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AMENDMENTS IN GST RULES

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2022

EXECUTIVE SUMMARY

In this update document, the amendments in GST rules with respect to ITC reversal changes related to the erstwhile forms GSTR 1A,2,3 and other issues are discussed.

1. Notification No. 19/2022–Central tax dated 28th September 202

A. Insertion of new sub clauses in rule 21 of Central Goods and Services Tax Rules, 2017

In the Central Goods and Services Tax Rules, 2017, in rule 21, after clause (g), the following clauses shall be inserted, namely:

(h) Being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months.

(i) Being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.

Impact of amendment:

The registration granted to a person is liable to be cancelled, if, -

- i. A taxpayer furnishing monthly returns, has not furnished returns for a continuous period of six months.
- ii. A taxpayer furnishing quarterly return, has not furnished returns for a continuous period of two tax periods.

B. Amendments in Rule 36 (Documentary requirements and conditions for claiming input tax credit)

In rule 36 of Central Goods and Services Tax Rules, 2017, -

(a) In sub-rule (2), the words, letters and figure, “, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person shall be omitted;

(b) In sub-rule (4), in clause (b), after the words, “the details of”, the words, “input tax credit in respect of” shall be inserted.

Impact of amendment:

No input tax credit shall be availed by a registered person in respect of invoices or debit notes unless,

- i. The details of such invoices or debit notes have been furnished by the supplier in the FORM GSTR-1 or using the invoice furnishing facility; and
- ii. The details of input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B.

C. Amendments in Rule 37 – Reversal of input tax credit in the case of non-payment of consideration

In rule 37 of the said rules, -

(a) For sub-rules (1) and (2), the following sub-rules shall be substituted, namely: -

“(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse

charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).".

(b) Sub-rule (3) shall be omitted.

Impact of amendment:

i. Proportionate ITC reversal removed

- a. Prior to amendment, sub-rule (1) clearly provided that taxpayer is liable to reverse the proportionate ITC attributable to the portion of the value, which has not been paid within 180 days.
- b. However, amended Rule 37 (1) is silent about whether the taxpayer is liable to reverse the entire or proportionate ITC, in cases where only part of the invoice value is not paid within 180 days. So even if partial amount remains unpaid, entire credit is liable to be reversed.
- c. Hence, now there are chances that in the absence of such clear stipulation in the amended rule, the authorities may demand reversal of entire ITC by applying this rule, even if the insignificant part of the invoice value has not been paid within 180 days.

ii. Reference to section 50(1) is omitted in rule 37(3)

- a. If the reference had remained as such, (i.e interest was payable under section 50(1), the reversal shall be treated as addition to the output tax liability and interest shall be levied @18%.
- b. Now in the absence of such reference to sub section of 50, authorities may consider the interest @ 24% under section 50(3) instead of 18% under section 50(1) of the CGST Act.
- c. However, if the taxpayer has not utilised the said ITC, then the same shall be used as defence, since interest shall be levied only in net tax liability (i.e after adjusting the ITC available)

iii. As per the new sub-rule (1) of Rule 37, the reversal shall be made in the GSTR-3B return for the tax period, following the period of 180 days.

- a. For example, if 180 days expires on 06.10.2022, the tax period following the said period is November 2022 and hence the reversal should be made in the GSTR-3B return for the month of November 2022, which would be filed on 20th December 2022.
- b. But nothing prevents the taxpayer to reverse the same in the GSTR-3B for the month of October 2022 itself, which would be filed on 20th November 2022, so that the interest liability could be reduced further.

D. Amendment in Rule 38 – Claim of credit by a banking company or a financial institution

(i) In sub-clause (ii) of clause (a), the word, letters and figure, "in FORM GSTR-2" shall be omitted

(ii) In clause (c), for the words, letters and figure, "and shall be furnished in FORM GSTR2", the words, letters and figure, "and the balance amount of input tax credit shall be reversed in FORM GSTR-3B" shall be substituted

(iii) Clause (d) shall be omitted

Impact of amendment:

The reference to GSTR-2 has been omitted to bring the provision in line with omission of Sections 42, 43 and 43A, vide Finance Act 2022 (which earlier provided for provisional ITC claim process, matching and reversal).

F. Amendment in Rule 43- Reversal of ITC on capital goods

In sub-rule (1), the words, letters, and figure, –FORM GSTR-2 and at both the places where they occur, shall be omitted.

Impact of amendment:

As the provisions relating to GSTR-2 and GSTR-3 are omitted the changes have been made in section 37 to make in line with law.

G. Rule 60– Form and Manner of Furnishing Details of Inward Supplies

In sub-rule (7), for the words “auto-drafted”, the words “auto-generated” shall be substituted.

Impact of amendment:

As the provisions relating to GSTR-2 and GSTR-3 are omitted the changes have been made in section 37 to make in line with law. The auto generated statement containing the details of input tax credit shall be made available in GSTR 2B.

H. Following rules are omitted:

Rule 69 (Matching of Claim of Input Tax Credit)

Rule 70 (Final Acceptance of Input Tax Credit and Communication thereof)

Rule 71 (Communication and Rectification of Discrepancy in ITC Claim/ Reversal thereof)

Rule 72 (Claim of Input Tax Credit on the same Invoice more than once)

Rule 73 (Matching of Claim of Reduction in the Output Tax Liability)

Rule 74 (Final Acceptance of Reduction in Output Tax Liability and Communication thereof)

Rule 75 (Communication and Rectification of Discrepancy in Reduction in Output Tax Liability and Reversal of Claim of Reduction)

Rule 76 (Claim of Reduction in Output Tax Liability more than once)

Rule 77 (Refund of Interest Paid on Reclaim of Reversals)

Rule 79 (Communication/ Rectification of Discrepancy in Details Furnished by e-Commerce Operator/ Supplier)

Impact of amendment:

As the provisions relating to GSTR-2 and GSTR-3 are omitted all the Rules evolving around ITC matching as prescribed in Rule 69, 70, 71, 72, 73, 74, 75, 76, 77 and 79 have been omitted

Rule 83 (Provisions relating to a Goods and Services Tax (GST) Practitioner)

In sub-rule (8), in clause (a), the words “and inward shall be omitted”.

Impact of amendment:

Rule 83(8) lists out the activities that a GST practitioner can undertake on behalf of a registered person (if so authorized). Clause (a) specifies “furnish the details of outward and inward supplies”. Given the omission of concept of GSTR-2 and amendment in Section 48, consequent amendment made in this rule as well.

J. Rule 85 (Electronic Liability Register)

In sub-rule (2), –

(i) in clause (b), for the words “said person”; the words “said person; or” shall be substituted.

(ii) clause (c) shall be omitted.

Impact of amendment:

Clause (c) of the said sub-section is omitted which earlier provided for amount of tax/interest payable as a result of mismatch under section 42 or 43 or 50 of CGST Act.

K. Rule 89 (Application for Refund of Tax, Interest, Penalty, Fees or any Other Amount)

In sub-rule (1), –

(a) After the words “claiming refund of”, the words, brackets, and figures “any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or” shall be inserted.

(b) The first proviso shall be omitted. (Any claim for refund relating to balance in the electronic cash ledger may be made through the return furnished for the relevant tax period in FORM GSTR 3 or FORM GSTR 4 or

FORM GSTR 7, as the case may be.)

(c) In the second proviso, for the words "Provided further that", the words "Provided that" shall be substituted

(d) In the third proviso, for the words "Provided also that", the words "Provided further that" shall be substituted.

Impact of amendment:

As the provisions are relating to GSTR-2 and GSTR-3 are omitted the changes have been made in section 37 to make in line with law.

M. Forms GSTR-1A, GSTR-2 and GSTR-3 are omitted from the Rules.

Impact of amendment:

Provisions relating to GSTR 1A, GSTR-2 and GSTR-3 are omitted from the rules and thus no longer applicable.

2. Notification No. 20/2022-Central tax dated 28th September 2022

Rescission of Notification No.20/2018-Central Tax, dated the 28th March, 2018

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations on the Council, hereby rescinds the notification of the Government of India, Ministry of Finance (Department of Revenue), No.20/2018-Central Tax, dated the 28th March, 2018,

published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section(i), vide number G.S.R. 309 (E), dated the 28th March, 2018, except as respects things done or omitted to be done before such rescission.

Impact of amendment:

▶ As per the notification dated March 28, 2018, the specified persons as per section 55 shall make an application for a refund of tax paid by them on inward supplies of goods or services or both, to the jurisdictional tax authority before the expiry of 18 months from the last date of the quarter in which such supply was received.

▶ The CBIC has rescinded Notification no. 20/ 2018, dated 28 March 2018, by notification no. 20/2022, as a result, the specified persons must file a refund application within the time prescribed under the section 54(2), which is six months.

Note: As per section 55 of the Central Goods and Services Tax Act, 2017, the Government may, on the recommendations of the Council, by notification, specify any specialized agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

SEZ Update- Insertion of Rule 43A-Work from Home

Coverage

The ambit of employees has been extended to include:

- ▶ Employees of ITES
- ▶ Who are temporarily incapacitated
- ▶ Who are travelling and
- ▶ Who are working offsite
- ▶ The permission granted shall be valid till 31.12.2023.

Application

- ▶ The Intimation shall be made to Development Commissioner (DC) through email on or before the date of facility for work from home from anyplace outside SEZ
- ▶ No requirement to submit the list of employees at the time of Intimation

- ▶ Where a unit permits its employees to work from home before the commencement of this rule, the same shall be intimated to DC through e-mail on or before 31st January 2023.

Conditions

- ▶ The permission shall be valid subject to:
- ▶ SEZ Continues to operate in the place as per LOA
- ▶ Employees shall perform work as per approved list of services
- ▶ Export revenue shall be part of NFE (Net Foreign Exchange)

Maintenance

The SEZ unit shall provide employees all duty-free goods including LAPTOP, DESKTOP and other electronic equipment needed to opt for WFH

Appropriate records shall be maintained by SEZ for verification.

Employee

The term employee shall include:

- ▶ All persons on Roll of SEZ unit
- ▶ Under a Direct Employment Contract
- ▶ Or Under Principal employer under a contract where the employee is expected to report it to the SEZ Unit