

COSIA/051/11/24/129

15.11.2024

To,  
The Assistant Director,  
DGST, WZU, Mumbai,  
6<sup>th</sup> Floor, Aerocity, Andheri Kurla Road,  
Andheri (East), Mumbai – 400 072.

**Sub: Study on various issues related to GST being faced by MSME sector**

Dear Madam,

We are thankful for your letter no. DGGST/ TECH/ ANLS/ 39/ 2024-TECH-O/o Pr ADG-DGGST-WZU-MUMBAI, dated 12/11/2024. It is very heartening to know that the government is proactively seeking to create better business conditions. We submit the following issues and suggestions for your kind consideration. We believe that these measures will not only streamline the dispute resolution mechanism but will also increase fairness, reduce harassment, reduce business disruption, and build trust:

**1. In general, the burden of MSMEs has increased:**

**Issue:** It is submitted that the compliance burden has increased multifold for the MSMEs who cannot afford to engage multiple staff and qualified consultants. More the number of compliances, more is the requirement of staff. Moreover, most of the compliances are compressed within 10 days period from around 11<sup>th</sup> to 20<sup>th</sup> of the month. The MSMEs are at disadvantage because unlike big companies they cannot employ software like SAP etc.; cannot afford to engage several qualified staff to handle GST work; cannot have Chartered Accountants as their full time

employee. The staff of MSME is generally a commerce graduate who handles accounting, and compliances under GST, Provident Fund, ESIC, TDS, Income Tax. He has to visit CAs and consultants and also to various government offices.

## Suggestion:

- (i) ITC-04 return should be done away with.
- (ii) The threshold for GST registration may be enhanced.
- (iii) For the purpose of computing exemption limits for registration, the following values may be excluded:
  - Exempted supplies,
  - Nil rated supplies
  - non-GST supplies
  - outward supplies on which tax is payable by the recipient under RCM (sec 2 (6) excludes inward supplies)
- (iv) Tracking of Invoice level information may be done away with for MSMEs. GSTR-1 may be abolished for MSMEs.
- (v) GSTR-3B may be simplified and correction of errors should be allowed.
- (vi) Stringent ITC matching norms may be done away with for smaller businesses.
- (vii) The MSME buyer should not be put under fear of losing credit if his supplier doesn't pay tax. **The tax should always be recovered from the person who is liable to pay tax.** ITC should never be denied to the recipient.
- (viii) The threshold for e-invoicing may be enhanced.

## 2. Vagueness in requirement of documents for registration:

**Issue:**The field officers are making any document and any information that they deem necessary. The registration applications are rejected on very strange observations. For example, we have come across cases asking for the following ( A few documents issued to our members, are attached by way of illustration):

- (i) How much capital is being introduced? What is source of the same?
- (ii) Documents to prove financial capacity to do business.
- (iii) What the applicant was doing previously? Provide three year's Income Tax Returns.
- (iv) Photograph of the business premises with signboard along with neighbouring areas.
- (v) If the owner doesn't reside nearby, how will he manage the business? Provide the plan and list of employees.
- (vi) Copy of agreement with the prospective customer.
- (vii) NOC from MIDC to run the business
- (viii) Consent to use premises as principal place has to be in form of a lease deed and registered with the registrar.

There are also cases where the reason for rejection is blank.

**Suggestion:** A checklist of documents may kindly be provided, and an instruction should be issued to not demand any document or information beyond the checklist.

## 3. Condition of sec 16 (2) (c) that the tax on an inward supply has “actually been paid”:

**Issue:** It is submitted that it is almost impossible for an MSME to ensure that his supplier has actually paid tax to the government. All that he can do is to comply with sec 16 (2) (aa) by checking whether the purchase document appears in GSTR-2B or not. It requires additional staff to individually check on the portal, the GSTR-3B filing status of every supplier.

**Suggestion:** Condition of section 16 (2) (aa) should be deemed enough for the recipient. In case, it is later found that the supplier has not paid tax, the onus should be on the government to recover it from the supplier. It is unjust and unfair to recover the amount from the recipient. Section 16 (2) (c) ought to be omitted.

#### 4. **Assignment of Lease received from MIDC/ CIDCO etc.:**

**Issue:** MSMEs who started their businesses in 1970s & 80s have grown old and have existed their business if the next generation is not interested in carrying on the business. They transferred the MIDC plots and since it was a permanent transfer akin to sale, no one even thought that GST could be payable. The money received in such transactions has generally been distributed by them to their heirs, family members, donated for charity etc. Now, the department is asking them to pay GST, which is an impossible burden for them towards the end of their life and is making their lives miserable. To compound the problem, the buyer will not bear the burden as he doesn't get ITC [being blocked under sec 17 (5) (d)].

**Suggestion:** Government should consider putting the transaction of "assignment of lease" in schedule III of the CGST Act, 2017 with effect from 1<sup>st</sup> July 2017.

## 5. Tax paid under wrong head:

**Issue:** The mechanism provided under section 77 puts a huge burden on the cash flow of MSMEs. Where inadvertently tax was paid for instance under the head CGST & SGST, then asking the MSME to pay the amount again and claim refund of the tax paid earlier blocks the working capital.

**Suggestion:** A mechanism can be developed where the Central and State government can settle the dues amongst themselves without requirement of any payment of tax or claim of refund by the taxpayer.

## 6. ITC Claimed under wrong head:

**Issue:** There are cases where inadvertently the credit is claimed under wrong head. For instance while CGST + SGST was charged by the supplier, the recipient claimed credit under the head IGST. However, there is no provision parallel to section 77 to deal with this situation.

**Suggestion:** Similar to the suggestion made for section 77, a mechanism should be developed to transfer the credits to relevant heads and settle the accounts without requirement of any reversal of ITC or levy of any interest or penalty.

## 7. Time Limit to issue Credit Note: Section 34 provides that the tax liability against a Credit Note cannot be adjusted if the same is declared after 30<sup>th</sup> November of the succeeding financial year. There are several situations where the need to issue Credit Note arises after November of the succeeding financial year.

**Suggestion:** It would be helpful if the time limit to declare Credit Note is removed.

## 8. **Amnesty under Sec 128A:**

### **Issue:**

- (i) The amnesty is available only for three financial years viz. FY 2017-18, 2018-19 and 2019-20. The period of 2020-21 and 2021-22 was worst for the MSMEs when due to Covid-19 and its aftereffects, they were grappling with extreme finance drain, slow orders, unavailability of employees and maintaining the setup and employees without orders, etc. It took further one year to come out of the aftermath and back to normalcy. The period at least upto 31<sup>st</sup> March 2023 needs to be covered.
- (ii) The amnesty does not cover cases of 'erroneous refund' (vide sec 128A (2)). The interest burden would be heavy on the MSMEs. It ought to be appreciated that the refunds have been granted after scrutiny by the officers and the taxpayer as well as the department have laboured under mistake. There is no justification to exclude such cases from the amnesty unless some fraud is established.

### **Suggestion: Benefit may be allowed to**

- (a) cases pertaining to the Fin. Year 2020-21, 2021-22 and 2022-23 as well.
- (b) Cases of demands arising from erroneous refunds as well.

## 9. Notices and Orders do not contain facts, grounds, reasons:

**Issue:** The officers (particularly those of State Tax) need proper training in issuing show cause notices, conducting adjudication proceedings and passing adjudication orders as well as the orders in the first appeal. For instance:

- notice proposing denial of credit of certain amount without specifying - which credits are sought to be denied and why.
- notice demanding tax without specifying the transaction.
- notice on one ground and adjudication order on a different ground.
- starting enquiry after issuance of notice.
- Adjudication orders just saying that the reply is not satisfactory. No reasons are given, the taxpayer's submissions are not discussed.
- Similar is the situation in the appeals. Appellate authorities are frequently making inquiries on the issues not covered by the impugned order.

**Suggestion:** Training programs may be conducted for the officers. Guidelines may be issued with illustrations. Basics of principles of natural justice may be emphasized.

## 10. Service of Orders:

**Issue:** Notices and orders are being served only through the portal. Some MSMEs miss to check the portal and come to know of the order when the officers come calling or order attachment of bank accounts.

**Suggestion:** It should be made mandatory to serve the notices physically. The officers who call the director after the appeal period is over, can also call when the order is issued.

## 11. Recovery of Dues:

**Issue:** The department is promptly attaching bank accounts once the appeal period is over. The taxpayers come to know of the action from their bank and not from the department.

**Suggestion:**

- (i) It should be fairly ensured that a taxpayer has actually received the order. Even if legally, it might be sufficient to post the order on the portal, the practical aspects must be considered. One phone call to the director could ensure that he is aware of the order. At least emails could be sent to all the directors.
- (ii) Portal can automatically send emails 15 days before expiry of appeal period.
- (iii) Before resorting to any coercive measure, the taxpayer should be asked to pay the dues and should be informed that coercive measures would be taken.

## 12. E-Way Bill and transit checks

**Issue:** The implementation of e-way bills and transit checks has unfortunately created opportunities for corruption. Officers often detain vehicles for minor errors in documentation, posing significant challenges for businesses. The primary threat is the refusal to release goods and vehicles unless the taxpayer immediately pays tax and penalty under DRC-03. Moreover, payment through DRC-03 creates another opportunity to deny



ITC to the customer further straining business relationships. Taxpayers are frequently asked to travel long distances, sometimes over 1000 km, to resolve disputes, causing severe disruptions to their operations.

## **Suggestion:**

### **(i) Provisional Release Without Detention:**

- Goods and vehicles should not be detained irrespective of the nature of the dispute. A mechanism should be established for provisional release of the goods and vehicle upon furnishing an undertaking uploaded directly onto the GST portal.
- Subsequent notices can be issued and adjudicated in accordance with the law. Any liability, including tax, interest, fine, or penalty, can be recovered post-adjudication. This ensures that business continuity is not disrupted.

### **(ii) Eliminate the Need for Physical Visits:**

- Businesses should not be required to visit the officer's location for resolution. Statements can be recorded through the GST portal using secure online methods.
- In cases where internet connectivity is unavailable, communication should be facilitated via email or other remote alternatives.

## (iii) Issue Comprehensive and Practical Guidelines:

- A **clear and structured guideline** should be issued to minimize the ambiguity in handling disputes. The guideline should consist of two distinct parts:
  - **Part A: A list of minor errors** (e.g., typographical errors in the e-way bill, minor mismatches in invoice details) for which vehicles should **not be detained** or penalties imposed. This list should be periodically reviewed and updated.
  - **Part B: A sequence of actions** to be followed during disputes. It should specify:
    - Goods and vehicles must be released immediately.
    - The tax mentioned in the invoice should be paid through the regular return filing process (GSTR-3B).
    - Any additional fines or penalties should be imposed only after an **adjudication order** is passed, not as a pre-condition for release.

## 13. **Advisories issued by GST Portal**

**Issue:** There have been instances where the field formations have refused to abide by the advisories issued by GSTN on the ground that it does not have any legal force. For example on 13/09/2023 the portal issued an advisory that taxpayers with AATO greater than 100 crores must report invoices on the e-invoice portal within 30 days. Goods & vehicle in transit were

detained for non issuance of e-invoice. Officers refused to acknowledge that the e-invoicing can be done later and even those having turnover more than 100 Crores have been given 30 days time.

**Suggestion:** Such instructions should be issued by the Board instead of GSTN.

#### 14. **Job-work Return (ITC-04):**

**Issue:** The return is very complex for MSMEs and often throws errors.

**Suggestion:** ITC-04 may be done away with.

#### 15. **Rectification of Errors:**

**Issue:** In any system, there is always a possibility of errors. Errors may occur in filing returns, preparing documents or preparing records. There should always be option to rectify them.

**Suggestion:** There should be scope to rectify errors in all returns, documents and records.

#### 16. **Officers not providing their contact details:**

**Issue:** Many officers do not provide their email address or phone numbers. For every communication, the taxpayer has to visit their office and wait until the officer meets him. On many letters the department still writes landline numbers that are not attended by anyone. Some write their personal email id in place of the official one.

**Suggestion:** It should be ensured that on every communication made from the department, the following contact details are provided:

- Name & Designation of the person to be contacted.
- Mobile number
- email address (this should be the official id provided by the government).

17. **Grievance Cells:**Corruption and arm twisting is very high. We need a single point of contact to raise grievances on this.Grievance cells of every Commissionerate should be set up and if already set up, should meet at least once in 2 months with at least 2 MSME Association representatives to timely bring up grievances on a continuous basis.

We once again thank you for the opportunity to present our suggestions. We would be happy to physically appear before you for any discussion concering the GST law and the issues of MSMEs.

Thanking you,

Yours faithfully,

**For Chamber of Small Industry Associations**

**Sandeep Parikh**  
**President**