



Indirect Tax Update

Summary of Notifications and Circulars issued from
18th to 23rd March 2020

Key Highlights:

- ✓ Extension of due dates
- ✓ E-invoicing
- ✓ Dynamic QR code
- ✓ Amendment to CGST Rules
- ✓ Aadhar for registration
- ✓ Special procedure for IRP/RP
- ✓ Other clarifications

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Notifications:

1. Special procedure for taxpayers in Dadra and Nagar Haveli and Daman and Diu consequent to the merger of the two Union territories:

(Notification No. 10/2020- Central Tax dated 21st March 2020)

- For the persons registered in the erstwhile UT's Daman-Diu and Dadra-Nagar Haveli as on 25.01.2020, the tax period for which they need to file return for Jan 2020 would be from 01.01.2020 to 25.01.2020.
- The tax period for February 2020 would be from 26.01.2020 to 29.02.2020.
- Irrespective of the tax charged in the tax invoices and other documents from 26.01.2020 till transition date, pay appropriate applicable tax in the GSTR3B.
- The ITC in the erstwhile registration may be transferred to new registration number by following the procedure mentioned below;
 - Within 1 month of new registration, an intimation of credit transfer will be given to the jurisdictional tax officer of old as well as new registration.
 - The ITC shall be transferred on the basis of the balance in the electronic credit ledger upon filing of the return in the erstwhile UT of Daman and Diu, for the tax period immediately before the transition date.
 - The transfer of ITC shall be carried out through GSTR 3B for the tax period immediately before the transition date and the transferor GSTIN shall debit the said ITC from its electronic credit ledger in Table 4(B)(2) of FORM GSTR-3B and the transferee GSTIN shall credit the equal amount of ITC in its electronic credit ledger in Table 4(A)(5) of FORM GSTR-3B.
- The balance of Union territory taxes in electronic credit ledger of the said class of persons, whose principal place of business lies in the Union territory of Daman and Diu, as on the 25th day of January, 2020, shall be transferred as balance of Union territory tax in the electronic credit ledger.

H&A Comments- The above procedure would ensure that the credit is transferred to the new registration in the absence of any specific provision in the GST law. Further, the recipient of supplies upto the transition date could face issues where the supplier has not charged correct taxes in the invoice but paid correct taxes to the government.

2. Special procedure for corporate debtors undergoing the corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016

(Notification No. 11/2020 - Central Tax dated 21st March 2020)

In case of corporate debtors under IBC 2016, undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by IRP or RP, shall follow the following procedure from the date of appointment of such IRP/RP till the period they undergo the corporate insolvency resolution process:

i. Registration:

- a. Such IRP/RP should obtain new registration in all states where such corporate debtor was registered.
- b. IRP/RP and the corporate debtor would be treated as distinct persons.
- c. Registration should be obtained within 30 days from date of his/her appointment.
- d. IRP/RP appointed before the issue of this Notification should take new registration within 30 days by 20-Apr-2020.

ii. Return: The IRP/RP should file first return under section 40 from the date on which he becomes liable to registration till the date on which such registration had been granted.

iii. Input tax credit:

- a. IRP/RP in his first return would be eligible to avail ITC in respect of supplies received bearing the GSTIN of the corporate debtor subject to conditions of chapter V of the said Act and Rules except the provision of section 16(4) and Rule 36 of CGST rules, 2017.
- b. Registered persons receiving supplies from IRP/RP until he gets registered, would be eligible to avail ITC on invoices issued using the GSTIN of corporate debtor subject to conditions of chapter V of the said Act and Rules except the provision of Rule 36(4) of CGST rules, 2017.
- c. The corporate debtor would be eligible for refund of amount deposited in cash ledger from the date of appointment till date of registration by such IRP/RP.

Explanation: For the purpose of this notification, the term 'corporate debtor', 'corporate insolvency resolution professional', 'interim resolution professional', 'resolution professional', would have the same meaning as assigned to them in the IBC, 2016.

H&A Comments- The above procedure have increased the compliance for the IRP/RP as he would now be required to obtain equal number of registrations, file returns, issue invoices, etc.

Further, it would also add on to the compliance cost which may further reduce the amounts available for distribution.

3. Waiving of the requirement for furnishing FORM GSTR-01 for 2019-20 for the taxpayers who could not opt for availing the option of special composition scheme under Notification no. 02/2019 – CT (R).

(Notification No. 12/2020- Central Tax dated 21st March 2020)

Persons who opted for payment of tax in terms of notification 2/2019-CT(R) i.e., composition scheme for service provider, instead of furnishing the statement containing the details of payment of self-assessed tax in FORM GST CMP-08 for the FY 2019-20 as specified in Notification no. 21/2019-CT, had furnished return in FORM GSTR-3B in the financial year 2019-20. Relaxation has been provided to such taxpayers would as they would not be required to furnish FORM GSTR-01 or FORM GST CMP-08 for all tax periods in FY 2019-20.

H&A Comments- This is a beneficial to the service providers who had opted to pay GST in terms of notification 2/2019-CT(R) and filed GSTR-3B for payment of taxes in the absence of any specific clarification for payment of taxes.

4. Exempts certain class of registered persons from issuing e-invoices and date for implementation of e-invoicing extended to 01.10.2020.

(Notification No. 13/2020-Central Tax dated 21st March 2020)

- Insurance company, banking company, financial institution, non-banking financial institution, GTA, supplier of passenger transportation service, supplier of services by way of admission to exhibition of cinematograph films in multiplex screens have been exempted from issuing e-invoices.
- The provisions of E-invoicing would be effective from 01.10.2020 instead of 01.04.2020.

H&A Comments- This was expected as the IT infrastructure is not yet ready for implementation of these provisions. Further, to allow ease of doing business and keeping in mind certain unorganised sectors, certain businesses have been exempted from the e-invoicing provisions.

5. Exempts certain class of registered persons from capturing dynamic QR code and date for implementation of QR Code to be extended to 01.10.2020.

(Notification No. 14/2020-Central Tax dated 21st March 2020)

- Insurance company, banking company, financial institution, non-banking financial institution, GTA, supplier of passenger transportation service, supplier of services by way of admission to exhibition of cinematograph films in multiplex screens have been exempted from capturing dynamic QR code.
- Where such registered person makes a Dynamic QR code available to the recipient through a digital display, such B2C invoice issued by such registered person containing cross-reference of the payment using a Dynamic QR code, shall be deemed to be having QR code.
- The provisions of capturing of dynamic QR Code would be effective from 01.10.2020 instead of 01.04.2020.

H&A Comments- This was expected as the IT infrastructure is not yet ready for implementation of these provisions. Further, to allow ease of doing business and keeping in mind certain unorganised sectors, certain businesses have been exempted from the e-invoicing provisions.

6. Extension of time limit for furnishing of the annual return specified under section 44 of the CGST Act, 2017 for the financial year 2018-2019 till 30.06.2020.

(Notification no.15/2020- Central Tax dated 23rd March 2020)

Due date for filing Annual Return (GSTR-9) and Reconciliation Statement (GSTR-9C) for FY 2018-19 has been extended till 30th June 2020 from the earlier date of 31st March 2020.

H&A Comments- This was expected due to the increased measures of the government to reduce the impact of the pandemic disease spreading across the globe.

7. Amendment to CGST Rules

(Notification No.16/2020-Central Tax dated 23rd March 2020)

a) Registration:

- Authentication of Aadhar number is mandatory for grant of registration w.e.f. 01.04.2020.
[Rule 8(4A)]

- Where a person fails to comply with the above Rule 8(4A), other than those covered by exclusion in section 25(6D) of the CGST Act, such person would be granted registration only after physical verification of the principle place of business in the presence of the said person in terms of Rule 25, but not later than 60 days from the date of application. Consequent amendment is done in Rule 25. [Proviso to Rule 9(1) and Rule 25]

H&A Comments- The Aadhar details captures at the time of registration would enable the government to have access to huge information and hence the businesses should ensure compliance to avoid interventions from the revenue.

b) Input tax credit:

- The validity of useful life of capital goods would now extend upto 5 years. Earlier it provided that the useful life of the capital good would be taken as 5 years. [Rule 43(c)]
- Where a capital good was earlier used for non-business purpose or exclusively for effecting exempt supplies is subsequently used for taxable and non-taxable/personal purpose, the ITC of such capital goods would be credited to the e-credit ledger and the ineligible credit attributable to the period during which such capital goods was used exclusively for non-taxable/ personal purpose would be calculated at 5% points for each quarter or part of the quarter should be reversed in the month in which the ITC of such capital goods is availed.[Rule 43(c)]
- Where a capital good was earlier used exclusively for taxable supplies is subsequently used for taxable and non-taxable/personal purpose, the ITC claimed in respect of such capital goods would be added to the common credit. [Rule 43(d)]
- It has been clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.[Explanation to Rule 43(e)]
- Clause (f) of Rule 43 has been omitted as the consolidation of all the commonly used capital goods credit would be done under Rule 43(c).

H&A Comments- Changes are made in computation of the eligible ITC pertaining to capital goods used commonly for taxable and exempt supplies/ personal use to make it more clearer.

c) Annual Return:

- The aggregate turnover limit for the purpose of GST audit and GSTR-9C has been increased to Rs. 5 Crores from Rs. 2 Crores for the FY 2018-19. [Proviso to Rule 80(3)]

H&A Comments- This is a welcome change as most of the business would not be required to get the books audited in terms of the CGST Act. This would reduce the compliance cost of the assessee. This would further mean that all the errors and omissions have to be rectified in GSTR-9.

d) Payment of taxes:

- In case of application for refund of any amount paid as tax wrongly or paid in excess and such tax is paid by debiting the e-credit ledger, then such amount if admissible would be re-credited to the e-credit ledger by the proper officer by an order made in FORM GST PMT-03. [Rule 86(4A)]

H&A Comments- The above provision would ensure irregular claim of refund of amount paid as tax wrongly or paid in excess and in order to en-cash the credits.

e) Refund:

- The meaning of “Turnover of zero-rated supply of goods” has been changed and means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both; . [Rule 89(4)]
- Refunds other than zero-rated or deemed export would be sanctioned in proportion to the amount debited from e-cash and e-credit ledger. [Rule 92(1A)]

H&A Comments- This would certainly restrict the amount of refund which could be claimed by the supplier of zero-rated supplies. This would result in a certain portion of credit to remain accumulated which would indirectly add on to the cost and thereby these supplies would actually not remain zero-rated due to the above amendment. The law should not drive the price that an exporter should charge for the supplies done by him.

f) Restriction on supply with payment of IGST

- In case of deemed export or merchant exporter, the benefit of notifications mentioned therein shall not be considered to have been availed only where IGST and Compensation Cess on inputs has been paid and has availed exemption of only BCD. [Explanation to Rule 96(10)].

H&A Comments- This is a welcome amendment and in line with our recommendation. Further, an explanation has retrospective effect and therefore the above explanation should be read as if it was inserted on 1.7.2017.

g) Non-realisation of export proceeds in case of export of goods – Rule 96B

- Where a person has claimed refund of unutilised ITC or IGST paid on exports in relation to export of goods, such amount received as refund should be paid back to the extent of non-realisation within 30 days of such period/extended period along with interest. Recovery under section 73 or 74 could be claimed in case of failure to pay back. Undertaking of the same should be given in FORM GST RFD-01.
- The above would not be applicable where the RBI writes off the requirement of realisation of sale proceeds on merits.
- Where the sale proceeds are realised subsequent to payment of refunded amount to the government, such amount could be re-claimed as refund by producing evidence about realisation within 3 months from the date of realisation. However, the realisation should be within the extended period as permitted by the RBI.

H&A Comments- This above restriction of realisation of proceeds is introduced through the rules however there is no restriction in the CGST Act and hence this provision is expected to be struck down unless there is an amendment in the Act to give effect to the above restriction. However it seems to be a measure to ensure realisation of FOREX to increase the FOREX reserve of the country.

h) Inspection, search and seizure

- The power to dispose the seized goods or things is now given to the proper officer. Earlier it could be done only by the Commissioner. [Rule 141(2)]

H&A Comments- The proper officer now has the powers to directly decide to dispose the goods without taking any approval from the Commissioner. It is expected that the proper officer diligently performs these duties.

8. Exemption from Aadhar authentication to certain classes of persons.

(Notification No. 17/2020-Central Tax dated 23rd March 2020)

Aadhar authentication for the purpose of registration under GST would not apply to a person who is not a citizen of India or to a class of persons other than the following class of persons namely –

- a. Individual
- b. Authorized signatory of all types
- c. Managing and Authorized partner and
- d. Karta and a Hindu undivided family.

The above is effective from 01-04-2020

H&A Comments- The above notification seems to be clarificatory providing the people who would be required to furnish the Aadhar details at the time of obtaining registration. The others anyway cannot obtain Aadhar in India.

9. Notification on the date from which an individual shall undergo authentication, of Aadhar number in order to be eligible for registration.

(Notification No. 18/2020 dated 23rd March 2020)

An individual should undergo authentication of Aadhar no. in order to be eligible for registration with effect from 1st April 2020. However, if Aadhar no. is not assigned to any individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9.

H&A Comments- The above notification allows an individual to obtain registration even if he does not have Aadhar no. based on alternate means. This is a good measure to ensure that Aadhar does not come in the way of business.

10. Specifying the class of persons, other than individuals who shall undergo authentication, of Aadhar number in order to be eligible for registration.

(Notification No. 19/2020 dated 23rd March 2020)

The following persons would be required to undergo authentication of Aadhar number, as specified in Rule 8, in order to be eligible for registration under GST namely:

- a. Authorized signatory of all types.
- b. Managing and Authorised partners of a partnership firm and
- c. Karta of a Hindu undivided family.

However, if Aadhar no. is not assigned to the above persons, they shall be offered alternate and viable means of identification in the manner specified in rule 9.

H&A Comments- The above notification allows the specified persons to obtain registration even if they do not have Aadhar no. based on alternate means. This is a good measure to ensure that Aadhar does not come in the way of business.

11. Summary of Prescription or Extension of Time Limit of Various Forms

a) Prescribes due date for GSTR 1 and GSTR 3B for April 2020 to September 2020

Notification No	Name of the Form	To be filed by	Period	Revised Due Date
27/2020	FORM GSTR 1	A registered person having an aggregate turnover of up to 1.5 crore rupees in the preceding FY or the current FY	For the Quarter of April 2020 to June 2020	31st July 2020
			For the Quarter of July 2020 to September 2020	31st October 2020
28/2020	FORM GSTR 1	A registered person having an aggregate turnover of more than 1.5 crore rupees in the preceding FY or the current FY	For the months of April 2020 to September 2020	11th day of succeeding month
29/2020	FORM GSTR 3B	A registered person an aggregate turnover of above 5 crore rupees	For the month of April 2020	20th day of succeeding

		in the preceding FY	to September 2020	month
		A registered person having principal place of business in states in Category 1 having an aggregate turnover of up to 5 crore rupees in the preceding FY	For the month of April 2020 to September 2020	22nd day of succeeding month
		A registered person having principal place of business in states and UT in Category 2 having an aggregate turnover of up to 5 crore rupees in the preceding FY	For the month of April 2020 to September 2020	24th day of succeeding month

Category 1: 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.

Category 2: 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.

b) Extension of due date for a registered person whose principal place of business is in the erstwhile State of Jammu and Kashmir

Notification No	Name of the Form	To be filed by	Period	Previous Due Date	Revised Due Date
20/2020	FORM GSTR 7	A registered person required to deduct tax at source	1. July 2019 2. August 2019 - October 2019	1. 31 st Aug 2019 2. 10 th of subsequent month	24th March 2020
24/2020	FORM GSTR 1	A registered person having an aggregate	July-September,	31st October, 2019	24th March 2020

		turnover of up to 1.5 crore rupees in the preceding FY or the current FY	2019		
25/2020	FORM GSTR 3B	A registered person	October, 2019	20 th of subsequent month	24th March 2020
26/2020	FORM GSTR 3B	A registered person	July-September, 2019	20 th of subsequent month	24th March 2020

- c) **Extension of due date for a registered person whose principal place of business is in the Union territory of Jammu and Kashmir or the Union territory of Ladakh**

Notification No	Name of the Form	To be filed by	Period	Previous Date	Due Date	Revised Due Date
20/2020	FORM GSTR 7	A registered person required to deduct tax at source	For the month of November 2019 to February 2020	10th of subsequent month		24th March 2020
21/2020	FORM GSTR 1	A registered person having an aggregate turnover of up to 1.5 crore rupees in the preceding FY or the current FY	For the quarter of October to December 2019	31st January 2020		24th March 2020
22/2020	FORM GSTR 1	A registered person having an aggregate turnover of more than 1.5 crore rupees in the	For the month of October 2019	11th day of the month succeeding such month		24th March 2020

		preceding FY or the current FY			
22/2020	FORM GSTR 1	A registered person having an aggregate turnover of more than 1.5 crore rupees in the preceding FY or the current FY	For the months of November 2019 to February 2020	11th day of the month succeeding such month	24th March 2020
23/2020	FORM GSTR 1	A registered person having an aggregate turnover of more than 1.5 crore rupees in the preceding FY or the current FY	For the months of July 2019 to September 2019	11th day of the month succeeding such month	24th March 2020
25/2020	FORM GSTR 3B	A registered person	For the month of November 2019 to February 2020	20th of subsequent month	24th March 2020

Circulars:

12. Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal

(Circular No. 132/2/2020 dated 18th March 2020)

Issue: Wherein the issue has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority however the appellate tribunal has been not constituted.

Subject: Procedure to be followed in absence of appellate tribunal for appeal to be made under section 112 of the CGST Act, 2017.

Clarification: The following procedure should be followed

- a) **Order of adjudicating authority:** File appeal in terms of Section 107 i.e., to the appellate authority. If order has been passed by AC/DC, file appeal to the appellate authority who would not be an officer below the rank of JC. Further, where the order has been passed by Addl. C/JC, file appeal to the Commissioner (Appeal) appointed for the same.
- b) **Appeal to order passed under Section 107:** The appellate tribunal has not been formed and hence application cannot be made within 3 months from the date of order sought to be appealed. Therefore, in light of ROD order dated 3.12.2019, the appeal where order sought to be appealed is passed before formation of the tribunal, could be filed within 3 months from the date on which the president or the State President of the Appellate Tribunal enters office.

Course of action today: The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

H&A Comments- The more the delay in setting up of the Appellate Tribunal, the more time would be taken for concluding the cases i.e., existing and new ones. Thereby would take too much time for any case to be decided.

13. Clarification in respect of apportionment of ITC in case of business reorganization under Section 18(3) of the CGST Act r/w rule 41(1) of the CGST Rules

(Circular No. 133/3/2020 dated 23th March 2020)

This circular has provided clarification in relation to certain specific interpretation of issues in relation to Section 18(3) r/w rule 41(1) of the CGST Rules.

Issue 1: In case of demerger, whether the value of assets of the new units is to be considered at State level or at all India level?

Clarification: For the purpose of apportionment of ITC pursuant to a demerger under rule 41(1) of the CGST Rules, 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. This is considering the distinct person concept under GST.

Issue 2: Whether ITC-02 is required to be filed in all the States where it is registered?

Clarification: ITC-02 is required to be filed only in those States where both transferor and transferee are registered.

Issue 3: Whether the formula as provided in the proviso to Rule 41(1) of the CGST Rules could be applied for all business re-organisation as the proviso specifically mentions only “demerger”?

Clarification: Yes, the formula for apportionment of ITC, as prescribed under proviso to rule 41(1) 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.

Issue 4: Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/Cess?

Clarification: No, the ratio of value of assets 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). It is further clarified that the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.

Issue 5: How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORMGST ITC-02 by the transferor?

Clarification: 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. For example, the transferor can transfer the entire amount in IGST head subject to availability of sufficient credit in IGST credit ledger.

Issue 6: It is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.

Clarification: It has been clarified that a conjoint reading of section 18(3) of the CGST Act along with rule 41(1) 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.

Issue 7: Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?

Clarification: For the purpose of apportionment of ITC under rule 41(1) of the CGST Rules, the ratio of the value of assets should be taken as on the “appointed date of demerger” in light of Section 232(6) of the Companies Act, 2013. Such ratio has to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.

H&A Comments- The circular has tried to address the practical difficulty in computing various figures as required under the provisions in the absence of specific guidance in the provisions of the Act and rules.

14. Clarification in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016

(Circular No. 134/4/2020 dated 23th March 2020)

As per IBC, once an entity defaults certain threshold amount, Corporate Insolvency Resolution Process (hereafter referred to as “CIRP”) gets triggered and the management of such entity (Corporate Debtor) and its assets vest with an interim resolution professional (hereafter referred to as “IRP”) or resolution professional (hereafter referred to as “RP”). **It continues to run the business and operations** of the said entity as a going concern till the insolvency proceeding is over and an order is passed by the National Company Law Tribunal (hereinafter referred to as the “NCLT”).

In order to ensure uniformity in the implementation of the provisions in relation to IRP/RP as provided in notification no 11/2020-CT, the following clarification has been provided.

Issue 1: How are dues under GST for pre-CIRP period be dealt?

Clarification: The dues under GST for the pre-CIRP period would be dealt in accordance with the provisions of IBC. The dues will be treated as ‘operational debt’ and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC.

The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate debtor to file the claim before the NCLT

Further, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.

Issue 2: Should the GST registration of corporate debtor be cancelled?

Clarification: No, the registration should not be cancelled. The proper officer may suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.

Issue 3: Is IRP/RP liable to file returns of pre-CIRP period?

Clarification: No, in accordance with the provisions of IBC,2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date, therefore IRP/RP are not under an obligation to file returns of pre-CIRP period.

Issue 4: Should a new registration be taken by the corporate debtor during the CIRP period?

Clarification: The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within 30 days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020- Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP.

Issue 5: How to file First Return after obtaining new registration?

Clarification: The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period. The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.

Issue 6: How to avail ITC for invoices issued to the corporate debtor in case the IRP/RP has been appointed before issuance of notification No.11/2020- Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP?

Clarification: The said class of persons shall, in his first return, be eligible to avail ITC on invoices covering the supplies of goods or services, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the corporate debtor, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of section 16(4) of the CGST Act and rule 36(4) of the CGST Rules. **This exception is made only for the first return filed under section 40 of the CGST Act.**

Issue 7: How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?

Clarification: Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP/ RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail ITC on invoices issued using the GSTIN of the corporate debtor, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, except the provisions of rule 36(4) of the CGST Rules.

Issue 8: Some of the IRP/RPs would have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?

Clarification: Any amount deposited in the cash ledger by the IRP/RP, in the existing registration of the corporate debtor, from the date of appointment of IRP/ RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the corporate debtor under the head refund of cash ledger, even though the relevant FORM GSTR-3B/GSTR-1 are not filed for the said period. This instruction would override the instruction as provided in circular 125/44/2019 dated 18.11.2019.

H&A Comments- The circular has tried to clarify the issues that could arise in relation to notification 11/2020-CT(R). The compliance of the IRP/RP would increase in light of the notification and the circular issued in this regard.

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