Agenda Item 15 (ii): Measures for Revenue Augmentation

The various measures are placed below in the succeeding paragraphs.

1. **GSTR-1 Amnesty scheme along with E-Way Bill Blocking for non-filers of GSTR-1**

   1.1. GSTR-1 filing has been low and has crossed 60% only once in the last six months (see Table below). This is despite the introduction of Rule 36(4) which restrict availment of input tax credit to 20% of the credit available in FORM GSTR-2A for a taxpayer. Presently late fees for delay in furnishing of FORM GSTR – 1 by the due date is Rs. 20 per day for NIL filers and Rs. 50 per day for others. The maximum late fee is Rs. 10,000 per month (Rs. 5,000 under the CGST / SGST Act).

      | Eligible Taxpayers to File GSTR-1 | Total Returns Filed | Return Filing % | Total Returns Filed | Return Filing % |
      |-------------------------------|-------------------|----------------|-------------------|----------------|
      | as on 30th of Next Month | as on 9th December 2019 |

   | May-19 | 55,64,504 | 22,05,052 | 39.63% | 29,54,802 | 53.10% |
   | Jun-19 | 1,03,58,399 | 50,79,328 | 49.04% | 70,59,934 | 68.16% |
   | Jul-19 | 51,33,194 | 21,31,891 | 41.53% | 28,35,857 | 55.25% |
   | Aug-19 | 49,85,666 | 20,94,862 | 42.02% | 27,65,712 | 55.47% |
   | Sep-19 | 1,04,73,814 | 41,55,049 | 39.67% | 62,36,123 | 59.54% |
   | Oct-19 | 48,45,556 | 22,76,447 | 46.98% | 24,27,563 | 50.10% |

   1.2. Many taxpayers, have represented that they are willing to file their FORM GSTR-1 but they are not willing to pay Rs. 10,000 per month of late fee. This is one of the key reasons for low or no filing of FORM GSTR-1.

   1.3. It may be noted that in the current GST system, there is no procedure for part return / invalid return. Therefore, the only way taxpayers can declare admitted liability is through FORM GSTR-1. This can be later recovered with interest by the Government. Therefore, in order to improve filing of GSTR-1 the following is proposed :

     a. A one-time amnesty scheme to file all FORM GSTR-1 from July 2017 to November 2019 may be given to taxpayers. There will be no penalty for filing such return if the same is filed till 10th January 2020.
b. E-Way bill generation may be blocked for two consecutive non-filing of FORM GSTR-1 (similar to FORM GSTR-3B)

2. **Credit availment to 10% of GSTR-2A in Rule 36(4)**

2.1. Rule 36(4) of the CGST Rules state:

(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 percent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

2.2. This rule was introduced to restrict input tax credit on missing invoices for any recipient to 20% of the total supplies received in his FORM GSTR-2A from his suppliers. This was done to ensure that not more than 20% (of FORM GSTR-2A) exists as unmatched credit in the system.

<table>
<thead>
<tr>
<th></th>
<th>Total Credit in 3B</th>
<th>Total Credit in 2A</th>
<th>Difference</th>
<th>Difference / 2A %</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2017-18</td>
<td>882619.53</td>
<td>633098.53</td>
<td>249521.01</td>
<td>39%</td>
</tr>
<tr>
<td>FY 2018-19</td>
<td>1478118.21</td>
<td>1307857.86</td>
<td>170260.35</td>
<td>13%</td>
</tr>
</tbody>
</table>

2.3. On analysis, it was found that in FY 2018-19 the total difference in FORM GSTR-2A and FORM GSTR-3B is 13% of total GSTR-2A. Therefore, approximately 13% of the total credit lies unmatched in the system currently.

2.4. In the interest of revenue and to increase the proportion of matched credit in the system, it is proposed that Rule 36(4) be amended to restrict input tax credit on missing invoices for any recipient to **10%** of the total supplies received in his FORM GSTR-2A from his suppliers.

3. **Credit blocking in specific instances**

3.1. Various instances of investigations have been noticed wherein it has been accepted by the persons / registered persons that the input tax credit that has been passed on is fake credit as the underlying invoices that have been passed on are fake invoices. In course of the investigation, the recipients who have availed the said input tax credit has also been established.

3.2. Section 16 of the CGST Act provides that ineligible credit is required to be reversed in the return. However, the said reversal is not happening as the return under the GST laws FORM GSTR-3B are self-assessed and are on a summary basis (wherein it is not possible to determine the exact reason for reversal without undertaking scrutiny of returns and contacting the taxpayers on a one to one basis). In this regard, it may be noted that there is a facility in the system which allows the tax authorities to block utilization of ITC and has been observed that
State Officers in as many as 25 States are already using the said facility. Further, it has also been observed that the said facility is not being used by the Central tax authorities.

3.3. To ensure uniformity and in the interest of revenue, it is proposed that the GST Council, as a measure of revenue augmentation, may approve issuance of a Circular to mandate the tax authorities to block the utilization of such credit.

3.4. Draft Circular has been prepared and is placed as Annexure – X to this Agenda Note.

4. **Extension of due date for filing of FORM GSTR-9 / 9C for FY 2017-18**

4.1. In order to simplify filing of Annual Return (FORM GSTR-9) and Reconciliation Statement (FORM GSTR-9C) for FY 2017-18 and FY 2018-19, Notification No. 56/2019 dated 14.11.2019 was issued. However, in order to implement the same, certain changes in the offline utility of FORM GSTR-9C was required.

4.2. It has been brought to notice by GSTN that the offline utility for filing of FORM GSTR-9C has not yet been deployed. Therefore, taxpayers are expressing concern that they are getting very little time for compliance.

4.3. It may be noted that removal of difficulties Order No. 08/2019-Central Tax dated the 14.11.2019 was issued to extend the the due date for filing the said FORM GSTR-9 / 9C till 31.12.2019.

4.4. Therefore, it is proposed that the due date for filing the said FORM GSTR-9 and FORM GSTR-9C may be extended for another one month, extending the due date to 31.01.2020.

4.5. Accordingly, approval of the GST Council is sought for issuance of a removal of Difficulties Order to amend the removal of difficulties Order No. 08/2019-Central Tax dated the 14.11.2019, so as to extend the due date for filing the Annual Return and reconciliation statement in FORM GSTR-9 and FORM GSTR-9C for the financial year 2017-18 to 31.01.2020.

5. **Return extension for North Eastern States**

5.1. Internet has been suspended in many of the North Eastern Areas with curfew also imposed in many of the territories. In light of this, many trade bodies have expressed their inability to file their return FORM GSTR-1, GSTR-7, GSTR-8, GSTR-3B, GSTR-9 and GSTR-9C.

5.2. Assam has requested for the following extensions:


5.2.4. FORM GSTR-9 and GSTR-9C for 2017-18 : From 31.12.2019 to 31.01.2020

5.3. It is requested that other North East States may also inform if there is a need to extend the due dates for their regions. It is further stated that Section 39(6) of the SGST Act empowers State Commissioners to extend the due date of filing their respective returns. Further, if such return is extended by the State Commissioner, the due date under the CGST Act is automatically extended. Therefore, all forms except GSTR-8, GSTR-9 and GSTR-9C may be extended by the State Commissioners on recommendation of the Council.

6. The proposal above regarding measures for revenue augmentation is placed before Council for consideration and approval.
Annexure X

Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, Dated the ___th December, 2019

To,

The Principal Chief Commissioners/Chief Commissioners/Principal Commissioners/ Commissioners of Central Tax (All) / The Principal Director Generals/ Director Generals (All)

The Principal Chief Controller of Accounts (CBIC)

Madam/Sir,

Various instances have been brought to notice by the field formations, wherein have it has been accepted by the persons / registered persons that the input tax credit (ITC) that has been passed on is fake credit as the underlying invoices that have been passed on are fake invoices. In course of the investigation, the recipients who have availed the said input tax credit have also been established. Thereby an explicit need for restriction in utilization of fraudulently availed ITC has been raised by the field formations.

2. The matter has been examined and an explicit provision for restriction in utilization of input tax credit is proposed to be introduced in the latest amendments to section 49 of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as the CGST Act). In order to ensure uniformity in the implementation of the provisions of the law across field formations, and to clarify any doubts that may arise on the issue, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby issues the following clarifications and guidelines.

3. It is clarified that the officers may adhere to the following guidelines while exercising powers under the said section:

   (i) Full ITC should be blocked instantly in cases, where the ITC availed by the registered taxpayers are found to be bogus or fake as a result of any investigation or intelligence. Such taxpayers are not entitled for the credit on the grounds that no supply is made and the proper tax has not been deposited in respect of the claimed credit.
(ii) Full amount of credit should be blocked where the firms are found to be non-functional. Such taxpayers are not entitled for credit as no supply has been received for the reason that the firms are non-functional.

(iii) Credit of taxpayers who have claimed transitional credit through TRAN-1/ TRAN-2, in excess of their lawful entitlement, should be blocked. In such cases, the credit should be blocked only to the extent of excess credit claimed over and above their entitlement as per GST law.

(iv) Credit of supplies which have not been used in the course of business or furtherance of the business should be blocked. The credit should be blocked to the extent of amount of inadmissible credit, if on examination of returns, such cases are detected.

(v) Credit of supplies should be blocked where the credit is inadmissible as per section 17(5) of the CGST Act, 2017. The credit should be blocked to the extent of amount of inadmissible credit, if on examination of returns or otherwise, such cases are detected.

(vi) Credit of supplies should be blocked in all cases where the taxpayers are not entitled to the credit in accordance with the law, i.e. if the tax is not paid by the supplier, the recipient is not in possession of the tax invoice, or the supply is outdated or the supplier is composition taxpayers etc. The credit should be blocked to the extent of amount of inadmissible credit.

4. It is requested that suitable trade notices may be issued to publicize the contents of this Circular. Hindi version will follow.

(Yogendra Garg)
Principal Commissioner (GST)