



ASC

GST TIMES





Compliance Calendar

S. No.	Due Date	Forms	Period	Description
1.	10 th September 2021	GSTR-7	August, 2021	Return for Tax Deducted at source to be filed by Tax Deductor
2.	10 th September 2021	GSTR-8	August, 2021	E-Commerce operator registered under GST liable to TCS
3.	11 th September 2021	GSTR-1	August, 2021	Taxpayers having an aggregate turnover of more than INR 5 crores or opted to file monthly return
4.	13 th September 2021	GSTR-1	August, 2021	Taxpayers who have opted for Quarterly Return Monthly Payment ("QRMP") Scheme
5.	13 th September 2021	GSTR-6	August, 2021	Every Input Service Distributor (ISD)
6.	14 th September 2021	GSTR-2B	August, 2021	Auto generated ITC statement
8.	20 th September 2021	GSTR-5 & 5A	August, 2021	Non-resident taxable person and OIDAR services provider file Monthly GST Return
9.	20 th September 2021	GSTR-3B	August, 2021	Taxpayers having an aggregate turnover of less than INR 5 crore (Not opting for QRMP Scheme)
10.	20 th September 2021	GSTR-3B	August, 2021	Taxpayers having an aggregate turnover of more than INR 5 crore (Not opting for QRMP Scheme)
11.	25 th September 2021	PMT-06	August, 2021	Challan for depositing GST by taxpayers who have opted for the quarterly filing of GSTR-3B under QRMP scheme
12.	30 th September 2021	REG-21	March, 2020 to August, 2021	Application for revocation of cancellation of registration where due date for filing such application falls between 01.03.2020 to 31.08.2021, in cases where registration has been cancelled under clause (b) or clause (c) of section 29(2) of the CGST Act.



TOPIC COVERED

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GOODS AND SERVICES TAX (GST)



Due date of filing of application for revocation of cancellation of GST registration extended

CBIC vide notification No. 34/2021- Central Tax, dated 29.08.2021 extended due date of filing of application for revocation of cancellation of GST.

Based on the multiple representations received, Government has extended the timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where the due date of filing of application for revocation of cancellation of registration falls between 01.03.2020 to 31.08.2021. The extension would be applicable only in those cases where registrations have been cancelled under clause (b) or clause (c) of sub-section (2) of section 29 of the CGST Act.

Section 29(2) (b): a person paying tax under section 10 has not furnished returns for 3 consecutive tax periods.

Section 29(2) (c): any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of 6 months.

Extends timelines for filing of application for revocation of cancellation of registration to 30.09.2021, where due date for filing such application falls between 01.03.2020 to 31.08.2021. Such extension would be applicable only in above mentioned cases.

GSTR-3B late fee amnesty scheme extended till 30.11.2021

CBIC vide notification No. 33/2021- Central Tax, dated 29.08.2021 extended GSTR-3B late fee amnesty scheme till 30.11.2021

In exercise of the powers conferred by section 128 of the Central Goods and Services Tax Act, 2017, the Government, on the recommendations of the Council, hereby makes the following further amendments in the notification previously issued by the Government of India through the Ministry of Finance, published in the Gazette of India.

Previously Government, vide Notification No. 19/2021- Central Tax, dated 01.06.2021, had provided relief to the taxpayers by reducing / waiving late fee for non-furnishing FORM GSTR-3B for the tax periods from July, 2017 to April, 2021, if the returns for these tax periods are furnished between 01.06.2021 to 31.08.2021.

As per the latest notification the last date to avail benefit of the late fee amnesty scheme, has now been extended from existing 31.08.2021 to 30.11.2021.



CBIC allows filing of FORM GSTR-3B & GSTR-1/ IFF using EVC till 31.10.2021

CBIC vide notification No. 32/2021- Central Tax, dated 29.08.2021 allows filing of FORM GSTR-3B & GSTR-1/ IFF using EVC till 31.10.2021

In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017, the Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: –

- (a) in the fourth proviso of rule 26(1), for the figures, letters and words “31st day of August, 2021”, the figures, letters and words “31st day of October, 2021” shall be substituted;
- (b) with effect from the 1st day of November, 2021, all the provisos shall be omitted;

The filing of FORM GSTR-3B and FORM GSTR-1/ IFF by companies using electronic verification code (EVC), instead of Digital Signature certificate (DSC) has already been enabled for the period from 27.04.2021 to 31.08.2021. This has been further extended to 31st October, 2021.

Advisory on HSN and GSTR-1 Filing

CBIC issued Advisory on dated 26.08.2021 in respect of issue raised by taxpayers that HSN used by them for reporting in GSTR-1 is not available in the table 12 HSN drop-down.

In accordance with Notification No. 78/2020 – Central Tax, dated October 15, 2020, taxpayers need to declare Harmonised System of Nomenclature (HSN) Code of Goods and Services supplied by them on raising of tax invoices, with effect from 1st April, 2021 on the below mentioned lines.

S. No	Aggregate Turnover in the preceding Financial Year	Number of Digits of HSN Code to be reported in GSTR-1
1.	Upto Rs. 5 crores	4
2.	Above Rs. 5 crores	6

It has been reported by few taxpayers that HSN used by them for reporting in GSTR-1 is not available in the table 12 HSN drop-down. They have further stated that they are facing issues in adding the required HSN details in table -12 and filing of statement of outward supplies in form GSTR-1 of July 2021. Further, in some JSON files, the HSN field is coming as blank from the offline tool, along with other errors as mentioned below:-

- 1) Processed with Error,
- 2) In Progress or Received but pending
- 3) Duplicate Invoice Number found in payload please correct.
- 4.) HSN related issues leading to error messages – ‘Processed with error’, ‘In progress’, ‘Received but pending’:



Issue & Resolution:

Through this advisory it has been stated that taxpayers should check their HSN code in Search HSN functionality provided by GSTN on GST portal and with the directory of HSN codes provided in a downloadable excel format at the following link

<https://services.gst.gov.in/services/searchhsnsac>

On examination of the HSN codes reported as missing, it has been observed that few taxpayers are trying to report truncated first 6-digits out of an otherwise valid 8-digit HSN. These truncated HSN codes are actually not available in GST Tariff at 6-digit level, with no corresponding description of goods. Therefore, these truncated 6-digit HSN are invalid. Taxpayers are therefore advised not to create 6-digit HSN code by truncating/removing the last two digits (including "00") of a valid 8-digit HSN code. However, there are no validations at present in the system.

It may be noted that presently GSTN has relaxed these validations in GSTR-1 due to the pandemic situation in the country and if taxpayers do not find a valid HSN code from the search drop down, then the system is presently accepting the user entries and they can add the HSN & description in the system and proceed to file the GSTR-1.

However, it may be noted that these validations are not relaxed on IRP portal for reporting e-invoices & also the e-way bill portal for issuing e-way bills.

It may kindly be noted that in some cases, the taxpayers are facing rejection at the time of filling the data in Table 12 of GSTR-1 at the GST portal, where the taxpayers are trying to proceed only after entering the HSN code, without entering any other data. It may be noted that without entering any data in 'Description' text box or any other field, other fields will not be thereafter, all the mandatory fields have to be filled before Submission of the data.

Error messages – 'Processed with error', 'in progress', 'Received but pending': issue & Resolution:

It has been noticed in a few cases that the taxpayers have not used the latest version of Offline Tool while uploading their GSTR-1 return through Offline mode on the GST portal. In some instances, it was observed that HSN Code and Tax rate fields were left blank in Table 12 of GSTR-1 and hence the system has not processed the said GSTR-1. The taxpayers are advised to download the latest version of Offline Tool (version 3.0.4) provided on the GST portal, instead of any older version. In case the taxpayer is using any third party GSTR-1 offline tool, then the service provider of the third party offline tool should be contacted & requested that the tool be updated.



Error message reported as – “Duplicate invoice Number found in payload please correct”: issue &Resolution:

GST law requires an invoice, credit/debit note to be unique across a Financial Year, and the same record number should not be repeated in the same Financial Year. If the same record number is reported again in the same Financial Year, the same is treated as a duplicate record, and rejected by the system.

It has been noticed that taxpayers were reporting duplicate records, and the same were being rejected by the system, causing inconvenience to other genuine filers. It is requested this kind of check may be exercised by the taxpayer or by the offline tool used by the taxpayer.

Restriction on filing of GSTR-1/IFF for default in filing of GSTR-3B

CBIC issued Advisory on dated 26.08.2021 clarified that from 01/09/2021 Registered person shall not be allowed to furnish FORM GSTR-1/IFF If he has not furnished FORM GSTR-3B for preceding 2 months (Non QRMP) OR If he has not furnished FORM GSTR-3B for preceding quarter (QRMP).

Rule-59(6) of CGST Rules, 2017; inserted vide Notification No. 1/2021 dated 1st January 2021, provides for restriction in filing of GSTR-1 in certain cases :

a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;

b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

This Rule will be implemented on GST Portal from 1st September, 2021. On implementation of the said Rule, the system will check that whether before the filing of GSTR-1/IFF of a tax-period, the GSTR-3B for the previous 2 months (for monthly filers) or GSTR-3B for the previous quarter (for quarterly filers), as the case may be has been filed or not. The system will restrict filing of GSTR-1/IFF till Rule-59(6) is complied with.

Advisory for Taxpayers regarding Blocking of E-Way Bill (EWB) generation facility resume after 15th August, 2021

CBIC issued Advisory on dated 04-08-2021 related to blocking of E-Way Bill. In this regard following advisory has been issued:



1.The E Way Bill generation facility of a person is liable to be restricted, in case the person fails to file their return in Form GSTR-3B (Monthly / Quarterly) / statement in CMP-08, for a two or more consecutive tax periods, in terms of Rule 138 E (a) and (b) of the CGST Rules, 2017. As you may be aware, the facility of blocking E way bill generation has been temporarily suspended due to pandemic.

2.The government has now decided to resume the blocking of EWB generation facility on the EWB portal, for all the taxpayers in terms of Rule 138 E (a) and (b) of the CGST Rules, 2017, after 15th August onwards.

3.Thus, after 15th August 2021, the System will check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08, and block the generation of EWB in cases of:

a.Non filing of two or more returns in Form GSTR-3B (Monthly/Quarterly frequency as may be applicable) for the tax periods up to June, 2021 and

b.Non filing of 02 or more statements in Form GST CMP-08 for the quarters up to April to June, 2021

4.To avail continuous EWB generation facility on EWB Portal, you are therefore advised to file your pending Form GSTR 3B (Monthly/Quarterly frequency as may be applicable) returns/ Form GST CMP-08 Statements immediately.

UPSGST: Guidelines for provisional attachment of property

The Commissioner, vide Letter No. GST/2021-22/14 /Commercial Tax, Dated: 25 August, 2021 issued guidelines for provisional attachment of property under section 83 of the UPSGST Act, 2017.

Doubts have been raised on various issues pertaining to provisional attachment of property under the provisions of section 83 of the Act read with rule 159 of Uttar Pradesh Goods and Services Tax Rules, 2017 (hereinafter: referred to as the "UPSGST Rules"). Besides, in a number of cases, Hon'ble have also made observations on the modalities of implementation of provisions of section 83 of the Act by the tax officers. In view of the same, the following guidelines are hereby issued with respect to the exercise of power under section 83 of the Act.

"83. Provisional attachment to protect revenue in certain cases.-

(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74 of the Act, the Commissioner is of opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order."



As mentioned above, the remedy of attachment being, by its very nature, extraordinary. It should be resorted to mainly in cases where there is an evasion of tax or where wrongful input tax credit is availed or utilized or wrongfully passed on. The following are some of type of cases, where provisional attachment can be considered to be resorted.

Where taxable person has:

- a) supplied any goods or services or both without issue of any invoice, in violation of the provisions of the Act or the rules made there under, with an intention to evade tax; or
 - b) issued any invoice or bill without supply of goods or services or both in violation of the provisions of the Act, or the rules made there under; or
 - c) availed input tax credit using the invoice or bill referred to in clause (b) or fraudulently availed input tax credit without any invoice or bill; or
 - d) collected any amount as tax but has failed to pay the same to the Government beyond a period of three months from the date on which such payment becomes due; or
 - e) fraudulently obtained refund; or
- a) passed on input tax credit fraudulently to the recipients but has not paid the commensurate tax

The above list is illustrative only and not exhaustive. The Commissioner may examine the specific facts of the case and take a reasoned view in the matter.

Types of property that can be attached

The value of attached property should be as near as possible to the estimated amount of pending revenue against such person. More than one property may be attached in case value of one property is not sufficient to cover the estimated amount of pending revenue against such person. Further, different properties of the taxpayer can be attached at different points of time subject to the conditions specified in section 83 of the Act. Movable property should normally be attached only if the immovable property, available for attachment, is not sufficient to protect the interests of revenue. Raw materials and inputs required for production or finished goods should not normally be attached by the Department.

In cases where the movable property, including bank account, belonging to taxable person has been attached, such movable property may be released if taxable person offers, in lieu of movable property, any other immovable property which is sufficient to protect the interest of revenue.

Procedure for provisional attachment of property

A copy of the order of attachment should be sent to the concerned Revenue Authority or Transport Authority or Bank or the relevant Authority to place encumbrance on the said movable or immovable property. The property, thus attached, shall be removed only on the written instructions from the Commissioner.



A copy of such attachment order shall be provided to the said taxable person as early as possible so that objections, if any, to the said attachment can be made by the taxable person within the time period prescribed under rule 159 of the UPSGST Rules. If such objection is filed by the taxable person, Commissioner should provide an opportunity of being heard to the person filing the objection. After considering the facts presented by the person in his written objection as well as during the personal hearing, if any, the Commissioner should form a reasoned view whether the property is still required to be continued to be attached or not, and pass an order in writing to this effect. In case, the Commissioner is satisfied that the property was or is no longer liable for attachment, he may release such property by issuing an order in FORM GST DRC-23.

Even in cases where objection is not filed within the time prescribed under rule 159(5) of UPSGST Rules, the Commissioner may take the grounds mentioned in the said objection/representation on record and pass a reasoned order. Where the Commissioner is satisfied that the property was or is no longer liable for attachment, he may release such property by issuing an order in FORM GST DRC-23.

If the provisionally attached property is of perishable/hazardous nature, then such property shall be released to the taxable person by issuing order in FORM GST DRC-23, after taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, and submits proof of payment. In case the taxable person fails to pay the said amount, then the said property of perishable/hazardous nature may be disposed of and the amount recovered from such disposal of property shall be adjustable against the tax, interest, penalty, fee or any other amount payable by the taxable person.

All such property as is by the Code of Civil Procedure, 1908 exempted from attachment and sale for execution of a Decree of a Civil Court shall be exempt from provisional attachment (Annexure-A).

Taxability of Leasing of Tank container without entering into Indian Territory

The Telangana state authority for advance ruling in case of M/s DECCAN TRANSCON LEASING PRIVATE LIMITED vide TSAAR Order No. 08/2021, dated 17th Aug 2021 on an application filed by applicant passed his ruling after considering the issues involved, on which advance rulings are sought by the applicant, relevant facts and interpretation of law.

Facts:

M/s Deccan Transcon Leasing Private Limited are Non-vessel owner container carriers/ Operators who are based in India but lease containers from suppliers outside the country and in turn use it in transportation of bulk chemicals. The applicant entered into a lease purchase agreement from M/s. Tankspan Leasing Limited. In terms of this agreement the applicant pays lease rentals every month and he is entitled for the purchase of the container during the period of lease or at the end of the lease period by paying the agreed rate.



Issue:

Is GST liable to be paid on leasing of tank containers taken from a supplier i.e., lessor who is located outside India and the tank containers do not reach India' As it is finance lease, it is supply of goods and tank containers do not reach the Indian Territory.

Interpretation of Law:

Entry 1(c) of Schedule II to Section 7 of the CGST Act declares a specific transaction to be supply of goods. However such transaction shall entail,

- a. Transfer of title in goods under an agreement.
- b. And such agreement shall stipulate that property shall pass at a future date upon payment of full consideration as agreed.

Thus for a transaction to qualify under this entry it should be backed by an agreement which does not leave any option for return of the goods at the end of such agreement.

The applicant has entered into an agreement for leasing goods from a foreign lessor. A plain reading of the relevant terms of the contract clearly indicate that there is no fixed lease term but the contract only mentions minimum lease period which may extend beyond such minimum period. There is no binding obligation for purchase of the goods at the end of the lease term. The agreement does not confer any title upon the lessee but a mere option to purchase based on fulfilment of certain conditions. Thus the agreement does not fulfil the conditions mandated under Entry 1(c) of Schedule II to the CGST Act.

In *K.L. Jahar & Co. Vs Dy. Commercial Tax Officer*, AIR 1965 SC 1083 - 1964-VIL-04-SC it has been held that a hire purchase agreement is distinct from a sale where price is to be paid in instalments, In the latter case, the property passes as soon as the sale is made even though the price has not been fully paid. The distinguishing feature of a hire purchase agreement is that the property does not pass when the agreement is made but only passes when the option is finally exercised after complying with all the terms of the agreement.

Heid:

Yes. The applicant is liable to pay IGST on importation of lease services into India in light of the above discussion.

SC: Refund under Inverted Duty Structure restricted to Inputs only

The Supreme Court in the case of *Union of India & Ors. v. VKC Footsteps India Pvt Ltd.* related to Constitutional validity of Section 54(3) of the CGST Act & Rules 89(5) of the CGST Rules - Eligibility to refund of unutilised input tax credit accumulated due to an inverted duty structure.



ISSUE -

The interpretation of the expression "inputs" in Section 54(3)(ii) of CGST Act and the definition of "Net ITC" in the amended Rule 89(5) - divergence between the views of the Gujarat High Court and Madras High.

The Hon'ble Gujarat High Court in VKC Footsteps India Pvt. Ltd. v. Union of India, held that by prescribing a formula in Rule 89(5) of the CGST Rules to execute refund of unutilized ITC accumulated on account of input services, the delegate of the legislature had acted contrary to the provisions of sub-Section (3) of Section 54 of the CGST Act which provides for a claim of refund of any unutilized ITC under IDS Rule 89(5) thereby restricting the refund only to input goods had acted ultra vires Section 54(3).

On the contrary, the Hon'ble Madras High Court in Tvl. Transtonnelstroy Afcons Joint Venture v. Union of India had a dissenting view with that of Gujarat High Court by noting that the proviso to Section 54(3) as well as its implications have not been taken into consideration in VKC Judgment provided by the Hon'ble Gujarat High Court except for a brief reference.

Assessee submits that Input Tax Credit means credit of input tax and since 'input tax' is defined with reference to the tax charged on the supply of goods or services or both, a refund available on the entirety of the unutilized Input Tax Credit including the credit which is relatable to tax paid on input goods and input services. Revenue argues that the first proviso to Section 54(3) is a restrictive.

HELD -

The Court while interpreting the provisions of Section 54(3) must give effect to its plain terms. The Court cannot redraw legislative boundaries on the basis of an ideal which the law was intended to pursue. Fiscal policy ought not be dictated through the judgments of the High Courts or this Court. For it is not the function of the Court in the fiscal arena to compel Parliament to go further and to do more - when the first proviso to Section 54(3) has provided for a restriction on the entitlement to refund it would be impermissible for the Court to redraw the boundaries or to expand the provision for refund beyond what the legislature has provided. If the legislature has intended that the equivalence between goods and services should be progressively realized and that for the purpose of determining whether refund should be provided, a restriction of the kind which has been imposed in clause (ii) of the proviso should be enacted, it lies within the realm of policy. Registered persons with unutilized ITC may conceivably form one class but it is not possible to ignore that this class consists of species of different hues. Given these intrinsic complexities, the legislature has to draw the balance when it decides upon granting a refund of accumulated ITC which has remained unutilized.

Parliament while enacting sub-Section (3) of Section 54 has stipulated that no refund of unutilized ITC shall be allowed other than in the two specific situations envisaged in clauses (i) and (ii) of the first proviso - While clause (i) has dealt with zero rated supplies made without the payment of tax, clause (ii), which governs domestic supplies, has envisaged a more restricted ambit where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies.



While the CGST Act defines the expression 'input' in Section 2(59) by bracketing it with goods other than capital goods, it is true that the plural expression 'inputs' has not been specifically defined. But there is no reason why the ordinary principle of construing the plural in the same plane as the singular should not be applied. To construe 'inputs' so as to include both input goods and input services would do violence to the provisions of Section 54(3) and would run contrary to the terms of Explanation-I - When proviso (ii) of section 54(3) refers to "rate of tax", it indicates a clear intent that a refund would be allowed where and only if the inverted duty structure has arisen due to the rate of tax on input being higher than the rate of tax on output supplies. Reading the expression 'input' to cover input goods and input services would lead to recognising an entitlement to refund, beyond what was contemplated by Parliament.

It is not open to the Court to accept the argument of the assessee that in the process of construing Section 54(3) contextually, the Court should broaden the expression 'inputs' to cover both goods and services. The Court affirms the view of the Madras High Court in *Tvl. Transtonnelstory Afcons Joint Venture* case and disapproves the view of the Gujarat High Court in *VKC Footsteps India Pvt. Ltd.* case.

The case is dismissed in favour of Revenue i.e. refund under inverted structure is restricted to Inputs only.



GET IN TOUCH!

In case of any further enquiries or further clarification, please feel free to contact us

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