

# GST

## Latest Updates in GST



कुंजी, देश के सर्वांगीण विकास की

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# GST

GOODS AND SERVICES TAX

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(Updated as on November 2022)



Directorate General of Taxpayer Services  
CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS  
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## Refund related measures:

- (a) Amendment has been made in formula prescribed in sub-rule (5) of Rule 89 of CGST Rules, 2017 for calculation of refund of unutilized Input Tax Credit on account of inverted rated structure vide Notification No. 14/2022-Central Tax dated 05.07.2022. The amended formula takes into account utilization of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period.
- (b) To provide relief to the taxpayers who faced difficulties in filing their refund claims within prescribed time limit due to Covid-19 pandemic, time period from 01 March, 2020 to 28 February, 2022 has been excluded from calculation of the limitation period for filing refund claim by an applicant under Sections 54 and 55 of CGST Act, 2017.

## Relief in Interest related provisions:

- (a) Retrospective amendment with effect from 01<sup>st</sup> July, 2017 has been made in Section 50 of CGST Act, 2017 by Finance Act, 2022 notified vide Notification No. 09/2022-Central Tax dated 05.07.2022 to provide that interest is required to be paid on the wrongly availed ITC only when the same has been availed as well as utilized. CGST Rules, 2017 have also been amended vide Notification No. 14/2022-Central Tax dated 05.07.2022 to provide for the manner of calculation of interest under Section 50 of CGST Act.
- (b) In addition to this, rate of interest on wrongly availed and utilized ITC has also been reduced to 18% from 24% with retrospective effect from 01<sup>st</sup> July, 2017 by Finance Act, 2022.

## Facilitation to Exporters:

- (a) Requirement of reversal of input tax credit for exempted supply of Duty Credit Scrips by the exporters has been done away with by amending Explanation 1 after Rule 43

(c) Circular No 162/18/2021-GST dated 25.09.2021 has been issued to clarify that:

- (i) the term “subsequently held” covers both the cases where the inter-state or intra-state supply, is either subsequently found by taxpayer himself as intra-state or inter-state respectively or where it is subsequently held by the tax officer in any proceeding.
- (ii) about the limit for filing such refund claims for past as well as prospective periods.

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of underlying invoice) shall determine the relevant financial year for the purpose of Section 16(4) of the CGST Act.

- There is no need to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier in the manner prescribed under Rule 48(4) of the CGST Rules. Production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically would suffice for verification by the proper officer.
- Only those goods which are actually subjected to export duty i.e. on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under Section 54(3) of the IGST Act from availing of refund of accumulated ITC. The goods, which are not subject to any export duty and having NIL rate specified in schedule or any customs notification, would be out of restriction provided under section 54(3) of the CGST Act.

**Clarification in respect of refund under Section 77 of CGST Act Section 19 of IGST Act where an intra state supply is subsequently held as inter-state supply and vice versa:**

- (a) Section 77 of CGST Act provides for refund of amount, paid as CGST and SGST in respect of supplies made considering intra-state supply, which are subsequently held as inter-state supply. Similar provision exists in Section 19 of IGST Act. Disputes have been raised regarding time limit for filing such refunds.
- (b) CGST Rules has been amended vide Notification No. 35/2021-Central Tax dated 24.09.2021, and Rule 89(1A) has been inserted in CGST Rules to provide:
  - (i) Procedure for filing such refund claims;
  - (ii) Such refund claims can be filed before the expiry of two years from the date of payment of tax under the correct head, or two years from the date of insertion of sub-rule (1A) to Rule 89 in past cases.

of CGST Rules, 2017 vide Notification No. 14/2022-GST dated 05.07.2022. This will benefit a large number of exporters whose ordinary course of business includes the sale of such Duty Credit Scrips also.

- (b) Amendment in CGST Rules, 2017 has been made vide Notification No. 14/2022-Central Tax dated 05.07.2022 to provide for refund of unutilized Input Tax Credit on account of Export of Electricity. This would facilitate the exporters of electricity in claiming refund of utilized ITC on zero rated supplies.
- (c) Amendment in CGST Rules, 2017 for handling of pending IGST refund claims: For time-bound disposal of refund claim applications filed by the taxpayers identified as risky based on data-analytics and risk parameters. Amendment has been made in Rule 96 of the CGST Rules, 2017 vide Notification No. 14/2022-Central Tax dated 05.07.2022 to provide for transmission of such IGST refund claims on the portal in a system generated **FORM GST RFD-01** to the jurisdictional GST authorities for processing in a time-bound manner.

**Other facilitation measures:**

- (a) UPI & IMPS has been provided as an additional mode for payment of Goods and Services Tax to taxpayers under Rule 87(3) of the CGST Rules, 2017 to facilitate taxpayers and to further encourage digital payment.
- (b) Threshold for mandatory issuance of e-invoice has been reduced to ₹ 20 Cr from 01<sup>st</sup> April, 2022. This threshold limit is further reduced to ₹ 10 Cr with effect from 01.10.2022. Data from e-invoice is auto populated in **FORM GSTR-1** & **FORM GSTR-3B** of the taxpayer, thereby easing the process of return filing by reducing the time taken in filing the returns.
- (c) Amendment has been made in CGST Act, 2017 by Finance Act, 2022 notified vide Notification No. 09/2022-Central Tax dated 05.07.2022 to provide for transfer of balance in electronic cash ledger of a registered person to electronic cash ledger of CGST and IGST of a distinct person. CGST Rules, 2017 have also been amended vide Notification No. 14/2022-Central Tax dated 05.07.2022 accordingly.

(d) Provision has been made for automatic revocation of suspension of registration by amending Rule 21A of CGST Rules, 2017 vide Notification No. 14/2022-GST dated 05.07.2022 in cases where suspension of registration was done by the system, for non-compliance in terms of clause (b) or clause (c) of sub-section (2) of Section 29 i.e. for continuous non-filing of specified number of returns. In such cases, once all the pending returns are filed on the portal by such taxpayers, the suspension of his GST registration will be automatically revoked by System without requiring taxpayer to make any application with the tax officer for the revocation of the suspension of the registration.

**FORM ITC-04** once in six months.

- Taxpayers, whose annual aggregate turnover in preceding financial year is up to ₹ 5 Cr, shall furnish **FORM ITC-04** annually.

(c) Notification No. 35/2021-Central Tax dated 24.09.2021 issued for requisite amendment in Rule 45(3) of CGST Rules, 2017. The said amendment is effective from 01.10.2021.

#### **Clarification on issue of “intermediary” under IGST Act:**

Considering the difficulty being faced by trade and industry due to diverse practices being followed in interpretation of scope of “intermediary services”, leading to disputes, including rejection of refund claims and/or issuance of demand notices, Circular No. 159/15/2021-GST dated 20.09.2021 has been issued to clarify the scope of the ‘intermediary services’ as per the present provisions of the IGST Act.

#### **Clarification relating to export of services- condition (v) of the Section 2(6) of the IGST Act, 2017 (establishment of distinct person):**

Due to ambiguity in interpreting the term “establishment of distinct person” in Explanation 1 under Section 8 of the IGST Act, 2017, Circular No. 161/17/2021-GST dated 20.09.2021 has been issued to clarify that

- A person incorporated in India under the Companies Act, 2013 and a foreign company, i.e. a person incorporated under the laws of any other country are to be treated as separate legal entities and would not be considered merely establishments of distinct persons under Explanation 1 of Section 8 of IGST Act, 2017.
- Supply between such persons would not be barred by the condition (v) of the sub-section (6) of the section 2 of the IGST Act 2017 for being considered as export of services.

#### **Clarification on various issues in GST:**

(a) Circular No. 160/16/2021-GST dated 20.09.2021 has been issued to clarify the following three issues:

- W.e.f. 01<sup>st</sup> January, 2021, in case of debit notes, the date of issuance of debit note (and not the date

#### **Clarifications issued on various issues to facilitate trade:**

(a) Following circulars have been issued to remove ambiguity and to avoid any legal disputes on various issues:

- Clarification has been issued vide Circular No. 173/05/2022-GST dated 06.07.2022 clarifying the issue of claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification.

- Clarification has been issued vide Circular No. 172/04/2022-GST dated 06.07.2022 clarifying the following GST related issues:

(i) To provide the clarification that ITC is not barred in cases where employers are providing goods and services to their employees which are obligatory for them under any law in force for the time being.

(ii) To provide the clarification that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee.

(iii) To provide the clarification that any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST Laws, can be

- (b) Such provision was adversely affecting the outward supplies made by supplier when he himself has been compliant but his recipient is a defaulter. Further, by restricting inward supplies of such defaulting recipient by the said provision, even their manufacturing is impacted, which was never the intention of the Government.
- (c) Therefore, the CGST Rules, 2017 were amended to provide for removal of restriction on generation of e-way bill in respect of supply of goods by a registered person when recipient has defaulted in furnishing returns.

#### Annual Return related measures:

- (a) Amendment in CGST Act, 2017 has been made through Finance Act, 2021 to provide for self-certification of reconciliation statement in **FORM GSTR-9C**, instead of previous requirement of certification of such statement by a Chartered Accountant/ Cost Accountant. This amendment is applicable for the Annual return for the FY 2020-21.
- (b) The above changes have been notified w.e.f. 01<sup>st</sup> April, 2021.
- (c) Requirement of furnishing annual return in **FORM GSTR-9** has been waived for the taxpayers with Aggregate Annual Turnover up to ₹ 2 Cr for financial year 2020-21. This waiver/ exemption has been further extended for FY 2021-22.
- (d) Requirement of furnishing reconciliation statement in **FORM GSTR-9C** has been waived for the taxpayers with Aggregate Annual Turnover upto ₹ 5 Cr for FY 2020-21.

#### Reduced frequency of filing ITC-04:

- (a) Presently, taxpayers are required to file **FORM GST ITC-04**, on quarterly basis, containing details of all goods sent to job worker and received from job worker.
- (b) Amendment in Rule 45(3) of CGST Rules 2017 has been made so as to allow:
- Taxpayers, whose annual aggregate turnover in preceding financial year is above ₹ 5 Cr, shall furnish

made by utilization of the amount available in the electronic credit ledger of a registered person. It has also been clarified that output tax does not include tax payable under reverse charge mechanism.

#### Refund related measures:

##### (a) Facility for withdrawal of refund claims:

- A facility for withdrawal of the refund claims has been provided by amendment in the CGST Rules, 2017 and providing a new **FORM GST RFD-01W** for making such applications for withdrawal of refund claims on the portal.
- It will help the taxpayers, who have filed the refund application by mistake or for wrong period or have made any mistake/ omission in the refund claim, to withdraw the refund application rather than to file appeal, once the refund claim is rejected.

##### (b) Exclusion of time taken for issuance of deficiency memo for calculating limitation period for filing a fresh refund application after removing deficiencies:

- CGST Rules, 2017 have been amended to provide for exclusion of the time period from the date of filing of refund application in **FORM GST RFD-01** till the date of issuance of Deficiency Memo (DM) in **FORM GST RFD-03**, for the purpose of computation of time, within which the refund claim can be filed, i.e. for limitation of time in respect of such fresh refund claim filed after rectification of deficiencies.
- This will help taxpayers in filing such fresh refund claims after removing deficiencies, without getting time barred due to time taken in issuance of deficiencies by the tax officers.

#### Amnesty Scheme to provide relief to taxpayers regarding late fee for pending returns:

- (a) To provide relief to the taxpayers, especially smaller taxpayers, from high amount of late fee accumulated on pending **GSTR-3B returns**, a late fee amnesty scheme has been brought out in respect of pending returns in **FORM GSTR-3B** for the tax periods from July 2017 to April 2021.

(b) Late fee has been reduced / waived in respect of pending returns in **FORM GSTR3B** for the tax periods from July 2017 to April 2021 as under: -

- late fee capped to a maximum of ₹ 500/- (₹ 250/- each for CGST & SGST) per return for taxpayers, who did not have any tax liability for the said tax periods;
- late fee capped to a maximum of ₹ 1,000/- (₹ 500/- each for CGST & SGST) per return for other taxpayers;

(c) The reduced rate of late fee would be conditional and apply only if **GSTR-3B** returns for these tax periods are furnished during the period between 01.06.2021 to 31.08.2021. The last date to avail benefit of the late fee amnesty scheme, has now been extended from existing 31.08.2021 to 30.11.2021.

#### Rationalization of late fee imposed under Section 47 of the CGST Act:

(a) To reduce burden of late fee on smaller taxpayers, late fee structure has been rationalized for prospective tax periods by aligning the upper cap of late fee with tax liability/turnover of the taxpayers, as follows:

- The late fee for delay in furnishing of **FORM GSTR-3B** and **FORM GSTR-1** has been capped, per return, as below:
  - (i) For taxpayers having nil tax liability in **GSTR-3B** or nil outward supplies in **GSTR-1**, the late fee has been capped at Rs. 500 (₹ 250/- CGST + ₹ 250/- SGST) per return
  - (iii) For other taxpayers:
    - ◊ For taxpayers having Annual Aggregate Turnover (AATO) in preceding year up to ₹ 1.5 Cr, late fee has been capped to a maximum of ₹ 2000/- (₹ 1,000/- CGST + ₹ 1,000/- SGST) per return;

- ◊ For taxpayers having AATO in preceding year between ₹ 1.5 Cr to ₹ 5 Cr, late fee has been capped to a maximum of ₹ 5,000/- (₹ 2,500/- CGST + ₹ 2,500/- SGST) per return;

- ◊ For taxpayers having AATO in preceding year above ₹ 5 Cr, late fee has been capped to a maximum of ₹ 10,000 /- (₹ 5,000/- CGST + Rs. 5,000/- SGST) per return.

- The late fee for delay in furnishing of **FORM GSTR-4** by composition taxpayers has been capped to ₹ 500/- (₹ 250/- CGST + ₹ 250/- SGST) per return, if tax liability is nil in the return, and ₹ 2,000/- (₹ 1,000/- CGST + ₹ 1,000/- SGST) per return for others.
- Late fee payable for delayed furnishing of **FORM GSTR-7** has been reduced to ₹ 50/- per day (₹ 25/- CGST + ₹ 25/- SGST) and has been capped to a maximum of ₹ 2,000/- (₹ 1,000/- CGST + ₹ 1,000/- SGST) per return.
- The above rationalisation of late fee will be applicable for prospective tax periods from June 2021 onwards.

#### Retrospective amendment of section 50 to provide interest payment on net cash basis:

- (a) Retrospective amendment has been made in Section 50 of CGST Act, 2017, with effect from 01.07.2017 to provide for payment of interest on the delayed payment of tax on net cash basis.
- (b) This will facilitate the taxpayers and help in removing ambiguity and disputes regarding payment of interest on gross tax basis or net cash basis.

#### Relaxing the provision relating to blocking of e-way bill, where the recipient is a defaulter:

- (a) Earlier, Rule 138E provided for blocking of generation of e-way bill for supply of goods, if the supplier or recipient has defaulted in furnishing returns for 2 or more tax periods.