

**GST UPDATE**  
**SEPTEMBER 2022**

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**NOTIFICATIONS, CIRCULARS AND INSTRUCTIONS**

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**A NOTIFICATION UNDER CENTRAL TAX**

S. N.	Date	Notification No.	Subject	Sec.	Rule
A.1	28.09.2022	18/2022 – CT	Notifying 01.10.2022 as the date on which provisions of sections 100 to 114, except clause (c) of section 110 and section 111 of Finance Act, 2022 shall come into force.	16, 29, 34, 37, 38, 39, 41, 42, 43, 43A, 47, 48, 49, 52, 54, 168	-
A.2	28.09.2022	19/2022 – CT	CGST (Second Amendment) Rules, 2022.	29 16 16 17(4) 17(1) to 17(3) 38, 39, 52 - 48 49, 49A, 49B 54, 77 54 37 38, 39 39 48	21 36 37 38 42, 43 60 69, 70, 71, 72, 73, 74, 75, 76, 77, 79 83 85 89 96 GSTR-1A GSTR-2 GSTR-3 PCT-05
A.3	28.09.2022	20/2022 – CT	Rescinds Notification No. 20/2018-CT dated 28th March, 2018.	54 55	-

S. N.	Date	Notification No.	Subject	Sec.	Rule
A.4	29.09.2022	Corrigendum	Corrigendum - 20/2022, dt. 28.09.2022	54 55	-

**A.1 Notification No. 18/2022 – CT ; dated 28.09.2022**

**S.O. 4569(E).**-In exercise of the powers conferred by clause (b) of sub-section (2) of section 1 of the Finance Act, 2022 (6 of 2022), the Central Government hereby appoints the 1st day of October, 2022, as the date on which the provisions of sections 100 to 114, except clause (c) of section 110 and section 111, of the said Act shall come into force.

[F.No.CBIC-20013/1/2022-GST]

(Rajeev Ranjan)  
Under Secretary, Government of India

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**A.2 Notification No. 19/2022 – CT ; dated 28.09.2022**

**G.S.R. 734 (E).**-In exercise of the powers conferred by section 164 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: -

**1. Short title and commencement. –**

(1) These rules may be called the Central Goods and Services Tax (Second Amendment) Rules, 2022.

(2) Save as otherwise provided in these rules, they shall come into force with effect from the 1st day of October, 2022.

2. In the Central Goods and Services Tax Rules, 2017 (herein after referred to as the said rules), in rule 21, after clause (g), the following clauses shall be inserted, namely:-

“(h) being a registered person required to file return under subsection (1) of section 39 for each month or part thereof, has not furnished returns for a continuous period of six months;

(i) being a registered person required to file return under proviso to subsection (1) of section 39 for each quarter or part thereof, has not furnished returns for a continuous period of two tax periods.”;

3. In rule 36 of the said rules,–
- (a) in sub-rule (2), the words, letters and figure, “, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person” shall be omitted;
  - (b) in sub-rule (4), in clause (b), after the words, “the details of”, the words, “input tax credit in respect of” shall be inserted;
4. In rule 37 of the said rules,–
- (a) for sub-rules (1) and (2), the following sub-rules shall be substituted, namely:-
    - “(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, but fails to pay to the supplier thereof, the amount towards the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay an amount equal to the input tax credit availed in respect of such supply along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:  
**Provided** that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16:  
**Provided** further that the **value** of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.;
    - (2) Where the said registered person subsequently makes the payment of the amount towards the value of such supply along with tax payable thereon to the supplier thereof, he shall be entitled to re-avail the input tax credit referred to in sub-rule (1).”;
  - (b) sub-rule (3) shall be omitted;
5. In rule 38 of the said rules,–
- (a) in clause (a), in sub-clause (ii), the word, letters and figure, “in FORM GSTR-2” shall be omitted;
  - (b) in clause (c), for the words, letters and figure, “and shall be furnished in FORM GSTR-2”, the words, letters and figure, “ and the balance amount of input tax credit shall be reversed in FORM GSTR-3B” shall be substituted;
  - (c) clause (d) shall be omitted;
6. In rule 42 of the said rules, in sub-rule (1), in clause (g), the words, letters and figure, “at the invoice level in FORM GSTR-2 and” shall be omitted;
7. In rule 43 of the said rules, in sub-rule (1), the words, letters and figure, “FORM GSTR-2 and” at both the places where they occur, shall be omitted;

8. In rule 60 of the said rules, in sub-rule (7), for the words “auto-drafted”, the words “auto-generated” shall be substituted;
9. rules 69, 70, 71, 72, 73, 74, 75, 76, 77 and 79 of the said rules shall be omitted;
10. In rule 83 of the said rules, in sub-rule (8), in clause (a), the words “and inward” shall be omitted;
11. In rule 85 of the said rules, in sub-rule (2), –
  - (a) in clause (b), for the words “said person;”, the words “said person; or” shall be substituted;
  - (b) clause (c) shall be omitted;
12. In rule 89, of the said rules, in sub-rule (1), –
  - (a) after the words “ claiming refund of”, the words, brackets and figures “any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 or” shall be inserted;
  - (b) the first proviso shall be omitted;
  - (c) in the second proviso, for the words “Provided further that”, the words “Provided that” shall be substituted;
  - (d) in the third proviso, for the words “Provided also that”, the words “Provided further that” shall be substituted;
13. In rule 96 of the said rules, in sub-rule (3), for the words, letters and figures, “FORM GSTR-3 or FORM GSTR-3B, as the case may be”, the letters and figure, “FORM GSTR-3B” shall be substituted;
14. FORM GSTR-1A, FORM GSTR-2 and FORM GSTR-3 of the said rules shall be omitted;
15. In FORM GST PCT-05 of the said rules, in Part-A, in the table, against Sr. No.1, under the heading “List of Activities”, the words, “and inward”, shall be omitted.

[F.No.CBIC-20013/1/2022-GST]

(Rajeev Ranjan)  
Under Secretary, Government of India

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide notification No. 3/2017-Central Tax, dated the 19th June, 2017, published vide number G.S.R. 610(E), dated the 19th June, 2017 and were last amended vide notification No. 14/2022 - Central Tax, dated the 5th July, 2022 vide number G.S.R. 517(E), dated the 5th July, 2022.

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**A.3 Notification No. 20/2022 – CT ; dated 28.09.2022**

G.S.R. 735(E). - In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, being satisfied that it is necessary in the public interest so to do, on the recommendations on the Council, hereby rescinds the notification of the Government of India, Ministry of Finance (Department of Revenue), No.20/2018-Central Tax, dated the 28th March, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section(i), vide number G.S.R. 309 (E), dated the 28th March, 2018, except as respects things done or omitted to be done before such rescission.

[F.No.CBIC-20013/1/2022-GST]

(Rajeev Ranjan)  
Under Secretary, Government of India

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**A.4 Corrigendum; dated 29.09.2022**

G.S.R. 740 (E).-In the notification of the Government of India, Ministry of Finance (Department of Revenue), No. 20/2022-Central Tax, dated the 28th September, 2022, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i), vide number G.S.R. 735 (E), dated the 28th September, 2022,:

- at page 5, in line 33, for the figure “2018”, read “2018, with effect from the 1st day of October, 2022”.

[F.No.CBIC-20013/1/2022-GST]

(Rajeev Ranjan)  
Under Secretary, Government of India

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**B CIRCULARS**

S. N.	Date	Circular No.	Subject	Sec	Rule
B.1	09.09.2022	180/12/2022-GST	Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd.	140	117

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**B.1 Circular No. 180/12/2022-GST; dated 09.09.2022**

To,

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

**Subject: Guidelines for filing/revising TRAN-1/TRAN-2 in terms of order dated 22.07.2022 & 02.09.2022 of Hon'ble Supreme Court in the case of Union of India vs. Filco Trade Centre Pvt. Ltd. -reg.**

Madam/Sir,

Attention is invited to the directions issued by Hon'ble Supreme Court vide order dated 22.07.2022 in the matter of Union of India vs. Filco Trade Centre Pvt. Ltd. , SLP(C) No. 32709-32710/2018. The operative portion of the order reads as follows:

- "1. Goods and Service Tax Network (GSTN) is directed to open common portal for filing concerned forms for availing Transitional Credit through TRAN-1 and TRAN-2 for two months i.e. w.e.f. 01.09.2022 to 31.10.2022.*
- 2. Considering the judgments of the High Courts on the then prevailing peculiar circumstances, any aggrieved registered assessee is directed to file the relevant form or revise the already filed form irrespective of whether the taxpayer has filed writ petition before the High Court or whether the case of the taxpayer has been decided by Information Technology Grievance Redressal Committee (ITGRC).*
- 3. GSTN has to ensure that there are no technical glitch during the said time.*
- 4. The concerned officers are given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity to the parties concerned.*
- 5. Thereafter, the allowed Transitional credit is to be reflected in the Electronic Credit Ledger.*
- 6. If required GST Council may also issue appropriate guidelines to the field formations in scrutinizing the claims. The Special Leave Petitions are disposed of accordingly. Pending applications, if any, also stand disposed of."*

2. Subsequently, in Miscellaneous Application No.1545-1546/2022 in SLP(C) No. 32709-32710/2018, Hon'ble Supreme Court vide order dated 2nd September, 2022 has inter-alia ordered as follows:

***“The time for opening the GST Common Portal is extended for a further period of four weeks from today.”***

3. In accordance with the directions of Hon'ble Supreme Court, the facility for filing TRAN-1/TRAN-2 or revising the earlier filed TRAN-1/TRAN-2 on the common portal by an aggrieved registered assessee (hereinafter referred to as the 'applicant') will be made available by GSTN during the period from 01.10.2022 to 30.11.2022. In order to ensure uniformity in implementation of the directions of Hon'ble Supreme Court, the Board in exercise of powers conferred under section 168(1) of the CGST Act, 2017 hereby clarifies the following:

**4. Guidelines for the applicant for filing TRAN-1/TRAN-2 or revising earlier filed TRAN-1/TRAN-2:**

- 4.1 The applicant may file declaration in FORM GST TRAN-1/TRAN-2 or revise earlier filed TRAN-1/TRAN-2 duly signed or verified through electronic verification code on the common portal. In cases where the applicant is filing a revised TRAN-1/TRAN-2, a facility for downloading the TRAN-1/TRAN-2 furnished earlier by him will be made available on the common portal.
- 4.2 The applicant shall at the time of filing or revising the declaration in FORM GST TRAN-1/TRAN-2, also upload on the common portal the pdf copy of a declaration in the format as given in **Annexure 'A'** of this circular. The applicant claiming credit in table 7A of FORM GST TRAN-1 on the basis of Credit Transfer Document (CTD) shall also upload on the common portal the pdf copy of TRANS-3, containing the details in terms of the Notification No. 21/2017-CE (NT) dated 30.06.2017.
- 4.3 No claim for transitional credit shall be filed in table 5(b) & 5(c) of FORM GST TRAN-1 in respect of such C-Forms, F-Forms and H/I-Forms which have been issued after the due date prescribed for submitting the declaration in FORM GST TRAN-1 i.e. after 27.12.2017.
- 4.4 Where the applicant files a claim in FORM GST TRAN-2, he shall file the entire claim in one consolidated FORM GST TRAN-2, instead of filing the claim tax period wise as referred to in sub-clause (iii) of clause (b) of sub-rule (4) of rule 117 of the Central Goods and Services Tax Rules, 2017. In such cases, in the column 'Tax Period' in FORM GST TRAN-2, the applicant shall mention the last month of the consolidated period for which the claim is being made.
- 4.5 The applicant shall download a copy of the TRAN-1/TRAN-2 filed on the common portal and submit a self-certified copy of the same, along with declaration in Annexure 'A' and copy of TRANS-3, where ever applicable, to the jurisdictional tax officer within 7 days of filing of declaration in FORM TRAN-1/TRAN-2 on the common portal. The applicant shall keep all the requisite documents/records/returns/invoices, in support of his claim of transitional credit, ready for making the same available to the concerned tax officers for verification.



- 4.6 It is pertinent to mention that the option of filing or revising TRAN-1/TRAN-2 on the common portal during the period from 01.10.2022 to 30.11.2022 is a one-time opportunity for the applicant to either file the said forms, if not filed earlier, or to revise the forms earlier filed. The applicant is required to take utmost care and precaution while filing or revising TRAN-1/TRAN-2 and thoroughly check the details before filing his claim on the common portal.
- 4.6.1 In this regard, it is clarified that the applicant can edit the details in FORM TRAN-1/TRAN-2 on the common portal only before clicking the “Submit” button on the portal. The applicant is allowed to modify/edit, add or delete any record in any of the table of the said forms before clicking the ‘Submit’ button. Once “Submit” button is clicked, the form gets frozen, and no further editing of details is allowed. This frozen form would then be required to be filed on the portal using “File” button, with Digital signature certificate (DSC) or an EVC. The applicant shall, therefore, ensure the correctness of all the details in FORM TRAN-1/TRAN-2 before clicking the “Submit” button. GSTN will issue a detailed advisory in this regard and the applicant may keep the same in consideration while filing the said forms on the portal.
- 4.6.2 It is further clarified that pursuant to the order of the Hon’ble Apex Court, once the applicant files TRAN-1/TRAN-2 or revises the said forms filed earlier on the common portal, no further opportunity to again file or revise TRAN-1/TRAN-2, either during this period or subsequently, will be available to him.
- 4.7 It is clarified that those registered persons, who had successfully filed TRAN-1/TRAN-2 earlier, and who do not require to make any revision in the same, are not required to file/ revise TRAN-1/TRAN-2 during this period from 01.10.2022 to 30.11.2022. In this context, it may further be noted that in such cases where the credit availed by the registered person on the basis of FORM GST TRAN-1/TRAN-2 filed earlier, has either wholly or partly been rejected by the proper officer, the appropriate remedy in such cases is to prefer an appeal against the said order or to pursue alternative remedies available as per law. Where the adjudication/ appeal proceeding in such cases is pending, the appropriate course would be to pursue the said adjudication/ appeal. In such cases, filing a fresh declaration in FORM GST TRAN-1/TRAN-2, pursuant to the special dispensation being provided vide this circular, is not the appropriate course of action.
5. The declaration in FORM GST TRAN-1/TRAN-2 filed/revised by the applicant will be subjected to necessary verification by the concerned tax officers. The applicant may be required to produce the requisite documents/ records/ returns/ invoices in support of their claim of transitional credit before the concerned tax officers for verification of their claim. After the verification of the claim, the jurisdictional tax officer will pass an appropriate order thereon on merits after granting appropriate reasonable opportunity of being heard to the applicant. The transitional credit allowed as per the order passed by the jurisdictional tax officer will be reflected in the Electronic Credit Ledger of the applicant on the common portal.
6. It is requested that suitable trade notices may be issued to publicize the contents of this circular.

7. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)  
Principal Commissioner (GST)

**Annexure-A to Circular 180/12/2022-GST**

***Declaration to be uploaded by the Applicant on the common portal along with TRAN-1/TRAN-2 (in accordance with para 4.2 of the Circular)***

**PART A**

1. Name and Style of Business:
2. GSTIN:
3. Registration effective from: (specify Date)
4. Whether TRAN-1/TRAN-2 furnished earlier: YES NO

**If reply to point 4 is 'Yes', then fill 4.1 to 4.9, else proceed to point 5 below:**

- 4.1 Details of TRAN-1/TRAN-2 furnished earlier:
  1. Date of furnishing TRAN-1:
  2. Date(s) of furnishing TRAN-2:
- 4.2 Amount of credit claimed earlier through TRAN-1:  
CGST-  
SGST/UTGST-
- 4.3 Amount of credit claimed earlier through TRAN-2:  
CGST-  
SGST/UTGST-
- 4.4 Whether notice or order u/s 73/74 of CGST Act, 2017 issued in respect of the credit availed through TRAN-1/TRAN-2 filed earlier: YES NO
- 4.5 If reply to point 4.4 is 'Yes', then mention the reference number and date of notice/order referred to in 4.4 above:
- 4.6 Amount of credit determined as in-eligible, if any, vide order referred to in 4.5 above:  
CGST-  
SGST/UTGST-

4.7 Whether Appeal preferred u/s 107 of CGST Act/ petition before Hon'ble High Court against order referred to in point 4.5 above----

YES NO

4.8 If reply to 4.7 is 'Yes', then whether Appeal/Petition referred to in point 4.7 above disposed off: YES NO

4.9 If reply to point 4.8 above is 'Yes', then amount of credit determined as in-eligible:

CGST-

SGST/UTGST-

5. Amount of credit claimed through TRAN-1/TRAN-2 being filed now:

CGST-

SGST/UTGST-

5.1 Whether any notice issued or order passed under existing law with regard to admissibility of the credit claimed as transitional credit: YES NO

5.2 If reply to point 5.1 above is 'Yes', then date of issuance of notice/ passing the order:

5.2.1 Amount of credit claimed in TRAN-1/TRAN-2 disputed/ held as in-admissible under existing law vide notice/ order referred to in 5.2 above: .....(provide details under each of the existing law)

### **PART B**

I, ----- (name and designation of person making this declaration on behalf of the registered person) on behalf of ..... (Name of registered person) bearing GSTIN-----, do hereby solemnly declare and affirm that:

- 1) I/We have submitted all returns for the period January, 2017 to June, 2017 required under the existing law;
- 2) I/We are in possession of all documents, evidences, invoices, accounts, statutory declarations and other records necessary for substantiation of claim of transitional credit being made in FORM GST TRAN-1/TRAN-2;
- 3) (a) \*I/We have not claimed any credit, within the meaning of sections 140, 141 and 142 of the Central/ State/ UT Goods and Services Tax Act, 2017, in any return in FORM GSTR-3B filed by me/us;OR
- 4) (b) \*I/We have claimed credit, within the meaning of sections 140, 141 and 142 of the Central/ State/ UT Goods and Services Tax Act, 2017, amounting to Rs.----- on account of central tax and Rs.----- on account of State/ union territory tax in my/ our return in FORM GSTR-3B filed by me/ us for the period -----and I/ we have reversed an amount of Rs.----- on account of central tax and Rs.----- on account of State/ union territory tax, along with an interest of Rs..... vide << details of

*such debit/ payment to be provided >>\*\*/ have not\*\* reversed the said amount, along with applicable interest. I/We have neither been refunded nor have claimed refund or would claim refund of the credit of tax carried forward in accordance with sub – section (1) of Section 140 of the Central/State/UT Goods and Services Tax Act, 2017, in the return relating to the period ending with the day immediately preceding the appointed day, furnished by me/us under the existing law, in respect of which this claim of transitional credit is made.*

- 5) I/We have not utilized or adjusted any amount of credit under the existing law, in response to any demand/ liability arising out of self-determination or assessment or audit or investigation, out of the amount being claimed as transitional credit in FORM GST TRAN-1/ TRAN-2;
- 6) The information furnished in **Part A** hereinabove is based on the accounts, information, records, documents and other necessary evidences in my possession and is true and correct to the best of my knowledge and belief, and nothing has been concealed therefrom.

Place                      Signature

Date                        Name

Designation in relation to registered person

*\* Only (a) or (b) of Paragraph 3 of Part B to be filled up, as applicable*

*\*\* Strike off, whichever is not applicable*

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**C INSTRUCTIONS UNDER CENTRAL TAX**

S. N.	Date	Instruction No.	Subject	Sec.	Rule
C.1	01.09.2022	04/2022-23 (GST-Investigation)	Guidelines for launching of prosecution under the CGST, 2017.	69 132 137	-

**C.1 Instruction No. 04/2022-23 (GST-Investigation); dated 01.09.2022**

**Subject: Guidelines for Launching of Prosecution under The Central Goods & Services Tax Act, 2017 -reg.**

Prosecution is the institution or commencement of legal proceeding; the process of exhibiting formal charges against the offender.

2. Section 132 of the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) codifies the offences under the Act which warrant institution of criminal proceedings and prosecution. Whoever commits any of the offences specified under sub-section (1) and sub-section (2) of section 132 of the CGST Act, 2017, can be prosecuted.

**3. Sanction of prosecution:**

**3.1** Sanction of prosecution has serious repercussions for the person involved, therefore, the nature of evidence collected during the investigation should be carefully assessed. One of the important considerations for deciding whether prosecution should be launched is the availability of adequate evidence. The standard of proof required in a criminal prosecution is higher than adjudication proceeding as the case has to be established beyond reasonable doubt. Therefore, even cases where demand is confirmed in adjudication proceedings, evidence collected should be weighed so as to likely meet the above criteria for recommending prosecution. Decision should be taken on case-to-case basis considering various factors, such as, nature and gravity of offence, quantum of tax evaded, or ITC wrongly availed, or refund wrongly taken and the nature as well as quality of evidence collected.

**3.2.** Prosecution should not be filed merely because a demand has been confirmed in the adjudication proceedings. Prosecution should not be launched in cases of technical nature, or where additional claim of tax is based on a difference of opinion regarding interpretation of law. Further, the evidence collected should be adequate to establish beyond reasonable doubt that the person had guilty mind, knowledge of the offence, or had fraudulent intention or in any manner possessed mens-rea for committing the offence. It follows, therefore, that in the case of public limited companies, prosecution should not be launched indiscriminately against all the Directors of the company but should be restricted to only persons who oversaw day-to-day operations of the company and have taken active part in committing the tax evasion etc. or had connived at it.

4. Decision on prosecution should normally be taken immediately on completion of the adjudication proceedings, except in cases of arrest where prosecution should be filed as early as possible. Hon'ble Supreme Court of India in the case of Radheshyam Kejriwal [2011 (266) ELT 294 (SC)] has, inter-alia, observed the following:

- (i) Adjudication proceedings and criminal proceedings can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The findings against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vi) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

In view of the above observations of Hon'ble Supreme Court, prosecution complaint may even be filed before adjudication of the case, especially where offence involved is grave, or qualitative evidences are available, or it is apprehended that the concerned person may delay completion of adjudication proceedings. In cases where any offender is arrested under section 69 of the CGST Act, 2017, prosecution complaint may be filed even before issuance of the Show Cause Notice.

**5. Monetary limits:**

**5.1 Monetary Limit:** Prosecution should normally be launched where amount of tax evasion, or misuse of ITC, or fraudulently obtained refund in relation to offences specified under sub-section (1) of section 132 of the CGST Act, 2017 is more than **Five Hundred Lakh rupees**. However, in following cases, the said monetary limit shall not be applicable:

- (i) **Habitual evaders:** Prosecution can be launched in the case of a company/taxpayer habitually involved in tax evasion or misusing Input Tax Credit (ITC) facility or fraudulently obtained refund. A company/taxpayer would be treated as habitual evader, if it has been involved in two or more cases of confirmed demand (at the first adjudication level or above) of tax evasion/fraudulent refund or misuse of ITC involving fraud, suppression of facts etc. in past two years such that the total tax evaded and/or total ITC misused and/or fraudulently obtained refund exceeds Five Hundred Lakh rupees. DIGIT database may be used to identify such habitual evaders.

- (ii) **Arrest Cases:** Cases where during the course of investigation, arrests have been made under section 69 of the CGST Act.

**6. Authority to sanction prosecution:**

- 6.1** The prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of the Pr. Commissioner/Commissioner of CGST in terms of sub-section (6) of section 132 of CGST Act, 2017.
- 6.2** In respect of cases investigated by DGGI, the prosecution complaint for prosecuting a person should be filed only after obtaining the sanction of Pr. Additional Director General/Additional Director General, Directorate General of GST Intelligence (DGGI) of the concerned zonal unit/ Hqrs.

**7. Procedure for sanction of prosecution:**

**7.1 In cases of arrest(s) made under section 69 of the CGST Act, 2017:**

- 7.1.1** Where during the course of investigation, arrest(s) have been made and no bail has been granted, all efforts should be made to file prosecution complaint in the Court within sixty (60) days of arrest. In all other cases of arrest, prosecution complaint should also be filed within a definite time frame. The proposal of filing complaint in the format of investigation report prescribed in **Annexure-I**, should be forwarded to the Pr. Commissioner/Commissioner, within fifty (50) days of arrest. The Pr. Commissioner/ Commissioner shall examine the proposal and take decision as per section 132 of CGST Act, 2017. If prosecution sanction is accorded, he shall issue a sanction order along with an order authorizing the investigating officer (at the level of Superintendent) of the case to file the prosecution complaint in the competent court.
- 7.1.2** In cases investigated by DGGI wherever an arrest has been made, procedure as detailed in para 7.1.1 should be followed by officers of equivalent rank of DGGI.
- 7.1.3** The Additional/ Joint Commissioner or Additional / Joint Director in the case of DGGI, must ensure that all the documents/ evidence and list of witnesses are kept ready before forwarding the proposal of filing complaint to Pr. Commissioner/ Commissioner or Pr. ADG/ ADG of DGGI.

**7.2 In case of filing of prosecution against legal person, including natural person:**

- 7.2.1** Section 137 (1) of the Act provides that *where an offence under this Act has been committed by a company, every person who, at the time offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.* Section 137 (2) of the Act provides that *where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.* Thus, in the case of Companies, both the legal person as well as

natural person are liable for prosecution under section 132 of the CGST Act. Similarly, under sub-section (3) of section 137, the provisions have been made for partnership firm or a Limited Liability Partnership or a Hindu Undivided Family or a Trust.

- 7.2.2** Where it is deemed fit to launch prosecution before adjudication of the case, the Additional/Joint Commissioner or Additional/Joint Director, DGGI, as the case may be, supervising the investigation, shall record the reason for the same and forward the proposal to the sanctioning authority. The decision of the sanctioning authority shall be informed to the concerned adjudicating authority so that there is no need for him to examine the case again from the perspective of prosecution.
- 7.2.3** In all cases (other than those mentioned at para 7.2.2 and arrests where prosecution complaint has already been filed before adjudication), the adjudicating authority should invariably indicate at the time of passing the order itself whether it considers the case fit for prosecution, so that it can be further processed and sent to the Pr. Commissioner/ Commissioner for obtaining his sanction of prosecution.
- 7.2.4** In cases, where Show Cause Notice has been issued by DGGI, the recommendation of adjudicating authority for filing of prosecution shall be sent to the Pr. Additional Director General/Additional Director General, DGGI of the concerned zonal unit/ Hqrs.
- 7.2.5** Where at the time of passing of adjudication order, no view has been taken on prosecution by the Adjudicating Authority, the adjudication branch shall re-submit the file within 15 days from the date of issue of adjudication order to the Adjudicating Authority to take view on prosecution.
- 7.2.6** Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General of DGGI may on his own motion also, taking into consideration inter alia, the seriousness of the offence, examine whether the case is fit for sanction of prosecution irrespective of whether the adjudicating authority has recommended prosecution or not.
- 7.2.7** An investigation report for the purpose of launching prosecution should be carefully prepared in the format given in **Annexure-I**, within one month of the date of receipt of the adjudication order or receipt of recommendation of Adjudicating Authority, as the case may be. Investigation report should be signed by an Deputy/Assistant Commissioner, endorsed by the jurisdictional Additional/ Joint Commissioner, and sent to the Pr. Commissioner/ Commissioner for taking a decision on sanction for launching prosecution. In respect of cases booked by DGGI, the said report shall be prepared by the officers of DGGI, signed by the Deputy/ Assistant Director, endorsed by the supervising Additional/ Joint Director and sent to the Pr. Additional Director General/ Additional Director General of DGGI for taking a decision on sanction for launching prosecution. Thereafter, the competent authority shall follow the procedure as mentioned in para 7.1.1.



- 7.2.8** Once the sanction for prosecution has been obtained, prosecution in the court of law should be filed as early as possible, but not beyond a period of sixty days by the duly authorized officer (of the level of Superintendent). In case of delay in filing complaint beyond 60 days, the reason for the same shall be brought to the notice of the sanctioning authority i.e., Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General, by the officer authorised for filing of the complaint.
- 7.2.9** In the cases investigated by DGGI, except for cases pertaining to single/multiple taxpayer(s) under Central Tax administration in one Commissionerate where arrests have not been made and the prosecution is not proposed prior to issuance of show cause notice, prosecution complaints shall be filed and followed up by DGGI. In other cases, the complaint shall be filed by the officer at level of Superintendent of the jurisdictional Commissionerate, authorized by Pr. Commissioner/ Commissioner of CGST. However, in all cases investigated by DGGI, the prosecution shall continue to be sanctioned by appropriate officer of DGGI.
- 8. Appeal against Court order in case of inadequate punishment/acquittal:**
- 8.1** The Prosecution Cell in the Commissionerate shall examine the judgment of the Court and submit their recommendations to the Pr. Commissioner/ Commissioner. Where Pr. Commissioner/ Commissioner is of the view that the accused person has been let off with lighter punishment than what is envisaged in the Act or has been acquitted despite the evidence being strong, filing of appeal should be considered against the order within the stipulated time. Before filing of appeal in such cases, concurrence of Pr. CC/CC should be obtained. Sanction for appeal in such cases shall, however, be accorded by Pr. Commissioner/ Commissioner.
- 8.2** In respect of cases booked by DGGI, the Prosecution Cell in the Directorate shall examine the judgment of the court and submit their recommendations to the Pr. Additional Director General/ Additional Director General who shall take a view regarding acceptance of the order or filing of appeal. However, before filing of appeal, concurrence of DG or Pr. DG (for cases booked by HQ Unit) should be obtained.
- 9. Procedure for withdrawal of prosecution:**
- 9.1 Procedure for withdrawal of sanction-order of prosecution:**
- 9.1.1** In cases where prosecution has been sanctioned but complaint has not been filed and new facts or evidence have come to light necessitating review of the sanction for prosecution, the Commissionerate should immediately bring the same to the notice of the sanctioning authority. After considering the new facts and evidence, the sanctioning authority, if satisfied, may recommend to the jurisdictional Pr. Chief Commissioner/ Chief Commissioner that the sanction for prosecution be withdrawn who shall then take a decision.
- 9.1.2** In the cases investigated by DGGI, such withdrawal of sanction order may be made with the approval of Director General of DGGI of concerned sub-national unit. In the cases booked by DGGI, Hqrs., Pr. Director General shall be competent to approve the withdrawal of sanction order.

**9.2 Procedure for withdrawal of complaint already filed for prosecution:**

- 9.2.1** Attention is invited to judgment of Hon'ble Supreme Court on the issue of relation between adjudication proceedings and prosecution in the case of **Radheshyam Kejriwal, supra**. Hon'ble Supreme Court in para 43 have observed as below:

*“In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court.”*

The said ratio is equally applicable to GST Law. Therefore, where it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings and such order has attained finality, Pr. Commissioner/ Commissioner or Pr. Additional Director General/ Additional Director General after taking approval of Pr. Chief Commissioner/ Chief Commissioner or Pr. Director General/ Director General, as the case may be, would ensure filing of an application through Public Prosecutor in the court to allow withdrawal of prosecution in accordance with law. The withdrawal can only be affected with the approval of the court.

**10. General guidelines:**

- 10.1** It has been reported that delay in the Court proceedings is often due to non-availability of the records required to be produced before the Court or due to delay in drafting of the complaint, listing of the exhibits etc. It shall be the responsibility of the officer who has been authorized to file complaint, to take charge of all documents, statements and other exhibits that would be required to be produced before a Court. The list of exhibits etc. should be finalized in consultation with the Public Prosecutor at the time of drafting of the complaint. No time should be lost in ensuring that all exhibits are kept in safe custody. Where a complaint has not been filed even after a lapse of 60 days from the receipt of sanction for prosecution, the reason for delay shall be brought to the notice of the Pr. Commissioner/ Commissioner or the Pr. Additional Director General/ Additional Director General of DGGI by the Additional/ Joint Commissioner in charge of the Commissionerate or Additional/ Joint Director of DGGI, responsible for filing of the complaint.
- 10.2** Filing of prosecution need not be kept in abeyance on the ground that the taxpayer has gone in appeal/ revision. However, to ensure that the proceeding in appeal/revision are not unduly delayed because the case records are required for the purpose of prosecution, a parallel file containing copies of essential documents relating to adjudication should be maintained.
- 10.3** The Superintendent in-charge of adjudication section should endorse copy of all adjudication orders to the prosecution section. The Superintendent in charge of prosecution section should monitor receipt of all serially numbered adjudication orders and obtain copies of adjudication orders of missing serial numbers from the

adjudication section every month. In respect of adjudication orders related to DGGI cases, Superintendent in charge of adjudication section should ensure endorsing a copy of adjudication order to DGGI. Concerned Zonal Units/ Hqrs. of DGGI shall also follow up the status of adjudication of the case from the concerned Commissionerate or adjudicating authority.

**11. Publication of names of persons convicted:**

**11.1** Section 159 of the CGST Act, 2017 grants power to the Pr. Commissioner/ Commissioner or any other officer authorised by him on his behalf to publish name and other particulars of the person convicted under the Act. It is directed that in deserving cases, the department should invoke this section in respect of all persons who are convicted under the Act.

**12. Monitoring of prosecution:**

**12.1** Prosecution, once launched, should be vigorously followed. The Pr. Commissioner/ Commissioner of CGST or Pr. Additional Director General/ Additional Director General of DGGI should monitor cases of prosecution at monthly intervals and take the corrective action wherever necessary to ensure that the progress of prosecution is satisfactory. In DGGI, an Additional/ Joint Director in each zonal unit and DGGI (Hqrs) shall supervise the prosecution related work and take stock of the pending prosecution cases. For keeping a track of prosecution cases, entries of all prosecution cases should promptly be made in DIGIT/ Investigation Module, within 48 hours of sanction of prosecution and the entries must be updated from time to time. Additional/ Joint Commissioner or Additional/ Joint Director, in-charge of supervising prosecution cases shall ensure making timely entries in the database.

**13. Compounding of offence:**

**13.1** Section 138 of the CGST Act, 2017 provides for compounding of offences by the Pr. Commissioner/ Commissioner on payment of compounding amount. The provisions regarding compounding of offence should be brought to the notice of person being prosecuted and such person be given an offer of compounding by Pr. Commissioner/ Commissioner or Pr. Additional Director General/Additional Director General of DGGI, as the case may be.

**14. Transitional Provisions:**

**14.1** All cases where sanction for prosecution is accorded after the issue of these instructions shall be dealt in accordance with the provisions of these instructions irrespective of the date of the offence. Cases where prosecution has been sanctioned but no complaint has been filed before the magistrate shall also be reviewed by the prosecution sanctioning authority considering the provisions of these instructions.

**15. Inspection of prosecution work by the Directorate General of Performance Management:**

**15.1** Director General, Directorate General of Performance Management and Pr. Chief Commissioners/Chief Commissioners, who are required to inspect the Commissionerates, should specifically check whether instructions in this regard are

being followed scrupulously and make a mention of the implementation of the guidelines in their inspection report apart from recording of statistical data. Similarly exercise should also be carried out in DGGI.

**16.** Where a case is considered suitable for launching prosecution and where adequate evidence is forthcoming, securing conviction largely depends on the quality of investigation. It is, therefore, necessary for senior officers to take personal interest in the investigation of important cases of GST evasion and in respect of cases having money laundering angle and to provide guidance and support to the investigating officers.

**17.** To ensure proper training to the officers posted for prosecution work, the Pr. Director General, National Academy of Customs, Indirect Taxes and Narcotics (NACIN), Faridabad, should organize separate training courses on prosecution/arrests etc. from time to time and should incorporate a series of lectures on this issue in the courses organized for investigation. The Pr. Commissioner / Commissioner or Pr. ADG/ ADG of DGGI should judiciously sponsor officers for such courses.

**18.** These instructions/guidelines may be circulated to all the formations under your charge for strict compliance. Difficulties, if any, in implementation of the aforesaid instructions/guidelines may be brought to the notice of the Board.

**19.** Receipt of this Instruction may please be acknowledged. Hindi version will follow.

(Vijay Mohan Jain)  
Commissioner (GST-Investigation), CBIC

**Annexure-I**

**INVESTIGATION REPORT FOR THE PURPOSE OF LAUNCHING PROSECUTION AGAINST \_\_\_\_\_**

**COMMISSIONERATE/ DGGI \_\_\_\_\_ DIVISION/ZONAL UNIT/ Hqrs. DGGI \_\_\_\_\_**

1. Name & address of the person(s), including legal person(s):
2. GSTIN (If any):
3. Nature of offence including commodity/ Service:
4. Charges:
5. Period of offence:
6. Amount involved
7. Particular of persons proposed to be prosecuted :
  - a. Name:

