



# Chartered Accountants Association, Ahmedabad

To,  
Chief Commissioner of Goods and Services Tax  
Gujarat State  
Ahmedabad

Date: 01.07.2021

Respected Sir,

**Sub:** Representations for various matters under Goods and Services Tax

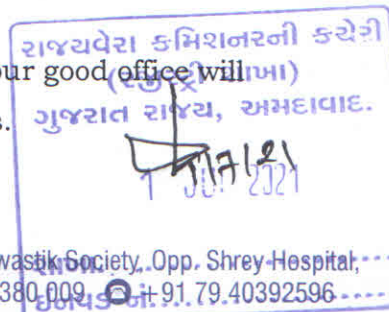
We are members of the Chartered Accountant Association, Ahmedabad having a strength of more than 1500 active members. We are organizing various knowledge enrichment programs and conducting Seminars, Workshops and Events with the sole purpose of knowledge enhancement of our members. In this era of GST, we have trained 1000 plus Chartered Accountants and are also regularly arranging various seminars on GST to keep up with the GST related changes.

We consider ourselves to be a part of society and wish to play an important role to help identify issues faced by people at large and suggesting various solutions. We wish to work hand in hand with your department in this regard so that we can enrich and help in developing and smooth functioning on both the sides.

In view of the above background, we are hereby sharing certain observations and suggestions thereto in the form of our representations which we feel would help in addressing the difficulties faced by the taxpayers at large.

We shall be happy to take you through the representation and discuss the points mentioned therein at your convenience.

We look forward to your support in the matter and are hopeful that your good office will look into the suggestions / observations and take appropriate actions.



## Executive Summary

Issue.	Issue in brief	Suggestion
1.	Ambiguity in calculation of turnover of zero-rated supplies under Rule 89 of the CGST Rules due to the amendment vide Notification no. 16/2020-CT dated 23 March 2020.	A suitable amendment may be carried to the Rule 89 (4) of the CGST Rules and / or a clarification may be issued to cover the specific scenarios where either value of domestic sales is not available or in cases where the prices of the products are subject to huge fluctuations.
2.	There is significant delay in processing of applications for registrations, by the Gujarat State GST department. Also, registration applications are rejected without assigning proper reasons.	Suitable instructions may be issued to the state GST department officers to strictly adhere to the timeline prescribed in the act read and process the registration applications in a time bound manner.
3.	There is no mechanism available to attach supporting documents at time of filing an application for amendment in GST registration such a change of address particulars, due to which the officer is required to issue an SCN to the taxpayer to produce the relevant documentation.	An option to attach supporting documents should be provided at the time of filing the amendment application which would result in speedy disposal of the application for amendments.
4.	Amendments to the GST registration details specially core field amendments are required to be approved and processed by the concerned officer.	To facilitate ease of doing business, certain amendments in GST application like Addition/Removal of Directors/ Partners, change of place of business, addition of Additional Place of Business etc. should be accepted on straight on record basis like MCA (ROC), and detailed scrutiny may be conducted later. Further in respect of companies

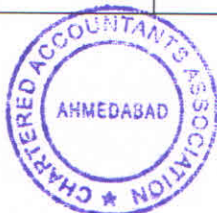
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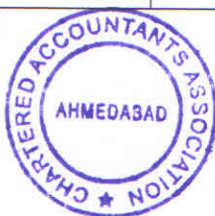


		and LLP's, these details can be very well verified online with ROC master data in order to save time.
5	In case of persons who have not filed returns for a period of more than 6 months, their registration would have been cancelled and may not be in a position to avail the benefit of the reduction of late fee payable as provided by Notification No. 19/2021 - CT dated 1 June 2021	Wherever a registration have been cancelled due to non-filing of returns during the period July 2017 to April 2021, the said registrations should be automatically restored for the taxpayers to get the due benefit of the relaxation granted by the Government.
6	Where a registration of a taxpayer has been cancelled for non-compliance with the provisions of the provisions of the GST law, such person, even after undertaking all the pending compliances, has to wait for the officer to revoke the cancellation of the registration	It is suggested that once the taxpayer has undertaken all the compliances under the CGST Act and Rules, particularly the non-compliances which led to cancellation of his registration, then the cancellation of the registration should be automatically revoked.
7	Notices are being issued requiring reconciliation of ITC availed as per GST 3B vs ITC available as per GSTR 2A during the period February to August 2020	As per notification 30/2020 dated 3 April 2020, the compliance with Rule 36 (4) for the period February to August 2020 was kept in abeyance till September 2020. Accordingly notices for justifying the differences between GSTR 3B and GSTR 2A for the period February to August 2020 should be avoided.
8	In case of taxpayers who are identified as risky exporters / suppliers, no communication is made to them in case of submission of the report by the	The taxpayers should be intimated about the findings given by the division / ward to DGARM and also once the proceedings are complete and / or where the name of the taxpayer is removed

*Necessary  
Action  
can  
be  
taken*



	division / ward or in case of closure of the proceedings leading to continuance of the restriction	from the list of risky exporter / supplier, the taxpayer should be immediately informed of such action.
9	The state bench of Tribunal under GST is yet to be formed. Accordingly, appeals cannot be filed against the orders issued by the first appellate authority. In these cases, it has been observed that the jurisdictional GST authorities initiate parallel proceedings to recover the tax dues.	It is suggested that necessary directions should be issued to the field formations and the jurisdictional officers to not issue initiate any recover proceedings where the taxpayer wishes to file an appeal and the matter has not attained finality.
10	It has been proposed in the Budget 2021 the option of exporting goods / services with payment of IGST and claiming refund of the same would be available only to a specific class of exporters/goods/services as notified by the government and such refund shall not be available to all category of taxpayers in general.	The option of exporting goods / services with payment of tax and claiming refund thereof is a more convenient option as it leads to faster processing of refunds and eliminates need of complex computations, reconciliation of ITC etc. required under the option of exporting goods / services without payment of tax and claiming refund of the accumulated ITC. Non-availability of this option will be big blow for exporter community. This will result in increased working capital requirement and increased compliance burden and departmental interaction.
11	It has been proposed in the Budget 2021 that the ITC is allowed only if supplier uploads Invoices and Debit Notes in its statement of outward supply (GSTR 1) and same are communicated to recipient	Considering that the process of GSTR 2 has not been fully implemented as envisaged at the inception of the GST law, the Government should reconsider this change and continue 5% relaxation for claiming ITC on Invoices and Debit Notes not appearing in GSTR-2A as





	<p>Post this change, only ITC visible to taxpayer in its GSTR-2A will be allowed. Taxpayers are having very limited time at the time of filing GST return so any error or omission in reporting invoices by the supplier will result into loss of tax credit to genuine taxpayers and also adversely impact working capital.</p>	<p>prescribed under Rule 36(4) of the CGST Rules, 2017.</p>
12	<p>In case of refund, the timelines specified in the rules and also clarified in the Circular issued by the CBIC for acknowledgment of an application, issuance of deficiency memos and grant of provisional refund are not being followed in many cases which leads to substantial delay in getting the refund</p>	<p>Suitable instructions may be issued to field formations so the timelines with respect to the refund claims are be strictly followed and the genuine taxpayers get the due refund in time.</p>
13	<p>In case of death of sole proprietor, the successor is required to cancel the old registration and obtain a new registration. The successor is also required to undergo many procedural formalities which takes 1 to 3 months, and the business suffers during such period.</p>	<p>The procedure to obtain a new GST registration by a legal heir in case of death of sole proprietor should be simplified where the legal heir is intending to continue the business. The registration may be granted promptly on the basis of death certificate and other safeguards in order to enable seamless continuity of the business by the legal heir.</p>



**Issue 1 – Ambiguities in calculation of turnover of zero-rated supplies under Rule 89 of the CGST Rules.**

An amendment was carried out to the provisions of Rule 89 (4) of the CGST Rules, 2017 vide Notification no. 16/2020-CT dated 23.03.2020 wherein the words "Turnover of zero-rated supply of goods" were substituted as follows:

*“(C) – “Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both”.*

In view of the said amendment, an exporter of goods is required to also produce the value of like goods domestically supplied by the same or, similarly placed supplier. It is understood that such provision was introduced to address the malpractices of over pricing of export goods by certain exporters in order to claim undue export related benefits.

It is, however, submitted that there are many cases where the exporters may not be in a position to either produce the value of like goods domestically supplied. Illustrative scenarios in which providing the value of like goods domestically supplied may not be available or may not be comparable is provided below:

1. The product being exported is a unique product meant only for consumption outside India and neither the exporter himself nor any other supplier in India supplies such product in the domestic market
2. There is a substantial difference in the quality of the product being exported by the exporter and the products being sold by the exporter or other suppliers in the domestic market
3. While like products may be sold by other suppliers in the domestic market, the price differential may be on account of certain distinguishing features and other quality aspects which may not be comparable





Further, in some cases the prices are pegged to an external benchmark such as brent crude prices or prices of a commodity on specified commodity exchange, in such cases, there is no specific mechanism available currently to arrive at the value of 1.5 times of value of the goods domestically supplied.

It has been observed that the refund applications are being rejected on the ground that the exporter is not able to justify the upper cap of 1.5 times value of the goods domestically supplied. Certain officers have also taken a view that in case the exporter is not able to provide the value of like goods in domestic market, then such value shall be considered as "0" leading to a rejection of the refund claim.

**Suggestion:**

It is requested that a suitable amendment may be carried out to the definition of Zero-rated supplies as contained in the amended Rule 86 (4) of the CGST Rules to provide that the restriction of 1.5 times shall be applicable only in cases where the exports are made to associated entities given that the supplies to non-related / non-associated parties would be at an arms-length price and would be driven by market forces. This would save the genuine exporters from the hardships.

Additionally, in cases where the export product is unique and there is no like product sold in the domestic market, it is understood that the price declared by the exporter is accepted by a few jurisdictions, based on a declaration from the exporter. In order to ensure uniformity, a clarification may be issued to accept the value declared by the exporter in such cases on the basis of a self-declaration in a predefined format.

Lastly, in case of goods which are sold on the basis of prices linked to some benchmark such as commodity exchange, brent crude prices etc. also, a declaration from the exporter in this regard may be accepted, as in such cases where the prices of the product are market driven, there may not be any need to assess the genuineness of the export value.



## **Issue 2 – Delay in processing of applications for registrations by the State GST department**

It has been observed that the applications for registrations are not being processed by the department in a timely manner and the deficiency memos / acknowledgements / SCNs are issued belatedly leading to difficulties to the taxpayers. The registration applications in some cases have taken a time of 60 days. Further, the applications for registrations are being rejected without assigning any reasons even where the queries raised / SCN issued are being duly replied with the necessary clarifications.

Non availability of GST registration in a timely manner leads to complete stoppage of business and would work against the basic premise of the ease of doing business.

### **Suggestion:**

Suitable instructions may be issued to process the GST registration applications by way of accepting the registration application or issuance of deficiency memo on a time bound manner. Further, in case of discrepancy in relation to the documentation even after submission of reply by the taxpayer in response to the SCN, if the officer is not satisfied, he may get in touch with the taxpayer on the registered contact details (email / phone) provided at the time of registration and seek for additional details rather than straight away rejecting the application.

## **Issue 3 – Facility to upload supporting documents for addition of place of business/change in place of business to be allowed in amendment application itself:**

At present there is no option available on the portal to upload supporting documents while filing an application for amendment in the registration specially for change in place of business. As a result, the tax officer is compulsorily





required to issue SCN for asking supporting documents. This results in delay in processing of the application.

**Suggestion:**

It is suggested that an option to attach supporting documents be provided in respect of an application for change in GST registration so as to assist the officer to consider the documents at the very first instance thereby saving time at both ends.

**Issue 4 – Certain amendments to be approved on straight to records basis and to prescribe time limit for approval of amendment applications.**

Currently, in order to make any amendment in GST registration, a taxpayer is required to file Amendment application bifurcated as Core Field/Non-Core Field amendments. While most non-core field amendments are automatic, in case of core field amendments, the application goes to the concerned officer for an approval, and we have observed that normally time is taken by the officer to process the applications. At times it creates lot of difficulties for businesses since Banks may keep the funding on hold or the goods dispatch cannot happen due to non-updation of details on GST portal. Currently there is no time limit set for approval of these applications. Also, while there is an internal time limit set within the department, the officers do not adhere to it.

**Suggestion**

Few amendments in GST registration which require early approval are as under:

1. Addition/Deletion of Directors and Partners;
2. Change in place of Business;
3. Addition of Additional Place of business-Godown, warehouse, depot etc.;



It is suggested that certain amendments may be processed on straight to records basis, in a similar manner as adopted by the Registrar of Companies ('ROC') under the Ministry of Corporate Affairs ('MCA'). Further, in respect of companies and LLP's, these details can be very well verified online with ROC master data in order to save time. Where the amendments are significant in nature requiring due verification by the department, a time limit of 7 days may be prescribed for processing the applications.

#### **Issue 5 – Suo moto Revocation of cancellation of registration for the period July 2017 to April 2021**

Recently, vide Notification No. 19/2021 – Central Tax dated 1 June 2021, the CBIC has rationalized late fees for delay in filing of return in Form GST 3B has also provided conditional waiver of late fee for delay in filing Form GSTR 3B right from the month of July, 2017 till April, 2021.

It is submitted that there would be hardly any case where a registered person has not filed his returns for the periods from July, 2017 to April, 2021 and the registration number would still be active. As per the extant provisions, if a registered person does not file returns for a continuous period for 6 months, his registration gets cancelled.

Now, if such person wants to restore his registration, he is required to apply for a restoration with the jurisdictional officer and that officer would normally entertain his application only if the person has deposited the tax payable along with applicable interest and late fee.

In many cases, if a person has paid tax and has not deposited the interest and late fee, due to shortage of funds, his application for restoration is generally not approved. Further, if such person has filed an appeal before the Joint Commissioner for restoration, then also such person is required to pay up all the dues in the form of tax, interest and late fee.

Given the above, while it a good step taken by the GST council and implemented by the CBIC to cap the late fee applicable for late filing of returns, we are of the





view that this amnesty provided may not help most taxpayers given that an active registration is a pre-requisite for availing the benefit of the amnesty scheme.

### **Suggestion**

Registration in all the above-mentioned cases should be automatically restored so as to enable the registered persons to pay the due tax, interest and late fee and take benefit of the amnesty scheme. In those cases where an Appeal is pending, the appeal should also be suo motto be allowed or the same at least the registration must be restored so as to allow maximum benefit of the relaxation granted by the GST Council.

### **Issue 6 – Automatic restoration of registration in cases where the compliances have been undertaken by the taxpayers subsequent to cancellation of registration – From May 2021 onwards**

The CGST Act, 2017 and the rules made thereunder provide for cancellation of registration under many circumstances. In case of cancellation of registration, the taxpayer has to complete all the pending compliances including payment of outstanding tax, interest and penalty and thereafter apply for revocation of cancellation of his registration. It is observed that even where the taxpayer has undertaken all the compliances, the proper officer takes time in revoking the cancellation of the registration or rejecting the application on certain technical grounds. This, on one hand, leads to difficulties to the taxpayers and on the other hand, increases litigation.

### **Suggestion**

It is suggested that once a taxpayer has complied with the provisions of the Act and Rules made thereunder particularly those non-compliances due to which his registration was cancelled, the revocation of the cancellation of registration



should be automatic. This will significantly lead to ease of doing business and reduce litigations.

**Issue 7 – Notices being issued requiring reconciliation of ITC availed as per GST 3B vs ITC available as per GSTR 2A during the period February to August 2020.**

Rule 36(4) of the CGST Rules, 2017 provides that the Input Tax Credit ('ITC') 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 37(1), shall not exceed 105% of the details uploaded by the suppliers.

Considering the outspread of the pandemic and nationwide lockdown imposed by the Central Government, during the period March to June 2020, the CBIC had issued the notification no 30/2020- Central tax dated 3 April 2020 containing various relaxations which included keeping Rule 36 (4) in abeyance during the February, 2020 to August, 2020. As per the said notification, the applicability of Rule 36 (4) for the period February 2020 to September was to be seen on a cumulative basis while filing the GSTR 3B return for the month of September, 2020.

Accordingly, for the period February, 2020 to August, 2020, the taxpayers were allowed to avail the ITC based in the invoices available with them without reconciling the same with the data appearing in GSTR 2A data. However, it has come to our notice that the state GST department is issuing notices seeking explanation for the differences between ITC availed as per GSTR 3B vs ITC getting reflected in GSTR 2A during the period – February 2020 to August, 2020 where such reconciliation was not required in terms of Rule 36 (4) read with Notification 30/2020.

**Suggestion**

Notices requiring the taxpayers of to reconcile the differences between the ITC availed as per GSTR 3B vs ITC available as per GSTR 2A during the periods where extension / relaxation has already been granted, should be avoided.





### **Issue 8 – Intimation of closure of inquiry against persons identified as risky exporters / suppliers**

Various exporters have received notices for Risky Exporters / suppliers from the department based on the DGRAM analysis and in such cases, there are certain repercussions that follow which include, blocking of refunds, draw back claim being kept on hold, thorough verification of exports consignment, etc. The respective division /ward undertakes a detailed verification of the data and submits the report to DGRAM through the Commissioner. The entire process takes up to 6 months to 1 year.

On completion of inquiry, there is no process of passing an order by the department and the person identified as risky exporter / supplier does not receive any communication from the authorities intimating closure of inquiry from the department's side.

### **Suggestion**

Once the Inquiry is complete at the departmental level, the registered person should be informed of the findings that are submitted by the department to DGARM. Further, there should be a system of passing written order on completion of inquiry which will enable exporters to seek processing of the pending refunds/exports claims etc.

Additionally, the removal of the name from the list of risky exporters should also be informed immediately to the taxpayer as well as to the concerned department i.e., Customs/ CGST /SGST department from DGRAM.

### **Issue 9 – Recovery of demands in cases where the taxpayer is not able to file an appeal due to non-constitution of the GST Tribunal**

The state bench of Tribunal under GST is yet to be formed. Accordingly, appeals cannot be filed against the orders issued by the first appellate authority. In these



cases, it has been observed that the jurisdictional GST authorities initiate parallel proceedings to recover the tax dues.

### **Suggestion**

It is suggested that necessary directions should be issued to the field formations and the jurisdictional officers to not issue initiate any recover proceedings where the taxpayer wishes to file an appeal and the matter has not attained finality. If required, the concerned officer may seek a declaration from the taxpayer that they intend to file an appeal before the Tribunal for documentation purpose.

### **Issue 10 – Amendment in the Budget 2021 seeking to restrict the option to make export of goods and services with payment and claiming refund**

It has been proposed in the Budget 2021 the option of exporting goods / services with payment of IGST and claiming refund of the same would be available only to a specific class of exporters/goods/services as notified by the government and such refund shall not be available to all category of taxpayers in general.

### **Suggestion**

The option of exporting goods / services with payment of tax and claiming refund thereof is a more convenient option as it leads to faster processing of refunds and eliminates need of complex computations, reconciliation of ITC etc. required under the option of exporting goods / services without payment of tax and claiming refund of the accumulated ITC. Non-availability of this option will be big blow for exporter community. This will result in increased working capital requirement and increased compliance burden and departmental interaction.





**Issue 11 – Amendment in the Budget 2021 seeking to restrict the total ITC to the extent of invoices uploaded by the supplier**

It has been proposed in the Budget 2021 that the ITC is allowed only if supplier uploads Invoices and Debit Notes in its statement of outward supply (GSTR 1) and same are communicated to recipient. Currently, the ITC to the extent of 105% of the invoices uploaded by the suppliers is available to the taxpayers.

**Suggestion**

Considering that the process of GSTR 2 has not been fully implemented as envisaged at the inception of the GST law, the Government should reconsider this change and continue 5% relaxation for claiming ITC on Invoices and Debit Notes not appearing in GSTR-2A as prescribed under Rule 36(4) of the CGST Rules, 2017.

**Issue 12 – Non processing of refund applications within the time limit specified under Circular No. 125/44/2019-GST dated 18 November 2019**

Rule 89 of the CGST Rules, 2017 states that an acknowledgment in respect of an application for refund claim filed shall be made available within 15 days from the date of filing of the said application. Further, Rule 91 of the Rules states that the proper officer shall grant a provisional refund within 7 days from the date of acknowledgement. Para 13 of the Circular No. 125/44/2019-GST dated 18 November 2019 clarifies that the proper officer shall refund, on a provisional basis, **ninety percent** of the refundable amount of the claim even in cases where the proper officer prima-facie has sufficient reasons to believe that there are irregularities in the refund application which would result in rejection of whole or part of the refund amount so claimed. Further, para no. 14 of the said circular states that if the officer is fully satisfied about the eligibility of a refund claim, he may issue a final order also within 7 days from the date of the acknowledgment instead of granting provisional refund.



It has been observed that the above-mentioned timelines are not being followed and in many cases, acknowledgments are issued after a time period of 60 days. Similarly, deficiency memos are also issued after period of 60 days which leads to substantial delay in getting the refund amount to the bank accounts of the claimant even though the timelines are specifically contained in the rules and have been abundantly clarified in the Circular issued by the CBIC.

**Suggestion:**

It is requested that although the circular is already there, suitable instructions may be issued to field formations so the timelines with respect to the refund claims may be strictly followed. The field formations may be instructed to issue acknowledgments, provisional refunds, deficiency memos and final refund orders in a time bound manner as specified in the CGST Rules, 2017 as well as the Circular (supra.).

**Issue 13 – Simplification of procedure to obtain a registration by legal heir in case of death of a sole proprietor**

In case of death of sole proprietor, if the business is intended to be carried on by the successor or legal heir, the successor cannot do so using the same GST registration since GST registration is PAN-based and the legal heir would have a different PAN. Accordingly, the legal heir shall be required to apply for a new registration in his own name and also apply for cancellation of registration of the sole proprietor. The legal heir would also have to ensure that the balance of ITC lying in the electronic credit ledger of the sole proprietor is transferred to the new registration. Normally, all the proof of business such as address etc. would be in the name of the proprietor and the legal heir is expected to first get all the business-related documents transferred to his name and then apply for a fresh registration. Undergoing such procedural formalities before obtaining registration takes 1 to 3 months and the business suffers during such period.







# Chartered Accountants Association, Ahmedabad

## Suggestion:


The procedure to obtain a new GST registration by a legal heir in case of death of sole proprietor should be simplified in cases where the legal heir is intending to continue the business. The registration may be granted promptly on the basis of death certificate and other safeguards in order to enable seamless continuity of the business by the legal heir.

We are hopeful that the above suggestions shall be helpful and would serve the purpose of bringing transparency in the GST law as well.

Yours faithfully,

For, Chartered Accountants Association, Ahmedabad

  
CA. Monish Shah  
President

  
CA Bishan Shah  
Chairman (DT Legal Representation Committee)

