

CHANGES IN THE GST RULES DATED **18.05.2021**

Notification No. 15/2021 – Central Tax dt. 18.05.2021 has made certain changes in the GST Rules in the areas of (a) refunds (b) revocation of registration cancellation orders and (c) E-way bill restrictions. The said changes shall apply from 18.05.2021. Summary of the same is as follows:

A. REFUND RELATED

I. Calculation of the limitation period when deficiency memo is issued

Rule 90(3) of the CGST Rules, 2017 provides that where the officer notices deficiencies in the refund application, the same will be communicated to the refund applicant in FORM GST RFD 03 asking the claimant to file a fresh refund application after rectification of such deficiencies. Circular No. 125/44/2019 – GST dt. 18.11.2019 clarified at paragraph no. 12 that the filing of the fresh refund application (after curing the deficiencies) must also be done within the limitation period of 2 years from the relevant date even though the original refund application has been filed within the said period. Now a proviso has been added to Rule 90(3) to provide that the time period from the date of filing of the original application till the communication of deficiencies in FORM RFD 03 shall be excluded for counting the limitation period of 2 years.

The aforesaid amendment has been necessitated for the fact that in many situations the department issues frivolous deficiency notices and hence the filing of the fresh refund application after curing the deficiencies use to happen after the limitation period of 2 years which then resulted in the rejection of the refund claim. Now with the present amendment excluding the period from the filing of the original claim till the communication of deficiencies shall result in the grant of additional time to file the fresh refund application to ensure that the said application is also filed within the overall period of 2 years.

One may however note the following points:

- i. None of the provisions of the Act provide for treating the rectified application as a fresh application for applying the limitation period.
- ii. In the plethora of cases in the pre-GST era the Tribunals have held that the date of filing of the first application is only required to be considered for applying the limitation period. The subsequent filing of the rectified

application is merely a continuation of the claim already made and cannot be treated as a fresh claim. Some of the cases for reference are as under:

- a. Goodyear India Ltd. v. Commissioner of Customs 2002 (150) E.L.T. 331 (Tri. - Del.)
- b. CCE v. Bhandiguri Tea Estate 2001 (134) E.L.T. 116 (Tri. - Kolkata)
- c. Rubberwood India (P) Ltd. v. Commissioner of Customs (Appeals) 2006 (206) E.L.T. 536 (Tri. - Bang.)
- d. Commissioner of S.T., Bangalore v. Printex Exports India Pvt. Ltd. 2017 (52) S.T.R. 375 (Tri. - Bang.)
- e. Nokia India Sales Pvt. Ltd. v. Commissioner of Customs 2019 (368) E.L.T. 975 (Tri. - Ahmd.)

iii. Para 10 of Circular 125/44/2019 dated 18.11.2019 clarifies that after a deficiency memo has been issued the refund application would not be further processed. Hence it is due to the limitations of the GSTN portal that the taxpayer has been advised to file the refund application again after rectifying the deficiencies to enable the processing of the same on the portal. Therefore it cannot be construed that the date of filing of the rectified refund application shall have to be considered for applying the limitation period since the same is done on account of the limitation of the portal and not of the Act.

iv. The amendment grants a fair procedural benefit to the claimants without curtailing or inflicting upon the existing rights of other taxpayers. Hon'ble Supreme Court in the case of CIT v. Vatika Township P. Ltd. (Civil Appeal No. 8750 of 2014) held that "If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective." Hence the present amendment granting procedural benefit can be said to apply retrospectively from the inception (i.e. July 2017).

II. Withdrawal of the refund application

Sub-rule (5) & (6) has been inserted in Rule 90 to permit the withdrawal of the refund application (RFD 01) at any time before:

- i. issuance of provisional refund sanction order in FORM GST RFD-04 or

- ii. final refund sanction order in FORM GST RFD-06 or
- iii. payment order in FORM GST RFD-05 or
- iv. refund withhold order in FORM GST RFD-07 or
- v. notice in FORM GST RFD-08

The withdrawal of the refund application is required to be made in FORM GST RFD-01W. On submission of withdrawal application, any amount debited from electronic credit ledger or electronic cash ledger shall be credited back to the respective ledgers.

Said facility shall allow the withdrawal of the refund applications filed erroneously and hence facilitate quicker refiling than waiting for the officer to issue the deficiency memo and then carry out the refiling.

III. Withholding of refund

Part A of FORM GST RFD-07 which provided for the details of the refunds completely adjusted against any outstanding demand has been omitted. This seems to be have been done as FORM DRC 09 already permits the communication of the recovery action which includes the adjustment from the refunds due.

Now Part B of FORM GST RFD-07 which provides for the details amount of refund withheld shall become Part A. Further where the refund is no longer liable to be withheld, an order for the release of the withheld refund shall be passed in Part B of FORM GST RFD- 07. The given amendment shall apply for the refunds claimed vide RFD 01, as well as refunds, claimed of IGST paid on exports.

B. REVOCATION OF THE REGISTRATION CANCELLATION ORDER

Extension of time limits for seeking the revocation of the registration cancellation order

Sec. 30(1) of the CGST Act, 2017 provides that the application for the revocation of the registration, where the said registration has been cancelled by the officer, is required to be made within thirty days from the date of service of the cancellation order. The proviso further grants the extension of time as under:

Extension by	Extended time beyond initial 30 days
Additional Commissioner or the Joint Commissioner	30 days
Commissioner	60 days

Now Rule 23 has been amended to permit the aforesaid extensions. A consequent amendment has also been made in the format of the application for revocation in FORM GST REG-21.

C. E-WAY BILL

Restrictions on the facility of E-way bill

Rule 138E of the CGST Rules, 2017 aims to restrict any person from generating Part A of the E-way bill in respect of any outward movement of the goods by a registered supplier who has defaulted in the filing of the returns/statement for two consecutive tax periods. However, there was a drafting lacuna in the said rule. The same has been corrected in line with the purpose discussed. It may however be noted that the said restriction applies for the outward movement of the goods by such defaulter and not for the inward movement of the goods to such defaulter.