

Amendments introduced in CGST Rules on May 18, 2021, and its implications

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The Government on May 18, 2021 has notified Central Goods and Services Tax (Fourth Amendment) Rules 2021. These rules introduced several amendments under the Central Goods and Services Tax ('CGST') Rules, 2017 to provide amendment in refund, registration and E way Bill (EWB) provisions. In this document, we have discussed these amendments and its implications.

1. Time limit for filing application for Revocation of cancellation of registration

- Where registration is cancelled by the proper officer on his own volition, then taxpayer can file an application for revocation of cancellation of registration. Such application can be filed within 30 days from the date of service of cancellation order
- Finance Act, 2020 has made amendment in the CGST Act to allow filing of such applications even after 30 days. The below officers may allow filing such applications even after 30 days on sufficient cause being shown to them

Officer Rank	Extension
Additional/Joint Commissioner	30 days
Commissioner	30 days (after the above period)

- Thus, in terms of CGST Act revocation application is also allowed to be filed after 30 days but up to 90 days (if approved by the above officers)
- The above changes in the CGST Act were not carried out in the CGST Rules and on the GSTN portal. The Rules have now been amended in line with the CGST Act
- Notably, the approval process for allowing extension has not been incorporated on the GSTN portal and hence CBIC has laid down a manual procedure to be followed in this regard. Brief of the procedure clarified is as under:
 - Taxpayer shall send a letter/email to the proper officer for extension of time limit by providing the grounds on which extension is sought
 - Proper officer shall forward the application to the Jurisdictional AC/JC/Commissioner
 - AC/DC/Commissioner shall communicate where the extension is allowed
 - In case extension is not allowed, an opportunity of being heard shall be given before taking the decision in matter
 - Where extension request is rejected, grounds of such rejection may be communicated to the tax payer

Taxmann's Comments:

The above amendment in CGST Rules is merely a technical change as CGST Act vide amendment through Finance Act, 2020 has already enabled the department to extend time limit for filing the revocation of cancellation of registration application.

We would also like to highlight that concerned taxpayers while computing the time limit of 30/60/90 days should also take the note of relaxations¹ provided by the Government in various compliances on account of Covid-19 pandemic

2. Amendments relating to E-way Bill (EWB)

- CGST Rules imposes a restriction on generation of EWB where the registered person (either supplier or recipient) fails to furnish Form GSTR 3B/GSTR 1/ GST CMP -08 for two months/quarters
- Amendment in the CGST Rules has been made to provide that EWB shall not be allowed to be generated in respect of outward movement of goods of registered person who has not furnished the said returns

Taxmann's Comments:

Currently if recipient of goods is not compliant in their return filings, then supplier is not able to generate the EWB. To overcome with this issue, amendment has been made to provide that EWB shall not be allowed to be generated in respect of outward movement of goods of a registered person who has not complied with the said return filings

Necessary amendments in EWB portal is awaited. We may note that in case of Ex-works transactions recipient causes the movement of goods and thus generates the EWB. In this case, if supplier is non-complaint with the GST return filings, recipient would not be able to generate the EWB

3. Amendments in relation to Refund provisions

Few amendments have been made in the CGST Rules relating to refunds. The same are discussed in below mentioned paras.

3.1. Limitation period of 2 years shall exclude period from date of filing of refund application to date of deficiency memo [Rule90(3)]

- Under GST, refund application is required to be filed within 2 years from the relevant date² and where the proper officer finds any deficiency in the said application, then law requires the applicant to file a 'fresh refund application' after rectification of such deficiencies (i.e. such application is treated as fresh refund application)
- Limitation period of 2 years was not excluding the time period from the date of filing

¹Refer Notification no. 14/2021 Central tax dated 01-05-2021

²Relevant date has been defined separately under the GST law. The definition provides dates in various scenarios such as for export of goods by Sea/Air the relevant date is the date on which the goods leaves the India (i.e. EGM date)

refund application till the date the deficiency memo & thus various refund applications were getting time barred

- To overcome with this difficulty, amendment has been made in the CGST Rules to provide that the time period from the date of filing refund application till the date the deficiency memo shall be excluded in computing limitation period of 2 years

Taxmann's Comments:

We may take a note that vires of Rule 90(3) is under judicial scrutiny before the Judiciary. Issuance of a deficiency memo effectively results in rejection of the refund application without giving any opportunity of hearing to the applicant and thus may be said to be arbitrary, illegal and ultra-virus in light of Article 14 and 19(1)(g) of the Constitution of India.

In a Petition before the Hon'ble Delhi High Court³ argument has also been taken to exclude the time period from the date of filing refund application till the date the deficiency memo from the overall period of 2 years (*same as above for which amendment has been brought*). Final order of learned High Court is awaited and would be relevant for applications that are time barred before this amendment

3.2. Introduction of facility to withdrawal the refund application [Rule 90(5) and (6)]

- New provisions are introduced to allow applicants to withdraw their refund application. The application can be withdrawn at any time before the issuance of provisional sanction order, refund sanction order, withhold order, etc.
- In this regard, applicant can file Form GST RFD-01W. Once the said application for withdrawal is submitted the amount which was debited from electronic credit/cash ledger at the time of filing refund application shall be credited back to electronic Credit/cash ledger from which such debit was made

3.3. Changes in format of Form GST RFD-07 and procedural changes for withheld of claim of refund (Rule 92 & 96)

- Amendment has been made in the CGST Rules and Form GST RFD 07 to make few procedural changes relating to adjustment and withholding of refund amount

³Insitel Services (P.) Ltd. v. Union of India [2020] 119 taxmann.com 371 (Delhi)