

GST Update

Weekly Update
16.05.2020

- This Presentation covers the GST changes / observations/ press releases/ Tweet FAQs/ Sectoral FAQs released by CBEC since the last update on 02.05.2020. No update was released on 09.05.2020. It supplements the earlier GST Updates.
- 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

Furnishing of GSTR 3B through EVC and SMS

- **Notification No. 38/2020 – Central Tax dated 5th May 2020**
- Furnishing of GSTR 3B through EVC: From 21st April 2020 to 30th June 2020, Companies can furnish the return under section 39 in GSTR 3B through electronic verification code (EVC) without using DSC.
- Manner of furnishing of return by short messaging service facility: NIL return under section 39 in GSTR 3B can be filled through short messaging service (SMS). For this, Rule 67A inserted in CGST Rules, 2017 (This will come into effect from a date to be notified later)
- *Explanation. - For the purpose of this rule, a Nil return shall mean a return under section 39 for a tax period that has nil or no entry in all the Tables in FORM GSTR-3B.*

Furnishing of GSTR 3B through EVC and SMS (Contd)

- **Return Filing Form GSTR-3B, through EVC (New Functionality)**
- The taxpayers who are required to mandatorily use DSC to file Form GSTR-3B, now have an option to file it using EVC.
- This is applicable to for all categories of Companies (including Limited Liability Partnerships and PSUs), registered under Companies Act, 2013.
- This option is available for returns filed in Form GSTR-3B during the period starting from 21-04-2020 to 30-06-2020.

Extension of E-Way Bill due to COVID 2019

- **Notification No. 40/2020 – Central Tax dated 5th May 2020**
- Seeks to extend the validity of e-way bills till 31.05.2020 for those e-way bills which expire during the period from 20.03.2020 to 15.04.2020 and generated till 24.03.2020
- E-way bill issued on or before 24th March and whose validity were expiring between 20th March to 15th April, shall now be valid till 31st May 2020.

- **Notification No. 41/2020 – Central Tax dated 5th May 2020**
- **GST Annual return for 2018-19:** Last date for filing GST annual return specified under section 44 of CGST Act read with rule 80 of the CGST Rules for 2018-19 has been extended till 30th Sept 2020.
- **Notification No. 42/2020 – Central Tax dated 5th May 2020**
- Extends the due date for furnishing FORM GSTR-3B returns for the taxpayers registered in Ladakh, for the months of -
- November 2019 to February 2020 – 24th March 2020
- November 2019 to December 2019 – 24th March 2020
- January 2020 to March 2020 - 20th May 2020

Amendment to Section 140- Transition Provisions

- Notification No. 43/2020 – Central Tax dated 16th May 2020 (Amendment to section 140 of CGST Act come into force w.e.f 16th May 2020)
- Section 140 of the CGST Act amended retrospectively w.e.f 01.07.2017, to prescribe the manner and **time limit** for taking transitional credit
- Sub-sections (1), (2), (3), (5), (6), (7), (8), (9) of sec. 140 are amended retrospectively from 1st July 2017 to enable the government to provide by rules **the time limits** to file TRAN-1 and for other compliances

CIRP under the IBC, 2016

- **Notification No. 39/2020 – Central Tax dated 5th May 2020** (Amends the Notn No. 11/2020- Central Tax dated 21st March, 2020)
- Time limit for registration extended due to covid by substituting the following to para 2-
- 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 (hereinafter referred to as the 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 or by 30th June, 2020, whichever is later

- **Circular No. 138/08/2020-GST dated 6th May 2020**
- **Extension of time limit in registration of IRP/CIRP due to lockdown:** Vide notification No. 39/2020- Central Tax, dated 05.05.2020, the time limit required for obtaining registration by the IRP/RP in terms of special procedure prescribed vide notification No. 11/2020 – Central Tax dated 21.03.2020 has been extended. Accordingly, IRP/RP shall now be required to obtain registration within thirty days of the appointment of the IRP/RP or by 30th June 2020, whichever is later.

Clarifications (Contd)

- The notification No. 11/2020– Central Tax dated 21.03.2020 was issued to devise a special procedure to overcome the requirement of sequential filing of FORM GSTR-3B under GST and to align it with the provisions of the IBC Act, 2016. The said notification has been amended vide notification No. 39/2020 - Central Tax, dated 05.05.2020 so as to specifically provide that corporate debtors who have not defaulted in furnishing the return under GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP
- Accordingly, it is clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).

Clarifications (Contd)

- In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an amendment in the registration form. Changing the authorized signatory is a non-core amendment and does not require approval of tax officer. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory.
- The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment. Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.

Clarifications (Contd)

- Vide notification No. 35/2020-Central Tax dated 03.04.2020, time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020, where completion or compliance of such action has not been made within such time.
- Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 was issued under powers conferred by section 11 of the CGST Act, 2017. The exemption provided in notification No. 35/2020-Central Tax dated 03.04.2020 is applicable for section 11 as well.
- Accordingly, it is clarified that the said 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.

Clarifications (Contd)

- Time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020 where completion or compliance of such action has not been made within such time. Accordingly, it is clarified that the due date of furnishing of FORM GST ITC-04 for the quarter ending March, 2020 stands extended up to 30.06.2020



Legal Updates

Case of Shree Motors Vs Union of India reported in 2020-TIOL-924-HC-Raj-GST

Facts

Writ petitions have been filed by the petitioners aggrieved by non filing of Form GST TRAN-1 at common portal allegedly because of various system error/technical glitches at the portal throughout the period during which the Form was available, which resulted in denial of transitional CENVAT credit. Petitioners case was that that the provisions of Section 140 of the CGST Act is a complete Code in itself and the same does not provide for eligibility subject to any further conditions.

Time Limit prescribed u/r 117 of CGST Rules valid and constitutional

The Hon'ble High Court held

Petitioners in the earlier round of litigation initially challenged the validity of provisions of Section 140 of the CGST Act and Rule 117 of the CGST Rules, however, in view of the fact that validity was upheld, the matter was transmitted to the Single Judge who by order dated 21.11.2019 disposed of the writ petitions by permitting the petitioners to submit online Form GST Tran-1 subject to furnishing a proof that they had tried to upload Form GST Tran-1 prior to 27.12.2017 and such attempt failed due to technical glitches on the common portal; that the GST Council was required to issue their requisite certificate within a period

Time Limit prescribed u/r 117 of CGST Rules valid and constitutional

The Hon'ble High Court held

of 15 days if the petitioners' assertion was found correct and in case the petitioners were not entitled for the requisite, the Council was required to pass an order giving reasons. GST Council referred to the ITGRC meeting, wherein, cases of the petitioners were considered and indicated that their cases fell in B-1 category and B-1 category has been described as 'as per GST system log, there are no evidences of error or submission/filing of Tran-1' - In view of the fact that this Court while deciding the writ petitions filed by the petitioners had laid down the specific parameters for grant of relief to the petitioners and it has been found by the respondents as a fact that there were no evidences

Time Limit prescribed u/r 117 of CGST Rules valid and constitutional

The Hon'ble High Court held

of error or submission/filing of Form GST Tran-1 by the petitioners, the petitioners apparently are bound by the said outcome and, as such, are not entitled to any relief. The theory of vested rights and the implication of limitation on the said aspect of vested right has been considered by Hon'ble Supreme Court in the case of Osram Surya (P) Ltd. (2002-TIOL-64-SC-CX), wherein, while considering the proviso II to Rule 57G of the Act of 1944 it was laid down that by providing limitation, the statute has not taken away any of the vested rights, which accrue to the manufacturers and what is restricted is the time, within which, the manufacturer has to enforce that right and, therefore, once

Time Limit prescribed u/r 117 of CGST Rules valid and constitutional

The Hon'ble High Court held

the provisions of Rule 117 of the CGST Rules, which prescribe limitation has been upheld, the plea raised pertaining to the denial of vested right on account of petitioners failing to submit/file Form GST Tran-1 in time cannot be countenanced - no case for interference as sought by the petitioners is made out in the present writ petitions. The petitions were dismissed.

Tax Dues not barred by Insolvency Proceedings under IBC

Case of Electrosteel Steels Ltd Vs State of Jharkhand reported in 2020-TIOL-915-HC-Jharkhand

Facts

The assessee company had challenged the garnishee order issued u/s 46 of the JVAT Act, asking the respondent Bank to pay into the Government Treasury, the sum of Rs.37,41,41,602/-, on account of tax / penalty due under the JVAT Act, from the assessee company, who failed to deposit the taxes for the period from 2011-12 & 2012-13, from the Bank account of the Company. The assessee Company had also challenged the letter dated 22.11.2009, issued by the State Tax Officer, Bokaro to the

Tax Dues not barred by Insolvency Proceedings under IBC

Facts (Contd)

Respondent Bank, to deposit the amount of Rs.75,57,000/- by way of demand draft in favour of the Deputy Commissioner, Commercial Taxes, Bokaro in view of the fact that pursuant to the garnishee order, the respondent Bank had furnished the information that only the amount of Rs.75,57,000/- was available in the assessee's account. The assessee claimed that the amount, could no more be realised by the State Government from the Company, in view of the fact that the State Bank of India had filed a Company Petition, before the NCLT under the IB Code, which was admitted by the NCLT and the interim resolution professional was appointed. The resolution plan was

Tax Dues not barred by Insolvency Proceedings under IBC

Facts (Contd)

made and approved. Upon approval of the Resolution Plan, M/s. Vedanta Limited took over the management of the assessee Company. According to the assessee, since no claim was made by the State Government as regards the tax liability in the corporate insolvency resolution process, the claim of the Government was now barred u/s 31 of the IB Code.

Tax Dues not barred by Insolvency Proceedings under IBC

Decision of the Hon'ble High Court

Whether once resolution plan is approved, tax liability of Company which is not claimed by the State Government during insolvency resolution process, is completely barred under Section 31 of the IB Code - **NO**

Whether if State Government has never been involved in corporate insolvency resolution process, such plan cannot be a binding on it and it can claim outstanding tax liabilities - **YES**

Hon'ble SC time barring judgment binding on all

- Hon'ble AP High Court; Writ Petition No. 8425/ 2020 in M/s Walchandnagar Industries Ltd
- Request for adjournment for PH owing to pandemic situation due to COVID 2019 denied
- **Decision of High Court-** Order passed by Hon'ble Supreme Court is binding on all citizens/ tribunals/ courts of the country, including those exercising quasi judicial functions
- Directs the respondent to give two weeks notice after the central govt relaxes the lockdown in India

Any ISSUES/ queries?



- <https://cbec-gst.gov.in/>
- [CBEC MITRA HELPDESK](#)
 - 1800 1200 232
 - cbecmitra.helpdesk@icegate.gov.in
- GSTN Help Desk
 - <https://selfservice.gstsystem.in/> - Grievance redressal portal
 - Help Desk Number: 0120-4888999

Any ISSUES/ queries?

- Twitter Handles
- For General Questions
- https://twitter.com/askGST_GoI
- For technology related issues
- <https://twitter.com/askGSTech>
- NACIN twitter
- https://twitter.com/NACIN_OFFICIAL

THANK YOU