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TAX WISE

Newsletter with a Difference

In this issue:

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From the editors desk

Dear readers

Hope you all are safe and sound in this tough times of pandemic COVID-19. We can understand that as each day passes it is becoming more and more difficult to cope up with the lockdown. In these times of enforced lockdown, we may sometimes lose hope and feel despair and pessimism slowly enveloping us. That is the time when we have to find a silver lining in this lockdown and treat it as a blessing in disguise. As Martin Luther King Jr said "*we must accept finite disappointment but never lose infinite hope*". The best way to use this lockdown period is to strengthen oneself and use this time to equip yourself with the knowledge, for which we do not find time during our routine work.

We present to you our monthly newsletter, which comprises of latest notifications, circulars and changes made during this lockdown period. Few very important decisions having far reaching consequences have also been pronounced and the same has also been discussed in this issue.

Hope you will enjoy reading it. Keep giving your feedback for improvements. Wishing all of you a good health. Stay healthy, stay happy.

Happy reading

VINEET BHATIA

Notification No. 37/2020 – Central Tax dated 28th April, 2020

Rule 87(13) of the CGST Rules was inserted vide Notification No. 31/2019 – Central Tax, dated 28th June, 2019, with effect from a date to be notified later. As per Rule 86 (13):-

> *87(13) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.*

Vide this present Notification No. 37/2020-Central Tax, the said provision i.e. transfer of credit from one head of cash ledger to another, through FORM GST PMT-09, has been notified and permitted w.e.f. 21.04.2020.

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

CGST Rules, 2017 has been further amended by this notification. The changes brought in the CGST Rules, 2017 are as under:

(i) Rule 26 has been amended and companies have also been allowed to file FORM GSTR-3B during the period from 21st April 2020 to 30th June 2020 by verifying through electronic verification code (EVC). This means the companies can now file returns in FORM GSTR-3B without digital signature.

(ii) A registered person who is required to furnish a Nil return in FORM GSTR-3B can furnish the said return by a short messaging service facility (SMS facility) from the registered mobile number based on OTP. For this purpose Rule 67 has been inserted.

Notification No. 39/2020–Central Tax dtd. 05-05-2020 and Circular No. 138/08/2020-GST dated 06-05- 2020

As per Notification No.11/2020- Central Tax, dated the 21st March, 2020, those registered persons who are corporate debtors under the provisions of the Insolvency and Bankruptcy Code 2016 (IBC), undergoing the Corporate Insolvency Resolution Process (CIRP) and the management of whose affairs have been taken by Interim Resolution Professional (IRP) or Resolution Professionals (RP), then they were required to follow the special procedure, from the date of the appointment of the IRP/RP.

The notification provided that such class of persons shall be treated as a distinct person of the corporate debtor and were liable to take a new registration in each of the States or Union territories where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP.

The notification further provided that if IRP/RP has been appointed prior to 21st March 2020, the IRP/RP was required to take registration within thirty days from the commencement of this notification i.e. the IRP/RP was required to take registration before 20th April, 2020. However due to lock down many of them could not apply and therefore Notification No.11/2020-Central Tax, as stated above, has been amended and **now RP/IRP can take registration upto 30th June, 2020.**

It has also been pointed out that certain class of corporate debtors shall not include those corporate debtors who were regularly filing their returns and has filed all their statements under section 37 (GSTR-1) and the returns under section 39 (GSTR-3B) for all the tax periods prior to the appointment of IRP/RP. Notification No.11 has been amended and now such corporate debtors are not required to take new registration through IRP/RP. A detailed circular no. 138 (discussed later) has also been issued in this regard.

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

By this notification e-way bill generated prior to 24th March, 2020 and which were expiring during the period 20th March, 2020 to 15th April, 2020, the validity period of such e-way bills shall be deemed to have been extended till the 31st May, 2020.

This means that all those cases where invoices were generated before 24th March, 2020 and e-way bills were also generated, but goods could not be dispatched physically due to lock down can now be sent on the basis of same invoice and same e-way bill, even if the validity of the e-way bill has expired.

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

By way of this notification the due date for furnishing annual return in Form GSTR-9 and Form GSTR-9C has specified under Section 44 of the CGST Act has been extended till 30th September, 2020.

Notification No.42/2020-Central Tax dated 5th May 2020

By this notification the due date for filing of FORM GSTR-3B for certain months for registered persons who are in the Union Territory of Jammu and Kashmir or Union Territory of Ladakh has been extended.

Circular No. 137/07/2020-GST dated 13th April, 2020

During COVID-19 period certain reliefs were announced by Government and the same has been explained in Circular No. 136/06/2020-GST dated 3rd April, 2020. However, due to COVID-19 a lot of service contract were getting cancelled, goods supplied were being returned or certain deadlines were expiring. By way of this circular it has been clarified by CBIC as under:

Sr. No.	Issues	Clarification
1	An advance is received by a supplier for a Service contract which subsequently got cancelled. The supplier has issued the invoice before supply of service and paid the GST thereon. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for a future event which got cancelled subsequently and for which invoice is issued before supply of service, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.
2	An advance is received by a supplier for a Service contract which got cancelled subsequently. The supplier has issued receipt voucher and paid the GST on such advance received. Whether he can claim refund of tax paid on advance or he is required to adjust his tax liability in his returns?	In case GST is paid by the supplier on advances received for an event which got cancelled subsequently and for which no invoice has been issued in terms of section 31 (2) of the CGST Act, he is required to issue a "refund voucher" in terms of section 31 (3) (e) of the CGST Act read with rule 51 of the CGST Rules. The taxpayer can apply for refund of GST paid on such advances by filing FORM GST RFD-01 under the category "Refund of excess payment of tax".
3	Goods supplied by a supplier under cover of a tax invoice are returned by the recipient. Whether he can claim refund of tax paid or is he required to adjust his tax liability in his returns?	In such a case where the goods supplied by a supplier are returned by the recipient and where tax invoice had been issued, the supplier is required to issue a "credit note" in terms of section 34 of the CGST Act. He shall declare the details of such credit notes in the return for the month during which such credit note has been issued. The tax liability shall be adjusted in the return subject to conditions of section 34 of the CGST Act. There is no need to file a separate refund claim in such a case. However, in cases where there is no output liability against which a credit note can be adjusted, registered persons may proceed to file a claim under "Excess payment of tax, if any" through FORM GST RFD-01.

4	Letter of Undertaking (LUT) furnished for the purposes of zero rated supplies as per provisions of section 16 of the Integrated Goods and Services Tax Act, 2017 read with rule 96A of the CGST Rules has expired on 31.03.2020. Whether a registered person can still make a zero-rated supply on such LUT and claim refund accordingly or does he have to make such supplies on payment of IGST and claim refund of such IGST?	Notification No. 37/2017-Central Tax, dated 04.10.2017, requires LUT to be furnished for a financial year. However, in terms of notification No. 35/2020 Central Tax dated 03.04.2020, where the requirement under the GST Law for furnishing of any report, document, return, statement or such other record falls during between the period from 20.03.2020 to 29.06.2020, has been extended till 30.06.2020. Therefore, in terms of Notification No. 35/2020-Central Tax, time limit for filing of LUT for the year 2020-21 shall stand extended to 30.06.2020 and the taxpayer can continue to make the supply without payment of tax under LUT provided that the FORM GST RFD-11 for 2020-21 is furnished on or before 30.06.2020. Taxpayers may quote the reference no of the LUT for the year 2019-20 in the relevant documents.
5	While making the payment to recipient, amount equivalent to one per cent was deducted as per the provisions of section 51 of Central Goods and Services Tax Act, 2017 i. e. Tax Deducted at Source (TDS). Whether the date of deposit of such payment has also been extended vide notification N. 35/2020-Central Tax dated 03.04.2020?	As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (3) of section 39 and section 51 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for furnishing of return in FORM GSTR-7 along with deposit of tax deducted for the said period has also been extended till 30.06.2020 and no interest under section 50 shall be leviable if tax deducted is deposited by 30.06.2020.
6.	As per section 54 (1), a person is required to make an application before expiry of two years from the relevant date. If in a particular case, date for making an application for refund expires on 31.03.2020, can such person make an application for refund before 29.07.2020?	As per notification No. 35/2020-Central Tax dated 03.04.2020, where the timeline for any compliance required as per sub-section (1) of section 54 of the Central Goods and Services Tax Act, 2017 falls during the period from 20.03.2020 to 29.06.2020, the same has been extended till 30.06.2020. Accordingly, the due date for filing an application for refund falling during the said period has also been extended till 30.06.2020.

Circular No. 138/07/2020-GST dated dated 6th May, 2020

Certain issues relating to IBC Code, 2016 and certain COVID related issues have been clarified by way of this circular. The Circular states as under:

ISSUES RELATED TO IBC, 2016		
Sr. No.	**Issue**	**Clarification**
1.	Notification No. 11/2020 – Central Tax dated 21.03.2020, issued under section 148 of the CGST Act provided that an IRP / CIRP is required to take a separate registration within 30 days of the issuance of the notification. It has been represented that **the IRP/RP are facing difficulty in obtaining registrations during the period of the lockdown and have requested to increase the time for obtaining registration from the present 30 days limit.**	Vide notification No. 39/2020- Central Tax, dated 05.05.2020, the time limit required for obtaining registration by the IRP/RP in terms of special procedure prescribed vide notification No. 11/2020 – Central Tax dated 21.03.2020 has been extended. Accordingly, IRP/RP shall now be required to obtain registration **within thirty days of the appointment of the IRP/RP or by 30th June, 2020, whichever is later.**
2.	The notification No. 11/2020– Central Tax dated 21.03.2020 specifies that the IRP/RP, in respect of a corporate debtor, has to take a new registration with effect from the date of appointment. Clarification has been sought whether IRP would be required to take a fresh registration even when they are complying with all the provisions of the GST Law under the registration of Corporate Debtor (earlier GSTIN) i.e. all the GSTR-3Bs have been filed by the Corporate debtor / IRP prior to the period of appointment of IRPs and they have not been defaulted in return filing.	**i.** The notification No. 11/2020– Central Tax dated 21.03.2020 was issued to devise a special procedure to overcome the requirement of sequential filing of FORM GSTR-3B under GST and to align it with the provisions of the IBC Act, 2016. The said notification has been amended vide notification No. 39/2020 - Central Tax, dated 05.05.2020 so as to specifically provide that corporate debtors who have not defaulted in furnishing the return under GST would not be required to obtain a separate registration with effect from the date of appointment of IRP/RP. **ii.** Accordingly, it is clarified that IRP/RP would not be required to take a fresh registration in those cases where statements in FORM GSTR-1 under section 37 and returns in FORM GSTR-3B under section 39 of the CGST Act, for all the tax periods prior to the appointment of IRP/RP, have been furnished under the registration of Corporate Debtor (earlier GSTIN).
3.	Another doubt has been raised that the present notification has used the terms IRP and RP interchangeably, and in cases where an appointed IRP is not ratified and a separate RP is appointed, whether the same new GSTIN shall be	**i.** In cases where the RP is not the same as IRP, or in cases where a different IRP/RP is appointed midway during the insolvency process, the change in the GST system may be carried out by an amendment in the registration form. Changing the authorized signatory is a non- core amendment and does not require approval of tax officer. However, if the previous authorized

	transferred from the IRP to RP, or both will need to take fresh registration.	signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as Primary authorized signatory. **ii.** The new registration by IRP/RP shall be required only once, and in case of any change in IRP/RP after initial appointment under IBC, it would be deemed to be change of authorized signatory and it would not be considered as a distinct person on every such change after initial appointment. Accordingly, it is clarified that such a change would need only change of authorized signatory which can be done by the authorized signatory of the Company who can add IRP /RP as new authorized signatory or failing that it can be added by the concerned jurisdictional officer on request by IRP/RP.
OTHER COVID RELATED REPRESENTATIONS		
4.	As per notification no. 40/2017-Central Tax (Rate) dated 23.10.2017, a registered supplier is allowed to supply the goods to a registered recipient (merchant exporter) at 0.1% provided, inter-alia, that the merchant exporter exports the goods within a period of ninety days from the date of issue of a tax invoice by the registered supplier. Request has been made to clarify the provision vis-à-vis the exemption provided vide notification no. 35/2020-Central Tax dated 03.04.2020.	i. Vide notification No. 35/2020-Central Tax dated 03.04.2020, time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020, where completion or compliance of such action has not been made within such time. ii. Notification no. 40/2017-Central Tax (Rate) dated 23.10.2017 was issued under powers conferred by section 11 of the CGST Act, 2017. The exemption provided in notification No. 35/2020-Central Tax dated 03.04.2020 is applicable for section 11 as well. iii. Accordingly, it is clarified that the said requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier gets extended to 30th June, 2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.
5.	Sub-rule (3) of that rule 45 of CGST Rules requires furnishing of FORM GST ITC-04 in respect of goods dispatched to a job worker or received from a job worker during a quarter on or before the 25th day of the month succeeding that quarter. Accordingly, the due date of filing of FORM GST ITC-04 for the quarter ending March, 2020 falls on 25.04.2020. Clarification has been sought as to whether the extension of	Time limit for compliance of any action by any person which falls during the period from 20.03.2020 to 29.06.2020 has been extended up to 30.06.2020 where completion or compliance of such action has not been made within such time. Accordingly, it is clarified that the due date of furnishing of FORM GST ITC-04 for the quarter ending March, 2020 stands extended up to 30.06.2020.

	time limit as provided in terms of notification No. 35/2020-Central Tax dated 03.04.2020 also covers furnishing of FORM GST ITC-04 for quarter ending March, 2020	

Judgement of Hon'ble Delhi High Court in the case of Brand Equity Treaties Limited & Ors vs. Union of India & Ors. (W.P.(C) 11040/2018)

Issue Involved

The common issue involved in all the four petitions was that the Petitioners were unable to claim transitional CENVAT credit and could not file TRAN-1 within prescribed period. It was stated by the Petitioners that they do not have any proof of technical glitches but still they were entitled to the CENVAT credit,

After detailed discussion the Hon'ble High Court followed its earlier orders in the case of **M/s SARE Realty Projects Pvt. Limited vs. Union of India** W.P.(C) 1300/2018, **M/s Bhargava Motors vs. Union of India** W.P.(C) 1280/2019, **M/s Kusum Enterprises Pvt. Limited vs. Union of India** W.P.(C) 7423/2019 (*all the above three cases were argued by the editor of this Newsletter*) & **M/s Blue Bird Pure Pvt. Limited vs. Union of India** 2019 SCC OnLine 9250. The Hon'ble Court stated that:

> The insertion of Sub-rule 1(A) and, thereafter, extensions being granted for filing of GST TRAN-1, notwithstanding the period envisaged under sub rule (1) of Rule 117, demonstrates that the respondents recognize the fact that the registered persons were not able to upload GST TRAN-1 due to technical difficulties on the common portal. This also substantiates that the period for filing the TRAN-1 is not considered – either by the legislature, or the executive as sacrosanct or mandatory.

The Hon'ble Delhi High Court also followed the judgement in the case of ***A.B. Pal Electricals vs Union of India*** **W.P.(C) 6537/2019** ***decided on 17th December, 2019*** . The Court further stated that

> The arbitrary classification, introduced by way of sub Rule (1A), restricting the benefit only to taxpayers whose cases are covered by "technical difficulties on common portal" subject to recommendations of the GST Council, is arbitrary, vague and unreasonable. What does the phrase "technical difficulty on the common portal" imply? There is no definition to this concept and the respondent seems to contend that it should be restricted only to "technical glitches on the common portal"

> We, however, do not concur with this understanding. "Technical difficulty" is too broad a term and cannot have a narrow interpretation, or application. Further, technical difficulties cannot be restricted only to a difficulty faced by or on the part of the respondent. It would include within its purview any such technical difficulties faced by the taxpayers as well, which could also be a result of the respondent's follies.

The Hon'ble High Court held that

> The extremely narrow interpretation that the respondents seek to advance, of the concept of "technical difficulties", in order to avail the benefit of Sub Rule (1A), is contrary to the statutory mechanism built in the transitory provisions of the CGST Act.

The Court further stated that:

> Further, we are also of the view that the CENVAT credit which stood accrued and vested is the property of the assessee, and is a constitutional right under Article 300A of the Constitution. The same cannot be taken away merely by way of delegated legislation by framing rules, without there being any overarching provision in the GST Act.

The Court finally held:

> 22. We, therefore, have no hesitation in reading down the said provision [Rule 117] as being directory in nature, insofar as it prescribes the time-limit for transitioning of credit and therefore, the same would not result in the forfeiture of the rights, in case the credit is not availed within the period prescribed. This however, does not mean that the availing of CENVAT credit can be in perpetuity. Transitory provisions, as the word indicates, have to be given its due meaning. Transition from pre-GST Regime to GST Regime has not been smooth and therefore, what was reasonable in ideal circumstances is not in the current situation. In absence of any specific provisions under the Act, we would have to hold that in terms of the residuary provisions of the Limitation Act, the period of three years should be the guiding principle and thus a period of three years from the appointed date would be the maximum period for availing of such credit.

Editor's Comment:

In the opinion of the editor the judgement pronounced by the Hon'ble Delhi High Court has extensively and elaborately dealt with all the aspects of transitional credit. It enunciates the correct legal proposition. The judgement has rightly held the provision of Rule 117 to be directory in nature when the substantive law (i.e. section 140 of the CGST Act) did not prescribe a time limit in the statute. The Hon'ble High Court has rightly held that CENVAT credit being a right stood accrued and vested in the assessee as on the existing date and right to property cannot be taken away without the authority of law.

The readers are advised that if they have not taken or got a credit then they should immediately move into action and claim the credit before 30th June, 2020, because thereafter even as per this Judgement the period of three years prescribed under the Limitation Act would lapse.

For full Judgement Read here

Judgement of Hon'ble Delhi High Court in the case of Bharti Airtel Limited vs. Union of India (W.P.(C) 6345/2018)

Facts of the case:

That during the initial three months of introduction of GST i.e. July, August, September, 2017 the Petitioner could not claim its entire input tax credit since the automated system of GSTR-2, GSTR-2A and GSTR-3 was not enabled on the GST portal. The Petitioner in its GSTR-3B for these months recorded the ITC based on its estimate. As a result the Petitioner was compelled to discharge its tax liability in cash, although, actually ITC was available with it but was not reflected in the system on account of lack of data. . The petitioner sought a rectification of its earlier return and consequentially Petitioner sought a refund of approximately 930 crores of the cash tax during the period July, 2017 to September, 2017.

Circular No. 26/26/2017-GST states that Form GSTR-3B can be corrected only in the **month in which the errors were noticed.** According to Petitioner this was contrary to the statutory scheme of the CGST Act.

Issue:

Whether Rule 61(5) of the CGST Rules and Circular No. 26/26/2017-GST dated 29.12.2017 are ultra vires the provisions of the CGST Act, 2017 and contrary to Articles 14, 19 and 265 of the Constitution of India.

After discussing in detail the scheme of filing of return and the rectification scheme as envisaged by CGST Act, the Hon'ble Delhi High Court held:

> In short, the CGST Act contemplated a self-policing system under which the authenticity of the information submitted in the returns by registered person is not only auto-populated but is verified by the supplier and confirmed by the recipient in the same month. The statutory provisions, therefore, provided not just for a procedure but a right and a facility to a registered person by which it can be ensured that the ITC availed and returns can be corrected in the person is not visited with any adverse consequences for uploading incorrect data.

The Court further held that the Petitioner has a substantive right to rectify/adjust the ITC for the period to which it relates. The rectification/ adjustment mechanism for the months subsequent to when the errors are noticed is contrary to the scheme of the Act. The Respondents cannot defeat this statutory right of the Petitioner by putting in a fetter by way of the impugned circular.

The Court finally concluded and read down para 4 of the impugned Circular No. 26/26/2017-GST dated 29.12.2017 to the extent that it restricts the rectification of Form GSTR-3B in respect of the period in which the error has occurred.

For full Judgement Read here

AUTHORITY FOR ADVANCE RULING-KARNATAKA
In Re: T & D Electricals
KAR ADRG 18/2020

Facts of the case:

Applicant registered under GST as works contractor and wholesale supplier in Jaipur, Rajasthan has been awarded a contract by Shree cement Ltd., at Karnataka to be executed at Karnataka. It sought for a ruling as to whether he is to obtain a separate registration in Karnataka.

Held, in view of fact that applicant intends to supply goods or services or both from their principle place of business which is Rajasthan and they do not have any other fixed establishment other than principle place of business, there is no requirement for a separate registration in Karnataka for execution of contract.

The second question raised before AAR was that if goods were purchased from dealer in Rajasthan and billed to the applicant in Rajasthan but supplied directly to site at Karnataka then dealer in Rajasthan has to charge which tax i.e. SGST and CGST or IGST?

Held: In this situation the supplier i.e. dealer in Rajasthan and the recipient of goods i.e. applicant both are in state of Rajasthan and hence this will be a case in intra-state supply and the dealer in Rajasthan will charge CGST and SGST.

The next question related to a situation where the applicant purchased goods from a dealer in Karnataka and got it supplied to the site at Karnataka. The question raised was that the supplier in Karnataka was required to charge SGST and CGST or IGST?

It was held: In this situation the supplier i.e. dealer is situated in Karnataka and the recipient of goods i.e. the applicant was situated in state of Rajasthan and hence the impugned supply becomes inter-state supply, in terms of Section 7(1) of the IGST Act, 2017. Further the supply gets covered under Bill to – Ship to transaction, in terms of Section 10(1)(b) of the IGST Act, 2017. Thus IGST has to be charged by the dealer in the relevant invoice.

The last question was regarding the documents to be carried and e-way bills to be prepared.

The AAR declined to answer the last question being beyond the scope of advance ruling.

For Full Text Read here

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