

# GST Trail

## Key Highlights of GST Notifications and Clarification Circulars

December 2022



## Notifications

### Notification Nos. 26/2022-Central Tax and 27/2022-Central Tax, both dated 26 December 2022

Pursuant to the 48<sup>th</sup> GST Council meeting held on 17 December 2022, the Central Board of Indirect Taxes and Customs (CBIC) has notified amendments to the CGST Rules, 2017, to facilitate trade and to streamline the compliances. Some of the key changes are summarized below:

1. Rule 8 has been amended to implement biometric-based Aadhaar authentication and risk-based physical verification for GST registration purposes in Gujarat.
2. Rule 37A has been inserted to prescribe the mechanism for reversal of Input Tax Credit (ITC) and subsequent re-availment thereof in case of non-payment of tax by the supplier in a specified period.

3. Rule 88C has been introduced to provide for the manner of dealing with the difference in liability reported in GSTR-1 and that reported in GSTR-3B. Accordingly, the taxpayer shall be intimated the difference through Form DRC – 01B while directing him to – (i) pay the differential tax liability along with interest; or (ii) explain the reason within seven days.

### Notification No. 25/2022-Central Tax dated 13 December 2022

For the registered persons whose principal place of business is in the State of Tamil Nadu, the time limit for furnishing Form GSTR-1 for November 2022 was extended till 13 December 2022.

## Circulars

### Circular No. 183/15/2022-GST dated 27 December 2022

Clarification has been issued to deal with the difference in ITC availed in GSTR-3B as compared to that detailed in GSTR-2A for FY 2017-18 and 2018-19 due to bona fide errors.

- The following scenarios have been covered:
  - a. The supplier has failed to file GSTR-1 for a tax period but has filed the GSTR-3B for the said tax period
  - b. The supplier has filed GSTR-1 as well as GSTR-3B for the said tax period but has failed to report a particular supply in GSTR-1
  - c. The supplier has wrongly disclosed the supply as B2C instead of B2B in the GSTR-1
  - d. The supplier has filed GSTR-1 and GSTR-3B for a tax period but wrongly declared the GSTIN of the recipient

- Upon seeking the details of all invoices on which ITC has been availed in GSTR-3B but which are not reflected in GSTR-2A, the proper officer shall ascertain the fulfillment of conditions of Sections 16, 17, and 18 of CGST Act, 2017 read with the relevant Rules thereof.
- The proper officer may take the following action to verify the condition of payment of tax by the supplier:
  - a. Where the difference in ITC in respect of a supplier for the said financial year exceeds INR 0.5 million, a certificate from the Chartered Accountant or the Cost Accountant certifying that the supplies have actually been made and tax thereon has been paid should be produced by the claimant. The CA or CMA certificate shall contain UDIN.
  - b. Where the ITC difference is up to INR 0.5 million, the certificate shall be from the concerned supplier.
- However, for FY 2017-18, such relaxations shall not be applicable to the claim of ITC in GSTR-3B filed between the due dates for September 2018 to March 2019 if the supplier has not furnished the details by the due date of furnishing GSTR-1 of March 2019.
- The said guidelines/instructions would apply only to the ongoing proceedings in scrutiny/audit/investigation, etc., for FY 2017-18 and 2018-19 and not to the completed proceedings. However, they will apply where any adjudication or appeal proceedings are still pending.
- In case of supply of services by way of transportation of goods, including by mail or courier, where the transportation of goods is to a place outside India, and where the supplier and recipient of the said supply of services are located in India, the place of supply is the concerned foreign destination where the goods are being transported. Accordingly, the aforesaid supply of services qualifies as inter-state supply, leviable to IGST.
- Neither Section 16 nor 17 of CGST Act, 2017 restricts the availment of ITC by the recipient located in India if the place of supply of said input service is outside India. Thus, the recipient of transportation services shall be eligible to ITC of IGST so charged by the supplier, subject to fulfillment of other conditions laid down in said Sections.

**[Circular No. 184/16/2022-GST dated 27 December 2022](#)**

Clarification issued on the entitlement of ITC where the place of supply is determined in terms of the proviso to Section 12(8) of IGST Act, 2017.

### [Circular No. 185/17/2022-GST dated 27 December 2022](#)

The said Circular provides clarity on the applicability of provisions of Section 75(2) of the CGST, 2017 and its effect on limitation.

- Section 75(2) provides that in cases where the Appellate Authority or Tribunal or Court concludes that the show cause notice issued under Section 74(1) of CGST Act, 2017 is not sustainable for the reason that the charges of fraud or any willful mis-statement or suppression of facts to evade tax have not been established against the noticee, then the proper officer shall determine the tax payable by deeming the notice to have been issued under Section 73(1).
- Resultantly, only that amount of tax short paid or not paid, or ITC wrongly availed or utilized, along with interest and penalty payable, can be re-determined where the show cause notice was issued within two years and nine months from the due date of furnishing of annual return (GSTR-9) for

the respective financial year. Where the show cause notice issued under Section 74(1) is beyond two years and nine months and the appellate authority concludes that the same is unsustainable, the entire proceeding shall be dropped.

- The same analogy of limitation shall be applicable in cases of tax payable on account of erroneous refund along with interest and penalty.

### [Circular No. 186/18/2022-GST dated 27 December 2022](#)

The said Circular provides clarity on the taxability of No claim Bonus offered by Insurance Companies and the applicability of e-invoice with respect to an entity.

### No Claim Bonus

There is no supply provided by the insured to the insurance company in the form of agreeing to the obligation to refrain from the act of lodging an insurance claim during the previous year(s) and accordingly, No Claim Bonus cannot be treated as consideration for any supply provided by the insured to the insurance company. Accordingly, GST shall be leviable on the actual insurance premium amount payable by the policyholder after the deduction of the No Claim Bonus.

### E-invoicing

The exemption from the generation of e-invoices is for the entity as a whole and is not restricted by the nature of the supply being made by the said entity.

### Circular No. 187/19/2022-GST dated 27 December 2022

Clarification has been provided regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalized under the Insolvency and Bankruptcy Code, 2016 (IBC).

In cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalized against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in DRC-25 reducing such demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

### Circular No. 188/20/2022-GST dated 27 December 2022

- In cases where the contract/agreement for the supply of services of construction of a flat/building has been canceled or where the long-term insurance policy has been terminated, the refund claim can be filed by unregistered persons only if the time period for issuance of credit note by the supplier has already expired.
- The unregistered person shall:
  - a. Obtain a temporary registration using his PAN
  - b. Select the same State/UT where the supplier, in respect of whose invoice refund is to be claimed, is registered
  - c. Undergo Aadhaar authentication
- Where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain temporary registration in each of the concerned States / UTs where the said suppliers are registered.

- To calculate the time period of two years from the relevant date, the date of issuance of the letter of cancellation of the contract/agreement for supply by the supplier will be considered as the date of receipt of services by the applicant under Clause (g) of Explanation (2) of Section 54 of CGST Act, 2017.

The proper officer shall process the refund claim in a manner similar to other RFD-01 claims.

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