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NEED OF VOLUNTARY CERTIFICATION OF GSTR-9C

The Finance Bill 2021 has substituted the Section 44 of CGST Act, 2017, where annual return (GSTR-9) is required to be submitted along with self-certified reconciliation statement (GSTR-9C), earlier GSTR-9C was required to be certified by the Chartered Accountant or Cost Accountant. So there is no change in process of annual audit except for certification.

Now, insulation by way of certification by independent chartered accountant or cost accountant has been dispensed with and more responsibility has been casted on the self-certified person i.e. authorised signatory as well as Board of Directors. During GSTR-9C Certification, we have noticed excess availment of ITC, short payment of tax on RCM basis, short payment of outward tax liability as well as non-payment of taxes on certain taxable supplies, non-reversal of ITC under Rule 42 & 43 of CGST Rules 2017, non-maintenance of books of accounts as mentioned in Section 35 of CGST Act 2017 read with Rule 56 of CGST Rules 2017 and many more and correct liability is discharged, which is considered as voluntary payment, then there is no penalty applicable.

However, if such self-certification is done without fully scrutinizing all aspects as mentioned above, it will get detected by the during the Departmental Audit or CERA Audit or CAG Audit. Generally, such audits are conducted after end of three financial years. Once it is detected by the department, then demand can be raised under Section 73 / 74 of CGST Act 2017 and larger period is extended, since it was mis-declared in self-certified GSTR-9C.

Therefore, penalty as mentioned in Section 122 of CGST Act 2017 will be applicable. The same is reproduced below:

Quote

122. Penalty for certain offences.—

(1) Where a taxable person who--

- i. supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- ii. issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;

- iii. collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- iv. collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- v. fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
- vi. fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
- vii. takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;
- viii. fraudulently obtains refund of tax under this Act;
- ix. takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;
- x. falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
- xi. is liable to be registered under this Act but fails to obtain registration;
- xii. furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
- xiii. obstructs or prevents any officer in discharge of his duties under this Act;
- xiv. transports any taxable goods without the cover of documents as may be specified in this behalf;
- xv. suppresses his turnover leading to evasion of tax under this Act;
- xvi. fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;
- xvii. fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;
- xviii. supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;
- xix. issues any invoice or document by using the registration number of another registered person;
- xx. tampers with, or destroys any material evidence or document;
- xxi. disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

- (2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—
- a. for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;
 - b. for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.
- (3) Any person who--
- (a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);
 - (b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
 - (c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
 - (d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;
 - (e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.

Un-Quote

Further, it will be treated as offence in accordance with the clause (f) of Section 132(1) of CGST Act 2017, which is reproduced below:

Quote

132. Punishment for certain offences.—

- (1) Whoever commits any of the following offences, namely:—
- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
 - (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - (c) avails input tax credit using such invoice or bill referred to in clause (b);
 - (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
 - (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable--
 - i. in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
 - ii. in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
 - iii. in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
 - iv. in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Un-Quote

Further, certification from chartered accountant or cost accountant will insulate you from penalty and fine, since no willful or malafied intention can be proven. However, after the certification of Chartered Accountant or Cost Accountant, any issue raised by the department during their audit can be only w.r.t. interpretation and not of any errors and omission.

Conclusion:

It has been also observed that during the process of certification of GSTR-9C and while doing the reconciliation with books of accounts, Chartered Accountant and Cost Accountants also advise lot of internal control system and timely determination of correct tax amount payable and reversal of ineligible credit under Section 17 of CGST Act 2017 and also the reversal of common credit under Rule 42 & 43 of CGST Rules 2017.

Further, on determination of liabilities, if liability and interest is paid voluntary then the question of penalty do not arise. Therefore, in the interest of the taxpayer and to safeguard to the authorised signatory and directors, it is advisable to conduct GST audit through Chartered Accountant / Cost Accountant before the filing of annual return and self-certified GSTR-9C.