



HOW FAKE BILLS MECHANISM IS CHALLENGING GST LAWS?

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ABSTRACT

One of the foremost and the most controversial tax reform that has been introduced in the recent past is GST or popularly known as Goods and Services Tax. The idea of One Nation and One Tax was the driving force behind this reform. Availment of ITC or Input Tax Credit is one of the essential features of this tax reform. But various anti-social agents are misusing this provision. They have created a fake-bills mechanism and are duping government authorities.

Through this research paper attempt has been made to analyse that how this fake bills mechanism works under the nose of administration and causes loss worth of hundreds of crores to the governmental authorities. Various case studies have been taken from the newspapers to understand the extent of working of this mechanism. In addition to this various basic provisions of GST as well as penal provisions for engaging in the tax misappropriation have also been analysed and thereby mentioned in this article. This article focuses on understanding the numerous provisions of GST and the penalties that the offenders can be subjected to.

1) INTRODUCTION

1.1) WHAT IS GST?

Goods and Services Tax or infamously known as GST, became a part of the Indian Tax Structure on 1st July 2017 when the GST Act passed by the Indian Parliament came into effect. The main driving force behind this reform was the idea of One Nation and One Tax. GST is an Indirect Tax which has brought all the other indirect taxes under its wide umbrella.

As per Goods & Services Tax Law in India is an all-embracing and multi-stage tax i.e all the taxes have been incorporated within it and is applied at every stage wherever a transaction takes place. In addition to it is collected from the person who is the final consumer of the product. In other words, GST is an indirect tax levied which is levied on the supply of goods and services.

A number of indirect taxes had to brought under the single umbrella of GST. These taxes included; the VAT i.e the value added tax, Octroi tax, Entertainment tax, Luxury tax, Purchase tax etc.

1.2) STRUCTURE OF GST

Under the GST there are four types of taxes which are collected from the consumer depending on the place of consumption. Following is the structure of GST

- **IGST (INTEGRATED GOODS AND SERVICES TAX):**

Prominent Author VS Datey, in his 42nd edition of Indirect Taxes Law and Practice has given the following views about IGST.

“IGST is levied on all Inter-State supplies of goods and/or services. It is governed by



the IGST Act. IGST rate will be uniform all over the country.”¹

Inter-state supply means when the location of buyer and seller is different i.e they are in different states of India. Intra-state supply on the contrary to it means when the location of buyer and seller is same i.e when they are located in the same state of India.

As per Article 269A (1) of The Indian Constitution, “ IGST collected by the Union will be apportioned between the union and states as per the law made by the parliament on the recommendation of GST Council.”

• **CGST (CENTRAL GOODS AND SERVICES TAX):**

The CGST has replaced many taxes which were existent earlier like the Central Excise Duty and the Service Tax. CGST is levied on Intra State supplies of both goods and services by the Central Government and is governed by the CGST Act.

• **SGST (STATE GOODS AND SERVICES TAX):**

This tax will replace the State VAT, Entry Tax, Octroi, Luxury Tax, Entertainment Tax etc. SGST is also levied on the Intra State supplies of both goods and services by the State Government and is governed by the SGST Act.

• **UTGST (UNION TERRITORY GOODS AND SERVICES TAX)**

The UTGST or Union Territory Goods and Service Tax is applied when the supply of the goods and services supply takes place in any of the five territories of India. As per section 2(8) of UTGST act these Union Territories are, “Andaman and Nicobar Islands, Dadra and Nagar Haveli, Chandigarh, Lakshadweep and Daman and Diu.”²

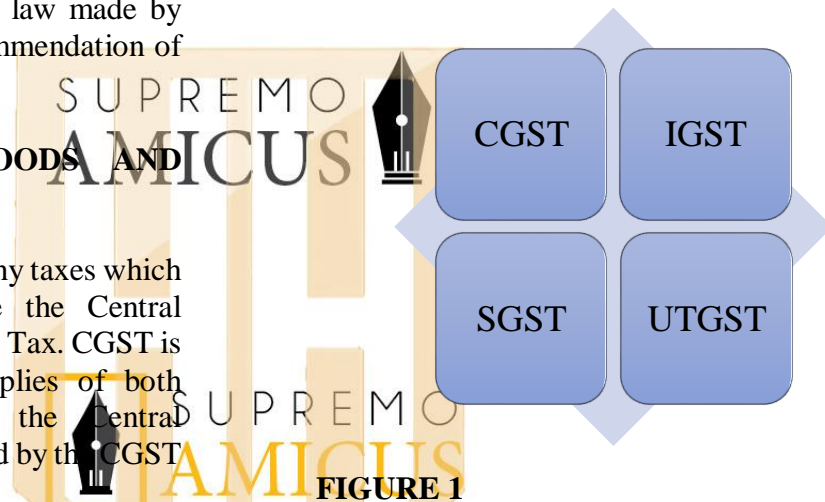


FIGURE 1
STRUCTURE OF GST

2) WHAT IS INPUT TAX CREDIT?

2.1) DEFINITION

In simple words, Input Credit means that at the time of paying tax on sales, one can reduce the tax he has already paid at the time of purchases.

¹ VS DATEY, INDIRECT TAXES LAW AND PRACTICE, (42nd Edition, 2018).

² Section 2(8) UTGST Act



NUMERICAL ILLUSTRATION:

Radhika Traders supplied goods @ Rs 11500. Radhika Traders received goods valued at Rs 10000. The supplier has charged GST in invoice. SGST and CGST rate on supply of goods is 9% each. Calculate the tax payable by Radhika Traders.

DETAILS	SGST	CGST
Tax payable on supply of goods by Radhika Traders on 11,500@9%	Rs. 1035	Rs 1035
Input Tax credit of taxes paid by supplier on input goods of Rs 10,000 @ 9% available in Electronic Credit Ledger of Radhika Traders	Rs 900	Rs 900
Net Tax payable by cash by Radhika Traders in Electronic Cash Ledger	135	135

TAX PAYABLE = RS 1500

TABLE 1

Input Tax Credit means reducing the taxes which have been paid on inputs from taxes which have been paid on outputs. . Howbeit, it is interesting to note that the

Input Tax each state and country is having different rules and regulations when it comes to the Input Tax.

2.2) WHAT IS THE TIME LIMIT TO AVAIL GST ITC?

ITC can be availed by any registered taxable person. For availing GST there are separate time periods depending on the specific situations. Following table summarizes these provisions:

SITUATION	ITC CLAIM DAY
A person liable to get registered or applied for registration or the one who has been granted registration	Day from when he is liable to pay taxes
Voluntary registration	Registration day
When benefit of composition scheme is no longer taken	Day from when he is liable to pay tax normally u/s 7 of the CGST Act.

TABLE 2

It is interesting to note that ITC can be claimed in the above mentioned situations only if it does not exceed one year from the date of issue of tax invoice.



In the situations other than the ones mentioned above, ITC can be claimed earlier of the following dates:

- a) The date of furnishing of annual return or
- b) Due date of filing return on monthly basis.

2.3) WHAT ARE THE DOCUMENTS AND FORMS REQUIRED FOR CLAIMING INPUT TAX CREDIT?

As per VS Datey and as per Rule 36 of CGST and SGST Rules 2017, “Each applicant is required to provide the following documents to claim Input Tax Credit under GST:

- a) Supplier issued invoice for supplying the services and goods or both according to GST law.
- b) A debit note issued by the supplier to the recipient in case of tax payable or taxable value as specified in the invoice is less than the tax payable or taxable value on such supplies.
- c) Bill of entry.
- d) A credit note or invoice which is to be issued by the ISD (Input Service Distributor) according to the GST invoice rules.
- e) An invoice issued like the bill of supply under certain situations instead of the tax invoice, if the amount is lesser than INR 200 or in conditions where the reverse charges are applicable according to the GST law.

- f) A supplier issued a bill of supply for goods and services or both as per the GST invoice rules.”³

3) INVOICE FOR SUPPLY OF GOODS AND SERVICES OR BOTH:

3.1) WHAT IS INVOICE?

If someone sells products or services to anyone in India, then he or she must issue invoice to his or her customers.

As per section 2(105) of CGST Act, “Supplier in relation to any goods and services or both shall mean the person supplying the said goods or services or both and shall include agent acting as such on behalf of such supplier in relation to the goods or services or both supplied.”⁴

Recipient as per section 2(93) of CGST Act, “Recipient of supply of goods or services or both means

- Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration.
- Where no consideration is payable for the supply of goods the person to whom the goods are delivered or made available or to whom possession or use of goods is governor made available
- Where no consideration is payable for the supply of services the person to whom the service is rendered.”⁵

GST has a consistent invoice based reporting system that records all the important information which is related to

³ VS DATEY, INDIRECT TAXES LAW AND PRACTICE, (42nd Edition, 2018).

⁴ CGST ACT Section 2(105).

⁵ CGST ACT Section 2(93).



the movement of goods from the place of origin to the place of destination.

The invoice is a crucial factor in the whole purchase and sale transaction, as it is the one which forms the basis of uploading returns as well as the fetching of the credit. It also helps in the strengthening of logistics chain. Thus in order to get smooth credits and a better working capital care must be taken in maintaining of the invoices, uploading of returns on a timely basis.

Under GST following are the various categories of invoices:

GST INVOICE:

As per section 31(7) of CGST Act, “The expression tax invoice shall include any revised invoice issued by the supplier in respect of a supply made earlier.”⁶

As per section 31(3) of CGST Act, “Tax invoice may not be issued if value of goods and services or both less than 200 rupees subject to such conditions and in such manner as may be prescribed.”⁷

As per section 7(1) of CGST act, “Supply means when there is a transfer, exchange, rental, lease, barter, disposal or license of goods or services made or agreed to be

made for a consideration by a person in the course or furtherance of business.”⁸

FORMAT OF GST INVOICE

A GST invoice should contain the following information. These have been specifically been enumerated under Rules 54 of CGST Rules. As per these rules the relevant information is:

- 1) “Name, address and the GSTIN of the supplier
- 2) The nature of invoice (tax invoice, supplementary invoice or revised invoice)
- 3) Invoice number (this shall be a consecutive alpha-numeric or numeric series specific for a financial year)
- 4) Date of Invoice
- 5) Name, address and the GSTIN of the recipient
- 6) Where the value of the goods exceeds Rupees Fifty Thousand and the recipient is an unregistered person, then name and address of such recipient and the delivery address of the consignment.
- 7) Description of the goods or services
- 8) HSN code of the goods or the Accounting Code of the Services
- 9) Quantity of the goods or services
- 10) Total value of the goods or services
- 11) Rate of Tax on each item
- 12) Tax amount charged, on account of CGST, IGST, and SGST to be shown separately under different columns
- 13) Name of the supplying State and the place of supply
- 14) Place of delivery

⁶ CGST ACT Section 31(7).

⁷ CGST ACT Section 31(3).

⁸ CGST ACT Section 7(1).



15) A statement mentioning whether reverse charge is applicable or not

16) Trade Discounts not forming part of value of the goods, if any

17) Signature in physical form or Digital Signature of the supplier or an authorized person, duly certifying the invoice.”⁹

services then he is required to issue a Bill of Supply in place of a tax invoice.

4) CASES OF FAKE BILLS MECHANISM REPORTED IN MEDIA:

CASE NO. 1¹⁰

CREDIT NOTES:

Credit note is issued in case of a downward revision of price. GST must be charged in the previous transaction. The credit note must be issued on or before the September 30th of the preceding financial year or before filing of the annual return of GST, whichever is earlier.

According to a report published in Business Today on May 22, 2018 in a GST Fraud,

“Fake bills have been used to claim input tax credit worth Rs. 450 crore. Just below the headline it was mentioned that Misuse of input tax credit is a serious concern for tax authorities as it seems to have created a hole in the system that the enforcement agencies are struggling to fix.”

SUPPLEMENTARY INVOICE OR DEBIT NOTES:

Debit note is issued when there is an upward revision in prices of a good or service which was supplied earlier was chargeable to GST. The said invoice must be raised within 30 days from the date of the said price revision.

In this case the Input Tax Credit worth 450 crore was taken from the government by a racket which was habitual in issuing fake bills.

CASE NO.2¹¹

BILL OF SUPPLY:

In case a supplier is registered under the composition scheme or he or she is making supply if exempted goods or

In another news story published in Business Standard on January 11, 2019,

⁹ CGST Rules 2017 Rule 54,

¹⁰ *GST Fraud Fake Invoice Input Tax Credit Rs 450 crore*, Business Today. (May 22, 2019, 9:40 AM) <https://www.businesstoday.in/current/economy-politics/gst-fraud-fake-invoice-input-tax-credit-rs-450-crore/story/277432.html>.

¹¹ *GST Intelligence Unit Busts Rs.100 crore Fke Invoice Racket In Gujarat*, Business Standard 2019 (January 11, 2019, 10:00 AM) https://www.business-standard.com/article/economy-policy/gst-intelligence-unit-busts-rs-100-cr-fake-invoice-racket-in-guj-arrests-3-119011100886_1.html.



“GST Intelligence unit busted Rs 100-crore fake invoice racket in Gujarat

In a yet another racket of fake Goods and Services Tax (GST) bill being issued without actual supply of goods for claiming input tax credit (ITC) fraudulently busted in Gujarat, the Ahmedabad Zonal Unit of Directorate General of GST Intelligence (DGGI) arrested three persons. There have now been nearly half a dozen cases of fake GST invoices being busted by state and central GST officials running in hundreds of crores of rupees.

In this case on a number of occasions fake invoices regarding supply of goods were issued on a number of occasions. When the offences committed by all are taken in summation then the ITC fraud amounting to 70 crore was done. The value of fake invoices added up to 400 crore INR.

CASE STUDY 3:¹²

According to a news story published in DNA on February 14, 2019,

“Bogus GST bills worth Rs 478 crore have been unearthed in Gujarat.”

In this case Fake companies were created by the accused and bills were issued in name of them. The fake bills added up to 478 crore. Over these bills

ITC was claimed and loss to state exchequer was caused.

5) HOW THIS MECHANISM WORKS

The people who wish to cheat the government and take benefit of ITC create fake companies. Once the fake companies come into existence then bills are issued in their names. On these Fake Bills, Input Tax Credit (ITC) is claimed. The owners of these fake companies take unjust benefit of ITC which is worth millions of Indian Rupees.

In order to create the fake companies, documents like Aadhaar Card, PAN Card and other identity proofs are taken. These documents may belong to the company owners themselves or to the laborers or the other people working in the nearby areas. Once these documents are received fake companies are registered companies in their names.

In some cases fake invoices are issued i.e. even there is no purchase of goods or services, it is shown that the goods and services worth millions have been purchased by someone just to get the benefit of ITC.

For Example: Mr. A never purchased inputs worth 1 crore but brings into existence the fake invoices regarding these with the help of a fake company registered under the name of his employee and claims ITC from the

¹²Gujarat Bogus GST Bills Worth Rs 478 crore Unearthed. DNA India, (February 14, 2019, 9:00 AM), <https://www.dnaindia.com/ahmedabad/report->

gujarat-bogus-gst-bills-worth-rs-478-crore-unearthed-three-arrested-2719856.



government for the inputs that he never purchased.

FAKE COMPANY



ISSUES FAKE INVOICES



GENUINE COMPANY



GENUINE COMPANY CLAIMS ITC

6) OFFENCES LISTED UNDER GST LAW IN INDIA

OFFENCES

There are 21 offences mentioned under GST Law. The offences which are provided under the GST law are mentioned in section 122(1) of CGST Act. As per this section, following are the offences:

1. “Missed to issue an invoice or has issued a wrong invoice for a supply;
2. Did not supply anything but still issued invoice;
3. Failed to pay collected TCS¹³ for a period exceeding 3 months;
4. If TCS is collected against the law but not paid to the government within 3 months;
5. Non-collection, lower collection or non-payment of TCS under section 43;
6. Failing to deduct TDS¹⁴ or submit TDS;

7. Availing input tax credit without receipt of any goods or services;
8. Committing fraud to obtain refund;
9. Getting input tax credit illegally from a distributor;
10. Furnishing wrong information, financial records, etc. while filing with the intention to evade tax;
11. Failing to pay tax;
12. Furnishing incorrect information at the time of registration;
13. Causing hindrance while an officer is performing his duty;
14. Failing to send required documents while transporting goods;
15. Not showing the actual turnover which results in tax evasion;
16. Failing to maintain documents or books of accounts as prescribed;
17. Not providing information asked by an officer during any proceeding;
18. Supplying such goods which need to be confiscated.
19. Using someone else’s TIN¹⁵ to issue invoice;
20. Destroying and damaging an evidence;
21. Disposing detained goods.”¹⁶

TCS: Tax Collected At Source (Tax collected by e-commerce operator from the consideration received by it on behalf of the supplier of goods and services who makes supply through operator’s online platform.

TDS: Tax Deducted At Source (It is a mechanism to track the transaction of supply of goods or services or both by making the recipient of such supply to deduct a small percentage of amount to be

¹⁵ Tax Payer Identification Number.

¹⁶CGST ACT Section122(1).



paid to the supplier of such goods and services and deposit the same with the government. In such cases the supplier has to take into account the amount so deducted and make the payment of balance of tax to the authorities.

7) PENALTIES UNDER GST

Penal provisions have been specifically made for each and every kind of offence under the GST law. The law has also mentioned various principles on which these penalties are based on.

7.1) GENERAL PRINCIPLES FOR IMPOSING PENALTIES:

7.1.1) NO PENALTY FOR MINOR BREACH:

The unintentional mistakes which might amount to a fraud or an attempt to tax evasion are penalized as per the following principles:

- In minor breach the error in tax is less than Rs. 5000 or it is exactly Rs. 5000. As per the law no penalty is imposed in this case.
- In case it is possible to rectify the breach then no penalty should be imposed.

7.1.2) PENALTY SHOULD ALIGN WITH SEVERITY OF BREACH:

Penalty imposed should be in accordance with the breach of law which is decoded by carefully analyzing the existing facts along with the circumstances.

7.1.3) REASON BEHIND PENALTY SHOULD BE DISCLOSED

It is prime duty of taxation authorities to provide this information to the concerned

individual regarding the reason of imposing penalty as per the principle of natural justice.

7.1.4) LOWER PENALTY ON VOLUNTARY DISCLOSURE OF BREACH

In case a fixed amount has not been imposed as a penalty then in such a case if a person reveals the breach which has been done by him then a lower penalty is imposed on such individual after taking into account this fact.

7.2) AMOUNT OF PENALTY AS PER GST LAW

As per Section 66(1) of CGST Act, “In case if any tax evasion the concerned individual should be punished with a penalty which should be higher than the amount of tax which has been evaded by him.”¹⁷

- As per Section 66(2) of CGST Act, “A person should be penalised with Rs 10,000 or 10% of tax deficit, whichever is higher.”¹⁸

PENALTY IN CASE NO SEPARATE PENALTY IS PRESCRIBED

- As per Section 67 of CGST Act, “If a person commits any offence for which separate no separate penalty has been prescribed in the law, then the quantum of

¹⁷ CGST ACT Section 66(1).

¹⁸ CGST ACT Section 66(2).



penalty can go as high as upto Rs. 25,000.”¹⁹

PUNISHMENTS AS A RESULT OF PROSECUTION

As per section 73(1) of CGST Act, “In case a person is convicted of any offence then he should be given the under mentioned punishments:

<u>Amount of Tax Evaded</u>	<u>Punishment</u>
1. Between Rs.25 lakh and Rs.50 lakh	1 year imprisonment + fine
2. Between Rs.50 lakh and Rs.250 lakh	3 years imprisonment + fine
3. More than Rs. 250 lakh	5 years imprisonment + fine”

TABLE 4²⁰

8) HOW TO VERIFY FAKE GST BILL AND GST NUMBER?

8.1) CHECK GST NUMBER

GSTIN is a 15 digit unique code which is assigned to each and every taxpayer under GST.

As per Rule 10(1) of CGST Rules 2017, “The structure of 15 digits GSTIN (Goods and Services Tax Identification Number) looks like below:

First two Digits-The first digit of GSTIN is state code as per Indian Census 2011. The state codes are as below.

01-Jammu and Kashmir, 02-Himachal Pradesh, 03-Punjab, 04-Chandigarh, 05-Uttarakhand, 06-Haryana, 07-Delhi, 08-Rajasthan, 09-UP, 10-Bihar, 11-Sikkim, 12-Assam, 13-Nagaland, 14-Manipur, 15-Mizoram, 16-Tripura, 17-Meghalaya, 18-Assam, 19-West Bengal, 20-Jharkhand, 21-Orrissa, 22-Chattisgarh, 23-MP, 24-Gujarat, 25-Daman and Diu, 26-Dadar and Nagar Haveli, 27-Maharashtra, 28-Andhra Pradesh, 29-Karnataka, 30-Goa, 31-Lakshadweep, 32-Kerala, 33-Tamil Nadu, 34-Puducherry and 35-Anadaman and Nicobar Islands.

Next 10 Digits-It is the PAN number of a business entity like your shop, mall or company.

13th Digit-It indicates the number of registrations as a business entity has within a state for the same PAN. It will be an alpha-numeric number (first 1-9 and then A-Z) and will be assigned on the basis of the number of registrations a legal entity (having the same PAN) has within one state.

¹⁹ CGST ACT Section 67.

²⁰ GST ACT Section 73(1).



14th Digit-It will be by default as Z.

15th Digit-The last digit will be a check code which will be used for detection of errors.”

In order to verify whether GST number is genuine or not one can access the below mentioned link:

<https://services.gst.gov.in/services/searchtp>

After checking the genuineness of GST Number the taxes which have been applied must be cross checked. The rates are available at the following link

If one is familiar with rates, then it is fine. Otherwise, one can check it by visiting

<https://cbec-gst.gov.in/gst-goods-services-rates.html>

8.2) COMPLAIN AGAINST SUCH FAKE OR FRAUDULENT PRACTICES

In case bill or GST number is not found to be correct then a complaint must be lodged with the relevant authorities. Even if the tax rates are not in right format the complaint can be lodged. Complaint can be lodged at the following links:

Email: helpdesk@gst.gov.in
Phone: 0120-4888999, 011-23370115

9) CONCLUSION AND SUGGESTIONS

The businesses acquire fake bills issued on transactions that never happen and on the basis of these fake transactions and invoices claim ITC.

In the recent years the reports of fake ITC claims are on a rise. ITC is an important feature of GST as it allows the taxpayers to claim credit for the taxes that they have paid while purchase of inputs. ITC reduces the tax burden on the end customer and in addition to it helps the seller get back money which eventually reduces the price of goods and services.

But fake bill mechanisms which are operating are causing loses to the exchequer worth crores of Indian Rupees.

Therefore it is necessary to bring some reforms in the GST mechanism to tackle this problem.

SUGGESTIONS FOR REFORMS:

- **PROVIDING OF EVIDENCE**

It should be made imperative for the traders to provide evidence of the transactions which have been made by them and also to produce the necessary documents for any kind of evidence This can includes legitimate invoices for each and every purchase that has been made along with the GSTINs as well as a unique invoice number.

- **FAKE GST INVOICE COMPLAINT FILING:**

The GST regime which has been crippled with tax evasions as well as fake since its



implementation in July 2017 will come out of such a situation if complaints against fake GST invoices can be filed.

