



**Notification No.  
26/2022 issued on  
26.12.2022 effective  
from 26<sup>th</sup> December  
2022 (except Rule 37)**

**BY: Team Tattvam**



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# Proportionate ITC allowed in case of non-payment of consideration

## **Rule 37: Reversal of ITC in case of non-payment of consideration**

Rule 37 of the CGST Rules, as amended w.e.f. 1<sup>st</sup> October, 2022, provided for reversal of ITC availed on the goods / services received by it in case it fails to make the payment to the supplier within 180 days. An anomaly was created due to the above amendment as to whether full ITC was required to be reversed even in cases where partial amount was paid to the supplier

The above anomaly has been resolved *vide* this amendment made effective retrospectively from 1<sup>st</sup> October, 2022 which requires the taxpayer to reverse only the proportionate ITC to the extent of the amount not paid to the supplier, whether wholly or partially

### **Tattvam Comments:**

The above amendment reinstates the earlier legal position thereby allowing the taxpayers to avail the proportionate ITC to the extent of amount paid by them to the supplier.

# Reversal of ITC due to non-payment of tax by supplier and its re-availment

## **Rule 37A: Reversal of ITC in the case of non-payment of tax by the supplier and re-availment thereof**

This Rule provides as follows:

- ✓ Recipient has availed ITC on goods / services based on tax invoice or debit note reported by the supplier in Form GSTR-1/IFF of a tax period
- ✓ Supplier has not furnished Form GSTR-3B of the said tax period upto 30<sup>th</sup> September of the next financial year
- ✓ Recipient is required to reverse ITC so availed in Form GSTR-3B to be filed upto 30<sup>th</sup> November of the next financial year. Else, such ITC needs to be reversed along with interest provided under Section 50
- ✓ Recipient is allowed to re-avail the reversed ITC upon furnishing of Form GSTR-3B by the supplier subsequently

### **Tattvam Comments:**

The above rule allows the recipient to re-avail the reversed ITC without any time limit thereby giving relief to the recipients who had borne the incidence of tax but were not able to take ITC due to non-compliance by supplier within the prescribed time limit

# Amended procedure for verification of mobile number and e-mail address for registration

In Rule 8(1), the words and letters, **“mobile number, e-mail address,”** have been omitted

In Rule 8(2)(a), after the words “Direct Taxes”, the words **“and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number”** shall be inserted

In Rule 8(2), clauses (b) and (c) shall be omitted

## **Implications of amendment in Rule 8 of the CGST Rules (Application for registration):**

- Declaration of mobile number and e-mail address by the person applying for GST registration not required
- Verification of mobile number and e-mail address not required
- Verification of Permanent Account Number (PAN) through One-time passwords (OTP) sent to the mobile number and e-mail address linked to the PAN required



In PART A of FORM GST REG-01, in the note, for the words, **“Authorised signatory filing the application shall provide his mobile number and email address”**, the words, **“E-mail Id and Mobile Number shall be auto-populated from Income Tax database as linked with the Permanent Account Number of the applicant”** shall be substituted

In the instructions for submission of Application for Registration, paragraph 2 (Verification of E-mail id and mobile number of authorized signatory) shall be omitted

## **Implication of amendment in FORM GST REG-01 (Application for registration):**

- Amended PART A of FORM GST REG-01 to state that E-mail id and mobile number shall be auto-populated from Income Tax database as linked with the PAN of the applicant
- Verification of E-mail id and mobile number of authorised signatory not required

# Verification process where the applicant has opted for Aadhaar number authentication

**Rule 8(4A) has been substituted as under:**

**“(4A) Every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.”**

## **Implications of amendment in Rule 8 of the CGST Rules**

- Substituted Rule 8(4A) to provide for following process for completion of registration application where the applicant has opted for Aadhaar number authentication and is identified based on data analysis and risk parameters:
  - biometric-based Aadhaar authentication
  - taking photograph of the applicant(s)
  - verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the notified Facilitation Centres.

# Power to notify non-applicability of biometric-based Aadhaar authentication to certain States/ UT

After Rule 8(4A), the following sub-rule shall be inserted:

**“(4B) The Central Government may, on the recommendations of the Council, by notification specify the States or Union territories wherein the provisions of sub-rule (4A) shall not apply.”**

In Rule 8(5), after the words, brackets and figure “sub-rule (4)”, the words, brackets, figure and letter **“or sub-rule (4A)”**, shall be inserted

## Implications of amendment in Rule 8 of the CGST Rules

- Inserted new Rule 8(4B) giving power to Central Government to notify\* the State or Union territories wherein Rule 8(4A) requiring Aadhaar based authentication shall not apply

**\*Notification No. 27/2022- CT, dated 26.12.2022 has been issued to provide that Rule 8(4A) shall apply in the State of Gujarat only**



# Grant of registration/deficiency notice within 30 days in case of specified persons

In Rule 9(1) and 9(2), in the proviso, after clause (a), the following clause shall be inserted, namely: -

**“(aa) a person, who has undergone authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, is identified on the common portal, based on data analysis and risk parameters, for carrying out physical verification of places of business; or”**

## **Implications of amendment in Rule 9 of the CGST Rules (Verification of the application and approval):**

- Proviso (aa) has been inserted in Rule 9(1) and (2) to state that the applicant who has undergone biometric based Aadhaar number authentication is identified based on data analysis and risk parameters as an applicant requiring physical verification of places of business:
  - the registration shall be granted within 30 days of submission of registration application.
  - the notice in FORM GST REG-03 [Notice for Seeking Additional Information / Clarification / Documents relating to Application for (Registration/Amendment/Cancellation)] may be issued within 30 days from the date of submission of the registration application.

# Cancellation of registration on request of registered person

In Rule 12(3), after the word, “Where,”, the words, brackets and figure, “on a request made in writing by a person to whom a registration has been granted under sub-rule (2) or”, shall be inserted.

## Implications of amendment in Rule 12(3) of the CGST Rules (cancellation of registration):

- Request for cancellation of registration can be made by the Proper Officer on a request made by a person to whom a registration had been granted if such request is made in writing

# Supportive documents to be attached in case of *ex-parte* cancellation of registration

In FORM GST REG-17, after the words “on merits”, “ \_\_**Kindly refer to the supportive document(s) attached for case specific details.**” shall be inserted.

## **Implications of amendment in FORM GST REG-17 (Show Cause Notice for Cancellation of Registration):**

- FORM GST REG-17 amended requiring to enclose supportive document(s) providing case specific details in case *ex parte* decision due to non-furnishing of reply to the Show Cause Notice for cancellation of registration.

In Rule 46(f), following Proviso has been inserted:

*"Provided that where any taxable service is supplied by or through an electronic commerce operator or by a supplier of online information and database access or retrieval services to a recipient who is un-registered, irrespective of the value of such supply, a tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient."*

## Implications of insertion of proviso in Rule 46(f) of the CGST Rules

- Applicable on taxable supplies **made by or through an e-commerce operator or an OIDAR service provider** to an un-registered person, irrespective of value of such supplies
- The tax invoice issued by the above suppliers should contain the name, address, PIN code and name of the state of the recipient
- The address on invoice shall be deemed to be considered as the address on record for the recipient.

**In Rule 46A, following Proviso has been inserted which is as under:**

***"Provided that the said single "invoice-cum-bill of supply" shall contain the particulars as specified under rule 46 or rule 54, as the case may be, and rule 49."***

## **Implications of insertion in Rule 46A of the CGST Rule**

- All details as prescribed in Rule 46 or 54 and Rule 49 shall be mentioned on the invoice-cum-bill of supply issued to the unregistered person.

***Rule 138(14)** allows exemption from generation of e-way bill in case of certain items listed in Annexure*

*Annexure to Rule 138(14) has been amended as under:*

***In Sr.No.5 of column 2 in Annexure of Rule 138(14), after the brackets, word and figures "(Chapter 71)", the words, brackets and figures "excepting Imitation Jewellery(7117)" has been inserted.***

## **Implications of amendment of Annexure to Rule 138(14) of the CGST Rule**

- Annexure covers list of items on which no e-way bill is required to be generated.
- Sr. No.5 covers 'Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) and ware.
- After the above amendment, exemption from generation of e-way bill has been withdrawn for imitation jewelry falling under HSN 7117 and hence **E-waybill will be required to be generated for such item.**



# Intimation to be sent in case of GSTR-1 and GSTR-3B mismatch

As per newly inserted Rule 88C where the amount of tax liability reported in GSTR 1/IFF exceeds the amount of tax payable as per GSTR 3B by **prescribed amount or percentage**, the taxpayer shall be intimated of such difference in PART A of FORM GST DRC-01B on a common portal and a copy of such intimation shall also be sent to his email address

Pay the differential tax liability, along with interest through FORM GST DRC-03 and furnish details thereof in Part B of Form GST DRC – 01B

Furnish reply in respect of differential tax liability remaining unpaid in Part B of Form GST DRC-01B

- The details of payment/reply in PART B of FORM GST DRC-01B shall be furnished within a period of **seven days** from date of intimation received in PART A of FORM GST DRC-01B.
- Where any amount intimated remains unpaid/no explanation has been furnished within the period specified or where the explanation is not found to be acceptable by the proper officer, **recovery proceedings shall be initiated under Section 79.**

# Filing of GSTR-1/IFF debarred in case of non-compliance with Rule 88(C)

***Rule 59 (6)(d) has been inserted in pursuant to amendment in Rule 88 (C)***

Where intimation has been issued in Part A of Form GST DRC -01B, then such taxpayer shall not be allowed to furnish FORM GSTR-1/IFF unless details in relation to amount deposited or reply in respect of unpaid amount is furnished in Part B of Form GST DRC – 01B.

## **Tattvam Comments:**

- Taxpayer shall maintain a reconciliation between GSTR-1 and GSTR-3B to be provide timely explanations on receipt of DRC-01B in case of mismatch between GSTR-1 and GSTR-3B
- PART B of FORM GST DRC-01B to be filed timely in order to avoid any restriction on filing GSTR-1 of subsequent period, thereby resulting in non-reflection of ITC in GSTR 2B of its customers in relation to supply made to them leading to denial of credit in respect of such supply.
- Where reply furnished under Part B of Form GST DRC-01B is not found satisfactory, department can initiate recovery proceedings. It is pertinent to note that SCN would not be issued to the tax payer in such a case and the department can directly resort to recovery. The only remedy available with said taxpayer will be writ petition.

# Updation of Electronic Credit Ledger on the recommendation of RBI

In Rule 87, sub-rule (8) has been inserted:

*"Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common portal".*

- **Table 5, 7 and 10 have been amended to simplify the process of reporting supplies made by taxable person including supplies made through e-commerce operator.**
- **In Table 9B, the details of Refund Voucher need not be furnished separately and same needs to be adjusted against advances reported under Table 11.**
- **In Table 12, the details in respect of description of outward supply is mandatorily required to be reported . Earlier, taxpayers had an option to not specify the description where HSN code had already been reported.**
- **Separate tables have been inserted in GSTR-1 for reporting details of supplies made through E-commerce operators on which the E-commerce operators are liable to collect tax under Section 52 of CGST Act or liable to pay tax under Section 9(5), and amendments thereof [Ref. Table 14 & 14A].**
- **Separate tables have been inserted in GSTR-1 wherein E-commerce operators shall be required to report details of supplies made through him and on which he is liable to pay tax under Section 9(5) of the CGST Act [Ref. Table 15 & 15A].**

# Documents for filing of refund by Unregistered persons

**Rule 89(2) provides list of documents to be submitted for claiming refund**

**Under the said rule, clause (ka) and (kb) has been inserted which provides as follows :**

**(ka) Following documents shall be submitted where the refund is claimed by an unregistered persons in pursuance of cancellation/termination of contract for supply of service**

- **A statement containing details of invoices viz., number, date, value, tax paid and details of payment**
- **Copy of such invoice**
- **Proof of making payment to the supplier**
- **Copy of agreement or registered agreement or contract i.e., entered with the supplier**
- **Letter issued by the supplier for cancellation or termination of agreement or contract for supply of service**
- **Details of payment received from the supplier against cancellation or termination of such agreement along with proof**

**Accordingly, changes have been made in form GST RFD – 01 so as to allow the refund for an unregistered persons**

**(kb) Where the refund is claimed by the supplier in pursuance of cancellation/termination of contract for supply of service, a certificate to be issued by supplier to the effect**

- **That he has paid tax in respect of the invoice on which refund is being claimed by the applicant**
- **That he has not adjusted the tax amount involved in these invoice against his tax liability by issuing credit note**
- **That he has not claimed and will not claim refund of the amount of the amount of tax involved in respect of the invoices**



**Rule 89(2) provides list of documents to be submitted for claiming refund**

**Under the said in clause (m), after the proviso the following proviso has been inserted:**

**(m) a Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:**

***Proviso: "Provided further that a certificate, is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence"***

**In the said Rule, in rule 108 for sub rule (3) the following sub – rule has been substituted:**

- ***Where the decision/ order is uploaded on the common portal, a final acknowledgment shall be issued in FORM GST APL-02 by the concerned authority***
- ***Where the decision/order not uploaded on the portal, the appellant shall submit a self-certified copy of decision/order within 7 days from the date of filing the appeal and a final acknowledgment shall be issued in FORM GST APL-02 by the concerned authority.***
- ***The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal***
- ***Where the self-certified copy of the decision/order is not submitted within 7 days from the date of filing of appeal, the date of submission of such copy shall be considered as the date of filing of appeal.***

## **Implications of Substitute in Rule 108(3)**

- In reference to substitute in Rule 108(3), the requirement of manual submission of Appeal within 7 days of online filing of said appeal has been omitted if the appellant has uploaded the certified order of the copy on the portal.
- However, in APL -01 there is no separate head to upload the Annexure on the GST portal while filing an appeal, therefore to avoid unnecessary litigation appellant have to ensure that whether he has received the final acknowledgement or not.

# Revised Procedure for filing appeal before Appellate Authority

**Rule 109 has been substituted to provide as under:**

- **Application to the Appellate Authority by the Department shall be filed in FORM GST APL-03 and a provisional acknowledgment shall be issued to the appellant immediately.**
- **Where the decision/ order is uploaded on the common portal, a final acknowledgment shall be issued in FORM GST APL-02 by the concerned authority**
- **Where the decision/order not uploaded on the portal, the appellant shall submit a self-certified copy of decision/order within 7 days from the date of filing the appeal GST APL – 03 and a final acknowledgment shall be issued in FORM GST APL-02 by the concerned authority.**
- **The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal**
- **Where the self-certified copy of the decision/order is not submitted within 7 days from the date of filing of appeal GST APL – 03, the date of submission of such copy shall be considered as the date**

## **Amendment in FORM GST APL-02:**

- **In the said rules, in FORM GST APL-02, in the heading, after the word, figures and brackets "rule 108(3)", the word, figures and brackets "and 109 (2)", shall be inserted.**

## **Rule 109C has been inserted to provide as under:**

- The appellant may file an application for withdrawal of the appeal filed in FORM GST APL-01 (by the assessee) or FORM GST APL-03 (by the department) *vide* application in FORM GST APL-01/03W, at any time before issuance of SCN or order under Section 107(11), whichever is earlier
- However, where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority within 7 days of filing of withdrawal application
- Provided further that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107, as the case may be

## **Inserted FORM GST APL-01/03W:**

- Consequent to insertion of Rule 109C, FORM GST APL-01/03W has been inserted for Withdrawal of Appeal Application



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# Thank You

