



Indirect Tax Newsletter

May 2023

One time amnesty scheme for revocation of cancellation of GST registration

The CBIC has issued the Notification No. 3/2023 dated 31.03.2023, in which the time limit for filing the revocation of cancellation of GST registration has been extended for those taxpayers whose GST stands cancelled by 31.12.2022 and they have not been able to file the revocation application within the prescribed time limit.

The revocation application can be filed by 30th June 2023 .

- a. Apply for revocation on or before 30.06.2023
- b. Revocation shall be applied only after filing all the returns due up to the effective date of cancellation of registration and after paying tax, interest, late fee, penalty if any levied.
- c. No further extension shall be available in above cases
- d. Cases covered for this purpose:
 - a. Cases where RC has been cancelled but revocation is not filed.
 - b. Cases whose application for revocation has been rejected for the reason of failure to adhere to the time limit for application of revocation.
 - c. Cases where the taxable person has appealed against the order of cancellation of registration.

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One time amnesty for withdrawal of best judgement assessment orders.

If the registered taxable person does not file his return (even with a notice) he will be sent a notice u/s 62. If he does not file return, the proper officer will assess the tax liability to the best of his judgement and an assessment order will be issued within 5 years from the due date of the annual return. If the taxable person files a valid

return within 30 days from the above assessment order, then the best judgement assessment order will be withdrawn.

As per the CGST notification 06/2023 dated 31st March 2023, non-filers are given an option to file pending returns if they missed the 30 days' time limit from date of issue of order if issued on or before 28th February 2023. The fresh time limit to file such pending returns is in between 1st April 2023 to 30th June 2023.

Reduction/waiver of late fee for Returns filed related to earlier periods.

(Based on Notification No. 02/2023-CT dt. 31.03.2023, Notification No. 07/2023-CT dt.31. 03.2023 and Notification No. 08/2023-CT dt. 31.03.2023)

The Return is filed between the period 01.04.2023 and 30.06.2023

Default	Reduced late fee
Non-filing of Form GSTR-4 (Return for composition supplier) for quarters falling between the period July 2017 to March 2019 or the financial years from 2019-20 to 2021-22, by the due date.	Rs. 500 [Rs. 250 each for CGST & SGST] OR Nil, if no GST is payable
Non-filing of Form GSTR-9 (Annual Return) for financial years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, by the due date	Total late fee restricted to Rs. 20,000 [Rs. 10,000 each for CGST & SGST]
Non filing of Form GSTR-10 (Final Return) by the due date	Rs. 1,000 [Rs. 500 each for CGST & SGST]

Rationalisation of late fee for delayed filing of annual return

The amount of late fee for delayed filing of Form GSTR-9 (Annual Return) for FY 2022-23 onwards has been restricted for specific class of registered persons, in the following manner:

Class of registered persons	Amount of late fee
Having an aggregate turnover up to Rs. 5 crore in the relevant financial year	Rs. 50 [Rs. 25 each for CGST & SGST] per day subject to a maximum of 0.04% [0.02% each for CGST & SGST] of turnover in the State or Union Territory.
Having an aggregate turnover of more than Rs. 5 crore and up to Rs. 20 crore in the relevant financial year	Rs. 100 [Rs. 50 each for CGST & SGST] per day subject to a maximum of 0.04% [0.02% each for CGST & SGST] of turnover in the State or Union Territory.



CASE LAW

Mere allegations of availing Fake Credit cannot be a ground for rejecting the refund applications unless it is established through conclusive findings.

Case : M/s BALAJI EXIM vs COMMISSIONER CGST AND OTHERS

Issued By: Delhi High Court

Order No: 10407/2022 ,Date: March 13 2023

The petitioner M/S. Balaji Exim had filed its refund application seeking a refund of the unutilized Input Tax Credit (ITC) amounting to Rs. 72,03,961, which comprised Integrated Goods and Service Tax (IGST) and Cess. The respondent issued a deficiency memo stating that the supporting documents were not uploaded on the GST portal.

A search was conducted by the officers of Central GST on the premises of the petitioner. The petitioner (its proprietor) was summoned to the office of the respondent to tender certain documents. The petitioner wrote several letters to the respondent requesting for early disposal of his refund applications. However, his requests were not acceded to.

In the meantime, the petitioner became aware of the allegations that its supplier had issued fake invoices, and its ITC was blocked. The supplier had moved the High Court by filing a writ petition seeking to unblock of its Electronic Credit Ledger (ECL).

Show cause notice was issued by the respondent to the petitioner proposing to reject the petitioner's refund applications. The petitioner responded to the show cause notice. The petitioner was also afforded a personal hearing by the respondent. During the course of the proceedings, the petitioner also submitted additional documents in support of its refund claim.

The Appellate Authority held that although the petitioner was in possession of the tax invoices, it could not be said that the petitioner had received the goods. Therefore, one of the conditions as stipulated in Section 16(2) of the Central Goods & Services Tax, 2017 – the taxpayer has received the goods or services or both – was not satisfied. The Appellate Authority concluded that the present case was one of “goodless supply on the strength of fake invoices”.

The court noted that the petitioner's refund applications were rejected on a mere apprehension that its supplier had issued fake invoices. There is no conclusive finding on the basis of any cogent material that the invoices issued by the supplier to the petitioner are fake invoices.

The court clarified that in the event the respondents are able to find material to establish the allegations regarding the non-supply of any goods to the petitioner, it would be open for the respondents to initiate such action as may be warranted in accordance with the law.

The Hon'ble Court held that it is not required to examine the affairs of its supplying dealers and hence the allegations of any fake credit availed by the concerned vendor cannot be a ground for rejecting the petitioner's refund applications unless it is established that the petitioner has not received the goods or paid for them.

