



ISSN 2582 - 211X

LEX RESEARCH HUB JOURNAL

On Law & Multidisciplinary Issues

Email - journal@lexresearchhub.com

VOLUME II, ISSUE I
OCTOBER, 2020

<https://journal.lexresearchhub.com>

**Lex Research Hub
Publications**

DISCLAIMER

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Lex Research Hub Journal On Law And Multidisciplinary Issues), an irrevocable, non exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, stored, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

The Editorial Team of **Lex Research Hub Journal On Law And Multidisciplinary Issues** holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not necessarily reflect the views of the Editorial Team of Lex Research Hub Journal On Law And Multidisciplinary Issues.

[© Lex Research Hub Journal On Law And Multidisciplinary Issues. Any unauthorized use, circulation or reproduction shall attract suitable action under applicable law.]

EDITORIAL BOARD

Editor-in-Chief

Mr. Shaikh Taj Mohammed

Ex- Judicial Officer (West Bengal), Honorary Director, MABIJS

Senior Editors

Dr. JadavKumer Pal

Deputy Chief Executive, Indian Statistical Institute

Dr. ParthaPratimMitra

Associate Professor, VIPS. Delhi

Dr. Pijush Sarkar

Advocate, Calcutta High Court

Associate Editors

Dr. Amitra Sudan Chakrabortty

Assistant Professor, Glocal Law School

Dr. Sadhna Gupta (WBES)

Assistant professor of Law, Hooghly Mohsin Govt. College

Mr. KoushikBagchi

Assistant Professor of law, NUSRL, Ranchi

Assistant Editors

Mr. Rupam Lal Howlader

Assistant Professor in Law, Dr. Ambedkar Government Law College

Mr. Lalit Kumar Roy

Assistant Professor, Department of Law, University of GourBanga

Md. AammarZaki

Advocate, Calcutta High Court

ABOUT US

Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) is an Online Journal is quarterly, Peer Review, Academic Journal, published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essays in the field of Law and Multidisciplinary issues.

Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. Lex Research Hub Journal On Law And Multidisciplinary Issues (ISSN 2582 – 211X) welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

PROBLEMS UNSETTLING GST IMPLEMENTATION, WITH EMPHASIS ON EVASION OF TAXES AND CREDIT FRAUDS

Author –

Anushri Mandal

Student (B.A. LLB)

West Bengal National University of Juridical Science

ABSTRACT

One of India's major reforms was the implementation of the Goods and Services Tax (GST). This was implemented as a means of curbing corruption by subsuming the different types of taxes such as the Excise Tax, Service Tax, Capital Gains Tax, Securities Tax etc. under one heading, thus implementing one tax system in the country. Aimed at reducing tax theft, this system of taxation brought with it various loopholes and complicacies (wrought about by shift in technology), which have not quite been able to be repaired by the concerned authorities.

Bogus input tax credits, fraudulent acts by exporters, the emergence of e-commerce etc. have hindered this attempt.

Moreover, this system has not been beneficial to all. Small businessmen are one of the most affected.

In this paper, I have dealt with the technical issues with the GST. These issues include additional working capital, delayed payment, returns, the issue with reporting of the Harmonized System of Nomenclature and many more.

GST is a relatively new issue, with seemingly more problems than solutions. I have aimed at analysing these issues, whilst providing possible solutions to tackle them effectively.

Keywords - GST, Tax Law, Evasion of Taxes, Credit Frauds

TABLE OF CONTENTS

Differences among States	11
Problems for Small Traders	11
GST Collections	12
Evader's and fraudster's Jackpot	13
Modus operandi of Bogus Input Tax Credit	14
Actual cases of fraudulent ITC	16
Fraud by exporters	17
Misuse of Inverted duty structure	18
Tax evasion.....	18
Technical issues with GST	20
Additional working capital:.....	20
Delayed payments:	20
Rectifications:	20
Returns:	21
Reporting of HSN:	21
Reconciliation in GST:.....	21
Refunds:	22
Interest on belated payments:	22
Issues for E-commerce Companies.....	23
E- Way bill	24
Problems in New GST Return System	25
Awareness	25
Realignment of Systems.....	26
Real Time Upload	26
Tracking invoices	26
Matching of invoices	27
Vendor communication	27
Complicated entries.....	28

INTRODUCTION

On July 1st, 2017, a major taxation reform was attempted with the introduction of GST. Many claimed it as India's second "tryst with destiny."¹ All indirect taxes were sought to be foregone and replaced by a single indirect tax administration and was touted to remove all the complications and hassles of a multiple taxation system and herald the way for a single-window indirect tax regime.² However, almost 32 months have elapsed and after multiple policy changes and turn-abounds, the tax administrators and the business community are still grappling to understand the ramifications, procedural and technical glitches.³ Compliance issues, tax avoidance and mounting credit frauds. The new tax regime is still evolving and things have not unfolded, as they were initially planned. Taxpayers, and professionals, are attempting to understand the applicability of the various provisions and their impact on their business and are trying to adapt to GST using various technologies. The World Bank has reportedly commented that GST was among the most complex tax systems in the world.⁴

The gross GST revenue collection for December 2019 at Rs. 1.03 lakh crore had crossed Rs. 1-lakh crore mark, thereby exhibiting a growth of 16 %. The total number of GSTR 3B Returns filed for November up to December 31 was 81.21 lakh.⁵

GST appears to be besotted with various teething problems including growing tax evasion and increasing credit refund frauds and the government is trying hard to find solutions to genuine problems faced by the business community. In this article, we will be discussing the problems being faced in the implementation of GST with special emphasis on evasion and credit frauds.

¹ Press Trust of India, *GST is India's new tryst with destiny: CII President, Shobana Kamineni*, THE ECONOMIC TIMES (Jun. 29, 2017, 3:34 PM), <https://economictimes.indiatimes.com/news/economy/policy/gst-is-indias-new-tryst-with-destiny-cii-president-shobana-kamineni/articleshow/59368519.cms>

² IANS, *GST: Indian system among the most complex globally, says World Bank report*, BUSINESS Standard (March 16, 2018), https://www.business-standard.com/article/economy-policy/gst-indian-system-among-the-most-complex-globally-says-world-bank-report-118031600472_1.html

³ *Id.*

⁴ *Id.*

⁵ Business Today.In, *GST revenue crosses Rs 1-lakh crore mark in December 2019*, BUSINESS TODAY (Jan. 1, 2020, 06:50 PM)), <https://www.businesstoday.in/current/economy-politics/gst-revenue-for-december-2019-crosses-rs-1-lakh-crore-mark/story/392973.html>

Part I of this paper deals with the various broader problems associated with GST. This includes problems with implementation, the different GST rates among states, the problems faced by small traders and other such issues associated with GST collection

Part II deals with the loopholes in GST, and how these loopholes have paved a way for fraud and tax evasion. Some actual cases of fraudulent ITC along with fraud by exporters, misuse of inverted duty structure and cases of tax evasions have also been discussed.

Part III focuses on technical issues associated GST such as delayed payment, returns, reporting of HSN, interest on belated payments etc. along with the various issues faced by e-commerce companies.

Part IV focuses on various problems associated with the new GST Return System, which was implemented in April 2020.

Part V is, finally, the conclusion of the paper.

PART I

Differences among States

GST rules lay down that if a state's revenue growth falls below 14% in a year, the Centre would compensate the shortage during the initial 5 years. However, many states have requested the 15th Finance Commission that the period of compensation, which is to expire during the financial year 2022 be extended.⁶ There are differences among the states with regard to the rates of GST on various items. It has been reported that many states are reluctant to bring some items such as petroleum products and electricity under the GST.⁷ Disagreements have been voiced over Tamil Nadu's introduction of an entertainment tax apart from levying GST. Lottery has two tax rates i.e. 12%, when sold within the state and 28%, when it is sold outside. This is a hot bed of controversy, with Punjab and West Bengal stating that the regime of dual rates should be continued whereas states such as Sikkim, Assam, Goa and Maharashtra were asserting for the imposition of one rate of tax.⁸ There is also a lack of consensus on tax concessions on electric vehicles, gold, mandatory e-ticketing on movie halls, etc.⁹

Problems for Small Traders

GST entails additional costs for small business community and everyone cannot afford cost of computers and trained operatives necessary to implement the compliances of GST, like making bills, uploading in the portal, online filing of returns etc.¹⁰ Allotting of MRP, which is essential in the GST era, is a challenge for many small businessmen. Most of these small businessmen, craftsmen, traders are uneducated and have mental blockages regarding paperwork. Even dealers

⁶ Remya Nair, *Fake firms, fake invoices and credit fraud — how it went all wrong for GST in just 2 years*, THE PRINT (Jan. 16, 2020, 12:46 PM), <https://theprint.in/economy/fake-firms-fake-invoices-and-credit-fraud-how-it-went-all-wrong-for-gst-in-just-2-years/349933/>

⁷ Shantanu Nandan Sharma & Suman Layak, *GST: The Challenges Before India's Largest Indirect Tax Reform*, ECONOMIC TIMES (October 7 2020, 3:34 PM), https://economictimes.indiatimes.com/news/economy/policy/gst-the-challenges-before-indias-largest-indirect-taxreform/articleshow/71353710.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁸ *Id.*

⁹ *Id.*

¹⁰ Attul Mittal, Major GST Issues/Problems Seen across India Till Now, SAGINFOTECH (Dec. 26, 2019), <https://blog.saginfotech.com/gst-issues-india>.

are confused regarding rates.¹¹ Many small business is below the threshold limit for GST and hence big enterprises fail to have confidence on them as these enterprises require adequate and faultless paperwork. As a result big buyers are demanding bills even from sellers, who are not mandated to register for GST. In the absence of certificate of exemption from GST, many small business persons are facing acute problems as big players are unwilling to deal with them.¹²

GST Collections

It was claimed that the introduction of GST would herald a new era of indirect taxation, which would experience a jump in tax collections.¹³ However, till date the government has not come out with any data which reveals that the revenue collected under GST exceeds the revenue collected by the 17 taxes, namely VAT, Octroi, service tax etc., which have been disbanded on the introduction of GST. It is reported that the collection under the GST regime may be lower.¹⁴

¹¹ *Id.*

¹² *Id.*

¹³ *Supra* note 7.

¹⁴ *Id.*

PART II

Evader's and fraudster's Jackpot

A few years have passed since the passing of GST but the tax scheme has witnessed unprecedented tax evasion and claims of a fraudulent input tax credit of gigantic proportions.¹⁵ Rampant tax evasion has taken even the taxmen by surprise. During 2018-19, more than 1,600 cases have been initiated in respect of tax evasion and bogus credit claims of Rs 11,251 crore. Till November 2019, more than 6,000 cases were launched by GST authorities⁶. Non-existent firms, fake input tax credit claims, bogus invoices have plagued the GST regime in just over four years. There is a mismatch between initial return GSTR-1 and final returns GSTR-3 filed by taxpayers estimated at Rs 34,000 crore and the present GST system has no mechanism to check it.¹⁶

So what had gone haywire with the system, which was hailed as a tryst with destiny and was aimed at creating an electronic trail for all transactions, which was supposed to make evasion difficult?

Reasons for frauds- In the initial GST design proposal there was a system whereby the seller had to upload the invoices, which would be matched by the invoices uploaded by the purchaser, in order to claim input credit. This system automatically removed the possibility of bogus Input Tax Credit (ITC).¹⁷ However, due to intense public outcry that it would not be possible to comply with the stringent requirements and lack of prevailing technological facilities with taxpayers, the government withdrew the invoice matching scheme. Forms like the GSTR 2 and GSTR 3, which were aimed to facilitate such matching and verifications, were scrapped.¹⁸ Instead, the government introduced a simple form known as GSTR3B6. Thus the loopholes in the system were exploited by unscrupulous elements and fraudulent input tax credit started to be claimed as there was no cross verification.¹⁹ Added to this, as the business community was struggling to cope up with the numerous complex compliances of GST, the government deliberately reduced enforcement

¹⁵ Sangeeta Tanwar, *A spate of recent frauds has taken the sheen off India's new tax regime*, QUARTZ INDIA, (Jun. 4, 2019), <https://qz.com/india/1634102/fraud-by-indias-manpasand-beverages-exposes-loopholes-in-gst/>

¹⁶ *Supra* note 10.

¹⁷ *Supra* note 6.

¹⁸ *Id.*

¹⁹ *Id.*

measures, so as to allow time to the business community to adapt to the new requirements and procedures.²⁰

Modus operandi of Bogus Input Tax Credit

As per GST rules, when a manufacturer purchases raw material, he pays GST to the supplier, who deposits the same to the government exchequer.²¹ The manufacturer adds value to the raw materials and sells his finished product. The purchaser of his finished products in turn pays him GST, which the manufacturer has to deposit to the government.²² While depositing with the government, the manufacturer gets the credit of the GST that he had paid to the supplier of his raw materials. Thus, from the GST to be deposited to the government, which the manufacturer had collected from the purchaser of his finished product, the manufacturer gets a reduction or credit of GST already paid by him to the supplier of his raw materials. The GST paid by the manufacturer to his supplier, which will be adjusted against the manufacturer's GST liability is known as Input Tax Credit (ITC).²³

Many unscrupulous persons are claiming fake ITC.²⁴

How is that possible? The simplest modus-operandi is to show purchases from a bogus company, obtain a bogus invoice, upload the purchases and payment of GST in the portal and claim a fake input tax credit.²⁵ No actual movement of goods take place in such cases. Only papers/documents are generated to evidence that transactions had taken place²⁶. Payments are made through banking channels in respect of the purchases made, as evidence to support actual physical purchases.²⁷ The

²⁰ *Id.*

²¹ *What is Input Credit under GST? & How to claim it?*, CLEAR TAX, (Jul. 08, 2020, 11:09 AM), <https://cleartax.in/s/what-is-input-credit-and-how-to-claim-it>.

²² *Id.*

²³ *Id.*

²⁴ Press Trust of India, *Rs 440 crore GST fraud busted in TN, man arrested*, INDIA TODAY, (Nov. 30, 2019, 00:27 AM), <https://www.indiatoday.in/crime/story/rs-440-crore-gst-fraud-busted-in-tamilnadu-man-arrested-1623835-2019-11-30>

²⁵ Press Trust of India, *GST Authorities Unearth Racket Involving Rs. 140 Cr*, ECONOMIC TIMES, (Nov 26, 2019, 09:02 PM), <https://economictimes.indiatimes.com/news/economy/policy/gst-authorities-unearth-racket-involving-rs-140-cr-tax-fraud/articleshow/72246031.cms?from=mdr>

²⁶ *Id.*

²⁷ *Id.*

money is withdrawn by the supplier from the bank and is refunded back to the purchaser in cash, after deducting commission.²⁸

To put to practice these nefarious schemes, it has been claimed by tax officials that bogus firms are registered and shell companies are created.²⁹ The owners/partners/directors of these bogus firms/ shell companies are generally laypersons like servants, housewives, taxi drivers, dally wagers, plumbers, unemployed youth etc. who are simply name lenders, who have no idea about the actual transactions.³⁰ Their names are used in exchange of commissions given to them and their signatures are taken in all legal and financial documentation. From a single address in a room in a building, hundreds of such companies are floated. As there is no physical existence of these companies and they exist only in paper, they are known as “shell companies”. They are mere shells and there is nothing tangible inside them.³¹ All kinds of fraudulent transactions are done through these shell companies.³² In case of any departmental action, the directors, who are servants, taxi drivers, sweepers etc. get caught and the men behind the fraud simply vanish, without leaving any trace.³³

The Principal Additional Director General, Chennai Zonal Unit of DGGSTI, K Anpazhakan, in an official release said that PAN and Aadhar of unsuspecting persons were obtained in the pretext of giving bank loans and were subsequently used to produce such fabricated entities. It has been claimed by officials that hi-tech means of data theft from Aadhar, PAN and bank records are being resorted to in order to create unsuspecting persons as bogus directors.³⁴

²⁸ *Id.*

²⁹ Asian News International, *Main culprit in case of GST fraud leading to tax evasion of Rs 241 crore arrested*, (Dec. 26, 2019), BUSINESS STANDARD, https://www.business-standard.com/article/news-ani/main-culprit-in-case-of-gst-fraud-leading-to-tax-evasion-of-rs-241-crore-arrested-119122601088_1.html

³⁰ ZeeBiz WebTeam, *GST Fraud Racket of Whooping R. 138 Cr Busted! REVEALED- This is how Criminals Used to Cheat*, (Oct 26, 2019), ZeeBusiness, <https://www.zeebiz.com/india/news-gst-fraud-racket-of-whopping-rs-138-cr-busted-revealed-this-is-how-criminals-used-to-cheat-113207>

³¹ Arkamoy Dutta Majumdar, *How shell companies are used in black money creation, laundering*, (Aug 18, 2017, 07:43 AM), LiveMint, <https://www.livemint.com/Money/cwZv5QRQdWLDKJKqLJuXtK/How-shell-companies-are-used-in-black-money-creation-launde.html>

³² BS Web Tea, *Fake invoicing racket worth Rs 7,896 cr busted; accused use 23 shell firms*, Business Standard, (Mar 3, 2020), https://www.business-standard.com/article/economy-policy/fake-invoice-racket-of-rs-7-896-cr-busted-accused-passed-on-itc-benefits-120030300256_1.html

³³ *Supra* note 31.

³⁴ *Supra* note 24.

Searches by GST authorities conducted at several such business premises revealed that most of these places were locked and local enquiries revealed that no such commercial activities were carried out from such premises.³⁵ Generally, a string of such bogus entities is used and numerous inter-related web of transactions of sales and purchases are made and routed through these entities. Many layers of such transactions are entered into, thereby creating a complex web of activities amongst themselves, so as to create the impression that the shell companies are having genuine commercial transactions. This makes detection difficult.³⁶

Such transactions also include payment and receipt of money through a series of bank accounts to make the transactions appear genuine.³⁷ This is done to obscure the ultimate usage of money and to siphon off the money from these fake entities. It is ensured that the fake invoices reach the manufacturers, who avail fraudulent ITC without receipt of goods.³⁸ It has been alleged by officers that such bank accounts were opened by bogus entities using forged documents allegedly in connivance with the officials of private banks by flouting established rules.³⁹

Actual cases of fraudulent ITC

The GST officers discovered a fraud, wherein one individual had created 90 bogus firms and was involved in generating fake invoices of a staggering amount of over Rs 7,000 crore. The fraudulent GST credit claimed was approximately Rs 700 crore. This reveals the magnitude of frauds taking place. The fraudulent input tax credits in this case were used by large enterprises in the cotton yarn spinning industry.⁴⁰

In Surat, investigations of two firms, namely Satyam Impex and Aatif Fashion revealed that a chain of 19 fake firms was created. Bogus invoices to the tune of Rs 679 crores were generated leading to fraudulent Input Tax Credit of ₹55. In this case, the fake firms were created by using identity documents of casual workers and labourer.⁴¹ In Uttarakhand, bogus refund claims

³⁵ *Id.*

³⁶ *Supra* note 31.

³⁷ *Supra* note 24.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Supra* note 6.

⁴¹ Our Bureau, Revenue Dept lens on GST refunds from 2017 as data analytics reveals 931 fraud cases, The Hindu (Business Line) (Jan 13, 2020), <https://www.thehindubusinessline.com/economy/revenue-department-identifies-931-gst-fraud-cases-through-data-analytics/article30558046.ece>

of ₹27.5 crore were prevented by timely investigations. It was revealed that fake credits of over Rs 600 crores were created by way of intricate web of transactions and painstaking cyber-planning.⁴²

In another incident, fruit juice maker Manpasand Beverages (MBL), which manufactures X-Cite, Mango Sip, Siznal, and Aprilla etc fruit juices were found to have entered into bogus transactions with about 30 shell entities and were involved in fraudulent input tax credit claim of Rs. 40 crore.⁴³

In Hyderabad, a group of iron & steel trading firms was found to be involved in generating bogus invoices of Rs 1,289 crores leading to illegal ITC claim of Rs 224 crores.⁴⁴ The names of some such companies available in the public domain are V.S. Ferrous Enterprises, Bharani Commodities, Infinity and Hindustan Steels, which are linked with the Hyderabad-based Sujana group of companies. It has been reported that these phony ITC were used as collaterals to procure loans of about Rs 700 crores from various banks.⁴⁵

Many instances of GST fraud by individuals have also come to light. An individual from Bihar was stated to have claimed fraudulent ITC of Rs. 800 crore.⁴⁶ This has been claimed to be one of the biggest of such frauds.⁴⁷

Hence, it is seen that frauds of gigantic proportions have rattled the GST authorities, which has led the government to introduce more stringent norms, usage of data analytics and other measures.

Fraud by exporters

Investigations are revealing that exporters are resorting to fake credit for payment of duties and are claiming cash refund. Data Analytics has revealed that some “star exporters” have claimed massive fictitious cash refunds by paying paltry taxes. Enquiries have revealed that they do not exist at their registered addresses.⁴⁸ It is claimed that refunds aggregating to Rs 320 crores have been claimed by such 1200 exporters. It has come to light that bogus entities have been created in

⁴² *Id.*

⁴³ *Supra* note 15.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Supra* note 6.

virtual space with the help of identity thefts and morphed documents. The involvement of Customs brokers has not been ruled out. Now the customs brokers are under obligations as per their licensing conditions to make verifications regarding the KYC of exporters.⁴⁹

Misuse of Inverted duty structure

Under the GST rules, cash refund can be claimed when the tax paid in respect of inputs purchased is more than the taxes to be paid on the final output. Such a duty structure is known as “inverted duty structure.”⁵⁰ It has come to light that the inverted duty structure is being misused to claim bogus cash refund. In a recent case of “hawai chappals,” fake ITC of Rs 600 crores was claimed. In the manufacturing of “hawai chappals”, the raw material used, known as EVA compound, attracts duty @ 18%, whereas duty payable on finished chappals is 5%. This difference of 13% was used to claim fake cash refund.⁵¹ Enquiries revealed that 500 fictitious firms were created and were shown to be manufacturing chappals at Uttarakhand, with intermediary companies and retailers at Gujarat, Maharashtra and Tamil Nadu. A total of about Rs 600 crores were claimed by way of ITC.⁵²

It is stated that refunds arising out of inverted duty structure amounting to Rs 28,000 crores claimed by over 27,000 taxpayers are being scrutinized by the Data Analytics Wing of GST to verify whether they are genuine or not.⁵³

Tax evasion

In the real estate materials supply business also, fake credits are rampant. For example, while selling cement to individual purchasers, the sales price includes GST but very few individual purchasers actually demand bills. So the individual pays GST to the seller but no bill is issued against that. So the seller accumulates unrecorded GST collections, which are used to give fake

⁴⁹ Press Trust of India, *GST fraud: Over 1,200 exporters untraceable, govt saves Rs 350 cr fake IGST refunds; involvement of customs brokers suspected*, FIRST POST, (Jan. 15, 2020), <https://www.firstpost.com/business/gst-fraud-over-1200-exporters-untraceable-govt-saves-rs-350-cr-fake-igst-refunds-involvement-of-customs-brokers-suspected-7910871.html>

⁵⁰ *Supra* note 41.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

purchase bills to real estate companies against some commission, who use it to claim bogus ITC and also inflate their expenses to avoid income tax.⁵⁴

Under-invoicing of transactions is also rampant to reduce the burden of GST. Under GST, movement of goods by carriers have to be accompanied by e-way bills. The rules state that these e-way bills can be cancelled within 24 hours of its generation.⁵⁵ So if the movement of goods goes undetected by the authorities/ flying squads, then the e-way bill is cancelled and the entire transaction goes off the radar. The government is planning of installing cameras at pertinent points, which will record movement of goods carrier and the data collected will be matched with the invoices uploaded by the suppliers.⁵⁶

Many times the product definitions given in the Act are interpreted wrongly to obtain lower rates of tax. At times this is done with a fraudulent intention. For example, branded goods can be shown as non-branded goods to get the benefit of lower taxes.⁵⁷

⁵⁴ *Supra* note 6.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Supra* note 7.

PART III

Technical issues with GST

Additional working capital:

A company which has its business operations scattered all over the country has to be registered and assessed in all these states. This entails additional working capital requirements, maintenance of accounts and avoidable, multiple legal formalities.⁵⁸ It is reported that GST credit is not immediately available to the purchaser, when there is a time lag between the payment and the delivery of service, e.g. advance booking for travel. Thus this leads to additional capital requirement by the purchaser as the credit is withheld by the service provider, till the delivery of the service. Further, business like automobile, food and outdoor catering, certain works contract services etc. are not entitled to input credit.⁵⁹

Delayed payments:

Under, GST rules, where goods have been sold on credit and the payments have not been made within 180 days to the supplier by the purchaser, the credit is liable to be reversed and it cannot be availed by the purchaser.⁶⁰ This provision had been introduced in light of fake bills being raised to claim bogus input credits and it was seen that in such cases of frauds, payments were generally not made against such purchases. However, such a provision may go against genuine trade agreements where the parties have agreed for payments to be made beyond a period of 180 days and may upset their financing and credit plans.⁶¹

Rectifications:

In cases of excess payment of tax, there no option to correct the same and subsequent filing of return and claim of refund is a long drawn problem. GSTR 3B does not entertain any modification

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Reversal of Input Tax Credit in GSTR 2*, CLEAR TAX, (Nov 28, 2019, 12:05 PM), <https://cleartax.in/s/reverse-input-tax-credit-under-gstr-2>

⁶¹ *Id.*

or amendment option and one has to wait for the next return or annual return.⁶² In case if such rectification leads to the payment of any money, then the same is likely to attract interest, for no fault of the businessman. It is interesting to note that once a rectification has been made in GSTR-1, then any subsequent mistake with regard to the same invoice cannot be made.⁶³ So it is a one-time affair only.

Returns:

Filling of GST returns is a challenging job for many and the rules are intricate and compliance is wearisome. At times tax experts themselves get confounded as to what is required to be done in a particular situation. There is no efficient government helpline where a taxpayer can call and get his queries solved.⁶⁴

Reporting of HSN:

HSN stands for ‘Harmonized System of Nomenclature’, which is an internationally accepted coding system.⁶⁵ The monthly filing of GSTR 3B, does not require the HSN of the inward supplies however, the HSN wise detail is required in the annual Return GSTR.⁶⁶ Reporting of HSN code is thereby increasing the time and effort for monthly/quarterly compliance, which are expensive and cumbersome for small business enterprises.⁶⁷

Reconciliation in GST:

It is not that the Reconciliation process in GST is something novel. The same system was

⁶² *Is it Possible to Revise GSTR-3B?*, CLEAR TAX, (Feb 17, 2020, 12:40 PM), <https://cleartax.in/s/revise-gstr-3b>

⁶³ *Supra* note 10.

⁶⁴ Rajesh Gupta, *Challenges In The Current GST Structure: A Way Forward*, OUTLOOK, MONEY, (Nov. 18 2019), <http://www.outlookindia.com/outlookmoney/finance/challenges-in-the-current-gst-structure-a-way-forward-3870>

⁶⁵ Mohnish Katre, *What is HSN Code Under GST?*, PROFIT BOOKS, (2018) <http://www.profitbooks.net/what-is-hsn-code-under-gst/>

⁶⁶ *Supra* note 15.

⁶⁶ *Supra* note 10.

⁶⁷ *Supra* note 15.

⁶⁷ *Supra* note 10.

adopted in VAT also.⁶⁸ However, under GST, the Reconciliation is much more difficult as the invoice number recorded by the receiver of the goods/ service may not tally with the seller's invoice received in 2A as both parties may have different nomenclature of storing the invoice numbers.⁶⁹

Refunds:

Another issue plaguing GST implementation is the inordinate delays in getting refunds. It was initially assured that 90% of the refunds of GST would be given within a week but inordinate delays are resulting.⁷⁰ It is being stated that growing instances of fake invoices and fraudulent input tax credit are resulting in more scrutiny and hence, more delays. Delays are leading to adoption of unavoidable practices, leading towards corruption.⁷¹

Interest on belated payments:

It has been agitated that whether in case of belated payment of tax, interest would be chargeable on the tax payable after the adjustment of ITC available with the Department or would be applicable on the gross tax liability existing prior to the ITC adjustment.⁷² In many cases, interest has been levied by the GST authorities without considering the ITC credit lying in the account of the taxpayers. This issue was raised in respect of Proviso to Section 50(1) of GST Act, which had been amended by the Finance (No 2) Act, 2019. The Hon'ble High Court of Madras in M/S Refex Industries Limited vs. The Assistant Commissioner of CGST & Central Excise⁷³ decided as under-
“The specific question for resolution before me is as to whether in a case such as the present, where credit is due to an assessee, payment by way of adjustment can still be termed 'belated' or 'delayed'. The use of the word 'delayed' connotes a situation of deprival, where the State has been deprived

⁶⁸ *Supra* note 64.

⁶⁹ *Id.*

⁷⁰ *Supra* note 7.

⁷¹ *Id.*

⁷² Seetha Raman, *Demand for interest on GROSS GST Payable before ITC Availment*, TAX GURU, (Feb. 26, 2020), <https://taxguru.in/goods-and-service-tax/demand-interest-gross-gst-payable-itc-availment.html>

⁷³ M/S Refex Industries Limited vs. The Assistant Commissioner of CGST & Central Excise, (2019) Writ Petition Nos.23360 and 23361 (India).

of the funds representing tax component till such time the Return is filed accompanied by the remittance of tax. The availability of ITC runs counter to this, as it connotes the enrichment of the State, to this extent. Thus, Section 50 which is specifically intended to apply to a state of deprival cannot apply in a situation where the State is possessed of sufficient funds to the credit of the assessee. In my considered view, the proper application of Section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the Department to the credit of the assessee.....The above proviso, as per which interest shall be levied only on that part of the tax which is paid in cash, has been inserted with effect from 01.08.2019, but clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. It should thus, in my view, be read as clarificatory and operative retrospectively.”⁷⁴

Issues for E-commerce Companies

E-commerce giants like Flipkart, Amazon etc. are also facing the aftershocks of GST as they have to collect TCS @1 % from the sellers at the time of payment. It will lead to capital blockages, which may increase operational costs due to TCS provisions.⁷⁵ The Act mandates that distinct registrations for TCS are compulsory for e-commerce companies. It does not matter if they have previously obtained registration for GST as a supplier. Registration for TCS has to be got for each state where there are intra-state as well as inter-state supplies. Thus e-commerce operators have to get registered in states even if they do not have an office in those states.⁷⁶

Some foreign e-commerce companies, who are not having an office in India but are conducting business through their purchasers, dealers, suppliers etc. located in India have to appoint agents to collect TCS and deposit it to the government on their behalf.⁷⁷ These agents require compulsorily registration separately under TCS provisions. Thus these provisions will lead appointments of

⁷⁴ *Id.*

⁷⁵ Press Trust of India, *E-commerce cos will have to register in every state for collecting TCS*, THE ECONOMIC TIMES, (Sep. 29 2018, 11:56 AM), <https://retail.economictimes.indiatimes.com/news/industry/e-commerce-cos-will-have-to-register-in-every-state-for-collecting-tcs/66003979>

⁷⁶ *Id.*

⁷⁷ Press Trust of India, *E-commerce companies will have to register in every state for collecting TCS*, BUSINESS LINE, (Sep. 29, 2018), <https://www.thehindubusinessline.com/economy/e-commerce-companies-will-have-to-register-in-every-state-for-collecting-tcs/article25078316.ece>

agents, registrations, paper work etc., which will lead to incurring of additional costs⁷⁸. Another area of dispute for e-commerce operators is the value of the taxable supply on which the TCS should be deducted as the value of taxable supply is not clear in many cases.⁷⁹

E-Waybill

E-waybills have proved to be a boon for transport companies and the era of check-posts, huge lines of waiting trucks at state borders, piling costs and delays etc. are now a matter of the past.⁸⁰ GST entails that the transporter will prepare an e-way bill and thus there has been a radical change from the earlier system of verification by state authorities to a self-declaration method. However, this does not mean that there will no verification.⁸¹ A consignment is liable to be stopped and verified at any place and time for verification of the e-way bill. Further, the portal matches the e-way bill with the invoice, when the same is uploaded in the monthly GSTR-1 returns.⁸² Thus the scope of short disclosure of turnover is checked by verifications at various levels. However there have been complaints about undue harassments by flying squads and allegations of illegal extortion. It has been reported that the portal is not flexible as there is lack of flexibility for rectification of errors and destination address.⁸³

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Satya Sontanam, *E-Way bills curb tax evasion, but glitches remain*, BUSINESS LINE, (Sep 23, 2019), <https://www.thehindubusinessline.com/economy/logistics/e-way-bills-curb-tax-evasion-but-glitches-remain/article29483271.ece>

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

PART IV

Problems in New GST Return System

A new GST return system will be implemented from April 2020 in order to mitigate the long series of complaints filed by the business community, to fill up certain gaps and also to check rampant credit frauds.⁸⁴ Under this New Return System, there will be one main return GST RET-1 and 2 annexures GST ANX-1 and GST ANX-2. This return is to be filed monthly but small taxpayers can opt to file quarterly returns. Small taxpayers have been defined to be having a turnover of up to Rs 5 crore in the immediately preceding financial year.⁸⁵ The new GST return system is an automated one. Under the new system, ITC can be claimed only after reconciliation of invoices.⁸⁶ Instead of returns there are now Annexures for invoice reporting. Thus, physical efforts to file returns have been reduced. Further manual errors are attempted to be curtailed at the source itself, thereby reducing litigation related to ITC claim.⁸⁷ However, from the face of it, there are still certain challenges in it, which are discussed as under-

Awareness

It will certainly take some time for the taxpayers to come in terms with the new GST return regime and it will a big challenge to educate the taxpayer to modulate his business operations and compliance systems to match the new regime.⁸⁸ For example, the businessman has to be made aware the workings of a real-time upload of invoices, claiming ITC under ANX-2 and the manner to monitor and report missing invoices.⁸⁹

⁸⁴ ET Contributors, *Is the New GST Return Filing System Really Simple? Reconciliation Holds the Key*, THE ECONOMIC SYSTEM, (Aug. 20, 2019, 09:46 AM), <https://economictimes.indiatimes.com/small-biz/gst/is-the-new-gst-return-filing-system-really-simple-reconciliation-holds-the-key/articleshow/70732248.cms?from=mdr>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Issues in the new GST Return System*, CLEAR TAX, (Mar. 18, 2020, 11:41 AM), <https://cleartax.in/s/issues-new-gst-returns-system>

⁸⁹ *Supra* note 88.

Realignment of Systems

Businesses have to realign their ERP systems to comply with the new standards. Changes in software may be required for obtaining inputs like such as POS summary, HSN wise summary, etc. The new regime of raising e-invoicing is also a new concept and will be introduced for large enterprises.⁹⁰

Real Time Upload

The new GST return regime necessitates that in GST ANX-1, invoices should be uploaded continuously on a real-time basis. There was no such concept of real time uploading in the current GST model and the business community has to technically upgrade itself to adopt to the new requirements. This may take time, investment of more funds and availability of competent man power. This is apart from the routine commercial activities that the businessman has to engage on a daily basis.⁹¹

Tracking invoices

As stated earlier, the purchaser will be able to claim ITC only when the seller had uploaded the same in the portal. There may be cases where the goods have been received by the purchaser along with the physical invoice and had made payment against the same but the seller may have missed out on uploading that invoice.⁹² So the purchaser is obligated to constantly monitor the portal and give feed back to the supplier regarding such missing invoices and ensure that the same has been done. A genuine problem may arise where the purchaser has to file monthly returns and the supplier files quarterly returns.⁹³ Under such a scenario, the monthly tax payer may not get

⁹⁰ Archit Gupta, *How to Address Challenges Expected from New GST Returns System*, ECONOMIC TIMES, (Nov 18, 2019, 01:09 PM), <https://m.economictimes.com/small-biz/gst/how-to-address-the-challenges-expected-from-new-gst-returns/articleshow/72103475.cms>

⁹¹ *Supra* note 88.

⁹² Sag Shyam, *New GST Return Filing System Comes As Challenges for Taxpayers*, TAX GURU, (Dec. 12, 2019), <https://taxguru.in/goods-and-service-tax/gst-return-filing-system-challenges-taxpayers.html>

⁹³ *Id.*

immediate input tax credit and may have to wait till it is uploaded at the end of the quarter by the supplier, thus putting a stress on his working capital requirements.⁹⁴

Matching of invoices

The uploading of the invoices on a real-time basis has to be done at both the ends i.e. by the supplier and the purchaser. The invoices which are uploaded by the supplier in his GST ANX-1 is said to auto-populate the purchaser's GST ANX-2.⁹⁵ Thus the system will match the invoices which have been uploaded by the supplier with the books of accounts, without which claim of ITC will not be possible.⁹⁶ So a businessman has to devote some time out of his schedule to this job or allocate a dedicated person to do it. As per the existing method, this matching was done at the time of filing of the return. As per the new GST return system, if the matching is done at the time of filing of the return, there may not be adequate time at disposal to follow up with the supplier, in case of any mismatch, leading to wrong claim of ITC.⁹⁷

Vendor communication

Such regular tracking of invoices and feedbacks to the vendor in case of mismatch is likely to test the patience and communication skills of both the parties as it may lead to irritation and may adversely affect business relations.⁹⁸ There has to be more consciousness regarding the type of vendors one is dealing with, their technical competence and intention to file monthly and quarterly returns so as to ensure frictionless transactions.⁹⁹ Small business may not be able to upload invoices correctly on a real time basis and hence larger enterprises may avoid doing business with them. Further, the new system envisages that after a supplier uploads an invoice, the purchaser has the

⁹⁴ *Id.*

⁹⁵ *Supra* note 88.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Supra* note 90.

⁹⁹ *Id.*

option to accept, reject or mark it as pending. Thus, correct reporting will be essential to reduce the probability of invoices being kept pending or rejected due to errors.¹⁰⁰

Complicated entries

It is claimed that the new return system intends to make matters simpler and it will be easy to claim ITC. However, doubts have been raised that in the event of ITC reversals, adjustment entries have to be passed, which may not be as easy as it is claimed.¹⁰¹ It is stated that ITC reversal is problematic where the full amount of goods have been delivered or where some credit note has not been received. It is also claimed that in case goods are not received by the purchaser and the purchaser reverses ITC then an adjustment entry has to be made in the next tax period, on the receipt of the credit note.¹⁰²

¹⁰⁰ *Supra* note 90.

¹⁰¹ *Supra* note 92.

¹⁰² *Id.*

Part V

Conclusion –

The idea behind the introduction of GST was very lofty and ambitious. The intention was to get rid of a plethora of indirect taxes, along with multiple compliances enforced by multiple agencies leading to numerous hurdles faced by the business community and to replace it with a single indirect regime. Hence, there were a lot of positive expectations from this move.

But when it came to practically framing the laws and implement it, a lot of teething unforeseen problems have surfaced. The government and the public were not technically and technologically prepared, which led to lots of criticisms and opposition. The government rolled back a few proposals but it led to rampant evasion and bogus credit claims, which caught the government totally unawares. The government had initially targeted for a collection of Rs. 1 lakh crore per month and initially this target could not be met.

Recently, the collections appear to be picking up, somewhat. The government has come out with proposals for filing of new returns with a lot of modifications to ensure compliances, remove the defects, redress the complaints and check evasion and frauds. The government has opened the window for the new format so that the business community can adjust itself to the changed requirements and make necessary modifications and improvements in their systems and processes.

This will be an ongoing process till the matters settle down and an acceptable and frictionless system evolves, which is easy to implement and comply with and which also has the necessary features to check any breach and evasion.