



Inside this edition

- GSTN issues FAQ for filing of FORM GST PMT-09.
- CBIC issues clarification w.r.t challenges in complying with the GST Law.
- GSTN has enables the facility for creation of Electronic Cash Ledger and Liability Register for UIN Holders.
- CBIC issues guidelines for conduct Personal Hearings in virtual mode under Customs Act, 1962.

NOTIFICATIONS



Directorate General of Foreign Trade (DGFT) amends the Export Policy by prohibiting the export of alcohol-based hand sanitizers

The DGFT notifies the amendment related to the export policy of sanitizers by prohibiting the export of alcohol-based hand sanitizers falling under any Indian Trade Clarification (ITC) HS codes including the undermentioned HS codes, with immediate effect.

S.No.	ITC HS Codes	Description
207 D	ex3004 ex3401 ex3402 380894	Alcohol based Hand Sanitizers

Only alcohol based hand sanitizers are prohibited for export. All other items falling under the above HS Codes are freely exportable.

Source: Notification No. 04/2015-20, dated May 06, 2020

Relief by Delhi High Court on time limit for availment of transitional Input Tax Credit (ITC) till June end is restricted.

As per Sec. 140 of CGST Act, 2017, taxpayers were allowed to carry forward ITC from Excise and Service Tax regime by filing TRAN-1 form. Hon'ble Delhi High Court in its Judgement in "*Brand Equities Treaties Ltd. & Ors. Vs. UOI*" allowed taxpayers registered under GST to claim accumulated CENVAT credit from pre-GST regime till June 30, 2020.

However, CBIC notified retrospective amendments to Sec.140 of CGST Act and prescribes the time limit for availing transitional credit.

As per the Notification "*The Central Government hereby appoints the 18th day of May, 2020, as the date on which the provisions of Section 128 of the Finance Act, 2020, shall come into force,*"

The notification could well negate the benefit granted by the Hon'ble Delhi High Court to all assesses of availing pending ITC till June 30, 2020.

Source: Notification No. 43/2020, Central Tax dated 16th May 2020

CIRCULARS



CBIC issued clarification with respect to challenges in implementing the GST Law

The Central Board of Indirect Taxes & Customs ("CBIC") vide *Circular No. 138/08/2020* has clarified the challenges which were faced by the registered person in complying with the GST Law.

The following clarification were made by the department:

S.No	Issue	Clarification
Issues related to Insolvency and Bankruptcy Code, 2016		
1.	As per Section 23 of Insolvency and Bankruptcy Code, 2016 Interim Resolution Professional (IRP) /Resolution Professional	Time limit for registration has been extended and IRP/RP shall now be required to obtain registration within 30 days of appointment of the IRP/RP or by 30th June, 2020

	(RP) are those who conduct entire corporate insolvency resolution process and manage the operations of the corporate debtor during the period of CIR process. The IRP/RP is required to take separate registration within 30 days of the issuance of the notification in this regard. However due to COVID-19 lockdown IRP/RP is facing difficulty in obtaining registrations and have requested to increase the time limit from the present 30 days limit.	whichever is earlier.
2	As per Section 3(7) of IBC, 2016 a Corporate Debtor is the corporate person who owes a debt to any person. The IRP/RP, in	Notification has been issued to devise a special procedure to overcome the requirement of sequential filing of FORM GSTR-3B under GST Act and to align it with the provisions of

	respect of corporate debtor, has to take a new registration with effect from the date of appointment. Clarification has been sought whether IRP/RP would be required to take a fresh registration even when they are complying with all the provisions of the GST Law under the registration of Corporate Debtor (earlier GSTIN) and they have not been defaulted in return filing.	the IBC Act, 2016. The 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/PR. 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).
3	Another doubt has been raised that the present notification has used the terms IRP and RP interchangeably and in cases where an	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

	<p>appointed IRP is not ratified and a separate RP is appointed, whether the same new GSTIN shall be transferred from the IRP to RP, or both will need to take fresh registration.</p>	<p>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</p>
--	--	---

		<p>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.</p>
<p>Other COVID-19 Related Representations</p>		
<p>4</p>	<p>A registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% IGST provided, that the merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier. However due to COVID-19 lockdown merchant exporter is not able to export the goods.</p>	<p>The 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 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 30.06.2020, provided the</p>

		completion of such 90 days period falls within 20.03.2020 to 29.06.2020.
5	Rule 45(3) of CGST Rules requires furnishing of FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during a quarter on or before the 25th day of the month succeeding that quarter. Accordingly, the due date of filing of FORM GST ITC-04 for the quarter ending March, 2020 falls on 25.04.2020. Clarification has been sought regarding the extension of time limit in this regard and also for FORM GST ITC-04 for quarter ending March, 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. 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.

Source: Circular No. 138/08/2020, dated 6th May, 2020

FREQUENTLY ASKED QUESTIONS



GSTN has issued FAQ on the filing of FORM PMT-09 on the GST Portal

1. What is Form GST PMT-09?

Form GST PMT-09 enables any registered taxpayer to perform intra-head or inter-head transfer of amount as available in Electronic Cash Ledger. Thus, a registered taxpayer can now file Form GST PMT-09 for transfer of any amount of tax, interest, penalty, fee or others, under one (major or minor) head to another (major or minor) head, as available in the Electronic Cash Ledger.

2. What is the use of Form GST PMT-09?

In case, a taxpayer deposits any amount under a major head (Integrated tax, Central tax, State/UT tax, and Cess) or minor head (Tax, Interest, Penalty, Fee and Others), they can then utilize this amount for discharging their liabilities only under that major head and minor head. So, they need to deposit amount only under a particular head to meet their existing liabilities under that head (only).

Form GST PMT-09 on the GST portal allows taxpayers to make Intra-head and Inter-head transfer of funds, as available in their Electronic Cash Ledger. Thus, this facility can be used to transfer any amount available in Electronic Cash Ledger as given below:

To transfer amount from minor head tax under major head cess to minor head interest under major head CGST or

To transfer amount from minor head Interest under major head IGST to minor head Tax under same major head IGST.

3. From where can I file Form GST PMT-09?

To file Form GST PMT-09, navigate to Services > Ledgers > Electronic Cash Ledger > File GST PMT-09 for Transfer of Amount option.

4. Can I select more than one major/minor head while Form GST PMT-09?

Yes, you can select more than one major/minor heads while transferring amount from one head to another, one at a time, while filing Form GST PMT-09.

5. How can I add more than one major/minor head while filing Form GST PMT-09?

You can add more than one major/minor head using Add Record option before clicking Proceed to file.

6. Can I preview Form GST PMT-09 before filing?

Yes, you can view/download Form GST PMT-09 in PDF format before filing the same on the GST Portal.

7. What are the modes of signing Form GST PMT-09?

You can file Form GST PMT-09 using DSC or EVC.

8. What will happen once Form GST PMT-09 is filed?

After Form GST PMT-09 is filed:

- ARN is generated on successful filing of Form GST PMT-09.
- An SMS and an email are sent to the taxpayer on his registered mobile and email id.
- Electronic Cash ledger will get updated after successful filing of Form GST PMT-09.
- Filed form GST PMT-09 will be available for view/download in PDF format.

9. Will I get any intimation once I file Form GST PMT-09?

Yes, you will receive SMS and e-mail on your registered e-mail ID and mobile number, once Form GST PMT-09 is filed.

10. From where can I view filed Form GST PMT-09

To view filed Form GST PMT-09, navigate to Services > Ledgers > Electronic Cash Ledger > View Filed GST PMT-09 option.

11. From where can I download filed Form GST PMT-09?

To download filed Form GST PMT-09, navigate to Services > Ledgers > Electronic Cash Ledger > View Filed GST PMT-09 > Download GST PMT-09(PDF) option.

Source: www.tutorial.gst.gov.in

NEW FUNCTIONALITY

GSTN has enabled the facility for creation of electronic cash ledger and liability register for UIN holders

- UIN holders can claim refund under section 55 of the CGST Act. The facility of cash ledger and liability register was not provided to UIN holders earlier, as they were only claiming refunds.
- As there is no check on invoices reported in Form GSTR-11 for claiming refund, it was possible for the UIN holders to claim excess refund in Form GST RFD-10, inadvertently.
- In such a scenario, there was no mechanism in place for the UIN holder to deposit the excess refund claimed voluntarily or for the Tax officer to create a demand against them.
- A cash ledger and a liability register, for UIN holders, have now been created on the GST Portal.

- A facility to make payment through challan has also been created in the Payment module for UIN holders.
- The UIN would now be able to make payment of the amount of excess refund claimed, on voluntary basis, through Form DRC-03. It would also be possible for the Tax officer to post the liability register (Part-II), if the UIN holder does not pay the excess amount voluntarily.

Source: CBIC Weekly Update, dated May02,2020

GSTN has enabled new facility to adjust negative ITC while distributing ITC to units by ISD in Form GSTR 6

- The persons registered as ISD can distribute ITC among its units by filing Form GSTR 6, every month.
- Previously, ISD were not able to adjust negative ITC to its units, under a major head through ITC available under another major head.
For example: If in a particular month, no ITC had accrued under a head but ITC reversal was required to be done under that head or in cases where no inward supplies under a head but receipt of Credit notes under that head for past supplies etc.
- ISD would now be able to adjust negative ITC while distributing credit through Form GSTR 6.

Source: CBIC Weekly Update, dated May02,2020

JUDGEMENTS



Show Cause Notice to be issued to the assessee before recovery of interest under Sec.50 of the CGST Act, 2017

Case name: M/S LC Infra Projects Pvt. Ltd. Vs. Union of India
Appeal Number : TS-253-HC-2020(KAR)-NT

Facts

The petitioner had been levied Interest on the unpaid taxes without issuing show cause notice and thereafter, the demand notice had been issued demanding tax of Rs. 13,63,864 and interest of Rs. 81,29,684.

The petitioner contended that the show cause notice must be issued before demand order.

Decision of the Hon'ble High Court

- It was held that before penalizing the assessee by making him pay interest, the principles of natural justice ought to be complied with before making a demand for interest under Sec.50(1) of CGST Act.
- HC concurred with the decision taken by the single Judge that before recovery of interest payable in accordance with section 50, a show cause notice is required to be issued to the assessee.
- HC thus concluded that "The impugned demand has been set aside only on the ground of the breach of the principles of natural justice by granting liberty to the respondents to initiate action in accordance with law for recovery of interest.

Relief to Bharti Airtel Limited to the extent that it restricts the rectification of Form GSTR 3B in respect of period in which error has occurred and permitted to rectify Form GSTR 3B for the period to which the error relates

Facts

Form GSTR-2A was introduced in October, 2018 and in the absence of the Form GSTR 2A during July-September, 2017, Bharti Airtel submitted the input tax credit details based on estimates. The Telecom Service Provider later noticed the underreporting and sought to file the rectified returns.

The Central Govt. opposed the carrier's plea and said the rectification of mistakes of an earlier tax period couldn't be done in any subsequent period.

Decision of the Hon'ble High Court

- The statutory scheme, as envisaged under the Act provided a facility for validation of monthly data through the IT System of the Government wherein the output of one dealer (Form GSTR-1), becomes the input of another dealer and gets auto-populated in Form GSTR-2 (Inward Supplies).
- The statutory provisions provided not just for a procedure but a right and a facility to a registered person by whom it can be ensured that the ITC availed and returns can be corrected in the very month to which they relate, and the registered person is not visited with any adverse consequences for uploading incorrect data.
- Form GSTR3B is filled in manually by each registered person and has no inbuilt checks and balances by which it can be ensured that the data uploaded by each registered person is accurate, verified and validated. Therefore, the design and scheme of the Act as envisioned has not been entirely put into operation as yet.

- If the statutorily prescribed form i.e. GSTR-2 & 3 had been operationalized by the Government, as was envisaged under the scheme of the Act, the Petitioner with reasonable certainty would have known the correct ITC available to it in the relevant period, and could have discharged its liability through ITC, instead of cash.
- The Respondents could not operationalize the statutory forms envisaged under the Act, resulting in depriving the Petitioner to accurately reconcile its input tax credit, the Respondents cannot today deprive the Petitioner of the benefits that would have accrued in favour of the Petitioner if such forms would have been enforced. The Petitioner, therefore, cannot be denied the benefit due to the fault of the Respondents.
- The Petitioner is therefore permitted to rectify Form GSTR-3B for the period to which the error relates, i.e. the relevant period from July, 2017 to September, 2017

Case name: Bharti Airtel Ltd. Vs UOI

Appeal Number : TS-257-HC-2020(DEL)-NT

ADVANCE RULING



No GST on Whole Time Director's Salary: AAR Karnataka

The Karnataka Authority for Advance Ruling (AAR) notified on 4th May, 2020 regarding the applicability of Goods and Services Tax (GST) on director remuneration. Mr. Anil Kumar, who is a director in a private

company, received director remuneration and approached Karnataka AAR on the applicability of GST.

The Karnataka AAR bench has clarified that GST will not apply to the director remuneration if he is classified as an employee of the company (executive director). However, if the director is classified as a non-executive director, i.e. nominated director, and provides services to the company, then the director remuneration is subject to GST. In such cases, the reverse charge mechanism will apply, and the company as a recipient of the services is liable to pay the GST. Thus, this AAR ruling will be useful to Indian companies to substantiate that GST does not arise in case of remuneration paid to executive directors, who mostly are key managerial personnel of the company. The ruling draws additional significance, as a month ago, the Rajasthan AAR had held to the contrary and created confusion. The schedule III of the CGST Act states that services by an employee to the employer are not considered as supply. The AAR noted that the applicant had not submitted any documentary evidence such as a copy of employment agreement, appointment letter, PF and ESI deduction to decide whether the applicant is an employee or not. However, the AAR concluded that if the director received the salary as an employee, it would be outside the scope of GST.

Source: AR No. KAR ADRG/30/2020

CUSTOMS



CBIC issued guidelines for conducting personal hearings in virtual mode under Customs Act, 1962

- In any proceedings before appellate or adjudicating authority under the Customs Act, 1962, the party, either as an appellant or a respondent, shall give his consent to avail the personal hearing before such authority, through video conferencing facility, at the time of filing his appeal or immediately after the issue of this instruction, in the case of pending appeals/adjudication matter. He should also indicate his email address for correspondence etc.
- The date and time of hearing along with a link for the video conference shall be informed in advance to the appellant/respondent or their consultant/ counsel and the concerned commissioner representing revenue through the official email or electronic media of the adjudicating/appellate authority, giving the details of officer-in-charge who would provide assistance to the party, for conducting the virtual hearing. This link should not be shared with any other person without the approval of the adjudicating/appellate authority
- The advocate/ consultant/ authorized representative, appearing on behalf of the party, in virtual hearing, should file his vakalatnama or authorization letter along with a copy of his photo ID card and contact details to the adjudicating/appellate authority through official e-mail address of the concerned authority after scanning the same. All persons participating in the video conference should be appropriately dressed and maintain the decorum required for such an occasion.
- Virtual hearing through video conference shall be held from the office of adjudicating/appellate authority or any official video

conference facility set up in the office of the adjudicating/appellate authority.

- The virtual hearing through video conference will be conducted through available applications like VIDYO, or other secured computer network. The appellant/respondent should download such application in their computer system/laptop/mobile phone beforehand for ready connectivity during virtual hearing, and join the video conference at the time allotted to them.
- In case where the party/ his representative wishes to participate in the virtual hearing proceeding along with their advocate, they should do so under proper intimation to the adjudicating/ appellate authority. They may participate in virtual hearing along with their advocate/ authorized representative or join the proceedings from their own office.
- The submissions made by the appellant or their representative through the video conference will be reduced in writing and a statement of the same will be prepared, which shall be known as "record of personal hearing". A soft copy of such record of personal hearing In PDF format will be sent to the appellant through the email ID provided by advocate/ appellant/ respondent, within one day of such hearing.
- If the, appellant/their representative wants to modify the contents of e-mailed record of personal hearing, they can do so and sign the modified record, scan and send back the signed record of personal hearing to the adjudicating/appellate authority.
- If, however, the appellant/their representative does not resend the above-e-mailed record of personal hearing within 3 days of receipt

of such e-mail, it will be presumed that they agree with the contents of the e-mailed record of personal hearing and adjudicating authority/appellate authority will proceed to decide the case accordingly. No modification in the e-mailed record of the personal hearing will be entertained after 3 days of its receipt by the appellant/their representative. The date of receipt of the email by the appellate/adjudicating authority will not be counted for this purpose.

- The record of personal hearing submitted in this manner shall be deemed to be a document for the purpose of Customs Act, 1962 in terms of section 138C of the said Act, read with Section 4 of the Information Technology Act, 2000.
- If the party/ advocate prefers to submit any document including additional submissions during the virtual hearing, he may do so by self-attesting such document and a scanned copy of the same may be emailed to the adjudicating/appellate authority immediately after the virtual hearing and in no case after 3 days of the virtual hearing. The date of the hearing will be excluded for this purpose.
- Any official representing the Department's side can also participate in the virtual hearing through video conferencing. The Commissionerate concerned shall inform the details in advance regarding such participation.

Source: Instruction No. 390/Misc/3/2019-JC dated April 27,2020

GST REVENUE COLLECTION

The government has deferred to release of May GST revenue collection data as the ongoing lockdown led to a lower mop-up during the month and extended deadlines for filing of return.

LET'S TALK

For a deeper discussion of how these issues might affect your business, please contact our Indirect Taxation Team.

VERENDRA KALRA & CO

CHARTERED ACCOUNTANTS

CONTACT DETAILS:

Head Office

75/7 Rajpur Road, Dehradun

T +91.135.2743283, 2747084, 2742026

F +91.135.2740186

E info@vkalra.com

W www.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

E info@vkalra.com

W www.vkalra.com

For any further assistance contact our team at
kmt@vkalra.com

©2020 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

