

GST Update

Weekly Update
28.03.2020

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 14.03.2020. It supplements the earlier GST Updates. No Update was issued on 21.03.2020.
- This presentation is based on CGST Act/Rules/ Notifications, except the provisions related solely to SGST provisions. Similar parallel provisions in State Laws may be referred to as required

Relief Measures in view of COVID-19 outbreak

- <http://www.gstcouncil.gov.in/sites/default/files/Press-Dynamic/PIB1607942.pdf>
- Ministry of Finance Press release dated 24th March 2020
- **Last Date for GSTR 3B:** Those having aggregate annual turnover less than Rs. 5 Crore Last date can file GSTR-3B due in March, April and May 2020 by the last week of June 2020. No interest, late fee, and penalty to be charged.
- Others can file returns due in March, April and May 2020 by last week of June 2020 but the same would attract reduced rate of interest @9 % per annum from 15 days after due date (current interest rate is 18 % per annum). No late fee and penalty to be charged, if complied before till 30th June 2020.

Relief Measures in view of COVID-19 outbreak (Contd)

- Date for opting for composition scheme is extended till the last week of June, 2020. Further, the last date for making payments for the quarter ending 31st March, 2020 and filing of return for 2019-20 by the composition dealers will be extended till the last week of June, 2020.
- Date for filing GST annual returns of FY 18-19, which is due on 31st March, 2020 is extended till the last week of June 2020.
- Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.

Relief Measures in view of COVID-19 outbreak (Contd)



- Payment date under Sabka Vishwas Scheme shall be extended to 30th June, 2020. No interest for this period shall be charged if paid by 30th June, 2020.
- Necessary legal circulars and legislative amendments to give effect to the aforesaid GST relief shall follow with the approval of GST Council

Aadhar Authentication

Section 25(6) (A), (B), (C) & (D) of CGST Act, 2017

Rule 8 and 9 of CGST Rules, 2017; Rule 25 of CGST Rules, 2017

Notifications No. 17, 18 & 19 all dated 23rd March 2020

36th and 37th GST Council Meetings

Authentication of GST registration through Aadhaar number

- **Why Aadhaar e-KYC based Registration is required?**
 - To curb/check fly-by-night operators who are taking advantage of easy registration system. (3 working days and no field inspection)
 - Statistics from e-way bill
 - To stop impersonation
 - To check bogus billing through 'laptop shops'

Amendment to CGST Act, 2017

- Section 25(6) was amended w.e.f 1st January 2020; Sub-sections 6A, 6B, 6C and 6D were inserted
- (6A) Every registered person shall undergo authentication, or furnish proof of possession of Aadhaar number, in such form and manner and within such time as may be prescribed:
- Provided that if an Aadhaar number is not assigned to the registered person, such person shall be offered alternate and viable means of identification in such manner as Government may, on the recommendations of the Council, prescribe:
- Provided further that in case of failure to undergo authentication or furnish proof of possession of Aadhaar number or furnish alternate and viable means of identification, registration allotted to such person shall be deemed to be invalid and the other provisions of this Act shall apply as if such person does not have a registration

Amendment to CGST Act, 2017 (Contd)

- (6B) On and from the date of notification, every individual shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number, in such manner as the Government may, on the recommendations of the Council, specify in the said notification:
- Provided that if an Aadhaar number is not assigned to an individual, such individual shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

Amendment to CGST Act, 2017 (Contd)

- (6C) On and from the date of notification, every person, other than an individual, shall, in order to be eligible for grant of registration, undergo authentication, or furnish proof of possession of Aadhaar number of the Karta, Managing Director, whole time Director, such number of partners, Members of Managing Committee of Association, Board of Trustees, authorised representative, authorised signatory and such other class of persons, in such manner, as the Government may, on the recommendations of the Council, specify in the said notification:
- Provided that where such person or class of persons have not been assigned the Aadhaar Number, such person or class of persons shall be offered alternate and viable means of identification in such manner as the Government may, on the recommendations of the Council, specify in the said notification.

Amendment to CGST Act, 2017 (Contd)

- (6D) The provisions of sub-section (6A) or sub-section (6B) or sub-section (6C) shall not apply to such person or class of persons or any State or Union territory or part thereof, as the Government may, on the recommendations of the Council, specify by notification.
- Explanation.—For the purposes of this section, the expression “Aadhaar number” shall have the same meaning as assigned to it in clause (a) of section 2 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016.”.

Exemption from Aadhar authentication

- **Notification No. 17/2020 – Central Tax dated 23.03.2020**
- Aadhar authentication shall not apply to
 - a person who is not a citizen of India or
 - to a class of persons other than the following class of persons, namely:– (a) Individual; (b) authorised signatory of all types; (c) Managing and Authorised partner; and (d) Karta of an Hindu undivided family.

Date of coming into effect

- **Notification No. 18 & 19 /2020 – Central Tax dated 23.03.2020**
- Notifies the date as 01.04.2020 from which (a) an individual; (b) authorised signatory of all types; (c) Managing and Authorised partners of a partnership firm; and (d) Karta of an Hindu undivided family shall undergo authentication, of Aadhaar number, as specified in rule 8 of the CGST, 2017, in order to be eligible for registration.
- If Aadhaar number is not assigned to the said persons, they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the CGST rules.

Amendment to Rule 8 and 9 of CGST Rules, 2017

- Sub-rule 4A inserted after Rule 8(4) -
- “(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.”
- Following proviso inserted to Rule 9(1)-
- Provided that where a person, other than those notified under section 25(6D), fails to undergo authentication of Aadhaar number as specified in rule 8(4A), then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in such cases.”.

Amendment of Rule 25 (Physical verification) of CGST Rules, 2017

- Rule 25 of the CGST Rules, 2017 substituted as under:
- **“Physical verification of business premises in certain cases.-** Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.”

- **Where Aadhaar is provided**
- To maintain privacy of promoters, GST System shall send "link" to the concerned persons at their e-mail and mobile to enter Aadhaar and OTP, if the promoter is not willing to share Aadhaar with Auth Signatory.
- On successful authentication, demographic data of the persons shall be fetched from Aadhaar to GST System,
- Registration process, thereafter, will remain the same as it is today
- For existing registrant persons covered in Phase-1, a screen will be provided for e-KYC authentication from Aadhaar

Authentication Process (Contd)

- **In cases where promoters decline to provide Aadhaar details:**
- Site survey(Physical verification) will be done and identification documents will be verified. In such cases, 3 working days upper cap will not be applicable (No deemed registration).
- Proviso clause inserted in rule 9(1) of CGST Rules, 2017 providing for physical verification in such cases



Refund Related Changes

- Refund to be allowed in cash only where excess tax has been paid in cash. The amount of refund to be paid in cash shall be restricted to the proportion of total taxes paid through utilisation of electronic cash ledger against the total amount of taxes paid through utilisation of both Electronic Credit Leger and Electronic Cash Ledger. The balance amount shall be re-credited to the electronic credit ledger. (Except zero rated supplies and deemed exports)
- After rule 86(4), the following sub-rule 4A inserted:-
- “(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.”

- After rule 92(1), the following sub-rule shall be inserted-
- “(1A) Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.”

Capping of value of zero-rated goods for refund purpose

- In rule 89(4), for clause (C), the following clause shall be substituted, namely:-
- “(C) Turnover of zero-rated supply of goods” means the value of zero-rated supply of goods made during the relevant period without pa
- yment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;”.

- Restriction on tax refund not to apply, if exemption is not claimed with respect to integrated tax or compensation cess at the time of import of inputs.
- In rule 96(10(b), with effect from the 23rd October 2017, the following Explanation shall be inserted, namely,-
- “Explanation- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”.

Recovery of refund paid on export of goods where export proceeds not realised

- After rule 96A, the following rule 96B inserted-
- **“96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised. –(1)** Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:

Recovery of refund paid on export of goods where export proceeds not realized (Contd)



- Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999, but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.
- (2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.”

- In FORM GST RFD-01, after the declaration under rule 89(2)(g), the following undertaking shall be inserted, namely

UNDERTAKING

I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017.

Signature

Name

Designation / Status

- <https://www.gst.gov.in/newsandupdates/read/364>
- The functionality to track the status of refund application has been available on the GST portal. By utilising this functionality, the taxpayers can know the stage at which the refund application is pending with the tax-officer/ taxpayer.
- A tax officer can issue payment order only after Public Financial Management System (PFMS) has validated the bank account mentioned in the refund application RFD-01. Similarly, final disbursement of refund amount sanctioned by the tax officer happens only after PFMS has validated the bank account mentioned in the payment order RFD-05. Thus, validation of bank account takes place at two stages. However, the exact detailed status of bank account validation is not available on the GST Portal.

Tracking GST Refund Application Status on the GST Portal and PFMS portal

- The Public Financial Management System (PFMS) of the Controller General of Accounts (CGA) has made available a central portal to track the status of bank account validation and disbursement of refund amount. By visiting the PFMS portal at https://pfms.nic.in/static/NewLayoutCommonContent.aspx?RequestPageName=Static/GSTN_Tracker.aspx the taxpayer can track the status of bank account validation.
- This advisory is being issued for the benefit of the taxpayers in order to make them aware of the ways in which they can track the status of their refund applications on both the Portals.
- The detailed advisory can be downloaded at <https://tutorial.gst.gov.in/downloads/news/Advisory%20on%20Refund%20Tracking.pdf>

Special procedure to be followed by corporate debtors undergoing the Corporate Insolvency Resolution Process (CIRP)

(Notification No. 11/2020–Central Tax dated 21.03.2020)

(Circular No.134/04/2020-GST dated 23rd March 2020)

(Insolvency and Bankruptcy Code, 2016)

Corporate Insolvency Resolution Process (CIRP)

- **Corporate Insolvency Resolution Process (CIRP)** is a recovery mechanism introduced by National Company Law Tribunal (NCLT) for recovery of creditors of an Insolvent company. If a corporate becomes insolvent, a financial creditor, an operational creditor, or the corporate itself may initiate CIRP.
- As per Insolvency and Bankruptcy Code, 2016 (IBC), once an entity defaults certain threshold amount the CIRP gets triggered, and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (IRP) or resolution professional (RP).
- It continues to run the business and operations of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the NCLT.

Legal Cases

**Abhijit Guhathakurta Resolution Professional (RP) for the 13
Videocon Group Companies Vs CGST Dept**

SBI Vs Videocon Industries Ltd and Ors

MA-4048/2019 In CP No. 02/I&BC/NCLT/MB/MAH/2018

National Company Law Tribunal (NCLT), Mumbai

- Techno Electronics Limited (TEL), one of the Corporate Debtors of VIL Group and registered under GST in the state of Uttarakhand.
- The CIRP of TEL commenced on August 31, 2018.
- On 13th November, 2018, the CGST Department issued a show cause notice to TEL stating that TEL's GSTIN is liable to be cancelled on account of not having filed the GST returns for the period of August, 2017 till September, 2018 as required under Rule 61(5) of the CGST Rules, 2017.
- Mr. Divyesh Desai (RP) of TEL at that time sent a letter dated November 29, 2018 to the Respondent informing them of the commencement of the CIRP, the moratorium coming into effect as per the provisions of the Code, also further informing the Respondent that they may file a claim with respect to the amounts due to the Respondent.

- TEL was unable to deposit GST in the form of GSTR 3B for the period of August 2017 till August 2018, prior to the commencement of the CIRP.
- Due to the design and mechanics of the GST portal, in order to deposit GST on the online GST portal for a particular month, a taxpayer is required to first deposit GST and filed returns for all preceding months.
- Later the e-way facility for filing of returns also blocked
- Moratorium under section 14 of the I&B Code

- Hon'ble NCLT, Chandigarh Bench, in a case of M/s Hind Tradex Ltd. V/s M/s Lakshmi Precision Screws Ltd. , CA No. 491 of 2018 , has recognised that a resolution professional is unable to file returns during the moratorium period due to the design of the online GST portal, which leads to an unnecessary and avoidable non-compliance with law. Accordingly, the Hon'ble Tribunal was pleased to pass the following Orders :-
- *“Having heard the learned counsel for the parties, we allow this application partly, permitting the Interim Resolution Professional/Resolution Professional to file the regular returns in accordance with the provisions of the CGST Act and the related provisions in physical form and also pay the taxes collected by the Interim Resolution Professional/Resolution Professional, as the case may be in accordance with the provisions of CGST Act. “*

- **NCLT Mumbai directed as under—**
- To restore the e-way facility for filing of the GST returns
- The GST Department is directed not to take any coercive steps against the Corporate Debtors. The GST Department may refrain from suspending/terminating/cancelling or taking any other adverse or coercive steps against these companies with relation to GST registration and under unpaid dues.
- The GST Department may accept manual/physical filing of the GST regular returns in accordance with the provisions of the Sales, GST tendered manually during the moratorium period.

Special procedure to be followed by corporate debtors undergoing the CIRP

- **Notification No. 11/2020–Central Tax dated 21.03.2020**
- Special procedure to be followed by corporate debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 who are undergoing the corporate insolvency resolution process (CIRP) and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP) from the date of the appointment of the IRP/RP till the period they undergo the corporate insolvency resolution process(CIRP)

Special procedure to be followed by corporate debtors undergoing the CIRP

- **Notification No. 11/2020–Central Tax dated 21.03.2020**
- Registration.- The said class of persons shall, with effect from the date of appointment of IRP /RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP:
- Provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

Special procedure to be followed by corporate debtors undergoing the CIRP

- **Notification No. 11/2020–Central Tax dated 21.03.2020**
- Return.- The said class of persons shall, after obtaining registration file the first return under section 40 of the said Act, from the date on which he becomes liable to registration till the date on which registration has been granted.
- Input tax credit.- The said class of persons shall, in his first return, be eligible to avail ITC on invoices covering the supplies of goods or services or both, received since his appointment as IRP/RP but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and the rules made thereunder, except the provisions of section 16(4) of the CGST Act and rule 36(4) of the CGST Rules, 2017.

Special procedure to be followed by corporate debtors undergoing the CIRP

- **Notification No. 11/2020–Central Tax dated 21.03.2020**
- Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or thirty days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and the rules made thereunder, except the provisions of rule 36(4) of the CGST rules.
- Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP/RP to the date of registration in terms of this notification shall be available for refund to the erstwhile registration.

- **How are dues under GST for pre-CIRP period be dealt?**
- In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date.
- The dues of the period prior to the commencement of CIRP will be treated as ‘operational debt’ and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.

- **Should the GST registration of corporate debtor be cancelled?**
- It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.

- **Is IRP/RP liable to file returns of pre-CIRP period?**
- No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date. Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.

- **Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?**
- Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period.

Special procedure for taxpayers in Dadra and Nagar Haveli and Daman and Diu consequent to merger of the two UTs

- **Notification No. 10/2020 – Central Tax dated 21st March 2020**
- Persons whose principal place of business or place of business was in the erstwhile Union territory of Daman and Diu or in the erstwhile Union territory of Dadra and Nagar Haveli till the 26th day of January, 2020; and is in the merged Union territory of Daman and Diu and Dadra and Nagar Haveli from the 27th January, 2020 onwards, as the class of persons who shall, except as respects things done or omitted to be done before the notification, follow the following special procedure till the 31st day of May, 2020

- The said registered person shall,-
 - ascertain the tax period for the month of January 2020 and February 2020 as below:-
 - (a) January 2020: 1st January 2020 to 25th January 2020;
 - (b) February 2020: 26th January 2020 to 29th February 2020;
 - irrespective of the particulars of tax charged in the invoices, or in other like documents, raised from the 26th January 2020 till the transition date, pay the appropriate applicable tax in the return under section 39 of the said Act;

- The said registered person who were registered in erstwhile UTs shall following procedure-
 - intimate the jurisdictional tax officer of the transferor and the transferee regarding the transfer of ITC, within one month of obtaining new registration
 - the ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile Union territory of Daman and Diu, for the tax period immediately before the transition date

- The said registered person who were registered in erstwhile UTs shall following procedure-
 - the transfer of ITC shall be carried out through the return under section 39 of the said Act for the tax period immediately before the transition date and the transferor GSTIN shall debit the said ITC from its electronic credit ledger in Table 4(B)(2) of FORM GSTR-3B and the transferee GSTIN shall credit the equal amount of ITC in its electronic credit ledger in Table 4(A)(5) of FORM GSTR-3B.
- The balance of UT taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the UT of Daman and Diu, as on the 25th day of January 2020, shall be transferred as balance of UT in the electronic credit ledger.

Deferment of E-invoice and QR Code

(Notifications No. 13 & 14 dated 21st March 2020)

- **Notification No. 13/2020– Central Tax dated 21st March 2020**
- Shall come into force from the 1st October 2020
- The registered persons, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the CGST rules, whose aggregate turnover in a financial year exceeds one hundred crore rupees, shall prepare invoice and other prescribed documents, in terms of rule 48(4) in respect of supply of goods or services or both to a registered person.

- **Notification No. 14/2020– Central Tax dated 21st March 2020**
- Shall come into force from the 1st October 2020
- An invoice issued by a registered person, whose aggregate turnover in a financial year exceeds five hundred crore rupees, other than those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of said rules, and registered person referred to in section 14 of the IGST Act, 2017, to an unregistered person (B2C invoice), shall have Dynamic Quick Response (QR) code:
- Provided that where such registered person makes a Dynamic Quick Response (QR) code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic Quick Response (QR) code, shall be deemed to be having Quick Response (QR) code.

Apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules

(Circular No.133 03/2020-GST dated 23rd March 2020)

(Section 18 (3) of CGST Act read with rule 41(1) of CGST Rules)

- In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level
- *The explanation to rule 41(1) of the CGST Rules states that “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. The value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.*

- Is the transferor required to file FORM GST ITC – 02 in all States where it is registered?
- *No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.*

- The proviso to rule 41 (1) of the CGST Rules explicitly mentions 'demerger'. Other forms of business reorganization where part of business is hived off or business is transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?
- *Yes, the formula for apportionment of ITC, as prescribed under proviso to rule 41(1) of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities*

- **Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/SGST/IGST/ Cess?**
- *No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.*

- **How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC–02 by the transferor?**
- *The transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head.*

- In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.
- *The apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor*

- **Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?**
- *The “appointed date of demerger” is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule 41(1) of the CGST Rules, the ratio of the value of assets should be taken as on the “appointed date of demerger”.*
- *For the purpose of apportionment of ITC under rule 41(1) of the CGST Rules, while the ratio of the value of assets should be taken as on the “appointed date of demerger”, the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.*



Other Changes

Composition Scheme

- **Notification No. 12/2020 – Central Tax dated 21st March 2020**
- Amends the notification No. 21/2019- Central Tax, dated the 23rd April 2019; Following proviso inserted in para 2:
- Provided that the said persons who have, instead of furnishing the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 have furnished a return in FORM GSTR-3B under the CGST Rules, 2017 for the tax periods in the financial year 2019-20, such taxpayers shall not be required to furnish the statement in outward supply of goods or services or both in FORM GSTR1 of the said rules or the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 for all the tax periods in the financial year 2019-20

Due date for filing the Annual return for financial year 2018-19

- **Notification No. 15/2020 – Central Tax dated 23rd March 2020**
- Due date for filing the Annual return and the Reconciliation Statement for financial year 2018-19 under section 44 of the CGST Act read with rule 80 of the CGST rules extended to 30.06.2020

GST Audit and Reconciliation Certificate

- Following Proviso inserted in rule 80(3) of CGST Rules, 2020
- “Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as specified under section 35(5) and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the financial year 2018- 2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”

RULE 141. Procedure in respect of seized goods. —(1) Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower, such goods or, as the case may be, things shall be released forthwith, by an order in **FORM GST INS-05***, on proof of payment.

(2) Where the taxable person fails to pay the amount referred to in sub-rule (1) in respect of the said goods or things, the **Commissioner proper officer** may dispose of such goods or things and the amount realized thereby shall be adjusted against the tax, interest, penalty, or any other amount payable in respect of such goods or things.

- **Notification No. 03/2020-Central Tax (Rate) dated 25th March 2020 (Effective w.e.f 1st April 2020)**
- Amends the notification No. 1/2017-Central Tax (Rate) to prescribe change in CGST rate of goods
- The GST rate on Mobile Phones and specified parts presently attracting 12% raised to 18%. (In order to correct the inverted duty structure)
- GST rate on all types of matches (Handmade and other than Handmade) rationalised to 12% (from 5% on Handmade matches and 18% on other matches).

CGST rate on Maintenance, Repair and Overhaul (MRO) services

- **Notification No. 02/2020- Central Tax (Rate) dated 26th March 2020 (Effective w.e.f 1st April 2020)**
- Amends the Notification No. 11/2017-Central Tax (Rate) dt. 28.06.2017 -
- reducing GST rate on Maintenance, Repair and Overhaul (MRO) services in respect of aircraft from 18% to 5% with full ITC

Due dates of furnishing GSTR-3B for April 2020 to September, 2020

- **Notification No. 27, 28 and 29/2020 – Central Tax dated 23rd March 2020**
- **Return Mechanism:** The existing system of furnishing FORM GSTR-1 & FORM GSTR-3B is to be continued till September 2020.
- Due dates for GSTR-1 shall be 11th of succeeding month for taxpayers having turnover more than Rs. 1.5 crore and for others – 31st July 2020 (April to June) and 31st October 2020 (July to September)
- Due Dates for GSTR-3B shall be on the same lines as for earlier months viz staggered dates of 20th, 22nd and 24th of succeeding month

Due Dates of filing of GSTR-3B for April to September 2020

S/No.	Aggregate turn over in the previous FY	And Taxpayer having principal place of business in the State/ UT of	Due date
1.	More than Rs 5 Cr	Anywhere in any State or UT	20 th of succeeding month
2.	Less than Rs 5 Crore	State of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	22 nd of succeeding month
3.	Less than Rs 5 Crore	State of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and	24 th of succeeding month

- **Notification No. 20 to 26 /2020 – Central Tax dated 23rd March 2020**
- Extension of due dates for FORM GSTR-3B for the month of July, 2019 to February, 2020 till 24th March, 2020 for registered persons having principal place of business in the State of Jammu and Kashmir.
- Similar extension done for FORM GSTR-1 & FORM GSTR-7.

THANK YOU