

CENTRAL GST CA. Rajiv Luthia, CA. Jinit Shah	
--	--

CBIC vide NOTIFICATION NO. 18/2022 – CT dated 28th September, 2022 has notified 1st October, 2022, as date from which section 100 to 114 except 110 (c) and 111 of the Finance Act, 2022 shall come into force. The relevant amendment is given herein under:

1. SECTION 100 & 104 OF FINANCE ACT, 2022:

➤ **SECTION 16(2)(ba): ADDITIONAL CONDITIONS FOR TAKING INPUT TAX CREDIT**

- Following Additional condition by way of clause (ba) is inserted in Section 16(2) for eligibility of ITC.

"The details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted"

➤ **SECTION 16(4) - EXTENSION OF TIME LIMIT TO AVAIL INPUT TAX CREDIT**

- Prior to Amendment, the time limit for availing ITC of invoice or debit note pertaining to financial year, was up to due date of furnishing return u/s 39 (GSTR 3B) for the month of September following the end of financial year or date of filing annual return, whichever is earlier.
- Amendment has been made in section 16(4) to extend the said time limit to avail ITC of Invoice or debit note pertaining to financial year **till 30th November** of subsequent financial year or date of filing annual return, whichever is earlier.
- Thus, Effectively, ITC on Invoice or Debit note pertaining to a financial year can be availed up to, earlier of:
 - o 30th November of subsequent financial year; or
 - o Date of filing of annual return.

➤ **SECTION 38 (COMMUNICATION OF DETAILS OF INWARD SUPPLIES & INPUT TAX CREDIT)**

- Section 38 is substituted with new provisions as under:
 - (1) The details of outward supplies furnished by the registered persons under section 37(1) and of such other supplies as may be prescribed, and an auto-generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.
 - (2) The auto-generated statement under sub-section (1) shall consist of—
 - (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and
 - (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of said supplies being furnished under section 37(1) by registered person (vendor on inward supply)—
 - (i) Within such period of taking registration as may be prescribed; or
 - (ii) who has Defaulted in payment of tax for such period as may be prescribed; or

- (iii) the output tax payable as per GSTR-1 exceeds output tax payable as per GSTR-3B for such period, by such limit as may be prescribed; or
 - (iv) Has availed ITC in excess of eligible credit that can be availed in accordance with section 38(2)(a), by such limit as may be prescribed shall be restricted; or
 - (v) Defaulted in discharging his tax liability in accordance with the provisions of section 49 (12) subject to such conditions and restrictions as may be prescribed; or
 - (vi) by such other class of persons as may be prescribed
- Thus, registered person will be eligible to claim credit of input tax only if such credit is appearing in auto-generated statement made available in prescribe form and the same is **not restricted in said auto generated statement.**

2. SECTION 101 OF FINANCE ACT, 2022 READ WITH RULE 21 OF CGST RULES, 2017 :

➤ SECTION 29: CANCELLATION OR SUSPENSION OF REGISTRATION.

- Prior to Amendment, Section 29(2) list down following circumstances in which registration can be cancelled by proper officer:
 - (a) *a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or*
 - (b) *a person paying tax under section 10 (composition dealer) has not furnished returns for three consecutive tax periods; or*
 - (c) *any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or*
 - (d) *any person who has taken voluntary registration under sub-section (3) of section 25 & has not commenced business within six months from the date of registration; or*
 - (e) *registration has been obtained by means of fraud, wilful misstatement or suppression of facts:*
- Sub clause (b) herein above has been amended whereby the proper officer can cancel the registration of composition dealer, if the return in Form GSTR-4 (to be filled annually) has been filed beyond 3 months from the due date (i.e. 30th April following the end of such financial year) of furnishing the said return.
- Sub clause (c) herein above has been amended whereby the proper officer can cancel the registration of person other than composition dealer, if the assessee has not furnished returns (i.e. GSTR 3B) for a continuous period of 6 months.

➤ CONSEQUENTLY, AMENDMENT IN RULE 21- REGISTRATION TO BE CANCELLED

- Following 2 clauses are inserted in Rule 21 wherein registration to be cancelled if-
 - (h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;
 - (i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.”;

3. SECTION 102 OF FINANCE ACT, 2022

➤ AMENDMENT TO SECTION 34 – EXTENSION OF TIME LIMIT TO ISSUE CREDIT NOTE

- Prior to Amendment, Section 34(2) provides time limit for issuance of credit note not later than 30th September following the end of the financial year in which corresponding supply was made, or the date of furnishing annual return for financial year in which corresponding supply was made, whichever is earlier.

- Said time limit for issuance of credit note is extended in respect of any supply made by assessee in financial year, till 30th November following the end of relevant financial year or the date of furnishing annual return for financial year in which corresponding supply was made, whichever is earlier.
- Thus, Effectively, credit note in respect of invoice pertaining to a financial year can be issued at earliest of following dates:
 - o 30th November following the end of financial year; or
 - o Date of filing of annual return.

4. SECTION 103, 105 AND 112 OF FINANCE ACT, 2022

➤ AMENDMENT TO SECTION 37, 39 & 52 – EXTENSION OF TIME LIMIT TO RECTIFY ERRORS OR OMISSION IN THE RETURNS

- Prior to Amendment, the time limit for rectification of errors or omissions in following returns is due date of furnishing such returns for the month of September following end of relevant financial year:
 - o Statement of outward supplies in Form GSTR-1 (Section 37)
 - o Return in Form GSTR-3B – (Section 39)
 - o Statement furnished by e-commerce operator in Form GSTR-8 - (Section 52)
- The above time limit is extended to 30th November following end of relevant financial year

SECTION 37(4) – FURNISHING DETAILS OF OUTWARD SUPPLY

- Sub clause 4 is insert in section 37 to provide that Form GSTR-1 for any period shall not be furnished unless details of outward supplies of all previous tax periods has been furnished by assessee in Form GSTR 1.

SECTION 39(5) – FURNISHING OF RETURNS BY NON-RESIDENT TAXABLE PERSON

- Prior to Amendment, Section 39(5) provides that Non-Resident taxable person is required to furnish his return (FORM GSTR 5) for every calendar month on or before 20th of following month.
- Now, the said due date preponed to 13th of every month following calendar month as against erstwhile 20th of next month.

SECTION 39 (10) – FURNISHING OF RETURNS

- Section 39(10) is amended thereby registered person is not allowed to furnish return (Form GSTR 3B) for a tax period unless he has furnished returns (Form GSTR 3B) as well details of outward supplies u/s 37 (FORM GSTR 1) for all the previous tax periods.

5. SECTION 106 OF FINANCE ACT, 2022

➤ AMENDMENT TO SECTION 41 REVERSAL OF ITC ON NON-PAYMENT OF TAX BY SUPPLIER

- Section 41 has been amended to provide that ITC availed in respect of inward supplies shall be reversed along with Interest by registered person if the tax thereon has not been paid by supplier.
- Further, the recipient shall be entitled to re-avail the said ITC in prescribed manner, where the said supplier makes payment of the tax in respect of the aforesaid supplies on later date.
- Thus, now saddles the recipient with the responsibility for payment of tax along with interest for the default of his supplier.

6. SECTION 107 OF FINANCE ACT, 2022

OMITTED FOLLOWING SECTION

- o Section 42 : Matching, reversal and reclaim of input tax credit
- o Section 43 : Matching, reversal and reclaim of reduction in output tax liability.

- o Section 43A : Procedure for furnishing return and availing input tax credit

7. SECTION 108 OF FINANCE ACT, 2022

➤ AMENDED TO SECTION 47 – LEVY OF LATE FEE

- Late fees (Rs.100/- per day subject to maximum Rs. 5,000) have been levied for delay in filing returns u/s 52 of the CGST Act. (i.e. FORM GSTR 7 - Return in respect of tax collected at source by e-commerce operator on supplies made through it)

8. SECTION 113 OF FINANCE ACT, 2022

➤ SECTION 54- CLAIMING OF REFUND LYING IN ELETRONIC CASH LEDGER

- Prior to Amendment, 1st Proviso to section 54(1) provides that in case of claim for refund of any balance in the electronic cash ledger, the refund claim can be through return furnished under section 39 (i.e. FORM GSTR 3B). However, it is found that GST portal does not permit filing of such refund claim through GSTR 3B. The GST portal permits filling the claim of refund through Form RFD-01
- The section is now amended there by it has notify "form" for such refund claim.

➤ SECTION 54- EXTENSION OF TIME LIMIT FOR CLAIMING REFUND BY SPECIFIED CLAIMANTS

- The time limit for claiming refund by certain class of persons like UNO, Multilateral Financial Institution, Consulate or Embassy of foreign countries was 6 months from the last day of the quarter in which supply corresponding to ITC was received.
- Amendment is made to extend such time limit to 2 years from the last day of quarter in which inward supply is received

➤ SECTION 54 - ADJUSTMENT OF REFUND AGAINST UNPAID LIABILITY

- The power to withhold the refund by proper officer in case of default in filing return, paying tax, etc. is now being applicable for refund under all scenarios.
- Hitherto, the same was applicable only for refund of unutilized ITC for assessee having zero rated supply and inverted duty structure i.e. Section 54(3).

➤ SECTION 54 – RELEVANT DATE FOR REFUND ON SUPPLIES MADE TO SEZ UNIT/DEVELOPER

- Sub-clause (ba) inserted in explanation 2 to section 54 for providing "relevant date" in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit, where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;
- Thus, the time limit of claiming refund is two years from the date of furnishing Form GSTR-3B by the supplier
- The amendment is stated to "*provide clarity*" in such cases as given in Clause 15 (d) of Annexure E of Circular no. D.O.F.No. 334/01/2022-TRU dated 1.2.2022 and clause 14(iv) of the Explanatory Memorandum explaining the Amendments in the CGST Act, 2017. It appears therefore that the amendment maybe treated as clarificatory i.e. to clarify the position in law as it always was from 1.7.2017.

CBIC vide NOTIFICATION NO. 19/2022 –CT dated 28th September,2022 has amended CGST Rules as follows:

➤ AMENDMENT IN RULE 21- REGISTRATION TO BE CANCELLED

- Following 2 clauses are inserted in Rule 21 wherein registration to be cancelled if-
 - (h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;

- (i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.”;
- Rule 37 has been substituted as follows:
- (1) A registered person, who has availed of ITC on any inward supply of goods or services or both, other than the supplies on which tax is payable under RCM basis, but fails to pay to the supplier thereof, the amount towards 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 pay an amount equal to the ITC availed in respect of such supply 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:
- 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 purposes of the second proviso to sub-section (2) of section 16:
- 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.;
- (2) Where the 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).”;
- Reference of GSTR 2 in Rule 36, 38, 42, 43 has been omitted.
- Rule 69 to 77 and Rule 79 relating to Matching of claim of input tax credit has been omitted.
- Rule 89 has been amended to provide that Person claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 is also required to make application in RFD 01 for refund of said balance in electronic cash ledger.
- 1st Proviso to Rule 89 which provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may be made through the return furnished for the relevant tax period in **FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7**, as the case may be shall be omitted.
- Consequently, amendment has been made in Rule 96(3) to remove reference of GSTR 3.
- Form GSTR 1A, FORM GSTR 2 and GSTR 3 has been omitted.

CBIC vide NOTIFICATION NO. 20/2022–CT dated 28th September, 2022 rescinded notification 20/2018 –ST dated 28th March, 2018 which provided extension of due date for filing application for refund under section 55 by notified agencies.

Other Important points to be noted

Notification 12/2017-CT (Rate) dated 28th June, 2022 (as amended till date) which provided exemption to following services has not been extended beyond 30th September, 2022. Thus, these service will be taxable from 1st October, 2022

- Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India.
- Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India.