

# GOODS AND SERVICES TAX

Monthly Highlights of News, Legislative Reforms, Statutory Changes and Judicial Pronouncements Related to GST

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## ■ GST collections drop to Rs 97,247 Crore in February

"The government dropped the target for current fiscal from the Budget Estimates of Rs 13.71 lakh crore, to Rs 11.47 lakh crore in the Revised Estimates"

GST collections in February dropped to Rs 97,247 crore from Rs 1.02 lakh crore in the previous month, of which the CGST is Rs 17,626 crore, SGST is Rs 24,192 crore, IGST is Rs 46,953 crore and Cess is Rs 8,476 crore. The number of sales return or GSTR-3B filed for the month of January up to February 28, 2019 is 73.48 lakh. The total GST collection in the current fiscal till February is Rs 10.70 lakh crore. The government has lowered the GST collection target for current fiscal to Rs 11.47 lakh crore in the Revised Estimates, from Rs 13.71 lakh crore budgeted initially. For the next fiscal 2019-20, the target has been budgeted at Rs 13.71 lakh crore.

Source: PTI, 01/03/2019

## ■ Relief for Real Estate Sector

The 33<sup>rd</sup> GST Council meeting held on 24th February 2019, at New Delhi, recommended reducing GST rate on real estate sector to 5 per cent from its present 12 per cent. Real estate sector is one of the largest contributors to the national GDP and provides employment opportunities to large number of people. 'Housing for all by 2022' envisions that, every citizen would have a house and the urban areas would be free of slums. There are reports of slowdown in the sector and low off-take of under-construction houses, which needs to be addressed. In this context, the reconvened GST Council meeting lowered the tax rate for under-construction housing to 5 per cent from the present effective rate of 12 per cent. For affordable housing, the GST rate was reduced to 1 per cent from 8 per cent. The new rate shall become applicable from 1 of April 2019. Affordable housing can be defined as "a residential house/flat of carpet area of upto 90 sqm in non-metropolitan cities and 60 sqm in metropolitan cities having value upto Rs. 45 lacs both for metropolitan and non-metropolitan cities".

### Existing Rate

- i. GST levied at 12 per cent with ITC on payments made for under-construction property or ready-to-move-in flats, where the completion certificate is not issued at the time of sale.
- ii. For affordable housing units, the existing tax rate is eight per cent.

### New Rate (w.e.f.1/4/2019)

- i. GST shall be levied at effective GST rate of 5% without ITC on residential properties outside affordable segment;
- ii. GST shall be levied at effective GST of 1% without ITC on affordable housing properties.

### Advantages

- i. The buyer of house gets a fair price.
- ii. 5% is an affordable rate for builders.
- iii. Cash flow problem for the sector is addressed.
- iv. Tax structure and tax compliance becomes simpler.

## Lottery still a controversial issue in the GST Council

The state of Kerala is determined to resist any move to change the current tax structure of lottery by the GST Council. Kerala Finance Minister, Dr. Thomas Isaac said, "Kerala will fight tooth and nail against any move to change the current lottery system."

Kerala is expecting at least 10 states to support this stand and hope that the decision will be made only through consensus. However, a sub-committee was formed to discuss this issue. While Kerala, Punjab and West Bengal were part of the sub-committee, it convened a meeting when Dr. Isaac was in hospital and the Punjab finance minister was presenting the state

budget. The meeting decided to bring in uniform tax rate for government-run lottery and private lottery at the rate of 18 per cent. Such a move would help the private lottery promoters to gain momentum in states like Kerala. The GST rate for lottery run by the state government has been fixed at 12 per cent, while the private lottery is at a higher rate (28 per cent), giving an advantage to the state-run lottery. Hence Kerala has asked the GST Council to hold voting on the issue, which was not possible through videoconference, since it needs to be executed through a secret ballot. Besides, Union finance minister Arun Jaitley was of the opinion that things should not go to the extent of voting. The GST Council had deferred this issue again with GoM for further discussions and find a conclusion amicably. It's likely to be the last meeting of the GST Council before going for the general elections, since code of conduct will be effective early March, no policy decisions can be announced.

■ Why should Kerala oppose?

The lotteries, apart from liquor, are also one of the major sources of revenue in a state with strapped resources. At the same time, it is a politically controversial subject in Kerala due to the alleged irregularities by private promoters few years ago. In 2011, the government began linking lotteries to philanthropic activities. The proceeds of one of Kerala's most popular lottery brands, 'KARUNYA' -- offers financial assistance to poor people fighting serious diseases. The promotional measures for Karunya ensure a feeling among the customers that buying a lottery is not just a ticket to luck but also 'touches the lives of poor'. Also, around two lakh people depend on lottery for their livelihoods, most of whom are aged or not physically fit for engaging in other employment.

Revenue Performance of Lottery (Rs. in Cr.)

Year	Revenue	Profit
2009-10	625.74	114.70
2010-11	557.69	92.02
2011-12	1287.08	394.87
2012-13	2778.80	681.76
2013-14	3793.72	788.42
2014-15	5445.43	1168.26
2015-16	6317.73	1461.16
2016-17	7394.91	1691.05
2017-18	9,021.36	1695.00
2018-19	9262.08	

Source: www.keralalotteries.com

In 2009-10, the state lottery turnover was Rs 625.74 crore, which went up to Rs 9,021.36 crore in 2017-18. Its contribution to the state's coffers, has seen a growth of over 22 per cent in 2017-18, performing better than the previous years. However, net profit from lottery sale has grown only 0.23 per cent during the year. In 2018-19, Rs. 9262.08 crore was received from lottery so far. According to the state budget 2019-20, the lottery turnover is expected to grow to around Rs 11,863 crore. The Finance Minister, Dr. Isaac, stated "We have been able to attain this in lottery sale by strictly defending undesirable trends and preventing the entry of other states' lotteries. The state government has taken a strong stand to impose GST at a higher rate on lotteries being conducted by middlemen". Currently the GST rate for lottery run by the state government has been fixed at 12 per cent, while the private lottery is at a higher rate (28 per cent), giving an advantage to the state-run lottery. The proposed uniform tax rate for government-run lottery and private lottery at 18 per cent would help the private promoters to gain momentum in states like Kerala. This not only affects Kerala's government run lottery industry but also the state's strong political stand against private lottery promoters. These are the major reasons which led the state to oppose GST Council's move to impose uniform tax rate for both state run and private lotteries.

■ Government detects GST evasion of Rs 20,000 crore between in April - February 2019

The government detected goods and services tax evasion of around Rs 20,000 crore between April 2018 and February 2019. Of the Rs 20,000 crore, Rs 10,000 crore was recovered, John Joseph, member (investigations) at the Central Board of Indirect Taxes and Customs (CBIC), said while speaking at an event organised by industry body Assocham. The government will take more measures to increase compliance, and act against evaders so that genuine businesses do not suffer, he said. The government, which set up the Directorate General Analytics and Risk Management under the CBIC, is relying on intelligence-based enforcement, formation of e-way bill squads and systematic analysis of data to curb evasion.

Source: Business Standard, 27/02/2019

■ Revenue department to set up committee to deal with bogus e-way bills

The revenue department is planning to set up a committee of tax officers to suggest steps to deal with bogus e-way bills. Many instances of bogus e-way bills and fake invoices have come to the notice of the CBIC since April last year. "Instances on bogus e-way bills based on fake invoices have been detected since April and the tax evasion involved worked out to about Rs 5,000 crore," an official told PTI. To this effect the revenue department is also working towards integrating the e-way bill system with NHAI's FASTag mechanism beginning April to help track movement of goods. Integration of e-way bill with FASTag would help find the location of the vehicle, and when and how many times it has crossed the NHAI's toll plazas.

Source: PTI, 17/02/2019

■ One lakh students to be trained in GST accountancy by ICAI

The Institute of Cost Accountants of India (ICAI) is all set to train about one lakh students on the soon-to-be launched GST Accountants course. The government is coming out with GST Accountants course and plans to train about one lakh GST Accountants over the next one to one-and-half year, said ICAI president Amit Anand. As per reports, the course fees would be fully funded by the Government of India. The objective of the programme is to ensure the GST compliance especially in the SMEs sector and the intention was to serve this sector with trained and qualified GST accountants.

Source: India Today, 15/02/2019

KERALA

■ Why is Kerala yet to achieve GST growth despite being a consumer state?

Kerala is one of the States which welcomed GST in its early stage of implementation. The present and previous Finance Ministers supported GST hoping it would boost our economy since Kerala is a consumer State. But, in reality, even after one and half year of

implementation, the revenue growth failed to achieve the expected rate. The state may have started picking up but currently the growth is around 10 per cent only. However, States like Tamil Nadu, Karnataka, Telangana and Maharashtra are performing better than Kerala. Consumption in metropolises like Chennai, Mumbai and Hyderabad is obviously high, but Kerala is ahead in the country in per capita consumption. Then why can't Kerala achieve the expected growth?

Dr. Issac, in his recent budget speech, mentioned that we need to analyse the lack of revenue growth in the state. The difference between the above States and Kerala is that, the basis of consumption of these States is the industries situated in those States. As such, the GST leakage would be less. But 75% of the consumption in Kerala is on account of goods produced in other States. In the absence of an effective e-Way bill system, there would be significant tax erosion on interstate trade; there are no check-posts to detect this. Instead, there are no other alternatives also. Even, annual returns are also not available for verification of accounts for detecting tax evasion. Now the GST department has no option other than to satisfy themselves with the tax that the dealers have declared. This situation, combined with the frequent reduction in GST rates is the reason for the decrease in the state revenues.

Source: Budget Speech 2019-20, Page 86, 87

#### Is it possible to achieve 30 per cent GST growth, as claimed in the Budget 2019-20?

The budget documents claimed that the state would achieve 30 per cent growth in GST for the ensuing financial year. It would be thought as impractical to achieve the above-mentioned growth from the existing 10 per cent. But the Finance Minister firmly believes that it is achievable. He also explained the rationale and the steps to be taken for this to happen. In the month of July, annual returns would be available in the system. Then, the tax accounts would be subjected to scrutiny and the sales and purchase details of taxpayers will be matched to detect illegal input tax credit claims and deliberate suppression of turnover. It means the big portion of tax loss can be recouped. The GST Council has assured all States, 14% growth rate for each year compared to the previous year. Our GST collection is 13% below this assured revenue. If we fill this gap, and if we achieve a growth rate of 14% in 2019-20, we will be above the compensation limit. In other words, if GST is increased by 27%, VAT arrear collection would be additional revenue for the State. For effective collection of VAT arrears, it is proposed to utilize amnesty scheme announced in the budget. It is expected to garner additional revenue of Rs. 6189 crore in GST over and above Rs. 22821.6 crores collected during 2018-19. It is targeted to collect Rs. 2000 crore through amnesty.

In order to achieve the above object, major revamp in the GST administrative structure and functionalities is inevitable. The following action plans are to be initiated to achieve the targeted revenue growth rate.

- (a) To co-ordinate the functions of the Centre and State GST departments, a Co-ordination Committee will be formed under the Chairmanship of Finance Minister with Secretary Taxes, State GST Commissioner, Principal Chief Commissioner of Centre and Director General of GST Intelligence.
- (b) The annual return and connected records of 2017-18 will be available from 2019 July onwards and that of 2018-19 would be available from 2019 December onwards. The verification based on these documents has to be implemented in a time bound manner to expect major boost in tax collection. To equip the department for annual returns scrutiny intensive training programmes will be carried out.
- (c) Invoice matching based on GSTR-2A requires a robust back end module and sector-wise data analysis. Facilities will be strengthened to develop such back end module and data analytics. For this purpose, services of professional consultants will be utilized for one or two years.
- (d) From 1<sup>st</sup> June, 2019 onwards all vehicles entering into the State of Kerala, shall be subjected to real time e-Way bill verification using Automatic Number Plate Recognition (ANPR) system. This project will be implemented jointly with Motor Vehicle department.
- (e) Majority of service providers are yet to take registration under GST. A good example is that of hotels. The prevailing tax rates of 18% to 12% for hotels were reduced to 5%. However, only 4600 hotels are registered in GST. Now, a compounding provision with 6% tax is proposed to be implemented for small service providers. In the circumstances, to bring in more persons into the tax net, comprehensive measures like street surveys will be conducted.
- (f) Arrangements would be made for intensive implementation of amnesty scheme. One of the perceived reasons for the failure of amnesty scheme of 2016-17 was the stoppage of revenue recovery steps. Hence revenue recovery steps would be strengthened along with amnesty scheme.
- (g) The tax department would be restructured. Enforcement wing would be strengthened. Steps would be taken for joint inspection of business places in appropriate circumstances based on data analysis, by Centre and State GST officers. One of the main reasons of evasion of tax is the practice of under valuation in invoices. This has to be effectively tackled for increasing the revenue. Conduct of test purchases are necessary to understand the difference in sale and purchase values, whether it reflects in the accounts of the dealer, and whether they are issuing bills for supply. For plugging tax evasion and to strengthen the intelligence wing, secret fund of Rs. 2 crore is earmarked.
- (h) To boost tax collection, the habit of compulsory



insisting of bills is to be encouraged. The suppliers of goods and services and consumers have to be made aware of the necessity of promoting bill culture. For this Rs. 1 crore is allotted. The State GST Department will be empowered to grant orders or instructions relating to using special billing software for the supply of specified goods or services. From 2019-20 onwards, e-Ticketing in approved software will be made compulsory with respect to cinema halls.

- (i) The accounting software developed by GSTN would be provided free of cost to traders.

Source: Budget Speech 2019-20, Page 86-90

### CASE LAWS

**GST registration to be taken from State where supply of goods/services or both effected: AAR Rajasthan**

K M Trans logistics (P.) Ltd., In re (2019)

The applicant, having the registered office at Jaipur, Rajasthan is providing transport services to various manufactures of motor vehicles for carrying their vehicles from factory to the various cities in India where the authorised dealers are located. In order to park their trucks and trailers the applicant has taken on lease the vacant lands in various cities. The vehicles are parked as there is always the risk of theft of tyres/motor parts and also drivers can rest at proper place. The applicant has sought ruling on the question, 'what should be the place of business to be considered for the purpose of registration'?

The authority for advance ruling observed that no billing is done from any other state other than Jaipur and even input services bills are billed at Jaipur. Further, the registration under GST regime is applicable on place of supply of goods and services or both. In the instant case, the place of supply is from the State of Rajasthan. Therefore, applicant is required

### STATUTORY CHANGES

Notification No. 08/2019- Central Tax, dated 08-02-2019	Seeks to extend the due date for furnishing of FORM GSTR 7 for the month of January, 2019 till 28.02.2019
Notification No. 09/2019- Central Tax, dated 20-02-2019	Seeks to extend the due date for furnishing FORM GSTR-3B for the month of January, 2019 to 28.02.2019 for registered persons having principal place of business in the state of J&K; and 22.02.2019 for the rest of the States.
Notification No. 02/2019- Integrated Tax (Rate), dated 04-02-2019	Seeks to rescind SI. No. 10D of Notification No. 09/2017-Integrated Tax (Rate) dated 28.06.2017 in relation to exemption of IGST on supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees.
Circular No. 88/2019, dated 01/02/2019	Seeks to make amendments in the earlier issued circulars in wake of amendments in the CGST Act, 2017 (which shall come into force w.e.f. 01.02.2019).
Circular No. 89/2019, dated 18-02-2019	Seeks to clarify situations of mentioning details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1.
Circular No. 90/2019, dated 18/02/2019	Seeks to clarify situations of compliance of rule 46(n) of the CGST Rules, 2017 while issuing invoices in case of inter- State supply.
Circular No. 91/2019, dated 18/02/2019	Seeks to give clarification regarding tax payment made for supply of warehoused goods while being deposited in a customs bonded warehouse for the period July, 2017 to March, 2018.
Order No. 1/2019 - Central Tax, dated 01/02/2019	Seeks to supersede Removal of Difficulties Order No. 1/2017 - Central Tax dated 13.10.2017 in view of the amendment to Section 10 of the CGST Act, 2017 (regarding allowing registered persons opting for Composition Scheme to supply services up to a limit) coming into force w.e.f. 01.02.2019
Order No. 2/2019 - Central Tax, dated 01/02/2019	Seeks to amend Removal of Difficulties Order no 4/2018-CT to extend the due date for furnishing of FORM GSTR 8 for the months of October, 2018 to December, 2018 till 07.02.2019
Order No. 1/2019 - Union Territories Tax, dated 01/02/2019	Seeks to supersede Removal of Difficulties Order No. 1/2017 - Union Territory Tax dated 13.10.2017 in view of the amendment to Section 10 of the CGST Act, 2017 (regarding allowing registered persons opting for Composition Scheme to supply services up to a limit) coming into force w.e.f. 01.02.2019.

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