DISTRICT TAX BAR ASSOCIATION MOGA

Office 490 Basant Singh Road, Moga (PB.) 142001

Ref No. ____ Dated 11/10/2017

To

Sh. Upender Gupta
Commissioner GST Policy Wing,
CBEC, North Block,
New Delhi.

Sub: **Procedural *Difficulties still faced by Dealers and Professionals under the Goods and Services Tax Law and solutions thereof (Part 4) – Regd.***

Hon'ble Sir,

It gives us immense pleasure in appreciating the efforts made by Government and team of Officials working on GST for redressing the problems faced by dealers and professionals. Although the amendments made in the recently concluded GSTN council meet are highly appreciable, still some procedural lapses exist. The resolution to these lapses is very important and urgent as well keeping in view the Transitional period.

Sir already three representations have been sent to your good self and this fourth representation constitute of some unresolved issues from earlier three representations and some new issues. The early resolution to these problems will enhance the confidence of public in Government and Officers, which otherwise was badly shattered due to its hasty implementation. These are elaborated as under:

1. ***Applicability of GST to Compostion in Transitional Period w.e.f. 01-07-2017:***

That window which was again opened till 30th September 2017 for shifting to Composition Scheme for those persons who have failed to migrate to Composition Scheme (Old migration cases) or failed to choose Composition scheme (Fresh registration) for any reason, has been made effective from 01-10-2017. In majority of cases **option to choose Composition scheme** was not available in respective login. This has resulted in confusion as persons have not collected any GST but are also not covered by Composition Scheme from 01-07-2017. This is wrong in all imaginations as the dealers have not collected GST then how they can pay Regular GST for July-September Quarter. There is urgent need to amend the same and make this scheme applicable w.e.f. 01-07-2017. **If the Government has any apprehension that dealer may not have collected tax from customer then an option may be given in the form of self declaration that whether any Tax has been collected or not** so as to bound the dealer by his declaration. He will be under fear of Law from giving wrong declaration.

Vice Versa –Similarly option has been given from 1st October 2017 to the persons to shift to Regular GST from Composition scheme, who have been granted Composition scheme **wrongly** by the system or otherwise, whereas he was not eligible to choose Composition scheme and was entitled to Regular GST and for which he has also collected tax from customers. **In these cases persons have been granted Regular GST from 01-07-2017 whereby all options of Forms 3B and GSTR 1 are visible for July, August.**

Similarly the persons whi have recently shifted to Composition scheme must be made effective w.e.f. from 01-07-2017 with declaration as discussed above. Sir it is requested **to give us immediate clarification whether our demand of applicability of Composition will be effective w.e.f. 1-7-2017 or 1-10-2017 as per notification.**

2. **Form GSTR 1 and other Forms window must remain open:**

The due date of filing GSTR 1 for the month of July was 10th of October 2017. It was learnt from the Government press note that only 67% of persons have filed GSTR 1 and 33% of the persons have still not filed it. In this regard it is bring to your notice that there may be many reasons for non filing, from technical issues to ignorance or any other reason. But then this window must not be closed and should remain open so that person can file it as and when he comes to know about the default. By closing the window the department is forcibly restricting to file the return GSTR 1 till 31st October, which is against Law. Our Suggestion is to keep it open so that more and more compliance can be made even if it is late.

Further being Transitional period persons who are filing return without the help of professionals and are filing wrong Form 3B and GSTR 1, guideline must be provided for these cases. E.G. Form 3B and GSTR 1 filed at NIL value by mistake or ignorance then what solution lies with purchasing person as his GSTR 2 will be NIL and also selling person will not be able to file correct GSTR 3.

3. **Form GSTR 1 should be amended**:

Form GSTR 1 should be amended so as to include sale and purchase figures both. It will result in better compliance and will bring out mismatch more effectively in comparison to present procedure. Moreover if 33% persons have not filed GSTR 1 returns then how it is possible to file GSTR 2. In this light it will become more important that GSTR 1 should include both sale and purchase value. In this way one Dealer will not be at the mercy of another dealer as to when does he file his return.

4. **Rectification in August 3B before Filing with EVC still awaited:**

The GSTN has provided an option to amend Form 3B for July. It is requested to provide the same option for the **month of August** also for the reasons already provided earlier. Also Form 3B for the month of September can not be filed until Form 3B for the month of August is filed.

5. **Error in Portal display in case date of liability is selected from earlier date**:

The persons who had applied for registration in September but has selected date of liability from July could not see the option to file Form 3B and GSTR 1 for July and August. Similarly persons who have applied GST No. in July or August but are allotted registration in later month, could only see the option to file return form 3B for the Month of July or August whereas persons have collected GST for the month of July or August **but could not file 3B** and GSTR1 for July and August as option to file 3B and GSTR 1 for July and August is not available.

6. **Faulty GSTR 1 in case of NIL rated Supply:**

That in Form GSTR 1 in Part 4A in case of B2B supply the NIL rated supply is put at 0% column. Again in Part 8A the form requires to mention NIL rated supply. This needs clarification/amendment as far as Part 8A of Form GSTR 1 is concerned.

7. **Cancellation Option not Available**:

That till now cancellation option is not available in the portal as the persons are below 20 lakh turnover limit. It is requested to provide the same at the earliest.

8. **Person who have migrated to Composition are still shown as Regular:**

That in many cases persons who have migrated to Composition are still shown as Regular dealer. This anomaly needs early action. This thing has been rposted by many professionals at helpdesk but the problem has ot been solved yet.

9. **Refund for the GST paid on inputs be refunded:**

As per the provisions of the Act were the Input Tax is at higher rate and Output Tax is at lower, the refund can be claimed by filing refund application of each tax period after filing of GSTR 3 of the relevant tax period. As the GSTR 3 of July has been put at November and so on for the month of August and September, great amount of capital has been blocked in GST on Inputs purchased and when output tax (which is at lower rate) is adjusted from input Tax credit, huge amount of refund is pending towards Government. The dealers for these cases may be allowed to take refund on the basis of Form 3B otherwise the businesses which are already under recession will slow down further and will effect not only prosperity of businessman but economy of this country also.

10. **Clarification as to rates/Advance ruling:**

That in many cases rate of GST is not clear. Inspite of many mail send to various authorities and GSTN the replies are not received. This will lead to litigation as once the rate is charged at lower rate no buyer will pay later on if the rate happened to be clarified at higher rate. Department must come out with early replies either through clarification or as per Advance Ruling as mentioned in the Act. This matter is explained with one example as to parts of Agriculture Implements. That confusion has been created on 29-09-2017 upon publication in Punjab Kesari newspaper whereby in FAQ issued by GSTN with its disclaimer has put parts of agriculture machinery falling under head 8432 and 8433 under 18% according to schedule 3 at Sr. No. 453. Whereas in earlier clarification provided on E-mail on 23-08-2017 by Joint Commissioner GSTN the rates of parts of agriculture machinery falling under head 8432 has been answered at 12%.

In this regard it is submitted that upon reading HSN codes provided in GST rate list (which is based on Central Excise rate list) under 8432 90 90 and 8433 90 00 parts are clearly mentioned there under leaving no doubt that parts are included under Chapter 8432 and 8433. This interpretation leads to inference that parts are taxable at same rate at which main machinery is taxable. This needs urgent clarification to protect the interest of Agriculture machinery manufacturers as they are levying GST rate @ 12% and are related to direct agriculture sector which is already under stress.

Sir, Hope you will be kind enough to take our suggestion in positive note. Our endeavour will be to make GST Effective and Non-complicated and for that Problems will be put till last of it is not solved.

Thanking you

Yours faithfully,

Dated:12/10/2017

RupenderKansal
Advocate
Secretary
9317631834, rupender.kansal@gmail.com

CC to Sh. Manish Sinha Commissioner, CBEC and GST council