

Critical Changes in GST Compliances from 1st January 2021

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Rule 21 : Additional Grounds for Cancellation of Registration -

- (a) does not conduct any business from the declared place of business;
- [¹](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
- (c) violates the provisions of section 171 of the Act or the rules made thereunder.
- ²[(d) violates the provision of rule 10A.]
- (e) avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or
- (f) furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax 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
- (g) violates the provision of rule 86B

Impact of amendment of Rule 21

Previously the Commissioner did not have a prescribed Rule for cancelling the registration incase of Sec 16 violation or when there was a major difference between outward tax liability as per GSTR 3B and outward tax liability as per GSTR 1.

Now with the insertion of clauses (e) & (f) in Rule 21, the Commisisoner shall also have the prescribed powers to cancel GST Registration incase there is a non compliance as per Sec 16. Most important is Sec 16(2)(c) wherein requires proof of payment of tax by the supplier. Hence incase the amount pf GST paid by the recipient to the supplier is ultimately not paid to the Govt., the dept. may invoke Rule 21.

Furthermore, Rule 21A(2) provides that atleast suspension of GST Registration may be done incase of violation of Rule 21. The suspension can now happen even without a hearing. The vires of Rule 21A(2) with Article 14 of The Constitution may be tested in time to come

Suspension of registration

21A(2) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may, ~~after affording the said person a reasonable opportunity of being heard~~, suspend the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

Impact of amendment of Rule 21A(2)

Rule 21A(2) provides that suspension of GST Registration may be done incase there is reason to believe that there is a violation of Rule 21 or Section 29. The suspension can now happen even without a hearing.

Reason to believe should ordinarily be strong enough and one expects that the department shall be careful in implementing suspension as invocation of this provision would result in a standstill of the business of the taxpayer whereby it would not be able of issue invoices or waybills till such suspension continues.

The vires of Rule 21A(2) with Article 14 of The Constitution may be tested in time to come

SCN incase of differences as per SOME ANALYSIS -

Rule 21A (2A) Where, a comparison of the returns furnished by a registered person under section 39 with -

- (a) the details of outward supplies furnished in FORM GSTR-1; or
- (b) the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1, or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled

Impact of amendment of Rule 21A(2A)

Again Rule 21A(2A) is a stringent Rule whereby incase of significant differences between GSTR 2A & GSTR 3B or between GSTR 1 & GSTR 3B, suspension of GST Registration can be invoked immediately and in future cancellation pf GST Registration too can be invoked.

One expects here too, that the department shall be careful in implementing suspension as invocation of this provision would result in a standstill of the business of the taxpayer whereby it would not be able of issue invoices or waybills till such suspension continues.

Addition of Rule 21A (3A)

“(3A) A registered person, whose registration has been suspended under sub-rule (2) or sub-rule (2A), shall not be granted any refund under section 54, during the period of suspension of his registration.

U/r 138E : Waybills will also be suspended for such Taxpayers

Impact of amendment of Rule 21A(3A) & 138E

Rule 21A(3A) is in addition to earlier Rules whereby incase suspension of GST Registration refunds will be denied. Also under Rule 138E, waybills will be blocked.

Rule 59 – No GSTR 1 incase Last Period's GSTR 3B has not been filed!

“(5) Notwithstanding anything contained in this rule, -

(a) a registered person shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B** for preceding two months;

(b) a registered person, required to furnish return for every quarter under the proviso to sub-section (1) of section 39, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period;

(c) a registered person, who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent. of such tax liability under rule 86B, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in **FORM GSTR-1** or using the invoice furnishing facility, if he has not furnished the return in **FORM GSTR-3B** for preceding tax period.

Impact of amendment of Rule 59(5)

Critical to note here that in case 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.

In this case it is important for recipients to ensure that the GSTR 3B of their suppliers is filed and the amount of GST is reflecting in their GSTR 2A before they may payment of the GST amount to the suppliers.

Rule 86B – Restriction of ITC to 99%

86B. Restrictions on use of amount available in electronic credit ledger.-

Notwithstanding anything contained in these rules, the registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of **99% of such tax liability**, in cases where the value of **taxable supply** other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees

Provided that the said restriction shall not apply where –

(a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, have paid more than **one lakh rupees** as income tax under the Income-tax Act, 1961 (43 of 1961) in each of the **last two financial years** for which the time limit to file return of income under sub-section (1) of section 139 of the said Act has expired;

(b) the registered person has received a refund amount of more than **one lakh rupees** in the preceding financial year on account of unutilised input tax credit under clause (i) of first proviso of sub-section (3) of section 54; or

Rule 86B – Restriction of ITC to 99%

(c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit under clause (ii) of first proviso of sub-section (3) of section 54;

(d) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, upto the said month in the current financial year; or

(e) the registered person is –

- (i) Government Department; or
- (ii) a Public Sector Undertaking; or
- (iii) a local authority; or
- (iv) a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit

Impact of amendment of Rule 86B

The said Rule has been invoked with the intention of dealing with unscrupulous and fly by night operators or circle traders who would now be required to pay some tax atleast by cash. However, it remains to be seen how an increase in cost by 1% would be a deterrent to these parties.

For Honest Taxpayers clause (d) is important to note. It gives cumulation facility. However in the beginning of the financial year, Rule 86B would be a hardship for even the Large and genuine Taxpayers. In this regard Section 21(g) requires invocation of cancellation incase of non-compliance with Rule 86B and to monitor compliance would be a challenge for professionals.

However, this Rule would not bother Large Taxpayers who would certainly have paid more than Rs.1 Lakh in Income tax in the earlier Financial Years.

Rule 36(4) – Excess ITC restricted to 5%

²[(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded **or Furnished** by the suppliers under sub-section (1) of section 37 **in FORM GSTR-1 or using the invoice furnishing facility**, shall not exceed ³[10 per cent.] **5%** of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.]

Impact of amendment of Rule 36(4) amendment

The restriction of ITC to 105% of GSTR 2A figure would be a hardship. However, it seems that the intention of the revenue in the time to come, is to just allow only the ITC of the GSTR 2A figure.

However with the inception of GSTR 2B, there would be another reconciliation requirement of GSTR 2A vis-à-vis GSTR 2B wherein there would be the following points of difference-

- ☐ 26/26/2017 Effect
- ☐ Amendments made in current period reflecting in 2A in the period of the invoice & 2B in the month of the amendment
- ☐ Timing differences

Rule 8

- ☐ Introduction of Biometric based Aadhaar authentication and taking of Photograph for issue of new GST Registration
- ☐ Verification of original documents uploaded along with the registration application

Rule 9

- ☐ Increase in time for grant of new Registration from 3 days to 7 days

Validity of e-way bill reduced. E-way Bill shall remain valid for 1 day for distance upto 200 Kms and additional 1 day for every 200Kms or part thereof; _w.e.f 01.01.2021

❑ Impact – For Large Vehicles it is difficult to cover 200 kms in one day. Hence this amendment would create more request for extensions and more detentions possibly

S 120. In section 16 of the Central Goods and Services Tax Act, in sub-section (4), the words "invoice relating to such" shall be omitted.

Impact - Section 16(4) of the CGST Act is amended to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. Hence input tax credit on debit notes will be available even if issued after 30th September of next Financial Year.

S 119. In section 10 of the Central Goods and Services Tax Act, in sub-section (2), in clauses (b), (c) and (d), after the words "of goods", the words "or services" shall be inserted.

Impact - Section 10 of the CGST Act is being amended, so as to exclude from the ambit of the Composition scheme certain categories of taxable persons, engaged in making-

- (i) supply of services not leviable to tax under the CGST Act, or
- (ii) inter-State outward supply of services, or
- (iii) outward supply of services through an eCommerce operator.

121. In section 29 of the Central Goods and Services Tax Act, in sub-section (1), for clause (c), the following clause shall be substituted, namely:-

"(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25:".

Impact - Section 29(1)(c) of the CGST Act is being amended to provide for cancellation of registration which has been obtained voluntarily under Section 25(3).

Not 92/2020 – Introduction of Certain Section of Finance Act 2020
w.e.f. 1st January 2020

122. In section 30 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:-

"Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,-

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).".

Impact - A proviso to Section 30(1) of the CGST Act is being inserted to empower the jurisdictional tax authorities to extend the date for application of revocation of cancellation of registration in deserving cases.

Not 92/2020 – Introduction of Certain Section of Finance Act 2020
w.e.f. 1st January 2020

123. In section 31 of the Central Goods and Services Tax Act, in sub-section (2), for the proviso, the following proviso shall be substituted, namely:-

"Provided that the Government may, on the recommendations of the Council, by notification,-

(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;

(b) subject to the condition mentioned therein, specify the categories of services in respect of which-

(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(ii) tax invoice may not be issued."

Impact - Section 31 of the CGST Act is being amended to provide enabling provision to prescribe that in certain cases in which tax invoice for services may not be issued or issued within a certain time period or some other document may be considered as tax invoice.

**Not 92/2020 – Introduction of Certain Section of Finance Act 2020
w.e.f. 1st January 2020**

124. In section 51 of the Central Goods and Services Tax Act,-

(a) for sub-section (3), the following sub-section shall be substituted, namely:-

"(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.";

(b) sub-section (4) shall be omitted.

Impact - Section 51 of the CGST Act is being amended to remove the requirement of issuance of TDS certificate by the deductor and to omit the corresponding provision of late fees for delay in issuance of TDS certificate.

**Not 92/2020 – Introduction of Certain Section of Finance Act 2020
w.e.f. 1st January 2020**

126. In section 122 of the Central Goods and Services Tax Act, after sub-section (1), the following sub-section shall be inserted, namely:-

"(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on."

Impact - Section 122 of the CGST Act is being amended by inserting a new sub-section to make the beneficiary of the transactions of passing on or availing fraudulent Input Tax Credit liable for penalty similar to the penalty leviable on the person who commits such specified offences.

**Not 92/2020 – Introduction of Certain Section of Finance Act 2020
w.e.f. 1st January 2020**

127. In section 132 of the Central Goods and Services Tax Act, in sub-section (1),-

(i) for the words "Whoever commits any of the following offences", the words

"Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences" shall be substituted;

(ii) for clause (c), the following clause shall be substituted, namely:-

"(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;;

(iii) in clause (e), the words ", fraudulently avails input tax credit" shall be omitted.

Impact - Section 132 of the CGST Act is being amended to make the offence of fraudulent availment of input tax credit without an invoice or bill a cognizable and non-bailable offence; and to make any person who commits, or causes the commission, or retains the benefit of transactions arising out of specified offences liable for punishment.

**Not 92/2020 – Introduction of Certain Section of Finance Act 2020
w.e.f. 1st January 2020**

131. In Schedule II to the Central Goods and Services Tax Act, in paragraph 4, the words "whether or not for a consideration," at both the places where they occur, shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017.

Impact - Entries at 4(a) & 4(b) in Schedule II of the CGST Act is being amended w.e.f. 01.07.2017 to make provision for omission of supplies relating to transfer of business assets made without any consideration from Schedule II of the said Act.

THANK YOU



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