

Tax Alert
24th August 2022

Half Yearly Newsletter on updates in GST Law



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NN 40/2021-CT dated 29.12.2021 w.e.f. 01.01.2022

The procedural law related to filing of refund application by foreign diplomatic missions and embassies has been given under Rule 95 of the CGST Rules, 2017. Rule 95 has been amended to provide that the refund claims filed by the foreign diplomatic missions and embassies in FORM GST RFD-10 in respect of the tax charged on the invoice for their inward supplies shall be supported by the copy of the invoice, duly attested by the authorized representative of the applicant if the said invoice do not bear the Unique Identity Number of the applicant.

Existing Law

1. Section 55 deals with refund of taxes paid on notified supplies of goods or services or both received by certain specified agencies notified by the Government on the recommendation of the Council.
2. The government has notified following agencies and the quantum of input tax refund entitled to said notified agencies:

2.1. Canteen Store Department (CSD) under Ministry of Defence. They are entitled to claim refund of 50% of ITC involved on supplies made to Unit Run Canteens of the CSD or Authorised Customers of the CSD.

[NN 06/2017-CT (Rate) dated 28.06.2017 : NN 06/2017-IT (Rate) dated 28.06.2017 : Corresponding State GST Rate Notifications]

2.2. United Nations or a Specified International Organisation. They are entitled to claim refund of GST involved on supplies received by them subject to the condition Goods or services are used or intended to be used for the official purposes.

2.3. Foreign Diplomatic Mission or Consular Post in India, or diplomatic agents or career consular officers posted therein. They are entitled to claim refund of GST involved on supplies received by them subject to the conditions that:

- a) Refund is available in respect of supplies mentioned in the

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certificate issued by the Protocol Division of the Ministry of External Affairs, based on the principle of reciprocity

- b) An undertaking signed by the foreign diplomatic agent or career consular officer that receipt of services are for the official purposes; or for the personal use
- c) A certificate that goods have been put to use or are in use of the mission or consulate; goods will not be supplied further or otherwise disposed of before expiry of 3 years from the date of receipt of goods; the refund would be paid back in case the goods have not been put to use or are in use of the mission or consulate.

[NN 16/2017-CT (Rate) dated 28.06.2017 : Corresponding State GST Rate Notifications : NN 13/2017-IT (Rate) dated 28.06.2017]

- 3. Chapter X of the CGST Rules is titled as "Refund" and it covers Rule 89 to Rule 97A. Rule 95 contains a procedure to be

followed by foreign diplomatic missions and embassies to file the refund.

- 4. Every person eligible to claim refund of tax paid by him on his inward supplies as per section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal or otherwise either directly or through a Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11.
- 5. An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.
- 6. The refund of tax paid by the applicant shall be available if
 - a) the inward supplies of goods or services or both were received from a registered person against a tax invoice;
 - b) name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice; and

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c) other restrictions as specified in the notifications are fulfilled.

7. As per section 54(2) of the GST Act, the application for refund is to be made within a period of 6 months from the end of quarter in which inward supplies are received. However, the government, as a special procedure notified under section 148, have extended this time limit to 18 months.

[NN 20/2018-CT dated 28.03.2018: Corresponding State GST Notification]

Accordingly, refund was available to the foreign diplomatic missions and embassies only for those inward supplies against which Unique Identity Number of the applicant was mentioned on the tax invoice.

Amendment

8. Vide Notification No. 40/2021-CT dated 29.12.2021 w.r.e.f. 01.04.2021 it has been notified that where Unique Identity Number of the applicant is not mentioned in a tax invoice of the inward supplies for which the said refund is filed, the refund of tax

paid by the applicant on such invoice shall be available if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10.

Effect of Amendment

9. The said amendment is applicable from 01.04.2021;

9.1. The refund of the tax paid on the inward supplies shall be available to the foreign diplomatic missions and embassies even if the Unique Identity Number of the applicant is not mentioned over the tax invoice provided that duly attested copy of the invoice by authorised representative is submitted along with the refund application.

Paksh Comments

10. The GST legislation provides that a specialized agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under

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the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons as notified under section 55 can file for refund of tax paid on inward supplies

14. As a concluding remark, we can say that the amendment has been brought to ease down the refund of tax paid on inward supplies by the foreign diplomatic missions and embassies.

11. The FORM GSTR-11 along with FORM GST RFD-10 has to be filed separately for each quarter for which refund claim is being filed.

12. As per Rule 95 of the CGST Rules, 2017 recording of Unique Identification Number on the tax invoice was a necessary condition for refund. If the UIN is not mentioned on the tax invoice of the inward supplies, refund will not be available.

13. In order to ease down such blockage of refund due to non-availability of UIN on the tax invoice, rule 95 has been amended to insert a proviso that refund will be available even if the UIN is not mentioned on the tax invoice provided the said tax invoice has been duly signed by the authorised representative.



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**NN 40/2021-CT dated 29.12.2021
w.e.f. 01.01.2022**

Existing Law

1. Section 129 of the GST Act provides for “Detention, seizure and release of goods and conveyances in transit”. As per sub-section (1) thereof, where any person transports any goods or stores any goods in contravention of the provisions of the Act, then said goods as well as conveyance used for transporting such goods are liable to detention or seizure, and shall be released as per provisions specified therein.

2. W.E.F. 01.01.2022, the amendments made vide Finance Act, 2021 were notified [Not. No. 39/2021 CT]. As per amendments made, the revised criteria to release the detained goods are as under:

Where owner of goods comes forward for payment of such penalty:

2.1. On payment of penalty equivalent to 200% of the tax payable on such goods.

2.2. If exempted goods are detained, on payment of penalty for an amount equal to 2% of the value of goods or Rs. 25,000/- whichever is less.

Where owner of goods does not come forward for payment of such penalty:

2.3. On payment of penalty equivalent to 50% of the value of goods or 200% of the tax payable on such goods, whichever is higher.

2.4. If exempted goods are detained, on payment of penalty for an amount equal to 5% of the value of goods or Rs. 25,000/- whichever is higher.

3. W.E.F. 01.01.2022, provisions of section 67(6) have also been made inapplicable for detention and seizure of goods.

4. W.E.F. 01.01.2022, the proper officer has to issue a notice within 7 days of detention/ seizure specifying the penalty payable. The order for payment of penalty shall be passed within a period of 7 days from the date of service of notice. Prior to 01.01.2022, these timelines were not provided.

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5. If payment of penalty u/s 129(1) i.e., for the purposes of securing release of goods is not made within a period of 15 days from receipt of copy of order, the goods or conveyance so detained / seized are liable to be sold or disposed of. Prior to 01.01.2022, if payment is not made within a period of 14 days of detention, then the confiscation u/s 130 could have been done.

Amendment

6. Since the period of making payment has been modified from 14 days from date of detention to a period upto the date of issuance of order, amendment has been made in rule 142(3) as under:

“seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3)”

7. Rule 142(3) provides for intimation of officer in Form GST DRC-03 whenever payment is made in

pursuance of a notice issued by the officer, or where the payment is voluntarily made, or made for the purposes of securing release of goods and conveyances.

8. Rule 142(5) provides for electronic issuance of summary of order in Form GST DRC-07. Since the conditions for securing release of goods are based on payment of penalty only, the expression ‘person chargeable with tax’ has been substituted with ‘person concerned’. The amended phrase is as under:

“tax, interest and penalty, as the case may be, payable by the person concerned”

Effect of Amendment

9. These are consequential amendments.

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**NN 40/2021-CT dated 29.12.2021
w.e.f. 01.01.2022**

Existing Law

1. Section 83 of the GST Act provides for “Provisional attachment to protect revenue in certain cases”. Prior to 01.01.2022, if any proceeding is pending under below-mentioned sections, the Commissioner has the power to attach any property including bank account belonging to the taxable person. The proceedings during pendency of which these powers can be invoked are as under:

- a) Section 62-Assessment of non-filers of returns
- b) Section 63-Assessment of unregistered persons
- c) Section 64-Summary assessment in certain special cases.
- d) Section 67-Inspection, search and seizure.
- e) Section 73- Tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any

reason other than fraud or any wilful statement or suppression of facts.

- f) Section 74- Tax not paid or short paid or erroneously refunded or ITC wrongly availed or utilised for any reason of fraud or any wilful statement or suppression of facts.
2. W.E.F. 01.01.2022, the amendment made vide Finance Act, 2021 has been made effective. It provides as under:

2.1. The attachment can now be done for the taxable person, or [any person specified in sub-section \(1A\) of section 122](#). Sub-section (1A) of section 122 covers the below mentioned persons who:

- i. supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply.
- ii. 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.
- iii. takes or utilises input tax

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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.

- iv. takes or distributes input tax credit in contravention of section 20, or the rules made thereunder.

Further, the person at whose instance such transaction is conducted is also included. Hence, the property of the supplier/recipient or any other person at whose instance such transaction is conducted can be attached.

2.2 The attachment of the property can be done after the initiation of proceedings under any of the following chapters:

- a) Chapter VII- Assessment.
- b) Chapter XIV- Inspection, Search, Seizure and Arrest
- c) Chapter XV- Demands and Recovery

3. The procedure for provisional attachment of property is laid

down under the Rule 159 of the CGST Act, 2017. The procedure existed before 01.01.2022 provides as under:

3.1. Order for provisional attachment is passed in Form GST DRC-22.

3.2. The objection against Form GST DRC-22 is required to be filed within 7 days.

3.3. The Commissioner after considering the objection and providing an opportunity for personal hearing, release the property by way of passing an order in Form GST DRC-23.

4. Hon'ble Delhi High Court¹ in one of the cases held that time period of 7 days for filing the objection is directory in nature. Moreover, it is the objector who would suffer adverse consequence on account of delay on his part in raising the objections. The respondents do not suffer any adverse consequence on account of delay, if any, in moving the objections.

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Amendment

5. W.E.F. 01.01.2022, the amendment made vide NN 40/2021-CT date 29th December 2021. As per the amendment, following changes have been incorporated under Rule 159.
 - 5.1. It has been specifically provided that copy of **order in Form GST DRC-22** shall be served on the person whose property has been attached.
 - 5.2. The word “taxable person” is substituted with “**such person**” to incorporate the effect of amendment made under section 83.
 - 5.3. The Form **GST DRC-22A** has been specified for filling the objection.
 - 5.4. The **time period to file the objection has been removed** from the statutory paperbook.

Conclusion

The Commissioner is not statutorily required to serve a copy of Form GST DRC-22 on the taxpayers. Earlier, taxpayers would have come to know about issuance of this order from the authorities with whom property was lying. Further, the removal of time limit to file the objection in Form GST DRC-22A is a welcome step. The representations would not be rejected solely on the ground of belated filing. Taxpayers shall not get a sufficient time to represent the case.



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NN 02/2022-CT dated 11.03.2022

Existing Law

1. Section 3 of the CGST Act provides powers to **Government** to appoint various class of officers by way of issuing a **notification**.

The officers appointed are:

- a) Principle Chief Commissioner of Central Tax (Pr. CCCT) = Pr. Directors General of Central Tax (Pr. DGCT)
- b) CCCT = DGCT
- c) Pr. CCT = Pr. Additional DGCT
- d) CCT = Additional DGCT
- e) Additional CCT = Additional DCT
- f) Joint CCT = Joint DCT
- g) Dy CCT = Dy DCT
- h) Asst. CCT = Asst. DCT
- i) CCT (Audit)
- j) CCT (Appeals)
- k) Additional CCT (Appeals)
- l) Joint CCT (Appeals) – vide Not. No. 04/2019-CT dated 29.01.2019

1.1. Not. No. 02/2017-CT dated 19.06.2017 was issued by the **Central Board of Excise and Customs** vide which various class of officers were appointed.

2. Section 5 provides that officer of central tax may **exercise the powers** and discharge the duties conferred or imposed on him under the Act, subject to such **conditions and limitations** as the **Board** may impose.

2.1. Not. No. 02/2017-CT dated 19.06.2017 was issued by the **Central Board of Excise and Customs** vide which jurisdiction of the officers was specified i.e., territory within which he may exercise the powers.

3. Since the Not. No. 02/2017-CT was not issued by proper authority as far as appointment of officers was concerned, a corrigendum was issued on 29.07.2019 vide which expression “**Central Board of Excise and Customs**” was substituted with “the Government”.

3.1. In our view, said corrigendum have validated the appointment of officers but have invalidated their jurisdictional assignments made in terms of powers conferred under section 5. Because powers under

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section 5 are to be exercised by Board.

4. Similarly, officers of DGGSTI were appointed vide Not. No. 14/2017-CT dated 01.07.2017 by the Board and was given jurisdiction throughout the territory of India, and their designation equivalent to officers appointed under Not. No. 02.2017-CT was notified. This Not. was also corrected by way of issuing a Corrigendum dated 29.07.2019 to similar effect, as discussed above.

Amendment

5. Vide Not. No. 02/2022-CT dated 11.03.2022, the **Central Government** has made amendment in Not. No. 02.2017-CT (*supra*).
6. As per this amendment, the Additional Commissioner or Joint Commissioner of Central Tax subordinate to specified Pr. CCT or CCT have been vested with powers to pass orders in respect of notices issued by officers of DGGSTI.

Effect of Amendment

7. The adjudication orders in respect of show cause notice(s) issued by officers of DGGSTI would be passed by the Additional Commissioner or Joint Commissioner of Central Tax subordinate to Pr. CCT or CCT.

Conclusion

8. The functional assignment under section 2(91) is still missing. The jurisdictional assignment u/s 5 has only been made.

Paksh Comments

9. The power to issue order is a **function** assigned to the proper officer under section 2(91) of the CGST Act by **Commissioner in the Board**. For this, reference can be made to Circular No. 01/01/2017 dated 26.06.2017, Circular No. 03/03/2017 dated 05.07.2017 vide which functions were assigned to officers appointed under the Act.
10. Vide para 6 of the Circular No. 31/05/2018 dated 09.02.2018, the function to issue order in respect of



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show cause notice issued by the officer of DGGSTI was assigned to the competent Central Tax officer of the Executive Commissionerate.

11. Vide para 7 of the Circular No. 31/05/2018 dated 09.02.2018, the SCN issued by DGGSTI in which principal place of business fall in multiple Commissionerate's and where the demand (CGST/IGST) is more than Rs. 5 Crores shall be adjudicated by Additional Commissioner (as assigned by the **Board**) who shall not be on the strength of DGGSTI and working there at the time of adjudication.
12. In terms of **functional assignment**, these SCN's are to be adjudicated by competent officers of the Executive Commissionerate.
 - 12.1. The competency of the officers has to be seen from para 5 of Circular No. 31/05/2018 dated 09.02.2018.
 - 12.2. Said officers are already appointed by the Government vide Not. No.

02/2017-CT, as amended from time to time.

- 12.3. In respect of jurisdictions notified vide Not. No. 02/2022-CT dated 11.03.2022, most likely under section 5 of the CGST Act, the competent officer for specified jurisdiction is Additional Commissioner or Joint Commissioner of Central Tax.
13. Looking from the other side of coin, Vide Not. No. 02/2022-CT, mere appointment of officers can be made by the Government, or their territorial jurisdiction can be defined. The functional powers must confer from circular issued in terms of section 2(91) and not otherwise. Therefore, if the power to issue orders under various sections in respect of a show cause notice issued by officer of DGGSTI was to confer upon any officer of central tax, such assignment should **also** have been made by way of circular issued under section 2(91). However, one may argue that it was necessary to issue present Notification to define their jurisdiction.

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14. Without prejudice, in our view:

- i. the **jurisdictional assignment** is made under section 5 can only be done by Board. However, presently it is being done by Government which itself is prone to challenge.
- ii. the **functional assignment** is made under section 2(91) and can only be done by Commissioner in the Board. However, presently it is being done by Board which itself is prone to challenge.



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NN 03/2022-CT dated 31.03.2022

Existing Law

1. Section 22 of the GST Act provides for “Person liable for registration”. As per sub-section (1), every supplier shall be liable to registered under this Act, if the aggregate turnover in a financial year exceeds 20 lakh rupees and in case of the special category states, the limit is 10 Lakh Rupees.
2. W.E.F. 01.01.2020, the proviso inserted vide Finance Act, 2018 was made effective by Not. No. 01/2020 CT. As per the amendment, in case of suppliers engaged exclusively in supply of goods, the power is given to the government to enhance the limit of aggregate turnover from 20 Lakh to 40 lakhs.
3. Section 23 of the GST Act provides for “Person not liable for registration”. As per sub-section (2), the Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.
4. W.E.F. 01.04.2019, by way of Not. No. 10/2019-CT dated 07.03.2019 issued under section 23(2) of the CGST Act, 2017, exemption is provided from registration for any person engaged in exclusive supply of goods and whose aggregate turnover in the financial year does not exceed ₹ 40 Lakh.
Except:
 - a) persons required to take compulsory registration u/s 24. (Section 24 *inter-alia* provides that a person making inter-state supplies is compulsorily required to take registration under the Act.)
 - b) persons engaged in making specified supplies of the goods.



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| S.no | HSN | Description |
|------|----------|--|
| 1. | 21050000 | Ice cream and other edible ice, whether or not containing cocoa. |
| 2. | 21069020 | Pan masala |
| 3. | 24 | All goods, i.e., Tobacco and manufactured tobacco substitutes |

| S. No. | HSN | Description |
|--------|------------|---|
| 1. | 6815 | Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash Blocks |
| 2. | 6901 00 10 | Bricks of fossil meals or similar siliceous earths |
| 3. | 6904 10 00 | Building bricks |
| 4. | 6905 10 00 | Earthen or roofing tiles". |

c) persons engaged in making intra-State supplies in the States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand; and

d) persons obtaining registration under the Act voluntarily.

Amendment

5. W.E.F. 01.04.2022, as per NN 03/2022-CT dated 31st March 2022, the notification as mentioned in above para 4 is amended. As per amendment, the limit of 40 Lakh for getting GST registration is not applicable for persons making below mentioned supplies as well.

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NN 04/2022-CT dated 31.03.2022

Existing Law

1. Section 10 of the GST Act provides for "Composition Levy". As per sub-section (1), a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay the tax under composition scheme. The maximum tax rates are as follows:
 - a) 1% - in case of Manufacturer
 - b) 2.5% - in case of works contract services and restaurant services
 - c) 0.5%- Other supplies.

It has been provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

2. W.E.F. 01.07.2017, amendments were made by way of notification no. 08/2017-CT dated 27.06.2017.

As per said notification, following amendments were made:

| S.no. | HSN | Description |
|-------|----------|--|
| 1. | 21050000 | Ice cream and other edible ice, whether or not containing cocoa. |
| 2. | 21069020 | Pan Masala |
| 3. | 24 | All goods, i.e., Tobacco and manufactured tobacco substitutes |

- 2.1. The aggregate turnover limit was increased from Rs. 50 Lakh to 75 Lakh. That means, whose aggregate turnover in the preceding financial year did not exceed seventy-five lakh rupees, may opt to pay as per composition levy.
- 2.2. In case of the below mentioned states, the limit was 50 Lakh rupees:

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- (i) Arunachal Pradesh,
- (ii) Assam,
- (iii) Manipur,
- (iv) Meghalaya,
- (v) Mizoram,
- (vi) Nagaland,
- (vii) Sikkim,
- (viii) Tripura,
- (ix) Himachal Pradesh

2.3. The manufacturer of the below mentioned goods cannot opt for composition levy.

3. W.E.F. 13.10.2017, the amendment made in NN 08/2017-CT- by way of notification no. 46/2017-CT. As per amendment made, Government increased the limit from 75 Lakh to 1 Crore for normal taxpayers and in case of suppliers of specified states, it was increased from 50 Lakh to 75 Lakh to opt for composition scheme.

4. W.E.F. 01.01.2018, the amendment made in NN 08/2017-CT- by way of notification no. 01/2018-CT. As per amendment made, Government reduced to tax rate

from 1% to 0.5% in case of manufacturer.

5. W.E.F. 01.02.2019, the amendment made in NN 08/2017-CT- by way of notification no. 05/2019-CT dated 29.01.2019. As per amendment made, tax rates specified in rule 7 of CGST Rules, 2017 will be applicable instead of individual tax rates.

Amendment in Law

6. W.E.F. 01.02.2019, the amendment made by way of amendment in the proviso vide Central Goods and Service Tax (Amendment) Act, 2018 was made effective. As per amendment made, power was given to the Government to increase the maximum limit for opt for composition from 1 Crore to 1.5 Crore.

7. W.E.F. 01.04.2019, the NN 08/2017-CT superseded by notification no. 14/2019 dated 07.03.2019. The following amendments were made

7.1. The aggregate turnover limit was increased from 1 Crore to 1.50 Crore. That means, whose

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aggregate turnover in the preceding financial year did not exceed 1.50 Crore rupees, may opt to pay as per composition levy.

7.2. In case of the below mentioned state the limit increased from the 50 Lakh rupees to 75 Lakh.

- (i) Arunachal Pradesh,
- (ii) Assam,
- (iii) Manipur,
- (iv) Meghalaya,
- (v) Mizoram,
- (vi) Nagaland,
- (vii) Sikkim,
- (viii) Tripura,
- (ix) Himachal Pradesh

7.3. The manufacturer of the below mentioned goods cannot opt for composition levy

| S.no. | HSN | Description |
|-------|----------|--|
| 1. | 21050000 | Ice cream and other edible ice, whether or not containing cocoa. |
| 2. | 21069020 | Pan Masala |
| 3. | 24 | All goods, i.e. Tobacco and manufactured tobacco substitutes |

8. W.E.F. 01.10.2019, the amendment made in notification no. 14/2019- by way of notification no. 43/2019-CT dated 30.09.2019. As per amendment made, the Manufacturer of the **Aerated water (HSN-22021010)** was excluded from the purview of composition scheme.

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Amendment

9. W.E.F. 01.04.2022, as per NN 04/2022-CT dated 31st March 2022, the notification no. 14/2019 is amended. As per amendment, the manufacturer of the below mentioned supply is excluded from the purview of composition scheme.

| S.no. | HSN | Description |
|-------|------------|---|
| 4. | 6815 | Fly ash bricks or fly ash aggregate with 90 per cent. or more fly ash content; Fly ash Blocks |
| 5. | 6901 00 10 | Bricks of fossil meals or similar siliceous earths |
| 6. | 6904 10 00 | Building bricks |
| 7. | 6905 10 00 | Earthen or roofing tiles". |



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NN 05/2022-CT dated 17.05.2022

1. This notification narrates that the Commissioner, in exercise of the powers conferred by Section 39(6) of CGST Act, 2017 read with Rule 61(1) of CGST Rules, 2017 and on the recommendations of the Council, extends the due date for furnishing the **return in** FORM GSTR-3B for the month April, 2022 till 24.05.2022.
2. As per information, this notification has been issued for the reasons that the input tax credit for April, 2022 month was not reflecting in Form GSTR-2B despite filing of Form GSTR-1 by the corresponding suppliers. There was a technical glitch on the portal.

Paksh Comments:

3. Earlier, Section 168 read with Rule 61(5) was used by the Commissioner to issue notifications regarding extension of due date to file return in Form GSTR-3B return. However, the power to extend the due date of return was provided under section 39(6) of the GST Act. Therefore, the manner of execution of law was not adequate.

4. Section 168 (2) provides that the Commissioner mentioned in Section 39(6) means the Commissioner posted in the Board.
5. There are numerous Commissionerate's in India wherein various Commissioners are posted. Some Commissionerate's have jurisdiction over a particular area whereas some have jurisdiction on PAN-India basis. Section 168 describes the Commissioner who is posted in the Board as the Commissioner authorised to issue notification in reference to Section 39(6).
6. NN/05/2022-CT is issued under section 39(6) which is totally correct.
7. Further, if we read Section 39(6), it says that Commissioner 'may for reasons to be recorded in writing' may issue notification. It means that if the Commissioner issues any notification in relation to Section 39(6), he has to provide the reasons for extending the due date in the notification so issued.
8. However, NN/05/2022-CT as well as earlier notifications issued in past, the reasons for extending the due dates are never mentioned. In order to trace the actual reasons, one has to resort to minutes or agenda to GST Council Meetings.

Update on Notification

NN 07/2022-CT dated 26.05.2022

Existing Law

1. Sub-section (2) of the Section 39¹ of the CGST Act, 2017 states that

(2) A registered person paying tax under the provisions of section 10, shall, for each financial year or part thereof, furnish a return, electronically, of turnover in the State or Union territory, inward supplies of goods or services or both, tax payable, tax paid and such other particulars in such form and manner, and within such time, as may be prescribed.

2. The rule 62 of the GST Rules was amended vide NN 20/2019-CT dated 23.04.2019 wherein these taxpayers [****]² were made to furnish:

2.1. a statement, every quarter or, as the case may be, part thereof containing the details

of payment of self-assessed tax in FORM GST CMP-08 till the 18th day of the month succeeding such quarter.

2.2. a return for every financial year or, as the case may be, part thereof in FORM GSTR-4 on or before the 30th day of April following the end of such financial year.

3. Vide NN 21/2019-CT dated 23.04.2019, a special procedure under section 148 of the GST Act was prescribed wherein the registered persons paying tax under the provisions of section 10 of the GST Act or by availing the benefit of Notification No. 02/2019-(Rate), dated the 07.03.2019 were made to furnish:

3.1. a statement, every quarter or, as the case may be, part thereof containing the details of payment of self-assessed tax in FORM GST CMP-08 till the 18th day of the month succeeding such quarter.

¹ As amended by section 97 of the Finance Act, 2019 made effective vide Not. No. 81/2020-CT dated 10.11.2020.

² The reference to 'or the taxpayers availing the benefit of notification No. 02/2019- CT (Rate), dated the 07.03.2019' was omitted from Rule 62 vide Not. No. 82/2020-CT w.e.f. 10.11.2020 as section 10 stood amended to cover these persons as well.

Update on Notification

3.2. a return for every financial year or, as the case may be, part thereof in FORM GSTR-4 on or before the 30th day of April following the end of such financial year.

4. The due date for filing Form GSTR-4 for the FY 2021-22 is 30.04.2022.

5. In terms of section 47 of the GST Act read with Not. No. 21/2021-CT dated 01.06.2021, a late fee in excess of Rs. 500/- (Rs. 250 each under CGST and State GST) is waived if GST payable is Nil, and in excess of Rs. 2,000 (Rs. 1,000 each under CGST and State GST) is waived where tax payable as per return is not Nil. As per section 47, late fee is Rs. 200/- per day (Rs. 100 each under CGST and State GST).

Amendment

6. The late fee in filing of Form GSTR-4 for the financial year 2021-22 has been waived for the period 01.05.2022 to 30.06.2022.

Decision/Effect of Amendment

7. The due date is still 30.04.2022.

8. However, if the return in Form GSTR-4 is filed on or before 30.06.2022, there shall no late fee.

9. If the return in Form GSTR-4 is filed after 30.06.2022, the late fee shall be applicable and computed from 01.07.2022. However, the benefit of waiver in excess of Rs. 500 or Rs. 2000, as the case may be, would be available.



Update on Notification

NN 08/2022-CT dated 07.06.2022

Existing Law

1. Section 52 of the GST Act provides for collection of tax at source (TCS, in short) on the supplies made through it and provides for payment of such tax along with filing of return in Form GSTR-8. This section reads as follows:

52. Collection of tax at source

(1) Notwithstanding anything to the contrary contained in this Act, every **electronic commerce operator** (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the **net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.**

Explanation. —For the purposes of this sub-section, the expression "net value of

taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, **other than services notified under sub-section (5) of section 9**, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

.....

(4) Every operator who collects the **amount specified in sub-section (1)** shall **furnish a statement**, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, **within ten days after the end of such month:**

2. The manner for filing of return of Tax Collection at Source has been prescribed under Rule 67 which provides as under:

"(1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in **FORM GSTR-8** electronically on the

Update on Notification

common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.

3. As per section 50 (1), the interest is payable on late payment of tax.
4. The Government has power to notify a special procedure in terms of powers conferred on it under section of GST Act which reads as follows:

148. Special procedure for certain processes.

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, *notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.*

for specified class of electronic commerce operators for specified tax periods wherein the interest has been waived. The details are as under:

| S. No. | Class of registered person | Month | Interest waived |
|--------|--|-----------------------|---|
| 1. | GSTR 8 not filed due to technical glitch But tax has been deposited in electronic cash ledger 60 Registered persons | Dec 2020 | Date of deposit to cash ledger to date of filling of GSTR 8 |
| 2. | GSTR 8 not filed due to technical glitch But tax has been deposited in electronic cash ledger 12 Registered persons | Sept 2020 To Jan 2021 | Date of deposit to cash ledger to date of filling of GSTR 8 |

Amendment

5. The Government vide Not. No. 08/2022-CT dated 08.06.2022 has provided for a special procedure

Update on Notification

NN 17/2022-CT dated 01.08.2022

[Last NN 01/2022-CT dated 24.02.2022]

Existing Law

1. The Applicability for e-invoicing hails its statutory reference from sub-rule (4) of Rule 48 of the GST Rules which provides as under:

“.....
(4) The invoice shall be prepared by *such class of registered persons* as may be notified by the Government, on the recommendations of the Council, by including such particulars contained in **FORM GST INV-01** after obtaining an Invoice Reference Number by uploading information contained therein on the Common Goods and Services Tax Electronic Portal in such manner and subject to such conditions and restrictions as may be specified in the notification.”

2. The Government has accordingly notified¹ the registered persons who shall issue the invoice after

generating IRN from the e-invoicing portal subject to certain restrictions and conditions specified therein. These details are given below:

2.1. Following registered persons are not required to generate IRN from the e-invoicing portal:

- a) Units located in Special Economic Zones (SEZs)²
- b) A Government department, a local authority³
- c) An insurer or a banking company or a financial institution, including a non-banking financial company
- d) Goods Transport Agency
- e) Passenger Transportation Service provider
- f) Supplier of services by way of admission to exhibition of cinematograph films in multiplex screens

2.2. The conditions and restrictions are as under:

Update on Notification

- a) The aggregate turnover in any of preceding FY from 2017-18 onwards shall exceed Rs. 20 Crores⁴
- b) IRN is to be generated for supply of goods or services or both to a registered person or for exports
- 2.3. The portals notified⁵ for generating IRN are as under:
- i. www.einvoice1.gst.gov.in;
 - ii. www.einvoice2.gst.gov.in;
 - iii. www.einvoice3.gst.gov.in;
 - iv. www.einvoice4.gst.gov.in;
 - v. www.einvoice5.gst.gov.in;
 - vi. www.einvoice6.gst.gov.in;
 - vii. www.einvoice7.gst.gov.in;
 - viii. www.einvoice8.gst.gov.in;
 - ix. www.einvoice9.gst.gov.in;
 - x. www.einvoice10.gst.gov.in;

3. Where IRN is generated, a Quick Reference Code (QR Code) is also required to be printed on the tax invoice⁶.

4. As per Not. No. 14/2022-CT dated 05.07.2022, a declaration is required to be given **in all cases** where IRN is not required to be generated (in other words, e-invoice is not required to be issued). Said declaration reads as under:

"I/We hereby declare that though our aggregate turnover in any preceding financial year from 2017-18 onwards is more than the aggregate turnover notified under sub-rule (4) of rule 48, we are not required to prepare an invoice in terms of the provisions of the said sub-rule."

Amendment

5. W.E.F. 01.10.2022, the e-invoice is required to be generated if the aggregate turnover in any FY from 2017-18 onwards exceeds Rs. 10 Crores. [Refer Not. No. 17/2022-CT dated 01.08.2022].

References

1. Not. No. 13/2020 dt. 21st March 2020, as amended from time to time
2. Inserted vide Not. No. 28/2021-CT dated 01.06.2021
3. --ditto--
4. Originally this limit was Rs. 500 Crores and the requirement to generate IRN came into force w.e.f. 01.10.2020. Later, this limit was reduced on four occasions, (i) to Rs. 100 Crores w.e.f. 01.01.2021 vide Not. No. 88/2020-CT dated 10.11.2020, (ii) to Rs. 50 Crores w.e.f. 01.04.2021 vide Not. No. 05/2021-CT dated 08.03.2021, (iii) to Rs. 20 Crores w.e.f. 01.04.2022 vide Not. No. 01/2022-CT dated 24.02.2022, (iv) to Rs. 10 Crores w.e.f. 01.10.2022 vide Not. No. 17/2022-CT dated 01.08.2022
5. NN 69/2019 – CT dated 13.12.2019
6. Not. No. 72/2020-CT dated 30.09.2020



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