

# SKKA IDT ALERT

01/2023 dt 04/01/2023

## WEEKLY UPDATES

In line with the recommendation of 48<sup>th</sup> GST Council Meeting held on 17<sup>th</sup> day of December 2022, the Central Board of Indirect Taxes and Customs (CBIC) exercising the powers conferred by section 164 of Central Goods and Services Tax Act 2017 (hereinafter referred to as the "CGST Act"), has notified Central Goods and Services Tax (Fifth Amendment) Rules, 2022 vide Notification No. 26/2022-CT dated 26.12.2022. Summary of important changes introduced through the notification is mentioned hereunder-

Rule Amended	Old Provision	Amended Provision	SKKA Comments
R.8(1)	(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, <b>mobile number, e-mail address</b> , State or Union territory in <b>Part A of FORM GST REG 01</b> on the common	(1) Every person, other than a non-resident taxable person, a person required to deduct tax at source under section 51, a person required to collect tax at source under section 52 and a person supplying online information and database access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, 2017 (13 of 2017) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereafter in this Chapter referred to as "the applicant") shall, before applying for registration, declare his Permanent Account Number, <del>mobile number, e-mail address</del> , State or Union territory in <b>Part A of FORM GST REG 01</b> on the common portal, either directly or through a Facilitation Centre notified by the Commissioner	<p><b>Only PAN disclosure in Part A of FORM GST REG-01 is mandatory. No separate Mobile number / email address is to be given since OTP shall be sent to mobile number and email id linked with PAN.</b></p> <p><b>Consequently Clause (b) and (c) to Rule 8(2) which required verification of mobile number and email id disclosed in R.8(1) through OTP has been omitted.</b></p> <p><b>The provision has been introduced to minimize formation of fake entities.</b></p>

	portal, either directly or through a Facilitation Centre notified by the Commissioner		
R.8(2)(a)	The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes.	The Permanent Account Number shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes <b>and shall also be verified through separate one-time passwords sent to the mobile number and e-mail address linked to the Permanent Account Number</b>	It was the practice of the industry to give phone number and mail id of accounts department while generating TRN for fresh registration application. Now, the practice can no longer be followed since OTP shall be sent only to number linked with PAN.  Note - Mobile number and email ID of authorized signatory can be different.
R.8(2)(b) and R.8(2)(c)	(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and  (c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.	<del>(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and</del>  <del>(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one-time password sent to the said e-mail address.</del>	Clauses omitted in line with amendment done in R. 8(1).
R.8(A)	(4A) Every application made under rule (4) shall be followed by- a) Biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number or,	<del>(4A) Every application made under rule (4) shall be followed by- a) Biometric-based Aadhaar authentication and taking photograph, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number or,</del>	<b>Now based on risk parameters and data analytics, applicant might have to present physical documents to the department for taking registration under the act.</b>  <b>Presently CBIC, exercising the powers conferred by Rule 8(4B) has notified vide notification</b>

	<p>b) Taking biometric information, photograph, and verification of such other KYC documents, as notified, unless the applicant is exempted under subsection (6D) of section 22, if he has opted not to get Aadhaar authentication done, of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under subsection (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.</p>	<p><del>b) Taking biometric information, photograph, and verification of such other KYC documents, as notified, unless the applicant is exempted under subsection (6D) of section 22, if he has opted not to get Aadhaar authentication done, of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under subsection (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.</del></p> <p>(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</p>	<p>27/2022-CT dated 26.12.2022 that R.8(4A) shall apply only to the State of Gujarat for the time being.</p>
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		individuals in relation to the applicant as notified under subsection (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.	
R.8(4B) inserted-		<b>(4B) The Central Government may, on the recommendations of the Council, by notification specify the States or Union territories wherein the provisions of sub-rule (4A) shall not apply.</b>	<b>Presently CBIC, exercising the powers conferred by Rule 8(4B) has notified vide notification 27/2022-CT dated 26.12.2022 that R.8(4A) shall apply only to the State of Gujarat for the time being.</b>
R.8(5)	On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in <b>FORM GST REG-02.</b>	On receipt of an application under sub-rule (4) <b>or sub-rule (4A)</b> , an acknowledgement shall be issued electronically to the applicant in <b>FORM GST REG-02.</b>	
R.37	A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the <b>value of such supply</b> along with the tax payable thereon, within	A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the <b>value of such supply whether wholly or partly</b> , along with the tax payable thereon, within the time limit specified in the	This is a much needed amendment in the CGST Rules which provide that reversal of ITC in case of non-payment to vendors within 180 days from the date of invoice shall be done on proportionate basis.  Reversal Amount = ITC availed x [Unpaid amount/Invoice Value]

	<p>the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice.</p>	<p>second proviso to sub-section (2) of section 16, shall pay or reverse an amount equal to the input tax credit availed in respect of such supply proportionate to the amount not paid to the supplier, along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice</p>	<p>Above amount shall be reversed along with interest. Further, the ITC so reversed can be reavailed once the payment is made to the vendor.</p>
R.37A (newly inserted)		<p><b>Reversal of input tax credit in the case of non-payment of tax by the supplier and reavailment thereof –</b></p> <p>Where input tax credit has been availed by a registered person in the return in FORM GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility, but the return in FORM GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in FORM GSTR-3B on or before</p>	<p>This Rule has been inserted to prescribe manner of reversal of ITC and reavailment thereof in case of non payment of tax by the supplier as envisaged by section 41 of CGST Act.</p> <p>The Rule states that if supplier fails to file FORM GSTR-3B within 30<sup>th</sup> September of subsequent FY in which ITC was availed by the recipient, then the recipient shall reverse the ITC so availed on such invoices within 30<sup>th</sup> November of subsequent FY in which ITC was availed by the recipient.</p> <p>If reversal is not done within above date, interest under section 50 shall apply.</p> <p>ITC so reversed can be reavailed once the supplier files its FORM GSTR-3B.</p>

		<p>the 30th day of November following the end of such financial year. Provided that where the said amount of input tax credit is not reversed by the registered person in a return in FORM GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.</p> <p>Provided further that where the said supplier subsequently furnishes the return in FORM GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in FORM GSTR-3B for a tax period thereafter.</p>	<p>It should be noted that first availment shall depend on filing of GSTR-1 by the supplier and the subsequent availment on filing of GSTR-3B by the supplier.</p>
R.59(6)(d) inserted		<p>(d) a registered person, to whom an intimation has been issued on the common portal under the provisions of sub-rule (1) of rule 88C in respect of a tax period, shall not be allowed to furnish the details of outward supplies of goods or services or both under section 37 in FORM GSTR-1 or using the invoice furnishing facility for a subsequent tax period, unless he has either deposited the amount specified in the said intimation or has furnished a reply explaining the reasons for any amount remaining unpaid, as required under the provisions of sub-rule (2) of rule 88C.</p>	<p>Taxpayers needs to keep a proper check on their monthly compliances since mismatch in disclosure of supplies empowers department to issue intimation under Rule 88C in FORM DRC-01B. If the taxpayer fails to make payment of tax as mentioned in the notice or fails to give reply to department in PART B of said form, filing of FORM GSTR-1 for the subsequent period shall be restricted. Further, this might lead to delay in filing of returns by supplier and consequently delay in availment of credit by the recipients.</p>

R. 87(8)	(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in <b>FORM GST PMT 07</b> through the common portal to the bank or electronic gateway through which the deposit was initiated.	(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number is generated or generated but not communicated to the common portal, the said person may represent electronically in <b>FORM GST PMT 07</b> through the common portal to the bank or electronic gateway through which the deposit was initiated. <b>“Provided that where the bank fails to communicate details of Challan Identification Number to the Common Portal, the Electronic Cash Ledger may be updated on the basis of e-Scroll of the Reserve Bank of India in cases where the details of the said e-Scroll are in conformity with the details in challan generated in FORM GST PMT-06 on the Common Portal.</b>	There are many cases where the amount gets deducted from taxpayer’s bank account within the due date but reflects in Electronic Cash Ledger later (beyond due date). This leads to delay in filing of FORM GSTR-3B and taxpayer also has to bear interest burden for no fault of his own.  This rule shall help in such cases but, we need to see how this mechanism is incorporated in GST portal.
R. 88C inserted		<b>88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return-</b> (1) Where the tax payable by a registered person, in accordance with the statement of outward supplies furnished by him in FORM GSTR-1 or using the Invoice Furnishing Facility in respect of a tax period, exceeds the amount of tax payable by such person in accordance with the return for that period furnished by him in FORM GSTR-3B, by such amount and such percentage, as may be recommended by the	This provision gives excessive powers to the department officers to initiate recovery proceedings where taxpayer fails to reply to FORM DRC 01B or the reply is not found to be satisfactory by the officer.  Further, in our view there is no provision in the CGST Act 2017 which empowers introduction of this rule and therefore this rule will get challenged in higher forums in time to come.

		<p>Council, the said registered person shall be intimated of such difference in Part A of FORM GST DRC-01B, electronically on the common portal, and a copy of such intimation shall also be sent to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said difference and directing him to-</p> <p>(a) pay the differential tax liability, along with interest under section 50, through FORM GST DRC-03; or</p> <p>(b) explain the aforesaid difference in tax payable on the common portal, within a period of seven days.</p> <p>(2) The registered person referred to sub-rule (1) shall, upon receipt of the intimation referred to in that sub-rule, either-</p> <p>(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</p> <p>(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, within the period specified in the said sub-rule.</p>	<p>Furthermore, whether taxpayer will be able to file appeal under section 107 for recoveries made under this rule is also not clear.</p>
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		<p>(3) Where any amount specified in the intimation referred to in sub-rule (1) remains unpaid within the period specified in that sub-rule and where no explanation or reason is furnished by the registered person in default or where the explanation or reason furnished by such person is not found to be acceptable by the proper officer, the said amount shall be recoverable in accordance with the provisions of section 79.</p>	
R.108(3)	<p>(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL 02 by the Appellate Authority or an officer authorised by him in this behalf.</p> <p>Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL 01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.</p>	<p><del>(3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL 02 by the Appellate Authority or an officer authorised by him in this behalf.</del></p> <p><del>Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL 01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.</del></p> <p>(3) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating</p>	<p>Submission of certified copy for OIO uploaded in GST portal has been done away with.</p>

		<p>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.</p> <p>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.</p> <p>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.</p>	
R. 109	(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be made in FORM GST APL 03, along with the relevant documents, either electronically or otherwise as may be	<del>(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be made in FORM GST APL 03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.</del>	

	<p>notified by the Commissioner.</p> <p>(2) A certified copy of the decision or order appealed against shall be submitted within seven days of the filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.</p>	<p><del>(2) A certified copy of the decision or order appealed against shall be submitted within seven days of the filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.</del></p> <p>(1) An application to the Appellate Authority under subsection (2) of section 107 shall be filed in FORM GST APL-03, along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner and a provisional acknowledgment shall be issued to the appellant immediately.</p> <p>(2) 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 under sub-rule (1)</p> <p>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-03 and a final</p>	
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		<p>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.</p> <p>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-03, the date of submission of such copy shall be considered as the date of filing of appeal.</p>	
R. 109C inserted		<p>The appellant may, at any time before issuance of show cause notice under sub-section (11) of section 107 or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W.</p> <p>Provided that where the final acknowledgment in FORM GST APL-02 has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application.</p>	Provisions relating to withdrawal of Appeal filed has been notified.

		Provided further that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of section 107 as the case may be.	
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**SKKA COMMENTS:**

*With provision of online compliances and payments, the framework of GST has become more accountable. The one nation, one tax system aims to improve India's competitiveness in global markets. Being GST-compliant, organizations can experience the merits of having a unified tax system and easy input credits. Notwithstanding compliance challenges, it's clear that noncompliance is vastly more expensive and far riskier to an organization*

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