



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

Goods and Service Tax today A practical session

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GST iDEA

Knowledge Portal on Goods & Services Tax

Organiser – Indo – German Chamber of Commerce

Transitional issues

Dispute on time limit relating to availment of ITC under GST

- Under the GST Act¹, taxpayers were allowed to carry forward input tax credits from excise and service tax regime by filing TRAN-1 form. The original deadline expired in September 2017, however the government granted several extensions till December 27, 2017. Further, taxpayers who couldn't file the claim due to technical glitch in the system were allowed to do so till March 31, 2020.
- Delhi high court in a recent judgment² allowed taxpayers to claim the transitional credit till June 30 2020.

CBIC Notification giving effect to amendment in the transitional credit provisions³

- (CBIC) has brought into force Section 128 of the Finance Act, 2020, which amends Section 140 of the CGST Act with retrospective effect from 1 July 2017 i.e. the date of advent of GST regime in India.
- With this amendment, the phrase 'within such time' has been introduced at multiple places in Section 140, with retrospective effect from 1 July 2017, thereby granting power to the legislature to prescribe a time limit for transitioning Cenvat Credit from such date. The amendment, in effect, also ratifies the time limits previously imposed under Rule 117, which had been held to be without authority of law by the Delhi High Court.
- This amendment changes the premise on which the Delhi High Court had held that the time limit prescribed in Rule 117 was not mandatory, therefore, rendering it ineffective. For taxpayers, it means that the relief granted by the Delhi High Court to transition the Cenvat Credit, even if the Form had not been filed previously, stands nullified.

1. Rule 117 of the CGST Act 2017

2. Mangla Hoist P LTD Vs Union Of India And Ors (2020-TIOL-1037-HC-DEL-GST)

3. Notification No. 43/2020 – Central Tax dated 16 May 2020

Transitional issues

- **High Court reiterated that time limit to file FORM GST TRAN-1 is directory and not mandatory, despite retrospective amendment to prescribe timeline ¹**

This judgement reiterates that ITC is a vested right and that the time limit for filing claim of transitional credit is procedural and directory, despite the retrospective amendment. The High Court has permitted taxpayers to correct even nontechnical errors and bona fide clerical mistakes in filing Form GST TRAN-1, on or before 30 June 2020.

- Supreme Court stayed the above mentioned Delhi High Court order. Hence the judgement of the Delhi High Court of allowing TRAN – 1 filing upto June 30,2020 cannot be implemented till the matter is finally decided by the apex court. ²

¹ Brand Equity Treaties Limited & Others v. The Union of India & Others 2020-TIOL-900-HC-DEL-GST

². Special Leave to Appeal (C) No(s). 7425-7428/2020

GST Impact on Directors Remuneration

Clarification with respect to GST on director's remuneration¹

- **Leviability of GST on remuneration paid by companies to the independent directors defined in terms of section 149(6) of the Companies Act, 2013 or those directors who are not the employees of the said company:**
 - In respect of such directors, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable.
 - The recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.
- **Leviability of GST on remuneration paid by companies to the whole-time directors including managing director who are employees of the said company**
 - Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a “contract of service”) or is there any element of “contract for service”.
 - Similar identification and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to TDS under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

1. Circular No 140/09/2020-GST GST dated June 10, 2020

GST Impact on Directors Remuneration (contd..)

Clarification with respect to GST on director's remuneration¹

- It is clarified that the part of Director's remuneration which are declared as 'Salaries' in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017
- The part of employee Director's remuneration which is declared separately other than 'salaries' in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. The recipient of the said services i.e. i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis

1. Circular No 140/09/2020-GST GST dated June 10, 2020

Impact of GST paid on advance consequent to cancellation order¹

Advance received by supplier, GST paid and invoice also issued

- In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a “credit note” .
- He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim.
- However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through FORM GST RFD-01.

Advance received by supplier, GST paid, receipt voucher issued and invoice not issued:

- In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued then he is required to issue a “refund voucher”
- The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category “Refund of excess payment of tax”

1. Circular No 137/07/2020-GST dated April 13, 2020

Impact of GST paid on advance consequent to cancellation order¹

Goods returned and tax invoice has been issued:

- In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a “credit note” .He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return .There is no need to file a separate refund claim in such a case.
- However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under “Excess payment of tax, if any” through FORM GST RFD-01.

1. Circular No 137/07/2020-GST dated April 13, 2020

Relief provided by Government with respect to compliances

- **The Taxation and Other Laws ¹(Relaxation of Certain Provisions) Ordinance, 2020 issued on 31-03-2020 has inserted a new Section 168A in the CGST Act, 2017, empowering the Government to extend due dates for various compliances.**
 - **As per the CGST Act 2017¹, Government was given the power to extend time limit in special circumstances.**
- “ Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

The power to issue notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.- For the purposes of this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act”

1. section 168A(1) of CGST Act 2017

Extension of due dates ,late fees and interest¹

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Class of registered persons	Rate of interest	Tax period	Revised date for GSTR-3B
Taxpayers having an aggregate turnover of more than rupees 5 crore in the preceding financial year	Nil for first 15 days from the due date, and 9% thereafter	Feb, 2020, March 2020, April, 2020	24th June, 2020
Taxpayers having an aggregate turnover of more than rupees 1.5 crore and up to rupees five crore in the preceding financial year	Nil	February, 2020, March, 2020	29th June, 2020
		April, 2020	30th June, 2020
Taxpayers having an aggregate turnover of up to rupees 1.5 crore in the preceding financial year	Nil	February, 2020,	30th June, 2020
		March 2020,	3rd July, 2020
		April, 2020	6th July, 2020

Waiver of late fees²

Late fees has been waived off in regard to GSTR-1 for the month of February - May 2020, provided the return is filed within the 30th June 2020.

1. Notification No – 31/2020-GST dated April 3, 2020
2. Notification No – 33/2020-GST dated April 3, 2020

Relief provided by Government with respect to compliances

- **Applicability of full rate of interest** - In case the return for the said months are not furnished on or before the dates mentioned in the notification in the table of the previous slide then interest at 18% per annum shall be charged from the due date of return, till the date on which the return is filed. In addition, regular late fee shall also be leviable for such delay along with liability for penalty.
- **Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019** : Government has extended the time limit for making the payment till 30.06.2020 ¹
- **Deferment of E-invoice** - E-invoice has been deferred till October 1, 2020
- Extending the time period for applying to composition scheme in form GST CMP-02 for FY 2020-21 till **30th June 2020** and furnishing statement in form ITC-03 till 31st July 2020 ²
- **Due date extension for composition dealers** - Due date extended for furnishing FORM GST CMP-08 (Statement for payment of self assessed tax under composition scheme) for the quarter ending March, 2020 till 07.07.2020 and filing FORM GSTR-4 (Return for composition dealers) for FY 2020-21 till 15.07.2020 ³
- The last date of filing appeal , refund application under the central excise from March 20, 2020 to June 29, 2020 extended to June 30, 2020
- The last date of filing appeal under the service tax from March 20, 2020 to June 29, 2020 extended to June 30, 2020

1. Notification No 01/2020 CE (NT) dated 14.05..2020
2. Notification number- 30/2020 dated April 3, 2020
3. Notification number- 34/2020-GST dated April 3, 2020

Relief provided by Government with respect to compliances

- **Extension of validity of e-way bill¹** - Where an e-way bill has been generated under rule 138 of the CGST Rules, 2017 on or before the 24th day of March, 2020 and whose validity has expired on or after the 20th March, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th June 2020.
- **Extension for submission of LUT for 2020 – 21²**- time limit for filing of LUT for the year 2020-21 shall stand extended to 30.06.2020 and the taxpayer can continue to make the supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before 30.06.2020. Taxpayers may quote the reference no of the LUT for the year 2019-20 in the relevant documents.
- **TDS return due date extension²** - the due date for furnishing of return in FORM GSTR-7 (TDS return) along with deposit of tax deducted for the said period has also been extended till 30.06.2020 and no interest shall be leviable if tax deducted is deposited by 30.06.2020
- **Due date for filing of the refund claim²**- the due date for filing an application for refund falling during the period from 20.03.2020 to 29.06.2020 has also been extended till 30.06.2020.
- **Due Date of Annual Return & GST Audit for FY 18-19³** -Last date for filing GST annual return for 2018 - 2019 has been extended till September 30, 2020⁴
- **Due Dates of Job work return** (i.e. FORM GST ITC – 04) for quarter ending March 2020 stands extended upto 30.06.2020

1. Notification number – 47/2020-GST dated June 9, 2020

2. Notification number – 35/2020-GST dated April 3, 2020

3.. Notification number – 41/2020-GST dated May 5 2020

Relief measures provided by Government¹

- **Maximum late fee capped at Rs. 500/- per return:** For people who have tax liability, maximum late fee for non-filing of GSTR-3B returns for period July 2017 - January 2020 has been capped to ₹ 500. This will apply to all returns submitted during July 1, 2020 to September 30, 2020
- **Relief for small taxpayers for late filing of returns for February, March & April 2020 tax periods:** For small tax payers whose aggregate turnover is up to ₹ 5 crore, the rate of interest for late furnishing of GST returns for Feb, Mar and April 2020, beyond July 6, 2020, the rate of interest is being reduced from 18% to 9%
- **Reduction in late fee for past Returns:** For all those who have no tax liability but have not filed GST returns for tax period July 2017 - January 2020 (prior to COVID19 period), there shall be no late fee at all.
- **Relief for small taxpayers for subsequent tax periods (May, June & July 2020):** Small tax payers whose aggregate turnover is up to ₹ 5 crore will be provided a waiver of late fees and interest if they file the form GSTR-3B for the supplies affected in months of May, June and July 2020, by September 30, 2020 no late fee or interest.
- **One time extension in period for seeking revocation of cancellation of registration:** Taxpayers who could not get cancelled GST registrations restored in time are being given an opportunity to apply for “revocation of cancellation” of registration up to September 30, 2020 - In all cases where registration has been cancelled till June 12, 2020.

1. 40th GST Council meeting held on June 12, 2020 and notification in this regard is yet to be issued

Other Relief measures provided by Government

- **Temporary suspension of provision restricting the claim of input tax credit:** Relaxation was given by government that for the period February 20- August 20 taxpayer shall consider matching of ITC with GSTR-2A on cumulative basis in the month of September 2020.¹
- **Immediate grant of refund:** Government has issued directive to issue all pending eligible refund.²
- **Furnishing of GSTR – 3B & GSTR-1 through EVC** from April 21, 2020 to September 30, 2020³
- **Transfer of amount from one account head to another in Electronic Cash Ledger** - Form **PMT-09** was implemented online for ensuring the transfer of tax between different head in the electronic cash ledger⁴
- Facility for Nil filing of GSTR-3B return through SMS was introduced by government w.e.f June 8, 2020⁵
- Personal hearings in virtual mode in Customs, Central Excise & Service Tax

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1. Notification No- 30/2020 dated April 3, 2020
 2. Instruction No 2/1/2020-GST dated April 9,2020
 3. Notification No- 48/2020- Central Tax dated June 19,2020
 4. Notification No- 37/2020 dated April 28, 2020
 5. Notification No – 44/2020-GST dated June 8 2020

Clarifications issued by the Government on various issues

Clarification on refund related issues¹

- The refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Further, refund of ITC availed on the invoices / documents relating to imports, ISD invoices and the inward supplies liable to Reverse Charge (RCM supplies) will not be impacted by the abovementioned factor.

Clarification on merchant exporter export time limit²

- The requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June 2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.

Recovery of refund on export of goods where export proceeds not realized³

- As per Rule 96B of the CGST Rules 2017, 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 realized, in full or in part, in India within the period of 9 months from the date of exports (as a one time measure it has been extended to 15 months for exports made up to or on July 31, 2020), the amount so refunded shall be realized along with interest.
- Therefore recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realized will cause hardship for business.

1. Circular No 139/09/2020-GST GST dated June 10, 2020
2. Circular No 138/09/2020-GST GST dated May 6, 2020
3. Notification No- 16/2020 dated March 23, 2020

Provision causing hardship to taxpayers

Input Tax Credit on employee welfare expenses during Lockdown

- As per CGST Act, 2017¹, ITC of taxes paid on expenses incurred for an employee is allowed, if made in the course or furtherance of business provided all other conditions as prescribed are also fulfilled.
- Further, CGST Act 2017,² stipulates the category of expenses on which ITC is not available as per GST Act, 2017. However, it also provides an exception that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force
- Ministry of Home Affairs has issued order for containment of epidemic in the country that includes the Standard Operating Procedure (SOP) for social distancing for offices, workplace, Factories and Establishment.
- The above guidelines require a business to make necessary arrangements for the restart of their business operations. The businesses may require incurring various natures of expenses like mediclaim insurance, transportation facility from home to workplace and vice versa, expenditure incurred for sanitation facility i.e. sanitizer, PPE kits, medical facility etc
- It has to analysed in details whether credit can be availed by business on the expenses incurred in terms of MHA guidelines
- ITC on supply of goods provided as a relief measure during COVID – 19 (CSR Activity) should also be analyzed in details in relation to availment of input tax credit.

1. Section 16 of the CGST Act 2017

2. Section 17(5) of the CGST Act 2017

Relief measure expected from Government

ITC on goods damaged during lockdown¹

Issue - Goods damaged due to lockdown

- Input tax credit of taxes paid on procurement of goods that are stolen, lost or destroyed is blocked.
- Tax credit shall not be available to a registered person on **goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.**

Discussion

In current situation the above provision shall adversely impact the tax payer and therefore relief measure in this regard should be provided by government.

1. Section 17(5) of the CGST Act 2017

Relaxation in Customs Compliances

- Extension of manual data interface in relation to SBO05 error correction in custom EDI System for shipping Bills filed with payment of IGST date up to 31/12/2019.
- Exemption of Custom Duties and Health Cess on Medical Equipment provided Customs (IGCRD) Rules, 2017 followed.
- Relaxation in clearance of goods without Original Certificate Of Origin with provisional assessment under section 18 of Customs Act, 1962.²
- Facility of **video conferencing** in lieu of physical hearing in respect of any proceedings under Customs Act, 1962.³
- Establishment of drive for special refund and drawback for immediate relief to MSMEs.
- Relaxation in filing appeal or reply whose timelines falls between 20.03.20 to 29.06.20 is extended up to 30.06.20.⁴
- Implementation of 24*7 custom clearance facility at all custom formations.
- Faceless Assessment (Virtual Assessment) at customs station of Bengaluru and Chennai under **Turant Customs** reform with an aim for speedy clearance, transparency in decision making and ease of doing business has been implemented. The Faceless Assessment will be implemented all over India in a short span of time to provide ease in customs clearance.⁵
- Facility of Undertaking instead of Bond for customs clearance, however the relaxation is applicable on specified category of Importer/Exporter.⁶

1. Circular No. 22/2020-cus dated 21.04.2020.

2. Circular No. 18/2020-cus dated 11.04.2020

3. Instruction – F.No.390/Misc/3/2019-JC dated 27.04.2020.

4. The Taxation and Other Laws Ordinance, 2020.

5. Circular No. 28/2020-cus dated 05.06.2020.

6. Circular No. 17/2020-cus dated 03.04.2020 & Circular No. 26/2020-cus dated 29.05.2020

Extension of FTP 2015-20 to 31.03.2021

Foreign Trade Policy and procedures are notified for a period of 5 years and thus exporters were keenly waiting for the announcement of the new policy beginning from 01.04.2020. However, keeping in view pandemic covid-19 in the country the same was extended to another one year and extended to 31.03.2021.¹ The existing HBP 2015-2020 which was effective till 31st March, 2020 is also extended to 31st March, 2021.²

Moreover, many relaxations were extended regarding the procedural aspects of the policy viz. extension of due dates for filing of SEIS/MEIS scrip, EOP extensions and other benefits. The details of benefits granted have been detailed in the next slides.

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1. Notification No.57/2015-20 dated 31.03.2020
 2. Public Notice No.67/2015-20 dated 31.03.2020

Relaxation Under Various Schemes of FTP



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Extension of Timelines/ Late fees waiver/ EOP for various Incentive Schemes:

S. No	Scheme	Extension of Timelines	Late Cut Waiver/ Any other Relaxation
1.	MEIS	<ul style="list-style-type: none"> •Shipping Bills for which LEO date is between 01.02.19 and 31.05.19, applications can be filed within 15 months instead of 12 months. •Duty credit scrip having validity between 01.03.18 and 30.06.18 shall be valid up to 30.09.20. 	The period between 01.03.2020 and 30.06.2020 shall not be counted for the purpose of late cut.
2.	SEIS	<ul style="list-style-type: none"> •Due date for application for F/Y 18-19 be 31.12.20. •Duty credit scrip having validity between 01.03.18 and 30.06.18 shall be valid up to 30.09.20. 	F/y 16-17 last date- 30.06.20. F/Y 17-18-late cut of 5% instead of 10% till 30.06.20. F/Y 18-19-no late cut if application filed till 30.06.20.
3.	Status certificate	Already issued certificate will be valid up to 31.03.2021	--
4.	Ratified Norms	On or after 01.04.15 shall be valid for another period of 1 year i.e. 31.03.21.	--
5.	LoP/LoI	valid up to 2 years to enable the unit to construct the plant & install machinery to commence the production. However, if the LoPs /LoIs whose original or extended validity expires on or after 01.03.20, it shall be deemed to valid up to 31.12.20.	--

1. Notification No.57/2015-2020 dated 31.03.2020
2. Public Notice No.67/2015-20 dated 31.03.2020
3. Public Notice No. 08/2015-20 dated 01.06.2020.

Relaxation Under Various Schemes of FTP (contd..)



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

Extension of Timelines/ Late fees waiver/ EOP for various Incentive Schemes:

S. No	Scheme	Extension of Timelines	Late Cut Waiver/ Any other Relaxation
6.	EPCG License	<ul style="list-style-type: none"> •validity period expiring between 01.02.2020 to 31.07.2020 shall automatically be extended by 6 months from the date of expiry. •Block wise EOP falls between 01.02.2020 to 31.07.2020 such period will automatically extended by 6 months from the expiry date. •submission of Installation Certificate expires between 01.02.2020 to 31.07.2020, then the same shall be extended for further period of 6 months. 	Exemption from payment of IGST and Cess for imports made under AA/EPCG for physical exports has been extended upto 31.03.2021
7.	Advance License	<ul style="list-style-type: none"> •validity period expiring between 01.02.2020 to 31.07.2020 shall automatically be extended by 6 months from the date of expiry •Eop expiring between 01.02.20 & 31.07.20 shall be automatically extended by 6 months from the date of expiry. 	Exemption from payment of IGST and Cess for imports made under AA/EPCG for physical exports has been extended upto 31.03.2021

1. Notification No.57/2015-2020 dated 31.03.2020
2. Public Notice No.67/2015-20 dated 31.03.2020

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