

EY Tax Alert

CBIC issues notifications, circulars and an order under GST

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Executive summary

Central Board of Indirect Taxes and Customs (CBIC) has issued notifications, circulars and an order¹ to provide the manner of tax payment and return filing for persons, paying tax under composition scheme or at concessional rate of 6%, the procedure to revoke the cancellation of registration under GST law and the restriction on generation of e-way bills in certain cases and to clarify the order of utilization of input tax credit (ITC).

The key amendments and clarifications are:

- Composition dealer and person paying tax at a concessional rate of 6% shall pay tax on a quarterly basis and file a single return for the financial year.
- Time limit to file application for revocation of cancellation of registration has been extended till 22 July 2019 where the cancellation orders are passed till 31 March 2019. Further, timelines have been provided for filing the returns pending till the date of revocation.
- Persons who have not filed returns for two consecutive tax periods will be restricted from generating e-way bill w.e.f. 21 June 2019.
- Till the new order of utilization of ITC as per Rule 88A of the Central Goods and Services Tax (CGST) Rules is implemented on the common portal, taxpayers may continue to utilize their ITC as per the functionality available on the common portal.

¹ Notification No.20/2019 to 22/2019 - Central Tax, Circular No. 98/17/2019-GST and 99/18/2019-GST and CGST (Removal of Difficulties) Order No. 5/2019-GST, all dated 23 April 2019

Background

- Notification No. 2/2019-Central Tax (rate) dated 7 March 2019 was issued to provide concessional tax rate of 6% for supplier of goods and/ or services with aggregate turnover up to INR 50 lakhs and who are not eligible to opt for composition scheme. CBIC has now specified the procedure for tax payment and return filing by issuing notification in this regard.
- Further, several registrations have been cancelled and due to expiry of time limit for filing application for revocation of cancellation, such time limit has been extended.
- With a view to ensure uniformity in the implementation of the provisions of the law, a circular has been issued to clarify the order of utilization of ITC.

Procedure for tax payment and return filing by persons opting for composition scheme or paying tax at concessional rate of 6%²

- The marginal heading of Rule 62 of CGST Rules "Form and manner of submission of quarterly return by composition supplier" has been changed to "Form and manner of submission of statement and return" and the same has been also made applicable to persons paying tax at concessional rate of 6% in terms of Notification No. 2/2019-Central Tax (rate) also.
- The persons opting for composition scheme under section 10 of CGST Act or paying tax at concessional rate of 6% shall:
 - furnish a quarterly statement of payment of self-assessed tax in Form GST CMP-08 till 18th of the month succeeding such quarter, and
 - furnish a return for every financial year in Form GSTR-4 on or before 30th April following the end of such financial year.

Earlier, the composition taxpayer was required to pay tax and file return on a quarterly basis.
- Such person shall discharge his liability towards tax and interest by debiting the electronic cash ledger.
- Where a person ceases to pay tax under composition scheme or at concessional rate of 6%, he shall:
 - furnish a statement in Form GST CMP-08 for the period for which he has paid tax under composition scheme or at concessional rate, till 18th day of the month succeeding the quarter in which the date of cessation falls, and

- furnish a return in Form GSTR-4 for the said period, till 30th April following the end of the financial year during which such cessation happens.

Revocation of cancellation of registration

- A large number of registrations have been cancelled under section 29(2) of the CGST Act by the proper officer due to non-furnishing of returns in Form GSTR-3B or Form GSTR-4.
- In cases where the period of thirty days provided for (i) revocation of cancellation order in section 30(1), (ii) the period for filing appeal under section 107(1) and (iii) the period of condoning the delay provided in section 107(4) has elapsed, the registered persons are unable to get their cancellation of registration revoked despite having fulfilled all the requirements for revocation of cancellation.
- GST being a new Act, the taxpayers are not familiar with the manner of service of notice by e-mail or making available at portal in comparison to earlier regime where manual service of notice was provided. Thus, certain difficulties have arisen in giving effect to the provisions of section 30(1).
- Accordingly, Removal of difficulty order³ has been issued wherein persons whose registrations have been cancelled after they were served notice by e-mail or through portal and who could not reply to the said notice and for whom cancellation order has been passed up to 31 March 2019, have been given one-time opportunity to apply for revocation of cancellation of registration on or before 22 July 2019.
- Further, CGST Rules have been amended⁴ to provide that returns for the following period shall be furnished within 30 days from the date of order of revocation of cancellation:
 - All returns due for the period from the date of order of cancellation till the date of order of revocation
 - Where registration has been cancelled with retrospective effect, all returns relating to the period from the effective date of cancellation till the date of order of revocation.
- In the light of these changes and in order to ensure uniformity in the implementation of the provisions of the law, a circular⁵ has been issued to clarify the provisions relating to revocation of cancellation of registration. The provisions are explained by way of an illustration.

² Notification No. 20 and 21/2019-Central Tax dated 23 April 2019

³ Order No. 5/2019-GST dated 23 April 2019

⁴ Notification No. 20/2019-Central Tax dated 23 April 2019

⁵ Circular No. 99/18/2019-GST dated 23 April 2019

Restriction on generation of E-way bill⁶

- Rule 138E of CGST Rules, inserted vide Notification No. 74/2018 – Central tax dated 31 December 2018, provides that a composition scheme taxpayer who has not furnished the returns for two consecutive tax periods or a regular taxpayer who has not filed returns for a consecutive period of two months, is restricted from generating e-way bill.
- Further, any other person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) is also not allowed to generate e-way bill in respect of such person.
- CBIC has now notified the effective date of the said rule as 21 June 2019. Thus, such restriction will come into force from 21 June 2019.

Order of utilization of ITC⁷

- Section 49A of the CGST Act provides that Integrated Goods and Services Tax (IGST) credit has to be utilized completely before utilization of CGST or SGST credit for discharge of any tax liability. Further, as per the provisions of section 49 of the CGST Act, IGST credit has to be utilized first for payment of Integrated tax, then Central tax and then State tax or Union Territory tax, in that order.
- The newly inserted rule 88A in the CGST Rules allows utilization of IGST credit towards the payment of Central tax and State tax, or as the case may be, Union territory tax, in any order subject to the condition that the entire IGST credit is completely exhausted before utilizing CGST and SGST credit.
- The circular clarifies that after the insertion of the said rule, the order of utilization of ITC is as follows:
 - a) IGST credit – IGST liability
 - b) Balance IGST credit – CGST or SGST liability in any order and in any proportion

Once IGST credit is completely exhausted

 - c) CGST and SGST credit – CGST and SGST liability respectively
 - d) Balance CGST credit – IGST liability
 - e) Balance SGST credit – IGST liability

CGST credit cannot be utilized against SGST liability and vice versa.
- The circular further provides that presently, the common portal supports the order of utilization of input tax credit in accordance with the provisions before implementation of the provisions of the CGST (Amendment) Act i.e. pre-insertion of Section 49A and Section 49B of the CGST Act.
- Therefore, till the new order of utilization as per newly inserted Rule 88A of the CGST Rules is implemented on

the common portal, taxpayers may continue to utilize their input tax credit as per the functionality available on the common portal. In other words, taxpayers may continue to utilize CGST and SGST credit against CGST and SGST liability respectively without first utilizing IGST credit.

Comments

Government's decision to extend the date to apply for revocation of cancellation will facilitate all small tax payers who faced difficulty in complying with the requirement of the law within prescribed time limit.

Single yearly return for persons paying tax under composition scheme and at concessional rate will substantially reduce the compliance burden as well as the compliance cost thereby providing a huge relief to such taxpayers.

The taxpayers faced practical difficulty while utilizing the input tax credit as the order of utilization as per Rule 88A had been made effective from 1 April 2019 but the portal was not updated with that functionality. The issue addressed by the circular will help avoid any litigation in this regard.

⁶ Notification No. 22/2019-Central Tax dated 23 April 2019

⁷ Circular No. 98/17/2019-GST dated 23 April 2019

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