



Tax Bar Association

(Registered under the Societies Registration Act, 1860)

Sreeram Market, 2nd Floor

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Email: taxbarghy1977@gmail.com

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Date: 29th August, 2019

To

Smt. Nirmala Sitaraman

Hon'ble Finance Minister of India

Guwahati

Respected Madam,

Sub : Issues and Suggestions in Implementation and Compliance with GST Law

Formed in the year 1977, Tax Bar Association, Guwahati is a prestigious professional association having membership strength of 429 members consisting of Chartered Accountants, Company Secretaries, Cost Accountants, Advocates and Tax Consultants.

With reference to the subject cited above, we would like to bring to your kind notice the following issues:

A) Issues in maintaining details of HSN/SAC Summary of Supplies

As per the provisions of Central Goods and Services Tax, all assesseees having turnover above Rs. 1.5 crore are required to maintain and submit HSN/SAC wise details of Inward and outward summary which is very complex and difficult for small and medium enterprises. For a manufacturing unit, it is easy to maintain HSN summary of outward supply since the unit generally manufactures either one or very few items, but for a trader who deals in numerous items, it becomes difficult for them to maintain HSN wise summary. Again there are multiple tax rates under the same HSN.

It is humbly requested to abolish the requirement of maintaining HSN/SAC wise details of inward and outward supply for assessee having turnover below Rs. 200 crores.

B) Procedural difficulty in complying with the provisions of Rule 42 of the CGST Rules 2017

As per the provisions contained in Rule-42 of the Central Goods and Services Tax Rules, every assessee who is having both taxable & non taxable outward supplies is required to reverse proportionate Common Input Tax Credit every month. This exercise is very complex to comply every month as it requires

- i) Identification of the common credit,
- ii) Identification of the taxable and non taxable supply,
- iii) Calculation of the proportionate credit, and
- iv) Reversal thereof every month.

To simplify and for ease of compliance without loss of any revenue to the Government, it is suggested that such reversal should be required to be done only once in a year in the month of March.

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C) Procedural difficulty in complying with the provisions of Rule 43 of the CGST Rules 2017

As per the provisions contained in Rule-43 of the Central Goods and Services Tax Rule, every assessee who is having both taxable & non-taxable outward supply is required to reverse 1/60th portion of Input Tax Credit on capital Goods every month in proportion to the value of taxable and non- taxable supply continuously for five years. This exercise is very complex to comply every month as it requires maintaining ITC details of each and every item of capital goods separately which is very cumbersome and complex.

To simplify and for ease of compliance without loss of any revenue to the Government, it is suggested that such reversal should be required to be done only once in a year in the month of March.

D) Procedural difficulty in complying with the provisions of Sec 17(3) of the CGST Act 2017

As per the provisions of Sec 17(3) read with explanation to this section and explanation 2 to Rule 45, for the purpose of reversal of Input Tax Credit value of Land and 1% of the value of transaction in securities is considered as exempt supply. It is very difficult to comply with this provision in cases where sale of land and transaction in securities is only for the purpose of investment and which are outside the regular books of accounts maintained in the course of business.

To simplify and for ease of compliance without much loss of revenue to the Government, it is suggested that sale of land and transaction in securities should not be considered as exempt supply as these are not covered under the definition of goods also.

E) Revision of GSTR-3B, GSTR-1 & GSTR-9

To err in human, and GST being a new law with complex return formats & technical glitches, and numerous changes in last two years, many assessee made some or other mistakes in the returns which are being noticed at the time of audit or filling of Annual return in Form-9 & 9C. The revision and/ or rectification of returns is allowed under all Tax Laws except GST.

It is suggested that there should be provision of at least one time revision of all the returns, i.e., GSTR-3B, GSTR-1 & GSTR-9.

F) Waiver of Late fees

One time opportunity was allowed to those who had not filed their returns from July, 2017 to September, 2018 to file the same without payment of late fee. However, those who had filed with late fee prior to grant of this opportunity were not allowed refund of the late fee already paid by them. This has created a feeling of discrimination among the tax payers.

We humbly suggest that all late fees should be waived for the returns upto the month of March, 2019 and the late fees already paid should be refunded.

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G) New GST return Forms

Most of the assesseees are presently busy in Income Tax Returns/ Income Tax Audit/GST Audit/ ROC Filling till Dec 2019 so it is very difficult for the assessee as well as professionals to understand and implement the new GST return forms at present. At the same time, mid-year implementation of new forms will also lead to various problems and complications in preparing Annual Return for the year 2019-2020.

It is suggested that the new GST return forms which are proposed to be made applicable from Oct 2019 should be made applicable from April 2020 only.

H) Issues in GSTN Portal

i) Technology In-compatibility

Present GSTN portal is using various advanced technologies e.g., Em-Signer, J-Son Structure of files, Advance validity tools etc. Majority of the assessee other than big corporate houses including the SME professionals dont have the access /aware of such advance technologies. *Thus it is requested that the GSTN portal should use only those technology which are easy to understand and implement by the small and medium enterprises.*

ii) Technical Glitches

Present GSTN portal is having too many technical glitches on regular basis especially on the due dates of filling return the GSTN sever is down which is a hindrance to timely compliance.

iii) Error Report Generation /Updation

When every there is an error while uploading any return, the portal gives a error file, but the error file is not generated or real time basis. The site shows wait for 20 minutes but some time its takes hours to generate the error report. At the same time while filling GSTR-1 online after submitting the data it should 15-20 minutes every time to update the respective table. There is national loss of productive human and technical resources because of these issues.

iv) Single Credit note against Multiple Invoice:

As per the provision of The CGST Act and Rule as amended a single credit note can be issued against multiple invoices, however GSTR-1 return as available on the GSTN portal does not provide such mechanism. The same need to be immediately provided.

v) Negative figures in GSTR 3B:

GSTR-3B does not allow negative figures in sales and taxes. An assessee who does not have a sale in a particular month but has sales return, is not able to report the same because negative sales and taxes figures are not allowed in GSTR 3B. Further negative figures are also not allowed for reversing input tax credit wrongly claimed excess in any month.

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I) Administrative Issues

a) **Roving Enquires and Notices**

The Departmental officers are making roving enquiries and issuing notices which are not in compliance and spirit of the law. Few issues in the notices are as follows:

- i) In case of “Bill to Ship to” transaction, the vehicle is detained because of non-availability of second invoice with the driver which is not mandate of the law and non-acceptance of bank guarantee and instance for cash challan only.
- ii) Common notice served to all assesseees which is illegal.
- iii) Notice asking details of utilisation of input citing reason that “95% of your output tax is paid by using ITC”. If an assessee deals in goods having tax rate of 18% with a margin of 10% in his business, there can not be output liability after adjustment of ITC more than 1.8% if he uses ITC of purchases only. These types of notices are just to harass the assessee.
- iv) In case of notices for GST non-compliance if no anomalies are found the officers ask for details of service tax era without any conclusive evidence of evasion.
- v) Post completion of Service Tax, the assesseees are not provided with the report of completion of service tax period covered.
- vi) For similar issues notices are being from various wings of the same department, i.e., range officer/anti evasion/audit cell. In spite of the fact that scrutiny was already conducted by scrutiny cell for a particular period.
- vii) Issue of notices for mis match of E way bill data with GSTR-1 whereas E-way Bill might have been issued for various reason e.g. movement of stock from Godown to shop or between branches and at the same time the turnover may not match because of credit note issued.

b) **Issue of Serving of Notice**

As per the provision of Sec 169 of The CGST Act notice can be served simply by uploading the same in the common portal. The section need to be suitably modified to provide that every notice over and above being uploaded on the common portal but be served by way of message and email to the registered number and email address.



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J. Issues in Form-9 & 9C

a) **Complex GSTR-9 & 9C**

The prescribed GSTR-9 & GSTR-9C are very complex and difficult to understand. The Details required in these forms are not maintained by most of the assessee including big corporate house. Thus it is humbly requested to simplify GSTR-9 & 9C forms

b) **Requirement of Details of Input Tax Credit**

In the prescribed GSTR-9 & GSTR-9C details of input tax credit availed are required to be provided in various tables which are practically impossible to provide correctly.

Table-6 of GSTR-9: Bifurcation of ITC into capital Goods, Input & Input services. Bifurcation of tax paid under Reverse Charge Mechanism into registered and unregistered. These details were neither required in GSTR-3B & GSTR-1 nor are the same being maintained by client. **Hence requirement in Table 6 of GSTR-9 should be done away with**

Table-8 of GSTR-9: Reconciliation of Input Tax Credit with auto-populated data in 8A of the table. However, where from the data in table 8A has been taken in best known to GSTN only. It is said that bill which are uploaded by supplier after 31st May 2019 is not considered, whereas there is no mechanism in the portal to find out which bills are uploaded after 31st May 2019. **Thus the details of figures auto-populated in Table-8A should be provided for reconciliation.**

Table-18 & 19 of GSTR-9: Details of HSN/SAC wise Input Tax Credit and output tax is required to provided in Table 18 and 19 and the data has to be matched nearest to two digit in paisa which is the biggest hindrance in filling of GSTR-9 and because of which the percentage of return filling is low on all India basis. **Thus the requirement of table 18 & Table 19 should be done away with.**

Table-14 of GSTR-9C: Details of expenditure/purchase wise Input Tax Credit in books as well as availed need to be provided. The assessee had maintained single CGST/SGST/IGST input tax ledger. At the same time there is no requirement under law to maintain such data. Thus it is impossible for the assessee to provide such data in present format. **Thus the requirement of table 18 & Table 19 should be done away with.**

c) **Requirement of Cash flow in Form-9C**

Part-B of form-9C requires the auditor to certify and upload the cash flow statement. However there is no provision under any law including GST law to prepare cash flow statement except for few corporate assessee. Thus the requirement of cash flow statement must be made optional wherever required under Companies Act.

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d) Requirement of Audited Statement in case of non-business assessee

Books of Accounts of assessee are audited either under Income Tax Act or Companies Act. There are assessees under GST law whose turnover is more than 2 crore but are not required to get the accounts audited as because either his turnover from business is less than 2 crore or even if audited some transactions are taxable under GST but are outside business books of accounts. In such cases uploading of audited financial statement is not possible.

e) Payment of out put tax Liability on filling of GSTR-9 & GSTR-9C & ITC claim

At the time of filling of GSTR-9 & GSTR-9C if some amount of output liability is computed as payable need to be paid through DRC-03. As per the instruction to these forms the same has to be paid by way of cash ledger. Payment of liability determined should be allowed to be paid through available input tax credit.

Further, input tax credit should be allowed through Annual Return and time limit for claiming such ITC should be linked with extended due date for filing of Annual Return. Not allowing claim of legitimate ITC which was not claimed due to ignorance should not be the intent of the law.

f) GSTR-9 & GSTR-9C for 2018-19

Presently GSTR-9 & GSTR-9C for 2018-19 is not available on the GSTN portal. The due date for the same is 31st Dec 2019. Both the forms should be immediately made available and the due date for filling GSTR-9 & GSTR-9C should be extended upto May 2020

K. Issues in E-way Bill

- Consolidated Report for E Way Bills generated during a financial year is not available for reconciliation and verification at assessee's end. E Way bills issued report is available for maximum 5 days time. This is a need for audit and verification purposes.
- Vehicles are being detained by the GST officer on flimsy ground even in those cases where there is neither any attempt to evade nor actual evasion of tax. There was a clear cut circular that in case typing error a maximum fine of Rs. 500/- be imposed. However, the field officers are forcing the assessee to pay 100% tax & penalty.
- There are genuine cases where e-way bill get expired during transit due to various unavoidable circumstances, like break down of vehicle, road blocked, delay in movement of vehicle and many other genuine reasons. In those cases there is no clear cut provision for extension of e-way bill if not done within 8 hours. As per the provisions of law the commissioner has been empowered to extend the validity on special circumstances. However practically it is not possible to apply to the commissioner when the vehicle is far away from jurisdictional commissioner.

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L. Issues in Payment of Tax

Payment of Tax under GST/Income Tax or any other law is not accepted by State Bank of India after 8 PM, whereas all other banks including all private banks accept payment till 12 midnight. SBI being the largest bank and used by most of the assessee should allow payment of tax after 8 pm.

M. Reverse Charge Mechanism

Reverse charge mechanism under GST laws is creating lots of confusion and compliance problems for the assessee. Further, RCM is not generating any revenue for the Govt.

We suggest complete abolition of RCM mechanism under GST laws.

Thanking you, we remain.

Sincerely yours,

For Tax Bar Association

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