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Confederation of Bahadurgarh Industries

Regn. No. HR015202100075

A SOCIETY REGISTERED UNDER HARYANA REGISTRATION AND REGULATION OF SOCIETIES ACT, 2012

Representing all the Industrial Areas of Distt. Jhajjar, Haryana

COBI Helpline - +91: 75001 00080

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COBI/2023-24/145

Date: 19.09.2023

To

The CGST Commissionerate
Rohtak – 124001

Sub: GST related issues and queries to be discussed during Open-House Meeting with trade bodies of CGST Rohtak

Dear Sir,

Confederation of Bahadurgarh Industries (COBI) is writing this letter on the behalf of the all the taxpayers of district Jhajjar.

In reference to the subject cited above, we are sharing the following list of common issues related to GST faced by the taxpayers.

1. Equality in ITC available in Electronic Credit Ledger and Electronic Cash Ledger and non-leviability of interest on ITC lying in Electronic Cash Ledger:

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As per section 50, if the ITC is lying in Electronic Credit Ledger, interest is not leviable which is not the case with Electronic Cash Ledger. It is double edge sword on Assessee. Cash lying in Electronic Cash ledger is the hard earned money of Assessee and is deposited only to make payment to government. IT should have more sanctity than the ITC lying in Electronic Credit Ledger. Interest should not be charged on cash lying in electronic cash ledger.

Reasoning 1: Cash lying in Electronic cash ledger is deposited only to make payment of GST to government.

Reasoning 2: Assessee is having loss of interest income which he could get by keeping money on his own account while government is earning Interest income on assessee's money lying in Electronic Cash Ledger.

Reasoning 3: Despite earning Interest income on assessee's money, government is asking to pay interest again amount lying in Electronic Cash Ledger is not set off due to inability of government to give utility to set off as was in excise regime.

Reasoning 4: Assessee is being penalized for not getting timely money from supplier due to which he is unable to make full GST payment timely and liable to pay interest on full cash payable amount while he can pay partly but government is not allowing part payment.

Reasoning 5: Government is charging interest on customer for delayed payment to supplier (beyond 180 days) from day one and also charging

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2



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interest from supplier for not getting timely money from customer at the time of filing of GSTR-3B. This nowhere seems to a business friendly approach. Either government should make customer to pay interest to supplier instead of charging itself or does not charge interest on supplier's inability to make full payment in GSTR-3B. Atleast allow a breathing space by not charging interest on amount lying in Electronic Cash Ledger.

Reasoning 6: Government is fighting day and night to tackle fake invoicing and also punishing genuine buyers of such fake Suppliers by claiming that tax is not paid by supplier to government or tax is paid from fake ITC while customer has paid tax to supplier. On one side, ITC is allowed on the basis of GSTR-2A/2B while genuine customers are harassed and asked to reverse ITC with interest and penalty on other side. In simple words, ITC in Electronic Credit ledger also does not entitle buyer to avail ITC despite payment to supplier. Payment to government's designated Account (Electronic Cash ledger) also does not entitle him to get ITC. Customer is totally clueless when he can avail ITC. This is another big anomaly in government policy.

Suggested Solution:

Part payment for regular payment should be allowed or interest on cash lying in Electronic cash ledger should be allowed.

This will help buyer to make payment directly and claim ITC and also help government to tackle fake invoicing and get its due share of GST. This will

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3



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help buyer to deposit more in Electronic Cash ledger to avoid interest (on delayed filing of GSTR-3B) and help government to earn more interest income (on deposits lying in Electronic Cash ledger).

2. **The recipient of goods is entitled to claim ITC only if the tax charged in respect of such supply has been actually paid to the Government despite the fact that receiver of goods has fully paid taxes to the supplier as per section 16(2)(c) who may delay/not pay the taxes to the government.** In fact, the liability for non-payment of taxes by supplier is unjustified burden on the recipient specially when there is no provision for the receiver of goods to check whether supplier has paid taxes or not.
3. **Interest on delayed payment to supplier-** As per law, if the payment to supplier is done within 180 days, no interest is payable. However, if payment is done on 181th day, he is made liable to pay for whole 181 days which seems not justified. When a window of 180 days is given for payment, interest should start from 181th day, not from the very first day of issuance of invoice. Delay payment may be due to financial crunch. Imposition of such burden of interest from very first day adds to his financial problems and cannot be considered as a business friendly environment.

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4. **Subject to Multiple jurisdictions and multiple notices/summons:** An assessee is made subject to jurisdiction of 2 authorities (Center and State) where he has his place of business. However, it is not so. If one taxpayer is having supplier or client from every State/UT of India, he is made subject to more than twice the number of states/UTs we have in India. He can be issued letter/summon/SCN/order/demand from anywhere in India. If supplier has not made payment of tax/ if he turns out a bogus firm, he is subject to jurisdictional authorities of his suppliers too alongwith his own jurisdictional authorities as well as Centre's anti-evasion authorities, State's intelligence Units and DGGI.

If he is sending goods from Kashmir to Kanyakumari, he is subject to jurisdiction of all states through which goods pass, he may have to face language barriers, distance barriers, knowledge barrier with regard to location of appellate authorities, Tribunals and High courts, has to search advocate in those locations which is nothing less than a nightmare.

There are case, where a taxpayer is receiving notices/summons from their own Central jurisdictional authorities, State jurisdictional authorities, from Central and state jurisdictional authorities of his suppliers against the same matter for the same period and keep on replying to their

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5



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notices/summons. Such notices/summons are an added burden on his capacity to run business in the form of mental capacity to tackle all these issues, has to appoint extra employee to arrange such data/document and also to keep hiring an advocate/CA to reply such notices/summons.

Solution: Combine all notices/summons, wherever issued in India, and send to the jurisdictional authorities of the assessee to whom notices/summons were issued. This will lessen the burden of all authorities which increases due to issuance of double notices. This will also allow Jurisdictional authorities to make thorough investigation/scrutiny/audit and they can issue one notice for all issues covering a particular Period rather than issuing multiple notices/summons/orders on same/similar matters and save a lot of time of authorities as well as assessees.

5. **ITC availment on the basis of GSTR-2B or invoices-** On one side the last date of availment of ITC is due date of filing return of September month of subsequent year or filing of annual return of relevant Financial Year, whichever comes earlier. There are cases where supplier has filed his GSTR-1 late (2-3 years delay) with late fees, due to which ITC will be reflected in GSTR-2B of buyer after the due date of getting ITC (filing return of September month of subsequent year or filing of annual return

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6



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of relevant Financial Year, whichever comes earlier). In such cases, how should buyer get ITC- on the basis of invoices or on the basis of GSTR-2B.

6. **Release of goods on payment of 200% penalty is too burdensome-** In case of detention/seizure of goods, the assessee is required to deposit 200% penalty for release of goods otherwise his goods will be disposed off. There are various cases all over India where assessee had to pay 200% penalty for no fault or slight mistake which does not warrant 200% imposition. Further, in all cases (other than E-way Bill), even in case of fake invoicing, the noticee is given opportunity to reply and only at the time of appeal, he needs to pay applicable pre-deposit while in case of E-way Bill matters, 200% penalty has to be paid for getting the goods released which makes them worse than the fake issuers. The goods should be released in bond/personal guarantee and any amount should be payable only at the time of filing appeal or at the time of recovery.

7. **Time limit of passing order in case of E-way Bills Appeals:** The assessee is made to pay 200% penalty in case of E-way Bill matters) section 129-130) and he is made to spare his hard-earned money, even if he is sure that he has not done any GST violation. He has no option but to go in appeal. However, there are various cases where appeals are lying pending for more than 2-3 years and hearing in such matters has not been done

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7



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till date. Therefore, there should be some time limit for passing of order in such matters.

8. Payment through DRC-03 should also be considered for ITC availment in certain cases:

There are various cases where suppliers received payment from buyers but didn't pay to government. Such cases are discussed in Circular No. 183/15/2022-GST [F. No. CBIC-20001/2/2022 - GST], Dated 27-12-2022. In the said Circular, A CA Certificate is asked certifying that "the tax on such supplies has been paid by the said supplier in his return in FORM GSTR-3B". There may be cases where the supplier has got his GST No. cancelled, due to which he won't be able to file GSTR-3B and buyer somehow caught hold of him and makes him to pay tax which can be done only through DRC-03. In such cases, payment through DRC-03 should also be considered for allowing ITC to buyers, not merely when the payment is made through GSTR-3B.

9. Anomaly between section 122 and Rule 37-

As per section 122 of CGST Act, "Where a taxable person who collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due" is liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded. Rule 37 allows 180 days' time to buyer to make payment against the invoice.

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8



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On one side, Rule 37 gives leverage of 180 days' to buyer for making payment to supplier. On the other hand, it penalizes supplier if tax is not paid within 3 months. If a supplier will receive payment after 3 months, how will he make GST payment in 3 months. Such anomalous provisions create a blow on the financial liquidity of the assessee. Therefore, time period prescribed in section 122 and Rule 37 should be 6 months instead of 3 months.

10. Requirement of builty/GR. GST Law nowhere requires builty/GR as a document necessary for transportation of goods. E-way Bill is the only document mandated by law for transportation of good. There are various genuine taxpayers who received goods against invoice and E-way Bill and did not demand for any builty/GR. Now such buyers are getting notices/summons to prove that supplies were genuine supplies and builty/GR is being demanded as evidence of transportation of goods. Such taxpayers complied with all the GST requirements for receiving goods, however, still asked to reverse ITC with interest and penalty which doesn't seem justified.

11. GST on scrap sale under RCM: Scrap sale attracting GST is not a business viable solution and has also resulted into menace of fake invoicing to a large extent. Either the scrap is generated from consumer's home or from

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9



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exempted goods. In both the cases, GST has already been paid to government either when the consumer purchased the goods or when manufacturer of exempted goods purchased raw material. Since tax has already been paid to government and scrap is a residuary items having less market value, scrap sale should be exempted from tax or brought under RCM.

12. GST on scrap generated from exempted goods: In many cases, Raw material of exempted goods is taxable one and scrap comes out just 1-2%, for which the assessee has to comply with lots of compliances. For examples, A unit manufacturing sanitary pads which is exempted product gets taxable Raw material. The production process generates less than 1% scrap which is not exempt. Such unit has 100 cr input credit and needs to pay just 5 lakhs on scrap sale. For scrap sale of just Rs. 5 lakhs, it has to get GST registration, need to reverse ITC as per section 42 and 43. All the GST liability against sale of purchase can be fully discharged against available ITC. However, just because the scrap is taxable, the compliance cost increases a lot. Therefore, scrap of such exempted product should also be exempted one as it is completely a revenue neutral exercise only increasing compliance cost.

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10



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13. Refund issue when named in Risky exporter: The cases of all Risky Exporters, where the refunds are stopped by the DGARM unit of CBIC, refunds may be allowed on one-time basis on submission of Bond/undertaking, as deemed fit. So that they can run their businesses in tough times. Also, a policy should be made for resolution of such matters in time bound manner and as early as possible. Currently, there is no grievance redressal mechanism exists for such matters. Refunds are stuck even after submission of reports of the risky exporters by jurisdictional authorities.

14. No mechanism for Risky suppliers/risky receivers- DGARM tags assesseees as Risky suppliers/risky receivers based on AI data and department freezes ITC credit and customer's refund gets denied. There is not Mechanism to know the basis of categorizing assessee as risky supplier/receiver. All of a sudden customer stops doing business, payment gets stopped, reputation gets totally ruined. All this happens on the basis of AI data without an opportunity of being heard to such person to explain before making the data public. System reporting of such data may be 70-80% correct. However, only on the basis of system reporting/AI, such categorization can be dangerous for genuine taxpayers. Therefore, before taking any drastic measures on the basis of system reporting/AI, data should be checked at the end of department

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11



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and an opportunity of being heard should be given to such person to explain his stand.

15. Relaxation of E Way Bills conditions for same PAN: Many states have issued relaxation for generation of E Way Bills within the same state, we recommend if appropriate notification /clarifications can be issued for doing away with requirements of generating of E Way Bills in respect of all Registered Taxable Persons having same PAN Number at each state level as well as Union Territory level as lots of issues are faced for Intra state movement of supply by entities having same PAN Number within the state.

16. Rationalization of GST Rates: One of the major challenges of GST is its complex tax structure. The GST system has four tax slabs – 5%, 12%, 18%, and 28%. Additionally, there is a special rate of 0.25% on rough precious and semi-precious stones and 3% on gold. This multi-tax system has made it difficult for businesses to understand and comply with tax laws. The complexity of the tax structure has led to confusion among taxpayers, resulting in increased compliance costs and a rise in litigation. This has started a lot of classification issues.

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12



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17. Issuance of letter instead of summons: There are many cases where direct summons are issued for getting any kind of information such as hard copy of GSTR-2A, GSTR-3B, ITR etc. Summons create a sense of fear in the mind of assessee and hampers his normal business functions too. In such cases, Our suggestion is that instead of summons, letter should be issued at the initial stage.

18. E-invoices are proposed for units having 1.5 Cr turnover – 1.5 Crore is not a big turnover and a business can manage it of his own. However, E-invoicing is not possible without hiring any software company which adds to additional financial burden. More than 10000 units are MSME units in Jhajjar and work with part-time accountant and does not have enough infrastructure to hire full time accountant. For such units, E-invoicing is an additional burden.

19. Invoicing for units having Turnover more than 100 cr: E-invoice is applicable to units having Turnover more than 100 cr. On one side, E-invoice is a mandatory document for movement of goods. On the other hand, provision is being made to generate E-invoice within one month. Suppose such unit generates E-invoice after 15 days of movement, can movement of goods against normal invoice is a legal document or having any validity in GST?

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13

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20. **Temp registration in case of E-way Bill matters:** There are many cases where goods are detained on minor mistakes and the assesseees are made to get temporary GST No. to get the goods released when neither the supplier nor the receiver has business in such states. This is prevailing in states like UP, Uttarakhand etc. Despite being registered under GST law, the assessee have to unnecessarily get a GST No. just for being detained in any random state while passing through it which is another harassment specially when state has no connection with the SGST payable against the transaction and the assessee has to pay SGST & CGST against an inter-state transaction.

Thanking you

Regards

For Confederation of Bahadurgarh Industries



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14