



Suggestions regarding Removal of Difficulties Order, 2022

Introduction

The power to remove difficulties available in section 172 of the Central GST Act, 2017 (hereinafter referred to as the CGST Act) was originally due to expire by 30th June 2020 was extended by two years vide Finance Act, 2020 with effect from 30th June 2020. This power has been exercised earlier by the Government to extend due dates to file Form GSTR-1 returns under section 37 and to avail input tax credit under section 16(4) of the CGST Act. With the extension of this power set to expire by 30th June 2022, it is timely that the Government consider the following urgent needs of taxpayers to alleviate their concerns as a one-time measure.

Difficulties to be removed

- a) Section 16(4) of the CGST Act may not be made applicable for all years up to 2021-22 in view of unfamiliarity with this new law resulting in material amount of credit loss due to stringent time limitation which was not publicised or propagated and a significant shift in the legislative policy compared to earlier tax regime where credits were allowed later during assessment or annual returns.
- b) For transition credit that could not be claimed for various reasons, several High Courts have allowed petitioners (in those cases) to claim transition credit in Form GSTR-3B returns. Again, the timelines prescribed for filing Form TRAN-1 forms were very strict. A one-time opportunity may be



- allowed to claim *bona fide* credits within Dec 2022 with a 'late cut' of 5 per cent.
- c) Interest on belated payment of output tax may be waived as long as output tax is paid and dues from Jul 2017 to Mar 2022 are cleared voluntarily through Form DRC-3 under section 73(5) of the CGST Act within Dec 2022 and all earlier payments made will not be liable to interest.
 - d) Reverse charge liability from Jul 2017 to Mar 2022 under section 9(3) or 9(4) of the CGST Act (and corresponding provisions on State / UT and Integrated GST Acts) discharged through Form DRC-3 under section 73(5) of the CGST Act within Dec 2022 may not attract any interest or penalty.
 - e) Utilization of input tax credit across multiple tax periods may be permitted under section 41(2) of the CGST Act. In the absence of any provision to recredit erroneous utilization of credit similar to Form PMT-03 (see rule 93), taxpayers face a double loss if demand for payment of output tax for a given tax period is made while rejecting payment of arrears out of credit availed in subsequent tax periods.
 - f) In case of restoration of cancelled registration in appeal, the appellant may be allowed to file returns without attracting the levy of late fee and interest as there is no time limit to conclude the appeal proceedings.
 - g) Many taxpayers could not file appeals in many cases due to ignorance of law in pre Covid-19 period, they may be allowed to file appeal now as one time measure.
 - h) One time waiver of late fee for belated filing of annual returns by composition dealers.



Draft provisions of RODO 2022

a) Section 16(4)

“16. Eligibility and conditions for taking input tax credit.—

(1)

.....

(4)

Provided that.....

Provided further that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of September, 2022 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, 2018-19, 2019-20 and 2020-21, as the case may be.”

b) Section 50(1)

“50. Interest on delayed payment of tax.— (1).....

Provided that

Provided further that the interest on tax payable under sub-section (1) or (3) or (4) of section 9 for any tax period relating to the financial year 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, as the case may be, which is discharged on own ascertainment by taxable person under sub-section (5) of section 73, shall not be levied if the same is discharged before 31 Dec 2022.”

c) Section 41(2)

“41. Claim of input tax credit and provisional acceptance thereof.— (1).....

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*The Institute of Chartered Accountants of India
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(2) The credit referred to in sub-section (1) shall be utilised only for payment of self- assessed output tax as per the return referred to in the said sub-section.

Provided that utilization of credit for any tax period relating to the financial year 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22, as the case may be, shall be for payment of output tax discharged as per the return referred to in section 39 or otherwise, but not later than 31 Dec 2022.

Conclusion

Extension of expiration of section 172 of the CGST Act will not serve its purpose if the said powers are not utilized to alleviate difficulties faced by the taxpayers during the earlier years of implementation of this new law. And to further extend the operation of section 172 of the CGST Act may not be feasible and as such, the taxpayers will face hardships and may litigate the matter.

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