

From

Excise & Taxation Commissioner,  
Haryana, Panchkula.

To

All the Jt. Excise & Taxation Commissioners (Range),  
All the Dy. Excise & Taxation Commissioners (ST),  
in the State of Haryana.

Memo No. 165 /GST-2  
Panchkula, date the 18/1/19

**Subject:- Guidelines in respect of some provisions of the Haryana Goods and Services Tax Act, 2017.**

Memo:

With the repeal of the Haryana Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956 and substituting the same with Haryana Goods and Services Tax Act, 2017, Central Goods and Services Tax Act, 2017 and The Integrated Goods and Services Tax Act, 2017, it is deemed appropriate to issue following guidelines for uniform and effective implementation of the new Acts:-

1. Detection of unregistered taxable person:

- (i) Section 25(8) of HGST Act, 2017 read with Rule 16 of HGST Rules, 2017 lays down that where pursuant to any survey, enquiry, inspection, search or any other proceeding under the Act, the proper officer finds that a person, liable to registration, has failed to apply for registration, such officer may register the said person on a temporary basis by issuing an order in Form **GST REG-12(appendix to the HGST Rules, 2017)**
- (ii) A person who has been temporarily registered shall apply within 90 days for regular registration. In case such a person does not apply for registration within 90 days of its temporary registration, he shall be considered as unregistered even for the period of temporary registration and all the assessments (including period of 90 days) will be framed as unregistered dealer. This given temporary registration no. was meant for identification only and shall not be of any use as it does not contain necessary details to avail benefit under the GST Act, 2017.
- (iii) Section 63 of the HGST Act, 2017 read with Rule 100(2) of HGST Rules, 2017 provides that the proper officer may proceed



to assess tax liability of an unregistered taxable person, to the best of his judgment, for the relevant tax periods, by issuing a notice in Form **GST ASMT-14 (appended to the HGST Rules, 2017)**. The assessment order shall be passed in Form **GST ASMT-15 (appended to the HGST Rules, 2017)**. The assessment may be framed within 5 years commencing with December next of each tax period.

- (iv) While framing best judgment assessment the provisions of Section 122(1)(xi) will apply and such a person shall be liable to pay penalty of Rs.10,000/- or an amount equivalent to the tax evaded, whichever is higher.
- (v) The amount found payable by the taxable person shall be paid within 3 months from the date of service of the order, failing which recovery proceedings shall be initiated u/s 79 of the Act.

2. **Detection of mismatch of returns in Form GSTR-1 and GSTR-3B (appended to the HGST Rules, 2017).**

(Section 61 of HGST Act, 2017 read with Rule 99 of HGST Rules, 2017 provides that if after scrutiny of the returns, the proper officer finds some discrepancy, a notice shall be issued to the dealer in **Form GST-ASMT 10 (appended to the HGST Rules, 2017)**. After service of the above notice, the dealer shall file reply in **Form GST-ASMT 11 (appended to the HGST Rules, 2017)**. If the proper officer finds the explanation submitted by the dealer acceptable, an order shall be passed in **Form GST-ASMT 12 (appended to the HGST Rules, 2017)**. In case the explanation is not found acceptable, the proper officer may initiate appropriate action including those under Section 65 or Section 66 or Section 67 of the Act or proceed to determine the tax and other dues under Section 73 or Section 74 of HGST Act, 2017.

3. **Enrolment of a GST Practitioner.**

Section 48 of HGST Act, 2017 read with Rule 83 of HGST Rules, 2017 provides that a registered taxable person is required to submit quarterly/periodical information to the department. This information may be furnished directly on the portal or through a GST Practitioner. For this purpose a GST Practitioner is needed to be approved as below:-

- (i) Any person falling in the criteria as prescribed under rule 83(1) of HGST Rules 2017, may apply in Form **GST PCT-01**, electronically through the common portal either directly or through a facilitation centre notified by the Commissioner. The



ETC Haryana has issued a notification No.68/ST-2, dated 10.08.2017 wherein the O/o the DETCs in every district and the Sub-office(s) in the State have been notified as facilitation centers.

- (ii) As per Rule 83(2), of the HGST Rules, 2017, on receipt of application the authorized officer, after making enquiry, may either enroll the applicant and issue a certificate in Form **GST PCT-02** or may reject the application. The ETC, Haryana has issued an order to authorize the officers.
- (iii) If the GST Practitioner is found guilty of misconduct, in connection with any proceedings under the Act, the authorized officer may issue a notice in Form **GST PCT-03**.

If explanation is not found satisfactory, the GST Practitioner may be disqualified by an order in Form **GST PCT-04**. The disqualification order is appealable to the Commissioner within 30 days.

**4. Power to Arrest a person during proceedings (including search and seizure) under the HGST Act, 2017:**

Section 69 (1) of the HGST Act, 2017 provides that:-

- (A) The Commissioner may, by an order authorize any officer of the State tax to arrest a person who is believed to have committed an offence specified in clauses (a) or (b) or (c) or (d) of sub-section (1) of Section 132 of the Act.

Such offences are:-

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made there under, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made there under leading to wrongful availment or utilization of input tax credit or refund of tax;
- (c) avails input tax credit using such invoice or bill referred to in clause (b);
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

The above said offences should be punishable under sub-clause (i) or (ii) of Section 132(1), as below:-



- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
  - (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilized or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- (B) As per Section 132(5), the offences specified in clauses (a) or (b) or (c) or (d) (as mentioned above) and punishable under sub-clause (i) (as mentioned above) are cognizable and non-bailable.

Such an arrested person shall be informed of the grounds of arrest and shall be produced before a Magistrate within 24 hours.

- (C) Except the cognizable and non-bailable offences, mentioned at (B) above, all other offences under the Act are non-cognizable and bailable and therefore an arrested person may be admitted to bail by the Dy. Commissioner or the Asst. Commissioner and in default of bail the arrested person shall be forwarded to the custody of a Magistrate.
- (D) As per Section 132(1), all the following offences, except mentioned at (B) above, are non-cognizable and bailable:-
- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
  - (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilization of input tax credit or refund of tax;
  - (c) avails input tax credit using such invoice or bill referred to in clause (b);
  - (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;



- (e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or
- (l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section.

As per clause (g) any person, who obstructs or prevents any officer in the discharge of his duties under this Act, may be said to have committed an offence under this Act but this offence is non-cognizable and bailable.

- (E) Under Section 67(10) of the HGST Act, 2017, the provisions of Cr P C relating to search and seizure shall apply to search and seizure under this Act (HGST Act, 2017).

## 5. Recovery of arrears under the HVAT Act, 2003/HGST Act, 2017.

- (A) As per Section 174(1) of the HGST Act, 2017, the HVAT Act, 2003(except qua six category of goods) has been repealed. However, under Section 174(2) of the HGST Act, 2017, it has been provided that the repeal shall not affect any recovery of arrears under repealed Act, as if the



Act had not been repealed. Meaning thereby, all the arrears under the HVAT Act, 2003 (repealed) may still be recovered under the earlier available provisions of the repealed Act (including the recovery provisions available under the Land Revenue Act).

(B) As per Section 142 of the HGST Act, 2017, any amount of tax, interest, fine or penalty recoverable from a person but could not be recovered under the existing law (HVAT Act) may be recovered as an arrear of tax under the HGST Act, 2017. Meaning thereby, for the arrears of the HVAT Act, there are available both the provisions of the HVAT Act, 2003 and also provisions of the HGST Act, 2017. The only rider, put under Section 142 of the HGST Act, 2017, is that the arrear remains unrecovered under the existing law (HVAT).

(C) However, the recovery provisions(as such) under the Land Revenue Act, are not available under the HGST Act, 2017, rather the recovery provisions under the HGST Act, 2017 are in itself akin to the recovery provisions under the Land Revenue Act.

(D) So far as, the recovery provisions under the HGST Act, 2017 are concerned, these are provided in chapter XV of the Act, as below:-

- (i) Under Section 73, a notice is to be issued requiring the person to show-cause as to why he should not pay the amount specified in the notice alongwith interest. Further, this notice should pertain to the demand arising on account of the reasons other than the reason of fraud etc. If the tax alongwith interest is paid within 30 days of issue of the notice, no penalty will be leviable, otherwise a penalty equivalent to 10 per cent of tax or ten thousand rupees, whichever is higher, shall be leviable.

It is pertinent to mention that under Section 73(11) where any amount of self-assessed tax or collected as tax is not paid within thirty days of the due date, a penalty to 10 per cent of tax or ten thousand rupees, whichever is higher shall be payable

- (ii) Under Section 74, if the demand is for the reasons fraud etc. the penalty may be equivalent to the tax specified in the notice.
- (iii) Under Section 76, a collected amount of tax is required to be paid whether the supplies, in respect of which such amount



is collected is taxable or not and in case of default a penalty equal to the amount is imposable.

(iv) Section 79 lays down the following modes of recovery, in case the amount payable is not paid:-

- (a) By deducting the amount so payable from any money owing to such person.
- (b) By detaining and selling any goods belonging to such person.
- (c) By notice requiring any other person from whom money is due or may become due to such person and every such notice shall be bound to comply with such notice and in case of default shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences under the Act/Rule shall follow.
- (d) By distraining any movable or immovable property belonging to or under the control of such person, and detain the same and if any amount remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold.
- (e) By preparing a certificate and send it to Collector of the district in which such person owns any property or resides or carries on business and the said Collector shall proceed to recover it as an arrear of land revenue.
- (f) By filing an application to the appropriate magistrate to proceed to recover as if it were a fine imposed by him (Magistrate).

(E) Under Section 81, after any amount has become due, any charge created on property, with the intention to defraud the Government Revenue, shall be void.

(F) Under Section 82, any amount payable shall be a first charge save as otherwise provided in the Insolvency and Bankruptcy Code, 2016.

(G) Under Section 83 during pendency of proceedings under Sections 62, 63, 64, 67, 73 and 74 the property may be attached provisionally including bank account.

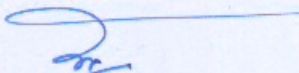


(H) An unrecovered arrear under the HVAT Act (Repealed), may be recovered under the HGST Act, 2017 by resorting to the provisions given under Chapter XV of the HGST Act, 2017.

6. Cross Empowerment

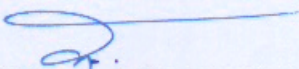
As per Section 6 of the Central Goods and Services Tax Act, 2017 and Section 4 of Integrated Goods and Services Act, 2017, the officers appointed under the State Goods and Services Tax Act are authorized to be the proper officers for the purposes of above Acts, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

These guidelines may please be brought in the knowledge of the officers working under you.

  
Addl. Excise & Taxation Commissioner (GST)-I  
For Excise and Taxation Commissioner, Haryana

A copy of the Guidelines is forwarded to the following:-

1. PS/ ACSET.
2. The Jt. Director (L) -I and II.
3. The Dy. Excise & Taxation Commissioners.
4. DA-I & II.
5. DDA-I & II.
6. PA/ETC.

  
Addl. Excise & Taxation Commissioner (GST)-I  
For Excise and Taxation Commissioner, Haryana

U. O. No. 78 /GST-2, Panchkula, dated the 18/1/19

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