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## **RELAXATIONS IN THE REFUND APPLICATION AND THE APPLICATION FOR REVOCATION OF CANCELLATION OF REGISTRATION: CBIC**

The Central Board of Indirect Taxes and Customs (“CBIC”) released a notification<sup>1</sup> providing certain relaxations with respect to refund applications and with respect to filing of application for revocation of cancellation of registration under Central Goods and Services Tax Act, 2021 (“Act”). Additionally, a standard operating procedure (“SOP”)<sup>2</sup> has also been released, outlining the temporary guidelines to provide reasons in writing to establish a sufficient cause before the proper officer, to seek the extension of time period to file the application for revocation of cancellation of registration. These guidelines will cease to have effect once an independent functionality for extension of time limit is developed at the Goods and service Tax (“GST”) portal itself.

### **Background:-**

#### ***(Refund application)***

- According to section 54 of the Act read with Rule 90 of the Central Goods and Services Tax Rules, 2017 (“Rules”), a taxpayer can claim refund of any tax or interest paid thereon, in form GST RFD-01. An acknowledgement of the same is provided to the taxpayer under Form GST RFD-02 indicating the date of filing of the claim of refund. Rule 90(3) of the Rules allows the proper officer to communicate the deficiencies in the refund application in a deficiency memo under FORM GST RFD 03, requiring the taxpayer to file a fresh application of refund. Furthermore, any application for refund can be filed within two years of the due date of submission of returns for the said financial period.
- Before the introduction of the notification, in case a taxpayer wishes to withdraw a claim of refund, the same could only have been done before by way of refiling the application, after the deficiency memo is issued by the proper officer.
- In case the refund is withheld under section 54(11) for reasons of the taxpayer not furnishing the returns for the said period or not paying any tax, interest or penalty, which has not been stayed by any court, an order under FORM GST RFD 07 has to be passed. The form contains two parts, part A and part B. Part A relates to the details of the refunds completely adjusted against any outstanding demand of payment of tax and part B relates to the refund amount withheld. Interestingly, the details in Part A are also communicated to the taxpayer under FORM DRC 09.

#### ***(Application of revocation of cancellation of registration)***

- According to section 30(1) of the Act, if the GST registration of a taxpayer has been cancelled under section 29 of the Act, an application for revocation of cancellation of registration (“Application”) can be filed, within 30 days from the date on which the order for suspension/cancellation registration was passed.
- CBIC by way of Notification No. 92/2020 dated 27.03.2020 amended section 30(1) of the Act, by adding a proviso therein, providing a power to the proper officer, to extend the time period for filing the Application from 30 days to 90 days, if a sufficient cause is shown to him by way of reasons recorded in writing.

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<sup>1</sup>Notification No. 15/2021 dated 18<sup>th</sup>May, 2021

<sup>2</sup>Circular No. 148/2021 dated 18<sup>th</sup>May, 2021

- The proper officer, in the context of section 30(1) of the Act, would be the officer to whom the application shall be submitted. The proper officer can either be the Additional/Joint Commissioner of GST, if the application is sought to be submitted between 30 to 60 days of cancellation of registration; or the Commissioner of GST, if the application is sought to be submitted between 60 to 90 days of cancellation of registration.
- As per Rule 23(1) of the Rules, the Application needs to be submitted vide FORM GST REG-21. However, there was no inclusion of the extended time period in Rule 23 of the Rules. Furthermore, no particular form or manner was prescribed to furnish reasons for seeking extension to file the application.

### **Amendment:-**

#### ***(Relaxation in relation to refund application)***

- The time period from the date of filing the refund claim under FORM GST RFD 01 and the date of issuance of deficiency memo under Rule 90(3) of the Rules shall be excluded from the statutory limitation period of 2 years under section 54(1) of the Act, for the purposes of filing a fresh application.
- Sub rule (5) and (6) have been introduced in Rule 90 of the rules to state that in case a taxpayer wishes to withdraw the refund application, a separate application under FORM GST RFD 01W has to be filed at any time before the issuance of provisional refund sanction order (in FORM GST RFD-04) or final refund sanction order (in FORM GST RFD-06) or payment order (in FORM GST RFD-05) or refund withhold order (in FORM GST RFD-07) or notice (in FORM GST RFD-08). On submission of the abovementioned withdrawal application, any amount debited from the electronic credit ledgers or electronic cash ledgers shall be credited back to the respective ledgers.
- FORM GST RFD 07 only outlines the details with respect to the refund amount withheld, and Part A of the same has been omitted.

#### ***(Application for revocation of cancellation of registration)***

- The time period as extended by the proper officer under section 30(1) has been included in the time period for filing the Application vide FORM GST REG-21 as per Rule 23(1) of the Rules.
- The SOP provides for the following mechanism to be followed in case of filing the application:
  - The reasons to seek extension for submission of Application, are to be submitted in writing by way of email or letter to the proper officer, who will forward the same to the jurisdictional Joint/Additional Commissioner, who and may accept or reject the request for extension after due consideration of the reasons put forth in support of the same.
  - In case the request is accepted, the extension of time period will be communicated to the proper officer.
  - However, if the request is rejected, an opportunity of being heard will be provided to the taxpayer before taking any decision and the grounds for rejection will be communicated to the taxpayer by the proper officer.
- The Central Government has extended the time limits for filing an appeal, reply or application or furnishing of any report, document, return, statement or such any such record under the

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provisions of the Act, vide Notification No. 14/2021 dated 1<sup>st</sup> May, 2021, in pursuance of the three judge bench decision of Hon'ble Supreme Court in the case of *In Re Cognizance for extension of Limitation* reported in 2021 SCC OnLine SC 373, wherein the bench in an order dated 27<sup>th</sup> April, 2021, invoked the plenary powers of Hon'ble Supreme Court under Article 142 of the Constitution of India to extend the limitation period of appeals from courts or tribunals until further orders, by restoring their previous order dated 8<sup>th</sup> March 2020, which is binding on all the courts and tribunals under Article 141 of the Constitution of India.

## VA Comments:-

- The extension of time period granted by the Central Government to file appeals or any such record proves to be a sigh of relief for the taxpayers in the wake of second wave of the pandemic.
- The refund related relaxations remove the procedural infirmities relating to limitation period for filing a fresh refund application and provisions to withdraw the same. Therefore, this is a welcome move by the Government.
- The relaxation with respect to filing of application for revocation of cancellation of registration is an endeavor on part of the government to plug loopholes in the law thereby removing procedural difficulties, thereby providing an ease to the taxpayers. Furthermore, in the interest of taxpayers, the CBIC has provided an option to submit any difficulties in the implementation of the instructions provided in the SOP on their designated mail address i.e., [gst-cbec@gov.in](mailto:gst-cbec@gov.in)
- There is no time limit prescribed for taking any decision regarding granting the extension, which would severely restrict the taxpayer to claim input tax credit, and would thereby disrupt the flow of revenue in the entire supply chain. Considering the economic crisis faced by the nation in the wake of the second wave of pandemic, it is expected that there should be efforts to expedite the decision making process. However, the hearings and investigations throughout the country are presently running at snail's pace due to the imposition of lockdown. Therefore, it is highly unlikely that the decision making process in the present case will be an exception. Therefore, it becomes imperative that the independent functionality for extension shall be developed at the portal at the earliest.

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