



Indirect Tax Update

Summary of Notifications and Circulars issued between
31st March and 3rd April 2020

Key Highlights:

- ✓ Notifications in respect of recommendations of GST council
- ✓ Due dates extension
- ✓ Reduced interest rate
- ✓ Waiver of late fees
- ✓ Clarifications - refunds
- ✓ Clarifications - returns

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1. Notifications with respect to relaxations provided in view of Novel Corona Virus

With reference to the Press Release dt. 24-03-2020 the government has come up with notifications for providing relief to the taxpayers in view of the disturbance caused by Novel Corona Virus (Covid 19).

Notification No.	Particulars	Brief about the Notification	Effective Date
30/2020-CT	CGST (fourth Amendment) Rules 2020	<p>The registered persons who opt to avail composition scheme for FY 2020-21 can file GST CMP 02 till 30-06-2020 & GST ITC -03 till 31-07-2020. This provision is w.e.f. 31.03.2020</p> <p>The restriction of ITC on invoices not appearing in GSTR 2A to the extent of 10% of eligible ITC appearing in GSTR 2A shall now apply cumulatively for the period Feb to Aug 2020 & the return in form GSTR 3B for the tax period September 2020 shall be furnished with cumulative adjustment of input tax credit for the said months. This provision is w.e.f. 03.03.2020</p> <p>Our Comment: This is a major relief for the registered persons as delay of few months may not have adverse impact. Considering the present dynamic report of GSTR-2A, considering other period i.e., Oct'19 to Jan'20 on a cumulative basis would be prudent and in line with the intention of the law.</p>	03.04.2020
33/2020-CT	Waiver of Late Fees for GSTR - 1	The Late Fee is waived for the months of March, April, and May, 2020, and for the quarter ending 31st March, 2020, for the registered persons who fail to furnish FORM GSTR-1 by the due date, but furnishes the said details in FORM GSTR-1, on or before the 30 th June, 2020.	-
34/2020-CT	Extension of Last date for	The last date for filing of statement in Form GST CMP-08 for quarter ending 31 st March 2020 is	03-03-2020

	Composition Tax Payer to furnish GST CMP-08.	extended to 07-07-2020 The last date for filing GSTR-4 for FY 2019-20 is extended to 15-07-2020	
35/2020-CT	Extension of time period for Compliances	<p>Where any time limit for completion or compliance of any action, by any authority or by any person, which falls during the period from 20th March, 2020 to 29th June, 2020, and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended up to the 30th day of June, 2020, including for the purposes of—</p> <p>(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by any authority, commission or tribunal etc., under the provisions of the GST Acts; or</p> <p>(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, under GST Acts.</p> <p>However, such extension of time shall not be applicable for the compliances of the provisions of the said Act, as mentioned below-</p> <p>(a) Chapter IV; (Time & Value of Supply)</p> <p>(b) sub-section (3) of section 10 (Composition</p>	20-03-2020

		<p>Scheme Turnover extension), sections 25(Procedure for Registration) , 27 (Special provisions relating to casual taxable person and non-resident taxable person.), 31(Tax Invoice), 37(Furnishing of Outward Supplies), 47(Levy of Late Fee), 50(Interest), 69(Power to Arrest), 90(Liability of partners of firm to pay tax), 122(Penalties), 129 (Detention);</p> <p>(c) section 39, except sub-section (3), (4) and (5) i.e., except GSTR-5, 6 and 7;</p> <p>(d) section 68 i.e., inspection in so far as e-way bill is concerned; and</p> <p>(e) rules made under the provisions specified at clause (a) to (d) above;</p>	
	Extension of the period of validity for an e way bill	<p>Where validity of an e-way bill expires during the period 20th day of March, 2020 to 15th day of April, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th day of April, 2020.</p> <p>Our Comment- This notification is issued under section 168A however the CGST Act does not have any such provision and hence the validity of this notification could be questioned however this in our view seems to be a typographical error and may not have any adverse impact.</p>	
31/2020-CT & 32/2020-CT	Waiver of Interest & Late Fees	Anx.1	20-03-2020
36/2020-CT	Extension of Due date of GSTR 3B for the month of May 2020	Anx.2	03-03-2020

Anx: 1 Waiver of Interest & Late Fees						
S. No.	Class of Registered Persons	Tax Period	Due Date	Rate Of Interest	Late Fee	Conditions
1	Taxpayers having an aggregate turnover of more than Rs. 5 crores in the preceding FY	Feb-20	20-03-2020	Nil for first 15 days from the due date, and 9% p.a. thereafter	0	If return in FORM GSTR-3B is furnished on or before the 24-06-2020
		Mar-20	20-04-2020			
		Apr-20	20-05-2020			
2	Taxpayers having an aggregate turnover of more than Rs. 1.5 crores and up to Rs. 5 crores in the preceding FY	Feb-20	22-03- 2020/ 24-03-2020	Nil	0	If return in FORM GSTR-3B is furnished on or before the 29-06-2020
		Mar-20	22-04-2020/ 24-04-2020			
		Apr-20	22-05-2020/ 24-05-2020			If return in FORM GSTR-3B is furnished on or before the 30-06-2020
3	Taxpayers having an aggregate turnover of up to Rs. 1.5 crores in the preceding FY	Feb-20	22-03-2020 / 24-03-2020	Nil	0	If return in FORM GSTR-3B is furnished on or before the 30-06-2020
		Mar-20	22-04-2020/ 24-04-2020			If return in FORM GSTR-3B is furnished on or before the 03-07-2020
		Apr-20	22-05-2020/ 24-05-2020			If return in FORM GSTR-3B is furnished on or before the 06-07-2020

Anx.2: Extension of Due date of GSTR 3B for the month of May 2020		
S.No.	Class of Registered Persons	Extended Due Date
1	Taxpayers having an aggregate turnover exceeding Rs. 5Cr	27-06-2020
2	Taxpayers having an aggregate turnover upto 5 Cr	
	Whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep,	12-07-2020
	Whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi	14-07-2020

Our Comment- The all above extensions and relaxations ass proposed in the GST council meeting has been given effect and the registered person to give sufficient time to manage the situation in the coming months.

2. Clarification on refund related issues

(Circular No. 135/05/2020- GST dated 31st March 2020)

This circular has provided clarification on some of the issues relating to GST refund.

Issue 1: Restriction on the clubbing of tax periods across financial years for claiming refund as provided in Paragraph 8 of the Circular No. 125/44/2019-GST dated 18.11.2019.

Clarification: It has been decided to remove the restriction on clubbing of tax periods across Financial Years. Accordingly, circular No. 125/44/2019-GST dated 18.11.2019 stands modified to that extent i.e. the restriction on bunching of refund claims across financial years shall not apply. This is on account of order passed on 21.01.2020 by the Delhi High Court in the case of M/s Pitambra Books Pvt. Ltd [W.P.(C) 627/2020] where the HC has stayed paragraph 8 as stated above. The High Court reiterated that Circulars can supplant but not supplement the law. Circulars might mitigate rigours of law by granting administrative relief beyond relevant provisions of the statute, however, Central Government is not empowered to withdraw benefits or impose stricter conditions than postulated by the law. Further, there is no restriction in the provisions of the GST law for claiming refund by clubbing tax period across financial years.

Our Comment: This is a welcome clarification and extremely beneficial to the registered persons who procure goods or services across months and the export is done in subsequent month which falls in the next FY. The ruling of Delhi High could be the start point for quashing of the circulars which are not in line with the law. This ruling has followed earlier Supreme Court decisions such as in Ratan Melting & Wire Industries cited 2008 (231) E.L.T. 22 (SC) wherein held that Circular contrary to statutory provisions has no existence in law.

Issue 2: Claiming refund under inverted duty structure on goods procured at a particular rate and the rate of tax was reduced subsequently before such goods could be sold.

Clarification: It has been clarified that the input and output being the same in such cases, though attracting different tax rates at different points in time cannot be said to be inverted rated and refund under inverted duty structure cannot be claimed. It is further clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same

Our Comment: This does not seem to be in line with the legal provision as Section 54(3)(ii) does not provide any restriction on the nature of input and output supply and hence this clarification is liable to be quashed.

Issue 3: Refund of tax paid on supplies other than zero-rated supplies

Clarification: The circular is clarifying the changes made vide notification no. 16/2020-CT dated 23.03.2020. It has been clarified that refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment i.e., e-credit ledger would be credited to the extent of ITC adjusted for payment of tax (GST PMT-03) and the balance would be refunded in cash (GST RFD-06).

Our Comment: This clarification has ensured further clarity and intention behind issuance of notification no. 16/2020-CT i.e., to avoid unintended encashment of credit balances.

Issue 4: Refund of ITC under section 54(3) of the CGST Act where invoices are not reflecting in GSTR-2A

Clarification: It has been clarified that the refund of accumulated ITC shall be restricted to the ITC as per 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.

Our Comment:

This clarification seems to be against earlier clarification in press release dated 18th October 2018 wherein it was set out that the facility to view the same in FORM GSTR-2A by the recipient is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self-assessment basis. Based on the same logic, the refund should not be denied citing non-reflecting in GSTR 2A.

Similarly this is against the Apex Court decisions as given below under erstwhile laws:

- a. In the case of Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others [TS-2-SC-2018-VAT], has dismissed the Special Leave Petition filed by the Revenue against the decision of the Hon'ble High Court of Delhi in the case of Arise India Limited and others Vs. Commissioner of Trade & Taxes, Delhi and others [TS-314-HC-2017(Del)-VAT] ("Arise India case"). The Hon'ble High Court of Delhi held Section 9(2)(g) of Delhi VAT Act to

the extent it disallows Input tax credit (“ITC”) to purchaser due to default of selling dealer in depositing tax, as violative of Articles 14 and 19(1)(g) of the Constitution of India.

- b. **Kay Kay Industries (2013-TIOL-41-SC-CX).** (2013-TIOL-41-SC-CX) that the manufacturer cannot determine whether his supplier has discharged excise duty on the goods which are supplied to the manufacturer by him.

Issue 5: New requirement to mention HSN/SAC in Annexure ‘B’

Clarification: The Statement of invoices to be submitted with application for refund of unutilized ITC would not be modified and details of HSN of inward supplies would be required to be given. This is done to distinguish ITC on capital goods and/or input services out of total ITC.

The applicant is now required to mention HSN code which is mentioned on the inward invoices. In cases where supplier is not mandated to mention HSN/SAC code on invoice, the applicant need not mention HSN/SAC code in respect of such an inward supply.

Our Comment: This cumbersome modification is done with stated purpose to ensure that erroneous refund in relation to capital goods is not claimed by a zero-rated supplier who is supplying goods or services under LUT without payment of IGST.

3. Clarification respect of various measures announced by the Government for providing relief to the taxpayers in view of spread of Novel Corona Virus

(Circular No. 136/06/2020- GST dated 03rd April 2020)

This circular has been issued to clarify the due date extensions vide notification no. 30/2020-CT to 35/2020-CT.

Sl. No.	Issue	Clarification
1	What are the measures that have been specifically taken for taxpayers who have opted to pay tax under section 10 the CGST Act or those availing the option to pay tax under the notification No. 02/2019-CT(R)?	These class of taxpayers have been allowed to file these form as mentioned below: (a) CMP-08 for Q4 of 2019-20 - 07.07.2020 (b) GSTR-4 for FY 2019-20 - 15.07.2020 (c) CMP-02 for FY 2020-21 - 30.06.2020 (d) ITC-03 for FY 2020-21 - 31.07.2020
2	Whether due date of furnishing FORM GSTR-3B for the months of February, March and April, 2020 has been extended?	The following has been clarified: (a) Nil rate of interest upto 15 days and 9% p.a. thereafter where turnover in previous FY is above Rs. 5 crores. (b) Nil rate of interest where turnover in previous FY is up to Rs. 5 crores. (c) Waiver of late fees for delay in filing GSTR-3B of these months These benefits are available only if returns are filed before the date as mentioned in the respective notifications.
3	What are the conditions attached for availing the reduced rate of interest for the months of February, March and April, 2020, for a registered person whose aggregate turnover in the preceding financial year is above Rs. 5 Crore?	The following has been clarified: (a) The due for filing GSTR-3B has not been changed. (b) Nil rate of interest upto 15 days and 9% p.a. thereafter provided return is filed on or before 24.06.2020. (c) For returns filed after 24.06.2020, interest at the rate of 18% p.a. would be applicable from

		the due date along with late fees.								
4	How to calculate the interest for late payment of tax for the months of February, March and April, 2020 for a registered person whose aggregate turnover in preceding financial year is above Rs. 5 Crore?	<p>The following has been clarified:</p> <table border="1"> <thead> <tr> <th>No of days of delay (date of filing of 3B)</th> <th>Interest</th> </tr> </thead> <tbody> <tr> <td>11 (02.05.2020)</td> <td>Nil</td> </tr> <tr> <td>61 (20.06.2020)</td> <td>Zero interest for 15 days + interest rate @9% p.a. for 46 days</td> </tr> <tr> <td>71 (30.06.2020)</td> <td>Interest rate @18% p.a. for 71 days [no benefit of reduced interest].</td> </tr> </tbody> </table>	No of days of delay (date of filing of 3B)	Interest	11 (02.05.2020)	Nil	61 (20.06.2020)	Zero interest for 15 days + interest rate @9% p.a. for 46 days	71 (30.06.2020)	Interest rate @18% p.a. for 71 days [no benefit of reduced interest].
No of days of delay (date of filing of 3B)	Interest									
11 (02.05.2020)	Nil									
61 (20.06.2020)	Zero interest for 15 days + interest rate @9% p.a. for 46 days									
71 (30.06.2020)	Interest rate @18% p.a. for 71 days [no benefit of reduced interest].									
5	What are the conditions attached for availing the NIL rate of interest for the months of February, March and April, 2020, for a registered person whose aggregate turnover in preceding financial year is up to Rs. 5 Crore?	<p>The following has been clarified:</p> <p>(a) The due for filing GSTR-3B has not been changed.</p> <p>(b) Return is filed on or before the date mentioned in 31/2020-CT.</p> <p>(c) For returns filed after the above date in (b), interest at the rate of 18% p.a. would be applicable from the due date along with late fees.</p>								
6	Whether the due date of furnishing the statement of outward supplies in FORM GSTR-1 under section 37 has been extended for the months of February, March and April 2020?	No, however late fee leviable under section 47 has been waived for delay in furnishing the statement of outward supplies in FORM GSTR-1 under Section 37, for the tax periods March, 2020, April 2020, May, 2020 and quarter ending 31st March 2020 if the same are furnished on or before the 30th June, 2020.								
7	Whether restriction under rule 36(4) of the CGST Rules would apply during the lockdown period?	The said condition shall not apply to ITC availed by the registered persons in the returns in GSTR-3B for the months of February to August, 2020, but that the said condition shall apply cumulatively for the said period and that the return in GSTR-								

		3B for the tax period of September, 2020 shall be furnished with cumulative adjustment of ITC for the said months in accordance rule 36(4).
8	What will be the status of e-way bills which have expired during the lockdown period?	The validity period of e-way bill that has been expired during 20th March to 15th April, 2020, has been extended till the 30th April, 2020.
9	What are the measures that have been specifically taken for taxpayers who are required to deduct tax at source under section 51, Input Service Distributors and Non-resident Taxable persons?	The said class of taxpayers have been allowed to furnish the respective returns for the months of March, 2020 to May, 2020 on or before the 30th June, 2020.
10	What are the measures that have been specifically taken for taxpayers who are required to collect tax at source under section 52?	The said class of taxpayers have been allowed to furnish the statement specified in section 52, for the months of March, 2020 to May, 2020 on or before the 30th June, 2020.
11	The time limit for compliance of some of the provisions of the CGST Act is falling during the lock-down period announced by the Government. What should the taxpayer do?	Except for few provisions covered in exclusion clause in notification 35/2020-CT, any time limit for completion or compliance of any action which falls during the period from the 20th March, 2020 to 29th June, 2020, and where completion or compliance of such action has not been made within such time, has been extended to 30th June, 2020.

Our Comment: The clarifications are in line with the notifications issued on 3rd April 2020 and are providing further clarity on specific aspects of the notifications issued on 3rd April 2020.