

GOVT OF NCT OF DELHI
DEPARTMENT OF TRADE & TAXES
VYAPAR BHAWAN, IP ESTATE, NEW DELHI - 110002
(POLICY BRANCH)

No.F.3(479)/GST/Policy/2023/ 346

Dated: 3 - 2 3

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Sub: Standard Operating Procedure (SOP) for Cancellation of Registration and for Repository of Non-genuine Taxpayers.

1. Background

- 1.1 GST is an indirect tax which is levied on the supply of goods and services and is a comprehensive, multi-stage, destination-based tax. It is levied on every value addition. In order to avoid the cascading effect of levy of tax at each chain of value addition, GST regime involves seamless flow of credit on supplies. It enables taxpayers to claim input tax credit (ITC) of tax paid on inward supplies.
- 1.2 GST Authorities have detected large number of taxpayers involving in use of fake invoices and wrongful availment/utilization of ITC. Such ITC is availed on the inward supplies shown from non-genuine/existing taxpayers without actual supply of goods & services.
- 1.3 Non-genuine taxpayer is the one who issues invoice under GST Act without actual supply of goods or services to pass on inadmissible tax credit of ITC to the claimant. Non-genuine taxpayer shall also include the persons who obtain registration by means of fraud, wilful misstatement or suppression of facts and for the fraudulent purpose like claim of bogus refunds or generation of e-way bills for suppressed supplies of other taxpayer, but they themselves are not engaged in **genuine** business activity.
- 1.4 Several cases of monetisation of credit fraudulently obtained or ineligible credit through refund have been detected in the past. On Verification, several taxpayers were found to be non-existent in a number of cases. In all these cases it has been found that the Input Tax credit (ITC) was taken by the taxpayer on the basis of fake invoices and the tax liability was paid using such ITC.

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- 1.5 Further, it has been reported that reference regarding fake dealer/suspicious transactions are received from various sources such as CGST, DGG1, DGARM, Other States, Economic Offence Wing (EOW) etc. which shows involvement of the concerned taxpayers.

The invoices that are usually treated as 'fake' wherein the GST invoices are raised by an entity without actual supply of goods or services. These are only illustrative list and not exhaustive in which such fake invoices could be misused in the GST regime.

- a) Issue of invoice without supply of goods or services where payment of tax is made by way of Input Tax Credit which is not available to the issuer of invoice. In such cases, there is no receipt of goods or credit by the issuer of invoice. He merely issues invoices and shows payment of tax by non-existent input tax credit. This results in actual loss of revenue where the buyer of the invoice avails inadmissible credit which is used for payment of tax. There have also been instances where no GST has been paid even by ITC by the issuers of the fake invoice.
- b) Issue of invoices by persons where the invoice is issued to one person and the goods are diverted to some other person. The person who purchases invoices may utilize the credit for offsetting tax liability or /and claim refund in case of exports, resulting in loss of revenue.
- c) Routing of invoices through a series of shell companies/dummy companies and transfer of input tax credit from one company to another in a circular, linear fashion to increase the turnover. In such cases, there is no supply of goods or services and thereby availment of credit based on such invoices gets hit by the provisions of Section 16 of the GST Act, which stipulates the conditions to avail credit that the buyer should be in possession of a tax invoice received the goods or services. In such cases, availment of credit without receipt of goods or services is inadmissible and utilization of such credit for actual regular supplies may result in loss of revenue and /or financial accommodation.
- d) Use of fake invoices issued in the name of non - existing entity by persons intending tax evasion and in the process of facilitation of clandestine movement of goods under the cover of such non - genuine invoice and e-way bill with use of fraudulently obtained GST Registration of such non - existing entity and credentials thereof. It may be with or without knowledge and / or consent of such persons.

2. Necessity/Purpose of Standard Operating Procedure (SOP):

In view of these circumstances, it is necessary to have a standard operating procedure for -

- 2.1 Investigation/ inspection/ verification for identification of non - genuine/existing taxpayers.
- 2.2 Creation of a 'Repository' of non - genuine taxpayers which will contain list of non-genuine/existing taxpayers along with necessary supportive and corroborative evidences.
- 2.3 Use of information and 'evidences' of non-genuine/existing taxpayers in the process of adjudication/ audit / assessment or other legal actions of cases of recipients of ITC claim on the basis of fake invoices.
- 2.4 'Exchange' of information of non - genuine taxpayers and evidences thereof with other authorities such as other State Governments and Central authorities.

3. Relevant Legal Provisions

3.1 Section 29 of the GST Act, read with Rule 20 of the Goods and Services Tax Rules provides that a taxpayer can apply for cancellation of registration in FORM GST REG-16 in the following circumstances:

- a. Discontinuance of business or closure of business;
- b. Transfer of business on account of amalgamation, merger, de-merger, sale, lease or otherwise;
- c. Change in constitution of business leading to change in PAN;
- d. Taxable person (including those who have taken voluntary registration) is no longer liable to be registered under GST;
- e. Death of sole proprietor;
- f. Any other reason (to be specified in the application).

3.2 While initiating the application for cancellation of registration in Form GST REG -16, the common portal captures the following information which has to be mandatorily filled in by the applicant:

- a. Address for future correspondence with mobile number and email address;

- b. Reason for Cancellation;
- c. Date from which cancellation is sought;
- d. Value and the input tax/ tax payable on the stock of inputs, inputs contained in semi- finished goods, input contained in finished goods, stock of capital goods/ plant and machinery;
- e. In case of transfer, merger of business, etc., particulars of registration of the entity in which the existing unit has been merged, amalgamated, or transferred (including the copy of the order of the High Court/ transfer deed);
- f. Details of the last return filed by the taxpayer along with the ARN of such return filed.

3.3. Further, the cancellation proceeding can also be initiated by the Proper Officer on his own motion.

3.4. The Proper Officer has power to cancel registration in following cases from the date he deems fit including any retrospective date, where:-

(a) a registered person has contravened such provisions of the Act or the rules made thereunder **as maybe prescribed**; or

(b) a person paying tax under section 10 (Composition dealer) has not furnished returns for **three** consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of **six months**; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

However, the proper officer shall not cancel the registration without giving the person an opportunity of being heard in these cases.

4. Standard Operating Procedure for cancellation of Registration

- 4.1 In order to ensure uniformity of procedure for cancellation of registration all Ward Incharges/Proper officer are directed to follow the following instructions:-

Cases where cancellation is initiated by the Proper Officer on his own motion:-

Identification of entities who generate “fake invoices” is the first step in curbing this menace. This method also involves identification of generators and users. To identify the generators of fake invoices the following risk parameters can be used.

- a) Multiple GSTIN registrations for a given address
- b) Multiple GSTIN for a given PAN
- c) GSTIN using incomplete or wrong addresses
- d) Tax payer using sensitive commodities.
- e) Common e-mail, common mobile numbers, common address, common authorized signatories, common promoters for multiple GSTIN.
- f) Mismatch between the premises declared and the volume of goods transacted.
- g) Mismatch between the quantum or transactions and the e-way bills generated. If there are, no e-way bills or less e-way bills generated compared to the details of transactions as per the GST returns.
- h) PAN involved in any “fake invoice” fraud or any other GST frauds appear as either in GSTR 1A or GSTR 2A.
- i) Abnormal ITC utilization (for example above 95%).

Where cancellation proceeding are initiated by the Proper Officer on above grounds, **the registration should be cancelled from the date of registration i.e ab-initio**. This gives an upper hand to the Revenue as all the activities of the taxpayers become ab-initio invalid. Date of cancellation gets reflected in GSTR-2A of the recipient enabling the Proper Officer of the recipients to deny input tax credit on such supplies received from the cancelled taxpayer. However, an

opportunity of the personal hearing is to be accorded to the taxpayer before issuing an order.

(iii) **When application for cancellation is submitted by the registered taxpayer :-**

When application is submitted by a registered taxpayer on GST portal the proper officer has to ensure that immediate action is taken on the application in order to safeguard Govt, revenue.

(A) Checking registration profile of the taxpayer thoroughly to find out:

- Nature of constitution i.e. proprietorship, partnership.
- Age of stakeholders.
- Whether the business premises was rented or self owned.
- Whether documents uploaded on the portal are complete and genuine.
- Whether field visit was conducted at the time of registration.
- Number of nature of amendments carried out during the registration tenure.

(B) Brief scrutiny of returns to find out:-

- Volume of business transactions conducted by the taxpayer.
- Whether returns upto date from which cancellation has been sought are filed.
- Whether there is any mismatch between output tax liabilities as per GSTR 1 & GSTR 3B and/or mismatch between input tax credit as claimed in GSTR 3B and that is auto populated in GSTR 2A.
- Whether 2A of the taxpayer contains supplies received from cancelled dealers/non -genuine taxpayers.

(C) Status of refund claims/processed/granted to the registered person.

(D) Any other information/documents received from internal or external sources:

- In case the Proper Officer forms an opinion that the activities of the taxpayers were suspicious, he may direct the GSTI to conduct local enquiries to ascertain whether any such firm existed and carried out the business activities at the scale as reported in returns.

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- * I GSTI report is negative one, then necessary action with respect imposition of penalty may be initiated *including cancellation of registration ab-initio*.
- Application for cancellation has to be *accepted only when the* dues are cleared by the taxpayers and rejection of an *application* needs to be followed by cancellation *proceeding under Section 29(2)*.

Note: It is necessary that action on the application to be taken within 30 days.

(E) Details of authorized signatory/ *GSTP/CA/Advocate etc. In his/her* registration details shall be taken on record for future correspondence.

- 4.2 The order issued by the Proper Officer *should be speaking one containing* details of the case and reasons of rejection of plea taken by the registered taxpayer.
- 4.3 The cancellation of registration shall not affect the liability of the person to pay tax and other dues for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.
- 4.4 The taxpayer whose registration has been cancelled is required to furnish GSTR-10 within 03 months of cancellation or date of order of cancellation whichever is later. The proper officer must ensure compliance in this regard.

5. **Evidences collected during Investigation/ Inspections/ Verification:**

The concerned Proper officer I Nodal Officer during visit collects detailed Evidences as possible/applicable to establish veracity of the business of taxpayer in question. An illustrative check list of all such evidences to be taken on record is given below:-

- 5.1 Photograph of the place of business with inspecting official/s
- 5.2 *If it is noticed that forged documents were submitted as a proof of identity or place of business, corresponding genuine documents shall also be taken on record.*

- 5.3 Ownership details, along with documents of *premises i.e. place/s of businesses or residence/s* shall be obtained *and the genuineness thereof* shall also be confirmed.
- 5.4 Statement from the witness nearby/adjacent shops, to the effect that, *the taxable person is non-existent at the place of business.*
- 5.5 Statement should be recorded from the owner of the premises.
- 5.6 It should be ascertained whether the professional is/was aware of the activity/transactions. In order to ascertain this, deposition *of* such person may be recorded under section 70 of the SGST / CGST Act(s). Preferably a separate deposition of the said professional should be recorded, if possible, in presence of the taxpayers. *If the taxpayer* is available, the signature of said professional and also the taxpayer needs to be obtained. If books of accounts or details of transactions wherein only invoices are being issues, are found in the premises *of* professionals (GSTP/CA/Advocate), this fact should be taken on record while taking deposition.
- 5.7 Details of all the bank accounts operated by the said taxpayer/person shall be obtained. This shall include the bank KYC details. Information related to operation of bank accounts by cheque, e-banking, etc. shall also be taken on record.
- 5.8 As far as possible, efforts should be taken to obtain electronic data stored on Pen-drive / hard disk / CD/ Laptop or PC etc. The data shall be obtained without losing evidential value.
- 5.9 The details *of the digital* signature certificate (DSC)/e-sign used for uploading the compliance may be obtained from the concerned authorities or service providers so as to identify the person responsible for uploading compliances.
- 5.10 Deposition of taxpayer or the person who is involved in non - genuine activity shall be obtained if the taxpayer is available. Due care needs to be taken at the time of recording deposition to frame the question properly in statement so that all relevant information having evidential value is covered.
- 5.11 As far as possible affidavit with photo ID should be taken with the following detailed contents, wherever applicable:

- ? Supply of goods/ services and filed returns in Form GSTR - 3B by reporting such fake outward supplies and used wrong *ITC to discharge* liability of such outward tax.
- > The Taxpayer is engaged in issuance of fake Tax invoices without actual supply of goods/ services and also received such fake tax invoices without receipt of any goods and filed returns in Form GSTR - 3B by reporting such fake outward supplies and used wrong *ITC upon the* strength of such fake tax invoices received and other related documents.
- > The person in whose name the GST registration has been obtained in his name and he was not involved in it. Thus he had not done any actual business of supply of goods or services.
- > The taxpayer registration has been obtained by somebody else under pretext of job offer or other wise and credentials in this behalf are with such person. Such person had indulged in issuance of fake tax invoices and generation of e-way bills in the name of person of no means.
- > Any such other scenario found by the investigation / proper officer.

6. Preparation of Evidence folders and sharing of folders: Actions to be taken after visits

- 6.1) After completion of inspection, verification, investigation and gathering of evidences (circumstantial or otherwise), statements, etc. If the officer reaches to the conclusion that the tax payer is non-genuine, he shall prepare a physical folder of the all direct/circumstantial evidences and immediately initiate the process of GST registration cancellation ab initio.
- 6.2) Each evidence folder should have a detailed report about inspection/verification/investigation by the officer, index of direct/circumstantial/ corroborative evidences and certified copies of evidences.
- 6.3) In case the officer is an investigation officer who is not the jurisdictional officer, he shall forward the detailed report along with certified copy of evidence folder to the Zonal officer of State.
- 6.4) The Zonal officer shall issue the speaking and proper reasoned show cause for suo-motu cancellation of GST registration ab-initio according to the provisions of section 29 of the SGSTZCGSTAct(s).
- 6.5) The detailed report along with folder of evidences and statutory orders shall also be sent in electronic form to Business Intelligence Unit (BIU) by the Proper Officer.

- 6.6) Investigation Officer shall send the folder of evidences to Zonal Officer in order to cancel the registration certificates of such non-genuine tax payers. Simultaneously, send copy of such folder to *BIU* for record and depository purpose.
- 6.7) Here, it should be noted that original evidences shall remain *in the* custody of the Proper Officer or, as the case may be, the Investigation Officer. The Officer shall submit/share either certified copy of evidences in physical form or soft copy of original evidences in electronic form wherever submission/sharing of these details is required for evidence purpose. However, it shall be in soft format to BIU.
- 6.8) Needless to mention that Proper Officer or Investigation Officer shall take all actions as per the law in addition to the actions mentioned above.

7. Repository of Non-genuine taxpayers:

- 7.1) BIU shall act as repository of non-genuine taxpayers. BIU shall prepare list of such non-genuine taxpayers as per Annexure-A and also maintain the electronic copy of evidences as received from Investigation or Proper Officers.
- 7.2) BIU shall also act as repository for the information of non-genuine/non-existent taxpayers identified and communicated by other State Tax authorities or CBIC authorities as the case may be. BIU shall maintain the list of such non-genuine/ no-existent tax payers along with evidences in the form of communication of concerned State Tax/ CBIC Authority.
- 7.3) BIU shall send the list/ information of non-genuine/existing taxpayers of State to GST Council/GSTN from time to time as per the directions of the Commissioner.

This issues with the prior approval of the Commissioner, State Tax.

11/02/2023

(AWANISH KUMAR)

Special Commissioner (Policy)

No. *f.3(479)/GST/Policy/2023 M*

Dated: – 1-3-23

To:

- 1) P.A. to Commissioner, State Tax
- 2) All ZonalIncharges.
- 3) All Ward In-charges through their *Special/Addl. /Joint Commissioners*.
- 4) Senior System Analyst for uploading on the portal.
- 5) Assistant Commissioner HR, *GNCTD*.
- 6) All Legal Assistants.
- 7) Guard file.