

Major Changes in GST Rules!

You Must Know!

[24th December 2020]

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How many times the Rules
amended?

Rules amended!

2017	• 14 times
2018	• 14 times
2019	• 9 times
2020	• 14 times
Total	• 51 times!

Whats new – Changes made through Not. No. 94/2020-CT!

Input Tax Credit

Returns

Re-conciliation

Registration

Legal provisions

Changes!

Registration	ITC	Returns	Credit ledger	E-way Bill	Notifications	Clarifications
<ul style="list-style-type: none">• Rule 8 (Application)• Rule 9 (Verification)• Rule 21 (Cancellation)• Rule 21A (Suspension)• Rule 22 (Cancellation)	<ul style="list-style-type: none">• Rule 36 (4) (ITC)	<ul style="list-style-type: none">• Rule 59 (Outward)	<ul style="list-style-type: none">• Rule 86B (Restrictions)	<ul style="list-style-type: none">• Rule 138• Rule 138E	<ul style="list-style-type: none">• Not. No. 94/2020	<ul style="list-style-type: none">• Myths vs FACTS

1.

From 10% to 5%

[Rule 36 (4)]

1.1 Changes in Rule 36 (4) [w.e.f. 1.01.2021]

5%

- (c) for the figures and words “10 per cent.”, the figure and words “**5 per cent.**” shall be substituted

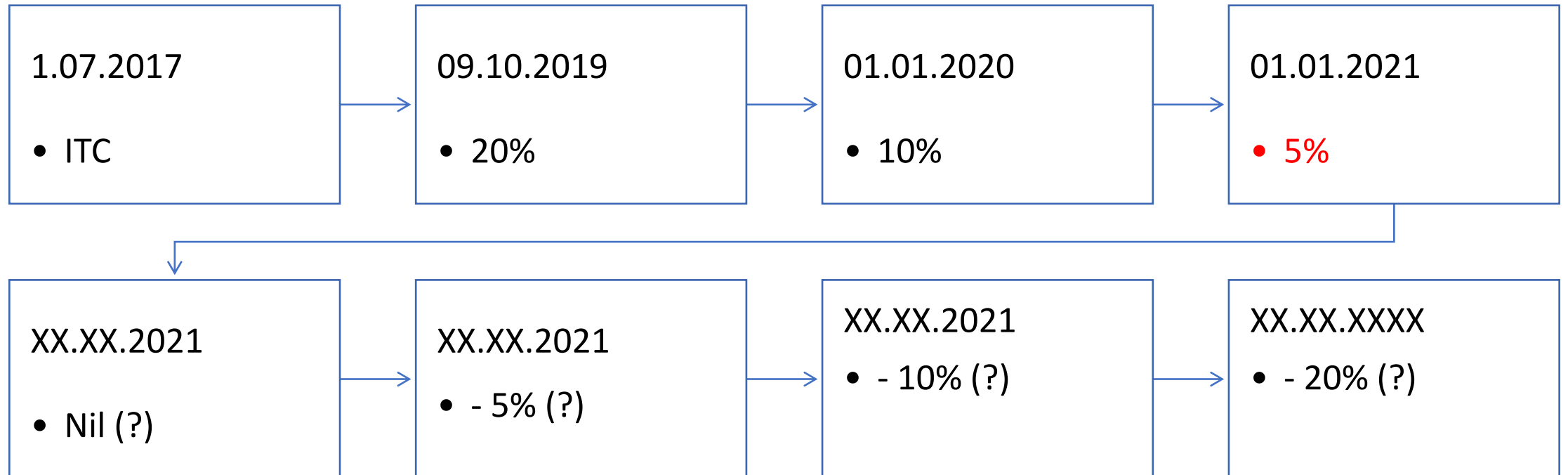
Uploaded

- (a) for the word “uploaded”, at both the places where it occurs, the word “**furnished**” shall be substituted

IFF added

- (b) after the words, brackets and figures “by the suppliers under sub-section (1) of section 37”, at both the places where they occur, the words, letters and figure “in FORM GSTR-1 or using the **invoice furnishing facility**” shall be inserted

1.1 Rule 36 (4) – Changes!



2.

Pay 1% in cash!

[Rule 86B]

2.1 New Year Surprise!

From 1.01.2021

2.2 Why!



2.3 Pay 1% in cash!

Pay atleast 1% of tax liability through **cash** ledger

If value of taxable supply other than exempt supply and zero-rated supply

In a month

Exceeds fifty lakh rupees

2.4 Why?

Why pay 1% in cash?

- In case of fake-invoicing, typically, entire GST liability is paid through credit so!

Why exempt supply and zero-rated supply excluded?

- As GST is not applicable thereon (so no issue of fake credit)

Why monthly turnover than annual?

- Mostly fake-supplier vanish after few months (so they don't complete a year)

2.5 Not applicable if – Income Tax!

Who?

- 1. Registered person
- 2. Proprietor
- 3. Karta
- 4. Any of its two partners
- 5. Managing Director or Whole-time Directors
- 6. Members of Managing Committee of Associations
- 7. Board of Trustees
- 8. As the case may be

What

- Have paid more than **one lakh** rupees as Income-tax
- In each of the **last two financial years** for which the time limit to file return of income under subsection (1) of section 139 of the said Act **has expired**

2.6 Not applicable if – GST Refund!

Registered person has **received a refund** amount of **more than one lakh rupees** in the preceding financial year on account of **unutilised input tax credit** under **clause (i)** of first proviso of subsection (3) of section 54

[i.e. zero-rated supply]

2.7 Not applicable if – GST Refund!

Registered person has received a refund amount of more than **one lakh** rupees in the **preceding financial year** on account of **unutilised input tax credit** under **clause (ii)** of first proviso of subsection (3) of section 54

[i.e. Inverted duty structure]

2.8 Self-assessment or System assessment!

CBDT has Income-tax data

MCA has Company and Director's data

CBIC has refund data

Then

Why ask GST payer to check whether 1% is applicable or not

Shouldn't based on data, system, decide it?

2.9 Not applicable if – Select ones!

1. Government Department
2. Public Sector Undertaking
3. Local authority
4. Statutory body

2.10 Not applicable if – GST payment cumulative criteria!

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**; or

2.11 Not applicable if – Selected ones!

Commissioner or an officer authorised by him in this behalf may
remove the said restriction **after such verifications** and such
safeguards as he may deem fit!

2.12 If 86B is applicable!

Scenario	Payment through Credit	Payment through Cash	Remarks
I	Nil	100%	Ok
II	60%	40%	Ok
III	90%	10%	Ok
IV	98%	2%	Ok
V	99%	1%	Ok
VI	100%	Nil	Rule 86B and Rule 21 (g)

2.14 Genuine taxpayers who may face Rule 86B!

Newly registered MNC
exporters (who are yet to file
GST refund claim)

Stock is accumulated on
account of COVID-19

Supplying goods at loss due to
COVID-19

First-time or start-up
entrepreneurs, not having
proven Income tax record

2.15 Rule but under which provisions of the Act?

Cart before the Horse!

Already Rule 36 (4) is challenged!

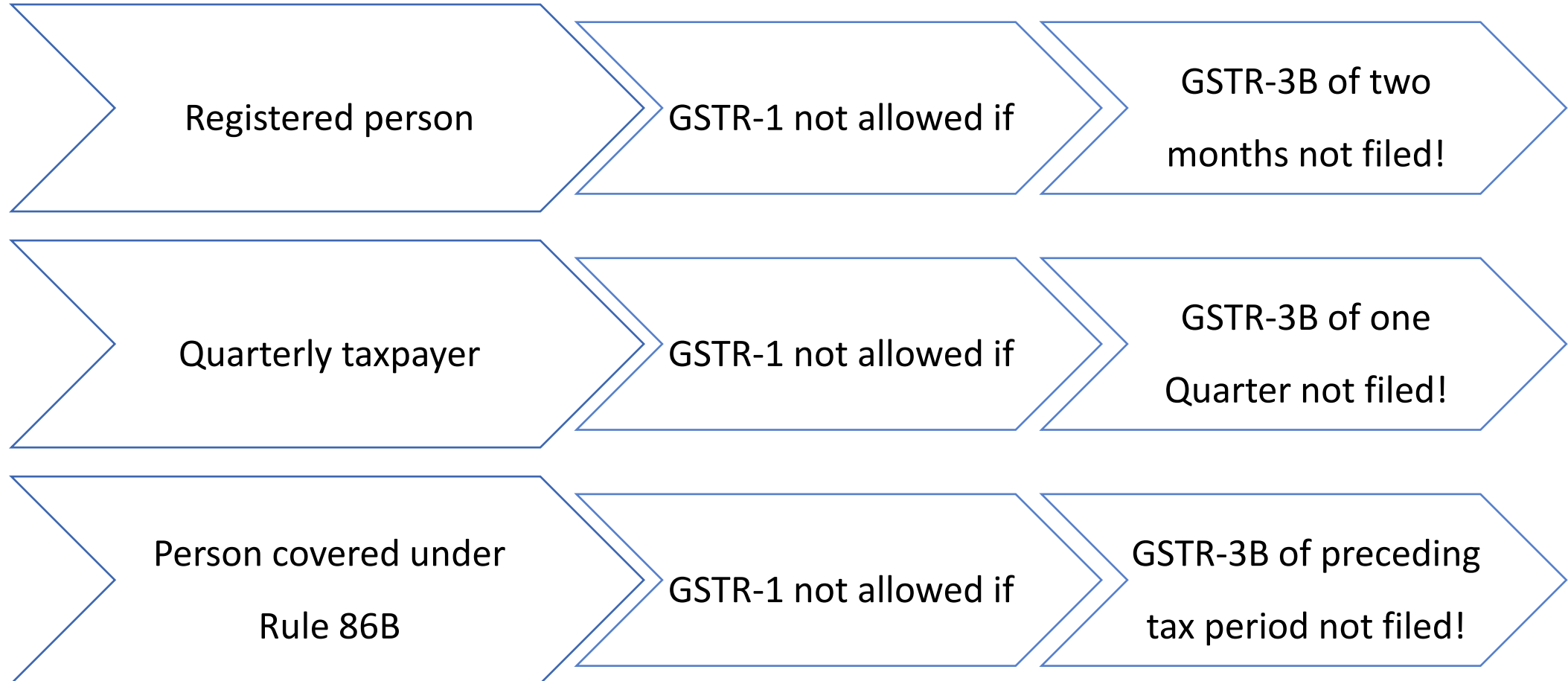
In days to come, Rule 86B will be!

3.

GSTR-1 filing not allowed if
GSTR-3B not filed!

[Rule 59 (5)]

3.1 GSTR-1 filing not allowed if!



3.2 Will it help GST Authorities?

If GSTR-1 is blocked then will it mean that the supplier has stopped doing business?

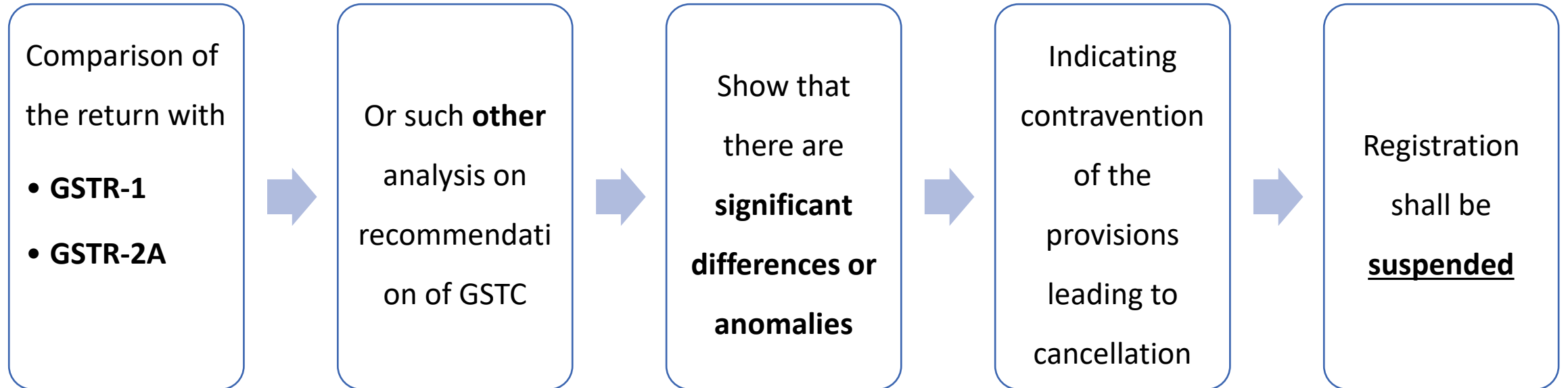
Rather GST Authorities need to receive data on real-time basis so recovery, if required, can be initiated!

4.

Data analytics and suspension!

[Rule 21A]

4.1 Suspension on suspicion!



4.2 Track your emails (including Spam mails)!

And communication to his **e-mail address** provided at the time of registration or as amended from time to time, **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!

4.3 Suspension – Immediate effect!

Action - Such suspension would be applicable with immediate effect to prevent passing on of fake input tax credit!

Impact – Supplier may **not be able to issue** invoice/ e-invoice/ e-way bill.
No business as B2B customers will immediately stop procuring from such vendors.

4.4 Suspension of Registration – Opportunity of being heard deleted!

(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, ~~after affording the said person a reasonable opportunity of being heard,~~ suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22."

4.5 Myth 1: No opportunity of being heard will be given if proper officer believes that registration is liable to be cancelled

- **FACT 1:** *The GST laws passed by the Parliament and state legislatures provide that GST registration is liable to be cancelled for those who have not filed 6 or more returns. **It is therefore wrong to say that the cancellation will be done without reasons.** To protect the **interest of revenue**, this provision has been put in the law so that fraudsters do not run away with GST collected from their customers.*
- *It may be further noted that no cancellation of registration would be done without giving proper opportunity of hearing to the taxpayer. Immediate action for **suspension is necessary** in cases where unscrupulous operators seek to pass on huge fake credit by gaming the system. Such action **will not affect genuine taxpayers** and will provide them a level playing field. Moreover, suspension may be revoked by the officer based on the taxpayer's representation.*

[\[Source – Twitter\]](#)

4.6 Revocation if it's a fit case!

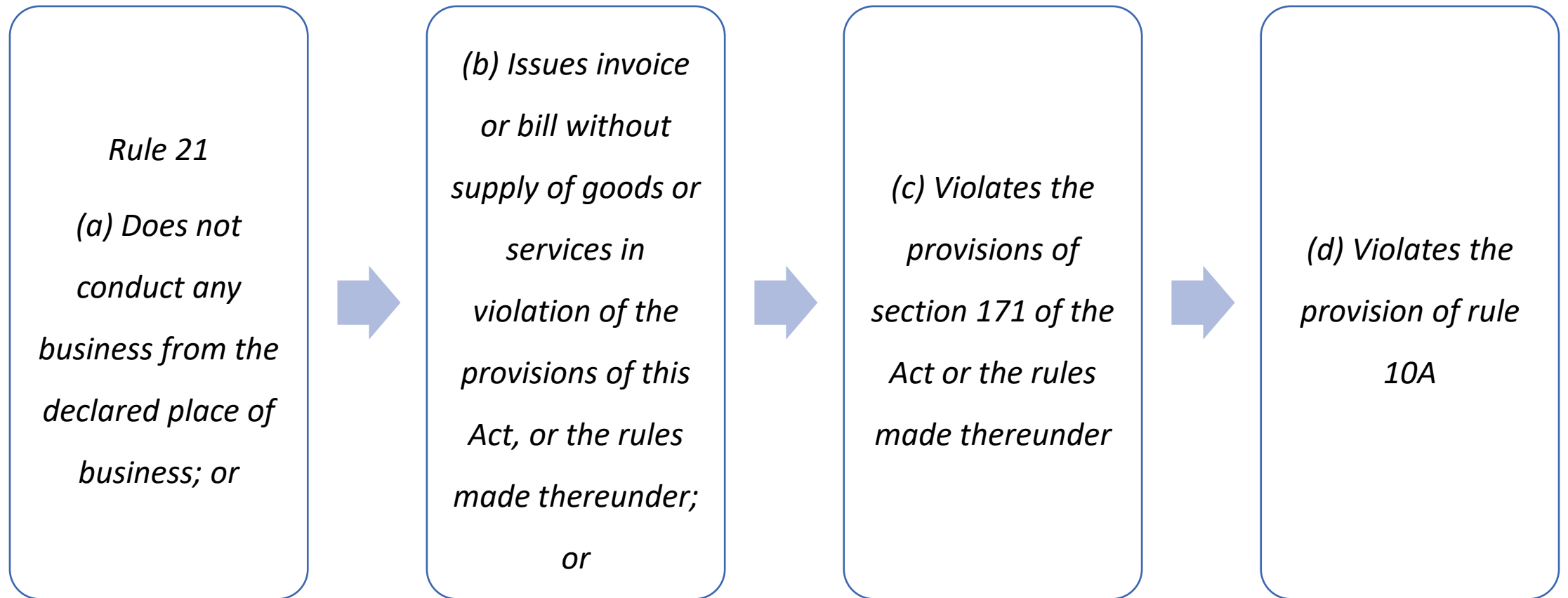
- *Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, **if he deems fit.***
 - *Proviso to Rule 21A (4)*

6.

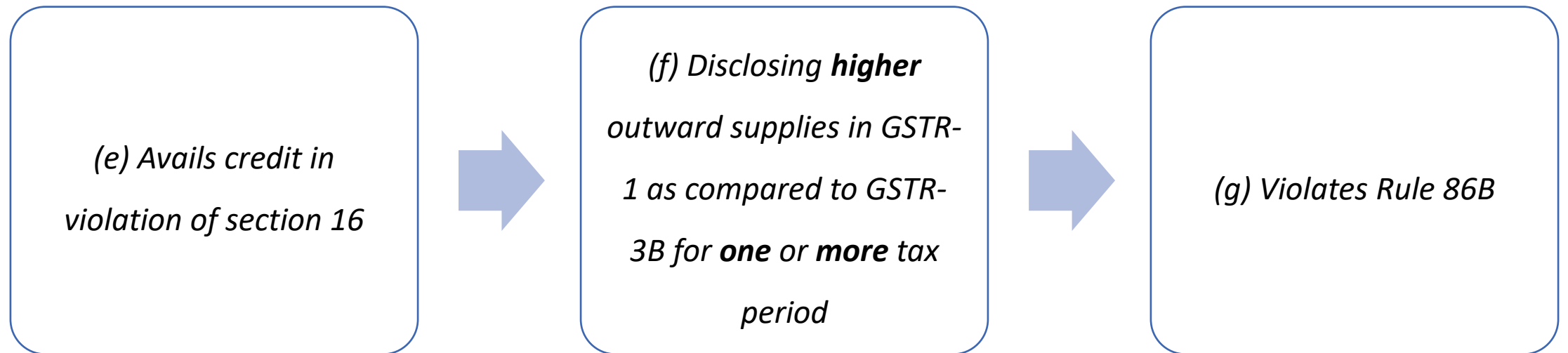
Cancellation of GSTIN!

[Rule 21]

6.1 Cancellation if – Existing provisions!



6.2 Cancellation if – Newly added!

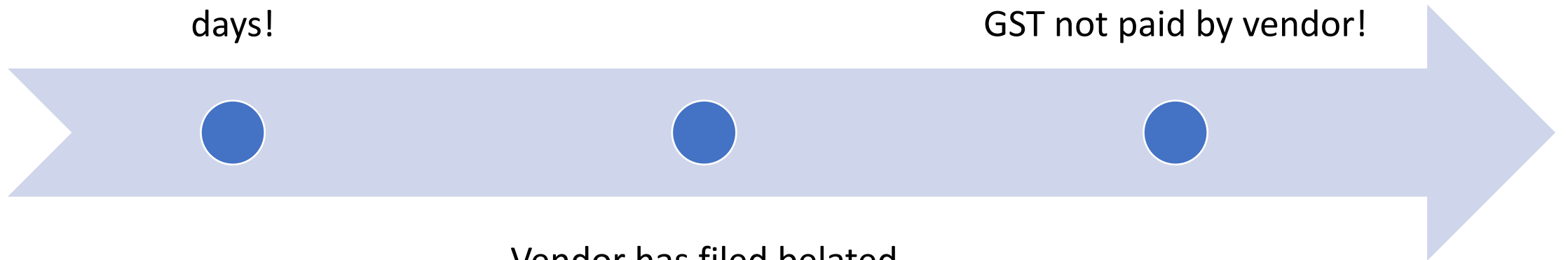


6.3 Section 16 violations - Examples!

Non-payment within 180

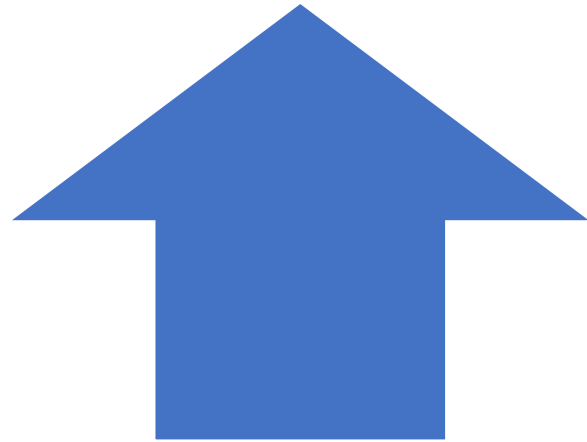
days!

GST not paid by vendor!



Vendor has filed belated
return after September!

6.4 Higher GSTR-1 but lower GSTR-3B – One or more period!



GSTR-1



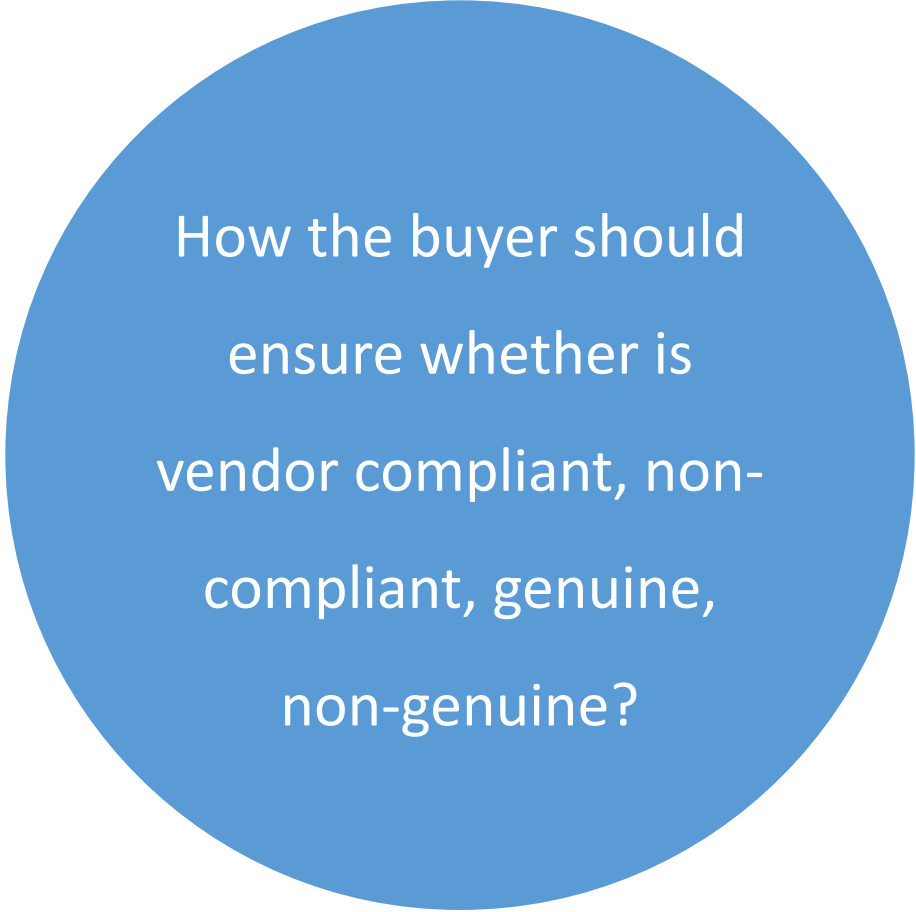
GSTR-3B

6.5 Myth 2: Even if there is a clerical error in filing returns, GSTIN will be cancelled. No option to correct your mistakes.

- **Facts 2: This is absolutely not true.** Only in fraudulent cases where there are **significant** discrepancies based on data analytics and sound risk parameters, and **not mere clerical errors**, the action of suspension and cancellation will be taken up. An example of a fraudulent case and serious discrepancy is where one has **passed on Crores of Rupees of Input Tax Credit and not filed GSTR3B returns, nor has he filed Income Tax returns or disclosed very little liability in Income Tax returns etc**, The GST ecosystem is very carefully working towards curbing the fake invoice frauds in the interests of bonafide taxpayers. GST system applies sophisticated tools like **BIFA, data analytics and AI & ML** to pinpoint and segregate these fraudsters only.

[\[Source – Twitter\]](#)

6.6 Tool for Buyers – Compliance Rating?



How the buyer should ensure whether is vendor compliant, non-compliant, genuine, non-genuine?

7.

E-way bill – Blocked!

[Rule 138E]

7.1 E-way bill – Blocked if!

A person, whose registration has been **suspended** under the provisions of sub-rule (1) or subrule (2) or sub-rule (2A) of rule 21A

[Rule 21 (2A) is newly added]

8.

E-way bill – Double your speed!

[Rule 138]

8.1 E-way bill – Double your speed!

Upto 31.12.2020!

- Every **100 km** equals one day validity!
- Distance is say 400 km, then e-way bill was valid for 4 days!

From 01.01.2021!

- Every **200 km** equals one day validity!
[refer Rule 138 (10) which is amended vide Not. No. 94/2020-CT]!
- Distance is say 400 km, then e-way bill was valid for 2 days!

9.

New Registrations

[Rule 8 (4A) and 9]

9.1 New registrations – Verify person!

If Authentication of Aadhaar opted for -

- Biometric-based Aadhaar authentication and taking photograph

If Authentication of Aadhaar not opted for -

- Biometric information, photograph

9.2 New registrations – Verify documents!

At Facilitation Centres - Verification of such other KYC documents, along with the verification of the original copy of the documents uploaded with the application!

9.3 New registrations – Verification premises!

...registration shall be granted **within thirty days** of submission of application, **after physical verification** of the place of business **in the presence** of the said person.

[Proviso to Rule 9 (1)]

10.

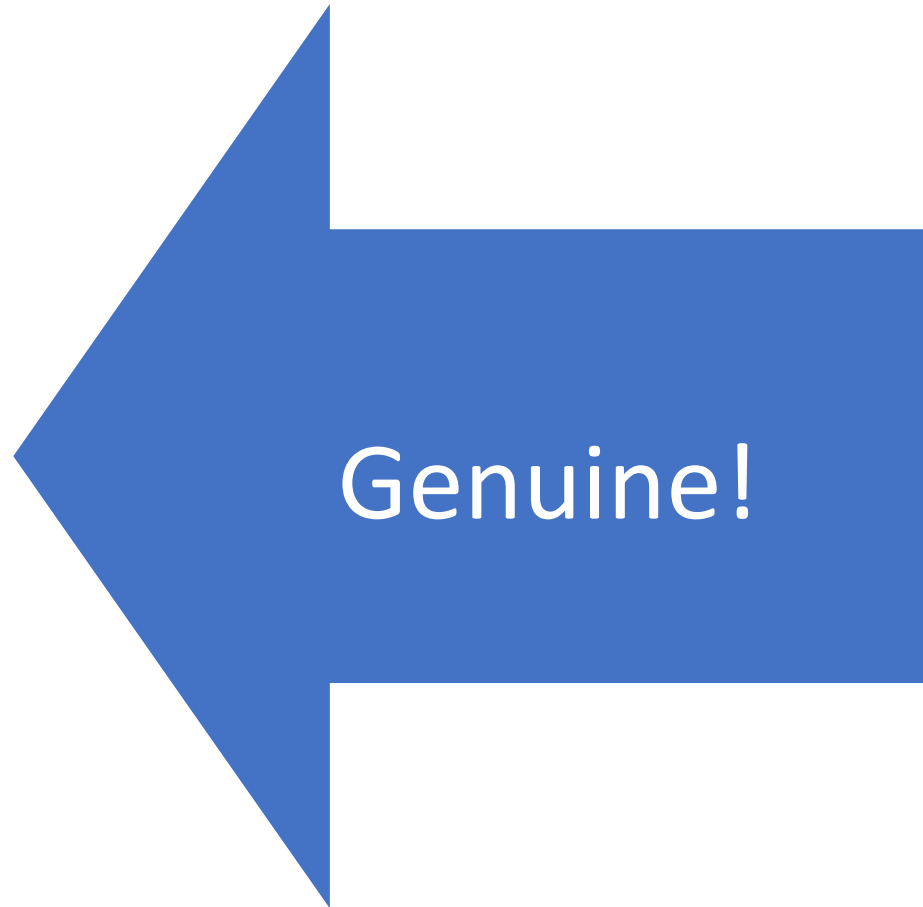
Somebody is going to get hurt!

10.1 Myth 3: The proposed change will impact ease of doing business.

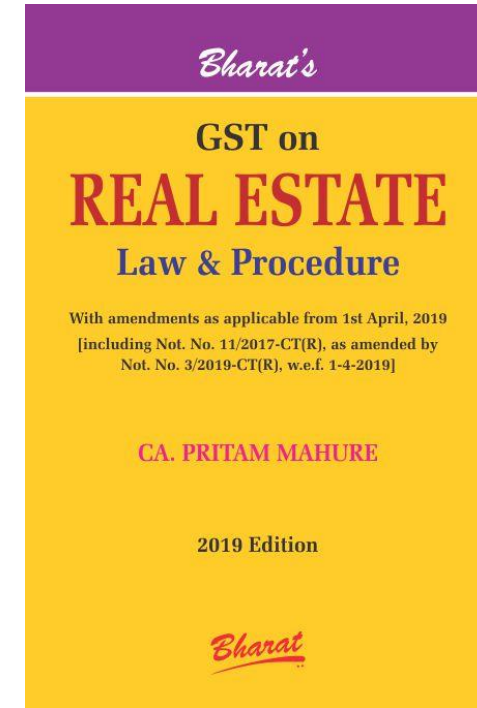
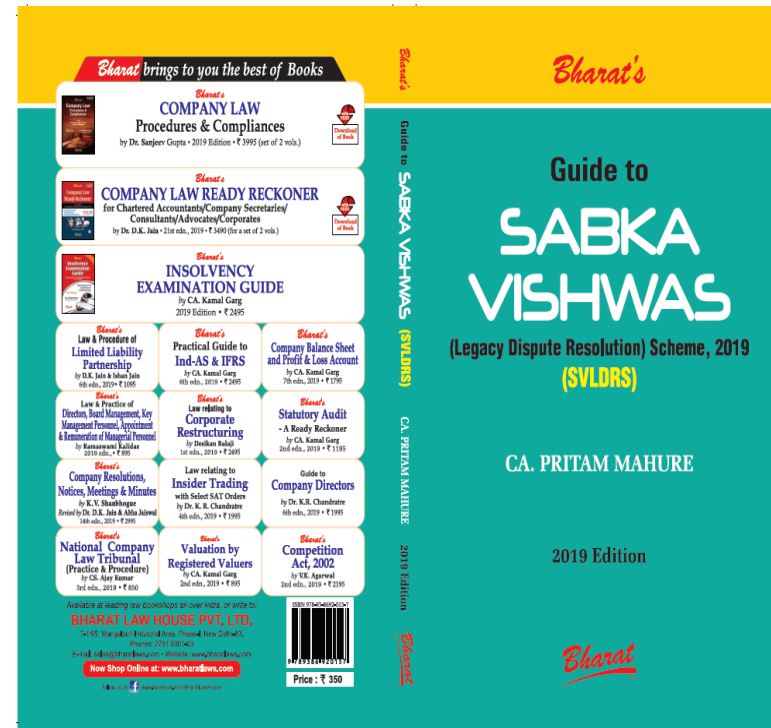
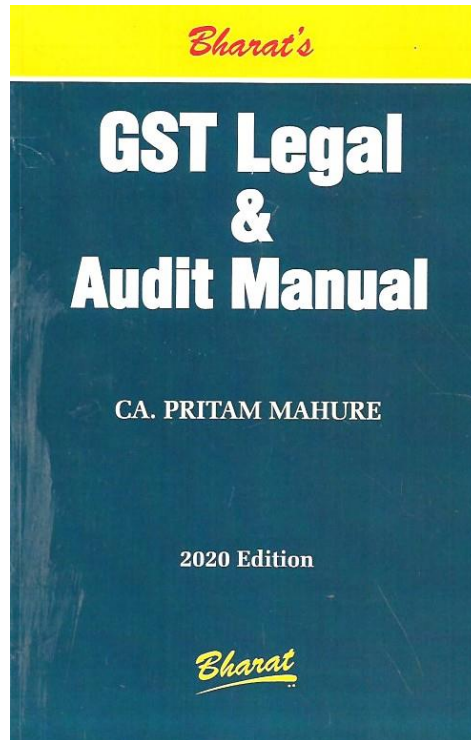
- **FACT 3: Not True. Fraudsters are misusing the system to the detriment of the interest of genuine taxpayers.** Consequently, **data driven targeting** of the fraudsters is the need of the hour. The data is being collected from **Income Tax, Banks, Customs and necessary matching** is being done to identify fraudsters and take action of suspension and cancellation after following due process of law. **Precise targeting** of fraudsters is being done only in specific cases, after doing a comprehensive analysis, using advanced data analytics tools. etc. Further, multiple risk indicators are checked and only then few high risk entities are selected. Action against fraudsters **will not impact the Ease of Doing Business** which is achieved in GST through liberal registration, refund regime and self-compliance system with little or no manual checks.

[\[Source – Twitter\]](#)

10.2 Who will get hurt?



Our Books



Thank you!

CA Pritam Mahure and Associates

Happy to Discuss!

For suggestions: info@lawgical.in / +91 9920644648 / 020-27293425

<https://pmaconsulting.in/>

[E-books on GST](#)

[E-books on How to be Future Proof](#)

Smile please 😊

Annexures – Legal Extracts!

Rule 86B. Restrictions on use of amount available in electronic credit ledger.-

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of **ninety-nine per cent.** of such tax liability, in cases where the **value of taxable supply other than exempt supply and zero-rated supply**, in a month **exceeds fifty lakh rupees**:

Provided that the said restriction shall not apply where –

- (a) 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 one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired; or

Rule 86B. Restrictions on use of amount available in electronic credit ledger.-

- (b) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of subsection (3) of section 54; or
- (c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of subsection (3) of section 54; or
- (d) 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; or

Rule 86B. Restrictions on use of amount available in electronic credit ledger.-

(e) the registered person is –

- (i) Government Department; or
- (ii) a Public Sector Undertaking; or
- (iii) a local authority; or
- (iv) a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.

Rule 59 - New sub-rule (5)!

Notwithstanding anything contained in this rule, -

- (a) A registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for preceding two months;
- (b) A registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period;
- (c) A registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility, if he has not furnished the return in FORM GSTR-3B for preceding tax period

Rule 21A – New sub-rule (2A)!

(2A) Where, a comparison of the returns furnished by a registered person under section 39 with

- (a) the details of outward supplies furnished in FORM GSTR-1; or
- (b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, 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.

Rule 8 (4A) to be substituted as below (w.e.f. date to be notified):

(4A) Every application made under rule (4) shall be followed by—

- (a) **Biometric-based** Aadhaar authentication and taking **photograph**, unless exempted under subsection (6D) of section 25, if he has opted for authentication of Aadhaar number; or*
- (b) Taking biometric information, **photograph** and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done, of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the **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 and the application shall be deemed to be complete only after completion of the process laid down under this subrule.*

Rule 9 (1) – Proviso to be substituted as below:

Provided that where-

- (a) a person, other than a person notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8 or does not opt for authentication of Aadhaar number; or*
- (b) 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 thirty days of submission of application, **after physical verification of the place of business in the presence of the said person**, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.*

Everything seems fair until its implemented!