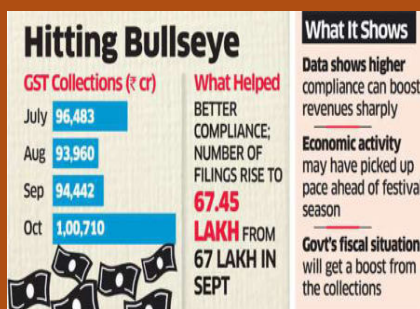


# GST NEWSLETTER

December 2018

## A RECENT SUCCESS



The success of GST is lower rates, lesser evasion, higher compliance, only one tax and negligible interference by taxation authorities.

View full news at:

<https://economictimes.indiatimes.com/news/economy/finance/gst-collections-cross-the-1-lakh-crore-mark-in-october/articleshw/66457681.cms>

## CA SUMIT KEDIA

### INSIDE THIS ISSUE

Key GST amendments and various Advance Rulings with their impact on business. The amendments carried out in the month of December 2018 will be part of our next month newsletter to be issued in January 2019.

### Recent developments –

With data sharing by GSTN with tax authorities regarding mismatches in figures reported in GSTR 1 & 3B, generation of e-way bills without filing of returns, departmental notices will be evident. Offlate GST registrations are being cancelled on account of nonfiling of returns for a period exceeding 6 months. Above developments make it imperative to be compliant and upto date with the provisions of the law.

The next phase in the implementation of GST is the Annual Return filing and GST Audit Report (GSTR 9 and GSTR 9C). With the extension in the due dates, the businesses are conferred with time to prepare for the submission of the forms.

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## I. What's trending in GST:

### 1. Amendment of Rule 55(5) of CGST Rules, 2017:

Where the goods are being transported in a semi knocked down or completely knocked down condition or **in batches or lots** –

The supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice

The supplier shall issue the complete invoice before dispatch of the first consignment.

Each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice.

The original copy of the invoice shall be sent along with the last consignment.

### 2. Amendment of Rule 36(2) of CGST Rules, 2017:

The following has been inserted:

Provided that if the said document **does not contain** all the specified particulars but contains The details of the amount of tax charged,

Total value of supply of goods or services or both,

Description of goods or services

GSTIN of the supplier and recipient and

Place of supply in case of inter-State supply,

**Input tax credit may be availed by such registered person.**

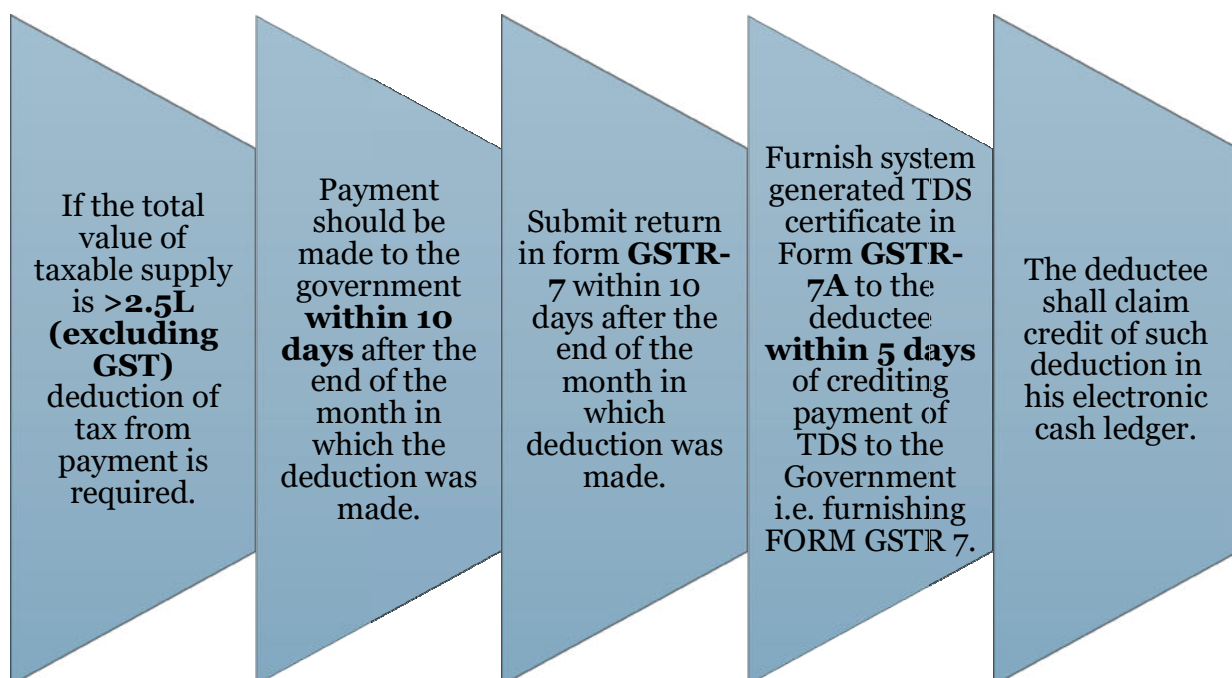
### 3. Notification no.33/2017 dt 15.09.2017: TDS Provisions implemented

The government had suspended the applicability of TDS until 30.09.2018. The TDS provisions are applicable from 01.10.2018 as notified in Notification No. 50 of Central tax dated 13<sup>th</sup> September 2018.

The following taxpayers are required to deduct tax in GST under Section 51 of the CGST Act, 2017:

- A department or establishment of the Central Government or State Government; or
- Local authority; or
- Governmental agencies; or
- an authority or a board or any other body,-
  - set up by an Act of Parliament or a State Legislature; or
  - established by any Government,
  - with fifty-one per cent or more participation by way of equity or
  - control, to carry out any function; or
- A society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 or
- Public sector undertakings.

#### a. Key Points



**b. Rate of tax to be deducted while making payment:**

- Inter-state supply: IGST @ 2%
- Intra-state supply: CGST @ 1%  
SGST @ 1%

**c. Provision for late fees for late filing of TDS Returns in GST**

**1. Fails to furnish FORM GSTR-7 within due date:**

**2. Late fee payable (Section 47(1)):**

- a. Rs. 100/- + Rs. 100/- per day (Maximum Rs. 5,000/-) under CGST Act & SGST /UTGST Act separately.

**3. Fails to furnish FORM GSTR-7A within due date:**

**4. Late fee payable [Section 51(4)]:**

- a. Rs.100/- + Rs.100/- per day (Maximum Rs. 5,000/-) under CGST Act & SGST/UTGST Act separately.

**4. Notification No.52/2018 dt 20.09.18: TCS Provisions:**

It notifies that every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of 1% of the net value of intra-state / inter-state taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the said operator.

It shall come into force from 1.10.2018 by virtue of notification no.51/dt.13.09.18.

The amount of tax so collected by the operator is required to be deposited by the 10<sup>th</sup> of the following month, during which such collection is made.

The operator is also required to furnish a monthly statement in Form GSTR-8 by the 10<sup>th</sup> of the following month.

The details furnished by the operator in GSTR-8 shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A on the Common Portal after the due date of filing of FORM GSTR-8.

The tax collected by the operator shall be credited to the cash ledger of the supplier who has supplied the goods/services through the operator. The supplier can claim credit of tax collected and reflected in the return by the operator in his [supplier's] electronic cash ledger.

## 5. **Circular no. 61/dt 04.09.2018 :**

In case the recipient taxpayer stores his goods in the godown of the transporter, then the transporter's godown has to be declared as an additional place of business by the recipient taxpayer.

Further, when the goods are transported from transporter's godown to the recipient taxpayer's any other place of business, a valid e-way bill shall be required depending upon state-specific e-way bill rules.

### **Analysis:**

The transporter will be required to maintain complete details of goods kept in his warehouse, including details of dispatch, movement as a warehouse keeper.

The taxpayer shall also maintain books of accounts of the additional place of business as per CGST rules.

## 6. **Principal-Agent Relationship Clarified vide Circular 57/31/2018-GST dt 04.09.2018**

The supply of services between the principal and the agent and vice versa would require "consideration" to consider it as supply and thus, be liable to GST.

The key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.

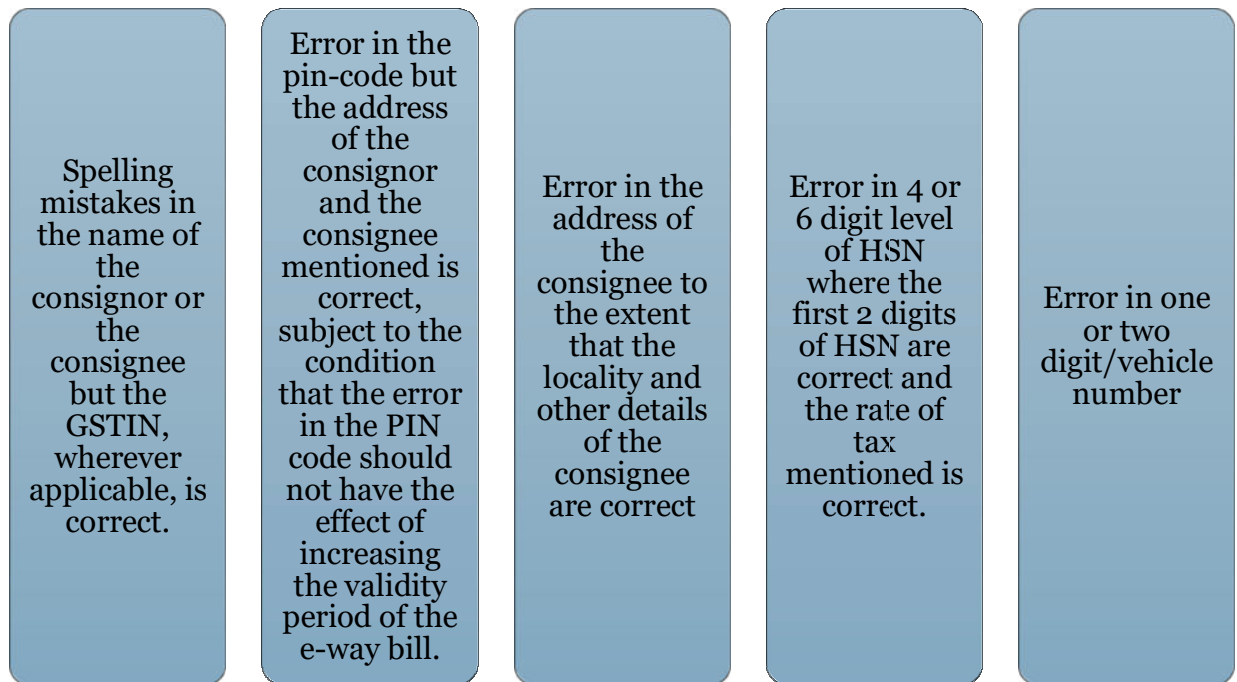
Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the ambit of Schedule I, that is it shall be considered as deemed supply whether it is done for a consideration or not.

However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act.

It shall then be considered as a supply only if it is done for a consideration.

## 7. **Circular No. 64/38/2018 dt 14.09.2018**

In cases where consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act of **detention and seizure of goods and conveyance may not be initiated** in the following situations:



In situations as mentioned above, penalty to the tune of Rs.1000/- would be imposed in form GST DRC-07 for every consignment.

## 8. FORM ITC-04:

New form GST ITC-04 substituted with more columns taking care of following multiple situations, along with losses and wastes-

- Details of inputs/ capital goods received back from job worker to whom such goods were sent for job work
- 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;
- Details of inputs/ Capital goods sent to job worker and subsequently supplied from premises of job worker.

### **Due date Extended:**

The time limit to file form GST ITC-04 for the period July'17 to September'18 has been extended till **31<sup>st</sup> December 2018**.

## 9. Refund related Issues

### a. Procedural Requirements

Submission of invoices for processing of refund claims.

Refund claim shall be accompanied by a print-out of FORM GSTR-2A of the claimant for the relevant period for which the refund is claimed.

It is emphasized that the proper officer shall not insist on the submission of an invoice for the details which are present in FORM GSTR-2A of the relevant period submitted by the claimant.

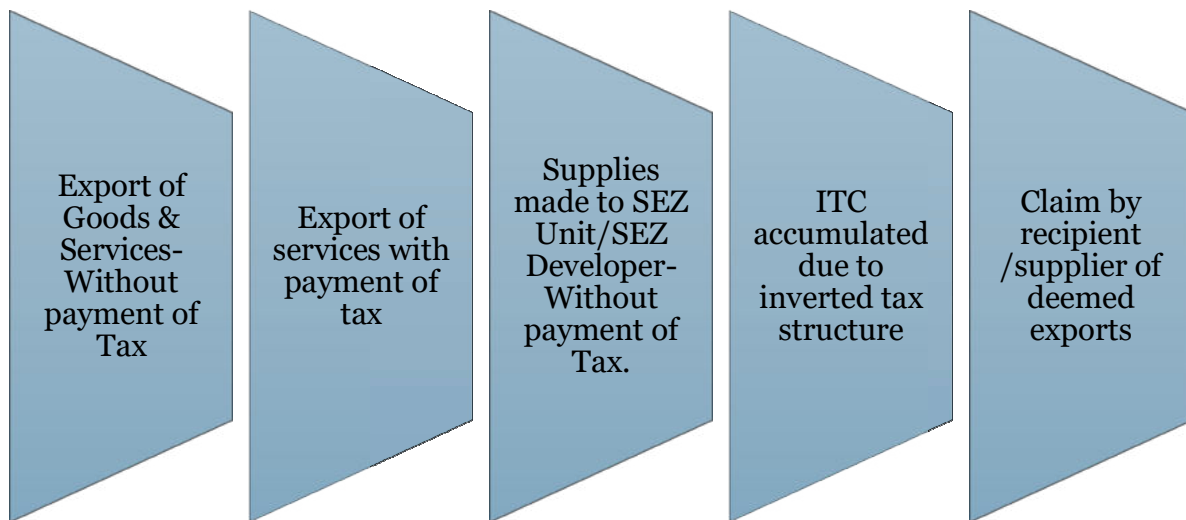
The claimant shall also submit the details of the invoices on the basis of which input tax credit had been availed during the relevant period for which the refund is being claimed.

The claimant shall also declare the eligibility or otherwise of the input tax credit availed against the invoices related to the claim period in the said Annexure for enabling the proper officer to determine the same.

### b. Application for Refund on the Common Portal can be filed for Multiple Tax Periods:

Earlier, refunds had to be applied for on a monthly basis. But, now refund can be applied for multiple periods.

Refunds relating to multiple periods can be claimed for the following:



**c. Restrictions:**

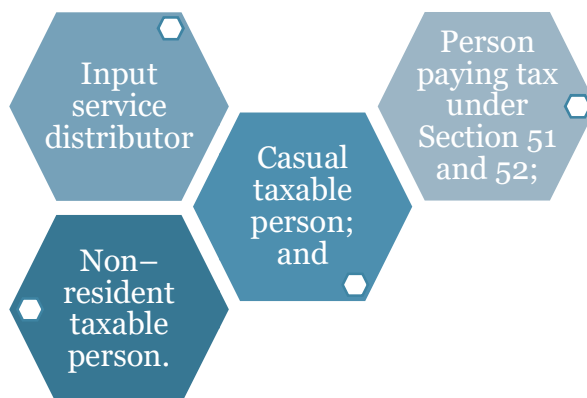
- Multiple tax periods should be within a single financial year.
- Application has to be filed chronologically for tax periods, i.e. if refund application is not filed for a period, then a declaration of “no refund application” is to be provided for the same period.

**II. Annual Return:**

It is a compilation of data filed in GSTR 1 & GSTR 3B during the financial year along with certain additional details.

**1. Applicability**

Section 44 (1) of the CGST Act prescribes that every registered person, **except:**





shall furnish an annual return for every financial year in the prescribed form. It is to be filed for each GSTIN irrespective of the turnover.

## 2. Due date:

The due date to file annual return is on or before 31<sup>st</sup> December of subsequent financial year i.e., for FY 17-18 the due date shall be 31<sup>st</sup> December 2018. However, the same has been extended to **31<sup>st</sup> March 2018**.

## 3. Penalty for Non-Filing:

As per Section 47(2) of CGST Act, late fee is Rs. 100 per day subject to maximum of 0.25% of turnover in a State/UT. Similar provisions of SGST Act will also be attracted.

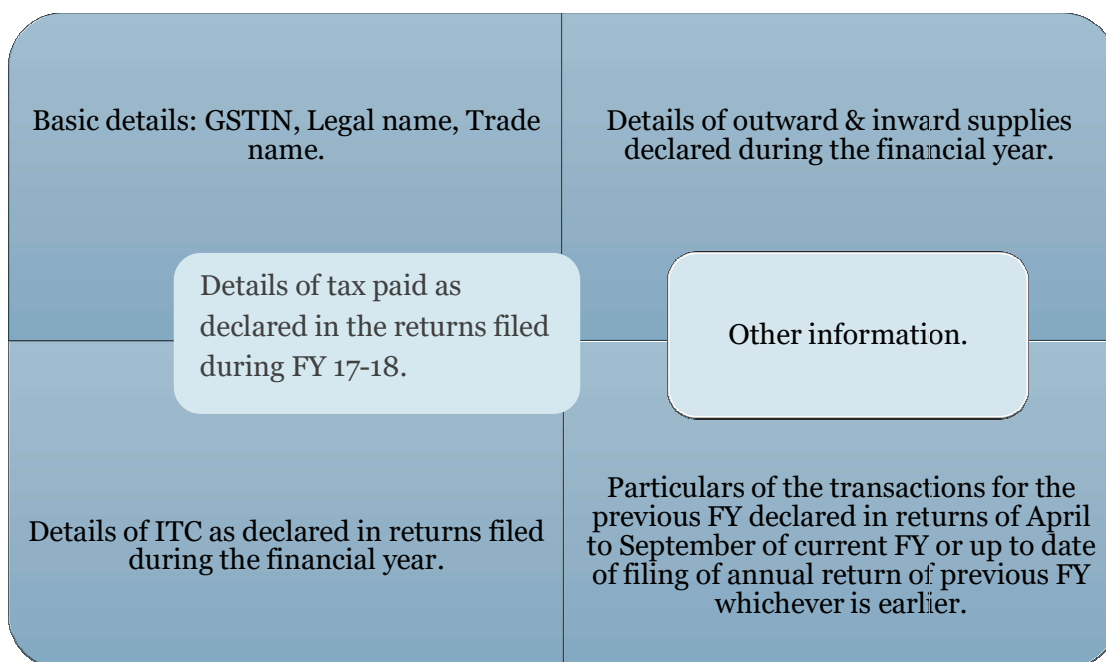
Therefore, late fees of Rs. 200/- per day shall be applicable subject to a maximum of 0.50% of turnover in the state.

## 4. Forms:

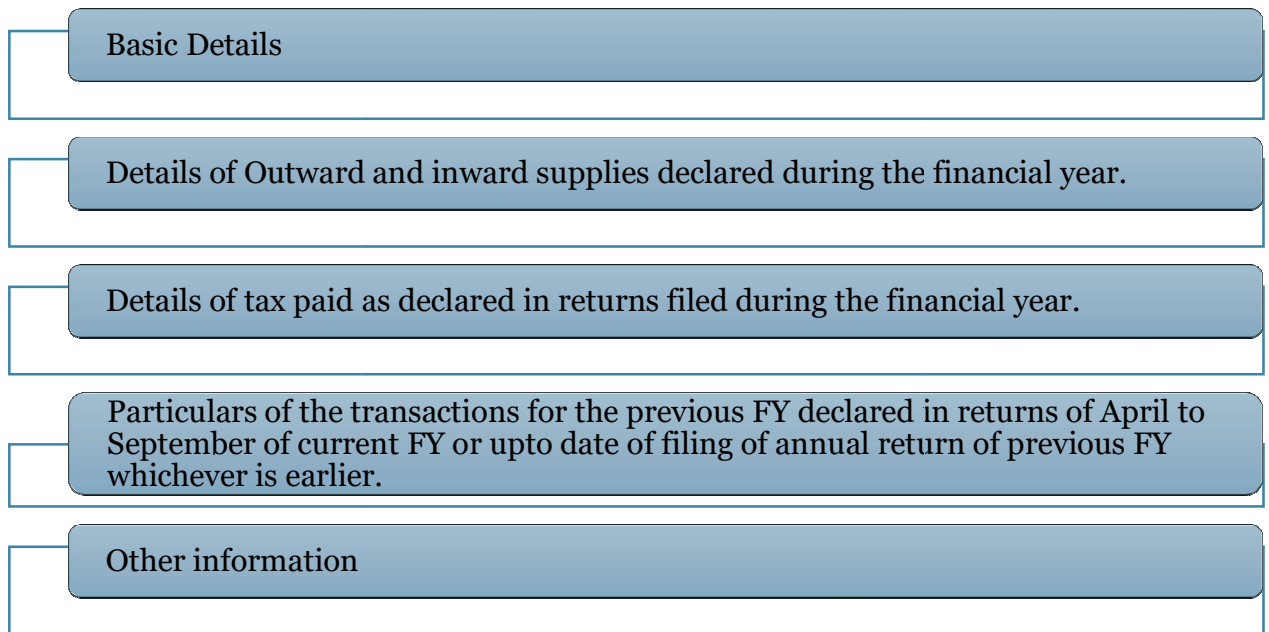
Form **GSTR-9** has to be filed by person registered under the normal scheme and **GSTR-9A** has to be filed by persons registered under the composition scheme.

A registered person who has migrated from Composition scheme to normal scheme or vice-versa will have to file both GSTR 9 & 9A for the respective tax periods.

## 5. GSTR-9 has 6 parts:



## 6. GSTR 9A has 5 parts:



## 7. Key points:

- The details for the period July 2017 to March 2018 are to be provided in this return.
- There is no scope for making changes for the errors committed in the period July'17- March'18 in the annual return as all the details are to be furnished as per the GST Returns filed during the financial year.
- There is no such option in law for revision of the filed annual return in case of any errors.
- Registered persons will have to sort the data according to the classifications in the annual return well- in advance to ensure that the return is filed on time.
- HSN Wise summary of Inward supplies and bifurcation of Input Tax credit availed on the same needs to be furnished in the return. It would be a challenge as it was not furnished in the GST Returns filed.

## III. GST Audit (GSTR 9C)

**GSTR 9C** is a reconciliation statement to be submitted by every registered person whose turnover exceeds the prescribed limits, duly certified by an auditor along with a copy of Audited Annual Accounts.

### 1. Applicability:

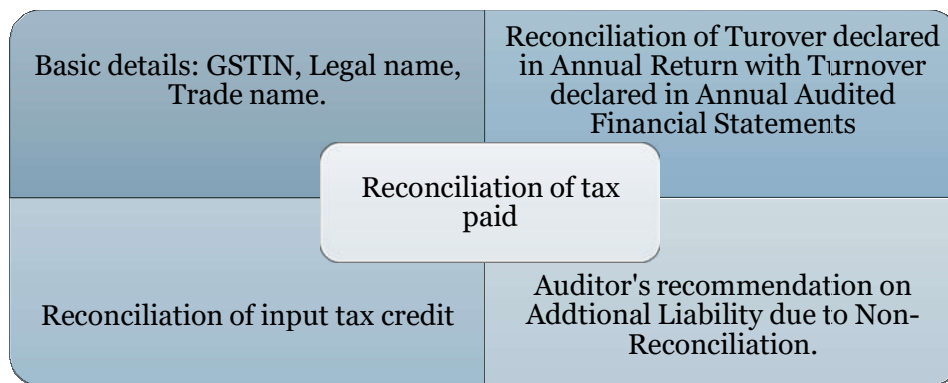
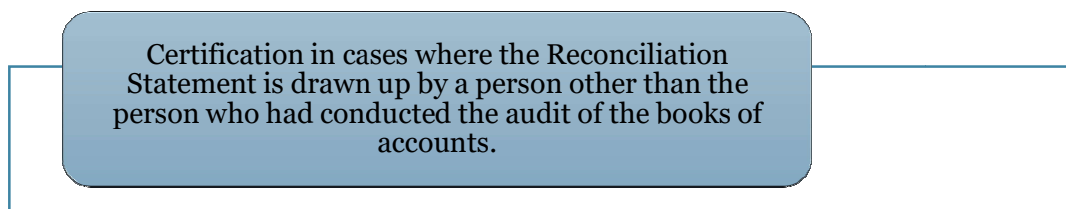
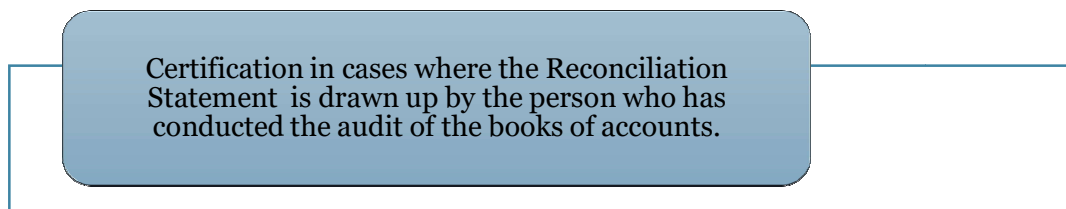
GSTR 9C has to be filed for every GSTIN linked to a PAN, if the aggregate turnover of all such GSTIN's exceeds Rs. 2 Crores.

**2. Due date:**

The due date to file GSTR 9C is on or before 31<sup>st</sup> December following the end of the financial year, i.e. for FY 17-18, the due date would be 31<sup>st</sup> December 2018. However, the same has been extended to 31<sup>st</sup> March 2019.

**3. Penalty for Non-filing:**

There is no specific penalty prescribed for non-filing of audit report and reconciliation statement thereon. However by virtue of general penalty provision under Section 125 of the CGST Act, there shall be levy of penalty which may extend to **Rs. 25,000/-** under this Act (equivalent amount under SGST Act).

**4. PART A: Reconciliation Statement has 5 parts:****5. PART B: Certification has 2 parts:****6. Key points:**

- In cases of a taxpayer with a single GSTIN, details of turnover and input tax credit can be readily derived from the audited financial statements. However, in case of entities with



multiple registrations, turnover and input tax credit will have to be derived from the books of accounts GSTIN Wise for the purpose of reconciliation.

➤ For reconciliation of input tax credit declared as per the annual returns with tax credit as per books of accounts, input tax credit needs to be bifurcated into various categories such as Purchases, Capital Goods and Stationery etc. It would be a tedious process in classifying inputs availed into such categories based on the audited financial statements.

➤ Any additional liability payable on the basis of auditor's recommendation shall be paid by way of cash ledger.

Any balance in electronic credit ledger cannot be utilized for the same.

- The auditor will have to state reasons for differences, if any between Annual Return and Books of accounts.

#### **IV. WHAT DOES THE AAR SAY?**

The recent judgment by the AAR on the back-office support sector rendered to overseas clients does not qualify as exports and would face GST of 18% had rattled the \$167-billion IT services and BPO sector.

Exports do not face tax in the country as they are consumed outside and back-office services have enjoyed this benefit even in the erstwhile service tax regime.

The issue could be taken up by the GST Council or even clarified by the GST Implementation Council once the law committee firms up its view.

#### **Following are further landmark rulings –**

##### **REGISTRATION**

##### **In RE: LIONS CLUB OF POONA KORTHUD**

Facts of the case-

1. Definition of supply requires that club, association, society, or any such body has to provide facilities or benefits to its members. And these facilities or benefits are to be provided for a subscription or any other consideration.
2. In this case, the amounts collected as 'fees' from the members are not for the purposes of making any 'supply'.

3. The club is not formed to provide any facilities or benefits to its members. The fees collected are used for social causes and to meet the expenses incurred in furtherance of the objectives of the Club.
4. There being no supply qua the fees received, the judgment laid down was that **Lions Club did not have to obtain registration.**

### **SEPARATE REGISTRATION**

#### **In RE: M/s. SONKAMAL ENTERPRISES PRIVATE LIMITED**

Facts of the case-

1. The above mentioned entity has its registered headquarters in Mumbai and receives imports at Haldia Port in Kolkata where it has no GST registration. Does the entity have to obtain registration at Kolkata also?
2. As per Section 11(a) of IGST Act, the **place of supply** shall be **location of supplier.**
3. Hence the entity issuing invoices from location of its headquarters to move goods from Kolkata with IGST being charged is well within scope of the GST Act and e-way Bill Rules.

### **COMPOSITE SUPPLY**

#### **In RE: M/s. COLUMBIA ASIA HOSPITALS PRIVATE LIMITED**

Facts of the case-

1. Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 **exempts healthcare services** from GST.
2. However, food and drinks and medicines offered to inpatients, outpatients and attendants will fall be grouped as bundled supply or not is the matter of study under this case.
3. The judgement provides that
  - a. Inpatients offered food, drinks and medicines on advice of Doctor or Nutritionist will be treated as composite supply with healthcare services being principal supply.
  - b. Inpatients and attendants of patients offered food, drinks and medicines not as per prescription of doctor will not form of composite supply and will therefore be liable to tax.
  - c. Medicines supplied to outpatients will also not form of composite supply or exempt supply since they always have the option of buying from another pharmacist.
4. Therefore, the ITC which otherwise remains ineligible/blocked will be available and eligible for credit proportionately to the extent made towards taxable supply.

### **CONSTRUCTION SERVICES**

#### **In RE: M/s BINDU VENTURES**

Facts of the case-

1. Entry 5 of Schedule II states that construction of complex building or civil structure be treated as **supply of service and constructions where entire consideration is received after issuance of completion certificate or after its first occupation** as issued by a **competent authority**, whichever is **earlier** is exempt.
2. In this case, the the bye-laws of the Karnataka state stated that **nobody can occupy a building until “Occupancy Certificate” is obtained.**
3. With this view, the judgement was made that the date of Occupancy Certificate be treated as date of completion of construction.
4. Hence, any consideration received before date of occupany certificate will be treated as supply and consideration received thereafter would not be liable to GST.

### **FOOD SUPPLY TO EMPLOYEES**

#### **In RE: CALTECH POLYMERS PVT LTD**

Facts of the case-

1. In the instant case, the entity recovers the food expenses from employees for the canteen service provided. While there is no profit made on such service, however, such supply of food and further recovery of expenses classified as supply.
2. While the entity argued that as per the defintion of business, the act of providing food to its employees is ancilliary and incidental to its main business.
3. However, the authority held the view that the above act classifies as supply and also receives consideration in return (however mininmal it is) and hence must be treated as outward supply and be liable to tax.

### **TRANSITIONAL INPUT TAX CREDIT**

#### **In RE: JCB INDIA LIMITED, SUYAAN INFRASTRUCTURE PVT. LTD., SIDDHARTH AUTO ENGINEERS PVT. LTD. AND RATNAPPRABBHA MOTORS**

Facts of the case-

1. The parties are of the opinion that the right to avail CENVAT credit had been already accrued under the erstwhile CENVAT Credit Rules 2004 and a replacement act can not make such right ultra-vires.
2. The time curtail on claiming ITC is therefore an invalid action on part of the government.
3. The Authority however held the opinion that a benefit provided cannot be construed as right and if asserted, it would adversely affect the larger public.
4. Hence the petition was dismissed with the view that a concession provided cannot be claimed as a matter of right. Also since the rules of CENVAT credit for availing ITC is also conditional/restrictional, this right cannot be availed. The transitional arrangement made with the time barr is hence within scope of law.
5. The observers however are of the opinion that an AAR cannot take stake on such national issue.

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