

IRON OUT A FEW WRINKLES IN GST



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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.

