

THE GST JOURNAL

Revising GST's journey in 2020

Issue 05
January 2021

A fortnightly journal
that explores the
current scenario of
GST in India.

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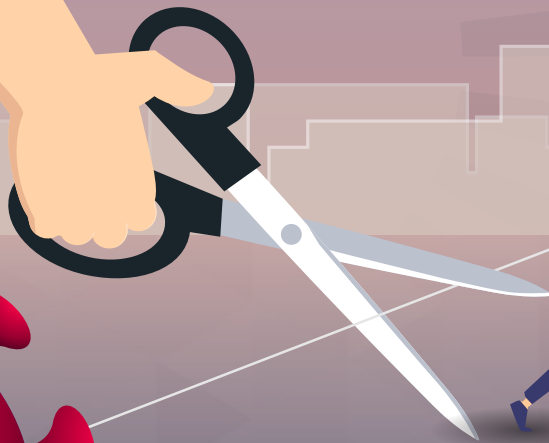
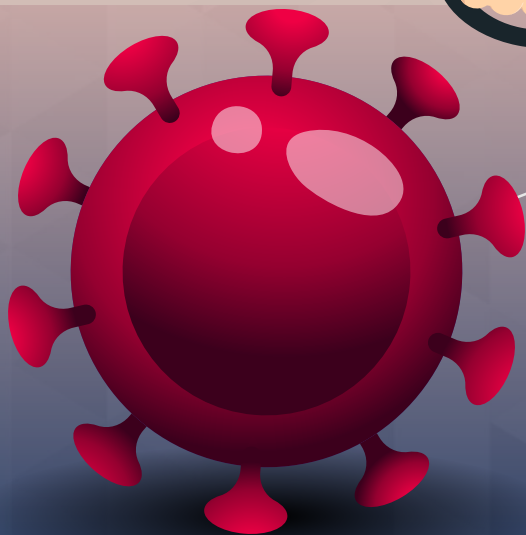
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Note from NJ Jain



**GST, the way it is going,
we have entered
into a perennial
reconciliation age.**

Nitesh Jain

*Managing Partner,
N.J. Jain & Associates*

To help you better understand this tax regime and keep you up-to-date with the happenings of its domain, we bring you “The GST Journal”. It is a fortnightly journey that charts out the latest happenings in the GST domain and analyses the trajectory of the tax system.

Amended with an intention to improve the tedious and complicated indirect tax regime, India adopted the Goods and Services Tax (GST) which brought the multitude of indirect taxes under one umbrella. While it's been approximately three years since the tax regime was introduced, it has been evolving and improving to serve the citizens better and create a simple and straightforward tax system.

In the fifth edition of our GST Journal, we look at the tumultuous and dynamic past year of GST and analyze the multiple changes in the regime introduced over the course of 2020. From the state-centre tussle over the compensation cess to numerous reforms introduced, revisit the eventful journey of GST in the past year.

GST in conversation

From cheque and UPI payment to GST, these 10 rules are changing from January 1

Businesses with monthly turnover of over Rs. 50 lakh to pay at least 1% GST liability in cash

INVOICE

Item Description Quantity Amount

Invoice Furnishing Facility (IFF) functionality now available on GST Portal

Total GST
Total amount

Plea before Madra High Court challenges levy of GST on incorporated clubs

Regional soft drink companies set to shift to 40% GST slab

GST collection hit record high of over Rs. 1.15 Lakh Crore in December 2020: Finance Ministry

GST: Power to block credit mustn't be used to harass taxpayers, Gujarat High Court says

Deadline for filing annual GST return extended

GST in Social media



Taxman

@taxmanindia

#IncomeTax Update!

Sections 69 and 132 of CGST Act are constitutional and fall within legislative competence of Parliament: Delhi HC Read the Full (Madras) High Court Judgment Here: <https://bit.ly/3qbM1HY>

#TaxmannUpdates #TaxmannIndia #MadrasHC #CGST



IRIS GST

@IRISGST

The Hon'ble Gujarat AAR, held that **#GST** at the rate of 18% is applicable on recovery of notice pay from the employees who leave the company without completing the notice period as per the appointment letter.



CNBC-TV18

@CNBCTV18News

The Jewellery retail trade has seen a growth in overall compliance level in since the introduction of **#GST**, However, the higher import on gold has ended up in further fueling gold smuggling.

@SomPR_WGC

Managing Director of World Gold Council India speaks to **@Manisha3005**



NSitharamanOffice

@nsitharamanoffc

In order to curb the GST fake invoice frauds, the Govt on the recommendations of the GST Council's Law Committee has issued a notification to deal with the menace of fraudsters who avail & pass on ineligible ITC by fake or fly-by-night firms. Addressing some myths around the same



Ministry of Finance

@FinMinIndia

#FinMin2020

Indian Customs leads long term structural reforms to ensure Ease of Doing Business. **#CBIC_India**'s Commitment and endeavour towards Trade facilitation and **#EODB**. (1/6) **#EconomicReforms2020 #ReformsAndGrowth**



Tax Guru

@taxguru_in

Gujarat HC rejects TAR/ITR due date date extension writ applications



- **GST Portal Update:** To select the Mismatch Report Option on GST Portal, follow Steps:-

1. Click on GSTR-2B
2. Move cursor to Return Tab then you will find this Mismatch Option

- Communication between Recipient and Supplier Taxpayers on GST Portal

[CLICK HERE TO VIEW](#)

- Due dates for filing of Form GSTR-3B for the Tax Periods from October, 2020 till March, 2021

[CLICK HERE TO VIEW](#)

- Invoice Furnishing Facility (IFF) for Taxpayers under QRMP Scheme

[CLICK HERE TO VIEW](#)

- Form DRC 03 under GST added 2 new rows:

1. Tax Liability for difference between GSTR 1 and GSTR 3B.
2. Tax payment on ITC mismatch.

- Seeks to make the Fourteenth amendment (2020) to the CGST Rules, 2017

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- Seeks to waive late fee for FORM GSTR-4 filing in UT of Ladakh for Financial year 2019-20

[CLICK HERE TO VIEW](#)

- Seeks to bring into force sections 119, 120, 121, 122, 123, 124, 126, 127, and 131 of Finance Act 2020 (12 of 2020)

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- Seeks to extend the time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 28.02.2021.

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- Seeks to make amendment (2021) to CGST Rules, 2017.

[CLICK HERE TO VIEW](#)

Judicial Review

GUJARAT HIGH COURT

★ **ZAVERI & CO. PVT. LTD.
VERSUS UNION OF INDIA
2020 (12) TMI 1042**

- Vires of Rule 96(10) of the CGST Rules as amended by Notification No. 54/2018-19 Central Tax dated 9.10.2018 - retrospective effect or prospective effect - HELD THAT:- The Coordinate Bench in COSMO FILMS LIMITED VERSUS UNION OF INDIA & 3 ORS. [2020 (10) TMI 1099 - GUJARAT HIGH COURT] took the view that the notification No. 54 of 2018 should be made applicable with effect from 23.10.2017 and not prior thereto i.e. from the inception of Rule 97(10) of the CGST Act.
- Mr. Sheth, the learned counsel has drawn our attention to Annexure – A page-20 of the paper book. It is the Notification No. 54 of 2018 dated 9.10.2018. According to Mr. Sheth, the Notification itself makes it clear that the same shall come into force from the date of its publication in the official gazette - According to Mr. Sheth, what has been observed in para-9 of the order passed in the Special Civil Application No. 15833 of 2018 needs to be re-looked, as the Department has started issuing notices indiscriminately on the premise that the Notification would apply with effect from 23.10.2017.
- Let notice be issued to the respondents returnable on 24.02.2020. Till the next date of hearing, the proceedings pursuant to the notice dated 24.11.2020 Annexure – B shall remain stayed.



Judicial Review

CESTAT NEW DELHI

★ M/S SOUTH EASTERN COALFIELDS LTD. VERSUS COMMISSIONER OF CENTRAL EXCISE AND SERVICE TAX, RAIPUR 2020 (12) TMI 912

Declared Service or not - appellant had collected an amount towards compensation/penalty from the buyers of coal on the short lifted/un-lifted quantity of coal; collected amount towards compensation/penalty from the contractors engaged for breach of terms and conditions; and collected amount in the name of damages from the suppliers of material for breach of the terms and conditions of the contract - period from July 2012 to March, 2016 - Whether the appellant is providing a "declared service" contemplated under section 66E(e) of the Finance Act, which service became taxable w.e.f July 1, 2012?

HELD THAT:- Liability has been fastened upon the appellant under section 65B read with section 66E(e) of the Finance Act for the period from July 2012 till March 2016 for the reason that by collecting the said amount the appellant had agreed to the obligation to refrain from an act or to tolerate the non-performance of the terms of the contract by the other party -

Section 68 provides that every person providing taxable service to any person shall pay service tax at the rate specified in section 66B in such manner and within such period as may be prescribed - It is, thus, clear that where service tax is chargeable on any taxable service with reference to its value, then such value shall be determined in the manner provided for in (i), (ii) or (iii) of subsection (1) of section 67. What needs to be noted is that each of these refer to "where the provision of service is for a consideration", whether it be in the form of money, or not wholly or partly consisting of money, or where it is not ascertainable. In either of the cases, there has to be a "consideration" for the provision of such service. Explanation to sub-section (1) of section 67 clearly provides that only an amount that is payable for the taxable service will be considered as "consideration". This apart, what is important to note is that the term "consideration" is couched in an "inclusive" definition.

The Supreme Court in COMMISSIONER OF SERVICE TAX ETC. VERSUS M/S. BHAYANA BUILDERS (P) LTD. ETC. [2018 (2) TMI 1325 - SUPREME COURT], while deciding the appeal filed by the Department against the aforesaid decision of the Tribunal,

also explained the scope of Section 67 of the Act. The Supreme Court observed that any amount charged which has no nexus with the taxable service and is not a consideration for the service provided does not become part of the value which is taxable under Section 67.

It would also be pertinent to refer to TRU Circular dated 20 June, 2012 issued by the Central Board of Excise and Customs as an Education Guide when the Negative List based taxation regime was introduced from July 2012 to clarify various aspects of the levy of service tax. The Board dealt with "consideration" in paragraph 2.2 of this Circular and pointed out that since the definition was inclusive, it will not be out of place to refer to the definition of "consideration" as given in section 2(d) of the Indian Contract Act, 1872.

A service conceived in an agreement where one person, for a consideration, agrees to an obligation to refrain from an act, would be a 'declared service' under section 66E(e) read with section 65B (44) and would be taxable under section 68 at the rate specified in section 66B. Likewise, there can be services conceived in agreements in relation to the other two activities referred to in section 66E(e) - It is trite that an agreement has to be read as a whole so as to gather the intention of the parties. The intention of the appellant and the parties was for supply of coal; for supply of goods; and for availing various types of services. The consideration contemplated under the agreements was for such supply of coal, materials or for availing various types of services. The intention of the parties certainly was not for flouting the terms of the agreement so that the penal clauses get attracted. The penal clauses are in the nature of providing a safeguard to the commercial interest of the appellant and it cannot, by any stretch of imagination, be said that recovering any sum by invoking the penalty clauses is the reason behind the execution of the contract for an agreed consideration. It is not the intention of the appellant to impose any penalty upon the other party nor is it the intention of the other party to get penalized.

The activities, therefore, that are contemplated under section 66E (e), when one party agrees to refrain from an act, or to tolerate an act or a situation, or to do an act, are activities where the agreement specifically refers to such an activity and there is a flow of consideration for this activity - In the present case, the agreements do not specify what precise obligation has been cast upon the appellant to refrain from an act or tolerate an act or a situation. It is no doubt true that the contracts may provide for penal clauses for breach of the terms of the contract but, as noted above, there is a marked distinction between 'conditions to a contract' and 'considerations for a contract'.

It is, therefore, not possible to sustain the view taken by the Principal Commissioner that penalty amount, forfeiture of earnest money deposit and liquidated damages have been received by the appellant towards "consideration" for "tolerating an act" leviable to service tax under section 66E(e) of the Finance Act - Appeal allowed - decided in favor of appellant.

A Quick Recap of 2020 in GST Compliances

JANUARY

The date of the one-time amnesty scheme to file all GSTR-1 FORM from July 2017 to November 2019 is extended till 17th January 2020.

10

MARCH

Certain important notifications are announced:

Special GST compliance procedures announced for the companies during the CIRP period. Aadhaar authentication is now more important for a certain individual getting registered under GST. For tax payers who are not able to avail the provided option of special composition scheme under notification No.2/2019-Central Tax (Rate), FORM GSTR-1 is waived off for Financial Year 2019-20. GSTR-1 and GST Return 3 B have been notified for the months of April 2020 till September 2020.

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JUNE

CBIC Notifications: **57/2020 CT:** Seeks to amend notification no. 52/2020-Central Tax in order to provide conditional waiver of late fees for the period from July, 2017 to July, 2020.

30

JULY

GST Council gave 26 as state code to the merged union territory of Dadra and Nagar Haveli and Daman & Diu w.e.f. 1/8/2020.

13

AUGUST

41st GST council meeting was held. To compensate for the shortfall of GST revenue, the GST Council proposed 2 options to the states: The states can borrow the amount of Rs.97,000 crores to meet the shortfall in income as estimated by the Centre to have risen due to GST. The entirety of the amount, including the shortfall in income due to COVID-19 impact (which rounds up to Rs. 2,35,000 crores), can be borrowed by the state from RBI as a market debt.

27

14

MARCH

39th GST Council Meeting was conducted. In it, an extension to the implementation of the new GST returns and e-Invoicing was announced.

03

APRIL

CBIC Notifications:

31/2020 CT: Seeks to provide relief by conditional lowering of interest rate for tax periods of February, 2020 to April, 2020.

32/2020 CT: Seeks to provide relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to April, 2020.

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JUNE

CBIC Notifications:

49/2020 CT: Seeks to bring into force Sections 118, 125, 129 & 130 of Finance Act, 2020 in order to bring amendment to Sections 2, 109, 168 & 172 of CGST Act w.e.f. 30.06.2020.

50/2020 CT: Seeks to make seventh amendment (2020) to CGST Rules.

51/2020 CT: Seeks to provide relief by lowering of interest rate for a prescribed time for tax periods from February, 2020 to July, 2020.

52/2020 CT: Seeks to provide one time amnesty by lowering/waiving of late fees for non furnishing of FORM GSTR-3B from July, 2017 to January, 2020 and also seeks to provide relief by conditional waiver of late fee for delay in furnishing returns in FORM GSTR-3B for tax periods of February, 2020 to July, 2020.

53/2020 CT: Seeks to provide relief by waiver of late fee for delay in furnishing outward statement in FORM GSTR-1 for tax periods for months from March, 2020 to June, 2020 for monthly filers and for quarters from January, 2020 to June, 2020 for quarterly filers.

54/2020 CT: Seeks to extend due date for furnishing FORM GSTR-3B for supply made in the month of August, 2020 for taxpayers with annual turnover up to Rs. 5 crore.

A Quick Recap of 2020 in GST Compliances

SEPTEMBER

GSTN Update regarding enabling on e-invoice portal.

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OCTOBER

43rd GST Council Meeting.

The GST Council unanimously agreed to extend the cess beyond 5 years.

The Finance Minister said that the Center cannot afford the borrowing cost but they will facilitate state's borrowing and help them obtain loans at reasonable interest rates.

05

01

OCTOBER

E-invoicing is made mandatory for all B2B transactions of companies with an annual turnover of more than 500 crores.

12

OCTOBER

43rd GST Council Meeting.

The GST Council unanimously agreed to extend the cess beyond 5 years.

The Finance Minister said that the Center cannot afford the borrowing cost but they will facilitate state's borrowing and help them obtain loans at reasonable interest rates.

OCTOBER

NIL Return Filing Via SMS for GSTR 1, GSTR 3B, CMP 08, etc.

15

01

NOVEMBER

NIL Return Filing Via SMS for GSTR 1, GSTR 3B, CMP 08, etc.

NOVEMBER

CBIC Notifications:

87/2020 CT: Seeks to extend the due date for furnishing of FORM ITC-04 for the period July- September 2020 till 30th November, 2020.

10

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NOVEMBER

Unique Characteristics of Monthly Payment of Taxes (QRMP) Scheme & Quarterly Return filing.

DECEMBER

CBIC has extended the due date of GST compliance till 31st March 2021

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05

DECEMBER

"All States choose Option-1 to meet the GST implementation shortfall".

DECEMBER

GST annual returns' due dates are extended by the government of India for the financial year 2019-20 till 28th February 2021 from 31st December 2020.

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DECEMBER

CBIC Notification:

94/2020 CT: Seeks to make the Fourteenth amendment (2020) to the CGST Rules, 2017.

Understanding the New Reforms:

Relaxation in compliance due to COVID 19 under GST - Updated

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Critique on recent changes made via Rules

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E-invoicing effective from 01.01.2021

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Critical analysis on Refund of IGST paid on export of goods against Advance Authorization

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HAPPY *New Year* 2021

What do you want for New Year?

Stability





www.njjain.com

ITC

on

DAMAGED GOODS

Let us suppose that a car dealer owns a warehouse full of cars. Due to a natural calamity, this warehouse is flooded. All the cars are damaged - some completely, others partially. In this situation, what happens to the ITC claim of the dealer on those cars? What does the GST Act provide for on ITC against fully damaged goods and partially damaged goods?

[READ MORE](#)



ITC

can be claimed for
**PROMOTIONAL
GOODS**

Bringing a fair conclusion to the long-disputed issue of whether or not ITC is admissible on GST paid for promotional expenses, the Karnataka bench of Authority for Advance Ruling (AAR) ruled that ITC will be available on such cases.

As the supply of promotional goods within related parties, such as franchise, is considered a 'taxable supply,' it attracts GST, which also justifies for eligibility of ITC. Whether franchises would be considered related parties is still a debatable issue, the board was decisive that ITC would not be available on the supply of promotional items to retailers, as it is not treated as a taxable supply

[READ MORE](#)



ITC

eligibility
when the
SUPPLIER
HASN'T PAID
GST

All tax-paying businesses are eligible for a certain amount of Input Tax Credit (ITC) on the GST paid for goods that were purchased for reselling. This is one of the basic tenets of taxation law. But what happens if the supplier of those goods hasn't paid their GST? Can the purchaser avail for ITC under such circumstances?

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N. J. JAIN & ASSOCIATES
CHARTERED ACCOUNTANTS

📍 B1301 - 1305, Ratnaakar Nine Square, Opp. ITC Narmada, Nr. Keshavbaug Party Plot, Satellite, Ahmedabad - 380015

☎ +91 79 400 226 28/ 29/ 30

✉ info@niteshjain.co.in

🌐 www.njjain.com

