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GST UPDATE

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GST Updates

This presentation contains all the Notifications and Circulars issued in December-2022 by Central board of Indirect Taxes and Customs. All these amendments have been presented hear topic wise and reference of relevant notifications and circulars have been given at top of each topic. As well as, we have given our own analysis wherever it is necessary.

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Changes related to application for GST Registration

A. Only mobile number and email id linked to PAN will be valid in GST Registration now

Now while making application for registration, applicant will be required to provide only PAN in Part-A of REG-01 application form. Email and mobile number will not be required to be provided.

Analysis

- At present while making application for registration, applicant is required to give PAN, mobile number and email id in Part-A of REG-01
- But now only PAN to be provided in Part-A of REG-01
- Once PAN is provided, it will then send OTP to mobile number and email id linked with the pan in CBDT
- That means now there will not be any option to give any mobile number and email id
- **Precautions required now before apply for GST Registration**

So now before making application for GST, one need to verify mobile number and email id registered in CBDT (Means linked with PAN). If those mobile number and email id are not active, then first update mobile number and or such email id in CBDT and the only apply for registration in GST.

Note: All the changes made in sub rule 1, 2, 4A and insertion of new rule 4B are only for above mentioned provisions

[Sub Rule 1, 2, 4A of Rule-8 of CGST Rules 2017 substituted by Notification No.26/2022-Central tax dated 26-12-2022. Effective from 26th December 2022]

New Sub Rule 4B inserted in Rule 8 of CGST Rules 2017 by Notification No.26/2022-Central tax dated 26-12-2022. Effective from 26th December 2022]

B. “Data analysis and Risk parameters” for physical verification of premises for GST registration

- Once application for GST registration is filed under Rule 8 of CGSTG Rules, 2017, this application is then verified and approved by proper officer under Rule 9 of CGST Rules 2017.
- But if any person fails to undergo authentication of Aadhar Number or does not opt for authentication for Aadhar number, the premises of such application will be verified physically by proper officer.
- Now if a person has undergone for authentication for aadhar number and is identified in common portal bases on data analysis and risk parameters, then physical verification of the premises of such person shall also be done.

Comment

- It is to be seen that how and in what manner this data analysis and risk parameters will be conducted? Will income tax return data of applicant will be verified before application of GST number? Only the time will show that what will be the criteria for data analysis and risk parameters.

[New clause (aa) inserted in sub rule 2 of Rule 9 of CGST Rules, 2017 by notification 26/2020 CT dated 26.12.2022 effective from 26.12.2022]

C. Cancellation of registration on request by a person required to deduct TDS/TCS

Registration can be cancelled on request made by person required to deduct TDS/TCS if such person is no longer liable to deduct TDS/TCS.

[Sub Rule 3 of Rule 12 of CGST Rules, 2017 New clause (aa) inserted in sub rule 2 of Rule 9 of CGST Rules, 2017 effective from 26.12.2022]

Now with effect from 01.10.2022, one relaxation is given to tax payer in the sense that ITC will have to be reversed only to the extent of payment not made to supplier.

Analysis

- As per proviso to Section 16(2) (d), if payment to supplier is not made within 180 days of the date of issue of invoice, then such ITC is to be added to output tax liability. In simple words tax to the extent of ITC availed on such inward supply has to be paid along with interest.
- In order to prescribe the manner of reversal, there is sub rule (1) of Rule 37 of CGST Rules, 2017 and as per this rule, ITC availed has to be paid even if there is failure to make part payment only
- Now this sub rule (1) of Rule 37 of CGST Rules, 2017 has been amended and two relaxations have been given as under
 - First relaxation is that now there is option to reverse ITC if there is balance of ITC in electronic credit ledger. Earlier there was provision of payment of ITC availed. (However practically GST department normally do not insist even to make payment of tax, it is ok if ITC is reversed)
 - Second relaxation is that ITC is to be reversed or paid now only in proportion of payment not made to suppliers.
- This is really a big relaxation, because, non-making of payment within 180 days is very common issue in most of the business due to liquidity issue or dispute with suppliers.

[Sub Rule 1 of Rule 37 of CGST Rules 2017 amended by Notification 26.12.2022 with effect from 01.10.2022]

GSTR-3B filling status of suppliers will be now crucial for taking ITC

A new rule 37A has been inserted in CGST Rules 2017, let's discuss extracts of this rule

- If ITC taken by recipient and GSTR-3B has not been filed for relevant month by the supplier within 30th September following the financial year in which such ITC availed then such ITC will have to be reversed by such recipient within 30th November.
- If such ITC is not reversed within the above prescribed time, then it will have to be reversed along with interest.

Analysis

- As per clause (c) of sub rule 2 of Section 16, ITC can be taken only GST by supplier has been paid.
- In order to operate this clause, at present there is Rule 36(4) of CGST Rules, 2017 and as per this rule recipient is required to compare ITC with GSTR-2B and cannot avail ITC more than reflected in GSTR-2B
- However, as everybody knows, GSTR-2B is just reflection of GSTR-1 filed by suppliers, means its only outward supply summary of suppliers
- This mechanism still does prove that supplier has paid tax
- Therefore, now new rule 37A has been inserted and as per this rule, GSTR-3B of suppliers must have been filed on or before 30th September, 2022 following the financial year in which such ITC taken.
- So as a result, now, every tax payer will have to keep track of GSTR-3B filling status of all suppliers. That is possible by verification of GSTR-2A as GSTR-2A gives details that GSTR-3B of supplies filed or not.

[New rule 37A inserted in CGST Rules, 2017 by Notification 26.12.2022 with effect from date notified]

04

Supply through ECO or supply of OIDAR, certain details of un-registered recipient compulsory even if value of supply is below Rs 50,000

Supply through Electronic Commerce Operator or in the case of supply of Online Information Data base Access Retrieval to Un Registered Recipient, name, address, PIN and State information will have to be provided in tax invoice by registered person and such given address will be deemed to be address on record of the recipient.

Analysis:

- At present there is clause (f) in Rule 46 of CGT Rules 2017. This rule 46 is for Tax Invoice. **As per this clause, when there is supply to URD and such supply value is less than Rs 50,000, then** name and address of the recipient and the address of delivery, along with the name of the State and its code, is to be provided in Tax Invoice only if such details is requested by such recipient.
- But now a new provision has been inserted in this clause, and as per this proviso name, address, PIN and State information of URD will have to be provided in tax invoice by registered person if such supply is through Electronic Commerce operation or if such supply is Online Information Data base Access Retrieval even if value of such supply is below than Rs 50 thousand.

[A new proviso inserted in rule 46 of CGST Rules 2017 by Notification 26/2012 Central Tax dated 26.12.2022 effective 26.12.2022]

05

Details in Invoice-cum-bill of supply

Now registered person shall have to mention details as mentioned in rule 46 or 54 and rule 49 as the case may be

Analysis

- As per rule 46A of CGST Rules, 2017 when registered person is supplying taxable and exempt supply together, a single “invoice –cum-bills of supply” may be issued.
- But what kind of details to be provided in such invoice? This was not specified anywhere in GST
- Now a new proviso has been inserted in Rule 46A and as per this proviso, details of rule 46 or rule 54 and rule 49 will have to be provided.
- Rule 46 is for Tax Invoice, Rule 54 is tax invoice in special cases, and rule 49 is for Bill of supply.
- Means now in invoice –cum-bills of supply” information of both tax invoice and exempt supply will have to be provided.

[A new proviso inserted in rule 46A of CGST Rules 2017 by Notification 26/2012 Central Tax dated 26.12.2022 effective from 26.12.2022]

06

Now GSTR-1 can be filed only if tax shown in intimation under DRC-01B is paid or reply to the said intimation given

One more horrible provision has been inserted in sub rule 6 of Rule 59 of CGST Rules 2017 by inserting new clause (d)

As per this new clause inserted in the said rule, if intimation has served to taxpayer in form DRC-01B under rule 88C of CGST Rules, 2017, then GSTR-1 can be filed only if tax shown in this intimation paid or reply to this intimation given.

Analysis: -

- Rule 59 of CGST Rules 2017 indicates form and manner of filling GSTR-1
- In the sub rule (6) of the said rule, a new clause (d) has been inserted.
- This new clause says that either pay tax shown in intimation given under Rule 88C or give reply to the said intimation. Only then GSTR-1 can be filed now.
- Now Rule 88C of CGST Rules 2017 indicates manner of dealing with difference between GSTR-1 and GSTR-3B.
- This New Rule 88C has been inserted by Notification 26/2022 effective from 26.12.2022.
- Now as per sub rule 1 of Rule 88C of CGST Rules 2017, if figure reported in GSTR-1 for month exceeds the figures reported in GSTR-3B of that month, then intimation to taxpayer shall be sent in DRC-01B form.
- Taxpayer is supposed to either pay tax shown in this intimation or to give reply justifying this difference within 7 days of receipt of such intimation.
- This could create absolutely harassment to the taxpayer.
- **Suppose there is one intimation in form GTSTR-01B on 08th January 2023. Taxpayer wants to file GSTR-1 of December 2022. Now first this taxpayer will have to give answer to this intimation. Everybody known that difference between GSTR-1 and GSTR-3B can be justified only by reconciliation. So obviously it takes time to calculate, to prepare reply, verification of this reply and then submission of this reply. Suppose taxpayer could not reply within 11th January 2023, that means he could not file GSTR-1 for December -2022 withing 11th of January 2023. That means service recipients of taxpayers will not be able to claim ITC of December -2022 in their GTSTR-3B of December -2022 as it will not be reflected in GSTR-2B of December 2022. So, all the customers of taxpayer will complain to taxpayer and finally this will badly impact to the business of taxpayer.**
- The most surprise thing is that intimation under DRC-01B gives time of 7 days for reply. Despite that taxpayer will have to bear harassment of this new clause in the case as explained above.
- I think the government has now completely forgotten the concept of “Ease of Doing Business”. Here genuine businesspersons are being punished due to fraudulent people.

[A new clause (d) inserted in Rule 59(6) by Notification 26/2012 Central Tax dated 26.12.20022 effective from 26.12.2022]

07

Non communication of CIN by bank now can be resolved by e-scroll of RBI

Now while making payment of GST in Electronic Cash ledger, when CIN (Challan Identification Number) is either not generate or generated but not communicated, then this problem can be resolved based on e-scroll of RBI. However, this e-scroll of RBI must be in conformity with details in challan generated in FORM GST PMT-06

Analysis

- At present as per sub rule 8 of 87 of CGST Rules, 2017, if CIN could not be generated or generated but could be communicated by the bank, then taxpayer can represent the issue by PMT-07 through the common portal.
- However, this process takes some time and it's put the taxpayer in difficult situation while filling of GSTR-3B at a time near expiry of due date.
- So now to resolve this issue, government has come up with the e-scroll of RBI as mentioned above.

[A proviso inserted in Rule 87(8) of CGST Rules 2017 by Notification 26/2012 Central Tax dated 26.12.20022 effective from 26.12.2022]

08

Documents specified in case refund is claimed by Un Registered Person

In case where refund is claimed by an unregistered person where agreement or contract for supply of service has been claimed, document checklist specified.

Analysis

- New clauses (ka) and (kb) have been inserted in Rule 89

- These clauses say that in case unregistered person filed refund application for cancellation or termination of contract of service, then such unregistered person shall have to submit the following documents in application GST RFD-01
 - Statement containing details of invoices.
 - Copy of invoices
 - Proof of making payment
 - Copy of agreement/contract
 - Copy of cancellation of agreement/contract
 - Certificate of supplier that he has not adjusted the has paid tax and has not adjusted this tax against his liability (not required in case unregistered person has born the tax)
- Now let me clear first, why this clause has been added?
- This clause has been added specifically for real estate industry.
- When any booking of flat/shop etc is cancelled, then such builders do not remain capable of issuing credit note within prescribed time limit as such booking may be cancelled after 1 year or after 2 or 3 years.
- Therefore, builders normally do not refund component of GST to buyers.
- This ultimately cause a loss to buyer.
- Now such buyers will be able to claim refund of GST paid to builders with specified list
- But the following are still obstacles.
 - What will happen if such buyer is registered in GST? Whether this clause will be applicable to them or not?
 - Builders normally do not issue invoice; they issue only payment recipient and finally a sale deed is prepared.
 - How the buyers will be able to submit invoices to department for claiming such refund?

[A new clause (ka) and (kb) inserted in Rule 89 by Notification 26/2012 Central Tax dated 26.12.2002 effective from 26.12.2002]

If order appeal against uploaded in common portal, then no need to submit its certified copy after filling appeal

Now once order appeal against is uploaded in common portal, then date of provisional acknowledgment shall be considered as date of filling appeal and therefore there will not be any requirement to submit order appeal against within 7 days of date of filling of appeal.

However, if such order appeal against is not uploaded in common portal, then its certified copy will have to be submitted to appellate authority within 7 days of filing of such appeal and then only date of provisional acknowledgment shall be treated as date of filing such appeal.

Analysis: -

- Once appeal is filed under form GST APL -01 to appellate authority, then a provisional acknowledgment is issued by appellate authority.
- After that Certified Copy of Order appeal against has to be submitted within 7 days of filling of such appeal. Then only date of provisional acknowledgment will be treated as filing of appeal date.
- If such certified copy is submitted after the expiry of 7 days from the date of filling of appeal, then date of final acknowledgment of appeal shall be treated as date of filling for appeal.
- So, it's clear that submitting certified copy of order appeal against within 7 days was a very crucial point as its non-submission could result in delay in filing of appeal and such appeal may be rejected.
- So now to remove this difficulty the Sub Rule 3 of Rule 108 has been substituted and now as per this new substituted rule, person filling appeal can simple just upload the order appeal against in the portal and there will not be any requirement to submit certified copy of order appeal against within 7 days of filing of appeal.
- So, we must say that filling of appeal procedure has been made smooth.
- However, if such order appeal against is not uploaded in common portal, then obviously person will have to submit certified copy of order appeal against within 7 days of filling of such appeal.

[Sub Rule 3 of Rule 108 has been substituted by Notification 26/2012 Central Tax dated 26.12.20022 effective from 26.12.2022]

10

If order appeal against uploaded in common portal, then no need to submit its certified copy after filling appeal application

100% similar change made as discussed in Point No.9

[Rule 109 has been substituted by Notification 26/2012 Central Tax dated 26.12.20022 effective from 26.12.2022]

11

Withdrawal of Appeal

Appellant will be allowed to make an application for withdrawal of appeal filed in FORM GST APL-02 or GST APL-03

However, such application can be made only before issue of show cause notice or order under Section 107(11) of CGST Act 2017

Note:

Sub section 11 Of Section 107 of CGST ACT 2017 contains the provision of issue of SCN if appellate authority is of opinion that tax has not be paid or refund grated by error or wrong ITC availed or utilised.

[New Rule 109C has been inserted by Notification 26/2012 Central Tax dated 26.12.20022 effective from 26.12.2022]

E-way bill now required for Imitation Jewellery

Now e-way bill provisions will be applicable for movement of Imitation Jewellery

Analysis

- Goods given in Annexure in Rule 138(14) have been exempted from provisions of e-way bill.
- Entry no 5 of this list includes jewellery
- That means e-way bill provisions are not applicable for movement of jewellery.
- But imitation jewellery now has been excluded from this annexure list of Rule 138(14) and therefore E-way bill provision now shall be applicable for movement of imitation jewellery from 26.12.2022.

**[Annexure to Rule 138(14) of CGST Rules 2017 amended by Notification
26/2012 Central Tax dated 26.12.2022 effective from 26.12.2022]**

Certain changes have been made in various forms of GST as under

Sr No	Name of Form	Name of the form	Type of change made
1	GST REG-01	Application for Registration	In Part-A changes related to email id and mobile has been made (Refer Point number-1 above)
2	GST REG-17	Show Cause Notice for cancellation of registration	Reference of supportive documents attached in SCN will be given now
3	GST REG-19	Order for cancellation of registration	The format of this order has now been made full of details covering various situations for cancellation of registration
4	GSTR-1	Details of outward supplies	Huge changes made in various Tables of GSSTR-1
5	GST RFD-01	Application for refund	Statement-08 (Rule 89(2) (ka) Refund for unregistered persons now inserted. [Refer Point No 8 above]
6	GST APL-02	Acknowledgement for submission of appeal	Earlier it was governed by Rule 108(3) only. But now governed by both Rule 108(3) and Rule 109(2) of CGST Rules 2017 [Refer our point No 9 & 10 above]
7	GST APL 01/03 W	Application for withdrawal of Appeal Application	[Refer our point No 11 above]
8	GST DRC-01B	Intimation of differences in liability of outward supply and that reported in return	This form has been inserted as a result of insertion of new Rule 88C in CGST Rules 2017 [Refer our point No 6 above]
9	DRC-03	Intimation of payment made	Shipping bill details of erroneous IGST refund can be entered now in this form

[All these forms have been amended or inserted by Notification 26/2012 Central Tax dated 26.12.2002 effective from 26.12.2002]

ITC claimed in GSTR-3B even not reflecting in GSTR-2A raises litigations. This problem resolved now for 2017-18 and 2018-19 by clarifications

Circular 183/15/2022 dated 27.12.2022 has been issued for clarification regarding ITC claimed in GSTR-3B even not reflecting in GSTR-2A raises litigations. This problem resolved now for 2017-18 and 2018-19

I. At present GSTR-3B and GSTR-2A mismatch for 2017-18 and 2018-19 creates the hardship to taxpayers

- When ITC claimed in GSTR-3B exceeds GSTR-2A, department always issues notices particularly during GST audit for demand of such excess credit claimed.
- Officers issue notice for 2017-18 and 18-19 also even the rule 36(4) of CGST Rules, 2017 for comparison between GSTR-2A and GSTR-3B was introduced from 09th October 2019
- In such case officers argue that as per clause (c) of Section 16(2) of CGST Act 2017, tax must have been paid by supplier for taking ITC.

II. Reasons of excess ITC in GSTR-2A over GSTR-3B could be due to following four genuine reasons.

If ITC not reflected in GSTR-2A, it does not mean that supplier has not paid taxes. There could be the following four genuine reasons for ITC not reflecting in GSTR-2A.

- i. Supplier has filed GSTR-3B but failed to file GSTR-1 (here we can say that tax paid by supplier)
- ii. Supplier has filed both GSTR-3B and GSTR-1 but failed to report supply (here also we can say that supplier has paid tax)
- iii. Supplier reported B2C instead of B2B in GSTR-1 (here also we can say that supplier has paid tax)
- iv. Supplier has mentioned wrong GSTN of recipient in GSTR-1 (here also we can say that supplier has paid tax)

III. Comparison of GSTR-2A and GSTR-3B never can conclude that tax paid or not paid by supplier (In other words comparison of GSTR-2A and GSTR-3B never can conclude that condition mentioned in clause (c) of Section 16(2) of CGST Act 2017 is satisfied or not

- Government could not establish any proven IT infrastructure even till today that GSTR-2A and GSTR-3B comparison can say that whether supplier has paid tax or not. In other words, whether condition in clause (c) of Section 16(2) of CGST Act 2017 is satisfied or not?
- In all **above four cases**, we can say that supplier has paid taxes in his GSTR-3B, means condition mentioned in clause (c) of Section 16(2) is satisfied. Then how can officer issue notice merely on ground that ITC not reflected in GSTR-2A?
- **GSTR-2A and GSTR-3B comparison is capable for finding difference of ITC but not capable to find out the reason for difference of such ITC.**
- Issuing show cause notices on GSTR-2A and GSTR-3B mismatch ground particularly for 2017-18 and 2018-19 is creating havoc and hardship to genuine taxpayers even they procured genuine purchase and ITC was eligible.

IV. To resolve the issue government now came out with circular 183/15/2022 dated 27.12.2022.

Therefore, now the government has issued circular to resolve this issue for 2017-18 and 2018-19. As per this circular, officers shall deal the above mentioned four situations in the following manner.

- Officer shall get details from taxpayer regarding all invoices on which ITC taken in GSTR-3B but not reflecting in GSTR-2A.
 - Confirm the following issues as per Section 16 of CGST Act 2017
 - Such taxpayer is having tax invoice.
 - He has received goods or services or both.
 - He has made payment to supplier (value +tax)
- In case ITC of GSTR-2A exceeds by Rs 5 lakhs over ITC of GSTR-3B
 - Officer will ask such taxpayer to produce a certificate of CA or CMA certifying that tax in respect of such invoices paid by supplier.

- In case ITC of GSTR-2A does not exceed by Rs 5 lakhs over ITC of GSTR-3B
 - Officer will ask such taxpayer to produce certificate of supplier certifying that tax in respect of such invoices paid by supplier.
- However, officer will not grant any relaxation in this issue in following case
 - Supplier has filed GSTR-1 of 2017-18 till due date of GSTR-1 of March 2019
 - **And** Recipient has claimed ITC on GSTR-3B of 2017-18 filed after due date of GSTR-3B of Sep-18 till date of GSTR-3B of March, 19

V. Applicability of this Circular

To be applied on case-to-case basis

It has been mentioned in this circular that this circular to be applied on fact and circumstances of each case not to be used in the interpretation of the provisions of law.

- To be applied only for ongoing proceedings like scrutiny/audit/investigations, etc. for 2017-18 and 2018-19
- The benefit of this circular will not be applicable to completed proceedings.
 - Means once taxpayer has already accepted and paid taxes along with interest and penalty and SCN has not been issued, then he cannot opt for refund

VI. What about excess ITC of GSTR-2A over GSTR-3B from 2019-20 onwards

- The circular has been issued only for 2017-18 and 2018-19 as the rule of comparison of GSTR-2A and GSTR-3B was introduced from 9th October 2019
- if supplier has paid taxes and has committed any of above mentioned four errors from 2019-20 onwards, then we can say that recipient has fullfilled the condition mentioned in clause (c) of Section 16(2)
- If the supplier has fulfilled all conditions of section 16, then can recovery of excess ITC of GSTR-2A/2B over GSTR-3B is justified merely on ground of ruled 36(4) of CGST Rules 2017?
- As per my opinion obviously not, because Rule 36(4) of CGST Act 2017 never can override Section 16 of CGST Act 2017

[Circular 183/15/2022 dated 27.12.2022]

Clarifications regarding place of supply in case of transportation of goods to place outside India

Circular 184/16/2022 dated 27.12.2022 has been issued for clarification regarding place of supply in case of transportation of goods to place outside India.

Clarification-1

Place of supply of services of transportation of goods (including by mail or courier) outside India where both supplier and recipient of said service are located in India, then place of supply of such service will be outside India.

This clarification is based on Proviso to Section 12(8) of IGST Act 2017. This proviso was inserted in the said section w.e.f. 01-02-2019 by IGST (Amendment) Act, 2018

Example:

Mr Z of West Bengal (transporter) provides service to Mr X of west Bengal to export his goods to Mr Y in Singapore. Mr Z and Mr X both located in India

Here both Service Provider Mr. Z and Service Recipient Mr. X are located in India, goods is transported outside India, so place of supply of this service will be outside India in terms of proviso to Sub Section (8) of Section 12 of IGST Act.

Clarification-2

Supply of services as mentioned in clarification-1 will be Inter State Supply of services in terms of Section 7(5) of IGST Act 2017

Clarification-3

Recipient of service as mentioned in clarification-1 (Mr. X as per Example) will be eligible to avail ITC for supply of service mentioned in clarification-1

However, eligibility of ITC will be dependent on fulfilment of all conditions mentioned in Section 16 and 17 of CGST Act 2017

Clarification-4

In the case mentioned in clarification-1, State code '96-
Foreign Country' to be mentioned while reporting transaction in GSTR-1

[Circular 184/16/2022 dated 27.12.2022]

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