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GOODS AND SERVICES TAX [GST]

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1. Latest updates by way of Notification issued as on 01.06.2021

❖ Notification No. 16/2021- Central Tax

[Interest to be payable on only cash paid through electronic cash ledger with retrospective effect from 01.07.2017]

In the said notification, the Central Government appoints 1st day of June 2021, as the date on which the provisions of section 112 of the Finance Act 2021 shall come into force.

Section 112 of the Finance Act: Amendment in proviso to Section 50(1) of the CGST Act which shall be deemed to have been substituted w.e.f. 01.07.2017 and the amendment says that interest on tax payable in respect of supplies made during a tax period shall be payable only on the portion of cash which has been debited through electronic cash ledger for payment of gst liability in the returns except after commencement of proceedings u/s 73 or 74 of CGST Act in respect of the said period.

<u>Our Comments</u>: A very welcome move by the GST council which we all are waiting. Earlier, interest was payable on the whole GST payment which also includes input tax credit. Now, provisions in relation to payment of interest have been amended with retrospective effect from 01.07.2017 which is to be paid only on cash paid through electronic cash ledger and not on whole GST payment.

❖ Notification No. 17/2021- Central Tax

[Extension of due date of filing of GSTR-1 other than QRMP]

This notification extends the time time-limit of furnishing the details of outward supplies in GSTR-1 of those registered persons whose turnover is more than Rs. 1.50 crores for the month of May 2021 to 26th of the following month.

<u>Our Comments</u>: Filing of GSTR-1 for the month of May 2021 has been extended from 11th June 2021 to 26th June 2021 for the registered persons who have not applied under QRMP scheme.

❖ Notification No. 18/2021- Central Tax

[Lowering of Interest for delay in payment of tax for the month of March to May, 2021- This notification deemed to have come into force w.e.f. 18.05.2021]

In this notification, interest rates for delay in payment of tax and filing of GSTR-3B has been reduced to some extent. Details were as under:

Particulars	Tax period	Due Date	Interest rate
Taxpayer having aggregate turnover of more than 5 crores in the preceding financial year	March, April and May, 2021	20th of the following month	9% - first 15 days from the due date 18% - After 15 days' till the date of payment
Taxpayer having aggregate turnover of upto 5 crores in the preceding financial year and opts to file monthly returns	March, April and May, 2021	20th of the following month	**March:** NIL- first 15 days from the due date 9% - For next 45 days 18% - Thereafter, till the date of payment **April:** NIL- first 15 days from the due Date 9%- for next 30 days 18%- Thereafter, till the date of payment **May:** NIL- first 15 days from the due Date 9% - for next 15 days 18%- Thereafter, till the date of payment
Taxpayer having aggregate turnover of upto 5 crores in the preceding financial year and opts to pay taxes monthly and file returns quarterly (QRMP Scheme)	March, April and May 2021	25th of the following month	**March:** NIL- first 15 days from the due date 9% - For next 45 days 18% - Thereafter, till the date of payment **April:** NIL- first 15 days from the due Date 9%- for next 30 days 18%- Thereafter, till the date of payment **May:** NIL- first 15 days from the due Date 9% - for next 15 days 18%- Thereafter, till the date of payment

Taxpayer liable to furnish return under composition scheme	March 2021 (Quarterly return)	18th day of the month succeeding the quarter	NIL- first 15 days from the due Date 9% - for next 45 days 18%- Thereafter, till the date of payment

<u>Our Comments</u>: By lowering the interest rate the council has given some relief to the taxpayers. However, in this unprecedented time, Council should re-consider its decision and waive off the interest on delay in payment of tax at least till the tax period of August 2021.

❖ Notification No. 19/2021- Central Tax

[Waiver of Late fees for furnishing the return of March to May 2021 and lowering of Late fees for earlier period]

The council has waived the late fees on delay in furnishing the GST returns (GSTR-3B) by few days, details of which are as under:

Particulars	Tax Period	Waiver of Late fees (in days)
Taxpayers having an aggregate turnover of more than 5 crore rupees in the preceding financial year	March, April and May, 2021	Fifteen (15) days from the due date of furnishing return
Taxpayers having an aggregate turnover of upto 5 crore rupees in the preceding financial year and opts to pay tax and file returns monthly	March, April and May, 2021	**March 2021:** Sixty days from the due date of furnishing return **April 2021:** 45 days from the due date of furnishing return **May 2021:** 30 days from the due date of furnishing return
Taxpayers having an aggregate turnover of upto 5 crore rupees in the preceding financial year and opts to pay tax monthly and file returns quarterly (QRMP)	January-March 2021	Sixty days from the due date of furnishing return

Also, Amnesty scheme were provided for those who have not filed their returns for the period from July 2017 to April 2021 and rationalisation of the late fees for those who will not fie the returns from June 2021 onwards. Details of both were as under:

A. For the period from July 2017 to April 2021 [Amnesty Scheme]

Particulars	Late Fees	If Return filed between (period)
Registered persons who failed to furnish return in Form GSTR-3B for the period July 2017 to April 2021 whose tax liability is NIL	Maximum of Rs. 500 [CGST+SGST]	1st June 2021 to 31st August 2021
Registered persons who failed to furnish return in Form GSTR-3B for the period July 2017 to April 2021 other than those having NIL tax liability.	Maximum of Rs. 1000 [CGST+SGST]	1st June 2021 to 31st August 2021

B. Late Fees Applicable for Prospective tax periods (From June 2021 onwards)

Sl. No.	Particulars	Late Fees
1	Registered persons whose total amount of tax payable in the return is NIL	Maximum of Rs. 500 [CGST+SGST].
2	Registered persons having an aggregate turnover of upto 1.50 crores in the preceding financial year other than NIL tax liability	Maximum of Rs. 2000 [CGST+SGST]
3	Registered persons having an aggregate turnover of more than Rs. 1.50 crores and upto Rs. 5 crores in the preceding financial year other than NIL tax liability	Maximum of Rs. 5000 [CGST+SGST]

Our Comments: Amnesty Scheme for the taxpayers for earlier tax period is a welcome relief for them if return filed within the aforesaid dates. Further, rationalisation of late fees is very much required for the taxpayers who have less turnover. However, late fees for delay in filing of GSTR-3B for registered persons having aggregate turnover of more than 5 crore rupees is Rs. 10,000 (CGST+SGST) as earlier and it still unchanged.

Note: Notification No. for the state tax may be different with respect to the central tax.

❖ **Notification No. 20/2021- Central Tax**

[Reduced Late fees payable for delay in furnishing Form GSTR-1 for the tax period June 2021 onwards]

The council has reduced the late fees for delay in furnishing statement of outward supplies (Form GSTR-1), details of which are as under:

Sl. No.	Particulars	Amount of Late Fees
1	Registered persons having NIL outward supplies in the tax period	Maximum Rs. 500 (250 CGST + 250 SGST)
2	Registered persons having an aggregate turnover of upto rupees 1.5 crores in the preceding financial year other than NIL outward supplies	Maximum Rs. 2000 (1000 CGST+ 1000 SGST)
3	Registered persons having an aggregate turnover of more than rupees 1.5 crores and upto rupees 5 crores in the preceding financial year other than NIL outward supplies	Maximum Rs. 5000 (2500 CGST+2500 SGST)

Our Comments: Reduction in GSTR-1 is a good move by the Government but still charging of late fees in this pandemic situation is a sweet burden for the taxpayers. In our opinion, Council should waive late fees on GSTR-1 while they are already charging the same for GSTR-3B since GSTR-3B is a return where the registered person pays taxes wherein GSTR-1 is a statement of outward supplies and they only report outward supplies, so there should not be any late fees for GSTR-1.

Note: Notification No. for the state tax may be different with respect to the central tax.

❖ Notification No. 21/2021- Central Tax

[Reduced Late fees payable for delay in furnishing Form GSTR-4 of the Composition taxpayers for the financial year 2021-22 onwards]

The council has reduced the late fees for delay in filing of GSTR-4 of composition taxpayers by way of this notification, details of the late fees are as under:

Sl. No.	Particulars	Amount of Late Fees (Rs.)
1	Registered person having NIL tax liability	Maximum Rs. 500 (250 CGST+ 250 SGST)
2	Registered persons having liability other than NIL tax liability	Maximum Rs. 2000 (1000 CGST+1000 SGST)

Our Comments: since composition taxpayers are the persons whose aggregate turnover is less than Rs. 1.50 crores, in our view, no late fees should be charged from them.

Note: Notification No. for the state tax may be different with respect to the central tax.

❖ Notification No. 22/2021- Central Tax

[Reduced Late fees payable for delay in furnishing Form GSTR-7 from June 2021 onwards]

Sl. No.	Class of registered persons	Maximum Amount of Late fees (Rs.)
1	Tax Deductor (per day liability)	Rs. 25 per day
2	Tax Deductor (Maximum Liability)	Rs. 1,000 (maximum)

Our Comments: Tax deductor were mainly the government agencies; a department of the Central or State Government or Local Authority who deducts taxes where the total value of supply under a contract exceeds Rs. 2.50 lakhs.

Note: Notification No. for the state tax may be different with respect to the central tax.

❖ Notification No. 23/2021- Central Tax

[E-invoicing rules not applicable in case of Government Department and Local Authority]

The council has made e-invoice rules not applicable to the Government Department and Local Authorities apart from the existing provision of non-applicability of e-invoice rules to other persons also.

Our Comments: In our view, for some period of time in this unprecedented situation of pandemic of COVID-19, e-invoicing rules may be deferred to the persons who are dealing or providing essential goods like Groceries, Medicines etc.

❖ Notification No. 24/2021- Central Tax

[General extension of due dates of various compliances subject to certain conditions and exceptions]

By virtue of this notification,

Any time limit for completion or compliance of any action, by any authority or by any person, has been specified in, or prescribed or notified under the said Act, which falls during the period from the 15th day of April, 2021 to the 29th day of June, 20201 and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action, shall be extended up to the 30th day of June, 2021

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the Acts stated above; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above;

However, the above extension shall not apply in the following cases:

Sl. No.	Compliance section of GST Act	Provision
1	Section 10(3)	Lapse of composition scheme on exceeding the turnover of specified limit.
2	Section 25	Registration
3	Section 27	Registration of casual and Non-Resident Taxable person
4	Section 31	Issue of Invoice
5	Section 37	Filing of Statement of outward supplies (GSTR-1)
6	Section 47	Levy of Late fees
7	Section 50	Payment of Interest
8	Section 69	Power to Arrest
9	Section 90	Liability of partners of firm to pay tax
10	Section 122	Imposition of penalty
11	Section 129	Detention, Seizure and Release of Goods / Conveyance in Transit
12	Section 39 except sub-section (3), (4) and (5)	Filing of GSTR-3B, GSTR-6, 7 and GSTR-8.
13	Section 68 in so far as e-way bill is concerned	NA
14	Chapter-IV	Provisions related to Determination of value of supply

In cases where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for issuance of order in terms of the provisions of subsection (5), read with sub-section (7) of section 54 of the said Act falls during the period from the 15th day of April, 2021 to the 29th day of June, 2021, in such cases the time limit for issuance of the said order shall be extended to fifteen days after the receipt of reply to the notice from the registered person or the 30th day of June, 2021, whichever is later.

Our Comments: In our view, all the extensions provided above should be extended at least till July end so that everyone will get time to cope-up with the present situation and get ready to deal with the departmental correspondences.

❖ Notification No. 25/2021- Central Tax

[Extension of due date of filing Form GSTR-4 for the financial year 2020-21]

This notification has extended the due date of filing of GSTR-4 of composition dealers for the financial year 2020-21 to 31st July 2021.

Our Comments: A welcome move to provide relief to the composition taxpayers.

❖ Notification No. 26/2021- Central Tax

[Extension of due date of filing Form GST ITC-04 for the quarter ended March 2021]

The said notification has extended the due date of filing of Form ITC-04 for the quarter January to March 2021 to 30th June, 2021.

Our Comments: In our view, more time should be given to file ITC-04 for the period mentioned aforesaid.

❖ Notification No. 27/2021- Central Tax

[CGST (5th Amendment) Rules, 2021]

Following amendments were made in the rules as mentioned below:

a) As per Rule 36(4), 105% of the eligible ITC in Form GSTR-2B should be cumulatively taken for the period of April, May and June, 2021 in the GST return of June, 2021.

b) A registered person registered under the provisions of the Companies Act, 2013 (18 of 2013) shall, during the period from the 27th day of April, 2021 to the 31st day of August, 2021, also be allowed to furnish the return under section 39 in FORM GSTR-3B and the details of outward supplies under section 37 in FORM GSTR-1 or using invoice furnishing facility, verified through electronic verification code (EVC).

c) A registered person availed the option under QRMP (Quarterly Return and Monthly Payment) scheme has to furnish IFF (Invoice furnishing facility) on the 13th of the following month of the tax period May 2021 been extended till 28th June 2021.

Our Comments: In our view, till such time the corresponding section to rule 36(4) has not been made applicable, the said rule has to be kept in abeyance for the time being.

2. Recent case laws

A. Damodar Valley Corporation [(2021) 127 taxmann.com 605 (AAR-West Bengal)]

Facts of the Case:
The applicant is stated to be a statutory body set up under the Damodar Valley Corporation Act, 1948 and is engaged in three major activities namely (i) generation, transmission and distribution of electricity, (ii) flood control and (iii) irrigation and some connected activities like soil conservation, afforestation etc.

The applicant has made this application under sub-section (1) of section 97 of the GST Act and the rules made thereunder raising following question:

Whether "Damodar Valley Corporation" is covered under the definition of the term 'Government Entity' as per Notification No. 31/2017-Central Tax (Rate) dated 13.10.2017

Observations:
The term 'Government entity' has been defined in paragraph-4 of the Notification No. 11/2017- Central Tax (Rate), dated the 28th June 2017 (as amended from time to time) as under:

"Government Entity" means an authority or a board or any other body including a society, trust, corporation,

(i) Set up by an Act of Parliament or State Legislature; or
(ii) Established by any Government,

with 90% or more participation by way of equity or control, to carry out a function entrusted by the Central Government, State Government, Union Territory or a local authority.

Damodar Valley Corporation has been set up under the Damodar Valley Corporation Act, 1948 (DVC) which was passed by the Central Legislature.

As per sub-section (1) and (1A) of section 4 of the DVC Act, as amended, states as under:

(1) The Corporation shall consists of –
- (a) a Chairman;
- (b) a member (technical) and a member (finance);
- (c) one representative from the Central Government;
- (d) two representatives one each from the State Government of Jharkhand and West Bengal;
- (e) three independent experts one each from the field of irrigation, water supply and generation or transmission or distribution of electricity; and
- (f) a Member-Secretary.

(1A) The Chairman and the members under the above clauses (a), (b), (d) and (f) shall be appointed by the Central Government in consultation with the State Governments concerned while the members under clause (c) and (e) as stated above shall be appointed by the Central Government, by notification in the official gazette.

It has also been observed that Section 51 of the DVC Act empowers the Central Government to remove any member from the corporation.
Also, the participating Governments hold 100% of equity control of the applicant.

Section 11 of the DVC Act envisages that the Corporation shall carry out such function and exercise such power which the Central Government may, after consultation with the provincial Governments by notification in the official Gazette, directs the Corporation.
It, therefore, appears that Damodar Valley Corporation fulfils the criterion laid down for "Government entity" as per Notification No. 31/2017-Central Tax (Rate) and Notification No. 32/2017- Central Tax (Rate) both dated 13.10.2017 since it has been set up an Act of Parliament with 100% control to carry out the funaction entrusted by the Government.

Ruling:
Hence, Damodar Valley Corporation shall be covered under the definition of "Government Entity" in terms of Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 [as amended from time to time].

This ruling shall be subject to the provisions of section 103 until and unless declared void under section 104(1) of the GST Act.

B. Schlumberger Asia Services Ltd. *v.* Commissioner of CE and ST, Gurgaon-I [(2021) 127 taxmann.com 509 (Chandigarh-CESTAT)]

Facts of the Case:
The appellant is providing various services. The cenvat credit of various duties and services paid by them and Education Cess, Secondary & Higher Education Cess, Krishi Kalyan Cess were lying unutilized in their cenvat credit account and the appellant could not utilize the same till 30-6-2017.
On 1-7-2017, the GST Regime came in force and the credit lying in the account was allowed to be transferred under GST Regime. The appellant took the cenvat credit lying unutilized in their cenvat credit account of services, goods, Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess to their GST account. Later on, an amendment came on 30-8-2018 in Section 140 of the CGST Act, 2017 that the assessee cannot carry forward the credit lying in their cenvat credit account of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess. Consequent to the amendment, the appellant immediately reversed the amount of cenvat credit pertaining to Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess and filed the refund claim of the amount lying unutilized as on 1-7.2017 in their cenvat credit account of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess.

A show cause notice was issued to the appellant that in terms of Section 140 of the CGST Act, 2017 the appellant is not entitled to carry forward the cenvat credit in GST Regime; therefore, the refund claim filed on 30-8-2019 is barred by limitation, therefore, their refund claim has lapsed of credit as Education Cess including Secondary & Higher Education Cess has been abolished from 1-6-2015. The matter was adjudicated and refund claim was rejected.

Observations:
The bench observed that the facts of the case are not in disputed that on 1-7-2017, the new regime of GST came into force and on the said date, there was no bar on

carry forward of the cenvat credit of Education Cess, Secondary & Higher Education Cess and Krishi Kalyan Cess to GST regime. In these circumstances, the appellant has taken the cenvat credit under CGST Act. It is also a fact on record that Section 140 of the CGST Act, 2017 was amended on 30-8-2018 and was applied retrospectively

Now the question arises whether the refund claim filed by the appellant is barred by limitation or not?

The amendment to Section 140 came after one year of the switching to the GST Regime on 30-8-2018 which is applicable retrospectively. In that circumstances how the appellant could have filed the refund claim within one year from 1-7-2017 till 30-8-2018, when there was no provision of law existed, when amendment itself takes on 30-8-2018, therefore, the **relevant date of filing the refund claim shall be 30-8-2018** and within one year of the said date, the refund claim has been filed by the appellant.
In that circumstance, the tribunal hold that the refund claim filed by the appellant is not barred by limitation.

The tribunal holds the case of M/s. Bharat Heavy Elecricals Ltd. would apply in the present case also.

Ruling:
In view of the above observations, the tribunal hold that the appellant is **entitled to file** the refund claim; accordingly, the impugned order is set aside.

Our Comments:

A very welcome decision by the Hon'ble CESTAT of Chandigarh. In most of the cases, the assessee were not filing the refund claim as well as they had also write-off these inputs in their books of accounts. However, who still have not written-off these inputs and have filed refund claim, they would definitely get the refund from the department.