

WMTPA

GST – Key Burning Issues

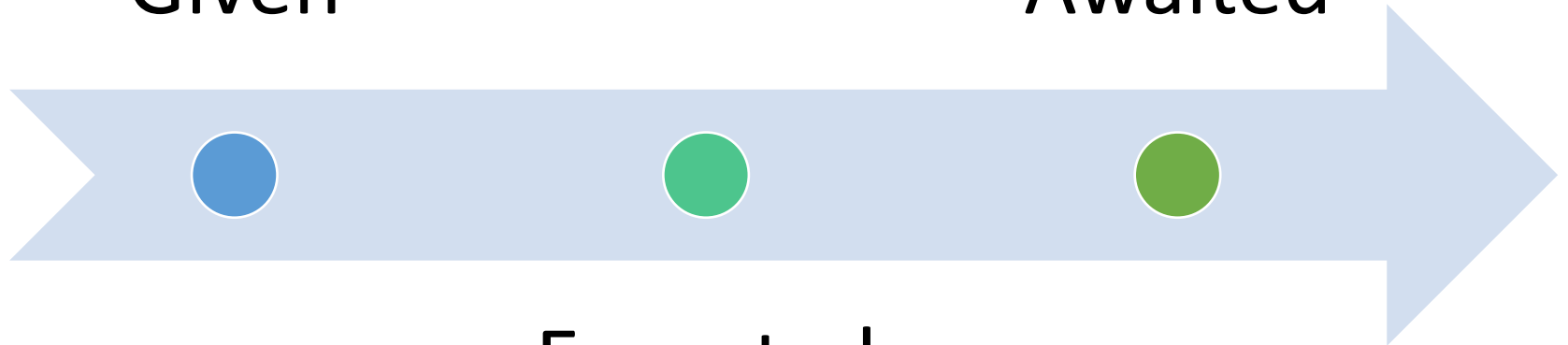
Live on Facebook
27nd March 2020 at 4 pm

CA Pritam Mahure and Associates

GST Relief

Given

Awaited



Expected



Relief given

1.1 Recent GST Announcements

Turnover	Less than 5 cr.	Others
Interest	Nil	Pay interest @ 9% after 15 days
Penalty	Nil	NA, if complied before till 30 th June
Late fees	Nil	As above
Last date	Last week of June	Last week of June

1.2 Few questions

Is this is a right time to discriminate between small and large taxpayer?

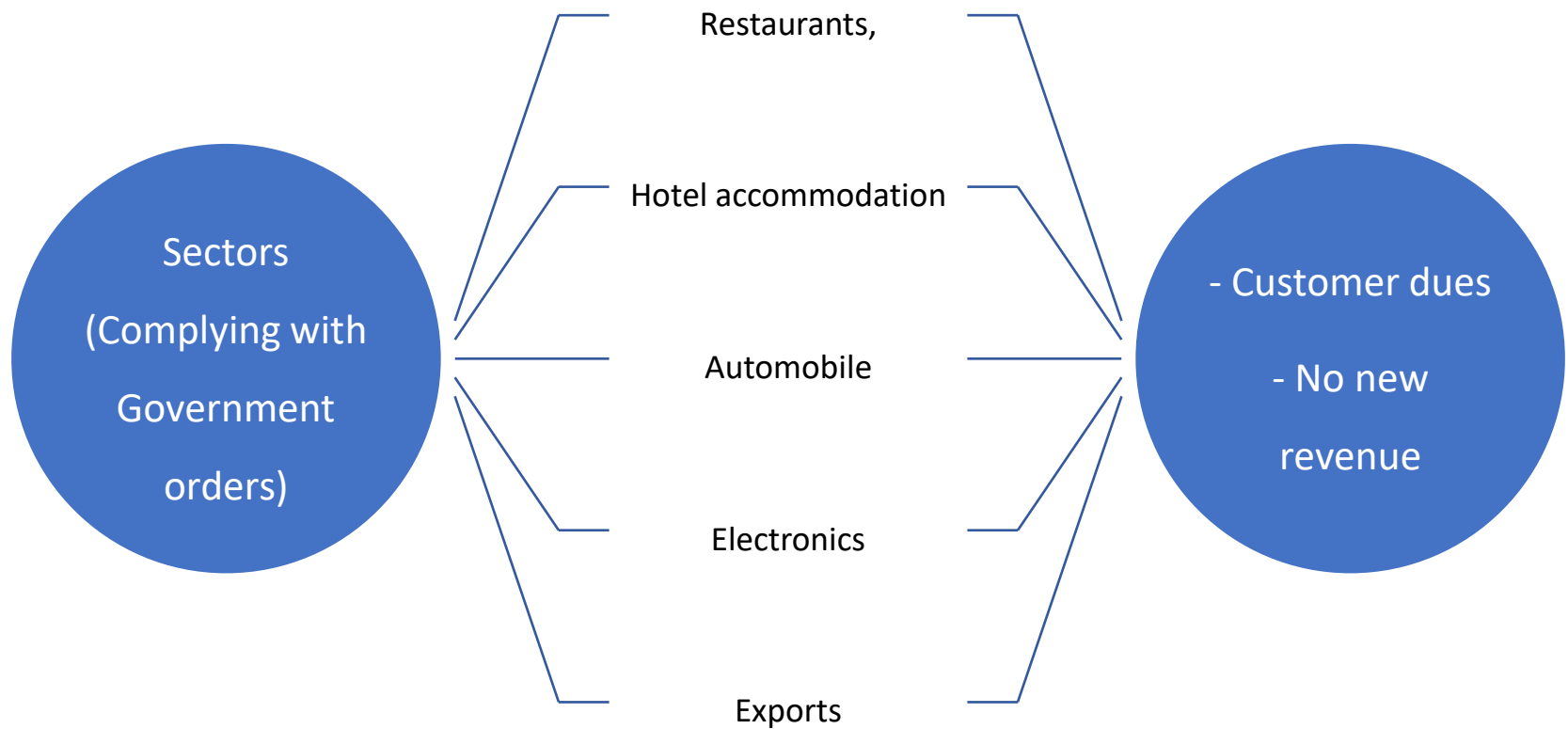
- To take care of employees, contract workers etc
- CSR?

Turnover

- Which FY (FY 1819 or 1920 or both)
- Whether exempted supply also included?
- PAN based or State-wise turnover?



1.3 What is the quantum of relief?



1.4 What is the quantum of relief?

Month	March	April	May	June
Sales	Low/ Nil sales	Low/ Nil sales	Low/ Nil sales	Low sales
Fixed cost	Same as January	Same as January	Same as January	Same as January

1.5 What is the relief?

Relaxation (in days)	Less than 5 crore	Others
February	24 th March - Due date already over	24 th March - Due date already over
March	70 days	15 days
April	40 days	15 days

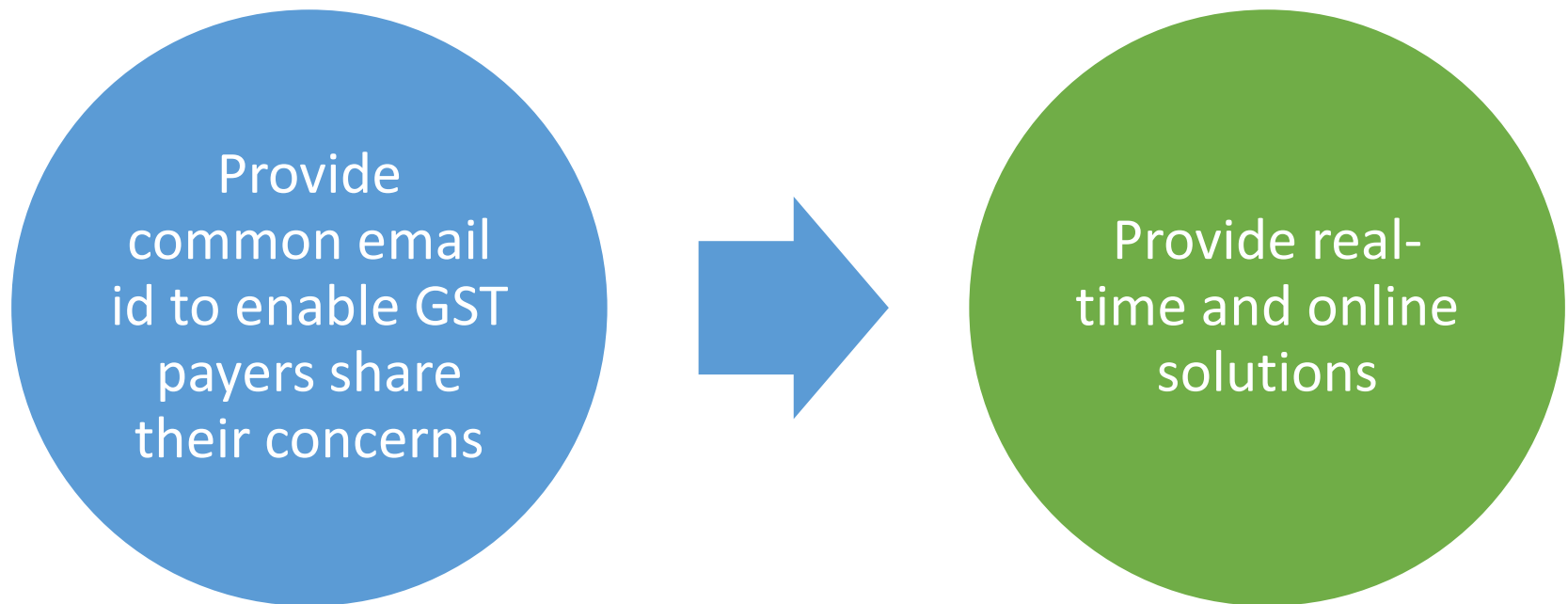


Relief
expected

2.1 Key GST issues needing attention!

Interest	ITC	Registration	What if	Refunds
<ul style="list-style-type: none">• Notices already issued – Declare void-ab-initio	<ul style="list-style-type: none">• Blocked by Rule 86A• Non-payment of GST by supplier?	<ul style="list-style-type: none">• Cancelled• E-way bills blocked	<ul style="list-style-type: none">• PH/ Summons• Existing ST/Excise Audits	<ul style="list-style-type: none">• Stuck due to difference of paise

2.2 Recommendations





Relief
Awaited

Key GST issues needing attention!

3. Credit should not be denied!

- Section 16 (4)

4. Bonafide buyers may not be penalised!

- Section 16 (2) (c)

5. Extent Time limit to issue credit note!

- Section 34

6. 180 days time limit to be extended

- Proviso to Section 16 (2)

Credit should not be
denied!

3.1 Credit should not be denied

Legal provision

- A registered person '*shall not be entitled take input tax credit in respect of invoice*', after the due date of furnishing of '*return under section 39*' for the month of September following the end of financial year or furnishing of Annual return, whichever is earlier (Section 16 (4) of CGST Act)

Issue

- Aforesaid provision is being interpreted by Authorities to mean that credit for FY 1819 is available only if the said returns are filed upto 20th October 2019

3.2 Credit should not be denied

Why ITC should be available?

- Terminology used in the section is '*shall not be entitled **take** input tax credit in respect of invoice*'
- It can be observed that the term used in the CGST Act is '**take**' instead of availment. At present, the credit gets auto-populated in the electronic ledger and thus, its taken as soon as it appears in the in the electronic ledger, although, ITC may be availed or utilized subsequently

3.3 Credit should not be denied

Why ITC should be available?

- Recently, GST Council has permitted collection of interest on net of credit amount and thus, recognised the taxpayers right to take credit
- Even otherwise, if the returns were filed in time then the Government would have received GST only to the extent of cash amount from the taxpayer and thus, only procedural delay of filing of returns should not saddle additional liability

3.4 Credit should not be denied

Why ITC should be available?

- It is a settled legal principle that procedural lapse cannot take away substantive right to claim ITC
- Further, Article 300A of Constitution of India no person shall be deprived of his property save by authority of law
- Even otherwise section 16 (4) of CGST Act uses the terminology '*return under section 39*' and in the case of AAP & Co. it has been upheld that GSTR-3B is not a return (although Rule 61 is amended subsequently)

3.5 Credit should not be denied

Why ITC should be available?

- Even otherwise Article 14 or Article 19 of Constitution of India could get violated
- Even in clandestine removal cases, only net of credit duty has been allowed to be recovered.
- Further, from perusal of Not. No. 11/2020-CT dated 21st March 2020 (issued in respect of persons undergoing the corporate insolvency resolution process) one can draw an inference that Section 16 (4) is a procedural condition than substantive one

3.6 Credit should not be denied

Why ITC should be available?

- Thus, to get over the aforesaid challenge, before taxpayers approach High Court, its preferable that GST Council should either clarify or if needed extend the time limit (by issuing Removal of Order similar to Order No. 02/2018-CT)

Bonafide buyers may not
be penalised!

4.1 Bonafide buyers may not be penalised!

Legal provision

- One of the condition prescribed, *inter-alia*, for availment of ITC is that the tax charged in respect of such supply should be **actually paid** to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply (Section 16 (2) (c) of CGST Act)

Issue

- Using this provision, the credit ledgers of bonafide buyers are being blocked / denied

4.2 Bonafide buyers may not be penalised!

Why bonafide buyers are entitled to credit?

- A bonafide buyer ensures that supplier is registered, then goods /services are procured alongwith tax invoice, subsequently, payment is made
- Further, to continue to avail the credit the buyer is expected to make payment to vendor within 180 days (proviso to section 16 (2) of CGST Act). If vendor is MSME then payment could be made within 45 days.

4.3 Bonafide buyers may not be penalised!

Why bonafide buyers are entitled to credit?

- When a bonafide buyer follows law of the land, a right will get equivalently created against the Government (once he fulfils his obligations) and this right (to claim credit) cannot be less enforceable than the right of the Government (to recover GST liability)
- Thus, shouldn't the Government use its machinery to recover taxes from perpetrators / defaulters rather than from the genuine buyers.

4.4 Bonafide buyers may not be penalised!

Why bonafide buyers are entitled to credit?

- It may be recalled that to ensure ITC to registered buyer, at the time of GST introduction, GSTN had created a work-flow which involved filing of GSTR-1, GSTR-2 and GSTR-3. However, given initial portal glitches, the GSTN made available to the business GSTR-1 and GSTR-3B.
- Dismantling of this process took away the right of the GST payer to view, on continuous basis, and take basis the uploaded GST invoices.

4.5 Bonafide buyers may not be penalised!

Why bonafide buyers are entitled to credit?

- Additionally, as all the returns (including e-way bills for goods) are filed online, which enables the GST Authorities to track non-payers / non-filers and initiate appropriate proceedings against the vendors, still not much action is initiated against such non-compliant vendors or to de-register them.
- Thus, for failure of its own machinery to check non-payment of GST by suppliers, should the bona fide buyers be punished

4.6 Bonafide buyers may not be penalised!

Why bonafide buyers are entitled to credit?

- It is an accepted fact that it is impossible for any buyer to predict whether vendor will deposit GST or not! Even the Know Your Supplier (announced in 39th GSTC) is yet to be introduced
- In Quest Merchandising India Pvt. Ltd [2018 (10) G.S.T.L. 182 (Del.) the H'ble Delhi HC held as *"In the event that the selling dealer has failed to deposit the tax collected by him from the purchasing dealer, the **remedy for the Department would be to proceed against the defaulting selling dealer** to recover such tax and not deny the purchasing dealer the ITC."*

4.7 Bonafide buyers may not be penalised!

Why bonafide buyers are entitled to credit?

- It is natural to assume that Lawmakers have introduced law which the society considers honest, equitable and upholds the right of bonafide buyers rather than denying their valid rights
- Given the aforesaid, GST Council should immediately look into the aforesaid concerns and address the same at the earliest.

Extent Time limit to issue
credit note!

5.1 Extent Time limit to issue credit note!

Legal provision

- A taxpayer can adjust his tax liability if he declares the details of credit note in the return, not later than September following the end of the Financial Year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier (Section 34 of CGST Act)

Issue

- Almost all industries including consumer durables, electronics, construction materials, automobiles, etc will be severely hit due to COVID-19
- This grim situation will force the suppliers/ manufacturer to give substantial discounts in the coming months or even year to come

5.2 Extent Time limit to issue credit note!

Resolution of the issue

- However, section 34 will debar them to issue a GST credit note after 20th September 2020.
- This will effectively mean that for the suppliers/ manufactures, even if they reduce prices of goods still the paid GST on the reduced price component cannot be reduced
- Further, due to this time limit of September, in respect of goods supplied in the month of March, taxpayers gets only six months. Even there is no time limit to declare Debit Note.
- Given the aforesaid, the GST Council should immediately look into the concern

Extent Time limit to make
payment!

6.1 Extent Time limit to make payment!

Legal provision

- Proviso to Section 16 (2) provides that in cases where a recipient fails to pay to the supplier of goods or services or both, within 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed (Proviso to Section 16 of CGST Act)

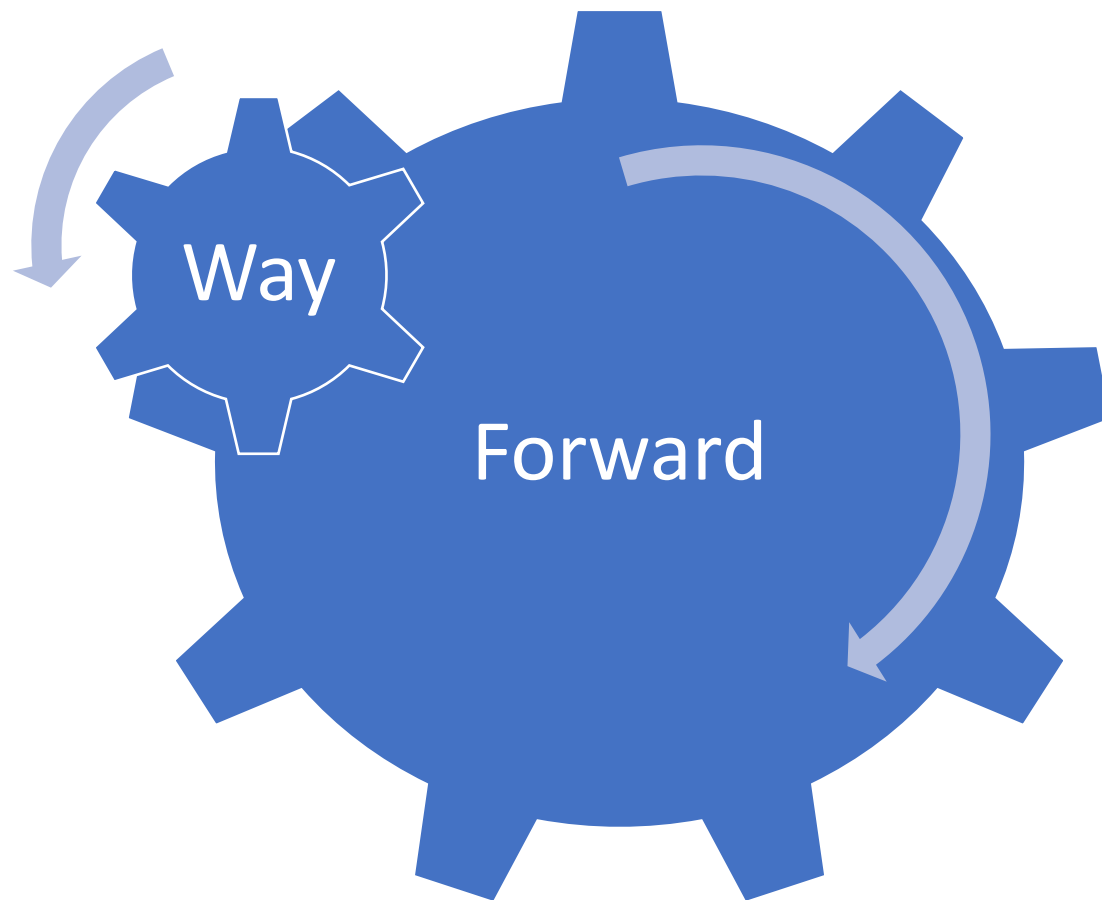
Issue

- Almost all industries including consumer durables, electronics, construction materials, automobiles, etc are severely hit due to COVID-19
- Given this mostly the payments to vendors will be deferred

6.2 Extent Time limit to issue credit note!

Resolution of the issue

- It may be noted that GST is already deposited by the supplier on accrual basis. Further, the terms of payment are between supplier and recipient.
- Given the aforesaid, aforesaid time limit could be extended to one year at the earliest



7.1 GST Challenges with COVID -19

Timely accounting
and finalisation

Reconciliations

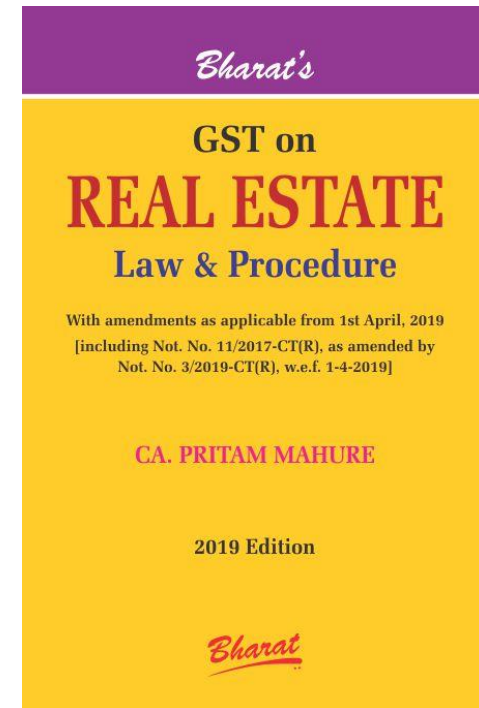
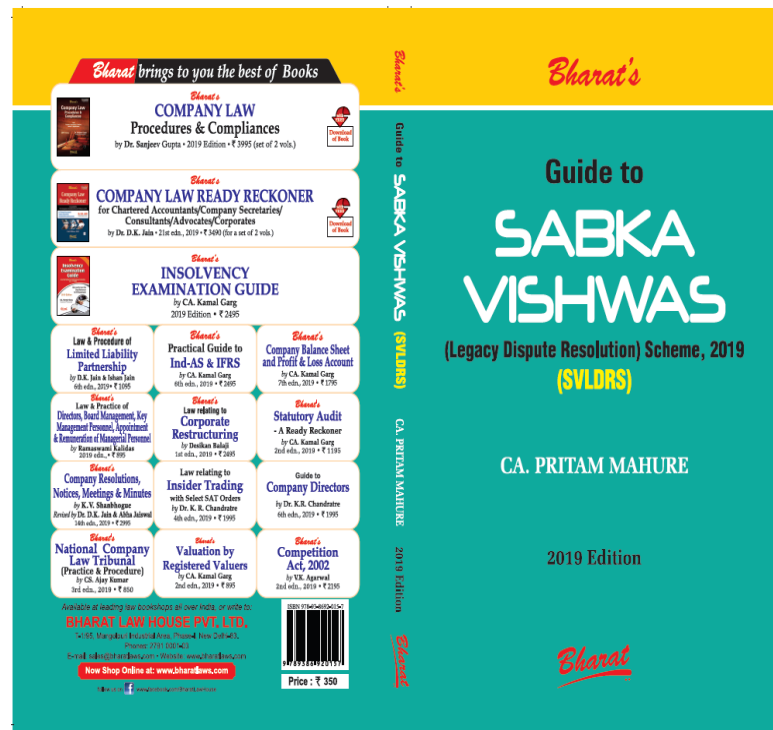
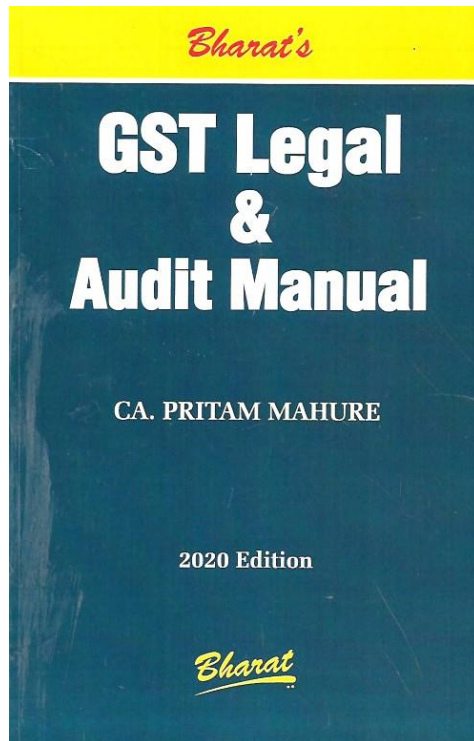
Filing of returns and
payment within time

GST Annual Return
and Audit

Payment under
SVLDRS

Refund (two years)

Our Books



Thank you!

CA Pritam Mahure and Associates

Happy to Discuss

For feedback / suggestions: info@lawgical.in / 020-27293425

E-books on GST

E-books on How to be Future Proof

Smile please 😊