



## **NITYA'S INSIGHT:**

Recent changes and clarifications under GST law

September 25, 2018

## A. AMENDMENTS UNDER CGST RULES

The Central Government vide **Notification No. 39/2018-Central Tax dated September 4, 2018** and **Notification No. 49/2018-Central Tax dated September 10, 2018** has introduced various amendments in the Central Goods and Services Tax Rules, 2017 ('CGST Rules'). Some key changes in the CGST Rules are discussed below:

### 1. New Return Format

#### Job-work details

- As per Rule 45(3) of the CGST Rules, details of challans of goods dispatched to a job-worker and received back needs to be furnished quarterly in Form GST ITC-04. The Government has issued a new format for Form GST ITC-04.
- The revised Form will require the furnishing of following additional details:
  - Inputs / capital goods received back from job worker other than job worker to whom goods were originally sent
  - Inputs / capital goods sent to job worker and subsequently supplied from premises of job worker

Important to note that the Form also requires furnishing details of losses and wastes taking place at job-worker's end.

#### Annual Return and Reconciliation Statement

- The format for Annual Return (GSTR-9, GSTR-9A and GSTR-9C) along with Reconciliation Statement and Audit Certification (GSTR-9C) has also been introduced in public domain. We will be separately sharing a detailed update on the same.

### 2. Contents of valid tax invoice / debit note for claiming credit

- A taxpayer can now claim credit on basis of tax invoice / debit note provided such documents contain following minimum particulars:
  - GSTIN of the supplier
  - GSTIN of the recipient
  - Description of goods or services
  - Total value of supply of goods or services or both
  - Amount of tax charged
  - Place of supply in case of inter-state supply

*(NITYA comments: This amendment relaxing contents on an invoice / debit note for recipient to take credit, will be effective retrospectively. An identical amendment made in the Central Excise Rules, 1944 dealing with modvat credit, has been held retrospective by Courts. The amendment will allow taxpayers to defend claim of credit basis tax invoice / debit note on which some particulars are missing.)*

### 3. Movement of goods

- The goods intended to be removed in batches / lots under a single invoice, need to be sent using multiple delivery challans. The process in such cases is summarized as under:
  - The supplier shall issue invoice for complete product before dispatch of the first consignment;
  - The original copy of invoice shall be sent along with the last consignment;
  - The supplier shall issue delivery challan for each consignment, giving reference of original invoice; and
  - Each consignment shall be accompanied by corresponding delivery challan along with a duly certified copy of original invoice
- In case of imported goods, the person in charge of a conveyance shall also carry a copy of bill of entry and shall indicate the number and date of bill of entry in Part-A of the e-way bill.

*(NITYA comments: This practice was already being followed across the industry and the amendment formalizes this position.)*

### 4. Refund of output GST paid

- Rule 96(10) of the CGST Rules has been amended retrospectively (with effect from October 23, 2017) which provides that registered person directly purchasing / importing supplies under Schemes like Advance Authorization / EPCG etc. cannot claim refund of integrated tax paid on export of goods / services.
- If such registered person supplies the said goods to a domestic buyer on payment of full tax, then the latter can export these goods under payment of integrated tax and rightfully claim refund of tax so paid.

*(NITYA comments: The constitutionality of the retrospective application of the above amendment is questionable. Further, the logic of restricting output stage rebate to taxpayers who procure capital goods under EPCG scheme is debatable. In case a taxpayer wishes to opt for output stage refund, they should ensure that the aforesaid benefits are not claimed on inputs or capital goods or are surrendered. The IGST paid will be eligible as credit.)*

## B. MISCELLANEOUS CHANGES

### Extension in due date for filing of GST TRAN-1

- The Commissioner has extended the due date for submitting the declaration in FORM GST TRAN-1 till January 31, 2019 on the recommendations of the GST Council.
- The extension is for the class of registered persons who could not submit the said declaration by the due date on account of technical difficulties on the common portal and whose cases have been recommended by the Council.
- The Commissioner has power to extend the last date in the above case till March 31, 2019.

*(Refer - Notification No.48/2018-Central Tax dated September 10, 2018 and Order No.4/2018-GST dated September 17, 2018)*

### Extension in due date of filing GSTR-1

- The due dates for filing GSTR-1 for July 2017 to September 2018 has been extended. The revised due dates are tabulated as under:

Period	Due Date	
	Taxpayers having turnover of more than 1.5 crores	Taxpayers having turnover of not more than 1.5 crores
July 2017 to September 2018	October 31, 2018	October 31, 2018
October 2018 to March 2019	11 <sup>th</sup> of month succeeding the relevant month	Last day of month succeeding the relevant quarter

*(Refer - Notification No.43/2018-Central Tax dated September 10, 2018 and Notification No.44/2018-Central Tax dated September 10, 2018)*

### Extension in due date of filing ITC-04

- The due date for filing GST ITC-04 (job-work details) for the period July 2017 to June 2018 has been extended till September 30, 2018.

*(Refer –Notification No.40/2018-Central Tax dated September 10, 2018)*

### Waiver of late fee in certain cases

- The late fee paid or payable for certain returns has been waived subject to prescribed conditions:

Return	Relevant Period	Condition
GSTR-3B	October 2017	Return submitted but not filed after generation of ARN
GSTR-6 (Input Service Distributor)	Any tax period	Filing / submission of return of any tax period between January 1, 2018 to January 23, 2018

*(Refer- Notification No.41/2018-Central Tax dated September 10, 2018)*

### **TDS and TCS provisions to be in force**

- The provisions vis-à-vis Tax Deduction at Source ('TDS') and Tax Collection at Source('TCS') will be effective from October 1, 2018.
- The government has also mandated the following specified persons to deduct tax at source:
  - An authority / board / any other body set up by an Act of Parliament or a State Legislature or established by any government with 51 percent or more participation by way of equity or control, to carry out any function
  - Society established under the Society Registration Act, 1860
  - Public Sector Undertakings
- An e-commerce operator shall be required to collect TCS at the rate of 1 percent.

*(Refer - Notification No.50/2018-Central Tax dated September 13, 2018, Notification No.51/2018-Central Tax dated September 13, 2018 and Notification No.52/2018-Central Tax dated September 20, 2018)*

## C. CLARIFICATIONS

- The Government has also issued various Circulars to clarify certain on-going issues in the industry. The same have been briefly discussed below:

### **Scope of principal agent relationship in context of Schedule 1 of the CGST Act**

- The crucial point for identification of principal-agent relationship for purposes of Schedule 1 of the CGST Act (activities to be treated as supply even without consideration) is whether the agent has the authority to pass or receive the title of the goods on behalf of the principal or not. Issue of invoice for further supply to be a determinant factor to identify relationship of principal-agent.
- In cases where invoices are issued in the name of agent, any provision of supply from principal to agent or vice versa would be covered under the ambit of this entry.

*(Refer – Circular No.57/31/2018-GST dated September 4, 2018)*

### **Refund related issues**

The Government has clarified various refund related issues faced by the industry in recent times. The significant issues clarified in this regard are discussed below:

- Proper officer needs to rely on GSTR-2A as evidence of procurement vis-à-vis which credit has been availed. Proper officer not to insist on submission of invoice whose details are present in GSTR-2A.
- For claim of any refundable amount, the claimant shall be debited from the credit ledger in the following order:
  - IGST to the extent of balance available;
  - Equal amounts from credit ledger of CGST / SGST. In case of shortfall in any of the ledgers of the CGST / SGST, the other ledger can be utilized.
- Any Central / State Authority shall not withhold disbursement of the amount sanctioned by the counterpart tax authority on any grounds. The remedy for any incorrect / erroneous sanction of refund amount lies only in an appeal.
- No show-cause notice and adjudicating order can be issued in respect of an application against which a deficiency memo has been issued and which has not been resubmitted subsequently by a registered person. Re-submission shall always be treated as a new application.

*(Refer – Circular No.59/33/2018-GST dated September 4, 2018)*

### **E-way bill where goods are stored at transporter's godown**

- In case the consignee / recipient taxpayer stores goods in transporter's godown, then the transporter's godown needs to be declared (with concurrence of the transporter) as an additional place of business by the recipient.

- In such cases, the transportation under e-way bill shall be deemed to be concluded once the goods reach transporter's godown and validity of the e-way does not need to be extended.
- The movement from transporter's godown to consignee's premises would again be subject to e-way bill provisions.

*(NITYA comments: The Circular still does not clarify the position in case of 3PL Model where transporter's hub is located in a different State.)*

*(Refer – Circular No.61/35/2018-GST dated September 4, 2018)*

**Relaxation in penalty for minor infractions in e-waybill**

- CBEC has clarified that penalty of Rs.1,000 will be imposed in cases where the movement of goods is under invoice and e-way bill but there are following mistakes in the e-way bill:
  - Mistake in name of consignor or consignee (but GSTIN is correct)
  - Mistake in Pin Code (where it does not result in increase in validity)
  - Error in address of consignee where locality and other details are correct
  - Error in one / two digits in invoice number
  - HSN Code where first two digits and GST rate are correct

*(Refer – Circular No.64/38/2018-GST dated September 14, 2018)*

**Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit**

- Recovery of arrears arising under the existing law shall be treated as central tax liability and needs to be paid through the utilization of the amount available in the Electronic Credit Ledger or Electronic Cash Ledger of the registered person.
- Till the above functionality is not available on the GSTN portal, Cenvat Credit availed erroneously can be reversed as follows:
  - Reversal of inadmissible transitional credit through Table 4(B)(2) of Form GSTR-3B
  - The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of Form GSTR-3B.

*(Refer – Circular No.58/32/2018-GST dated September 4, 2018)*

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