



# GST – RECENT NOTIFICATIONS ACTING AS OXYGEN – ENABLING EASE OF DOING BUSINESS IN INDIA

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**G**oods and Services Tax (GST) is a destination based consumption tax, which is implemented in India from 1<sup>st</sup> July, 2017.

The Act contains the following no of sections / provisions (other than its sub-sections/ clause/ sub-clause/ paragraphs) - Compiled as on 11 <sup>th</sup> January, 2018		
	Act	Rules
CGST	174 sections	162 Rules
IGST	25 sections	2 rules
UTGST	174 sections	162 Rules

We are all aware that over the past few months, there are several notifications issued till date. There are in total 13 (thirteen) amendments made to the CGST Rules. As a cursory glance on the numbers reveals the following data:

Compiled as on 11 <sup>th</sup> January, 2018		
Acts	Notifications	Circulars
CGST (Non-Tariff)	76	28
CGST (Tariff)	47	-
IGST (Non-Tariff)	12	2
IGST (Tariff)	50	-
UTGST (Non-Tariff)	18	
UTGST (Tariff)	47	
Compensation Cess (Non-Tariff)	1	1
Compensation Cess (Tariff)	7	-

Apart from the above, there are in total 12 (twelve) Orders issued till date.

The reason for stating the above facts are to bring to surface – how far these Notifications are facilitating increased degree of 'Ease of doing business' in India. Let us take some illustrative examples.

**Case (1)** - IGST Notification No: 10/2017 dated 13<sup>th</sup> October, 2017 Inter State Supply of taxable Services having aggregate turnover less than ₹20 lacs (including J&K) / ₹10 lacs in Special Category States - is exempted from obtaining registration.

#### Analysis:

- ❖ What would be the fate of those tax payers, who got themselves registered as per provisions of Sec.24(i) of the CGST Act, 2017 ? – will they be allowed for cancellation of registration ?
- ❖ Tax payers registered u/s 24(i) of the CGST Act, 2017 but cited 'Voluntary' as the cause for obtaining 'registration'. Now, these type of registered tax payers, even when their aggregate turnover does not exceed the specified threshold limit, read with the IGST Notification No.10/2017, shall not be allowed to cancel their registration. As we are aware that if a person had opted registration 'Voluntarily' then, they shall become eligible for cancelling their registration only after completion of one year from the date of their registration.

#### Impact:

- ❖ If you want to be compliant, you may be at a loss at times, especially, when you are having the stated type of Notifications.
- ❖ If cancellation is not allowed, then, meet the GST return related compliances as prescribed.

#### Suggestions:

GST Council should issue appropriate advisory/ notification / clarification, allowing tax payers including those who cited voluntary registration, to go for cancellation of their registration.

**Case (2)**-Casual Taxable Person registered u/s 24(ii) of the CGST Act, 2017 wants to get converted into a Regular Taxable Person – due to extension of ongoing activities

#### Analysis:

- ❖ 90 days + 90 Days within one financial year but 'Supply' is incomplete
- ❖ 90 days + 90 days flowing between two financial years
- ❖ 90 days completed during the year for one Supply. After a gap, another fresh supply for 60 days is received within the same financial year. Is it possible to take a CTP registration during that financial year ?

Impact:

- ❖ There is no such specific provision, as on date, for making a migration / conversion from a CTP to a Regular Taxable Person in such taxable territory.

Suggestions:

GST Council should recommend appropriate migration route to facilitate business entities/ tax payers.

**Case (3):** Change in Rates of Tax

Analysis:

- ❖ To bring in & ensure rationalization in the tax rates, there was a major change notified by reducing the tax rates of various goods/ services.
- ❖ To the extent the tax rates are reduced and the value of such tax is not declared as NIL/ EXEMPTED, there would be only deferment of adjusting its available ITC.
- ❖ To the extent, say a goods at 12% or 5% is notified as NIL/ EXEMPTED, the ITC will get blocked.

Impact:

The Taxpayer / Business Entity would tend to definitely recover the blocked credit as its 'Cost' and accordingly, the Cost of Goods / Services would tend to increase.

**Case (4) – IGST Rate Notification No.41/2017 dated 23<sup>rd</sup> October, 2017.** This notification specifies Inter-State Supplies made to Merchant-Exporters to be charged at a maximum rate of 0.1%. It therefore grants exemption from charging any rates higher than 0.1%

Analysis:

- ❖ This is a benefit granted to Merchant Exporters
- ❖ This may be an initial hindrance to the Original Supplier, who has made this supply to such 'merchant exporter'.

Impact:

- ❖ Say, the original supplier, had procured goods and or services at 5%, for which he has an ITC to such extent.
- ❖ Now, that, the outward supply would be made at 0.1%.
- ❖ This means that at a given point of time, the original supplier would have an ITC 4.9%.
- ❖ This will be a blocking of ITC. Will this be considered as an 'inverted duty structure' and the original supplier be allowed a refund of the excess amount held in ITC?

Suggestions:

GST Council should made appropriate advisory to facilitate even the Original Suppliers for getting refund of ITC due to inverted duty structure. This will facilitate their business too.

**Case (5) – IGST Rate Notification No.47/2017 dated 14<sup>th</sup> November, 2017**

Specifies the maximum rate to be charged on certain specified supplies to certain specified institutions shall not exceed 5%. It therefore grants exemption from charging any rates higher than 5%.

Analysis:

- ❖ This is a benefit granted to such specified Institutions.

- ❖ This may be an initial hindrance to the Original Supplier, who has made this supply to such specified recipients.

Impact:

- ❖ Say, the original supplier, had procured goods and or services at 18%, for which he has an ITC to such extent.
- ❖ Now, that, the outward supply would be made at 5%.
- ❖ This means that at a given point of time, the original supplier would have an ITC 13%.
- ❖ This will be a blocking of ITC. Will this be considered as an 'inverted duty structure' and the original supplier be allowed a refund of the excess amount held in ITC?

Suggestions:

GST Council should made appropriate advisory to facilitate even the Original Suppliers for getting refund of ITC due to inverted duty structure. This will facilitate their business too.

**Case (6) – Legal fiction in Invoicing Rules**

As per Rule 46A (CGST Not. No. 45/2017 dated 13.10.2017) Invoice-cum - Bill of Supply

Analysis:

- ❖ Invoice or tax invoice u/s 2(66) of the CGST Act, as per sec.31 of the Act.
- ❖ Invoice can be issued by a Regular Taxable person having levy u/s 9
- ❖ Bill of Supply can be issued by a Composition Levy Taxable Person.
- ❖ Now this Rule 46A, states 'Invoice-cum-Bill of Supply' to be issued by the supplier if it is making an outward supply of both taxable and exempted goods.

Impact:

- ❖ This is a legal fiction. Rules tends to override the Act.

Suggestions:

These type of rules should not be framed, which demonstrates a poor drafting of law and which is also bad in law.

Conclusion:

Change is constant and change for good is to be welcomed too. The much awaited notifications / circulars are facilitating in overcoming the post-implementation challenges under GST. We are also getting ready for the incoming of e-way bill which is getting implemented by this month end and also awaiting the pronouncement of Union Budget – 2018, which would be very important for the Economy as a whole. However, it is urged to the GST Council and Tax Policy Makers to make appropriate clarifications on the issues surfaced above, so as to avoid hurdles/ hindrances for both the Taxpayers and the Consumers at large.