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**Common portal under GST –
Something which is Uncommon!**

Technology is the backbone of GST. The GST law contains enabling provisions for usage of an electronic platform, beginning with seeking registration under GST to issuance of an order by the department. GST has its own bitter experience while dealing with technology in tax administration. We have seen technological failures on multiple points, be it dealing with transitional credits, e-way bills, returns, credit summary etc. Despite all this, it seems that the Government is very hopeful to make everything faceless and transparent by using technology as a platform under GST.

Under Section 146 of the Central Goods and Services Tax Act, 2017 ('CGST Act'), the Government is empowered to notify 'common portal' to deal with various procedural aspects such as registration, tax payment, returns filing, e-way bills and e-invoices, refunds, assessment and the like. Besides this, the Government has been vested with residuary powers to notify 'common portal' to deal with any other procedural aspect under GST.

Making use of its powers, the Government has issued a series of notifications in the past to notify multiple portals under this section. A quick summary of these notifications is tabulated below:

Notification No.	Date	Common Goods and Services Tax Electronic Portal	Purpose
4/2017 – Central Tax	June 19, 2017	www.gst.gov.in	• Registration • Payment of tax • Furnishing returns, • Computation settlement of Integrated Tax • E-way bill
9/2018 – Central Tax (superseded 4/2017 – Central Tax)	January 23, 2018	www.gst.gov.in	• Registration • Payment of Tax • Furnishing returns • Computation Settlement of Integrated Tax
		www.ewaybillgst.gov.in	• E-way bill
69/2019 – Central Tax	December 13, 2019	www.einvoice1.gst.gov.in ; www.einvoice2.gst.gov.in ; www.einvoice3.gst.gov.in ; www.einvoice4.gst.gov.in ; www.einvoice5.gst.gov.in ; www.einvoice6.gst.gov.in ; www.einvoice7.gst.gov.in ; www.einvoice8.gst.gov.in ; www.einvoice9.gst.gov.in ; www.einvoice10.gst.gov.in .	• Invoice under Rule 48(4) of the CGST Rules

As can be seen from above, the word 'common' is very 'uncommon' when it comes to common portal. There is no single portal that can be used to deal with all procedural aspects under GST. The notifications under which a particular portal is 'notified' explicitly law down the purpose for which such portal can be used. Such a portal should be used only for the notified purpose nothing more, nothing less!

Interestingly, none of the above notifications prescribe which portal is notified for (i) Issuance of Show Cause Notice ('SCN') / Order and filing of appeal against such SCN / Order; and (ii) Filing of refund application and relatable documents. At present, all these actions are happening on www.gst.gov.in. This leads to an open question that *Is there no notified portal for these 2 purposes?*

Unfortunately, the answer to above question is YES!. The Government missed notifying www.gst.gov.in as a common portal for (i) Issuance of SCN / Demand Order and filing of appeal against such SCN / Demand Order; and (ii) Filing of refund application and relatable documents. The present exchange of documents via www.gst.gov.in relating to the above proceedings is a ground-level practice accepted by both the taxpayer and the department. In absence of any notification, www.gst.gov.in cannot be considered as a 'common portal' for issuance of SCN / Demand Order as well as carrying out refund proceedings. Thus, these proceedings are technically invalid under Section 169 of the CGST Act.

The above view is also accepted by various High Courts under the GST regime wherein Demand Orders passed by the department have been set aside on the ground that service of such Demand Order was improper under Section 169 of the CGST Act. Similar judicial pronouncement exists under the erstwhile Central Excise regime and the Customs regime. Given this situation, a taxpayer can argue that service of notice via www.gst.gov.in is not a valid service of notice by the department and can request the adjudicating authority to drop the proceeding. There is one exception to this situation. Section 160 of the CGST Act provides a saving provision wherein service of notice, order or communication shall not be challenged where such notice etc. has been acted upon by the recipient. This means that the present argument of improper service of notice can not be taken where the recipient has already filed a reply to the notice. This argument shall hold good in all those situations where reply to notice, order or communication is pending from the recipient's end.

The above lacuna very well impacts refund proceedings as well. The refund rules require filing of refund application electronically on 'common portal'. Presently, all refund applications are filed on www.gst.gov.in. The present portal is not a 'notified portal' for filing refund applications. Unlike Section 160 of the CGST Act, there is no saving provision for proceedings relating to refund applications. This is a more draconian situation as a taxpayer would be in trouble in case its refund application is rejected by the department on the ground that filing such application on www.gst.gov.in is invalid and time-limit to file such an application is also lapsed by the time the rejection order is issued. It is unlikely that the department would reject refund applications on the ground that the application is filed on www.gst.gov.in which is not a common portal yet a remote possibility of doing so can not be ruled out.

A retrospective amendment to above notifications is the only solution to remove this anomaly. Till the time such retrospective amendment is made, a taxpayer can contest SCN / Demand Order or any other communication issued by the department on www.gst.gov.in for undertaking assessment proceedings, on the ground of improper service. In cases of refunds, a taxpayer is advised to file a simple letter along with physical refund application (in notified forms) with the department informing that it has filed a refund application on www.gst.gov.in and request the department to act upon this application.

The Union Budget 2021 also introduced the concept of 'common portal' in the Customs Act as well. The concept is very similar to the existing concept under GST Act. It is an interesting space to watch whether the Government continues to make above misses or rectifies such glaring errors as far as administration of Customs law is concerned.



Gaurav Narula
Associate Director
(Author)
NITYA Tax Associates