

Analysis of GST notifications in India

Jenny Thekkekara ¹, Anitha Kumary L ²

¹ Associate Professor, Gulati Institute of Finance and Taxation, Thiruvananthapuram

² Associate Professor, Gulati Institute of Finance and Taxation, Thiruvananthapuram

Introduction

Goods and Services Tax (GST) is implemented in India with the slogan of 'one tax one nation'. Simplification of law and procedures are one of the important objectives of GST implementation in India. GST is known as a Good and Simple tax. Nevertheless, with the introduction of GST, the administrative system of the government was forced to issue a large number of notifications in respect of the various provisions of the GST Law. It resulted in the issuance of 718 notifications till 31 December 2022 (not including the notifications issued by various state governments and union territories) which makes the assessment, levy and administration of tax and its collection complex for both the officials and taxpayers

If a law is simple means the number of changes proposed in it should be less. Due to the frequent issuance of notifications under GST, tax payers are finding it difficult when they process a document for filing monthly returns and reply to assessment orders. The notification with regard to the same be changed overnight without being informed in advance and they are to be fined and charged for non-completion of the process within the time span and limit. Frequent changes in notifications increase the compliance cost of taxpayers by way of upgrading/updating software applications.

The small and medium businesses are the ones who may be affected more as they may fall back in getting timely updates and advise for want of engagement of professionals which normally, they cannot afford. A large number of notifications is likely to reduce compliance and adversely affect revenue. The issuance of these notifications is a major hassle with regard to simplifying tax procedures under GST Law.

Studies on GST are focused mainly on the initial implementation issues of GST in India. The structural bias, major concerns include RNR fixation, fiscal autonomy of states, GST rate fixation, issues of small business, compliance level, issues faced under VAT scenario etc. (Alok Kumar Prasanna (EPW, 2016), Raktim Dutta, Binod Kumar (EPW 2018), Surajit Das (EPW, 2017), The EPW editorial (EPW, August 2019) Sudipto Banerjee and Sonia Prasad (EPW, September 2017), Sacchidananda Mukherjee (NIPFP WP No.301, 2020). So far very limited study has been conducted on this area. This study is the first attempt to analyse the notifications issued after the implementation of GST.

This study intends to understand the reasons for the alarming number of GST notifications both general and rate under the Central Goods and Services Tax Act (2017)/State Goods and Services Tax Act since its inception in July 2017 till December 2022. The study will also group the various notifications in relation to the different sections concerned and find out how many notifications have been issued under different sections of the Central Goods and Services Tax Act/State Goods and Services Tax Act, 2017. The study also proposes to look into the legal ambiguity if any for making changes under various sections of the Central Goods and Services Tax Act, 2017. The study will also look into the implication on state revenue due to the enormous number of notifications.

Status of GST notifications

GST notifications are issued under Central Goods and Services Tax Act, 2017 (CGST Act) and Integrated Goods and Services Acts, 2017. (IGST Act) .Notifications are under two categories such as central tax notifications and central tax (rate) notifications. The status of notifications issued from the inception of GST to December 2022 is presented in.

Year	Central Tax [CT]	Integrated Tax [IT]	Central Tax (Rate) [CT(R)]	Integrated Tax (Rate) [IT (R)]	Total
2017	75	12	47	50	184
2018	79	4	30	31	144
2019	78	4	29	28	139
2020	95	6	5	5	111
2021	40	3	22	22	87
2022	27		15	11	53
Total	394	29	148	147	718
(per cent)	(54.87)	(4.04)	(20.61)	(20.47)	(100)

Table 1 gives the total number of notifications issued from 2017 to 2022 under various Acts of goods and services tax. It is seen from table 1 that the majority of notifications are issued

under central tax category (54.87 per cent). Central tax rate notifications come to 20.61 per cent of the total number of issued notifications. Central tax notifications showed an increase from 2017 onwards and a negligible decrease showed in 2019. In 2020, the number of notifications issued increased to 95. There has been a considerable decline in the number of issuance of notifications from 2021-22. Here one pertinent point to note is that along with CGST notifications, there is a need for the issuance of corresponding notifications under State Goods and Services Tax Act, 2017 (SGST Act) . It is observed that the corresponding SGST notifications are not issued on time. For eg;, in Kerala, only the SGST notifications are available in the website of State Goods and Services Tax Department for a limited period. It is learned that the state taxes department issues corresponding notifications for meeting the administrative requirement but not making them available to the public.

Table 2: Central tax notifications and share of relevant sections involved under CGST Act, 2017

Sl.No	Section involved under CGST Act	No. of sections involved in Central Tax Notifications	% sections dealt in notifications
1	Sec.1	8	1.29
2	Sec.5	11	1.78
3	Sec.10	26	4.20
4	Sec.16	6	0.97
5	Sec.19	8	1.29
6	Sec.23	9	1.45
7	Sec.25	14	2.26
8	Sec.29	5	0.81
9	Sec.31	22	3.55
10	Sec.37	57	9.21
11	Sec.38	8	1.29
12	Sec.39	101	16.32
13	Sec.44	16	2.58
14	Sec.47	30	4.85
15	Sec.50	9	1.45
16	Sec.51	17	2.75
17	Sec.54	11	1.78
18	Sec.67	4	0.65
19	Sec.68	6	0.97
20	Sec.128	18	2.91
21	Sec.148	36	5.82
22	Sec.164	62	10.02

23	Sec.168	56	9.05
24	Sec.168A	10	1.62
24	Others	69	11.13
	Total	619	100

CGST notifications issued are related to different sections of CGST Act. Table 2 explains the relevant sections under which the number of notifications issued. It is observed from table 2 that large number of notifications issued are having implication on section 39 of CGST Act (16.32 per cent). The second section having the maximum number of notifications (66) is under section 168. Section 168 deals with instructions or directions to Officers for implementing the Act. Section 37 also having a greater number of notifications and placed in third position. Section 168 placed as fourth and fifth positions.

Though the number notifications issued under Central tax is 394 covering 174 sections. By the analysis it is observed that notification issued in one section is not restricted to that particular section. Certain notifications having implications on 4 to 5 sections.

Table 3: Relevant sections dealt under Central tax notifications

Sections	Sections dealt with	% sections dealt in notifications
Sec 1	Commencement of the provisions of the Act	1.29
Sec 5	Powers of Officers	1.78
Sec 10	Composition Levy	4.2
Sec 19	Taking input tax credit in respect of inputs and capital goods sent for job works	1.29
Sec 23	Persons not liable for Registration	1.45
Sec 25	Registration	2.26
Sec 31	Tax Invoice	3.55
Sec 37	Returns-Outward supplies	9.21
Sec 39	Returns-Inward and Outward supplies of goods or services or both	16.32
Sec 44	Annual Return	2.58
Sec 47	Levy of Late fee	4.85
Sec 51	TDS	2.75
Sec 128	Power to wave Penalty or fee or both	2.91
Sec 148	Notifying certain class of registered persons for furnishing returns and payment of tax	5.82

Sec 164	Power to make notifications	10.02
Sec 168	Power to issue instructions or directions	9.05
Sec 168A	Power of Government to extend time limit in special circumstances	1.62
Others	Other sections	19.05

It is observed that a larger number of notifications issued under central tax under CGST Act is in Section 39 (16.32 per cent). Section 39 deals with the return filing of inward and outward supplies of goods or services or both. As return filing is online, any difficulty in filing returns has been rectified with the issuance of notifications. Section 164 gives the power to make notifications, 10 per cent of notifications issued on that basis. Section 39 and Section 168 are the two sections also have the issuance of more notifications. Due to technological glitches, a lot of difficulties and delays occurred in return filing at various stages. This leads to the issuance of a large number of notifications. The lack of coordination of GSTN portal and corresponding provisions in the Act created a lot of anomalies.

Table 4: Central Tax (Rate) notifications and share of relevant sections involved under CGST Act

Sl.No	Sections under CGST Act.	Central Tax (Rate) Total	Per cent
1	Sec.7	4	1.77
2	Sec.9	85	37.61
3	Sec.11	71	31.42
4	Sec.15	28	12.39
5	Sec.16	12	5.31
6	Sec.51	2	0.88
7	Sec.54	4	1.77
8	Sec.55	2	0.88
9	Sec.148	18	7.96
	Total	226	100.00

Table 4 gives the number of sections under which the notifications under Central tax rate have been issued. Most of the rate notifications issued are based on sections 9 and 11 of CGST Act. Under section 9 (Levy and collection of tax-charging section), 85 notifications (37.61 per cent) were issued while under section 11, 71 notifications (31.42 per cent) were issued. Section 9 is the charging section and section 11 deals with the power to grant exemption from tax.

Revenue implications on states happened due to the issuance of certain notifications. For E.g., Notification No 41, 2017, central tax (rate), slashed the rate of around 200 commodities from 28 per cent to 18 per cent. It indicates the decline of SGST rate from 14 per cent to 9 per cent. This definitely declines the SGST collection of states. (Joseph and Anitha Kumary, 2021).

Any reduction in tax rate indicates a corresponding reduction in tax revenue to the exchequer. A number of changes in the tax rate of commodities would definitely increase the compliance cost of taxpayers. Administratively also it creates difficulties in assessment for the tax officers. Frequent changes in rates through notifications definitely have an adverse impact on tax administration. Issuance of a large number of notifications has affected the revenue neutrality of rates. As notifications reduce rates or exempt various commodities and services directly reduce revenue collection.

Another issue identified is the lack of coordination of sections of the Act and GSTN network changes. Changes made with the issuance of notifications are carried out in the GSTN portal with a time lag. This lag leads to further issuance of notification for postponement of the date for return filing.

Further, the study analysed the relevant sections and content of notifications. Ambiguities are identified in many sections. It is observed from the analysis that the main reason for the issuance of a large number of notifications is the lack of clarity in sections under CGST Act and the corresponding procedure in the GSTN system. It is observed from the analysis that the absence of a stable and simplified return filing system could be the main reason for the issuance of a large number of notifications. Delay in adaptability, lack of domain knowledge while developing the GSTN network, delay in making rule changes in the GSTN system are major factors. Dealers require sufficient time in understanding the legal changes and making corresponding changes/updates while filing monthly returns of 3B and GSTR1 returns.

Purpose of issuing notifications

From the analysis of the content of CGST tax notifications, it is observed that a large number of notifications are issued mainly for rectifying the problems of GSTN system. Around 25 per cent of notifications issued are related to return filing mainly postponement of the date of filing of returns. This indicates that the majority of notifications issued are based on technical

issues of GSTN system. Certain notifications have direct implications on various sections of the CGST Act. This needs further analysis of the content of notifications.

Ambiguities identified in relevant sections

Ambiguities were identified in various sections of CGST Acts while analysing the notifications. It needs further analysis of the content of each notification and its implication in each section. It is noticed that notification relates to one section has implications on more than one section. Certain notifications have implications on 3 to 5 sections.

The content of the notification is not clear. The object and purpose of the notification should be given as explanatory notes in each notification. The number of sections dealt with in each notification is not clearly mentioned. This leads to ambiguity in the identification of other related to the notification concerned. This will adversely affect the assessment of both the administration and other stakeholders.

An increase in compliance cost on account of the frequent changes (eg.rate changes) requires upgrading of software and hardware. Hasty changes need more time to make the updating. This affected both businessmen, practitioners, officials concerned and other stakeholders. Particularly, these frequent changes affect heavily on small traders and MSME sectors.

Registration threshold deviations in certain states eg. Telangana where they have not issued notifications for enhancing the threshold from 20 lakhs to 40 lakhs. (Notification no.10/2019, Central tax). A similar type of deviation exists in other states. States like Kerala issued the enhancement of notification exclusively for goods with effect from 1 April 2019 (SRO 248/2019). This enhancement of the threshold to 40 lakhs for goods will affect states like Kerala where small dealers are large in number. Some of the notable problems/difficulties identified on account of the issuance of a large number of notifications are as follows.

1. Frequent Amendments in the Rules by issuing notifications make the procedure more complicated. The stakeholders find it difficult to run after the amendments. Reduce the number of issuing notifications. Businessmen have to do business rather than study the notifications for doing business. It will discourage engaging in business and also it will lead to an informal way of doing business and the result will be revenue loss.

2. Notifications issued by the Centre are copied by the States. The purpose for the issuance of the Notification is not explained in the notification. Hence there may arise contradictions in the implementation level even between states.
3. Many notifications are issued in tune with erstwhile service tax notifications like notification 12/2017 Central Tax. The language of the notification should be simple.
4. Same HSN is given for goods having different rates.
5. Complexity of language of the notifications. Even an expert in law is finding it difficult to understand the meaning
6. All substantive provisions should be in the parent Act. Delegated power should not be exercised for making substantive law ((1026) 7 SCC 703) . Details are given in Appendix 1.
7. Power of government to issue delegated piece of legislation has to be done by rules and not by notifications (Munjaal Manish Bhai Bhat vs Union of India(Guj) (2022) 30 KTR 444 (Guj)

Policy inputs

Issuance of frequent notifications to be minimised. Issuance of notifications will be restricted to once in three months. Changes through notifications will be incorporated in the GSTN portal within the short stipulated time limit. Changes in Acts will be made twice a year. The purpose for the issuance of the notification will be explained in the notification. Notifications will be issued in tune with goods also rather than the practice of considering only the service tax notification method. The language of the notifications should be simple. The use of 8 digit HSN code will be made mandatory for clarity. It is high time to incorporate all substantive provisions in the parent act. Delegated power should not be exercised for making substantive law. Simplification of return filing will be made in order to avoid frequent issuance of notifications thereby reducing the compliance cost of taxpayers for upgrading/updating software applications. Small and medium businesses should get sufficient time for updating for return filing with tax professionals.

References

Joseph K J and Anitha Kumary L (2021) , *Kerala's GST revenue conundrum: A preliminary exploration within the fiscal federal context*, *Kerala Economy*, Oct-Nov- Dec, p.7-16 , Gulati Institute of Finance and Taxation.

Gulati Institute of Finance and Taxation (2022) , *Munjaal Manish Bhai Bhat vs Union of India(Guj)*, *Kerala Tax Reporter (KTR)*, Vol 30, p 444- 492

Websites of cbic.gov.in , gst.gov.in and keralataxes.gov.in.

Appendix 1

Supreme Court in the case of **Cellular Operators Association of India v. TRAI [(1026) 7 SCC 703]** wherein the Apex Court has delineated the parameters of judicial review of subordinate legislation. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

- a) Lack of legislative competence to make the subordinate legislation.
- b) Violation of fundamental rights guaranteed under the Constitution of India.
- c) Violation of any provision of the Constitution of India.
- d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
- e) Repugnancy to the laws of the land, that is, any enactment.
- f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules).

The court considering the validity of a subordinate legislation, will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. Where a rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. But where the contention is that the inconsistency or non-conformity of the rule is not with reference to any specific provision of the enabling Act, but with the object and scheme of the parent Act, the court should proceed with caution before declaring invalidity.”

Rule which does not conform to the provisions of the Act will have to be held ultra vires the enabling Act.