

Ref:- AIMTPA/016/20-21

Date:- 19-Oct-2020

**SMT. NIRMALA SITHARAMAN JI**

Finance Minister  
Government of India  
NEW DELHI

**Dear Madam,**

- Reference :**
1. The CGST Act 2017, r/w CGST Rules, along with the various amendments carried out from time to time.
  2. Notification No 49 of 2019, dated 9<sup>th</sup> October, 2019.
  3. Initiation of proceedings u/s 65 of the CGST Act 2017.
  4. Removal of Difficulty Order 02/2020.

Apropos it is stated that the country is engaged in combating the pandemic of Covid-19. The nationwide lockdown is being lifted gradually. However, the risk of a second wave is anticipated and in the wake of that, Hon' Prime Minister has requested people to maintain social distancing rules and venture out, only if it is required. The pandemic has not only caused disruption in physical well-being of people, but also the economic landscape.

It is in this backdrop that we intend to discuss few prevailing issues in GST and their probable solutions that can be acceptable to all.


**CONTINUE.....**

Yours  
Team AIMTPA

  
Vice  
President

  
Secretary  
General

  
Vice  
Secretary

 @aimtpa

Address - Chohitan Road, Barmer (Rajasthan)  
Email - aimtpa.org@gmail.com, info@aimtpa.org, www.aimtpa.org  
9602680627, 8104021991, 9892196196, 9326988923, 9414353742

- **President**  
VK BOTHRA
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Kamlesh Soni

## **1) Late fees: -**

On knowing the graveness of the subject from media, the Council decided to reduce late fees at Re 500/- per return for taxpayers declaring outward liability and Re Nil for taxpayers having no outward liability. But the waiver had a flaw –

It waived late fees only if returns were filed between 01-07-2020 to 30-09-2020. Because of this condition, those who had a carry forward late fee in the last return they filed could not find it possible to avail the benefit. Secondly, it is observed that those whose registrations are cancelled *suo-moto*, the corresponding revocation applications are either not decided or they are rejected for no proper reason. Many taxpayers could not take the benefit of late fees waiver due to rejection of revocation applications. It is requested to extend the waiver scheme till 31-12-2020. An SOP to process revocation applications that requires Nodal Officers to revoke the cancelled numbers in time or say by 30.11.2020 would do well, so that people who have gone out of system are given proper chance to come back in system. It is believed that substantial amount of tax that was paid from time to time will be available if returns are filed.

## **2) The unanswered question of section 16(4): -**

Those who filed returns from July 2017 (late migrations as an example) have the fear of the consequences of invoking section 16(4) lingering. The Board has not clarified the position on this provision, despite several requests to do so. The intention of the Council behind enacting such a provision is to instill discipline regarding correct, complete and timely compliance. In normal circumstances, i.e. when compliance is streamlined with actual law and when economic conditions are better, the logic behind this provision is acceptable and is hence well understood. But when the Council is repeatedly requested to first create an atmosphere conducive for compliance (slow, glitch prone GST Portal), invoking a penal law for late compliance is not a prudent idea. Therefore, one of the solutions can be to avoid invoking the provision 16(4) altogether, by “assuming” the Doctrine of Severability. The Board, its Policy Wing must consider this option and decide to not to use this sub section for the initial 3 years.

### **3) Departmental Audit under section 65: -**

Taxpayers are in receipt of notices under the above cited section for the years 2017-18 and 2018-19. It is requested to keep the proceedings in abeyance till other important compliance like GST Annual Returns, Audits and Income Tax Audits are completed. It is not possible to comply for a proceeding under a section as vital as section 65 at this juncture. It is therefore requested that the proceedings be commenced from a later date, preferably in the next calendar year.

### **4) Rule 36(4) issue: -**

As per notification 49/2019 dated 09-10-2019, a new rule has been inserted in the CGST Rules. As per the said Rule, one is not allowed to take credit of an amount more than the amount of ITC appearing in his GSTR 2A and an addition of 10% to it.

Trade is well aware that governments need revenue to cope with the ongoing pandemic and also continue with developmental projects. But framing such policies to garner revenue is, in simple words, cutting the branch one is sitting on. Businesses have already been struggling to pay taxes on time. The pandemic has somewhat aggravated the struggle. Even if one accepts the rationale behind the Rule, how does one negate the fact that a recipient who buys from a supplier who files a quarterly GSTR 1 has to pay tax twice from his pocket for apparently no fault of him or his supplier? This is also in violation of original intent of law which provided Taxpayers to report ITC (through GSTR 2) not appearing in their 2A. Kindly note that in a way present rule penalize genuine Taxpayers and spares those who collect tax from their clients and do not pay it, while depriving opportunity to genuine suppliers by not providing facility to report such instances and thereby also affecting revenue and sentiment of Taxpayers which is never intended.

In addition to this, it is feared that noncompliance would increase due to this Rule. If substantial amount of ITC is not appearing in the GSTR 2A of recipient, say because his suppliers file quarterly GSTR 1, he will either opt to not to follow the Rule or to avoid filing his GSTR 3B for 3 months and demand a late fee waiver for the 3 months. Neither the government gets monthly tax that it required and nor the taxpayer is happy. We therefore suggest for a holiday from following this Rule – *ab-initio*.

These are some issues that need immediate response. Apart from that a faulty GST Portal continues to be the top troublemaker for taxpayers. It has maintained its reputation of failing near due dates right from the beginning and there is no change or improvement in the server capacity. It launches any form or facility on its own and without any prior notice. One more request is made to administer the functioning of the Portal. Taxpayers requests to extend due dates rise when portal is unable to handle load. Taxpayers have already suffered heavy late fees in the past due to portal problems.

At last, we request your honor to allow a meeting of the Trade and Professional members of this Association with yourself and the members of the Board for an elaborate discussion aiming at making this reform a success.

JAI HIND

YOURS FAITHFULLY  
Team AIMTPA