



C.V.O. CA'S

NEWS & VIEWS

FOR MEMBERS /
SUBSCRIBERS /
VOL. 26 - NO. 8
FEBRUARY 2023



From President's Desk...

Dear Professional Colleagues and Readers,

I had a chance to read Bhagwat Gita few days back, and I realize both Jainism and Bhagavad Gita, share some similarities in their teachings and principles. As I understand, Jainism predates the Bhagavad Gita and therefore it's likely that some of the principles and teachings of Jainism may have influenced the development of the Bhagavad Gita.

One similarity is the emphasis on non-violence (ahimsa in Jainism) and the importance of compassion and kindness towards all living beings. Both Jainism and Bhagavad Gita stress the importance of non-violence and non-harm as a central virtue to be cultivated. Jains believe that all living beings have an innate desire to live, and causing harm to any living being is a violation of this principle.

Another similarity is the emphasis on self-control and the importance of developing one's inner self. Both Jainism and Bhagavad Gita advocate for self-control and self-discipline as a means to achieve spiritual liberation and union with the divine.

Jainism and Bhagavad Gita also stress the importance of non-attachment and the need to detach oneself from material possessions and desires in order to achieve spiritual freedom.

Lastly, both advocate for the importance of action and duty in the world, rather than withdrawal from it.

It's important to mention that despite similarities, Jainism and Bhagavad Gita have different perspective on many things such as concept of God, path to liberation, Karma and rebirth etc.

Further, I would like to take this as an opportunity to announce certain upcoming events:

The association will be organizing public program on Budget at King George Auditorium on 7th February. CA Nitin Maru will be sharing his thoughts on Direct Tax provisions of Budget and CA Nilesh Shah will share his thoughts on impact of budget on capital market.

We have also announced a technical course on equity market. The course will offer training on how to read price chart. The course is spread over 15 hours of physical training.

Association has announced it's mega event "Ramat ji Ramjat" which will be mega games and cultural program. This is an inter-zone competition and some games are dedicated for spouse and kids. I request everyone to please register for the same.

Events in retrospect:

Last month the association organized a public program on How to obtain hassle free loans for MSME and Small household business houses at affordable terms. The loan is sanctioned based on eligibility in less than 1 hour.

Thank you all..... Always in Gratitude


CA Amit Chheda

February 1, 2023

G S T

Assessment Demand Recovery

Do it at Your Own Peril	CA Ketan Rambhia (Chairman Comm.).....	3
Assessment & Demand Under GST Law	CA Manan Maru	5
Recovery Under GST	CA Akash Gogri	10
GST Update - Amendments Pursuant to 48th Council Meeting	CA Harsh Shah	14
Iron Out a Few Wrinkles in GST	CA Nirali Gada	23
Events in Retrospect		26-29

Managing Committee 2022 - 2023

President	: CA Ameet Chheda
Vice President	: CA Jeenal Savla
Secretary	: CA Vinit Gada
Treasurer	: CA Harsh Dedhia
Jt. Secretary	: CA Gautam Mota
Members	: CA Priti Savla CA Parin Gala CA Umang Soni CA Girish Maru CA Chintan Rambhia CA Viral Satra CA Hetal Gada CA Nihar Dharod CA Deep Chheda CA Chintan Saiya

News Bulletin Committee 2022 - 2023

Chairman	: CA Ketan Rambhia
Convenor	: CA Girish Maru
Jt. Convenor	: CA Shreya Nagda
Members	: CA Heenal Furia CA Kimi Nagda CA Misha Sangoi CA Reenkal Gangar CA Bhavin Dedhia CA Dipti Chheda CA Keyur Furia CA Jeet Gala CA Rohan Dedhia CA Shweta Furia

Disclaimer: The views / opinions expressed in the articles are purely of the writers. The readers are requested to take proper professional guidance before abiding the views expressed in the articles. The publisher, the editor and the association disclaim any liability in connection with the use of the information mentioned in the articles.

DO IT AT YOUR OWN PERIL



CA Ketan Rambhia

Email : ketan.r@skrambhia.com



FROM THE DESK OF CHAIRMAN

Recent documentary by BBC on Modi and India i.e. "India – The Modi Question" has created a lot of debate in India and the world over, and for reasons. As the said documentary is banned in India, as per media reports go and from social media we can learn that the so called documentary is in two parts, in first part the issue of 2002 Gujarat riots has been evoked when PM Narendra Modi was Chief Minister of Gujarat, and in second part, continuing attacks on PM Modi, discusses 'BJPs unprecedented victory in 2019 and what it means to have a government with a stronger mandate. "Essentially the gloves are off," one of the commentators, Chris Ogden, a political scientist at the University of St. Andrews, says. The series then moves to August 5, 2019, and the changes to the legal status of Jammu and Kashmir (i.e., the abrogation of Article 370). It shows scenes of what are described as protests in Jammu and Kashmir, followed by a discussion on the National Register of Citizens (NRC) and the Citizenship Amendment Act (CAA) protests, and the riots in Delhi in 2020. The second part also includes interviews with protestors, families that have been detained under the NRC and the kin of those who died allegedly at the hands of the police during the Delhi violence of 2020. This is very unfortunate that BBC has raked up settled matter which is more than two decades old and the then Modi Government of Gujarat has been cleared of all the charges of Government led riots etc, on one hand, and other matters which are purely internal to the Indian nation.

The timing of this documentary is definitely not just co-incidence but seems to be a well thought game-plan to demonise the present Indian Government led by PM Modi to weaken political clout of ruling party and general political atmosphere by evoking controversial issues. The intention also seems to divide Indian people based on religious sentiments and destabilise peace and harmony in the country. There has been furore against this documentary by Indian diaspora all over the world and in India and for right reasons. The documentary not only undermines PM Modi but also undermines India as a country. It has directly attacked PM Modi but that is not all, it is also challenging validity of Indian judicial rulings at the highest level and has effect of undermining our judicial system, which cannot be accepted. India's judicial system, even with its flaws, is one of the best in the world. The allegation on BBC, that this documentary is nothing but a witch-hunt, is absolutely correct as the decades old settled issues are unnecessarily being raked up for self-gains.

PM Modi has earned himself name as one of the best administrator and being praised world over by various global leaders, and he has proved with his political and diplomatic acumen, sheer hard work, and strong nationalistic fervor. This has brought India as a nation to frontline competing with developed nations and economic giants. India's development has taken leaps under his leadership, and India has helped needy nations in times of need, which has earned India many friends. Now India's gains definitely resulted in loss to someone / some nations. The vested interest world over and maybe within India seems to have made a game-plan to weaken PM Modi's clout and gain in the process. This seems to be beginning before the ensuing India's general elections in 2024. BBC has taken route of yellow journalism.

Russia, the long-standing friend of India, has commented on the documentary as “info war against global power with independent policy”. This says it all. This is not about PM Modi, but increasing political and economic clout of India on world forum under his leadership which is pricking like thorn to many, especially western countries who cannot see Asian tiger roaring, who cannot see India rising on all fronts on world map. Uganda-born Indian-origin peers in the House of Lords, Dolar Popat, wrote to the director general of the *BBC*, Tim Davie, condemning the documentary as “one-sided” and asking him to stop the *BBC* from airing the program to “avoid exasperating [sic] the already tense situation” between British Hindus and Muslims. The “false representation has old wounds [sic] by creating hatred between British Hindus and Muslims by attempting to paint India as an intolerant nation where Muslims are persecuted”, Mr. Popat said. “It is a sordid conspiracy of lies meant to sully the reputation of a growing global power and its popular leader by an ex colonial master reeking with envy at the rocketing fortunes of its former subject nation”, writes Vivek Gumaste in *The Sunday Guardian* and rightly so. Various other views will also come and people may be critical of ban on documentary as against freedom of speech.

All said and done, the fact is one can love PM Modi, hate him but cannot ignore him. The same goes true for India. One more thing comes out that the haters have no major issue to discuss against present Indian Government and therefore keeps on raking up 2002 riots and pseudo-secularists try to create divide between citizens based on religious sentiments. This is dangerous game as it hurts all sections of society and the nation. People of India must understand true intentions behind such biased journalistic endeavors and try not to get carried away by it. India's young population is leading the country to new heights in terms of knowledge, technologies, entrepreneurship, skills and so on. Our focus as Indian citizens should be on doing right things and ignore such biased media stories. Let the world blame Modi, shame India, at its own peril.

Thank you all..... Always in Gratitude

CA Ketan Rambhia



ASSESSMENT & DEMAND UNDER GST LAW



CA Manan Maru
Email : mananmaru@yahoo.co.in

I-Assessment

Assessment means determination “accurate tax liability.” Assessment procedure is a mechanism to work out the actual tax liability payable by taxpayer. It can be either self assessed or can be determined by department. The main object of Assessment Procedure is collect the revenue effectively, efficiently & accurately.

Assessment has been divided into different categories which are as follows :-

1. Self Assessment U/s. 59:-

In self assessment the tax payer shall calculate the tax liability on their own & show the same in the relevant returns filed by them.

2. Provisional Assessment U/s. 60:-

In provisional assessment tax payer is unable to identify the tax liability (i.e. unable to identify tax rate, value of taxable goods / services & tax applicable thereon). The taxpayer approaches the concerned assessing officer for determination of tax liability. Assessing Officer then passes the provisional order towards payment of tax liability. Based on provisional assessment taxpayer pays the tax. Assessing officer shall pass the provisional assessment order within 90 days from the date of receipt of request from taxpayer. Provisional Assessment Order shall contain in detail working how the tax liability has been arisen, what value is considered for goods / services & applicable tax rate.

- (1) Every registered person shall apply online on GST Website in Form GST ASMT – 01 for requesting the officer to determine the liability under sub-sec (1) of Sec – 60.
- (2) The proper officer on receipt of application filed under sub rule (1) of Sec – 60, shall issue notice in FORM GST ASMT – 02 requiring the taxpayer to provide additional details if required. The taxpayer shall file the reply in GST ASMT – 03. The proper officer if desire can also ask the taxpayer to meet in personal.
- (3) Post submission of response by taxpayer the proper officer shall examine the same & pass order in FORM GST ASMT – 04 allowing the taxpayer to pay the tax on provisional basis.
- (4) Once the order is been passed then the taxpayer shall execute a bond in accordance with sub section (2) of Sec – 60 in FORM GST ASMT – 05 along with security in the form of a bank guarantee for an amount determined under sub-rule (3).
- (5) After payment of tax on provisional basis the proper officer shall issue notice in FORM GST ASMT – 06, calling for further information & records for finalization of assessment under sub-sec (3) of Sec – 60. Once the assessment is finalized the proper officer shall pass order in FORM GST ASMT – 07 determining the final tax payable by the taxpayer.

- (6) Taxpayer can file FORM GST ASMT – 08 towards release of security bond which was furnished under sub rule (4) after the final assessment order is been issued under sub rule (5).
- (7) Proper officer shall ensure that the taxpayer has paid tax as determined in final assessment order as per sub rule (5). Once the tax is paid the proper officer shall release the bond furnished by the taxpayer in FORM GST ASMT – 09 within a period of seven working days from the date of receipt of application from the taxpayer under sub rule (6).

3. **Scrutiny Assessment U/s. 61 :-**

- (1) The returns which are filed by the taxpayer are been assessed by the proper officer U/s. 61. The scrutiny assessment is done on the basis of the information available with the proper officer. If the proper officer finds any kind of discrepancy (based on the return filed by the taxpayer & information available with proper officer) then proper officer shall issue notice to the taxpayer in FORM GST ASMT – 10 informing the taxpayer about the discrepancy & seeking explanation from the taxpayer within such time not exceeding 30 days from the date of service of notice. The period of 30 days can be extended by the proper officer. The notice shall also determine the tax, interest & any other amount payable if the amount is quantifiable.
- (2) The taxpayer can file FORM GST ASMT – 11 providing the explanation towards the notice issued. If the taxpayer accepts the discrepancy mentioned in the notice then taxpayer shall pay the dues & inform the proper officer about the same.
- (3) If the explanation provided by the taxpayer under sub rule (2) is accepted by the proper officer, the proper officer shall inform the taxpayer accordingly in FORM GST AMST – 12.
- (4) If the taxpayer does not respond to the discrepancy notice issued by the proper officer by providing the satisfactory explanations within a period of 30 days or such extended period or fails to take corrective measures even after accepting the discrepancies the proper officer can initiate appropriate action against the tax payer (i.e. Conduct audit of tax payer U/s. 65 or Start Special Audit procedure U/s. 66 or Inspect or Search the place of business of taxpayer U/s. 67 or Initiate demand & recovery procedure or send notices for outstanding demand or shortfall when there is no willful intention of doing fraud U/s. 73 & send notices for outstanding demand or shortfall when there is willful intention of doing fraud U/s. 74)

4. **Best Judgment Assessment U/s. 62 :-**

The proper officer passes Best Judgment Assessment Order if the taxpayer have not furnished the relevant returns U/s. 39 (GSTR – 3B/4) or U/s. 45 (GSTR – 10). Proper Officer will first issue notice U/s. 46 to file the relevant returns to the taxpayer within the period of 15 days. If the taxpayer still does not file the relevant return in lieu of notice served then proper officer based on the information, data & records available will pass the best judgment order in FORM GST ASMT – 13 & upload the summary order electronically in FORM DRC – 07.

5. **Assessment of Unregistered Person U/s. 63 :-**

In this case the person liable to register has not taken registration or fails to take registration or whose registration has been cancelled under sub-sec (2) of Sec -29 but was liable to pay tax, the proper officer may proceed to assess the tax liability based on best judgment for the relevant period. An assessment order can be issued within a period of 5 Years from the date specified for filing of annual return U/s. 44 for the relevant financial year to which tax not paid relates.

The proper officer shall issue notice in FORM GST ASMT - 14 containing the grounds on which assessment is proposed to be made along with summary to be uploaded electronically in FORM GST DRC - 01.

Taxpayer is allowed 15 days time to respond to the notice issued. If no reply is received from the taxpayer the proper officer shall pass final order in FORM GST ASMT - 15 along with summary in FORM GST DRC - 07 which shall be uploaded electronically.

6. Assessment in certain special cases (Summary Assessment) U/s. 64 :-

Based on the evidence the proper shall with prior approval of Additional Commissioner or Joint Commissioner, can proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if the proper officer has sufficient grounds to believe that delay can adversely affect the interest of revenue.

Based on the order passed, the taxpayer can make application within a period of 30 days from the date of receipt of order passed stating the order as erroneous the Additional Commissioner or Joint Commissioner can withdraw the such order and can follow the procedure laid down in Sec - 73 & Sec - 74.

Additional Commissioner or Joint Commissioner on their own motion also can withdraw the such order if it found to be erroneous and can follow the procedure laid down in Sec - 73 & Sec - 74.

II - Demand

Since in GST the tax payable by taxpayer is self assessed so there are chances that tax can either be short paid or not paid or erroneously refunded or input tax credit is wrongly availed or utilised, in that case demand can arise.

1. Determination of Tax Short Paid or Not Paid or erroneously refunded or Input Tax Credit Wrongly Availed or Utilised for any reason other than fraud or any willful-misstatement or suppression of facts U/s.73 :-

- (1) Proper officer shall issue show cause notice U/s. 50 in FORM GST DRC - 01 requiring the taxpayer to provide reason why the tax should not be paid by the taxpayer along with interest payable.
- (2) The proper office shall issue notice under sub-sec (1) of Sec - 50 at least three months prior to the time limit prescribed to the issue of order under sub-sec (10).
- (3) Along with notice the proper officer shall also issue a summary statement electronically in FORM GST DRC - 02 containing the details for tax short paid or not paid or erroneously refunded or input tax credit wrongly availed or utilised for such period.
- (4) The taxpayer based on self assessment can pay all the relevant tax dues along with interest before the issuance of notice & inform the proper officer about such payment made in FORM GST DRC - 03.
- (5) On receipt of application made by taxpayer in FORM GST DRC - 03 the proper officer shall issue an acknowledgement of acceptance in FORM GST DRC - 04 & the proper officer shall not serve the notice to the taxpayer for the relevant period.
- (6) If the taxpayer pays all the relevant dues along with interest within a period of 30 days based on the receipt of notice, the taxpayer shall inform the proper officer about such payment made in FORM GST DRC - 03.

- (7) If the taxpayer has paid all the tax paid after the issuance of notice but within a period of 30 days the proper officer shall issue an acknowledgement of acceptance in FORM GST DRC - 05 & further proceeding in respect of the notice shall be deemed to be concluded.
 - (8) If the taxpayer pays all the dues as mentioned in the notice after a period of 30 days the proper officer can impose penalty which will be higher of 10% of tax amount due or Rs. 10,000.
 - (9) The proper officer can issue notice within a period of 3 Years from the due date of furnishing of annual return for the relevant financial year to which the tax has not been paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised.
2. Determination of Tax Short Paid or Not Paid or erroneously refunded or Input Tax Credit Wrongly Availed or ITC Utilised for any reason other than fraud or any willful-misstatement or suppression of facts U/s. 74 :-
- (1) Proper officer shall issue show cause notice U/s. 50 in FORM GST DRC - 01 requiring the taxpayer to provide reason why the tax should not be paid by the taxpayer along with interest payable.
 - (2) The proper office shall issue notice under sub-sec (1) of Sec - 50 at least six months prior to the time limit prescribed to the issue of order under sub-sec (10).
 - (3) Along with notice the proper officer shall also issue a summary statement electronically in FORM GST DRC - 02 containing the details for tax short paid or not paid or erroneously refunded or input tax credit wrongly availed or utilised for such period.
 - (4) The taxpayer based on self assessment can pay all the relevant tax dues along with interest & penalty equivalent to fifteen percent before the issuance of notice & inform the proper officer about such payment made in FORM GST DRC - 03.
 - (5) On receipt of application made by taxpayer in FORM GST DRC - 03 the proper officer shall issue an acknowledgement of acceptance in FORM GST DRC - 04 & the proper officer shall not serve the notice to the taxpayer for the relevant period.
 - (6) If the proper officer find that the tax paid by the taxpayer based on self assessment basis is short paid, proper officer can issue demand notice for the balance tax payable along with penalty.
 - (7) If the taxpayer pays all the relevant dues along with interest & penalty equivalent to twenty five percent of tax payable within a period of 30 days based on the receipt of demand notice, the taxpayer shall inform the proper officer about such payment made in FORM GST DRC - 03.
 - (8) If the taxpayer has paid all the tax paid after the issuance of demand notice but within a period of 30 days the proper officer shall issue an acknowledgement of acceptance in FORM GST DRC - 05 & further proceeding in respect of the notice shall be deemed to be concluded.
 - (9) If the taxpayer pays all the relevant dues along with interest & penalty equivalent to fifty percent of tax payable within a period of 30 days based on the receipt of demand order, the taxpayer shall inform the proper officer about such payment made in FORM GST DRC - 03.
 - (10) The proper officer shall issue order within a period of 5 Years from the due date of furnishing of annual return for the relevant financial year to which the tax has not been paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised.

3. General Provisions relating to determination of Tax U/s. 75 :-

- (1) If any service or issuance of notice U/s. 73 or U/s. 74 is stayed by an order of appellate authority or appellate tribunal, the period such stay shall be excluded while calculating the period of 3 Years (U/s. 73) or period of 5 Years (U/s. 74) as the case may be.
- (2) If it is concluded by appellate authority or appellate court that the notice issued U/s. 74 is not sustainable, proper office shall determine the tax payable by the taxpayer in accordance with Sec - 73.
- (3) Where any order is required to be issued in pursuance of the direction of appellate authority or appellate tribunal or a court, the proper officer shall issue the order within a period of two years from the date of communication of the said direction.
- (4) If any adverse decision which is contemplated against the taxpayer, a personal hearing opportunity shall be granted if the taxpayer makes a request in writing.
- (5) If sufficient cause is been shown by the taxpayer, proper officer can grant time to taxpayer & adjourn the personal hearing. The maximum of three adjournment can be granted to the taxpayer.
- (6) While passing the order the proper office shall set out all the relevant facts and the basis of his decision.
- (7) The amount of tax, interest & penalty demanded in the order shall not exceed the amount specified in the notice issued and no such demand shall be confirmed which on the grounds which was not mentioned in the notice.
- (8) If appellate authority or appellate tribunal modifies the amount of tax payable determined by the proper officer, the amount of interest & penalty stands modified accordingly based on the amount of tax so modified.
- (9) Taxpayer will be liable to pay interest even if nothing is mentioned in the order passed by the proper officer.
- (10) If no order is passed by the proper officer within the specified period of 3 Years or 5 Years, then it can be concluded that adjudication proceedings are completed and no order can issue thereafter.



RECOVERY UNDER GST



CA Akash Gogri
Email : akashgogri@gmail.com

Introduction:-

In order to protect the interests of the revenue, GST like any other tax structure requires a mechanism for tracking and recovery of tax that escapes either inadvertently or by design, through malfeasance or with intent to defraud. Chapter XV of the CGST Act, 2017 contains the provisions for Demands and Recovery of Tax.

Section No.	Particulars
73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts
74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts
75	General provisions relating to determination of tax
76	Tax collected but not paid to Government
77	Tax wrongfully collected and paid to Central Government or State Government
78	Initiation of recovery proceedings
79	Recovery of tax
80	Payment of tax and other amount in instalments
81	Transfer of property to be void in certain cases
82	Tax to be first charge on property
83	Provisional attachment to protect revenue in certain cases
84	Continuation and validation of certain recovery proceedings

These are further enforced with the help of Chapter XVIII of the CGST Rules laying out various procedures to be followed by the tax authorities.

The proper officer is required to issue an order in Form DRC-07 containing the amount of tax, interest and penalty payable, on completion of adjudication proceedings. This shall also be treated as notice for recovery as per Rule 142(6) of CGST Rules, 2017. As per Section 78, the amount payable in pursuance of an order passed under the Act, shall be payable within a period of three months from the date of service of the order failing which recovery proceedings may be initiated by the proper officer.

Recovery proceedings under Section 79 can begin only when it is determined through adjudication under Section 73/74 that such amount is 'payable' by the assessee. Garnishee proceedings to be undertaken only after adjudication process is complete, even if default is for payment of interest only. – Mahadeo Construction Co. 2020 (4) TMI 666 – Jharkhand HC

Modes of Recovery:-

Section No.	Particular
79(1)(a)	Deduction of amount owed to the person by the proper officer or any specified officer
79(1)(b)	Sale of goods belonging to the person in control of the proper officer or any specified officer
79(1)(c)	Recover the money from a third person from whom money is due or may become due to the person
79(1)(d)	Sale of immovable/ movable property belonging to the person
79(1)(e)	Recovery through the Collector or application to Magistrate

Recovery by sale of goods:-

The proper officer shall prepare an inventory with an estimate of market value of such goods and can sell so much of the goods as required to recover any outstanding dues and administrative costs incurred in recovery process. The proper officer shall sell the goods through auction process, including e-auction by issuing notice in Form DRC-10.

Recovery from third person:-

The proper officer may issue a notice to any person who owes money to the defaulter in Form DRC-13 and such person if they owe some money to the defaulter would have to make payment of such sum to the government and to the extent to such payment, their liability towards such a defaulter would be considered sufficiently discharged.

If a person to whom such notice is issued fails to make payment to the government, they would be considered as defaulter and recovery proceeding would be initiated against them.

A person to whom such notice is issued may submit proofs to the proper officer substantiating that no money is owed to the defaulter on the date of the notice and in that case such a person may not be held liable to make any payment to the government.

Recovery from sale of immovable/ movable property:-

The proper officer may seize any immovable/ movable property belonging to the defaulter. They shall make a list of the property of the defaulter along with estimated market value and pass on order for attachment/distrain and notice for sale in Form DRC-16. The seized property shall be sold by way of auction.

Order of appropriation of Funds:-

As per Rule 154, the amounts realized from sale of goods, or sale of immovable or movable property shall be appropriated in the following order:-

1. Against the administrative cost of the recovery process
2. Against the amount to be recovered
3. Against any other amount due from the defaulter under any of the GST Acts.

Any balance amounts pending after the above appropriations shall be paid back to the defaulter.

Option of payment in instalments:-

The Commissioner may allow extension in time limit for payment, other than payments self-assessed as tax in any returns filed under the act, in monthly instalments not exceeding 24 months, subject to interest under Section 50. Default of payment of any instalment shall render the entire outstanding amount recoverable immediately without any further notice for payment of such amount.

Provisional Attachment:-

The Commissioner may issue an order in Form DRC-22 for provisional attachment of any property, including bank account belonging to defaulting person if during pendency of proceedings under Section 62,63,64,67, 73 or 74 of the Act, they are of the opinion that it is necessary to protect the interests of the revenue to do so.

It has been laid down in the Case of Kaish Impex Private Limited – 2020 (1) TMI 933 – Bombay High Court, provisional attachment cannot be resorted to, merely when summons under Section 70 have been issued

To determine what would constitute as essentials of forming “Opinion of the Commissioner” for purpose of provisional attachment, we may refer to the following judicial pronouncements –

1. Patran Steel Rolling Mill 2018 (12) TMI 1441 - Gujarat HC
2. Remark Flour Mills Pvt. Ltd. 2018 (4) TMI 1292 - Gujarat HC
3. Kaish Impex Private Limited - 2020 (1) TMI 933 - Bombay HC
4. Valerius Industries 2019 (9) TMI 618 - Gujarat HC

The following principles emanate out of an interpretation of the above judgements –

Power of attachment is an extraordinary and drastic power. Mere pendency of proceedings is not a valid reason for exercising such power. The Commissioner should form an opinion. Such an opinion must be formed on the basis of some tangible and objective facts like background, history, financial condition, flight risk or any other reliable information. Authority must try to ensure that balance between interest of revenue and interest of trade is maintained.

Another important question arising out of this set of provisions is whether authority for provisional attachment can be delegated by the Commissioner to any subordinate officer. It has been held in case of Valerius Industries 2019 (9) TMI 618 - Gujarat HC, the naming of a delegate to do an act involving a discretion indicates that the delegate was selected because of his peculiar skill and the confidence reposed in him and there is a presumption that he is required to do the act himself and cannot redelegate his authority. As a general rule, "if the statute directs that certain acts shall be done in a specified manner or by certain persons, their performance in any other manner than that specified or by any other person than one of those named is impliedly prohibited.

Blocking of ITC

As per Rule 86A, the Commissioner or an officer not below the rank of Assistant Commissioner authorised by them in this regard, may block the input tax credit in the electronic credit ledger if they have reasons to believe that such input tax credit has been availed fraudulently by resorting to any of the following –

1. ITC availed for an invoice issued by non-existent supplier or for supply which has not been received;
2. ITC availed for an invoice on which tax has not been paid;
3. Person availing the ITC is non-existent;
4. Invoice on which ITC is availed is not available.

The reasons to believe have to be recorded in writing. Such a blocking of ITC shall be valid for one year from the date of debit in the electronic credit ledger.

A major issue arising out of this Rule is that there is a violation of the principles of natural justice considering that it does not provide an opportunity to be heard before blocking the ITC. The judgement of the Honourable Supreme Court in case of Kesar Enterprises Ltd. – 2012 clearly states that Principles of Natural Justice require that an opportunity of being heard is afforded to the assessee before passing an order irrespective of whether the requirement of hearing has been mandated in the law or not.



GST UPDATE - AMENDMENTS PURSUANT TO 48TH COUNCIL MEETING



CA Harsh Harshad Shah
Email : caharshharshadshah@gmail.com

1.1. Amendments in GST Rates:

Sr n.	Chapter / Heading / Sub-Heading / Tariff Item	Goods	Existing Rate	Revised Rate
1	2207	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%
2	2302, 2309	Husk of pulses including chilka and concentrates including chuni/churi, khanda	5%	0%

[Notification No. 12/2022 and 13/2022-Central Tax (Rate), dated December 30, 2022]

1.2. Applicability of Reverse charge Mechanism:

- *Mentha Arvensis* is covered under Reverse charge mechanism which means *Mentha Arvensis* when supplied by any Unregistered person to any Registered person, the registered person will be liable to pay taxes on the same under RCM w.e.f. 1st January 2023.

[Notification No. 14/2022-Central Tax (Rate), dated December 30, 2022]

1.3. Amendments in Exemptions under GST:

- An Explanation has been inserted after entry 12 in the exemption notification, by virtue of which no GST is liable where the *residential dwelling is rented to a registered person in his personal capacity for use as his/her own residence and on his own account and not on account of his business.*
- Entry 23A of the exemption notification has been deleted and accordingly Service by way of access to a road or a bridge on payment of annuity shall be a taxable service.

[Notification No. 15/2022-Central Tax (Rate), dated December 30, 2022]

1.4. Amendments w.r.t. Application for Registration:

- The requirement of declaring and verifying the mobile number and email address by the person applying for the GST registration has been omitted.
- PAN will now be verified through separate one-time password received on the mobile number and email address linked to PAN.
- Rule 8(4A) of CGST Rules, 2017 (“CGST Rules”) has been amended to such that the application for registration shall be deemed to be complete *only after the biometric-based Aadhaar authentication and taking photograph of the applicant in case of an individual (or of such individuals in relation to the applicant as notified where the applicant is not an individual), along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the notified Facilitation Centres.* Rule 8(4B) of the CGST Rules to specify the States or Union territories wherein the provisions of sub-rule (4A) shall not apply.
- *New proviso to Rule 9(1)(aa) and Rule 9(2)(aa) of the CGST Rules has been inserted w.r.t. granting of the registration, to state that the registration shall be granted within 30 days of submission of application to a person, who has undergone authentication of Aadhaar number, for carrying out physical verification of places of business.*
- Rule 12(3) of the CGST Rules has been amended to state that the proper officer may cancel the registration on a request made in writing by a person to whom a registration has been granted.
- Amended PART A of FORM GST REG-01 to state that E-mail id and mobile number shall be auto-populated from Income Tax database as linked with the Permanent Account Number of the applicant.
- The instruction in FORM GST REG-01 w.r.t. Providing E-mail Id and Mobile Number of authorised signatories for verification and future communications, has been omitted.



[Notification No. 26/2022-Central Tax, dated December 26, 2022]

1.5. Amendments w.r.t. Input Tax Credit:

- Rule 37 of CGST Rules has been amended retrospectively with effect from 01.10.2022 to provide for reversal of input tax credit only proportionate to the amount not paid to the supplier vis-à-vis the value of the supply, including tax payable.
- A new **Rule 37A** has been inserted in CGST Rules which states that where the recipient has availed ITC on an invoice or debit note which is visible in their respective GSTR-2B, however, the supplier fails to furnish the GSTR-3B for the tax period corresponding to the said invoice or debit note till 30th September following the end of FY in which the ITC has been availed, *the recipient will be liable to reverse or pay the ITC availed in the GSTR-3B filed on or before 30th November following the end of such FY, and which can be reclaimed once the supplier files the GSTR-3B for that period.*

[Notification No. 26/2022-Central Tax, dated December 26, 2022]

1.6. Amendments w.r.t. withdrawal of application of Appeal:

- **Rule 109C** has been inserted under CGST Rules in order to facilitate the withdrawal of appeal.
- According to the said rule, the appellant may make an application for withdrawal of appeal in *FORM GST APL-01/03W* at any time before
 - ✓ Issuance of show cause notice by the Appellate Authority; or
 - ✓ Issuance of Order by the Appellate Authority,



Whichever is earlier.

- Approval by the Appellate Authority will be required where the final acknowledgment in *FORM GST APL-02* has already been issued, and such application for withdrawal of the appeal shall be ***decided by the appellate authority within seven days of filing of such application.***
- No additional time shall be granted for filing any fresh appeal by the appellant pursuant to such withdrawal.

[Notification No. 26/2022-Central Tax, dated December 26, 2022]

1.7. Issuance of Provisional/Final acknowledgement by Appellate Authority:

- **Rule 108(3)** of CGST Rules w.r.t. Appeal to the Appellate Authority has been amended whereby a final acknowledgment, indicating appeal number, shall be issued in *FORM GST APL-02* by the Appellate Authority where the decision or order appealed against is uploaded on the common portal.
- However, where the decision or order appealed against is not uploaded on the common portal, the appellant shall ***submit a self-certified copy of the said decision or order*** within a period of ***seven days from the date of filing of FORM GST APL-01*** and a final acknowledgment, indicating appeal number, shall be issued in *FORM GST APL-02* by the Appellate Authority.
- ***The date of issuance of such provisional acknowledgment shall be considered as the date of filing of appeal.***
- Where the self-certified copy of the decision or order is ***not submitted within a period of seven days*** from the date of filing of *FORM GST APL-01*, ***the date of submission of such copy shall be considered as the date of filing of appeal.***
- In a similar manner, CBIC has amended Rule 109 of the CGST Rules w.r.t. requirement of submission of the certified copy of the order appealed against and the issuance of provisional and final acknowledgment by the appellate authority, to facilitate timely processing of appeals and ease the compliance burden for the appellants.

[Notification No. 26/2022-Central Tax, dated December 26, 2022]

1.8. Clarification w.r.t. Difference in ITC availed in GSTR-3B as compared to GSTR-2A:

- CBIC vide *Circular no. 183/15/2022-GST dated December 27, 2022* has clarified the way to deal with the difference in Input Tax Credit ("ITC") availed in FORM GSTR-3B as compared to that detailed in FORM GSTR-2A for FY 2017-18 and 2018-19 which might arise due to following:
- ✓ The supplier has *failed to file FORM GSTR-1* for a tax period but has filed the return in FORM GSTR-3B for said tax period.
 - ✓ The supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but has *failed to report a particular supply in FORM GSTR-1*.
 - ✓ Where supplies were made to a registered person and invoice is issued as per Rule 46 of CGST Rules containing GSTIN of the recipient, but *supplier has wrongly reported the said supply as B2C supply*, instead of B2B supply, in his FORM GSTR-1.
 - ✓ Where the supplier has filed FORM GSTR-1 as well as return in FORM GSTR-3B for a tax period, but he has *declared the supply with wrong GSTIN of the recipient* in FORM GSTR-1.
 - ✓ Any other bonafide error committed in reporting during FY 2017-18 and FY 2018-19.
- According to the circular, a registered person shall:
- ✓ *Furnish details* regarding all the invoices on which ITC has been availed in his FORM GSTR 3B but which are not reflecting in his FORM GSTR 2A.
 - ✓ Provide sufficient *proof regarding the fulfilment of all the conditions* laid down in Section 16 of CGST Act, 2017.
 - ✓ Provide sufficient *proof that the ITC availed in an eligible credit* in accordance with Section 17 and 18 of CGST Act, 2017.
 - ✓ In order to verify the compliance with condition laid down in Section 16(2)(c) of CGST Act, 2017:



Difference between ITC claimed in GSTR-3B and that available in GSTR-2A	Certification regarding supplies were actually made to said registered person and tax on the same is duly discharged
In respect of a Supplier for the said financial year exceeds Rs. 5 Lakhs.	Required from CA/CMA along-with a Valid UDIN.
In respect of a Supplier for the said financial year is upto Rs. 5 Lakhs.	Required from Concerned Supplier

- However, it is clarified that for the period FY 2017-18, as per proviso to section 16(4) of CGST Act, 2017 the aforesaid relaxations shall not be applicable to the claim of ITC made in the FORM GSTR-3B return filed after the due date of furnishing return for the month of September, 2018 till the due date of furnishing return for March, 2019, if supplier had not furnished details of the said supply in his FORM GSTR-1 till the due date of furnishing FORM GSTR 1 for the month of March, 2019.

1.9. Procedure for filing application of refund by the unregistered buyers:

- Facility has been provided to unregistered buyers / recipients for *claiming refund of tax borne by them in the event of cancellation of the contract/agreement for supply of services of construction of flat/building or on termination of long-term insurance policy.*
- Application can only be made *before the expiry of 2 years from the relevant date* which can be date of issuance of letter of cancellation of the contract/ agreement for supply by the supplier.
- Refund claim can be filed by the unregistered persons only in those cases where at the time of cancellation/termination of agreement/contract for supply of services, the time period for issuance of credit note under section 34 of the CGST Act has already expired.
- Refund shall also be issued in case, where the *unregistered person has borne the incidence* of tax and not passed on the same to any other person.
- The unregistered person shall *obtain a temporary registration* using his Permanent Account Number (PAN). Unregistered person would also be required to undergo Aadhaar authentication and provide details of bank accounts in which refund amount is to be claimed.
- The application for refund shall be filed in FORM GST RFD-01 along with all the requisite documents which are as follows:
 - ✓ Details of invoices, in respect of which refund is being claimed along with copy of such invoices.
 - ✓ Proof of making such payment to the supplier
 - ✓ Copy of agreement or registered agreement or contract
 - ✓ Letter issued by the supplier for cancellation or termination of agreement or contract for supply of service
 - ✓ Certificate issued by the supplier to the effect that he has paid tax in respect of the invoices, not adjusted the tax amount by issuing credit notes and has not claimed refund and will not claim refund in respect of those invoices.
- Further, certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.
- Further, no refund shall be claimed if the amount is less than one thousand rupees.
- *Separate applications for refund have to be filed in respect of invoices issued by different suppliers.*
- Further, where the suppliers, in respect of whose invoices refund is to be claimed, are registered in different States/UTs, the applicant shall obtain *temporary registration in the each of the concerned States/UTs where the said supplier are registered.*
- The proper officer shall also upload a detailed speaking order along with the refund sanction order in FORM GST RFD-06.



[Notification No. 26/2022-Central Tax, dated December 26, 2022 and Circular No. 188/20/2022-GST dated December 27, 2022]

1.10. Clarification w.r.t. entitlement of ITC where the place of supply determined as per section 12(8) of IGST Act, 2017:

- CBIC vide *Circular No. 184/16/2022-GST dated December 27, 2022* has issued a clarification on the entitlement of input tax credit where the place of supply is determined in terms of the proviso to section 12(8) of the IGST Act, 2017.

Supplied to	Place of Supply
Registered Person	Location of such registered person
Unregistered person	Where goods are handed over for their transportation

- ***Provided that If transportation of goods is place outside India***, the place of supply is the concerned foreign destination where the goods are being transported.
- With respect to the above-mentioned proviso, the circular also clarified on certain points:
- ✓ Aforesaid supply of services would be considered as ***inter-State supply*** since the location of the supplier is in India and the place of supply is outside India. Therefore, ***integrated tax (IGST) would be chargeable on the said supply of services.***
 - ✓ The recipient of service of transportation of goods shall be ***eligible to avail input tax credit in respect of the IGST so charged by the supplier***, subject to the fulfilment of other conditions laid down in section 16 and 17 of the CGST Act.
 - ✓ The supplier of service shall report place of supply of such service by selecting State code as ***'96- Foreign Country'*** from the list of codes in the dropdown menu available on the portal in FORMGSTR-1.

1.11. Clarification w.r.t. applicability of provisions of Section 75(2) of CGST Act, 2017:

- CBIC vide *Circular No. 185/17/2022-GST dated December 27, 2022* has clarified the applicability of Section 75(2) of CGST Act, 2017 and its effect on limitation.

S. N.	Issues	Clarification
1	What would be the time period for re-determination of the tax, interest and penalty payable by the noticee where court concludes that the said notice is not sustainable under Section 74 of CGST Act for the reason that the charges of fraud or any willful-misstatement or suppression of facts to evade tax have not been established against the noticee and directs the proper officer to re-determine the amount of tax payable by the noticee, deeming the notice to have been issued under section 73 of CGST Act?	The proper officer is required to issue the order of redetermination of tax, interest and penalty payable under Section 73 within the time limit as specified in under Section 75 of the said Act, i.e. <u>within a period of two years from the date of communication of the said direction by appellate authority or appellate tribunal or the court</u> , as the case may be.
2	How the amount payable by the noticee, deeming the notice to have been issued under Section 73, shall be re-computed/ redetermined by the proper officer as per provisions of Section 75?	The proper officer has to re-determine the amount of tax, interest and penalty payable deeming that the notice has been issued under Section 73 of CGST Act in terms of section 75 of the said Act, can be re-determined for so much amount of tax short paid or not paid, or input tax credit wrongly availed or utilized or that of erroneous refund, in respect of which show cause notice was issued within the time limit as specified under Section 73 CGST Act, 2017 i.e. within 2 years and 9 months from the due date of furnishing of annual return for the respective financial year. Similarly, the amount of tax payable on account of erroneous refund along with interest and penalty payable can be redetermined only where show cause notice was issued within 2 years and 9 months from the date of erroneous refund.

1.12. Other amendments:

- A new proviso to Rule 46(f) has been inserted to provide that Supplier of Online Information And Database Access Or Retrieval services and Supplier supplying services through an Electronic Commerce Operator to a recipient who is unregistered, shall issue a Tax Invoice containing “name and address of recipient along-with its PIN code and the state name”. The same shall be deemed to be the address on record of the recipient.
- New proviso to *Rule 46A* has been inserted to provide that, the invoice-cum-bill of supply shall contain the particulars as specified under *Rule 46 or Rule 54, and Rule 49 of the CGST Rules*.
- *New Rule 59(6)(d)* has been inserted which states that a registered person to whom an intimation has been issued on the common portal and he has neither deposited the amount specified nor furnished a reply explaining the reasons, ***shall not be allowed furnish details in GSTR-1 or using invoice furnishing facility.***
- Rule 138(14) of the CGST Rules has been amended to prescribe that *no e-way bill is required to be generated in case of jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) except imitation jewellery (7117).*
- Rule 161 of the CGST Rules has been amended to prescribe that the intimation or notice for the reduction or enhancement of any demand under Section 84 of the CGST Act (recovery proceedings) shall be issued in *FORM GST DRC- 25*.
- FORM GST REG-17 has been amended w.r.t. supportive documents attached for case specific details to be provided in case ex parte decision in case of no reply to the Show Cause Notice (“SCN”) for cancellation of registration.
- FORM GST REG-19 has been amended w.r.t. order for cancellation of registration.
- FORM GSTR-1 has been amended w.r.t. details of outward supplies of goods or services by the *supplies made through e-commerce operators.*
- *FORM GST RFD-01 has been amended so as to allow the refund for unregistered persons.*
- FORM GST APL-02 has inserted reference to Rule 109(2) w.r.t. issuance of the provisional/final acknowledgment, indicating appeal number in FORM GST APL-02 by the Appellate Authority.
- New FORM GST APL-01/03W has been inserted w.r.t. the application for withdrawal of appeal application.
- CBIC vide Circular no. 186/18/2022-GST dated December, 2022 clarified that No Claim Bonus deducted from the Insurance premium cannot be considered as a consideration for any supply provided by the insured to the insurance company.
- Also, No Claim Bonus is a permissible deduction under Section 15 of CGST Act for the purpose of calculation of Value of Supply of Insurance services provided by the Insurance companies to the insured.
- The Exemption from generation of E-Invoices is for the entity as a whole and is not restricted by the nature of supply being made by the said entity.

- CBIC vide Circular no. 187/19/2022-GST dated December, 2022 has clarified that in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an **intimation in FORM GST DRC-25 reducing such demand**, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

1.13. **Clarification on refund related issues including IDS refund formula under GST Law:**

- CBIC has issued a clarification on refund related issues under GST Law. The clarifications on the issues are as under:

Sn.	Issues	Clarifications
1	Whether the formula prescribed under Rule 89 of the CGST Rules for calculation of refund of unutilised input tax credit on account of inverted duty structure, as amended vide NN. 14/2022-CT dated July 05, 2022, will apply only to the refund applications filed on or after July 05, 2022, or whether the same will also apply in respect of the refund applications filed before July 05, 2022 and pending with the proper officer as on July 05, 2022?	Vide NN. 14/2022-Central Tax dated July 05, 2022, amendment has been made in Rule 89 of CGST Rules, modifying the formula prescribed therein. The said amendment is not clarificatory in nature and is applicable prospectively with effect from July 05, 2022. The refund applications filed before July 05, 2022 will be dealt as per the formula as it existed before the amendment made vide Notification No. 14/2022-Central Tax dated July 05, 2022.
2	Whether the restriction placed on refund of unutilised input tax credit on account of inverted duty structure in case of certain goods falling under chapter 15 and 27 vide NN.09/2022-Central Tax (Rate) dated July 13, 2022, which has been made effective from July 18, 2022, would apply to the refund application pending as on July 18, 2022 also or whether the same will apply only to the refund applications filed on or after July 18, 2022 or whether the same will be applicable only to refunds pertaining to prospective tax periods?	The said notification has come into force with effect from July 18, 2022. The restriction imposed vide the said notification on refund of unutilised input tax credit on account of inverted duty structure in case of specified goods falling under chapter 15 and 27 would apply prospectively only. Accordingly, it is clarified that the restriction imposed by the said notification would be applicable in respect of all refund applications filed on or after July 18, 2022 and would not apply to the refund applications filed before July 18, 2022.

[CBIC Circular No. 181/13/2022-GST dated November 10, 2022]



IRON OUT A FEW WRINKLES IN GST



CA Nirali Gada
Email : gadanirali@gmail.com

The compliance under GST has been evolving every passing day. With introduction of every new requirement under the Law, there arises a need to clarify the tons of questions to deal with the requirements. While the CBIC is on the spree of bringing regulation for restriction of tax leakages, but the compliance has been taking lots of time and efforts of Indian businesses.

48th GST council meeting which was held on 17th December 2022 had various agenda to decide upon under the chairpersonship of the FM Smt. Nirmala Sitharaman.

As one of the measures for streamlining compliances in GST, GST council decided to introduce new Rule 88C under GST rules which would intimate the difference in the tax liability notified in the statements of the outward supplies Vs GSTR-3B so as to facilitate the taxpayers to pay / explain the reasons for differences.

The extract of press-release is as under:

*Rule 88C and FORM GST DRC-01B to be inserted in CGST Rules, 2017 for intimation to the taxpayer, by the common portal, about the difference between liability reported by the taxpayer in FORM GSTR-1 and in FORM GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage, for enabling the taxpayer to either pay the differential liability or explain the difference. Further, clause (d) to be inserted in sub-rule (6) of rule 59 of CGST Rules, 2017 to restrict furnishing of FORM GSTR-1 for a subsequent tax period if the taxpayer has neither deposited the amount specified in the intimation nor has furnished a reply explaining the reasons for the amount remaining unpaid. **This would facilitate taxpayers to pay/ explain the reason for the difference in such liabilities reported by them, without intervention of the tax officers.***

The decision has been implemented by issuance of Notification No. 26/2022 - Central Tax dated 26th December 2022, whereby the new Rule has been introduced. The rule has been reproduced as under:

"88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return.-

(1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to—

(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or,

(b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.

(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either,-

(a) pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or

(b) furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B, within the period specified in the said sub-rule.

(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.

Analysis of Rule 88C of CGST Rules, 2017:

- Rule 88C and FORM GST DRC-01B is inserted in CGST Rules, 2017 for **intimation to the taxpayer**, by the common portal, about the difference between liability reported by the taxpayer in FORM GSTR-1 and in FORM GSTR-3B for a tax period, where such difference exceeds a specified amount and/ or percentage, for enabling the taxpayer to either pay the differential liability or explain the difference.
- GST council has **not notified any percentage or amount** as on today so as to make the concerned rule operational.
- Whilst the rule has been brought with a motive to curb tax leakage and streamlining the process, however, there are likely chances that it would not be well taken by the industry at a large:
 - The rule envisages the **time limit of 7 days** to respond to the intimation either by paying tax liability using DRC-03 or by explaining the differences in part B of DRC-01B. The time limit of 7 days would appear too short to the taxpayers industry. Additionally, there is no window specified under the rule for granting any extension in timelines to the taxpayers.
 - Rule 59(6)(d) of CGST Rules, 2017 would **restrict furnishing of FORM GSTR-1 for a subsequent** tax period if the taxpayer has neither submitted the explanation nor he has paid taxes. The non-adherence with this rule would lead to immediate restriction on GSTR1 and would impact ITC claim in the hands of recipients of supplies.
 - **The recovery proceeding under Section 79** of CGST Act, 2017 would be initiated in case of non-submission of explanation, non-payment of taxes or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer. This appears to be bit harsh since the opportunity of being heard would not be granted by providing a hearing date. Further, the outcome of intimation proceedings cannot directly take a leap to a recovery proceeding.
 - **An absence of effective judicial procedure** would lead to piling up of writs at High Court level since invocation of recovery proceeding without appropriate hearing would not help in judicial analysis and examination. In turn, the specified rule could be amended whereby instead of initiating recovery directly under Section 79 of CGST Act, 2017, the proper officer may proceed to issue a show-cause notice in accordance with Section 73 or 74 of CGST Act, 2017 and follow the judicial procedure.

With union budget 2023 around the corner, this rule is surely going to iron out the few wrinkles under GST Law, however, to achieve the planned objective, the specified rule needs a re-work at CBIC's end to make it tax-payer friendly.



EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
Wednesday, 28th December, 2022	Study circle committee	SA 700 Forming an Opinion and Reporting on Financial Statements along with SA 230 Audit Documentation	CA Parin Gala	85 participants
Thursday, 29th December 2022	Study Circle Committee	Case study under Income tax	CA Kunthan Gada	22 participants

EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
6th January 2023 to 8th January 2023	Study Circle Committee	Overview on Code on Wages and Code on Social Security	<p>Session 1 Panel Discussion: Kal Aaj Aur Kal - CA Practice - Certainty in Uncertain Times Panellist 1 - CA Manish Modi Panellist 2 - CA Sameer Arora Mahindra and Mahindra Automobiles Visit Next Multi Baggers in Capital Market : 1. CA Ashish Bahety 3 Technical Analysis & Breakout Trades 2. CA Navin Shah 3 Next-Gen investment opportunity. 3. CA Mulesh Savla - Next-Gen investment opportunity. Presentation paper with Practical Case Studies on Audit Quality (SQC1 & SA 220) - CA Hasmukh Dedhia Analysis of recent Supreme Court decisions on Taxation of Charitable and Religious Trusts - CA Rajesh Kadakia</p>	90 participants



EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
Tuesday, 17th January 2023	Program Committee	Hassle Free Loans from PSU Banks for MSME Business at Affordable Terms	CA Jinand Shah & Mr. Ronak Shah	170 participants



EVENTS IN RETROSPECT

Day & Date	Committee	Program Name	Moderator / Speaker	Attendance / Views
Saturday, 21st January 2023	YIME Committee	Turf Football Tournament	----	64 Players in 8 Teams

NEETNAV NIGHTHAWKS



GBCA FC



CGCA CLEVERS



DHRUVA DAPPERS FC

DPS UNITED



SAM STRIKERS



DDA KI DHAMMAL



KPB UNITED



MAN OF THE SERIES – DEV SHAH (13 Goals)