



Analysis of 55th GST Council's decision for Amendments in CGST Act, 2017 and CGST Rules, 2017 in respect of functionality of Invoice Management System (IMS)

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- The GST Council recommended inter-alia-
 - i. To amend section 38 of CGST Act, 2017 and rule 60 of CGST Rules, 2017 to provide a legal framework in respect of generation of FORM GSTR-2B based on the action taken by the taxpayers on the Invoice Management System (IMS).
 - ii. To amend section 34(2) of CGST Act, 2017, to specifically provide for requirement of reversal of input tax credit as is attributable to a credit note, by the recipient, to enable the reduction of output tax liability of the supplier.
 - iii. To insert a new rule 67B in CGST Rules, 2017, to prescribe the manner in which the output tax liability of the supplier shall be adjusted against the credit note issued by him.
 - iv. To amend section 39 (1) of CGST Act, 2017 and rule 61 of CGST Rules, 2017 to provide that FORM GSTR-3B of a tax period shall be allowed to be filed only after FORM GSTR-2B of the said tax period is made available on the portal.

Our Comments:

Section 34(2) of CGST Act 2017 will be amended, to specifically provide for requirement of reversal of ITC as is attributable to a credit note, by the recipient, to enable the reduction of output tax liability of the supplier. As of now the provision is only there u/s 15(3)(b)(ii) of CGST Act for CNs issued for discount. Now for all CNs the said provision will prevail.

Simultaneously new rule 67B in CGST Rules, 2017 would be inserted to prescribe the manner in which the output tax liability of the supplier shall be adjusted against the credit note issued by him. **Hence it seems that this Rule will prescribe that incase the recipient rejects the CN, then supplier has to pay tax as his output tax liability. Interest would also apply herein.**

Section 39 (1) of CGST Act, 2017 and rule 61 of CGST Rules, 2017 will provide that FORM GSTR-3B of a tax period shall be allowed to be filed only after FORM GSTR-2B of the said tax period is made available on the portal. **Hence IMS is there to stay and the GSTR-2B figures would flow only from IMS going forward it seems.**

Section 38 of CGST Act, 2017 and rule 60 of CGST Rules, 2017 may be amended to provide a legal framework in respect of generation of FORM GSTR-2B based on the action taken by the taxpayers on the Invoice Management System (IMS). **As of now IMS is not recognised by law. Section 38 and Rule 60 still refer to 'auto-generated GSTR-2B'**

Simultaneously, with these amendments it seems that the CNs would also be allowed to be kept pending as demanded by the Trade & Industry.

To bring supply of the sponsorship services provided by the body corporates under Forward Charge Mechanism: Analysis of 55th GST Council's decision

Sponsorship services were brought into reverse charge with the intention of reducing the compliance burden on small and unorganised associations and organisations who run on sponsorship from their constituents (members or non-members). Further it was difficult for the Government also to track these associations and organisations. Most of these associations and organisations are Non-Profit Organisations (NPOs).

However, it is seen now-a-days that these NPOs have also become quite big and are already in possession of a GST registration for their other services. Further many of them are registered even as a Section 25 Company under the Companies Act 2013. Incase their sponsorship services are on reverse charge basis, then to such extent the service recipients pay GST on sponsorship services and not these NPOs. This requires that these NPOs reverse their Input Tax Credit (ITC) proportionately. For example incase GST paid membership fees which are on Forward Charge (FCM) is Rs.50 Lakhs and RCM paid sponsorship services is Rs.1Crore, then such taxpayer has to reverse 2/3rd of its ITC. Such reversal is a substantial cost to the NPO and increases its operational cost.

Hence for those entities which are registered as body corporates, their services of sponsorship has been proposed to be on FCM rather than RCM. Therefore, they do not require to reverse their ITC anymore.

However, many big NPOs are registered even as Trusts or co-operative societies and not as a Section 25 Company. For example, certain Chambers of Commerce are not registered as a Company. The definition of 'body corporate' as per 13/2017 CT (R) is that *"(b) "Body Corporate" has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013"* which states –

"body corporate" or "corporation" includes a company incorporated outside India, but does not include –

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf"

Hence these entities would still be under RCM.

These Entities may now go to the Council again for further relaxation.

BRIEF ABOUT THE AUTHOR:

Vivek Jalan is a Chartered Accountant, M.B.A (International Trade) & a qualified L. LM (Constitutional Law) & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairman of The Indirect Tax Core Group of The Confederation of Indian Industries – EAC(ER). He is the Chairperson of The National Fiscal Affairs & Taxation Committee of The Bengal Chamber of Commerce and Industry. He is a Member of The Managing Committee of The Bengal Chamber of Commerce and Industry.

He is a regular Columnist and guest expert in Economic Times, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Indirect Taxes and Direct Taxes which reaches more than 70000 professionals.

He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 15 years of experience in the field of Indirect & Direct Taxation. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books on taxation include the following –

- **Income Tax Section Wise Commentary and Analysis of Recent Developments**
- **Union Budget 2024 Edition**
- **GST APPELLATE TRIBUNAL (GSTAT)**
- **TAX PLEADING & PRACTICE JOURNAL – OCTOBER 2023**
- **GST PLEADING & PRACTICE – SEPTEMBER 2023**
- **UNION BUDGET – 2023-24**
- **HANDBOOK ON GST – August 2022**
- **COMMENTARY ON UNION BUDGET 2022 – Feb 2022**
- **GST PLEADING & PRACTICE – AUGUST 2021**
- COMMENTARY ON UNION BUDGET 2021 – Feb 2021
- SECTION-WISE COMPENDIUM ON GST – Oct 2020
- INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020
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- SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
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- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY

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