



# Indirect Tax Newsletter December 2022

## Changes in the CGST Rules on the recommendations of the 48th GST Council Meeting.

The CBIC vide Notification No. 26/2022 (Central Tax) dated December 26, 2022 has issued 'the Central Goods and Services Tax (Fifth Amendment) Rules, 2022' to further amend the Central Goods and Services Tax, Rules, 2017 ("the CGST Rules"). Following are the key highlights-

### I. Registration:

- Omitted the requirement of declaring mobile number and e-mail address by the person applying for GST registration
- Permanent Account Number (PAN) to be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the PAN.
- Omitted the requirement of verifying the mobile number and e-mail address
- The application for registration shall be deemed to be complete only after the biometric-based Aadhaar authentication and taking photograph of the applicant 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.
- The registration shall be granted within thirty days of submission of application to a person, who has undergone authentication of Aadhaar number, and is identified on the common portal for carrying out physical verification of places of business.



**II. ITC** -With effect from October 1, 2022, to state that a registered person, who fails to pay to the supplier, the amount towards the value of such supply whether wholly or partly along with the tax payable thereon, within the time limit, shall pay or reverse an amount equal to the Input Tax Credit (ITC) availed in respect of such supply proportionate to the amount not paid to the supplier along with interest.

**III. Invoice-** The tax invoice issued by the registered person shall contain the name and address of the recipient along with its PIN code and the name of the State and the said address shall be deemed to be the address on record of the recipient, in case where any taxable service is supplied by or through an Electronic Commerce Operator (“ECO”) or by a supplier of Online Information And Database Access Or Retrieval (“OIDAR”) services to a recipient who is un-registered, irrespective of the value of such supply.

**IV. New Rule 59(6)(d)-** A new rule has been inserted to prescribe that a registered person, to whom an intimation has been issued on the common portal in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both in **FORM GSTR-1** or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid.

**V. Application for refund of tax, interest, penalty, fees or any other amount-**

- The refund application shall be accompanied by a statement containing the 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, the copy of

agreement or contract, entered with the supplier for supply of service, the letter issued by the supplier for cancellation or termination of agreement or contract for supply of service, details of payment received from the supplier against cancellation or termination of such agreement along with proof thereof, in a case where the refund is claimed by an unregistered person where the agreement or contract for supply of service has been cancelled or terminated.

- the refund application shall be accompanied by a certificate issued by the supplier to the effect that he has paid tax in respect of the invoices on which refund is being claimed by the applicant.
- a certificate is not required to be furnished in cases where refund is claimed by an unregistered person who has borne the incidence of tax.

**VI. E-way Bill-** No e-way bill is required to be generated in case of jewellery, goldsmiths’ and silversmiths’ wares and other articles except imitation jewellery .

**VII. FORM GSTR-1-** Amended the form w.r.t. details of outward supplies of goods or services by the supplies made through e-commerce operators.

**VIII. FORM GST DRC-03-** Substituted FORM GST DRC-03 w.r.t. Intimation of payment made voluntarily or made against the SCN or statement or intimation of tax ascertained through FORM GST DRC-01A.

**For more information-**

<https://taxinformation.cbic.gov.in/view-pdf/1009584/ENG/Notifications>

## CASE LAW UPDATE

### GST Authorities can retain Seized Goods for a Maximum Period of Four and Half Years: Delhi HC

**Case Name :** *Dhruv Krishan Maggu versus Principal Director General W.P.(C) NO. 7517 OF 2020 dated 12/12/2022*

In the present case the DGGI received a communication from the Allahabad Bank, Delhi that certain high level transactions related to refund of GST credited to four bank accounts which were newly opened. The said amount was immediately withdrawn from the accounts & the address of the four accounts were found same. The said four accounts were frozen. The total amount of credit of refund is to the tune of Rs.10.32 crores. The Department conducted searches in the said premises and found that the four entities are non existence and non functional.

The Department recorded the statements of the proprietors of all the entities. They stated that they were not aware of any details. DGGI observed that 23 firms were opened in the names of the laborers, drivers, cooks, street hawkers etc. The DGGI also found that certain individuals including the Petitioner were found to be involved in the process of availing IGST refunds and siphoning the same. The GST refund to the extent of Rs.63 crores have been siphoned off by them.

In the process of unearthing these transactions, search and seizure were conducted in which computer, laptops, documents and other documents were seized. The petitioner in the present writ petition sought return of his laptop, computer, documents and other things which were seized by the DGGI. Both the parties made their submissions before the court.

The High Court observed that when goods are seized, such seized goods have to be returned to the person from whom they were seized within six months of the seizure of goods, unless and until, the proper officer, on sufficient cause, extends the same for a further period of not exceeding then 6 months. In the case of documents or books or things, the same can be retained by the officer for so long as it is required for examination and for inquiry of proceedings under the Act. The court further observed that in case of wrongful availment of Input Tax Credit the proper officer has five years from the date of erroneous refund to pass the order

The High Court observed that by a conjoint reading of sections of the act, the 'documents or book or things' can be retained for a maximum period of four and half years, within which period the notice has to be issued, plus thirty days from the date of erroneous refund. In the present case, the said period had not yet lapsed. Therefore the High Court rejected the prayer of the petitioner for the return of laptop, computer and other documents to the petitioner.

