

GST NEWSLETTER DECEMBER 2018

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CHARTERED ACCOUNTANTS

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ARTICLES

• CANCELLATION OF GST REGISTRATION

GST brought various taxpayers registered under different indirect tax laws under its rule. As GST is a destination-based tax, so any supplier with an aggregate turnover exceeding Rs 20 lakh needs to register under GST. Certain types of suppliers need to compulsorily register under GST irrespective of their turnover and some have the option to do so without any compulsion.

But in some cases, the taxpayer may no longer be required to comply with GST laws. This may be due to the taxpayer having a lower turnover than the threshold limit or the business, for which he has obtained the GST registration being discontinued. In such cases the GST registration can be cancelled by filing all pending returns and applying for the GST cancellation.

▪ **Types of Cancellation of Registration:**

Cancellation of GST registration is governed under section 29(1) of CGST Act 2017. The section provides for two types of cancellation:

- Cancellation of GST registration by a registered person himself or by his legal heirs in case of the registered person's death. (Voluntary)
- Cancellation of GST Registration by the Jurisdictional Officer. (Compulsory)

▪ **Voluntary Cancellation of GST Registration by Registered Person:**

Voluntary cancellation is permitted in the following circumstances in Form GST REG 16

- If the business of Registered Person has been discontinued for any reason such as death of proprietor, amalgamation, demerger etc.
- If there is a change in the constitution of the registered business. Such change may be due to sale or transfer, conversion of business (private to public companies) etc.
- If the person or business is no longer liable for GST registration (Migrated GST Persons can cancel registration if their supply is exempted or turnover is less than threshold exemption limit).

Up-till 22nd January 2018 voluntary registrations could not be cancelled till expiry of one year from the date of registration as per proviso to Rule 20 of CGST Rules, 2017. However, notification no. 03/2018-CT dt 23.01.2018 deleted the proviso and voluntary registrations can be cancelled within any period after registration.

any period after registration.

▪ **Cancellation of Registration by GST Officer:**

The Jurisdictional officer may cancel the GST registration in case of any defaults in the registration or any change in status quo subsequent to registration in Form GST REG 17. These include:

- Any contravention of the prescribed provisions and rules of the GST Act;
- Composition taxpayers who have failed to furnish returns for three consecutive tax periods;
- Normal taxpayers who have failed to furnish returns for a continuous period of six months;
- Taxpayers who have obtained voluntary registration but failed to commence business within six months from the date of registration;
- The registration has been obtained by means of fraud, willful misstatement or suppression of facts.
- *Any of the reasons as stated above in voluntary cancellation.*

However, the registration will not be cancelled unless an opportunity for being heard is given to the taxpayer by way of Form GST REG 18. The officer issues the order for cancellation in Form GST REG 19 within thirty days of receipt of Form GST REG 16 or Form GST REG 18.

▪ Pending Tax Liability

No GST registration can be cancelled if there is any pending tax liability or any other obligation unless such liability is discharged. The liability can be discharged by way of debit in the electronic credit ledger or electronic cash ledger:

- ❖ The input credit in semi-finished / finished / raw stock of goods on the day immediately before the date of cancellation or;
- ❖ Output tax payable on such goods; whichever is higher.

For capital goods or plant and machinery, the reversal shall be:

- The input credit taken on such capital goods, reduced proportionately on a pro-rata basis for the remaining useful life* of the asset or;
- The output tax applicable on the transaction value of such capital goods, whichever is higher.

*The useful life of the asset shall be 5 years as per Rule 44 of the CGST Rules, 2017.

▪ Revocation of Cancellation of GST Registration:

It is possible to revoke cancellation of GST registration only if it's been suo-moto cancelled by the Jurisdictional officer. An application can be made for its revocation by filing Form GST REG 21 within 30 days of service of cancellation order. However, if the cancellation is due to non-filing of returns then before applying, the taxpayer needs to file all pending returns & make the payment of all dues such as tax, interest & penalty. If the officer is satisfied, then the cancellation will be revoked

through an order in Form GST REG 22 which will be issued to the taxpayer within 30 days from the date of the application for revocation.

However, if the officer is not satisfied with the remedial measures undertaken by the tax payer then they will issue a Show-cause notice (SCN) in Form GST REG 23 and the taxpayer has to file the reply in Form GST REG 24 within seven working days from the date of service of Form GST REG 23. If the officer is not further not satisfied then the revocation application will be rejected and the order will be communicated to the taxpayer in Form GST REG 05.

▪ Conclusion:

Cancellation of GST registration is not a simple process though the CBIC has made efforts towards it. A taxpayer who has cancelled his registration voluntarily cannot revoke such cancellation. But he may, however, apply for a new registration. Further, mere filing for cancellation is not sufficient as any pending returns have to be filed before such cancellation can be granted. Also, any mistakes in the application may result in the cancellation being denied and further exasperating taxpayers with additional burden of GST return filing till such cancellation is granted. However, with technological advances and options to file for cancellation online the chance of such errors or mistakes will reduce manifold.

Below is the list of forms related to GST cancellation:

FORM NAMES	PURPOSE OF FORM
GST REG 16	The form is used by the registered person for cancellation of registration.
GST REG 17	It is show cause notice for cancellation of registration by Jurisdictional officer.
GST REG 18	It is used to reply for the show cause notice by the registered person.
GST REG 19	It is used by Jurisdictional Officer to pass order for cancellation of GST registration
GST REG 20	The form is used by registered person to stop the cancellation proceedings based on explanation from Form GST REG 18
GST REG 21	It is the form for revocation of cancellation by the registered person.
GST REG 22	Form for Jurisdictional Officer to pass order for revoking cancellation of GST registration

• Final Returns

- Final return or Form GSTR-10 is to be filed by all persons whose registration has been cancelled or surrendered, and is a one-time process.
- The due date is basically three months from the date of cancellation or date of cancellation order whichever is later.
- The person will be given 15 days' time for filing the return with all the documents required.
- Here are certain details which needs to be disclosed in GSTR-10.
 - ❖ GSTIN
 - ❖ Legal name
 - ❖ Business name
 - ❖ Address
 - ❖ Application reference number
 - ❖ Effective date of surrender / cancellation.
 - ❖ Details of Input held in stock, finished goods and capital goods (only if invoice is available)
 - ❖ Tax amount payable with Interest & Penalty.
 - ❖ Whether cancellation order has to be passed
 - ❖ Unique ID of Cancellation Order
 - ❖ Date of cancellation order
 - ❖ Particulars of closing stock.

CASE LAWS

➤ Advance Ruling on classification of supply of Sweets from Shop with attached Restaurant.

The applicant M/S. Kundan Mithan Bhandar, Uttarakhand which is primarily engaged in the business of supplying of pure food items such as sweetmeats, namkeens, cold drinks and other edible items and it also runs the restaurant in the first floor of the same premises. The applicant wants clarification whether the activity is supply of goods or supply of services, nature and rate of tax on items and input tax credit.

Law: SAC 9963(Accommodation, Food and Beverage services) states that supply, by the way of or service or in any other manner whatsoever, of goods, being food or any other article for human consumption or drink, where such supply or service is for cash, deferred payment or any other valuable consideration, provided by a restaurant eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied other than those located in the premises of hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purpose having declared tariff of any other unit of accommodation Rs.7,500 and above per unit per day or equivalent.

Ruling: The AAR held that, supply shall be treated as supply of service and sweet shop shall be treated as extension of restaurant. All the items including takeaway items from the said premises shall attract GST of 5% as on the date subject to the condition of non availment of credit of input tax charged on goods and services used in supplying the said services.

➤ Advance Ruling on amortized cost of tool manufactured for use in component manufacturing.

The applicant M/s Nash Industries (I) Pvt Ltd, Peenya which is engaged in the business of manufacturing Sheet Metal Pressed Components and caters to various industries, ATM, printers etc., and is having multi-locational facilities in and around Bangalore. The applicant has applied for advance ruling on whether the amortised cost of the tool manufactured by them for the sole purpose of manufacturing the components has to be added to arrive at the value of the goods supplied for the purpose of GST under Section 15 of the CGST Act read with rule 27 of CGST Rules.

Law: As per Section 15 (2) (b) of the CGST Act, 2017 the value of a supply shall include 'Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or service or both.'

Ruling: The AAR held that, the amortised cost of tools is a first supply for which GST is applicable. These are re-supplied back to the applicant free of cost & they shall once again be added to the value of the components while calculating the value of the components supplied as per the Section 15 of the CGST / SGST / IGST Act 2017.

NEWS FLASH

Proposed improvements in e-way bill generation, being released on 16.11.2018

➤ **Checking of duplicate generation of e-way bills based on same invoice number**

The e-way bill system is enabled not to allow the consignor/supplier to generate the duplicate e-way bills based on his one document. If the transporter or consignee has generated one e-way bill on the consignor's invoice, then any other party tries to generate the e-way bill, the system will alert that there is already one e-way bill for that invoice.

➤ **CKD/SKD/Lots for movement of Export/Import consignment**

CKD/SKD/Lots supply type can be used for the movement of the big consignment in batches. When One 'Tax Invoice' or 'Bill of Entry' is there, but the goods are moved in batches from supplier to recipient with the 'Delivery Challan', then option can be used. For Export consignment the 'Bill To' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and shipping address and PIN code will be of the location from where the consignment is moving out from the country. For Import consignment, the 'Bill From' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and dispatching address and PIN code will be of the location from where the consignment is entered the country.

➤ **Shipping address in case of export supply type**

For Export supply type, the 'Bill To' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and shipping address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is moving out from the country.

➤ **Dispatching address in case of import supply type**

For Import supply, the 'Bill From' Party will be URP or GSTIN of SEZ Unit with state as 'Other Country' and dispatching address and PIN code will be of the location (airport/shipping yard/border check post) from where the consignment is entered the country.

➤ **'Bill to – Ship To' transactions**

There are four types of 'Bill to – Ship To' transactions:

- ❖ Regular: This is a regular or normal transaction, where Billing and goods movement are happening between two parties - consignor and consignee.
- ❖ Bill to – Ship to: In this type of transaction, three parties are involved. Billing takes places between consignor and consignee but the goods move from consignor (decided by third party) to the consignee.
- ❖ Bill from - Dispatch From: in this transaction also three parties will be involved billing takes places between consignor and consignee, but the goods are moved by the consignor to the consignee (decided by third party)
- ❖ Combination of both: It is the combination of above two transaction.

➤ **Changes in Bulk Generation Tool**

New columns have been added in the Bulk Generation Tool.

• NOTIFICATIONS AND CIRCULARS FOR THE PERIOD OF NOVEMBER 2018

- Six Central Tax Notification Issued.
- Two Circulars.

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to extend the due date for filing of FORM GSTR – 7 for the months of October, 2018 to December, 2018	66/2018-Central Tax, dt. 29-11-2018
2.	Seeks to extend the due date for filing of FORM GSTR - 4 for the quarter July to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh.	65/2018-Central Tax, dt. 29-11-2018
3.	Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover up to Rs 1.5 crores for the quarter from July, 2018 to September, 2018 for taxpayers in Srikakulam district of Andhra Pradesh.	64/2018-Central Tax, dt. 29-11-2018
4.	Seeks to extend the due date for filing of FORM GSTR - 1 for taxpayers having aggregate turnover above Rs 1.5 crores for taxpayers in Srikakulam district in Andhra Pradesh and 11 districts of Tamil Nadu.	63/2018-Central Tax, dt. 29-11-2018
5.	Seeks to extend the last date for filing of FORM GSTR-3B for taxpayers in Srikakulam district of Andhra Pradesh and 11 districts of Tamil Nadu.	62/2018-Central Tax, dt. 29-11-2018
6.	Seeks to exempt supply from PSU to PSU from applicability of provisions relating to TDS.	61/2018-Central Tax, dt. 05-11-2018
7.	Circular No. 74/48/2018-GST dated 05-11-2018 Circular clarifying collection of tax at source by Tea Board of India.	74/2018
8.	Circular No. 73/47/2018-GST dated 05-11-2018 Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credre agent.	73/2018

• DUE DATES OF GST FOR THE MONTH OF DECEMBER 2018

DECEMBER						
						2018
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4	5	6	7	8
9	10 *GSTR-7 & GSTR-8	11 *GSTR-1	12	13 *GSTR-6	14	15
16	17	18	19	20 *GSTR-3B/5/5A	21	22
23	24	25	26	27	28	29
30	31 *GSTR-9					
*Monthly return for taxpayer with Annual turnover more than Rs.1.50 Crores or Taxpayer who has opted Monthly return option.						

Disclaimer:

The conclusions reached and views expressed in the Newsletter are matters of opinion based on our understanding of the facts, anticipated tax laws and anticipated rules. There can be no assurance that the tax authorities' or regulators may not take a position contrary to our views. Further, the content of this newsletter should not be used as a supporting to frame any opinions. All queries and clarifications on the content stated in this newsletter should be directed to Vinay & Keshava LLP through phone or email.

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