

# E-invoicing – Whether the relevant provisions of GST law require patchwork?

## Introduction

Effective from August 1, 2023, taxpayers with an annual turnover of more than INR 5 Cr will be recognized as “**class of registered person**” who will be mandated to generate e-invoice<sup>[1]</sup>. Initially, the requirement to generate e-invoice was effectuated in October 2020 by making it mandatory for persons with annual turnover of more than INR 500 Cr and gradually, in a phased manner, the said limit was reduced to INR 10 Crores. The further trimming of threshold limit that too INR 5 Cr will undoubtedly cover substantial number of smaller taxpayers in the e-invoicing net.

It must be pointed out that e-invoicing ought not to be confused with the issuance of electronic invoices. E-invoice essentially means generation of a unique Invoice Reference Number (**‘IRN’**) by uploading certain key particulars of a GST invoice (created through taxpayer’s own billing system) in a standard format on the e-invoicing portal.

## The scheme of e-invoicing

The entire scheme of e-invoicing, as mentioned in agenda note for 35<sup>th</sup> GST council meeting (2019), was designed to achieve two-fold objectives namely: a) Real-time reporting and automatization of tax relevant processes - replacing the manual and periodic reporting of forms - eventually, leading to digitalization of supply chain and better management of human resources. b) Significant reduction in tax evasion by addressing various types of tax fraud viz. no invoicing or invoicing with no underlying supply, fraudulent refunds of input tax credit, etc.

These twin objectives could have been achieved by making e-invoicing mandatory for at least all the B2B supplies. However, owing to the technological limitations which has all along plagued GST implementation, the scheme was rolled out in a staggered manner. Further, contemplating that certain persons may face difficulty in generation of e-invoice on a real-time basis, exemption has been provided to certain “classes of registered person” <sup>[2]</sup>.

To ensure strict implementation and to deter taxpayers from any noncompliance, stringent consequences are prescribed on failure to issue e-invoice (if required) by categorically stating that, where there is a requirement to generate IRN and taxpayer failed to do so, invoice issued without IRN shall not be treated as invoice<sup>[3]</sup>. Any noncompliance, among others, will lead to following consequences:

- **For supplier:** It may be considered that supply has been made without issuance of tax invoice thereby attracting penalty under Section 122 of the CGST Act.
- **For recipient:** Disallowance of input tax credit of GST paid on inward supply on the grounds that he is not in possession of a valid tax invoice.

Such grave consequences at the end of both the supplier and the recipient press the need to analyze provisions of GST law pursuant to which the e-invoicing scheme has been enforced.

## The disconnect in GST provisions

A perusal of relevant provisions of GST law and agenda note for GST council meetings bring out certain apprehensions that the enforcement of e-invoicing scheme may not be completely free from legislative pitfalls. There appears to be a disconnect between the primary section *qua* tax invoicing viz Section 31 and the extent rule viz Rule 48 meant to provide the procedure as is evident from a bare reading:

- Section 31 of the CGST Act *inter-alia* deals with the requirement to issue tax invoice in case of supply of goods/services. In terms of Section 31(1), a person supplying taxable goods shall issue a tax invoice by mentioning the specified particulars. Further, the proviso to said section states that the government may specify the “**categories of goods or supplies**” for which tax invoice shall be issued in a prescribed manner. From the mandate of Section 31, it can be inferred that the government can notify “**category of supplies**” in respect of which invoice should be issued in a prescribed manner.
- Rule 48 of the CGST Rules - which deals with the manner of issuing invoice – in sub-rule (4) states that the invoice shall be prepared by a notified “**class of registered persons**” after obtaining IRN by uploading specified information on the common GST electronic portal. Rule 48(4) in contrast to Section 31 states that the government may notify a “**class of registered persons**” required to issue invoice in a specified manner.

Evidently there is a conflict between the provisions of CGST Act and underlying Rules.

It is noteworthy that the phrase “**categories of goods or services**” and “**class of registered persons**” are two different phrases used distinguishably in the GST law at multiple places and therefore, may not be considered equivalent. In the below table, we have highlighted few provisions of the CGST Act wherein it can be seen that the phrases **categories of goods or services / class of transactions / class of registered persons** are used in distinguishable context.

S N	Categories of goods/services	Class of registered persons
1	<p><b>9(3)</b> The Government may, on the recommendations of the Council, by notification, <b>specify categories of supply of goods or services</b> or both, the tax on which shall be paid on reverse charge basis by the recipient</p> <p><b>9(5)</b> The Government may, on the recommendations of the Council, by notification, <b>specify categories of services</b> the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it</p>	<p><b>9(4)</b> The Government may, on the recommendations of the Council, by notification, <b>specify a class of registered persons</b> who shall, in respect of supply of <b>specified categories of goods or services or both</b> received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply</p>
2	<p><b>67(8)</b> The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, <b>specify the goods or class of goods</b> which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed</p>	<p><b>44 (First proviso)</b> Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt <b>any class of registered persons</b> from filing annual return under this section</p>
S N	Class of taxable persons or class of transactions	
1	<p><b>152 (3)</b> Nothing in this section shall apply to the publication of any information relating to a <b>class of taxable persons</b> or <b>class of transactions</b>, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information</p>	
2	<p>158(3). Nothing contained in this section shall apply to the disclosure of:</p> <p>(I) any information relating to any <b>class of taxable persons</b> or <b>class of transactions</b> for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information</p>	

Therefore, Rule 48(4) seems clearly contrary to Section 31 – thereby raising question on the very validity of the said Rule as it is settled position that rules cannot go beyond what has been prescribed under the Act[4].

Interestingly, Notification No. 13/2020 dated March 21, 2020 (**'subject notification'**) which notifies the “*class of registered persons*” who has to generate e-invoice has been issued under Rule 48(4). Hence, if Rule 48(4) falls foul of Section 31 then the subject notification will have no validity in the eyes of law – thereby bringing the entire scheme of e-invoicing into jeopardy.

*Requirement to generate e-invoice for credit and debit notes*

Subject notification *inter-alia* also states that registered persons with an annual turnover exceeding INR 5 Cr (w.e.f. 01.08.2023) shall prepare invoices and “**other prescribed documents**” in the manner prescribed under Rule 48(4). Further, Form GST INV-01 (Format/Schema for e-invoice) in document type field in addition to tax invoice includes debit and credit note. The said inclusion, along with tax invoice, emphasizes on the requirement to generate IRN in case of debit/credit notes as well.

It is noteworthy that Rule 48(4) only prescribes the manner of issuing “invoice”, and it does not include debit/credit notes. To address this issue, as per agenda note for 39<sup>th</sup> GST council meeting, on the basis of the law committee recommendation, it was proposed to suitably amend Rule 48(4). Relevant extract of the agenda note is mentioned below[5]:

*2.3. Sub-rule (4) of rule 48 of CGST rules provides that invoice shall be issued only after obtaining Invoice Reference Number. However, this rule doesn't cover debit note, credit note, export invoice, self-invoice in case of RCM supplies under section 31(3)(f) of CGST Act, 2017, invoice issued by an ISD and other documents. **During the Law Committee meeting this issue was discussed and committee has recommended the amendment of rule 48 of CGST rules, 2017 to this effect.***

...

*3. In view of the above, on account of e-invoicing following proposals are proposed:*

- 1. ....;*
- 2. **Amendment of rule 48 to include credit note, debit note, export invoice, ISD, self-invoice under section 31(3)(f) of CGST Act, 2017 in case of RCM supplies etc for the purpose of IRN;***
- 3. ....;*

Further, it was also recommended to amend Notification No. 70/2019 dated December 13, 2019, (**'N.No. 70/2019'**) by substituting the word “invoice” with words “**invoice and other prescribed document**”. Importantly, while subject notification superseded N.No. 70/2019 and incorporated the said amendment, however, a similar amendment as was recommended by the law committee was not carried out in Rule 48(4). Hence, in the absence of such amendment, a position can be taken that generation of IRN should not be considered a mandatory requirement in case of debit/credit notes.

## Parting remarks

Undoubtedly, implementation of e-invoicing with an objective to achieve automation in reporting and compliances is applaudable. Over the past six years, it has made significant progress, and with the further expansion of e-invoicing net, the level of automation in GST compliances is expected to improve. Nevertheless, the disconnect between Section 31 and the underlying rules poses a potential issue that may result in unwarranted litigation w.r.t to the very validity of the provisions related to e-invoicing. Hence, it is imperative to iron out these disconnects to ensure a harmonious and seamless functioning of the entire scheme.

We hope you have found this information useful. For any queries/clarifications please write to us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:

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