

F.No. GST/INV/FAKE INVOICES/18-19
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST-Investigation Wing

Room No.01, 10th Floor,
Tower-2, 124, Jeevan Bharti Building ,
Connaught Circus, New Delhi- 110001.


Dated the 10th May, 2019

OFFICE MEMORANDUM

Subject:- Standard Operating Procedure(SOP) for utilising the fake invoice Issuers dataset by SGST authorities -reg...

Please refer to GST Council letter F. No. 96/GCG-Offence Case Data/GSTC/2019 dated 18.03.2019 wherein guideline(s) about how the data of fake invoice issuer(s) supposed to be used by SGST authorities was requested. In the said context, the **Standard Operating Procedure(SOP)** for State GST authorities is herewith enclosed/attached.

This issue with the approval of CHAIRMAN, CBIC


(Neeraj Prasad) 07/05/19
Commissioner (Investigation)
CBIC

To,

The Joint Secretary, GST Council (**KIND ATTN: SHRI DHEERAJ RASTOGI**)
New Delhi

Standard Operating Procedure (SOP) for Tackling Fake Invoice Cases

1. Background:

1.1 Large number of GST fraud cases involving the use of fake invoices for wrong availment of input tax credit (ITC), which is further used to pay GST on outward supply have been detected since the rollout of GST by the Central GST authorities as well as State GST authorities. Whereas the *mens rea* for the use of such fake invoices appears to be fraudulent availment/encashment of ITC credit, the unscrupulous entities engaged in this also defraud other authorities such as Banks by inflating turnovers, laundering of money etc.

2. What is a fake invoice?

2.1 The “Invoices” that are usually treated as ‘fake’ are those wherein the GST invoices are raised by an entity without actual supply of goods or services or payment of GST. There are three ways in which such fake invoices could be misused in the GST regime.

- i. Issue of invoices without supply of goods or services where payment of tax is made by way of Input Tax Credit which is not available to the issuer of invoice. In such cases, there is no receipt of goods or credit by the issuer of invoice. He merely issues invoices and shows payment of tax by nonexistent input tax credit. This results in actual loss of revenue where the buyer of the invoice avails inadmissible credit which is used for payment of tax. There has also been instance where no GST has been paid even by ITC by the issuers of the fake invoice
- ii. Issue of invoices by persons where the invoice is issued to one person and the goods are diverted to some other person. The person who purchases invoices may utilize the credit for payment of taxes at the time of export of goods and claim refund of the said tax paid, resulting in loss of revenue.
- iii. Routing of invoices through a series of shell companies/dummy companies and transfer of input tax credit from one company to another in a circular fashion to increase the turnover. In such cases, there is no supply of goods or services and thereby availment of credit based on such invoices gets hit by the provisions of Rule 16 of the CGST Act, 2017, which stipulates that the conditions that to avail credit, the buyer should have an invoice on which tax has been paid and he should have received the goods. In such cases, availment of credit without receipt of goods is inadmissible and utilization of such credit for actual regular supplies results in loss of revenue and financial accommodation. In such cases, unscrupulous traders are utilizing the GSTN

System to create invoices, fake e-way bills showing movement of goods etc., to defraud the revenue and the banking system.

3. Potential motives for using fake invoices:

3.1 An illustrative list of motives that drive unscrupulous entities to generate of use fake invoices is as follows:

- i. Evasion of GST on taxable output supplies by:
 - a) Availing undue ITC
 - b) Saving GST (cash) by payment of tax liability using undue ITC
 - c) Clandestine supply without invoices and without payment of taxes

- ii. Converting excess ITC into cash by:
 - a) Transferring of ITC to those who can utilize it
 - b) Shifting ITC from exempted supplies to taxable supplies\
 - c) Encashment of ITC by way of IGST refund or unutilized ITC refunds

- iii. Inflating turnover for the purpose of:
 - a) Availing higher Credit Limit/ Overdraft from Banks
 - b) Obtaining bank loans
 - c) Improving valuations for IPO or sale of stake
 - d) Obtaining contracts including Government contracts

- iv. Booking fake purchases for getting Income-tax benefits by:
 - a) Showing reduced profit margins and higher expenses
 - b) Avoiding payment of Income-tax by reducing net profit

- v. Cash generation/ diversion of company funds

- vi. Laundering of money

4. Salient features of GST frauds involving fake invoices:

4.1 Some salient features that have emerged from the GST fraud cases already detected are as follows:

- a) The ITC involved in the fraud cases usually reaches a large sum in a short timeframe. Some reported frauds are in hundreds of crores.

- b) Fake invoice cases involve fabrication of invoices which is an offence under IPC. The Investigating Authority has to take call regarding how to get this part of the case investigated. Issues of legality, jurisdiction are involved
- c) In a number of cases, E-way bills have been generated without the corresponding filing of returns. The lack of real time connect between E Way Bill system and GSTN is being exploited by fraudsters
- d) The frauds usually involve a large number of GSTIN entities spread over States.
- e) Some of the entities would fall under the jurisdiction of the CGST authorities while the connected entities fall under the jurisdiction of the State authorities.
- f) Data adequacy and availability has become another challenge. The capability of invoice matching is yet to be provided. In multi-jurisdictional investigations, Tax administration do not have access to supplies in other jurisdictions, even though data resides in the GSTN.
- g) In many cases, dummy firms are created/floated to commit the fraud. The addresses are often incorrect/incomplete and the details revealed in the registration forms are often false. As entry barrier is very low, and there is a lack of a proper system of scrutiny and verification of registration data, fraudsters are able to commit frauds with impunity.
- h) There is another class of dummy companies with verifiable facts but no assets or means to do business; they act as surrogate for other large companies to camouflage their activities.
- i) Connivance with transporters to get bogus billty/consignment note to show movement of goods on paper and creating fake e-Way bills with fake/wrong vehicle registration details without the supply of any goods. There is no system in place to see if vehicle registration data is correct or not.
- j) Fly-by-night operators are used to get GSTIN and generate large number of tax invoices and e-Way bills in the first few months and disappear. In this way the fly-by-night operators help other large companies to supply and transport their goods without invoice and paying taxes.
- k) Encashment of ITC availed on fake invoices by obtaining IGST/ITC refunds. especially in case of free shipping bills raises the issue of valuation of export goods. Further Customs-GST coordination with regard to such fake invoice cases requires to be looked into.
- l) Supplies made and GST collected but not paid i.e. GSTR-1 is filed but GSTR-3B is not filed. In some cases both GSTR-1 and GSTR-3B are not filed.

5. Suggested strategy to tackle “fake invoice” fraud in GST:

5.1 The frauds in question need to be tackled by putting in place a regime that enables to the extent possible the identification of suspect entities at the initial stage itself and in other cases the detection of GST frauds at the earliest. The former becomes especially important as the past experience is that many of such operators have a tendency to operate through impersonation in the name of dummy persons who have no real assets making it virtually impossible to recover any amounts from them, if a case is detected at a later stage. In this direction the following safeguards are suggested as key elements of risk profiling to check such GST frauds:

- a) Scrutiny/Verification of registered taxpayers through risk profiling and verification for early identification of fraudsters indulging in fake invoices.
- b) Historically tax evasion prone sectors.
- c) Maintenance of offence database of those figuring in frauds to prevent their re-entry in the System.
- d) Some of the risk indicators of such persons or activities done by them or commodities traded by them or patterns behind their activities are as under:
 1. Multiple registrations on same PAN.
 2. Common email, common mobile numbers, common address, common authorised signatory, common promoters etc.
 3. A person whose registration application is rejected or a person whose registration is cancelled may apply again for registration.
 4. Live registration against the said PAN with the CGST jurisdiction where offence has been booked by SGST authorities.

6. Standard Operating Procedure for detecting and tackling “Fake invoice” fraud in GST

The standard operating procedure to detect and tackle “fake invoice” fraud involve the following steps.

6.1 **Identification:** Identification of entities who generate “fake invoices” is the first step in curbing this menace. This method also involves identification of generators and users. To identify the generators of fake invoices the following risk parameters can be used.

- a) Multiple GSTIN registrations for a given address
- b) Multiple GSTIN for a given PAN
- c) GSTIN using incomplete or wrong addresses
- d) Tax payers using sensitive commodities.

- e) Common e mail, common mobile nos, common address, common authorised signatories, common promoters for multiple GSTIN.
- f) Mismatch between the premises declared and the volume of goods transacted.
- g) Mis-match between the quantum or transactions and the e-way bills generated. If there are no e-way bills or less e-way bills generated compared to the details of transactions as per the GST returns.
- h) PAN involved in any “fake invoice” fraud or any other GST frauds appear as either in GSTR1A or GSTR 2A.
- i) Abnormal ITC utilisation (for example above 95%).

Identification also involves the users of fake invoices because, this where the real concern rests. The user can utilise the fraudulent credit for payment of supply of goods or services. The item number “h and i” above will help in identifying the potential users of credit accumulated through fake invoices.

6.2 Investigation: The primary aim of investigation is to establish that there was actual supply of goods or services by the supplier to prove that they issued “fake invoices”. This can be achieved by following steps.

- a) Search of all premises declared to prove the lack of or inadequacy of manufacturing facility of the declared goods.
- b) Other indicators like consumption of electricity, water etc mis match with the declared quantum of goods manufactured.
- c) Lack of facility and space to handle the quantum of goods traded.
- d) Suppliers of invoices do not have any premise for dealing with the goods
- e) The inputs and input services required for provision of certain services not existing.
- f) Lack of valid clearances / licences / permissions from any other authorities which are required to deal in any manner with either inputs or final products or intermediate products, input services or output services.
- g) Lack of required agreements between the entities.
- h) Lack of e-way bills
- i) Fake vehicle nos shown in e e-way bills or invoices.
- j) Comparing the details supplied to other agencies like Income Tax, Registrar of companies
- k) Mismatch with the details available for vehicles from RTO office

7 Action after detection:

Once it is completely investigated resulting in the issue of SCN or any other penal actions, steps to be taken to prevent the same entities indulging again in the same fraud. This can be achieved through the following steps.

- a) Creation of an offence database” module in the GST Application wherein the GSTIN of the entity shall be flagged for “fake invoice” or any other fraud. This will enable automatic identification of buyers of fake invoices from these entities and automatic alerts can be given in GST Application for further verification by the officers.
- b) Post cancellation of registration, the re-registration of such persons should be dealt with differently than normal registration. Such applications for re-registration should be flagged to alert the officers concerned and there should be no deemed registration in such cases. Physical verification should be a must for such cases.
- c) The entities which have availed ITC on the basis of fake invoices need to be identified and recovery made from them as per law. Their previous transactions with other entities also need to be studied on sample basis in view of their detected propensity.
- d) Provisions for provisional attachment of property including the bank accounts are contained in Section 83 of the CGST Act, 2017 read with Rule 159 of the CGST Rules, 2019. These provisions should invariably be invoked in such cases.
- e) If there are prima-facie reasons showing criminal involvement of Directors in effecting GST evasion, then Section 89 of the CGST Act 2017 can be invoked read with Section 83 of the said Act, bank accounts/properties of even directors may be liable for attachment.
- f) Blocking of ITC of such persons including their beneficiaries (who might fall within the jurisdiction of the other GST authorities as well) so as to not allow the person to get away with undue credit.
