

EY Tax Alert

CBIC issues notifications pursuant to recommendations made in the 54th GST Council meeting

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Executive summary

This Tax Alert summarizes recent Notifications¹ issued by Central Board of Indirect Taxes and Customs (CBIC) *inter alia* amending Central Goods and Services Tax Rules, 2017 (CGST Rules) pursuant to recommendations made in the 54th Goods and Services Tax (GST) Council meeting.

Key amendments are as follows:

- ▶ Rule 47A is inserted to prescribe a time limit of 30 days from the date of receiving supply of goods or services, for issuance of self-invoice by a registered person.
- ▶ Rule 96(10), 89(4A) and 89(4B), which restricts refund in cases where benefit of specified concessional/ exemption notifications is availed on inward supplies, are omitted.
- ▶ Rule 164 is inserted along with forms for providing procedure and conditions for availment of benefit under Section 128A.
- ▶ Special procedure has been notified for rectifying orders with confirmed demands on account of ineligible ITC due to contravention of Section 16(4), but now eligible under newly inserted Section 16(5) or 16(6).
- ▶ Supply of metal scrap and services by way of renting of any property other than residential dwelling, provided by any unregistered person to any registered person will now be taxed under RCM.

¹ Notification Nos. 20 to 23/2024 - Central Tax dated 8 October 2024
Notification Nos. 24 and 25/2024 - Central Tax dated 9 October 2024
Notification Nos. 05 to 09/2024 - Central Tax (Rate) dated 8 October 2024

Background

- Goods and Services Tax (GST) Council in its 54th meeting had made various recommendations including amendments in Central Goods and Services Tax Rules, 2017 (CGST Rules) relating to implementation of amnesty scheme for waiver of interest and penalty, omission of rules restricting refund, etc.²
- Central Board of Indirect Taxes and Customs (CBIC) has now issued Notifications³ implementing such recommendations.

Amendments

Input tax credit (ITC)

- Rule 36(3) of the CGST Rules provides that no ITC shall be availed by a registered person in respect of tax that has been paid in pursuance of any order where demand has been confirmed on account of any fraud, willful misstatement or suppression of facts.
- The above rule is amended to make it applicable only where the order demanding tax is passed under Section 74.

Time limit for issuance of self-invoice

- Rule 47A is inserted to prescribe a time limit of 30 days from the date of receiving supply of goods or services, for issuance of self-invoice by a registered person.
- The above amendment shall come into effect from 1 November 2024.

Time limit for furnishing TDS return

- Rule 66 of the CGST Rules is amended to prescribe time limit within which the return under Section 39(3) shall be furnished by a person deducting tax under Section 51.
- Such person is required to furnish a return in GSTR-7, on or before the 10th day of the month succeeding the calendar month.
- The above amendment shall come into effect from 1 November 2024.

Refund

- Rule 96(10), 89(4A) and 89(4B), which restricts refund in cases where benefit of specified concessional/ exemption notifications is availed on inward supplies, are omitted.

- Consequently, Rule 89(4) and 89(5) are suitably amended to allow refund in such instances.

Amnesty scheme

- Vide Finance (No. 2) Act, 2024, Section 128A was inserted in the Central Goods and Services Tax Act, 2017 (CGST Act) to waive interest and penalty in cases other than fraud or suppression of facts, for FY 2017-18 to 2019-20, if entire tax demand as per SCN or order is paid up to the notified date.

The said date has been notified as follows:

<i>Class of registered person</i>	<i>Notified date</i>
Where proceedings were initiated under Section 73 of the CGST Act	31 March 2025
Where proceedings were initiated under Section 74 and later deemed as if the notice was issued under Section 73.	6 months from the date when the tax is redetermined under Section 73.

- Rule 164 is inserted along with certain forms for providing procedure and conditions for availment of benefit under Section 128A.
- Where the demand of tax is partially on account of erroneous refund and partially for other reasons, an application may be filed only after payment of the full amount of tax demanded.
- Similarly, where the demand of tax pertains partially for the period covered under amnesty scheme and partially for the period other than the one covered under the scheme, an application may be filed only after payment of the full amount of tax demanded.
- The amount payable under the scheme shall be the amount that remains payable, after deducting the amount not payable in accordance with section 16(5) or 16(6) of CGST Act from the amount payable in terms of the notice or order.
- The above amendments are effective from 1 November 2024.

Procedure for rectification of order pursuant to Section 16(5) and 16(6) of the CGST Act

- Section 16(5) was inserted in CGST Act to extend time limit to avail ITC for FY 2017-18 to 2020-21 till 30 November 2021.
- Further, Section 16(6) was inserted to provide that time limit to avail ITC where registration of the recipient is cancelled and subsequently restored will be extended to:
 - 30 November of the subsequent FY; or
 - 30 days from the date of order of revocation, whichever is later

² Refer our alert "GST Council recommends notifying amnesty scheme effective 1 November 2024 and proposes various trade facilitation measures" dated 11 September 2024

³ Notification Nos. 20 to 23/2024-Central Tax dated 8 October 2024

- CBIC has notified special procedure for rectifying orders for registered persons with confirmed demands for incorrect ITC due to contravention of Section 16(4), but now eligible under newly inserted Section 16(5) or 16(6).
- Eligible persons should file an electronic application for rectification on the common portal within 6 months from the date of the notification, provided no appeal has been filed against the original order.

Exemptions

- Following services have been exempted:
 - Services incidental or ancillary to the supply of transmission and distribution of electricity by transmission and distribution utilities.
 - Research and Development services supplied by specified entities against consideration in the form of grants.
 - Affiliation services provided by State or Central educational boards, Council and other similarly placed bodies to Government Schools.

Miscellaneous

- Supply of metal scrap falling under Chapters 72 to 81 and services by way of renting of any property other than residential dwelling, provided by any unregistered person to any registered person will now be taxed under RCM.
- TDS @ 2% is made applicable in case of B2B supplies of metal scrap w.e.f. 10 October 2024.
- GST rate on services by way of transportation of passenger by air in helicopters on a seat share basis is reduced to 5% without ITC on goods.
- Late fees for delay in furnishing GSTR-7 for the month of June 2021 onwards by registered person required to deduct tax at source under Section 51 is reduced to INR50 per day.

Further, the total amount of such fee is capped to INR2000.

Moreover, complete waiver of late fee is granted where TDS liability was Nil.

Comments

Omission of Rule 89(4A), 89(4B) and 96(10) is likely to remove complexities and challenges faced by the exporters in claiming refund. However, it would be essential to assess the implications on exports made post omission of said rules where benefit of exemption on inputs procured under earlier provisions had been taken.

Recently, the Madras High Court [2024-VIL-1055-MAD] instructed the Revenue to issue separate Show Cause Notices (SCNs) for each financial year, thereby allowing the taxpayer to avail the benefit of amnesty scheme. Considering Rule 164, which mandates taxpayers to pay the total amount of tax demanded in a consolidated notice or order, businesses might contest this requirement based on the judgment.

Unlike Section 31(4) and 31(5), the newly inserted Rule 47A under Section 31(3)(f) does not explicitly address the time limit to issue self-invoice in case of continuous supply of goods or services attracting RCM.

While RCM notification has been amended to include "services by way of renting of any property other than residential dwelling", the press release issued pursuant to the 54th GST Council meeting, mentions Council's recommendation to include only renting of commercial property under RCM.

Taxpayers may be required to analyse the scope of the term "commercial property" to evaluate whether leasing of industrial plots, factory buildings, commercial lands etc. should be considered for the purpose of RCM.

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