36/2019-GST Dt. 11-Oct-19	Clarification on applicability of GST exemption to the DG Shipping approved maritime courses conducted by Maritime Training Institutes of India.
9	118/37/2019-GST Dt. 11-Oct-19	It is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using a sample prototype hardware / test kit in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act.
10	119/38/2019-GST Dt. 11-Oct-19	Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997. The supply of lending of securities under the scheme is classifiable under heading 997119 and is leviable to GST@ 18% under Sl. No. 15(vii) of Notification No. 11/2017-Central Tax (Rate) dated 28-Jun-2017 as amended from time to time.
11	120/38/2019-GST Dt. 11-Oct-19	It is hereby clarified that the explanation having been inserted under section 11(3) of the CGST Act, is effective from the inception of the entry at Sl. No. 3(vi) of the notification No. 11/2017- CTR dated 28-Jun-2017 , that is 21-Sep-17. The line in notification No. 17/2018-CTR dated 26-Jul-18 which states that the notification shall come into effect from 27-Jul-17 does not alter the operation of the notification in terms of Section 11(3).
12	121/39/2019-GST Dt. 11-Oct-19	Services provided by State Government by way of grant of alcoholic liquor licence against consideration in the form of licence fee or application fee or by any other name shall neither be treated as supply of goods nor as supply of services. Therefore, no GST shall be charged on the above specified services

Advance Authority Rulings (GST)

Case 1 - Recovery of 50 per cent of parental health insurance premium from employees by employer would not amount to 'supply of services' and not chargeable to GST.

Case Name: Jotun India (P.) Ltd

Order No: GST-ARA-19/2019-20/B-108

Date: 04-Oct-19

Court: AUTHORITY FOR ADVANCE RULINGS,
MAHARASHTRA

Facts of the Case:

The applicant was a manufacturer, supplier and exporter of paints and powder coatings. The applicant had introduced parental insurance scheme for employees' parents. The applicant recovered 50 per cent of the premium in one to three installments from the salaries and the balance 50 per cent amount was borne by the applicant.

Matter under Consideration:

The applicant had sought an advance ruling in respect of the question that whether recovery of 50 per cent of parental health insurance premium from employees, amounts to supply of service under section 7.

Observation and Findings:

It was found from the sample copy of insurance policy submitted by the applicant that the applicant initially pays the entire premium along with taxes and then recovers 50 per cent of the premium through salary in one instalment in case of staff and in three instalments in case of operators as the case may be. The applicant is not in the business of providing insurance coverage. Secondly, to provide parental insurance cover, is



not a mandatory requirement under any law for the time being in force and therefore, non-providing parental insurance coverage would not affect its business by any means. Therefore, activity of recovery of 50 per cent of the cost of insurance premium cannot be treated as an activity done in the course of business or for the furtherance of business.

Ruling:

From the reading of the definition of supply given under section 7 and the term 'Business' defined in section 2(17) it is found that the activity undertaken by the applicant like providing 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' of section 2(17). Hence, the applicant is not rendering any services of health insurance to their employees' parent and hence there is no supply of service in the instant case of transaction between employer and employee.

In view of discussion above, the recovery of 50 per cent of parental health insurance premium from employees does not amount to 'supply of service' under section 7.

Advance Authority Rulings (GST)

RAMA SAYS:

The ruling given by the Honourable Bench is in favour of the applicant based on the essence of definition of supply according to which the primary elements to be present shall be supply of goods or service, consideration and supply shall be in course or furtherance of business.

One of the interesting observations has been with respect to the fact that the levy can only be triggered if the employer is themselves in the line of business of which the recoveries have been made from the employee.



Case 2 - Where applicant supplies foreign going vessels stores like paint, rope, spare parts, electronic equipment etc. as defined under section 2(21) of Customs Act, 1962, same is not an export or zero-rated supply unless it is marked specifically for a location outside India. Applicant, therefore, is liable to pay tax on such supplies.

Case Name: Shewratan Company (P.) Ltd.

Order No: 30/WBAAR/2019-20

Date: 21-Oct-19

Court: AUTHORITY FOR ADVANCE RULINGS,
WEST BENGAL.

Facts of the Case:

The Applicant supplies foreign going vessels stores like paint, rope, spare parts, electronic equipment etc. These goods might be procured from India or may be imported from outside India. In case of imported goods, they are stored in a warehouse without payment of Import duty and sent directly from warehouse to foreign going vessel.

Matter under Consideration:

Advance Ruling is sought on whether it is liable to pay tax on such supplies to foreign going vessels. More specifically, it wants to know whether such supplies are zero-rated supplies.

Observation and Findings:

The question is whether such stores, when taken on board any foreign going vessel, may be construed as being taken to a place outside India. When such goods are used as stores in a foreign going vessel, they are neither taken out of India (unless they are specifically marked for a foreign destination) to a place outside India nor cleared for home consumption. At the same time, they need documentation like export because such goods cross the limits of the customs area when taken on board the foreign going vessel.

In terms of Central Sales Tax Act, a sale in the course of export takes place when the goods cross the limits of the customs area. However, the export of goods under section 2(5) of the IGST Act and section 2(19) of the 1962 Act means taking the goods from India to a place outside India. The place of supply shall be the location outside India.

Advance Authority Rulings (GST)



A foreign going vessel anchored within the territory of India is not a place outside India. The supply of stores imported or otherwise, to foreign going vessels cannot, therefore, be construed as export unless it is marked specifically for a location outside India.

Ruling:

The Applicant's supply of stores to foreign going vessels, as defined under section 2(21) of the Customs Act, 1962 Act, is not export or zero-rated supply, unless it is marked specifically for a location outside India. The Applicant is, therefore, liable to pay tax on such supplies under the GST Act or the IGST Act, as the case may be.

RAMA SAYS:

The ruling given by the Honourable Bench favoured the Revenue as the main essence was to determine whether the Goods qualify as Export or not. Export under the IGST Act (and the 1962 Act as well) has a much narrower meaning, and the Place of Supply has to be the location outside India. Taking the stores on board such a vessel does not amount to supply to a location outside India and hence does not amount to Export.

Recent Case Laws (GST)

Sale of goods from Duty Free shops located at International Airports constitutes 'export of goods'

Facts of the Case:

The petitioner, Flemingo Travel Retail Ltd, runs the duty-free shop (DFS) at Mumbai International Airport. They took exception to an order of a Deputy Commissioner of Sales Tax wherein he denied refund of input tax credit pursuant to sale of duty-free goods from the duty-free shops at the departure area of airport. According to the petitioner, they were already paying Mumbai International Airport (MIAL) under a concession agreement towards the minimum guaranteed fees/ concession fees for grant of rights and use of licensed premises of duty-free shops in the departure or arrival area of international airport. Therefore, they are not liable to pay GST. Whereas, as per the State and the respondent authorities, the nomenclature 'Duty-Free Shop' does not entitle the petitioner to be free from entire indirect tax burden under every law. The input tax credit is restricted to the tax borne by the petitioner only on the value of goods supplied, and other GST paid on services cannot be allowed to be given as input tax credit qualifying for refund. The import of goods for sale at DFS may not attract customs duty since the same is not at all cleared for home consumption, but that does not mean that the same are not liable to GST, respondents argued.

Decision:

Court examined Article 286 of the constitution which deals with restrictions regarding imposition of tax on the sale or

purchase of goods. The bench noted-"The supply made in the course of import into India or in the course of export out of India, cannot be subjected to any tax." Thereafter, Court observed- "Section 2(5) of the IGST Act defines "export" to mean "taking goods out of India to a place outside India". In view of the above we are satisfied that supply by the DFS of the Petitioner to the outbound passenger constitutes exports by the DFS. Consequently, in terms of section 16(1) of the IGST Act, it becomes a zero-rated supply. The Respondent-Authority has erroneously held that the Petitioner does not satisfy the crucial test of sending of the goods to foreign destination where they would be received as 'imports', to deny the benefits of zero-rated supply." Thus, holding the order of the Deputy Commissioner of Sales Tax as arbitrary, Court quashed it and allowed Flemingo's writ petition.

RAMA SAYS:

Needless to say that if the duty free shop, which caters to the outgoing or incoming international passengers, is subjected to local taxes by the State, the tax burden will increase and the price of the goods, which are supposed to be free of taxes and duties, will go up, and the same would prevent the duty free shops in India from competing with DFSs at international airports elsewhere in the world. This will also hamper and prejudicially affect foreign trade, and augmentation and conservation of foreign exchange and will also negate the intent and purpose of article 286 of the Constitution of India. The Honourable High Court has thus delivered fair decision.

RAMA IRIS GST / Portal Updates



IRIS UPDATES:

Reconciliation: Summary & Category-wise Vendor View

Now, in Summary, Total Vendor Count (hyperlinked) is reflecting and can also redirect the user to Category-wise Vendor View with Reconciliation Category filter applied.

Category-wise Vendor view will reflect the comparative data as per 2A and as per 2P i.e. Purchase data. This view has the two filters - GSTIN of Counterparty and Category.

'Vendor Summary' Button is added in Reconciliation Summary to initiate the generation of the latest 'Summary' and 'Net Vendor Summary'.

Utilities:

Compliance status on the basis of GSTR3B return has been added in GSTIN Details section. This is currently only available in single GSTIN search. This will help user to track the filing status of vendors.

GSTR1 EWB Reconciliation Download:

The download option is now available in GSTR1 EWB Reconciliation. It will help the user to download GSTR1 EWB Reconciliation results in the csv format.

Send Mail in GSTR1:

Send mail feature is also available for GSTR1 under the view section. It will help user to send the invoices to the Customer/Counterparty.

GSTR1 Download:

For the Regular Invoices and advances, the data will now be downloaded in their respective input formats in the zip folder from view section of GSTR 1.

It will help the user to upload the respective sheets after correction if any correction is required to be made.

Jump To:

To quickly navigate through the business hierarchy new feature 'Jump to' has been introduced where user can type the Filing entity name and select the Filing entity directly. User can find the Jump to option on business hierarchy level.

For demo enquiry, please contact
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GST Collection for October 2019 - The gross GST revenue collected in the month of October, 2019 is Rs. 95,380 crore of which CGST is Rs. 17,582 crore, SGST is Rs. 23,674 crore, IGST is Rs. 46,517 crore (including Rs. 21,446 crore collected on imports) and Cess is Rs. 7,607 crore (including Rs. 774 crore collected on imports). The total number of GSTR 3B Returns filed for the month of September up to 31st October, 2019 is Rs. 73.83 lakh.

CBI Arrests a Superintendent of Central Tax in a Bribery Case - The Central Bureau of Investigation has arrested a Superintendent of CGST & Central Excise Division Range-II, Lucknow (Uttar Pradesh) for demanding and accepting a bribe of Rs.25,000/- from the complainant. A case was registered on the allegations of demanding of illegal gratification of Rs.25,000/- by the Superintendent, CGST & Central Excise Division, Range-II, Lucknow for settling GST matters of complainant's firm for the financial year 2014-15, 2015-16 and 2016-17. CBI laid a trap and caught the accused while demanding and accepting bribe of Rs. 25,000/- from the complainant. Incriminating documents have been recovered during the searches from the premises of accused.

Yet another Fake GST invoice Racket busted by DGGI, Gurugram - The Directorate General of GST Intelligence (DGGI), Gurugram Zonal Unit, Gurugram arrested Sh. Rajiv Gupta on 23.10.2019, partner in M/s RST Batteries, Mundka Delhi and Director of M/s RST Batteries Pvt. Ltd Bahadurgarh, Haryana for orchestrating a racket involving fake invoices valued at more than Rs 136 crores thereby defrauding the Government of more



than Rs 20 crores. This fraud was given effect to by issuing fake invoices by creating a web of more than 52 fake firms. These fake firms were used to issue bogus invoices which were passed on to various dealers and manufacturers who used them for discharging Government duty, in essence defrauding the Government of huge amounts of revenue.

The Gurugram Zonal Unit of DGGI has so far arrested 10 persons in similar cases thereby unearthing fake invoices more than Rs 1,500 crores, which has defrauded the sovereign exchequer of more than Rs 280 crores.

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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