

O/o the Commissioner of State Tax
Maharashtra State, 8th Floor,
GST Bhavan, Mazgaon,
Mumbai-400010

INTERNAL CIRCULAR

(Restricted Circular for office use only)

No. JC (HQ)-5/GST/2022/Revocation/F.No.185/B- 3 , Mumbai dt 23/3/2022
Internal Circular No.06 A of 2022.

Sub. : Instructions regarding care to be taken while revocation of cancellation of GST registration.
Ref. : Internal Circular No. 9A of 2021 dt 29.07.2021.

Synopsis –

The proviso to Rule 23(1) of the MGST Rules, 2017 says that no application for revocation shall be filed unless such returns are furnished and the amount due as tax has been paid. The second proviso says that returns due from the date of order of cancellation till the date of order of revocation have to be furnished within a period of thirty days from the order of revocation. The third proviso which is regarding retrospective cancellation says that the taxpayer shall furnish all returns from the date of cancellation till date of order of revocation of cancellation within a period of thirty days from date of order of revocation of cancellation. However, review of return follow up shows these provisions are not followed. Instructions are given in this circular regarding the same.

BACKGROUND:

Registration of several taxpayers have been cancelled under sub-section (2) of section 29 of the Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as “the Act”) due to non-filing of returns in FORM GSTR-3B or GSTR-4. Sub-section (2) of section 29 of the Act, 2017 empowers the proper officer to cancel the registration from such date, including any retrospective date, as he may deem fit. Circular instructions are also issued regarding cancellation of registration on account of failure to furnish returns vide Internal Circular No. 9A of 2021 dt 29.07.2021.

During review of GSTR-3B follow up by field officers, it is noticed that a few officers have approved revocation of cancellation of registration without getting returns filed and payments made as required u/s 30 r/w Rule 23 of the MGST Rules, 2017. It was also noticed that few of such registered persons whose cancellation of registration was revoked have not filed GSTR-3B or GSTR-4 returns within the prescribed date after revocation of cancellation of registration i.e. within 30 days from the date of order of revocation of cancellation of registration. Moreover, in cases of revocation of retrospective cancellations, payments are not made and/or returns are not filed within 30 days from the order of revocation of cancellation of registration.

In few cases, the officers did not exercise proper judgment so as to ensure compliance of Rule 23. This results in iterative cancellations.

2. RELEVANT PROVISIONS AND SCENARIOS:

Rule 23(1) of MGST Rules, 2017 explicitly provides that no application for revocation shall be filed, if the registration has been cancelled for the failure of the registered person to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns. As per the provisions of Rule 23(1), the following scenarios emerge in case of revocation of cancellation of registration --

Scenario 1:

Where, effective date of cancellation of registration and date of order of cancellation of registration are same *i.e.* where the registration is cancelled **prospectively** for failure to file returns then all the returns for the period up to the date of order of cancellation shall be furnished and tax due shall be paid along with any amount payable towards interest, penalty and late fee in respect of said returns by registered person before filing application for revocation (*First proviso to Rule 23(1)*).

Further, all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration (*Second proviso to Rule 23(1)*).

Scenario 2:

Where, the registration has been cancelled **retrospectively** *i.e.* effective date of cancellation is earlier than the date of order of cancellation of registration, then -

2A) In case where the effective date of cancellation is last day of the last return filed or date immediately succeeding the last day of return filed, all returns relating to the period containing the date of effect of cancellation of registration till the date of order of revocation of cancellation shall be filed within thirty days from the date of order of such revocation (*Third proviso to Rule 23 (1)*).

2B) In case where the effective date of cancellation is subsequent to the last day of the last return filed but before the date of cancellation order, all the returns of full tax period up to the date of effect of cancellation of registration shall be furnished and tax due shall be paid along with any amount payable towards interest, penalty and late

fee in respect of said returns by registered person before filing application for revocation.

Further, all returns due for the period from the effective date of cancellation of registration till the date of the order of revocation of cancellation of registration shall be furnished by the said person within a period of thirty days from the date of order of revocation of cancellation of registration (*Second proviso to Rule 23(1)*).

The above scenarios are explained by way of examples given in the TABLE I:

TABLE I

Sr. No.	Revocation Scenario	GSTR-3B filed up to	Date of cancellation order	Effect date of Cancellation	Returns to be filed before revocation	Payment to be made before revocation	Returns to be filed within 30 days of revocation
1(a)	Prospective cancellation	May, 21	31.12.2021	31.12.2021	June, 21 to Dec, 21	All due periods	Jan, 22 till the date of revocation
1(b)*	Prospective cancellation	May, 21	21.12.2021	21.12.2021	June, 21 to Nov, 21	All due periods	Dec, 21 till the date of revocation
2(a)	Retrospective cancellation	May, 21	31.12.2021	31.05.2021	N.A.	All due periods	June, 21 till the date of revocation
3(a)(i)	Retrospective cancellation	May, 21	31.12.2021	30.09.2021	June, 21 to Sep, 21	All due periods	Oct, 21 till the date of revocation
2(b)(ii)*	Retrospective cancellation	May, 21	31.12.2021	15.10.2021	June, 21 to Sept, 21	All due periods	Oct, 21 till the date of revocation

Note: * indicates the scenario in which the effective date of cancellation of registration is during the month and not the last day of the month. Hence, return cannot be filed for the part period.

3. INSTRUCTIONS:

In view of the specific requirements of Rule 23 (1) of the MGST Rules 2017, following internal instructions are issued:

3.1 Visit to the POB before revocation: On receipt of application for revocation of cancellation of registration, the proper officer shall pay a visit to the POB of the taxpayer in order to ensure that the taxpayer is in genuine business from his premises. This will ensure that the revocation is not done in the case of non-existent / non-genuine tax payer.

3.2 Revocation in case of prospective cancellation:

i) Payments: All Nodal / proper officers are hereby directed to ensure all the payments, which are due before an order of revocation of cancellation of registration is passed.

ii) Returns to be filed:

(a) Before passing an order of revocation, every Nodal/Proper Officer shall ensure that the taxpayer has filed all returns till the date of cancellation, along with payments.

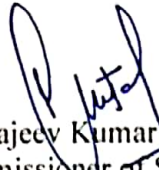
(b) Further, it shall also be ensured that the taxpayer file all returns due for the period from the date of the order of cancellation of registration till the date of the order of revocation of cancellation of registration within thirty days from the date of the order of revocation of cancellation of registration.

3.3 Revocation in case of retrospective cancellation:

- i) **Payments:** All Nodal / proper officers are hereby directed to ensure all the payments, which are due before an order of revocation of cancellation of registration is passed.
- ii) **Returns to be filed:**
 - (a) In case where the effective date of cancellation is last day of the last return filed, the Nodal/Proper officer shall ensure that the taxpayer has filed all returns due within 30 days from the date of the order of revocation of cancellation of registration.
 - (b) In case where the effective date of cancellation is subsequent to the last day of the last return filed but before the date of cancellation order, the Nodal/Proper officer shall ensure that the taxpayer has filed all returns for period up to the date of effect of cancellation before filing application of revocation and returns for period from effect date of cancellation to date of revocation within 30 days from the date of the order of revocation of cancellation of registration.

3.4 Even after revocation, if a registered person fails to file returns, the appropriate action under section 29, section 75(12), section 62 and/or section 132 may be initiated, or if found fit, be proposed for Audit under section 65.


All the instructions given in the circular shall be followed scrupulously, by all the authorities in the Department and difficulty if any in following the guidelines of this circular shall be brought to notice of this office.


(Rajeev Kumar Mital)
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Maharashtra.

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Copy forwarded for information to:

- (1) Joint Commissioner of State Tax (Mahavikas) with a request to upload the circular in the Employee Corner section on MGSTD website.
- (2) Deputy Secretary, Finance Department, Mantralaya, Mumbai.
- (3) Under Secretary, Finance Department, Mantralaya, Mumbai.
- (4) Accounts Officer, State Tax Revenue Audit, Mumbai and Nagpur.


(Vishakha Borse)
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