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#### 1. Amendments in CGST Rules, 2017

The following amendments have been made in the CGST Rules, 2017 vide [Notification No. 40/2021 – Central Tax dt. 29th December, 2021](#)

- i. Rule 36(4) has been substituted to provide that with effect from 01.01.2022, a registered person shall be able to avail ITC in respect of only those invoices or debit notes which have been furnished by the supplier in the statement of outward supplies in **FORM GSTR-1** or using the invoice furnishing facility and the details of such invoices or debit notes have been communicated to him in **FORM GSTR-2B** under sub-rule (7) of rule 60.
- ii. A proviso has been inserted in sub-rule (3) of rule 95 (**Refund of tax in certain cases**) retrospectively with effect from 01.04.2021, to bring forth that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10**.
- iii. Rule 142(3) lays down that if the amount referred to in section 129(1) of the CGST Act, 2017 is paid within fourteen days of detention or seizure of the goods and conveyance, the proceedings in respect of the notice shall be concluded. The said sub-rule has been amended to provide that if the amount referred to in section 129(1) of the CGST Act, 2017 is paid within *seven days of the notice issued under sub-section (3) of section 129 but before the issuance of order under the said sub-section (3)*, the proceedings in respect of the notice shall be concluded. Further, in sub-rule (5), the words “ the person chargeable to tax” have been substituted with the words “the person concerned”.
- iv. A new rule 144A (**Recovery of penalty by sale of goods or conveyance detained or seized in transit**) has been inserted with effect from 01.01.2022. The new rule lays down that that where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under section 129(1) within fifteen days from the date of receipt of the copy of the order passed under section 129(3), the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance.

If the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be

reduced by the proper officer. The said goods or conveyance shall be sold through a process of auction, including e-auction.

- v. Rule 154 (**Disposal of proceeds of sale of goods or conveyance and movable or immovable property**) has been substituted with effect from the 01.01.2022 to provide that such proceeds shall now be appropriated against the amount to be recovered or to the payment of the penalty payable section 129(3), as the case may be, after being appropriated against administrative cost of the recovery process. Further, balance amount, if any, instead of paying directly to the defaulter, shall now be credited to the electronic cash ledger of the owner of the goods or conveyance in case the person is registered or else shall be credited to his bank account. However, where the balance of sale proceeds cannot be so paid within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.
- vi. Rule 159 (**Provisional attachment of property**) has been amended to provide that the Commissioner shall send the order of attachment in Form GST DRC-22 and a copy of such order shall also be sent to the person whose property is being attached under section 83. Other amendments have also been made in this rule to incorporate the changes made in section 83 vide the Finance Act, 2021 providing for attachment of property of a person other than the taxable person i.e., any person specified in sub-section (1A) of section 122. Further, any objection to the order of provisional attachment of property shall be filed in **Form DRC-22A** whose format has also been notified.
- vii. **Forms GST DRC-10 and GST DRC-22** have been substituted with new Forms with effect from 01.01.2022.
- viii. In **Form DRC GST DRC-11 (Notice to successful bidder)**, rule 144A has been included in addition to existing rules 144(5) and 147(12). Further, the word conveyance has also been included in addition to goods with effect from 01.01.2022 implying that now the possession of the goods as well as conveyance shall be transferred to the successful bidder after making full payment of the bid amount. Similar changes have also been made in **FORM GST DRC-12 (Sale Certificate)**.
- ix. In **Form GST DRC-11 (Restoration of provisionally attached property / bank account under section 83)**, the words '*Regional Transport Authority/Other Relevant Authority*' have been added in addition to existing '*Immovable property registering authority*', with effect from 01.01.2022.
- x. A new table has been substituted under clause (a) of entry no. 15 in **FORM APL-01** with effect from 01.01.2022.
- xi. A new **Form GST DRC-22A (Application for filing objection against provisional attachment of property)** has been introduced with effect from 01.01.2022 under rule 159(5).

## 2. **Guidelines for management and administration of Consumer Welfare Fund provided to Board under rule 97(7A) of the CGST Rules, 2017**

CBIC has issued guidelines for management and administration of Consumer Welfare Fund made available to the Board under rule 97(7A) of the CGST Rules, 2017. The provisions governing the manner of utilization of the Fund are prescribed in rule 97 of the CGST Rules, 2017. Sub-rule (7A) of rule 97 provides that the Committee, constituted under sub-rule (4), shall make available to the CBIC 50% of the amount credited to the Fund each year, for publicity or consumer awareness on GST, provided the availability of funds for consumer welfare activities of the Department of Consumer Affairs is not less than 25 crore rupees p.a.

The detailed Guidelines can be accessed at the following link:

**[Guidelines for CWF provided to Board under rule 97\(7A\) of CGST Rules, 2017](#)**

**3. Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli**

*Circular No. 168/24/2021 – GST dt. 31<sup>st</sup> December, 2021* has been issued to explain the mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli has been issued. The following procedure has been prescribed in respect of the taxpayers, registered in the erstwhile UT of Daman & Diu and who are unable to file refund claim, due to merger of UT of Dadra & Nagar Haveli and UT of Daman & Diu, to enable such taxpayers to file refund claim for the period prior to merger:

- i. The application for refund shall be filed under ‘Any other’ category on the GST portal using their new GSTIN. In the Remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed.
- ii. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.
- iii. Upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing to debit the said amount from the electronic credit ledger through **FORM GST DRC-03**. Once the proof of such debit is received, he shall proceed to issue the refund order in **FORM GST RFD-06** and the payment order in **FORM GST RFD-05**.
- iv. No refund claim, requiring debit from the electronic credit ledger or where the refund would result in re-credit of the amount sanctioned in the electronic credit ledger, shall be filed using old GSTIN.

The complete Circular can be accessed at **[Circular No. 168/24/2021 – GST dt. 31st December, 2021](#)**

**4. Amendments in rate notifications pertaining to goods**

The following rate notifications have been issued to align the rate notification of goods with the new Harmonised System of Nomenclature (HSN) implemented from January 1, 2022:

- i. **[Notification No. 18/2021-CT \(Rate\) dt. 28.12.2021](#)** to amend **[Notification No. 1/2017-Central Tax \(Rate\) dated 28.06.2017](#)** thereby making changes in the rate of certain goods.
- ii. **[Notification No. 19/2021-CT \(Rate\) dt. 28.12.2021](#)** which seeks to amend exemption **[Notification No. 2/2017-CT \(Rate\) dated 28.06.2017](#)** in respect of goods.
- iii. **[Notification No. 20/2021-CT \(Rate\) dt. 28.12.2021](#)** seeks to amend **[Notification No 21/2018-CT \(Rate\) dated 26.07.2018](#)** which prescribes concessional CGST rate on specified handicraft items.

**5. Recommendation of 46<sup>th</sup> GST Council Meeting**

The GST Council in its 46<sup>th</sup> meeting held on 31.12.2021 has recommended to defer the decision to change the rates in textiles sector recommended in the 45<sup>th</sup> GST Council

meeting. Consequently, the existing GST rates in textile sector would continue beyond 1<sup>st</sup> January, 2022.

### **Guidelines for recovery under section 79 for cases covered under explanation to section 75(12) of the CGST Act, 2017**

The CBIC vide [Instruction No. 01/2022-GST dt. 07.01.2022](#) has issued the guidelines for recovery proceedings under the provisions of section 79 of the CGST Act, 2017 in cases covered under explanation to sub-section (12) of section 75 of the Act namely, where the tax payable in respect of details of outward supplies furnished by the registered person in GSTR-1, has not been paid through GSTR-3B return, either wholly or partly, or any amount of interest payable on such tax remains unpaid.

The guidelines provide that there may be some cases where there may be a genuine reason for difference between the details of outward supplies declared in GSTR-1 and those declared in GSTR-3B. Accordingly, it has been provided that wherever any such difference is found, the proper officer may send a communication (with DIN, in terms of guidelines issued vide [Circular No. 122/41/2019-GST dated 5th November 2019](#)) to the registered person to pay the amount short paid or not paid or to explain the reasons for such short payment or non-payment of self-assessed tax, within a reasonable time, as prescribed in the communication.

If the concerned person is able to justify the differences between GSTR-1 and GSTR-3B or is able to explain the reasons of such short-payment or non-payment of tax, to the satisfaction of the proper officer, or pays the amount such short paid or not paid, then there may not be any requirement to initiate proceedings for recovery under section 79.

However, the proper officer may proceed with recovery proceedings under section 79 if :

1. the said registered person either fails to reply to the proper officer or fails to make the payment of such amount short paid or not paid, within the time prescribed in the communication or such further period as may be permitted by the proper officer.
2. the said registered person fails to explain the reasons for such difference/ short payment of tax to the satisfaction of the proper officer.

# **BUDGET PROPOSAL 2022**

## **1. Input Tax Credit**

Currently, credit shall be availed only on the basis on FORMGSTR-2B. Henceforth no ITC shall be available if the ITC has been restricted u/s38.

The current format of FORM GSTR-2B does not contain all the details as specified in the newly introduced Section 38.

It would be advisable to wait and watch how the new statement of GSTR 2B would capture and communicate such details to the recipient.  
(Insertion of clause(ba)of Sub-section (2) of Section 16 of CGST Act,2017 inserted vide Clause 99 of Finance Bill,2022)

(Substitution of Section 38 of CGST Act 2017 inserted vide Clause 103 of the Finance Bill 2022)

## **2. Restrictions on Input Tax Credit**

### **Additional conditions and restrictions for availment of input tax credit**

As per proviso inserted in Section 16 the Input tax credit can be availed only if such credit is available as per auto-generated statement-FORMGSTR-2B.

The auto-generated statement shall communicate the following details to the recipient which might result in blocking of ITC (new Section 38):

- Invoices furnished by supplier with in such period of taking fresh registration as may be prescribed.
- Non-payment of tax by supplier for a continuous period as may be prescribed.
- Excess taxable outward supplies reported by the supplier in FORM GSTR-1 compared to FORM GSTR-3B by a limit to be prescribed
- Credit availed by the supplier in excess of credit available by a limit to be prescribed.
- Supplier who has utilized more than permissible credit as per newly introduced Section 49(12).{which puts restrictions on discharging output tax liability through Input Tax Credit in entirety-Rule 86B}
- Invoices furnished by any class of persons to be prescribed.

### **3. Input Tax Credit - No interest on ITC wrongly availed but not utilized (Retrospective effect from 1<sup>st</sup>July 2017)**

No interest to be levied on only wrong availment of ITC but no utilization of the same.

This measure was recommended in the 45th meeting of GST council and bring the same into effect is a welcome relief for many taxpayers.

(Sub-section (3) of section 50 of CGST Act, 2017 substituted retrospectively vide clause 110 of Finance Bill, 2022

Notification No.13/2017-Central Tax, is being amended retrospectively, with effect from the 1st day of July, 2017, to notify rate of interest under subsection (3) of section 50 of the CGST Act as 18%.)

#### **4. Input Tax Credit - Elimination of FORM GSTR-2**

The following sections have been omitted on account of elimination of FORM GSTR-2 and earlier proposed two-way communication process between supplier and recipient

- Section 42- Matching, Reversal and Reclaim of Input Tax Credit.
- Section 43- Matching, Reversal and Reclaim of reduction in Output Tax Liability.
- Section 43A- Procedure for furnishing returns and availing Input Tax credit.

This amendment seems to be proposed to negate the effect of various high court decisions which were in favour of assesseees.

Section 47 of the CGST Act is being amended to levy late fees on delayed filing of TCS return. Further, late fees on delayed filing of GSTR 2 has been removed consequent to elimination of FORM GSTR-2.

(Section 47 of CGST Act, 2017 amended vide clause 107 of Finance Bill, 2022)

#### **5. Reversal and Re-availment of Input Tax Credit**

##### **Availment of Input tax credit on self-assessment basis compared to availment on provisional basis presently**

The onus is on the recipient with respect to any credit availed on self assessment basis which must be reversed along with the applicable interest where the tax has not been paid by the supplier to the Government.

However, when the supplier makes the payment of tax, the registered taxpayer may re-avail the amount of credit so reversed.

Re-availment of Input tax credit shall not be not bound by the time limit prescribed under section 16(4) of CGST Act, 2017.

(Insertion of Section 41 of CGST Act, 2017 vide Clause 105 of the Finance Bill, 2022)

#### **6. Extension of time limit**

### **ITC on supplies pertaining to previous financial year**

ITC for supplies received in previous financial year can now be claimed through GSTR-3B filed till **30th November of the succeeding financial year**. Earlier, ITC for such supplies was available till the due date of filing GSTR-3B of September of the succeeding financial year.

Basis above amendment, ITC accounted till 30th November, can also be availed in GSTR 3B of any tax period remaining to be filed till 30th November. However, clarification will be awaited on availment of ITC in the GST returns to be filed till the month of October or November. Till then it would be advisable to consider 31st October as effective date.

(Sub-section 4 of Section of CGST Act, 2017 amended vide Clause 99 of Finance Bill, 2022)

### **Credit note on supplies pertaining to previous financial year**

Credit notes, for outward supplies made in previous financial year, can be now **issued** till **30th November of the succeeding financial year**.

(Sub-section 2 of Section 34 of CGST Act, 2017 amended vide Clause 101 of Finance Bill, 2022)

### **Rectification of errors or omission related to supplies pertaining to previous financial year**

Any error or omission in the details furnished in previous financial year should be modified through returns filed latest by **30th November of the succeeding financial year**.

However, clarification will be awaited on modification of errors till filing of GST returns for the month of October or November. Till then it would be advisable to consider 31st October as the effective date rather than 30th November.

(Proviso to sub-Section 3 of Section 37 and sub-section 9 of Section 39 of CGST Act, 2017 amended vide Clause 102 & 104 of Finance Bill, 2022)

### **Rectification of errors or omission related to tax collected at source by an E-commerce operator**

Any error or omission in the details furnished in previous financial year, should be modified through returns filed latest by **30th November of the succeeding financial year**.

It is advisable to rectify the error/omission through FORM GSTR-8 of October of the succeeding financial year.

(Proviso to sub-section 6 of Section 52 of CGST Act, 2017 amended vide Clause 111 of Finance Bill, 2022)

## **7. Amendment in Returns**

### **Due date for filing GSTR-5 for Non-Resident Taxable Person**

Every registered non-resident taxable person shall furnish return, for every calendar month:

. within **thirteen** days (earlier twenty days) after the end of a calendar month or

within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(Sub-section (5) of Section 39 of CGST Act 2017, amended vide clause 104 of Finance Bill, 2022)

### **Quarterly return monthly payment (QRMP) Scheme**

**Currently**, for taxpayers opting for QRMP scheme, a special procedure was prescribed.

**After amendment**, there would be an option to the persons under QRMP scheme to pay either self-assessed tax or an amount that may be prescribed

(Proviso to sub-section (7) of section 39 of CGST Act 2017 substituted vide clause 104 of Finance Bill, 2022)

### **Blocking of filing of FORM GSTR-1**

A registered person shall not be allowed to file FORM GSTR-1 for a month if FORM GSTR-1 of any of the previous periods has not been filed. An exception from the above provision can be provided to a certain class of registered persons.

(Sub-section (4) to section 37 of CGST Act 2017 inserted vide clause 102 of Finance Bill, 2022)

### **Blocking of filing of FORM GSTR-3B**

A registered person shall not be allowed to file FORM GSTR-3B for a tax period in following cases:

FORM GSTR-3B for the previous period is not filed. FORM GSTR-1 for the same tax period is not filed- (inserted vide amendment.) An exception from the said provision to certain class of registered persons.

(Sub-section (10) of section 39 of CGST Act 2017 amended vide clause 104 of Finance Bill, 2022)

## **8. GST Refund**

### **Time limit for filing refund application.**

**Enhancement in time limit for filing refund application from 6 months to 2 years** from the last day of the quarter in which the said supply was received in case of a specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons notified under section 55.

(Sub-section 2 of section 54 of CGST Act, 2017 substituted vide clause 112 of Finance Bill, 2022)

On account of absence of explanation earlier, "**Relevant date**" for filing refund claim in respect of supplies made to a Special Economic Zone developer or a Special Economic Zone unit is specified to be **two years from the due date for furnishing of return under section 39 in respect of such supplies.**

(Sub-clause (ba) to clause 2 after explanation of section 54 of CGST Act, 2017 inserted vide clause 112 of Finance Bill, 2022)

### **Extension of scope for withholding of or recovery from refund**

where registered person defaulted in furnishing return, tax, interest, penalty or fees.

(Sub-section 10 of section 54 of CGST Act, 2017 inserted vide clause 112 of Finance Bill, 2022)

Refund claim of any balance in the **electronic cash ledger** shall be made in such form and manner as to be prescribed.

(Proviso to sub-section 1 of section 54 of CGST Act, 2017 inserted vide clause 112 of Finance Bill, 2022)

### **Transfer of balance as available in electronic cash ledger – inter head and to distinct person**

The registered taxpayer can transfer any amount of tax, interest, penalty, fee or any other amount available under electronic cash ledger to -

- Integrated Tax, Central Tax, State Tax, Union territory Tax or Cess of the same GSTIN or,
- Integrated Tax or Central tax of a distinct person - SAME PAN, different GSTIN

Provided that no such transfer as per clause (b) shall be allowed if there is any unpaid liability in the electronic liability register of the transferor.

(Amendment in Sub-section 10 of Section 49 of CGST Act, 2017 inserted vide Clause 109 of the Finance Bill, 2022)

## **9. Cancellation of registration**

The proper officer shall have the power to cancel registration of the **composition dealer** if he fails to furnish return for a financial year beyond **3 months from the due date** of filing the said return. Earlier, condition for cancellation was failure to furnish returns for 3 consecutive tax periods.

(Clause (b) sub-section (2) of section 29 of CGST Act, 2017 substituted vide clause 100 of Finance Bill, 2022)

The proper officer shall have the power to cancel the registration of any registered person **other than composition dealer** who fails to furnish returns for **such continuous tax period as may be prescribed**. Earlier, condition for cancellation was limited to failure for furnishing returns for continuous period of 6 months.

(Clause (c) sub-section (2) of section 29 of CGST Act, 2017, inserted vide clause 100 of Finance Bill, 2022)

## **10. Retrospective Amendments**

### **Notification on common portal under GST**

The Government has notified [www.gst.gov](http://www.gst.gov) in as the common portal for all the GST related services, except for E-way bill and E-invoicing.

(Clause 114 of Finance Bill, 2022)

### **Retrospective Exemption**

Supply of unintended waste generated during the production of fish meal (falling under heading 2301), except fish oil, for the period from 1st July 2017 to 30th September 2019 shall be **nil-rated supplies** for the purpose of levy and collection of GST under CGST Act, IGST Act & UTGST Act.

GST paid during the above-mentioned period, if any, **shall not be refunded**.

(Clause 116, 119 & 122 of Finance Bill, 2022)

### **Supply of Alcoholic Liquor License to be treated as Non-GST Supply for the period 1st July 2017 to 30th September 2019**

Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called by the State Governments was notified to be neither supply of goods or supply of services from 30th September 2019. However, for the period from 1st July 2017 to 30th September 2019 too, this shall be **considered as Non-GST supply** for the purpose of levy and collection of GST under CGST Act, IGST Act and UTGST Act.

GST paid during the above-mentioned period, if any, **shall not be refunded**.

(Clause 117, 120 & 123 of Finance Bill, 2022)