

Analysis of GST Notifications dt'ed 31st July 2023

By: Team Tax Connect

Friends,

One more set of notifications have been issued under GST, even as we await the 51st GST Council Meeting to be held on 2nd August 2023. The following are our brief analysis of the notifications as follows –

1. Analysis of Not No 31/2023 – Central Tax -

Rule 8(4A) States as follows -

¹⁰[(4A) Where an applicant, other than a person notified under sub-section (6D) of section 25, opts for authentication of Aadhaar number, he shall, while submitting the application under sub-rule (4), undergo authentication of Aadhaar number and the date of submission of the application in such cases shall be the date of authentication of the Aadhaar number, or fifteen days from the submission of the application in Part B of FORM GST REG-01 under sub-rule (4), whichever is earlier.

Provided that every application made under sub-rule (4) by a person, other than a person notified under sub-section (6D) of section 25, who has opted for authentication of Aadhaar number and is identified on the common portal, based on data analysis and risk parameters, shall be followed by biometric-based Aadhaar authentication and taking photograph of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this proviso.]

The above Rule 8(4A) was recently introduced and it provided that taking GST registrations would going forward entail –

1. Aadhar Authentication
2. For certain persons identified on GST Portal, the following additional process needs to be followed –
 - A. Taking photograph of the applicant where the applicant is an individual
 - B. Taking photographs of ARs of Companies, etc where the applicant is not an individual
 - C. Verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner

NOTIFICATION No. 27/2022 - Central Tax – provided that the above additional process would be applicable only to the state of Gujarat on a test basis.

IMPACT OF NOTIFICATION No. 31/2023 dated 31st July 2023 –

This notification now that has extended the additional process of authentication as above to 'Puducheery' also. This has been done to tackle the menace of fake registrations under GST. Hence for registrations identified as 'risky' by data analytics, the AR would require to go to facilitation centre, get his photograph clicked and original documents physically verified before registration can be granted. The risk parameters have not been specified as of now but the following may be the risk parameters –

1. Too many GST registrations in the same premise
2. Sensitive buildings/ places in the Commissionerate with previous history of dubious taxpayers
3. Individuals involved with registrations are with a bad track record

Getting a GST registration has been difficult of late. After these steps getting a GST registration maybe more delayed. It seems that one by one this would be replicated for all jurisdictions. However, the silver lining is that these stringent processes would be applicable only in 'risky' cases.

2. Analysis of Not No 32/2023 – Central Tax

In continuation of the exemption granted to taxpayers in the past years with Aggregate Turnover of less than Rs.2 Crores from filing Annual Return in Form 9, the same exemption has been carried forward for filing the Annual Return for FY 22-23. Hence for FY 22-23, exemption is granted to taxpayers with Aggregate Turnover of less than Rs.2 Crores from filing Annual Return in Form 9.

3. Analysis of Not No 33/2023 – Central Tax

Section 158A has been enacted by Finance Act 2023, which provides for Consent based sharing of the following information furnished by taxable person by GST Portal –

- (a) particulars furnished in the application for registration or in the GST Returns
- (b) the particulars uploaded on the common portal for preparation of invoice, the details in GSTR-1 and the details of E-Waybills
- (c) such other details as may be prescribed.

The consent maybe obtained from supplier and/or recipient in the above cases as may be specified to specified persons.

Now, Notification No 33/2023 Central Tax, has notified "Account Aggregator" as the systems with which information may be shared by the common portal based on consent under Section 158A of the Central Goods and Services Tax Act, 2017 (12 of 2017). "Account Aggregator" means a non-financial banking company which undertakes the business of an Account Aggregator in accordance with the policy directions issued by the Reserve Bank of India under section 45JA of the Reserve Bank of India Act, 1934 (2 of 1934) and defined as such in the Non-Banking Financial Company - Account Aggregator (Reserve Bank) Directions, 2016.

This notification shall come into force from 1st October 2023, which also means that the notifications, notifying the amendments made in Finance Act 2023 shall be issued before that date

Understanding Account Aggregator -

An Account Aggregator (AA) is a type of RBI regulated entity (with an NBFC-AA license) that helps an individual securely and digitally access and share information from one financial institution they have an account with to any other regulated financial institution in the AA network. Data cannot be shared without the consent of the individual. There will be many Account Aggregators an individual can choose between. Account Aggregator replaces the long terms and conditions form of 'blank cheque' acceptance with a granular, step by step permission and control for each use of a person's data. The process flow is –

Account Aggregator empowers the individual with control over their personal financial data, which otherwise remains in silos



As of Dec'22 RBI has granted Certificate of Registration to 6 companies as Account Aggregator (AA) - Finsec AA Solutions Private Limited, Cams Financial Information Services Private Limited, Cookiejar Technologies Private Limited, National E-Governance Services Limited (NESL) Asset Data Limited, Perfios Account Aggregation Services Private Limited and Yodlee Finsoft Private Limited.

4. Analysis of Not No 34/2023 – Central Tax

From 1st October 2023, Non-GST Registered Taxpayers can supply 'goods' from E-Commerce Platform incase certain conditions are met -

(i) It is important to note that such relaxation is only for 'supply of goods' through E-Commerce platforms and not supply of services.

(ii) Inter-State supply of goods cannot be made by such persons through E-Commerce platform.

(iii) such persons can make supply of goods through electronic commerce operator in only one State or Union territory;

(iv) such persons shall be required to have a PAN issued under the Income Tax Act, 1961 and shall declare the following on the common portal before making the supply through the E-Commerce Portal -

a. Their PAN

b. Address of their place of business

c. The State or Union territory in which such persons seek to make such supply

These shall be subjected to validation on the common portal;

(v) Such NON-GST Registered persons shall be granted not more than ONE "enrolment number" on the GST portal on successful validation of the PAN in ONE State or UT. This Enrollment No is a must.

(vi) This enrollment no shall become invalid when the GSTIN is allotted to such person.

(vii) It seems that the E-Commerce operators will not collect GST-TCS from these unregistered persons.

5. Analysis of Not No 35/2023 – Central Tax -

Unprecedented and First Notification of its kind Unifying CENTRAL Tax Adjudication Countrywide -

In exercise of the powers conferred by section 5 of the CGST Act and section 3 of the IGST Act the Board has appointed common Central tax officers of CGST – Bengaluru for adjudicating various notices issued to 'BSH Household Appliances Manufacturing Pvt. Ltd' with distinct GSTINs in Mumbai, Bengaluru and Chennai. This is the first of its kind of notification and has the following implications –

1. It is the long-standing demand of taxpayers to have a COMMON/CENTRAL INVESTIGATOR for notices issued on the 'same issue', issued by DGGI or other agencies. This notification goes one step further and has even notified a COMMON ADJUDICATING AUTHORITY.
2. This notification can now be replicated across CENTRAL TAX JURISDICTIONS atleast. However, it is to be seen whether State Tax Authorities would accept the same, diluting the concept of 'distinct person' under GST somewhat.
3. Incase of any final demand against these notices, the jurisdiction is to be seen going forward.

However, this is a forward looking notification by the CBIC.

6. Analysis of Not No 01/2023 – Integrated Tax

Section 16(4)(ii) of The IGST Act empowers The Government to specify a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Vide Not No 01/2023 – Integrated Tax the Government has notified that "All Goods" are eligible for such benefit "except" Pan Masala, gutka, tobacco products, Mentha piperit, Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis, etc

Hence the above goods cannot be exported with payment of tax and have to be exported only without payment of tax