

Reply to Notices Under GST

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Basic Principals while replying any Notice

- Verify, whether it is in prescribed Form.
- Find out whether the alleged default is committed by recipient and the notice is self-explanatory.
- If it is not so, write to issuing authority, to clarify.
- Do not assume anything and do not reply hurriedly, in half-hearted manner.
- Facts of the case are very important and should be written down first, before writing reply.

- Do not simply cite the case law, but write the applicable facts and applicable ratio of the case cited.
- Prayer i.e. what lastly you expect the authority to do, shall be mentioned, instead of merely mentioning that the Notice is bad in law.

Notice in FORM – GST – REG - 03 for Seeking Additional Information / Clarification / Documents relating to Application for Registration / Amendment / Cancellation (Rule 9)

- Reply shall be furnished within 7 days in FORM-GST-REG-04.
- If the applicant need some more time, (though there is no provision), he should request by email. (Natural justice)
- Rule 9(5) provides that, where registering authority failed to grant RC within 3 or 7 working days, application shall be deemed to have been approved.
- In spite of aforesaid Rule, many a times, RC was not made effective from the date on which turnover exceeded the limit but from the prospective date. [Rule 10(2)].

- In such case, application for rectification shall be made u/s 161. There is no Rule to prescribe the Rectification Application Form. However, FORM-GST-DRC-08 is prescribed by Rule 142(7) for Rectification order.
- **Case Study:** Application for cancellation of RC was filed on 25-01-20.
- Rule 22(3) provides that RC shall be cancelled within 30 days.

- Rule 9 which provides for notice in FORM-GST-REG-03 only for asking additional information relating to grant of RC and not relating to application for cancellation.
- Even it is presumed that FORM-GST-REG-03 is also prescribed for cancellation, as per Rule 9(2) the officer shall issue the notice within 3 working days from the date of submission of application.

- Notice in FORM-GST-REG-03 is not issued within 3 days and issued after two months stating that “Department has examined your application and is not satisfied with it for the reason. Therefore pay interest & penalty and submit challan to this office. If no response is received by the stipulated date, your application is liable for rejection.”
- Whether it can be called as void?

Notice for Cancellation of Registration for non-filing of Returns

- **Submissions:**
- We have filed the Returns in GSTR -3B for July 17 and August 17 and GSTR -1 for July 17. We admit that all other returns have not been filed.
- The reason for the said non filing is that our customers have not paid huge amounts towards the outward supply made by us. As a result, we are facing financial stringency which has resulted into non-payment of GST, non-payment of salary to our staff and to our suppliers.

- Under the circumstance, we request to give the time of one month within which we will make fullest attempt to recover the outstanding from our customers to enable us to pay the taxes and file the returns.
- In spite of the above request, if the registration is cancelled, the appellate authority can restore the same, after filing of all such returns.

Notice FORM – GST – RFD - 08 for rejection of refund application

- This notice shall mention the reason for which rejection is proposed.
- The reply shall be in **FORM-GST-RFD-09**
- Rejection is proposed on account of time barring.
- Time limit of 2 years is applicable only for claiming refund of tax, interest and other amount paid in excess. [Section 54(1)]
- Time limit of 6 months is applicable only for claiming refund by foreign consulates etc. of tax paid on inward supplies. [Section 54(2)]

- No time limit is specified for claiming “refund of unutilized ITC at the end of any tax period” in case of zero rated supplies & inverted duty structure.[Section 54(3)]. Therefore, refund application cannot be rejected on the ground of late filing.
- **FORM-GST-RFD-01** is not obligatory for refund of unutilised ITC as the words “in such form and manner as may be prescribed” are absent in case of Section 54(3).
- Therefore even letterhead application is also legal. However the general provision regarding obligatory electronic filing is required to be studied carefully.

- Act or Rule does not provide that a single application for refund cannot cover two or more tax periods and two or more categories.
- The words “refund of unutilized ITC at the end of any tax period” shows that when the application is filed say at the end of February and no application was filed for earlier months, it is obvious that the credit for those periods also is accumulated at the end of February.
- Therefore in aforesaid case, it cannot be said that the claim for earlier periods is given up.
- However, the Portal does not allow the application for subsequent period, before filing for earlier periods.

- Where, earlier period's application is stuck because of technical glitch, subsequent application also gets stuck. These are Portal created problems. Hence I had to file Writ Petition.
- Para 12 of Circular No.125/44/2019-GST clarifies that since a refund application filed after correction of deficiency is treated as a fresh application, such a rectified refund application submitted after correction of deficiencies, shall also have to be submitted within two years defect notice in FORM-RFD-03, to rectify the deficiency, shall also be filed within the time limit.
- Aforesaid clarification is illegal, as the Act or Rule does not so provide.

Notice to pay Interest

- Have u come across any notice, giving appropriate calculation?
- **Section 50. Interest on delayed payment of tax**

*(1) Every person who is liable to pay **tax** in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the **tax** or any part thereof to the Government within the period prescribed, shall for the period for which the **tax** or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding **eighteen per cent**, as may be notified by the Government on the recommendations of the Council.*

- *Provided that, the **interest on tax payable in respect of supplies made** during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of Section 39, except where such return is furnished after commencement of any proceedings under Section 73 or Section 74 in respect of the said period, shall be levied on that portion of the tax that is paid in debiting the electronic cash ledger.*
- *(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four per cent, as may be notified by the Government on the recommendations of the Council.

- Section reproduced above is amended one, to overcome the controversy, whether the interest attracts on gross or net tax liability.

- To ask for interest on gross liability, was madness.
- No person can be said to pay any liability without adjusting what is due to him.
- Therefore, wherever the liability arises because of technical hurdle, no facility to revise the returns etc. NOT TO GIVE UP.
- One Professional came to me, crying, while filing GSTR-1 for his client, he showed GSTN of some other customer. Hence the actual customer raised debit note on his client for loss of ITC plus interest. In turn, his client is not paying his fee of Rs.1 lac.

- What this law and administration is? So, I promised him to file Writ Petition without charging any fee, to direct GSTN Portal to facilitate amendment of GSTR-1.
- **Bhatia Industries and Infrastructure Ltd. BHC Nagpur**
Bench-WP No.430 of 2014
- The Petitioner was entitled for refund for 2008-09 for which he applied on 11/06/2010.
- Since the returns for the subsequent Year 2009-10 were not filed, he adjusted the said refund in one of the returns of that year.

- The refund officer sanctioned the refund on 16/12/2012, by refund adjustment order dated 21/03/2013.
- In Assessment for the period 2009-10, the assessing officer levied the interest u/s 30(2) by treating the Petitioner as a person who failed to pay taxes by holding that the adjustment of Rs.41,31,650/- which was made on 28/03/2012 was in the nature of failure on the part of the Petitioner.

- The Court observed, by not making refund within time limit, the Refund Officer has violated law and the present officer has treated him as defaulter within the meaning of section 30(2) and levied interest, forgetting that the Refund Officer had himself violated the Law. In our opinion, section 30(2), therefore, will have no application in the present case. The petitioner cannot be blamed for not making payment and it is the concerned officer, who did not pass order within three months and created the entire chaos. Thus we hold that the concerned Assistant Commissioner of Sales Tax, who has issued demand notice to levy interest, is deemed to be aware of this factual and legal position since the order of refund was communicated to him and the petitioner is not at fault. We, therefore, think that the petitioner must be compensated by the department by an order of compensatory costs to be recovered by the department from the officer is at fault.

- **Whether Interest is payable, where Migration was delayed by GSTN Portal?**
- Undisputed position is that application for migration was made in time. It was not processed because of some technical glitch. As per Circular issued by the State Commissioner, required Annexure was filed to Proper Officer, but again the Officer failed to do the needful. The communication regarding this was made to State Commissioner, Principal Chief Commissioner-CGST, Mumbai Zone, Special Secretary to GST Council. Immediately thereafter i.e. in January 2020 migration was completed by GST Portal.

- Thereafter, all taxes have been paid, but the returns are not filed; as it would attract Late Fee & Interest.
- Therefore, Writ Petition was prepared, Lock Down started and Late Fee concession has been granted for all the periods from July 2017 to July 2020. Therefore all returns have been filed with payment of concessional Late Fee,
AND
- The Writ Petition was modified with a prayer for refund of Late Fee paid and waiver of entire Interest.

Whether on the following, Interest is payable & at what rate?

- Tax was paid at lower rate (under wrong entry):- Yes
- Tax was not paid (output tax, RCM, TDS,):-Yes
- ITC was claimed in excess and utilised for payment of output tax:- Yes
- Where excess ITC was claimed but not utilised for payment of tax?

- Reply should be, NO.
- ITC claimed wrongly, but not utilised cannot be called as 'availed' or 'used'.
- The interest u/s 50(1) of the Act attracts where "tax payable" is paid late. Tax payable means the tax actually payable after adjusting the amount of ITC.

Rate of Interest

- Where tax demand arise because of any order - Interest@24% u/s 50(3)
- In case of admitted tax, Interest @18% u/s 50(1).

How to compute interest?

- The words in Section 50(1), “fails to pay **tax** within the period prescribed” are important.
- Therefore, the transaction on which additional tax liability is admitted shall be identified, tax period wise.
- Then only, due date can be identified & delayed period can be computed.

Notices for Scrutiny or Investigation

- Sections relating to Assessment- 60 to 64
- Sections relating to Audit & Special Audit- 65 & 66
- Sections relating to determination of tax not paid or short paid etc.- 73 & 74.
- Summon under Section 70.
- Before admitting additional tax liability & filing DRC-3, THINK TWICE.

Summon to persons to give evidence and produce documents

Section 70(1): The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.

(2) Every such inquiry referred to in sub-section (1) shall be deemed to be a “judicial proceedings” within the meaning of section 193 and section 228 of the Indian Penal Code.

Summon to Mumbai taxpayer to attend before Tamilnadu DG of GST Intelligence

- I objected to it as shown below.
- We submit that Section 70 of the CGST Act empowers the Proper Officer to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry. The words 'in any inquiry' conveys that for invoking Section 70, any inquiry in case of any person has commenced and the Proper Officer is satisfied that any other person is in possession of a document or any other thing which is helpful as evidence, in the said inquiry.

- As such, after the aforesaid satisfaction of the Proper Officer, he is entitled to summon such other person to give evidence or produce a document or any other thing specified in such summon.
- In view of Section 70, we respectfully state that, you not being the Proper Officer having jurisdiction in our case as well as in case of any other person in whose case, any such inquiry has commenced, has no power to issue the said summon.
- Under the circumstance and legal position explained hereinabove, we request you to withdraw the said summon and excuse us from not attending before you on 14/09/2020.

- The reply to above was, “As per Sr. No. 4 of GST Circular No.3/3/2017-GST dt. 5/7/17 and Sr. No.8 of Notification No.14/2017/Central Tax dt. 1/7/17, Directorate General of GST Intelligence has all-India jurisdiction.”
- Now, to overcome the issue of jurisdiction, we should keep on investigating the cases under CPC & CRPC.

Notice to recover short paid tax under wrong entry

- Where tax is correctly paid but Chapter Heading is wrongly mentioned, NO WORRY.
- Only the words given in the entry are important, not the Chapter Headings.
- Many times, Chapter Headings confuses the tax payer as to what is covered under the said entry and what is not.
- Sometimes, custom authorities clear the goods under wrong Chapter Heading.
- Therefore, if the goods sold are covered under the wording of a particular entry, authorities cannot levy additional tax on the ground that wrong Chapter Heading is mentioned in Invoice, returns etc.

Notice for reversal of ITC (Works Contract Trading)

- In some cases, investigation is being made to find out bogus circular transactions of works contracts.
- Every supplier has shown these transactions in GSTR-1.
- The wording in inward and outward invoices is exactly matching.
- Exact number of invoices for inward and outward supply between the chain of principal and sub-contractors.

Notice Questioning quantum of ITC Claimed

- Sometimes, the authorities point out that the goods in stock are lying for years together-more than required-are purchased (only invoices), with the intention of ITC more than output tax payable.
- Though blocking the funds in stock cannot be questioned by authorities, genuineness of purchases can be investigated.
- For sending the notice propsoing; the purchases are to defraud the revenue.

Notice for Beneficiaries' transactions (Purchases from Non-genuine Taxpayer)

- Notice in Form ASMT-10 under Section 61 of MGST Act 2017 r/w MGST Rule 99(1) *stating that you have claimed ITC on purchases from non-genuine taxpayer.*

Submissions:

- You are requested to properly explain whether the ITC claimed by us is not according to law and if it is so, then you are requested to provide the supporting documentary evidence on the basis of which you came to said conclusion.

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- Notice in Form ASMT-10 under Section 61 of MGST Act 2017 r/w MGST Rule 99(1) *stating that you have claimed ITC on purchases from non-genuine taxpayer.*

Submissions:

- You are requested to properly explain whether the ITC claimed by us is not according to law and if it is so, then you are requested to provide the supporting documentary evidence on the basis of which you came to said conclusion.

Notice to pay ITC difference in GSTR-3B and GSTR-2A for the FY 2018-19

- We have received your mail dated 26.12.2019 whereby you have requested us to voluntarily pay the tax liability of Rs.0.08 We also inform you that we have appointed Advocate Deepak Bapat to act, appear and plead on our behalf in this matter. His email id is dkbapat2002@yahoo.co.in and mobile no. is 9820528006.
- Henceforth, you are requested to send every letter, notice etc. in this regard, to Mr. Deepak Bapat vide email or whatsapp and please mark copy to us also.
- Crore in GST DRC-03 for ITC difference in GSTR-3B and GSTR-2A for the FY 2018-19 and produce the copy of GST DRC-03 within 3 days.

- It is also stated that if we failed to pay the aforesaid amount, you will issue GST DRC-01 under Rule 142(1).
- **Submissions:** In reply, we point out that the difference in ITC of Rs.0.08 Crore communicated to us, is not transaction wise, but Financial Year wise, by summarily matching our claim of ITC in GSTR-3B with the GSTR-1 of registered suppliers who have shown the transactions of outward supply made to us by showing our GSTIN as a recipient.

- We further point out that we were allowed to claim the ITC in respect of inward transactions of FY 2017-18, in any GSTR-3B for April 2018 to September 2018. Similarly transactions of outward supply of any FY were allowed to be shown in the GSTR-1 of subsequent FY, any time after filing GSTR-3B and the aforesaid last date has been extended upto 10th January 2020.
- In view of the above, it is possible that we have claimed the ITC in FY 2018-19 but the suppliers have shown the corresponding outward transactions in GSTR-1 of 2017-18, 2018-19 or 2019-20. In view of the above, it is possible that the ITC claimed by us in GSTR-3B of FY 2018-19 is more than GSTR-1 of our supplier pertaining to FY 2018-19.

- Under the aforesaid circumstance, the difference in ITC claimed by recipient in GSTR-3B and tax shown by the corresponding supplier in GSTR-1 is bound to occur.
- We submit that unless it is made obligatory for every recipient to file GSTR-2 containing each transaction of inward supply on which ITC is claimed, proper officer cannot find out the outward transactions on which the corresponding supplier has failed to actually pay in cash or through utilisation of admissible ITC, by matching with each transaction shown in GSTR-1 of corresponding supplier. **As till today the provision of filing GSTR-2 is not introduced, the impugned action is premature and without any documentary evidence to establish that the suppliers of the appellant has failed to pay the tax of Rs.0.08 Crore.**

- We submit that for disallowing the ITC by invoking Section 16(2)(c), the proper officer shall establish with documentary evidence, that the supplier has failed to actually pay tax to Government, in cash or through utilisation of ITC admissible, in respect of each such transaction of his outward supply.
- Therefore you are requested to withheld the action of disallowance of ITC till the provision of mandatory filing of GSTR-2 is introduced and we upload it by showing all inward supply transactions for the FY 2017-18 and 2018-19 and till you cross verify it with GSTR-1 of our suppliers containing his transactions of outward supply for the FY 2017-18 and 2018-19.

- If you do not accept our request to withhold the action of issuing the notice in GST DRC-01 u/r 142(1), then we request you to provide us transaction wise details and documentary evidence on the basis of which you have concluded that we have claimed excess ITC of Rs.0.08 Crore.

- **Application to Supplier's Proper Officer for invoking Section 62 & 76 against him**
- This is to inform you that above referred taxable person has failed to pay output tax at Rs.-- CGST & Rs.-- SGST collected by him from us on his sales to us as shown in the attached sheet.
- Clause (c) of sub-section (2) of Section 16 of both the aforesaid Act provides that a purchaser is not entitled to claim ITC unless the supplier actually pays the output tax into Government Treasury. As the said taxable person has not filed Form GSTR-1 for the relevant period, said turnover of sales and tax collected thereon is not reflected in Form GSTR-2A. As a result we are not entitled for the said ITC.
- Therefore you are requested to take action against the said taxable person under Section 62 and Section 76.

- ***Section 62: Assessment of non-filers of returns.***
- ***Section 76: Tax collected but not paid to Government***
- We bring to your kind notice that the appointment of the Proper Officers is not made only to deny the ITC by invoking Section 16(2)(c), but also to invoke Section 9(1) which provides that **“there shall be levied a tax called **CGST/SGST** on all intra-State supplies --- and collected in such manner as may be prescribed and shall be paid by the taxable person.”**

- **Application to Supplier's Proper Officer for invoking Section 62 & 76 against him**
- This is to inform you that above referred taxable person has failed to pay output tax at Rs.-- CGST & Rs.-- SGST collected by him from us on his sales to us as shown in the attached sheet.
- Clause (c) of sub-section (2) of Section 16 of both the aforesaid Act provides that a purchaser is not entitled to claim ITC unless the supplier actually pays the output tax into Government Treasury. As the said taxable person has not filed Form GSTR-1 for the relevant period, said turnover of sales and tax collected thereon is not reflected in Form GSTR-2A. As a result we are not entitled for the said ITC.
- Therefore you are requested to take action against the said taxable person under Section 62 and Section 76.

- Therefore, being the Proper Officer of the said defaulting vendor, it is absolutely necessary to invoke Section 62 and Section 76 against him to levy and recover the output tax payable by him as per Section 9(1) of the CGST Act. After the said tax is recovered, you are requested to inform the undersigned as well as to the Proper Officer of the undersigned.
- We also state that, if the proper officer of the vendor fail to recover the said tax from the said defaulting supplier, within the statutory time limit, the said loss of revenue should be borne by the Government and it cannot be recovered from the genuine purchaser by invoking Section 16(2)(c).
- **Representation to FM-Principal Chief Commissioners-State Commissioners for making changes in GSTN Network for auto generated notice to defaulting suppliers who have not included the transactions of outward supply in GSTR-1 and to pay output tax.**

Notice proposing to enhance sales, on accounting issues

- In case of works contracts, different methods of accounting are being followed to disclose sales such as contractor account it on the basis of payment received and the customer account it on the basis of invoice raised or approved.
- After cross check with customer, assessing officer or appellate authorities have issued notice for enhancement as per value shown by the customer.
- In such case, the reply should be that for several years accounting is being done as per any of the prescribed accounting standard, and if the sales accounted in all the years are taken into account, it will match with the turnover accounted by the customer.
- However, under GST era, because of electronic cross matching, with GSTR-2A/TDS/RCM etc. satisfying the authorities has become difficult.

Notice u/s 16(4) to reverse ITC

- No ITC of any Invoice, if the return is filed after the date prescribed u/s 39 for filing return of September of subsequent year or for filing Annual return of current year whichever is earlier i.e. 20th October of subsequent year.
- Suppose any return of 2018-19 is filed after 20th October 2019 by claiming ITC, Proper Officer will come to know by common sense, that Section 16(4) applies.
- But if ITC transaction of 2018-19 is included in any return of subsequent year filed after 20th October 2019, authorities cannot pass the order for reversal of ITC, without investigating book of accounts.

- Notices are being sent by Senior Intelligence Officer, Directorate General of GST Intelligence of respective Area or by Proper Officer.
- Government claims that for a welfare State, collection of taxes is an important aspect in the governance of a country and therefore, the State is required to see that tax is realised, so that such tax can be utilised in the welfare activities of the State. **If the payment of tax is evaded the State Government will not be able to carry out its activities and thereby the developmental works of the State is halted. In order to realise tax effectively, the State may pass orders imposing obligation on any person carrying on business and such restriction cannot be said to be unreasonable.**

- **Option with Tax Payer:** To reverse and pay the ITC with interest OR reply as follows.

Submissions:

- Though, Article 19(1)(g) allows restrictions in tax matters, it cannot be **without establishing the interest of general public.**
- *We are not going to be benefited by late filing of returns.*
- Said return was not filed for financial crunch- GST Portal not allows return filing without payment.

- ITC is available if used or intended to be used in business. So entitlement can be after 20th October also. Hence the credit to ITC Ledger should be allowed even where the transactions falls u/s 17(5). So the tax payer can use such credit (if legally entitled) at his option to pay 'output tax' payable as per any return due thereafter or if such liability occurs in any proceeding.
- Therefore, there is no rational, in invoking Section 16(4).
- It is against the principle *Lex Non Cogit Ad Impossibilia*. Means, the Law does not compel a man to do certain act, which he cannot possibly perform.
- Therefore, this restriction on ITC is unreasonable.

- The Government argues that such restriction is to reduce, evasion of tax, by delaying the returns or by not filing the returns.
- Our submission is that, there are other penal provisions to enforce the payment of tax by filing the returns, such as, cancellation of registration certificate, passing of assessment order u/s 62(1) levying any tax to the best of judgment of the assessing officer, levy of interest, penalty, prosecution etc.
- Late filing gets regularised after payment of late fee. Please refer the concession in late fee which was granted in last year for lockdown, provided for any return from July 2017 onwards.

- Moreover, ITC is a tax which is already paid and therefore if return is not filed within the time specified u/s 16(4), there is no evasion of any tax.
- On the contrary, because of such denial of ITC, a possibility of not filing such return is very high.
- As the taxpayer will be liable to pay entire amount of output tax, he may think of evading the payment of output tax.
- In many cases, the amount of ITC is more than output tax payable. Therefore it cannot be presumed that the intention behind non filing of return was to evade the payment of tax.

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- In many cases, the amount of ITC is more than output tax payable. Therefore it cannot be presumed that the intention behind non filing of return was to evade the payment of tax.

- Therefore denying the ITC by invoking Section 16(4) means one more penal action for the same default.
- In view of the above it cannot be said that this restriction is reasonable and in the interest of general public.
- Under the circumstance and legal position, we request you to withdraw the said notice.
- In Nelco Ltd., Bombay High Court upheld the provision of this time limit; but in that case Section 16(4) was not specifically challenged. That case was for challenging the time limit provided for filing TRAN-1.
- Therefore in a fit case, challenge should continue.

