

## Notifications

### Gist of amendments to the CGST Rules, 2017

[Notification No. 26/2022](#) and [No. 27/2022-Central Tax](#) dated 26<sup>th</sup> December 2022

- PAN-linked mobile number & e-mail ID to be used for registration and OTP verification to restrict misuse of PAN of a person by unscrupulous elements without knowledge of the said PAN-holder. Amendment in rule 8 and rule 9 of CGST Rules is made to facilitate the same. Application for registration will be approved only after physical verification of the premises even after Aadhar authentication is done, if the said person is identified on the common portal based on data analysis and risk parameters, for carrying out physical verification of places of business. Rule 12 (3) of CGST Rules, 2017 has been amended to provide for facility to the registered person (RP) who are required to collect tax at source u/s 52 or deduct tax at source u/s 51 of CGST Act, 2017, to make request for Cancellation of Registration.
- Rule 37(1) of CGST Rules, 2017 is amended w.e.f. 01.10.2022 to provide for reversal of input tax credit (ITC) in case of non-payment

of consideration to the vendor within 180 days from the date of invoice only to the extent of proportionate unpaid consideration. Thus, amendment will help to remove ambiguity about whether to reverse full ITC availed on the said supplies even where the RP has made partial payment to the supplier for the said supplies.

- New Rule 37A is inserted in CGST Rules, 2017 to provide for the mechanism and time limit for reversal of ITC by the RP where tax is not paid by the supplier to the Government, and the mechanism where the supplier subsequently pays the tax, for re-claiming the credit.
- Proviso to Rule 46(f) is inserted, namely where any taxable service is supplied by or through an e-commerce operator or by a supplier of Online Information Database Access and Retrieval services (OIDAR) services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued shall contain the name, address of the recipient, its PIN code and the name of the State and the said address shall be deemed of be the address on record of the recipient.

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Earlier the name and address of the recipient was required to be mentioned in the tax invoice in case the value of the taxable supply was less than Rs. 5,000 only on the request of the recipient.

- Proviso to Rule 46A is inserted which states that where a RP is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies and shall contain the particulars as specified under Rule 46,54 or 49 as the case may be.
- Clause (d) is inserted after Rule 59(6)(c), which provides that where a RP, to whom the intimation has been issued on GST portal under the provisions of Rule 88C(1) in respect of a tax period, shall not be allowed to furnish Form GSTR 1/IFF for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid.
- Rule 88C mentioned above and FORM GST DRC-01B is inserted to provide for an intimation to be issued to the supplier where the differences in the details reported in GSTR-1/IFF and GSTR-3B exceed a specified percentage. Filing of GSTR-1 in respect of such supplier will be restricted until such differences are paid along with interest through DRC 03 or reply is furnished within 7 days. If an explanation is not found satisfactory then the provision of Section 79 will apply.
- Proviso is inserted in Rule 87(8), which provides that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the RBI.
- Sub-rule (3) of Rule 108 and Rule 109 of the CGST Rules, 2017 are amended to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority. This would facilitate timely processing of appeals and ease the compliance burden for the appellants.

- To reduce litigations at the level of appellate authorities, Rule 109C and FORM GST APL-01/03W is inserted in the CGST Rules, 2017 to provide the facility for withdrawal of an application of appeal before issuance of show cause notice u/s 107(11) or before issuance of the order whichever is earlier.
- Pilot run will be conducted in the state of Gujarat for Biometric-based Aadhaar authentication and risk-based physical verification of registration applicants.

### Changes in GST tax rates and changes related to reverse charge mechanism (RCM)

[Notification No. 12/2022-Central Tax \(Rate\) dated 30<sup>th</sup> December 2022](#) and [Notification No. 13/2022-Central Tax \(Rate\) dated 30<sup>th</sup> December 2022](#)

Sr. No.	Description	New Tax Rate
1	Husk of pulses including chilka and concentrates including chuni/churi, khanda	Nil
2	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	5%
3	Ethyl alcohol and other spirits, denatured, of any strength (other than above)	18%
4	Fruit pulp or fruit juice based drinks	12%
5	Mathematical boxes, geometry boxes and colour boxes	12%

[Notification No. 14/2022- Central Tax \(Rate\) dated 30<sup>th</sup> December 2022](#) and [Notification No. 15/2022- Central Tax \(Rate\) dated 30<sup>th</sup> December 2022](#)

- Supply of Mentha arvensis will now fall under RCM as has been done for Mentha Oil
- It is explained that no GST is payable where the residential dwelling is rented to a RP if it is

rented in his/her personal capacity for use as his/her own residence and on his own account and not on account of his business w.e.f.1<sup>st</sup> January 2023.

## Instructions

### Instruction has been issued describing manner of processing and sanction of IGST refund in case of Risk Exporters

[Instruction No. 04/2022-GST dated 28<sup>th</sup> December 2022](#)

- As per the instruction, Directorate General of Analytics and Risk Management (DGRAM) based on data analysis and risk parameters would identify the exporters where verification of credentials of the exporter, including availment of ITC by the exporter, is considered essential before grant of refund.
- DGARM would then place an alert on such exporter on Indian customs EDI system along with reason.

## Circulars

### Clarification on refund related issues

[Circular No. 181/13/2022-GST dated 10<sup>th</sup> November 2022](#)

- It has been clarified by CBIC that the amended formula for grant of refund in cases of inverted duty structure under Rule 89(5) of the CGST Rules for calculation of refund of ITC would be applicable in respect of refund applications filed on or after 05.07.2022.
- Further it has also been clarified that the restriction imposed vide [Notification No. 09/2022-Central Tax \(Rate\) dated 13<sup>th</sup> July 2022](#) on refund of unutilised ITC on account of inverted duty structure in case of specified goods falling under Chapter 15 and 27 would apply prospectively only and would be applicable in respect of all refund applications filed on or after 18.07.2022 only.

### Guidelines issued for verification of GST on Transitional Credit Claims

[Circular No. 182/14/2022-GST dated 10<sup>th</sup> November 2022](#)

- The Hon'ble Supreme Court has directed that the GST common portal be opened for filing prescribed forms for availing Transitional Credit through TRAN-1 and TRAN-2 for 2 months from 01.10.2022 to 30.11.2022 for the aggrieved registered assessee.
- The Transitional Credit claimed by the applicant shall be credited in his electronic credit ledger to the extent allowed by the jurisdictional tax officer through an order after carrying out necessary verifications.
- The said verification has to be carried out within 90 days after completion of the window of 2 months, i.e., up to 28.02.2023. During this window of 2 months, Hon'ble Supreme Court has kept all questions of law open.
- It is to be noted that the applicant is not allowed to file revised returns under the existing laws.
- Reference is also invited to the Board's [Circular No. 180/12/2022 dated 9<sup>th</sup> September 2022](#) vide which guidelines have been issued for the applicants for filing new TRAN-1/TRAN-2 or revising the already filed TRAN-1/TRAN-2 on the common portal.

### Clarification has been issued to deal with difference in ITC availed in GSTR-3B in comparison to GSTR-2A for FY 2017-18 and 2018-19

[Circular No. 183/15/2022-GST dated 27<sup>th</sup> December, 2022](#)

- In the situations where the supplier has failed to file GSTR-1 for a tax period but has filed the return in GSTR-3B, or where the supplier has filed GSTR-1 and GSTR-3B for a tax period, but has failed to report a particular supply in GSTR-1, or where the supplier has wrongly reported the said supply as B2C instead of B2B supply, due to which the supplies made in the said tax period do not get reflected in GSTR-2A, the Proper Officer shall seek the details from the RP of all the invoices on which ITC has been availed in GSTR 3B but not reflecting in his GSTR 2A before taking any action against the RP.

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- The Proper Officer shall then ascertain fulfilment of the conditions of Section 16 of CGST Act
- These instructions will apply only to the ongoing proceedings for financial year (FY) 2017-18 and 2018-19 and not to the completed proceedings except pending adjudication or appeal proceedings.
- Where difference between the ITC claimed in GSTR-3B and that available in GSTR 2A of the RP in respect of a supplier for the said FY exceeds Rs.5 lakhs, the RP has to provide CA/CMA certification certifying that supplies in respect of the said invoices have actually been made to the said RP by the supplier and the tax on such supplies has been paid by the said supplier in his GSTR 3B return.
- If the difference is up to Rs.5 lakhs, a certificate from the supplier is needed.

**Clarification has been issued on the entitlement of ITC where the place of supply is determined as per the proviso to Section 12(8) of the IGST, 2017**

[Circular No. 184/16/2022-GST dated 27<sup>th</sup> December 2022](#)

- Section 12(8) of IGST Act 2017, provides that the place of supply of services by way of transportation of goods, including by mail or courier to, —
  - a) a RP, shall be the location of such person;
  - b) a person other than a RP, shall be the location at which such goods are handed over for their transportation.
- Hence, in case of supply of services by way of transportation of goods is to a place outside India, including by mail or courier, where the supplier and recipient are located in India, the place of supply is the concerned foreign destination where the goods are being transported.
- It will be inter-state supply and recipient of service of transportation of goods shall be eligible to avail ITC in respect of the IGST.
- The supplier of service has to select State Code as '96- Foreign Country 'in GSTR 1.

**Clarification is issued for the time limit**

**within which the Proper Officer is required to re-determine the amount of tax payable considering notice to be issued u/s 73(1)**

[Circular No. 185/17/2022-GST dated 27<sup>th</sup> December 2022](#)

- As per Section 75(2) of CGST Act, 2017, where the appellate authority or appellate tribunal or court concludes that the notice issued by Proper Officer u/s 74(1) is not sustainable for reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax have not been established, then the Proper Officer shall determine the tax payable by the noticee, deeming as if the notice was issued u/s 73(1).
- In such cases, the Proper Officer is required to issue the Order of redetermination of tax, interest and penalty payable within the time limit as specified u/s75 (3) of the CGST Act, i.e., within a period of 2 years from the date of communication of the said direction by appellate authority or appellate tribunal or the court, as the case may be.

**Clarification has been issued with respect to taxability of No Claim Bonus (NCB) offered by Insurance companies and applicability of e-invoicing to specified entities**

[Circular No. 186/18/2022- dated 27<sup>th</sup> December 2022](#)

- It has been clarified that there is no supply provided by the insured to the insurance company in the form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.
- Further, NCB is a permissible deduction u/s 15(3)(a) of the CGST Act for the purpose of calculation of value of supply

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- Where the deduction on account of NCB is provided in the invoice issued by the insurer to the insured, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the insurer, after deduction of NCB mentioned on the invoice.
- In terms of [Notification No. 13/2020-Central Tax dated 21<sup>st</sup> March 2020](#), as amended, certain entities/sectors have been exempted from mandatory generation of e-invoices as per Rule 48 (4) of CGST Rules, 2017.
- The said exemption from generation of e-invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

### **Clarification has been issued on the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016.**

[Circular No. 187/19/2022-GST dated 27 December 2022](#)

- It has been clarified that where any notice of demand of Government dues is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then where such Government dues are reduced it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand.
- The Commissioner shall give an intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending.
- Any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

### **Clarification has been issued stating the manner of filing of application for refund by unregistered persons u/s 54(1) of the**

### **CGST Act,2017**

[Circular No. 188/20/2022-GST dated 27<sup>th</sup> December 2022](#)

- In cases where the contract for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, a new functionality has been made available allowing unregistered persons to take a temporary registration and apply for refund under the category 'Refund for Unregistered person'.
- Unregistered person would be required to undergo aadhaar authentication, mention bank account details, file GST RFD-01 which cannot exceed the GST charged on the invoice and upload evidence to establish that he has borne the tax incidence.
- Where time limit for issue of credit note u/s 34 of CGST Act has not expired at the time of cancellation/termination of contract, the concerned suppliers can issue credit note and pay back the tax collected to such unregistered person.
- No refund application would be entertained, if the claim is less than Rs.1,000.

### **Clarification has been issued on incentive paid by Banks for promotion of RuPay Debit Cards and BHIM-UPI.**

[Circular No. 190/02/2023-GST dated 13 January 2023](#)

It has been clarified that incentives paid by the Ministry of Electronics and Information Technology (MeitY) to Banks under the incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and not liable to GST.

# KEY TAKE AWAY

- Clarification has been issued for dealing with mismatch of ITC availed in GSTR-3B and 2A for F.Y.2017-18 and F.Y.2018-19.
- Clarification has been issued for Place of Supply under proviso to Section 12(8) of IGST Act, 2017.
- Clarification has been issued with respect to taxability of no claim bonus offered by insurance companies and applicability of e-invoicing to certain specified entities.
- Clarification has been issued for making application of refund by unregistered persons.
- Tax-payers can not file their current GSTR-1 returns unless the tax demanded under Rule 88C has been paid.
- Rule 37 has been amended from 1<sup>st</sup> October 2022 to provide for reversal of ITC in case of non-payment of consideration to the vendor within 180 days from the date of invoice to the extent of proportionate unpaid consideration.
- New Rule 37A is inserted to provide for the mechanism and time limit of reversal of ITC by the recipient where tax is not paid by the supplier to the Government.
- It has been clarified that proprietors renting out residential dwelling in their personal capacity are exempted from GST.



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