

25th February, 2020 / 12463

To,

Shri Ajay Jain
Principal Chief Commissioner, CGST
Central GST Bhavan
Amabwadi
Ahmedabad

Durgesh V. Buch
President

Natubhai Patel
Sr. Vice President

Bhargav Thakkar
Vice President

Sanjeev Chhajer
Secretary

Dilip M. Padhya
Secretary (R)

Pathik S. Patwari
Treasurer

Sub: Submission of pending issues related to GST

Respected Sir,

Greetings from Gujarat Chamber of Commerce and Industry (GCCCI).

Sir, we have compiled the pending issues related to GST and attached herewith.

We request you to consider these issues positively and resolve the same as early as possible.

With regards,

Sincerely,



Durgesh Buch
President

ISSUES RELATING TO GST

BLOCKING OF INPUT TAX CREDIT

1. We would like to bring to your notice Notification No. 75/2019-Central Tax dated 29.12.2019 by which Rule 86A has been inserted in the Rules which stipulates to restrict the Input Tax Credit for having reasons to believe that input tax credit available in the Electronic Credit Ledger was fraudulently availed or is ineligible.
2. In this regard, the officers of the department have started exercising powers under this new provision and are blocking the Input Tax Credit on provisional basis due to which the tax payers are unable to utilize such credit towards payment of Output Tax Liability. In this regard we have to point out the following:
 - (a) The dealers are not made aware about the officer who had exercised such power. Therefore the dealers have to run from pillar to post to firstly find out the learned Officer who had taken such action against them.
 - (b) The dealers are unaware about the reasons on basis of blockage of ITC has taken place.

In our humble submission it is the requirement for the observations of the principles of natural justice that dealers should be given notice & opportunity of being

heard on aforesaid issue before exercising powers under rule 86A of CGST Rules 2017.

- (c) It is often found that such action is taken merely by making comparison of the amount of claim of Input Tax Credit in GSTR 3B vis-avis GSTR 2A of a particular month instead of the holistic view of such claim to be verified for the entire period till the month for which the dispute is raised.

It is respectfully submitted that while initiating the action under rule 86A of CGST Rules the department should take into consideration the mismatch between GSTR 2A till the last return and the amount of claim of Input Tax Credit in GSTR 3B till that return because there are several cases wherein the tax payers claim the Input Tax Credit at a later stage of filing GST returns (subsequent period) and for that particular tax period the details are not a part of GSTR 2A which creates deviations.

It is also required to be noted that the amount of Input Tax Credit towards Import of Goods & Reverse Charge Mechanism are not reflected in GSTR 2A of the recipient. Therefore validation under the newly enacted rule should be made for calculating mismatch only towards purchase reflected in GSTR 2A and Input Tax Credit claimed in GSTR 3B other than Import of Goods

& Reverse Charge Mechanism. Such validation may help to eliminate unnecessary differences which are not part of GSTR 2A of recipient.

(d) After several attempts if in case the dealer is able to trace out the jurisdiction of the concerned officer and provide necessary submission to the department against the blockage of the input tax credit, the process of unblocking of Input Tax Credit on GST portal is not initiated.

In our humble submission once the satisfactory explanation is offered by the dealer the input tax credit claim on the GST portal should be immediately unblocked.

We also firmly believe that before taking rigorous action for blockage of input tax credit, the department should clearly make appropriate distinction between Genuine / Innocent (Bonafide) Tax Payers and others so that honest dealers do not suffer for trifle errors on the part of either the supplier or the recipient.

Deficiency Memos (RFD 03) For Refunds

3. In Circular No. 125/44/2019- GST, it is clarified that if the application for refund is complete in terms of sub-rule (2), (3) and (4) of rule 89 of the CGST Rules, an acknowledgement in FORM GST RFD-02 should be issued within 15 days of the filing of the refund application. The date of generation of ARN for FORM GST RFD-01 is to be considered as the date of filing of the refund application. Sub-rule (3) of rule 90 of the CGST Rules provides for communication of deficiencies in FORM GST RFD-03 where deficiencies are noticed within the aforesaid period of 15 days.
4. We have learnt that though the application of refund is required to be made online on GST Portal and all relevant documents are required be uploaded along with the application, for want of physical documents & queries which is unaddressed to the applicant the offices issue Deficiency Memos in FORM GST RFD 03 enlisting the queries on which expressive submission or reply is required.
5. After a deficiency memo has been issued, the refund application would not be further processed. The dealers are required to file fresh refund application electronically in FORM GST RFD-01 again for the same period and this application would have a new and distinct ARN.

6. It is observed that after the new application for refund is filed, the entire process of re-verification of the claim is undertaken and many times again a deficiency memo is issued on certain other grounds not issued earlier. This is resulting in to huge time being wasted for one reason or the other in granting refunds to the dealers. As a matter fact we have received representations to the effect that such power of issuing deficiency memo has been grossly misused and leads to rampant corruption.
7. It is our sincere request that once a deficiency memo is issued and is fully complied with the amount of input tax credit debited from electronic credit should be re-credited immediately. The fresh application of refund for the same amount should be allowed without further verification so as to avoid unnecessary delay in granting refund.
8. We believe that the provisions of law are required to be suitably amended so as to introduce a mechanism by asking the applicant for only submission & documents which are enlisted in Deficiency Memo rather than applying for fresh application which leads to prolonged exercise on both sides.

Interest on NET TAX LIABILITY only

9. Presently, interpretation of Section 50(1) relating to interest is causing unnecessary hardships to the taxpayers. GST Department is imposing interest on GROSS TAX

LIABILITY for belated payment of tax by issuing notices. Coercive recovery proceedings are also initiated based on such demand for interest. Already the issue is settled by way of very balanced judgment passed by Honorable Madras High Court in case of **M/s Refex Industries Limited v. The Assistant Commissioner of CGST & Central Excise Writ Petition Nos. 23360 and 23361 of 2019** wherein it is held that interest shall be only attracted on the delayed payment of GST to the extent of taxes paid vide Cash Challan/s. The Court held that the proviso inserted in section 50 with effect from 01.08.2019 providing for interest to be levied only on that part of the tax which is paid in cash, clearly seeks to correct an anomaly in the provision as it existed prior to such insertion. Unfortunately the said amendment has yet not be brought in to force.

10. It has been held by Hon. Supreme Court in umpteen number of cases that input tax credit is as good as tax paid by the dealer. Reference is invited to the following judgments:

(a) Eicher Motors Ltd. v/s Union of India 1999 (106) ELT 3

(SC)

(b) Collector of Central Excise v/s Dai Ichi Karkaria Ltd.

1999 (112) ELT 353 (SC)

(c) Jayaswal Neco Ltd. v/s Commissioner of Central Excise
2015 (322) ELT 587 (SC)

11. It is also not out of place to point out that even Hon. Gujarat High Court has in many cases stayed the recovery proceedings relating to interest on gross tax liability.

It is therefore, requested to issue necessary instructions for not initiating recovery proceeding towards charging of interest on GROSS TAX LIABILITY. Also in cases where the registration certificates of dealers are cancelled for want of payment of tax, payment of interest on gross liability is insisted for the restoration of the registration certificates of such dealers. It is requested that even for restoration of registration certificates, in so far as interest is concerned, insistence should be only for the payment of interest for delay in paying net liability after reduction of admissible input tax credit.

Appeal in the State where dispute raised with regard to goods in transit

12. At present the practice adopted is that dealers have to file an appeal in the State wherein dispute is raised for the goods in transit. For this purpose firstly dealers are required to take temporary registration certificate in the State where dispute has arisen. Thereafter tax and penalty are required to be

deposited. Even after such payment order in DRC 07 is not issued. As a result dealers are not able to file the appeal.

13. We are clearly of the opinion that dealers registered in a particular State should be allowed to file appeal in the State wherein it is registered instead of the State in which the dispute is raised. This would avoid unnecessary harassment of the dealers. Also so far as such dispute within the State is concerned, the dealers should be allowed to file appeal to the appellate officer having jurisdiction over their place of business.

Transitional credit to be allowed

14. Extensive provisions have been made in the GST Acts for granting transitional credit. Such credit is largely based on the returns filed under the earlier regime. Due to mistake or glitches of the system many dealers have not been able to rightly claim their credit within the stipulated time limit. Many Hon. High Courts including Hon. Gujarat High Court has held that the time limit for claiming such credit should not be strictly observed. Dealers should therefore be given opportunity to claim such transitional credit which they are legally entitled to but have failed to claim for one reason or the other.

GST FORM PMT 09

15. Vide Notification No. 31/2019 Central Tax dt. 28th June 2019, with effect from a date to be notified later, the following sub-rule has been inserted i.e. Rule 87 (13), namely:

A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.”

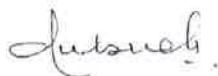
This provision is still not made operational. It is therefore urged to make the above provision operative on the GST Portal in the interest of tax payer.

Waiver of Late Fees & Penal provision for GSTR 9 & 9C for F.Y. 2018-19

16. The due date for filing FORM GSTR 9 & FORM GSTR 9C has been extended to 31st March 2020 for FY 2018-19. The full facility for filing such forms are still not functional for most of the dealers. Even one month's time to comply the same on GST portal is practically impossible as many details auto populated in GSTR 9 are incomplete & untrue. It is therefore very much necessary that the late fees & penal provision for late filing of GSTR 9 & 9C for FY 2018-19 should be completely waived.

Non Operational of Authority for Advance Ruling in State of Gujarat.

17. Since several months, the authority for advance ruling is inoperative in the State of Gujarat and numbers of cases are pending for adjudication before the authority. Due to this, the time limit of 90 days for passing of the order as provided in section 98(6) is not observed at all. Hence it is requested to restart the process of Advance Ruling in State of Gujarat at the earliest.



Durgesh Buch
President