

**USISPF – Circulars and Notifications issued pursuant to 48<sup>th</sup> GST Council meeting held on December 17, 2022**

**1. Summary of Circulars issued by CBIC**

S. No.	Circular No.	Clarifications issued by CBIC	Remarks				
1	183/15/2022-GST	<p>Clarifies the procedure for <b>verification of ITC by authorities for FY 2017-18 and FY 2018-19</b> wherein inward invoices do not appear in GSTR-2A. Scenarios covered as follows:</p> <ol style="list-style-type: none"> <li>Supplier failed to file GSTR-1, but filed GSTR-3B</li> <li>Supplier filed GSTR-1 and 3B but failed to disclose a particular supply in GSTR-1</li> <li>Supplier filed GSTR-1 and 3B but reported a particular supply as B2C instead of B2B</li> <li>Supplier filed GSTR-1 and 3B but reported a particular supply with wrong GSTIN</li> </ol>	<p>This is a critical development and needs impact assessment for 2017-18 and 2018-19.</p> <p>The process prescribed is for <b>cases where invoices do not appear in 2A</b>. Thus, the Authorities are effectively asking for a matching to be conducted to identify which invoices do not appear in 2A.</p> <p>With respect to the condition of Section 16(2)(c) of the CGST Act, ie, payment of tax by supplier, the procedure prescribed puts an onerous task on the recipient to obtain CA certificate where ITC in GSTR-3B&gt;GSTR2A</p> <table border="1" data-bbox="1272 930 1968 1342"> <tbody> <tr> <td>ITC &gt; 5 lakhs</td> <td>Certificate with UDIN - certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been <b>paid by the said supplier in his return in FORM GSTR 3B</b></td> </tr> <tr> <td>ITC &lt; 5 lakhs</td> <td>Certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been <b>paid by the said supplier in his return in FORM GSTR 3B</b>.</td> </tr> </tbody> </table>	ITC > 5 lakhs	Certificate with UDIN - certifying that supplies in respect of the said invoices of supplier have actually been made by the supplier to the said registered person and the tax on such supplies has been <b>paid by the said supplier in his return in FORM GSTR 3B</b>	ITC < 5 lakhs	Certificate from the concerned supplier to the effect that said supplies have actually been made by him to the said registered person and the tax on said supplies has been <b>paid by the said supplier in his return in FORM GSTR 3B</b> .
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			<ul style="list-style-type: none"> <li>It appears that the circular only addresses the cases where Form GSTR-1 and GSTR-3B is filed but does not cover cases of 3B non-filers.</li> </ul>
2	184/15/2022-GST	<ul style="list-style-type: none"> <li>As per Section 12(8) of the IGST Act 2017, <b>place of supply of services by way of transportation of goods, by mail or courier</b>, is the location of recipient where recipient is registered.</li> <li>The instant circular clarifies that in such a scenario, IGST would be leviable on the transaction as location of supplier and place of supply are not in same State.</li> <li>It has further been clarified that subject to the conditions prescribed under Section 16 and 17 of the CGST Act, 2017, recipient would be eligible to claim credit of IGST so charged.</li> </ul>	<ul style="list-style-type: none"> <li>This is a positive development and aligned to the tax position adopted by the industry specifically after introduction of POS code 96 back in September 2020.</li> </ul>
3	185/15/2022-GST	<ul style="list-style-type: none"> <li>Circular seeks to clarify various procedural issues wherein it has been concluded by higher authorities that <b>show cause notice (SCN) issued under Section 74 of the CGST Act, 2017 is not sustainable and tax payable is to be determined deeming as if the notice was issued under section 73(1)</b></li> </ul>	<ul style="list-style-type: none"> <li>This is a welcome clarification as it gives clarity to and uniformity in the procedure to be followed by the tax authorities in case a SCN under Section 74 (suppression, willful misstatement etc) is held to be invalid.</li> <li>The officers will have to redetermine the tax liabilities under Section 73, ie, normal period of limitation.</li> </ul>
4	186/15/2022-GST	<ul style="list-style-type: none"> <li>Instant Circular provides clarification as under: <ul style="list-style-type: none"> <li>No Claim Bonus duly disclosed in policy document and invoices fulfills the criteria prescribed Section 15(3)(a). Accordingly, GST shall be leviable on actual insurance premium amount, payable by the policy holders to the</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Clarifies the valuation for insurance services to exclude no-claim bonus</li> <li>Also clarifies that exemption from issuance of e-invoice is applicable at the entity level for all supplies made by the <b>notified suppliers which are exempted from issuance of e-invoice</b></li> </ul>

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		<p>insurer, after deduction of No Claim Bonus mentioned on the invoice</p> <ul style="list-style-type: none"> <li>- It has been clarified that <b>exemption from issuance of e-invoices</b> provided to certain entities/ sectors vide notification no. 13/2020 – Central Tax dated 21 March 2020 is applicable to entity as whole irrespective of the nature of supply being made.</li> </ul>	

In addition, **Circular 187 and 188** have also been issued which pertain to assessee adjudicated under Insolvency and Bankruptcy Code, 2016 (IBC) and to refund application by unregistered dealers in case of cancellation of long term contracts, respectively.

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## 2. Summary of Notifications issued by CBIC

### Notification 26/2022-Central Tax, dated December 26, 2022

- Changes in Rule 8 of the Central Goods and Service Tax Rules, 2017 ('CGST Rules'):
  - Mobile and email ID not required while registering - E-mail Id and Mobile Number shall be auto-populated from Income Tax database as linked with the Permanent Account Number of the applicant
  - PAN validation by OTP on email and mobile linked to PAN
  - Risk based physical verification of applicant/ representative
- Rule 9 of the CGST Rules, sub-rule 9(aa) has been inserted to provide that a physical verification of premise would be required, even for the applicants who are identified for risk based verification.
- Changes in Rule 37 and Rule 37A is summarised below:
  - Reversal of ITC proportionate to the unpaid amount to vendor (180 day criteria); and
  - Reversal of ITC where vendor only furnishes GSTR-1 and not 3B till the October return of next FY. Re-availment of ITC allowed where 3B furnished later.
- Rule 46 of the CGST Rules has been amended to provide that Invoice should mandatorily contain the *"name and address of the recipient along with its PIN code and the name of the State"* for supply of services through ECO or OIDAR supplier.
- Rule 88C has been inserted in CGST Rules to provide where  $GSTR1 > GSTR3B$ , difference to be intimated in Part A of FORM GST DRC-01B, electronically on the common portal. The taxpayer on receipt of the intimation shall within the period specified in the said sub-rule:
  - a. Pay the amount of the differential tax liability, as specified in Part A of FORM GST DRC-01B, fully or partially, along with interest under section 50, through FORM GST DRC-03 and furnish the details thereof in Part B of FORM GST DRC-01B electronically on the common portal; or
  - b. furnish a reply electronically on the common portal, incorporating reasons in respect of that part of the differential tax liability that has remained unpaid, if any, in Part B of FORM GST DRC-01B.
- Rule 89, clause K has been inserted to provide that in case of cancellation of contract – refund mechanism has been prescribed.

- Further, a change has been prescribed in Rule 108(3) of the CGST Rules as under:

*“(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal*

*Provided that where the decision or order appealed against is not uploaded on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:*

*Provided further that where the said self-certified copy of the decision or order is not submitted within a period of seven days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal”*

Similar amendment has been made in Rule 109 of the CGST Rules.

- Rule 109C has been inserted to allow withdrawal of appeal filed by taxpayer.
- In addition to the above, amendment to GST monthly returns has also been made to declare 9(5) supplies separately.

#### **Notification 27/2022-Central Tax, dated December 26, 2022**

- Biometric-based Aadhaar authentication and risk-based physical verification of registration applicants in **Gujarat**.

*(4A) Every application made under sub-rule (4) by a person, other than a person notified under subsection (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 sub-rule.*