

CGA Legal
Your GST Knowledge Partner

The GST Bulletin

Month: June 2021

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We wish all our readers our best wishes on the 4th Anniversary of Introduction of Goods & Services Tax in India

Goods & Services Tax have definitely come a long way. In 2017, several legal experts termed implementation of GST as a hasty implementation. However, despite handling various criticisms, Government has continued with its pan India Implementation of GST.

As per PIB, The gross GST revenue collected in the month of May 2021 is INR 1,02,709 crore. The revenues for the month of May 2021 are 65% higher than the GST revenues in the same month last year. This would be eighth month in a row that GST revenues have crossed 1 lakh crore mark. This is despite the fact that most of the States have been under strict lockdown due to the pandemic and there has also been relaxation in due date for payment of tax for taxpayers having aggregate turnover below INR 5 crores.

The above figures definitely shows the prowess of GST. There is however a long way to go for it to be actually termed as “Good & Simple Tax”. Some of the major concerns which need to be addressed by the government are;

1. Ease in Matching process i.e GSTR-2A Reconciliation
2. Automation and timely completion of GST Appeals
3. Ease and greater transparency in GST Refund process
4. Effective control and monitoring to curb the menace of fake invoicing

We belong to the nation where hope is the vital part of our DNA so here is hoping for a more taxpayer friendly GST regime in the years to come.

Regards
Team CGA Legal

About The GST Bulletin

The GST Bulletin is a Fortnightly Newsletter from Team Cga Legal, a leading Indirect Tax Consultancy firm . The Newsletter is intending to keep its readers updated with all important changes in Goods & Services Tax including latest Notifications, Circular and Technical updates if any. The Newsletter also has a special column of GST Compliance Calendar for the Month. Along with it, CGA also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below;

<https://www.cgalegal.co.in/home/newsletters.php>

Other Offerings from Team CGA Legal

- **CGA Legal Judicial Precedent:** A Fortnightly Publication of various important judgments which can have huge impact on your business decisions.
- **CGA Legal GST Compliance Calendar:** Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- **CGA Legal Meet :** Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website www.cgalegal.co.in

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GST Compliance Actionable

| GSTR-3B/ GST PMT -06 | | | | | | |
|--------------------------------|---|----------------------------|---|----------------------------|----------------------------|---|
| S. No. | Type of taxpayer | Statutory Due Date | Interest Rate for Payment of Tax NTN 18/2021-CT dt. 01-06-21 | | | Late fees waived if filed within NTN 19/2021-CT dt. 01-06-21 Also Ref Note 2 |
| | | | Nil till | 9% from | 18% from | |
| Tax Period : April 2021 | | | | | | |
| 1. | Turnover more than 5 crore in the preceding FY | 20.05.21 | N.A | 21.06.21 | 05.06.21 | 04.06.21 |
| 2. | Turnover up to INR 5 crores and have opted for monthly return filing 1. State A 2. State B [Ref Note 4] | 1. 22.05.21 2. 24.05.21 | 1. 06.06.21 2. 08.06.21 | 1. 07.06.21 2. 09.06.21 | 1. 07.07.21 2. 09.07.21 | 1. 06.07.21 2. 08.07.21 |
| 3. | Turnover up to INR 5 Crores and under QRMP Scheme [PMT-06] | 25.05.21 | 09.06.21 | 10.06.21 | 10.07.21 | N.A |
| Tax Period : May 2021 | | | | | | |
| 1. | Turnover more than INR 5 crore in the preceding FY | 20.06.21 | N.A | 21.06.21 | 06.07.21 | 05.07.21 |
| 2. | Turnover up to INR 5 crores and have opted for monthly return filing 1. State A 2. State B [Ref Note 4] | 1. 22.06.21 2. 24.06.21 | 1. 07.07.21 2. 09.07.21 | 1. 08.07.21 2. 10.07.21 | 1. 23.07.21 2. 25.07.21 | 1. 22.07.21 2. 24.07.21 |
| 3. | Turnover up to INR 5 Crores and under QRMP Scheme [PMT-06] | 25.06.21 | 10.07.21 | 11.07.21 | 26.07.21 | N.A |

GST Compliance Actionable

GSTR-3B/ GST PMT -06

| S. No. | Type of Taxpayer | Statutory Due Date | Interest Rate @ 18% from | Late Fee Applicable from [Also Refer Note 2] |
|---|---|----------------------------|----------------------------|--|
| Tax Period : June 2021/ Quarter ending June 2021 | | | | |
| 1. | Turnover more than INR 5 crore in the preceding FY | 20.07.21 | 21.07.21 | 21.07.21 |
| 2. | Turnover up to INR 5 crores and have opted for monthly return filing 1. State A 2. State B [Ref Note 4] | 1. 22.07.21 2. 24.07.21 | 1. 23.07.21 2. 25.07.21 | 1. 23.07.21 2. 25.07.21 |
| 3. | Turnover up to INR 5 Crores and under QRMP Scheme [PMT-06] | 25.07.21 | 26.07.21 | 26.07.21 |

GSTR-1/ IFF

| S. No. | Type of Taxpayer | Tax Period | Statutory Due Date | Late Fee Applicable from [Also Refer Note 1] |
|--------|---|--------------------|--------------------|--|
| 1. | Turnover more than INR 5 crore in the preceding FY & Turnover up to INR 5 crores and have opted for monthly return filing | June 2021 | 11.07.21 | 12.07.21 |
| 2. | Turnover up to INR 5 Crores and under QRMP Scheme | April to June 2021 | 30.07.21 | 31.07.21 |

GST Compliance Actionable

Return for Composition Tax Payers

| S. No. | Form | Tax Period | Statutory Due Date | Extended Due Date | Reference Notification |
|--------|--------|------------------------|--------------------|--------------------------|----------------------------------|
| 1. | CMP-08 | Quarter ending June 21 | 18.07.21 | NA | NA |
| 2. | GSTR-4 | FY 2020-21 | 30.04.2021 | 31.07.2021 Ref Note 3 | NTN 25/2021-CT Dated 01-06-21 |

Other Forms/ Returns

| Type of Return/ Form | Tax Period | Type of Taxpayer | Statutory Due Date |
|----------------------|------------|-----------------------------|--------------------|
| GSTR-5 | June 2021 | Non-Resident Taxable Person | 20.07.21 |
| GSTR-5A | June 2021 | OIDAR | 20.07.21 |
| GSTR-6 | June 2021 | ISD | 13.07.21 |
| GSTR-7 | June 2021 | TDS Deductor | 10.07.21 |
| GSTR-8 | June 2021 | E-Commerce Operator | 10.07.21 |

Return for Goods sent for Job work

| S. No. | Form | Tax Period | Statutory Due Date |
|--------|--------|--------------------------|--------------------|
| 1. | ITC-04 | Quarter ending June 2021 | 25.07.2021 |

GST Compliance Actionable

Notes

1. **Applicable Late Fee for GSTR-1** : Reference NTN 20/2021-CT dt 01.06.2021, the late fees provided below is both under Central and State GST.

| Type of Return | Tax Period | Category of Taxpayers | Normal Return | | Nil Return | |
|----------------|--|--|--|--------------------------------------|---------------------------------------|--------------------------------------|
| | | | Fee in INR per day for which default continues | Maximum Late Fee which can be levied | Fee in INR per day for which defaults | Maximum Late Fee which can be levied |
| GSTR-1 | June 2021 or QE ending June 2021 onwards | Registered Taxpayers with AATO 0-1.5 Cr | 50 | 2,000 | 20 | 500 |
| | | Registered Taxpayers with AATO 1.5-5 Cr | 50 | 5,000 | | |
| | | Registered Taxpayers with AATO more than INR 5Cr | 50 | 10,000 | | |

GST Compliance Actionable

Notes

2. Applicable Late Fee for GSTR-3B : Reference NTN 19/2021-CTdt 01.06.2021. The late fees provided below is both under Central and State GST.

| Tax Period | Category of Tax payers | Normal Return | | Nil Return | |
|-----------------------------------|--|--|--------------------------------------|--|--------------------------------------|
| | | Fee in INR per day for which default continues | Maximum Late Fee which can be levied | Fee in INR per day for which default continues | Maximum Late Fee which can be levied |
| July 2017- April 2021 | All Registered Person required to file Return | 50 | 1,000 | 20 | 500 |
| May 2021 | All Registered Person required to file Return | 50 | 10,000 | 20 | 10,000 |
| June 2021 or QE June 2021 onwards | Registered Taxpayers with AATO 0-1.5 Cr | 50 | 2,000 | 20 | 500 |
| | Registered Taxpayers with AATO 1.5-5 Cr | 50 | 5000 | | |
| | Registered Taxpayers with AATO more than INR 5Cr | 50 | 10,000 | | |

3. Applicable Late Fee for GSTR-4 : Reference NTN 21/2021-CT dt 01.06.2021. From FY 2021-22 onwards late fees is INR 500 [CGST RS 250 & SGST INR 250] if Nil Return else INR 2000[CGST INR 1000 & SGST INR 1000]

GST Compliance Actionable

Notes

4. State A: Regular Tax payers having an aggregate turnover of upto INR 5 crores whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep

State B: Regular Tax payers having an aggregate turnover of upto INR 5 crores whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi

GST Updates – CBIC Circulars

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

Circular No. 156/12/2021-GST Date: 21-06-2021

Notification No. 14/2020-Central Tax, dated 21st March 2020 had been issued which requires Dynamic QR Code on B2C invoice issued by taxpayers having aggregate turnover more than 500 crore rupees, w.e.f. 01.12.2020. Further, vide notification No. 06/2021-Central Tax, dated 30th March 2021, penalty has been waived for non-compliance of the provisions of notification No.14/2020 – Central Tax for the period from 01st December, 2020 to 30th June, 2021, subject to the condition that the said person complies with the provisions of the said notification from 1st July, 2021. Further, various issues on Dynamic QR Code have been clarified vide Circular No. 146/2/2021-GST, dated 23.02.2021.

Now, CBIC has provided further clarifications w.r.t. applicability of Dynamic Quick Response (QR) Code on B2C (Registered person to Customer) invoices and compliance of notification 14/2020-Central Tax, dated 21st March, 2020 as amended which are detailed as follows:

| Issue | Clarification |
|---|---|
| <p>Whether Dynamic QR Code is to be provided on an invoice, issued to a person, who has obtained a Unique Identity Number as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017?</p> | <p>Any person, who has obtained a Unique Identity Number (UIN) as per the provisions of Sub-Section 9 of Section 25 of CGST Act 2017, is not a “registered person” as per the definition of registered person provided in section 2(94) of the CGST Act 2017. Therefore, any invoice, issued to such person having a UIN, shall be considered as invoice issued for a B2C supply and shall be required to comply with the requirement of Dynamic QR Code.</p> |
| <p>UPI ID is linked to the bank account of the payee/ person collecting money. Whether bank account and IFSC details also need to be provided separately in the Dynamic QR Code along with UPI ID?</p> | <p>Given that UPI ID is linked to a specific bank account of the payee/ person collecting money, separate details of bank account and IFSC may not be provided in the Dynamic QR Code.</p> |

GST Updates – CBIC Circulars

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

Circular No. 156/12/2021-GST Date: 21-06-2021

| Issue | Clarification |
|---|--|
| <p>In cases where the payment is collected by some person other than the supplier (ECO or any other person authorized by the supplier on his/ her behalf), whether in such cases, in place of UPI ID of the supplier, the UPI ID of such person, who is authorized to collect the payment on behalf of the supplier, may be provided?</p> | <p>Yes. In such cases where the payment is collected by some person, authorized by the supplier on his/ her behalf, the UPI ID of such person may be provided in the Dynamic QR Code, instead of UPI ID of the supplier</p> |
| <p>In cases, where receiver of services is located outside India, and payment is being received by the supplier of services in foreign exchange, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?</p> | <p>No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier in foreign currency, through RBI approved mediums, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier</p> |
| <p>When part-payment has already been received by the merchant/ supplier, either in advance or by adjustment (e.g. using a voucher, discount coupon etc), before the dynamic QR Code is generated, what amount should be provided in the Dynamic QR Code for “invoice value”?</p> | <p>When the part-payment for any supply has already been received from the customer/ recipient, in form of either advance or adjustment through voucher/ discount coupon etc., then the dynamic QR code may provide only the remaining amount payable by the customer/ recipient against “invoice value”. The details of total invoice value, along with details/ cross reference of the part payment/ advance/ adjustment done, and the remaining amount to be paid, should be provided on the invoice.</p> |

GST Updates – CBIC Circulars

Clarification in respect of applicability of Dynamic Quick Response (QR) Code on B2C invoices

Circular No. 156/12/2021-GST Date: 21-06-2021

| Issue | Clarification |
|---|--|
| <p>In some instances of retail sales over the counter, the payment from the customer is received on the payment counter by displaying dynamic QR code on digital display, whereas the invoice, along with invoice number, is generated on the processing system being used by supplier/ merchant after receiving the payment. In such cases, it may not be possible for the merchant/ supplier to provide details of invoice number in the dynamic QR code displayed to the customer on payment counter. However, each transaction i.e. receipt of payment from a customer is having a unique Order ID/ sales reference number, which is linked with the invoice for the said transaction. Whether in such cases, the order ID/ reference number of such transaction can be provided in the dynamic QR code displayed digitally, instead of invoice number.</p> | <p>In such cases, where the invoice number is not available at the time of digital display of dynamic QR code in case of over the counter sales and the invoice number and invoices are generated after receipt of payment, the unique order ID/ unique sales reference number, which is uniquely linked to the invoice issued for the said transaction, may be provided in the Dynamic QR Code for digital display, as long as the details of such unique order ID/ sales reference number linkage with the invoice are available on the processing system of the merchant/ supplier and the cross reference of such payment along with unique order ID/ sales reference number are also provided on the invoice.</p> |

GST Updates – CBIC Circular

Clarification regarding GST rate on laterals/parts of Sprinklers or Drip Irrigation System.

Circular No. 155/11/2021-GST Date: 17-06-2021

The GST rate on Sprinklers or Drip Irrigation System along with their laterals/parts are governed by S.No. '195B' under Schedule II of notification No. 1/2017- Central Tax (Rate), dated 28th June, 2017 which has been inserted vide notification No. 6/2018-Central Tax (Rate), dated 25th January, 2018 and reads as below:

| S. No. | Chapter Heading/ Sub-heading/Tariff Item | Description of Goods | CGST Rate |
|--------|--|--|-----------|
| 195B | 8424 | Sprinklers; drip irrigation systems including laterals; mechanical Sprayer | 6% |

The intention of this entry has been to cover laterals (pipes to be used solely with sprinklers/drip irrigation system) and such parts that are suitable for use solely or principally with 'sprinklers or drip irrigation system', as classifiable under heading 8424 as per Note 2 (b) to Section XVI to the HSN. Hence, laterals/parts to be used solely or principally with sprinklers or drip irrigation system, which are classifiable under heading 8424, would attract a GST of 12%, even if supplied separately.

GST on service supplied by State Govt. to their undertakings or PSUs by way of guaranteeing loans taken by them

Circular No. 154/10/2021-GST Date: 17-06-2021

Entry No. 34A of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts "Services supplied by Central Government, State Government, Union territory to their undertakings or Public Sector Undertakings (PSUs) by way of guaranteeing the loans taken by such undertakings or PSUs from the banking companies and financial institutions."

Accordingly, as recommended by the Council, it is re-iterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt under said entry No. 34A.

GST Updates – CBIC Circulars

GST on milling of wheat into flour or paddy into rice for distribution by State Governments under PDS.

Circular No. 153/09/2021-GST Date: 17-06-2021

Clarification is sought that whether composite supply of service by way of milling of wheat into wheat flour, along with fortification, by any person to a State Government for distribution of such wheat flour under Public Distribution System is eligible for exemption under entry No. 3A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017.

It is clarified that;

1. Public Distribution specifically figures at entry 28 of the 11th Schedule to the constitution, which lists the activities that may be entrusted to a Panchayat under Article 243G of the Constitution. Hence, said entry No. 3A would apply to composite supply of milling of wheat and fortification thereof by miller, or of paddy into rice.
2. In case the supply of service by way of milling of wheat into flour or of paddy into rice, is not eligible for exemption under Sl. No. 3 A of Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 for the reason that value of goods supply in such a composite supply exceeds 25%, then the applicable GST rate would be 5% if such composite supply is provided to a registered person, being a job work service (entry No. 26 of notification No. 11/2017- Central Tax (Rate) dated 28.06.2017). Combined reading of the definition of job-work [section 2(68), 2(94), 22, 24, 25 and section 51] makes it clear that a person registered only for the purpose of deduction of tax under section 51 of the CGST Act is also a registered person for the purposes of the said entry No. 26, and thus said supply to such person is also entitled for 5% rate.

GST Updates – CBIC Circulars

Clarification regarding rate of tax applicable on construction services provided to a Government Entity, in relation to construction such as of a Ropeway on turnkey basis.

Circular No. 152/08/2021-GST Date: 17-06-2021

Clarification was required on whether services supplied to a Government Entity by way of construction such as of “a ropeway” are eligible for concessional rate of 12% GST under entry No. 3 (vi) of Notification No. 11/2017- CT (R) dt. 28.06.2017?

It has been clarified that, above-mentioned entry does not apply to any works contract that is meant for the purposes of commerce, industry, business of profession. Further, civil constructions, such as rope way for tourism development shall not be covered by said entry 3(vi) not being a structure that is meant predominantly for purposes other than business.

While road, bridge, terminal, or railways are covered by entry No. 3(iv) and 3(v) of said notification, structures like ropeway are not covered by these entries. **Therefore, works contract service provided by way of construction such as of rope way shall fall under entry at sl. No. 3(xii) of notification 11/2017-(CTR) and attract GST at the rate of 18%.**

GST Updates – CBIC Circulars

Clarification regarding GST on supply of various services by Central and State Board (such as National Board of Examination)

Circular No. 151/07/2021-GST Date: 17-06-2021

According to explanation 3(iv) of the notification No. 12/ 2017 CTR, “Central and State Educational Boards” are treated as Educational Institution for the limited purpose of providing services by way of conduct of examination to the students. Therefore, NBE is an ‘Educational Institution’ in so far as it provides services by way of conduct of examination, including any entrance examination, to the students. Thus, it is clarified that;

- GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution [under S. No. 66 (aa) of NN. 12/2017-CT(R) dated 28-06-2017].
- GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc., when provided to such Boards [under S. No. 66 (b) (iv) of NN. 12/2017-CT(R) dated 28-06-2017].
- However, GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test) so as to authorise them to provide their respective services.

GST Updates – CBIC Circulars

Clarification regarding applicability of GST on the activity of construction of road where considerations are received in deferred payment (annuity)

Circular No. 150/06/2021-GST Date: 17-06-2021

It is clarified that the entries 23 and 23A of notification No. 12/2017-Central Tax exempts access to road or bridge, whether the consideration are in the form of toll or annuity. [Heading 9967]

However, Services by way of construction of road fall under heading 9954. This heading inter alia covers general construction services of highways, streets, roads railways, airfield runways, bridges and tunnels. Consideration for construction of road service may be paid partially upfront and partially in deferred annual payments (and may be called annuities).

Accordingly, it is hereby clarified that Entry 23A of notification No. 12/2017-CT(R) does not exempt GST on the annuity (deferred payments) paid for construction of roads.

Clarification regarding applicability of GST on supply of food in Anganwadis and Schools

Circular No. 149/05/2021-GST Date: 17-06-2021

As per entry 66 of NN 12/2017-CT(R) dated 28-06-2017, exempts Services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory. This entry applies to pre-school and schools. Further, an Anganwadi inter alia provides pre-school non-formal education. Hence, Anganwadi is covered by the definition of educational institution (as pre-school).

Accordingly, it is clarified those services provided to an educational institution by way of serving of food (catering including mid- day meals) is exempt from levy of GST irrespective of its funding from government grants or corporate donations

GST Technical Updates – GSTN

Upcoming functionalities to be deployed on GST Portal for the Taxpayers

Date: 11-06-2021

As part of our constant endeavour to provide a smooth and hassle free experience to the taxpayers and simplify the process for them, to comply with their GST compliances, following functionalities are recently deployed or are being deployed on the portal shortly:

| Module | Form/ Functionality | Functionality released/ to be released for Taxpayers |
|---------|---|---|
| Ledgers | Negative liability statement made available to composition taxpayers | <ul style="list-style-type: none"> In case of a negative liability in any tax period of a composition taxpayer (and if no amount is required to be paid by the taxpayer (during that period)), the said negative liability will be maintained in Negative liability statement. This negative balance lying in the negative liability statement will be automatically adjusted against the liabilities of subsequent tax period(s). The statement would be accessible to them, post-login, by navigating to Services > Ledgers > Negative Liability Statement. |
| Returns | Download of Form GSTR-4A in excel and auto-population of its details in Form GSTR-4 of the composition taxpayer | <p>Form GSTR-4A is an auto-drafted statement generated for Taxpayers opting for Composition levy, containing details reported by their registered suppliers in their Form GSTR-1/ GSTR-5 and by their TDS deductors in their Form GSTR-7.</p> <ul style="list-style-type: none"> A facility to download the details of Form GSTR-4A, in an Excel file would be made available to the taxpayers, soon. This Excel file would contain consolidated summary of the supplies at GSTIN level, for the complete financial year, which are required to be reported in Annual Return filed by them in Form GSTR-4. This summary will also be auto-populated in Table 4A and 4B of their Form GSTR-4. |

GST Technical Updates – GSTN

Upcoming functionalities to be deployed on GST Portal for the Taxpayers

Date: 11-06-2021

| Module | Form/ Functionality | Functionality released/ to be released for Taxpayers |
|--------------|---|--|
| Front Office | Inclusion of common names in the HSN Directory and its download in excel format by the taxpayers | <ul style="list-style-type: none"> The currently available HSN Master has been updated on the GST Portal and it now includes product names commonly used in Trade corresponding to a particular HSN code. A download facility for the entire HSN directory in Excel Format has also been provided to the taxpayers under the link "Download HSN in Excel Format". This facility is available as a part of the 'Search HSN' functionality, available both in Pre and Post Login, on the GST Portal. |

CGA Legal Recommends

Grounds to Fight GSTR-2A Mismatch Notices from the Authorities

Many taxpayers, these days, are receiving the notices from the department regarding the mismatch of ITC in GSTR-2A vis a viz ITC taken in GSTR-3B during the relevant period. Thus, we have summarized the grounds to fight such notices with the department:

Conditions for taking Input Tax Credit as per CGST Act, 2017

As per Section 16(2) of the CGST Act, *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;*
- b) *he has received the goods or services or both;*
- c) *subject to the provisions of section 41 or section 43A, 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; and*
- d) *he has furnished the return under section 39*

Thus, as per above-mentioned provisions, the four conditions are required to be satisfied for availment of input tax credit i.e. the recipient is in possession of tax invoice or debit note or any other tax paying document, that the recipient has received the goods or services, that the supplier has paid the tax to the government and that the recipient has furnished the return. It nowhere specifies that the ITC shall be availed by the recipient on the basis of GSTR-2A.

Therefore, disallowance of eligible input tax credit due to non-reflection of credit in GSTR-2A is arbitrary and without any legal basis.

Insertion of New Clause (aa) in sub-section (2) of section 16

A new clause (aa) has been inserted in sub-section (2) of section 16 vide Finance Act, 2021. It reads as follows;

Section 16(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,—*

CGA Legal Recommends

Grounds to Fight GSTR-2A Mismatch Notices from the Authorities

a)

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;*

(b).....

This section has still not been notified. This clause has been inserted prospectively with effect from the date to be notified. Since, this clause has been inserted prospectively with effect from the date to be notified later on. It can be said that upto when this provision gets notified, the reflection of input tax credit in GSTR-2A is not the condition precedent for claiming otherwise eligible ITC. Therefore, disallowance of eligible input tax credit due to non-reflection of credit in GSTR-2A is arbitrary and without any legal basis.

Section 42 and 43 are in abeyance

The condition for availment of ITC that “tax charged in respect of the subject supply has been actually paid to the Government” is subject to the provisions of Section 41.

In this respect, it is to be noted that Section 41 of the CGST Act entitles every registered person to provisionally take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to the electronic credit ledger. This provisional credit becomes final after matching, reversal and reclaim of ITC carried out in the manner laid down under Section 42 of the CGST Act.

The mechanism for matching of ITC as envisaged in Section 42 of CGST Act, is provided under the Central Goods and Services Rules, 2017 (“CGST Rules”). **On perusal of the aforesaid provisions, it can be said that there is a specific mechanism for reversing the credit in case of the discrepancy in the ITC availed by the recipient against the output liability of the supplier. However, this complete mechanism for matching of ITC has been kept in abeyance due to technical glitches prevailing in the GSTN System.**

CGA Legal Recommends

Grounds to Fight GSTR-2A Mismatch Notices from the Authorities

Having said above, now it may be further noted that condition of payment of tax to government under Section 16(2)(c) is also subject to Section 43A of the CGST Act. Section 43A lays down the procedure in relation to furnishing of return and availing ITC. As per sub-section (2) of Section 43A, notwithstanding anything contained in Section 41, Section 42 or Section 43, the procedure for availing of ITC by the recipient and verification thereof shall be such as may be prescribed.

However, it is pertinent to note that neither the Section 43A has been notified yet nor any manner for verification of ITC has been prescribed. Hence, Section 43A is not applicable in present case and Section 41 and Section 42 would continue to apply which are itself kept in abeyance.

Therefore, till the provisions in this respect are given effect, the recipients are entitled to claim the ITC on the basis of tax invoice issued by vendor without any consideration that such tax invoice is being reflected in GSTR-2A or not.

Insertion of Rule 36(4) of CGST Rule, 2017 is contrary to take ITC on the basis of GSTR-2A

As per rule 36(4) of the CGST Rules inserted with effect from 09-10-2019, 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 section 37(1) [Furnishing details of outward supplies], in FORM GSTR-1 or using the invoice furnishing facility, shall not exceed specified percentage (currently 5%) of the eligible credit available in respect of invoices or debit notes the details of which have been furnished by the suppliers under section 37(1) in FORM GSTR-1 or using the invoice furnishing facility.

From the above provision it can be noted that this rule itself provides a machinery to take excess credit upto 20% or 10% or 5% of the eligible credit on the basis of GSTR-2A or on the basis of the communication of details furnished by the supplier. Therefore, rule 36(4) also substantiate the legal position that credit upto a specified percentage can be availed on invoices which are not reflecting in GSTR-2A. If the input tax credit as reflecting GSTR-2A is only allowed then what was the need to being rule 36(4). The rule 36(4) is contradictory to the stand taken by the department.

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Absence of legal baking for the insertion of Rule 36(4) of CGST Rule, 2017

It is to be noted that before the introduction of the provision of Section 16(2)(aa) through Finance Act, 2021 which needs to be notified, there was no provision under the CGST Act, 2017 which provides the condition to take ITC on the basis of the communication of the details furnished by the supplier. Therefore, it can be said that the insertion of Rule 36(4) under CGST Rule, 2017 is unconstitutional being contrary to the scheme of the CGST Act.

Further, various writ petitions have been filed before the Hon'ble Rajasthan High Court in GR Infra projects Limited v. Union of India [D.B. Civil Writ Petition No. 6337/2020 dated August 05, 2020], before the Hon'ble Calcutta High Court in M/s. LGW Industries Limited & anr. v. Union of India & ors. [W.P.A. 92 of 2020, dated December 14, 2020] and before the Hon'ble Gujarat High Court in M/s Society for Tax Analysis And Research v. Union of India [R/Special Civil Application No. 19529 of 2019, dated, November 14, 2019] wherein the Courts have issued notice to government, in case of Rule 36(4) of the CGST Rules, which places a restriction on availment of ITC @20%/10%/5% (as amended from time to time) over and above amount reflected in GSTR 2A, despite having valid tax invoice.

It is to be noted that, the condition imposed by Rule 36(4) of the CGST Rules is not under the control of the recipient and hence can be said to be a condition which is impossible to be fulfilled by the recipient and thereby not requiring compliance.

Substantive benefits shall not be denied due to fault of supplier or procedural lapses

It is pertinent to note that the benefit of ITC cannot be denied to the recipient of goods or services or both on account of default or procedural lapse on the part of the supplier. In a recent judgment, the Hon'ble Madras High Court in the case of **M/s. D.Y. Beathel Enterprises v. The State Tax Officer** [2021 (3) TMI 1020 – Madras High Court], held that the approach taken by the revenue authorities in reversing the Input Tax Credit ("ITC") availed by the Petitioners for the fault of the sellers is incorrect.

Thus, a recipient cannot be denied the right to ITC merely due to circumstances that are beyond the control of the recipient. Non-filing or incorrect filing of the details of outward supplies by the supplier is not under the control of the recipient for which the recipient is not under an obligation to reverse the ITC not reflecting in its GSTR-2A or to be denied of ITC.

Therefore, it is unjust to deny ITC to the recipient on failure on part of Supplier to furnish details on the same in time.



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