



Summary of notifications, circulars and RoD issued on June 28th and
29th, 2019

July'19

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Team Hiregange



1. Notifications extending due dates for furnishing returns

1.1 Extension of due date for furnishing return by a registered person required to deduct tax at source (**Notification No. 26/2019 – Central Tax dated 28.06.2019**)

The due date for furnishing the return in FORM GSTR-7 by a registered person required to deduct tax at source for the months from October 2018 to July 2019 has been extended till 31st August 2019.

H&A comments: The due date for filing Form GSTR-7 for Oct '18 to Mar '19 was already extended up to a certain period in the past vide notification Nos. 66/2018 dated 29th Nov '18, 8/2019 dated 8th Feb '19 and 18/2019 dated 10th Apr '19. However, the present notification seeks to extend the time limit for such return till 31st August 2019 for the period from Oct '18 to Jul '19. However, this could pose issues for the deductee as there would be delay in reflection of the tax deducted in their portal to be able to claim the same as a cash balance in their electronic cash ledger.

1.2 Due date of furnishing FORM GSTR 1 (**Notification No. 27/2019 & 28/2019 – Central Tax dated 28.06.2019**)

The due date for furnishing the return in FORM GSTR-1

- a) By a registered person having an aggregate turnover of up to 1.5 crore rupees in the preceding FY or the current FY for the months of July 2019 to September 2019 has been notified as 31st October 2019.
- b) By a registered person having an aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year for the months of July 2019 to September 2019 has been notified as 11th day of the month succeeding such month.

H&A comments: Every registered person, other than an Input Service Distributor, a non-resident taxable person and composition dealer or Tax deductor or Tax collector,



shall furnish electronically, in Form GSTR 1, the details of outward supplies of goods or services or both effected during a tax period on or before the 10th of the month succeeding the said tax period. Special Procedure has been prescribed for the registered persons having a turnover up to Rs. 1.5 crores in preceding FY or current FY for furnishing the same quarterly. Time limit of furnishing GSTR 1 for such person for July 2019 to September 2019 has been prescribed as 31st October 2019. For other persons who are required to file such Form, the due date has been extended to 11th of the month succeeding such month.

In all the notifications extending the due date for Form GSTR-1, it has been mentioned that the due date for furnishing details in Form GSTR-2 and GSTR-3 would be subsequently notified.

1.3 Due date of furnishing FORM GSTR 3B (Notification No. 29/2019 – Central Tax dated 28.06.2019)

The due date for furnishing the return in FORM GSTR-3B and for payment of taxes, interest, etc., by a registered person for the months of July 2019 to September 2019 has been specified as the 20th day of the month succeeding such month.

H&A comments: *Though it was expected that the new returns would be made available on optional basis for the period from Apr '19 the same is not ready and thereby a requirement to further notify the due dates for filing of returns and payment of taxes in Form GSTR-3B.*

1.4 Exemption for furnishing GSTR 9 and GSTR 9C by a supplier of OIDAR service provider (Notification No 30/2019 – Central Tax dated 28.06.2019)

Exemption from furnishing of Annual return in the FORM GSTR 9 under section 44(1) read with Rule 80(1) and Reconciliation Statement in the FORM GSTR 9C under section 44(2) read with Rule 80(3) has been granted for a person supplying online



information and database access or retrieval services from a place outside India to a person (other than a registered person) in India,.

H&A comments: This exemption is a welcome move for such service providers where it had become difficulty and inconvenient to comply with the requirements of the law.

1.5 Extension of the due date for furnishing of annual returns in FORM GSTR-9, FORM GSTR-9A and reconciliation statement in FORM GSTR-9C for the FY 2017-2018 (Order No. 6/2019 – Central Tax dated 28.06.2019)

As per section 44(1) of CGST Act 2017, every registered person, other than specified persons is required to file an annual return (GSTR 9) for FY 17-18 on or before 31st December 2018. The due date had been extended up to 31st March 2019 by Order 1/2018-Central Tax and then again to 30th June 2019 by Order No 3/2018. The due date is now further extended up to 31st August 2019.

H&A Comments: This is a welcome move considering the preparedness of the industry and the technical glitches of the portal.

1.6 Extension of the due date for furnishing declaration in Form ITC 04 (Notification No. 32/2019 – Central Tax dated 28.06.2019)

The due date for furnishing declaration in Form ITC 04 in respect of goods dispatched to a job worker or received from a job worker, for the period from July, 2017 to June, 2019 is extended till 31st August, 2019

H&A comments: As per Rule 45 details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter. The time limit for filing of the declaration in Form ITC 04 for period July 2017 to June 2019 has been extended till 31st August 2019. The multiple extensions clearly owes to the design of the Form ITC-04 which was amended almost a year back, however the amended modalities have still not be configured on the GSTN portal.



Summary of extension of time limit for various forms

Notification No / Order Ref No	Name of the Form	To be filed by	Period	Previous Due Date	Revised Due Date
Notification No. 26/2019 dated 28 th Jun '19	FORM GSTR 7	A registered person required to deduct tax at source	October 2018 to July 2019	10 days after the end of such month (refer note below)	31 st August 2019
Notification No. 32/2019 dated 28 th Jun '19	Form ITC 04	Principal sending goods on job work	July 2017 to June 2019	25th day of the end of the quarter	31 st August 2019
Removal of Difficulties Order No. 6/2019- Central Tax dated 28th June, 2019	Form GSTR 9	Every registered person other than Casual taxpayers, for Composition dealers it is Form GSTR 9A.	(F.Y.17 – 18) i.e. July,17 to Mar,18	30 th December,2018 which was subsequently extended till 30 th June,2019	31 st August 2019
	Form GSTR - 9A	Annual Return by composition Tax payers	(F.Y.17 – 18) i.e. July,17 to Mar,18	30th December,2018 which was subsequently extended till 30th June,2019	31 st August,2019
	Form GSTR 9C	Registered person having aggregate T/o of more 2 crores in preceding financial year	(F.Y.17 – 18) i.e. July,17 to Mar,18	30th December,2018 which was subsequently extended till 30th June,2019	31 st August,2019

Note:

GSTR-7 previous due dates (before issue of notification dated 28th Jun '19) were as under:



- a. For the period October to Dec'18 – 31st Jan 2019
- b. For the month Jan'2019 – 28th Feb '19
- c. For the month Mar'19 – 12th Apr '19

Summary of due dates notified of various forms (contd.)

Notification No / Order Ref No	Name of the Form	To be filed by	Period	Previous Due Date	Revised Due Date
Notification No. 27/2019 dated 28 th Jun'19	FORM GSTR 1	A registered person having aggregate turnover of up to 1.5 crore rupees in the preceding FY or the current FY	July 2019 to September 2019	-	31 st October 2019
Notification No. 28/2019 dated 28 th Jun'19	FORM GSTR 1	A registered person having aggregate turnover of more than 1.5 crore rupees in the preceding FY or the current FY	July 2019 to September 2019	10 th day of the month succeeding such month	11 th day of the month succeeding such month
Notification No. 29/2019 dated 28 th Jun'19	FORM GSTR 3B	Every registered person other than OIDAR or an ISD or a non-resident taxable person or composition dealer or Tax Deductor or Tax collector	July 2019 to September 2019	-	20 th day of the month succeeding such month



2. Amendments to CGST Rules, 2017 (Notification No. 31/2019-Central Tax dated 28.06.2019) and other amendments

2.1 Balance in the electronic cash ledger under a particular head to be available as set off against liability under any head - **Rule 87 of CGST Rules, 2017**

Any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger can be transferred to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09. The date from which such facility would be available would be notified subsequently. The Form PMT-09 has been notified.

H&A comments: This is a welcome facility which will enable the taxpayers to consider the cash ledger as one account whereby deposits can be made in the electronic cash ledger any head i.e. IGST, CGST, SGST, Cess or any other head, which can then be used to pay either IGST, CGST, SGST, UTGST or Cess. However, penalties and interests cannot be paid from the already existing cash balances under other heads.

2.2 Value of supply not to include Kerala Flood Cess— **Rule 32A of CGST Rules 2017**

For the intra-State supplies within Kerala on which Kerala Flood Cess (KFC) is sought to be levied under clause 14 of the Kerala Finance Bill, 2019, the value of such KFC need not be included in the value of supply for charging GST.

H&A comments: Government of Kerala has proslated Kerala Flood Cess (KFC) on the intra state supplies in the state of Kerala. The said Cess not being which is not a cess levied under the GST laws therefore, in order to remove the ambiguity for adding such 'cess' component to the taxable value for the purpose of GST, amendment has been brought in vide Rule 33A to avoid such anamoly to clarify that KFC would not form part of the taxable value for levy of GST i.e. CGST/SGST will not be charged on KFC component.



2.3 E-way bill related

a. Amendment in Rule 138 of CGST Rules, 2017 relating to E way Bill:

- (a) Multimodal shipment in which at least one leg involves transport by ship would be treated in line with “Over Dimensional Cargo” as per which the same would be excluded for determining validity of e way bill.

H&A Comments: Now goods transported through multimodal shipment in which at least one leg involves transport by ship would not be subject to e-way bill validity time lines giving a big relief to the industry due to the uncertainties in the transport timelines.

- (b) Provision has been inserted in the rules for extending the validity of the e-way bill within eight hours from the time of its expiry.

H&A comments: The E Way Bill portal functionality has now been incorporated in the rules.

b. Inclusion of persons opting for composition scheme under notification 2/2019-CT, for restriction on updating Part A of the e-way bill - Rule 138E of the CGST Rules, 2017

The persons opting to pay tax under composition scheme under Notification No 02/2019 – Central Tax (Rate) dated 07th March, 2019 at the rate of 6% would also not be allowed to furnish information in Part A of e-way bills if the statement in FORM GST CMP-08 is not filed for 2 consecutive quarters. The same criteria has been made applicable for the composition tax payers under section 10 as both these categories of composition tax payers are required to file returns in Form GSTR-4 only once for a year whereas payment of taxes is required to be done every quarter in Form GST CMP-08.

H&A Comments: The amendment is to include the new category of the composition taxpayers for the said restriction on furnishing details in e-way bills. Further, reference to returns has been updated to Form CMP-08 being the quarterly tax payment form of these composition tax payers.



2.4 Amendment to forms

- a. Form GSTR 4 is amended to remove amendment tables and add yearly summary of the inwards liable under reverse charge, tax rate-wise summary of inward, and outward supplies and summary of the self-assessed tax paid in Form CMP-08, as the said return is now required to be furnished only once in a year by 30th day of April succeeding the financial year.

H&A comments: Amending the forms to bring it in line with the requirement of filing the same only once in a year.

- b. Following amendments in the Form GSTR-9:

- In table 8C details of ITC on inward supplies received during 2017-18 but availed during April to March 2019 can be disclosed, as against the earlier description where ITC relating to April to September 2019 only was required to be disclosed.
- a. The header of Part V of the Form is now amended to allow disclosure of transactions relating to FY 2017-18 that are declared in returns the filed between April 2018 till March 2019. Instruction 7 is also amended accordingly.
 - b. In the instructions it has been mentioned that the FORM GSTR-2A figures auto-populated in table 8A would be as generated as on the 1st May 2019.

H&A comments: The clarifications given in the press release dated 4th June 2019 have now been given effect to by amendment in the form in the Rules

- c. Form DRC-03 has been amended to include 'annual return' and 'reconciliation statement' as one of the options for the cause for payment.
- d. Form REG-07 has been updated stipulating the Tax deductor at source or tax collector at source to disclose the bank details.

2.5 Provisions relating to exemption and refund with respect to supply made by DPS DFS to international passengers

- a. **Exemption to supplies made by the outlets at the departure area to international passengers and applicability of refund on taxes paid on goods**



procured -(Notification No. 10/2019- & 11/2019 Integrated Tax (Rate) dated 29.06.2019)

With effect from 1st Jul '19, the outward supplies made by the retail outlets which are established in the departure area, beyond the immigration counter of an international airport, to a person who is not a resident of India and who enters India for a stay of not more than 6 months for legitimate non-immigrant purposes (herein after referred as "outgoing international tourist"), would be exempt from the IGST (similar notifications issued under the Central, State and UT Acts).

Further, as per notification No. 10/2019 Integrated Tax (Rate) dated 29th June, 2019, in respect of the above supplies, such retail outlets would be eligible to claim refund of the GST paid on the inward supplies of such goods. The refund is subject to the procedure and conditions set out in rule 95A of CGST Rules, 2017

H&A comments: It is a benefit from all angles for such retail outlets established in an international airport, as the outward supplies are exempt from IGST liability and the IGST paid on inward supplies can be claimed as a refund.

b. Procedure for refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist - New rule 95A CGST Rules 2017

(a) This rule is inserted w.e.f. 1st Jul '19, as per which a retail outlet, established in the departure area of an international airport beyond the immigration counters, supplying indigenous goods to an outgoing international tourist leaving India, shall be eligible to claim refund of tax paid by it on inward supply of such goods.

"Outgoing international tourist" shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

(b) Applicant shall furnish Form GSTR FORM GST RFD- 10B on a monthly or quarterly basis, as the case may be, along with self certified compiled information of invoices along with concerned purchase invoice for the supply



made, either directly or through a facilitation centre notified by the Commissioner.

(c) Conditions for availing refund are:

(i) Retail outlet should have received goods from registered persons against tax invoice.

(ii) The said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;

(iii) Name and GSTIN of the retail outlet is mentioned in the tax invoice for the inward supply; and

(iv) Such other restrictions or conditions, as may be specified, are satisfied.

(d) The provisions of rule 92 shall apply as it is for the sanction and payment of refund under this rule.

(e) The Form RFD-10B has been notified.

H&A comments: After contradictory judgments of the High Courts on the issue of, whether supplies by outlets in the international departure terminal to an outgoing international passenger is a zero-rated supply, it has been considered appropriate that the same be treated as an exempt supply. However provision has been made for refund of the taxes paid on the procurement of the goods in respect of which the refund is available. Hence, the refund is not of the input tax credit as the same is not treated as a zero-rated supply, but the refund is of the taxes paid on the goods procured. There is noticeable incongruence in the amendment in as much as Section 15 of the IGST Act which calls for refund of IGST in case of tourist has not been notified as of yet. The circumventing procedure to govern the refund claim as above, is therefore susceptible to the vice of excessive delegation and invalidation of parent statute.



2.6 “Payment advice” substituted by “Payment order” and consolidated disbursement of the refund amount by Centre (including State taxes) - Rule 91, Rule 92 and Rule 94 of CGST Rules 2017

From a date to be notified later, the words “Payment advice” would be substituted by “Payment order”, in case of grant of provisional refund, order sanctioning refund, order sanctioning interest on delayed refunds. Further, a consolidated payment advice will be issued for the refund and the Central Government would disburse such refund amount. Further, Form RFD-05 has been amended accordingly.

H&A comments: This amendment will ensure that in cases the amount of refund includes State taxes also, the entire amount would be disbursed by the Centre as per the consolidated payment advice and subsequently adjusted with the State Government accounts to the extent of the State taxes. This will ensure disbursement of refunds in totality with one jurisdictional office in future which in many cases in the present are held up to the extent of the State taxes.

2.7 Relating to Anti-profiteering

a. Extension of time limit for examination of Anti Profiteering application by the Standing Committee (SC) constituted by Council and insertion of time limit for examination of Anti Profiteering application by State Level Screening Committee (SLSC) and the SC constituted by Council:

The time limit available to the SC to examine the accuracy and adequacy of the evidence provided in the application relating to anti-profiteering, being 2 months, can now be extended by the Authority to a further period of 1 month for reasons to be recorded in writing.

Also now time limit has been specified in the rules for the SLSC to forward the application with its recommendation to the Standing Committee, being 2 months from the date of receipt of application (which can be extended by the Authority to a further period of 1 month for reasons to be recorded in writing).

H&A comments: Provision for time limit extension up to one month has been provided to the SC for examination of the applications relating to Anti-



profiteering. Further the time limit for the SLSC has been mentioned in the rules which was earlier missing.

b. Extension of time limit for conduct of investigation of Anti Profiteering application referred by Standing Committee :

The Director General of Anti-profiteering is now given time limit of six months from date of receipt of reference from Standing Committee for completing the investigation in relation to Anti Profiteering, instead of the earlier three months, which can further be extended for period not exceeding three months for reasons to be recorded in writing as may be allowed by the Authority.

H&A comments: This will provide additional time for the DGAP to complete the investigation.

c. Order of the Anti Profiteering Authority: Rule 133 of the CGST Rules, 2017

(a) The Authority has now a time limit of 6 months from the receipt of the report of the DGAP to determine the question relating to profiteering. Further the Authority can get any clarification from the DGAP on the report submitted by it.

(b) Amendment has been made to allow the Authority demand along with Interest at the rate of 18% from the date of collection of the higher amount till the date of deposit of such amount, in case of profiteering including the amounts are credited to the Consumer Welfare Fund.

There is noticeable incongruence in the amendment in as much as Section 15 of the IGST Act which calls for refund of IGST in case of tourist has not been notified as of yet. The circumventing procedure to govern the refund claim as above, is therefore susceptible to the vice of excessive delegation and invalidation of parent statute.

(c) The Authority can now direct the DGAP to investigate or inquire into goods or services not covered in the application, with regard to the anti-profiteering application filed in respect of which the DGAP has submitted a



report of the Authority and such investigation or enquiry shall be considered as a new investigation or enquiry and all the provisions of rule 129 relating to proceedings for examining antiprofitteering shall apply.

Specific provisions have been inserted for the Authority to direct DGAP to conduct investigation and enquiry, which will further increase the scope of Anti Profiteering investigations to cover other goods not included in application/investigation report of Director General of Anti Profiteering. Before this amendment also, the authority in its orders has been directing DGAP to conduct the investigation in respect of cases not covered by the applications on the ground of widest powers. It would be intriguing as to how such amendment is treated for the past cases where scope of investigation has been extended without having the power to do so.

2.8 Amendment in rule relating to TDS and TCS acceptance by recipient to match the portal functionalities - Rule 66 and 67 of CGST Rules 2017

The details furnished by the deductor in FORM GSTR 7 and by e-commerce operator in FORM GSTR 8 shall be made available electronically to each of the deductees/suppliers on the common portal (and not in GSTR-2A) after validation.

H&A comments: *The above amounts deducted were earlier mentioned to be available in Form GSTR-2A for acceptance by the deductee or supplier for credit to the cash ledger. However, in the wake of Form GSTR-2A going to be dispensed with, the said reference has been removed and credit to the electronic cash ledger is allowed after the validation. This is the modus operandi at the portal till date and the amendment in the rule has been brought out to match the same.*

2.9 No immediate requirement for furnishing bank account details during registration under GST – Rule 10A of CGST Rules 2017.

- a) The bank details can be furnished after receiving GST registration i.e. registration certificate and GSTIN, but not later than 45 days from the date of grant of



- registration or the due date of furnishing return under section 39 i.e. Form GSTR-3B, whichever is earlier.
- b) This relaxation is not available for a person required to take registration as a deductor or a collector of tax under rule 12 of the Rules and person suo moto registered by the proper officer under rule 16 of the Rules.
 - c) Further, rule 21 has been amended to include the non-furnishing of such information as the reason for cancellation of registration.
 - d) Appropriate amendments have been done in the Forms REG-01, REG-07 and REG-12 in this regard.

H&A comments: Till now, the bank details shall be furnished at the time of applying for registration in form GST REG-01. Henceforth, Government has provided relaxation on furnishing the bank details at a later point of time but within 45 days or return filing date w.e.earlier. The amendment appears to take care of the practical nuisance where the banks had been refusing to open the current accounts of the newly registered business-es sole proprietors, AOPs, partnerships] in the absence of any existing registration certificates.

2.10 QR code to be incorporated in Invoice and Bill of Supply – Rule 46 & Rule 49 of CGST Rules 2017

From a date to be notified in future, every tax invoice and Bill of Supply shall have Quick Response (QR) code.

H&A comments: This provision may have been introduced in the wake of curbing tax evasion considering the number of cases of bogus ITC claims being reported.

3. Defferment of Applicability of Kerala Flood Cess (G.O.(P) No. 97/2019 taxes dated 29.06.2019)

As per the said GO issued by the Kerala State Government, the Kerala Flood Cess would be levied from 1st August, 2019.



4. Clarification issued

4.1 Clarifications relating to post sale discounts (Circular No. 105/24/2019 GST dated 28.06.2019)

Various clarifications relating to sales promotion schemes were issued vide circular no. 92/11/2019 dated 7th March 2019. In circular no. 105/24/2019 Central Tax dated 28th June 2019, further clarifications have been issued in this regard which is as follows:

Nature of discount	Treatment of discount under GST
Post-sale discount is given by the supplier of goods to the dealer without any further obligation or action required at the dealer's end.	Such a discount would not be included in the value of supply, in the hands of supplier of goods, subject to the fulfillment of provisions of section 15(3) of the CGST Act.
If the additional discount is given by the supplier of goods to the dealer is the post-sale incentive requiring the dealer to do some act like undertaking special sales drive, advertisement campaign, exhibition etc.,	It would be a separate transaction and the additional discount will be the consideration for undertaking such activity. It would be in relation to supply of service by the dealer to the supplier of goods and the dealer would be required to charge applicable GST on the value of such additional discount. This can be claimed as an input tax credit by the supplier.
An additional discount is given by the supplier of goods to the dealer to offer a special reduced price by the dealer to the customer to augment the sales volume.	Such additional discount would represent the consideration flowing from the supplier of goods to the dealer for the supply made by the dealer to the customer and would be liable to be added to the consideration payable by the customer and thereby liable to GST. The customer will not be able to claim ITC of the tax paid on such additional consideration as the said amount would not be paid to the supplier by the customer.



Recipient eligibility of ITC in case of commercial/Financial credit notes without reduction of GST portion.	Already clarified vide circular no. 92/11/ 2019-GST <i>ibid</i> that the supplier of goods can issue financial/commercial credit notes in such cases but he will not be eligible to reduce his original tax liability. The dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount as the same falls under the exception carved in the second proviso to sub-rule (1) of rule 37 of the CGST rules i.e. being an amount incurred by the recipient of the supply which the supplier was liable.
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H&A comments – The clarification regarding the eligibility of credit in the hands of the recipient of supply in cases where a financial credit note is issued, was the need of the hour in light of the Advance Ruling being to the contrary in the case of MRF Ltd, (2019 (23) G. S. T. L. 193 (A. A. R. - GST), [2019] 65 G.S.T.R. 11 (AAR). However, the reasoning does not seem to be appropriate as the said discount is not any amount that the recipient has incurred, which the supplier was originally liable.

The clarification that GST is liable on the discounts given with specific obligation for sales promotion or the passing of the reduced price to the customer is contrary to the settled legal position and not in accordance with the GST law. The amendment appears to be influenced by the recent investigations against the FMCG giants by the revenue authorities in the service tax context. In the sales tax/ vat regime, the courts have been of the view that incentives extended by the companies to dealers to promote one's own trade qualifies for deduction from sales turnover as discount Motor Industries Company [1983 53 STC 48 (SC). Having been decided as such it is inconceivable as to how such discounts are being contemplated as separate supplies by the Circular.

This controversial clarification can have far reaching consequences for industries whose products are market driven i.e. the cement industry, mobile industry, etc. which offer such discounts based on the market conditions being driven by demand, technology, competition, etc., This clarification could affect the discounts given by the supplier / manufacturer to compensate for the losses made by the dealer due to the market



conditions. It is advisable to represent before council to withdraw this clarification or challenge the courts.

4.2 Clarification on processing of refund applications wrongly mapped (circular No.104/23/2019- GST dated 28.06.2019)

In respect of processing of refund applications by a tax authority, some of the applications are mapped to a tax authority on the GSTN portal which is different from the authority to which the applicant was administratively assigned in terms of the actual distribution of taxpayers.

This have been happening due to the reason that administrative assignment of some of the tax payers to the Central or the State tax authority has not been updated on the GST portal as decided by the respective tax authorities, in pursuance of the guidelines issued by the GST Council Secretariat, vide Circular No. 01/2017 dated 20.09.2017, regarding division of taxpayer base between the Centre and States to ensure Single Interface under GST. However, due to some gap in the system, a tax payer administratively assigned to Central Tax authority was mapped to the State Tax authority on the GST portal.

Further, in this regard para 2(e) of Circular No. 79/53/2018-GST dated 31.12.2018 clarified that the proper officer of the State tax authority should electronically re-assign the said application to the designated jurisdictional proper officer. However, the said re-assignment facility is not yet available on the GST portal.

Hence the question stands as to who would process the refund application which has been mapped wrongly to a different tax authority.

In this regard, it is clarified that where reassignment of refund applications to the correct jurisdictional tax authority is not possible on the GST portal, the processing of



the refund claim should not be held up and it should be processed by the tax authority to whom the refund application has been electronically transferred by the GST portal wrongly.

After the processing of the refund application is complete, the refund processing authority may inform the GST portal about the incorrect mapping with a request to update it suitably on the common portal so that all subsequent refund applications are transferred to the correct jurisdictional tax authority.

H&A comments: The above clarification would ensure timely processing of refund claims where there has been a system error and the application has been mapped to a different tax authority. Further, it would also ensure that such error in mapping is avoided for subsequent applications by the same applicant as the officer is required to inform the GST portal for correcting the incorrect mapping.

4.3 Clarification on applicability of GST on Additional/ Penal interest (Circular No. 102/21/2019 - GST dated 28.06.2019)

Clarification has been issued regarding the applicability of GST on the additional / penal interest on account of delay in payment of EMI. This has been explained by the following 2 scenarios:

Scenario 1: The supplier while selling the product would himself gives an option to the buyer to pay the consideration in instalments. Further, the contract would have a clause for payment of additional/ penal interest for any delay in payment of such instalments. In some instances, the supplier would issue separate invoice for mobile and separate invoice for extending loan services i.e., for the interest and additional/ penal interest.

Clarification: It is clarified that in terms of section 15(2)(d) of the CGST Act, 2017 the amount of penal interest has to be included in the value of supply, being interest or late fee or penalty for delayed payment of consideration for the sale. Thereby, if the supply between the supplier and the recipient is taxable, then the penal interest would also be



taxable as it would be included in the value of the main supply. The manner of invoicing would not change the GST implication.

Scenario 2: The supplier would sell the product to the recipient. The recipient would have an option to avail facility of loan from a 3rd party. The 3rd party would charge some interest and additional/ penal interest for any delay in payment.

Clarification: It is clarified that for the purpose of transaction between the supplier and the recipient, GST should be levied on the value charged by the supplier from the recipient. The transaction between the 3rd party and the recipient would be covered under Sl. no 27 of notification 12/2017-CT(R) *“services by way of (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services)”*, being in the nature of interest and hence exempt.

It is further clarified that such penal interest would not fall under the ambit of entry 5(e) of Schedule II of the CGST Act, 2017 i.e., *“agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act”*. However, any service fee/ charges or any other charges would not qualify to be interest as defined in the above mentioned notification and accordingly it would not be exempt from the levy of GST.

H&A comments: *Earlier an FAQ was issued relating to the Banking, Insurance and Stock Broking sector where it was clarified in query No. 45 that interest charged for default in payment for any supply that is liable to GST would also be liable to GST. On similar lines it has been clarified here that the penal interest that is charged by the supplier of the goods is in respect of the supply made and hence the same would be liable to GST as the original supply, whereas the penal interest charged for the loan or facility would be exempt. However, it is to be noted that in the first scenario where the EMI facility is provided by the supplier, if the transaction can be treated as 2 separate transactions i.e.*



supply of goods and extending finance facility, then the penal interest charged on such finance charges i.e. interest could be kept out of the ambit of GST being late charges collected on an exempt supply.

With respect to the 2nd scenario, the Gujarat AAR in Shreenath Polyplast Pvt. Ltd. 2018-TIOL-26-AAR-GST, had also accorded a view that interest facility accorded by a third party [del credere agent] is in the nature of interest and therefore exempt from GST. However the Appellate Authority for Advance Ruling had reversed the ruling on the ground that such an interpretation would make Section 15 (2) (d) otiose. The clarification as above has restored the position back to the original one, wherein the interest portion charged by a 3rd person has been accorded exemption.

4.4 Clarifications Regarding Place of supply (Circular No. 103/22/2019- GST dated 28.06.2019)

Determination of place of supply in case services provided by ports

The port authorities provide various services in relation to cargo handling. Such services include haulage of wagons, loading and unloading of wagons, shipment/loading on vessel etc. It has been clarified that the place of supply for such services would be determined as per the residuary provision under section 12 and 13 of the IGST Act i.e. as per sub clause 2 thereto and would not be as per section 12(3) of IGST Act, since the services are not related to an immovable property. Hence following would be the place of supply for cargo handling services provided by the ports to clients.

Situation	Section	Place of Supply
Location of supplier and location of recipient is in India	12 (2)	Registered recipient- Location of such recipient Unregistered recipient- Location of recipient if address is available Location of supplier if address of recipient is unavailable
Location of supplier or location of recipient is outside India	13(2)	Location of recipient if available Location of the supplier, if the location of recipient is unavailable



Determination of place of supply for activities performed on unpolished diamonds which are temporarily imported into India

Cutting and polishing activity are performed on the diamonds temporarily imported into India, which are not put to any use in India. It has been clarified that the place of supply for such services would not be determined as per section 13 (3)(a) of the IGST Act, as the second proviso to the said section creates an exception for services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India. Hence the place of supply for such services would be determined in terms of section 13(2) of the said Act, i.e. the location of recipient if it is available, and location of supplier if the location of recipient is unavailable.

H&A comments - Since the place of supply for such services performed on unpolished diamonds would be out of India where the location of the recipient is known, it would be an export of service, provided other export conditions are satisfied.

4.5 Clarification on Refund of tax paid on inward supplies when supplied to tourist against foreign currency by DFS or DPS (Circular No.106/25/2019-GST dated 29.06.2019)

The sale of indigenous goods procured from domestic market by Duty Free Stores (DFS) or Duty Paid Stores (DPS) to an outgoing international tourist (eligible passenger i.e. to a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes) is a “supply” under GST and is subject to levy of IGST but exempted vide notification No. 11/2019-Integrated Tax (Rate) and 01/2019-Compensation Cess (Rate) and corresponding notifications under the State and UT GST laws. Therefore, retail outlets will supply such indigenous goods without collecting any taxes from the eligible passengers. They would be entitled to claim refund of CGST, SGST, IGST and Compensation Cess paid by them on inward supplies of indigenous goods when supplied to eligible passengers.

It is to be noted that the above is not a refund of the ITC on the procurements for the reason that the said supply is exempt thereby no ITC is eligible. However, a refund mechanism is provided to claim refund of the taxes paid on the goods which would not be available for the services, effectively making the supplies zero rated. To expedite the



processing of the above refund claims, the conditions, manner and procedure for filing and processing of such refund claims is provided below.

Basic conditions:

1. The retail outlet should be registered under GST.
2. Such retail outlets should be established at departure area of the international airport beyond immigration counters.
3. The supply to eligible passengers is exempted from levy and hence input tax credit of taxes paid on inward supply of goods should be reversed in accordance the Rule 42 and 43 of the CGST Rules, 2017.

Manner and procedure for filing refund application:

1. The refund application should be filed with jurisdictional Central/ State tax authority only.
2. The records with respect to duty paid indigenous goods brought to the retail outlets and their supplies to eligible passengers should be maintained as per Annexure A in electronic form (format available in the circular).
3. Refund would be granted based on invoices of the inward supplies of indigenous goods and not based on accumulated balance of ITC in credit ledger.
4. No refund of tax paid on input services, if any, will be granted to the retail outlets.
5. The following documents/ declarations would be required for claiming refund:
 - i. Details of the Passport (via Passport Reading Machine);
 - ii. Details of the Boarding Pass (via a barcode scanning reading device);
 - iii. A passenger declaration as per **Annexure B** (format available in the circular);
 - iv. A copy of the invoice clearly evidencing that no tax was charged from the eligible passenger by the retail outlet
6. The retail outlets will be required to prominently display a notice that international tourists are eligible for purchase of goods without payment of domestic taxes.



7. The retail outlets are required to apply for refund manually on a monthly or quarterly basis depending upon the frequency of furnishing of return in FORM GSTR-3B, in FORM GST RFD-10B until the online utility for filing the refund claim is made available on the GST portal.
8. The following documents need to be accompanied along with the refund application:
 - i. An undertaking that the indigenous goods have actually been received by such retail outlets;
 - ii. An undertaking that the indigenous goods have been sold to eligible passengers;
 - iii. Copies of FORM GSTR – 3B by the retail outlets for the period covered in the refund claim;
 - iv. Copies of FORM GSTR-2A for the period covered in the refund claim; and
 - v. Copies of the attested hard copies of the invoices on which refund is claimed but which are not reflected in FORM GSTR-2A.

Processing and sanction of refund claim:

1. On submission of the refund application, the proper officer should issue an acknowledgement manually within 15 days of refund application in FORM GSTR RFD-02.
2. In case of any deficiencies or any additional information is required, the same should be communicated by issuing a deficiency memo manually in FORM GST RFD-03 by the proper officer within 15 days of the receipt of the refund application. Only one deficiency memo should be issued against one refund application which is complete in all respects.
3. The proper officer should perform the following activities:
 - (a) Validate the GSTIN details on the GST portal.
 - (b) Ascertain whether the return in FORM GSTR- 3B has been filed by the retail outlets.



- (c) Scrutinize the details contained in FORM RFD-10B, FORM GSTR-3B and FORM GSTR-2A.
4. The proper officer may rely upon FORM GSTR-2A as an evidence of the account of the supply received by them. Officers are advised not to call for hard copies of invoices or details contained in Annexure A. Hard copies of only those invoices of inward supplies should be submitted that have not been reflected in FORM GSTR-2A.
 5. The proper officer shall issue the refund order manually in FORM GST RFD-06 along with the manual payment advice in FORM GST RFD-05 for each head i.e., CGST/SGST/UTGST/IGST/Compensation Cess. A signed copy of the sanction order shall be sent to the PAO for disbursement of the said amount.
 6. Where any refund has been made in respect of an invoice without the tax having been paid to the Government by the supplier of such goods or where the supply of such goods was not made to an eligible passenger, such amount refunded shall be recovered along with interest in terms of section 73 or section 74 of the CGST Act, as the case may be.
 7. The payment of the sanctioned refund amount in relation to CGST/ IGST/ Compensation Cess shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to SGST/ UTGST shall be made by the State tax/Union Territory tax authority.
 8. The refund order issued by the proper officer of Central Tax is duly communicated to the concerned counter-part tax authority within seven days for the purpose of disbursement of the remaining sanctioned refund amount. The procedure outlined in para 6.0 of Circular No.24/24/2017-GST dated 21st December 2017 should be followed by the PO in this regard i.e. appointing a nodal officer for communication between the Central and the State officers for the disbursement of the refund sanctioned.



The above scheme would be applicable from 01.07.2019 and would be applicable in respect of all supplies made to eligible passengers after the said date. Refund of taxes paid on inward supplies of indigenous goods received by them even prior to 01.07.2019 as long as all the conditions laid down in Rule 95A of the CGST Rules and conditions discussed above are fulfilled.

H&A comments: *As on date there are contradictory decisions of the High Courts whether the supply of goods by the outlets in the departure terminal of international flights would be a zero-rated supply or not. In the midst of this notifications and clarifications are being issued that the sale made by such outlets to the eligible passengers is an exempt supply with the option of refund of the tax paid on the procurement of the goods.*

A similar refund claim mechanism is being successfully operated by foreign jurisdictions such as Singapore and Malaysia. The adventurous reform will have to first face the technological challenges of GSTN portal, before being categorized as success. Baring the legal validity of the same, it is to be noted that the above stated procedure could, instead of being a relief to the DFS or DPS, be a burden which would require mapping of goods procurement invoices to the sales made to eligible passengers which would not be possible on a one on one basis and the law has also not provided the manner of ascertaining the same. Hence the outlet will have to adopt reasonable basis to ascertain the same and apply for refund.

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Special thanks to CA Vishal Jain for penning this article. For any further queries/comments please write to vishal@hiregnage.com.

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