



IMPORTANT CHANGES IN GST PURSUANT TO 48TH GST COUNCIL MEETING

- **CA SWAPNIL MUNOT** | **CMA NIKHIL CHAVAN** | **CMA NANDA BARDE & Team**

48th GST Council meeting was held on 17th Dec 2022 via virtual modes, in which some changes were made in GST Law – more particular, in relation to

- ✚ Provisions for curtailing Fake Invoices – Changes in GST Registration Procedure,
- ✚ Relief to deal with ITC mismatch cases for FY 2017-18 and FY 2018-19,
- ✚ Intimation for tax payment in case of difference in GSTR 1 & 3B
- ✚ Refund of GST to Home buyer/others on cancellation of agreement/contract,
- ✚ Simplification of appeal procedure and
- ✚ Few others changes/clarification.

Accordingly, Government has issued Notification No 26/2022 CT to 27/2022 CT dated 26th Dec 2022 and Circular No 183/15/2022 GST to 188/20/2022 dated 27th July 2022 to give effect of changes recommended by GST Council. Some changes were also made in GST Rate. In this article, we will understand important changes effected by above mentioned Notification and Circular:

❖ **CHANGES IN GST REGISTRATION PROCEDURE, IN ORDER TO AVOID MISUSE OF PAN AND CURTAIL THE PRACTICE OF CREATING FAKE ENTITY WITH PAN OF OTHERS**

[RULE 8, RULE 8(4A), RULE 9 (1)(AA), NOTIFICATION NO 27/2022 CT DATED 26TH DEC 2022]:

▪ **CHANGES IN INITIAL GST REGISTRATION PROCEDURE [RULE 8]:**

- ☞ Earlier at the time of obtaining GST registration, First PAN, Email, Mobile was required to be provided. On such mobile and Email OTP was sent.
- ☞ Now only PAN is to be provided, OTP will be sent to Mobile and Email linked to such PAN as per data with income tax department/NSDL.

▪ **VERIFICATION OF ORIGINAL COPY OF DOCUMENT UPLOADED WHILE APPLYING FOR GST REGISTRATION [RULE 8 (4A)]:**

- ☞ Person who is willing to apply for GST Registration, who has opted for Aadhaar verification, is now also required to – ‘produce original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner and the application shall be deemed to be complete only after completion of the process’.
- ☞ However, such cases will be selected based on data analysis and risk parameters and may not be applied straightaway to all. Let’s see, how the department/GSTN implements this procedure.
- ☞ **This will be implemented on pilot basis initially only in “Gujrat” State.** It means, this is applicable only in the state of Gujrat. Not applicable on other parts of the country as of now.

[Notification No 27/2022 CT dated 26th Dec 2022]

▪ **PHYSICAL VERIFICATION OF PREMISES STILL BE WARRANTED EVEN AFTER ADHAR AUTHENTICATION IN SOME CASES [RULE 9 (1)(AA)]:**

- ☞ Physical verification of premises will still be warranted in case of person, even after undergoing Aadhar authentication in case, if he is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business.

❖ **REVERSAL OF ITC IN THE CASE OF NON-PAYMENT OF TAX BY THE SUPPLIER AND REAVAILMENT THEREOF [RULE 37A]:**

- ☞ Where ITC has been availed by a registered person in 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 GSTR-1 or IFF , but the return in 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 ITC in respect of such invoice or debit note has been availed, => the said amount of ITC 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:

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

☞ **Reavailment option:** 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

▪ **Author Comment** – In our view, newly added, Rule 37A is contrary to Sec 16, however it is beneficial for taxpayer, as it:

- ✓ Allow to claim and retain ITC, which is appearing in GSTR 1 but GSTR 3B not filed by supplier till Nov of next financial year
- ✓ In such case, if such tax is not paid by supplier in GSTR 3B, then interest on recipient will start after 30th Nov of next financial

However, it appears that authorities will not accept this, but it will definitely helpful while replying to notices or its support can be taken in litigation

❖ **COMPULSORY TO MENTION DETAIL OF RECEIPT, IN CASE OF B2C SUPPLY IN CASE OF SUPPLY THROUGH ECOMMERCE OPERATOR [RULE 46(F)]**

- ☞ Where any taxable service is supplied by or through an E-Commerce operator or by a supplier of online information and database access or retrieval services
- ☞ To a recipient who is unregistered, (irrespective of the value of such supply),
- ☞ Tax invoice issued by the registered person shall contain - the name and address of the recipient along with its PIN code and the name of the State, and the said address shall be deemed to be the address on record of the recipient

❖ **TAX PAYMENT / INTIMATION IN CASE OF MISMATCH BETWEEN GSTR 1 AND GSTR 3B [RULE 88C, RULE 59(6)(D)]:**

- ☞ Where the tax payable as per GSTR-1 or IFF in respect of a tax period, exceeds GSTR-3B, by such amount and such percentage, as may be recommended by the Council,

- ☞ the said registered person shall be intimated of such difference in **Part A of FORM GST DRC-01B**, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to:
 - a) Pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or
 - b) Explain the difference in tax payable on the common portal, **within a period of seven days.**

- ☞ The registered person shall, upon receipt of the intimation referred above, either,-
 - a) Pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC- 01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or
 - b) Furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in **Part B of FORM GST DRC-01B**, within the period specified in the said sub-rule.

- ☞ **Recovery Proceedings:** Where any amount specified in the intimation remains unpaid within the period specified and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

☞ **Subsequent Return filing not allowed:** Registered person, to whom an intimation has been issued on the common portal under the provisions of Rule 88C in respect of a tax period, shall not be allowed to furnish GSTR-1 or IFF for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the rule 88C(2).”.

❖ REFUND TO UNREGISTERED PERSON ON CANCELLATION OF AGREEMENT OR CONTRACT FOR SUPPLY OF SERVICE [RULE 89(2)(KA), 188/20/2022-GST DT 27TH DEC 2017] :

POINTER	DETAILS
Who can claim Refund under this?	<ul style="list-style-type: none">○ Unregistered buyer, upon cancellation/termination of agreement for supply of service (and where time limit for adjustment by credit note is over for supplier of over as per Sec 34(1) of CGST Act 2017) can claim refund of GST amount paid to supplier.○ Example:<ul style="list-style-type: none">- Person has booked the flat, paid all the amount including GST in FY 2018 but afterwards deal is cancelled in 2021- Premium paid for long term insurance including GST, but afterwards such insurance policy is cancelled.
Procedure to claim Refund	<ul style="list-style-type: none">○ New functionality has been made available on the common portal which allows unregistered persons to take a temporary GST registration

<p>of GST by such unregistered buyer</p> <p>[Temporary GST Registration to Unregistered Buyer]</p>	<ul style="list-style-type: none">○ The unregistered person, who wants to file an application for refund shall obtain a temporary GST registration on the common portal using his PAN○ While doing so, the unregistered person shall select the same state/UT where his/her supplier.○ 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.○ 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 the each of the concerned States/UTs where the said supplier are registered
<p>Refund application is to be filed in which Form?</p> <p>and</p> <p>What document is required?</p>	<ul style="list-style-type: none">○ Apply for refund in Form RFD 01 under the category 'Refund for Unregistered person' along with Statement 8 details asked therein and document mentioned in below para. <ul style="list-style-type: none">✓ Statement containing the details of invoices (viz. number, date, value, tax paid and details of payment), in respect of which refund is being claimed✓ Copy of such invoices, proof of making such payment to the supplier, the copy of agreement or registered agreement or contract, as applicable, entered with the supplier for supply of service,✓ the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service,

	<ul style="list-style-type: none"> ✓ details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof ✓ Certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant; that he has not adjusted the tax amount involved in these invoices against his tax liability by issuing credit note; and also, that he has not claimed and will not claim refund of the amount of tax involved in respect of these invoices <ul style="list-style-type: none"> ○ Separate applications for refund have to be filed in respect of invoices issued by different suppliers
Time limit for claiming Refund	<ul style="list-style-type: none"> ○ Within Two years from date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier.
Refund is allowed of which amount	<ul style="list-style-type: none"> ○ The refund amount claimed shall not exceed the total amount of tax declared on the invoices in respect of which refund is being claimed. ○ In cases where the amount paid back by the supplier to the unregistered person on cancellation/termination of agreement/contract for supply of services is less than amount paid by such unregistered person to the supplier, only the proportionate amount of tax involved in such amount paid back shall be refunded to the unregistered person
Refund is not allowed in case of	<ul style="list-style-type: none"> ○ Refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired <p>If such period is not expired, then refund application can not be filed</p>

Action by Officer	○ After scrutiny of refund application, proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06
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❖ APPEAL PROCEDURE SIMPLIFIED [RULE 108(3), RULE 109, RULE 109B]

- ☞ Earlier after submission of appeal, compulsorily certified copy of order is required to be submitted, then only appeal was deemed to be accepted.
 - Now if order against which appeal is filed is uploaded on portal, → then there is no need to submit certified copy of order against which appeal is filed.
 - If order is not uploaded in portal, → then self-certified copy of order (and not certified by officer) is required to be submitted within 7 days from the date of filing of appeal in Form APL 01.
 - This relaxation is also provided for appeal to tribunal.
- ☞ Option is provided for withdrawal of appeal by insertion of Rule 109B. For this Form APL 01/03 W is inserted.

❖ CLARIFICATION TO DEAL WITH DIFFERENCE IN ITC AVAILED IN GSTR-3B AS COMPARED WITH GSTR-2A FOR FY 2017-18 AND 2018-19 [183/15/2022-GST DT 27TH DEC 2017]

- ☞ Government has issued welcome circular to provide relief for ITC mismatch in initial year of GST implementation. This circular is applicable only for ITC difference of FY 2017-18 and FY 2018-19. It deals with below four scenarios:

- a) **GSTR 1 not filed case:** Where the supplier has filed GSTR 3B but not filed GSTR 1, due to which the supplies made in the said tax period do not get reflected in FORM GSTR-2A of the recipients.
- b) **Failed to report invoice in GSTR 1:** Where the supplier has filed GSTR-1 and GSTR-3B, but has failed to report a particular supply in GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the recipient.
- c) **Reported in B2C:** Where the supplier has filed GSTR-1 and GSTR-3B, but supplier has wrongly reported the said supply as B2C supply, instead of B2B supply, in his FORM GSTR-1, due to which the said supply does not get reflected in FORM GSTR-2A of the said registered person
- d) **Wrong GSTIN:** Where the supplier has filed GSTR-1 and GSTR-3B, but he has declared the supply with wrong GSTIN of the recipient in FORM GSTR-1.

☞ In above cases, proper officer will allow ITC claim, subject to compliance of other provisions of CGST Act 2017 (Sec 16, Sec 17 etc), as per below procedure:

☞ In case where differential ITC (CGST + SGST or IGST) claim [GSTR-3B minus GSTR-2A] exceeds by Rs 5 lakhs in case of particular supplier	➔ Proper officer shall ask the registered person to produce a certificate for the concerned supplier from CA or CMA, certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been paid by the said supplier in his return in FORM GSTR 3B. Certificate issued by CA or CMA shall contain UDIN
☞ In case where differential ITC (CGST + SGST or IGST) claim	➔ Proper officer shall ask the claimant to produce a certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said

[GSTR-3B minus GSTR-2A] is upto Rs 5 lakhs in case of particular supplier: registered person and the tax on said supplies has been paid by the said supplier in his return in FORM GSTR 3B.

☞ This relaxation/beneficial procedure is not applicable to:

- ✓ Completed proceeding of FY 2017-18/ FY 2018-19.
[It is applicable only to ongoing proceedings in scrutiny/audit/ investigation / adjudication / appeal, etc. for FY 2017-18 and 2018-19]
- ✓ the claim of ITC made in the FORM GSTR-3B return filed after the due date of Sep, 2018 till the due date March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

CIRCULAR ISSUED FROM 183/15/2022 TO 188/20/2022 GST DATED 27TH DEC 2022

Below circular were issue to clarify on various things as listed below

Circular No and Date	Subject clarified by Circular
183/15/2022-GST dt 27 th Dec 2017	Clarification to deal with difference in Input Tax Credit (ITC) availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 [Discussed above in detailed]
184/16/2022-GST dt 27 th Dec 2017	Clarification on the entitlement of ITC where the place of supply is determined in terms of the proviso to Sec 12(8) of IGST Act, 2017 Clarification is issued in terms of transportation of goods outside India and location of supplier and recipient is in India.

185/17/2022-GST dt 27 th Dec 2017	Clarification with regard to applicability of provisions of Sec 75(2) of CGST, 2017 and its effect on limitation.
186/18/2022-GST dt 27 th Dec 2017	Clarification on - Taxability of No Claim Bonus offered by Insurance companies and applicability of E Invoice
187/19/2022-GST dt 27 th Dec 2017	Clarification regarding the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016
188/20/2022-GST dt 27 th Dec 2017	Prescribing manner of filing an application for refund by unregistered persons [Discussed above in detailed]

For detailed understanding of changes, one should refer above mentioned Notification and Circular.

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