



## DEMYSTIFYING CIRCULAR NO 129 OF CGST

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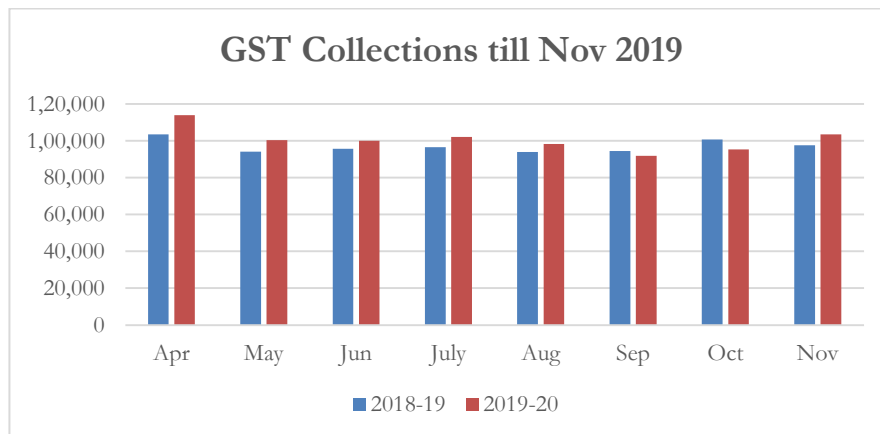
**G**ST has been rolled out about 30 months back, and it is dubbed to a major tax reform post-independence, but the reality is it is a business process reform. As it is a new tax regime and in the initial days of implementation, the Government is lenient on the taxpayers. This is given as legroom for the trade and industry to adapt to the new laws but some sections of the taxpayers are misusing the same as there is not much activity happening on search, seizure and inspection. In the initial days, the Government has instructed the officers not to make field visits and inspections but this is being continued for quite some time. This has resulted in a lot of fraud taking place in the ecosystems. Every alternative day we see in newspapers on ITC frauds, or fake invoices etc., All this has resulted in lower tax collections and also lower compliance in return filing.

Return Type*	Particulars	Apr'19	May'19	June'19	July'19
<b>GSTR-1</b>	Eligibility	57,58,955	55,64,504	1,03,58,399	51,33,194
	Returns Filed	27,91,052	27,01,021	61,38,878	22,30,815
	Return Filing%	48.46%	48.54%	59.26%	43.46%
<b>GSTR-3B</b>	Eligibility	1,02,33,313	1,02,86,063	1,03,58,399	1,04,26,762
	Returns Filed	83,24,486	82,77,220	81,53,056	77,36,519
	Return Filing%	81.36%	80.47%	78.71%	74.20%

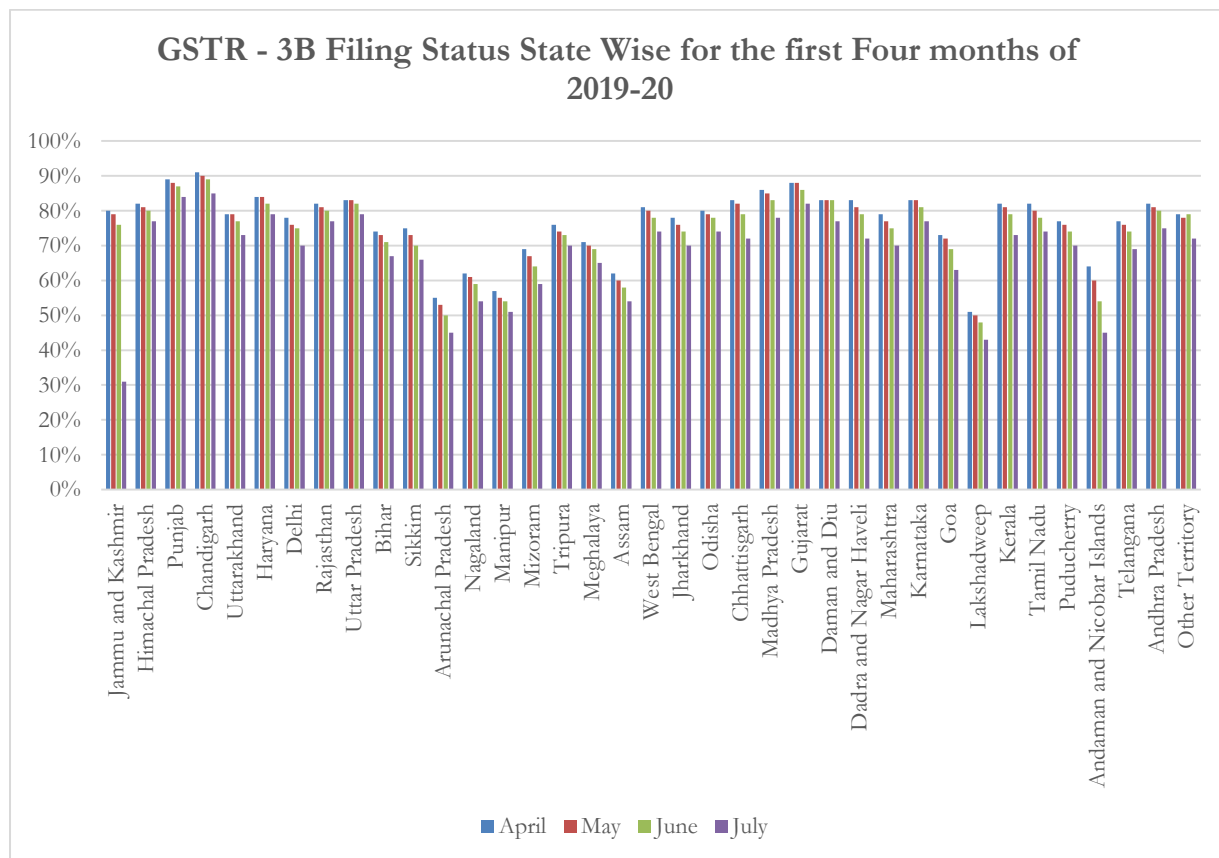
If we see the above table, we could see a constant dip in the return filing percentage for the first four months of the current Fiscal year.

\*Source - <http://gstcouncil.gov.in/sites/default/files/gst-statistics/Return-Filing-Summary-2019-20.pdf>

GST Collections started with a bang in April 2019 but after that, we could observe a gradual fall in the collections. There was a clear dip in Aug/Sep & Oct but improved during Nov 2019. All these trends are giving a room of suspicion on the tax evasion by some unscrupulous taxpayers in the system. To ramp up the tax collections tax evasion measures have been rolled out from time to time. As part of it, the e-invoice is being introduced, and matching is being made mandatory and restrictions on the availing input tax credit.



Apart from these measures, the department is using data analytics and started issuing notices to errant taxpayers who are not filing their returns at regular intervals. As a part of this process, notices have been issued to such taxpayers.



As the notices are being issued from various field formations on the same, the process of issue of notices and the subsequent steps taken are not alike across the country as it is a new law. To make the process simple and standard across the country, in the same manner, the Central Board of Indirect Taxes and Customs has issued Circular No 129/148/2019-GST on 24<sup>th</sup> Dec 2019 has been issued under the provisions of Section 168 of CGST Act 2017. This Circular applies to all the central government officials or all other persons employed in the implementation of the CGST Act. We can also expect similar circulars being issued by states and union territories.

Every Registered taxpayer in GST has to file returns at periodic intervals and the same is as per the provisions of Section 39 of the CGST Act 2017 as per the due dates are given below

Sl.No	Section	Taxpayer Type	Due Date
1	Section 39(1)	Regular Taxpayer	20 <sup>th</sup> of next month
2	Section 39((2)	Composition Taxpayer	18 <sup>th</sup> of day of end of each quarter
3	Section 39((3)	TDS Deductor	10 <sup>th</sup> day of the next month
4	Section 39(4)	Input Service Distributor	13 <sup>th</sup> Day of next month
5	Section 39(5)	Non-resident taxable person	20 <sup>th</sup> day of the next month
6	Section 44(1)	Regular Taxpayer for filing of Annual Return	31 <sup>st</sup> Day of December of the following year
7	Section 44(2)	Regular Taxpayers having turnover above Rs 2 crores have to file GST Audit	31 <sup>st</sup> Day of December of the following year
8	Section 45	Final Return	To be filed within three months from the date of cancellation of from three months of issue of the order for cancellation, whichever is later.

As per provisions of Section 46 of the CGST Act 2017 and Rule 68 of the CGST Rules 2017, taxpayers who do not file returns under Section 39, 44 & 45 will be issued a notice in Form GSTR – 3A.

For taxpayers who do not file their returns under Section 39, 44 & 45, the assessment procedure is given in Section 62 of the CGST Act 2017. As per the provisions of Section 62, the concerned officer can issue an assessment order for tax liability based on the best judgment basis on the material available or gathered by him. The assessment order can be issued within five years from the date of filing of the Annual Return relating to the period where taxes have been not paid. The assessment order is deemed to be withdrawn if the taxpayers file the returns and pay taxes within 30 days but the provisions related to interest under Section 50(1) and for a late fee under Section 47 will be applicable.

The Circular also provides the format of the Notice to be issued by the proper officer

***Notice to return defaulter u/s 46 for not filing return***

*Tax Period -*

*Type of Return –*

*Being a registered taxpayer, you are required to furnish return for the supplies made or received and to discharge resultant tax liability for the aforesaid tax period by due date. It has been noticed that you have not filed the said return till date.*

- 1. You are, therefore, requested to furnish the said return within 15 days failing which the tax liability may be assessed u/s 62 of the Act, based on the relevant material available with this office. Please note that in addition to tax so assessed, you will also be liable to pay interest and penalty as per provisions of the Act.*
- 2. Please note that no further communication will be issued for assessing the liability.*
- 3. The notice shall be deemed to have been withdrawn in case the return referred above, is filed by you before issue of the assessment order.*

The proper office an issue the assessment under best judgment in Form GST ASMT – 13 if the taxpayer does not file returns within 15 days.

The following guidelines have been issued for the Officers across India

- a) System-generated alerts will be sent to all the taxpayers before three days of the due date of the filing of GSTR – 3B
- b) After the due date, system-generated messages/mail will be sent to all the taxpayers who have not filed returns as per provisions of Section 39 of the CGST Act 2017 to the authorized signatory, directors, partners, proprietor etc.,
- c) Five days after the due date of filing of returns as per provisions of Section 39, notice is sent under Form GSTR – 3A to all the non-filers intimating them to file returns within 15 days.
- d) The taxpayers who have not filed the returns within the due date, Assessment order under Section 62 of the CGST Act 2017 will be issued in Form GST ASMT – 13 under best judgment will be issued.
- e) For arriving the tax liability under Section 62 (best judgment), the officer may rely on the data available in GSTR – 1, e-waybills and purchase data from GSTR – 2A or based on inspection under Section 71 of the CGST Act 2017.
- f) If the default taxpayers file the returns within 30 days, it is deemed that the assessment order is withdrawn as per provisions of Section 62(2) of the CGST Act 2017. In case if the default taxpayers do not file returns within 30 days after the issue of the order, recovery proceedings under Section 78 and Section 79 will be carried out.

The proper officer may follow the above process in normal cases, but in certain cases, based on the facts, the Commissioner may provisionally attach the properties of the default taxpayers to safeguard the revenue under provisions of Section 83 of the CGST Act 2017 before the issue of Form GST ASMT – 13.

The proper officer may initiate the proceedings under Section 29 for the cancellation of the registration if the taxpayers do not file returns.