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NOTIFICATIONS



- **Notification No. 37/2020- Central Tax dated 28th April 2020**

CBIC on the recommendations of council has given effect to Rule 87 (13) of CGST Rules “**Electronic cash ledger**” & FORM GST PMT 09 is comes into effects. FORM GST PMT 09 is the prescribed challan for shifting the wrongly paid ITC. It is recently introduced by CBIC. If you have paid a wrong tax, like CGST in place of SGST, you can shift it using this challan. PMT 09 consists of minor and major heads. You can mention the amount of tax you wish to shift as in the details of the amount to be transferred from one account head to another. The reallocation of tax can be from major head to minor head and vice versa. This Rule will come into effect from 21st April, 2020.

- **Notification No. 40/2020- Central Tax dated 5th May 2020**

The Government has extended validity of e-way bills generated under Rule 138 of CGST Rules, 2017 by adding proviso that bill which would have expired between March 20 – April 15 have extended to April 30:

“Provided that where an e-way bill has been generated under rule 138 of the Central Goods and Services Tax Rules, 2017 on or before the 24th day of March, 2020 and its period of validity expires during the period 20th day of March, 2020 to the 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 31st day of May, 2020”.

- **Notification No. 41/2020- Central Tax dated 5th May 2020**

The due date of filing GSTR 9/9C for F.Y 2018 -19 has been extended till 30th September, 2020.

- **Notification No. 38/2020- Central Tax dated 5th May, 2020**

Companies registered under the Companies Act, 2013 are now allowed to file GSTR 3B through EVC from 21st April, 2020

“Provided further that a registered person registered under the provisions of the Companies Act, 2013 shall, during the period from the 21st day of April, 2020 to the 30th day of June, 2020, also be allowed to furnish the return under section 39 in FORM GSTR3B verified through electronic verification code (EVC).”

The government has also facilitated to furnish NIL return by OTP.

“67A. Manner of furnishing of return by short messaging service facility: Notwithstanding anything contained in this Chapter, for a registered person who is required to furnish a Nil return under section 39 in FORM GSTR-3B for a tax period, any reference to electronic furnishing shall include furnishing of the said return through a short messaging service using the registered mobile number and the said return shall be verified by a registered mobile number based One Time Password facility.”

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.

CIRCULARS



- **Circular No. 133 03/2020 dated 23rd March 2020**

The Central Board of Indirect Taxes & Customs (“CBIC”) has issued clarification with respect to apportionment and transfer of ITC in the event of merger, demerger, amalgamation or change in the constitution/ownership of business as there were certain doubts regarding interpretation of Section 18(3) of CGST Act, 2017 vide Circular No. 133 03/2020 dated March 23rd, 2020 an explanation has been

inserted provided that in case of demerger “value of assets” means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.

Also, following clarifications were provided against the issues raised to ensure uniformity of law as per Section 168(1) of CGST Act, 2017:

S.No	Issue	Clarification
1.	In case of demerger, 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.	CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to said rule 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. Under the provisions of the CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger, 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
2	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.

3	Rule 41 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 sub-rule (1) of rule 41 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.
4	Whether the ratio of value of assets, as prescribed under proviso to Rule 41 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 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.
5	How to determine the amount of ITC that is to be transferred to the transferee under each tax	The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to

	head (IGST/CGST/SGST) while filing of FORM GST ITC-02 by the transferor?	be transferred, as determined under Rule 41 of the CGST Rules. However, 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.
6	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	According Section 18 of the CGST Act, Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed. Further, Rule 41 of the CGST Rules prescribes that the registered person shall file the details in FORM GST ITC-02 for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee. A conjoint reading of sub-section (3) of section 18 of the CGST Act along with sub-rule (1) of rule 41 of the CGST Rules would imply that 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.
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- **Circular No. 137/08/2020- GST dated 13th April 2020**

CBIC has examined and in order to ensure uniformity has issued clarification on advance received and got cancelled due to reasons occurred w.r.t to novel Corona Virus.

Issue

An advance is received by a supplier for a service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

Clarification

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” in terms of section 34 of the CGST Act. 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.

Issue

An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?

Clarification

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, 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*”.

Issue

Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?

Clarification

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” in terms of section 34 of the CGST Act. 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 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.

Issue

Letter of Undertaking (LUT) furnished for the purposes of zero-rated supplies as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 read with rule 96A of the CGST Rules has expired on 31.03.2020. Whether a registered person can still make a zero-rated supply on such LUT and claim refund accordingly or does he have to make such supplies on payment of IGST and claim refund of such IGST?

Clarification

LUT is required to be furnished for a financial year. However, in terms of notification No. 35/2020 Central Tax dated 03.04.2020, where the requirement under the GST Law for furnishing of any report, document, return, statement or such other record falls during between the period from 20.03.2020 to 29.06.2020, has been extended till 30.06.2020.

Therefore, in terms of Notification No. 35/2020-Central Tax, 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.

Issue

While making the payment to recipient, amount equivalent to one per cent was deducted as per the provisions of section 51 of Central Goods

and Services Tax Act, 2017 i. e. Tax Deducted at Source (TDS). Whether the date of deposit of such payment has also been extended?

Clarification

As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (3) of section 39 and section 51 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for furnishing of return in FORM GSTR-7 along with deposit of tax deducted for the said period has also been extended till 30.06.2020 and no interest under section 50 shall be leviable if tax deducted is deposited by 30.06.2020.

Issue

As per section 54 (1), a person is required to make an application before expiry of two years from the relevant date. If in a particular case, date for making an application for refund expires on 31.03.2020, can such person make an application for refund before 29.07.2020?

Clarification

As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (1) of section 54 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for filing an application for refund falling during the said period has also been extended till 30.06.2020.

GST REFUND



GSTN has issued alert to the taxpayers on fake messages on GST Refund

It has been observed that some fraudulent messages are being circulated on WhatsApp, Email, and SMS, claiming to process a GST refund. It clearly shows that some miscreants have started to take undue advantage of the Covid19 crisis, by sending out fake messages with phishing links. One such link takes to a portal claimed to have been developed by GSTN. The same is fake and the Government has notified only www.gst.gov.in as the common portal, under the GST Laws.

Through such links, the taxpayers are asked to fill important information such as- Personal details, Address, Refund Details, and KYC Verification, which may not just cause financial losses to the taxpayer but also enable such unscrupulous elements to steal their personal data for mala fide intentions.

Please be informed that GST refunds can be claimed through the GST portal <https://www.gst.gov.in/> only. Any other source, a portal with a similar interface, a message claiming to process GST refunds is fraudulent. Please also note that GST Network does not ask personal information, refund details, and KYC verification through email, WhatsApp or SMS or through any other website.

Taxpayers are advised to remain cautious against such messages and use the GST portal www.gst.gov.in for refund application or any other GST related activity.

Do's and Don'ts regarding Refund applications.

Do's	Don't
Use only GST portal www.gst.gov.in for claiming refunds	Do not reply to any message claiming to process GST refunds
For any information on claiming GST refund, checking status of the refund application read https://www.gst.gov.in/help/refund	Do not open any link or attachment in the message
Remember that GST Network never call detailed personal information and refund details on email, WhatsApp or SMS	Never fill any personal detail and other information on any platform other than GST portal for claiming refunds
Stay updated with News & Update section of www.gst.gov.in for any official and authorized information	Do not call at the number mentioned in the message
In case of any query of confusion, please call GST helpdesk 1800-103-4786.	Do not trust information from any source other than the GST portal which uses similar portal names and interface

NEW FUNCTIONALITY

The GSTN Portal has enabled a new facility in Form GSTR-6.

The adjustment of negative Input Tax Credit ("ITC") while distributing credit to its units by ISD, through Form GSTR- 6.

- The persons registered as ISD can distribute ITC among its Units by filing Form GSTR-6, every month.

- Previously, ISD was 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 Note(s) under that head for past supplies etc.
- ISD would now be able to adjust negative ITC while distributing credit through Form GSTR 6.

CUSTOMS



Paperless - E-Delivery PDF Gate pass and final OOC (Out of Charge) BOE to customs brokers & importers

The CBIC has announced a slew of measures to expediate to clearance **process and mitigate the unprecedented situation which has arisen due to the COVID-19 pandemic**. This process has enabled the clearance process to be more contact less i.e.; automated and online as well as paper-less. These anti-COVID-19 measures include the facility to clear goods on the basis of an undertaking, acceptance of electronic Country of Origin certificate etc. **These steps complement the earlier reforms unrolled as a part of Turant Customs such as online query module, e-Sanchit, web-based goods registration, electronic processing of DGFT issued licenses, machine release of imported goods based on Customs Compliance Verification and electronic transmission of PDF-based First copy of Bill of Entry (BoE) to Customs Brokers and registered importers.**

JUDGEMENT



Case name: Commercial Steel Company v. Assistant Commissioner of State Tax (Telangana High Court)

Appeal Number : WP No. 2161 of 2020

Date of Judgement/Order : 04/03/2020

- **Case of Commercial Steel Company – Decision of Hon’ble Telangana High Court in the Writ Petition No.2161of 2020**

Facts

Petitioner had purchased goods from JSW Karnataka and goods were destined for Hyderabad. Goods intercepted at Jeedimetla in Telangana and notice of detention alleging “*wrong destination*” issued under Section 129 (3) of CGST Act. Though the goods were accompanied by tax paid documents which reflected payment of IGST, demand made for payment of CGST+SGST. It is contended by the petitioner that since at that time the petitioner could not contestation account of a marriage in the family, on 12.12.2019 at Hyderabad, and since the driver of the vehicle was pressurizing for release of the vehicle, Petitioner was forced to pay the amount mentioned in the notice.

The petitioner further contended that the said collection of tax and penalty by the respondents is through coercion and threat in spite of the fact that the consignment was covered by all the requisite documents. It is alleged that when the goods were in transit in an inter-State sale, the respondents cannot detain the same and demand and collect the tax in the manner they have done which is arbitrary and without jurisdiction.

Decision of the Hon’ble Court High Court held that

- In our considered opinion, there were no good and sufficient reasons for detention by the 1st respondent of the vehicle and the goods which it was carrying when the transaction causing movement of the goods was inter-State in nature and the provisions of the SGST were not shown to have been violated. Also, there is no warrant to levy any penalty since it can’t be said that there is any wilfulness in the conduct of the dealer.
- The impugned action of the respondents in collecting the amount of Rs.4, 16,447/- from the petitioner towards tax and penalty under the CGST and SGST Act, 2017 under threat of detention of the vehicle carrying the said goods for an absurd reason(‘wrong destination’) when the vehicle in question carried all the proper documents evidencing that it was an inter-State sale transaction is clearly arbitrary, violative of Articles 14, 265 and 300-A of the Constitution of India.
- The 1st respondent is directed to refund the same with interest at the rate of 6% per annum.

- **GST REVENUE COLLECTION**

The government has deferred to release of April 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.

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