

# **GOODS & SERVICES TAX / IDT UPDATE – 51**

## *Central Goods and Services tax (Fifth Amendment ) Rules, 2018*

The Central Government vide *Notification No. 46 /20/2018 –GST dated 13<sup>th</sup> June, 2018* has notified following rules further to amend the Central Goods and Service Tax Rules ,2017.

Particulars	Existing provision	Revised provision
<p><b>Insertion in Rule : 37</b> Reversal of input tax credit in the case of non-payment of consideration</p>	-	<p><b>New proviso in Rule 37 has been inserted to provide that that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.</b></p> <p><i>Remarks: With the insertion of this proviso any amount that the supplier is liable to pay in relation to supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both shall be deemed to have been paid and no reversal of input tax credit on such amount is required to be made in case recipient fails to pay to the supplier the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice.</i></p>
<p><b>Substitution in proviso to sub-rule (3) of Rule : 83</b> Provisions relating to a goods and services tax practitioner</p>	<p>Provided that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of <b>one year</b> from the appointed date</p>	<p><b>Provided further that no person to whom the provisions of clause (b) of sub-rule (1) apply shall be eligible to remain enrolled unless he passes the said examination within a period of eighteen months from the appointed date.</b></p>

		<p><b>Remarks:</b> By this amendment, a person who was enrolled as a sales tax practitioner or tax return preparer under the earlier law for a period of not less than five years shall be eligible to remain enrolled unless he passes the said examination within a period of <b>18 months</b> from the appointed date. Earlier he was required to pass the said examination within a period of <b>one year</b>.</p>
<p><b>Substitution in sub-rule (5) of Rule: 89</b> Refund of input tax credit on account of inverted duty structure.</p>	<p>Maximum Refund Amount = {(Turnover of inverted rated <b>supply of goods</b>) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated <b>supply of goods</b></p>	<p>Maximum Refund Amount = {(Turnover of inverted rated <b>supply of goods and services</b>) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated <b>supply of goods and services</b>.</p> <p><i>The above change has been given a retrospective effect from 01.07.2017.</i></p>
<p><b>Substitution in clause (a) of sub-rule (3) of Rule 95:</b> Refund of tax to certain persons.</p>	<p>Refund of tax paid by the applicant was available only if the price of supply covered under a single tax invoice exceeds Rs. 5000.</p>	<p>Now, this condition has been omitted from the said rule therefore, no condition of amount of invoice to claim refund.</p> <p><i>The above change has been given a retrospective effect from 01.07.2017.</i></p>
<p><b>Insertion of proviso in sub-rule (1) of Rule 97:</b> Consumer Welfare Fund</p>	-	<p>All amounts of duty/central tax/integrated tax /Union territory tax/cess and income from investment along with other monies specified under C.E Act, CGST Act,2017; IGST Act,2017; UTGST Act,2017 and Compensation to States Act, 2017 shall be credited to the Fund</p> <p><b>“Provided that an amount equivalent to fifty per cent of the amount of cess determined under sub-section (5) of section 54 read with section 11 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), shall be deposited in the Fund.</b></p>

**Substitution of clause (3) in Rule 133|** Order of the Authority

Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order

(a) reduction in prices;

(b) Return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of 18%. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be; in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the fund referred to in section 57

(c) imposition of penalty as specified under the Act; and

(d) cancellation of registration under the Act

Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

(a) reduction in prices;

(b) Return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be; ~~in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the fund referred to in section 57~~

(c) **The deposit of an amount equivalent to 50% of the amount determined under the above clause in the Fund constituted under section 57 and the remaining fifty per cent of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;**

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

**Explanation: For the purpose of**

		<p><b>this sub-rule, the expression, —concerned State means the State in respect of which the Authority passes an order.</b></p> <p><i>Remarks: Amendment in the rule has been made to provide that the funds ordered to be paid by such authority shall be shared equally by Center &amp; the concerned State.</i></p>
<p><b>Insertion of clause (o) in sub-rule (14) of Rule 138: E-way bill.</b></p>	-	<p>A new clause (o) has been inserted to the list of specified goods on which no e-way bill is required to be generated</p> <p><b>Clause (o) contains “empty cylinders for packing of liquefied petroleum gas are being moved for reasons other than supply.”</b></p> <p><i>Remarks: Empty cylinders sent by the fabricator are not eligible for this relaxation which is only available between bolting plant and the distributor-dealer-consumer network which meets the conditions prescribed.</i></p>
<p><b>Insertion of sl. No 10 in instructions to Form GSTR 4 (A quarterly return to be filed by the composition suppliers)</b></p>	-	<p>Serial 4A of Table 4 which requires information about Inward supplies received from a registered supplier (other than supplies attracting reverse charge) is not required to be furnished for the tax periods July, 2017 to September, 2017, October, 2017 to December, 2017, January, 2018 to March, 2018 and April, 2018 to June, 2018.</p>
<p><b>Insertion in Form GST PCT-01 (Application for Enrolment as Goods and Services Tax Practitioner)</b></p>		<p>Enrolment sought as:</p> <p>11. Sales Tax practitioner under existing law for a period of not less than five years</p> <p>12. Tax return preparer under existing</p>

		law for a period of not less than five years]
<b>Form GST- RFD-01</b>	-	Changes have been made in the said form in the Statement related to the refund of accumulated ITC due to inverted tax structure. This is to make the form in line with the changes made in the formula for calculating Refund. Similar change has been made in RFD – 01A for online filing.

[\[Notification No. 46 /20/2018 –GST dated 13th June, 2018\]](#)

**Clarifications of certain Issues under GST**

The Central Government vide [Circular No. 48/22/2018 –GST dated 14<sup>th</sup> June, 2018](#) has provided clarifications on certain issues under GST which are as follows:

<b>Sl. No.</b>	<b>Issue</b>	<b>Clarification</b>
1.	Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an interstate supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?	<p>As per section 7(5) (b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.</p> <p>Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.</p> <p>In the instant case, section 7(5)(b) of the IGST Act is a specific provision which states that such supplies shall be treated as inter-State supplies.</p> <p><b>Therefore it is clarified that services of short term accommodation, conferencing, banqueting etc., provided to a SEZ</b></p>

		<p><b>developer or a SEZ unit shall be treated as an inter-State supply.</b></p> <p><i>Remarks: Reference may also be had to the UAC list of services approved to have entered for authorized operations</i>  <a href="http://sezindia.nic.in/upload/uploadfiles/files/Uniformlist.pdf">http://sezindia.nic.in/upload/uploadfiles/files/Uniformlist.pdf</a></p>
2.	<p>Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc.?</p>	<p>As per section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit.</p> <p>Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed.</p> <p>Further, as per the second proviso to rule 89(1) of the CGST Rules, 2017, in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:</p> <p>(a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;</p> <p>(b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.</p> <p><b>A conjoint reading of the above legal provisions reveals that subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.</b></p> <p><i>Remarks: It is not being expressly declared that these services are ‘entered’ for authorized operations which need to be</i></p>

		<i>examined in each case (see link in previous remarks).</i>
3.	Whether independent fabric processors (job workers) in the textile sector supplying job work services are eligible for refund of unutilized input tax credit on account of inverted duty structure under section 54(3) of the CGST Act, 2017, even if the goods (fabrics) supplied are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017?	<p>Notification No. 5/2017-Central Tax (Rate) dated 28.06.2017 specifies the goods in respect of which refund of unutilized input tax credit (ITC) on account of inverted duty structure under section 54(3) of the CGST Act shall not be allowed. However, in case of fabric processors, the output supply is the supply of job work services and not of goods (fabrics).</p> <p><b>Hence, it is clarified that the fabric processors shall be eligible for refund of unutilized ITC on account of inverted duty structure under section 54(3) of the CGST Act even if the goods (fabrics) supplied to them are covered under notification No. 5/2017-Central Tax (Rate) dated 28.06.2017.</b></p> <p><i>Remarks: welcome clarification which has wide implications in other industries where this ratio can provide good guidance as this is laying down a principle rather than declaring a special dispensation.</i></p>

[Circular No. 48/22/2018 –GST dated 14th June, 2018 ]

**Extension of Special Refund Fortnight till 16.6.2018**

The Government has launched the second “Special Drive Refund Fortnight “from 31.5.2018 to 14.6.2018. During the first Refund Fortnight from 15<sup>th</sup> to 29<sup>th</sup> March an amount of Rs.5350 crore was sanctioned and during this fortnight over Rs 7500 crore has been sanctioned. **In view of overwhelming response from exporters and pending claims, the period of Refund fortnight is being extended by two more days’ i.e up to 16<sup>th</sup> June, 2018.**

All exporters whose refunds have been held up on account of short payment are required to make the payment of IGST equal to short payment and follow the instructions of Circular No.12/2018-Customs dated 29.5.2018.

In IGST short payment cases, small exporters whose aggregate IGST refund amount for the period July, 2017 to March, 2018 is upto Rs. 10 Lakhs are required to submit self-certified copies of proof of payment of IGST to the concerned Customs office at the port of export. Others are required to submit a certificate from a Chartered Accountant including the proof of payment.

All GST refund claimants, whose claims are still pending, are being encouraged to approach

their jurisdictional Tax Authority for disposal of their refund claims submitted on or before 30.04.2018. In case the jurisdiction (i.e. Centre or State) has not been defined for a particular claimant, he/she can approach either of the jurisdictional tax authorities.

All claimants may note the refund application in FORM GST RFD-01A will not be processed unless a copy of the application, along with all supporting documents, is submitted to the jurisdictional tax office. Mere online submission is not sufficient.

All IGST refund claimants may register on ICEGATE website, if not already done, to check their refund status. Customs field formations have been informed about the extension of the Refund Drive. Exporters are requested to make the best of this extended drive and avail of the opportunity to get the refunds sanctioned during this special drive. In case of any problem, exporters are advised to approach the Commissioner of Customs /Jurisdictional Tax Authorities. The Government is committed to clear all the remaining refund claims filed upto 30.04.2018 are still pending.

(Release ID :179914 dated 12<sup>th</sup> June, 2018)

**Change of email and mobile number of the authorized signatory by taxpayers with assistance from the jurisdictional tax officer under GST system**

Complaints are being received from taxpayers that the intermediaries who were authorized by them to apply for registration on their behalf had used their own email and mobile number during the process. They are now not sharing the user credentials with the taxpayer on whose behalf they had done the registration in the first place and the taxpayer is at their mercy.

With a view to address this difficulty of the taxpayer, a functionality to update email and mobile number of the authorized signatory is available in the GST System. The email and mobile number can be updated by the concerned Jurisdictional tax authority of the taxpayer as per the following procedure:

**Steps to be followed:-**

- Taxpayer is required to approach the concerned jurisdictional Tax Officer to get the password for the GSTIN allotted to the business.
- <https://www.gst.gov.in>,>. Allotted jurisdiction is displayed in red text>
- Taxpayer would be required to provide valid documents to the tax officer as proof of his/her identity and to validate the business details related to his GSTIN.
- Tax officer will check if the said person is added as a Stakeholder or Authorized Signatory for that GSTIN in the system.
- Tax officer will upload necessary proof on the GST Portal in support to authenticate the activity.
- Tax officer will enter the new email address and mobile phone number provided by the Taxpayer.
- After upload of document, Tax officer will reset the password for the GSTIN in the system.
- Username and Temporary password reset will be communicated to the email address as



entered by the Tax Officer.

- Taxpayer need to login on GST Portal <https://www.gst.gov.in/> using the **First time login** link.
- After first time login with the Username and Temporary password that was emailed to him, system would prompt the taxpayer to change username and password. The said username and password can now be used by the taxpayer.

(Release ID :179956 dated 14<sup>th</sup> June,2018)

[<http://pib.nic.in/newsite/erelease.aspx>]

## Customs

### Procedure for E- commerce exports through Post and Clarification regarding personal imports

In order to facilitate exporters engaged in fulfilling multiple low- value- small- shipment orders the Central Government vide *Circular No. 18/2018 –Customs dated 13<sup>th</sup> June, 2018* has permitted that PBE-11 may be used for this purpose.

[*Circular No. 18/2018 –Customs dated 13<sup>th</sup> June, 2018*]

### Exemption of reverse charge on supply made by unregistered persons to registered person getting expired on 30<sup>th</sup> June

Please note that exemption (10/2018-CT(R) and 11/2018-IT(R)) from payment of GST under 9(4) of CGST Act and 5(4) of IGST Act is due to expire on 30 June, 2018. Unless exemption extended, inward supplies from unregistered suppliers will need to be subject to tax on reverse charge basis.

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