

GST Update

Weekly Update
03.08.2019

Background

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 27.07.2019. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications. Similar parallel provisions in State Laws may be referred to as required

Notifications and Circulars

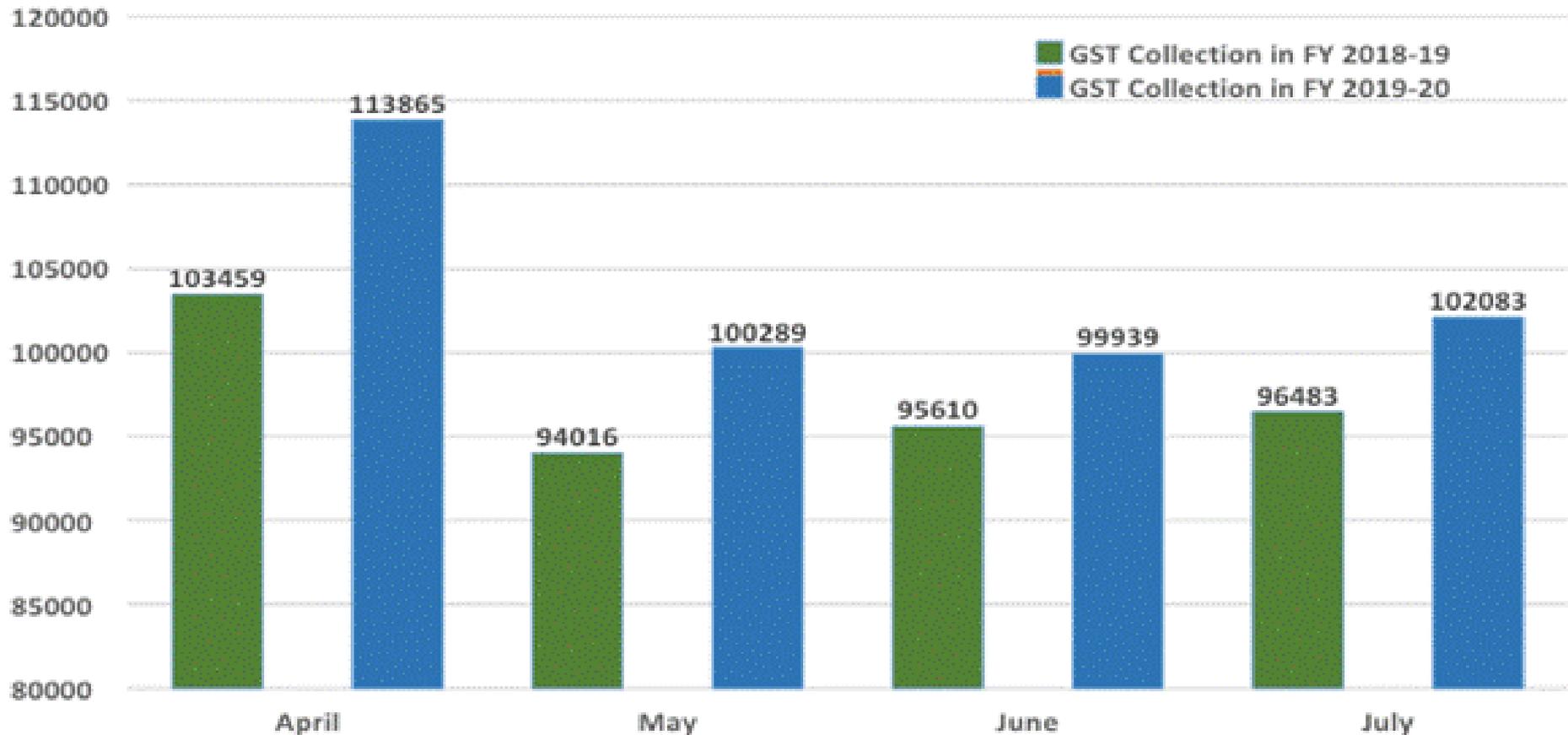
- Two Central Tax (Rate) Notifications and One Central Tax Notification issued
- One Customs Circular relating to IGST issued
- FAQs on Kerala Flood Cess released by Kerala Government

GST Collections for July, 2019

- The total gross GST revenue collected in the month of July, 2019 is **₹ 1,02,083 crore**, of which -
- CGST is ₹ 17,912 crore,
- SGST is ₹ 25,008 crore
- IGST is ₹ 50,612 crore (including ₹ 24,246 crore collected on imports) and
- Cess is ₹ 8,551 crore* (including ₹797 crore collected on imports).
- During April-July 2019 vis-à-vis 2018, the domestic component has grown by 9.2% while the GST on imports has come down by 0.2% and the total collection has grown by 6.83%

- On a comparison with last year, the revenue in July, 2018 was ₹ 96,483 crore and the revenue during July, 2019 is a growth of 5.80% over the revenue in the same month last year.
- During April-July 2019 vis-à-vis 2018, the domestic component has grown by 9.2% while the GST on imports has come down by 0.2% and the total collection has grown by 6.83%.
- The Government has released Rs. 17,789 crore to the states as GST compensation for the months of April-May, 2019.

Trends in GST Collection in Rs. Crore



Refunds of IGST paid on import in case of specialized agencies

- **Circular No. 23/2019-Customs dated 1st August, 2019**
- A refund mechanism of IGST paid on imports by the specialized agencies operationalised
- Section 55 of the CGST Act provides refund of taxes paid on the notified supplies of goods or services or both received by them
- Section 3 (7) of Customs Tariff Act, 1975 (CTA), provides for a parity between the integrated tax rate attracted on imported goods and the integrated tax applicable on the domestic supplies of goods

Refunds of IGST paid on import in case of specialized agencies (Contd)

- In the case of UN and specialised agencies, the Notification No.16/2017-Central Tax (Rate) dated 28.6.2017 (notification No.13/2017-Central Tax (Rate) and Notification No.16/2017-Union Territory Tax (Rate)) envisage payment and then refund of taxes paid.
- Therefore, on this principle of parity, specialised agencies ought to get the refund of the IGST paid on imported goods.
- The respective customs field formations shall provide refund of IGST paid on import of goods by the specialized agencies notified by Central Government under Section 55 of CGST, Act, 2017

Quarterly Statement by Composition taxpayers Form GST CMP-08

- **Form GST CMP-08 Quarterly Statement by Composition taxpayers for purpose of payment of tax**
- GST CMP-08 is a one page statement containing the outward supplies value, applicable tax; inward supplies with RCM and applicable tax; Now available on GST Portal
- Due date for furnishing the statement containing the details of payment of self-assessed tax in said FORM GST CMP-08, for the quarter April, 2019 to June, 2019, or part thereof,
- Now **further extended to 31st August, 2019 (Notification No. 35/2019 – Central Tax dated 29th July, 2019)**
- **Now, Composition taxpayers are required to make quarterly tax payment in GST CMP 08 and file GSTR-4 annually.**

Exemption to hiring of Electric buses by local authorities from GST

- **Notification No.13/2019- Central Tax (Rate) dated 31st July, 2019**
- Exemption Notification No.12/2017- Central Tax (Rate) dated 28th June, 2017 amended
- Against S.No. 22, in the entries in column (3), after clause (a), the following clause (aa) inserted –
- *‘(aa) to a local authority, an Electrically operated vehicle meant to carry more than twelve passengers;*
- *Explanation.- For the purposes of this entry, “Electrically operated vehicle” means vehicle falling under Chapter 87 in the First Schedule to the Customs Tariff Act, 1975 which is run solely on electrical energy derived from an external source or from one or more electrical batteries fitted to such road vehicle.*

GST rate on Electric Vehicles, and charger or charging stations for Electric vehicles

- **Notification No. 12/2019-Central Tax (Rate) dated 31st July, 2019**
- Exemption Notification No.1/2017-Central Tax (Rate), dated the 28th June, 2017 amended
- The GST rate on all “Electric vehicles” and “Charger or charging stations for Electric vehicles” reduced to 5%. Electric Vehicles shall also include E-Bicycles.
- In Schedule I- 2.5%, following entries inserted-
- **234B:** 8504 - Charger or charging station for Electrically operated vehicles”
- **242A :** 87 -Electrically operated vehicles, including two and three wheeled electric vehicles.

FAQs on Kerala Flood Cess

- <https://keralataxes.gov.in/wp-content/uploads/2019/07/FINAL-FAQ-ON-FLOOD-CESS-29-07-2019.pdf>
- Kerala Flood Cess is levied to raise the fund required for reconstruction of State after the devastating flood occurred in the State during August 2018.
- The Power to impose such a levy flows from Article 279(A) (4)(F) of the constitution
- Applicable w.e.f 1st August, 2019 for a period of two years
- Levied under Section 14 of Kerala Finance Act, 2019. The Kerala Flood Cess Rules published vide Notification SRO. No.359/2019 published as G.O.(P) No.80/2019/TD dated 25-05-2019.
- Approved by GST Council in its 32nd Meeting

- Kerala Flood Cess is imposed @ 1% on the value of supply of goods or services or both coming under Schedule II, III & IV of SRO.No.360/2017 Dt.30.06.2017. But in the case of goods coming under Fifth Schedule of SRO.No.360/2017 (gold, diamond etc.), the Kerala Flood Cess is applicable at the rate of 0.25%.
- Thus, Rates of Kerala Cess-
 - Goods taxed at the rate of 6%, 9% and 14% = 1% Cess
 - All Services under Kerala GST= 1% Cess
 - Goods taxed at the rate of 1.5% = 0.25% Cess
 - A cess of 0.25 percent will be levied on gold, silver, platinum ornaments, precious stones, imitation jewellery, diamonds, among other items, that fall in the fifth schedule of GST rates

- GSTIN will be treated as Registration Number for Kerala Flood Cess. The tax payer has to login the official website “www.keralataxes.gov.in” to generate user ID and password. While entering GSTIN number, one time password (OTP) will be sent to the mobile number of authorized representative for creating used ID and password. After login to the system, tax payers shall furnish the details of turnover applicable for Kerala Flood Cess and make e-Payment of Kerala Flood Cess.
- The Cess will be levied only on the value of supplies made within the state by registered dealers, (intra state supplies only) to unregistered persons which means the levy will be only on retail transactions(B2C)
- Thus, **no credit** is allowed on the cess paid as the same is levied on transactions made by taxable persons to the unregistered end consumers. B2B transactions are not covered in Kerala Flood cess.

- As per GST Law, the tax due for a month has to be remitted on or before 20th of the succeeding month in GSTR 3B return. Due date for filing GSTR 3B shall be applicable for the Kerala Flood Cess return.
- Kerala Flood Cess is applicable only for intra-state supply. If a supply is made to an unregistered tax payer, Kerala Flood Cess is to be levied.
- Supply to registered taxpayer does not attract KFC, if the supply is made in furtherance of business. Supply of Goods or Services or both made by a taxable person in the State to another taxable person having GST Registration in the State shall be leviable to Cess, if the supply is made not in furtherance of business.
- Kerala Flood Cess is NOT applicable for supply of exempted goods or services

- **Value for the purpose of KFC:** Kerala Flood Cess is to be calculated on the value of supply. The CGST and SGST collection shall not be included in the value of supply.
- Eg:- If the value of supply is Rs.100/- and tax rate of the commodity is 12% GST, the invoice to be raised as shown below:
Value of supply – Rs.100/- CGST - Rs.6/- SGST - Rs.6/- Cess - Rs.1/-
Total sales value - Rs. 113/-
- As per SRO.No.434/2019 Dt.28.06.19, Rule 32A incorporated in Kerala GST Rules 2017. As per this rule, the value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of Section 15 of the Act, but shall not include the said cess.

- Composition tax payers are exempted from the levy of Kerala Flood Cess including tax payers who have opted for composition for service as per Section 14(1)(i) of Finance Act,2019
- Kerala Flood Cess can be collected from customers by showing separately in the invoices.
- SGST Rule 46 (l) & (m) regarding issue of tax invoice is applicable in the case of Kerala Flood Cess also. Hence subject to conditions applicable to issue of invoice under the same Rule shall be applicable to Kerala Flood Cess also. Therefore as per Rule the Invoice shall contain details of Kerala Flood Cess like rate of tax and amount of tax charged in respect of taxable goods or services.

- Interest @ 18% will be applicable for delayed payment of Cess for delayed payment of Kerala Flood Cess.
- Exemption is eligible only for registered taxable person having GST registration in Kerala GST. A person situated outside Kerala having registration outside Kerala and receiving inward supply of service or goods or both where the place of supply is in Kerala will be chargeable Cess
- Separate monthly return in form KFC-A to be filed along with GSTR-3B. The return to be filed on www.keralataxes.gov.in



GST Legal Updates

Gujarat HC strikes down provision of lapsing of unutilised credit on account of inverted rate structure

Case of Shabnam Petrofils Pvt Ltd Vs UOI reported in 2019- TIOL-1656-HC-AHM-GST

Facts:

The petitioner-company manufactures Polyester Texturized Yarn as well as Polyester Woven Fabrics and Polyester Knitted Fabrics. The other petitioner is a society whose members are mostly MMF fabric weavers. The petitioners challenge the validity of Notfn No 20/2018-CT(R), which mandates that the accumulated ITC lying unutilized in balance in respect of certain specified goods, after payment of tax for and upto July 31, 2018 on inward supplies received upto such date, would lapse - The petitioners claim that impact of such Notfn resulted in huge losses for them - They also claimed that registered persons were

Gujarat HC strikes down provision of lapsing of unutilised credit on account of inverted rate structure

entitled u/s 16 of the CGST Act to claim ITC and that the CGST Act did not enable issuing of Notfns which provided for lapse of ITC - They further claimed that powers u/s 54(3)(ii) of the CGST Act were limited to notifying the supplies not entitled to refund of ITC accumulated on account of the inverted rate structure & that the Notfns exceeded the provisions of Section 54(3)(ii).

The Hon'ble High Court held as under

The CGST Act itself provides for lapse of ITC u/s 17(4) & 18(4) of the Act - Where the legislature wanted ITC to lapse, it would have been expressly provided - No such express provision is made u/s 54(3) - This section does not inherently empower the

Gujarat HC strikes down provision of lapsing of unutilised credit on account of inverted rate structure

Govt to provide for the lapsing of the unutilised ITC accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. It is trite law that delegated legislation must be in conformity with provisions of parent statute. By prescribing for lapse of ITC, the Notfn No 05/2017-CT(R) dated 28.06.2017 as amended by Notfn No 20/2018-CT(R) dated 26.07.2018, exceeded the power delegated u/s 54(3)(ii) of the CGST Act. Therefore, proviso (ii) of the opening paragraph of the Notfn No.05/2017-C.T. (Rate) inserted vide Notfn No.20/2018- C.T. (Rate) is ex-facie invalid and liable to be struck down.

Issuance of SCN under Section 73 sine qua non for recovery of interest under Section 50

LC Infra Projects Pvt Ltd Vs UoI reported in 2019-TIOL-1660-HC-KAR-GST

Facts:

Petitioner, a dealer, was entitled to claim the Input Tax Credit for the GST paid by the sub-contractors while filing its GST returns. Since some of the sub-contractors had not uploaded the invoices and filed their returns, ITC to which the petitioner was entitled to was not being tallied. The third respondent, Superintendent, addressed an e-mail seeking clarification of availments of ITC and it was alleged that there was an excess availment of ITC to the tune of Rs.2,62,48,383/-. The petitioner pointed out that the ITC differential credit is not pertaining to the petitioner, relating to the tax period in question. The petitioner has been levied tax

Issuance of SCN under Section 73 sine qua non for recovery of interest under Section 50

Facts: (Contd...)

on the unpaid tax without issuing Show Cause Notice and thereafter, the Demand Notice has been issued claiming the tax amount of Rs.13,63,864/- and interest amount of Rs.81,29,684/- payable by the petitioner. The third respondent vide its letter dated 07.05.2019 has sought for attachment of the bank account of the petitioner. In the said background, the petitioner is before the Karnataka High Court challenging the action of the respondents in quantifying the interest and attaching the bank account without issuing Show Cause Notice as contemplated under Section 73 of the Act.

Issuance of SCN under Section 73 sine qua non for recovery of interest under Section 50

The Hon'ble High Court held as under

Issuance of Show Cause notice u/s 73 of the Act is sine qua non to proceed with the recovery of interest payable thereon under Section 50 of the Act and penalty leviable under the provisions of the Act or the Rules - Undisputedly, the interest payable under Section 50 of the Act has been determined by the third respondent without issuing Show Cause Notice, which is in breach of principles of natural justice. It is trite law that any order passed by the quasi-judicial authorities in contravention of the principles of natural justice, cannot be sustained - Similarly, after determination of the interest liable to be paid by the petitioner, no notice has been issued before attaching the bank account of the petitioner. There is a lapse on the part of

Issuance of SCN under Section 73 sine qua non for recovery of interest under Section 50

The Hon'ble High Court held as under

the third respondent. The notion of the third respondent that Section 75(12) of the Act empowers the authorities to proceed with recovery without issuing Show Cause Notice is only misconceived. The said Section is applicable only to the self-assessment made by the assessee and not to quantification or determination made by the Authority. It is ex-facie apparent that action of the third respondent is perverse and illegal and the same deserves to be set aside. Orders dated dated 04.03.2019 as well as dated 07.05.2019 are quashed with liberty to the third respondent to proceed in accordance with law. Petition allowed.

Patna High Court sets aside recovery of interest on account of mere availment of ITC without utilisation

Commercial Steel Engg Corporation Vs State of Bihar reported in 2019-TIOL-1585-HC-PATNA-GST

Facts:

Bihar Goods and Services Tax Act, 2017. Petitioner seeks for issuance of a writ in the nature of certiorari for quashing of the order passed by respondent as being illegal and without jurisdiction in terms of s.73(1) of the Act and to restrain the respondent from taking any coercive action against petitioner for recovery of said demand contained in the impugned order dated 06.11.2018.

Patna High Court sets aside recovery of interest on account of mere availment of ITC without utilisation

The Hon'ble High Court held as under

There was an input tax credit to the tune of Rs.18,33,304.76 in favour of the petitioner for the period 2007-08 and to the tune of Rs.20,79,256.00 for the period 2011-12 for the taxes deposited under 'the VAT Act' and 'the Entry Tax Act' - what is to be seen is whether, the credit reflected in the electronic credit ledger of the petitioner amounts to either availment or utilization of the credit. Assistant Commissioner of State Taxes has somewhere got confused to treat the transitional credit claimed by the dealer as an availment of the said credit when in fact an availment of a credit is a positive act and unless carried out for reducing any tax liability by its reflection in the return filed for any financial year, it cannot be a case of either availment

Patna High Court sets aside recovery of interest on account of mere availment of ITC without utilisation

The Hon'ble High Court held as under

or utilization. Had it been a case where the credit shown in electronic ledger, was availed or utilized for meeting any tax liability for any year, there would be no error found in the action complained but it would be stretching the term 'availment' beyond prudence to treat the mere reflection of the transitional credit in the electronic credit ledger as an act of availment, for drawing a proceeding under section 73(1) of 'the BGST Act'. The provisions underlying Section 73 is self eloquent and it is only if such availment is for reducing a tax liability that it vests jurisdiction in the assessing authority to recover such tax together with levy of interest and penalty under section 50 but until such time that the statutory authority is able to

Patna High Court sets aside recovery of interest on account of mere availment of ITC without utilisation

The Hon'ble High Court held as under

demonstrate that any tax was recoverable from the petitioner, a reflection in the electronic credit ledger cannot be treated as an 'availment'. Annexure 2 series confirms that the petitioner has an input tax credit in his favour under the Value Added Tax Act and the Entry Tax Act. Whether he is entitled for refund of this credit or entitled to carry it forward in the transitional credit, may be a subject matter of proceeding pending before the statutory authority but nonetheless, it is definitely a confirmation of the fact that there is no tax outstanding against the petitioner which is recoverable. Legislative intent reflected from a purposeful reading of the provisions underlying section 140 alongside the provisions of section 73 and Rules 117 and

Patna High Court sets aside recovery of interest on account of mere availment of ITC without utilisation

The Hon'ble High Court held as under

121 is that even a wrongly reflected transitional credit in an electronic ledger on its own is not sufficient to draw penal proceedings until the same or any portion thereof, is put to use so as to become recoverable. Order dated 6.11.2018 passed by the respondent no.3, the Assistant Commissioner of State Taxes in purported exercise of power vested in him under section 73 of 'the BGST Act' is held per se illegal and an abuse of the statutory jurisdiction and is accordingly quashed and set aside. Petition allowed.

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_Gol
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- https://twitter.com/NACIN_OFFICIAL

THANK YOU