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**GST Updates –
Summary of circulars, notifications & RoD issued
on 23rd and 24th Apr '19**

Hiregange & Associates

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1. CLARIFICATION RELATING TO MANNER OF UTILISING ITC (Circular No. 98/2019-GST dated 23.04.2019)

- With effect from 1st Feb'19, in terms of amendment to section 49 of the CGST Act, 2017, and by insertion of section 49A and 49B in the said Act, it is required that the balance of IGST credit should first be utilized for payment of IGST liability, then for CGST liability & finally for SGST/UTGST liability. The intention was that the entire balance of IGST credit shall be exhausted before utilising the credit balances of CGST & SGST/UTGST.
- However, the above posed a serious issue where there was a possibility of accumulation of CGST credit in many cases without recourse to utilisation or refund, which would have caused working capital issues.
- Hence, a new rule 88A was inserted as per which it is still required that the IGST credit be utilised first, but after such credit is used for payment of IGST liability, the remaining IGST credit can be used to pay CGST and/or SGST/UTGST liabilities in any order and for any amount. This will ensure that the apprehension of credit accumulation and working capital blockage is addressed without compromising the Governments' mandate of exhausting IGST credit first.
- However, as on date, the portal does not support the above mechanism provided in section 49A and rule 88A, *ibid*. Therefore, till the new mechanism of utilization is not implemented on the portal, the taxpayers may continue to utilize the ITC as per the existing functionality available on the portal.

H&A comments: The amendment and clarification provided by the Government has addressed the issue that arose due to insertion of section 49A *ibid*, which could have led to accumulation of CGST credit vis-à-vis payment of SGST/UTGST by cash. The utilization pattern after insertion of Rule 88A could be understood with the help of following illustration:

ILLUSTRATION:

Particulars	IGST	CGST	SGST	Total
Output tax liability	1,00,000	1,00,000	1,00,000	3,00,000
Input tax credit	2,00,000	60,000	60,000	3,20,000

UTILIZATION OF CREDIT FOR MAKING PAYMENT

(a) Option 1

Description	Payable	ITC Available	Paid through ITC			Additional Cash Required
			IGST	CGST	SGST	
IGST	1,00,000	2,00,000	1,00,000	-	-	-
CGST	1,00,000	60,000	60,000	40,000	-	-
SGST	1,00,000	60,000	40,000	-	60,000	-

➤ IGST ITC balance = Nil (2,00,000 - 1,00,000 - 60,000 - 40,000)

- CGST ITC balance = 20,000 (60,000 - 40,000)
- SGST ITC balance = Nil (60,000 - 60,000)
- **Additional cash payment = Nil**

(b) Option 2

Description	Payable	ITC Available	Paid through ITC			Additional Cash Required
			IGST	CGST	SGST	
IGST	1,00,000	2,00,000	1,00,000	-	-	-
CGST	1,00,000	60,000	50,000	50,000	-	-
SGST	1,00,000	60,000	50,000	-	50,000	-

- IGST ITC balance = Nil (2,00,000 - 1,00,000 - 50,000 - 50,000)
- CGST ITC balance = 10,000 (60,000 - 50,000)
- SGST ITC balance = 10,000 (60,000 - 50,000)

Additional cash payment = Nil

(c) Option 3

Description	Payable	ITC Available	Paid through ITC			Additional Cash Required
			IGST	CGST	SGST	
IGST	1,00,000	2,00,000	1,00,000	-	-	-
CGST	1,00,000	60,000	40,000	60,000	-	-
SGST	1,00,000	60,000	60,000	-	40,000	-

- IGST ITC balance = Nil (2,00,000 - 1,00,000 - 50,000 - 50,000)
- CGST ITC balance = Nil (60,000 - 60,000)
- SGST ITC balance = 20,000 (60,000 - 40,000)

Additional cash payment = Nil

2. RESTRICTION ON GENERATING E-WAY BILL *(Notification No 22/2019-CT dated 23.04.2019)*

- Rule 138E of the CGST Rules 2017 provided that the supplier or the recipient of goods would not be allowed to generate EWB in the following cases:
 - (a) Composition dealer (Section 10 of CGST Act): Not furnished return for a consecutive of two tax periods.
 - (b) Persons other than above: Not furnished returns for a consecutive of two tax periods.
- The above would be effective from 21st June 2019.

- Neither the supplier nor the recipient would be allowed to generate EWB in case any one person has committed the above default.

***H&A comments:** As per the above rule timely filing of GST returns would become essential as failure in filing would lead to disruption in carrying out business activities. However, the above provision has not taken into account the recent changes relating to the composition scheme i.e. a new subset of persons eligible for composition scheme as per notification No. 2/2019-CT have not been included in (a) above and the return periodicity for the composition dealers is now annual as per which the composition dealers if not filed returns for 2 years will only not be eligible to generate e-way bill.*

3. EXTENSION OF DUE DATE FOR FILING FORM GSTR-3B FOR THE MONTH OF MAR '19 (Notification No 19/2019-CT dated 22.04.2019)

- The due date for furnishing Form GSTR-3B for the month of Mar '19 is extended from 20th Apr '19 to 23rd Apr '19.

***H&A comments:** The above extension has also provided additional 3 days for availing missed out credits relating to FY 2017-18 as provided by the RoD No.2/2019-CT dated 31.12.2018, provided the supplier has uploaded the same in his Form GSTR-1 by 11th of Apr '19.*

4. REVOCATION OF CANCELLATION OF REGISTRATION

4.1 Extension of time to submit application for revocation of cancellation of registration (RoD No.5/2019 – GST dated 23.04.2019)

- Where the notice for cancellation of registration has been issued due to non-filing of returns:
 - a. To the registered e-mail address, or
 - b. By making available such notice on the common portal,And subsequently if such person has fulfilled all the requirements for revocation of cancellation of registration, such person would now be allowed to file the application for revocation of cancellation of registration by 22.07.2019, w.r.t. orders passed up to 31.03.2019

***H&A comments:** This extension of time limit was required as a number of registrations were cancelled due to non-filing of returns where the notice for cancellation of registration were served online, and such assesses were not aware of the fact of such notice being issued online. Subsequently on filing of the returns, it was noticed that the time limit for applying for revocation has lapsed. By this RoD, such assesses would now be able to file for revocation of cancellation up to the extended time limit and get their registration active.*

However, this extension is only w.r.t. orders passed up to 31.03.2019 and that too applicable only in cases where no reply has been filed against the notice. Hence, in cases where the notice for cancellation has been served other than by way of e-mail or making

available at portal (i.e. say by post, etc.) and where reply has been filed to the notice, the extension would not be applicable. Further, for the orders passed after such date, the application for revocation of cancellation shall be filed within 30 days of service of order in terms of section 30(1) of the CGST Act, 2017 or file an appeal within the time limits u/s 107(1) of the CGST Act, 2017.

4.2 Amendment in rule 23 of the CGST Rules, 2017 relating to revocation of cancellation of registration (Notification No. 20/2019 – Central Tax dated 23.04.2019)

- Filing of GST returns post revocation of cancellation of registration [rule 23 of CGST Rules, 2017].
 - In case an order for revocation of cancellation has been passed, all the returns from the date of order of cancellation of registration till the date of order of revocation of cancellation of registration should be filed within a period of 30 days from the date of order of revocation.
 - Where the registration is cancelled with retrospective effect, then all the returns due from the effective date of cancellation of registration till the date of order of revocation of cancellation of registration within a period of 30 days from the date of order of revocation.

H&A comments: The rule 23 earlier required filing of returns before applying for revocation which was not possible due to registration becoming ineffective. The amendment now allows time up to 30 days from the order of revocation for filing of the returns which were not filed from the date of cancellation.

4.3 Clarification relating to filing application for revocation of cancellation of registration (Circular No. 99/2019-GST dated 23.04.2019)

- In light of the amendment in rule 23 of the CGST Rules, 2017 and the RoD 5/2019 relating to the revocation of cancellation of registration, the following is clarified that in case of cancellation of registration due to non-filing of the returns,
 - a. **When registration is cancelled prospectively:**
 - The application for revocation shall not be filed unless the returns for the period up to the date of cancellation of registration are filed and the tax due has been paid.
 - Further, returns from the date of order of cancellation to the date of order of revocation shall be filed within 30 days from date of revocation.
 - b. **When registration is cancelled retrospectively:**
 - Since the common portal does not allow furnishing of returns after the effective date of cancellation the application for revocation of cancellation can be filed without filing the returns, subject to the condition that all returns relating to the period **from the effective date of cancellation till the date of order of revocation of cancellation**

shall be filed within a period of 30 days from the date of order of such revocation.

H&A comments: *This circular has brought clarity on the aspect that where there is a cancellation of registration with retrospective effect, due to non-filing of the returns, the application for revocation of cancellation order can be filed before furnishing of the returns and the required returns shall be filed within 30 days of revocation order. However, if the cancellation order is not with retrospective effect, the application for revocation of cancellation can be filed only after furnishing all the returns till the date of order of cancellation of registration.*

However, in case the said return is not filed within 30 days from order of revocation, there is no provision for permitting further extension of time limit, which could mean that the revocation would become ineffective and the registration could stand cancelled.

5. CHANGES RELATING TO COMPOSITION TAXPAYERS

5.1 Amendments in the rules (Notification No. 20/2019 – Central Tax dated 23.04.2019)

- The following would be the 2 categories of composition dealers:
 - a. Persons opting for composition in terms of Section 10 of CGST Act (predominantly goods), and
 - b. Persons availing benefit of notification No 02/2019-CT.
(Hereinafter referred to as **Composition dealers**)
- The person applying for a new registration could exercise the option for payment of concessional rate of tax in serial no 5 and 6.1(iii) of FORM GST REG-01.
- These composition dealers would now be required to make payment of self-assessed tax by filing statement in FORM GST CMP-08 for every quarter, on or before 18th of the month following each quarter. The liability of tax and interest should be discharged by debiting electronic cash ledger only.
- File Form GSTR-4 annually for every FY by 30th April following the end of such FY. There is no requirement for filing such form on quarterly basis going forward.
- Where the Composition dealer withdrawing from the composition scheme or ceases to avail the benefit of notification no 02/2019-CT, would be required to furnish statement in FORM CGST CMP-08 within the due date till the period for which he had paid tax under composition scheme or was availing the above mentioned benefit. He would also be required to furnish Form GSTR-4 for that FY before 30th April following the end of such FY.

H&A comments: *The above amendment has reduced the return filing compliance for composition dealers and persons availing the benefit of notification no 02/2019-CT. They would continue to pay taxes on quarterly basis and file returns only once a year.*

5.2 New return filing procedure for Composition dealers *(Notification No 21/2019-CT dated 23.04.2019)*

- Composition dealers would be required to pay taxes quarterly in FORM GST CMP-08 on or before 18th of the month following each quarter.
- Composition dealers would be required to file Form GSTR-4 annually for every FY by 30th April following the end of such FY. There is no requirement for filing GSTR-4 on quarterly basis going forward.
- If the above two form/statements are filed then it would be deemed that the provisions of Section 37 and 39 of the CGST Act, 2017 are complied.

H&A Comments: *The new procedure will apply to the persons already opted for the composition scheme u/s 10 of the CGST Act including the persons opting for the composition scheme in terms of notification No. 2/2019-CT.*

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