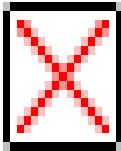


And now, it's raining notifications...! - Part II

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V. NOTIFICATION No. [49/2019-CT](#) ibid "Amendments to the [CGST Rules, 2017](#)- *"It's acid rain!"*

By notification no. [49/2019-CT](#) ibid, CGST (Sixth Amendment) Rules, 2019 ('the Amending Rules')

) are framed making significant amendments in certain provisions of the [CGST Rules, 2017](#)

. A careful study of these amendments vis-à-vis the relevant Press Release (Law and Procedure related changes) would reveal that except one amendment relating to

'the imposition of restrictions on availment of ITC by the recipients in cases where details of outward supplies are not furnished by the suppliers in the Statement (Form GSTR-2A) under S.37 of the [CGST Act, 2017](#)'

, no other amendment finds a mention in the Press Release though a few of these amendments are quite significant and have far-reaching implications . **So much for the transparency!**

The amendments made by the subject notification are effective from

October 09, 2019 unless otherwise specified in the amending provision.

Is the notification No. [49/2019-CT](#) ibid valid?

Before the scope and the implications of the amendments are discussed, let me first deal with an important issue and that is whether the subject notification No. [49/2019-CT](#) itself is a valid piece of legislation?

This notification by which 'CGST (Sixth Amendment) Rules, 2019' are framed and the amendments to the various provisions of the CGST Rules, 2017 are carried out, is issued under S.164 of the [CGST Act, 2017](#). For the ease of reference, S.164 is reproduced below:

"S.164

(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees".

It will be evident from the careful perusal of S.164 that in terms of sub-section (1) thereof, the Central Government is empowered to make, by notification, rules for carrying out the provisions of the Act. Needless to say, such powers vested in the Central Government 'to make rules' would include the powers 'to amend the rules' in any manner as deemed fit.

However, such notification making (or amending) the rules can be issued by the Central Government only on the recommendation of the Council.

This being the case, it is rather shocking that there is absolutely no mention in the subject notification that it has been issued **on the recommendation of the Council!**

This puts a very big question mark over the very validity of the notification and in fact, may render it invalid and without authority of law. It may be pointed out here that the powers conferred upon the Central Government under sub-section (2) and (3) are for specified purpose only and do not exist independently but flow from the powers conferred on the Central Government under sub-section (1). Under these circumstances, the subject notification could not have been issued by the Central Government without recommendation of the Council. This is not an ordinary or inadvertent lapse either! Mind you, one of the amendments made by the notification relates to the substitution of sub-rule (5) of Rule 36 with retrospective effect from July 1, 2017 and has far-reaching implications. This amendment did not even figure in the aforesaid Press Release! Is one supposed to presume that the issue relating to the proposed retrospective amendment was deliberated upon by the Council? Is one also supposed to presume that the subject notification is issued 'on the recommendation of the Council'? Where is the legal and justifiable basis for such a presumption?

In fact, if one digs deeper, one will be shocked to find that in every single notification issued under S.164 of the Act in the past making or amending the rules, the mandatory and all important expression '**on the recommendation of the Council**'

is conspicuous by its absence! What is indeed shocking is the fact that the basic notification no. [3/2017-CT](#) dated 19.06.2017 issued under S.164 of the Act and by which [CGST Rules, 2017](#)

have been notified and brought into force also does not state that it is being issued '**on the recommendation of the Council**'. Since then, the CGST Rules, 2017 have been subjected to frequent amendments as stated under:

- i. 14 (fourteen) amendments during calendar year 2017;
- ii. 14 (fourteen) amendments during calendar year 2018;
- iii. 5 (five) amendments during the current calendar year 2019 (up to 30.09.2019)

Thus, altogether, 33 (thirty-three) notifications have been issued till date under S.164 carrying out various amendments in the CGST Rules, 2017 which were originally notified through notification no. [3/2017-CT](#)

ibid. These amendments could not have been carried out without the recommendation of the Council as is the mandate of S.164 of the Act. In spite of this, not a single notification cares to mention that it is issued '**on the recommendation of the Council**'!

This is rather shocking and disturbing as well. When each and every amendment, before it is notified, is deliberated (or presumed to have been deliberated) by the GST Council and has an approval of the Council, why such casual and loose drafting of the notification? It is also obvious that since the parent notification no. [3/2017-CT](#) ibid itself avoided any mention that it was being issued

'on the recommendation of the Council'

(whether inadvertently or for whatever reason), the notifications that followed thereafter have simply stuck to the same practice! The framers of the notification ought to realize that 'GST Council' is the supreme and high powered body vested with vast powers under Article 279A of the Constitution of India. The statutory provisions governing the GST regime are being and can be enacted and/or amended only on the recommendation of the Council. The expression '**on the recommendation of the Council**' used

in S.164 (and for that matter in any other statutory provision) carries tremendous statutory weight behind it and is not one to be used or not used as one may like! The expression is '**sacred**' and not '**sanctimonious**' and has to be respected.

It is, therefore, felt that the very validity of the present notification no. [49/2019-CT](#) and all the previous notifications including notification no. [3/2017-CT](#) ibid is questionable as it does not state that it is issued '**on the recommendation of the Council**'.

It is hoped that before this issue snowballs into unnecessary legal dispute, suitable remedial action will be taken to set the house in order.

Against the backdrop of the above root issue, the nature and implications of certain significant amendments made by the present notification are briefly discussed hereinbelow:

a. Amendments to Rule 21A – Suspension of registration

Rule 21A has been inserted in the [CGST Rules, 2017](#) by notification no. [03/2019-CT](#) dated 29.01.2019 w.e.f. 01.02.2019. The provision deals with 'suspension of registration' of a taxpayer in certain circumstances as specified therein. Sub-rule (3) of Rule 21A provides that a registered person **shall not make any taxable supply** during the period of suspension and shall not be required to file any return under S.39 of the [CGST Act, 2017](#).

An Explanation has now been inserted in sub-rule (3) of Rule 21A so as to clarify the expression "**shall not make any taxable supply**" to mean that **'the registered person shall not issue a tax invoice and accordingly, not charged a tax on supplies made by him during the period of suspension'**.

This is, indeed, a strange explanation! Does it mean that a registered person, during the period of suspension, can make taxable supply, but cannot issue tax invoice nor charge tax on it? If so, how will he be able to make the taxable supply in the first place? And if the intention is **to not allow**

him to make the taxable supply during the period of suspension then where was the need for such an explanation? If the registered person is allowed to make taxable supply during the period of suspension but without issue of a tax invoice and without charging a tax on it (a very incongruous proposition, indeed!), will it not create complications at a later date in the recovery of tax if the suspension is upheld and the registration is finally cancelled?

A new sub-rule (5) has also been inserted in Rule 29A providing for the revision of invoice in terms of S.31(3)(a) of the Act and filing of (first) return in terms of S.40 of the Act by the person concerned in respect of the supplies made during the period of suspension in case an order for the revocation of suspension of registration has been passed by the proper officer subsequently.

These amendments have come into effect on October 09, 2019.

b. Amendment to Rule 83A – GST practitioner

This amendment seeks to align the time limit for passing the examination by a person enrolled as a GST practitioner under rule 83(2) of the CGST Rules, 2017 with the time limit prescribed under the second proviso to sub-rule (3) of the said rule 83. In effect, such GST practitioner will be required to clear the examination by 'December 31, 2019'.

This amendment is effective from October 09, 2019.

c. Amendments to Rule 91 – Consolidated payment advice

The netizens may recall that by 'the CGST (Fourth Amendment) Rules, 2019' framed by notification no. [31/2019-CT](#) dated 28.06.2019, certain amendments were made to the various provisions of the CGST Rules, 2017. By Rule 10, 11, 12 and 26 of these amending Rules, the provisions of Rule 91 (grant of provisional refund); Rule 92 (order sanctioning refund); Rule 94 (order sanctioning interest on delayed refund) and in **Form GST RFD-05** respectively were also made. A concept of consolidated payment advice from a single authority for the disbursement of refund was also introduced. These amending Rules 10, 11, 12 and 26 were later brought into effect from 'September 24, 2019' by notification no. [42/2019-CT](#) dated 24.09.2019.

The amendments now made in Rule 91 by the present notification are consequential in nature and have been made **effective from September 24, 2019** accordingly.

d. Amendments to Rule 117 – Extension for filing Form GST TRAN-1 and GST TRAN-2

Sub-rule (1A) of Rule 117 empowers the Commissioner, on the recommendation of the Council, to extend the date for filing the declaration in **Form GST TRAN-1 by a further period not beyond 31st March, 2019**, in respect of registered persons who could not submit the declaration by the due date on account of technical difficulties on the common

portal and in respect of whom the Council has made a recommendation for such extension.

Sub-rule (1A) has now been amended so as to extend the specified date for filing

Form GST TRAN-1 in the above circumstances from '31st March, 2019'to '31st December, 2019'.

Simultaneously, proviso to sub-clause (iii) of clause (b) of sub-rule (4) of Rule 117 is also being suitably amended and the filing of **Form GST TRAN-2** is allowed to be filed up to '**31 st January, 2020**'

by the registered persons who are covered by sub-rule (1A) and are allowed to file the declaration in **Form GST TRAN-1** up to 31 st December, 2019.

These amendments are effective from October 09, 2019.

[To be continuedâ€¦]

[The views expressed are strictly personal.]

See [Part I](#)

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