



Dhadda & Co.  
CHARTERED ACCOUNTANTS

# DCoD

DCo Digest

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# Newsletter



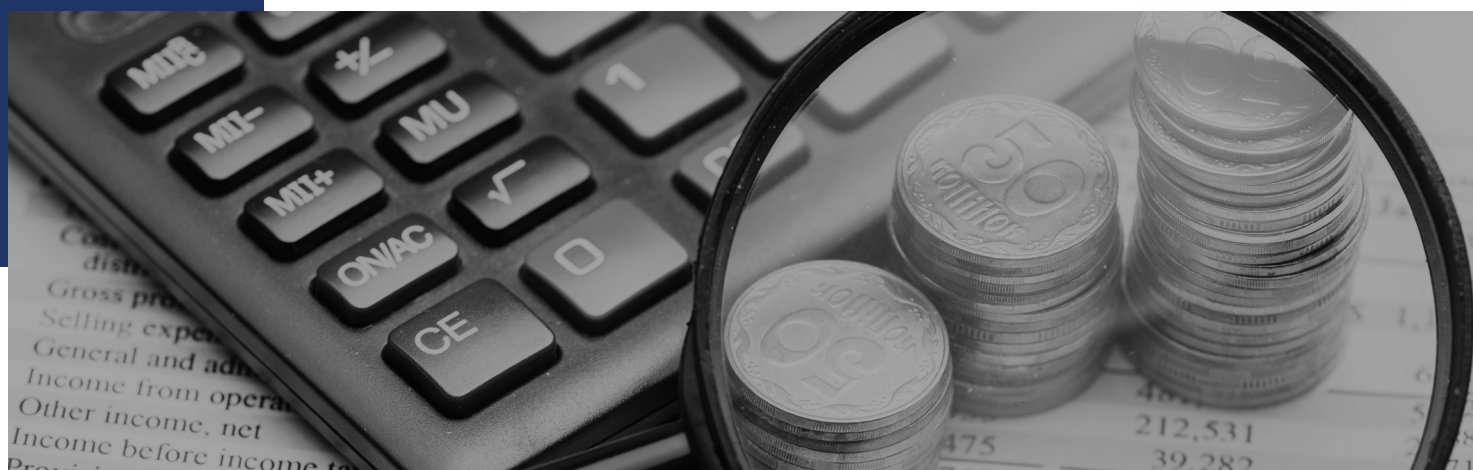
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The Government is modifying the GST rules at a fast pace and numerous amendments have been made in GST with respect to various aspects including registration, invoicing, returns, e-way bills etc. The rules are getting stringent and considering the repercussions set out in the amended provisions, it is very important for the taxpayers to be aware about the compliance requirements in order to ensure a smooth sailing business.

This edition of our newsletter intends to bring such amendments for the readers in a simplified manner with its implications along with our insight on certain handpicked topics and judgments relevant in the context.

# Preface



# Rule 86B Restrictions on use of amount available in electronic credit ledger

As per Rule 86B, the registered person shall not use the amount available in electronic credit ledger to discharge his output tax liability in excess of 99% of such tax liability.

**Applicability-** Value of taxable supply other than exempt supply and export exceeds INR 50 lakh in a month.

## Certain exceptions provided to above restrictions are:

- If the registered person has paid more than INR 1 lakh as income tax under the Income-tax Act, 1961 in each of the last 2 financial years.
- If the registered person has received a refund amount of more than INR 1 lakh in the preceding financial year on account of export under LUT/Bond or inverted tax structure.
- If the registered person has discharged his 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, upto the said month in the current financial year.
- If the registered person is the Government Department, Public Sector Undertaking, Local Authority or Statutory Body.

## Amendment in Rule 59 - Blocking of filing of GSTR-1 if GSTR-3B is not filed

- A registered person shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;
- A registered person, required to furnish return for every quarter shall not be allowed to furnish the details in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;

- A registered person on whom restriction under Rule 86B is applicable to use amount available in electronic credit ledger in excess of 99% of such tax liability under rule 86B, shall not be allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding tax period.

### **Amendments in Rules regarding ITC matching with credit reflected at portal U/R 36(4)**

- **Furnishing of invoices required instead of mere uploading of invoices**

Prior to amendment, Rule 36(4) restricted credit of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37. The word uploaded has been replaced by furnished which implies as follows:

- Credit will be restricted in respect of invoices uploaded by supplier in GSTR-1 but such return has not been furnished/filed.
  - However, furnishing of invoices using the “invoice furnishing facility” will be considered as sufficient for recipient to take credit.
- **5% capping on GST Credit to be availed on Invoices not furnished by Suppliers**

The claim of ITC in respect of invoices not furnished by the corresponding vendors have now been restricted to 5% of the credit available in respect of invoices furnished by the vendors in GSTR-1 or using Invoice furnishing facility.

- **Cancellation of GST Registration by Proper Officer in GST**

**Under Rule 21** of CGST Rules 2017, following have also been made ground for cancellation of registration:

- Where a taxpayer avails Input Tax Credit (ITC) in violation of the provisions of section 16 of the Act or the rules made thereunder.
- Outward supplies furnished in FORM GSTR-1 in excess of FORM GSTR-3B for the such tax periods
- Violation of the provisions for payment of tax liability in cash as required under Rule 86B.

### **Amendment in rules for Suspension of registration**

- **Requirement to provide opportunity of being heard removed for suspension**

No opportunity of being heard shall be given to a taxpayer for suspension of GSTIN, where the proper officer (PO) has reasons to believe that the registration of person is liable to be cancelled. The words “opportunity of being heard has been omitted from clause (2) of Rule 21A.

It implies that the proper officer has been granted power to suspend the registration without issue of any notice if he has reasons to believe that the registration of a person is liable to be cancelled.

- **Mismatch of GSTR-3B with GSTR-1 or GSTR-2A/2B made Ground for suspension of GSTIN**

Significant differences in comparison of following can lead to suspension of GSTIN:

- Mismatch in details of outward supplies in GSTR-3B and FORM GSTR-1
- Mismatch in details of inward supplies in GSTR-3B with GSTR-2A/ GSTR-2B (details derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1)
- Such other analysis, as may be carried out on the recommendations of the Council

These differences indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration can trigger suspension.

Intimation for such mismatch and suspension shall be given on portal or e-mail ID in FORM GST REG-31 with 30 days period to explain why such registration shall not be cancelled.

- **No refund allowed during suspension of GSTIN**

Where a GSTIN has suspended, no refund u/s 54 of CGST Act 2017 can be availed by the taxpayer. First GSTIN Suspension proceedings have to be closed before applying for a refund.

### **GST Registration to be granted in 7 & 30 Working Days**

The time for system-based registration has been modified from 3 days to 7 days. Now the grant registration would be within 7 days against 3 days as provided earlier from the date of filing of the registration application.

In cases, the applicant does not do Aadhaar authentication or where the department deems fit to carry out physical verification of place of business, the registration shall be granted within thirty days of submission of application, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.

### **E-invoicing made mandatory if aggregate turnover exceeds Rs. 100 Crores**

As per Notification No. 13/2020, E-invoicing has been made applicable to Registered Person (other than SEZ unit, Insurance Company, Banking company, financial Institution including non-banking financial institution, GTA, Supplier of passenger transportation service, supplier by way of admission to exhibition of cinematograph films in multiplex screens) whose aggregate turnover in any preceding financial year from 2017-18 onwards exceeds Rs. 100 crore in respect of supply of goods or services or both or for exports.

### **Amendments in E-way bill rules**

- **Validity of E-way bill narrowed by increasing distance from 100 km to 200 km per day**

As per Rule 38, E-way bill will now be valid for 1 day for every 200 km of travel, as against 100 km earlier, in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship. For every 200 km or part thereof thereafter, one additional day will be allowed.

- **Restriction on furnishing E-way bill during suspension of GSTIN**

No person can generate E-way bill in respect of a person whose registration has been suspended under Rule 21A.

**Notified Sections of Finance Act, 2020 shall come into force**

As per Notification No. 92/2020- CT dated December 22, 2020 following sections may come into force

\* **Section 10(2) (Composition levy)** - Seeks to harmonise the conditions for eligibility for opting to pay tax under Composition Scheme as sub-section (1) and sub-section (2A) of Section 10 of the CGST Act.

\* **Section 16(4) (Delinking of Debit Notes with Original invoice for claim of ITC)** - Delinks availment of ITC on debit notes with the date of issuance of the original invoice. Thus, ITC on debit notes issued after 6 months from the end of the financial year to which invoice pertains can be availed post amendment.

\* **Section 29(1)(c) (Cancellation or suspension of registration)** - Allows cancellation of persons who has taken voluntary registrations under Section 25(3) of the CGST Act.

\* **Proviso to Section 30(1) (Revocation of cancellation of registration)** - Empowered jurisdictional Additional / Joint Commissioner and Commissioner to extend the period of 30 days to file an application for revocation of cancellation of registration.

\* **Proviso to Section 31(2) (Tax invoice)** - Empower the Government to prescribe period and manner or exclusion from issuing tax invoice for specified categories of services or any document which may be deemed to be a tax invoice for such services.

\* **Section 51(3) (Tax deduction at source)** - The requirement for the deductor to issue TDS certificate under Section 51 of the CGST Act has been removed with new rules to be prescribed for issuance of such certificates, and accordingly, the provision for fees (penalty) for the delay in issuance of such certificate has been omitted.

\* **Section 122 (1A) (Penalty for certain offences)** - Seeks to insert a new sub-section (1A) so as to make the beneficiary who retains benefit or at whose instance a supply has been made without the issuance of an invoice, or invoice has been issued without supply, or excess ITC has been availed/distributed liable for penalty as that of actual supplier/recipient.

\* **Section 132 (Punishment for certain offences)** - Seeks to amend Section 132 so as to make the offence of fraudulent availment of ITC without invoice or bill, cognizable and non-bailable offence under sub-section (1) of Section 69 and to make any person who retains the benefit of certain transactions and at whose instance such transactions are conducted liable for punishment.

**\* Schedule II, Para 4 (Activities or transactions to be treated as supply of goods or supply of services)** - Omitted the words “whether or not for consideration” with effect from July 1, 2017, so as to give clarity to the meaning of the entries (a) and (b) of said paragraph 4, while aligning the same with Section 7(1), (1A) and Schedule I (supply without consideration) of the CGST Act. Now Schedule II, Para 4 reads as below:

*“(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;*

*(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;.....”*

### **Time limit for filing Form GSTR-1**

As per Notification No. 83/2020– CT dated November 10, 2020, extended time limit for furnishing the details of outward supplies in Form GSTR-1 are:-

**Quarterly GSTR-1:** If opted in for/ by default Quarterly Return Filing and Monthly Payment of Taxes: The 13th day of the next month succeeding such quarter

### **Monthly GSTR-1:**

<b>S. No</b>	<b>Month for which GSTR-1 is to be filed</b>	<b>Due date</b>
1	January 2021	11.02.2021
2	February 2021	11.03.2021
3	March 2021	11.04.2021

### **CBIC issued Circular for waiver from recording of UIN on the invoices for the months of April 2020 to March 2021**

CBIC has issued Circular No.144/14/2020-GST dated December 15, 2020 for waiver from the recording of UIN on the invoices for the months of April 2020 to March 2021, subject to the condition that the copies of such invoices are attested by the authorized representative of the UIN entity and the same is submitted to the jurisdictional officer.

### **Mandatory to mention 8-digit HSN in invoice for 49 chemical based products**

Government has made it mandatory for a registered taxpayer to mention 8-digit HSN Code in tax invoice for a list of 49 chemical based products majorly falling under Chapter 38, 29 or 28.

Compiled by Beenu Joshi





## E-Invoicing under GST

The GST Council, in its **37th meeting** held on **20th September, 2019**, approved introduction of E-invoice in GST in a phased manner. GST Council, in its **39th meeting**, held on **14th March, 2020**, further recommended certain classes of registered persons to be exempt from implementation of e-invoices and the date for implementation of E-invoicing to be extended to **01 October, 2020** for certain category of taxpayers. The e-invoice system, the game changer in the GST system, was launched on **1st October, 2020** on the GSTN portal. As per the notification of GST (**Notification No. 61 dated: 30th July, 2020**), this system has been enabled for the taxpayers with PAN based turnover **more than Rs 500 Crores**, during financial year. This also has a **direct implication** on availment of ITC, generation of E-way bill and filing of GST returns. Also, according to NIC, within the first month of introduction itself, **more than 495 lakh** e-invoices were generated on the NIC portal by **27,400 tax payers**.

### What is E-invoicing

**E-invoicing** or **'electronic invoicing'** is a system wherein the taxpayer will upload his invoice details and register his supply transaction on the Government Invoice Registration Portal (IRP) and get the Invoice Registration Number (IRN) generated by the IRP system. It does not mean generation of invoices from a Central Portal of tax department.

### Applicability

- With effect from 1-10-2020: Registered Person having aggregate turnover (PAN basis) of more than Rs 500 crore in any of financial years starting from 1-7-2017.
- With effect from 1-01-2021: Registered Person having aggregate turnover (PAN basis) of more than Rs 100 crore in any of financial years starting from 1-7-2017.

## Understanding of IRN (Invoice Reference Number)

- It is a unique **64- character hash**, IRN is expected to be generated within 100 milliseconds.
- IRN is a HASH of (<Supplier GSTN> <Document number> <Financial year>).
- It is allotted by government to tag and identify every valid e-invoice generated in India.
- **E.g.** HASH of “01AAAAB1234C1Z02019-20INVAB1234” is 35054cc24d97033afc24f49ec4444dbab81f542c555f9d30359dc75794e06bbe (64 digits).

**Note:** In computer science language, IRN is called HASH.

## Applicability of E-invoicing

It can be generated only by the supplier and not by the recipient or transporter for

- B2B invoices
- Export invoices
- Credit & Debit notes only.

## Exemption from E-invoicing

- SEZ (Special Economic Zone) Units
- Insurer or a Banking company or a financial institution, including a non- banking financial company.
- GTA (Goods Transport Agency) supplying services in relation to transportation of goods by road in a goods carriage.
- Suppliers of passenger transportation service.
- Suppliers of services by way of admission to exhibition of cinematograph films in multiplex screens.

## Modes of generation of E-invoice

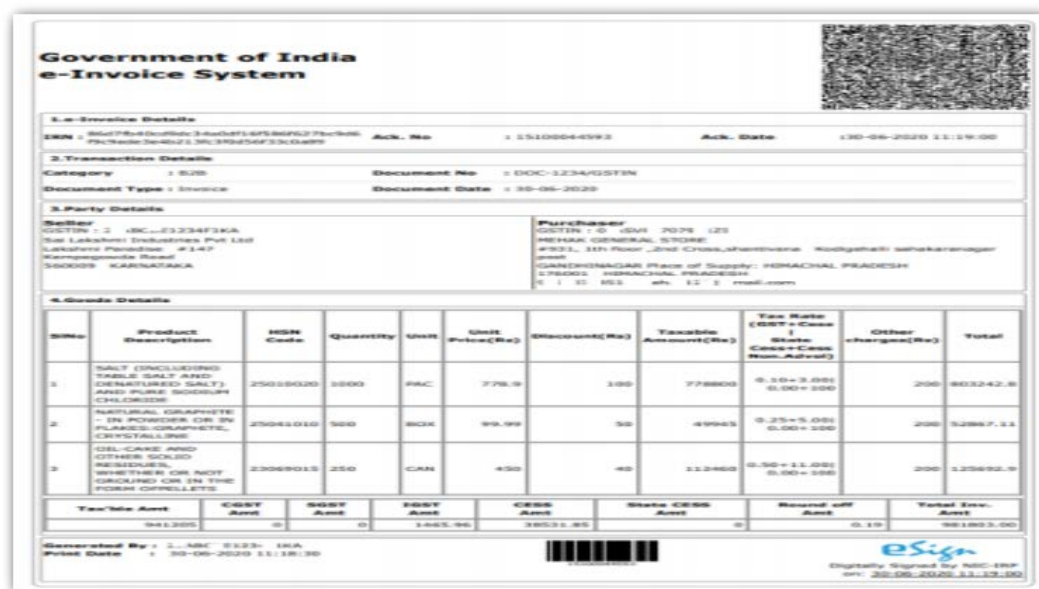
Currently, there are three modes of generations of IRN in NIC system.

1. Direct API interface of ERP system of tax payer with NIC system.
2. API interface of ERP system of the tax payer through GSP with NIC system.
3. Offline tool for bulk uploading of invoices and generating IRNs.

**Note:** Around 15% of the tax payers are using the offline tool for the IRN generations and 85% are integrating through API.

## Generation of Tax invoice in standard format /Schema

- Schema simply means FORMAT. It is termed as ‘Form GST INV-1’.
- Schema acts as uniform standard format for ERP/Billing software providers to build utility in their software to prepare e-invoice in notified standard.
- Most important requirement for generation of the E-invoice is that tax invoice must have certain mandatory fields and must confirm to the e-invoice schema published in GST common portal (<https://www.gstn.org/e-invoice/>).



### Comparison between Present and proposed Invoicing Processes:

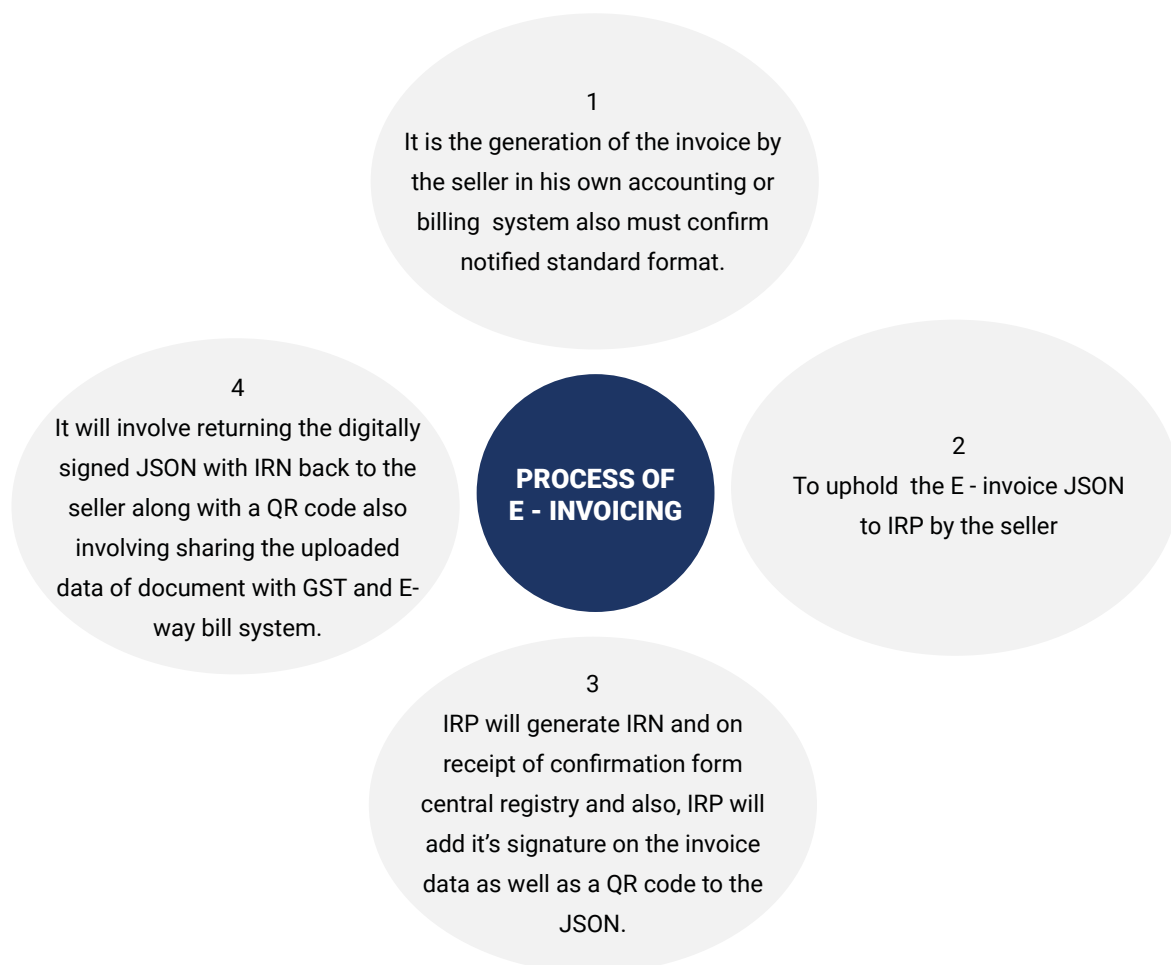
Particulars	Present Invoicing	Proposed E-invoicing
<b>Invoice Standards</b>	No standard format defined for Invoicing	Invoicing systems have to adhere the data standards as per E-invoicing schema.
<b>Documents Signing</b>	Signed by Supplier	Digitally signed by the Registrar
<b>Invoice Items</b>	Documents to capture mandatory fields as per GST Rules	Documents to also capture all fields as mandated in the E-invoice scheme
<b>Invoice Cancellation</b>	Documents can be cancelled any time before uploading to GSTN.	IRN can be cancelled only within 24 hrs of generation

### Consequence of Non-Generation of E-Invoice

1. The invoice generated by the registered person is invalid
2. The movement of goods on such invoice shall be invalid and will be treated as movement without proper documentation
3. The receiver of such invoice cannot claim ITC on the basis of such invoice
4. The supplier can be penalized under Section 122 of the Act
5. The receiver of such invoice if claims ITC on such invoice can be also penalized under Section 122 of the Act
6. The details of outward supplies may not auto-populate in GSTR-1 which otherwise shall be available if E-Invoice is generated.

Updates

## Process of generation E-invoice



**Note:** The IRP will only take JSON of the E-invoice.

### Time Limit for generation of E-Invoice

1. No limit as such as been prescribed as of now. However such E-Invoicing is for supply of goods then before movement of goods, the E-Invoice should be generated.
2. If movement of goods is not required to be done on the invoice, then before handing over of invoice to the receiver.

### Time Limit for cancellation of E-Invoice

1. The cancellation of E-Invoice can be done within 24 hours from the issuance of E-Invoice. However if such time has lapsed, then the only option available is issuance of credit note under Section 34 of the Act along with IRN.

## Notifications on E-invoice:

### 1. Amendment in RULE 48 of CGST Act, 2017 (Vide Notification No. 68/2019 Central Tax Dated: 13th Dec, 2019)

The invoice shall be prepared by such class of registered persons as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.

### 2. Setting up of IRP (Invoice Registration Portal) (Vide Notification No. 69/2019 Central Tax Dated: 13th Dec, 2019)

CGST Notification 69/2019 notifies an e-invoicing portal that will accept e-invoices, verify the invoice and generate a unique **Invoice Reference Number**.

## The list of Websites of this e-invoice portal are:

- [www.einvoice1.gst.gov.in;](http://www.einvoice1.gst.gov.in)
- [www.einvoice2.gst.gov.in;](http://www.einvoice2.gst.gov.in)
- [www.einvoice3.gst.gov.in;](http://www.einvoice3.gst.gov.in)
- [www.einvoice4.gst.gov.in;](http://www.einvoice4.gst.gov.in)
- [www.einvoice5.gst.gov.in;](http://www.einvoice5.gst.gov.in)
- [www.einvoice6.gst.gov.in;](http://www.einvoice6.gst.gov.in)
- [www.einvoice7.gst.gov.in;](http://www.einvoice7.gst.gov.in)

Compiled by Monika Goyal

# Judicial Pronouncements

## Case 1: Validity of Service of Notices & Orders

### M/s Shri Shyam Baba Edible Oils vs The Chief Commissioner and another (W.P. No. 16131/2020)

#### Issue:

Validity of communication of show-cause notice/order to petitioner on his E-mail address and not by uploading on website of revenue.

#### Facts and Discussion:

The petitioner raised a grievance that show-cause notice was never communicated to it.

The department contended that show-cause was to the petitioner on his E-mail address and despite receiving the same the petitioner failed to file any response.

The petitioner drew the attention of the Court to provision of Rule 142(1) of CGST Rules.

The rules requires that the proper officer shall serve along with show cause notice a summary thereof electronically in FORM GST DRC- 01.

The Court analysed that a bare perusal of the aforesaid provision reveals that the only mode prescribed for communicating the show-cause notice/order is by way of uploading the same on website of the revenue.

#### Held

The Hon'ble High Court held that the statutory procedure prescribed for communicating show-cause notice/order under Rule 142(1) of CGST Act having not been followed by the revenue, the impugned demand order deserves to be and is struck down.

The Court relied upon a trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. The Court held that this principle becomes all the more stringent when statutorily prescribed and as is the

case herein.

#### DCO Excerpts

- The given judgment brings forth an important aspect that service of Show Cause Notice or order is valid only by prescribed modes under the law.
- The taxpayers should be aware that communication of notices/orders except through prescribed modes is invalid and unsustainable in law and can be challenged. Any demand through such notices/order is liable to be quashed.
- However, a further insight in to the provisions of law reveals that methods of communication of notices or orders has actually been given in the statute itself under Section 169 of the Act.
- The electronic delivery of the notices or orders specified in the section includes:
  - Sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
  - Making it available on the common portal
- The common portal however, for the purpose of service of notices or orders under the provisions of law has not been notified yet which needs to be catered by the Government.

Compiled by Girdhar Mundra

## Case 2: Treatment of incentives/discounts under Dealership agreements (Service Tax judgment relevant under GST regime also)

**M/s Rohan Motors LTD, Dehradun v/s Commissioner of Central Excise, Dehradun. [2020-TIOL-1676-CESTAT-DEL]**

### Issue:

Whether discounts/incentives received by dealers from manufactures accounted in books as income are leviable to service tax?

### Facts:

The appellant purchases vehicles on a principal-to-principal basis and sells the same to the buyers and not as an agent of manufacturer.

As per the agreement, appellant has received various incentives/ discounts / bonus etc. from manufacturer and it was accounted in their books of accounts as “miscellaneous income”.

The Department noticed such Misc. income and took the view that such amounts received by the appellant from manufacturer are in consideration towards promotion and marketing of the vehicles and such consideration is liable for payment of Service Tax under the category of Business Auxiliary Service.

The agreement itself provides that the appellant has to undertake certain sales promotion activities as well. The carrying out of such activities by the appellant is for the mutual benefit of the business of the appellant as well as the business of manufacturer. Therefore the amount of incentives received on such account cannot be treated as consideration for any service.

### Held:

The discounts/incentives received by the appellant from manufacturer cannot be made liable for payment of Service Tax under BAS, since the appellant is purchasing the cars from manufacturer on principal to principal basis and subsequently, reselling the same.

No service tax can be demanded on the incentive which was in form of trade discounts, extended to the party in terms of a declared policy for achieving sales target.

Cases relied upon:

- Toyota Lakozy Auto Pvt. Ltd. 2017 (52) STR 299 (Tri.- Mumbai) [2016-TIOL-3152-CESTAT-MUM]
- Commissioner of Service Tax, Mumbai-I Vs. Sai Service Station Ltd. [2013-TIOL-1436-CESTAT-MUM]

### DCO Excerpts

- The discounts/incentives received under agreements on principal to principal basis on a condition of sale or linked with undertaking an activity for sales promotion of the products does not form consideration for any service.
- The principal buyers are not agent of the manufacturer and hence discounts extended to them are only trade discounts which may be linked with achieving certain sales targets.
- Same cannot attract levy of service tax or GST.

Compiled by Princy Dhadda



# Expert's Insight



## Reversal of ITC Due to Non-Payment

Section 16 of CGST/SGST Act, 2017 talks about eligibility of input tax credit. Second & third proviso to Section 16(2), provides for reversal and re-availing of ITC on account of non-payment which reads as:

**“Provided further** that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:”

**“Provided also** that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.”

In layman’s language Input Tax Credit is required to be reversed where there is failure on part of the recipient to make payment to the supplier within 180 days from the date of invoice issued by the supplier. The recipient entitled to avail the credit reversed, once he makes the payment to the supplier.

In addition to this, Rule 37 of CGST/SGST Rules, 2017 provides the procedure for implementation of proviso to section 16(2) of CGST/SGST Act as mentioned below:

Reversal of input tax credit in the case of non-payment of consideration

### Rule 37

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second



proviso to sub-section (2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that, the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16

[Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.]

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

(4) The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.

The real challenge is the difficulties that the recipients face while implementation of above provision. In this article we shall discuss a few issues that are commonly faced by the recipients:

### 1. Aging of Creditors

Second proviso to Sec. 16(2) provides that the same applies in case of non-payment within the period of 180 days from the date of issue of invoice by the supplier. Hence the period of 180 days for determination of ITC reversal needs to be calculated

from the date of issuance of invoice and not the date on which said invoice is recorded in the books of accounts or the date on which ITC is claimed. Also, the process of aging gets complicated for industries where credit terms do not mandate the recipient to make payment within a period of 180 days or where the commodities require push sale.

### 2. Procedure for Reversal

Rule 37(1) provides that registered person who has earlier availed ITC and has failed to make the payment of the value of supply as well as tax thereon shall furnish such details in FORM GSTR 2 for the month immediately following the period of 180 days. As per Rule 37(2), such amount furnished in GSTR 2 shall be added to output liability ledger for the month in which such details are furnished. Also, it is to be noted that GSTR 2 has been suspended till further notice. Now, the question arises is how the credit is required to be reversed in absence of GSTR 2? In the decision of Apex Court in the case of CIT vs. B.C. Srinivasa Shetty [(1981) 2 SCC 460] it was held that without machinery provision, charging provision shall fail.

It is therefore advised to the registered person that the output tax equivalent to the ITC credit taken on invoice for which consideration has not been paid must be considered in the Form GSTR 3B and output tax should be paid on the same.



### 3. Part payment of Taxable Value and Tax thereon

Sometimes credit terms do not require the recipient to make full payment towards a supply. Since, proviso to Sec. 16(2) nowhere states that full amount is required to be paid within 180 days to avoid the reversal. Hence, in our opinion ITC is required to be reversed only on proportionate amount which is not paid within a period of 180 days.

### 4. Re-availing of earlier reversed ITC

Third proviso to Sec. 16(2) provides for re-availing of ITC reversed earlier on making the payment of the value of supply along with the tax thereon. One can re-avail the ITC on subsequently making the payment. Further, Rule 37(4) also provides that the time limit prescribed u/s 16(4) for availing ITC (i.e. before the due date for furnishing return for the month of September of the succeeding year or annual return, whichever is earlier) shall not apply for re-availing the credit which was reversed earlier. Hence, such ITC can be claimed anytime in future when the payment is made.

### 5. Schedule I Activities

Transactions made without consideration are covered in Schedule I to the CGST Act, 2017. Proviso to Rule 37(1) provides that the value of supplies made without consideration as specified in Schedule I of the CGST Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16. Hence ITC reversal is not required to be made for transactions covered under Schedule I.

### 6. Failure to make payment

Second proviso to Section 16(2) states 'where a recipient fails to pay to the supplier of goods or services or both'. In this context, the word 'fails to pay' has much wider implications. As stated in our discussions above, there may be certain scenarios where the recipient may delay the payment beyond 180 days. Also, in some cases there may be a contractual agreement between the buyer and seller wherein payment term may be beyond 180 days. So, in such cases if payment is made by the buyer to the

seller within the agreed terms, can it be considered as failure to pay under the GST Law?

Let us now refer second proviso to Rule 4(7) of Cenvat Credit Rules, 2004 as quoted below:

(7) The CENVAT credit in respect of input service shall be allowed, on or after the day on which the invoice, bill or, as the case may be, challan referred to in rule 9 is received:

Provided that in respect of input service where whole or part of the service tax is liable to be paid by the recipient of service, credit of service tax payable by the service recipient shall be allowed after such service tax is paid:

Provided further that in case the payment of the value of input service and the service tax paid or payable as indicated in the invoice, bill or, as the case may be, challan referred to in rule 9 is not made within three months of the date of the invoice, bill or, as the case may be, challan, the manufacturer or the service provider who has taken credit on such input service, shall pay an amount equal to the CENVAT credit availed on such input service, except an amount equal to the CENVAT credit of the tax that is paid by the manufacturer or the service provider as recipient of service, and in case the said payment is made, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules:

From the apparent reading of above rule, it is clear that reversal of credit as per Cenvat Rules, 2004 was required to be reversed where payment was not made within a period of 180 days irrespective of failure to pay as per contractual terms. Thus, a question arises as to whether contractual obligations between the parties in good faith override the express provisions of GST law? The question is yet to be answered by judicial authorities in due course of time.

Written by Shefali Jain Bang



### **Online filing of application (Form GST EWB 05) by the taxpayer for un-blocking of E-Way Bill (EWB) generation facility**

A facility has now been provided to the taxpayers on the GST Portal, from 28th November, 2020 onwards, to file an application online for unblocking of their EWB generation facility (in Form EWB-05), in case their EWB generation facility has been blocked on the EWB Portal.

To file an online application for unblocking EWB generation facility on GST Portal, a taxpayer need to:

1. Login to the portal and navigate to Services> User services> My Applications
2. Select application type as "Application for unblocking of E-way bill" and click New Application
3. Submit application in Form EWB-05.

### **GSTN starts auto-populating GSTR -1 on the basis of IRN on near to real time basis**

GSTN starts auto-populating GSTR -1 on the basis of IRN on near to real time basis along with source, IRN Number & date.

The IRN Data will also be reflected in the counter-Party's GSTR -2A.

### **GST EWB: New enhancements in E – Way bill System**

Following new enhancements have been made in the E-way bill system, dated December 8, 2020:

1. 1.Recipient GSTIN should be registered and active, on the date of preparation of the document by the supplier.
2. 2.Document Nos. are case sensitive for e-Way bill generation.
3. 3.In the Bulk Upload, if the Pin-to-Pin distance is not known, the distance may be passed as zero. The system will automatically populate the distance, if available. However, if the distance is not available then error is returned. For such cases, the user has to pass the distance.
4. 4.If Pin code does not exist in the EWB system then at-least the first 3 digits of the pin code must match with the State selected.
5. 5.In Bulk upload, 96 can also be passed as state code for 'Other Country'.
6. 6.In case EWB is generated from the e-Invoice System, then IRN is displayed in the e-Waybill print.
7. Source from: [https://docs.ewaybillgst.gov.in/Documents/ewb\\_enhancements.pdf](https://docs.ewaybillgst.gov.in/Documents/ewb_enhancements.pdf)

# New On GSTN Portal



### **Auto population of details in Form GSTR-3B from Form GSTR 1 & 2B**

Auto-population of system computed details in Form GSTR-3B, has been enabled for taxpayers from Nov 20 Tax Period Onwards.

1. Liabilities in tables-3.1 & 3.2 of Form GSTR-3B (except Table-3.1 (d) pertaining to inward supplies liable to reverse charge), are computed by the system on the basis of details of outward supplies as filed in Form GSTR-1 for the tax period
2. Input Tax Credit (ITC) details and details of inward supplies liable to reverse charge, to be reported in Tables-4 and 3.1 (d) respectively, are computed as per system generated Form GSTR-2B for the tax period.

### **Two new options added under Form DRC 03**

Two new options have now been made available on GST portal while filing of DRC 03:

1. Tax Liability for difference between GSTR 1 and GSTR 3B.
2. Tax payment on ITC mismatch.

### **Appeal against Refund Order**

GST Portal now allows filing of appeal against refund order on line. Earlier, such appeals were required to be filed manually.

Compiled by Tarushree Singhvi



# Dhadda & Co.

CHARTERED ACCOUNTANTS

## Editorial Team:

Yash Dhadda, Princy Dhadda, Mudit Jain, Saket Sharma,  
Shuchi Sethi, Shefali Jain Bang, Girdhar Mundra, Tarushree  
Singhvi, Beenu Joshi & Monika Goyal

 0141-2724952

 [dhaddaonline.com](http://dhaddaonline.com)

 [email@dhaddaonline.com](mailto:email@dhaddaonline.com)

 Jaipur| Kota

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# Thank You