INDIRECT TAX E-BULLETIN

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MAY YOU LIVE IN INTERESTING TIMES!

Welcome to the fourth edition of the quarterly E-Bulletin brought to you by Khaitan & Co.

As the COVID-19 pandemic continues to rage on, the country has climbed to a No. 2 spot among the list of nations worst hit by the infection. The predictions for the economy are grim, with experts forecasting at least a period of two years for the economy to recover.

While the growth, in general, has dipped, there are few sectors that have seen a rise in revenue. For instance, due to the lockdown, the e-commerce industry has seen a surge in demand as more and more people turned to online shopping. Edu-tech enabled online teaching has seen a rise in business with many pioneers in the sector receiving investments from international funds. Retail sector has also seen a comfortable demand but the few sectors that are still showing profits may not be enough to propel the economy on a growth path.

On the indirect tax front, while the GST Council is tackling the States' compensation issue – albeit with very little success – the Central Government has again announced a slew of extensions for various timelines. The anti-profiteering authority has been given a breather to complete investigations and this may just add to the woes of the assessees. For the taxpayers, the Government has provided some leeway by moderating the interest rates on delayed filing of returns and clarified rates for composition dealers. In a major blow to exporters, the Government announced the end of MEIS benefits from 1 January 2021 and provided a ceiling on the maximum amount of benefits (INR 2 crore) for the last few months of the current calendar year.

Although the pandemic is still on, the courts too, through virtual hearings have passed many important judgements. The Apex Court ruled on the quintessential question of admissibility of a writ petition when an alternative remedy was available. The Gujarat High Court, on the one hand allowed refund of input tax credit attributable to services in cases of inverted duty structure, while on the other hand upheld the constitutionality of the provision specifying place of supply of intermediary services to be within India, even when provided to a recipient situated outside India. Out of the many rulings pronounced by the Authorities for Advance Ruling, the significant ones included those on the issue of applicability of GST on sale of developed plots, and on lease of residential buildings for use as hostels.

We have received numerous positive responses on our previous three quarterly bulletins and we hope that you find this fourth edition equally interesting.

Stay healthy and stay safe!

With regards

Indirect Tax Team
Khaitan & Co

01.

CASE LAW UPDATES

GOODS AND SERVICES TAX

Refund of ITC pertaining to input services allowed in cases of inverted duty structure: Gujarat High Court

In *VKC Footsteps India Private Limited v Union of India & Others*[1], the Gujarat High Court held that the explanation to rule 89(5) of the Central Goods and Services Tax Rules (CGST Rules) which restricted the definition of "Net ITC" to include Input Tax Credit (ITC) availed on inputs and not input services (in cases of inverted duty structure), was *ultra vires* Section 54(3) of the Central Goods and Services Tax Act, 2017 (CGST Act). The High Court observed that Section 54(3), being the parent provision, allowed a person to claim refund of "any unutilised ITC" – including ITC in respect of inputs and input services – and held that such claim of refund could not be restricted only to inputs by excluding input services through rule 89(5). The High Court accordingly read down rule 89(5) to the extent it excluded ITC in respect of input services from the definition of "Net ITC".

KCO Comments

The decision of Gujarat High Court settles the controversy surrounding the interplay between Section 54(3) of the CGST Act and rule 89(5) of the CGST Rules, insofar as cases of inverted duty structure are concerned. Evidently, Section 54(3) merely prescribes a *condition precedent* for claiming refund of ITC and does not restrict the *quantum* of such ITC that would be refunded. Accordingly, once the specified threshold (i.e. accumulation of ITC on account of rate on inputs being higher than the rate on output supplies) is met, the entire accumulated ITC (attributable to inverted duty turnover as reduced by the tax payable thereon) should be refunded. The Gujarat High Court, in our view, has rightly affirmed this position. Importantly, this decision may be usefully relied upon to challenge denial of refund of ITC pertaining to capital goods against exports or cases of inverted duty structure.

It may be noted that identical writ petitions are currently pending before the High Courts of Bombay, Rajasthan, Patna and Madras[2]. It is hoped that these are expeditiously disposed following the aforesaid decision of the Gujarat High Court.

Provision specifying place of supply of intermediary services to be within India, even when recipient of such services is outside India, constitutional: Gujarat High Court

In *Material Recycling Association of India v Union of India & Others*[3], the Gujarat High Court held Section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act), which specifies the "place of supply" of intermediary services to be the location of the supplier of services (i.e. of the intermediary), to be constitutional. The High Court observed that an intermediary could not be considered to be an "exporter" of services since it only arranges or facilitates a supply and stated that if such services provided by an intermediary located in India are not taxed in India, they would not be taxed elsewhere. The High Court further held that merely because the location of the recipient of intermediary services is outside India and consideration is received in foreign exchange,

1 2020-TIOL-1273-HC-AHM-GST

2 *Raymond UCO Denim Private Limited* (Bombay High Court, Nagpur bench; WP No 5676/2019), *Voylla Fashions Private Limited* (Rajasthan High Court, Jaipur bench; D.B. Civil Writ Petition No. 24375/2018), *Shree Ram Lime Products Private Limited* (Rajasthan High Court, Jodhpur bench; D.B. Civil Writ Petition No. 11337/2018), *AFCONS-SIBMOST Joint Venture* (Patna High Court; Civil Writ Jurisdiction Case No. 11470 of 2019) and *Tvl. Tanstonnelstroy Afcons Joint Venture* (Madras High Court; WP No 8596/2019 and connected matters)

3 2020 (8) TMI 11 – Gujarat High Court

such services would not be categorised as "exports" as the legislature had thought it fit to tax such services within India, thereby maintaining a consistent position right from the service tax regime.

KCO's indirect tax team represented the petitioner before the Gujarat High Court.

KCO Comments

The decision of the Gujarat High Court has delivered a blow to the industry of commission agents and intermediaries situated in India who facilitate supply of goods/services for foreign entities. Since GST is a destination-based system of taxation, the place of supply should ideally be determined based on the place where benefits of the transaction are accrued and services are consumed. In case of intermediary services provided to a person located outside India, such place would normally be the location of recipient of such services. The Gujarat High Court has however, rejected this fundamental contention of the petitioner.

It may be noted that the *Parliamentary Standing Committee on Commerce*[4] and the *Tax Research Unit of the Central Board of Indirect Taxes and Customs*[5] have already recommended that the place of supply of intermediary services under Section 13 of the IGST Act should be changed from the location of the supplier to the location of the recipient. It is hoped that these recommendations are accepted, and necessary amendments are brought about.

It may also be noted that identical writ petitions in the case of A.*T.E. Enterprises Private Limited*[6] and *Indenting Agents Association*[7] are presently pending before the Bombay High Court.

ITC on detachable sliding and stacking glass partition admissible: Appellate Authority for Advance Ruling

The Appellate Authority for Advance Ruling (Appellate AAR), Karnataka, in *WeWork India Management Private Limited*[8], partly reversed the ruling issued by the Authority for Advance Ruling, Karnataka[9] (AAR) denying ITC in respect of detachable sliding and stacking glass partition used for creating separate work spaces for tenants. The Appellate AAR relied on the definitions of "immovable property" and "attached to the earth" provided in the General Clauses Act, 1897 and the Transfer of Property Act, 1882 respectively and applied the twin test of: (i) extent of annexation; and (ii) object of annexation, for ascertaining whether the glass partitions constituted "immovable property". Observing that the glass partitions were merely for demarcation of workspace area and could be dismantled and re-fixed to signify a change in such area, the Appellate AAR held them to be "movable" in nature and allowed ITC on their purchase.

KCO Comments

There is considerable jurisprudence available for deciding whether a particular property can be classified as movable or immovable. Although these issues are still extensively litigated, courts have in the past broadly considered the following factors to be relevant for determination: (i) degree of permanence i.e. whether the property can be dismantled without causing substantial damage; (ii) intention behind affixing the property to the earth i.e. if it is merely to improve its efficiency or to make it functional; and (iii) intention to keep the property permanently fastened. The ruling of the Appellate AAR has appropriately taken into consideration all the aforesaid factors and comes across as a welcome decision.

4 Report titled "Impact of Goods and Services Tax on Exports" laid before the Parliament on 19 December 2017

5 TRU Office Memorandum dated 17 July 2019

6 WP (L) No 639 of 2020

7 WP No 320 of 2018

8 Order No KAR/AAAR-17/2019-20 dated 6 March 2020

9 Advance Ruling No KAR ADRG 106/2019 dated 30 September 2019

Merchanting Trade Transactions liable to GST: Authority for Advance Ruling

The AAR, Gujarat, in the case of *Sterlite Technologies Limited*[10] ruled that GST would be payable on the sale leg of a Merchanting Trade Transaction (MTT) (supply of goods from one foreign country directly to another foreign country on the instructions of a person located in India). The AAR ruled that although GST would not be payable on the purchase leg of the MTT, the sale leg would qualify to be a "supply" under GST. The AAR further held that the sale leg would not qualify as an "export" since the goods, not being physically available in India, would never cross the Indian customs frontiers. Accordingly, the AAR concluded that the sale leg would attract Integrated Goods and Services Tax (IGST).

KCO Comments

Given the popularity of MTTs in international trade, the aforesaid ruling requires examination since it has upset established positions as regards taxability of MTTs. In our view, the ruling of the AAR is contrary to settled law on at least two counts: (a) the ruling contradicts the express language of paragraph 7 of Schedule III to the CGST Act which considers *supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India* to be neither a supply of goods nor a supply of services; and (b) the ruling takes note of the ruling delivered by AAR, Kerala in *Synthite Industries Limited*[11] holding such transactions to be not taxable, but fails to distinguish the same or provide any comment thereon. In our view, the ruling delivered by the AAR, Kerala lays down the correct position of law as regards taxability of MTT and in light of paragraph 7 of Schedule III referred above, the ruling of the AAR, Gujarat is likely to be reversed in appeal.

Sale of developed plots liable to GST: Authority for Advance Ruling

The AAR, Gujarat, in the case of *Shree Dipesh Anilkumar Naik*[12] ruled that the activity of sale of developed plots was not equivalent to sale of land and was therefore liable to GST. In this case, the Applicant proposed to sell land owned by him after undertaking levelling activity and developing certain basic amenities such as sewerage, drainage, water, telephone and electricity lines – all of which were mandatory as per the local statutory authority – but without undertaking any construction activity thereon. The AAR ruled that an activity could be excluded from the scope of GST only if it involved sale of immovable property (simpliciter). Accordingly, the AAR concluded that the activity of sale of developed plots was covered under the category of *construction of a complex intended for sale to a buyer* and was therefore taxable.

KCO Comments

The aforesaid ruling follows another delivered by the AAR, Gujarat, in the case of *Satyaja Infratech*[13] on an identical issue. Both the aforesaid rulings are surprisingly inadequate in their reasonings since they fail to acknowledge that the transactions in question essentially involve sale of "land", albeit with certain amenities that by themselves do not have any separate identity and are inextricably connected to the land. The rulings fail to acknowledge that "developed land" is still "land" and should therefore be outside the scope of GST, so long as no construction activity is undertaken thereon.

Further, the classification adopted by the AAR is also not proper since the nature of development does not qualify to be construction of a complex,

10 Advance Ruling No. GUJ/GAAR/R/04/2020 dated 17 March 2020

11 Order No. CT 12275/18-C3 dated 26 March 2018

12 Advance Ruling No. GUJ/GAAR/R/2020/11 dated 19 May 2020

13 Advance Ruling No. GUJ/GAAR/R/2019/21 dated 20 September 2019

building, civil structure or a part thereof – all of which involve at least some independent construction activity on the land. Moreover, reliance of the AAR on the decision of the Supreme Court in the case of *Narne Construction Private Limited*[14] is also misplaced, since the decision was delivered in the context of the Consumer Protection law, which is a beneficial piece of legislation warranting liberal interpretation.

Separately, it may be noted that the Customs, Excise and Service tax Appellate tribunal (CESTAT) in the case of *Tirathdas Shaukat Rai Construction Private Limited*[15], under the previous indirect tax regime, has already held the activity of development of plots to be not taxable.

Sale on ex-works basis, an inter-State supply liable to IGST: Authority for Advance Ruling

The AAR, Telangana, in the case of *Penna Cement Industries Limited*[16] ruled that a sale made to a buyer situated in a different State on ex-works basis (i.e. where delivery takes place at the factory gate, insofar as the supplier is concerned) would qualify to be an inter-State supply. The AAR observed that in such ex-works sales, although the goods were made available to the recipient at the factory gate, the movement of goods terminated only at the location of the consignee/recipient (in a different State) since the transportation was undertaken by the recipient. Noting that the place of supply had to be determined with reference to the location where the movement of goods ultimately terminated, notwithstanding whether such movement was undertaken by the supplier, recipient or any other person, the AAR ruled that the transaction would qualify as an inter-State supply liable to IGST.

KCO Comments

There is a slight contradiction in Section 10(1)(a) of the IGST Act, which is the provision governing place of supply in cases involving movement of goods, inasmuch as for determination of the place of supply, it places equal emphasis on both, the location of *delivery of goods to the recipient* and the location where the *movement undertaken by the recipient terminates*. In our view, the ruling of the AAR is in line with the concept of a destination-based or consumption-based system of taxation and lays down the correct position of law.

It may be noted that the GST Council, in its 37th meeting held on 20 September 2019, had taken cognizance of the aforesaid issue and had referred it to the law committee for consideration. However, no clarification has thus far been issued by the Government.

Leasing of residential building for use as a hostel liable to GST: Authority for Advance Ruling

The AAR, Andhra Pradesh, in *Lakshmi Tulasi Quality Fuels*[17] ruled that the activity of leasing a residential building to a person engaged in the business of providing "long stay accommodation" services (akin to a hostel) was liable to GST. The AAR noted: (i) that the building in question had a large number of rooms equipped with amenities; (ii) that boarding and hospitality services were proposed to be extended to the inmates; (iii) other clauses in the lease deed governing *inter alia*, the right to engage third party service providers and avail non-residential water supply; and (iv) the peculiar "rules and regulations" mentioned in the "residential enrolment form", and concluded that the building was constructed for the purpose of running a "lodge house". Accordingly, the AAR denied the benefit of the notification exempting *services by way of renting*

14 2013 (29) STR 3 (SC)

15 2018 (11) G.S.T.L. 319

16 TSAAR Order No. 03/2020 dated 2 March 2020

17 AAR No 12/AP/GST/2020 dated 5 May 2020

of residential dwelling for use as residence and held that the lease rent was chargeable to GST.

KCO Comments

Taxability of letting out residential premises for use as hostels or for providing paying guest accommodation services (either directly or indirectly) has already proven to be a litigious issue, with at least three other AARs ruling the activity to be taxable[18]. Although in cases where the aforesaid services are provided indirectly (through an independent lessee, such as in the aforesaid case), it may be conceded that the activity, from the standpoint of the lessor, does not amount to *renting for use as residence*, the same inference cannot be drawn in cases where such services are provided directly by the lessor.

The expression "residence" involves a certain degree of permanence, which is why hostels or paying guest accommodations can be distinguished from forms of temporary accommodation such as hotels or lodges. Further, the expression "dwelling" should not be narrowly interpreted to mean only independent units such as houses or flats but should also include forms of shared residential accommodation such as hostels. In light of this, an argument can be made that benefit of the aforesaid exemption would also be available to hostels and other forms of accommodation involving a fair degree of permanence.

SERVICE TAX

Photography service termed as works contract; value of photographic paper and consumables not to be included in the taxable value for levy of service tax: Madhya Pradesh High Court

In *Agrawal Colour Advance Photo System v Commissioner of Central Excise and Another*[19], the Madhya Pradesh High Court reversed the decision of the larger bench of the CESTAT[20] holding that the value of photography services for levy of service tax included the value of material used and consumed in the course of rendering such services. The High Court held that post insertion of Article 366(29A) of the Constitution, the State legislatures were empowered to levy sales tax on the six sub-clauses specified therein (including on the transfer of property in goods involved in the execution of a works contract) and there was no question of applying the "dominant nature test" for ascertaining the substance of the contract.

The High Court placed reliance on the decision of the Apex Court in the case of *PRO Lab*[21] which had upheld the constitutional validity of levy of sales tax on the value of goods involved in processing and supplying of photographs. Finally, observing that photography services contained elements of goods as well as services and were thus covered under "works contract", the High Court held that the value of photography services for levy of service tax had to be determined in isolation of value of goods, which were separately liable to sales tax.

KCO Comments

The bifurcation of a composite contract into "sales" and "services" has been a bone of contention among the Union and State legislatures, since the taxing powers in respect of each were independent and separate prior to introduction of GST. In the aforesaid decision, the High Court has extensively analysed the jurisprudence surrounding the applicability of sales tax and service tax on contracts of a composite nature and correctly held that service tax was leviable only on the value of service component. This decision may be usefully relied upon to deal with cases where the service tax department has demanded service tax on the entire value of a composite contract, ignoring the value of goods involved therein.

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18 *Kamal Kishor Agarwal Ramnath Bhimsen Charitable Trust* [2019 (4) TMI 1451 – AAR Chhattisgarh], *Students' Welfare Association* [2019 (3) TMI 1473 – AAR Maharashtra], *Sri Sai Luxurious Stay LLP* [2020 (4) TMI 695 – AAR Karnataka] and *Sri Taghar Vasudeva Ambrish* [2020 (4) TMI 692 – AAR Karnataka].

19 CEA No 1/2013

20 Aggarwal Colour Advance Photo System v Commissioner of Central Excise, Bhopal; [2011] 13 taxmann.com 192 (New Delhi - CESTAT)

21 [2015] 53 taxmann.com 530 (SC)

Foreclosure charges levied by banks on premature termination of loans not taxable: CESTAT Larger Bench

In *Commissioner of Service Tax, Chennai v Repco Home Finance Ltd*[22], the larger bench of the CESTAT held that foreclosure charges levied by banks on premature termination of loans did not constitute "consideration" for performance of lending services and were therefore not liable to service tax. The CESTAT observed that foreclosure of loan was antithetical to lending and the charges recovered were essentially damages for breach of contract. It was held that merely because a clause pertaining to damages existed in the loan agreement, it could not be concluded that the parties had been given an option to terminate the contract. The CESTAT further held that foreclosure could not be viewed as an alternative mode of performance since it results in repudiation of contract. The CESTAT finally concluded that such charges could not be subjected to service tax since no element of service was rendered by banks against such charges.

KCO Comments

The decision of the CESTAT comes across as a significant milestone in the jurisprudence surrounding the taxability of liquidated damages. The CESTAT has addressed most of the common arguments put forth by the revenue authorities in support of taxability of damages such as availability of option to terminate the contract, alternative mode of performance, etc and has

clearly stated that damages arising out of repudiation of contract by an unilateral act of one of the parties could not be considered to be recovered against any "service".

Although the CGST Act contains its own seemingly expansive definition of the term "consideration", it appears that the principles laid down by the aforesaid decision would still be relevant for ascertaining the taxability of an act, forbearance, or a sum – in the nature of damages – from the touchstone of "supply". In this regard, the decision of the Bombay High Court in *Bai Mamubai Trust*[23], examining the taxability of liquidated damages in the GST regime, constitutes another useful precedent.

SALES TAX

Writ jurisdiction cannot be exercised to condone delay in filing appeal beyond the statutory period; Writ remedy can be availed only within the prescribed statutory period: Supreme Court

In *Assistant Commissioner (CT) LTU, Kakinada & Ors v Glaxo Smith Kline Consumer Health Care Limited*[24], the Supreme Court emphasised the need for High Courts to exercise self-restraint and not entertain writ petitions as a matter of course in cases where an alternative efficacious remedy exists. The Apex Court held that writ jurisdiction should not be exercised in cases where an assessee fails to avail of the prescribed appellate remedy within the statutory period, since such instances did not amount to violation of any fundamental, statutory or legal right. The Apex Court further held that jurisdiction under Article 226 of the Constitution should not be exercised to issue writs inconsistent with the legislative scheme and intent.

Importantly, the Apex Court also held that in cases where remedy by way of appeal is provided, an assessee is empowered to invoke writ jurisdiction only within the period specified for filing such appeal. In case an assessee invokes the writ jurisdiction (for whatever reason) beyond the aforesaid period, High Courts have been advised not to entertain such petitions as a matter of

22 Service Tax Appeal No. 511 of 2011-LB

23 2019 (31) G.S.T.L. 193 (Bom.)

24 Civil Appeal No 2413/2020

course, since it would render the statutory timeline otiose.

KCO Comments

The aforesaid decision is significant, since it clearly lays down that High Courts have no power to condone delay in preferring statutory appeal beyond the prescribed period of limitation, even on *bona fide* grounds. In fact, the Supreme Court has gone a step further and observed that even it could not condone such delay despite having wider powers under Article 142 of the Constitution.

More significantly, it also states that a writ petition (wherever appropriate) should be preferred only within the statutory period of filing an appeal and not beyond. Assessees aggrieved by any patent illegality in assessment / adjudication orders are advised to be conscious of this exposition, while weighing their options.

02.
REGULATORY UPDATES

GOODS AND SERVICES TAX

1. Time-limit for completion of anti-profiteering related compliances extended

In line with the recommendations of the GST Council, the time limit for completion of any action which was due by the authorities in relation to the anti-profiteering investigations which would have fallen due during the period from 20 March 2020 to 29 November 2020 has been extended till 30 November 2020.

This would have been done to give relief to both assessees and investigating authorities who were grappling with completion of formalities due to various restrictions placed due to COVID-19 pandemic.

2. Provision relating to levy of interest notified

Amendment to Section 50 of the CGST Act wherein interest is to be levied on actual (delayed) tax paid through cash (by debiting the cash electronic cash ledger) and not on that portion paid through electronic credit ledger. This provision has been notified with effect from 1 September 2020, however the Ministry of Finance has assured no recovery proceedings shall be conducted in respect of the past period by considering such provision to have been in existence even then.

Accordingly, assesses have to be mindful of any demand notices that may be issued in derogation of such representation made by the ministry.

3. E-invoicing provisions amended

The criteria for persons who would be required to issue e-invoices with effect from 1 October 2020 have been relaxed. In addition to the earlier exemptions granted, now assessees (a) located in Special Economic Zones and / or (b)those having turnover upto five hundred crores (INR 500 crores) have been exempted from complying with the e-invoicing provisions. Additionally, the newly introduced FORM GST INV-01 is to be referred to for the format of e-invoices to be issued.

4. Facility of filing Nil returns through SMS introduced

A facility has been introduced for filing of nil details in FORM GSTR 3B or FORM GSTR 1 returns by sending an SMS through the registered mobile number basis a verification through a one-time password that is generated.

5. Interest rates revised

Interest rates prescribed if Form GSTR-3B is not filed within the due dates specified

Class of Persons	Interest Rate	Relevant period for which Form GSTR-3B to be filed
Taxpayers having an aggregate turnover of more than five crores rupees (INR 5 crores) in the preceding financial year	Nil for first 15 days from the due date, 9 per cent thereafter till 24 June 2020	February 2020, March 2020, April 2020
Taxpayers having an aggregate turnover of up to five crores	Nil till 30 June 2020, 9 per cent thereafter till 30 September 2020	February 2020

Class of Persons	Interest Rate	Relevant period for which Form GSTR-3B to be filed
rupees (INR 5 crores) in the preceding financial year, whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana or Andhra Pradesh or the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep	Nil till 5 July 2020, 9 per cent thereafter till 30 September 2020	March 2020
	Nil till 9 July 2020, 9 per cent thereafter till 30 September 2020	April 2020
	Nil till 15 September 2020, and 9 per cent thereafter till 30 September 2020	May 2020
	Nil till 25 September 2020, and 9 per cent thereafter till 30 September 2020	June 2020
	Nil till 29 September 2020, 9 per cent thereafter till 30 September 2020	July 2020
Taxpayers having an aggregate turnover of up to rupees five crores (INR 5 crores) in the preceding financial year, whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha or the Union territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi	Nil till 30 June 2020, 9 per cent thereafter till 30 September 2020	February 2020
	Nil till 3 July 2020, 9 per cent thereafter till 30 September 2020	March 2020
	Nil till 6 July 2020, 9 per cent thereafter till 30 September 2020	April 2020
	Nil till 12 September 2020, and 9 per cent thereafter till 30 September 2020	May 2020
	Nil till 23 September 2020, 9 per cent thereafter till 30 September 2020	June 2020
	Nil till 27 September 2020, 9 per cent thereafter till 30 September 2020	July 2020

6. Rates of tax applicable for composition dealers clarified

Rates of tax applicable to composition dealers clarified in order to avoid any confusion regarding overlap:

Section under which composition levy is opted	Category of registered persons	Rate of tax
Sub-Sections (1) and (2) of Section 10 of CGST Act	Manufacturers, other than manufacturers of such goods as may be notified by the Government	One (1) per cent. of the turnover in the State or Union territory
Sub-Sections (1) and (2) of Section 10 of CGST Act	Suppliers making supplies, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human	Five (5) per cent. of the turnover in the State or Union territory

Section under which composition levy is opted	Category of registered persons	Rate of tax
	consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.	
Sub-Sections (1) and (2) of Section 10 of CGST Act	Any other supplier eligible for composition levy under Sub-Sections (1) and (2) of Section 10	One (1). of the turnover of taxable supplies of goods and services in the State or Union territory
Sub-Section (2A) of Section 10 of CGST Act	Registered persons not eligible under the composition levy under Sub-Sections (1) and (2), but eligible to opt to pay tax under Sub-Section (2A), of Section 10 of the CGST Act	Three (3) per cent. of the turnover of supplies of goods and services in the State or Union territory.

7. Provision extending power to issue removal of difficult orders notified

The provision extending the power to issue removal of difficulty orders for a period of five years from three years has been notified and shall come into effect from 30 June 2020.

8. Amendments to transitional provisions notified

The controversial amendments (introduced vide Section 128 of the Finance Act, 2020 and which take effect from 1 July 2017) to the transitional provisions under Section 140 of the CGST Act thereby validating the time limits prescribed in Rule 117 of the CGST Rules, have been notified on 16 May 2020.

9. Verification of GST Returns

Assessees registered under the Companies Act, 2013 are allowed to furnish FORM GSTR 3B and verify it through electronic verification code (EVC) for the period 21 April 2020 to 30 September 2020. Further, for the period 27 May 2020 to 30 September 2020, such assessees have also been allowed to file FORM GSTR 1 and verify it through EVC.

10. Extension in timelines of specified GST returns

Return / Event	To be filed by	Relevant period	Revised Due Date
FORM GSTR 4	Composition dealers	Financial year 2019-20	31 October 2020
FORM GSTR 3B	Persons having principal places of business in states of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union	August 2020	1 October 2020

Return / Event	To be filed by	Relevant period	Revised Due Date
	territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep		
FORM GSTR 3B	Persons having principal places of business in states of States of 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		3 October 2020

FOREIGN TRADE POLICY

11. Withdrawal of Merchandise Exports from India Scheme (MEIS) benefits

In line with ruling given by the World Trade Organisation (WTO) on 31 October 2019, quantitative and qualitative caps have been introduced on the MEIS benefits:

(a) For the benefits availed in respect of exports made for the period from 1 September 2020 to 31 December 2020, an exporter shall not be granted licenses in excess of rupees two crores (INR 2 crores) per import export code (IEC). This shall be subject to further downward revision so as to not exceed the total allocation of rupees five thousand crores (INR 5000 crores) by the Government.

(b) An exporter who has procured the IEC after 1 September 2020 or who has not made any exports between 1 September 2019 to 31 August 2020 shall not be eligible for the MEIS benefits.

(c) No MEIS benefits shall be available for exports madeon or after 1 January 2021.

03.
NEWS UPDATES

1. Rollout of customs faceless assessments

Under the auspice of the *Turant Customs* programme, the Central Board of Indirect Taxes and Customs has ordained the roll out of faceless assessment at an all India level in all ports of import and for all imported goods by 31 October 2020. Detailed instructions in this regard have been issued.

2. Automatic issue of Let Export Order (LEO)

In case of goods which are covered under courier shipping bills and which have been cleared by the risk management system post scanning under an x-ray machine, will automatically be issue a LEO. This is an effort to reduce the lead time in case of courier exports.

3. Extension of Authorised Economic Operator (AEO) certificates

Except in cases where a negative report has been received, the validity of all AEO licenses expiring between 1 March 2020 to 30 September 2020 shall stand extended to 30 September 2020.

We hope the e-Bulletin enables you to assess internal practices and procedures in view of recent legal developments and emerging industry trends in the indirect tax landscape.

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