

THE GANDHIDHAM CHAMBER OF COMMERCE & INDUSTRY

(ESTD. 1953)

"CHAMBER BHAVAN", Plot No. 71, Sector 8, Post Box No. 58,
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No. GCCI / 388

Date : 5.9.2018

Shri Arun Jaitleyji,
Hon'ble Minister for Finance,
Corporate Affairs, Information
and Broadcasting & Chairman GST Council,
Government of India
Room No. 134, North Block
New Delhi - 110 001

Sub:- Submission of suggestion on GST Law

Dear Sir,

It is our constant endeavour to interact and contribute to make GST laws much simpler and less complex in a way that it could be understood even by a layman or an unorganized taxpayer without the intervention of a tax expert.

It is suggested that the compliance under GST law be made simple and transparent which would ease compliances, cut or control cost of compliance and create a sense of ease of doing business. For example, the input tax credit mechanism needs to be relooked and eased out – availment, apportionment, blockage, credit in special circumstances, and credit for capital goods / job work which is a painful and cumbersome process of computation.

As a part of our constant efforts to contribute suggestions on GST laws, we have segregated some suggestions on various topics under GST as follows :-

(1) GST ISSUES :-

1. A clarification needs to be issued that **Transferable Development rights (TDRs)** are not taxable under the GST Laws since it is an immovable property right.
2. The persons who are paying income-tax on **presumptive basis** are required to fill up return form ITR 4 'Sugam'. The said return form issued for AY 2018-19 includes the information regarding **turnover/gross receipts** reported for GST. The disclosure of turnover as per GST return in the ITR 4 'Sugam' for the AY 2018-19 fails to serve the purpose for which it was incorporated in the return form. As the term 'gross receipt'/'turnover' the same should include GST and Cess which have been billed in the tax invoice issued in respect of supply of taxable goods or services or both. It creates dilemma in the mind of taxpayers as to whether any issue may arise due to non-matching of the figures of turnover? Further, in the instructions to the return form also no clarification has been provided in this regard.

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3. The recipient shall be entitled to claim **input tax credit** on his inward supplies, only if the Supplier has remitted to the Government, the taxes collected from the recipient. In this regard it is suggested that the recipient shall not be denied the benefit of claiming ITC merely because the same was not remitted to the Government by the Supplier. The recipient has paid the taxes in good faith and the Supplier only acts as an agent of the Government for collection of taxes. The Recipient cannot be made responsible for the default committed by the Supplier as it is the duty of the Government to identify such tax evaders.
4. **Seamless flow of Credit** under GST regime not observed in place of supply of services by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; as the place of supply shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.
5. **Unutilised balance of KKC** as on 30.06.2017 is not available as transitional credit under GST Laws. The unutilised balance of KKC has become a cost in the hands of the Assessee. Therefore, It is suggested that the credit of KKC be allowed to be brought forward as transitional credit under the GST regime as the Assessee had already considered the factor of availability of credit of KKC in their pricing and contracted for the provision of service accordingly. Since the due date of filing Form GST TRAN 01 has expired (i.e. on 27.12.2017), it is suggested that the portal be reopened in order to claim the unutilised KKC credit as appearing as closing balance in the Service Tax Returns for the month of June 2017.
6. If an **upfront fee** is paid in respect of transfers by State Government Industrial Development Corporations or Undertaking to Industrial Units (such supplies for a period exceeding 30 years) then such supplies are exempt. However such upfront fee would remain taxable if the period of lease is lower than 30 years or to any person other than Industrial Units. Therefore, it is suggested that exemption may be extended to all transfers of immovable property irrespective of the period of lease and whether or not to an Industrial Unit.
7. In case of **customs valuation** for paying IGST, when the valuation is substantial higher than the actual market price, the input tax credit is much higher than the output e.g. scrap, timber etc. under the circumstances there is no provision to take refund. The amount of ITC should be allowed to get refunded and enabling provision should be incorporated.
8. In case of import when the landing price (CIF) includes transportation cost, the IGST on same is already paid/payable, while the law also empowers to collect tax again on the value of ocean freight, by assuming 10% of CIF value, which amounts to **double taxation on freight value**.

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9. GST law nowhere specifies how to determine **principal supply**. A number of disputes may arise due to this. Therefore, it is suggested to clarify the manner of determination of a principal supply to avoid the disputes. It will help avoid classification disputes.
10. It is suggested that in case of **reversal of input tax credit on capital** CGST Rules, 2017 be reconsidered or the appropriate notification/explanation/ clarification is required.
11. It is suggested that Govt. should either make provision of filing **revised /rectified GSTR-3B** else add a separate tile/column for prior period adjustments in the GSTR-3B so that mismatch can be evaded.
12. Presently, under GST law there is a concept of **Cash Ledger** wherein cash payments are being made by the tax payers under the **three major heads** viz: CGST, SGST & IGST. These major heads are further sub-divided into five different minor heads viz: Tax, Interest, Fee, and Penalty & Others. Now, a tax payer has to pay tax under one major head and under one minor head combination. Further tax paid is credited to that particular major & minor heads and is adjustable with the liability under such heads only. Even if a tax payer has a surplus amount under one head and deficit under the other he has no option to offset. He needs to pay the deficit amount and to claim the surplus amount either as refund or to carry forward it for future liability. Due to such a bar the tax payer's not only working capitals is blocked but also they are saddled with the burden of claiming refund.
13. The provisions of GST in respect of payment of tax and **levy of interest** are quite peculiar. The assessee has to pay interest till the time amount is debited to his **Electronic Cash Ledger**. It is immaterial how much balance lying to his Electronic Cash ledger but the interest liability will be calculated till the date amount is debited to Electronic Cash Ledger.
14. Though the Govt. has already reduced the quantum of **late fee** but still there are some issues involved with the levy of late fee under GST. The late fee on account of delay in filing tax returns is causing some disturbances in those cases where the figures of late fee exceeds the payable tax. In such a situation it is really harsh to demand late fee more than the tax payable.
15. The **valuation mechanism** under GST Laws can be further simplified to facilitate better understanding of the provisions and to mitigate confusion in the minds of the taxpayers. Complicated adjustments for computing the taxable turnover under GST Laws would affect the ease of doing business by the Assessees.
16. There is no provision to claim input tax credit on **capital goods purchased prior to obtaining registration**. The claim of ITC on capital goods shall be restricted in proportion to the depreciation claimed over the year(s) and shall not be restricted fully.

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17. **Restriction of ITC** under section 17(3) leads to a reduction in the common inputs of the Assessee even when the common ITC does not relate to the under reverse charge basis shall not be made applicable for the reason that, merely because the liability to pay tax is shifted from the Supplier to recipient, ITC on common inputs cannot be denied to the Supplier.
18. It is suggested that **Compensation Cess be levied on Coal** only at the first point when the raw coal and lignite and peat are raised and dispatched from the mine and any further moment thereon, be exempted. Further the transitional Credit be allowed for the Clean Energy Cess paid under the erstwhile law.

(2) PROCEDURE ISSUES :-

1. The Government intended to make **GST fully IT based**, with minimum human interaction. The designed GST law, is dependent on the IT infrastructure, i.e., GSTN. It can be said that the successful implementation of GST law rests on the smooth functioning of GSTN. In fact, the same has been achieved in short span of one year despite quick changes in the laws. In the beginning, many issues cropped up, such as-
 - ◆ Filing of statutory returns, processing thereof, matching of data, etc.
 - ◆ Helpline did not work;
 - ◆ Missing error reports
 - ◆ Solution was not provided
 - ◆ Not aligned to GST Laws
 - ◆ Failure of e-way bill, initially
 - ◆ Payment of taxes
1. The Non-availability of the mechanism to **reconcile** the actions by Centre & States
2. Non-availability of **the mechanism for assessments in GSTN**
3. Non-availability of the mechanism for **appeals and revision** in GSTN
4. Delays in processing of **refunds** for exporters due to discrepancies in GSTN
5. The **GST E-way bill** is a major concern for most of the companies which are regularly into the business of transporting goods and sending material over the locations, the transport company is also trying to figure out how it would deal with the GST E-way bill provisions. As soon the bill expires the transport company or the trucker himself has to generate the GST E-way bill on his own.
6. It is suggested that the **actual date of return filing** must appear in the record of the assessee on the GST portal, along with the record of filings made by the assessee.
2. Unlike earlier, businesses are now switching from pen and paper invoicing and filing to **online** return filing and making payments. This might be tough for some smaller businesses to adapt to.

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(3) OTHER ISSUES :-

1. When the GST was conceived it was supposed to be a **single uniform rate** across all product categories, but the shape that the GST has taken is far removed from the actual concept of one country-one tax. What instead we have got is a multi-ties tax structure with 4 different tax rates 3, 5, 12, 18 and 28 per cent. Besides, there would be exempted and zero-rated goods, which means there would be at least six different categories of products under GST. GST would be simpler if only one or two rates were present.
2. Businesses have to either update their existing accounting or ERP software to GST-compliant one or buy GST **software** so that they can keep their business going. But both the options lead to increased cost of software purchase and training of employees for an efficient utilization of the new billing software.
3. It is suggested that the option of having **multiple trade names** against one GSTIN be provided to all registered persons, regardless of the constitution of business, to facilitate ease of doing business.
4. It is suggested that system glitches be looked into and resolved so that the genuine assesseees are not penalised for system defaults. Where **multiple GSTINs** have been issued against a single PAN (may be due to migration from various registrations, or any other reason), within the same State, a communication can be sent to the respective persons to intimate them regarding the multiple registrations within the same State. Accordingly, where a person has wrongly been allotted more than one GSTIN in a State, he may be permitted to apply for cancellation of such registration as per his choice.
5. A facility to enable **filing of GST returns** for the month(s) preceding the month in which registration is granted, if registration has been applied for within prescribed time limit.
6. Although there are several circulars issued for speeding up of the **refund process** the ground reality is that trade and industry have not been in a position to obtain refunds. Therefore, it is suggested that some kind of accountability on the part of Officers be introduced to alleviate the difficulties faced by trade and industry.
7. **Software's** used by business enterprises across India are tailor made therefore, this is a big challenge for the Authorities and Auditors to understand different information systems placed at different assesseees and reports generated from the same. Therefore, It is suggested that some standard functionalities that the every information system should have be drafted by GST Council and software providers should be made compulsory to get the same audited from Chartered Accountants and the report for the same should be submitted to the tax authority.

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We look forward in contributing the drafting of simple, transparent and fair GST laws in India with a hope that our above suggestions will get due attentions and consideration at the platform of GST Council under your chairmanship.

Thanking you,

Yours faithfully,



(Dinesh Gupta)
President

Copy to :

1, Shri Pramod Vasave, Commissioner GST, Office of the Commissioner of Goods & Service Tax, Plot No. 82, Sector – 8, Opp. Ramlila Maidan, Gandhidham - Kachchh

2. The President, Gujarat Chamber of Commerce & Industry, Ahmedabad