



MANGALURU BRANCH OF SIRC OF ICAI



ICAI MANGALURU
1971 - 2021

FOR PRIVATE
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ONLY

E-SAMAACHAAR

EDITION-FEBRUARY 2021

MANGALURU BRANCH OF SIRC OF ICAI

ICAI BHAWAN, PADIL, MANGALURU- 575007

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Dear Professional Colleagues,



February being the second month of this year, like everyone, I hope that 2021 will see Corona virus abating due to the brilliant work of scientists and medics so that society can get back to something approaching normality, whatever normal is, in these Post -COVID times. Hope this Makara Sankranti/ Pongal & Lohri marks the end to all sorrows and pain people went through in the year 2020 and brings in happiness, wealth and good health in everyone's living.

Makar Sankranti is dedicated to Lord Sun and we are entering the period of uttarayana. It is said that Dakshinayana symbolizes the night of God or sign of negativity and Uttarayana is considered as symbol of the day of God or sign of positivity Even Lohri is a festival where we express gratitude to the almighty. We all are grateful to the almighty that we and our family could sustain in the unprecedented situation during COVID.

26th January was chosen as the day to announce India becoming a republic in the year 1930 and on the same day , the Indian National Congress denounced colonial rule and proclaimed Purna Swaraj, "Complete Freedom". The newly inducted Rafale fighter aircraft was featured on the Republic Day parade 2021. Although people were locked in their homes due to COVID during 2020 with emergence of 2021 people opened their door and started emerging successful as before with a hope that this year will give freedom to all the citizens against this deadly virus.

In the view of continued challenges faced by the taxpayers in meeting statutory compliance due to the outbreak of COVID 19 the tax audit was asked to be done on/ before 15th of January. Hoping all the Chartered Accountants have fulfilled their obligation to complete the tax audit on time. CAs not only deal with debit-credit of accounts, but they also play a vital role at a big level in Nation-Building. CAs are the foundation base of the Economy and utilizing the financial expertise, the nation gets right direction in various financial and economic related measures to enhance the decaying Indian economy and Industrial growth.

Whatever may be the course all play major role in boosting the economic development of our country. And to achieve this, all starts with the dream to make it possible.

**“To accomplish great things,
We must not only act, but also dream;
Not only plan, but also believe”**

Great things take their own time to happen .Dream means nothing if you do not have your own inclination to go for them. You can have a dream, but if you are not going to exert oneself, then what is the purpose? Your dreams are a vision you see, it is your goals, it is the reason you wake up everyday, and it is something you could never give up doing.Your success in life starts with a dream; in order to lead your dreams to success you must be determined, have courage, as well as have a passion for what you do.

**“Work hard for what you want
Because It won’t come to you without a fight,
Get addicted to your dream
And you can achieve anything you want”**

With Best Wishes of the year and Season’s Greetings,

**CA S S Nayak
Chairman
Mangaluru Branch of ICAI**

Branch Activity for the month of January 2021

01	02.01.2021	<p><u>CPE Seminar On</u></p> <p>Topic : All about 44AA to 44AE, TCS & Restrictions on Cash Transactions in Income Tax & Consequences of belated Filing of ITR's & various audit reports under income tax</p> <p>Speaker : CA K Gururaj Acharya, Bengaluru</p> <p>Chief Guest : Prof.Dr.M.S.Moodithaya Pro Vice Cancellor Nitte (Deemed To be University)</p>
02	26.01.2021	<p><u>Republic Day Celebration & Blood Donation Camp</u></p> <p>Chief Guest : Dr. Dilip G Naik Pro – Vice Cancellor Manipal Academy of Higher Education</p> <p>Guest of Honour : S.A.Prabhakara Sharma Secretary Indian Red cross Society, D K Dist.Branch</p>

Branch Activity Gallery for January 2021



Session on
Restrictions on
Cash Transactions
in Income Tax &
Section 44AA to
44AE, TCS &
Consequences of
belated Filing of
ITR's by CA K
Gururaj Acharya

Session presided over by
the Chief Guest:
Prof.DR.M.S.Moodithaya
Pro Vice Cancellor
Nitte (Deemed To be
University)





A Token of love
and gratitude for
the guests of the
day

Beginning the session
by lighting the
auspicious lamp _





Republic Day Celebrations at the Branch

Starting the Republic Day Celebrations by lighting the Lamp by our Chief Guest Mr.Dilip G. Naik and the Guest of Honour Mr. S A Prabhakara Sharma





Felicitation of the Senior Members of the Branch

Blood Donation Camp in association with The Indian Red Cross Society held at the branch



Impact analysis & comments on critical changes made in GST **w.e.f. 1st January 2021.**

1. Background

The year 2020 can be easily be labeled as 'coming out of comfort zone' year for the entire world. This year has seen series of changes in GST as well like E-Invoicing, proposed changes in GST Returns, Introduction of QRMP scheme, GSTR-2B and auto populated GSTR-3B. Department has also come across large number of GST fraud cases involving the use of fake invoices for wrong availment of input tax credit (ITC), which is used to pay GST on outward supply since the rollout of GST by the Central GST authorities as well as State GST authorities. Many entities involved in availing and passing on input tax credit (ITC) fraudulently were booked. The Central Board of Indirect Taxes and Customs (CBIC) under the Department of Revenue (DoR) made several changes to deal with the menace of fraudsters who avail and pass on ineligible ITC by fake or fly-by night firms.

2. Restriction for payment of taxes through ITC - Rule 86B

Businesses with monthly turnover of over INR 50 lakh will have to mandatorily pay at least 1 per cent of their GST liability in cash, the finance ministry said as it moved to curb evasion by fake invoicing. The Central Board of Indirect Taxes and Customs (CBIC) has notified certain changes to the Goods and Services Tax (GST) Rules, bringing in stringent conditions on settlement of Tax liability using input tax credit.

The Government by way of [Notification No. 94/2020 - CT dated 22nd December 2020](#) placed absurd restriction that payment of taxes through utilization of balance from electronic credit ledger cannot exceed 99% of such tax liability in case where the value of taxable supply in a month exceeds 50 Lakhs rupees [other than exempt supply and zero-rated supply] w.e.f. 1st January 2021.

It has to be noted that S. 49(4) of CGST act provides that *"The amount available in the electronic credit ledger may be used for making **any** payment towards output tax...."*

The section when clearly provides that credit could be used towards payments of any liability, it is well settled principle of law when section enables then rule which is subordinate to section cannot have an overriding effect, it could be said that placing restriction on utilization of credit to max 99% is ultra vires to the CGST Act and not required to be followed moreover such adverse rules are breaching the basic

principles of Natural justice as ITC is the property of taxpayers. These principles have been confirmed in the past by the Supreme Court in various cases.

However, this restriction would not be applicable to the following where

- (i) Paid Income Tax of 1 lakh or more in each of last two FYs by person or the proprietor or Karta or the MD or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees
- (ii) Claimed refund of ITC on zero-rated supplies of 1 lakh or more in the preceding FY
- (iii) Claimed refund of ITC on Inverted duty structure of 1 lakh or more in the preceding FY
- (iv) the registered person has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively, up to the said month in the current financial year; or
- (v) the registered person is –
 - Government Department; or
 - a Public Sector Undertaking; or
 - a local authority; or
 - a statutory body:

The weirdest part is excluding themselves from applicability of such harsh rule is nowhere giving a satisfaction. The Government seems to assume that all taxpayers are availing ITC in fraudulent manner as they don't have good measures to catch hold of fraudsters and hence even bona-fide persons would be harassed by these unreasonable and stringent provisions.

Impact Analysis: Restriction of utilization of ITC up to 99% of the tax liability has been newly inserted under Rule 86B for which there is no restriction laid down in the Parent Act under GST. It is a well settled principle of law that if a delegated legislation goes beyond the power conferred by the statute, such delegated legislation has to be declared ultra vires. The delegated legislation is to supplant the statute and not to supplement in itself. It is also important to note that 1% of cash liability in terms of Rule 86B does not include payment made through cash liabilities in the nature of RCM transaction.

One may rely on the following principles

- i. In case of **Sukhdev Singh v. Bhagat Ram - AIR 1975 SC 1331**, the Constitution Bench has held that the statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific

power conferred by the statute to make rules and regulations establish the pattern of conduct to be followed.

- ii. In case of **State of Karnataka and Another v. H. Ganesh Kamath etc. - AIR 1983 SC 550**, it has been stated that it is a well settled principle of interpretation of statutes that the conferment of rules making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.
- iii. The Apex Court in case of **Union of India vs. S. Srinivasan 2012 (281) ELT 3 (SC)** held that “If a rule goes beyond the rule making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it.”

From the above cases, it could be said that since there is no power given under the Act Restricting the utilization of ITC up to 99% of the tax liability, the same usurp delegated legislation, ultra vires to the CGST Act, 2017 and hence unconstitutional - One may under intimation to department may not follow the said rule

For Genuine & Honest Taxpayers it is important to note that rule gives cumulation facility where a taxpayer has to keep a track each month that cumulative discharge of output tax liability in cash in the current financial year is more than 1% up to the filing of return.

However, in the beginning of the financial year, Rule 86B would be a hardship for even the Large and Genuine taxpayers and it is estimated such restriction would impact more than 45000 entities from date of its applicability.

In this regard Section 21(g) requires invocation of cancellation in case of non-compliance with Rule 86B and to monitor compliance would be a challenge for various Professionals.

CBIC so far have booked about 12000 cases and arrested 365 persons due to frauds in GST

[Source:

https://twitter.com/cbic_india/status/1341748308394446848?ref_src=twsrc%5Egoogle%7Ctwcamp%5Eserp%7Ctwgr%5Etweet].

However, the actions of Government are not justified by bringing stringent provisions which will affect other 1.27 crores taxpayers. This clearly projects the lack of trust of the government on the taxpayers and creating the negative atmosphere in the business. These stringent provisions will have adverse impact on other initiatives of the government like Make in India, FDI policies, etc.

At this juncture the paper writer would remind that the Hon'ble Finance Minister of India Smt. Nirmala Sitharaman in the budget speech provided that, ***"Our government would like to reassure taxpayers that we remain committed to taking measures so that our citizens are free from harassment of any kind."***

3. Amendment in Rule 36(4) - Restriction on ITC to extend of 105% eligible ITC in GSTR-2A or BoA's whichever is lower

Rule 36(4) was introduced to restrict the availment of credit on invoices and debit notes uploaded by the supplier in GSTR 1 up to 10% [20% for period 01.10.2019 - 31.12.2019] of the eligible credit available on invoices and debit notes details of which have been uploaded by the suppliers in GSTR 1.

Following are the amendment made to this provision w.e.f. 1st January 2021:

- a. Recipient could avail the eligible credit on invoices and debit notes uploaded in GSTR-1 which has been furnished by the supplier. Earlier only uploading the details in GSTR-1 but GSTR 1 not furnished would suffice the compliance of such provision. However, now filing of GSTR 1 by the supplier has been mandated to avail the credit by the recipient.
- b. Restriction on availment of ITC has been reduced from 10% to 5%. Recipient can take the credit up to 105% of the eligible credit available on invoices and debit notes which have been furnished by the supplier in GSTR-1.

Impact Analysis: As we are aware one of the basic principles on which the idea of implementation of GST was floated in India was 'seamless flow of credit' and but Govt with its unwarranted restriction has vanished the word seamless Due to various restrictions in law, as of now, seamless flow of input tax credit does not seem to be a reality.

In addition to apportioned credits, restricted credits and blocked credits, rule 36(4) has been a major night mare to all the tax payers and is continuing to be worse.

To add insult to the injury, the Government has issued [Notification No. 49/2019 – Central Tax on 9th of October 2019](#) amending [CGST Rules 2017](#) with Central Goods and Services Tax (Sixth Amendment) Rules, 2019 and added a sub-rule 4 to Rule 36 which states that ‘Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent (**Further amended to 10% w.e.f. 1st January 2020 and now 5% w.e.f. 1st January 2021**) of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37’.

It is a well stated principal that substantial benefit of credit should not be denied due to the default by vendors. Similarly, provisions/ disputes in Central Excise, Service Tax and VAT have been held to be unreasonable in the past in the following decisions wherein held credit cannot be denied when the vendor did not deposit taxes:

- a. The Honorable Supreme Court in the case of **Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others [TS-2-SC-2018-VAT]**, has dismissed the Special Leave Petition filed by the Revenue against the decision of the Honorable High Court of Delhi in the case of Arise India Limited and others Vs. Commissioner of Trade & Taxes, Delhi and others [TS-314-HC-2017(Del)-VAT] (“Arise India case”). The Honorable High Court of Delhi held Section 9(2)(g) of Delhi VAT Act to the extent it disallows Input tax credit (“ITC”) to purchaser due to default of selling dealer in depositing tax, as violative of Articles 14 and 19(1)(g) of the Constitution of India.
- b. In **Commissioner of CE vs Kay Kay Industries (2013-TIOL-41-SC-CX)** that the manufacturer cannot determine whether his supplier has discharged excise duty on the goods which are supplied to the manufacturer by him.
- c. In the case of **Bharti Telemedia Ltd. Vs. Union Of India & Ors.** - [Appeal Number : W.P.(C) 6293/2019], the Delhi High Court has issued a notice to the UOI stating that Input Tax credit (GST) cannot be denied to recipient for default on part of the supplier as the Department has been vested with all the powers to recover any revenue lost owing to non-payment of taxes by erring suppliers. However, the above is not a final decision and such view could be validated under GST once there is a final decision in this regard from the Apex Court of India.

Seeing the earlier trend there could be possibility that credit would not be allowed in future if supplier has not uploaded details in GSTR 1 and filed the same. Recipient of supplies shall ensure that all the vendors upload the invoices in GSTR 1 and file the returns which will ensure compliance of this Rule.

Further, the restriction placed in Rule 36(4) is ultra vires CGST Act, 2017, as it appears to have been inserted in Rules in accordance with Section 43A of CGST Act, 2017. Section 43A was inserted by CGST Amendment Act, 2018, which is however, not notified as of date. Where section is not yet notified, the above rule would be ultra vires the law.

Further one may need to appoint one executive exclusively for the purpose for doing the reconciliation of ITC between books of accounts & GSTR-2A/2B in GSTN Portal. His job would only be to follow up with vendors for continuous filing of GSTR-1 Returns. Instead of doing business one may need to be behind vendors for filing the GSTR-1 returns from their end which is against article 19(1) (g) of the constitution.

4. Hurdles to be crossed for availing ITC

- Section 16(1) and (2) - Check condition for availment of ITC
- Section 17(5) Check eligibility
- GSTR-2A/2B invoice details reconciliation
- Payment by vendor - Follow up with vendor whether he filed GSTR-3B and paid GST of invoice issued
- Rule 36(4) restriction 105% of eligible ITC in GSTR-2A
- Rule 42 and 43
- Rule 86B Restriction for payment of taxes through ITC maximum 99%
- Rule 86A Check whether ITC is blocked or not
- Appoint an entire team for above procedure instead of doing business

Isn't it's so easy to avail ITC? One may think to expense the ITC itself, it has become more direct tax rather than indirect tax - Credit has lost its presence itself under GST.

5. Communication between Recipient and Supplier Taxpayers on GST Portal

A facility of 'Communication Between Taxpayers' has been provided on the GST Portal, for sending a notification by recipient (or supplier) taxpayers to their supplier (or recipient) taxpayer, regarding missing documents or any shortcomings in the documents or any other issue related to it. This facility is available to all registered persons, except those registered as TDS, TCS or NRTP.

The main features of this facility are summarized as below:

- A. **How to use the facility on GST Portal:** Taxpayers can send notification, view notification, send reply and view replies to the notifications on their dashboard after login.
 - a. To send notification navigate to - **Services > User Services > Communication between Taxpayers >** and select **Compose** option.

- b. To view any new notification received or any reply received select **Inbox (Notification & Reply Received)** option.
- c. To view any new notification sent or reply sent select **Outbox (Notification & Reply Sent)** option.

B. How to send a Notification

- a. While composing a notification under **Send New Notification** tab, select the **Supplier** option to send notification to a Supplier, otherwise select **Recipient**.
- b. In the **Document Details** section, select the **Action Required** by Supplier/ Recipient from the drop-down list and enter required details.
- c. Up to fifty documents can be added in a notification.
- d. The sender can also add Remarks (up to 200 Characters) in the box provided for the same.

C. Some other features

- a. The counter party taxpayer will receive an e-mail on their registered e-mail address and an SMS on his registered mobile number for all notifications received.
- b. An alert will also be given to Recipient/Supplier on logging into the GST portal.
- c. A taxpayer is allowed to send up to 100 notifications to a single GSTIN for a particular tax period.
- d. The recipient can upload the details of missing documents (not uploaded by their supplier in his Form GSTR-1) and send a notification to their supplier, using this facility. Supplier can then add such documents directly in their Form GSTR-1, if not reported earlier.
- e. The functionality to upload and download the documents is not available as on date and will be made available soon.

6. Amendments in registration provisions:

(i) Amendment in Registration under GST Law:

A.Addition to procedure of verification: Earlier registration under GST could be made either after Aadhaar authentication or after physical verification of place of business. However, amendment has been made to provide additional option before registration along with additional requirement as follows:

Application shall be followed by:

- a. biometric-based Aadhaar authentication and taking photograph, unless exempted under subsection (6D) of section 25, if he has opted for authentication of Aadhaar number;
- b. taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done;

Of the applicant where applicant is individual or such individual in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual as notified under notification 19/2020 dated 23rd March 2020.

Also, verification of original copy of the documents uploaded would be done with the application in FORM GST REG-01 at one of the Facilitation Centers notified by the Commissioner and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.

B. Additional time provided in the process of granting registration of the applicant:

- a. Department shall be required to review and grant registration within 7 days against 3 days as provided earlier from the date of filing of registration application.
- b. Where the applicant fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication or where department feels fit to carry out physical verification the time limit for grant of registration shall be 30 days instead of 7 days.
- c. Where the application submitted is found to be deficient, either in terms of any information or any document required to be furnished or where the proper officer requires any clarification of information provided or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within 7 working days instead of 3 working days.
- d. Where the applicant fails to undergo Aadhaar authentication or does not opt for Aadhaar authentication or where department feels fit to carry out physical verification the time limit for grant of registration shall be 30 days instead of 7 days the notice in FORM GST REG-03 may be issued not later than thirty days from the date of submission of the application.

In case within above timelines actions are not taken then the application for grant of registration shall be deemed to have been approved.

Impact Analysis: This additional procedure has mainly added to curb the fake registration which has increased in last few years. The registration process will now be longer and more time consuming. Further Biometric verification and physical verification of documents at facilitation centres made mandatory will make it cumbersome specially in case of big companies where every new registration will require authorized signatories to visit facilitation centres for biometric verification along with physical verification of documents.

(ii) Amendment in Cancellation of Registration:

A. Following amendments have been made to provisions under cancellation of registration under Rule 21:

- a. Registration would be liable to be cancelled if the registered person issues invoice or bill without supply of goods or services or **both** in violation of provisions of the Act, or the rules made thereunder. The word “both” was missed to be added which has now been added.
- b. Rule has mainly focused on various scenarios where registration could be cancelled. Now, following additional reasons have been added where registration could be cancelled:
 - Avails input tax credit in violation of the provisions of Section 16 and the rules made thereunder.
 - Furnishes the details of outward supplies in FORM GSTR-1 for one or more tax periods in excess of the details of outward supplies declared by him in FORM GSTR-3B u/s 39 for the said tax periods.
 - Violates the provisions of Rule 86B.

B. **Following amendments have been made to provisions under suspension of registration under Rule 21A:**

- a. Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled u/s 29 or u/r 21, he may suspend the registration **without affording the said person a reasonable opportunity of being heard**, pending the completion of the proceedings for cancellation of registration.
- b. **A new sub-rule shall be inserted after sub-rule 2, namely (2A):** Comparison of the details furnished in FORM GSTR-3B u/s 39 could be taken place with
 - a) The details of outward supplies furnished in FORM GSTR-1; or
 - b) The details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1 i.e., GSTR 2B, or such other analysis, could be carried out on the recommendation of the Council.

Where such comparison shows that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31, highlighting the said differences and anomalies and asking him to explain, within a period of 30 days, as to why his registration shall not be cancelled.

For the said sub-rule (2A), following additional provision has been imposed:

- The said person shall not make any taxable supply during the period of suspension and shall not be required to furnish any return u/s 39.
- The suspension of registration under sub-rule (2A) shall be deemed to be revoked upon completion of proceedings of cancellation u/r 22.
- No refund shall be granted u/s 54, during the period of suspension.
- The proper officer shall issue an order in FORM GST REG-19 within 30 days from the date of reply to the show cause notice intimated through FORM GST REG-31, cancel the registration with effect from date determined by him and notify the taxable person.
- In response to the notice issued under sub-rule (2A), if the proper officer is satisfied, he may drop the proceedings.
- The suspension of registration u/r 21A may be revoked by the proper officer anytime during the pendency of the proceedings for cancellation.

Impact Analysis: Clarification has been issued by CBIC stating that where there is clerical error in filing of return, GSTIN will not be cancelled. Only in fraudulent cases where there are significant discrepancies based on data analytics and sound risk parameters, and not mere clerical errors, the action of suspension and cancellation will be taken up.

In case, where the amount of GST paid by the recipient to the supplier is ultimately not paid to the Govt., the department may invoke Rule 21. Furthermore, Rule 21A (2) provides that at least suspension of GST Registration may be done in case of violation of Rule 21. The suspension can now happen even without a hearing. The vires of Rule 21A (2) with Article 14 of The Constitution may be tested in time to come.

Again, Rule 21A(2A) is a stringent Rule whereby in case of significant differences between GSTR 2A & GSTR 3B or between GSTR 1 & GSTR 3B, suspension of GST Registration can be invoked immediately and in future cancellation of GST Registration too can be Invoked.

Further no explanation has been provided as to how much variation may be considered significant.

It is also important to note that Clarification has been issued by CBIC stating that GST laws passed by the Parliament and state legislatures provide that GST registration is liable to be cancelled for those who have not filed 6 or more returns. It is therefore wrong to say that the cancellation will be done without reasons. To protect the interest of revenue, this provision has been put in the law so that fraudsters do not run away with GST collected from their customers.

It may be further noted that no cancellation of registration would be done without giving proper opportunity of hearing to the taxpayer. Immediate action for suspension is necessary in cases where unscrupulous operators seek to pass on huge fake credit by gaming the system. It is specifically given that such action will not affect genuine taxpayers and will provide them a level playing field. Moreover, suspension may be revoked by the officer based on the taxpayer's representation.

7. Amendments in E-way Bill provisions:

Validity of E-Way Bill: Earlier one day was permitted for transportation of goods under cover of E way bill for 100km. Now the same has been increased to 200km w.e.f. 1st January 2021. This would be very difficult for the transporter to ensure that this time limit is met for compliance for validity of E way Bill.

Additional reason has been added for blockage of E way bill facility: The following are the reasons:

- a. a person, whose registration has been deemed to suspended on submission of application of cancellation under the Rule 21(A)(1) or
- b. where proper officer has reason to believe that registration needs to be cancelled under Rule 21(A)(2) or
- c. Sub-rule (2A) of rule 21A which is discussed above.

Change of wording in Rule 138(E): It is important to note that no person shall be allowed to furnish E way bill in case such person has not furnished returns for a consecutive period of two months. Such provision has been amendment to restrict generation of E way bill in case returns have not been furnished **for two tax periods**.

This provision has been amended to accommodate the new scheme introduced i.e. Quarterly return monthly payment (QRMP) where registered person having turnover less than INR 5 crores are allowed to file GSTR 3B Quarterly effective from 1st January 2021. Even E way bill shall not be generated for the persons following QRMP scheme if 2 consecutive quarterly returns are filed.

8. Restrictions in filing of GST returns:

Following are the tax payers have been restricted for filling GSTR 1 or invoice furnishing facility (IFF) under Rule 59(5).

- a. Taxpayer has not filed GSTR 3B for preceding two months.
- b. Taxpayer required to furnish GSTR 3B for every quarter, has not filed GSTR 3B for preceding tax period.
- c. Taxpayer who is restricted from using the amount available in electronic credit ledger to discharge his liability towards tax in excess of ninety-nine per cent of such tax liability under rule 86B, has not filed GSTR 3B for preceding tax period.

Impact Analysis: In this case it is important for recipients to ensure that the GSTR 3B of their suppliers is filed and the amount of GST is reflecting in their GSTR 2A before they may payment of the GST amount to the suppliers. It is important to take a declaration from all the vendors that GST in respect of amount collected has been actually paid to the Government. However again restriction have not been provided through parent law but provided as notified through rules which is against the objective of GST “Seamless credit” and principles laid down by the Apex courts various times.

9. De linking of ITC on Debit note with Invoice Date:

In terms of Section 16(4) the registered person would not be entitled to take ITC in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing 3B for the month of September following the end of financial to which such invoice or **invoice relating to such debit note** pertains or furnishing of relevant annual return, whichever is earlier.

It may be noted that the time limit to avail ITC with respect to the tax charged on the debit note before the amendment u/s 16(4) of the CGST Act, 2017 was linked to the invoice date and not the date of the debit note. This has resulted in hardships to the industry especially cement industry where retrospective price increase is a very common feature.

However, in recent Finance Bill, 2020, clause 118 seeks to amend section 16(4) of the CGST Act so as to delink the date of issuance of debit note from the date of issuance of the underlying invoice for purposes of availing input tax credit. Hence the time limit for availment of credit based on the debit note would be computed from the date of the debit note and not based on the invoice related to such debit note.

After the amendment, section 16(4) would read as follows:

A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.

The amendment proposed by the Finance Bill, 2020 by way of amendment of section 16(4) seems to be clarificatory in nature to clear the ambiguity in enforcement of the provisions of the GST law which is new and developing. Therefore, the amendment could be applied retrospectively w.e.f. 1st July 2017 onwards. However, Notification No. 92/2020-CT dated 22nd December, 2020 has notified that the same would be effective from 1st January 2020.

Example: If an invoice was issued, say during Feb '19 and a debit note pertaining to such invoice is issued during Sep '19 then, prior to this amendment, the last date for taking credit in respect of this debit note would have been the due date of filing Form GSTR-3B for the month of September 2019. However, post this amendment, the last date for taking such credit would be the due date of Form GSTR-3B for the month of September 2020 as the debit note was issued in the FY 2019-20.

Therefore, we can take a view that ITC in respect of debit note issued now with respect of invoices issued for 2017-18 can be availed by the recipient.

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**CA Rakesh Kamath,
Udupi**

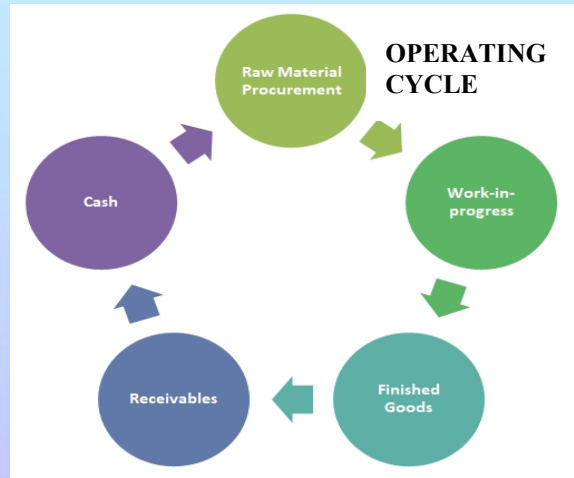
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A GLIMPSE INTO STOCK AUDIT

The survival of any business unit mainly depends on its liquidity. Liquidity is the life blood of a unit which ensures that it survives in its worst-to-worst conditions. Liquidity is ascertained from the availability of the working capital with the business unit. The operations of the business unit move through various stages of Operating Cycle.

Each process / stage of the Operating Cycle will take some fixed number of days and at each stage the funds of the unit gets blocked into various Current Assets. The Working Capital requirement depends upon the availability of credit in the market, manufacturing process, availability of buyers for the product and terms of payment offered to the customer.

Smaller business units, may sometimes be in a position to utilize their own sources of funds for their working capital and are able to smoothly run their business activities. However, as the size of the business grows the funds at the disposal of the businessman may not be sufficient, to source the raw material, to pay the overhead costs etc. Any failure to arrange for raw material due to insufficiency of funds, all subsequent processes may fail. Irrespective of the stoppage of operations, the overhead cost will have to be incurred and may lead to financial distress.



To avoid this risk, it is always advisable for the business units to have a working capital finance from the banks. Banks lend in the form of Overdraft Facility or Cash Credit facility. When the main security for the working capital facility is Stock/ Book Debts/ Both, it is generally called Cash Credit facility and when it is given on the security of any other Immovable/Movable Assets or without any security, it is called Overdraft Facility. Both these facilities serve the same purpose.

Process of Sanction of Working Capital Finance

When the Business unit approaches the Bank for Working Capital Finance, the following documents along with application are normally required to be submitted:

- ✓ Audited Financial Statements for latest 2 to 3 years.
- ✓ Detailed Projections for next 2 to 3 years, with justification for requested Working Capital Bank Finance.
- ✓ Month wise details of Sales, Purchases, Stock, Debtors and Creditors from the beginning of the year (April) up to the previous month.
- ✓ GST / other monthly returns if any.
- ✓ Any other documents as may be required and called for by the Bank for proper appraisal of the request.
- ✓

The Bank processes the request of the applicant after making all necessary enquiries, unit visits and proper due diligence. If the request is found genuine, the facility applied for may be sanctioned.

The Sanction Terms normally contain the following along with several other conditions:

- ✓ The borrower has to submit the Stock and Book debt statements on a monthly / quarterly /half yearly/ yearly basis. The Stock Statement formats of all the banks will have a provision to fill up the details with regards to the Opening Stock, Purchases made during the month, Sales / Removal of Stock either for Sale or Manufacture and Closing Stock. These details are invariably to be provided

by the borrower for each element of inventory say Raw Material, Work in Progress and Finished Goods.

- ✓ Similarly, the book debt statement will also contain details as to the Opening Balance of the Debtors, Credit Sales made during the month, Recovery made during the month and Closing balance with the age wise classification of debtors as to above 90 days and less than 90 days. Details of Creditors also needs to be provided in the Stock Statement.
- ✓ Stock and Book debts need to be hypothecated to the Bank
- ✓ Stock should be Insured comprehensively.
- ✓ Cash Credit Facility should be renewed at regular intervals say yearly or once in two years.
- ✓ The Bank's hypothecation charges should be prominently displayed at the factory / place of business
- ✓ Borrower has to contribute his share of margin for working capital as specified by the bank
- ✓ The facility can be further collateralized by say immovable / movable securities.

On acceptance of the terms of sanction and on execution of necessary documents, the facility is ready for release. The account is permitted to operate like a Current Account with overdrawn limit up to the sanctioned limit. The Limit is subject to drawing power calculated based on the Stock and/or Book Debt Statements submitted by the borrower at regular intervals as per the terms of sanction.

The Branch Manager or the Authorized Officials are expected to conduct inspection as per the guidelines of the Bank at regular intervals. However, the Bank management needs additional assurance, that the details given by the borrower relating to stock and/or book debts are extracted from the books of accounts and for this purpose, may appoint external qualified person normally Chartered Accountants in practice for undertaking the Stock Audit for large Borrowal accounts say above Rs. 200 Lacs.

Approach to Stock Audit

On receipt of an Appointment Letter and its due acceptance, the Auditor in consultation with the branch officials, has to fix the date and time for visiting the branch and the business unit of the borrower.

The stock audits formats are provided by the Bank and the information required are to be collected at the Branch Level and the Business unit level.

Information/ Details to be collected at the Branch

- ✓ **Application for the Overdraft Facility:** This will provide to the Stock Auditors, the information such as Name of the Borrower, Address, Constitution, Nature of activities, Names of the Promoters, Limit Requested etc.,
- ✓ **Process/ Appraisal Note and Sanction Letter:** This will enable the Auditor to collect the information on the limit sanctioned, details of the Main Security either in the form of Stock or Book Debts or both, Collateral Securities to be provided, Rate of Interest and all other conditions that need to be full filled before availing the facility sanctioned to the borrower. It also gives a fair idea about the projections on which the bank has relied upon while sanctioning the cash credit facility.

- ✓ **Stock Statement File:** The information such as the Monthly Stock Position, Monthly Purchases and Sales, Monthly Credit Sales and Recoveries, Closing Debtors and Creditors balances etc., can be ascertained.
- ✓ **Insurance policies:** The insurance coverage on stock and also on collateral securities, the various types of risk covered such as fire, riot, earthquake etc., location of the assets, Banker's charges on the policies, validity of the insurance etc., are noted.
- ✓ **Latest Audited Financial statements**
- ✓ **QIR (Quarterly Information Report)**
- ✓ The soft copy or the hard copy of the **Statement of Borrowal Account**
- ✓ **Verification of Drawing power limit** entered in the Bank's software and the Actual Drawing Power as per the Stock Statement.

Information to be collected and Audit Approach at the Business Units

The main purpose of the unit inspection is to verify the following:

- ✓ The books of accounts
- ✓ Verification of physical stock
- ✓ Existence or non-existence of internal control
- ✓ Quality of stock.

Checklist

- ✓ Monthly Summary of Debtors, Creditors, Sales and Purchases from beginning of the year to the month previous to the unit inspection, needs to be obtained and compared with the figures given in the stock / Book Debt statement. If the variations are large, it needs to be reported in the audit observations.
- ✓ Turnover declared in the monthly GST returns has to be verified with the Turnover declared in the stock statement as well as with the books and deviations are to be reported.
- ✓ The payment of Statutory dues such as PF, ESI, GST should be verified and reported if not paid. Audit report formats of some banks expect specific comments on this aspect.
- ✓ Stock statement for the previous month / months to be generated from the Auditee's software and compared with stock statements, and if the variation is high, needs to be commented upon in the report
- ✓ Statement of Stock position on the date of inspection (or of the previous day) should be called for and stock needs to be physically verified. Some of the banks expect the auditors to mention the percentage of stock verified from each category of inventory say Raw Materials / Consumables, Work in Progress and Finished Goods. The auditor has to exercise best of his judgment for

verification of stock, as the method applied in one unit may not be suitable in another unit due to the difference in nature of stock.

- ✓ The recoveries made from debtors have to match with the credit in the Cash Credit account. If huge variations are noticed it should form a part of audit observations. Normally, limit is sanctioned with the condition that the borrower should deal exclusively with the overdraft lending bank. Hence the recoveries from debtors if not matched with the turnover in the account, it gives an indication of deviations from the sanctioned terms and needs an explanation from the borrower.
- ✓ If the borrower is permitted to do the transactions in some other bank, the statement of account with such other bank should form a part of stock statement for the respective period.
- ✓ Debit / withdrawal transactions should be for purchase of stock and normal administrative expenses only. If withdrawal is seen for any other purpose say personal drawings etc., it should form part of audit observations. This can be verified from the trial balance or balance sheet or ledger accounts maintained by the borrower. For the purpose, the auditor may randomly select withdrawal transactions and verify its treatment in the books of accounts.
- ✓ The valuation of stock should be given special attention. For this purpose, the purchase invoices are to be called for and the cost per unit of some selected items should be compared with the value stated in the stock statement and difference if any needs to be reported.
- ✓ Book debt statement of latest month generated from the software to be compared with the statement submitted to the branch, to identify manipulation if any. Similarly, age wise classification of Debtors has to be generated from the software and compared with the statement submitted to the Bank.
- ✓ The sales projections for the Audit period to be compared with Actual Annualized Sales. Huge variations, if any needs to be brought to the notice of the management by way of audit observations.
- ✓ The figures of Closing Stock, Creditors and Book Debt as at the year-end stock statement to be compared with figures stated in the corresponding Audit Financial Statements and differences if any, having significant bearing on the drawing power needs to be reported.
- ✓ Negative variations arising from the comparison of the Projections with the Actual Quarterly performance are to be reported in the Audit Observations.
- ✓ Huge cash withdrawals, personal drawings, turnover in the account, payment to persons not connected with the business, frequent over drawings, adhoc sanctions, outward or inward cheque returns etc., to be scrutinized from the statement of accounts and variations needs to be reported in the Audit observations.

Audit Report

All the information gathered above and filled in the format are reviewed for Audit observations specifically relating to

1. Inadequacy in the Drawing Power
2. Inadequacy of the Insurance Cover

3. Availability of Monthly Stock statements and variations in the amounts when compared to the system generated reports provided by the Business units.
4. Inadequate turnover compared to limit sanctioned in the Borrowal Account
5. Working condition of the unit
6. Non-Compliance of terms of sanction etc.,

Draft copy of the report with the detailed observations are to be submitted to the Branch for the Branch Managers comments or clarifications. The Auditor's observations are escalated by the branch to the borrower and an opportunity to intimate any disagreement with the matters reported in the draft report be given. Once consensus is arrived at, the final report is to be submitted to the branch with copies to the controlling offices as per appointment letter.

To conclude, though the process looks simple, all of us have experienced difficulties at the actual execution of our work. The difficulty normally faced are:

- ✓ Lack of co-operation from the borrower either to give the information or not allowing us to view the software
- ✓ Incomplete books of accounts
- ✓ Not having an inhouse permanent accountant and excessive dependency on external parties for each and every information
- ✓ Time constraint etc.,

In spite of all the above difficulties, we are expected to do justice to the assigned task and any shortcomings in the reporting may lead to serious implications.

It is a known fact that, inspite of all the care, precautions, due diligence etc., by the Banks, Branch Officials, regulatory authorities etc., there is no absolute certainty that the borrower account will not turn bad. However, our careful approach towards the assignment, supported by proper working paper, will definitely protect us from any charges of negligence.



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SUBHASHITHAS

GREED

अपि मेरुसमं प्राज्ञमपि शूरमपि स्थिरम् ।
तृणीकरोति तृष्णैका निमेषेण नरोत्तमम् ॥

Even if a man has steady, clever, brave mind like the Meru mountain.
Greed can damage him like grass in a matter of moments.

GREAT PEOPLE

न कालमतिवर्तन्ते महान्तःस्वेषु कर्मसु ।

Great people never delay their duties.

TO ATTAIN SALVATION

विद्यां चाविद्यां च यस्तद्वेदोभ्य सह ।
अविद्यया मृत्युं तीर्त्वाऽमृतमश्नुते ॥

One who knows both, the material science as well as the spiritual science, transgresses fear of death by the former, i.e. by proper bodily and mental efforts, and attains salvation by the latter, i.e. by the purity of mind and soul.

KARMA

यद्यत्संद्दश्यते लोके सर्वं तत्कर्मसम्भवम् ।
सर्वा कर्मानुसारेण जन्तुर्भोगान्भुनक्ति वै ॥

Whatever is seen among men (whether pleasure or pain) is born of Karma (actions). All creatures enjoy or suffer, as per their past actions.

SELFLESSNESS

स्वस्मै स्वल्पं समाजाय सर्वस्वं ।

A little bit for yourself and everything for others!

WORDS OF WISE

- ✧ Success is not measured by the number of years added to your life but the amount of life added to your year
- ✧ No candle loses its light while lighting other candle. So never stop sharing your knowledge with others
- ✧ Sun rises everywhere but crops grow only where the farmer has worked hard
- ✧ Relationships and Friendships never die a natural death but they are always murdered by ego, attitude and carelessness
- ✧ Life shrinks or expands in proportion to your courage to make changes
- ✧ The more you learn the more you realize how much you don't know
- ✧ Criticism like rain should be gentle enough to nourish a person's growth
- ✧ It is better to lose on your own terms than to win on someone else's terms
- ✧ One who makes a mistake and does nothing to correct it is committing another mistake
- ✧ Man is not the creature of circumstances, circumstances are the creatures of men
- ✧ The greatest ignorance is to reject something you know nothing about
- ✧ Most people waste time thinking of how to spend their time
- ✧ A handful of men have become very rich simply by paying attention to details that most others ignored



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