GST 99

TAX TALK

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Editorial...

Inevitable nation-wide lockdown is still continuing. The painful fact is that we have to live with the virus till the effective remedies are developed. The Government is responding very slow as far as GST is concerned as it has to deal with the problems arising due to continuous lockdown.

Everybody is now looking for some more relaxation in the compliance dates because when these dates were announced, neither the public nor the government had thought that lockdown will persist so long; hoping the government will soon do the needful.

COVID-19 has disrupted normal functioning of department as well as appellate authorities, CBIC has issued instructions for conducting personal hearings in virtual mode. This will ensure continuity of the adjudication and appellate matters in this time of uncertainty and help reducing the backlog.

CBIC to provide liquidity to GST Taxpayers especially MSME Sectors during lockdown period. It has processed 29,230 applications for refund claims amounting to Rs.11,052 crores. This is a welcome move but at the same time, amendment in refund provision is creating hardship for the assessee looking for refund.

Further, due date for GSTR-9 & GSTR-9C for the financial year 2018-19 and E-Way Bill validity has also been extended. The facility for filing of return by EVC has also been extended to Form GSTR-1 for companies and limited liability partnerships. Certain changes/clarifications have also been made with respect to special procedure prescribed for corporate debtors under Corporate Insolvency Resolution Proceedings. Notifications and Circulars issued in these regards are discussed in this issue.

Presently, taxpayer can obtain separate registration for every place of business within a particular state or union territory, even though the said multiple business places are not different business verticals. As per the rule, Form ITC-02A has to be furnished within 30 days of obtaining separate registrations. The Form ITC-02A was not available on the portal previously, however the same has been made functional now and therefore, taxpayers can now easily transfer their unutilised input tax credit lying in electronic credit ledgers to the newly registered place of business.

Recently, two path breaking decisions were given by Hon'ble Delhi High Court. In the case of **Bharti Airtel Ltd vs Union of India & Ors [2020-TIOL-901-HC-DEL-GST]**, the Delhi high Court has allowed the rectification of mistakes in GSTR-3B in the same month to which the mistake pertains. Delhi High Court held that the failure of the Government to operationalise the statutory returns i.e. GSTR 2, 2A and 3 prescribed under the CGST Act, cannot prejudice the assessee. The GSTR 3B which was merely a summary return, as an alternative. It did not have the statutory features of the returns prescribed under the Act, therefore, if there were errors, the return should be allowed to be rectified in the very month in which the mistake took place.

Another, in the case of **Brand Equity Treaties Ltd. v. Union of India & Ors [2020-TIOL-900-HC-DEL-GST]** wherein Delhi High Court had held 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. Therefore, the Court held that the limitation of 3 years under the Limitation Act, 1963 would apply. The Hon'ble court has directed the government through this order to reopen the portal not only for the appellant but for every assessee to allow to file the FORM GST TRAN-1. Further court mentioned that if the portal is not opening for them, accept the form in physical form. We are of the opinion if any assessee who failed to file or not provided proper or complete information must submit TRAN-1 by 30.06.2020 i.e., within 3 years of introduction of GST.

During the COVID-19 time, among other things such as specified offices, workplaces, factories and establishments shall be required to obtain medical insurance for the workers before starting its operation. Now the question of input tax credit on the same case is in discussion whether it will be allowed or not as certain supplies are specifically blocked.

We hope this newsletter will add some value and prove to be beneficial to the readers. We highly solicit suggestion/opinions of the readers. Please feel free to convey your views at gst@goyalstax.com.

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Due Dates for GSTR-1 and GSTR-3B are provided on next page.
Due Dates for other GST Forms are extended to 30th June 2020.

RETURNS THROUGH EVC (OTP)

Prior to lockdown, Companies and Limited Liability Partnerships were required to digitally sign GSTR-1 and GSTR-3B forms, while filing monthly returns and paying taxes. However, as offices are shut due to the lockdown, such persons were unable to use digital signature which has led to delay in filing returns. They are allowed during the period of lockdown up to June 30, 2020, to furnish the return in Form GSTR-3B verified through electronic verification code (EVC). Recently facility has been extended to filing of Form GSTR-1.

[Notification No. 38/2020-CT]

NIL GSTR-3B THROUGH SMS

Businesses with nil or no entry in all the tables in form GSTR-3B will be able to file return through SMS using the registered mobile number and the said return will be verified by a registered mobile number based on one time password (OTP) facility. Date is yet to be notified for such facility.

[Notification No. 38/2020-CT]

E-WAY BILL

Amid lockdown, the validity of the e-way bills expiring between the period from 20th March, 2020 and 15th April, 2020 was extended till 30th April, 2020 vide Notification No. 35/2020-Central Tax dated 3rd April, 2020.

Further, extension of lockdown has pushed the government to give the second extension for all those e-way bills that were generated on or before 24th March, 2020 (when the first lockdown was announced but had expired between the period from 20th March, 2020 and 15th April, 2020 till 31st May, 2020. This extension will give respite to many taxpayers who are already suffering due to complications in transportation services during the lockdown period.

[Notification No. 40/2020-CT]

ANNUAL RETURN

Due date to file GSTR 9 & 9C for the financial year 2018-19 once again has been extended to 30th September, 2020. It will give chance to the taxpayers to file their annual returns on time with clarity and accuracy by reviewing all their past returns and transactions to fill up details in the annual return form.

[Notification No. 41/2020-CT]

GSTR-1 DUE DATES

Monthly	Due Date	Compliance Date
Mar'2020	11.4.2020	30.6.2020
Apr'2020	11.5.2020	30.6.2020
May'2020	11.6.2020	30.6.2020
Jun'2020	11.7.2020	No Change
Quarterly		
Jan-Mar'2020	30.4.2020	30.6.2020
Apr-Jun'2020	31.7.2020	No Change

CLARIFICATION FOR CORPORATE DEBTORS

Special procedure was introduced for registered persons who are undergoing the corporate insolvency resolution process, so as to enable them to comply with the provisions of GST Laws during the CIRP period vide Notification No. 11/2020 - Central Tax dated 21st March 2020. This notification has been modified to exclude corporate debtors who were regularly furnishing returns i.e. GSTR 3B and GSTR 1 for all the tax periods prior to the appointment of IRP/RP from special procedure. In other words, 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. Further, those who are required to take new registration, last date for them has been extended to 30th June, 2020.

It has also been clarified that if a different IRP/RP is appointed midway during the insolvency process, change the authorised signatory in the registration form. No fresh registration is required for them. However, if the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get details amended through the jurisdictional authority.

On 27th May 2020, GSTN has introduced a new GST registration feature for all the IRP/ RP. They should choose the reason for registration as "Corporate Debtor undergoing the Corporate Insolvency Resolution Process with IRP/RP" while registering on the GST portal. The date of appointment of IRP/RP shall be considered for assuming the GST compliance duties. The registration form is required to be submitted on the GST portal using the digital signature certificate of IRP/RP.

Special procedure was notified on 21st March, 2020 and facility has been enabled on 27th May, 2020, such lack of co-ordination between Portal and CBIC is quite disturbing. Nonetheless, since the dates of GST compliances have all been extended until 30th June 2020, it is safe to assume that all IRP/RPs can comply by 30th June 2020.

[Notification No. 39/2020-CT & Circular No. 138/08/2020-GST]

MERCHANT EXPORTER

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 90 days from the date of issue of tax invoice by the registered supplier. It has been clarified that the said requirement of exporting the goods within 90 days from the date of issue of tax invoice is also covered in general extension i.e. 30.06.2020, provided the completion of such 90 days period falls within 20.03.2020 to 29.06.2020.

[Circular No. 138/08/2020-GST]

JOB WORKER (GST ITC-04)

Goods dispatched to a job worker or received from a job worker during a quarter are required to be reported in GST ITC-04 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. It has been clarified that FORM GST ITC-04 for quarter ending March, 2020 is also covered in general extension i.e. 30.06.2020 and accordingly, the due date stands extended up to 30.06.2020.

[Circular No. 138/08/2020-GST]

TRANSITIONAL CREDIT

A new indirect tax regime was implemented from 1st July, 2017 merging large number of taxes in GST. Since, it was transition from the earlier tax regime to new tax regime, the Central Goods and Services Tax Act, 2017 (CGST Act) includes transitional provision in Section 140 (similar provision in State GST laws). This section enabled the taxpayer to carry forward the unutilized input credit from the pre-GST regime and also allowed them to take credit on the stock as on 30th June, 2017, for which credit was not allowed in pre GST regime, as GST credit.

Section 140(1) of the CGST Act:

(1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed;

Rule 117 of CGST Rules, 2017 (CGST Rules) requires every taxpayers entitled to take credit under section 140 shall within 90 days of the appointed day submit a declaration electronically in FORM GST TRAN-1.

The prescribed period of 90 days was extended several times since some taxpayers were unable to file the Form TRAN-1. Final date which expired on 27th December 2017 except for assessee covered under technical glitches as per Rule 117(1A) of the CGST Rules.

Number of cases being unresolved approached the court. The understanding followed by the High Courts in these cases was mainly based on the concept that 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 a delegated legislation by framing rules without there being any overarching provision in the CGST Act.

Recently, in the case of Brand Equity Treaties Ltd. v. Union of India & Ors [2020-TIOL-900-HC-DEL-GST], petitioners raised the ground of a lack of authority for prescribing time under rule 117 among other grounds of the credit being their vested right and that the Rules prescribing and extending time as they liked were ultra vires the Act, were levelled against the Government.

The Hon'ble Delhi High Court had found the arguments of the taxpayers' reasons enough to concede to their grounds and read down Rule 117 of the CGST Act as directory in nature and held that non adherence to the deadline would not result in forfeiture of rights. It was further clarified that in absence of specific provision under the act, the residuary provision of the Limitations Act,1963 would apply and granted 3 years limitation from the date of effect.

Accordingly, court directed to either open the online portal so as to enable the Petitioners to file declaration TRAN-1 electronically, or to accept the same manually. Department shall thereafter process the claims in accordance with law. We are also of the opinion that other taxpayers who are similarly situated should also be entitled to avail the benefit of this judgment. Therefore, Governments are directed to publicise this judgment widely including by way of publishing the same on their website so that others who may not have been able to file TRAN-1 till date are permitted to do so on or before 30.06.2020.

A matter of concern is the recent retrospective amendment w.e.f. 1st July 2017 in Section 140 of the CGST Act by virtue of Section 128 of the Finance Act, 2020, inserting the phrase "within such time" as may be prescribed, thus delegating the power to the executive to prescribe time limit for filing TRAN-1. This effectively will have grave ramifications since by virtue of this addition, the mandating of a substantive provision as laid down in the Brand Equity judgement will be fulfilled and the time limit prescribed in Rule 117 of the CGST Rules will become a matter of mandate, retrospectively w.e.f. 01.07.2017. When indirect tax reforms were undertaken it was announced that no retrospective amendments would be made. Unfortunately, this has not been followed.

The need of the hour is for the Government to intervene and provide final opportunity to all the assesses irrespective of the nature of glitch, TRAN-1 filed or not and settle the issue without getting into the loop of endless litigation. As this retrospective amendment would come in the way of genuine claims of various assessees who were rightfully eligible to such transitional credit.

GSTR-3B Compliance Date					
Turnover		**≤ 1.5 cr**	**>1.5 cr but ≤ 5 cr**	**> 5 cr**	
Month	**Due date**	**No Interest**	**No Interest**	**No Interest**	**9% Interest**
Feb'2020	**20/22/24.03.2020**	**30.06.2020**	**29.06.2020**	**04.04.2020**	**24.06.2020**
Mar'2020	**20/22/24.04.2020**	**03.07.2020**	**29.06.2020**	**05.05.2020**	**24.06.2020**
April'2020	**20/22/24.05.2020**	**06.07.2020**	**30.06.2020**	**04.06.2020**	**24.06.2020**
GSTR-3B Date extension					
May'2020	**20/22/24.06.2020**	**12/ 14.07.2020**	**12/ 14.07.2020**	**27.06.2020**	**N.A.**

COVID-19 & ITC

During the COVID 19 time among other things such as specified offices, workplaces, factories and establishments shall be required to arrange/provide transport facility and obtain medical insurance for the workers before starting this operation.

The Ministry of Home Affairs vide order no. 40-3/2020-DM-I(A) dated 15th April 2020, laid down various guidelines with respect to the activities that shall be permitted and the activities that shall remain prohibited in certain specific areas (non-containment zones) across the country. Offices, workplaces, factories and establishments have been allowed to operate in the non-containment zones subject to conditions prescribed.

The above is required for workers coming from outside, special transportation facility will be arranged without any dependency on the public transport system and also Medical insurance for the workers to be made mandatory.

Hence, in order to operate during the lockdown, it would be mandatory for businesses to comply with various conditions, failing which, penal provisions may be invoked under Disaster Management Act, 2005 Companies will also have to map state specific directives issued in order to implement the MHA order. Input Tax Credit on certain supplies is blocked in term of section 17(5) of the CGST Act, 2017 as per clause (b) of the Disaster Management Act. Companies will also have to map state specific directives issued in order to implement the MHA order.

Input Tax Credit on certain supplies is blocked in terms of section 17(5) of the CGST Act, 2017. Clause (b) of Section 17(5) states the following -

(b) the following supply of goods or services or both-

i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

...

...

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force

[Emphasis supplied]

On perusal of proviso to clause (b) of Section 17(5), it is clear that Input Tax Credit of GST paid on the health services, health insurance and leasing and hiring of motor vehicles shall be available only if it is obligatory under any law. It must be noted that the aforesaid Order has been issued by MHA under the powers conferred to the National Executive Committee under Section 10(2)(l) of DMA. Hence, it is mandatory under the law and accordingly, credit should be available.

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