



Indirect Tax Update

Summary of Notifications and Circulars issued on
9th and 10th June 2020

Key Highlights:

- ✓ Clarification - refund
- ✓ Clarification - director payments
- ✓ E-Way bill validity extension
- ✓ Other extensions considering Covid-19

Document Date: 12th June 2020

Hiregange & Associates
Chartered Accountants

| Bangalore | Mumbai | Hyderabad | Gurugram | Noida | Chennai |
| Pune | Visakhapatnam | Guwahati | Vijayawada |

Index:

1. Clarification on refund related issues.....	3
2. Clarification on levy of GST on Director's remuneration.....	3
3. Special procedure for taxpayers in Dadra and Nagar Haveli and Daman and Diu consequent to the merger of the two Union territories: ...	6
4. Extended period to pass refund order under Section 54(7) of the CGST Act.....	6
5. Extended validity of E-Way Bill	7

1. Clarification on refund related issues

(Circular No. 139/09/2020- GST dated 10th June 2020)

This circular provided the clarification on the issue relating to availability of invoice details in GSTR 2A for granting the refund.

Circular 135/05/2020-GST dated 31st March 2020 clarified that refund of unutilized ITC would be available only to the extent of details of invoices appearing in FORM GSTR-2A of the applicant. In the light of this clarification, various refund sanctioning authorities have rejected refund of accumulated ITC availed on imports, ISD invoices, RCM, etc stating that the details of said invoices are not reflected in FORM GSTR-2A of the applicant.

The government has clarified that the aforesaid circular i.e., 135/05/2020-GST does not in any way impact the refund of ITC availed in respect of imports, ISD invoices and inward RCM supplies. The refund of such ITC relating to imports, ISD invoices and inward RCM supplies would be available to the applicant.

H&A Comments- It would do well to recall that prior to the issuance of Circular No. 135/05/2020-GST dated 31st March 2020, refund was being granted even in respect of credit availed on the basis of invoices (not reflected in FORM GSTR-2A) which were uploaded by the applicant along with the refund application on the common portal. However, vide Circular No.135/05/2020 - GST dated the 31st March 2020, the refund related to these invoices has been restricted. However, this clarification is beneficial for the assessee to the extent the refund is relating to these specified credits. This was required to clear the confusions created by the field formation. Hope the department shall clear all the pending refunds on account of this issue.

2. Clarification on levy of GST on Director's remuneration

(Circular No. 140/10/2020- GST dated 10th June 2020)

The circular is issued to clarify the issue in respect of directors remuneration i.e., whether it would get covered under clause (a) of Schedule III of the CGST Act or whether the same would be liable to tax under RCM in the hands of the company.

The clarification is as follows:

- (a) **Independent Director:**

- As per the provisions of the Companies Act, 2013, the independent director should not have been an employee of the company. Therefore, an independent director is not an employee of the company.
- The remuneration paid to him cannot be said to be covered under the scope of Schedule III as there is no employer employee relationship.
- The company would be required to pay GST under reverse charge in terms of notification 13/2017-CT(R).

(b) Whole-time Director:

- In terms of definition of whole-time director under Companies Act 2013, WTD is defined in an inclusive manner, and thus he may be a person who is not an employee of the company.
- Where the WTD is an employee of the company, then the remuneration paid could get covered under Schedule III and consequently outside the ambit of GST.
- It is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

(c) Other Employee Directors:

- Where the tax has been deducted at source (TDS) on the remuneration paid to a director under section 192 of the Income Tax Act, 1961, the remuneration paid could get covered under Schedule III and consequently outside the ambit of GST.
- Where the tax has been deducted at source (TDS) on the remuneration paid to a director as *Fees for professional or Technical Services under section 194J* the remuneration paid to him is outside the scope of Schedule III and liable for GST under reverse charge in the hands of the company.

H&A Comment:

- This clarification seems to have been issued with the intention to clarify RCM implications on directors remuneration in the context of the rulings given in the case of Alcon Consulting Engineers (I) Pvt Ltd 2019 (030) GSTL 0678 AAT-GST and in the case of Clay Crafts India Pvt Ltd vide advance ruling no. RAJ/AAR/2019-20/33.
- The Authority of Advance Ruling under GST, Karnataka in case of Alcon Consulting Engineers (I) Pvt. Ltd. 2019 (030) GSTL 0678 A.A.R. - GST dated 25-09-2019, ruled that the remuneration

paid to the Director of the Applicant company is liable to tax under reverse charge mechanism under sub-section (3) of Section 9 in the hands of the Applicant company as it is covered under Entry No. 6 of Notification No. 13/2017-Central Tax (Rate), dated 28-6-2017. This ruling did not consider or examine Schedule III nor did examine the facts that if such director was appointed as employee or otherwise and hence it can be said that the ruling is short sighted.

- The second ruling by the Advance Ruling Authority for GST, Rajasthan in case of Clay Crafts India Pvt. Ltd., vide advance ruling no. RAJ/AAR/2019-20/33 dated 20-02-2020 also ruled that the consideration paid by the company to its directors will attract GST under reverse charge mechanism. This ruling just held that the employees are not directors without any reasoning and without considering various facts in the case as to terms of appointment of director, TDS and PF deduction etc. and this advance ruling is not a reasoned ruling.
- In our view, both the advance rulings have erred and missed the basic essence that the employment service is not subjected to GST whether such employment is that of a director or any other designation.
- However, the circular 140/10/2020-GST has failed to bring clarity on aspect that whole time director is employee of company and it has failed to differentiate between the nature of payments done to director i.e., the payment arising to director on account of his services in directors capacity and payment arising to him on account of any other services supplied in directors individual capacity such as renting of commercial premises to company done by him.
- In our considered view, reverse charge should only be applicable for payments arising to him on account of his services supplied in the capacity of director [other than in capacity as employee].
- In this context it would be important to analyse, whether the service of director of the company to the company would be service by an employee to the employer, in which case the same cannot be a supply and no GST levy either.
- The terms employee and employer are not defined under the GST Act and hence the same must be understood in common parlance and with the aid of other laws.
- Explanation to Section 62(1)(b) of the Companies Act, 2013 defines employee as under:
“Employee” means
 - a) a permanent employee of the company who has been working in India or outside India; or
 - b) a director of the company, whether a whole-time director or not but excluding an independent director; or c. an employee as defined in clauses (a) or (b) of a subsidiary, in India or outside India, or of a holding company of the company but does not include
 - i. an employee who is a promoter or a person belonging to the promoter group; or

- ii. a director who either himself or through his relative or through anybody corporate, directly or indirectly, holds more than ten percent of the outstanding equity shares of the company.
- From the above definition of the Companies Act, it is very clear that the other than the independent director all other directors either whole time or otherwise is considered as employee of the company. Section 149(6) defines the independent director to mean a director other than a managing director or a whole-time director or a nominee director. So, it is clear that the managing director, a whole-time director and a nominee director shall be employee of the company, and hence there is no question of GST levy either in the hands of the company or in the hands of the director
- It is suggested that the companies, must look at the terms of employment of the directors, whether it is the same in all respect with that of any employee and in such case, there shall not be GST liability. In case of any deviation or in case of independent director, GST would be liable in the hands of the company under reverse charge mechanism.

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

(Notification No. 45/2020- Central Tax dated 09th June 2020)

The special procedure for taxpayers in Dadra and Nagar Haveli and Daman and Diu as provided in notification 10/2020-CT dated 21st March 2020 was required to be followed up to 31st May 2020. The government has extended this date from 31st May 2020 to 31st July 2020.

H&A Comment: This extension is beneficial for the registered persons considering the COVID-19 situation as the additional time would ensure proper compliance.

4. Extended period to pass refund order under Section 54(7) of the CGST Act

(Notification No. 46/2020- Central Tax dated 09th June 2020)

Where a notice has been issued for rejection of refund claim and where the time limit for issuance of order in terms of such application falls during 20th March 2020 to 29th June 2020, then the time limit for such order has been extended to 15 days after the receipt of reply to the notice or 30th June 2020, whichever is later.

H&A Comment: This is a beneficial notification considering the COVID-19 situation to provide additional time to the registered person to respond to the notice of rejection of refund claim.

However, the situation is uncertain even for the period post 30th June 2020 and the government may have to look at the above again at the end of June 2020.

5. Extended validity of E-Way Bill

(Notification No. 47/2020- Central Tax dated 09th June 2020)

Where an e-way bill has been generated on or before the 24th March, 2020 and whose validity has expired on or after the 20th March, 2020, the validity period of such e-way bill shall be deemed to have been extended till the 30st day of June, 2020.

H&A Comment: This is also a beneficial notification in light of the COVID19 situation to provide additional time to the registered person to complete the movement of goods under the existing e-way bill as two e-way bills cannot be generated for a single invoice.

Head Office:

Bangalore: No.1010, II Floor, 26th Main, 4th 'T' Block, Jayanagar, Bangalore - 560 041 | Tel 080-26536404/05 +91 9845011210 | E-mail madhukar@hiregange.com

Branches:

Hyderabad: 4th Floor, West Block, Srida Anushka Pride, Opp. Ratnadeep Supermarket, Road Number 12, Banjara Hills, Hyderabad, Telangana - 500034 | Phone: 040-23318128 / 9908113795 | E-mail: sudhir@hiregange.com

NCR (Gurgaon): 509, Vipul Trade Centre, Sector 48, Sohana Road, Gurgaon, Haryana - 122 009 | Phone: 012-44634496 / 8510950400 | E-mail: ashish@hiregange.com

Visakhapatnam: D.No 8-1-112, Premier House, 2nd Floor, Vidyanagar, Opp. III Town Police Station, Pedda Waltair, Visakhapatnam-530 017 | Phone: 91-9989604111 | E-mail: anil@hiregange.com

Mumbai: 409, Filix, Opp. Asian Paints, LBS Marg, Bhandup West, Mumbai - 400 078 | Phone: 91-9867307715 | E-mail: vasant.bhat@hiregange.com

Pune: Rajyog Creations Apartment, Flat No. 5, IV Floor, Anand Park, Above HDFC Bank, Aundh, Pune-411 007 | Phone: 7680000205/ 020-41202013 | E-Mail: ravikumar@hiregange.com

Chennai: Fagun Chambers, Third Floor, No.26 Ethiraj Salai, Egmore, Chennai - 600 008 | Phone: 9962508380 / 044-43596509 | E-Mail: vikram@hiregange.com

Guwahati: 2A, 2nd Floor, Royal Silver Tower, Near Home Town Lachitnagar Main Road, Uluhari, Guwahati- 781007 | Phone: 7670087000 | E-Mail: mannu@hiregange.com

Noida: Skybox Business Center, Office No. B2 Basement C-22, C Block, Sector 65, Noida (UP) | Phone: 012-44634496 / 8510950400 | E-mail: ashish@hiregange.com

www.hiregange.com