Table Agenda

38th GST Council Meeting - 18th December 2019

Agenda Item 15 (iii): Addendum to Agenda Item 10: Decisions of the GIC Implementation Committee (GIC) for information of the GST Council

Minutes and Decisions of the 34th GST Implementation Committee (GIC) Meeting held on 2nd December 2019

The 34th Meeting of the GIC was held at GST Council Secretariat in Jeevan Bharti Building, Tower-II, New Delhi on 2nd December 2019.

2. The two agenda items (Agenda Item 1 and 2) received from GST Policy Wing and one agenda item (Agenda Item 3) received from Tax Research Unit- II, originally circulated for approval of GIC by email were discussed and decided during the 34th GIC Meeting.

Agenda item 1: Implementation of e-invoice scheme and QR code

3. Sh. Yogendra Garg, Pr. Commissioner, GST Policy Wing, CBIC introduced the agenda and stated that the Council in its 35th Meeting held on 21st June, 2019, recommended to introduce electronic invoicing system (e-invoice) for B2B invoices in a phased manner. Phase 1 was proposed to be voluntary and it was to be rolled out from January, 2020. In view of the same, a Technical Sub-Group was constituted to look into technical aspects of e-invoice. The Council, in its 37th Meeting held in Goa on 20th September, 2019 took note and approved the recommendations of the technical subgroup on e- invoice. The e-invoice schema and template, as approved by the GST Council, are available at https://www.gstn.org/e-invoice/.

3.1. In order to implement the recommendation of the Council for introduction of electronic invoicing system, the Law Committee recommended the following:

For e- invoice

(i) new sub-rules (4), (5) and (6) may be inserted in rule 48 of the CGST Rules as enabling provision for mandating issuance of electronic invoice;
(ii) the taxpayers having aggregate turnover more than Rs. 100 Cr. be notified as class of taxpayers, who shall be required to issue e-invoice from a notified date
(iii) It would be optional from 1st January, 2020 for taxpayers whose aggregate turnover is more than Rs. 500 Cr and 1st February, 2020 for taxpayers whose aggregate turnover is more than Rs. 100 Cr. The same would be compulsory from 1st April 2020 onwards for taxpayers whose aggregate turnover is more that Rs. 100 Cr.

3.2. In view of the above, rule 48 of the CGST Rules is required to be amended. Further, date of effect of provisions of sub-rule (4) of rule 48 of CGST Rules, 2017 and common portal for e-invoicing would also be required to be notified. The amended rule 48 is proposed to be made effective from 01st April, 2020. Further, FORM GST INV-01 would also need to be substituted along with instruction for it. The e-invoice schema and its terms and conditions for the implementation of e-invoicing will also be notified.

3.3. Pr. Commissioner, GST Policy Wing, CBIC added that they were already in talks with various accounting software companies regarding the technical changes required. Small & medium
size tax payers (having annual turnover below Rs. 1.5 crore) can avail accounting and billing system being offered by GSTN free of cost. This mechanism will lead to a reduction in their efforts to file GSTR-1 etc. today and under New Return, the data of e-invoice will be used by the GST system to update the ANX-1 of the seller and ANX-2 of the buyer automatically.

3.4. Sh. Prakash Kumar, CEO, GSTN added that the schema standardization was done based on standards followed by most countries and was put in public domain for wide consultation and the final draft was approved by the Council in its 37th Meeting. The tax payer will find no difference from his perspective but the difference lies in the output (electronic file) which will be generated by ERP system/accounting system to be shared with GST System as well as with the buyer. Adoption of the new system will enable complete inter-operability amongst various accounting/billing software. This will not only eliminate transcription errors but will also obviate need for physical invoices being couriered.

3.5. The twin objectives of improving the commerce at billing/invoicing stage and ease of reporting to GST (for return annexures as well as for e-way bills) is expected to be achieved. CEO GSTN further informed the Committee that the first Invoice Registration Portal (IRP) is being setup by NIC and one more is being worked upon to provide full redundancy. He added that cognizance should be taken of the fact that all accounting software companies have to make changes (payload, electronic format of invoices generated etc.) and in this light, he suggested that rollout for taxpayers having turnover above Rs 100 crore may be considered after assessing the implementation for large taxpayers having turnover more than Rs 500 Crores.

3.6. Pr. Commissioner, GST Policy Wing, CBIC further informed that regarding turnover, there were discussions whether this turnover should be in the preceding Financial Year or any financial year. He mentioned that since e-invoicing of B2B invoices is beneficial to all in the GST system, it is proposed that the mandatory e-invoking should apply to all who have crossed the threshold in any year and that the proposed notifications have been drafted accordingly. Regarding the suggestion to issue the notification based on the feedback from the industry, he mentioned that it is possible to issue the notification for mandatory generation depending on the industry feedback. Sh. Sandeep Bhatnagar, Member (GST and Investigation), CBIC also concurred with the idea that in-principle approval may be given now and the notification may be issued at a later date.

For Quick Response (QR) Code in B2C invoice

3.7. Further, Pr. Commissioner, GST Policy Wing, CBIC stated that vide Notification No. 31/2019 - Central Tax dated 28th June, 2019, sixth proviso was inserted in rule 46 of the Central Goods and Services Tax Rules, 2017 (CGST Rule, 2017), namely: -

“Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code”.

3.8. The said proviso has not been made effective yet.

3.9. He stated that the Law committee has recommended that the above said proviso may be made effective from 01st April, 2020. The Committee has further recommended as under:

(i) the taxpayers having annual aggregate turnover more than Rs. 500 Crore may be notified as class of taxpayer, who shall be required to issue invoice having dynamic QR code;
(ii) To enable smooth roll out, such class of taxpayers may have an option to issue B2C invoice from 01st March, 2020. However, the same would be compulsory from 01st April 2020 onwards.

(iii) Further where the supplier makes the dynamic QR code available to the recipient through a digital display, an invoice issued by such a supplier containing cross-reference of the payment using such a dynamic QR code shall be deemed to have been issued with QR code.

3.10. Accordingly, he requested GIC to approve the proposals with corresponding notifications. It was also proposed that optional facility of generating e-invoice and QR code be made public through press release.

3.11. Shri Sandeep Kumar, Chief Commissioner, CGST Delhi pointed out that HSN code is missing in the list of data fields for QR code. Pr. Commissioner, GST Policy Wing replied that that depends on the schema. There is a proposal to modify GST INV-01 anyway, and a written proposal may be sent to the GST Policy Wing for examination in this regard. CEO, GSTN replied that the schema has a place for HSN code but since law makes HSN optional for few tax payers, it will be optional. The schema and FAQ on this issue are available on the GSTN website.

3.12. Pr. Commissioner, GST Policy Wing added that companies with Rs 500 crore plus turnover will have to generate the invoice with the dynamic QR code and display this to the customer. This will allow tracking the B2C transactions and addresses the concern of last mile consumption escaping the tax net. This is in addition to other measures like lottery scheme.

3.13. CEO, GSTN added that the facility of generation of QR code has been handled by the NPCI and the QR code will be generated at the time of payment. As of now, the QR code is static (fixed) but NPCI is making changes to create dynamic QR code which will be generated and capture many data fields which are not captured by the current static QR code mechanism.

3.14 Pr. Commissioner GST Policy placed the revised draft of notifications before the Committee which was taken on record.

3.15. Decision: The GIC approved the proposals for implementation of e-invoice scheme and QR code. The notifications will be issued after vetting by the Union Ministry of Law and Justice. It was also approved that optional facility of generating e-invoice and QR code will be made public through a press release. Accordingly, the implementing notification No. 72/2019-Central Tax dated 13.12.2019 has been issued.

**Agenda item 2: Withdrawal of Circular No. 107/26/2019-GST dt. 18.07.2019**

4. Pr. Commissioner, GST Policy Wing, CBIC introduced the agenda and stated that Agenda Item: 22 (ii) was placed before the 37th GST Council in its meeting held on 20th September, 2019 for issuance of a Circular in supercession of Circular No. 107/26/2019-GST dt. 18.07.2019 to clarify the various doubts related to supply of Information Technology Enabled Services (ITeS). The Council had recommended the issuance of the said Circular.

4.1. Post recommendation of the GST Council, the issue of intermediary was revisited by the Central Board of Indirect Taxes and Customs (CBIC). It was opined that there is a need to first achieve clarity on important policy issues such as scope of the expression “intermediary”, the expression “on his own account” and issues like what are the intermediaries that need to be taxed in
India and the intermediaries that need to be granted export benefit. Therefore, it was felt that the best course of action would be as follows:

   i. policy issues decided may be resolved first
   ii. appropriate changes in law may be proposed during the budget session to explicitly state the legal intent, with approval of the GST Council,
   iii. Circular No. 107/26/2019-GST dt. 18.07.2019 may be rescinded
   iv. no new circular may be issued without further deliberation on the policy issues involved.

4.2. The proposals relating to amendment in law related to intermediaries requires further deliberation and would be dealt separately. Therefore, the proposal was placed before the GIC to rescind the Circular No. 107/26/2019-GST dt. 18.07.2019 ab-initio.

5.3. **Decision:** After discussion, GIC agreed to rescind the Circular No. 107/26/2019-GST dt. 18.07.2019 ab-initio. Accordingly, implementing Circular No. 127/46/2019-GST dated 04.12.2019 was issued.

**Agenda item 3: Reverse Charge Mechanism on renting of motor vehicles**

6. It was stated that suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC. The GST Council in its 37th meeting dated 20.09.19 decided to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @ 5% to corporate entities may be placed under RCM. RCM was not recommended for suppliers paying GST @12% with full ITC, so that they may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them. Accordingly, a new entry was inserted in the RCM notification with effect from 01.10.19 vide notification no 22/2019 Central Tax (Rate) dated 30th September 2019.

6.1. It was mentioned that post issuance of the notification, references have been received from Karnataka State Travel Operator's Association and an individual which raise the following issues:

   (a) When a service is covered by RCM, GST would be paid by the service recipient and not by the supplier. Therefore, the wording of the notification that “any person other than a body corporate, paying central tax at the rate of 2.5%” is not free from doubt and needs amendment/clarification from the perspective of drafting.

   (b) Whether GST is required to be paid by a body corporate when receiving the said services from an unregistered person, who shall not be paying any GST.

   (c) Where the service is sub-contracted, RCM would block the ITC of the last person in the chain, supplying the service to a body corporate.

6.2. Accordingly, it was proposed that the wording of the RCM entry may be modified to say that supply of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, shall be placed under RCM, when the supplier fulfils all the following conditions:

   (a) is other than a body-corporate;
   (b) does not issue an invoice charging GST @12% from the service recipient; and
(c) supplies the service to a body corporate.

6.3. This would take care of the issues at paragraph 6.1.(a) and 6.1.(b) above. As regards the issue of blockage of ITC, it is a general consequence of placing any supply under RCM. It was also proposed that we may also issue a circular clarifying the applicability of RCM as above for the period from 1.10.19 (the date on which the notification No. 22/2019-CT (R) came into effect) till the date of issuance of the proposed amending notification. Accordingly, the GIC was requested to approve the draft Notification and Circular as proposed in the agenda item.

6.4. The State of Gujarat through written comment expressed that they agreed with the RCM on renting of motor vehicles in cases where supplier is unregistered person. However, the wording of the RCM entry in the circulated draft notification may be amended as “A person, other than body corporate when supplying services to a body corporate and not charging GST @ 12%”. It was clarified that the proposed draft or Column 3 of the RCM entry suggested by Gujarat is essentially the same as proposed in the agenda note. However, the draft notification shall be got vetted from the Ministry of Law and Justice before issuance. The GIC was requested to approve the agenda.

6.5. **Decision:** The GIC in-principle approved the draft Circular and notification relating to RCM on renting of motor vehicles subject to vetting of draft Notification by the Ministry of Law and Justice in view of observation made by Gujarat. The implementing Circular and Notification are yet to be issued.