



Association of Tax Practitioners

State Committee, Reg.No:ER.38/87

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(Registered under the Travancore-Cochin Literary, Scientific & Charitable Societies Registration Act 1955)

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No.ATP/PCC(GST)1/2020

Dated 20th October 2020

MEMORANDUM

To

**The Principal Commissioner (GST),
Central Board of Indirect Taxes and Customs,
GST Policy Wing, New Delhi - 110 011.**

**Sub: Difficulty faced by GST Tax Practitioners, in
implementing directions contained in Circular
No.142 /12/2020-GST dated 09.10.2020, Request to
extend all due dates, Failure of GST Portal Services-
Submitting representation - Regarding.**

Respected Sir,

When the GST was implemented in our Country, every class of people and trade community, given warm welcome to it, due to its simplicity, so published. But latter, by one by one, modifications/amendments made and its clarification issued under GST Act and Rules 2017, which became complicated, and it is now a task before the Trade community to see that all the amendments made, are followed with strict compliance. As a result of the complicated amendments, the traders are in stress, cannot do proper business, due to time consuming return filing and submission of various forms with complicated calculations of reverse tax on Input Tax claimed, for the reason of non filing of returns by Suppliers, etc. Hence the task of filing returns of assessee with due consideration of the amendments made in the Act from time to time and the clarifications issued by the Board is entrusted with GST Tax Practitioners. Now through our District Forums we had received representations, on the confusing/unsolvable issues, particularly based on Circular No.142/12/2020-GST dated 09.10.2020 and **maintenance of GST Portal and failure of GST portal to provide uninterrupted**

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services to the registered persons in India from 14th October 2020 onwards. By this time it is a fact that in GST there are so many glitches due to wrong concept and insufficient network capacity. We submit some important issues need to be solved on war basis and for **calling back Circular No.142/12/2020-GST dated 09.10.2020 and postpone all due dates urgently.**

1. Loss of GSTR1 data uploaded in portal, after filing the GSTR1 Return.

Many of our member Practitioners reported that, GSTR1 data uploaded in GST portal is losing, after filing the same, due to portal error of GSTIN. The same is self identified by the portal and directing to resubmit, which causes wastage of time and hardships to our members and trade community as a whole. Since such a case is reported to GSTIN, they have admitted that data loss is it is due to technical errors and putting the assessee to Submit stage and requesting to file the returns immediately so as to account the same in GSTR2A of the concerned recipients. Copy of a communication from Team GSTIN is attached towards the proof of existing glitches in the portal. This cause loss of ITC to assessee and waste of precious time of GST Practitioners who are already overloaded with various tax compliance due, such as GST Annual Return for the year 2018-19, 2019-20, monthly returns and Income Tax Returns, filing of tax audit report etc.

Hence it is most humbly prayed that necessary orders may please be issued as given below to overcome the issues cited above.

Our Suggestion:

The portal need to be upgraded and equipped to accept returns and data of all the assessee. We believe that the data is losing due to the fact that the portal is not having capacity to accept uploading of data by number of assessee at a time, particularly on due dates. Till upgrading of the GSTIN portal, due dates may be extended from October 2020 upto 31.03.2021 in lifting related late fee on all non compliances, including GSTR 3B, GSTR9, GSTR9C etc, as the traders and GST Practitioners lost time in the process of resubmitting GSTR1, especially considering the grave situation persisted due to the pandemic Covid 19.

2. Difficulty to comply with Circular No.142/12/2020-GST dated 09.10.2020

As a result of non filing of GST return, there exists heavy amount due as late fee. At the same time for various reasons from time to time the Board withdrawn late fee. Hence a large number of assessee who had not filed returns, waiting for lifting of late fee to regularize with filing of their returns. Now as per existing provision, once a late fee is paid, which is not refundable, in a case which is lifted on a future date. That is once a late fee is paid, which not refundable. At the same time by the reason of non filing of returns by supplier, the purchasing dealer's returns with input tax credit will be affected. As per provisions of Sec.16(4) of the CGST Act, ITC relating to invoices or debit notes pertaining to invoices raised in F.Y. 2019-20 can be claimed up to the due date of filing of GSTR-3B for the month of September 2020 in accordance with Circular No.142/12/2020-GST dated 09.10.2020. Similarly, the last date for making corrections/uploading invoices in GSTR-1 for F.Y. 2019-20 and issuing debit/credit notes relating to invoices raised in F.Y.2019-20 is also the due date for filing the return for the month of September 2020.

Our Suggestion:

The mismatch in GSTR2A in shortage of OPT paid by suppliers is due to non filing of returns. You will also appreciate that a recipient of supplies requires time and effort to reconcile ITC as per books with the ITC appearing in GSTR-2A and follow up with the defaulting suppliers to get them to upload invoices before the last date. In view of the fact that valuable time has been lost during lockdown and data lost in GSTN, it will take some time to get back on track by the trade community, it is only just and proper to extend the time limit prescribed in the Circular. A scheme may be introduced in waver of entire late fee, if the returns are filed within 31.12.2020 under the GST Act and to declare that any late fee paid earlier shall be adjusted to electronic cash register of assessee and extend the time to comply with the Circular in adjusting with GSTR2A may be allowed upto 31.03.2021. Such an extension granted in the first year i.e. F.Y. 2017-18 up to March 2019 owing to the difficulties faced due to the teething troubles faced in GSTN and the taxpayers.

3. Need for finding a solution to remove the difficulty in claiming ITC on inward supplies from taxpayers filing quarterly GSTR-1

After introduction of sub-rule (4) to Rule 36, taxpayers who are procuring goods or services or both from suppliers filing GSTR-1 on a quarterly basis are unable to claim the ITC of the GST paid on such purchases till the supplier files his GSTR-1 after the end of the quarter. This leaves the buyer facing a severe liquidity crunch. Further, this provision has left the small taxpayers filing quarterly GSTR-1 at a disadvantage, since suppliers filing monthly GSTR-1 are preferred over such small taxpayers. The situation, which is already unfavourable to the development of trade, has become grave due to the economic slowdown caused by the nationwide lockdown. Taxpayers under the MSME sector are facing an existential crisis. A solution is urgently needed to correct the situation.

Our suggestion

a) Allow recipients to claim the self-assessed ITC for the first two months of a quarter. They may be required to reconcile the ITC with GSTR-2A / GSTR2B on a quarterly basis or make necessary changes in GSTR portal may be implemented enabling to switch from Quarterly return filing mode to monthly return filing mode whenever the dealer wants.

b) If the legislature is not in favour of allowing the claim of ITC on self assessment basis, then allow suppliers who have opted to file quarterly GSTR- 1 to upload invoices on a continuous basis. Presently, such taxpayers cannot upload the invoices in the first two months of the quarter and must wait.

4. Extension of relief in Rule 36(4) of the CGST Rules, 2017

Notification No. 30/2020-Central Tax dated 3rd April 2020 granted relief in the applicability of Rule 36(4) of the CGST Act and stated that the application of Rule 36(4) from February to August 2020 will be done cumulatively at the time of filing of return for the month of September 2020. At the time of issuing this notification, no one had predicted that the difficulties of the pandemic would continue for so long.

Our suggestion

Since it is very difficult for the businesses to collate the data and comply with the provisions of Rule 36(4) owing to serious shortage of staff, due to the pandemic Covid 19. Therefore, the relief in Rule 36(4) and giving cumulative effect to must be extended further upto 31.03.2021.

5. Extension of capping of late fees to Rs. 500/- beyond September, 2020

The CBIC has already notified that there will be no late fees if there is no tax liability, and, if there is any tax liability then a maximum late fee of Rs. 500 per return would be applicable to such GSTR-3B returns filed up to September 30, 2020.

Our suggestion

This relaxation must be further extended up to 31.03.2021 or till the pandemic subsides and businesses are back to normal.

6. Extension of due date for filing GSTR-9/9A & GSTR-9C for F.Y. 2018-19.

As you may be aware that due date for GSTR-9/9A and GSTR-9C for FY 2018-19 is on 31.10.2020; but due to system problem our members are unable to file / upload GSTR-9/9A and GSTR-9C. Hence, we request your good selves to kindly extend the due date of filling GSTR-9/9A and GSTR-9C for the FY 2018-19 up to 31.12.2020.

7. Due dates for filing GSTR1 & GSTR3B may be revised to boost collection;

It is most humbly requested that the present due date for filing **GSTR1 and GSTR3B on 11th and 20th / 22nd of subsequent month may be revised as 25th and 30th respectively** which will provide sufficient time for the tax payers to compute GST Dues, Avail all pending ITC and remit the tax on due date.

8. Issues in Annual FORM GSTR-4 for composition taxpayers

The due date for filing Annual FORM GSTR-4 for F.Y. 2019-20 was extended to 31st October 2020 owing to difficulties faced by composition taxpayers while preparing the filing the return. We wish to bring to your kind attention that despite the extension, following issues still remains which must be resolved immediately.

a) The details of GST paid through quarterly FORM GST CMP-08 are auto-populated in FORM GSTR-4 and the difference between tax payable and tax already paid is required to be discharged in cash before filing of FORM GSTR-4.

i. In some cases, the auto-populated details of FORM CMP-08 are blank. The taxpayers are not in a position to file FORM GSTR-4 unless they discharge the entire tax liability for F.Y. 2019-20 in cash again.

ii. In other cases, taxpayers who found that there was a short-payment of tax at the time of filing FORM CMP-08 in any one of the quarters of F.Y. 2019-20 have discharged the said tax liability in the first quarter of F.Y. 2020-21. However, the auto-populated details of FORM CMP-08 in FORM GSTR-4 do not include the tax liability discharged through FORM CMP-08 filed in F.Y. 2020-21. Therefore, the taxpayers cannot file their Annual GSTR-4 unless they discharge the same liability all over again.

b) Additionally, we wish to state that the requirement for filing inward supplies is a redundant exercise and goes against the stated objectives of the Composition Scheme of making compliance easier for smaller tax payers. It is, therefore, suggested that the requirement for listing the inward supplies be done away with in FORM GSTR-4, since these dealers are in any case not eligible to avail ITC.

9. Amendment in Section 129 of the GST Act, for considering any reply filed against notice of detention and adjudication process

Section 129 of the GST Act provides for detention, seizure and release of goods and conveyances in transit. Even though the section provides for release of goods and conveyance on payment tax and penalty or to furnishing bank guarantee and bond for release of the goods. Nothing provides for payment of tax and penalty in protest, considering the reply for unconditional release of the goods and conveyance and the manner in which proper adjudication in return of the security furnished.

Our Suggestion

Section 129 of the GST Act need to be amended for unconditional release of goods and conveyances, if the reply filed against notice of detention finds to be satisfactory. Similarly the section need to be clarified that until adjudication is completed the security furnished as bank guarantee shall not be realized from

Bank. It needs to be clarified that the enquiry officer had the power to return the security furnished after adjudicating the matter. Similarly a time limit for complying with the directions of the appellate authority needs to be provided.

Since our members are dealing with GSTN portal, the difficulties of traders with the GSTN portal as well as the Amendments/Circulars/clarifications in GST are complied on date wise, know the pulses of trade community, ***we may be included in the GST Grievance Redressal Committee already formed in central and state level.*** Our representation made for including our representative in the State GST Advisory Committee is now pending, unattended. Hence proper direction may be issued for including our representative in the State Advisory Committee of GST in Kerala, at the earliest. We request you to kindly consider the above issues in GST urgently and immediate orders deemed fit may please be issued for proper administration of GST in our Country, at the earliest.

Thanking you,

Yours faithfully,

For Association of Tax Practitioners

S/d

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- 2) Central Finance Minister, New Delhi
- 3) GST Council, New Delhi
- 4) The Revenue Secretary, Govt. of India, New Delhi
- 5) Minister of Finance, Govt. of Kerala, Thiruvananthapuram
- 6) Principal Chief Commissioner, Board of Indirect Taxes and Customs,
Thiruvananthapuram Zone