

## Analysis of CBIC Notifications issued on 22nd December, 2020

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The year 2020 can easily be labelled as 'coming out of comfort zone' year for the entire world. In GST also, things are no different. This year has seen series of changes in GST landscape like E-invoicing, introduction of 138E for E-way Bills, proposed changes in GST Returns, Introduction of QRMP Scheme, GSTR-2B and auto-populated GSTR-3B. All the above changes have far reaching implications on the tax payers and the overall tax compliance climate.

CBIC has introduced various amendments to close this very dynamic year 2020 through issue of following notifications;

NTN 92/2020-CT	Central Government appoints the 1st day of January, 2021, as the date on which the provisions of various section of Finance Act, 2020 shall come into force
NTN 93/2020-CT	Seeks to insert proviso in Notification No. 73/2017– Central Tax, dated the 29th December, 2017
NTN 94/2020-CT	Central Goods and Services Tax (Fourteenth Amendment) Rules, 2020

We present below our analysis of the above changes;

### **I. Provisions of Finance Act, 2020 related to GST Applicable from 01.01.2021**

Finance Act, 2020 had made certain amendments in the provisions of the Act. Now vide NTN 92/2020-CT dt. 22.12.2020, following amendments shall come into effect from 01.01.2021:

#### **1. Amendment in Composition Scheme in respect of Supplier of goods and /or of specified services-**

As per Sec 10(1) marginal supply of services (other than restaurant services) to the extent of 10% was permitted to supplier of goods opting for composition scheme. Sec 10(2) which provides for eligibility of Composition scheme has been amended to include services in the conditions of eligibility. Earlier there was only the reference of goods. The net impact of the amendment is that if the registered person is providing following services;

- Supply of services not leviable to tax,
- Inter-state supply of services

- Supply of services through an E-commerce operator required to collect TCS.

Such person will not be eligible for composition scheme even if the quantum of such services is less than 10% in the total turnover in a State or Union territory.

It may also be noted that the exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account while reading the said restriction due to specific exclusion of the same by virtue of the third proviso to Sec. 10(1) of the CGST Act, 2017.

## **2. Delinking of ITC on Debit note with Invoice Date**

It may be noted that the time limit to avail ITC with respect to the tax charged on the debit note before the amendment u/s 16(4) of the CGST Act, 2017 was also linked to the invoice date and not the date of the debit note. This has resulted in hardships to the industry especially automobile sector where retrospective price increase is a very common feature.

## **3. Option for Cancellation of Registration suo moto granted in case of Voluntary registration u/s 25(3)**

- An amendment had been made u/s 29(1) of the CGST Act, 2017 to provide that even a registered person who has obtained the registration voluntarily can opt for cancellation if such person is otherwise not required to be registered mandatorily u/s 22 (on crossing the threshold) or Sec. 24 (compulsory registration in certain cases). This again is a welcome amendment.

**4. Extension of period of filing Revocation of Registration Application** - Sec. 30(1) of the CGST Act, 2017 had been amended to provide that on sufficient cause, the Additional/Joint Commissioner can extend the period for making the revocation application by 30 more days and the Commissioner can extend even further by 30 more days. In other words, a revocation application can be filed within 30 days from the date of service of cancellation order and additional 60 days condonation can be sought by assessee

**5. Empowering the Government to specify the time and manner of issuance of Tax invoice for supply of services:** Sec 31(2) of the CGST Act, 2017 has been amended to grant the power to the Government to specify, with respect to categories of services or supplies in respect of which a tax invoice shall be issued, with such time and manner as prescribed.

**6. TDS Certificate now governed through rules:** The procedural part contained in Sec. 51 dealing with the issuance of the TDS certificate and the consequences on certain failures is now to be dealt by way of a rules and hence the concerned provisions contained in the Act are omitted.

**7. Beneficiaries of Fake Invoicing brought under Tax net:** Sec 122 deals with penalties under GST in respect of various offences. Sec 122(1A) has been inserted wherein it has been proposed that a person who retains the benefit of following transactions and at whose instance such transactions are conducted:

- supplies any goods or services or both without the issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;
- takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- takes or distributes input tax credit in contravention of section 20, or the rules made thereunder

shall also be liable to the penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on. Corresponding amendments in Sec 132 has also been made whereby the person who causes to commit and retains the benefit of the given offences would be liable to prosecution.

**8. Amendment in Schedule II to Sec 7 of CGST Act:** Post amendment in Section 7, it has been made clear that Schedule II to Section 7 is merely a classification schedule and does not determine whether a transaction is a supply or not. Sec. 7(1)(c) of the CGST Act, 2017 only allows the activities specified in Schedule I as supply even if the same are made without a consideration. Hence, unless the transaction in question is not covered by Schedule I, Schedule II cannot deem it as a supply if it is made without a consideration. Therefore the said anomaly is corrected by way of a retrospective amendment effective from 01.07.2017 to the effect that the aspect of presence/absence of consideration will be dealt by Schedule I only and Schedule II shall merely classify the said transaction once it is established that it is a supply.

## **II. Waiver of Late fees in filing of GSTR-4 for FY 2019-20 if return filed till 31-12-2020 where principal place of business is in the Union Territory of Ladakh**

Special benefit has been accorded to the registered person who have opted for Composition scheme and whose principal place of business is in the Union Territory of Ladakh. They can file **GSTR-4** for FY 2019-20 till 31-12-2020 with no late fees u/s 47 of CGST Act.

## **III. Amendment in CGST Rules**

**1. Introduction of Biometric Verification in case of New Registration & Other changes:** Rule 8 and 9 have been amended to provide for the following

- If Opted for Aadhaar based Authentication - Taking biometric-based Aadhaar authentication and taking photograph or
- If Not Opted for Aadhaar based Authentication- taking biometric information, photograph and verification of such other KYC documents

for the applications for new registration. The amendment also requires verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule. The application shall be deemed to be complete only after completion of the aforementioned process.

Furthermore; the **period for granting the registration has been increased from 3 days to 7 days.** However, in cases where a person fails to undertake the Aadhaar authentication or does not opt for authentication of Aadhaar number or where the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, deems it fit to carry out physical verification of places of business, the registration shall be granted within a period of 30 days instead of the normal 7 days. **Referred provisions shall come into effect from 22-12-2020.**

*CGA legal Comments: The registration process will now be longer and more time consuming. Further Biometric verification and physical verification of documents at facilitation centres made mandatory will make it cumbersome specially in case of big companies where every new registration will require authorized signatories to visit facilitation centres for biometric verification along with physical verification of documents.*

## **2. Suspension/Cancellation of GST Registration:**

- **Additional Conditions introduced:** Now as per Rule 21, Registration granted to a person can be cancelled if the said person;
  - ❖ Avails ITC in violation of the provisions of section 16 of the Act or the rules made thereunder; or
  - ❖ Furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 (GSTR-3B) for the said tax periods; or
  - ❖ Violates the provision of rule 86B [Utilises Electronic credit ledger for discharge of more than 99% of Tax liability if value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees]
- **No opportunity of being heard before Suspension of Registration** in case registration of a person is liable to be cancelled under section 29 or under rule 21.
- **Intimation of Suspension of Registration:** The registration of taxpayer may be suspended if;
  - Significant difference found in Comparison of GSTR-3B with GSTR-1 or GSTR-2A
  - Any other analysis recommended by GST Council

The intimation in **FORM GST REG-31** will be sent to the registered person highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.

- **No taxable supply** can be made during Suspension of registration and **no refund** will be granted during the period of suspension of his registration.
- **Power granted to department** that suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.

**Referred provisions shall come into effect from 22-12-2020.**

*CGA legal Comments: The above changes have given enormous power to the department in respect of suspension of registration. Registration can be suspended if there are **significant** variations between GSTR-1 & GSTR-3B or GSTR-2A and GSTR-3B. No explanation has been provided as to how much variation may be considered significant. Further registration will be suspended post which intimation will be provided. During the suspension no taxable supply can be undertaken or refund will be granted. Further the proper officer has also been granted power to revoke the suspension anytime during the pendency of the proceedings for cancellation. This may see cases of harassment of taxpayers in the hands of some officers. Let us hope that this power may not be misutilised by the department. Further, the registered persons now need to be very careful while filing their returns. Conducting regular reconciliations of returns along with GSTR-2A is now an absolute necessity.*

**3. Capping of ITC availment for missed invoices reduced from 10% to 5%:** Rule 36(4) has been amended to the effect that the registered person is restricted from availing the ITC in excess of the 5% (earlier it was 10%) of the eligible ITC for which the concerned suppliers have furnished the invoices. **The aforesaid 5% restriction shall come into effect from 01.01.2021.**

**4. Restriction in the filing of GSTR 1:** Rule 59 has been amended to NOT permit the taxpayer to file GSTR 1 if,

- he has not furnished the return in FORM GSTR-3B for the preceding two months (for taxpayer filing monthly returns);
- he has not furnished the return in FORM GSTR-3B for preceding tax period (for taxpayer filing quarterly returns)
- he is required to discharge the tax liability of at least 1% by cash (see the discussion on Rule 86B) and he has not furnished the return in FORM GSTR-3B for preceding tax period (instead of two months under (a)).

**Referred provisions shall come into effect from 22-12-2020.**

**5. Restrictions on use of amount available in electronic credit ledger.-** A new rule 86B has been inserted whereby a registered taxpayer (where the value of taxable supply other than exempt supply and zero-rated supply exceeds INR 50 lakhs/month) cannot discharge his liability in excess of 99% by utilizing the

ITC. In other words, such taxpayer shall be required to discharge at least 1% of the liability only by way of cash. However, the rule provides for the following exceptions (wherein the entire liability can be discharged by utilizing the ITC):

- the said person or the proprietor or karta or the managing director or any of its two partners, Whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than INR 1 lakh as income tax in each of the last two financial years for which the time limit to file the return of income has expired; or
- the registered person has received a refund amount of more than INR 1 lakh in the preceding financial year on account of unutilised input tax credit on account of zero-rated supplies (exports + SEZ); or
- the registered person has received a refund amount of more than INR 1 lakh in the preceding financial year on account of unutilised input tax credit on account of inverted rate structure; or
- the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year;
- the registered person is – (i) Government Department; or (ii) a Public Sector Undertaking; or (iii) a local authority; or (iv) a statutory body.

Furthermore; Commissioner or an officer authorised by him in this behalf is granted the power to remove the said restriction after such verifications and such safeguards as he may deem fit. **Referred provisions shall come into effect from 01.01.2021.**

**CGA legal Comments:** The above amendment is meant to curb fake invoicing. However, this may pose reconciliation issues for tax payers while filing the returns.

**6. Further Restriction in case of E-Way Bill:** The Validity of E-way bill of 1 day for every 100 Km has been reduced to 1 Day for every 200 km with effect from 1<sup>st</sup> January, 2021. Furthermore, rule 138E has been amended whereby no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,

- has not furnished the returns (GSTR-1 or GSTR-3B) for a consecutive period of two tax periods
- whose registration is suspended as under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A.

**Referred provisions shall come into effect from 22-12-2020.**

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