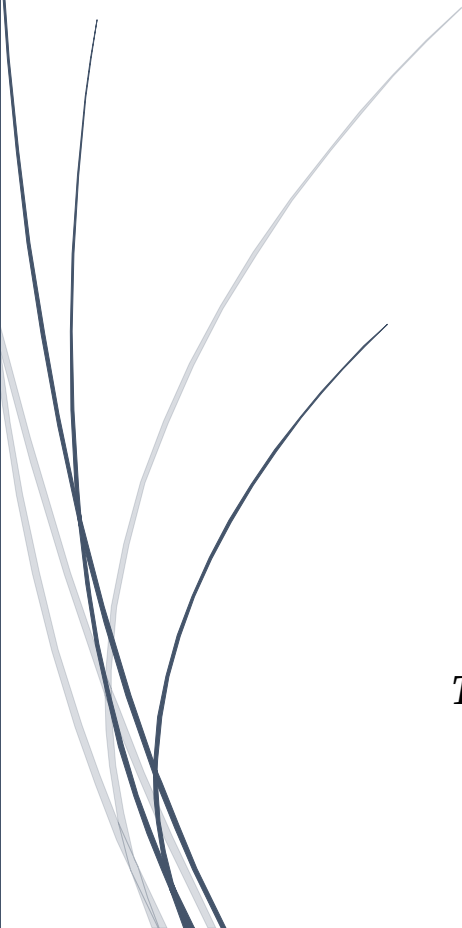


*Collated
Suggestions on
Draft Rules on
Refund,
Registration,
Payment etc.*



*Indirect Taxes Committee
The Institute of Chartered Accountants of India
New Delhi*



I. INTRODUCTION

1. The Institute of Chartered Accountants of India considers it a privilege to submit its collated suggestions on Draft Rules of Registration, Return, Refund, Payment and Invoice.
2. We appreciate the steps taken by the Government of India and its commitment for an early introduction of the GST.
3. We look forward to contributing in the drafting of simple, transparent, & fair IDT laws in India.
4. In case any further clarifications or data is considered necessary, we shall be pleased to furnish the same. The contact details are:

Name and Designation	Contact Details	
	Ph. No.	Email Id
CA. Madhukar N Hiregange Chairman, Indirect Taxes Committee	9845011210	madhukar@hiregange.com
CA. Sharad Singhal, Secretary, Indirect Taxes Committee	09310542608 0120-3045954	idtc@icai.in ; s.singhal@icai.in



Suggestions on Rules & Formats – GST

Registration Rules

1. Application for Registration

Rule 1 sub-rule (1) of the draft GST registration rules provides that every person, other than a non-resident taxable person, a person required to deduct tax at source under section 37 and a person required to collect tax at source under section 43C, who is liable to be registered under sub-section (1) of section 19 and every person seeking registration under sub-section (3) of section 19 (hereinafter referred to in this Chapter as “the applicant”) shall, before applying for registration, declare his Permanent Account Number (PAN), mobile number and e-mail address in Part A of FORM GST REG-01 on the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

Suggestion

It is suggested that along with PAN, email id & mobile no. Date of Birth/ Incorporation also be requested for in Application of Registration in Part A of FORM GST REG-01 as this would help in curbing the chances of entering a wrong PAN, even if remotely possible.

2. Refund of Advance Tax on rejection of registration for a Casual Taxable Person/ Non-resident taxable person

Under Rule 1(6) read with Rule 2(5) of draft GST Registration rules it has been provided that a casual taxable person/ non-resident taxable person is given a temporary identification number by the Common Portal for making advance deposit of tax under Section 19A. However, the application for registration may be rejected under Rule 2(5). Thus, in case of any rejection of application of such taxable person, in absence of any suitable provision, his payment against the provisional number may get stuck in system and the credit of such payment may not be available to such person.

Suggestion

It is suggested that there be provided a procedure for appropriation/refund of tax in case of rejection of application for registration by a casual taxable person.

3. Application for Registration by Casual taxable persons

Rule (1) sub-rule (7) of GST Registration Rules provides for the person applying for registration under sub-rule (6) shall make an advance deposit of tax in an amount equivalent to the estimated tax liability during the period for which registration is sought, as specified in section 19A.



Suggestion

It is suggested that the phrase “applying for registration under sub-rule (6)” should be substituted with the phrase “applying for registration as referred to in sub-rule (6) read with sub-rule (1)”. It is to be noted that even casual taxable persons applying for registration is covered in sub-rule (1) and there is no such person applying for registration under sub-rule (6). This sub-rule may accordingly be revised.

4. Verification of Application of Registration

Rule 2 sub-rule 3 of draft GST Registration rules provides that where a clarification under sub-rule (2) of the GST Rules of the concerned State has been sought prior to any clarification, information or document being sought under sub-rule (2), the clarification, information or document furnished by the applicant shall be forwarded to the proper officer under said Rules for appropriate action.

Suggestion

It is suggested that the sub-rule 3(CGST/ SGST) be rephrased as follows:

“(3) Where a clarification, information or document under sub-rule (2) of the GST Rules of the State concerned has been sought prior to any clarification, information or document being sought under sub-rule (2), the clarification, information or document furnished by the applicant shall be forwarded to the proper officer under said Rules for appropriate action, by such proper officer under these rules.

(CGST Rules)

(3) Where a clarification, information or document under sub-rule (2) of the CGST Rules has been sought prior to any clarification, information or document being sought under the sub-rule (2), the clarification, information or document furnished by the applicant shall be forwarded to the proper officer under the CGST Rules for appropriate action, by such proper officer under these rules.

(SGST Rules)

5. Issue of Registration Certificate

As per Rule 3 sub-rule 3 of the draft GST Registration Rules where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date registration shall be the date of grant of registration under sub-rules (1), (4) or (6) of rule 2.

Suggestion

- It is suggested that effective date of registration where an application for registration has been submitted by the applicant after 30 days be the date of application of registration and not date of grant of registration.
- It is suggested that the words **“as the case may be”** be added at the end of sub-rule 3 as sub rule (1) or (4) or (6) describe different timeline for grant of registration certificate and insertion of aforesaid words may help avoid ambiguous interpretation.



6. Requirement to pay tax provided vide Rules and not the Act

Rule 4 sub-rule 1(c) of the draft GST Registration Rules provides that all separately registered business verticals of such person shall pay tax under this Act on supply of goods and/or services made to another registered business vertical of such person and issue a tax invoice for such supply.

Suggestion

It is suggested that provisions of levy of GST on all separately registered business verticals be provided by way of Act, not Rules as registration rules cannot provide for levy of tax.

7. Typographical error of applicability of Rules 1 & 2 in case of Separate Registrations for multiple business verticals within a State

Rule 4 sub-rule 3 of the draft GST Registration Rules provides that provisions of rule 1 and rule 2 relating to verification and grant of registration shall mutatis mutandis apply to an application made under this rule.

Suggestion

It is suggested that in the aforesaid sub-rule the words “provisions of rule 1 and rule 2” be replaced with “provisions of rule 2 and rule 3” which are the rules for to verification and grant of registration.

8. Effective date of registration where Unique Identity Number is assigned to certain special entities

Rule 6 of the draft GST Registration Rules provides that every person required to obtain a unique identity number under sub-section (6) of section 19 may submit an application, electronically in FORM GST REG-09. The proper officer may, upon submission of an application in FORM GST REG-9 or after filling up the said form, assign a Unique Identity Number to the said person and issue a certificate in FORM GST REG-06, within 3 common working days from the date of submission of application.

Suggestion

It be suitably clarified that what would be the effective date of registration where Unique Identity Number is assigned under sub-section (6) of section 19 as the same has not been provided for in the said rules.

9. Time-limit for amendment in registration particulars

Rule 9 sub-rule 1 of the draft GST Registration Rules provides that where there is any change in any of the particulars furnished in the application for registration in FORM GST REG-01, FORM GST REG-07, FORM GST REG-09 or FORM GST-REG-10, as the case may be, either at the time of obtaining registration or as amended from time to time, the registered taxable person shall, within 15 days of such change, submit an application electronically, duly signed, in FORM GST REG-11, electronically, along with documents relating to such change at the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.



Suggestion

It is suggested that the time limit of 15 days for making an amendment application be extended to 30 days as it will be in lines with time limit of amendment under current laws. For example as per Rule 4(5A) of the Service Tax Rules, 1994 amendments may be requested within 30 days of making the application for registration.

10. Time Limit for application of Suo Moto Registration

Rule 10 sub-rule 3 of the draft GST Registration Rules provides that every person to whom a temporary registration has been granted under sub-rule (1) shall, within thirty days from the date of grant of such registration under the said sub-rule, file an application for registration in the form and manner provided in rule 1 unless the said person has filed an appeal against the grant of temporary registration, in which case application for registration shall be applied for 30 days after the date of issuance of order upholding the liability to register by the Appellate Authority.

Suggestion

It is suggested that the words “applies for 30 days” be replaced with “applied for within 30 days” to provide the correct intent and interpretation.

11. Clarification of the term “Rule Return 19”

Rule 11 sub-rule 2 of the draft GST Registration Rules provides that every taxable person, other than a person paying tax under section 8, seeking cancellation of registration under sub-rule (1) shall furnish a final return under rule Return.19.

Suggestion

It is suggested that the term “rule Return.19” be suitably clarified. There appears to be a typographical error in the absence of Rule 19 to these rules.

12. Grounds for Cancellation of Registration

Rule 12 sub-rule 1 of the draft GST Registration Rules provides that where the proper officer has reasons to believe that the registration of a taxable person is liable to be cancelled under section 21, he may issue a notice to the taxable person in FORM GST REG-15 to show cause within 7 days as to why his registration should not be cancelled. Provided that where a notice for cancellation has been issued under [SGST rules of the State/CGST Rules], no notice shall be issued under sub-rule (1).

Suggestion

It is suggested that grounds of suo moto cancellation of registration by the proper officer be provided in order to ensure transparency and better governance.



13. Revocation of Cancellation of Registration

Proviso to Rule 13 sub-rule 1 provides that no application for revocation shall be filed if the registration has been cancelled for the failure of the taxable person to furnish returns unless such returns are filed and any amount due as tax in terms of such returns has been paid along with any amount payable towards interest, penalties and late fee payable in respect of the said returns.

Suggestion

It is suggested that amendment be made in section 27 of Model GST Law because as per Rule 13 application for revocation of cancellation of registration cannot be filed unless the returns are furnished. However, as per section 27, returns can be furnished only by registered taxable person. If registration is cancelled, it indicates that no return can be filed, and accordingly, the process for revocation fails. The anomaly be accordingly rectified.

14. Method of authentication

Rule 15 sub-rule (1) of the draft GST Registration Rules provides that all applications, including reply, if any, to the notices, returns, appeals or any other document required to be submitted under these rules shall be filed electronically at the Common Portal with digital signature certificate or through e-signature as specified under Information Technology Act, 2000 (21 of 2000) or through any other mode of signature notified by the Board/Commissioner in this behalf. Also Rule 15 sub-rule (2) of the draft GST Registration Rules provides that each document including return filed online shall be signed by the concerned person in the respective cases.

Suggestion

It is suggested that word “return” appearing in Rule 15 sub-rule (1) and sub-rule (2) be dropped.

15. Typographical/Clerical Error in Rule 15

In Rule 15 sub-rule 2 is appearing twice. The latter of the two be made as sub-rule (3) and clerical error be corrected.

16. Physical verification of business premises in certain cases

Rule 17 of draft GST registration Rules provides that where the proper officer is satisfied that the physical verification of the place of business of a taxable person is required after grant of registration, he may get such verification done and upload the verification report along with other documents, including photographs, in Form GST REG-26 on the day following the date of such verification.

Suggestions

- *It is suggested that a time limit for physical verification be provided (say 30 days), beyond which the details furnished be deemed to be true and thus no physical verification be required.*
- *Circumstances which warrants the necessity for physical verification be provided for.*



- A need for prior permission to be obtained from the concerned higher authority or to be carried out on the recommendation of the concerned higher authority be inserted.
- Mechanism of prior intimation to the taxable person whose premises would be physically verified be provided for.

17. Application for Registration

Some general suggestions w.r.t application for registration:

- It is suggested that there be provided an option to correct/ amend the FORM GST REG-01 as it may so happen that some submission may be omitted inadvertently in the registration form. There should be an option to rectify the same.
- In order to save the applicant from repeating the tedious process of filling in the same application form again and again there be provided an option for submission of FORM GST REG-01 to different Central/ State authorities in different States by way of single application and marking states where registration is sought. Alternatively, the date from the application form of one state simply be imported into the other state's application form.
- There be provided a mechanism for grant of registration to government departments as Government may also become liable to pay tax in some instances.
- There be provided a mechanism for identification of duplicate entries as there might arise a situation where person may make a duplicate entry inadvertently and same might go for re-verification and may result in duplicate registration on same premises. In case, a person wants a separate registration of his different business vertical in the same premises it be specifically provided for in the registration form itself. Filing of complete application form will result in duplication of information and work.
- Alternatively, Choice of registration for different business verticals be given in the FORM GST REG-01 itself to avoid duplicate/ multiple applications.
- Casual taxable persons not be required to submit his address in the State for which registration is being sought as they have no fixed place of business in the taxable territory in which they occasionally undertakes transactions.

18. Application Form for Registration under GST: Form GST REG 01

Suggestions

Point 12B: It is suggested that option be provided under nature of business requested in said point for e-commerce and one option be provided for Others Category to specify the nature of business not covered in the provided options.

Point 13: Details of Bank Accounts be limited to major operating accounts of an assessee instead of requesting for total no. of Bank accounts maintained by the applicant for conducting business.

There be made provision for providing Correspondence Address, alternate email id, mobile no. etc.



19. Form GST REG-09

Form GST REG-09 provides for the application for allotment of Unique ID Number to UN Bodies/ Embassies/ any other person. As per serial no. 2 of the Form GST REG-09, there are three categories of entity required to apply for allotment of Unique ID Number i.e. UN Body, Embassy and Other Person.

Suggestion

It is suggested that one more category of entity i.e. High Commission be specifically mentioned in the GST REG-09 Form in addition to the given categories who are required to apply for UIN. Since India is a member of commonwealth and all the member of commonwealth countries are represented by High Commission. Other person made applicable in respect of Honorary Counsellor's represented generally by Indian nationals.

20. Application for Enrolment of Existing Taxpayer in Form GST REG-20

Every person who has been granted a provisional registration shall submit an application electronically in FORM GST REG-20, duly signed, along with the information and documents specified in the said application, on the Common Portal either directly or through a Facilitation Centre, notified by the Board or Commissioner.

Suggestion

It is suggested that in FORM GST REG-20, an option be added to opt for composition scheme, as there might be persons amongst the persons being migrated, who would want to opt for composition from the start of GST.

21. Option for Centralised registration

As per Section 19 of the Model GST Law, every person who is liable to be registered shall apply for registration in every such State in which he is so liable within thirty days from the date on which he becomes liable to registration. Further, it also provides that a person having multiple business verticals in a State may obtain a separate registration for each of such business vertical.

Suggestion

*It is suggested that option for Centralised Registration be given to the tax payer even when he is operating in multiple states. Otherwise it will be very difficult for Industries / Sectors like Telecom, Insurance etc. in ascertaining tax liability, where area is not constraint. For example, Delhi-NCR covers 3 States namely Delhi, Haryana, and Uttar Pradesh and it will be difficult to segregate user base service in between 3 States. Presently, the option for Centralised registration is available under Service Tax and to some extent in case of LTU's in Central Excise. Hence, it is suggested that **Option for Centralised registration** be allowed for goods as well as Services to facilitate ease of doing business and save taxpayer from multiple registrations, assessments and other compliances.*



22. Registration in case of Transfer/ Merger of Business

In case of transfer/ merger of business, the assessee taking over the business will have to apply for fresh registration. However the option of mentioning the old GSTIN is not provided for so as to enable transfer of credits from the old entity.

Suggestion

It is suggested that there be provided an option in Form GST REG 01 to provide details of Source GSTIN & Date of transfer/amalgamation/merger etc. This would enable easy transfer of credits in case of merger/ amalgamations/ demergers etc.

23. Migration of Persons registered under Earlier Laws

It is suggested that in case of assessee liable to deduct/ collect TDS/TCS an option be given for migration of existing dealers as filing of another application for obtaining such registrations might cause unnecessary compliance procedures.

Payment Rules

24. Lack of clarity on impact in case of issue of revised invoice

Rule 1 sub-rule (1) of the draft GST rules provides that the electronic tax liability register under sub-section (7) of section 35 shall be maintained in FORM GST PMT-1 on the Common Portal and all amounts payable by a taxable person shall be debited to the said register.

Suggestion

In the proposed rules, there is lack of clarity on impact in case of issue of revised invoice/ supplementary invoices/ debit notes / credit notes on the electronic ledgers.

Rules shall provide clarification on how and when the impact of revised invoice and debit/credit notes shall be considered in electronic ledgers. For example if an assessee issues a supplementary invoice in a month subsequent to a month of issuing original invoice, then how and in which month such change in liability would be accounted in the electronic ledger.

25. Electronic Tax Liability Register

Rule 1 sub-rule (2) sub-section (a) of the draft GST Payment Rules provides that the amount payable towards tax, interest, late fee or any amount payable as per the return filed by the said person.



Suggestion

It is suggested that the word return should be clarified and instead of using the word “return”, the phrase “return filed under section 27(1)” be used as it will help to resolve confusion regarding whether given return is GSTR-3 or details of outward supply under Section 25.

26. Mechanism of debits and credits in electronic ledgers

Rule 1 sub-rule (3) of the draft GST rules provides that the payment of every liability by a registered taxable person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 2 and/or, as the case may be, the electronic cash ledger maintained as per rule 3 and the electronic tax liability register shall be credited accordingly.

Suggestion

Mechanism of debits and credits in electronic ledgers/ register is not clear either in act or in rules. For example who and when shall make the debit/credit entries in respective electronic ledgers is not made clear. Further, department officers shall not be authorised to make entries in Electronic ledgers especially in case of issuing SCNs, audit notes etc as they may create liability irrationally.

27. Electronic Tax Liability Register for TDS/ TCS

Rule 1 sub-rule 4 of draft GST payment Rules provide that the amount deducted under section 37, or the amount collected under section 43C, or the amount payable under sub-section (3) of section 7, or the amount payable under section 8, or any amount payable towards interest, penalty, fee or any other amount shall be paid by debiting the electronic cash ledger maintained as per rule 3 and the electronic tax liability register shall be credited accordingly.

Issue

Penalty imposed on supplier will get reflected in electronic liability ledger which may become subject matter of adjudication at an appropriate forum. However, the format of GST PMT-1 provides that in case of closing debit balance in electronic liability ledger, the return for that and subsequent period will be treated as invalid.

Suggestion

It is suggested that penalty be reflected in Electronic liability register, but the restriction imposed for treating return invalid in cases where electronic liability ledger shows debit (payable) be modified to exclude the un-admitted and disputed demand like penalty, tax etc.



28. Rectification of incorrect entries

Rule 2 sub-rule (1) of the draft GST payment rules provides that the electronic credit ledger shall be maintained in FORM GST PMT-2 for each registered taxable person on the Common Portal and every claim of input tax credit under the Act shall be credited to the said Ledger.

Suggestion

- *There is no clarity on whether assessee could rectify the incorrect entries passed in the electronic ledgers. It is recommended that the assessee should have authorization to edit /rectify/ pass correct entries in the electronic ledgers and also to pass credit/debit entries in order to reverse the wrong debits/credits in a limited time.*
- *It is suggested that the phrase "The electronic credit ledger" should be substituted with the phrase "The electronic credit ledger under sub-section (2) of Section 35" since it would assist in co-relating the given provision with the powers conferred under the law.*

29. Explanation to Electronic Cash Ledger

- A.** Explanation to Rule 3 of the draft GST Payment Rules provides that for making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the taxable person making such payment.

Suggestions

- *It is suggested that the said explanation should be removed in order to provide relaxation to the taxable person from the burden of paying extra cost. Therefore, the given burden should be borne by government or some other way-out should be found (may be national level tie ups with banks) whereby payment to government would be free from such type of commissions.*
- B.** Rule 3 of the draft GST Payment Rules contemplates that the electronic cash ledger under sub-section (1) of section 35 shall be maintained in FORM GST PMT-3 for each registered taxable person on the Common Portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

Suggestion

It is suggested that different columns for tax, interest, penalty, fee or any other amount should be combined into a single column since separate columns for each of the items like tax, interest, penalty, fee, other payments under the Electronic Cash Ledger would defeat the purpose of having a cash ledger, which is merely in the nature of money deposited with the Government for utilization in the prescribed manner for specific purposes. Also, Section 35(3) of the Model GST Law doesn't provide for any restriction on the manner or purpose for deposit of money into the Electronic Cash Ledger that means there is no restriction for cross-utilization of the balance under any column of the Electronic Cash Ledger. In other words, consolidating the payment columns of the Electronic Cash Ledger would facilitate the ease of doing business under the proposed GST regime.



30. Authorization to collect taxes/interest/penalty/any other amounts in cash

Rule 3 (3) of the said rule provides that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter (OTC) payment shall not apply to deposit to be made by the proper officer or any other officer authorized for the amounts collected by way of cash or cheque, demand draft during any investigation or enforcement activity or any ad hoc deposit.

Suggestion

Authorization to collect taxes/interest/penalty/any other amounts in cash could lead to revenue leakage and could promote illegal practices. Hence Suggestion is that the collection in cash must strictly be prohibited unless permission from higher authorities in writing.

31. Electronic Cash Ledger

Rule (3) sub-rule (5) of the draft GST Payment Rules provides that where the payment is made by way of NEFT or RTGS from any bank, the mandate form shall be generated along with the challan and the same shall be submitted to the bank from where the payment is made.

Suggestion

It is suggested that a standardised format be prescribed for this purpose since nothing has been clarified in this regard in the given rules.

32. Date of deposit

Section 35 read with GST payment rules provides that the date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit.

Suggestion

Section 35 of the proposed GST act shall be amended to provide date of initiating the payment transaction by assessee shall be deemed to be date of deposit. Rules could specify the same for each nature of transaction.

33. Formats of Electronic Tax Liability Register, Credit Ledger & Cash Ledger

GST PMT-1, PMT-2 and PMT-3 provides for one single column for providing details of SGST, CGST and IGST. If details are combined then this may create difficulties in identifying/ keeping track of credit utilization as credit of CGST is not available against SGST and vice versa.

Suggestion

It is suggested that separate columns be provided for entering details of SGST, CGST and IGST as it is provided in Form GST PMT-5.



Invoice Rules

34. Rule 1 : Tax Invoice – Consecutive Numbers

1(b) sets out a consecutive serial number unique for a financial year. In the past the separate serial numbers were specifically allowed by way of a one time declaration. Trading, Manufacturing, services, exports. Now under GST there may be need of internal invoices for supplies made within the entity (including stock transfer) and external invoice for others.

Suggestion

To enable ease of doing business, the normal method of working of registered assessee should be allowed to be continued. Provision to intimate separate sets of serial numbers with reason therefor within 30 days to be incorporated in the rules.

35. Rule 1 Tax invoice

Section 23 provides a registered person supplying, taxable goods/service shall issue, at the time of supply, a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed further rule 1 provides more detailed should provide in the tax invoice.

Suggestion

The contents of the invoice were more it may come to 2 sheets. The contents should be reduced, the amount of information sought in the invoice is enormous, this would be a major hassle for the assessee in terms of time and cost

36. Place of Delivery and Address of delivery

Rule 1(e) provides the address of delivery and rule 1(n) provides place of delivery further section 2(2) defines “address of delivery” means the address of the recipient of goods and/or services indicated on the tax invoice issued by a taxable person for delivery of such goods and/or services.

Suggestion

Clarity on place of delivery and address of delivery should be provided as the both are given in Rule 1 only there may be chances that the assessee may not understand the same, the rule can provide explanation in this regard.

37. Invoicing by a supplier providing both goods as well as services

Rule 2 of the draft GST Invoice Rules provides that the invoice shall be prepared in triplicate, in case of supply of goods, in the following manner:—

- a) the original copy being marked as ORIGINAL FOR RECIPIENT;
- b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.



Provided that the duplicate copy is not required to be carried by the transporter if the supplier has obtained an Invoice Reference Number under sub-rule (4).

The invoice shall be prepared in duplicate, in case of supply of services, in the following manner:-

- a) the original copy being marked as ORIGINAL FOR RECEIPT; and
- b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

Suggestion

- *It be suitably clarified that whether a supplier dealing in supply of goods as well as supply of services is required to maintain and issue two different series of invoices for goods & services, respectively.*
- *In case consecutive series is permitted for supplier of both goods & services, it be clarified as to how the number of copies i.e. Duplicates and Triplicates would be managed.*

38. Proviso to Rule 3 – Bill of Supply

Proviso 2 & 3 of Rule 3 provide that:

Provided further that the registered taxable person may not issue a bill of supply if the value of the goods or services supplied is less than one hundred rupees except where the recipient of the goods or services requires such bill:

Provided also that a consolidated bill of supply shall be prepared by the registered taxable person at the close of each day in respect of all such supplies where the bill of supply has not been issued in terms of the second proviso.

Suggestion

- *Whether two separate invoice to be raised when both exempted as well as taxable goods/service provided. The same is not dealt in the draft rules, the clarity should be provided so that the whether two invoice should be raised or in tax invoice only we can remove the exempted goods/services.*
- *It is suggested that these two provisos be deleted as it might get difficult to keep a track of such small amounts.*

39. Section 61 inspection of movement of goods

Sub-section 1 Section 61 of draft model GST law provides that the person in charge of a conveyance carrying any consignment of goods of value exceeding fifty thousand above to carry with him such documents as may be prescribed in this behalf of by state or central government and if any officer requires for verification the said person shall be liable to produce the documents.

Suggestion

As per the above section there should other documents along with invoice which should be carried and shown to the proper officer on intercepted. The government is moving towards GST where the state check post will



be removed whether the inspection by officer will be required and whether other documents along with invoice is required for movement of goods.

40. Documents for Export of Goods

In GST regime the government should relax the documents part as the assessee is still to comply with the custom documents part.

Suggestion

For Export of Goods they have provided the existing Central excise procedure of executing the Bond whether we should continue to raise ARE-1 separately send along with the export invoice.

The documentation part could be reduced as same is uploaded in online return and ARE-1 formalities shall be getting away with.

41. Section 24 of Model GST law read to rule 4

Rule 4 Supplementary tax invoice and credit or debit notes the section 24 provides only credit and debit notes however there is no discussion on supplementary invoice in section 23 or section 24 of model GST law.

Suggestion

There is no specific mention of Supplementary Invoice in the model GST law but in rules it was referred rule 23 (Tax invoice Section), the clarity should be provided in this regard.

42. Section 43A of Model GST law

Section 43A provides for special procedure for removal of goods for certain purposes i.e. goods removed for job work with prior permission of commissioner.

Suggestion

The rules not specified the procedure/documents for Job work. the government should come up with the documents for sending the goods for job work without payment of taxes.

43. 2nd proviso to rule 2 and Rule 5(2)

If supplier of service is a banking sector, the period within which the invoice is to be issued shall be forty-five days from the date of supply of service. shall issue a tax invoice or any other document in lieu thereof, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed under rule 1.



Suggestion

The contents should be simple and it should be practically followed by banking sector, as banking transaction is different compare to other business transactions.

44. Rule 5(3) read with rule 1

The supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also contains other information as prescribed under rule 1

Suggestion

Goods transport agency there is specific contents provided in rule 5(3) which is deviated from the actual rule. The assessee will be not identify if the GTA also raise the tax invoice for providing service therefore, the government should come up simple format for GTA.

45. Rule 5: Tax Invoice in special cases

Rule 5(3) of draft GST Invoice Rules provides that a Goods Transport Agency (GTA) in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also contains other information as prescribed under rule 1.

Suggestion

It is suggested that the requirement of providing HS Code be done away with as ascertaining or verifying correct HS Code of goods to be transported by GTA is a tough task and will unnecessarily put an increased the burden on GTA.

46. Rule 5: Tax Invoice in special cases

Rule 5(4) of the draft GST Invoice rules provides that where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, and



whether or not containing the address of the recipient of service but containing other information as prescribed under rule 1.

Suggestion

It is suggested that the said provisions may also apply to admission to events or entertainment events like cinema theatre etc.

47. Issues in Rule 5

Rule 5 needs to be changed

Suggestion

Where the supplier is supplying taxable services notified under this rule by the Union Government, it would be sufficient if the details specified in the notification are provided in the taxable invoice by whatever name it is called and for such notified services, the provisions of Rules 1 and 2 of these Rules shall not apply.

This is required because in case of tickets issued to bus passengers, railway passengers, receipts issued by postal department for parcels, speed post etc it would be impossible to provide all the details specified in Rule 1. It would be sufficient if the receipt indicates the amount of CGST AND CGST payable. Since there may be several other cases where relaxation from the provisions of Rule 1 is required, it would be better to give the powers to the government to issue the notification.

48. General

There are procedure/documents were set out for movement of import of goods from port/airport is not coming out anywhere in the rules. The same should be incorporated in the rules.

49. Drafts format under Goods and Service Tax Invoice Rules

Form GST INV -1 (application for electronic reference number of an invoice)

Issues

- a) As per format of GST INV-1, it appears that for each and every invoice supplier would be required to get an ERN first and post which he would be able to issue a Tax Invoice. The pre-generation of ERN in each and every case will consume substantial cost and time of every supplier in cases involving volumes.
- b) For generation of ERN, supplier will have to depend upon external factors such as internet accessibility, availability of ERN utility on GST portal etc.
- c) Post generation of ERN, if some changes are required to be made in some of the details or ERN needs to be cancelled, then mechanism/procedure for the same needs to be provided.



Suggestions

- It is suggested that requirement of generation of ERN be completely dispensed with since every supplier will be bound to file GSTR-1 (Details of Outward Supply) wherein invoice-wise details are required to be uploaded for matching.
- Further, instead of making ERN mandatory for each and every invoice, it be made applicable only for invoices where amount exceeds certain monetary limit say, Rs. 10 lakhs.

50. Tax Invoice issued on advance – No invoice then for movement of goods

The assessee would issue an invoice on receipt of advance for goods, then when goods are supplied in full or in part, the issue of another invoice would result in duplication.

Suggestion:

For advances a special invoice called advance invoice maybe generated for only the purpose of credit. This would be adjustable against the invoices for the supply.

51. Amendments/ Clarifications in Invoice Format GST-INV-01

Following amendments be made in GST-INV-01:

- *There be made separate invoice format for CGST/ SGST, IGST, Composition dealer, Tax under Reverse Charge*
- *It be specified if transaction is for supply of goods or services and accordingly description be sought in the invoice.*
- *Instead of requiring only HSN Code it be HSN Code/ Accounting code*
- *Provision to show Cost of freight/Insurance/Packing and forwarding subsequent to total if such expenses are incurred post to supply of goods and services.*
- *Place of Supply and Place of delivery be separately specified.*

52. Rule 3 Bill of sale

2nd proviso to section 23 provides that the registered taxable person supplying non-taxable goods and/or services or opted for composition scheme shall issue bill of supply

Suggestion

Whether two separate invoice to be raised when both exempted as well as taxable goods/service provided. The same is not dealt in the draft rules, the clarity should be provided so that the whether two invoice should be raised or in tax invoice only we can remove the exempted goods/services.



Refund Rules

53. Issue of export manifest and Export report

Proviso to Rule 1 of Refund rules, in case of export of goods, application for refund shall be filed only after the export manifest or an export report, as the case may be, in respect of such goods is delivered under section 41 of the Customs Act 1962.

The application under sub-rule (1) shall be accompanied by documentary evidences to establish that a refund is due to the applicant, a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices, in a case where the refund is on account of export of goods.

Suggestion

Therefore, it is suggested provide link between ICEGATE of customs administration and the proposed GSTN of GST administration may be established so that online verification of the export can be carried out. This would provide auto population of details of export manifest from customs website with respect to invoice raised under GST and assist in correlating transactions.

54. Refund by SEZ Units, Developers etc.

Proviso to Rule 1 sub-rule 1 of draft GST refund rules provide that in respect of supplies made to an SEZ unit or a developer, or supplies regarded as deemed exports, the application shall be filed by the said unit or the developer or the recipient of deemed export supplies. This provision leads to loss of ab initio exemption by SEZ developers and units in SEZ.

Suggestion

It is suggested that supplies to SEZ developer and units in SEZ be treated as 'zero rated' supplies as the GST chain will remain unbroken and cost of purchase by such units will be without the incidence of domestic taxes and levies. In case such units effect taxable supplies, they will restart the GST chain.

55. Documents for claim of refund

Rule 1(2) of draft GST refund rules provide list of documentary evidences to be accompanied with refund application under GST.



Suggestion

It is suggested that a mandatory list be provided which contains documents required in each case, namely:

- a) *In case of export of goods – statement in format enclosed*
- b) *In case of export of services – statement in format enclosed*
- c) *In any other case – reference number of order granting refund or finalization of provisional assessment and GST-RFD-1 for 38(2) refunds*
- d) *All statements to be certified by CA / CWA as regards:*
 - *Unjust enrichment (also self-certified by applicant for refund)*
 - *Actual payment received in foreign exchange with reference of FIRC*
 - *Accounting of export sales in the books of accounts of applicant for refund*
 - *Fact regarding debit entry in ITC ledger*

Multiple documents are listed and there is overlap of facts in each of these documents. This creates confusion about purpose of any specific document

56. Issue in incident of tax and interest passed to other party –

‘Explanation 2 to Rule 1 sub-rule (2) of draft GST Refund Rules, provide that where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.’

Suggestion

This can be interpreted that if supplier has separately collected taxes on the face of invoice from customer, then it would be treated as passing of incidence. However, if in case, where the tax amount was included as part of cost of Goods sold, then there might be an issue. Therefore, it is suggested to provide methodology for the same. Further how does assessee prove incidence of interest is not passed maybe clarified.

57. Refund of tax, interest, penalty, fees or any other amount for export of goods/ services

Rule 1 sub-rule 4 of draft GST Refund rules provide that where any taxable goods or services are exported without payment of tax, under bond or letter of undertaking under section ____ of the IGST Act, 201_, refund of input tax credit shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Export turnover of goods} + \text{Export turnover of services}) \times \text{Net ITC}}{\text{Adjusted Total Turnover}}$$

Where,-

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;
- (C) "Export turnover of goods" means the value of goods exported during the relevant period without payment of tax under bond or letter of undertaking;



(D) "Export turnover of services" means the value of services exported without payment of tax under bond or letter of undertaking, calculated in the following manner, namely:-

(E) "Adjusted Total turnover" means the value of turnover in a State, as defined under subsection (104) of section 2, excluding the value of exempt supplies, during the relevant period;

(F) "Relevant period" means the period for which the claim has been filed.

Suggestion

- It is suggested that NET ITC to include credit of capital goods too.
- Further it be clarified that NET ITC means CGST and IGST availed during the relevant period because as per rules only IGST and CGST can be refunded and there may be separate rule for refund of SGST under SGST rules, the formulae should clearly provide the meaning of Net ITC.
- Alternatively, term Net ITC be replaced with ITC as ITC for the relevant period would result in opening balance of ITC not being available as credit. Opening balance credit cannot be left out from refund claims. Credit once allowed cannot have any expiry date. GST does not require one-to-one correlation.
- Further, Export turnover of goods not to include "only export under bond". Section 2(43) does not include such condition to classify the transaction as exports. If refund will be allowed only for goods exported under bond, every person has to obtain the bond and export. It should be made optional. Since taking goods outside India itself is export, why for the refund, it should be under bond?
- It be clarified that "export turnover of goods" means export turnover of goods as per section 2(43) on which IGST is not paid.

58. Deficiency & Acknowledgement of Returns

Communication of acknowledgement and deficiency under provisions of Rule 1(7) to (9) of draft GST Refund rules are potentially litigious.

Suggestion

It is suggested to provide that refund filed will not be barred by limitation pending disposal of all deficiencies communicated as such provision would repose confidence of trade and industry in process of refund.

59. Provisional Refunds

Rule 2(1)(c) of the draft GST Refund Rules provide that no proceeding of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.

Suggestion

It is suggested that the aforesaid clause be deleted as there might be past refund claims where appeals are pending which may be finally disposed of after many more years and this may hurt industry due to potential misuse.



60. Order Sanctioning Refund

Proviso to Rule 3(1) of the draft GST Refund Rules provide that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any earlier law, an order giving details of the adjustment may be issued in FORM GST RFD-6.

Suggestion

It is suggested that this proviso be deleted as such stoppage of refund may render refund process superfluous and add one more layer of verification by the department. Department is welcome to issue garnishee orders in case of such willful defaulters.

61. Interest on Delayed Refunds

For Rule 5 of the draft GST Refund Rules it be clarified that interest will start from date of GST RFD 2 / 3. The rigour and automatic nature of the interest payable by supplier or recipient be extended to Government also.

62. Grant of refund subject to following conditions

The provisional refund under sub-section (4A) of section 38 shall be granted subject to the following conditions

- a. The person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an earlier law where the amount of tax evaded exceeds two hundred and fifty lakh rupees;
- b. The GST compliance rating of the applicant is not less than five on a scale of ten;
- c. No proceeding of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court

Suggestion

Above clause (c) may not be the right as there might be cases which were running from past period. Therefore, it is suggested to consider each application as separate.

63. Procedure for refund of tax paid on bad debts

No provisions are made for refund of tax paid on bad debts

Suggestion

Procedure for refund or adjustment of tax paid, shall be clarified in following situation

- a. *Where assessee has issued invoice & received payment for a service to be provided which is not so provided either wholly or partially or renegotiated due to deficient provision of supply of service.*



- b. Where assessee has made supply of service or goods, raised invoice & made payment of GST as per time of supply. However, subsequently value of invoice was not received from customer and it became bad debt.

64. Issue in deemed export refund

In respect of supplies made to an SEZ unit or a developer, or supplies regarded as deemed exports, the application shall be filed by the said unit or the developer or the recipient of deemed export supplies

Suggestion

It is recommended that the deemed export (deemed export for situations listed in Chapter 8 of the Foreign Trade Policy. Supplier of domestically produced duty paid goods when supplied to EOUs / SEZs / Projects under International Competitive Bidding (ICB) / Mega Power Plants / World Bank Funded Projects) need to be treated on equal footing as export and the similar provision as detailed above for actual exports of goods or services would be applicable.

65. Grounds for refund of 80% provisionally

Section 38(4A) provides that provision refund 80% of the total amount so claimed, '**excluding the amount of input tax credit provisionally accepted**', on a provisional basis. It is required give explanation for what is provisionally accepted credit. This would also leads to hardship to follow and reconcile and it would not serve the purpose of seamless credit under GST.

Suggestion

It is suggested to provide explanation for what is provisionally accepted credit. Otherwsie this lack of clarity would leads to unnecessary hardship to follow and reconcile and it would not serve the purpose of seamless credit under GST. It is suggested to provide 80% refund on total refund claim without exclusion clause.

66. Documents to be submitted with refund application

A statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of export of services

Suggestions

It is recommended that submission of BRC may not be insisted upon at the time of filing of refund application and post facto verification can be carried out by the tax authorities through e-BRC as recommended by Refund business process.



67. Comparison to Refund process Vs. Draft Rules, No procedure prescribed on following

Suggestion

It is suggested to prescribe procedure for the same to avoid confusion.

- a. Refund on account of year end or volume based incentives provided by the supplier through credit notes:
- b. Tax refund for international tourists
- c. Tax credit on inputs used for manufacturing /generation /production /creation of tax free supplies or non-GST supplies
- d. Refund for tax payment on purchase by UN bodies, supplies to CSD canteens, para military forces canteens, etc.
- e. Excess payment of tax due to mistake or inadvertence:

68. Amendments required in Annexure 1 & 2 of GST RFD-1

Following amendments be made to Annexure 1 of GST RFD -01

- A column be provided for specifying wrong payment of taxes to other heads like SGST/CGST in lieu of IGST.
- In details of invoice the term “value” be replaced with “total/ taxable value” and words “description of” be added in the column with heading “Goods/ Services”.

Following amendments be made to Annexure 2 of GST RFD -01

- In the certificate, for the words “tax and interest” the words “tax, interest & penalty” be substituted.
- Under the signature of the Chartered Accountant/ Cost Accountant, the next field be made as Membership No. / Firm No. instead of Name.

69. Amendment in Refund Sanction/ Rejection Order – Form-GST-RFD-05

- Point v. – Separate Column for demand under earlier law be provided for.

Return Rules

70. Form GSTR-4: Composition taxpayer Return

Para 10 column no. 7 & 8 of the Quarterly return for compounding taxable person i.e. GSTR-4 of the draft GST Return Rules provides for the TDS-IGST rate as well as amount.

Suggestion

*It is suggested that the **column no. 7 & 8 be removed from the given para 10** since the composition taxpayer is restricted from interstate supplies, therefore TDS on IGST couldn't*



arise. Also filing this column would automatically invalidate the taxpayer's status being composition taxpayer.

71. Form GSTR-1: Details of outward Supplies

Form GSTR-1 of the draft GST Return Rules provides for the various details required to be given by the taxpayer in respect of outward supply,

Suggestion

*It is suggested that some **other fields are required to be added** in the given form as listed below:*

- a. There could be para 9A for reporting any change in Nil Rated/Exempted supply of earlier tax period.*
- b. There should be some para to report outward supply subject to reverse charge*
- c. Outward supply which is Branch transfer/ Agent transfer if separately flagged will be easy to work while calculation annual turnover, present return has no row/column for these transactions.*
- d. Deemed Outward supply which may be free of Charge/Self-consumed/Destruction or Loss of goods/service if any, should be reported.*
- e. Along with the invoices issued during the tax period, a separate row for Debit/Credit note should also be inserted to know about numbers of Debit/Credit notes issued during the tax period since it will also be helpful in audit.*

Disclaimer: The suggestions we have provided have been contributed by CAs in IDT practice across India. All suggestions could not be vetted fully to our satisfaction, but as the time is a constraint, we are submitting after a cursory verification.