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# NEWSLETTER

## AJAY RATTAN & CO. Chartered Accountants

Newsletter for August'22  
Volume 12, Issue 8



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# COMPLIANCE

## DUE DATES | AUGUST 2022

Due Date	Compliance Detail	Applicable To
<b>7<sup>th</sup></b>	<ul style="list-style-type: none"> <li>a) TDC/TCS deposit</li> <li>b) Equalization Levy deposit</li> </ul>	<ul style="list-style-type: none"> <li>a) Non-Government Deductors</li> <li>b) All Deductors</li> </ul>
<b>10<sup>th</sup></b>	<ul style="list-style-type: none"> <li>a) GSTR – 7 (TDS return under GST)</li> <li>b) GSTR – 8 (TCS return under GST)</li> </ul>	<ul style="list-style-type: none"> <li>a) Person required to deduct TDS under GST</li> <li>b) Person required to collect TCS under GST</li> </ul>
<b>11<sup>th</sup></b>	GSTR – 1 (Outward supply return)	<ul style="list-style-type: none"> <li>a) Taxable persons having annual turnover &gt; Rs. 5 crore in FY 2021-22</li> <li>b) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme.</li> </ul>
<b>13<sup>th</sup></b>	<ul style="list-style-type: none"> <li>a) Invoice Furnishing Facility – IFF (Details of outward supplies of goods or services)</li> <li>b) GSTR-6 [Return by input service distributor (ISD)]</li> </ul>	<ul style="list-style-type: none"> <li>a) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and not opted for Quarterly Return Monthly Payment (QRMP) Scheme.</li> <li>b) Person registered as ISD</li> </ul>
<b>15<sup>th</sup></b>	<ul style="list-style-type: none"> <li>a) Deposit of PF &amp; ESI contribution</li> <li>b) Issue of TDS Certificates for Q1 of FY 22-23 (other than salary)</li> </ul>	<ul style="list-style-type: none"> <li>a) All Deductors</li> <li>b) All Deductors</li> </ul>
<b>20<sup>th</sup></b>	<ul style="list-style-type: none"> <li>a) GSTR-5 (Return by Non-resident)</li> <li>b) GSTR-5A (OIDAR) services return</li> <li>c) GSTR-3B (Summary return)</li> </ul>	<ul style="list-style-type: none"> <li>a) Non-resident taxable person</li> <li>b) OIDAR services' provider</li> <li>c) (i) Taxable person having annual turnover &gt; Rs. 5 crore in FY 2021-22</li> <li>(ii) Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and not opted for Quarterly return Monthly Payment (QRMP) Scheme.</li> </ul>
<b>25<sup>th</sup></b>	Form GST PMT-06 (Payment of tax for QRMP filers)	Taxable persons having annual turnover ≤ Rs. 5 crore in FY 2021-22 and opted for QRMP scheme





[Circular No. 15/2022, Circular No. 16/2022 & Circular No. 17/2022](#)

**CBDT condones delay in filing of Forms 9A, 10, 10B, 10BB (audit reports for claiming tax exemption by certain institutions) for Assessment Year (AY) 2018-19 onwards**

CBDT has issued Circulars nos. 15, 16, and 17 dated 19<sup>th</sup> July 2022 to extend the powers of Principal Chief Commissioner of Income-tax (Pr. CCIT) / Chief Commissioner of Income-tax (CCIT) to admit applications of condonation of delay in filing Form No. 9A, Form No. 10, Form No.10B and Form No.10BB for A Y 2018- 19 or for any subsequent Assessment Years where there is delay of up to 365 days and decide on merits subject to satisfying themselves that the applicant was prevented by reasonable cause from filing such Form within the stipulated time.

**Notification No. 4/2022**

**Procedure of PAN application & allotment through Simplified Proforma for incorporating Limited Liability Partnerships (LLPs) electronically Form FiLLiP of Ministry of Corporate Affairs.**

A Common Application Form (CAF) in the form of Simplified Proforma for incorporating Limited Liability Partnership (LLP) (Form - FiLLiP) has been notified by the Ministry of Corporate Affairs vide notification G. S. R. 173(E), dated 4/03/2022.

**Classes of persons, forms, format, and procedure for Permanent Account Number (PAN) are as under:**

S. No.	Particulars	
1.	Classes of persons to which FiLLiP form will apply	-- Newly incorporated Limited Liability Partnership (LLP)
2.	Applicable form	Simplified Proforma for incorporating Limited Liability Partnerships (Form: FiLLiP) of Ministry of Corporate Affairs (MCA) notified vide notification G.S.R. 173(E), dated 4 <sup>th</sup> March, 2022
3.	Procedure	Application for allotment of Permanent Account Number (PAN) will be filed in FiLLiP form using Digital Signature of the applicant as specified by the Ministry of Corporate Affairs. After generation of Limited Liability Partnership Identification Number (LLPIN), MCA will forward the data in form 49A to the Income-tax Authority under its Digital signature, Class 2/Class 3 of MCA
4.	Format	Xml



## **Expenditure of funds under 'Har Ghar Tiranga' campaign shall be an eligible Corporate Social Responsibility (CSR) activity**

'Har Ghar Tiranga', a campaign launched by the Government of India under the aegis of 'Azadi Ka AmritMahotsav' celebrating 75 years of India's independence, is aimed to invoke the feeling of patriotism in people and to promote awareness about the Indian National Flag.

In this regard, MCA vide circular dated 26<sup>th</sup> July 2022 has clarified that spending of funds for the activities related to the 'Har Ghar Tiranga' campaign, such as the below, shall be an eligible CSR activity on promotion of education relating to Indian culture under Schedule VII of the Companies Act, 2013.

- Mass scale production and supply of the National Flag
- Outreach and amplification efforts; and
- Other related activities

**Circular dated 26<sup>th</sup> July 2022**

## **MCA to launch 1st set of company e-forms on its Version 3 (V3) online portal from 31<sup>st</sup> August 2022 onwards**

MCA vide notice dated 15<sup>th</sup> July 2022 has notified launching of its first set of company e-forms on its V3 online portal from 31<sup>st</sup> August 2022 onwards. Following e-forms shall be rolled out in the 1<sup>st</sup> phase:

- DIR3-KYC Web & DIR3-KYC (Director KYC related forms);
- DPT-3 & DPT-4 (return of deposits); and
- CHG-1, CHG-4, CHG-6, CHG-8 & CHG-9 (charge creation, modification & satisfaction related forms)

To facilitate implementation of these e-forms on the V3 MCA portal, industry has been advised to take note of the following:

- Company e-filings on the version-2 (V2) MCA portal will be disabled from 15<sup>th</sup> August 2022 at 12:00 AM (Indian time) for the above mentioned 9 e-forms.
- Stakeholders to ensure that there are no Service Request No (SRN) with respect to the said 9 e-forms under 'pending payment' & 'resubmission' status as on 15<sup>th</sup> August 2022.
- Offline payments for the above 9 e-forms on the V2 MCA portal would be disabled from 7<sup>th</sup> August 2022 at 12:00 AM (Indian time) and only online mode of payments such as credit / debit card and net banking shall be allowed.

## **Insolvency & Bankruptcy Code (IBC), 2016 - Insolvency Professionals (IPs) mandatorily required to disclose their relationship with engaging parties to Insolvency Professional Agency (IPA)**

Insolvency & Bankruptcy Board of India (IBBI) vide notification dated 4<sup>th</sup> July 2022 has made it mandatory for IPs appointed as Liquidators under the IBC, to disclose their 'Relationship' with the engaging parties to the IPA of which the IP is a member.

IP's relationship with following engaging parties	Disclosure to be made to IPA within 3 days of
Corporate Debtor	IP's appointment
Registered valuers / Accountants / Legal Professionals / other Professionals appointed by the IP	Appointment of these Professionals
Financial Creditors	Constitution of Committee of Creditors
Interim Finance Providers	Agreement with the Interim Finance Provider
Prospective Resolution Applicants	Supply of information memorandum by IP to the Prospective Resolution Applicant
If relationship with any of the above parties comes to notice or arises subsequently	Arising of such notice

### **Situations which lead to constitution of 'Relationship' for this purpose**

- Where the IP or the other professional has derived 5% or more of his / its gross revenue in a year from professional services to the related party
- Where the IP or the other professional is a shareholder, director, key managerial personnel, or partner of the related party
- Where a relative (spouse, parents, parents of spouse, sibling of self and spouse, and children) of the IP or other professional has a relationship of either of above 2 kinds with the related party
- Where the IP or other professional is a partner or director of a company, firm or LLP, such as, an IP entity or registered valuer, the relationship of above 3 kinds of every partner or director of such company, firm or LLP with the related party

**Responsibilities to be undertaken by IP during discharge of his duties as Liquidator under IBC**

- Ensure timely and correct disclosures made by him to the IPA of which he is a member.
- Provide a confirmation to the IPA that the appointment, if any, of every other Professional has been made at arms' length relationship.
- IP shall be duty-bound to raise bills or invoices in his name towards his fees and such fees shall be paid to him through a banking channel.
- IP shall while undertaking assignments or conducting processes, exercise reasonable care and diligence and take all necessary steps to ensure that the company under liquidation complies with all the applicable laws.

**Notification dated 4<sup>th</sup> July 2022.**



## **Rates on provision of Service changed and shall come into force with effect from the 18<sup>th</sup> July, 2022**

*[Refer Notification no-3/2022 – Central Tax (Rate) dated 13.07.2022]*

### ➤ **GST on GTA Services-**

- RCM on freight applicable from Re. 1 now, exemption of Rs. 750/- abolished, all consignment notes for freight below Rs. 750/- and where freight for single carriage is up to Rs. 1,500/- shall also be taxable at par with freight of higher value.
  - Goods Transport Agency (GTA) has been provided dual option under forward charge - One option is that the GTA pays tax @ 5% under forward charge without availing ITC & 2nd Option is that GTA pays tax @ 12% under forward charge by availing ITC. These options are required to be exercised once in every financial year independently. Option for 2022-23 can be exercised by 16-08-2022 while option for 2023-24 and thereafter is required to be exercised by 15th March preceding the beginning of the financial year. Hence, option for 2023-24 can be exercised before 15-03-2023.
  - If an option is exercised by a GTA, it needs to mention a declaration on every tax invoice cum consignment note that option has been exercised in this behalf. Registered persons liable to pay freight in such a case need not pay tax under RCM on freight covered by such invoices bearing declaration.
  - Renting of goods carriage with the operator and where cost of fuel is included in consideration charged from service recipient shall be taxable @ 12%. Renting of goods carriage with an operator where cost of fuel is not included in the consideration is taxable @ 18%.
  - However, Services by giving on hire to a GTA, a means of transportation of goods are exempt.
- **Rent (excluding ICU) exceeding Rs 5,000/- per day** per patient charged by a hospital shall be taxed to the extent of amount charged for the room at 5% without ITC.



## [Renting of residential dwelling to GST registered person – Withdrawal of exemption & introduction of GST @ 18% on reverse charge basis \(With effect from the 18<sup>th</sup> July 2022\)](#)

*[Refer Notification no-4/2022 and 5/2022 – Central Tax (Rate) dated 13.07.2022]*

Earlier, renting of residential dwelling was not subject to GST. Now, the Central Board of Indirect Taxes & Customs has withdrawn the exemption in case of residential premises being let out to a registered person. The renting of residential dwelling to GST registered person will be taxable @ 18% and the liability to pay the GST shall be on tenant on reverse charge basis.

## [GST on packaged food items \(effective from the 18<sup>th</sup> of July 2022\)](#)

*[Refer Notification No- 6 & 7/2022- Central Tax (Rate) dated 18.07.2022]*

The expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.'

## [Amendment made in Section 49 \(10\) and Section 50 \(3\) of CGST Act, 2017](#)

*[Refer Notification no-9/2022 - Central Tax (Rate) dated 05.07.2022].*

- **Section 49 (10): A registered person can now transfer the balance in electronic cash ledger under this Act, to the ECL for**
  - IGST, CGST, SGST/UGST, Cess etc.
  - IGST & CGST of a distinct person.

Note: -Balance can only be transferred to the distinct person if the person has not any unpaid liability in electronic liability register.

- Retrospective amendment u/s 50 (3) w.e.f. 1<sup>st</sup> July 2017, in respect of interest, the same shall be payable not more than 24%, on the wrongly availed input **availed & utilized**.

## [CBIC exempts certain taxpayers from filing Form GSTR-9 \[annual return by regular taxpayers including Special Economic Zone \(SEZ\) units & developers\] for Financial Year \(FY\) 2021-22](#)

*[Refer Notification No- 10/2022- Central Tax dated 05.07.2022]*

CBIC has exempted taxpayers whose aggregate turnover in FY 2021-22 is up to Rs. 2 Crore from the requirement to file annual return in Form GSTR-9 for FY 2021-22.

## [Furnishing Form GST CMP-08 \(quarterly summary return for composition scheme taxpayers\) for quarter ended June 2022](#)

*[Refer Notification No- 11/2022- Central Tax dated 05.07.2022]*

CBIC has extended the due date for filing CMP-08 form from 17 July 2022 to 31 July 2022.

## **Waiver of late fee for delay in filing of Form GSTR-4 (annual return for composition taxpayers) for FY 2021-22**

***[Refer Notification No- 12/2022- Central Tax dated 05.07.2022].***

Form GSTR-4 is an annual return to be filed for each FY by taxpayers who have opted for composition scheme during the relevant FY. For FY 2021-22, the due date of filing Form GSTR-4 was 30 April 2022. In case of any delay, a late fee of Rs. 50 per day is chargeable subject to maximum of Rs. 2,000. In May 2022 CBIC had waived the late fees till 30 June 2022 for delay in filing of Form GSTR-4 for FY 2021-22. On recommendation of the GST Council, CBIC has now extended the relaxation from 30 June 2022 to 28 July 2022.

## **CBIC extends the sunset date till 30 September 2023 for issue of order related to recovery of tax for FY 2017-18**

***[Refer Notification No- 13/2022- Central Tax dated 05.07.2022].***

As per Section 73 of Central Goods & Services Tax Act, 2017 (CGST Act, 2017), GST officer may determine the amount of demand payable by a taxpayer for tax not paid or ITC wrongly availed. The GST officer can issue the order within 3 years from the due date for filing of annual return (in Form GSTR-4 or GSTR-9 as the case may be), for the FY for which the tax was not paid. CBIC on recommendation of GST Council has extended the sunset date for FY 2017-18 from 31 January 2023 to 30 September 2023.

## **CBIC excludes COVID period from calculation of time limitation for (a) issue of order for recovery of erroneous refund & (b) filing of refund application by taxpayer**

***[Refer Notification no-13/2022 – Central Tax dated 05.07.2022]***

Time period extended for	Due date	Exclusion of COVID period
Recovery of erroneous refund by GST officer as per section 73 of CGST Act, 2017 GST officer may pass an order determining the amount to be recovered from a taxpayer on account of claim of erroneous refund	Due date to pass such recovery order is 3 years from the date of grant of erroneous refund	CBIC on recommendation of GST Council has excluded the period from 1 March 2020 to 28 February 2022 for computation of such time period
Filing of refund application by taxpayer as per section 54 of CGST Act, 2017 a taxpayer claiming GST refund may make an application for refund with the GST authorities.	Due date for filing refund application is 2 years from the 'relevant date'. 'Relevant date' for each type of GST refund (such as export of goods, deemed export, export of services, inverted duty structure etc.) has been prescribed in the law.	

## CBIC amends CGST Rules, 2017 to streamline compliances under GST

[Refer Notification no-14/2022 – Central Tax dated 05.07.2022]

CBIC on recommendation of GST Council has amended certain CGST Rules in order to ensure streamlining of compliances under GST. The key amendments made are as below.

Amendment regarding	Background	Existing regulation	Amendment
Deemed revocation of suspension of registration	As per section 29 of CGST Act, 2017 GST officer may cancel registration of a taxpayer where he has not filed the GST returns for beyond 3 months	If the taxpayer files all the pending GST returns, still the taxpayer has to approach the GST officer for revocation of suspension	CBIC has inserted new proviso relating to deemed revocation which states that where the registration has been suspended due to non-filing of GST Returns, the suspension of registration shall be deemed to be revoked upon filing of all pending GST returns
Declaration for non-applicability of e-Invoice	As per Rule 48 of CGST Rules, 2017 certain notified classes of taxpayers are required to prepare e-invoice if their aggregate turnover in any FY from 2017-18 onwards exceeds Rs. 20 crores (except certain taxpayers like insurance companies, banking companies, goods transport agency etc.)	For taxpayers who are exempt from requirement to issue invoice, there was no requirement to give any declaration regarding such exemption in the tax invoice	A taxpayer who is exempt from issuing e-invoice must mention the following declaration on the tax invoice. 'I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule   '
Manner of calculating interest on delayed payment of tax due to nonpayment / short payment	Interest @ 18% per annum is applicable on delay in payment of tax liability	No clarification was available relating to amount and period of tax to be considered for calculation	<ol style="list-style-type: none"> <li>1. In case of delay in filing of return, interest will be levied only on the net tax liability which is being paid by debiting the ECL unless such return is being filed after proceedings initiated by tax department.</li> <li>2. In all other cases, where the taxpayer fails to pay the tax, the interest will be levied on the amount of tax which remains unpaid for the period starting from the due date for payment of such tax till the date of actual payment</li> </ol>
Manner of calculating interest where ITC has been wrongly availed and utilized	The interest rate is 24% per annum where ITC has been wrongly availed and utilized	No clarification was available relating to amount of ITC and period to be considered for calculation	<ol style="list-style-type: none"> <li>1. Interest shall be calculated on the amount of ITC wrongly availed and utilized for the period starting from the date of utilization till the date of reversal of such ITC or the date of actual payment.</li> <li>2. ITC wrongly availed shall be deemed to have been utilized when balance in ECRL falls below the amount of</li> </ol>

			<p>ITC wrongly availed.</p> <p>3. Where the ITC wrongly availed in the return, the date of utilization shall be considered as earlier of the 'due date of filing the return or the actual date of filing of return'. In all other cases, the date of utilization shall be considered as the date of debit in ECRL</p>
Form GSTR-3B (summary return)	Form GSTR-3B is a self-declared summary return required to be filed by every regular taxpayer to report sales, ITC claimed and net tax payable	All regular taxpayers are required to report the figure of sales irrespective of supply made through ECO or through other platform in the common table of Form GSTR-3B	New Table 3.1.1 which includes taxable supplies on which ECO pays tax and supplies of specified services made through ECO has been inserted.
Form GSTR-9 (annual return by regular taxpayers)	Form GSTR-9 is an annual return to be filed for each FY by the regular taxpayers to report details of sales made, ITC claimed, GST paid, etc. during the year	<p>All regular taxpayers have an option to report consolidated figure for exempted, nil rated and non-GST supplies in table 5D of Form GSTR-9</p> <p>Heading of Part-V of form GSTR-9 is 'Particulars of the transactions for the FY declared in returns of the next financial year till the specified period'</p> <p>Taxpayers have an option to report HSN code wise sales summary in Table 17 of Form GSTR-9</p>	<p>Regular taxpayers are required to report non-GST supplies in table 5F separately and can report consolidated figure of exempted and nil rated supplies in table 5D.</p> <p>The heading shall be replaced as 'Particulars of transactions for the previous FY but paid in the Form GSTR-3B between April 2022 to September 2022'</p> <p>From FY 2021-22 onwards, it shall be mandatory for regular taxpayers to report HSN code as below:</p> <ul style="list-style-type: none"> <li>• 6 digits, if annual turnover in previous FY &gt; Rs, 5 crores</li> <li>• 4 digits, if annual turnover in previous FY ≤ Rs, 5 crores</li> </ul>
Date of application of refund in case of mismatch with Shipping Bill	As per Rule 96 of CGST Rules, 2017, the shipping bill filed by a taxpayer shall be deemed to be an application for refund and such application shall be deemed to be filed only when the taxpayer has furnished a valid return in Form GSTR-1 and Form GSTR-3B	When there is any mismatch between the data furnished by the taxpayer in shipping bill and Form GSTR-1 and the taxpayer has rectified such mismatch in the next return period, in this case, no clarification was available relating to consideration of date of application of refund	In case of such rectification, the date on which such rectification is done by the taxpayer shall be deemed to be the date of application of refund



**CBIC clarifies mandatory furnishing of correct information regarding inter-state supplies & amount of ineligible / blocked Input Tax Credit (ITC) in Form GSTR-1 (statement of outward supplies) & GSTR-3B (summary return)**

**[Refer Circular no-170/2/2022 – Central Tax dated 06.07.2022]**

Clarification regarding	Background	Issue	Clarification issued
Furnishing of information regarding interstate supplies made to unregistered person (consumers) and composition taxpayers in Form GSTR-1 & GSTR-3B	The process of return filing has been simplified over a period of time. Form GSTR-3B is getting auto generated on the portal by way auto-population of liabilities from form GSTR-1.	It has been observed by tax department that there are still some infirmities in information being furnished by taxpayers in relation to inter-state supplies made to unregistered person, to composition taxpayers	<p>Taxpayers have been advised to report place of supply (POS) wise details of inter-state supplies made to unregistered persons, composition taxpayers in Table 3.2 of Form GSTR3B, even though the same has been furnished in Table 3.1. Accordingly, taxpayers making inter-state supplies:</p> <ul style="list-style-type: none"> <li>• To unregistered persons, shall also report the details of such supplies, POS wise in table 3.2 of Form GSTR-3B and table 7B or Table 5 or Table 9/10 of Form GSTR-1</li> <li>• To composition taxpayers, shall also report the details of such supplies, POS wise in Table 3.2 of Form GSTR-3B and Table 4A or 4C or Table 9 of Form GSTR-1</li> <li>• Shall update their customer database properly with correct state name and ensure that correct POS is declared in the tax invoice and in Table 3.2 of Form GSTR-3B while filing their return It has also been advised that any amendment carried out in Form GSTR-1 should also be considered while reporting the same in Table 3.2 of Form GSTR-3B</li> </ul>
Furnishing of information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of Form GSTR-3B	The process of return filing has been simplified over a period of time. Form GSTR-3B is getting auto-generated on the portal by way of auto population of ITC from Form GSTR-2B (auto generated inward supply statement)	It has been observed by tax department that there appears to be lack of clarity regarding information about reversal of ITC as well as ineligible ITC in Table 4 of Form GSTR-3B	<p>Taxpayers have been advised to furnish the information regarding ITC availed, reversal thereof and ineligible ITC in Table 4 of Form GSTR-3B and to follow the procedure as under:</p> <ul style="list-style-type: none"> <li>• Total ITC (eligible as well as ineligible) is being auto-populated from Form GSTR-2B in Table 4(A)</li> <li>• Taxpayers will report reversal of ITC, which are absolute in nature and are not reclaimable and ineligible ITC in Table 4(B)(1)</li> <li>• Taxpayers will report reversal of ITC, which are not permanent in nature and can be reclaimed in future in Table 4(B)(2). Such ITC may be reclaimed in Table 4(A)(5) on fulfilment of necessary conditions. Further, all such reclaimed ITC shall also be shown in Table 4(D)(1)</li> <li>• Table 4(B)(2) may also be used by the taxpayer for reversal of any ITC availed in Table 4(A) in any previous tax periods because of some inadvertent mistake</li> <li>• Therefore, the net ITC available will be calculated in Table 4(C) which is as per the formula (4A- [4(B)(1) + 4(B)(2)]) and the same will be credited to the ECRL</li> <li>• As the details of ineligible ITC under section 17(5) are being provided in Table 4(B), no further details of such ineligible ITC will be required to be provided in Table 4(D)(1)</li> <li>• Accordingly, it has been clarified that the reversal of ITC of ineligible credit u/s 17(5) or any other provision is required to be made under Table 4(B) and not under Table 4(D)</li> </ul>

## **CBIC issues clarifications on issues relating to applicability of demand & penalty in respect of transactions involving fake invoices**

*[Refer Circular no-171/3/2022 – Central Tax dated 06.07.2022]*

<b><u>Issue</u></b>	<b><u>Clarification</u></b>
Taxpayer 'A' has issued tax invoice to another taxpayer 'B' without any underlying supply of goods or services or both. 'B' avails ITC on the basis of the said tax invoice and further passes on the said ITC to another taxpayer 'C' by issuing invoices without underlying supply of goods or services or both. Whether 'B' will be liable for the demand and recovery and penal action?	<ul style="list-style-type: none"><li>• In this case, the ITC availed by 'B' in his ECRL on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, has been utilized by 'B' for passing on of ITC by issuing tax invoice to 'C' without any underlying supply of goods or services or both</li><li>• As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The ITC availed by 'B' in his ECRL on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible</li><li>• In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction. Therefore, in these specific cases, no demand and recovery of either ITC wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' u/s 73 or 74 of CGST Act</li><li>• However, in such case, 'B' shall be liable for penal action both u/s 122(1) [(ii) and (iv)] for issue of invoices without any actual supply of goods and/ or services as also for taking/ utilizing ITC without actual receipt of goods and/or services</li></ul>

CBIC has clarified that actual action to be taken against a person will depend upon the specific facts and circumstances of the case and provisions relating to arrest may also be involved if the situation arises.

## **Clarification on various issue pertaining to GST**

*[Refer Circular no-172/4/2022 – Central Tax dated 06.07.2022].*

### **Refund Claimed by the recipients of supplies regarded as deemed export**

The ITC availed by the recipient of deemed export suppliers would not be subjected to provisions of Section 17 of the CGST Act, 2017.

ITC availed by the recipient of deemed export supply for claiming refund of tax paid on suppliers regarded as deemed exports is not to be included in the "Net ITC" for computation of refund of unutilized ITC on account of zero-rated supplies.

### **Interpretation of section 17 (5) of the CGST Act**

The word leasing refers leasing of motor vehicles, vessels and aircrafts only and not to leasing of any other items, accordingly availment of ITC is not barred in case of leasing, other than leasing of motor vehicles, vessels and aircraft.

### **Perquisites provided by employer to the employees as per contractual agreement**

The perquisites provided by the employee in term of contractual agreement entered into between the employer and employee, will not be subjected to GST when the same are provided in terms of contract between the employer and employee.

### **Utilisation of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities.**

Any payment towards output tax, whether self-assessed in the return or payable as a consequence of any proceeding instituted under the provisions of GST laws, can be made by utilization of the amount available in the electronic credit ledger of a registered person.

## **Inverted Duty Structure (IDS) - CBIC issues clarification regarding claiming of refund where the supplier is supplying goods under some concessional notification**

*[Refer Circular no-173/5/2022 – Central Tax dated 06.07.2022]*

### **Issue: -**

Clarification was required with regard to eligibility of refund in cases where the supplier is required to supply goods at a lower rate under concessional benefit allowed by tax department to the buyer.

### **Clarification issued by CBIC: -**

- Refund of accumulated ITC on account of IDS would be allowed in cases where accumulation of ITC is due to tax rate on outward supply being less than the tax rate on inputs (same goods) at the same point of time, due to some concessional rate notification.
- Refund will not be available if the input and output supplies attract different tax rates at different points in time.

## **Prescribing manner of re-credit in electronic credit ledger using FORM GST PMT-03A**

The taxpayer shall deposit the amount of erroneous refund along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 by debit of amount from electronic cash ledger. Till the time an automated functionality for handling such cases is developed on the portal, the taxpayer shall make a written request, in format enclosed as Annexure-A, to jurisdictional proper officer. The proper officer, on being satisfied that the full amount of erroneous refund along with applicable interest, as per the provisions of section 50 of the CGST Act, and penalty, wherever applicable, has been paid by the said registered person in FORM GST DRC-03 by way of debit in electronic cash ledger, he shall re-credit an amount in electronic credit ledger, equivalent to the amount of erroneous refund so deposited by the registered person, by passing an order in FORM GST PMT-03A, preferably within a period of 30 days from the date of receipt of request for re-credit of erroneous refund amount so deposited or from the date of payment of full amount of erroneous refund along with applicable interest, and penalty, whatever applicable, whichever is later.



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