

GST Alert 03/2022-23

Date 15.07.2022

Changes in GST Law & Procedure

GST Council in its 47th meeting held in Chandigarh on 28-29th June 2022 had taken many decisions, to implement these decision, various notifications and circulars are issued, following is a gist of them. Some of the changes are procedural hence will be applicable prospectively whereas some are clarificatory in nature, hence would be applicable retrospectively. Gist of these changes are as under:

I. Interest on wrong availment of Input Tax Credit would be payable only if the same is utilised – Retroactive Amendment in Section 50 (3) – [Noti 9/2022 - CT]

If any person has availed any Input Tax Credit (ITC) which he is not eligible to avail, he was asked to pay interest thereon even if it was established that the said wrong ITC was not utilized. A retrospective amendment was made section 50 (3) saying that effective from 01.07.2017, interest would become payable only if the wrongly availed ITC was utilised for payment of tax and not otherwise. This amendment is now notified and therefore **it would be applicable from 01.07.2017 onwards.**

II. Transfer of amount available in Electronic Cash Ledger to distinct person

If any person has balance in electronic cash ledger under any of the head like Tax, Interest, Penalty and Late fees then he can transfer such balance to another GST Registration having same PAN like GST Registration taken in another state or in the same state for different business segment or branch.

The transfer of Electronic Cash Ledger Balance shall be subject to the condition that person who wish to transfer amounts from Electronic Cash Ledger does not have any unpaid liability in Electronic Liability Ledger.



III. GSTR 9 not required to be filed by Persons having turnover below 2 crores in FY 2021-22 [Noti 10/2022 - CT]

Requirement for filing of Annual Return (GSTR 9) was waived for a person having Aggregate Annual Turnover below 2 crores for FY 2017-18 till 2020-21. Said waiver has been extended to FY 2021-22 as well. Please note turnover should be below 2 crores on PAN number level and not just a GSTIN level, in other words turnover for all GSTINs will be taken, if the same is below 2 crores, the person is not required to file GSTR 9 return.

IV. Relief in certain compliances [Noti 11 and 12/2022-CT]

1. Person who has opted for Composition Scheme is required to file return in form CMP-08 on quarterly basis on or before 18th of the month falling after the quarter. Due date for such a return for Jun 2022 quarter has been extended to 31.07.2022.
2. Person who has opted for Composition Scheme is required to file return in form GSTR 4 on yearly basis on or before 30th April of the next year falling after the financial year. Late fee for filing this return for FY 2021-22 has been waived from 01.05.2022 to 28.07.2022.

V. Certain critical time limits for the GST department as well as for taxpayers extended [Noti 13/2022-CT]

Due to covid, Supreme Court had given relief to trade by way of extending time limits for various Litigation & Refund related matters. Government felt that the officials also needed similar relief, in view of which 3 critical timelines have been extended:

1. Due date for filing Annual return (GSTR 9) for FY 2017-18 was 05.02.2020 for some states including Gujarat and 07.02.2020 for rest of the states. As per the provision of section 73, an order against a Show Cause Notice (SCN) is required to be issued within 3 years from the due date of the Annual Return. Accordingly, for FY 2017-18, an Order in Original against an SCN for non-payment of output tax or for wrong availment of ITC (in cases where no Suppression, fraud or mis-representation was involved) has to be issued by 04.02.2023. Further, the SCN



for FY 2017-18 has to be issued within 2 years and 9 months from the due date of Annual Return, accordingly the last date for issuing SCN for FY 2017-18 was 04.11.2022.

Vide this notification, above timelines are extended as under:

- a. Last date for issuing SCN – 30.06.2023**
- b. Last date for issuing Order against above SCN – 30.09.2023**

So, the departmental authorities have been given additional time period of 8 months for issuance of SCN as well as order.

2. In case of wrongly given refunds, time limit for issuance of demand orders under section 73(10) was 3 years from the date of grant of erroneous refund. Now the said period of limitation shall exclude the period from the 1st day of March, 2020 to the 28th day of February, 2022. Effectively the time limit is increased by 2 years.
3. In case of filing of Refund Applications under Section 54/55 of CGST Act, 2017 the time limit for filing of Refund application was 2 years from the relevant date. Now the said period of 2 years shall exclude the period from the 1st day of March, 2020 to the 28th day of February, 2022. Effectively the time limit is increased by 2 years.

VI. Important Changes made in GST Rules [Noti 14/2022-CT]

1. Where a taxpayer is having taxable and exempt turnover, he is required reverse proportionate ITC as it is understood that certain ITC is used for supplying exempt goods or services. Selling of Duty Credit Scrips like MEIS, DFIA and SEIS was exempted from levy of GST, so a question arose whether the value received on sale of duty credit scrip must be considered as exempt supply and hence considered for reversal of ITC or not. There were legal grounds to say that it cannot be considered as exempt sale and there was no need to reverse ITC, however department in a few cases did not agree with the view and had issued demand notices for the same, a few cases also travelled to High Courts. To nip this issue in its



bud, rules have been amended to say that value of supply of Duty Credit Scrips shall be excluded for the purposes of ITC reversal calculation.

2. Currently, all taxpayers having turnover above 20 crores in any financial year from 2017-18 onwards is required to issue E-Invoice. In case such a person is not issuing E-invoice, then he will have to give a written declaration as under in the Tax Invoice issued by him:

“I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule.”

3. Mechanism for calculating Interest has been notified retrospectively from 01.07.2017 The method is explained by way of examples as under:

a. Interest on Output Tax paid late

- i. A company ABC Ltd, for the month of April 2022 had Rs 1 lac of tax payable, due to some reasons it could not file GSTR 3B on 20th May 2022 and filed the same on 30th May 2022 with a delay of 10 days. While filing return it had Rs. 30,000 lying in its credit ledger from earlier period and availed Rs. 30,000 new ITC, it utilised these Rs. 60,000 ITC and paid Rs. 40,000 by debiting Cash ledger. In such a scenario, he will be asked to pay Interest on Rs. 40,000 for 10 days @ 18% per annum.
- ii. Under scrutiny/ search proceedings done in April 2022, a company XYZ Ltd is asked to pay Rs. 5 lacs as output tax for FY 2017-18. The company agrees and pays the same by utilising outstanding ITC balance lying in its credit ledger. In such a scenario, company will have to pay Interest @ 18% on the entire 5 lacs for the entire period.
- iii. A Partnership firm DEF has an outstanding demand of Rs. 10 lacs in a GST litigation where order is issued under form DRC 07, he chooses to pay the same by utilising 3 lacs ITC and 7 Lacs by cash. DEF will have to pay Interest @ 18% on the entire 10 lacs for the entire period since when it is outstanding.



iv. A Company Late Latif, files return for April 2022 within time, but forgets to declare a tax liability of Rs. 10 crores in this return. Company declares the same in May 2022 return which is also filed on time. He pays the said 10 crores (of April 2022) by utilising old ITC balance lying with the company since March 2022. Unfortunately, Late Latif will have to pay interest @ 18% on 10 Crores for a delayed period of 30 days.

b. Interest on Wrongly availed and utilised ITC

A company named PQR Ltd. who was into supplying of Management Consultancy Services availed ITC of Rs. 5 lacs in April 2018 on purchase of Honda City Car. It realised the mistake in March 2022 and reversed the same. Its unutilised ITC balance position since April 2018 was as under:

- a. From April 2018 to Sept 2021 - Rs. 6 lacs
- b. From Oct 21 to Dec 21 – Rs 5 lacs
- c. January 2022 – Rs. 4 lacs
- d. February 2022 – Nil

The company paid the entire ITC of 5 lacs by paying the same in cash on 28.02.2022 by filing DRC-03. The company will have to pay Interest as under:

- a. Interest for the period from April.18 to Sept.21 – Nil
- b. Interest for the period from Oct.21 to Dec.21 – Nil
- c. Interest for the month of Jan.2022 – Rs. 1,500/- (Rs. 1 Lac * 18%/12)
- d. Interest for the month of Feb.2022 – Rs. 7,500/- (Rs. 5 Lac * 18%/12)



4. Amendments made in Rule 89 of CGST Rules

- a. An Explanation to Rule 89(1) inserted so as to include “authorised officer” as defined in Rule 2 of SEZ Rules 2006 as specified officer for the purpose of CGST Act,2017.
- b. New clause (ba) has been inserted under Rule 89(2) prescribing separate statement to be submitted for claiming Refund of Unutilised Input Tax Credit on account of Export of Electricity containing following particulars:
 - i. the number and date of the export invoices
 - ii. details of energy exported
 - iii. tariff per unit for export of electricity as per PPA (Power Purchase Agreement)
 - iv. the copy of statement of scheduled energy for exported electricity by Generation Plants issued by the Regional Power Committee Secretariat as a part of the Regional Energy Account (REA)
 - v. the copy of agreement detailing the tariff per unit
- c. New explanation has been inserted under Rule 89(4) to provide the value of exported goods shall be taken as lower of:
 - i. FOB (Free on Board) Value declared in Shipping Bill or Bill of Export
 - ii. Value declared in in Tax Invoice or Bill of Supply
- d. The formula for Inverted Duty Structure refund under Section Rule 89(5) has been amended to take into account utilisation of Input Tax Credit of Input and Input Services for payment of Output Tax in same propitiation in which Input Tax Credit is availed in respect of Input and Input Services during the said tax period. The revised formular for Refund would be as under:



Maximum Refund Amount = {(Turnover of inverted rated supply of goods **and services**) x Net ITC ÷ Adjusted Total Turnover} - {tax payable on such inverted rated supply of goods and services x (Net ITC ÷ ITC availed on inputs and **input services**)}.

5. Amendments made in Rule 96 of CGST Rules

Reference to GST Return GSTR-3 has been replaced with GSTR-3B

- a. In case there is mismatch in data furnished by Exporter in Shipping Bill and GSTR-1 then data of application for Refund of goods shall be deemed to have been submitted on the date when mismatch in respect shipping bill is rectified by the exporter.
- b. Commissioner of Board shall have power to withhold the Refund if he is of the opinion basis of data analysis and risk parameters that verification of credentials of the exporter and availment of ITC by the exporter is considered necessary to safeguard the interest of the revenue.

Where the refund is withheld, the refund application shall be transmitted to proper officer under GST electronically through common portal and intimation of the same shall also be sent to exporter through common portal. The application for refund shall be deemed to have been submitted on the date of transmission.

VII. Change in norms for filing GSTR 3B [Noti 14/2022-CT – Point 11 and Circular 170]

There some important changes made in format of GSTR 3B as well as reporting norms have also been changed, gist is as under:

1. Transactions on which tax is payable by the E-Commerce Operator (like Restaurant Services) will now have to disclose the details in a new table 3.1.1 as under:



- a. E-commerce Operator shall report Taxable turnover on which it has to pay tax. Say for example a restaurant ABC makes Rs 1 lac worth of food supplies through Zomato, then Zomato will disclose Rs. 1 lac here plus the turnover it has done for other restaurants.
 - b. Continuing with the above example, ABC Restaurant will disclose Rs. 1 lac on which Zomato has to pay tax here.
2. In case of ITC reporting, following details are now required to be reported separately:
- a. ITC reclaimed which was reversed under Table 4(B)(2) in earlier tax period
 - b. Ineligible ITC under section 16(4) and ITC restricted due to PoS provisions
3. Some more changes are made in reporting norms of GSTR 3B for ease of settlement of funds between Centre and States, gist is as under:
- a. Supplies to unregistered person (B2C) will have to be reported State wise
 - b. Supplies to Composition dealers and UIN holders will also have to be reported State wise
 - c. Any amendment carried out in Table 9, 10 or 11 of **FORM GSTR-1** should also be given effect to while reporting the figures in Table 3.2 of **FORM GSTR-3B**
 - d. It is being advised to adhere to following norms for ITC reporting:
 - Total ITC (eligible plus ineligible) will have to be reported in table 4A of GSTR 3B, this will get auto populated through GSTR 2B. System will not auto populate Time barred ITC and ITC of C+S of other states.
 - Proportionate Reversal of ITC (under rule 38, 42 and 43) on account of taxable and non-taxable turnover as well as ineligible blocked credits (under section 17-5) will have to be reported in table 4B(1) of GSTR 3B.
 - Person will report reversal of ITC, which can be reclaimed in future like reversal done on account of non-payment of consideration to supplier within 180 days etc in **Table**



- 4B(2)** of GSTR 3B. Such ITC may be reclaimed in **Table 4A(5)** on fulfilment of necessary conditions. Further, all such reclaimed ITC shall also be shown in **Table 4(D)(1)**.
- **Table 4 (B) (2)** may also be used by registered person for reversal of any ITC availed in **Table 4(A)** in previous tax periods because of some inadvertent mistake.
 - Therefore, the net ITC Available will be calculated in Table 4 (C) which is as per the formula **(4A - [4B (1) + 4B (2)])** and same will be credited to the ECL of the registered person.
 - As the details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1).
 - ITC not available, on account of limitation of time period as delineated in sub-section (4) of section 16 of the CGST Act or where the recipient of an intra-State supply is located in a different State / UT than that of place of supply, may be reported by the registered person in Table 4D (2). Such details are available in Table 4 of FORM GSTR-2B.
 - **Accordingly, it is clarified that the reversal of ITC of ineligible credit under section 17(5) or any other provisions of the CGST Act and rules thereunder is required to be made under Table 4(B) and not under Table 4(D) of FORM GSTR-3B.**

VIII. Refund of ITC to Deemed Exporters [Circular 172]

- a. Input Tax Credit claimed by Recipient of Deemed Export supplies for the purpose of claiming refund of tax paid on such supplies shall not be considered as ITC in terms of provision of GST law. It is merely a process wherein the Deemed Exporter will claim ITC in Electronic Credit Ledger and Debit the same while claiming refund.
- b. The said ITC shall not be considered as part of NET ITC for the purpose of calculation of Refund amount under rule 89(4) and 89(5) of CGST Rules.



IX. Clarification on taxability of Perquisites paid by employer to the employee [Circular 172]

Doubts regarding taxability of Perquisites provided by employer to the employee are laid to rest, it has been clarified that any perquisite provided/paid by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.

As per Schedule III to the CGST Act, Services by employee to the employer in the course of or in relation to his employment are not to be considered as supply of goods or services and hence GST is not applicable on them. In view of this, perquisites provided by the employer to the employee in terms of contractual agreement, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

X. Clarification on Refund under Inverted Duty Structure where goods are being supplied under concessional rate [Circular 173]

1. Earlier Circular No. 135/05/2020-GST dated 31.03.2020 clarified that refund under inverted duty structure shall not be eligible where the input and output supplies (goods) are same even though they are attracting different rate of taxes at different point of time.
2. It came to light that there may be situations, where tax on output supply is lower on account of a concessional rate notification. In view of this it has now been clarified that where the inputs and output goods are same, but the outward supplies attract concessional rate by way of notification providing lower rate of tax (then the inputs), such taxpayer would be eligible for refund subject to fulfilment of other conditions.

XI. Formation of Tribunals

Since the introduction of GST in July of 2017, it's been 5 years, thousands if not lacs of cases have piled up in to the department on account of variety of issues majority of which are on account of e-way bill offences. Taxpayers have been forced to pay lacs as pre-deposits in normal cases and penalty in case of e-way bill offences for release of their goods and conveyance.



If past experience is any guide, it has proved futile to get justice at the first appeal stage, law envisaged establishing Tribunals for filing of second appeals before a person approaches the High Court. However, due to some adverse comments of Madras High Court and then the Supreme Court, setting up of GST Appellate Tribunals (GSTAT) was stalled. GST Council has now formed a Group of Ministers under the convenorship of Shri Dushyant Chautala (Dy Chief Minister of Haryana) to recommend amendments required in the law which leads to successful formation of the GSTAT in every state. Hope we see the light at the end of the tunnel sooner than later.

XII. Conclusion

Some welcome changes have been notified like Interest on ITC whereas some changes like formation of Tribunals is still facing legal potholes. I can't stop but ask myself, why are such wholesale changes/amendments/clarifications required. Have we collectively gone wrong somewhere, will these changes lead to peace and light at the end of the tunnel or are these forcing us into yet another dark tunnel

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