

GOODS & SERVICES TAX COUNSELLOR

(GSTC)

(An inhouse tri-monthly newsletter on GST)
(for private circulation)

Agarwal Sanjiv & Company

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Editorial



In Indian economy, core sector has shown robust growth @ 7.9% in eight sectors. India, presently the fifth largest economy of the world, may beat Germany, 4th largest economy by 2025-2026. Banks may play a critical role in the economic growth. These views have been expressed by RBI Dy. Governor.

Fiscal defect for first half of current year 2022-23 has touched 37% of full year target. Fiscal defect may remain at 6.4% of GDP in Financial Year 2023. Centre's gross tax collections have shown healthy growth so far and are expected to surpass the full year budgeted target despite the Customs and excise duty cuts. While the scenario is optimistic on the tax collections front, the non-tax revenue could see some shortfall primarily due to lower dividend transfer from the RBI in the current fiscal year.

(Continued.....)



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"Winning isn't everything, but wanting to win is".

-Vince Lombardi





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●Volume 8 ●Issue 31 ●Date: 01 November, 2022

Editorial continued....

October, 2022 GST collection has once again crossed Rs. 1.50 lakh crore with Rs. 1,51,718 crore GST collection. This is the second highest collection so far and the collection has breached Rs. 1.40 lakh for eight times in a row. The gross GST revenue collected in the month of October, 2022 is Rs. 1,51,718 crore of which CGST is Rs. 26,039 crore, SGST is Rs. 33,396 crore, IGST is Rs. 81,778 crore (including Rs. 37,297 crore collected on import of goods) and Cess is Rs. 10,505 crore (including Rs. 825 crore collected on import of goods), which is second highest till date.

In an interesting decision, it has been held by a Delhi Court that an accused cannot be forced to provide the pass word of the electronic gadgets seized during investigation. However, help can be taken from specialized agencies or persons to crack the pass word to access the data of computer etc. An accused has a fundamental right to maintain silence as per Article 20(3) of the Constitution and forcing him to reveal password would be violative of the right. Will the investigating agencies including taxation laws be able to digest this ? What next ?

Dr. Sanjiv Agarwal

Editors: Neha Somani [B.Com, FCA];
Chief Editor: Dr. Sanjiv Agarwal [FCA, FCS, ACIS (UK)]

GST UPDATES

(Crisp updates related to GST)

Mandatory mentioning of HSN codes in GSTR-1

- As per Notification No. 78/2020 – Central Tax dated 15th October, 2020, it is mandatory for the taxpayers to report minimum 4 digit or 6 digit of HSN Code in table-12 of GSTR-1 on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year. To facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal.
- Part I & Part II of Phase 1 has already been implemented from 01st April 2022 & 01st August 2022 respectively and is currently live on GST Portal. From 01st November, 2022, Phase-2 would be implemented on GST Portal and the taxpayers with up to Rs 5 crore turnover would be required to report 4-digit HSN codes in their GSTR-1.

[Source: GSTN dated 22.10.2022 ([//www.gst.gov.in](http://www.gst.gov.in))]

Filing TRAN forms for Taxpayers from Daman and Diu & Ladakh

- Due to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli and Daman and Diu, the taxpayers of Ladakh and earlier 'Daman and Diu' region have been allotted new GSTINs. There is therefore a doubt as to how to file the TRAN-1 and whether it would be linked with the old TRAN-1 or not.
- The aggrieved taxpayers of both the above-mentioned regions are hereby informed that they can file or revise their TRAN-1 or TRAN-2 Forms only through their newly allotted GSTINs. Kindly do not use the old GSTIN for filing of TRAN forms.
- The respective tax administrations of both the regions are also advised to accordingly facilitate the taxpayers and keep the above information in mind while processing the TRAN claims under the new GSTINs by linking both the old and revised TRAN-1 forms filed by such taxpayers.

[Source: GSTN dated 25.10.2022 ([//www.gst.gov.in](http://www.gst.gov.in))]

Payment of Pre-deposit for pre-GST cases in GST era

- CBIC has clarified on manner of payment of Pre-deposit for cases pertaining to Central Excise and Service Tax in GST regime.
- Payment of Pre-deposit as a pre-condition for filing appeal is neither in the nature of duty on or can be treated as arrear under the erstwhile Service Tax / Excise laws and hence cannot be considered to be covered under the transitional provisions of CGST law.
- GST law provides an option to pay admitted tax dues and pre-deposit through electronic cash or credit ledgers.
- Form GST DRC-03 is prescribed for payment of tax, interest, penalty under sub-section (5) and (8) of both section 73 and 74, and section 129 (1) of the CGST Act, 2017 or any other payment due in accordance with the provisions of the CGST Act, 2017 as specified in rule 142(2) and 143(3) of CGST Rules, 2017
- In GST regime for appeal mechanism under section 107 of the CGST Act. 2017, Rule 108 (1) of the CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with option of payment of admitted amount and pre-deposit through electronic cash/credit ledger. Thus, under GST Act also, Form GST DRC - 03 is not a prescribed mode for payment of pre-deposit.
- It has been clarified that payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposit under section 35F the Central Excise Act, 1944 and Section 83 of Finance Act, 1994 read with section 35F of the CEA.
- Further, there exists a dedicated CBIC-GST Integrated portal, <https://cbic-gst.gov.in> [Board's Circular No. 1070/3/2019-CX dated 24th June, 2019 refers in this regard], which should only be utilized for making pre-deposit under the Central Excise Act, 1944 and the Finance Act, 1994.

[Source: Instruction - CBIC-240137/14/2022-Service Tax Section-CBEC issued by CX & ST Wing, Ministry of Finance, dated 28.10.2022]

GST Collection for October, 2022

- The gross GST revenue collected in the month of October 2022 is **Rs. 1,51,718 crore** of which CGST is **Rs. 26,039 crore**, SGST is **Rs. 33,396 crore**, IGST is **Rs. 81,778 crore** (including Rs. 37,297 crore collected on import of goods) and Cess is **Rs. 10,505 crore** (including Rs. 825 crore collected on import of goods), which is second highest till date.
- The revenue for October, 2022 is second highest monthly collection, next only to the collection in April, 2022 and it is for the second time the gross GST collection has crossed Rs. 1.50 lakh crore mark.
- This is the ninth month and for eight months in a row now, that the monthly GST revenues have been more than the Rs. 1.4 lakh crore mark.
- The highest collection has been in States of Tamilnadu, Gujarat, UP and Haryana.

(Source: PIB Press Release ID1872591 dated 01.10.2022)

GST IN NEWS



(Important clipping from newspapers)

OCTOBER GST COLLECTION STANDS AT RS 1.52 LAKH CRORE, SECOND-HIGHEST SINCE IMPLEMENTATION

GST collections for the month of October stood at Rs 1.52 lakh crore, according to the data shared by finance ministry on Tuesday. This is the second highest collection since implementation of GST. Goods and Services Tax (GST) collection had touched a record high of nearly Rs 1.68 lakh crore in April. In October last year, the revenues stood at over Rs 1.30 lakh crore.

The gross GST collected in the month of October 2022 is Rs 1,51,718 crore of which Central GST is Rs 26,039 crore, State GST is Rs 33,396 crore, Integrated GST is Rs 81,778 crore (including Rs 37,297 crore collected on import of goods) and Cess is Rs 10,505 crore (including Rs 825 crore collected on import of goods), which is second highest till date. GST mop-up has been over Rs 1.40 lakh crore for eight months in a row. During the month of September 2022, 8.3 crore e-way bills were generated, which was significantly higher than 7.7 crore e-way bills generated in August 2022.

(Source: Economic Times dated 01.11.2022)

TAX ON DIGITAL ASSETS COULD GO UP, GOVT MULLING GST ON CRYPTO MINING, SUPPLY

The government is examining the applicability of goods and services tax (GST) on various cryptocurrency transactions including mining of these digital assets. The issue is being examined internally at the Central Board of Indirect Taxes and Customs (CBIC) and a proposal will be taken to the GST Council.

There are several aspects of the operation which intersect with GST as a tax," he said in an interview to ET. The budget has proposed a flat 30% capital gains tax on virtual digital currencies beginning April 1, 2022.

The government in this year Budget imposed a 30 percent tax income from crypto assets with effect from April 1, 2022 and 1 percent tax deducted at source on payment of virtual assets of more than Rs. 10,000 in a year and taxation of such gifts in the hands or recipients from July 1.

(Source: Business Standard dated 29.10.2022)

GOVT SETS THE BALL ROLLING ON DECRIMINALISATION OF GST ACT

Decriminalisation of Goods and Services Tax Act is on the cards, which would give a big reprieve to small businesses in India, sources told businessline. In what could be a major overhaul of the GST Act in nearly six years after it came into effect, the government is likely to raise the threshold limit for initiating criminal prosecution against GST evasion and draw a clear distinction between minor offences and wilful evasion under the proposed new changes.

The threshold limit for launching criminal proceedings under GST will be raised to Rs.20 crore and also the property of offenders below the set threshold will not be attached, as per the new changes to the GST Act being thought about.

This and more such laissez-faire proposals will be put up before the GST Council during the second week of November. Some of these recommendations have come from the GST investigation units of the Central Board of Indirect Taxes and Customs. Number of ITRs for AY23 set to exceed AY22 number, even as businesses have time to file returns. Ease of tax filing a key factor for higher number of returns.

Currently, GST evasion of Rs.5 crore or more attracts a jail term of 5 years. It will be 3 years with a fine for offences involving evasion between Rs.2-5 crore and 1 year in case of evasion amounting between Rs.1-2 crore. In case of repeated offence, jail term could be 5 years.

Also, the Act is so draconian that it sees both minor and wilful offenders under the same lens, which mainly hurts small businesses. Such drastic provisions will be discarded by abolishing the jail term below the threshold limit. Instead, the government will make GST offences up to Rs.20 crore compoundable, the sources said. As a motivation for the assesseees to opt for compounding rather than litigation, the penalty or levy will also be kept lower. Prosecution will only be initiated in extreme cases, where wilful evasion of GST and misuse of input tax credit can be established.

Provisions of the Indian Penal Code, the presence of which is not required in the GST Act, are likely to be verified and removed. For the new changes, the government would be mainly touching upon section 38, 83, 132, 133 among others and amend them accordingly after the GST Council gives its go-ahead.

(Source: Business Line dated 31.10.2022)

PRE-DEPOSIT TO APPEAL UNDER OLD EXCISE, SERVICE TAX LAWS TO BE ONLY IN CASH: CBIC

Central Board of Indirect Taxes & Customs (CBIC) has said that pre-deposits for appeals in cases related to erstwhile Central Excise Duty and Service Tax can be made only in cash and not through Electronic Cash Ledger. Experts feel such a move aims to nullify rulings by various High Courts in favour of taxpayers.

After going through all the arguments and the facts placed on the record, the court felt it does appear that the confusion seems to be because there was no proper legal provision to accept payment of pre-deposit. Accordingly, it asked the CBIC to clear the air immediately. In the instruction, the CBIC said that any credit, tax interest, fine or penalty recoverable from the person before, on, or after July 1, 2017, under the existing law (Central Excise Act and Chapter V of Finance Act, 1994) should be recovered as an arrear of tax under the CGST Act.

Source: Business Line dated 30.10.2022)

OBLIGATIONS FOR THE MONTH

(List of due dates for compliance under GST)

DUE DATES OF VARIOUS GST FILINGS IN NOVEMBER, 2022

<i>Types of Return</i>	<i>Purpose</i>	<i>For the Period</i>	<i>To be filed by (Due dates)</i>
GSTR-7	Filing of TDS return	October, 2022	10.11.2022
GSTR-8	Filing of TCS return	October, 2022	10.11.2022
GSTR-1	Filing of GST outward supplies (monthly)	October, 2022	11.11.2022
GSTR-6	Filing of return by Input Service Distributor	October, 2022	13.11.2022
GSTR-1	Filing of GST outward supplies under the QRMP scheme (IFF)	October, 2022	13.11.2022
GSTR-5	Filing return by Non- Resident taxable persons	October, 2022	20.11.2022
GSTR-5A	Filing return by non-residents OIDAR service providers	October, 2022	20.11.2022
GSTR-3B	Filing of summary return and payment of taxes(monthly)	October, 2022	20.11.2022
PMT-06	Challan for depositing GST by taxpayers	October, 2022	25.11.2022
GSTR-11	Statement of inward supplies received by person having Unique Identification Number	October, 2022	28.11.2022

Note: Option to file TRAN-1 and TRAN-2 on the GST Portal will be open from 01.10.2022 to 30.11.2022.

JUDICIAL RULINGS UNDER GST

(Judicial pronouncements and rulings)

Supreme Court on SLP against Bail filed by Enforcement Directorate

In *Assistant Director Directorate of Enforcement v. Kamal Ahsan & Anr.* (2022) 10TMI 1082 (Supreme Court) Order dated 20.10.2022, enforcement Directorate filed a Special Leave Petition against a bail order issued by Allahabad High Court. Factually, High Court granted a bail to a person suffering from malignancy and cancer against which ED filed a SLP seeking interference on bail order.

The Apex Court observed that the bail order did not warrant any interference by the Apex Court. It observed that there was no need for the ED to file the said SLP. The SLP was just a wasting the stationery and the legal fees apart from the court's precious time. The Court deemed it fit to impose costs of Rs 1,00,000 (Rupees one lakh only) on the concerned officer who granted permission to file the petition.

On such deposit, Rs.50,000/- was directed to be transferred to National Legal Services Authority, New Delhi and Rs.50,000/- to Mediation and Conciliation Project Committee, Supreme Court of India. The petition was accordingly dismissed.



FROM THE GOVERNMENT

(Text / extract of Government Notification / Circular / Press Release etc)

CBIC-240137/14/2022-SERVICE TAX SECTION -CBEC

Government of India

Ministry of Finance

Department of Revenue

(Central Board of Indirect Tax and Customs)

(CX&ST Wing)

Instruction dated 28.10.2022

Sub: Pre-deposit payment method for cases pertaining to Central Excise and Service Tax

It has been brought to the notice of the Board that appeals have been rejected by some Commissioner (Appeals) for non-compliance of pre-deposit requirements as mandated under section 35F of the Central Excise Act, 1944 (CEA) and Section 83 of the Finance Act, 1994 read with section 35F of the CEA where such payments have been made through Form GST DRC-03 on common GST portal, by holding that it is not a prescribed method of payment of such pre-deposit. The issue has been referred to the Board by Hon'ble High Court of Mumbai in writ petition No. 6220 of 2022 in the matter of Sodexo India Services Pvt. Ltd. Vs. Union of India and Ors. with directions to examine and issue suitable instruction in this regard.

2. The mater has been examined. It may be seen that Form GST DRC-03 is prescribed for payment of tax, interest, penalty under sub-section (5) and (8) of both section 73 and 74, and section 129 (1) of the CGST Act, 2017 or any other payment due in accordance with the provisions of the CGST Act, 2017 as specified in rule 142(2) and 143(3) of CGST Rules, 2017 . Further, in GST regime for appeal mechanism under section 107 of the CGST Act. 2017, Rule 108 (1) of the CGST Rules, 2017 provides Form GST APL-01 for filing an appeal with option of payment of admitted amount

and pre-deposit through electronic cash/credit ledger. Thus, under GST Act also, Form GST DRC - 03 is not a prescribed mode for payment of pre-deposit.

3. Attention is invited to Miscellaneous transitional provisions sub-section (6)(b), subsection (7) (a) and sub-section (8)(a) of section 142 of the CGST Act, 2017, which, *inter alia*, provides that any credit tax, interest, fine or penalty recoverable from the person before, on or after 1st July, 2017 under the existing law (Central Excise Act and Chapter-V of Finance Act, 1994) shall be recovered as an arrear of tax under CGST Act. It is, however, settled that pre-deposit as a requirement for exercising the right to appeal neither is in the nature of duty nor can be treated as, arrears under the existing law and hence can not be said to be covered under transitional provisions of CGST Act.

4. In view of above, it is clarified that payments through DRC-03 under CGST regime is not a valid mode of payment for making pre-deposit under section 35F of the Central Excise Act, 1944 and Section 83 of Finance Act, 1994 read with section 35F of the CEA. There exists a dedicated CBIC-GST Integrated portal, <https://cbic-gst.gov.in> [Board's Circular No. 1070/3/2019-CX dated 24th June, 2019 refers in this regard], which should only be utilized for making pre-deposit under the Central Excise Act, 1944 and the Finance Act, 1994.

5. Trade may be suitably informed. Hindi version will follow.

(Vanm Kumar Singh)

Under Secretary to Govt of India

Advisory on sequential filing of GSTR-1

Sequential filing of GSTR-1 & filing of GSTR-1 before GSTR-3B on GST Portal

1. The Central Government has amended Section 37 & Section 39 of Central Goods & Service Tax Act (CGST), 2017 vide Notification No. 18/2022–Central Tax dated 28th September, 2022 with effect from 01 October, 2022. According to section 37(4) of CGST, Act, a taxpayer shall not be allowed to file GSTR-1 if previous GSTR-1 is not

filed and as per sec 39(10) a taxpayer shall not be allowed to file GSTR-3B if GSTR-1 for the same tax period is not filed.

2. Section 37(4) & 39(10) of Central Goods & Service Tax Act, 2017 are reproduced below:

Section 37(4) : A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

Section 39(10) : A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

3. These changes are being implemented prospectively and will be operational on GST Portal from 01st November, 2022. Accordingly, from October-2022 tax period onwards, the filing of previous period GSTR-1 will be mandatory before filing current period GSTR-1.

Illustration: Filing of October, 2022 period GSTR-1 will be mandatory before filing GSTR-1 of November, 2022 period.

4. Further, from October, 2022 tax period onwards, filing of GSTR-1 will also be mandatory before filing GSTR-3B.

Illustration: Taxpayer will not be allowed to file GSTR-3B for October, 2022 period if GSTR-1 of October, 2022 period is not filed.

[Source: GSTN dated 21.10.2022]

Implementation of mandatory mentioning of HSN codes in GSTR-1

As per Notification No. 78/2020 – Central Tax dated 15th October, 2020, it is mandatory for the taxpayers to report minimum 4 digit or 6 digit of HSN Code in table-12 of GSTR-I on the basis of their Aggregate Annual Turnover (AATO) in the preceding Financial Year. To

facilitate the taxpayers, these changes are being implemented in a phase-wise manner on GST Portal.

Part I & Part II of Phase 1 has already been implemented from 01st April 2022 & 01st August 2022 respectively and is currently live on GST Portal. From 01st November, 2022, Phase-2 would be implemented on GST Portal and the taxpayers with up to Rs 5 crore turnover would be required to report 4-digit HSN codes in their GSTR-1. To view the detailed advisory please [click here](#).

[Source: GSTN dated 22.10.2022]

Advisory on Filing TRAN forms for Taxpayers from Daman and Diu & Ladakh

Due to reorganization of the state of Jammu & Kashmir and merger of the Union territories of Dadra and Nagar Haveli and Daman and Diu, the taxpayers of Ladakh and earlier 'Daman and Diu' region have been allotted new GSTINs. There is therefore a doubt as to how to file the TRAN-1 and whether it would be linked with the old TRAN-1 or not.

The aggrieved taxpayers of both the above-mentioned regions are hereby informed that they can file or revise their TRAN-1 or TRAN-2 Forms only through their newly allotted GSTINs. Kindly do not use the old GSTIN for filing of TRAN forms.

The respective tax administrations of both the regions are also advised to accordingly facilitate the taxpayers and keep the above information in mind while processing the TRAN claims under the new GSTINs by linking both the old and revised TRAN-1 forms filed by such taxpayers.

[Source: GSTN dated 25.10.2022]

Rs.1,51,718 crore gross GST revenue collected for October 2022

Second highest collection ever with, next only to the collection in April 2022

Monthly GST revenues more than Rs.1.4 lakh crore for eight months in a row, with Rs.1.5 lakh crore crossed for the 2nd time since inception of GST

September 2022 sees generation of 8.3 crore e-way bills, which is significantly higher than 7.7 crore e-way bills generated in August 2022

Posted On: 01 NOV 2022 12:12PM by PIB Delhi

The gross GST revenue collected in the month of October 2022 is Rs. 1,51,718 crore of which CGST is Rs. 26,039 crore, SGST is Rs. 33,396 crore, IGST is Rs. 81,778 crore (including Rs. 37,297 crore collected on import of goods) and Cess is Rs. 10,505 crore (including Rs. 825 crore collected on import of goods), which is second highest till date.

The government has settled Rs. 37,626 crore to CGST and Rs. 32,883 crore to SGST from IGST as regular settlement. In addition, Centre has also settled Rs 22,000 crore on adhoc basis in the ratio of 50:50 between Centre and States. The total revenue of Centre and the States after regular as well as adhoc settlements in the month of October 2022 is Rs.74,665 crore for CGST and Rs. 77,279 crore for the SGST.

The revenue for October 2022 is second highest monthly collection, next only to the collection in April 2022 and it is for the second time the gross GST collection has crossed Rs. 1.50 lakh crore mark. October also saw the second highest collection from domestic transactions, next only to April 2022. This is the ninth month and for eight months in a row now, that the monthly GST revenues have been more than the Rs. 1.4 lakh crore mark. During the month of September 2022, 8.3 crore e-way bills were generated, which was significantly higher than 7.7 crore e-way bills generated in August 2022.

The chart below shows trends in monthly gross GST revenues during the current year. The table shows the state-wise figures of GST collected in each State during the month of October 2022 as compared to October 2021.

State-wise growth of GST Revenues during October 2022

State	Oct-21	Oct-22	Growth
Jammu and Kashmir	648	425	-34%
Himachal Pradesh	689	784	14%
Punjab	1,595	1,760	10%
Chandigarh	158	203	28%
Uttarakhand	1,259	1,613	28%
Haryana	5,606	7,662	37%
Delhi	4,045	4,670	15%
Rajasthan	3,423	3,761	10%
Uttar Pradesh	6,775	7,839	16%
Bihar	1,351	1,344	-1%
Sikkim	257	265	3%
Arunachal Pradesh	47	65	39%
Nagaland	38	43	13%
Manipur	64	50	-23%
Mizoram	32	24	-23%
Tripura	67	76	14%
Meghalaya	140	164	17%
Assam	1,425	1,244	-13%
West Bengal	4,259	5,367	26%
Jharkhand	2,370	2,500	5%
Odisha	3,593	3,769	5%

Chhattisgarh	2,392	2,328	-3%
Madhya Pradesh	2,666	2,920	10%
Gujarat	8,497	9,469	11%
Daman and Diu	0	0	20%
Dadra and Nagar Haveli	269	279	4%
Maharashtra	19,355	23,037	19%
Karnataka	8,259	10,996	33%
Goa	317	420	32%
Lakshadweep	2	2	14%
Kerala	1,932	2,485	29%
Tamil Nadu	7,642	9,540	25%
Puducherry	152	204	34%
Andaman and Nicobar Islands	26	23	-10%
Telangana	3,854	4,284	11%
Andhra Pradesh	2,879	3,579	24%
Ladakh	19	33	74%
Other Territory	137	227	66%
Center Jurisdiction	189	140	-26%
Grand Total	96,430	1,13,596	18%

RM/PPG/KMN

(Release ID: 1872591)

For text of Notifications / Circulars / Press Releases, Finance Bill please visit www.cbic.gov.in
www.gstcounsellor.com

UNDERSTANDING GST

(Conceptual understanding of GST provision)

Export of goods [Section 2(5)]

(5) "Export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

As per section 2(5) of the IGST Act, 2017, 'export' with its grammatical variations and cognate expressions, means taking out of India to a place outside India in relation to goods.

According to Investopedia, 'export' means a function of international trade whereby goods produced in one country are shipped to another country for future sale or trade. The sale of such goods add to the producing nation's gross output. If used for trade, exports are exchanged for other products or services. Exports are one of the oldest forms of economic transfer, and occur on a large scale between nations that have fewer restrictions on trade, such as tariffs or subsidies.

It may be noted that the export transactions shall be considered as zero rated supply and would be subject to zero rate of tax in GST regime.

It is important to note that the export of goods have been defined in terms of taking goods out of India and not in reference to crossing of custom frontiers of India. The term India has been defined in the Act in section 2(56) of the CGST Act, which includes its territorial waters. The limit of territorial water extends beyond custom frontiers. The definition of export of goods would mean that goods to cross territorial water limit also to qualify as exports. This is not the practice in line with the earlier law.

Under the GST Law, export of goods or services have been treated as:

- inter-State supply and covered under the IGST Act.
- 'zero rated supply' i.e. the goods or services exported shall be relieved of GST levied upon them either at the input stage or at the final product stage.

The salient features of the scheme of export under GST regime are as follows:

- The goods and services can be exported either on payment of IGST which can be claimed as refund after the goods have been exported, or under bond or Letter of Undertaking (LUT) without payment of IGST.
- In case of goods and services exported under bond or LUT, the exporter can claim refund of accumulated ITC on account of export.
- In case of goods, the shipping bill is the only document required to be filed with the Customs for making exports. Requirement of filing ARE 1/ARE 2 is not there under GST regime.
- The supplies made for export are to be made under self-sealing and self-certification without any intervention of the departmental officer.
- The shipping bill filed with the Customs is treated as an application for refund of IGST and shall be deemed to have been filed after submission of export general manifest and furnishing of a valid return in Form GSTR-3 by the applicant.

DECODING GST LAW

(Analysis of select GST provision)

REFUND OF PAYMENT OF WRONG TAX

Tax wrongfully collected and paid to Central Government or State Government
(Section 77 of CGST Act, 2017)

77. (1) A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of Central Tax and State Tax or, as the case may be the Central Tax and the Union Territory Tax payable.

Tax wrongfully collected and paid to Central Government or State Government
(Section 19 of IGST Act, 2017)

19. (1) A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(2) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime. Thus, under the GST regime there will be a standardised form for making any claim for refunds. The claim and sanctioning

procedure will be completely online and time bound which is a marked departure from the existing time consuming and cumbersome procedure.

The corresponding provisions under IGST Act, 2017 are contained in section 19 as aforementioned. The provisions are similar.

Wrong collection and payment of tax

Section 77 of CGST Act, 2017 provides for refund of Central Tax on situations where intra-State supplies are subsequently held to be inter-State supplies.

As provided by section 77 of the CGST Act, 2017, a taxable person who has paid tax on a supply transaction considering it to be an intra-State transaction and deposited SGST and CGST on such transaction, but later on this transaction has been held to be an inter-State transaction. In such case, the taxable person would be-

- (a) required to deposit IGST on such transaction,
- (b) eligible to seek refund of SGST and CGST already paid by him on such transaction.

This provision deals with a situation where a taxable person wrongly pays CGST/SGST or CGST/UTGST on the transaction treating it as intra-state supply, but which is subsequently held to be inter-state supply. Upon payment of IGST on such transaction, the CGST/SGST or CGST/UTGST will to be refunded in such manner and subject to prescribed conditions

Refund of CGST and SGST or, as the case may be, CGST and UTGST shall be granted in such manner and subject to such conditions as may be prescribed.

Situations leading to excess or wrong payment

The provisions of section 77 of CGST Act, 2017 or section 19 of IGST Act, 2017 shall be invoked in the following situations:

<i>Payment of tax</i>	<i>Supply considered</i>	<i>Actual supply</i>
CGST / SGST / UTGST	Intra-state	Inter-state
Paid IGST	Inter-state	Intra-state

LEGAL TERMINOLOGY

(Meanings of Latin Words and Expressions generally used in Legal drafting and Judicial Pronouncements)

<i>De novo</i>	A fresh, from the beginning
<i>Ejusdem generis</i>	Of the same kind or nature
<i>Ex gratia</i>	A favour or gift that is not legally necessary
<i>Ex parte</i>	Without the presence or participation of opposite party
<i>Ex post facto</i>	Retroactive, affecting something that has already happened

EVENTS



(Listing of future GST events)

PROGRAMME	:	21st World Congress of Accountants 2022
DATE	:	18 to 21 November 2022
VENUE	:	Jio World Convention Centre, Mumbai
ORGANISED BY	:	The Institute of Chartered Accountant of India
CONTACT	:	https://icaikw.org ; gst@icai.in .

GST LITERATURE



(Listing of GST Articles published elsewhere)

- Assessments under GST – Dr. Sanjiv Agarwal, GSTL, Vol. 64, Part 3, dated 15.09.2022.
- Gaming and GST – Hardik Gandhi, Business Line dated 06.10.2022
- CBIC on different types of declared services– Dr. Sanjiv Agarwal, www.taxguru.co.in dated 18.10.2022.
- Refunds under GST – Dr. Sanjiv Agarwal, www.taxmanagementindia.com dated 22.10.2022.
- The ferocious side of tax law – TCA Ramanujam & TCA Sangeetha, Business Line, dated 01.11.2022

GST HUMOR



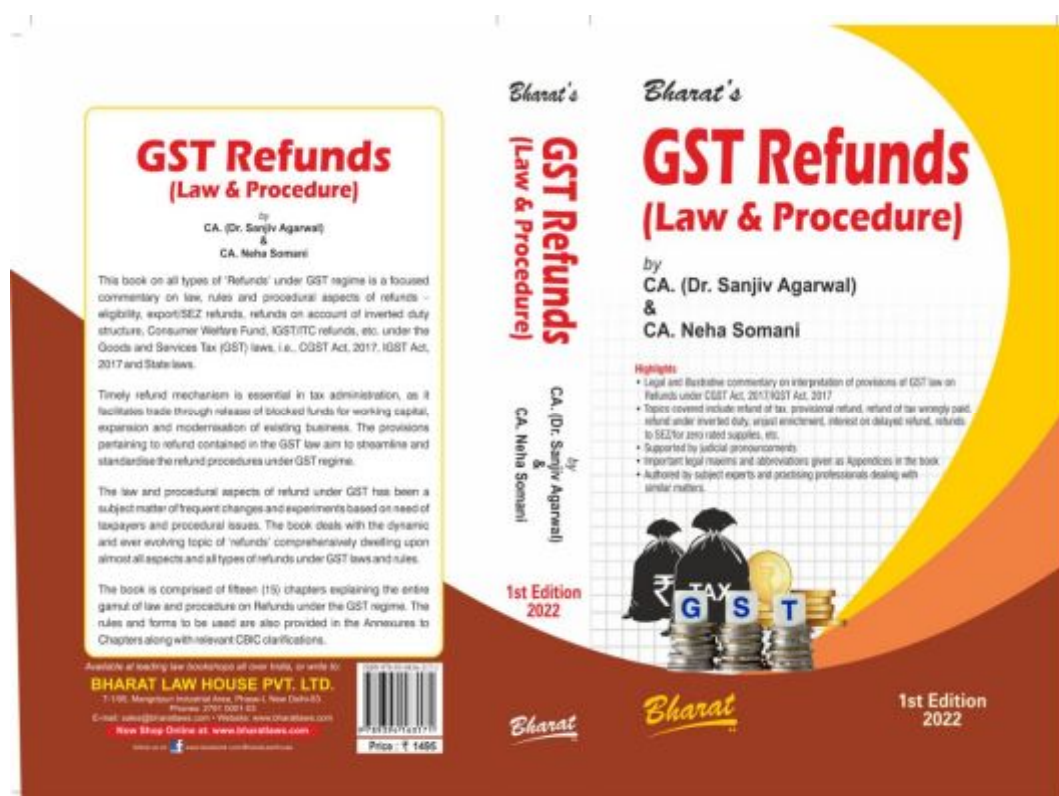
GST CAPSULE

(Quote / Un-Quote)

"I think in fact, the growth rates for the coming years may be slightly more, slightly better than what these numbers are, because I think there is a possibility that India's capital formation cycle will do better after on decade of retrenchment."

- *V Anantha Nageswaran*
Chief Economic Adviser

ANNOUNCEMENTS

GST Refunds Law & Procedure

Title	GST Refunds (Law & Procedure)
Authors	Dr. Sanjiv Agarwal and CA. Neha Somani
Publication	August, 2022
Co-Publishers	Taxsutra, Pune & Bharat Law House Pvt. Ltd., New Delhi
Price	Rs. 1495/-
Pages	1000 (Approx)

About the Book

This book on all types of ‘Refunds’ under GST regime is a focused commentary on law, rules and procedural aspects of refunds – eligibility, export / SEZ refunds, refunds on account of inverted duty structure, Consumer Welfare Fund, IGST / ITC refunds etc. under the Goods and Services Tax (GST) laws, i.e., CGST Act, 2017, IGST Act, 2017 and State laws.

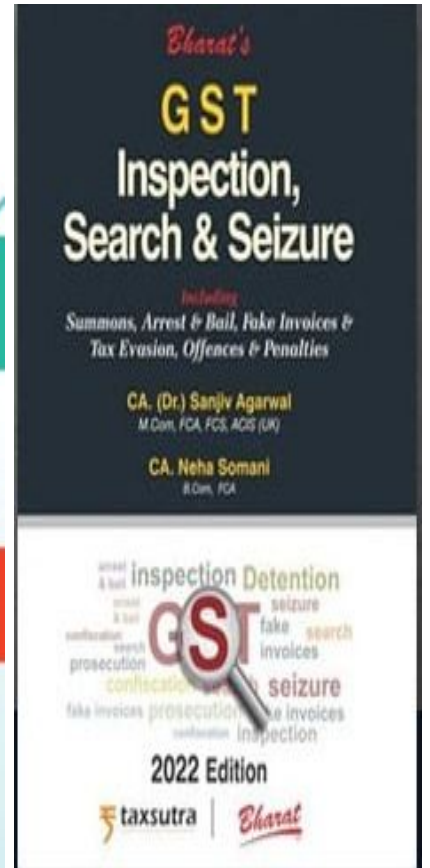
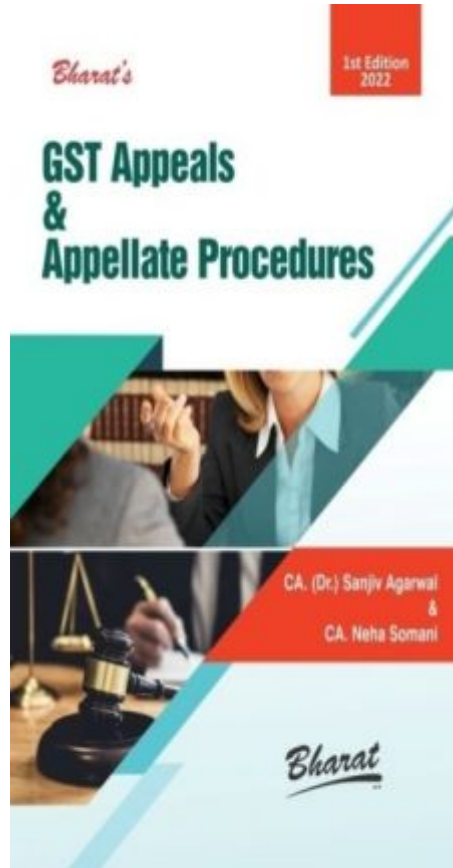
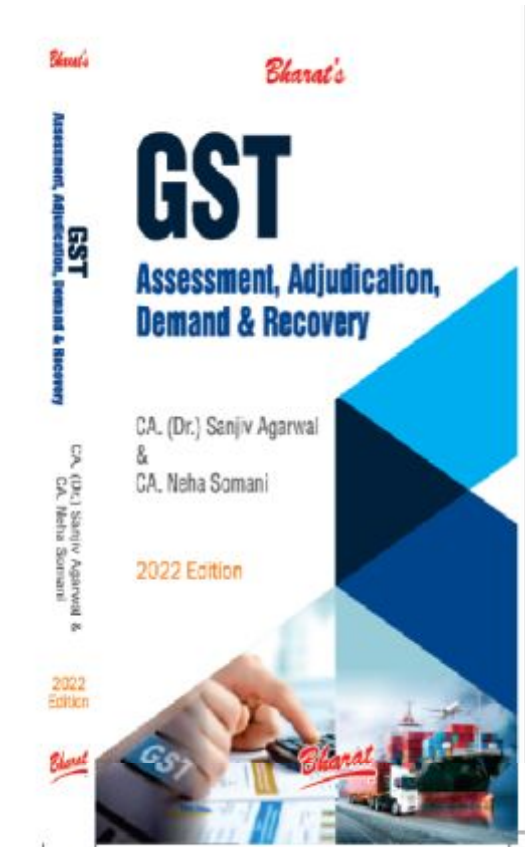
Timely refund mechanism is essential in tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business. The provisions pertaining to refund contained in the GST law aim to streamline and standardise the refund procedures under GST regime.

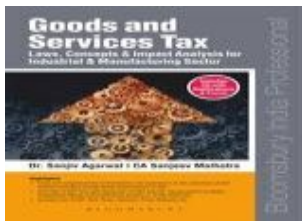
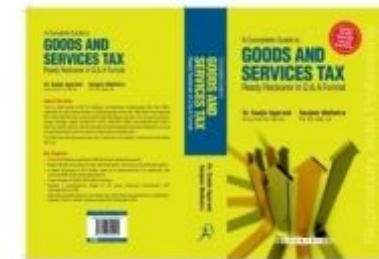
The law and procedural aspects of refund under GST has been a subject matter of frequent changes and experiments based on need of taxpayers and procedural issues. The Book deals with the dynamic and ever evolving topic of ‘refunds’ comprehensively dwelling upon almost all aspects of refunds and all types of refunds under GST laws and rules.

The Book is comprised of fifteen (15) chapters explaining the entire gamut of law and procedure on Refunds under the GST regime. The rules and forms to be used are also provided in the Annexures to Chapters alongwith relevant CBIC clarifications.

Highlights

- Legal and illustrative commentary on interpretation of provisions of GST law on Refunds under CGST Act, 2017 / IGST Act, 2017
- Easy to understand law and procedure on Refunds under GST
- Topics covered include refund of tax, provisional refund, refund of tax wrongly paid, refund under inverted duty, unjust enrichment, interest on delayed refund, refunds to SEZ / for zero rated supplies etc.
- Special chapter on principles of interpretation
- Supported by judicial pronouncements
- Important legal maxims and abbreviations given as Appendices in the book
- Authored by subject experts and practicing professionals dealing with similar matters.





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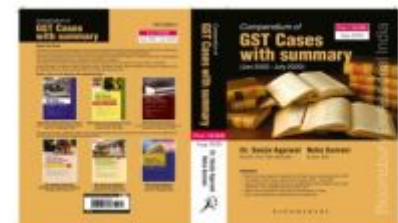
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For exclusive and in-house seminar / workshop on Goods and Services Tax (GST) conducted by Dr. Sanjiv Agarwal (FCA, FCS)

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