

GST Alert 10/2020-21

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### Critique on recent changes made via Rules

Government has issued a notification (94/2020-CT) amending key GST rules, far reaching changes have been made which will impact how we avail credits and do the compliance. Gist of these changes and our views on them is as under:

#### **I. Changes made in Registration Process [Rule 8 and 9]**

- A. Registration process has been made more stringent whereby a person seeking registration will have to get himself authenticated through biometric based Aadhar and taking of photograph, in case the applicant opts not to get aadhar authentication done then he will have to provide biometric information, photograph and verification of KYC documents
- B. Time for processing of registration has been enhanced from 3 days to 7 days. If the applicant opts for Aadhar authentication, his application for registration will be granted within 7 days. In case he does not opt for aadhar authentication or if the officer deems it necessary to carry out physical verification then the time limit for grant of registration shall be 30 days instead of 7 days. Same process will apply in case of application for additional place of business. In case the officer doesn't take any action within the stipulated 7 or 30 days' time, registration will be deemed granted

#### **II. Suspension and Cancellation of GST Registration [Rule 21 and 22]**

- A. Powers of the Officer to cancel registration of a taxpayer has been increased manifold if any of the following violations are found:
  - a. Avails Input Tax Credit (ITC) in violation of Section 16.
  - b. Value of outward supplies declared in GSTR 1 is in excess of the value declared in GSTR 3B for one or more months
  - c. Violates provisions of new Rule 86 (B) (discussed in detail below)



- B. If the officer has reasons to believe that the taxpayer has violated the provisions of rule 21 (in point A above) he may suspend the registration of the taxpayer **without giving him any opportunity of being heard**
- C. If the officer finds significant differences or anomalies in the following, then he can suspend registration of the taxpayer
- details of outward supplies furnished in **GSTR-1**
  - details of inward supplies derived based on GSTR 2A

There are several scenarios where in there would be genuine reasons for differences between turnover reported in GSTR1 and 3B where liability in GSTR1 is greater than GSTR3B, following is a list of some of such reasons: -

- Amendment made for earlier period in outward supply or CN in R1
- Wrongly reported as B2C instead of B2B of earlier periods
- Amendment made in 3B for any excess liability shown earlier
- Missed invoice of earlier period correctly reflected in 3B now shown in current R1
- Credit note furnished in 3B but missed in calculation of outward supplies for R1.
- Liability identified paid through DRC-03
- Actual excess/duplication in B2C in R1 which remains uncorrected
- Genuine error by the return maker or filer

The above may become reasons for suspension of registration and the taxpayer will have to satisfy the officer in order to withdraw such suspension

- D. If the registration is so suspended, officer will send a communication on the portal or by sending an email to explain the anomalies which needs to be explained within 30 days failing which the registration will be cancelled
- E. A registered person, whose registration has been suspended shall not make any taxable supply during the period of suspension and shall not be required to furnish any return
- F. A registered person, whose registration has been suspended shall not be granted any refund under GST, during the period of suspension of his registration.



**III. Restriction on availment / claim of ITC [Rule 36(4)]**

The claim of ITC in respect of invoices not furnished by the corresponding vendors has now been restricted to 5% of the credit available in GSTR 2B. This limit earlier was 10% of ITC available. This would mean that a taxpayer's ITC claim shall now be restricted to 105% of the Credit reflected in his GSTR 2B. Any claim exceeding the specified limit shall result in violation of CGST Act read with rules which may result into suspension of GSTIN as explained above. This change shall come into effect from 1<sup>st</sup> January 2021.

Following table reflects the changes in ITC availment:

Sr. No.	Period	Availment Restriction
1.	01.07.2017 to 8.10.2019	No Restrictions
2.	09.10.2019 to 31.12.2019	Can claim <b>120%</b> of the credit reflecting in GSTR 2A/2B
3.	01.01.2020 to 31.12.2020	Can claim <b>110%</b> of the credit reflecting in GSTR 2A/2B
4.	01.01.2021 onwards	Can claim <b>105%</b> of the credit reflecting in GSTR 2A/2B

As can be seen, government is moving towards a regime whereby a taxpayer will be allowed to claim credits of taxes which are reported and paid by their suppliers and nothing more. Era of claiming credits on self-assessment basis is all but over.

**IV. Changes in return filing norms [Rule 59 (5)]**

- A. Taxpayer (filing monthly returns) will not be allowed to file GSTR 1 if he fails to file GSTR 3B for two preceding months.
- B. Taxpayer (filing quarterly returns) will not be allowed to file GSTR 1 if he fails to file GSTR 3B for previous quarter.
- C. A taxpayer, who is restricted from using the ITC available in credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish GSTR 1 or IFF, if he has not furnished the return in **FORM GSTR-3B** for previous month or quarter
- D. Above restrictions are in addition to the earlier restriction of blocking of E-way Bill facility if 2 previous GSTR 3B are not filed



### V. Restriction on availment / claim of ITC [Rule 86(B)]

Taxpayer shall not be allowed to use more than 99% of the available credit in electronic credit ledger to discharge his liability towards output tax, in cases where the value of taxable supply (other than exempt supply and zero-rated supply) in a month exceeds 50 lakh rupees.

This restriction shall not apply in following cases:

- a. the taxpayer himself, or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than 1 lakh rupees as income tax under the Income-tax Act, in each of the last two financial years.
- b. the taxpayer has received a refund amount of more than 1 lakh rupees in the preceding financial year on account of unutilised input tax credit
- c. the taxpayer has discharged his GST liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, up to the said month in the current financial year
- d. the Taxpayer is –
  - i. Government Department
  - ii. a Public Sector Undertaking
  - iii. a local authority
  - iv. a statutory body

### VI. Change in validity of E-way bill [Rule 138 (10)]

Earlier for movement of goods, one day was permitted for distance of up to 100 kms under E-way bill provisions. With effect from 01.01.2021, the same has been increased to 200 kms. In other words, now a truck will have to cover minimum 200 kms in a day else his e-way will be invalid.

Example: For a normal transportation vehicle one day validity of e-way bill was allowed for travelling 100 kms or part there of. For every additional 100 Kms or part one additional day was



allowed. So a truck travelling 1760 Kms was allowed validity of 18 days from the midnight of date of generation of e way bill. But now with this change this truck travelling 1760 Kms shall be allowed validity of 9 days from the midnight of date of generation of e way bill.

Thus, the period of validity of e-way bill has been reduced to 50% w.e.f. 01-01-2021

### VII. Conclusion:

Rationale given by the government for introducing these amendments is to control the menace of Fake Invoicing which as per them is making a mockery of the system and is resulting in huge losses for the governments. Hence this critique will revolve around this rationale and whether government will be able to achieve its intended goal through these amendments.

Prima Facie it seems they will be able to achieve what they have set out to, but it will be at a huge and irreparable cost to the genuine taxpayers. For these changes in compliance and ITC availment structure to work, GST Compliance needs to work like a musical symphony, not a note must be in the wrong place or time, not a return must be filed late or with errors. Humans have never in their history conformed to this norm of perfection, so to believe that GST taxpayers will be able to dance to these tunes is in itself a difficult ask.

Working capital is the oxygen of any business and more so in these difficult times, for this system to work, all will have to file their returns within the stipulated times else that very oxygen will get sucked into GST tax payments. Vendors are given credit periods for variety of reasons which will in turn force the taxpayer to dig into his own pockets for payment of GST on accrual basis, bearing the cost of GST for a default of a vendor because he doesn't have the wherewithal to file his return was a tough ask, now to add to this misery these amendment seek to put the taxpayers registration at stake for an unintended mistake or unintentional delay of the return filer is taking it too far. To add to this officer can suspend the registration at the cost of natural justice. We all know, officers in their gut know that GSTN doesn't show correct figures, based on the incorrect date the officer will now be allowed to take away my liberty to do business till I go and satisfy him.



Now lets come to this bizarre rule 86B which I firmly believe will be struck down at the earliest by the first High court it meets, arbitrary is too small a word to describe it, it's an example of bureaucratic monstrosity. If I pay 1% of the output tax in cash I am allowed to utilise 99% of the credit, if I pay more than 1 lac of income tax then I can utilise 100% of the ITC, but a genuine person who has just established a small business where he has ITC available due to capital expenditure can utilise just 99% of the ITC. In case this hapless taxpayer wants to safeguard his working capital requirements he will have to seek the commissioners approval to utilise 100% ITC.

With GSTR 1, 3B, 2A, 9, 9C we all were forced to enter a perennial reconciliation age, these amendments will bring more misery in coming times. Judicial principle which says 100 guilty may escape but one innocent must not be punished is all but buried now, we will see more and more of this cacophony in amendments which eventually will kill the goose that lays the golden egg. GST which we all were promised is all but gone, nothing remains seamless anymore.

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