Fin min move to catch fake GST bills to hit genuine taxpayers too: industry

Updated at January 6, 2021 16:06 IST

The finance ministry's move to tighten the noose on entities that have been fraudulently taking input tax credit under the goods and services tax (GST) system has invited the ire of traders and tax experts. Basically, the Centre has inserted a rule under which businesses with a monthly turnover of over Rs.50 lakh will now have to mandatorily pay at least one per cent of their GST liability through cash ledger, starting from this month.

Also, for missing invoices, businesses can now claim input tax credit on no more than 5 per cent of the amount, against 10 per cent allowed earlier.

The Central Board of Indirect Taxes and Customs (CBIC) has introduced Rule 86B under the Central GST Act which restricts the use of input tax credit for discharging GST liability to 99 per cent. “The registered person shall not use the amount available in the electronic credit ledger to discharge his liability towards output tax in excess of 99 per cent of the tax liability, in cases where the value of taxable supply in a month exceeds Rs.50 lakh,” CBIC said.

While calculating the turnover threshold, sales from GST-exempt goods and zero rates supply would not be included.

However, this restriction will not apply where the managing director or any partner has paid more than Rs.1 lakh as income tax, or the registered person has received a refund amount of more than Rs 1 lakh in the preceding fiscal year on account of unutilised input tax credit.

Reacting to the move, Abhishek Rastogi, partner at Khaitan & Co, said he will challenge the government's move in the court.

On the other hand, finance ministry sources said the move will impact only risky or fly-by-night operators.

They explained that the new provision applies to those whose annual turnover is more than Rs six crore and a large number of exemptions and exclusions have been provided.

For instance, they said this rule is not applicable in cases where the registered person deposited more than Rs.one lakh as income tax in each of the last two years. Also, if a registered person has received a refund of more than Rs.one lakh in the preceding financial year on account of export or inverted tax structure, he does not fall under the ambit of this rule.

Besides, this rule doesn't apply to government departments, public sector undertakings and local authorities.

Further, all small businesses including MSMEs and Composition dealers have been excluded from the rule.

After all exclusions, the rule would apply to only 40,000-45,000 taxpayers, or about 0.37 per cent of the total GST tax base of 10.2 million, the sources said.

Rastogi said, "While the intention appears to trap fake invoice cases, the proposed change will negatively impact a lot of genuine businesses."

He said those involved in fake invoices should be dealt with separately, not through this change in rule. Seamless input tax credit is the genuine right of companies under the GST system which is being distorted now, he said.

"These restrictions will significantly impact businesses that usually have accumulated credits, as they will have to discharge output tax liability in cash instead of available credit balance. The point under consideration is whether the provision defeats the concept of seamless credit," said Rastogi.

Traders' body CAIT has urged finance minister Nirmala Sitharaman to defer the introduction of the rule. It said ideally any change in GST rules should come into effect from the beginning of a financial year.

To an explanation by finance ministry sources that the rule will apply to just 40,000-45,000 taxpayers, CAIT secretary general Praveen Khandelwal asked whether there is a guarantee that the rule would not be further amended to bring others under its ambit as well. "E-invoicing was made mandatory for those with annual turnover of over Rs 500 crore from October 2020. Then from January, it was made mandatory for those with annual turnover of over Rs 100 crore. From April 1, it would be made mandatory for all those having turnover of over Rs five crore. Similarly, what is the guarantee that the rule for paying ITC with cash ledger will not be expanded," he asked.

Chairman of PHDCCI's indirect taxes committee, Bimal Jain, said the rule has not been introduced at an appropriate time and is creating an air of uneasiness for trade and industry. He urged the Centre to withdraw or postpone it.

Also, input tax credit up to only 5 per cent can be taken in case of missing invoices. Earlier, it was allowed for up to 20 per cent of the amount before it was restricted to 10 per cent, with effect from January 1 this year.

Rastogi said the limit of 10 per cent is already before courts for judicial review and the additional restriction will certainly be a moot point of challenge as well.

Jain said this rule is on the basis of the Know-your-supplier norm. It envisages blocking of credit and circumventing the right to appeal, which is not within the four corners of natural justice, he added

Further, the CBIC has amended GST rules, restricting filing of outward supply details in the relevant form for businesses that have not paid tax for the past periods by filing summary input-output form.

Until now, non-filing of GSTR 3B resulted in blockage of e-way bill but will now result in GSTR 1 blockage as well.

Khandelwal said certain promises made by former finance minister Arun Jaitley to traders are being violated now. "Much against the declared spirit of GST as a good and simple tax, the cess has become a colonial taxation system, far removed from the ground realities of business conducted in India. Various recent amendments and introduction of rules under the GST system have made the taxation system complicated and put a great deal of compliance burden on traders," he said.

Meanwhile, GST collections hit an all-time high of Rs.1.15 trillion in December. The mop up relates to transactions in November, when e-way bills declined to 57.7 million, from 64.2 million in October. Finance secretary A B Pandey attributed it to economic recovery and to many systemic changes introduced in the GST system the past few months.

On the controversial rule of asking specified companies to pay at least one per cent GST liability through the cash ledger, he said, "These measures have been introduced for only those few thousand companies who are on the wrong side of the law. In a tax base of 12 million, there are a few thousand entities who have issued invoices worth hundreds of crores of rupees, but their income tax profile shows that they have either not filed any returns or are showing income of about Rs two lakh or so. Therefore, if any restriction is imposed on such class of tax evaders, how could it be impacting the rights of a genuine business," he asked.

Resource: Business Standard, 06 Jan 2021