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# CGST Amendments

## In pursuance of 48<sup>th</sup> GST Council Meeting



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## **Update in CGST Rule 8,9**

### **Notification No. 26/2022-CT dated 26.12.2022**

Recently, the GST Council's 48th meeting was held in which it was recommended that PAN-linked mobile number and e-mail address to be captured and recorded in **FORM GST REG-01** and OTP-based verification to be conducted at the time of registration on such PAN-linked mobile number and email address to restrict misuse of PAN of a person by unscrupulous elements without knowledge of the said PAN-holder.

### **Existing Law incorporating the amendments made vide NN 26/2022-CT:**

#### **Rule 8. Application for registration.—**

(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is

liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, <sup>1[\*\*]</sup> State or Union territory in **Part A of FORM GST REG-01** on the common portal, either directly or through a Facilitation Centre notified by the Commissioner:

.....

(2)(a) The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes <sup>2[and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number]</sup>.

<sup>3[\*\*]</sup>

<sup>1</sup> The words "mobile number, e-mail address," stood omitted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, w.e.f. 26.12.2022.

<sup>2</sup> Inserted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, w.e.f. 26.12.2022.

<sup>3</sup> Omitted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, w.e.f. 26.12.2022. Prior to the omission, it reads as under:

*"(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile*

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<sup>4</sup>[(4A) Every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the

number; and

(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.”

<sup>4</sup> Substituted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, dated 26-12-2022. Prior to the substitution, sub-rule (4A), as substituted by the Central Goods and Services Tax (Fourteenth Amendment) Rules, 2020 vide Notification No. 94/2020-Central Tax, dated 22-12-2020, with effect from a date to be notified read as under:

<sup>a</sup>[(4A) Every application made under rule (4) shall be followed by—

- (a) biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (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 sub-rule.]

a. Prior to the substitution, sub-rule (4A), as substituted by the Central Goods and Services Tax (Tenth Amendment) Rules, 2020 vide Notification No. 62/2020-Central Tax, **w.r.e.f. 1-4-2020**, read as under:

“(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), with effect from 21st August, 2020, undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in **Part B of FORM GST REG-01** under sub-rule (4), whichever is earlier.”

b. Originally, sub-rule (4A) was inserted by the Central Goods and Services Tax (Third Amendment) Rules, 2020 vide Notification No. 16/2020-Central Tax, dated 23-3-2020, **w.e.f. 23-3-2020**, as under:

“(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 1/4/2020, undergo authentication of Aadhaar number for grant of registration.”

common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph 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 sub-rule.]

<sup>5</sup>[(4B) The Central Government may, on the recommendations of the Council, by notification specify the States or Union territories wherein the provisions of sub-rule (4A) shall not apply.]

(5) On receipt of an application under sub-rule (4) <sup>6</sup>[or sub-rule (4A)], an acknowledgement shall be issued electronically to the applicant in **FORM GST REG-02**.

### Rule 9. Verification of the application and approval.—

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying

<sup>5</sup> Inserted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, dated 26-12-2022.

<sup>6</sup> Inserted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, dated 26-12-2022.

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documents and if the same are found to be in order, approve the grant of registration to the applicant within a period of **seven working days** from the date of submission of the application:

*(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or ;*

.....  
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.

### Effect of Amendment

#### **PAN linked Mobile Number and E-Mail ID to be used**

1. The requirement of declaring mobile number and e-mail address by the person applying for GST registration has been omitted.
2. Permanent Account Number ("PAN") to be verified through separate one-time

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- passwords sent to the mobile number and e-mail address linked to the PAN.
3. The mobile number and e-mail address as linked with PAN would be verified.
4. Accordingly, Form PART A of FORM GST REG-01 has been amended to remove E-mail id and mobile number because it would be verified by way of sending OTP.
5. However, the details of Proprietor/all Partners/Karta/Managing Directors and whole time Director/Members of Managing Committee of Associations/Board of Trustees etc. as filled in Part B of Form GST REG-01 shall not auto-populated from income tax database. The auto-population would happen only in Part A of Form GST REG-01.
6. The Aadhar Authentication shall be required to be done in respect of persons mentioned in Part B of Form GST REG-01 in terms of section 25(6B) and section 25(6C) of the GST Act.
7. Accordingly, the instruction number 2 of FORM GST REG-01 w.r.t. providing "E-mail Id and Mobile Number of authorised signatory for verification and future communication which will be verified through One Time Passwords to be sent separately, before

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filling up Part-B of the application” has been omitted.

### **Applicants identified based on data analytics and risk parameters shall undergo process of Bio-metric based Aadhar Authentication in the State of Gujarat**

8. W.E.F. 01.04.2020, Aadhar Authentication was made mandatory for grant of registrations to all persons other than those exempted u/s 25(6D) of the Act. W.E.F. 21.08.2020, it was provided that the application for registration would be deemed to be submitted on earliest of completion of Aadhar Authentication or on expiry of 15 days from date of submission of application.

Now it has been provided that common portal will identify the applicants based on data analytics and risk parameters. In such cases, the application for registration shall be followed by biometric-based Aadhaar authentication and taking photograph along with verification of original documents uploaded along with the registration application. Application would be considered as filed once said verification is complete.

9. Vide Not. No. 27/2022-CT dated 26.12.2022, it has been notified that Rule

8(4A) of the CGST Rules w.r.t. the completion of application after biometric-based Aadhaar authentication and taking photograph of the applicant, verification of the documents in FORM GST REG-01 etc., shall not be applicable in all the States and Union territories except the State of Gujarat.

### **Alternate means of verification in the absence of Aadhar Authentication**

10. If the applicant is so identified, the physical verification of the premises shall be carried out and the registration would be granted within 30 days from the date of submission of application.
11. In case any deficiency is observed in the application, notice for seeking clarification to applicants so identified shall be issued within 30 days from the date of submission of application.

### **Paksh Remarks**

12. Generally, the application is deemed to be submitted on the date when Aadhaar Authentication is complete and then the same is forwarded to the proper officer. Time limit to issue notice for discrepancy, if any, is 7 working days and to issue the registration certificate is also 7 working

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days. Hence, an applicant expects registration within 15 working days from the date of Aadhar Authentication.

13. Said time period could have been extended to 37 days (30 days + 7 days) if the proper officer on approval of authorised officer deems it fit to carry out physical verification of the premises and also find deficiencies the application submitted by the applicant. This period is subject to the time period taken by applicant to submit reply to deficiency memo which is 7 working days.

14. Now, the time period can also be 37 days even in those cases where the applicant is identified by the common portal based on risk parameters and data analysis.

Note: Looking at the manner in which Rule 9(3) has been drafted, it appears that time period to issue registration pursuant to issuance of notice for deficiencies in circumstances mentioned at point 2 and 3 above would be 7 days pursuant to receipt of reply. However, it appears to be wrong as the physical verification is practically to be carried out once the application complete in all respects is received by the proper officer. If that being the real

situation, said sub-rule requires amendment.

15. Therefore, we consider that the provision regarding physical verification in those cases where proper officer takes authorisation from an authorised officer shall be omitted, once the provisions of Rule 8(4A) is made fully operational on PAN India basis, to avoid harassment and misuse of the provision. This would control the unbridled wisdom given to the proper officer.

16. It appears that now onwards, the time restriction of 15 days to undergo Aadhar Authentication would not be there on common portal.

## Update in CGST Rule 37

### **Notification No. 26/2022-CT dated 26.12.2022**

1. The law related to payment of consideration (value along with tax payable) to the vendors within 180 days from the date of issue of invoice failing which the recipient is burdened with the liability to pay back the amount of ITC availed, proportionate to the unpaid amount, along with interest has always been a subject matter of discussion.
2. Recently, the rule 37 was substituted to modify the references of compliance Forms as the original scheme of law has finally been abandoned with the introduction of Form GSTR-2B and prescribing Form GSTR-3B as a return u/s 39.

### **Legal Provisions**

3. Section 16(2) of the GST Act provides that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless specified conditions are fulfilled. These conditions relate to (i) possession of valid document, (ii) furnishing of details in Form GSTR-1 and communication

thereof in Form GSTR-2B (applicable w.e.f. 01.01.2022), (iii) goods or services or both are received, (iv) details are not communicated as restricted in Form GSTR-2B (applicable w.e.f. 01.10.2022), (v) tax is paid to the credit of Central Government by the vendor, and (vi) return in Form GSTR-3B is filed.

4. The second and third proviso to section 16(2) provides as under:

*“Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:*

*Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.”*

5. The manner of adding the amount in output tax liability has been provided in



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rule 37 of the GST Rules which has been amended recently. This pre-amended and amended rule reads as under:

Sub-rule	Rule 37 prior to 01.10.2022	Rule 37 w.e.f. 01.10.2022
1	A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section 16, shall	A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply <sup>1</sup> [, whether wholly or partly,] along with the tax payable thereon, within the time limit specified in the second proviso to sub-section (2) of section

<p><i>paid to the supplier in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice:</i></p> <p>Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the</p>	<p>16, shall pay <sup>2</sup>[or reverse] an amount equal to the input tax credit availed in respect of such supply <sup>3</sup>], proportionate to the amount not paid to the supplier,] along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:</p> <p>Provided that the value of supplies made without consideration as specified in Schedule I</p>
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<sup>1</sup> Inserted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, w.e.f. 1-10-2022

<sup>2</sup> Inserted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, w.e.f. 1-10-2022

<sup>3</sup> Inserted by the Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-Central Tax, w.e.f. 1-10-2022


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	<p>purposes of the second proviso to sub-section (2) of section 16:</p> <p>Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.</p>	<p>of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:</p> <p>Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.;</p>
2	The amount of input	Where the

	<p>tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.</p>	<p>said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).</p>
3	<p>The registered person shall be liable to pay interest at the rate notified under <b>sub-section (1) of section 50</b> for the period <b>starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability,</b> as mentioned in sub-rule (2), is paid.</p>	--
4	<p>The time limit specified in sub-section (4) of section 16 shall not</p>	<p>The time limit specified in sub-section (4) of section 16 shall not apply to a</p>


**Update in CGST Rule 37**

<p>apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.</p>	<p>claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.</p>
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**Prior to 01.10.2022**

6. As per original scheme of making compliances under GST law, the registered persons were supposed to furnish the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in **FORM GSTR-2** which was to be added in the output tax liability while furnishing return in Form GSTR-3. An extract of these Forms is reproduced below for reference:

**Form GSTR-2**
**11. Input tax credit reversal / re-claim**

Description for reversal of ITC	To be added or reduced from	Amount of ITC			
		Integrated tax	Central Tax	State / UT	Cesses

	Output liability			Tax	
(1)	(2)	(3)	(4)	(5)	(6)
<b>Information for the current tax period</b>					
(a). Amount in terms of Rule 37(2)	To be added				

**Form GSTR-3**
**Part A (to be auto-populated)**

7. Addition and reduction of amount in output tax for mismatch and other reasons

Description	Added or reduced from	Amount of ITC			
		Integrated tax	Central Tax	State / UT	Cesses


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	m ou tp ut lia bili ty			a x	
(1)	(2)	(3)	(4)	( 5 )	( 6 )
(g). Input tax credit reversal/reclaim	A dd /r ed uc e				

7. However, these Forms were not operationalised and were replaced by way of Form GSTR-3B but the rule 37 remains unamended leaving it doubtful for taxpayers on manner of reversing the ITC under rule 37(2) / adding the same to output tax liability till 01.10.2022.

**Rule 37 w.e.f. 01.10.2022 i.e., Effect of the Amendment**

8. It has been provided that w.e.f. 01.10.2022, a registered person shall either pay or reverse the amount of input

tax credit while furnishing return in Form GSTR-3B. An extract of Form GSTR-3B, as amended w.e.f. 05.07.2022, is given below for reference:

**Form GSTR-3B**
**4. Eligible ITC**

Details	Integra ted Tax	Ce ntra l Tax	St at e/ UT Ta x	C es s
(1)	(2)	(3)	(4)	(5 )
<b>(A) ITC Available (whether in full or part)</b>				
(5) All other ITC				
<b>(B) ITC Reversed</b>				
(2) Others				
<b>(C) Net ITC available (A-B)</b>				
<b>(D) Other details</b>				
(1) ITC reclaimed				



## Update in CGST Rule 37

which was reversed under Table 4(B)(2) in earlier tax period				
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9. It is notable that rule 37(2) prior to 01.10.2022 specifically provided that amount of ITC reversal shall be added to the output tax liability of the registered person and accordingly a table in Form GSTR-3 was inserted. However, w.e.f. 01.10.2022, the manner prescribed under rule 37 r/w Circular No. 170/02/2022-GST dated 06.07.2022 in terms of second proviso to section 16(2) is in complete deviation i.e., it prescribes to reduce the eligible ITC instead of adding the amount in output tax liability. *It is well settled that the executive organ while formulating the rules under statutory grant of power cannot overrule the same and in result formulate a different provision than provided in the statute. Therefore, validity of rule 37 w.e.f.*

01.10.2022 is still questionable.

### Interest

10. Without prejudice to the validity of rule 37 pre and post amendment, prior to 01.10.2022, it was specifically provided that interest at the rate notified under section 50(1) shall be payable. This was because of the reason that reversal of an amount equivalent to the ITC availed is in the nature of “addition to output tax liability” and it was provided in second proviso to section 16(2) r/w rule 37(2).
11. However, amended rule 37 provides that the registered person shall pay or reverse the amount which is to be reduced from the input tax credit while furnishing return in Form GSTR-3B and it simply makes a reference to section 50 wherein different provisions are prescribed for calculation of interest if payable under sub-section (1) or sub-section (3) thereof.
12. Going by the Act, a registered person is liable to pay tax as the amount of reversal has to be added in output tax liability. *Therefore, interest appears to be payable under section 50(1) of the Act but is questionable in terms of rule 37 r/w*

## **Update in CGST Rule 37**

manner of furnishing details in Form GSTR-3B which provides to reduce the same from input tax credit.

13. Further, section 50(3) is applicable on ITC wrongly availed and utilised. Whether failure to pay within 180 days makes the ITC ineligible i.e., to say that the credit was wrongly availed? This itself is a question of law because of various reasons. First, section 16(2) deals with the conditions for entitlement of ITC and proviso thereof has to be understood in the same sense. Hence, failure to pay within 180 days dis-entitle a registered person from availing the ITC. Second, the provisos to section 16(2) are not in the nature of conditions and hence, failure to pay within 180 days does not dis-entitle the registered person from availing ITC. That is the reason why legislature has provided in third proviso that the registered person shall be entitled to re-avail the ITC when payment is made to the registered person notwithstanding the time limit given under section 16(4). Since the time limit u/s 16(4) has been made inapplicable to re-availment of credit, the entitlement of ITC cannot be

questioned and hence, the same cannot be termed as “wrongly availed” on failure to pay within 180 days.

14. Hence, the applicability of sub-section of section 50 is a subject matter of debate between trade and jurisdictional authorities and is required to be specifically provided in the rules. It is also notable that interest u/s 50(1) is payable on full amount of ITC for the period starting from date of availing the same whereas interest u/s 50(3) is payable on amount that remains unutilised and that too for the period during which balance in electronic credit ledger falls below the amount of ITC required to be reversed.

### **Period of interest**

15. Prior to 01.10.2022, period of interest was specifically provided to begin from the date of availing credit on such supplies till the date when the amount added to the output tax liability i.e., from day 1. However, the period of interest is not specified under amended rule 37. In this background, reading of second proviso to section 16(2) suggests that legislature intention behind it was to impose interest

## **Update in CGST Rule 37**

from the date of availing ITC. That is the reason to mention *“shall be added to his output tax liability, along with interest thereon”*.

16. Since the period for reversal is not specified in amended rule 37, reference is required to be made to the provisions of Rule 88B in background of second proviso to section 16(2). Rule 88B provides that interest u/s 50(1) shall be paid *“for the period starting from the date on which such tax was due to be paid till the date such tax is paid”*. Since the ITC is required to be reversed in the return furnished in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice, does it mean that taxpayers are burdened with additional interest liability for one month?

17. Interest u/s 50(3) is payable for the *“period starting from the date of utilisation of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount”*. Here, the date of utilisation means the due date or actual date of furnishing return in Form GSTR-3B

or date of debit from electronic credit ledger, as the case may be, when the balance in electronic credit ledger falls below the amount of wrongly availed ITC.

### **Paksh Remarks**

18. The amount required to be reversed is to be added in output tax liability. Doing so, the provisions of section 49 are applicable which provides the manner of utilisation of balance lying in electronic credit ledger and electronic cash ledger for the purposes of discharging output tax liability. However, as per manner prescribed, the ITC is required to be reversed in table 4(B)(2) of Form GSTR-3B, thereby, *completing surpassing the provisions of section 49 which provides the order of utilising the balance in electronic credit ledger for the purposing of making payment of output tax liability. Therefore, to the extent as well, amended rule 37 is questionable.*

19. Besides above points, the validity of provisos as well as meaning of term *“failure to pay”* is expected to be put to judicial scrutiny which can have a bearing on trade.

## Update in CGST Rule 37

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20. Therefore, there are many issues which are still required to be clarified. We expect that once the rules are aligned with provisions of Act and Form GSTR-3B is substituted to provide a separate table for addition/reduction of amounts in output tax liability, there would not be chaos amongst taxpayers while ensuring compliance with statutory provisions.



## Update in CGST Rule 37A

**Notification No. 26/2022-CT dated 26.12.2022**

### Background

1. As the Government circumscribed the role of online matching to the auto-population of matched results in Form GSTR-2B, the concept of provisional credit was done away with effect from 01.10.2022. This is because of the reasons that there is no requirement of legal provisions to keep the ITC self-assessed in return as provisional, and to finalise the same pursuant to matching in terms of section 42 or 43, as the case may be, which has to be carried out on common portal after the filing of a valid return by the corresponding supplier. Accordingly, section 42, section 43 and corresponding rules 69 to 79 (except rule 78) have also been omitted w.e.f. 01.10.2022.
2. The substituted section 41 provides that recipient shall reverse the ITC along with interest in respect of supplies whose tax is not paid by the corresponding supplier and shall re-avail the same when the taxes are paid by said supplier in such manner as may be prescribed. This

manner has been prescribed by way of inserting Rule 37A vide Not. No. 26/2022-CT dated 26.12.2022.

### Legal Provision

3. Section 16(2) of the GST Act provides that no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless specified conditions are fulfilled. These conditions relate to (i) possession of valid document, (ii) furnishing of details in Form GSTR-1 and communication thereof in Form GSTR-2B (applicable w.e.f. 01.01.2022), (iii) goods or services or both are received, (iv) details are not communicated as restricted in Form GSTR-2B (applicable w.e.f. 01.10.2022), (v) **subject to section 41, tax is paid to the credit of Central Government by the vendor**, and (vi) return in Form GSTR-3B is filed. The relevant extract is reproduced hereinbelow for reference:


**Update in CGST Rule 37A**

4. Section 41 prior to and w.e.f. 01.10.2022 reads as under:

Sub-section	Section 41 prior to 01.10.2022	Section 41 w.e.f. 01.10.2022
<b>Heading</b>	<b>Claim of input tax credit and provisional acceptance thereof</b>	<b>Availment of input tax credit</b>
1	Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to <b>take</b> the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited <b>on a provisional basis</b> to his electronic credit ledger.	Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to <b>avail</b> the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.
2	<b>The credit referred to in</b>	<b>The credit of input tax</b>

<p><i>sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.</i></p>	<p><i>availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed: Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered</i></p>
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**Update in CGST Rule 37A**

		<p><i>person may re-avail the amount of credit reversed by him in such manner as may be prescribed.</i></p>
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**Validity of condition u/s 16(2)(c) r/w Section 41 prior to 01.10.2022**

5. Prior to 01.10.2022, one of the conditions to avail ITC was that tax shall be paid to the credit of Government subject to provisions of section 41. Section 41 r/w rule 69 provided that ITC self-assessed in the return is to be kept provisional and shall be matched u/s 42 after the due date of furnishing the return. In the process, it was provided that tax in respect of supplies which are not appearing in Form GSTR-1 of the corresponding suppliers or where valid return i.e., return with full payment of taxes, is not filed by said suppliers would be added to the output tax liability of the recipient. It was also provided that where rectifications are carried out or

taxes are paid before the time limit specified u/s 39(9) of the GST Act by the corresponding supplier, the recipient would be entitled to reduce the output tax liability to the extent of taxes so matched.

6. However, it is notable that the proviso to rule 69 provided that time limit to carry out matching shall be co-extensive with the time limit for furnishing Form GSTR-1 and Form GSTR-2. As the due date to file GSTR-2 was extended to an unforeseen period until it was abandoned on 01.01.2021, and online matching did not carry out on common portal even after said date, the restrictions and conditions of provisional ITC were not operational at any point of time.
7. Therefore, it is inferred that there is no non-compliance with the conditions of section 16(2)(c) for ITC claims in respect of supplies not declared by the corresponding suppliers in his valid return for the period upto 01.10.2022 given that it is well settled in the absence of machinery provisions, the benefit pertains to the assessee.

**Benefit of Rule 37A is restricted only to one tax period [condition u/s 16(2)(c) r/w**

## Update in CGST Rule 37A

### section 41 w.e.f. 01.10.2022]

8. It has now been provided that ITC can be availed on self-assessment basis by the recipient without considering the conditions of section 16(2)(c). However, if tax is not paid by the supplier, said ITC shall be reversed along with applicable interest and shall be re-availed when tax is paid by the supplier. The manner of executing this is left with Government to be provided by way of Rules.
9. Not. No. 26/2022-CT dated 26.12.2022 has inserted rule 37A which provides as under:
- i) Where ITC is availed in respect of invoice or debit notes, details of which have been furnished by suppliers in Form GSTR-1 or invoice furnishing facility (IFF)
  - ii) But return in Form GSTR-3B is not filed i.e., tax is not paid by supplier
  - iii) till 30<sup>th</sup> September following the end of financial year
  - iv) in which ITC has been availed

ITC shall be reversed in Form GSTR-3B filed on or before 30<sup>th</sup> November following the end of such financial year. In case ITC is not so reversed, said amount shall become

payable along with interest u/s 50. The registered person would be entitled to re-claim ITC in case return in Form GSTR-3B is subsequently furnished by the corresponding supplier.

10. Appreciating the manner prescribed u/s 41, the ultimate benefit to be enjoyed by a recipient is very limited. This is because of the restrictions imposed on filing of Form GSTR-1 viz., it cannot be filed if GSTR-1 or GSTR-3B for any of the previous tax period is not filed, and newly added conditions for entitlement to ITC vide section 16(2)(aa) and 16(2)(ba) inserted recently. As a result of these restrictions and newly added conditions, the circumstance of availing ITC in respect of invoices whose tax is not paid by the corresponding supplier has effectively been reduced to one tax period.

**30<sup>th</sup> September or 30<sup>th</sup> November following  
the end of which financial year?**

11. Newly inserted Rule 37A provides that ITC is required to be reversed if return in Form GSTR-3B is not filed by the corresponding supplier till the 30<sup>th</sup> day of September following the end of financial year in which

## Update in CGST Rule 37A

the input tax credit in respect of such invoice or debit note has been availed. It is to be seen that if ITC for the FY 2022-23 is availed in FY 2023-24, whether the rule 37A would trigger on 30.09.2024 or 30.09.2025 as the expression used in rule 37A is “*following the end of financial year in which the input tax credit in respect of such invoice or debit note **has been availed***”. Similar analogy applies for 30<sup>th</sup> November.

12. Further, even though the time limit is mentioned till 30<sup>th</sup> November but the reversal has to be carried out in return furnished for the tax period October 2022 which is to be filed on 20<sup>th</sup> November. However, in respect of quarterly taxpayers, said provision still fails to provide specifically that payment can be made by way of Form PMT-06 to be filed on or before 25<sup>th</sup> November.

### Applicability of time-limit u/s 16(4) to re-avail ITC

13. Earlier section 42(7) provided that recipient can re-avail the ITC (i.e., amount can be reduced from the output tax liability) if supplier pays the tax within the time limits provided under section 39(9) of the Act. However, said

restriction is not specifically mentioned in proviso to section 41(2). Further, reading the provisions of section 41(2) along with Rule 37A, it appears that time restriction of section 16(4) is not applicable on re-claim of ITC.

14. However, cannot be lost sight of the fact that said benefit is restricted only to one tax period in light of the conditions to avail ITC inserted recently i.e., section 16(2)(aa) and 16(2)(ba) read with section 16(4) and restrictions imposed on filing of Form GSTR-1 vide section 37(4) of the CGST Act, 2017 r/w Rule 59(6) of the CGST Rules, 2017.

### Concluding Remarks

15. In view of the author, the benefit of rule 37A is available only in respect of those invoices or debit notes which are furnished in Form GSTR-1 or through IFF by the corresponding suppliers but return in Form GSTR-3B is not filed. In light of the restrictions inserted vide Rule 59(6), if return in Form GSTR-3B is not filed, a registered person cannot furnish Form GSTR-1 for subsequent month/tax period. Further, one of the conditions to avail ITC mentioned u/s 16(2)(aa) has to be

## **Update in CGST Rule 37A**

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satisfied even going by circumstance covered in Rule 37A. Hence, this provision is not going to benefit the taxpayers at large.

## Update in CGST Rule 108

### CGST Rule 108(3)

Recently, the GST Council's 48th meeting was held, in which it was recommended to provide clarity on the requirement of submission of the certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority, to facilitate timely processing of appeals and ease the compliance burden for the appellants. Accordingly, rule 108(3) has been amended vide Not. No. 26/2022-CT dated 26.12.2022.

#### Existing and Rule 108(3)

Existing Law	Amended Law
A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in <b>FORM GST APL-</b>	Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in

Existing Law	Amended Law
<b>02</b> by the Appellate Authority or an officer authorised by him in this behalf:	this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:
Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the <b>FORM GST APL-01</b> , the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.	Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in

Existing Law	Amended Law
	<p>this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:</p> <p>Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal.</p>

provides bandwidth to upload supporting documents which can be a copy of speaking order.

2. It has now been provided that if a copy of speaking order is uploaded along with summary order, then the appellant is not required to submit a hard copy of certified order in the office of appellate authority within a period of seven days. In such cases, appeal filed online shall be a sufficient compliance.
3. However, if a copy of speaking order is not uploaded, then the appellant is required to submit a self-certified copy of the order within a period of seven days from the date of online filing of appeal. If the self-certified copy of said order is submitted after a period of seven days, then the date of submission of self-certified copy of order shall be the date of filing of appeal.
4. The controversy over meaning of term "certified order" has been resolved and it has been specified that "Self-certified copy" of the order shall be submitted by the appellant. This would save the efforts involved in obtaining copy of order duly certified by the officer.

### Effect of Amendment

1. The amendments give clarity on the manner of issuing orders. The assessing officer issuing a summary of the order in specified format e.g., Form GST DRC-07, Form GST RFD-06, shall also issue a speaking or detailed order. The functionality to issue summary order also

### Paksh Remarks

5. The benefit of this rule must be allowed on appeals already filed given that beneficial amendments are always retrospective in nature.





6. In cases where appeals were dismissed for fault of submitting certified copy of order within seven days of online filing and where the copy of order was uploaded on common portal, adequate relief(s) by way of re-storing the appeal to its original number shall be allowed by next appellate authority.
7. In case copy of order is not uploaded on common portal and unnecessary delays are made by the office of proper officer, it is advisable to write an email or submit a letter requesting to serve a copy of speaking order. In such cases, in our view, period of filing of appeal shall start from date of service of speaking copy of the order.

## **Update in CGST Rule 109C**

GST Council in its 48<sup>th</sup> meeting recommended to provide a facility for withdrawal of appeal upto certain specified stage to help in reducing litigations at the level of appellate authorities. Accordingly, Rule 109C has been inserted by Not. No. 26/2022-CT dated 26.12.2022 which reads as under:

**“Rule 109C. Withdrawal of Appeal.** *The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W:*

*Provided that where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application:*

*Provided further that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be.”*

### **Analysis of Amendment**

1. Application to withdraw the appeal can be filed by an assessee in Form GST APL-01W and by the department in Form GST APL-03W.
2. This facility has been provided in case of appeals filed before first appellate authorities.
3. If the application for withdrawal of appeal is submitted prior to issuance of acknowledgment in Form GST APL-02, then the order/approval of the appellate authority is not required.
4. On the contrary, if the withdrawal application is submitted after issuance of acknowledgment in Form GST APL-02, then the order/approval of the appellate authority which would be given within 7 days. If the opposite party does not object the withdrawal and appellate authority is judiciously satisfied,

the appellant shall be allowed to withdraw the appeal.

5. In either of cases, appellant can re-file the appeal before same authority provided the same is filed within the statutorily permissible timelines. This is a welcome provision given that it is well settled that appeals once withdrawn cannot be re-filed before same authority or no cause of action arise for seeking relief at next appellate forum unless the withdrawal was persuaded, or was under coercion or undue influence.
6. In our view, if the application to withdraw the appeal is allowed i.e., appeal is withdrawn after issuance of acknowledgment in Form GST APL-02 and later on, need arises to contest the issue before appellate authorities, the only remedy would be to approach next appellate forum with a prayer to re-store the appeal on the files of first appellate authority to its original number. However, given the settled jurisprudence over the issue, it must be supported by strong factual reasons to justify the cause of action.
7. Date of issue of final acknowledgment in Form GST APL-02 would play a pivotal

role in cases of withdrawal of appeal.

## Miscellaneous Amendments

### Amendments made in the CGST Rules, 2017:

#### 1. Facility for cancellation of registration to be provided to persons who are required to collect TCS or deduct TDS

Sub-rule (3) of rule 12 of CGST Rules, 2017 has been amended to provide for facility to the registered persons, who are required to collect tax at source under section 52 or deduct tax at source under section 51 of CGST Act, 2017, for cancellation of their registration on their request.

#### 2. In rule 46, in clause (f), the following proviso shall be inserted:

Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a 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.

Further in Rule 46A, following proviso has been inserted: Provided that the said single "invoice-cum-bill of supply" shall contain

the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49.

#### 3. Facility to explain difference between Form GSTR-1 and GSTR-3B, and restriction to be imposed on furnishing of GSTR-1 if said difference is not explained/paid

Rule 88C and FORM GST DRC-01B has been inserted in CGST Rules, 2017 for intimation to the taxpayer, by the common portal, about the difference between liability reported by the taxpayer in FORM GSTR-1 and in FORM GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage.

Further, clause (d) has been inserted in sub-rule (6) of rule 59 of CGST Rules, 2017 to restrict furnishing of FORM GSTR-1 for a subsequent tax period if the taxpayer has neither deposited the amount specified in the intimation nor has furnished a reply explaining the reasons for the amount remaining unpaid.



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