

Date: 05/03/2020

Atul R. Shah
President

To,
The Government of India
Ministry of Finance
Department of Revenue
CBIC, GST Policy Wing.

Dear Sir,

Sub: - Suggestion on Agenda Note & Draft Notification in respect of Transition Plan in the view of Merger of Union Territory of Dadra & Nagar Haveli and Daman and Diu

With reference to above cited subject, we have reviewed the draft notification dated xxth February 2020 issued.

Sir, Our Association comprising of various Manufacturer, Service provider, Trader, etc. located within Union Territory of Dadra and Nagar Haveli AND Daman and Diu. Prior to Merger, there are two different Union Territories:
(1) Dadra and Nagar Haveli (Hereinafter referred as DNH) and
(2) Daman and Diu (Hereinafter referred as DD)

Sir, both the above Union Territories are industrial Areas and huge transactions take place for supplies of goods / services between DNH and DD.

Our Association highlight following suggestions in the interest of Trade and Industries for smooth functioning of GST within the new Union Territory called "*Dadra and Nagar Haveli AND Daman and Diu*". (Hereinafter referred as Merged UT)

1) SUGGEST TO CHANGE OF DATE IN THE DRAFT NOTIFICATION:

The draft Notification provides intervening period for January 2020 as 01.01.2020 to 26.01.2020 and for February 2020 as 27.01.2020 to 29.02.2020. The merged UT has made effective from 26th January 2020.

SUGGESTION: The date should be change for January 2020 as 01.01.2020 to **25.01.2020** and for February 2020 as **26.01.2020** to 29.02.2020

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Vice President

Dr. R. B. Shelke
General Secretary

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- 2) SUGGEST TO ACCEPT THE SAME CATEGORY OF TAX AS CHARGED AND PAID BY TAXPAYER FROM 26th JANUARY 2020 ONWARDS AS THERE WAS HUGE CONFUSION AMONG THE TAXPAYER:

Due to merged UT, the guidelines were issued by both Union Territories Commissioner to charge CGST & UTGST from 26th January 2020 for smooth functioning of GST, There are other some ways which still provide to charge IGST. The same are brought for your kind attention:

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Vice President

Sr. No.	Particulars	Recommend Tax
1	Press Note dated 27-01-2020 issued by DNH Commissionerate directing to charge CGST & UTGST from 26 th January 2020 onwards	CGST & UTGST
2	Trade Notice dated 28-01-2020 issued by DD Commissionerate directing to Charge CGST & UTGST from 26 th January 2020 onwards	CGST & UTGST
3	No amendment or changes made in the GST portal and therefore, the portal still accept IGST in GSTR-1 return for Merged UT	IGST
4	No amendment or changes made in the E-way portal and therefore, the portal still accept IGST in e-way for Merged UT	IGST
5	In General Budget 2020, proposal has been made in the Finance Bill to amend definition of Union Territory and the same shall have effective after enactment of Finance Act, 2020. This shows that there is no change in the tax category till Finance Act, 2020 is effective.	IGST

Dr. R. B. Shelke
General Secretary

Due to above, there are lot of confusions among the taxpayer for charging of tax from 26th Jan. 2020 and different types of practices has been followed in the trade and Industries for charging and paying the tax. Some of the instances are highlighted for your ready reference:

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- a) Some Taxpayer Charged CGST and UGST as per the guidelines issued by both UT Commissionerate and paid the same by changing the place of supply in GSTR-1 return
- b) Some Taxpayer Charged CGST and UGST as per the guidelines issued by both UT Commissionerate but paid IGST as GSTR-1 accept IGST only.
- c) Some Taxpayer charged IGST as GST portal and E-way portal accept IGST for the supply and based on Finance Bill.
- d) Some taxpayer start charging CGST and UTGST only after receipt of guidelines from UT Commissionerates.
- e) Some taxpayer continue IGST from 26th January 2020 to 31st January 2020 so that GSTR return for the month of January 2020 can be filed on the same method and thereafter from 1st February 2020 charging IGST.
- f) Some small taxpayer has charged the tax as directed by the Recipient of goods and services, to continue the business

As per the draft Notification, the CGST and UTGST is to be charged as per the GST Law. There will be following implication on the Supplier and Recipient:

- a) The taxpayer who has charge or paid wrong category of tax (IGST). Now, the taxpayer is require to pay the correct category of tax **with applicable interest.**
- b) The tax paid wrongly is require to be obtain as refund. Therefore, **large taxpayers have to file the refund application. This will unnecessary block the capital of the Taxpayers.**
- c) The recipient who has availed the ITC based on the wrong tax charged on the invoice, is now require to **reverse the ITC with applicable interest**
- d) The taxpayer has to **issue various credit note and debit note** to rectify the errors

SUGGESTION:

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Since, whatever category of tax paid in the form of CGST and UTGST or IGST, it goes in the treasury of Central Government only and there are no State Government involved in the merged UT. Thus, there will be no revenue implication for revenue point of view. Therefore, our suggestions are as follows:

- a) Accept the same category of tax as paid by the taxpayer irrespective of tax payable as per the GST law.
- b) Allow the ITC to the Recipient based on above (a)
- c) In case of delay in discharge of tax, applicable interest can be charged from the taxpayer

The necessary order can be passed under Section 172 of CGST Act, 2017 as removal of difficulties, in the interest of large taxpayer. This will avoid various litigation between taxpayer and GST department and also avoid huge disputes among the supplier and Recipient of goods / services in business transactions.

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Vice President

3) **SUGGEST TO CONTINUE WITH THE STATE CODE NUMBER FOR DD FOR SMOOTH FUNCTION OF GST:**

Due to change of state code for DD from existing 25 to 26, there will lot of difficulties may arise. Some of the difficulties are highlighted for ready reference:

A) **If GST number get change:** The following are the difficulties

- a) **Software system across country of taxpayer need to be modified:** The taxpayer may be supplying goods / services to various states / UT and also receiving various goods and services from various States / UT. Therefore, software system maintained by the Taxpayer across the country require modification by creating a new vendor code with new GST number. The software system of both Supplier and Recipient of DD is require to be modified.
- b) **Modification require with DGFT office in IEC number and also with Customs Department :** The taxpayer should be require to update in the IEC number issued by Director General of Foreign Trade office and also with Customs department

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- c) **Modification require to be made with Banks and other institution / Authorities**
Now a day, the GST number is given to Bank and various institution / department. The same is also require to be updated
- d) **Difficult to raise e-invoice from 1st April 2020** : It will be difficult to start raising the e-invoices from 1st April 2020 and the taxpayer is require to modified his GST number in this software system as well as supplier / recipient.
- B) **Modification require in GST portal for following difficulties:**
- a) **Uploading of credit note and debit note:** Difficulties in raising credit note and debit note for invoices raised from old GST number after 1st April 2020 onwards and now the credit note and debit note are raised from new GST number. The GST portal should be modified to this extent.
- b) **Availing of balance ITC for FY 2019-20 not availed by Taxpayer:**
As per the GST law, the taxpayer can avail the ITC till filing of September return after the end of the financial year or filing of Annual return whichever is earlier.

The GST portal is require to be made to this extent that the Taxpayer should be permitted to avail the remaining ITC after 1st April 2020 onwards. Otherwise, there will be unnecessary blockage of fund of the taxpayers.
- c) **Uploading of data in GSTR-2A:** Presently, ITC is allowed not exceeding 10% of the invoices uploaded on the GST portal. The GST portal is require to be modified to this extent.
- d) **Filing of Annual Return:** There will be difficulty in fling the Annual returns for FY 2018-19 and 2019-20. The GST portal is require to be modified to this extent.
- e) **Impact of filing the Refund claim:** The taxpayer files various refund claim such as Inverted duty structure, zero rated supply made without payment of tax, etc. The GST law provides to file the refund claim within 2 years. The GST portal should be modified, in filing the refund claim, even the ITC has been transferred to new GST number.

SUGGESTION:

In view of above difficulties, it is our suggestion:

- (a) To continue with same state code number of DD for smooth functioning of GST after merged UT. The GST portal require slight modification that supply between code 25 and code 26 should be treated as intra state supply. If this modification is possible in the GST portal, this will avoid all above difficulties.
- (b) In case, there is change in the state code, it is our suggestion that the old number should be continue for some interval period up to 20-10-2020 or further period so that all transactions relating to old GST number can be made from the same old GST number. This suggestion have huge impact on the Taxpayer as they have to maintain two different series of records in their software system. Therefore, the suggestion given at (a) above should be considered in the interest of large taxpayer.

4) IF NEW STATE CODE FOR DD IS INTRODUCE:

The following are some of the suggestions, if new state code for DD is introduce:

- a) **GST PORTAL MUST BE AMENDED PRIOR TO MAKING THE NOTIFICATION EFFECTIVE:** In order to have smooth functioning of GST, necessary amendment must be carried out in the GST portal before making the notification effective.
- b) **CHANGE EFFECT MUST BE EFFECTIVE FROM 1ST APRIL 2020 OR ANY OTHER MONTH :** For the smooth operation of the GST, the change in state code and other procedure should be made effective from 1st day of April 2020 or any other month as convenient to Government of India. The effective date should not be in the middle of any month.
- c) **NEW REGISTRATION SHOULD START IMMEDIATELY:** The new registration process should be initiate immediately so that the new GST number can be allotted to DD Taxpayer. The said new GST can be share among the Supplier and Recipient of DD Taxpayer, to enable them to make suitable change in their existing software system.

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d) **EFFECT ON E-INVOICES:** The e-invoices is to be implemented from 1st April 2020 for GST having annual turnover above 100 crores in financial year 2019-20. Therefore, large number of big taxpayers are in the process of modifying the existing software system and insisting the Recipient to provide various mandatory information. Delay in issue of new GST will effect the implementation of e-invoices.

5) **IMPACT ON REFUND CLAIM:**

The draft notification in para 2(a) provides for transfer of ITC within one month of obtaining new registration.

This will create difficulty for taxpayers applying for refund (such as Inverted duty structure, zero rated supply made without payment of tax, etc.) after 1st April 2020 for earlier tax period

SUGGESTION: The new GST number should allow to file the refund claim relating to old GST number also i.e. Tax period from April 2018 onwards. The clause should be inserted I the notification.

6) **CLAUSE TO BE INSERTED IN THE DRAFT NOTIFICATION TO ALLOW ITC OF OLD GSTIN IN NEW GSTIN:**

As per the GST law, the taxpayer can avail the ITC till filing of September return after the end of the financial year or filing of Annual return whichever is earlier.

There is no clause in the draft notification for availment of ITC from 1st April 2020 onwards for old GST number which was not availed earlier.

SUGGESTION: The clause should be inserted for availment of remaining ITC for FY 2019-20

7) **CHANGE IN MERGED UT PROPOSED IN FINANCE BILL SHOULD BE GIVEN RETROSPECTIVE EFFECT:**

The present Hon'ble President of India has passed Resolution under Article 240 of the Constitution of India and made it effective from 26th January 2020. On the other side, amendment is proposed in CGGT Act and UTGST Act for amendment of definition of Union Territory. There is no proposal for make this amendment retrospectively. Therefore, both the amendment (i.e.

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Hon'ble President of India Resolution and Finance Bill 2020) are contradictory with each other.

SUGGESTION: the amendment made in the Finance Act, 2020 should be given retrospective effect. This will make both the amendments on par.

8) TURNOVER FORMULA GIVEN IN NOTIFICATION SHOULD BE MODIFIED FOR TRANSFER OF CREDIT:

The draft Notification in para 2(b) provides the turnover formula for transfer of ITC. There is no requirement for any turnover formula for transfer of ITC. The entire ITC available should be transferred if taxpayer having registration in both the Union Territories. Therefore, this turnover formula seems to be irrelevant

SUGGESTION: Turnover formula should be deleted from the notification

In view of above suggestion, details clarification / instruction should be provide to the filed formation / Departmental Auditor not to take any adverse action for technical grounds and assist the Taxpayer in resolving their issues.

Hoping a favourable response in the interest of Trade and Industries.

Thanking You
Yours faithfully
For Federation of Industries Association



Atul Shah
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