

Ref. No.: 3117/1/50

28th December, 2020

Smt. Nirmala Sitharaman
Hon'ble Minister for Finance
Government of India
New Delhi

Subject: To invite your kind attention to the changes introduced vide Notification 94/2020 with a request to defer the implementation of the same as the trade is still struggling for survival.

Reference: Notification No. 94 /2020 – Central Tax New Delhi, the 22/12/2020

Dear Smt. Nirmala Sitharaman Ji,

Most respectfully it is brought to your kind attention that the type of compliances introduced and amendments made from time to time are totally defeating the whole purpose of introduction of GST which was stated as **"Good and Simple Tax"** by our Honourable Prime Minister. There are many issues which are to be brought to your kind notice, but we invite your immediate attention and interference to the following issues which will arise with the introduction of Notification No. 94/2020 dated 22/12/2020:

S.No.	Amendment	Description	Impact of the amendment and suggestions
1.	Restriction on availment of Input Tax Credit ('ITC') as per Rule 36(4) of the CGST Rules	ITC availment in respect of invoices not furnished by the corresponding vendors <u>has been reduced to 5%</u> of matched invoices from the existing 10% with effect from 01 January 2021 Further, the words 'uploaded' (in the context of uploading of Form GSTR-1 by the suppliers) have now been replaced with the word	There was already a working capital crunch with the 10% rule. The change in the word from uploaded to furnished indicates that the recipient shall be eligible to avail ITC of matched invoices wherein the supplier has filed return under Form GSTR-1 as against mere uploading of invoices on the GSTN Portal.

		'furnished'.	
2.	Introduction of Rule 86B in the CGST Rules (with effect from 1 January 2021)	<p>The said rule has been introduced to <u>restrict utilisation of available balance in the Electronic Credit Ledger ('ECL') in excess of 99 percent</u> for discharge of output liability wherein the taxable turnover (other than exempt supply and zero-rated supply) exceeds INR 50 lakhs in a given tax period. The said restriction shall not be applicable on the following cases:</p> <p>a. Businesses/stakeholders have paid Income Tax liability exceeding INR 1 lakh in each of the preceding 2 financial years for which time limit to file return under section 139(1) if Income Tax Act has expired</p> <p>b. Registered person have received a refund of more than INR 1 lakh in the preceding financial year for unutilised ITC on account of zero-rated services or Inverted Duty Structure</p> <p>c. Registered person have discharged in cash output liability more than 1% of total output tax liability cumulatively upto the said month in the current financial</p>	<p>Restricting usage of ITC is against the spirit of the GST law when seamless ITC flow and utilization of the same was the intent to introduce GST. The ITC paid by assessee is a form of cash that it has already paid to the vendor. To check mismatch of ITC already blockage of ITC is provided under Rule 36(4) which too is against the spirit of law. To bring such compliance burden when the entire trade of the country is badly affected due to COVID-19 and trying to hard to survive revive is too harsh and will add to the hardships of any business man .</p> <p>Moreover, the rule is too difficult to be comprehended and complied for the businesses and may lead to misinterpretation and unwilful non- compliance.</p> <p>Further, there is no corresponding provision for claiming refund of such accumulated credit at the time of closure of business. Rules cannot override the provisions. So a mechanism of issuing refund of the ITC at the end of every</p>



		<p>year</p> <p>d. Government Department, Public Sector Undertaking, local authority or Statutory body.</p>	<p>Financial Year which will get accumulated due to the introduction of this Rule should also be introduced.</p>
3.	<p>Amendment to Rule 21 of the CGST Rules for Cancellation of Registration</p>	<p>The said rule has been amended to include the following instances which may lead to cancellation of GST registration:</p> <p>The said rule has been amended to include the following additional instances which may lead to cancellation of GST registration:</p> <p>(a) does not conduct any business from the declared place of business;</p> <p>(b) issues invoice or bill without supply of goods or services in violation of the provisions of the Act, or the rules made thereunder; or</p> <p>(c) violates the provisions of section 171 of the Act or the rules made thereunder.</p> <p>(d) violates the provision of rule 10A.</p> <p>(e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or</p> <p><u>(f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax</u></p>	<p>Cancellation of GST registration should be done if there is a major non-compliance. Suspending registration for minor non-compliances will lead to increase of authority with GST officers and may lead to corrupt practices.</p> <p>In case of works contractors they have to take number in the state where their tender for a work gets approved. After finishing the tender they wait for payment and also for another tender so they have to keep the number. This does not mean that they do not intend to work from there. The mechanism and compliances provisions are such that even though he doesn't have work he has to continue with the number. So if his number is cancelled then under such circumstances applying for number every time for bidding for a tender would be not be workable.</p>



		<p><u>periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods; or</u></p> <p>(g) violates the provision of rule 86B</p>	
4.	Amendment to Rule 21A of the CGST Rules for Suspension of Registration	<p>Wherein there are significant deviations/ anomalies between:</p> <p>Details of outward supplies in Form GSTR-1 vis-à-vis Form GSTR-3B or</p> <p>Inward supplies in Form GSTR-3B vis-à-vis Form GSTR-2A indicating contravention of the CGST Act such registration shall be suspended and an opportunity shall be provided to the taxpayer to explain the differences. Further, no refund under Section 54 of the CGST Act shall be granted during the period of suspension of registration.</p> <p>Also, the rule has been amended to empower the proper officer to cancel registration without giving the registered person an opportunity of being heard, if the officer has reason to believe that the registration is liable to be cancelled.</p>	<p>Suspension of GST registration should be done if there is a major non-compliance. Suspending registration for minor non-compliances will lead to increase of authority with GST officers and may lead to corrupt practices</p> <p>Reason to belief should not be taken very lightly, the officer should take the permission of senior officer before taking any such step after recording proper satisfaction.</p>
5.	Amendment to	Rule 138 and 138E have been	This provision is not possible to





<p>the provisions of E-way bill</p>	<p>amended to give effect to change in distance for validity of E-way bill and furnishing information in Part-A of Form GST EWB-01 respectively:</p> <p><u>Rule 138:</u> W.e.f. 01 January 2021, an e-way bill will have a validity of one day where the distance to be covered in transportation is upto 200 km. Further, validity shall extend by one additional day for every 200 km or part thereof. Such distance was 100 km before such amendment</p> <p><u>Rule 138E:</u> A person whose registration has been suspended under the provisions of Rule 21A shall not be allowed to furnish information in Part-A of Form GST EWB-01</p>	<p>be implemented as the transportation sector works in various ways. In part loads and heavy vehicles to cover a distance of 200 kms in a day is next to impossible. This amendment would increase the compliance and the transporter will have to make more request for extensions and frequency of detention of vehicles would increase. The Transport Associations should be consulted before implementing this provision.</p> <p>If these provisions are not scrapped it will also give more power to the officers and will hamper the smooth transportation of goods.</p>
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<p>6.</p>	<p>Amendment to Rule 59</p>	<p>Rule 59(5) No GSTR 1 can be filed in case Last Period's GSTR 3B has not been filed</p>	<p>Incase last period's GSTR 3B is not filed, the current GSTR 1 cannot be filed. Hence only after tax payment of last period would the supplier be eligible to issue invoices.</p> <p>This is a very harsh Rule. Right of filing of return should not be taken from the assessee as there could be multiple reasons for non filing of 3B. One can file 3B only when the payment of tax is made. In the present scenario payments are not</p>
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			<p>received in time. Moreover, the credit period in general trade is that of 90 days. For MSME's it is 45 days. If the payments are not received how is it possible for the assessee to make the payment of tax from his pocket and file the return. Therefore, this Rule should be done away with.</p>
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From the issues discussed above your honour will appreciate that the compliances introduced are too stringent and the same will add to the hardships of the businessmen. Therefore, it is requested that the implementation of the Notification No. 94/2020 may kindly be deferred till 31.3.2020 in the interest of the businessmen and in the interest of the nation. The trade is not prepared for this burden. We also request you that in future if any compliance procedures are drafted and rules are introduced the representative from the trade and some Law Experts are consulted. A committee in this regard may be framed under your Chairmanship.

An urgent attention is invited to the above provision to ease the difficulties of the trade. For this kind gesture the trade shall ever remain grateful.

Thank You. With kind regards

Truly your's

Praveen Khandelwal
National Secretary General
Confederation of All India Traders

