

# TAX FLASH NEWS

23 December 2020

## GST Notification update | Amendment to the Central Goods and Services Tax Act and Rules

With an aim to curb the menace of fake invoices and fraudulent claim of input tax credits (ITC), Central Board of Indirect Taxes and Customs (CBIC) have issued notification to amend the CGST Rules and to give effect to certain amendments made to the CGST Act vide the Finance Act, 2020.

### 1. Amendment to the CGST Rules

#### a) Rule 36(4) – Claim of ITC for unmatched credits restricted to 5 per cent

Restriction in claiming the ITC of the unmatched credits has been further reduced from 10 per cent to 5 per cent.

The amendment shall come into effect from 1 January 2021.

#### b) Restriction on filing of GSTR-1

New sub-rule (5) has been inserted under Rule 59, to provide that a registered person shall not be allowed to file GSTR-1, if it has failed to furnish the return in GSTR-3B for two preceding months/tax period<sup>1</sup> as the case may be.

The amendment shall come into effect from 22 December 2020.

#### c) Restriction from utilising credits available in the electronic credit ledger

New rule 86B has been inserted to restrict the claim of credits to 99 per cent of the output tax liability. The restriction shall be imposed where the value of taxable supplies other than exempt supply and zero-rated supply in a month exceeds INR 50 lakhs.

However, aforementioned restriction shall not apply in following cases

- The said registered person has paid more than INR 1 lakh as income tax under the Income Tax Act, 1961 in each of the last two financial year; or
- The said registered person had received refunds in excess of INR 1 lakh in the preceding financial year of unutilised ITC either on account of Zero-rated supplies made without payment of tax; or Inverted tax structure; or
- The said registered person has paid more than 1 per cent of the total output tax liability through the electronic cash ledger. The total output tax liability shall be calculated cumulatively up to the said month in the current financial year; or
- The said registered person is a Government Department; or public sector undertaking; or local authority; or a statutory body.

The amendment shall come into effect from 1 January 2021.

#### d) Amendmen to the e-way bill provisions

The table prescribing the validity period of e-way for distance travelled has been amended. The amended table is reproduced as under

<sup>1</sup> Person who are required to file quarterly returns

Sl. No.	Distance	Validity period
1	Upto 200 km (earlier 100 km)	One day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship
2	For every 200 km (earlier 100 km) or part thereof thereafter	One additional day in cases other than Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship

**The amendment shall come into effect from 1 January 2021.**

**e) Suspension of Registration | Enhanced power to suspend registration**

Gist of the amendment to Rule 21A is as under-

- i. Where a Proper officer has a reason to believe that the registration of a person is liable to be cancelled, it can now suspend the registration without giving a reasonable opportunity to the taxpayer
- ii. Upon comparison of returns furnished by a registered person under section 39 with the outward supplies return in GSTR-1, or with the details of inward supplies derived based on the returns furnished by the suppliers, or such other analysis, show a significant difference or anomalies, indicating contravention of the provisions contained in the GST Act or Rules, leading to cancellation of registration, the proper officer shall suspend the registration of such registered person.

The intimation of such suspension and notice for cancellation shall be intimated in Form 'GST REG-31'. The intimation shall be communicated electronically on the common portal, or by sending a communication to the registered e-mail ID of such person. The form shall highlight the differences and the anomaly and seek reasons from the taxpayer as to why the registration should not be cancelled.

- iii. New sub-rule 3A inserted, to provide that during the period of suspension, no refund shall be granted to a registered person.

The amendment shall come into effect from 22 December 2020.

**f) Cancellation of Registration**

New clauses have been inserted in Rule 21, providing power to cancel registration of a person in following cases

- Where the taxpayer has availed ITC in violation of the provisions contained in section 16 or the rules made thereunder;
- Where the outward supplies declared in GSTR-1 for one or more tax period, exceeds outward supplies declared in GSTR-3B; and
- The taxpayer violates the restriction imposed vide the newly inserted rule 86B [discussed in para 1(c) above]

The amendment shall come into effect from 22 December 2020.

**[Notification no. 94/2020-Central Tax dated 22 December 2020]**

**2. Finance Act, 2020 | CBIC notifies 1 January 2021 as the date from which certain amendments to the CGST Act shall come into force**

Gist of the key amendments which shall come into effect from 1 January 2021 is as under –

- a) Section 16(4) – the provision prescribes period of limitation for claiming of ITC on invoices/debit notes raised during a year. The provision has been amended to delink the date of issuance of debit note from the date of issuance of underlying invoice.
- b) New sub-section (1A) inserted under section 122, to make the beneficiary of the following transaction, at whose instruction such transaction was conducted liable for penalty
  - Supply of goods or services or both without issuing invoice or issuing incorrect or false invoice
  - Issue of invoice or bill without supply of goods or services or both
  - Avails or utilises ITC without actual receipt of goods or services or both

- Avails or distributes ITC in contravention of the provisions contained for input service distributors
  
- c) Scope of criminal offences prescribed under section 132 expanded to include not only those persons who have committed the offences, but also to include person who causes to commit and retains the benefits arising out of the prescribed offences.

**[Notification no. 92/2020-Central Tax dated 22 December 2020]**

### Our comments

The amendments notified are very critical specifically the amendment which restrict the claim of ITC to only 5 per cent of the matched credits and also the amendments which restricts the claim of ITC to 99% of output tax liability of the taxpayer.

Though the amendments has been introduced considering the increased number of fraudulent cases unearthed by the GST authorities, these amendments may impact genuine taxpayers also.

Another important amendment which may hit the taxpayer is the amendment to the e-way bill provisions. The validity period of one day for a distance of 200 km seems to be very difficult to comply with.



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