

MEMORANDUM TO HON'BLE DY.CHIEF MINISTER, BIHAR
SHRI SUSHIL KUMAR MODI
on 04.12.2019

RULE 36(4) OF GST MAKING RESTRICTION ON AVAILMENT OF INPUT

Through insertion of new rule 36(4), restriction has been imposed on input availment and under the rule, provisional input credit availed by the taxpayer should not exceed 20% of the total input credit amount appearing in GSTR-2A of the taxpayer based on the details of the Invoices / Debit Notes uploaded by the respective supplier/s in their monthly GSTR-1.

The said provision in respect of making restriction on availment of input credit is in contravention to the section 16(2) & 41(1) of the CGST Act and above all, if the supplier/s or any taxpayer has opted to file quarterly return within the provisions of the Act, he shall not be able to avail the input credit against such transaction and in turn is liable to pay tax against his output liability without adjustment of input resulting in blockage of fund at his level.

The aforesaid decision has again caused a major confusion and dissatisfaction among taxpayers due to the changes made in the rule. Many taxpayers couldn't have filed their return after the said amendments.

It is therefore suggested to kindly not only defer the implementation of the said rule for the return/s up to the period of March'2020 but also a revisit of the said rule is necessary.

BIHAR TAXATION DISPUTE RESOLUTION SCHEME- OTS

Recently, BIHAR TAXATION DISPUTE RESOLUTION SCHEME- OTS was approved by the assembly and we're very much thankful to the government to meet our long time demand in the interest of both taxpayers and the government.

In this regard, we herein suggest that the rules to the said act may also please be notified so that the scheme gets implemented without loss of time and its validity period should be 31.03.2020.

The coverage period under scheme benefit should also be extended upto 28.02.2019 so that all pending scrutiny or assessment or audit assessment is completed and any dispute arising out are also resolved under the scheme benefit.

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Rectification / Cancellation / Fresh Issuance of Form C / F

Under the vat regime, such registered taxpayers in the state, who used to make interstate purchases against Form C / F , they were liable to issue the statutory forms to their supplier but there are so many taxpayers who failed to do so under various reasons like need rectification / amendment / cancellation of forms already issued online but having mistake therein.

It is but oblivious that in case of failure in issuing forms to their respective supplier, such person would be liable to pay the amount of differential tax, interest & penalty etc. to their supplier, which is imposed by the counter party sales tax department.

Taxpayers should not suffer only on this ground that they made mistake in issuing forms and form once issued could not be rectified.

It is requested that government should give an opportunity to issue fresh forms C / F for the vat period and to open window for a limited time period to make correction / rectification in the forms already issued so that everything related to vat get cleared.

It would give relief to many taxpayers without any loss to the government and we seek immediate action in the matter.

NEW GST RETURN FORM/s

In order to simplify GST returns, New return module has been framed and its trial version has also been made available on GSTN portal to get feedback on practical difficulties faced by the user. It has also been decided to make the new return operational from 01.04.2020

In this regard, we again reiterate our earlier comments/ feedback on the new return module.

It has been our observation and views that by and large, New Return Format is on the same line as it was in original format (GSTR-1, GSTR-2 & GSTR-3) except feature of enabling continues uploading of outward supply Invoice and to file Outward & Inward Statement i.e.ANX-1 & ANX-2 along with the main return. The time line for uploading outward supply Invoice has been kept same i.e. 10th of the following month and secondly matching of supplier's uploaded Invoices by the recipient into same month would be the same situation as was in original concept.

The return filing date has also been kept same for all class of taxpayers putting abnormal load on the server at the same time.

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Missing Invoice feature has been offered only to the Normal Return RT-1 filing taxpayers and not for SAHAJ & SUGAM. Apart, the recipient would not be able to avail input in respect of such supplier who fails to file his return for two consecutive months.

In outward statement, furnishing HSN wise & rate wise Invoice summary would again be too complex.

The payment challan PMT-08 is also one sort of summary of return asking to furnish output liability amount & input credit amount of the month, which is not possible unless the complete account for the month is not prepared and therefore objective of quarterly filing do not meet in real sense.

All these above structure would make the compliance more complex even in comparison to the present one.

In our eye's, there is apprehension to experience smoothness in the New Return Module rather more worse situation may arise and so we would suggest to review the module of New Return once again. A detailed feedback may be submitted separately by us, if there has left some possibilities to make changes.

GST RULE 138E – CHANGE IN TIMELINE & DEFERMENT OF FOR FURTHER 3 MONTH PERIOD / UP TO 31.03.2020

CBIC vide their notification No. 74/2018 dated 31.12.2018 had made provision to restrict the supplier / recipient / transporter for issuing E-way Bill EWB-01 in respect of such registered person, who fails to furnish their returns for two consecutive tax periods.

The implementation of the said provision was announced to be made effective from 21.04.2019 but deferred twice first up to 21.08.2019 and then up to 21.11.2019.

Though, we are in support of such restriction by the government against the defaulters but two month default in filing return and in turn blocking of e-way Bill issuance is quite low and it's suggested that the said two month time should ideally be raised to six month period.

The issuance of e-way bill should be blocked for such person who failed in filing return for consecutive six month period and he should be dealt as per provision of 29(2)(c) of GST Act also.

Secondly, keeping into view the other facts like lack of awareness about the said regulations by most of the stakeholders, poor return filing and above all, slow down in the economy, we suggest to defer the implementation of said provision for a further period of 3 months and if possible up to 31.03.2020.

GST GRIEVANCE REDRESSAL SYSTEM

It has been observed that GST grievance redressal system of raising ticket and to resolve the difficulties of the stakeholders has infect become just a formality because in most of the cases proper reply is not given and the ticket is closed without solving out.

TAX PAYMENT & DELAYED INTEREST

Presently, many taxpayers, who, if due to unavoidable reasons, are unable to file their returns, but want to pay their tax liability to avoid applicable delay interest, system does not allow them as payment made remains in cash ledgers, while the system admit once the liability is set off while submitting/filing return. This is unjustified for the genuine taxpayers.

It's suggested to make the system efficient for tackling such situation and no interest should be demanded if the sufficient amount is lying in any of the cash ledger till the system is modified by the GSTN.

INTER CHANGE HEADS OF TAX PAID – FORM PMT-09

Presently, taxpayers are required to pay their liability into different head namely tax / fees / interest of the respective a/c (CGST / IGST / SGST) and so even if there be balance in one head, one has to pay for the different head, if needed.

In order to address this difficulty, it was proposed to allow shifting of payment made from one head to another head in both minor and major head change. Form PMT-09 for the purpose has not yet been made available on the portal.

PAYMENT THROUGH DEBIT & CREDIT CARD

As per rule 87 (3)(2), the payment can be made through Debit Card & Credit card but the GSTN portal do not allow for the same. Necessary steps in this regard may please be taken.

DELAY RETURN LATE FEE WAIVER

GST council in its 31st meeting had decided to waive off the late fees applicable for the delay in filing return for the period from July'17 to Sep'2018 to all such defaulter taxpayers, who file their return till 31.03.2019

It was the decision which we've been suggesting for a quite long time so as to bring all such defaulters into the net giving them an opportunity to regularize their return without paying any late fees penalty and are thankful for such a nice step.

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But, the said decision was not good for such taxpayers, who had already filed their return paying late fees till 21.12.2018. It was against the principle of equality and justice for such taxpayers and also discouraging to file timely.

It's our request that the amount of late fee paid by all such person already filed their return prior to such announcement should be refunded to them. The amount so paid is not a big amount but it will give a good message among the trade & business community while creating an atmosphere of trust & co-operation.

It is pertinent to mention that at the time of introduction of GST, the government had assured taxpayers that for the 1st year, tax payers shall not be penalized for any of their fault.

Secondly, in such a case, where taxpayer is unable to file return due to technical reason, no late fee should be charged to him. For this, a procedure should be framed to get waiver of late fee.

It's also suggested that to offer one last opportunity to defaulters taxpayers to update all their pending return etc. and for this late fee waiver for all the return up to March'20 period should be offered, if filed till due to filing return for March'20 i.e 20.04.2020 and thereafter registration of failed person should be cancelled without giving any time to hear.

POINTS OF BIHAR CHAMBER OF COMMERCE & INDUSTRIES

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