

# GST

# Newsletter

## (August 2019)

### INSIDE THIS ISSUE

- Sabka Vishwas Scheme 2019
- Advance Rulings
- High court Judgements
- Recent Updates

### CA Sumit Kedia

The roadmap relating to the stage wise implementation of new GST returns from Oct 2019 is released. The initial concept of matching is being implemented in these new formats. Entity whose previous year turnover was upto 5 Crores has been provided with a facility of quarterly return. However the new returns have not yet caught much attention as the entire Industry is now grappling with the filing of annual returns GSTR 9 and 9C. The recent data shows that only around 28% of GST annual returns have been filed till date with hardly one week left for the due date.

This newsletter covers various important amendments, advance rulings and certain court judgements on GST passed during the month of July 2019.

## I. Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

A dispute resolution cum amnesty scheme called 'The Sabka Vishwas Legacy Dispute Resolution Scheme, 2019' has been introduced for resolution and settlement of legacy cases of Central Excise and Service Tax. Mrs. Nirmala Sitharaman (Ministry of Finance) had quoted the following in her Budget Speech-

*"GST has just completed two years. An area that concerns me is that we have huge pending litigations from pre-GST regime. More than Rs. 3.75 lakh crore is blocked in litigations in service tax and excise. There is a need to unload this baggage and allow business to move on. I, therefore, propose, a Legacy Dispute Resolution Scheme that will allow quick closure of these litigations. I would urge the trade and business to avail this opportunity and be free from legacy litigations."*

Henceforth, in order to curb the pending litigations under the erstwhile Indirect Tax Enactments, this scheme provides relief from tax, penalty, interest, immunity from prosecution, etc., on account of pending disputes. **The Scheme has now been notified and will be operationalized from 1st September 2019. The Scheme would continue till 31st December 2019.**

### i) Laws covered under the scheme:

Insights of various Acts covered under this Scheme are as below-

- The Central Excise Act, 1944 or the Central Excise Tariff Act, 1985 or Chapter V of the Finance Act, 1994 and the rules made there under;
- The Finance Act, 2004 , 2007 , 2015 , 2016;
- The Agricultural Produce Cess Act,1940;
- The Mica Mines Labour Welfare Fund Act, 1946;
- The Textiles Committee Act, 1963;
- The Coal Mines (Conservation and Development) Act, 1974;
- The Agricultural and Processed Food Products Export Cess Act, 1985;

- The Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Cess Act, 1976;
- The Additional Duties of Excise (Goods of Special Importance) Act, 1957;
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1955;
- The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972;
- The Oil Industry (Development) Act, 1974;
- The Produce Cess Act, 1966;
- The Mineral Products (Additional Duties of Excise and Customs) Act, 1958;
- Any other Act, as the Central Government may, by notification in the Official Gazette, specify.

**ii) Who can avail the benefit of this Scheme:**

All persons shall be eligible to opt under this scheme except the below mentioned –

Where appeal has been filed & finally heard as on or before 30 June 2019.

Where Show cause notice has been issued & finally hearing has taken place as on or before 30 June 2019.

Who have been convicted under any provision for the matter for which he intends to file declaration.

Who have been issued a show cause notice for erroneous refund or refund.

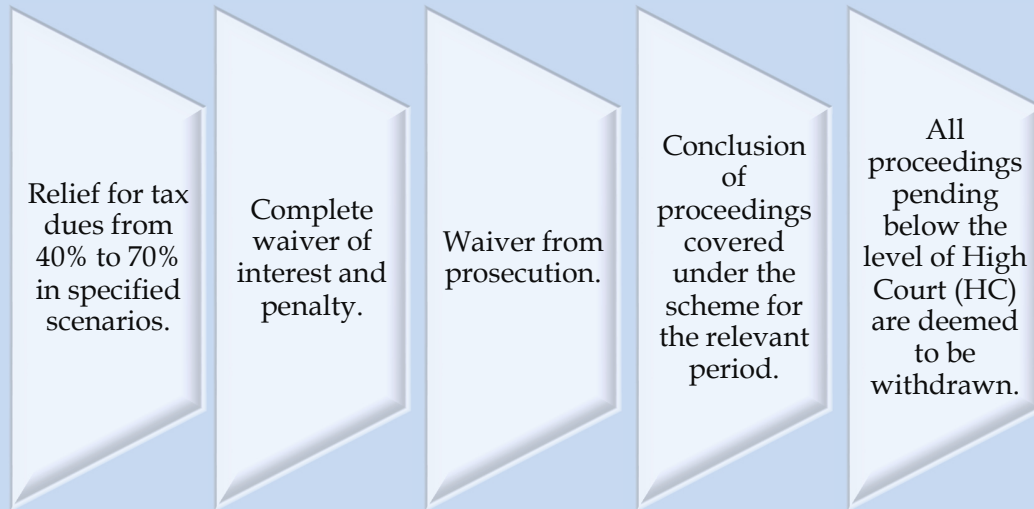
Who have been subject to audit/ enquiry/ investigation, but the duty has not been quantified as on 30 June 2019.

Who has made voluntary disclosure under specific certain circumstances.

Who have filed an application under settlement commission

Who intend to file declaration in respect of tobacco and related products, petroleum, etc.

**iii) Benefit under the scheme:**



**iv) Relief under the Act:**

S.No.	Details	Amount (in Rs.)	Relief
A)	Tax dues relating to SCN or appeal arising out of such SCN which is Pending as on 30.06.2019.	< 50 lakhs  > 50 lakhs	70% of the Tax dues  50% of the Tax dues
B)	Tax dues relating to SCN for late fee or penalty only and the amount of duty has been paid or is Nil	-	Entire amount of late fee or penalty.
S.No.	Details	Amount (in Rs.)	Relief

C)	Tax dues are relatable to amount in arrears	< 50 lakhs > 50 lakhs	60% of the tax dues 40% of the tax dues
D)	Tax dues are linked to an enquiry, investigation or audit against the declarant and the amount quantified on or before 30th June	< 50 lakhs > 50 lakhs	70% of Tax dues 50% of Tax dues
E)	Tax dues are on account of voluntary disclosure by the Declarant	-	No relief

a) Procedure:

STEP 1	<ul style="list-style-type: none"> <li>• A declaration has to be filed by the person estimating the tax dues payable;</li> </ul>
STEP 2	<ul style="list-style-type: none"> <li>• If the declaration is disputed, the designated committee must give the person an opportunity of being heard before finalising the statement of amount payable; and</li> </ul>
STEP 3	<ul style="list-style-type: none"> <li>• On payment and upon submission of proof of withdrawal of appeal (in proceedings before the HC and Supreme Court), the designated committee issues a discharge certificate.</li> </ul>

v) Restrictions:

Tax dues have to be paid in cash only and cannot be paid using credit.

No credit can be availed of the tax dues paid under the scheme either as payer or as recipient of the underlying goods or services.

100% tax dues must be paid for voluntary disclosures

No refund of amount paid under this scheme or any balance remaining after adjustment of pre-deposit, can be claimed.

Payment and discharge under this scheme shall not absolve any liability for periods not covered under the declaration.

Key Points

- The scheme does not cover cases in which interest alone is in dispute.
- More clarity is required on the manner in which “voluntary disclosure” operates under the scheme.
- It is unclear whether CENVAT credit reversal issues (specifically for service tax assesses) is covered under the scheme.

## II. Advance Rulings

### **i) ITC not eligible where payments are netted off against receivables**

**Applicant: M/s Sanghvi Movers Ltd. (AAR Tamil Nadu)**

#### **Facts of the case -**

- M/s. Sanghvi Movers Ltd., Tamil Nadu (“the Applicant or SML TN”) is a branch office of M/s. Sanghvi Movers Ltd. Pune, Maharashtra (“SML HO”), which is engaged in the business of providing medium-sized heavy-duty cranes on wet-lease basis to the customers as per the requirement.
- The applicant entered into a Memorandum of understanding (“MoU”) with SML HO for ‘Crane & Trailer Supplies’ to SML TN Depot at TN Chennai. The payments are however made by the SML TN to SML HO on netting off basis i.e. adjustment of receivable and payable in book of accounts are made and net amount is payable.

#### **Issue Involved -**

Whether Integrated Goods and Services Tax (“IGST”) payable on inter-state inward supply of leasing service from supplier SML HO for providing further supply on hire charges would be admissible as Input Tax Credit (“ITC”)?

#### **Held by AAR -**

The AAR (Tamil Nadu) vide *Order No. 26/AAR/2019 dated June 21, 2019* observed as under:

- As per MoU lease /hire charges payable by SML TN to SML HO is netted off in books of accounts and is considered as deemed payment.

- As per proviso to Section 16(2), the applicant will not be eligible for full ITC, as they are not paying the full amount to their supplier SML HO, rather net amount is being paid.

Accordingly, the AAR held that, **supplies received from SML HO are not eligible for the full ITC. Rather ITC shall not be available to the extent specified in the restrictions as per second proviso Section 16(2) of CGST Act read with Rule 37 of CGST Rules, 2017 as stated above.**

## ii) Goods provided free of cost

**Applicant: M/s Polycab Wires Private Limited (AAR Kerala)**

### **Facts of the case -**

- Applicant is a dealer in electrical goods, cables of all kinds including winding wires, pipes etc. As part of their CSR activity, they had supplied electrical goods as follows –
  - i) Free of cost to Kerala State Electricity Board(KSEB) through their distributors spread across the State for flood victims;
  - ii) Directly distributed electrical items to flood affected people under CSR expenses for free.
- Distributors had billed the goods to KSEB and paid GST to Government.
- In the invoice, the distributor had shown sale value, GST and total amount with 100% discount. Later, distributor would raise claim to the applicant who would reimburse the amount.

### **Issues Involved -**

1. Whether distributors are entitled for input tax credit on goods supplied to Kerala State Electricity Board on instructions from the applicant?



2. Whether Input Tax Credit is available on CSR expenses?

**Held by AAR -**

**Case (i)** - The distributors had billed the goods to Kerala State Electricity Board and paid GST to Government. In the invoice so issued, the distributor had valued the goods for the purpose of tax and value was shown at 100% discount. In this supply, since the consideration is not wholly in money, Rule 27 of the CGST/KSGST Rules would apply for valuation and after the goods are supplied to KSEB, distributor would raise claim to the applicant who will reimburse the value to the distributor. **This being the case, the distributor would be entitled for input tax credit on the goods supplied to Kerala State Electricity Board as output tax liability towards the outward supply was remitted to the Government.**

**Case (ii)** - As per Section 17(5)(h), input tax credit shall not be available in respect of goods lost, stolen, destroyed, written off or disposed by way of gift or free samples. In this case after availing input tax credit, the applicant disposed goods as free supply for CSR activities. **Hence, the applicant is liable to reverse the input tax credit already availed.**

**iii) GST on supply/installation/erection and assembly of complete Air Conditioning plants**

**Applicant: M/s Nikhil Comforts (AAR Maharashtra)**

**Facts of the case –**

- The applicant's major part of the contract is supply of goods i.e. VRF Indoor & Outdoor Units, refrigerant piping with insulation, drain piping with insulation, MS stands, Cabling, Additional Refrigerant and associated electrical works etc.

- These goods are delivered to client by the applicant and such goods that are supplied are used by the applicant to provide services of installation, testing and commissioning of units.

**Issue Involved –**

Is this supply a composite supply?

**Held by AAR –**

The AAR held that **the transaction is a Composite supply** (*as without these goods, services cannot be supplied by applicant and, therefore, it is found that goods and services are supplied as a combination and in conjunction and in course of their business where principal supply is supply of goods*) **liable to tax at rate applicable to Air Conditioners which are principal goods** involved in transaction under Schedule IV, Sr. No. 119 of Notification No 1/2017 (Central tax rate) dated 28-6-2017

### III. High court Judgements

- i) **Patna HC set aside proceedings u/s 73 for recovery of ineligible credit transitioned but not utilized**

**Petitioner: M/s Commercial Steel Engineering Corporation (Patna High court)**

**Facts of the case –**

- The Assessee has unadjusted ITC for FY 2007-08 and 2011-12 which due to inadvertent mistake of the Accountant was not reflected in the returns filed for the subsequent years and it is only in 2017 that the mistake was detected. Refund application filed by the assessee for the FY 2007-08 has been rejected on grounds that it was time barred.

- The Assessee thus filed an application in terms of Section 140 of the Bihar Goods and Services Tax Act, 2017 (“BGST Act”) to take credit of surplus VAT and to carry forward the same in his electronic credit ledger in form of TRAN-1 for the years 2007-08 and 2011-12 amounting to Rs.39,12,560. Revenue raised a demand on tax liability on which transitional credit in Form TRAN-1 was claimed and imposed interest at the rate of 18% for availment of such credit and penalty equivalent to 10% of tax quantified.

**Issue Involved –**

Whether the credit reflected in the electronic credit ledger of the assessee amounts to either availment or utilization of the credit?

**Held by High court –**

The Patna HC in Civil Writ Jurisdiction Case No. 2125 of 2019 held that:

- A plain reading of Section 73 of the CGST Act would confirm that it is only on such availment or utilization of credit to reduce tax liability, which is recoverable under Section 73(1) read alongside the other provisions present thereunder.
- The provisions underlying Section 73 of the BGST Act is self-eloquent. **It is only if such availment of credit is a positive act and carried out for reducing any tax liability by its reflection in the return filed for any financial year, there can be a case of either availment or utilization.** The Assistant Commissioner of State Taxes somewhere got confused to treat the transitional credit claimed by the dealer as an availment of credit.
- Until such time that the statutory authority is able to demonstrate that any tax was recoverable from the Petitioner, **a reflection in the electronic credit ledger cannot be treated as an ‘availment’.** 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.

- The legislative intent reflected from a purposeful reading of the provisions underlying Section 140 of the BGST Act alongside the provisions of Section 73 of the BGST Act and Rules 117 and 121 of the BGST Rules 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.

Therefore, the HC allowed the writ while stating that the order passed by Revenue in purported exercise of power vested in him under Section 73 of BGST Act is held per se illegal and an abuse of the statutory jurisdiction and is accordingly quashed and set aside.

## ii) Interest is payable on Gross Liability

**Petitioner: M/s Megha Engineering & Infrastructures Limited (Telangana High court)**

### Facts of the case -

- Megha Engineering & Infrastructures Ltd., (the petitioner) is engaged in the manufacture of MS Pipes and in the execution of infrastructure projects. The petitioner had delayed in filing the returns in GSTR-3B for the period from October 2017 to May 2018.
- **They had paid tax liability (net of ITC) along with interest calculated on the net tax liability at the time of filing of its returns.** The revenue thereafter, **had issued a letter demanding interest to be calculated on the total tax liability (gross).** In response to the said demand, the petitioner filed a writ before Telangana High Court.

**Issue involved –**

Whether interest is to be paid on Net or Gross Liability?

**Held by High court –**

The Telangana High Court held that interest shall be discharged on gross tax amount which includes the ITC.

Whereas, "The Gujarat HC gave a contradictory view stating that interest shall be charged on net tax liability." Similarly Delhi High Court has granted stay from recovery of interest demanded on gross GST liability till next hearing to be held in 30th Sept 2019.

*As per Finance Bill 2019 Sub Section (1) of section 50, the following proviso shall be inserted*

*"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger."*

## IV. Recent Updates

i) Issues related to GST on monthly subscription/contribution charged by a Residential Welfare Association (RWA) from its members

1. **Whether the maintenance charges paid by residents to RWA exempt from GST? If yes, then to what extent is the same exempted?**

Yes, the supply of service by RWA to its own members by way of reimbursement of charges or share of contribution is exempt under GST upto an amount of Rs.7,500/- per month per member.

2. **Is registration required by the RWA if its aggregate turnover is Rs.20 Lacs or less in a financial year? Whether GST on Maintenance Charges is to paid if the amount of charges is more than Rs.7,500/- per month per member?**

No, where the aggregate turnover of an RWA does not exceed Rs.20 Lakh in a financial year, it shall not be required to take registration and pay GST even if the amount of maintenance charges exceeds Rs.7,500/- per month per member.

Annual Turnover of RWA	Monthly Maintenance Charges	Exemption
More than Rs.20 lakhs	More than Rs. 7500/-	No
	Rs.7500/- or Less	Yes
Rs.20 lakhs or less	More than Rs. 7500/-	Yes
	Rs.7500/- or Less	Yes

3. **Is ITC of GST paid on input and services used by it for making supplies to its members and use such ITC for discharge of GST liability on such supplies where the amount charged for such supplies is more than Rs.7,500/- per month per member?**

Yes, the RWAs' are entitled to take ITC of GST paid by them on capital goods, goods and input services such as repair and maintenance services and more.

4. **Where a person owns two or more flats whether the ceiling of Rs.7,500/- per month per member on the maintenance for the exemption to be available shall be applied per residential apartment or limited to per person?**

The ceiling of Rs.7,500/- per month per member shall be applied separately for each residential apartment owned by him.

5. **How should the RWA calculate GST payable where the maintenance charges exceed Rs.7,500/- per month per member? Is the GST payable only on the amount exceeding Rs.7,500/- or on the entire amount of maintenance charges?**

In case the charges exceed Rs.7,500/- per month per member, the entire amount is taxable. For example, if the maintenance charges are Rs.9,000/- per month per member, GST @18% shall be payable on the entire amount of Rs.9000/- and not on [Rs.9,000 - Rs.7,500] = Rs.1,500/- .

**iv) New Functionality on Form GST ITC 04 on GST Portal:**

<b>Earlier Version</b>	<b>Latest Version</b>
<p><u>Table 4:</u> Details of Inputs/capital goods sent for job-work</p>	<p><u>Table 4:</u> Details of inputs/capital goods sent for job work (includes inputs/capital goods directly sent to place of business /premises of job worker).</p>
<p><u>Table 5:</u> Details of input/capital goods received back from job worker or sent out from business place of job-work</p>	<p><u>Table 5A:</u> Details of inputs/ capital goods received back from job worker to whom such goods were sent for job work; and losses and wastes.</p> <p><u>Table 5B:</u> Details of inputs / capital goods received back from job worker other than the job worker to whom such goods were originally sent for job work; and losses and wastes.</p> <p><u>Table 5C:</u> Details of inputs/ Capital goods sent to job worker and subsequently supplied from premises of job</p>

	worker; and losses and wastes.
--	--------------------------------

**Due date for GST ITC 04 starting from 01st July' 2017 till 30th June' 2019 is 31.08.2019.**

- v) Last date for filing of intimation, in FORM GST CMP-02, for availing the option of payment of tax under notification No.2/2019-Central Tax (Rate) dated 07.03.2019 (by exclusive supplier of services), to be extended from 31.07.2019 to 30.09.2019.
- vi) The last date for furnishing statement containing the details of the self-assessed tax in FORM GST CMP-08 for the quarter April, 2019 to June, 2019 (by taxpayers under composition scheme), to be extended from 31.07.2019 to 31.08.2019.

E-way Bill Updation:

- **Multiple Vehicle On E-way Bill:-**

Earlier, separate delivery challans had to be raised first for consignment moving in multiple-vehicles, followed by generation of separate E-way bills for the same. Now, using the multi-vehicle updation, the multiple conveyance details can be filled in after generating the E-way bill.

- **E-way Bill By End-consumer:-**

In cases where goods whose value exceeds prescribed limits as per state legislature is transported by a consumer's own vehicle (assuming the recipient consumer is unregistered), he has to carry an e-way bill during the transportation of such goods.

If the person transporting the goods is an unregistered person or a normal citizen, he can either request the supplier to generate an e-way bill or he can generate it himself by logging into the e-way bill portal for citizens.



- **E-way bill by SEZ:-**

SEZ supplies are treated similar to how the other inter-state supplies are treated. The SEZ units or developers will have to follow the same E-way bill procedures as the others in the same industry follow.

In case of supplies from SEZ to a DTA or any other place, the registered person who facilitates the movement of goods shall be responsible for the generation of e-Way bill.

---

**Disclaimer:** This document is prepared by A. K. Lunawath & Associates solely for clients and other chartered accountants to provide updates on important amendments in GST. The information is exclusively for educational purposes, professional advice shall be taken before taking any decision based on this document.

(For your feedback or comments, you can reach CA Sumit Kedia | Email: [Sumit@akl.co.in](mailto:Sumit@akl.co.in))