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CHARTERED ACCOUNTANTS

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DCo Digest

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Newsletter



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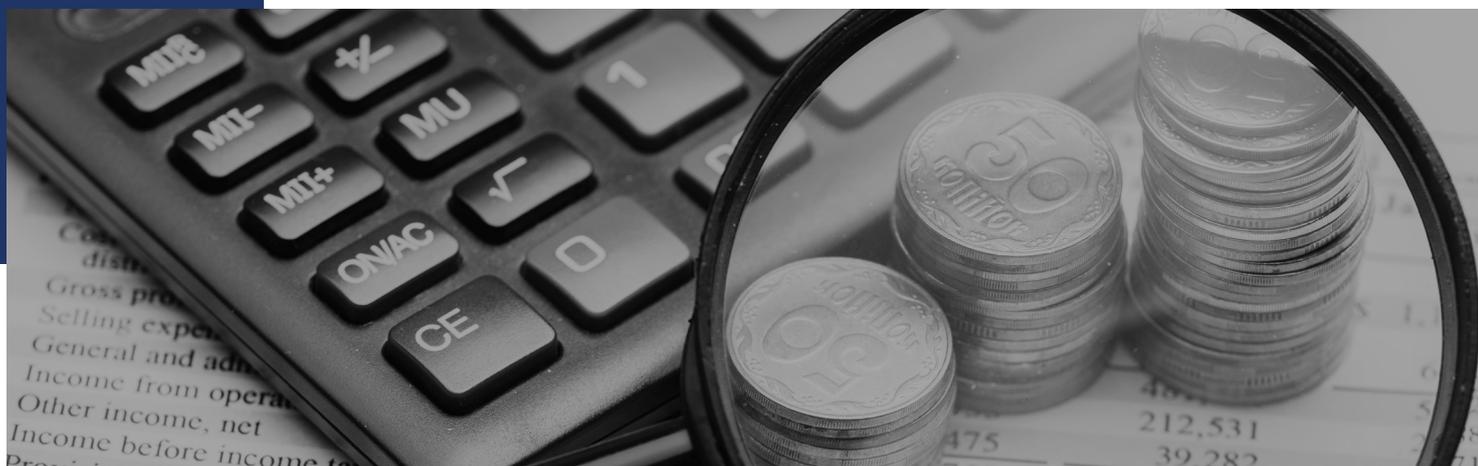
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The Indian Government has bombarded the taxpayers with a lot of changes applicable from Jan 1, 2022. Some of these changes flow from the amendments to the Central Goods and Services Tax Act, 2017 (“CGST Act”) which were introduced vide the Finance Act, 2021 (“Finance Act”) but brought into effect only from 1 January 2022 through Notification no. 39/2021-Central Tax dated 21 December 2021 which have been covered in this edition. The other changes discussed emerge from the recommendations of the GST Council vide it’s 45th meeting held on 17 September 2021 as notified through various recent notifications.

In this edition we have summarised the significant judgments under the Indirect Taxes in the year 2021 along with a brief discussion on the judgements of M/s Shri Tyres v. State Tax Officer and Anish Infracon India (P.) Ltd. v. Union of India. With also encompassing some more new functionalities made available on GST portal, we hope you find this edition enlightening and useful.

Enjoy Reading!

Preface



Important changes in GST Regime with effect from 1st January, 2022 –

Central Government has brought into effect the provisions of Finance Act, 2021 effective from 1st January, 2022. In the Budget of 2021-22, changes in Finance Bill, 2021 were proposed to make changes in CGST Act, 2017. Accordingly, CGST Act, CGST Rules and IGST Act, 2017 have been amended. We have examined the proposed changes in summary form for ease of understanding –

1. Mandatory Aadhar Authentication in certain cases – Rule 10B of the CGST Rules, 2017 –

- a. Filing of application for revocation of cancellation of registration in Form GST REG-21 under Rule 23;
- b. Filing of refund application in Form RFD-01 under rule 89
- c. Refund under Rule 96 of the integrated tax (IGST) paid on goods exported out of India

2. GST ITC Credit available when reflected in GSTR 2A/2B –

The CBIC vide Notification No. 39/2021–Central Tax dated December 21, 2021 notified the below mentioned amendments w.e.f. January 01, 2022

Section 16(2) - Eligibility and conditions for taking input tax credit – Section 109 of the Finance Act, 2021.

“(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.”

Updates

A new clause '(aa)', after clause (a), in Section 16(2) of the CGST Act, that provides an additional condition to claim ITC based on **GSTR-2A and newly introduced GSTR-2B**, i.e., ITC on invoice or debit note can be availed only when details of such invoice/debit note have been furnished by the supplier in his outward supplies (GSTR-1) and such details have been communicated to the recipient of such invoice or debit note.

Hence, with effect from 1st January, 2022 the conditions for availment of Input tax credit as per CGST Act, 2017 is as follows -

1. The recipient is in possession of tax invoice or debit note issued by a supplier;
2. The details of the above-mentioned invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient in the manner specified under Section 37 of the CGST Act;
3. The recipient has received the goods or services or both;
4. The tax charged in respect of such supply has been actually paid to the Government, and
5. The recipient has furnished the return under Section 39 of the CGST Act.

The CBIC vide Notification No. 40/2021–Central Tax dated December 21, 2021 notified the below mentioned amendments w.e.f. January 01, 2022

Rule 36(4)

(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,-

- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
- (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.]

Earlier Rule 36(4) of the CGST Rules, 2017 was implemented to cap 5% limit on ITC availment as per GSTR 2A/2B. With the aforesaid proposed amendment, there is no relevance to Rule 36(4) with effect from 1st January,2022 and invoice level matching with GSTR 2B shall be mandatory for availing ITC.

3. Notification of provisions on Recovery of self-assessed tax

In section 75 of the Central Goods and Services Tax Act, in sub-section (12), the following Explanation has been inserted –

Explanation - For the purposes of this sub-section, the expression “self-assessed tax” shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

Widening of the scope of the term “self-assessed tax” –

The ambit of the term “self-assessed tax” is proposed to be widened. Now recovery can be initiated by the officer even for the outward supply liability shown in the GSTR-1 filled under Section 37 of the CGST Act.

It is important to note that the recovery proceedings, in respect of ‘self-assessed tax’ on outward supplies which have been declared in Form GSTR-1 but not included in Form GSTR-3B, can be initiated straightaway under Section 79 (i.e. through various modes like detaining/selling goods belonging to defaulter which are under control of the department, garnishee proceedings, distaining and selling of movable or immovable property belonging to the defaulting person, etc.) without even resorting to proceedings under Section 73 or Section 74 of the CGST Act.

4. Amendment to Sec 7 – Definition of “Supply” –

This amendment has made transactions between clubs/ associations and its members taxable. A new sub-clause has been inserted in Section 7 of the Central Goods and Services Tax Act, 2017 –

Section 7(1)(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

Explanation - For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another; Expanded the scope of ‘supply’ to levy GST on supplies between the club/association and its members, to overcome the principle of mutuality:

A retrospective amendment (w.e.f. July 1, 2017) is made by inserting a new clause ‘(aa)’ after clause (a), in Section 7(1) of the CGST Act to widen the scope of term ‘supply’ by including ***activities or transactions of supply of goods or services or both between any person (other than individual) to its members or constituents or vice versa for cash, deferred payment or other valuable consideration.***

Further, an explanation is included that the person and its members or constituents shall be deemed to be two separate persons and overriding effect has been given to the said explanation over anything contained in any other law for the time being in force and even to the judgements of any Court, Tribunal or any other authority.

Consequently, Para 7 of Schedule II of the CGST Act has been proposed to be deleted retrospectively (w.e.f. July 1, 2017) which is related to ‘supply of goods by unincorporated associations or body of persons to a member thereof for cash, deferred payment or other valuable consideration’ being activity/ transaction treated as supply of goods.

5. Amendment to Sections 74 and 107 of the CGST Act, 2017 –

The CBIC vide Notification No. 39/2021–Central Tax dated December 21, 2021 notified the below mentioned amendments w.e.f. January 01, 2022

a. Recovery of tax vs. Seizure and Confiscation:

Amendment has been made in Explanation 1(ii) of Section 74 of the CGST Act so as to make seizure (Section 129 of the CGST Act) and confiscation of goods and conveyances in transit (Section 130 of the CGST Act), a separate proceeding from recovery of tax under Section 73 (determination of tax in non-fraud cases) or Section 74 (determination of tax in fraud cases) of the CGST Act.

b. Pre-deposit for Appeal before Appellate Authority

Amendment has been made to insert a proviso to Section 107(6) of the CGST Act, to provide that appeal against order passed under Section 129(3) of the CGST Act in **Form MOV-09**, can be filed before the Appellate Authority only after depositing **25% of the penalty imposed** to the department (the limit has been enhanced from 10% of the pre-deposit).

6. Amendment to Sections 129 and 130 of the CGST Act, 2017 (Provisions related to E-Way Bills)-

The CBIC vide Notification No. 39/2021–Central Tax dated December 21, 2021 notified certain amendments in Section 129 and 130 of the CGST Act, 2017 w.e.f. January 01, 2022.

A. Amendment to Section 129 - detention, seizure and release of goods and conveyances in transit -

a. Enhancement of Penalty –

Situation	Taxable Goods	Exempt Goods
When owner comes forward - Sec 129(1)(a)	Penalty equal to 200% of tax payable (earlier penalty – 100% Tax)	Lowest of 2% of the value of goods or Rs. 25,000/- (no change)
When owner does not come forward - Sec 129(1)(b)	Penalty equal to higher of 50% of value of goods or 200% of the tax payable on such goods (earlier penalty – 50% of value of goods)	Lowest of 5% of the value of goods or Rs. 25,000/- (no change)

b. Non release of goods on provisional basis upon execution of bond or security

- Section 129(2) has been omitted: Now the goods seized shall not be released on provisional basis upon execution of a bond and furnishing security and the penalty imposed by the officer will have to be paid in cash by the taxpayer.

c. Period of issuance of notice and passing of order under Section 129(3) of the CGST Act:

The proper officer detaining/seizing the goods, have to issue a notice (GST MOV-07) within 7 days specifying the penalty payable and pass an order (GST MOV-09) within next 7 days after service of such notice (earlier there was no such time limit).

d. Opportunity of being heard before determination of penalty -

No penalty shall be determined without giving opportunity of hearing, where penalty is payable on detention or seizure of goods or conveyance.

B. Amendment to Section 130 - confiscation of goods or conveyances and levy of penalty –

Section 129 and Section 130 of the CGST Act, 2017 has been delinked.

Prior to amendment, if the person does not pay tax and penalty within 14 days of seizure, the conveyance and goods detained were liable for confiscation as per Section 130.

But, post current amendment, the goods or conveyance detained or seized shall become liable to be sold or disposed of in the manner prescribed, in case the payment of imposed penalty is not made within 15 days from the date of receipt of copy of the order imposing such penalty.

Further, conveyance used for transportation of the goods may be released on payment of penalty or Rs 1 Lakh whichever is less.

7. Amendment to the definition of Zero-Rated Supplies – Sec 16 of the IGST Act, 2017

a. Insertion of the word “authorized operations” in Sec 16(1)(b) -

“Zero rated supply” means any of the following supplies of goods or services or both,
 namely:

- (a) export of goods or services or both; or
- (b) supply of goods or services or both for Authorized Operations to a Special Economic Zone developer or a Special Economic Zone unit.

b. Substitution of sub - Sec (3) to Sec 16 - Realization of exports proceeds

“(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, ***in case of nonrealisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.***

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify--

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;

(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”

8. Extension in Form GSTR 9 and Form GSTR 9C of Financial Year 2020-2021

Due date of Form GSTR 9 and Form GSTR 9C for Financial Year 2020-2021 has been extended from December 31, 2021 to February 28, 2022 vide Notification No. 40/2021-Central Tax dated December 21, 2021

9. Changes in GST Rates/Exemptions on specified services provided to Governmental Authority or Government Entity

1. Specified works contract services to Governmental Authorities or Govt. Entities (Notification No. 15/2021-CT (Rate), Dated Nov 18, 2021, effective from Jan 1, 2022)

The GST rates on the below services provided to Governmental Authority and Government Entity has been increased from 5%/12% to 18%.

S.no	Description	Ex-isting rate	New rate
1	Composite supply of works contract supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of - (a) Historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity (b) Canal, dam or other irrigation works (c) Pipeline, conduit or plant for water supply, water treatment, or sewerage treatment or disposal (d) Civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession (e) Structure meant predominantly for use as an educational, a clinical, or an art or cultural establishment (f) Residential complex predominantly meant for self-use or the use of their employees or other persons (Sl. No. 3(iii) & (vi) of Notification No. 11/2017-CT (Rate), Dated 28-06-2017)	12%	18%
2	Composite supply of works contract provided by a sub-contractor to the main contractor providing services specified in Sl. No. 1 above (Sl. No. 3(ix) of Notification No. 11/2017-CT (Rate), Dated 28-06-2017)	12%	18%
3	Composite supply of works contract involving predominantly earth work (that is, constituting more than 75 % of the value of the works contract) (Sl. No. 3(vii) of Notification No. 11/2017-CT (Rate), Dated 28-06-2017)	5%	18%
4	Composite supply of works contract provided by a sub-contractor to the main contractor providing services specified in Sl. No. 3 above. (Sl. No. 3(x) of Notification No. 11/2017-CT (Rate), Dated 28-06-2017)	5%	18%

Consequent to above amendment, the condition that such services should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be relating to services provided to Government entity has also been removed.

2. Pure/Composite services to Govt. Authorities or Govt. Entities - Exemption withdrawn

(Notification No. 16/2021-CT (Rate), Dated Nov 18, 2021, effective from Jan 1, 2022)

Exemption in respect of below services provided to Governmental Authority and Government Entity has been withdrawn from January 01, 2022

Updates

S.no	Description	Existing rate	Existing rate
1	Pure services (excluding works contract service or other composite supplies involving supply of any goods) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution (Sl. No. 3 of Notification No. 12/2017-CT (Rate), Dated 28-06-2017)	Exempted	18%
2	Composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution (Sl. No. 3A of Notification No. 12/2017-CT (Rate), Dated 28-06-2017)	Exempted	18%

10.Changes in the scope of taxability of E-Commerce Operators – Food & Passenger Vehicle Aggregators

(Notification No. 16/2021-CT (Rate) & 17/2021-CT (Rate), Dated Nov 18, 2021, effective from Jan 1, 2022)

1.GST levy on Motor Vehicle aggregators

The scope of taxability of the services of transportation of passengers through E-commerce Operators ('ECO') has been increased to include 'omnibus' and 'any other motor vehicle'

The notification levying GST on ECO has borrowed the meaning of the terms 'omnibus' and 'motor vehicle' from the Motor Vehicle Act, 1988

In context of above services, the service exemption notification has also been amended to provide that no exemption would be available in respect of the below services supplied through an ECO:

S.no	Description	HNS	Ex-isting rate	New rate
1	Transport of passengers, with or without accompanied belongings, by— Non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire Stage carriage other than air- conditioned stage carriage (Sl. No. 15 of Notification No. 12/2017-CT (Rate), Dated 28-06-2017)	9964	Ex-empted	5% or 12% (with ITC)
2	Service of transportation of passengers, with or without accompanied belongings, by— Metered cabs or auto rickshaws (including e-rickshaws) (Sl. No. 17 of Notification No. 12/2017-CT (Rate), Dated 28-06-2017)	9964	Ex-empted	5% or 12% (with ITC)

2. GST levy on Food Delivery aggregators

(Notification No. 17/2021-CT (Rate), Dated Nov 18, 2021, effective from Jan 1, 2022)

The ambit of levying GST on supply made through E-commerce operator has been increased to include Food Delivery aggregators within its scope

It has been notified that GST on the supply of 'restaurant service' would be paid by E-Commerce operator as if he is the supplier of such services

Notably, what qualifies as 'restaurant service' has not been defined by the impugned notification

The above levy is subject to an exception where such services are supplied by the restaurants, eating joints, etc. located at a premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500 per unit per day or equivalent

11. Changes in GST rates under Footwear & Textile Industry

(Notification No. 14/2021-CT (Rate), Dated Nov 18, 2021, effective from Jan 1, 2022)

In view of the decision of the 45th GST Council meeting, the Government has increased the GST rates for the footwear to 12%. The recommendation was to increase the GST rates so that anomaly relating to inverted duty structure can be removed. Rate hike on textiles has been deferred for the time being in force.

12. Relevant Customs Provisions

114AC- Where any person has obtained any invoice by fraud, collusion, wilful misstatement or suppression of facts to utilise ITC on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of such duty or tax, such person shall be liable for penalty not exceeding 5 times the refund claimed.

13. Other amendments

In the case of UIN holder, the refund of tax paid in respect of invoices in which UIN is not mentioned shall be available only if the copy of the invoice duly attested by the authorized representative of the applicant is submit along with the refund application in FROM GST RFD-10. (Notification No. 40/2021-Central Tax dated December 21, 2021).

14. Limitation Extension Order till February 28th, 2022

The Hon'ble Supreme Court in the matter of Re Cognizance For Extension of Limitation [Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in Suo Motu Writ Petition (C) No. 3 of 2020 dated January 10, 2022] restored its earlier order in compliance to exclude period starting from March 15, 2020 till February 28, 2022, for the purposes of limitation prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, in view of the spread of the new variant of the COVID-19 and the drastic surge in the number of COVID cases across the country.

Previous Orders Trail

1. The Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 dated March 23, 2020 had extended period limitation for judicial and quasi-judicial proceedings from March 15, 2020 till further order considering the challenges faced by the litigants on account of COVID 19.

2. Further vide order dated March 08, 2021 stated that the extended period limitation shall end on March 14, 2021.

3. Furthermore, vide Re: Cognizance for Extension of Limitation [Miscellaneous Application No. 665/ 2021 dated April 27, 2021] restored the above order dated March 15, 2020 till further order.

4. Thereafter, vide order dated September 23, 2021 stated that the extended period limitation shall end on October 02, 2021 after noting that normalcy was returning.

Due to foreseen Third Wave of COVID-19, a plea has been made to extend the period of limitation in view of rising COVID cases

Held:

The Hon'ble Supreme Court in **Miscellaneous Application No. 21 of 2022 dated January 10, 2022** held as under in view of rising COVID cases:

- Restored its order dated March 8, 2021, April 27, 2021 and September 23, 2021. Further directed that the period from March 15, 2020 till February 28, 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
- Consequently, the balance period of limitation remaining as on October 03, 2021, if any, shall become available with effect from March 01, 2022
- Held that, in cases where the limitation expiring during the period between March 15, 2020 till February 28, 2022, the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from March 01, 2022. Further, where the actual balance period of limitation remaining, with effect from March 01, 2022 is greater than 90 days, that longer period shall apply.
- Clarified that, the period from March 15, 2020 till February 28., 2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable

Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

Compiled by CA Sourabh Chippa

Updates

Judicial Pronouncements

Case 1: M/s Shri Tyres v. State Tax Officer [2021] 133 taxmann.com 319 (Madras)

Issue:

Invalidity of Demand in case of non-adherence to procedure by Department

Facts and Discussion:

The Competent Authority passed a demand order under section 73 on the assessee. The impugned order was not preceded by Form GST DRC-01 and Form GST DRC-01A.vvv

Analysis

On analysis the writ on the sole ground of absence of notice in FORM DRC-01 and DRC-01A, the Court held as under:

The requirements of issue of Form GST DRC-01 and Form GST DRC-01A have been statutorily ingrained in rule 142 of the Central Goods and Services Tax Act Rules, 2017.

Section 73 of the Central Goods and Services Tax Act, 2017 deals with 'Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.'

A careful perusal of section 73 in conjunction with rule 142 makes it clear that non adherence to rule 142 had caused prejudice to the assessee qua impugned order. Therefore, it is a rule which necessarily needs to be adhered to, if prejudice is to be eliminated in the case on hand. In other words, it is not a mere procedural requirement but on the facts and circumstances of the case it becomes clear that it tantamount to trampling the rights of the assessee.

The impugned order is set aside solely on the ground of non adherence to rule 142 and all other procedural requirements.

The Competent Authority shall commence proceedings afresh, i.e., de novo and complete the exercise by adhering the requirements more particularly requirements under rule 142.

DCO Excerpts

The Court has clearly laid down that adherence to procedure of passing orders for demand and recovery laid down in Rules is not a mere procedural requirement but a mandatory requirement and non-compliance on this part can trample the rights of the assessee.

- Hence a demand order without proper summary of notice and order in prescribed Formats at GST portal are liable to be struck down solely on ground of non-adherence to procedural requirement of Rules.

Case 2: Anish Infracon India (P.) Ltd. v. Union of India [2021] 127 taxmann.com 61 (Gujarat)

Facts and Discussion:

The petitioner received the show cause notice, which had been replied to in detail, which is in reference to the wrong availment of ITC. It is the grievance on the part of the petitioner that summary notice in the form of GST/DRC/07 dated 06.01.2021 culminated into the physical summary order of FORM GST DRC-07 with a specific direction to make the payment in 30 days. Detailed submissions have been made and

request also was made not to initiate the recovery proceedings.

The assessee approached the Court on the ground that the detailed order is not being made available and what has been issued is the physical summary order without any explanation or reasons for raising huge demand.

Analysis

Petitioner has submitted that absence of detailed order is the hampering ground for the petitioner to move such an appeal.

The Court gave directions that the reasoned order, if not already supplied to the petitioner, be provided within 07 days of the receipt of the copy of this order. Such a copy of reasoned order shall be shared electronically within 24 hours on e-mail id to the Petitioner.

DCO Excerpts

The Court fairly considered the point of the assessee that an order cannot be challenged on merits on basis of a summary order without any reasoned order attached to it. The Adjudicating Authority was given directions to issue a detailed order. Hence assessee always has a right to seek detailed order, in case not served to the assessee for any demand confirmed through summary.

Compiled by CA Shuchi Sethi



Case summary

Highlights of Significant Judgments under Indirect Taxes in the year 2021

1. Union of India v. AAP & Company [2021] 133 taxmann.com 168 (SC)

Gujarat High Court gave a decision in case of AAP & Co, Chartered Accountant v. Union of India [2019] 107 taxmann.com 125 wherein clarification in Press Release dated 18-10-2018 that last date for availing ITC for invoices issued from July, 2017 to March, 2018 was due date for filing return FORM GSTR-3B

SC in the present SLP held that issue has been decided in favour of Revenue in Union of India v. Bharti Airtel Ltd. [2021] 131 taxmann.com 319 (SC) and assessee's attempt to distinguish said judgment in AAP & Company has failed. Hence order of Gujarat HC has been held as not sustainable.

Impact: GSTR-3B is a return under Section 39.

2. Union of India v. Bharti Airtel Ltd. [2021] 131 taxmann.com 319 (SC)

The petitioner filed a grievance for regarding rectification of GSTR-3B for the period from July to September 2017. The Delhi High Court allowed rectification of Form GSTR-3B in respect of the period in which error had occurred and held that Circular No. 26/26/2017-GST, dated 29-12-2017 imposing restriction of rectification of GST Returns only in the period in which error is noticed, is arbitrary and is to be struck down. Against this order, the Revenue filed an appeal before the Supreme Court.

The Honourable Apex Court observed that the impugned Circular provided for reporting differential figures and rectification of errors in subsequent periods in which error is noticed. Significantly, the registered person is not denied the opportunity to rectify omission or incorrect particulars, which he could do in the return to be furnished for the month or quarter in which such omission or incorrect particulars are noticed. Thus, it is not a case of denial of availing of ITC as such. The Circular has been issued exercising power under section 168(1) of CGST Act, 2017, it is not contrary to Section 39(9) and therefore, the Apex Court upheld the validity of the impugned Circular.

Impact: The rectification in GST Returns can be done in accordance with Circular No. 26/26/2017-GST, dated 29-12-2017 only.

3. Union of India v. VKC Footsteps India Pvt. Ltd. [2021] 130 taxmann.com 193 (SC)

Few writ petitions were filed before the High Court of Gujarat and the High Court of Madras challenging the validity of Rule 89(5) that denies the refund of un-utilised ITC on input services on the ground that it is ultra vires the provisions of Section 54. The Gujarat High Court allowed the claim for the refund made by the petitioners before it, considering unutilised ITC on input services as part of 'Net ITC' for the purpose of calculating refund in terms of Rule 89(5). However, the Madras High Court came to a contrary conclusion and it upheld the validity of Rule 89(5). Therefore, the appeal was filed before the Supreme Court due to divergent views.

The Honourable Supreme Court observed that the purpose of the formula in Rule 89(5) is to give effect to Section 54(3) (ii) which makes a distinction between input goods and input services for grant of refund. The Apex Court also observed that the formula under Rule 89(5) to create a legal bifurcation is a familiar terrain in fiscal legislation including delegated legislation. It set aside the decision of the Gujarat High Court and upheld the decision of the Madras High Court. The Supreme Court also noted that the practical effect of the formula might result in certain inequities but it restrained providing any formula saying that it's the field of the legislature. The Court strongly urged the GST Council to reconsider the formula and take a policy decision regarding the same.

Impact: Refund of accumulated ITC of input services is not allowed in case of inverted duty tax structure.

4. Radha Krishna Industries v. State of Himachal Pradesh [2021] 127 taxmann.com 26

The Court has analysed the powers of provisional attachment in depth and settled an interpretation of the law that such powers cannot be exercised arbitrarily. The Court observed that the power to order a provisional attachment of the property of

the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled.

The taxpayer must be given an opportunity of being heard and a reasoned order has to be passed by the Authority in rebuttal to the objections of taxpayer against the attachment.

Since the provisional attachment is under the exercise of powers of Commissioner, writ against such order is maintainable before a High Court as far as GST Appellate Tribunal is not into existence.

Impact: Provisional attachment of property without granting reasonable opportunity and a reasoned order is improper and invalid.

5. Platinum Holdings (P.) Ltd. v. Additional Commissioner of GST & Central Excise, Chennai [2021] 131 taxmann.com 142 (Madras)

The petitioner was a Special Economic Zone (SEZ) and made purchases from several suppliers/vendors for the development of the SEZ. The petitioner filed applications for refund of the taxes and it was held that the petitioner was not entitled to the refund on the ground that only a supplier of services would be entitled to claim the refund and not the SEZ itself. It filed an appeal and the appeal was also rejected. The petitioner filed the writ petition.

The Honourable High Court observed that Section 54 of the CGST Act read with Rule 89 of CGST Rules permits any entity to seek a refund of taxes or other amounts paid under provisions of the Act. The only exclusion is for the person covered under a notification issued under Section 55, admittedly inapplicable to the petitioner. Therefore, it was held that the application filed for refund of taxes paid under the Act would be maintainable if it would be established that no such claim has been made by supplier, and tax has been remitted to treasury.

Impact: SEZ Units exporting goods or services under LUT can claim refund of unutilized ITC under Rule 89(4) of the Act.

6. Jyoti Construction v. Deputy Commissioner of CT & GST, Jajpur [2021] 131 taxmann.com 104 (Orissa)

The petitioner was a partnership firm engaged in the business of execution of works contract including civil, electrical and mechanical. The Additional Commissioner rejected the appeal filed by the petitioner holding that the appeals filed were defective. He was of the view that the petitioner had made payment of the pre-deposit being 10% of the disputed amount under the IGST, CGST and SGST

by debiting its electronic credit ledger. It did not pay it from the electronic cash ledger and this was in contravention of Section 49(3) of GST Act, 2017. The petitioner filed writ petition against the same. The Honourable High Court observed that output Tax as defined under section 2(82) of GST Act could not be equated to pre-deposit required to be made in terms of section 107(6) of GST Act. The petitioner was required to make payment equivalent to 10% of the disputed amount of tax arising from the order against which the appeal was filed. The credit ledger cannot be debited for making payment of predeposit at the time of filing of the appeal. The petition filed was dismissed

Impact: Pre-deposit (10% or 20% of disputed tax) for filing appeal before 1st / 2nd appellate authority can be paid through Electronic Cash Ledger only.

7. Bright Star Plastic Industries v. Additional Commissioner of Sales Tax [2021] 132 taxmann.com 146 (Orissa)

The Show-cause notice was issued to the petitioner for cancellation of registration alleging the claim of ITC on fake invoices issued by a non-existent supplier. It filed the reply but registration was cancelled holding that clarification submitted was not satisfactory. It filed for revocation of cancellation of registration but it was also rejected. Thereafter, the appeal was filed before the Appellate Authority and the same was also rejected. It filed a writ petition against the same. The Honourable High Court observed that the

department would have to show that somehow the purchasing dealer and selling dealer acted in connivance to defraud the revenue. However, the department failed to show that the petitioner as a purchasing dealer deliberately availed of the ITC in respect of the transactions with an entity knowing that such an entity was not in existence. Thus, the department was directed to restore the petitioner's registration by issuing appropriate orders/directions.

Impact: GST Registration of person claiming ITC cannot be cancelled just because the supplier defrauded the government and said receipt did not act in connivance with supplier.

8. Shri Nandhi Dhall Mills India (P.) Ltd. v. Senior Intelligence Officer, Director General of Goods & Service Tax [2021] 127 taxmann.com 31 (Madras)

An investigation was conducted in the premises of the petitioner and the petitioner remitted Rs.1 crore in FORM GST DRC-03 on the same day. The second instalment of the tax was also paid subsequently. Later, the MD of the petitioner retracted his statement and petitioner stated that it has no liability to tax and its officials were forced to accept liability to tax and the admission was not voluntary.

The Court held that Section 74(5) intends to cover payment of tax under self-assessment which must include determination of liability to pay tax by the assessee on his own which is unconditional. Only payment of tax through Form DRC-03 without the assessee actually acknowledging and admitting such liability but rather under stress of investigation, does not tantamount to self-assessment. Therefore, it was held that amount collected shall be refunded to the petitioner.

Impact: Payment of tax through DRC-03 under Section 74(5) of the Act without actual admission by taxpayer of such payment cannot lead to appropriation of tax directly. Refund of such amount paid can be claimed.

9. D.Y. Beathel Enterprises v. State Tax Officer, Tirunelveli [2021] 127 taxmann.com 80 (Madras)

The petitioners purchased goods and the sale consideration including tax component was paid to the sellers only through banking channels. However during inspection by the department, it came to light that supplier did not pay any tax to the Government. The department passed orders levying entire liability on recipient and neither examined the sellers nor initiated any recovery proceedings against them in first place.

The Court criticized the approach of the authorities and held that "When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him. This is all the more necessary because the respondent has taken a stand that the petitioners have not even received the goods and had availed ITC on the strength of generated invoices. Thus, the Court quashed the orders against the recipient and instructed that enquiry should be made against the seller.

Impact: Where tax has not been paid by supplier, ITC of recipient cannot be reversed unless department has taken reasonable steps to recover such tax from the supplier first.

10. Canon India (P.) Ltd. v. Commissioner of Customs - [2021] 125 taxmann.com 188 (SC)

The issue under consideration was whether the Directorate of Revenue Intelligence ('DRI') has the authority in law to issue a show-cause notice under Section 28(4) of the Customs Act for recovery of duties allegedly not levied or paid when the goods have been cleared for import by a Deputy Commissioner of Customs who decided that the goods are exempted.

The Hon'ble Apex Court observed that Section 28(4) (supra) empowers the recovery of duty not paid, etc. and confers the power of its recovery on 'the proper officer'. When the statute directs that 'the proper officer' can determine duty not levied/not paid, it does not mean any proper officer but that proper officer alone. It is completely impermissible to allow an officer, who has 'not' passed the original order of assessment, to re-open the assessment on the grounds that the duty was not paid/not levied, by the original officer who had decided to clear the goods and who was competent and authorized to make the assessment. The section must therefore be construed as conferring the power of such review on the same officer or his successor or any other officer who has been assigned the function of assessment. In other words, an officer who did the assessment could only undertake reassessment. Given the above, the Hon'ble Apex Court held that the show-cause notices issued by the Additional Director General of the DRI in the given case are

invalid and was without any authority of law. Hence, such notices and ensuing demands are set-aside.

Impact: DRI officers are not empowered to issue SCN under Customs Act for recovery of duty, interest or penalty. Such SCN are without jurisdiction.

11. Abdul Mannan Khan v. Goods & Services Tax Council [2021] 127 taxmann.com 357 (Calcutta)

The petitioner while uploading Form GSTR-1 (return) inadvertently reported a particular sale made to the registered company as an unregistered sale. Subsequently, after one and half years of the period concerned, the buyer informed the petitioner that they were not getting credit of the Input Tax Credit due to an inadvertent mistake of the petitioner. The petitioner thereafter made an application seeking rectification of the GSTR-1 Form. This application was rejected on the ground that the period for making such an application expired as per Section 37 of the GST Act. Aggrieved by the communication of the SGST authorities, writ petition was filed.

The Honourable Court observed that there was no reason to interfere as the statute has provided a period of limitation for seeking rectification. The writ court cannot, by itself, condone such a limitation period. Condoning such delay would make the provision otiose and open the floodgates for similar cases. Therefore, it was held that the claim of the petitioner for rectification of accounts was to be rejected.

Impact: GSTR-1 cannot be rectified after the due date as given in the Act i.e. Due Date of filing GSTR-3B for the month of September of the subsequent year.

12. Comsol Energy (P.) Ltd. v. State of Gujarat [2021] 127 taxmann.com 736 (Gujarat)

The applicant filed refund claims of IGST paid on Ocean Freight under reverse charge mechanism after the decision of Court in its own case wherein levy of IGST on such service was held unconstitutional. The department issued Deficiency Memo on an erroneous premise that the refund claim was not filed within the statutory time limit as provided under section 54 of the GST Act. It filed a writ application against the same.

The Court observed that the levy of the IGST under the RCM on the Ocean Freight for the service provided by a person located in non-taxable territory by way of transportation of goods through the vessel from a place outside India to customs frontier of India was already held as unconstitutional. Therefore, the amount of IGST collected by the Central Government was without authority of law, the department was obliged to refund the amount erroneously collected. Since section 54 would be applicable only for claiming refund of any tax paid under provisions of GST Act and the amount collected by the department without the authority of law not to be considered as tax collected by them, section 54 would not be applicable and thus, deficiency memo was to be quashed and set aside. Thus, the Court directed the department to process the refund claim filed in the prescribed form RFD-01 online portal for the month of February 2018 and March 2018.

Impact: In case ITC of GST paid under RCM on ocean freight has not been claimed, the refund of said amount can be claimed without following the statutory time limit of 2 years from the date of payment of tax.

13. ARS Steels & Alloy International (P.) Ltd. v. State Tax Officer, Group-I, Chennai [2021] 127 taxmann.com 787 (Madras)

The petitioners were engaged in the manufacture of MS Billets and Ingots. MS scrap was an input in the manufacture of MS Billets and the latter, in turn, would constitute an input for the manufacture of TMT/CTD Bars. There was a loss of a small portion of the inputs, inherent to the manufacturing process. The department issued orders seeking to reverse a portion of the ITC claimed by the petitioners, proportionate to the loss of the input, referring to the provisions of Section 17(5)(h) of the GST Act. The petitioner filed a writ petition against the same.

The High Court observed that assessment orders rejected a portion of ITC claimed, invoking the

provisions of Section 17(5)(h) which relates to goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. The situations as set out in clause (h) indicate loss of inputs that are quantifiable and involve external factors or compulsions. A loss that is occasioned by consumption in the process of manufacture is one that is inherent to the process of manufacture itself. Therefore, the reversal of ITC involving Section 17(5)(h) by the revenue, in cases of loss by consumption of input which is inherent to manufacturing loss is misconceived and not correct; as such loss is not contemplated or covered by the situations adumbrated under section 17(5)(h). Thus, the orders requiring reversal would be liable to be set aside.

Impact : No reversal of ITC in case of loss by consumption of input which is inherent to manufacturing loss

14. Nkas Services Pvt Ltd vs State of Jharkhand 2021-TIOL-2079-HC-Jharkhand-GST

Petitioner was issued a Show-cause notice by the Deputy Commissioner of State Taxes under Section 74 of the JGST Act, 2017. The notice issued in a format without even striking out any irrelevant portions and without stating the contraventions committed by the petitioner i.e. whether its actuated by reason of fraud or any wilful misstatement or suppression of facts in order to evade tax. The petitioner was issued only DRC-01 but actual SCN was not served. Further the issue involved in the SCN was mismatch of ITC between GSTR-3B and GSTR-2A and was issued under Section 74 of the Act.

The Honorable Court held that Proceedings under Section 74 have a serious connotation as they allege punitive consequences on account of fraud or any wilful misstatement or suppression of facts employed by the person chargeable with tax. In absence of clear charges which the person so alleged is required to answer, the noticee is bound to be denied proper opportunity to defend

itself. This would entail violation of principles of natural justice which is a well-recognized exception for invocation of writ jurisdiction despite availability of alternative remedy. Impugned notice completely lacks in fulfilling the ingredients of a proper show-cause notice under Section 74 of the Act. A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the JGST Rules, 2017 cannot substitute the requirement of a proper show-cause notice. Court finds that upon perusal of GST DRC-01 issued to the petitioner, although it has been mentioned that there is mismatch between GSTR-3B and 2A, but that is not sufficient as the foundational allegation for issuance of notice under Section 74 is totally missing and the notice continues to be vague. Thus Impugned notice and the summary of show-cause notice in Form GST DRC-01 are quashed.

Impact: Issuance of DRC-01 without proper SCN is an invalid service under Rule 142 of the CGST Rules. Further SCN for mismatch of ITC in GSTR-2A and GSTR-3B under Section 74 of the Act is also proper.

15.Yasho Industries Ltd. v. Union of India [2021] 127 taxmann.com 781 (Gujarat)

The inquiry was initiated against the petitioner and a summons was issued. The petitioner filed the writ petition challenging the summons on the ground that DGGI wrongly assumed jurisdiction to issue summon under section 70 by virtue of Circular dated 5-7-2017 and the same was without jurisdiction.

the writ petition challenging the summons on the ground that DGGI wrongly assumed jurisdiction. The Honourable High Court observed that a proper officer has the power to summon any person whose attendance he considers necessary either to give evidence or to produce documents in any inquiry in the same manner in case of a Civil Court under CPC. As per the definition of 'proper officer' contained in

section 2(91), a 'proper officer' in relation to any function to be performed under CGST Act means Commissioner or Officer of Central Tax, who is assigned that function by Commissioner. In the instant case, the summons was issued by an officer of Directorate General of Goods and Services Tax Intelligence (DGGI) holding the designation of Senior Intelligence Officer, who was appointed as Central Tax Officer with all powers under CGST Act. It was also observed that the officer was assigned powers of a proper officer by Board vide Circular dated 5-7-2017 issued in exercise of powers conferred by clause (91) of section 2 of CGST Act read with

section 20 of the IGST Act. Therefore officer of DGGI was the proper officer in relation to function to be performed under CGST Act as contemplated under section 2(91), and therefore, he was entitled to issue summons under section 70 of the CGST Act in connection with inquiry initiated against petitioner.

DGGI wrongly assumed jurisdiction to issue summon under section 70 by virtue of Circular dated 5-7-2017 and the same was without jurisdiction.

16.LGW Industries and Ors vs UOI and Ors 2021-TIOL-2308-HC-KOL-GST

The petitioners in those writ petitions are aggrieved by the impugned notices issued by the respondents concerned for not allowing the petitioners, who are the purchasers of the goods in question and refusing to grant the benefit of input tax credit (ITC) on purchase from the suppliers and also asking the petitioners to pay penalty and interest under relevant provisions of GST Act

The case of department was that the suppliers from whom the petitioners/buyers were claiming

to have purchased goods were all fake and non existing and the bank accounts opened by those suppliers were on the basis of fake documents and petitioners' claim of benefit of input tax credit was not supported by relevant documents and that the petitioners have not verified genuineness and

identity of aforesaid suppliers who were registered taxable persons (RTP) before entering into any transaction with those suppliers. –

Petitioners submit that they have paid the amount of purchases in question as well as tax on the same not in cash and all transactions were through banks and petitioners are helpless if at some point of time after transactions were over, if department concerned finds on enquiries that the aforesaid suppliers (RTP) were fake and bogus and on this basis petitioners could not be penalized unless the department/respondents establish with concrete materials that the transactions in question were outcome of any collusion between petitioners/purchasers and suppliers in question.

It was held by the Honorable Court that it cannot be said that there was any failure on the part of petitioners in compliance of any obligation required under statute before entering the transactions in question or for verification of genuineness of suppliers in question. The matter was remanded back to respondents concerned to consider afresh the cases of petitioners. If it is found upon considering the relevant documents that all the purchases and transactions in question are genuine and supported by valid documents and transactions in question were made before the cancellation of registration of those suppliers, the petitioners shall be given the benefit of input tax credit in question

Impact: Parameters were laid down to determine when ITC of recipient is to be treated genuine and admissible even if supplier is absconding.

(Compiled by CA Yash Dhadda and CA Shuchi Sethi)



Expert's Insight



GSTR 3B vs GSTR 2A/2B

Introduction

In the past few months availment of ITC in accordance with GSTR 2A/2B was already a big fuss, and with the changes applicable with effect from 01-01-2022 in section 16(2) and Rule 36(4), it now has lag backing. Earlier, the taxpayer was allowed to avail ITC on self-assessment basis, but now he is required to match the same with GSTR 2B at invoice level.

The amendments that are effective from January 01, 2022 vide notification no. 39/2021 of CT dated 21-12-2021 and notification no. 40/2021 of CT dated 29-12-2021 read as follows:

Section 16 2(aa)

Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

“(aa) The details of invoices or debit notes referred to in clause (a) has been furnished by the supplier in the statement of outward supply and such details

have been communicated to the recipient of such invoice and debit notes in the manner specified under Section 37.”

Rule 36(4)

(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless,—

- (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and
- (b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.]

Rule 60(7)

(7) An auto-drafted statement containing the details of input tax credit shall be made available to the registered person in FORM GSTR-2B, for every

month, electronically through the common portal, and shall consist of—

- (i) the details of outward supplies furnished by his supplier, other than a supplier required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1, between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous month to the due date of furnishing of FORM GSTR-1 for the month;
- (ii) the details of invoices furnished by a non-resident taxable person in FORM GSTR-5 and details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 and details of outward supplies furnished by his supplier, required to furnish return for every quarter under proviso to sub-section (1) of section 39, in FORM GSTR-1 or using the IFF, as the case may be,—

- (a) for the first month of the quarter, between the day immediately after the due date of furnishing of FORM GSTR-1 for the preceding quarter to the due date of furnishing details using the IFF for the first month of the quarter;
- (b) for the second month of the quarter, between the day immediately after the due date of furnishing details using the IFF for the first month of the quarter to the due date of furnishing details using the IFF for the second month of the quarter;
- (c) for the third month of the quarter, between the day immediately after the due date of furnishing of details using the IFF for the second month of the quarter to the due date of furnishing of FORM GSTR-1 for the quarter;

(iii) the details of the integrated tax paid on the import of goods or goods brought in the domestic Tariff Area from Special Economic Zone unit or a Special Economic Zone developer on a bill of entry in the month.

The above provision allows availment of the ITC on invoices or debit notes only when: -

- a.** Details of the same have been furnished by supplier in Form-GSTR-1; and
- b.** Such details have been communicated to

recipient in the manner specified in Section 37.

In simpler terms the 5% grace of the eligible credit reflecting in GSTR 2A/2B which was available prior to 1st Jan, 2022, has been now done away with. The above rules make it a mandatory requirement for taxpayer to match their ITC with the details of invoices which have been uploaded by suppliers in their statement of outward supply i.e. Form GSTR-1 or IFF and to ensure that the same is reflecting in their Form GSTR 2B before availing ITC in respect of the same.

Now, there are three phases of availing ITC since the inception of GST:

Phase 1: From 01-07-2017 to 08-10-2019, where GSTR 2A and 3B matching was not mandatory.

Phase 2: From 09-10-2021 to 31-12-2021, where GSTR 2A and 3B matching was required upto 120%/110%/105%.

Phase 3: 01-01-2022 onwards, where GSTR 2B and 3B matching is mandatory at invoice level.

Contradictions

Section 41

Section 41 allows a taxpayer to provisionally avail ITC on the basis of self-assessment done by the taxpayer through his return without considering the fact whether the said invoices are reported by the supplier or not. Whereas, Section 16(2)(aa) makes it mandatory to avail ITC only when the invoices are furnished by the supplier and communicated to the recipient.

14,000	291 859,36	
40,000	127 500,00	
15,000	90 44,18	
741,000	32 965,47	
4,000	46 382,00	
	342,6	
12,000	442 629,2	
105,00	360 500,00	
14,000	44 12,00	24 91
2,000	35 532,00	35 532,00
1,000	3 000,00	
1,000	3 000,00	
52,000	7 906,00	1 890,00
50,000	4 378,00	
2,000	3 528,00	00,00
1 129,000	826 865,10	00

Section 43A

Section 43A as introduced by CGST (Amendment) Act, 2018 (yet to be effective) submits the procedure for furnishing return and availing ITC, notwithstanding anything contained in Section 16(2). Section 43A (4) provides that ITC in respect of such outward supplies which are not reported by the supplier on the common portal could be availed to the maximum amount not exceeding twenty percent of the ITC available in respect of the matched invoices. However, Section 16(2)(aa) makes it mandatory to avail ITC only when the invoices are furnished by the supplier and communicated to the recipient and Rule 36(4) make it mandatory to avail ITC only as per GSTR 2b. The question that arises is that where is the space for unmatched ITC?

Rule 59 or Rule 60?

The newly inserted section 16(2)(aa) specifies the manner of communication to the recipient as per section 37 of the Act, but the ambiguity in the language gives birth to new litigation since the rule under section 37 is rule 59, however currently Form GSTR 2A and 2B have been specified under Rule 60, which draws its powers from section 38 of the Act.

Applicability prior to Jan 2022 also?

Although the newly inserted provision is effective from 01-01-2022, yet, another question that comes up is whether it would affect the ITC availed in the period prior to 1st Jan, 2022? If yes, then it is going to be another serious challenge for the taxpayers to explain the availment of the input tax credit in respect of invoices not reflecting in GSTR 2A/2B

Compliance to be taken up from 1-1-2022?

The taxpayers are now bombarded with a to-do list of activities to adhere to compliances w.e.f. 01-01-2022. The list starts with:

- The real time matching of ITC to be availed with GSTR 2A/2B at invoice level
- Follow up with the suppliers for incorrect filing or non-filing of their GSTR 1
- The supplier has also filed his GSTR 3B
- To ensure timely filing of their own GSTR 1 so that the recipient can avail ITC

Along with above, following conditions need to be satisfied by registered person under Section 16(2) of the CGST Act for availing ITC on inward supplies of goods or services or both:

- The recipient is in possession of tax invoice or debit note issued by a supplier;
- The details of the above-mentioned invoice or debit note have been furnished by the supplier

in the statement of outward supplies in GSTR-01 or using invoice furnishing facility and such details have been communicated to the recipient in Form GSTR-2B under Rule 60(7) of the CGST Rules;

- The recipient has received the goods or services or both;
- The tax charged in respect of such supply has been actually paid to the Government by the supplier; and
- The recipient has furnished the return under Section 39 of the CGST Act.

Conclusion

The government has introduced these provisions in order to cut off erroneous, fraudulent and fake input tax credit availment by handful taxpayers. But, is it actually fair to disallow ITC to the honest taxpayers for non-compliance by their suppliers? It will be really interesting to see how these amendments are accepted by the taxpayers.

Written by Shefali Jain Bang

997,000	1 164 228,50
183,000	566 934,54
14,000	291 859,36
40,000	127 500,00
15,000	90 44,18
741,000	32 965,47
4,000	46 382,3
	342,6
12,000	442 629,2
105,000	360 500,0
14,000	44 12,00
2,000	35 532,0
1,000	3 000,00
1,000	3 000,00
52,000	7 906,00
50,000	4 378,00
2,000	3 528,00
1 129,000	826 865,10
1 007,000	755 600,00



Withdrawal of application for cancellation of registration in FORM REG - 16 by taxpayer

Functionality has been introduced on the GST portal for withdrawal of application for cancellation of registration, filled in form REG-16, provided no action has been initiated by the tax officer against their application.

Providing effective date of suspension in taxpayers profile

The effective date of suspension of a taxpayer is also displayed on the portal while accessed using "search taxpayer" functionality.

Enabling EVC for all Taxpayers

Earlier all the taxpayers registered as companies were mandatorily required to use DSC for all online process on GST Portal. Now, the Facility of using EVC, in addition to DSC has been extended to such taxpayers.

Change in undertaking to be submitted by taxpayer for issuance of form PMT-03

To enable tax officer to issue PMT03, an undertaking has to be filed by the taxpayer. The Text in the Undertaking Form to be submitted by the taxpayer, include both credit & Cash Ledgers enabling re-credit inadmissible amount to respective ledgers.

Removal of validation for all minor heads except tax/cess in form GST APL-01, for refund module

To allow applicant to file appeal for interest on delayed grant of refund, the earlier validation on the value of interest and penalty amounts to not exceed the claimed amount / amount in the original order, has been removed from the appeal form APL-01.

Updating the description in ledger for MOV- 11, rectified MOV-09/MOV-11

In case an order/rectification order is issued in form GST MOV 09/11, the description in the liability ledger has now been updated to indicate the demand type.

Rectification of order (DRC-08) functionality in enforcement module (For MOV-09/11 orders)

For cases where the tax officers the demand order (Form GST DRC -07) or issues rectification or withdrawal order (Form GST DRC -08) in transit cases, following functionality has been enabled for the taxpayers:

Orders in Forms MOV 09/11 have been provided with a hyperlink "Request for rectification", by clicking which, the details of relevant order will get auto Populated and the taxpayer will be able to choose the reason for rectification and also enter explanatory text against each selected reason, upload attachments, if needed, verify and submit the same.

Filing of application in form GST DRC-20 by Taxpayer for payment of recovery amount in installments or seeking extension of time

In view of Notification No.03/2019-CT (Rate), dated 29.03.2019, which, inter alia, provides for the register person to file an appeal in Form GST DRC-20, seeking extension of time for payment of taxes or any amount due or for allowing payment of such taxes or amount in installments in accordance with the provisions of section 80.

New On GSTN Portal



The above notification also empowers the commissioner to issue an order in Form GST DRC-21, allowing the taxable person further time to make Payment and/or to pay the amount in monthly installments, not exceeding Twenty-four, as he may seem fit.

The taxpayer will now be able to file an application seeking extension of time for allowing payment in installments provided the demand is not less than Rs.25000.

Implementation of Rule -59(6), as amended, on GST portal

As per Notification No. 35/2021 – Central Tax dated 24th September 2021, clause (a) of the sub-rule (6) of Rule 59 of CGST Rules, 2017 was amended. By way of this amendment, for the words “for preceding two months”, the words “for the preceding month” were substituted with effect from 1st January 2022. This means that from 1st January 2022 onwards, if a monthly filer has not filed the GSTR-3B for the preceding month, then such taxpayer will not be allowed to file the GSTR-1 for the subsequent month, till the GSTR-3B for the preceding month is filed.

Mandatory Aadhaar Authentication for a registered Person

The Central Government vide Notification No. 38/2021-CT dated 21.12.2021 has notified January 1, 2022 as the implementation date for Rule 10B of CGST Rules, 2017.

In the said rule, **it is mandatory for the registered person to undergo Aadhaar authentication** for the below purposes:

1. Filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23 of CGST Rules, 2017
2. Filing of refund application in FORM RFD-01 under Rule 89 of CGST Rules, 2017
3. Refund of the IGST paid on goods exported out of India under Rule 96 of CGST Rules, 2017.

The taxable person, who has not yet authenticated their Aadhaar, may like to go through this authentication process before filing the above two applications and enabling GST system to validate and transmit the IGST refund data from GST system to ICEGATE system.

If Aadhaar number has not been assigned to the concern person for Aadhaar authentication as specified above, such person may undergo e-KYC verification by furnishing the following:

- (a) She/he will feed Aadhaar Enrolment ID and upload the acknowledgement; and
- (b) She/he shall also upload any one of the following documents:

- (i) Bank passbook with photograph; or
- (ii) Voter identity card issued by the Election Commission of India; or
- (iii) Passport; or
- (iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988):

Provided further that such person shall undergo the Aadhaar authentication within a period of thirty days from allotment of the Aadhaar number.

Aadhaar authentication or e-KYC verification before filing of refund may be completed by navigating to "Dashboard > My Profile > Aadhaar Authentication Status"

GSTR-1/IFF

A revamped & enhanced version is being made available on the GST Portal to improve the taxpayer experience. This advisory covers the changes being brought in Phase -1 while the advisory about Phase -2 changes would follow.

GSTR-1 can be viewed as usual by navigating from Returns Dashboard > Selection of Period > Details of outward supplies of goods or services GSTR-1 > Prepare Online.

The following provides an overview of the updated functionality and their benefits in Phase 1.

1. Reorganized GSTR-1 Dashboard : Taxpayers will now experience an enhanced online user interface in GSTR-1/IFF with the following changes.

1. GSTR-1/IFF has been grouped in two sections namely ADD RECORD DETAILS and AMEND RECORD DETAILS.

2. All the tables/tiles for new details addition shall be available under ADD RECORD DETAILS section while all the tables/tiles for amending previously filed details shall be available under AMEND RECORD DETAILS section. Re-arrangement of tables/tiles shall ensure that taxpayers can navigate in an easy manner to add or amend record details in the GSTR 1/IFF.

3. By default, ADD RECORD DETAILS section shall be in expanded form (visible) and AMEND RECORD DETAILS section shall be in collapsed form (hidden). Taxpayers can expand or collapse these sections as per the requirement. As it has been observed that only around 1% of details added are amended by taxpayers, that it why it will be in collapsed mode.

4. E-invoice advisory and help buttons have been moved to the top of the dashboard page for ease of access. It also is notable that e-invoice provisions are applicable only to selected taxpayers, having aggregate turnover above a particular threshold.

2. Table/Tile Document Counts– The document count for each tile (table) has been made more informative with colour coding. The status of uploaded (Saved, Pending, Errored) documents with their count will also be made available. Taxpayer can now ascertain if there are any pending or errored records in any of the tables of GSTR-1/IFF from the dashboard itself. System shall update the count of records in the tiles on real time basis which will help in easy reconciliation. In case any record added by taxpayer is errored out, then the tile will be highlighted in red colour.

3. Enhancement in B2B and CDNR table/tile – Taxpayers will now be able to view a new record details table with the details of the recipient -wise count of records. Record details table will have the following columns:

1. **Taxpayer type** – Type of recipient taxpayer (Regular, SEZ, and Composition) shall be displayed in this column.

2. **Processed invoice** – Number of processed invoices will be available in this column with hyperlink. On clicking it, the taxpayer will navigate to document details page to view all the records added for the respective recipient(s).

3. **Pending/errored invoice** - Number of pending invoices will be available in this column with hyperlink. On click of it, taxpayer can navigate to pending/errored records details page to view all the records which are in pending or errored status for the respective recipient(s).

4. **Add Invoice** – Taxpayer can add new records for the selected recipient. On click of + symbol, add page shall open with pre-filled recipient GSTIN. On click of save, add page will reopen so that taxpayers can continue to add multiple records.

5. **Search** - A general search functionality has been added in Document details page. Using this, taxpayer can now search specific record pertaining to a specific GSTIN. This will help taxpayer to search added records seamlessly.

4. Records Per page feature -System will now provide the records per page feature in all the tables under ADD RECORD DETAILS section leading to ease of viewing. This feature will allow the taxpayers to customized number of records to be viewed on per page. By default, the Records per page will be set at 10 records per page and can be increased to view 50 records per page.

5. Steps to file GSTR-1/IFF - – A new check has been introduced in the system which will check that whether the taxpayer has added new records after generating the summary. Taxpayers may please note that there would be changed flow in such a situation. In case new records have been added, the SUBMIT and PREVIEW buttons will be disabled till a new summary has been generated after updating records. This check will ensure that filing of GSTR-1/IFF always happens with the correct & update summary only, and no mistake happens in this regard. Taxpayer can upload details of outward supplies and file GSTR-1/IFF by following the steps enumerated below:

- a. Taxpayer can add or amend records in respective tables of GSTR-1/IFF.
- b. Once the records are saved, taxpayer shall click on GENERATE SUMMARY button.
- c. After the summary is successfully generated, system will enable PREVIEW and SUBMIT buttons.
- d. If the taxpayer intends to verify summary of GSTR-1/IFF, taxpayer can click PREVIEW button to download summary PDF.
- e. Taxpayer can make necessary changes before SUBIT/FILE of GSTR-1/IFF. However, if any new records are added after generating the summary, the SUBMIT and PREVIEW buttons will be disabled till a new summary has been generated by clicking GENERATE SUMMARY button after updating records
- f. Taxpayer will also be informed to generate new summary, in case the latest summary is not available/generated.
- g. After the changes done in GSTR-1/IFF, taxpayer shall click on Generate

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summary button and can submit/file GSTR-1/IFF.

The next phase of the GSTR-1 enhancement will provide the taxpayers with an enhanced GSTR-1 online summary view, recipient(s) wise summary PDF and remove need of SUBMIT before FILE. The details regarding the same will also be informed to the taxpayers in due course.

On demand fetching of Bill of Entry details from ICEGATE Portal

1. To help importers of goods, and recipients of supplies from SEZ, search Bill of Entry details, which did not auto-populate in GSTR-2A, a self-service functionality has been made available on the GST Portal that can be used to search such records in GST System, and fetch the missing records from ICEGATE.

2. Please note that it usually takes 2 days (after reference date) for BE details to get updated on GST Portal from ICEGATE. This functionality should, therefore, be used if data is not available after this period.

The reference date would be either Out of charge date, Duty payment date, or amendment date - whichever is later.

3. Taxpayers can follow the below steps to fetch the requisite details:

a. Login to GST Portal

b. Navigate to Services > User Services > Search BoE

c. Enter the Port Code, Bill of Entry Number, Bill of Entry Date and Reference Date and click the SEARCH button.

Note: The reference date would be either Out of charge date, Duty payment date, or amendment date - whichever is later.

d. If the BoE details do not appear in the Search results, click on the QUERY ICEGATE button, at the bottom of the screen, to trigger a query to ICEGATE.

e. History of fetched BoE details from ICEGATE along with status of query are displayed after 30 minutes from the time of triggering the query.

4. For records of type IMPG (Import of Goods), details of: Period for Form GSTR-2A (system generated Statement of Inward Supplies); Reference Date; Bill of Entry Details like Port Code, BoE Number, BoE Date & Taxable Value; and Amount of Tax would be displayed.

For records of type IMPGSEZ (Import of Goods from SEZ), details of: Period for Form GSTR-2A; Reference Date; GSTIN of Supplier; Trade Name of Supplier; Bill of Entry Details like Port Code, BoE Number, BoE Date & Taxable Value; and Amount of Tax would be displayed.

5. Taxpayers are advised to confirm correct details either from BE documents, or using ICEGATE portal

New functionality of interest calculator in GSTR-3B to be introduced

To facilitate taxpayers in doing self-assessment, the new functionality of interest calculator is being released in GSTR-3B. This functionality will assist taxpayers in calculating the interest applicable for delayed filing of returns. Taxpayers will have to verify and discharge the correct interest liability as per law, as payment of interest is a statutory compliance.

Interest computation

The interest computed by the system has been aligned with the Section-50 of the CGST Act, 2017, **as amended**. Consequently, interest liability for respect of supplies made during the present tax-period and declared in the GSTR-3B for this period will be calculated only on that portion of the tax which is paid by debiting the electronic cash ledger, i.e., tax paid in cash. With respect to the liability pertaining to the previous tax-period(s), and paid in later GSTR-3B, the interest will be computed for the entire liability, whether paid by debiting the electronic cash ledger or electronic credit ledger.

Auto-population of system computed interest

This new functionality will compute the minimum interest applicable on the basis of the values declared by the taxpayers in GSTR-3B for a particular tax-period. This system computed interest will be auto-populated in Table-5.1 of GSTR-3B for the next tax-period, the way it is done for the Late fees at present. The system computed interest values auto-populated in next GSTR-3B return will be kept editable, initially. However, the system generated PDF of filed GSTR-3B will contain both values: the System computed interest, and the user paid interest values.

Scenarios where interest is applicable

Interest liability can arise in cases of either of the following, or both:

i. **Delayed filing of return:** If the present GSTR-3B is filed after the 'due date', then interest will be applicable at prescribed rate of interest from the 'due date' of GSTR-3B for relevant period i.e. till the date of filing of the return.

ii. **Delayed declaration of liability:** If the liability pertaining to previous tax-periods is discharged in the present GSTR-3B, then interest will be leviable from the 'due date' of return for the said previous period till the date of declaration of the liability in the return. Thus, as part of the interest calculator, a new feature has been provided to GSTR-3B for allowing taxpayers to voluntarily declare Tax-period wise break-up of liability. If a taxpayer is discharging liability for any past period(s) in the present GSTR3B, then exact tax-period wise break-up of the same can be provided by the taxpayers. The interest will be thereafter computed by the system accordingly.

Furnishing tax-period wise break-up in GSTR-3B: The return in FORM GSTR-3B, as it is now, allows taxpayers to discharge tax liability for previous tax-periods also, in addition to the tax liability for the present period. However, the tax-period wise break-up of the tax liability is not available in GSTR-3B. Thus, for computing the exact interest liability, the information regarding the tax-period wise break-up of the consolidated tax liability declared by the taxpayer would be required by the system.

In view of above, a **new button** has been added in GSTR-3B, called **Tax Liability Breakup (Voluntary)**, and data is to be entered by clicking this button only by those taxpayers who are making payment for liability pertaining to earlier tax-periods in the present GSTR-3B. In cases where the present GSTR-3B consists of liability only for the present period, the taxpayers can ignore this button, and continue filing their return as usual.

This functionality will be made available on the GST Portal shortly, and the same will be intimated to the taxpayers.

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Thank You