Table Agenda 10 (i): Interim recommendations of Committee of Officers on Risk Based Management of taxpayers under GST regime

As a follow up of a presentation by the Member (Investigation), CBIC on the Fake Invoices & Fraudulent Availment of ITC, IGST Refunds and Drawback in the officers meeting held on 20.06.2019, it was decided to constitute a Committee of Officers (CoO) on risk-based management of taxpayers with a intent to establish certain checks and balance on the risky taxpayers such as follows:

a. Data Sharing for KYC: 3600 KYC of registrants based on data sharing from multiple agencies like CBDT (KYC verification to be IT driven, faceless and time bound) (PAN + ITR), Aadhar, GST returns, IEC etc.
b. Assess financial standing: Use of data to assess financial standing of entity to profile its capability w.r.t. turnover and passing on ITC.
c. Identify risky entities: Based on pre-identified risk parameters and risk profiling, identify on a continuous basis 'risky' entity.
d. Regulate ITC credit flow and IGST refunds of risky entities
e. Supplementary measures: E-invoice / E-Way Bill etc.
f. Customs: Mandatory examination

2. Accordingly, a CoO on risk-based management of taxpayers, having members from Centre and different States have been constituted on 15.07.2019 with the following mandate to study, examine and suggest:

a. the modalities of KYC verification of a taxpayer through various agencies, parameters for risk-based profiling of a taxpayers so as to identify 'risky' entity in an automated manner;
b. the modalities for assessing financial creditability of a taxpayer vis-à-vis his GST profile and also suggest various threshold limits for such target taxpayers;
c. reasonable restrictions/interventions to be imposed on taxpayer based on his risk parameters to regulate issue of invoice, utilization of ITC, passing of ITC, refunds etc.;
d. changes required, if any, in the GST Law and Rules to enable profiling and regulating risky taxpayer, including invocation of penal provisions in case of failure to undertake the desired verification/compliance for KYC;
e. measures for implementation of suggested risk-based management on immediate basis and any other measures, mechanism and machinery to check and curb multiple types of frauds.

3. Further, a suggestion received from the Policy wing to assess and recommend offence data requirements and modalities for data sharing between Centre, States and various other agencies and also in view of suggestion for sharing of evidences of cases on fake invoices by the CCT, Maharashtra vide his DO No. DCSO/Fake_Invoice/Inv_Cases/ B 392 Mumbai dated 07.08.2019, two more TORs were added in the mandate of the said CoO as well as officer of Maharashtra Government was also invited in the proceeding of the CoO. Accordingly, an addendum to the CoO and for TOR was issued by the Secretariat's OM dated 08.08.2019 as under:

a. data requirements and modalities for sharing of data of offence cases amongst Centre, States and with various other agencies;
b. common format for reporting offence cases by Centre and States, which could be used for sharing and storing data, based on the formats already in use by CEIB and CBIC.

4. The CoO had its first meeting on 22.08.2019 when various modalities for the Committee's mandate were discussed. Based on the discussion, GSTN and DG ARM were requested to make a presentation on taxpayers having issued abnormal invoices within three months of the taking registration. The CoO had its 2nd meeting on 09.09.2019. Based on deliberation and presentation made, the CoO has submitted it record of discussion of 2nd meeting (**Annexure-1**) through GST Policy Wing vide their OM No. 20/16/15/2019-GST dated 13.09.2019 in which the following interim recommendations has been made:

a. To initiate the Aadhar based verification process of all new taxpayers.
b. Develop modalities and timelines for similar verification of all the existing taxpayers.
c. In absence of Aadhar validation, compulsory physical verification of premises.
d. For risky new taxpayers (Proprietor, new PAN with no Income Tax or Business turnover, financial credentials) restrict ITC on supplies made by them to Rs. 20 lakh per month i.e. Block GSTR-2A auto population to Rs. 20 lakhs per month for first 6 months.
e. Further ITC to be linked to their depositing a certain percentage of the ITC sought to be passed on in cash ledger. Considering that the average cash to allowed credit ratio is 20:80, the credit allowed to be pushed above the limit of Rs. 20 lakhs shall be 5 times the amount deposited in the cash ledger.
f. GSTC with help of GSTN to get an offence database developed and all enforcement wings to share suspect GSTINs, DINs from GST and pre-GST periods in the said database.
g. Till new return is rolled out, transpose information from GSTR-1, GSTR-2A and GSTR-3B to identify taxpayers claiming excess ITC or taking ITC of duty/taxes not paid.

5. The record of discussion of the 2nd Meeting of the CoO and above interim recommendations are placed before the Council for consideration.

Annexure-1

Record of Discussion of the 2nd Meeting of the Committee of Officers on Risk Based Management of Taxpayers under GST Regime held on 9th September, 2019

The Second meeting of the Committee of Officers on Risk Based Management of Taxpayers under GST Regime was convened on 9th September, 2019 under the chairmanship of Shri Yogendra Garg, Pr. Commissioner, GST, CBIC at Kalpvriksha. North Block, New Delhi. The list of the attendees is enclosed as **Annexure – I.**

2. At the outset, the Pr. Commissioner, GST welcomed all the participants to the meeting and emphasised that the Committee, before making a detailed recommendation, should look upon enlisting some immediate steps for a structured risk-based management of the taxpayers that can be submitted as the interim recommendations of the Committee.

3. He informed that based on the discussions held in the last meeting certain measures were agreed upon in principle such as Mandatory Aadhar Verification for registration and categorization of risky supplier with respect to new businesses. He further enquired about the status of implementation of the Aadhar Verification process both from law perspective as well as from system / technology perspective. He informed that from legal point of view Section 25 of the CGST Act, 2017 have been amended, however, State amendments on the same are yet to be done.

3.1. With respect to new risky businesses, he asked the Committee to deliberate upon whether there can be a linkage of financial capacity of such businesses as there can be a supplier who has a total capital available of say, ₹ 20 Lacs, make supplies worth ₹100 Crores, takes on a tax liability of say, ₹12 Crores having a play of 50 days to file Returns and however, vanishes after 45 days without filing the returns. Sh. Riddesh Rawal, Deputy Commissioner – State Taxes, Gujarat (via V.C.) also raised the same issue wherein a new taxpayers issue no. of invoices and disappears without filing the returns. He also suggested that all new taxpayers should be mandatorily be required to file monthly returns.

3.2. Pr. Commissioner, GST, in this regard informed that keeping in mind the principle of "Ease of doing business", the Committee needed to deliberate upon the measures that can be imposed to limit exposure on account of such fraudulent taxpayers. Shri Neeraj Prasad, Commissioner (GST – Investigation) in this regard, informed that the it might not be feasible to restrict business activities of new businesses based on the financial capacity i.e. capital investment; however, these parameters can be used to keep a vigil on new risky suppliers.

3.3. Pr. Commissioner, GST suggested that in case of such new risky suppliers, a better way out would be that the availability of credit in GSTR-2A should be linked to the financial capacity such as paid up capital, subscribed capital, Income Tax Returns etc. and only proportionate credit should be allowed to such suppliers.

4. Thereafter, Commissioner (GST – Investigation) stated that they had sought reports from field formations with respect to certain fraudulent taxpayers and an issue has been flagged off by CGST & CX, Bhubaneshwar Zone. Briefing about the issue, he submitted that new registrants are not required to mandatorily submit their bank account details at the outset and can submit the same within 45 days, which appears to be a major compliance gap. Pr. Commissioner, GST in this regard informed that Bank account details may not be a constraint for taking a new registration, however, bank account details have to be submitted for doing anything on GST portal.

5. Subsequently, Shri Sanjay Gupta, ADG, DGARM presented the analysis of GSTR 3B data with respect to taxpayers who within first three months of their registration have a declared tax liability of

more than ₹1 Crore. He stated that in FY 2018-19, a total no. of 2355 GSTINs were completely new to the eco-system and have a declared tax liability of more than ₹1 Crore within first three months of registration. He further stated that for such GSTINs, ITC utilization pattern was also analysed and it was found that out of 2355 GSTINs, 2120 GSTINs had more than 95% ITC utilization, 2009 GSTINs had more than 99% ITC utilization and 329 GSTINs had 100% ITC utilization. Thereafter, data for FY 2019-20 was presented by the ADG, DGARM wherein it was reported that for FY 2019-20 (till date), a total no. of 744 GSTINs were new registrants having declared liability of more than ₹1 Crore in first three months after April, 2019. Out of these 448 GSTINs have ITC utilization of more than 99%.

5.1. Shri Ritwik Pandey, Joint Secretary, DoR pointed out that out of the above, most of taxpayers having more than 99% of the ITC utilization are mainly the taxpayers who may be involved in Circular Trading and are fraudulent taxpayers. Pr. Commissioner, GST, thereafter sought suggestions as to how this data can be used to create limitation on populating GSTR 2A for such suppliers. Joint Secretary, DoR in this regard submitted that for such suppliers passing on credit of more than ₹20 Lacs should not be allowed in a month. He further stated that with respect to above proposal examination needs to be done to carve a way out for genuine taxpayers. He added that for genuine taxpayers, who want to pass on credit of unpaid tax of more than ₹20 Lacs in a month, certain parameters may be put in place like filing of return etc.

5.2. Commissioner (GST – Investigation), in this regard, suggested that similar to the provisions in pre-GST regime, deterrent provisions should be made applicable wherein a taxpayer, if declared risky, would have to pay on every consignment and other checks, for a specified period of time. He further pointed out that there should be disincentive for not only suppliers of fake invoices but also people who are availing credit based on fake invoices like it was in Central Excise law. Joint Secretary, DoR informed that in a present scenario, GSTN does not allows the above proposed. Sh. Vashishtha Chaudhary, SVP GSTN informed that blocking of ITC for such cases can be considered as an alternative. ADG, DGARM suggested that since the nos. are less, an option of physical verification by the officers for such suppliers could also be looked into. He further added that while restricting passing on credit of unpaid tax of more than ₹20 Lacs in a month, in addition to tax liability the ITC ratio of a taxpayer should also be checked.

5.3. Pr. Commissioner, GST, thereafter sought comments from SVP, GSTN with respect to implementation of Aadhar based verification system. SVP, GSTN in reply submitted that the application has been developed but it would take approximately one month to implement the same. Sh. Manish K. Sinha, JS, TRU – II suggested that based on Aadhar authentication, Income tax data could also be linked.

5.4. Pr. Commissioner, GST and JS, DoR summarized to the Committee that in principle following can be the proposed interim recommendations: -

(a). a new taxpayer registering on a new PAN may be subjected to mandatory KYC / Aadhar basedVerification / Physical Verification,

(b). he may be allowed to do his regular business but he shall be restricted to pass on credit of unpaid tax of more than ₹20 Lacs in a month for the first six months.

(c). To pass on credit of more than ₹20 Lacs, he should make payment of tax in cash ledger (Average cash to credit ratio is 20:80, the credit allowed to be pushed above the limit of Rs 20 lakhs shall be 5 times the amount deposited in the cash ledger).

6. Subsequently, Pr. Commissioner, GST asked the State Taxes, Government of Gujarat for their views on the proposal. JC (enforcement) and DC, State Taxes, Government of Gujarat in principle agreed with the proposal and submitted that every new registrant should be included in this scheme. JS, TRU – II further added that for existing taxpayers a sudden spike could be considered as a trigger to adopt the above procedure so that old registrations are not mis-utilized.

7. In continuation, Pr. Commissioner, GST raised another issue with State Taxes, Government of Gujarat. He informed that Centre has identified certain risky exporters, credit verification for whom was undertaken by Centre only. However, some of the exporters fall under the jurisdiction of State Authorities also. It is proposed that first level credit verification may be undertaken by the respective authorities. Even if these risky exporters have applied for IGST refund, verification may be done in line with verification for ITC refund. Subsequent to verification, refund may be released and the exporter may be put in risk category for Audit purposes. DC, State Taxes, Government of Gujarat suggested that refund amount should not be sanctioned if the transaction is not being reported in GSTR 2A.

8. Thereafter, SVP, GSTN gave presentation on the issues on identifying the risky taxpayers. He stated that there are three categories of identifying issues: - identity theft, know but misusing loopholes and affiliated transaction-based tax evasion. In these three categories risky taxpayers may be identified based on the parameters like liability set off by 90% usage of ITC, difference of GSTR-3B and GSTR-1, difference between GSTR-3B and GSTR-2A, etc. He further presented risk categorization of the taxpayers for the States of Delhi and Maharashtra viz-a-viz Low, Medium and High-Risk categories. He further added that to ascertain the findings of the analysis, feedback forms have been given to the field formations to report the results based on the verification conducted. JS, DoR suggested that jurisdictional officers should be asked to verify these details.

9. Further, data requirements and modalities for sharing of data of offence cases amongst Centre, States and various other agencies were also discussed. All the members reiterated the need for a comprehensive Offence database having data from States & Centre both. This would help in identifying entities having cases booked against them or against which offence data exists in legacy period.

10. The Committee after detailed deliberations developed a consensus on the following interim recommendations:

a) To initiate the Aadhar based verification process of all new taxpayers.
b) Develop modalities and timelines for similar verification of all the existing taxpayers.
c) In absence of Aadhar validation, compulsory physical verification of the premises
d) For risky new taxpayers (Proprietor, new PAN with no Income Tax or Business turnover, financial credentials, restrict ITC on supplies made by them to Rs. 20 lakh per month I.e. Block GSTR-2A auto population to Rs. 20 lakhs per month for first 6 months.
e) Further ITC to be linked to their depositing a certain percentage of the ITC sought to be passed on in cash ledger. Considering that the average cash to credit ratio is 20:80, the credit allowed to be pushed above the limit of Rs 20 lakhs shall be 5 times the amount deposited in the cash ledger.
f) GSTC with help of GSTN to get an offence database developed and all enforcement wings to share suspect GSTINs, DINs from GST and pre-GST periods in the said database.

The date and time of next meeting shall be communicated separately.

Annexure - I

Sr. No.	Name (Smt./Shri)	Designation
1	Yogendra Garg	Pr. Commissioner, GSTPW
2	V.P Singh (via VC)	Excise & Taxation Commissioner, Government of Punjab
3	Srikar M.S (via VC)	Commissioner of State Tax, Government of Karnataka
4	Ritvik Pandey	JS, Revenue (DoR)
5	Riddesh Rawal (via VC)	Deputy Commissioner of State Tax, Government of Gujarat
6	Manish K Sinha	JS, TRU- II
7	Neeraj Prasad	Commissioner (GST Investigation)
8	Sanjay Gupta	ADG, DGARM
9	Dheeraj Rastogi	JS, GSTC Secretariat
10	Vashishtha Chaudhary	SVP, GSTN
11	Niranjan C.C.	Joint Director, DGGI (HQRS)
12	Nimba Ram	Joint Commissioner, GST Policy Wing
13	Kumar Vivek	AVP, GSTN
14	Sumit Bhatia	Assistant Commissioner, GST Policy Wing