

# SKKA IDT ALERT

2023-2024/25

## Notification No. 38/2023 dated 04.08.2023 - Central Tax (Newly inserted rules)

The CBIC in its latest notification (Notification No. 38/2023 dated 04.08.2023 - Central Tax), has introduced a series of significant amendments and additions to the Central Goods and Services Tax Rules, 2017. These changes are detailed in the notification and will become effective from the date of their publication in the Official Gazette. A few of the recently added rules have been talked about in this article.

**1. Rule 59: Sub rule (6): *The insertion of the below two new clauses under Rule 59 Sub rule (6) of the CGST rules could create a lot of worry and difficulties for taxpayers.***

**Clause (e)** outlines that if a registered individual receives an intimation through the common portal based on the regulations of Rule 88D (**explained below**) for a specific tax period, they will be **prohibited from providing details of outward supplies of goods or services or both in FORM GSTR-1** or using the invoice furnishing facility for a **subsequent tax period**. This restriction holds unless the registered person has either paid the excess input tax credit amount indicated in the notice or has furnished an explanation for the outstanding excess input tax credit, as mandated by Rule 88D.

**Clause (f)** provides that if a registered person **fails to furnish their bank account details within 30 days of receiving GST registration** as outlined by Rule 10A they **shall not be allowed to report outward supplies in FORM GSTR-1** or using the invoice furnishing facility.

**Comments-** **The above amendments can bring the business of a Taxpayer to standstill as GSTR 1 will not be allowed to be furnished on account of difference in ITC as per GSTR 2B and GSTR 3B unless payment made or reply submitted or non furnishing of bank details. Also the law already provides that if GSTR 1 is not filed for 1 tax period, then GSTR 1 for subsequent tax period also cannot be filed by a tax payer.**

**3. Rule 88D: Manner of dealing with difference in input tax credit available in auto-generated statement containing the details of input tax credit and that availed in return. –**

Rule 88 delineates the procedural framework for addressing disparities in the input tax credit claimed by a registered taxpayer in their tax return (FORM GSTR-3B) as compared to the input tax credit available according to the automatically generated statement in FORM GSTR-2B.

If the input tax credit claimed in GSTR-3B surpasses that derived from GSTR-2B by a determined amount and percentage as advised by the Council, the registered entity will receive an electronic **intimation through Part A of FORM GST DRC-01C on the common portal.**

This intimation will also be dispatched to the registered email address on record, illuminating the identified discrepancy and directing the identified taxpayer to either remit an sum equivalent to the excessive input tax credit claimed via FORM GST DRC-03, alongside applicable interest as per Section 50, **or furnish an explanation for the disparity within seven days on the common portal.**

Subsequently, the registered taxpayer, upon receipt of his intimation, must either fully or partially pay the excess input tax credit mentioned in Part A of FORM GST DRC-01C, along with Section 50 interest, and provide related particulars in **Part B of FORM GST DRC-01C on the common portal, or alternatively, submit an explanatory response through the common portal within the stipulated time frame, clarifying any outstanding excess input tax credit yet to be paid.**

In instances where the specified sum indicated in the initial intimation remains unpaid within the prescribed time and if no satisfactory explanation is furnished by the non-compliant registered taxpayer or if the explanation is deemed unacceptable by the authorized officer, **the outstanding amount shall become subject to demand in accordance with the provisions of either Section 73 or Section 74, as appropriate.**

*To conclude with this rule may impose additional administrative burdens on registered taxpayers and potentially lead to disputes if explanations are deemed unsatisfactory, possibly affecting business operations.*

#### **4. Rule 138F: Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof. –**

Rule 138F outlines the process of furnishing information and **generating e-way bills for the intra-state movement of valuable goods (such as gold, precious stones, etc)**. It applies when a Commissioner of State tax or Union territory tax mandates reporting of specified goods, **the consignment value of which exceeds such amount, not below rupees two lakhs**, as may be notified by the Commissioner of State tax or Union territory tax, in consultation with the jurisdictional Principal Chief Commissioner or Chief Commissioner of Central Tax, or any Commissioner of Central Tax authorized by him,

Registered individuals causing such movements must electronically provide details in Part A of FORM GST EWB-01 before the movement commences, leading to a unique e-way bill number. If goods are supplied through an E-commerce operator or courier agency, they may furnish the information. Part B of FORM GST EWB-01 isn't required in these cases. The shared information aids registered suppliers in FORM GSTR-1, and generated e-way bills can be cancelled within 24 hours if goods aren't transported as specified. ***Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.***

Despite the provisions outlined in this rule, there is an exemption from generating an e-way bill in the following cases:

- ❖ In situations where goods are transported from custom ports, airports, air cargo complexes, or land custom stations to inland container depots or container freight stations for the purpose of customs clearance.

- ❖ When the transportation of goods occur under customs bond, from an inland container depot or a container freight station to a customs port, airport, air cargo complex or land customs station, or between different custom stations or ports, and such transportation is either under customs supervision or with a custom seal.

For this rule the term “**consignment value**” of goods means the total value mentioned on the invoice, bill of supply, or delivery challan. This value includes taxes mentioned in the document but does not include the value of goods that are exempt from tax when the same invoice covers both taxable and exempt items.

#### **5. Rule 142B. Intimation of certain amounts liable to be recovered under section 79 of the Act.-**

Rule 142 governs the process of notifying and recovering amounts, including tax and interest under section 79 of the Act. In cases aligned with section 75 in conjunction with rule 88C when any such recoverable amount remains unpaid, the proper officer will electronically intimate the details through FORM GST DRC-01D on the common portal, *directing the defaulting taxpayer to pay within seven days*, with applicable interest, the amount, as specified. The unpaid amount will be recovered in Part II of the Electronic Liability Register in FORM GST PMT-01.

This intimation serves as the recovery notice. If the specified amount remains unpaid after the stated period, the proper officer will proceed with recovery as per the relevant provisions, which may include rules 143,144, 145, 146, 147, 155, 156, 157 or 160.

*In summary, the introduction of this rule could potentially result in taxpayers encountering difficulties in adhering to the seven-day payment timeframe, particularly when facing financial constraints or disputes pertaining to recoverable sums. Furthermore, failure to remit the amount may lead to rigorous proceedings, potentially without affording the taxpayer an opportunity of being heard.*

#### **6. Rule 163: Consent based sharing of information. -**

Rule 163 enables registered persons to share specific information from forms such as:-

- ❖ FORM GST REG-01 as amended from time to time.
- ❖ Return in FORM GSTR-3B for certain tax periods and;
- ❖ FORM GSTR-1 for certain tax periods, pertaining to invoices, debit notes and credit notes issued by him, as amended from time to time:

with a requesting system, subject to obtaining the registered person’s consent and, in case of GSTR-1 the consent of recipients of issued invoices. The requesting system communicates the consent and relevant details to the common portal, which then facilitates the exchange of information between the requesting system and the registered person.



## CONNECT WITH US

39A, Jorapukur Square Lane (Behind Girish Park),

Room # 202, Kolkata- 700006, WB, INDIA

E | [info@skkassociates.com](mailto:info@skkassociates.com)

W | [www.skkassociates.com](http://www.skkassociates.com)



## Advocate Ankit Kanodia

*LLM, LLB, FCA, CS, B.Com(H), CIDT- ICAI*

Indirect Tax Litigation & Consultancy

39A, Jorapukur Square Lane (Behind Girish Park),

Room # 205, Kolkata- 700006, WB, INDIA.

T | 098315 43580

E | [ankit@advocateak.com](mailto:ankit@advocateak.com)

W | [www.advocateak.com](http://www.advocateak.com)