

Recent Notifications in GST including some recent issues

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GST Amendments as per Notification issued on 31st March,2023



BRIEF

- The CBIC has issued eight notifications on 31st March 2023 to give effect to various recommendations made by the GST Council in its 49th meeting held on 18th February 2023.
- The Notifications are primarily aimed at providing amnesty schemes for regularizing various compliances.
- Limitation for passing orders u/s 73 has also been extended.

AMNESTY TO ANNUAL RETURN NON-FILERS

Applicable to	Registered persons who failed to furnish the annual return (GSTR-9) by the due date for any of the financial years 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22.
Relevant provision of the Act/Rules	Sec. 47(2) of CGST Act provides for a late fee of 100 per day of delay subject to a maximum late fee of 0.25% of the turnover in the State. A similar provision exists under the relevant SGST Act making the total late fee – 200 per day.
Scope of amnesty	-Twenty-five rupees/Fifty rupees per day, subject to a maximum of an amount calculated at 0.02 percent. of turnover in the State. -Total amount of late fee payable shall be restricted to 10,000 under CGST Act, A similar notification is expected under the SGST Act, making the total maximum late fee payable 20000.
Conditions for availing amnesty	Furnish the pending annual return between 1st April 2023 to 30th June 2023.
Source	Notification No. 07/2023 – Central Tax dated 31st March 2023

AMNESTY TO FINAL RETURN (GSTR-10) NON-FILERS

Applicable to	Registered persons who failed to furnish the Final return (GSTR-10) .
Relevant provision of the Act/Rules	<p>Sec. 45 of CGST Act states that every registered person who is required to file return in Form GSTR -3B and whose registration is cancelled, must furnish a final return in Form GSTR-10 within 3 months of the date of cancellation or the date of cancellation order, whichever is later.</p> <p>Sec. 47 of CGST Act provides for a late fee of 100 per day of delay in filing such final return subject to maximum of 5000. Similar provisions exist in the SGST Act, taking the total late fee to 200 per day subject to maximum of 10000.</p>
Scope of amnesty	Total amount of late fee payable shall be restricted to 500 under CGST Act. A similar notification is expected under the SGST Act, making the total max. late fee payable 1000.
Conditions for availing amnesty	Furnish the pending annual return between 1st April 2023 to 30th June 2023.
Source	Notification No. 08/2023 – Central Tax dated 31st March 2023

AMNESTY TO GSTR-4 NON-FILERS

Applicable to	Composition taxpayers who have not filed their annual return in FORM GSTR-4 for F.Y. 2017-18, 2018-19, 2019-20, 2020-21 or 2021-22.
Quantum of waiver	<p>Zero late fee in case where there is no additional liability payable as per GSTR-4.</p> <p>In case there is additional tax payable as per GSTR-4, maximum late fee is capped at 250 under CGST Act. A similar notification is expected under SGST Act. Hence, the maximum late fee shall be 500.</p>
Condition for availing amnesty	Registered person must file GSTR-4 between 1st April 2023 to 30th June 2023.
Source	Notification No. 02/2023 – Central Tax dated 31st March 2023

AMNESTY IN THE FORM OF ONE-TIME EXTENSION IN TIME LIMIT FOR FILING APPLICATION FOR REVOCATION OF CANCELLATION OF REGISTRATION

Applicable to	Registered person, whose registration has been cancelled on or before 31st December 2022 for non-filing of returns and who has failed to apply for revocation of cancellation within 30 days from the date to service of cancellation order.
Conditions for availing one time extension	Furnish all pending returns up to the effective date of cancellation of registration by making payment of taxes due as per such returns, along with applicable interest and late fee. Thereafter, apply for revocation of cancellation of registration on or before 30th June 2023.
Note	The benefit of this extension can also be claimed by those whose appeal against the order of cancellation of registration or appeal against the order rejecting application for revocation has been rejected on the ground of failure to adhere to the time limit specified u/s 30(1) of CGST Act.
Source	Notification No. 03/2023 – Central Tax dated 31st March 2023

16(4) issue in case of cancelled registration

- Guj HC in case of Allyssum Infra V/s Union of India (NO. 23556 of 2022 dated 17.04.2023).

6.1 In this regard it is observed that when the competent authority considers the issue of revocation of cancellation of petitioners' GST registration under the aforesaid notification, the petitioners shall be entitled to lodge its claim for availment of Input Tax Credit in respect of the period from the cancellation of the registration till the registration is restored.

AMNESTY SCHEME FOR DEEMED WITHDRAWAL OF BEST JUDGEMENT ASSESSMENT ORDERS ISSUED U/S 62

Applicable to	RP who failed to furnish a return within a period of 30 days from the service of best judgment assessment (BJA) order u/s 62(1) of CGST Act issued on or before 28th February 2023.
Relevant provision of the Act/Rules	Sec. 62(1) of CGST Act provides for assessing liability of non-filers based on best judgment of the tax authority. Sec 62(2) provides that where a valid return is furnished within 30 days of the service of BJA order, said order shall be deemed to be withdrawn.
Scope of amnesty	This notification seeks to provide relief to the registered persons who could not avail the benefit of sec. 62(2) by providing that the BJA order shall be deemed to be withdrawn if the registered person adheres to the conditions hereunder.
Conditions for availing amnesty	Furnish pending return on or before 30.06.23 along with applicable interest and late fee.
Note	Amnesty scheme is applicable whether or not an appeal had been filed against the BJA order and whether or not appeal filed, if any, has been decided.
Source	Notification No. 06/2023 – Central Tax dated 31st March 2023

EXTENSION OF LIMITATION FOR PASSING ORDERS U/S 73

Time limit for passing orders u/s 73 for recovery of tax not paid /short paid / ITC wrongly availed or utilized relating to F.Y. 2017-18 to F.Y. 2019-20 has been extended as under:-

Financial Year	Extended date
2017-18	31st December 2023
2018-19	31st March 2024
2019-20	30th June 2024

This will allow more than for departmental authorities to issue notices since sec. 73(2) requires issuance of notice by the proper officer at least 3 months prior to the time limit for passing order.

Key Changes Notified by Finance Act, 2023 Act No. 8 of 2023

Received the assent of the President on the
31st March, 2023. (Major changes yet to be
notified)



Section 10: Composition Levy

- **Section 10(2)(d) and 10(2A)(c) of CGST Act, 2017 has been amended in respect of composition levy by E-commerce operators.**
- The restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy has been lifted.
- **Now, taxpayers engaged in supply of goods through E-commerce platform can also opt for composition scheme under GST.**

Section 17: Apportionment of credit and blocked credits.

- **Section 17(5) has been amended to restrict input tax credit on Corporate Social Responsibility (CSR) expenditure.** The amendment provides that input tax credit shall not be available in respect of goods or services or both received by a taxable person, which are used or are intended to be used for activities relating to obligations under the Corporate Social Responsibility as per Section 135 of the Companies Act, 2013.
- **An additional exception has been added under Section 17(3) restrict the input tax credit (ITC) on the value of exempt supplies,** which excludes the value of activities or transactions mentioned in Schedule III, except for the sale of land and buildings.

An additional exception has been added i.e. **The value of such activities or transactions as may be prescribed with respect to the supply of warehoused goods to any person before clearance for home consumption.**

Section 17: Apportionment of credit and blocked credits.

- *Section 17(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.*

Explanation.-For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except,-

(i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.

- para 8(a) of Schedule III of the CGST Act i.e., "Supply of warehoused goods to any person before clearance for home consumption",

Schedule III: Activities or transactions which shall be treated neither as a supply of goods nor supply of services

Para (7) and (8) and Explanation (2) to Schedule III of CGST Act, 2017 has been amended retrospectively

"Para 7 & 8 now reads as under:

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

8. (a) Supply of warehoused goods to any person before clearance for home consumption;

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption."

- Accordingly, these paras and explanations shall have retrospective effect w.e.f. 01.07.2017.
- However, no refund shall be made of the tax which has been collected.

Section 23: Persons not liable for registration under GST.

Section 23(2) of the CGST, 2017 has been amended with a non-obstante clause, so as to provide that, persons required to take registration in GST as per Section 22(1) of the CGST Act and compulsory registration required under Section 24 of the CGST Act, need not to register themselves, if they are exempted from taking the GST registration.

- Section 23 has been amended in a way that now it starts with -
- "Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24".
- Earlier, a person who was exclusively engaged in making exempt supplies was still required to obtain GST registration due to mandatory registration under section 24 (*e.g.*, in the case of RCM).
- As per the change, if registration is not required under Section 23, there is no need to obtain registration irrespective of any mandatory requirement in terms of other provisions.
- **Such overriding effect shall come into force from retrospective effect w.r.f. 01.07.2017.**

Section 30: Revocation of cancellation of Registration

- **Section 30 of the CGST Act, 2017 which provided for time limit for taxpayers to submit a revocation application within 30 days from the date of service of cancellation order** wherein such period could be extended the permission of Additional Commissioner/Joint Commissioner/Commissioner, **has now been amended by removing the 30 day time limit.**
- Now any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in such manner, within such time and subject to such conditions and restrictions as may be prescribed.

Section 62: Assessment of non-filer of returns

- **Section 62(2) of the CGST Act, 2017 i.e. Assessment of unregistered persons has been amended to provide the time period of 60 days instead of 30 days, for furnishing return Form GSTR 3B or Form GSTR 10 (Final Return) where the proper officer has assessed tax liability on best judgment assessment basis.**
- Moreover, where the registered person fails to furnish a valid return within 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of INR 100/- for each day of delay beyond 60 days of the service of the assessment order and incase he furnishes valid return within such extended period, the assessment order shall be deemed to have been withdrawn, but the liability to pay interest under Section 50(1) and late fee under Section 47 of the CGST Act shall continue.

Timelines for GST Returns have been changed.

- **Section 37(5), Section 39(11), Section 44(2), Section 52(15) have been inserted.**
- **Time limit upto which GSTR-1/GSTR-3B/Annual return (GSTR 9) /GSTR-8 for a tax period can be furnished by a registered person is three years from the due date.** Further, there can be extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.
- This means that taxpayers will not be permitted to furnish or file the above GST returns after the expiry of 3 years from the due date of filing such respective returns:
 - **GSTR 1 under section 37(5)**
 - **GSTR 3B under section 39(11)**
 - **GSTR 9 under section 44(2)**
 - **GSTR 8 under section 52 (15)**

Section 122: Penalty for certain offences

Sub-section (1B) has been inserted in Section 122 of the CGST Act, 2017 which prescribes for penal provisions applicable to Electronic Commerce Operators.

Any electronic commerce operator shall be liable to penalty of Rs. 10,000 or amount equivalent to tax amount had such supply been made by registered person other than under section 10 whichever is higher, where E-commerce operator:

- allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply;
- or fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under the Act.

Section 12: Place of supply of services where location of supplier and recipient is in India

✓ **Place of Supply in certain cases.**

- Proviso to sub-section (8) of section 12 of the IGST Act is being omitted so as to clarify that the place of supply for-
 - the transportation services of goods being transported to outside India, and
 - where the supplier of services and recipient of services are located in India,

shall be the location of recipient of services (if recipient is registered) and shall be the location at which such goods are handed over for their transportation (if recipient is unregistered).

Section 12(8) The place of supply of services by way of transportation of goods, including by mail or courier to,--

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

“Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.”

Other Issues



Reconciliation of ITC – 2A vs. 3B

Reconciliation of ITC – 2A vs. 3B

- Show Cause Notices are mechanically issued on account of differences in Form GSTR 2A and GSTR 3B.
- Department is presuming that if ITC is not reflected in GSTR 2A, tax has not been deposited in terms of Section 16(2)(c).
- Department is also alleging that if supplier's registration is cancelled retrospectively then tax is not paid by the Supplier.
- Department is relying on Section 155 to contend that the Burden of Proof is on the Assessee to prove that he is eligible for input tax credit under GST law.

Reconciliation of ITC – 2A vs. 3B

REASONS FOR MISMATCH

- IGST claimed on the import of goods.
- IGST Credit on the import of services.
- The credit of GST paid on reverse charge mechanism.
- The Supplier of Goods or Services or both have filed GST Returns but reported them in the next financial year beyond due date.
- The supplier instead of filing as B2B supply by mistake filed as B2C supply in GSTR 1 and paid taxes in GSTR 3B.
- The supplier mentioned wrong GSTN of the recipient.
- The Supplier of Goods or Services or both have not filed GST Returns.

Reconciliation of ITC – 2A vs. 3B

STATUTORY PROVISIONS:

- Section 16 of the CGST Act-
- (2) 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-
 - (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;
 - (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; (inserted w.e.f. 1.1.2022)...
 - (c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply;

Reconciliation of ITC – 2A vs. 3B

STATUTORY PROVISIONS:

- Rule 36(4) of CGST Rules, 2017 before January 2022 amendment
 (4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility, shall not exceed 5 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in FORM GSTR-1 or using the invoice furnishing facility.
- Rule 36(4) of CGST Rules, 2017 post January 2022 amendment
 (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 input tax credit in respect of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60

Reconciliation of ITC – 2A vs. 3B

STATUTORY PROVISIONS:

- SECTION 155. Burden of proof.

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person

Reconciliation of ITC – 2A vs. 3B

No statutory provision to deny credit merely on the ground that there is some mismatch in Forms prescribed under GST.

- Section 42, 43 of CGST Act, 2017 were never enforced.
- Finance Act, 2021 inserted clause (aa) in Section 16(1). This clause has been made effective w.e.f. 1.1.2022 vide Notification No. 39/2021-Central Tax dated 21.12.2021. This amendment has not been made retrospective.

CBIC Circular No. 183/15/2022-GST dated 27.12.2022

CBIC Circular No. 183/15/2022-GST dated 27.12.2022 provides the following scenarios where ITC does not reflect in GSTR 2A

- Applicability:
 - GSTR-1 not filed. GSTR-3B Filed
 - GSTR-1 And GSTR-3B filed, Supply Not Reported.
 - GSTR -1 And GSTR-3B filed, Supply Reported B2C instead Of B2B.
 - GSTR -1 And GSTR-3B filed, Supply Reported With Wrong GSTRIN Of Receipted.
- The CBIC circular prescribes that ITC can be availed on submission of a CA/CMA Certificate if the mismatch exceeds Rs.5,00,000/- and Certificate of Supplier if mismatch is below Rs.5,00,000/-
- Clarification specifically provides that it is applicable only for FY 2017-18 and 2018-19.
- Limit per supplier per year

Reconciliation of ITC – 2A vs. 3B

- Whether ITC can be denied for the period October 2019 to December 2021 if not appearing in GSTR 2A but beyond permissible limit as per Rule 36(4) of CGST Rules, 2017?
 - M/s. Wipro Limited India Vs ACGST Bengaluru, 2023 (1) TMI 499 (KAR)
 - Circular No. 183/15/2022-GST dated 27.12.2022 applicable for FY 2019-20 also
- Whether ITC can be denied for the period after 1.1.2022 if ITC is not appearing in GSTR-2A/2B? -

RULE 88C :Manner of dealing with difference in liability reported in GSTR-1 & GSTR-3B

Introduced Sequential Filing Of Returns (GSTR 1 & 3B)

- No subsequent Period can be furnished if previous not filled
- Sec -39(10) -File GSTR 1 then GSTR 3B can be filed - FA 2022 w.e.f 01-10-2022
- Rule 59(6) -Pay Taxes otherwise GSTR 1 cannot be filed
- Rule 21 if no consecutive filling for 6 months/2 Tax periods in quarterly Number Cancelled.
- 3 years from due date -Maximum Time Limit prescribed for GSTR3B, GSTR 1,GSTR 9
- Insertion of Rule 88C vide Noti. No. 26/2022 dt 26.12.22

88C. Manner of dealing with difference in liability reported in GSTR-1 & GSTR-3B

Rule 88C has been inserted in the CGST Rules vide Noti. No. 26/2022 dt 26.12.22. This rule basically provides for as under:

1. Where tax payable for a tax period under GSTR-1 exceeds the amount of tax payable under GSTR-3B, by specified amount and percentage, a system generated intimation in Part A of Form DRC-01A of such difference shall be given to registered person.
2. On receipt of DRC-01A, registered person shall **within a period of 7 days** either pay such differential tax liability fully or partially with interest and furnish details thereof and furnish the same in Part B of Form DRC-01B electronically on the common portal, or
3. Furnish a reply electronically on common portal incorporating reasons in respect of unpaid differential liability, if any, **in Part B of Form DRC-01B.**
4. In case, differential tax liability is not paid within period specified, or where no explanation or reason is furnished by registered person or where such reason is not found to be acceptable by proper officer, **the said amount shall be recoverable in accordance with Section 79 of the CGST Act.**

Rule 88C- Draconian ?

- There is no enabling Section for Rule 88C.
 - Section 75(12) is a guidance for action under Chapter XV but 88C is not a demand & recovery action.
 - Hence, no enabling Section for this Rule
- It is still not clarified whether DRC-01B is a notice or not.
- If DRC-01B is a notice, then all the rights, remedies, and safeguards allowed in Section 75 must be available.
- Opportunity of being heard ?
- It is still not clarified whether an order will be issued by the Proper Officer to initiate recovery actions or not.
- If no order is to be issued only DRC-01B will be issued, then the rights, remedies, and safeguards u/s 107 (Appeals) are infringed.
- No procedure is clarified, if the Proper officer starts recovery actions and immediately the taxpayer amends GSTR-1.

Transactions between developer & buyer - Impact of Cancellations?

Refund by Buyer (Circular No.188/20/2022-GST)

Clarification by Circular:

- The unregistered person, who wants to file an application for refund under section 54(1) of CGST Act, in cases where the contract/agreement for supply of services of construction of flat/ building has been cancelled or where long-term insurance policy has been terminated, **shall obtain a temporary registration on the common portal using his Permanent Account Number (PAN).**
- While doing so, the unregistered person **shall select the same state/UT where his/her supplier, in respect of whose invoice refund is to be claimed, is registered.**
- Thereafter, the unregistered person would be required **to undergo Aadhaar authentication** in terms of provisions of rule 10B of the CGST Rules.
- Further, the unregistered person would be required to enter his bank account details in which he seeks to obtain the refund of the amount claimed. The applicant shall provide the details of the bank account which is in his name and has been obtained on his PAN.

Refund by Buyer (Circular No.188/20/2022-GST)

Application for Refund:

- The application for refund shall be filed in FORM GST RFD-01 on the common portal under the category 'Refund for unregistered person'.
- The applicant shall upload statement 8 (in pdf format) and all the requisite documents as per the provisions of rule 89(2) of the CGST Rules.
- The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed.
- Further, the applicant shall also upload the certificate issued by the supplier in terms of rule 89(2)(kb) of the CGST Rules along with the refund application.

Relevant date for filing of refund

- Date of issuance of letter of cancellation of the contract / agreement for supply by the supplier

ISD Vs. Cross Charge

ISD Vs. Cross Charge

STATUTORY PROVISIONS

- SECTION 2. Definitions.
- (61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;
- Cross charge is not defined.

ISD Vs. Cross Charge

STATUTORY PROVISIONS

- RULE 28 - Value of supply of goods or services or both between distinct or related persons, other than through an agent.
 - Value shall be - Open market value, value of goods or services of like kind and quality, as per Rule 30 & Rule 31, in that order.
 - Proviso - where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.
- SECTION 16 - Eligibility and conditions for taking input tax credit.

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

ISD Vs. Cross Charge

COMPARATIVE ANALYSIS

ISD	CROSS CHARGE
Input services pertain to one or more registrations but incurred by one registration.	Input services consumed by a distinct person to provide services to another distinct person.
No concept of ISD for Goods.	Goods consumed by a distinct person are also required to be cross charged.
Specific formula is required to be followed for distribution of ITC.	Rule 28 provides for determination of the value of service rendered to distinct person.
ITC to be distributed based on turnover.	Any reasonable method.
Separate Registration required.	No separate registration is required.

Rule 37A :ITC Reversal for Non-Payment of Tax by Supplier and Re-Availment thereof

Reversal of ITC in case of Non-Payment of Tax by the Supplier and Re-availment thereof

Finance Act, 2022 have made amendments in following section of Input Tax Credit (ITC):

Section 16 (2) (C): It states that buyers can claim ITC for a supply if the tax charged on its invoice has been deposited with the government by the supplier / vendor, either in cash or by utilizing ITC (Subject to Provisions of Section 41)

Section 41 (2): It states that the recipient of credit must reverse such ITC claimed if the supplier has not deposited taxes. The proviso allows the buyer to re-avail or re-claim such reversed ITC later when the supplier pays tax.

Such amendments were later made effective from 1st October, 2022 vide Notification No. 18/2022 Central Tax dated 28.09.2022 However, there was no corresponding rule in the CGST rule in order to govern the procedure of reversal and reclaim of ITC pursuant to Section 41.

Now, CBIC for the purpose of implementation of provision contained in section 41(2) inserted a new Rule called Rule 37A in CGST Rules vide **Notification No 26/2022 Central Tax dt 26-12-2022.**

Reversal of ITC in case of Non-Payment of Tax by the Supplier and Re-availment thereof

Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof:-

Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year.

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.

Reversal of ITC in case of Non-Payment of Tax by the Supplier and Re-availment thereof

- Supplier has duly furnished the details of invoice/debit note in its GSTR-1 and Buyer has claimed the ITC of such invoices/ debit notes based upon the its GSTR-2B (auto populated based upon GSTR-1 filed by Supplier)
- Supplier has not furnished the GSTR-3B for the period corresponding to such invoice/ debit note till 30th September following the end of financial year in which the ITC is availed by buyer.
- Buyer need to reverse the ITC while filling its GSTR-3B on or before 30th November following the end of FY in which such ITC is Availed.
- If buyer not able to reverse within 30th November, ITC amount need to be paid along with interest.
- Buyer can re-avail/ reclaim the ITC when the supplier file GSTR-3B for the said tax period.

Reclaiming of ITC reversed under Rule 37A

As per the proviso to the rule the buyer is eligible for reclaiming of ITC when the supplier filed its GSTR-3B for corresponding period of tax invoice / debit note.

Important Point:

Method of re-availment along with Disclosure in GSTR-3B by Buyer:

I. If Buyer Reverse the ITC prior to 30th November and subsequently supplier file GSTR-3B:

Under this circumstances buyer need to Reverse the ITC in Table 4(B)(2) of GSTR-3B.

After filling of GSTR-3B by supplier, the buyer can re-avail the same in Table 4(A)(5) but the same need to be additionally disclosed in Table 4(D)(1) of GSTR-3B.

II. If Buyer did not reverse the ITC prior to 30th November and subsequently supplier file GSTR-3B:

Since the buyer not reverse the ITC prior to 30th November, the only recourse available is to pay the ITC along with Interest. No need to reverse the same in table 4(B).

When Supplier files its GSTR-3B, then Buyer can directly re-avail the same in GSTR-4(A)(5). No need to disclose in Table 4(D)(1) since the same was not reversed in Table 4(B)(2)

Thank You

