

## DA TAX ALERT- INDIRECT TAX

An e-Tax alert from **Darda Advisors LLP**

### INDIRECT TAX UPDATE – July 2020

Issue: 02



### Contents

- [GST Compliance Calendar](#)
- [Goods and Service Tax](#)
- [Customs and Others](#)

## GST Compliance Calendar - July 2020

Return	Person responsible	Period	Due date	Notification
GSTR 1	Normal Taxpayer	June 2020	11 July 2020	-
	Quarterly taxpayer	Apr-Jun 2020	31 July 2020	-
GSTR 3B	Normal Taxpayer	June 2020	20/22/24 July 2020	-
	Normal Taxpayer (Turnover < Rs. 5 Cr.)	March 2020	3/5 July 2020	31/2020-CT
	Normal Taxpayer (Turnover < Rs. 5 Cr.)	April 2020	6/9 July 2020	31/2020-CT
GST CMP-08	Quarterly Statement for Composition dealer	Jan-Mar 2020	7 July 2020	34/2020-CT
GSTR 4	Composition taxpayers' Annual return	FY 19-20	15 July 2020	34/2020-CT
ITC 03	Reversal of ITC in stock	FY 20-21	31 July 2020	30/2020-CT

# GST

@ 3.0

Goods and Services Tax (India)

## Back to Ground Zero - TRAN-1 filing date extension judgment of Delhi High Court stayed by Supreme Court

- Based on the appeal filed by Central GST authority, the Honorable Supreme Court of India stayed Delhi High Court Judgment in the case of Brand Equity Treaties Ltd (WP[C] No. 196/2019 & CM Appeal No. 965/2019 dated 05 May 2020) instructing GST authority to open the GSTN facility to file GST TRAN-1 till 30 June 2020.
- Further, Section 140 of the CGST Act, 2017 is already amended through Finance Act, 2020 dated 27 March 2020 with retrospective effect from 1 July 2017 and provided that transition credit taken after due date will be disallowed. To facilitate this, the term “within such time” has been inserted among various provisions of Section 140 of the CGST Act, 2017. The section 128 of Finance Act, 2020 (12 of 2020) has been notified w.e.f 18 May 2020.
- However, the said issue was further discussed by another Bench of the Delhi High Court after retrospective amendment of Section 140 wherein it was held that the decision was applicable in respect of time-lines for filing GST Form TRAN-1, regardless of the

recent retrospective amendment. Further, the Honorable Delhi High Court in the case of SKH Sheet Metal Components v. Union of India & Ors. [Judgment dated 16 June 2020 in W.P. (C) 13151/2019] noted that the earlier decision did not entirely rested on the fact that statute did not prescribe any time limit for availing the transition credit. It also noted that the exclusion of non-technical cases under Rule 117(1A) of CGST Rules, 2017 was arbitrary and irrational.

**DA's comments:** The last chance for filing TRAN-1 after multiple judgments and rulings also lost due to recent stay by the Honorable Supreme Court. CBIC should take concrete steps to assist the industry to avail pre-GST regime credits with certain exceptions based on facts and situation of the case.

## Cash Carry Vans are eligible for ITC

- The Company is having cash management network pan India. During the course of providing the cash management services, the company is engaged in providing ATMs and installing the same at various locations across India and managing cash circulation through transporting cash from currency chest to bank branches, Cash pick-up and delivery from and to



dedicated banks. Such transportation of cash is done through the security vans popularly known as “cash carry vans”. The advance ruling filed by the Company was not decided by the AAR (Authority for Advance Ruling) and hence the matter went to AAAR (Appellate Authority for Advance Rulings) to decide whether the credit is allowed on cash carry vans used for carry cash which are sold in future as scrap.

- The AAAR held that, as the law now stands, ITC is not available to the Company on purchase of motor vehicles i.e. cash carry vans, which are purchased and used for cash management business and supplied post usage as scrap. Aggrieved by the order, the Company filed the writ petition in the Honorable Bombay High Court which set aside the AAAR Ruling and instructed to decide the case after considering various submissions.
- In view of the observations of the Hon'ble High Court, AAAR reconsidered the submissions made by the Appellant afresh. The AAAR stated that we are inclined to concur with the Company's contention as to what is being transported by them in the cash-carry vans is not the money but the goods for them, as they cannot use

such money for any purpose, whatsoever. It is unavoidably warranted to deviate from the literal meaning provided to the term 'money' under section 2(75) of the CGST Act, 2017 and it has been rightly observed that what is being transported by the Company in their cash-carry van is not money but the goods for the said reasons and can be decisively inferred that money under question is nothing but goods. Accordingly, the AAAR held that ITC against the GST paid on the purchase, and fabrication of the motor vehicles, used for carrying cash and bullions, is available to the Company.

**DA's comments:** The law has allowed ITC on goods transportation vehicles irrespective of its usage and whether goods are taxable or not. The above AAAR is an welcome decision which came after the Honorable High Court remanded back the case to reconsider based on submissions.

*M/s CMS Info Systems Ltd. – Maharashtra AAAR (Order no. MAH/AAAR/SS-RJ/04A/2018-19) [2020-TIOL-33-AAAR-GST]*

**Online tests scored after human intervention are outside the purview of OIDAR service**

- NCS Pearson Inc., Minnesota, is engaged in the business of

computer based test (exams) administrative solutions to its clients (test sponsor) like educational institutes, professional licensing organizations etc. The Company offered three types of administrative tests on behalf of the clients to the test takers in India. Test takers are typically individuals across the Globe including the candidates from India who are not registered under CGST, Act, 2017. The types of Tests are: Type 1: Self administered digital test with MCQ, Type 2: Similar to Type 1 except that the candidate needs to go to Test centre, Type 3: Mixture of MCQ and analytical writing assessment section i.e. essay-based questions and conduct at Test Centre and essay answers are sent to evaluator in USA for examination. All are priced separately. Further, in India, there are contractual arrangements with independent third party service providers including a subsidiary company for providing test centre services in Type 2 and Type 3. The Company is already discharging GST on Type 1 test.

- The Company raised the query before AAR whether type 2 and type 3 classifies as 'Online Information and Database Retrieval Services' (OIDAR services) under GST law and if not whether still liable to IGST on supply of said services to non-taxable online

recipients in India. The Company submitted that the key ingredient of OIDAR services is 'minimal human intervention' which can decide whether Type 2 and Type 3 test are liable to GST or not and in their case, without going to test centre, the test cannot be conducted.

- The AAR held that provision of taking tests online at designated test centers are naturally bundled activities and are supplied in conjunction with each other in the ordinary course of business and therefore can be termed as Composite Supply as per Section 2 (30) of CGST Act, 2017. Since the main object of the whole activity is to take online tests, so the principal supply would be OIDAR service provided by the applicant to non taxable online recipients. For Type 2 Test, it is OIDAR services and no liability arise and for Type 3 Test, it is not OIDAR services being evaluated by USA evaluator and exempt under GST vide sr. no. 10 of notification No. 09/2017-IGST (Rate) dated 28 June 2017.

**DA's comments:** Classification of transactions as OIDAR services is always in dispute and detailed discussion over 'minimal human intervention' concept across the international VAT/GST regime in the said advance ruling can be considered for debate and discussion

*M/s NCS Pearson Inc. – Karnataka AAR [2020-TIOL-115-AAR-GST]*

## Differentiating Parotta vis a vis Roti for GST applicability

- Indirect taxes (GST and erstwhile Excise Duty/VAT) are transactional taxes, that covers goods, services and businesses and levy the tax at varying rates. Various rates are applied to leave certain essential goods or promote certain domestic sectors/industries and sometimes to discourage certain kinds of consumption (i.e. caffeinated beverages). India's GST has seven rates that cover over 1,350 tariff items on goods.
- The company, ID Fresh Food approached the AAR to seek a ruling on the GST rate applicable to whole wheat parottas and Malabar parottas. The AAR held that the parottas would be liable to GST at 18% as the 5% rate was applicable to rotis or chapattis but not parottas. Yet, almost-ready-to-eat parotta did not make it to the list.
- The Karnataka AAR interpreted the product category 1905—“Khakhara, plain chapatti or roti”—as one that covered ready-to-eat food items while the ID Fresh Food parottas required heating before eating and hence were determined as falling in a different category.

This ruling leads to division between premium parotas and plain parotas.

- Further, CBIC clarified in series of tweets that the ordinary or any parotta served for consumption by a restaurant or a takeaway would attract 5 per cent GST rate just like plain roti. Also, the GST Council at its 37th meeting had discussed the rate on frozen and preserved parotta and did not recommend to reduce the tax rate as this product is sold by the organised sector.

**DA's comments:** Such classification disputes are very common in India and globally in all tax regimes. However, the Government should ensure that tariff classification and rate differentiation should be consistent and does not lead to dispute for the similar products just based on its usage or other criteria. The said advance ruling has also lead to debate on social media on North vs. South divide and the Government should issue official clarification in the form of circular/instructions as tweets are not valid for taking decisions by taxpayers.

*M/s ID Fresh Food (India) Pvt. Ltd. – Karnataka AAR [2020-TIOL-114-AAR-GST]*

## Nature of levy on ex-factory inter-state supplies

- M/s Penna Cement Industries Limited raised a query before Telangana AAR whether they should charge CGST and SGST or IGST on ex-factory/works basis supply from their plants in Telangana.
- In the case of ex-factory inter-State sales, the goods are made available by the supplier to the recipient at the factory gate, but this is not the point where movement terminates since the recipient subsequently assumes the charge for transportation of the goods up to the destination in another state. Thus, termination of the movement of goods evidently takes place at the location (in a different state) to which the goods are consigned/destined and such movement is effected by the recipient or by any other person such as transporter authorized by the recipient.
- In terms of the section 10 (1) of IGST Act, 2017, it is apparent that place of supply in respect of goods (where supply involves movement of goods) shall be the location of goods at the time when movement of goods terminates for delivery to the recipient. Further, the usage of the words under section 10 (1) of IGST Act, 2017 'whether by the

supplier or by recipient' after the words 'where the supply involves movement of goods' perceptibly indicates that the movement can be effected by the supplier or by the recipient or by any other person authorized by the recipient. Accordingly, it can be inferred that the place of supply in respect of goods where the supply involves movement of goods whether by the supplier or by the recipient or by any other person authorized by him has to be determined with reference to the location where the movement of goods ultimately terminated.

- The AAR held that the supplier in the stated instance is liable to charge IGST in respect of ex-factory inter-State supplies.

**DA's comments :** Any query related to Place of Supply cannot be considered by AAR as per CGST Act, 2017. In the present case, the AAR has given ruling on place of supply by discussing in detail on section 10 of IGST Act, 2017. Centralised AAR is required at this stage immediately to have consistent ruling across all states and as per provision of the GST law.

*M/s Penna Cement Industries Limited – Telangana AAR [2020-TIOL-112-AAR-GST]*



## Non availability of lower rate benefit to non government companies on Original Works

- The applicant has been awarded a tender by M/s. Railtel Corporation of India limited (A Government of India Undertaking, Ministry of Railways) which was appointed by M/s Bharat Broadband Network Ltd. (100% owned by Government of India) and the work to be performed is that of Excavation of trenches and laying of OFC (Optical Fiber Cable) through ducts, testing, commissioning of OFC.
- The appellant has raised the query before AAR whether the Contract with Railtel Corporation of India Ltd. will fall under the Notification 24/2017-Central Tax (Rate) Sr.No.3(vi)-Construction Service or Original Work to Government Authority, and the rate of tax applicable to be 12% or not.
- The AAR held that the work carried out by the applicant is not a function covered under the list of functions entrusted to a Municipality under Article 243 W of the Constitution of India or the list of functions entrusted to a Panchayat under Article 243 G of the Constitution of India. In view of the above, M/s. Railtel Corporation of India Ltd. does not fall under the category of 'Government Authority'.

Further, it cannot be construed that the OFC laid underground are meant predominantly for use other than for commerce, industry, or any other business or profession as stated by the applicant. Therefore, the contract in question does not satisfy the conditions envisaged in 3(vi) of Notification No.24/2017-Central Tax (Rate) dated 21 September 2017.

**DA's comments :** The exemption and lower rate benefit for supply to Government and Government bodies/entity is subject to multiple conditions and needs to be satisfied cumulatively before availing such benefit.

*M/s Shree Hari Engineers And Contractors – Gujarat AAR [2020-TIOL-145-AAR-GST]*

## Levy of GST on goods supplied outside India from vendor's premises located outside India

- The facts is that the applicant proposed to undertake "Merchant Trade Transaction" wherein they would receive an order from customer located outside India; back to back order would be placed by them to supplier located outside India; goods would be directly shipped by vendor outside India to customer located outside India and payment would be made in foreign currency to vendor and applicant

would receive foreign currency from customer.

- The applicant raised the query
  - i. whether GST is payable on goods procured from vendor located outside India in a context where the goods so purchased are not brought into India and further
  - ii. Whether GST is payable on goods sold to customer located outside India where goods are shipped directly from the vendor's premises (located outside India) to the customer's premises.
- The AAR referred Section 2(10), section 7(2), section 5(1) of the IGST Act, 2017 and sub-sections (7) (8) and (12) of Section 3 of the Customs Tariff Act, 1975, Section 12 and 15 of the Customs Act, 1962 and concluded that "it is evident that the integrated tax on goods imported into India shall be levied and collected at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 i.e. on the date determined as per provisions of Section 15 of the Customs Act, 1962. On the first issue, AAR held that GST is not payable on goods procured from vendor located outside India, where the goods so purchased are not brought into India. On the second issue, the AAR held that

the applicant is selling goods for a consideration in the course or furtherance of business and as such the transaction tantamount to 'supply' in terms of the definition of 'supply' under CGST Act, 2017.

**DA's comments:** The Article 245 of the Constitution of India provides that the Parliament can make laws for the whole or any part of the territory of India and cannot enact a law beyond the territorial limits of India. However, the Authority in this case has done by ruling that a supply of goods which takes place outside India would still be liable to IGST.

In the month of June 2020, a few vague Rulings relating to Parotta, sale of developed plots and this ruling have raised question mark on relevance of such advance rulings and legal sanctity when pronounced without application of law, facts and legal interpretation and leads to adverse impact on other players in the same sector/industry.

*M/s. Sterlite Technologies Ltd –  
Advance Ruling No.  
GUJ/GAAR/R/04/2020*

## Non availability of ITC on project development services for development of SIPC

- Deendayal Port Trust (DPT) is assigned by Ministry of Shipping to prepare a master plan comprising

future projects and for utilization of land resources for developing port based smart city and incurring following expenses i.e. Programme management consultancy, Marketing Consultancy; Land levelling and other related works; Roads; Water, electricity, & Drainage Infrastructure; and Other related works for developing SIPC (Smart Industrial Port City).

- DPT will auction the land under the SIPC for 60 or more years, for a consideration, in the form of one time up front premium. Considering the taxability of collection of one time premium, DPT has raised the query whether input tax credit (ITC) would be available on said expenses or not to them for providing taxable output supply
- Gujarat's Authority of Advance Ruling (AAR) ruled that the said project development is nothing but construction of an immovable property and any project development services or goods or works contract used for construction of an immovable property shall attract the provisions of clause (c) and (d) section 17 (5) of the CGST Act, which specifically deny input tax credit in respect of works contract services or goods and services used for construction of an immovable property.

**DA's comments:** Whether 60+ years

leasing of plots would be liable to GST or not would be the issue before deciding whether ITC would be available on such transaction. Further, the earlier judgment of Orissa High Court in the case of Safari Retreats Private Limited held that ITC is allowed on goods and services used for construction of immovable property and used in the course or furtherance of business.

*M/s Deendayal Port Trust – Gujarat AAR [2020-TIOL-131-AAR-GST]*

## Extension of notices for rejection of refund claim

- Time limit for issuance of the order of refund is extended to fifteen days after the receipt of reply to the notice from the registered person or the 30 June, 2020, whichever is later. Further the date is extended till 31 August 2020 vide Notification no.56/2020-Central Tax dated 27 June 2020.

[Notification no.46/2020-Central Tax dated 9 June 2020](#) and [Notification no.56/2020-Central Tax dated 27 June 2020](#)

## E-Way bill validity for specific period further extended

- Validity period for e-way bills which were generated on or before 24 March 2020 and whose validity has expired on or after 20 March 2020 has been extended till 30 June

2020. Notification No. 47/2020-Central Tax, dated 9 June 2020 issued for the purpose amends Notification No. 35/2020- Central Tax with effect from 31 May 2020. It may be noted that earlier, the validity of e-way bills generated on or before 24 March 2020 and expiring between 20 March 2020 to 15 April 2020 was extended till 31 May 2020.

[Notification No. 47/2020-Central Tax, dated 9 June 2020](#)

## Verification through EVC for Companies

- Registered persons registered under the provisions of the Companies Act, 2013 have been allowed to furnish the details of outward supplies in Form GSTR-1 verified through Electronic Verification Code (“EVC”), during the period from 27 May 2020 to 30 September 2020. Period during which Form GSTR-3B has been allowed to be verified through EVC has also been revised. The new period is from 21 April 2020 to 30 September 2020 instead of from 21 April 2020 to 30 June 2020 as notified earlier on 5 May 2020 and effective from 21 April 2020.

[Notification No. 48/2020-Central Tax, dated 19 June 2020, effective from 27 May 2020](#)

## Nil filing return in Form GSTR 3B by SMS w.e.f. 8 June 2020

- Form GSTR 3B for a month having nil or no entry in all the Tables can be filed through a SMS using the registered mobile number and the said return shall be verified by a registered mobile number based One Time Password (OTP) facility. This facility introduced vide Rule 67A of the Central Goods and Services Tax Rules, 2017 has been made effective w.e.f. 8 June 2020 which was notified vide Notification 38/2020-Central Tax dated 5 May 2020 but was not made effective.

[Notification No. 44/2020 – Central Tax dated 8 June 2020](#)

## Extension of the date for transition under GST of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Haveli

- The date for transition is extended for Union Territories of Daman and Diu & Dadar and Nagar Haveli to 31 July 2020 from 31 May 2020, which was amended in the Notification 10/2020-Central Tax dated 21 March 2020

[Notification No. 45/2020 – Central Tax dated 09 June, 2020](#)

## Procedure for Real Estate Developers to pay shortfall on value of inward supplies under RCM

- Based on rate notification, tax shall be paid through prescribed form electronically on the common portal by end of the quarter following the financial year. Accordingly for FY 2019-20, tax on such shortfall is to be paid by the 30 June, 2020. It has been decided that FORM GST DRC-03, as already prescribed, shall be used for making the payment of such tax by promoter/developer.

[Instruction No. 3/2/2020- GST dated 24th June 2020](#)

## Due dates extension till 31 August 2020 for specified compliances

- Due dates for some compliances whose due dates were falling between 20 March 2020 to 29 June 2020 were extended till 30 June 2020 vide Notification 35/2020 dated 3 April 2020. Further, the due date is extended till **31 August 2020** for specified compliances where the time limit is expiring between 20 March 2020 and 30 August 2020
- Following compliances are **covered** under the said notification
  - Depositing TDS payment

- TCS provision
- Refund application
- Letter of undertaking for FY 20-21
- Following compliances are **not covered** under the said notification
  - Time of supply
  - Value of supply
  - Registration requirement
  - Lapse of composition scheme on exceeding turnover limit
  - Casual taxable person
  - Tax invoice
  - Furnishing details of outward supplies- GSTR 1
  - Furnishing of returns (except subsection 3,4 and 5 in relation to TDS return, ISD return and Non resident Taxable Person return respectively)
  - Levy of late fee for late filing of returns
  - Payment of interest
  - Inspection of movement of goods (only for E-way bill)
  - Power of arrest
  - Liability of partners to pay the tax
  - Penalty for certain offences
  - Detention, seizure and release of goods and conveyance in transit

[Notification No. 55/2020 – Central Tax dated 27 June, 2020](#)



## Clarification in respect levy of GST on director's remuneration

- Following issue was clarified on 10 June 2020 vide [Circular No: 140/10/2020](#)

Issue	Clarification
<p>Taxability of remuneration paid to <b>Independent Director</b></p>	<ul style="list-style-type: none"> <li>• Since independent director is not an employee of the company which can be inferred from the definition of “independent directors” under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014</li> <li>• Therefore in respect of such directors who are not the employees of the said company, the services provided by them to the Company, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable</li> <li>• Accordingly remuneration paid to such independent directors, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis</li> </ul>
<p>Taxability of remuneration paid to <b>Directors, who are employees of company</b></p>	<ul style="list-style-type: none"> <li>• Directors of the company may be functioning in dual capacities, namely, one as a director or under a contract of service (employment) with the Company</li> <li>• If the remuneration paid to the directors are declared as salaries in the books of account and are subject to TDS u/s 192 of Income Tax Act, 1961, then it is not taxable as per Schedule III of the CGST Act, 2017 being consideration for services by an employee to the employer</li> <li>• If the remuneration paid to the directors are declared in other than salaries in the books of account and are subject to TDS u/s 194J of Income Tax Act, 1961 as fees for Professional or Technical Service, then it is taxable since outside the scope of Schedule III of the CGST Act, 2017. Further, Company shall discharge the GST on it on RCM .</li> </ul>

## Conditional waiver of interest for specified registered persons\*

S.No	Class of registered persons	Rate of interest	Tax period
1	<b>More than 5 Crores</b> Aggregate Turnover	Nil for first 15 days from the due date,  9 % thereafter till 24 June 2020  (No change in the dates. Only relevant provision in earlier notification substituted)	February,2020 March 2020, April,2020
2	Aggregate turnover <b>upto 5 Crores</b>  (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, Pondicherry,	Nil till 30 June, 2020,  9% thereafter till 30 September, 2020	February 2020
		Nil till 3 July 2020,  9% thereafter till 30 September, 2020	March 2020
		Nil till 6 July 2020,  9% thereafter till 30 September, 2020	April 2020
		Nil till 12 September 2020,  9% thereafter till 30 September, 2020	May 2020

\* [Notification No. 51/2020 – Central Tax dated 24 June 2020](#)

S.No	Class of registered persons	Rate of interest	Tax period
	Andaman and Nicobar Islands and Lakshadweep - <b>Category 1 states</b> )	Nil till 23 September 2020, 9% thereafter till 30 September, 2020	June 2020
		Nil till 27 September 2020, 9 % thereafter till 30 September, 2020	July 2020
3	Aggregate turnover <b>upto 5 Crores</b>  (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 – <b>Category 2 states</b> )	Nil till 30 June, 2020, 9% thereafter till 30 September, 2020	February 2020
		Nil till 5 July 2020, 9% thereafter till 30 September, 2020	March 2020
		Nil till 9 July 2020, 9% thereafter till 30 September, 2020	April 2020
		Nil till 15 September 2020, 9% thereafter till 30 September, 2020	May 2020
		Nil till 25 September 2020, 9% thereafter till 30 September, 2020	June 2020
		Nil till 29 September 2020, 9 % thereafter till 30 September, 2020	July 2020

## Conditional waiver of late fees for specified taxpayers for relevant period for GSTR 3B\*

S.No	Class of registered persons	Tax period	Condition (If Form GSTR 3B is furnished on or before)
1	<b>More than 5 Crores</b> Aggregate Turnover	February,2020, March 2020, April,2020	24 June, 2020
2	Aggregate turnover <b>upto 5 Crores</b> (Category 1 states)	February 2020	30 June 2020
		March, 2020	3 July 2020
		April, 2020	6 July 2020
		May, 2020	12 September 2020
		June, 2020	23 September 2020
		July, 2020	27 September 2020
3	Aggregate turnover <b>upto 5 Crores</b> (Category 2 states)	February 2020	30 June 2020
		March, 2020	5 July 2020
		April, 2020	9 July 2020
		May, 2020	15 September 2020
		June, 2020	25 September 2020
		July, 2020	29 September 2020

\* [Notification No. 52/2020 – Central Tax dated 24 June 2020](#)

## Conditional waiver of late fees for specified taxpayers for relevant period for GSTR 3B\*

- Waiver of late fees (above Rs. 250) for the GSTR 3B return for July 2017 to January 2020; if furnished between 1 July 2020 to 30 September 2020
- Waiver of total late fees for the GSTR 3B return for July 2017 to January 2020; if furnished between 1 July 2020 to 30 September 2020, where tax liability is Nil
- Waiver of late fees (above Rs. 250) for the GSTR 3B return for taxpayers with **more than 5 Cr.** Turnover for May 2020 to July 2020; if filed till 30 September 2020
- Waiver of total late fees for the GSTR 3B return for May 2020 to July 2020; if furnished till 30 September 2020, where tax liability is Nil

## Conditional waiver of late fees for all registered persons for GSTR 1 for specified months/quarters\*

S.No	Tax period	Date
1	March 2020	10 July 2020
2	April 2020	24 July 2020
3	May 2020	28 July 2020
4	June 2020	5 August 2020
5	January –March 2020 quarter	17 July 2020
6	April –June 2020 quarter	3 August 2020

## Due date extension for August 2020 for GSTR 3B\*\*

S.No	Registered persons	Tax period	Due Date
1	Aggregate turnover upto <b>5 Crores</b> (Category 1 states)	August 2020	1 October 2020
2	Aggregate turnover upto <b>5 Crores</b> (Category 2 states)	August 2020	3 October 2020

\* [Notification No. 53/2020 – Central Tax dated 24 June 2020](#)

\*\* [Notification No. 54/2020 – Central Tax dated 24 June 2020](#)

\*\*\*[Notification No. 57/2020 – Central Tax dated 30 June 2020 w.e.f 25 June 2020](#)



## Certain sections of Finance Act, 2020 notified with effect from 30 June 2020

S.No	Relevant Section of Finance Act, 2020	Provision	Impact
1	118	Sec 2(114) of CGST Act, 2017 has been amended to add Ladakh as Union territory in the Act	Ladakh is now regarded as Union territory for the purpose of CGST Act
2	125	Sec 109 of CGST Act, 2017 has been amended to have separate Bench of the Appellate Tribunal for the state of Jammu and Kashmir	J & K can have now separate Appellate Tribunal
3	129	The board does not have power to issue instructions to commissioner to determine and pay the expenses of the examination and audit of records under special audit	Board (CBIC) has the power to issue instructions to commissioner which now has been removed for special audit purpose
4	130 & 134	For the removal of difficulty in the provisions of CGST Act and IGST Act by a general or special order passed in the Official gazette but before a period of five years from the commencement of CGST Act and IGST Act	Earlier three years now changed to five years. Removal of difficulty order can be passed till 30 June 2022

- [Notification No. 49/2020 – Central Tax dated 24 June 2020](#)
- [Notification No. 4/2020 – Integrated Tax dated 24 June 2020](#)

## Notifying rates of GST for Composition Taxable Persons under Rule 7 of CGST Rules, 2017\*

S.No	Relevant Section of CGST Act, 2017	Registered persons	Rate of tax (of turnover in the State or Union territory)
1	10(1) & 10(2)	<b>Manufacturers</b> , other than manufacturers of such goods as may be notified by the Government	0.5 %
2	10(1) & 10(2)	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	2.5 %
3	10(1) & 10(2)	Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10	0.5 %
4	10(2A)	Registered persons not eligible under the composition levy under subsections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10	3%

\* [Notification No. 50/2020 – Central Tax dated 24 June 2020](#)

## **GSTR 3B – Manner of calculation of interest relaxed for taxpayers with aggregate turnover more than Rs. 5 crore**

- CBIC has relaxed the manner of calculation of interest in case of delayed furnishing of GSTR-3B. Accordingly, a lower rate of interest of NIL for first 15 days after the due date of filing return in Form GSTR-3B and at the rate of 9% thereafter till 24 June 2020 has been notified. After this date, normal rate of interest, i.e. 18% per annum shall be charged for any further period of delay in furnishing of the return. Hitherto, the interest at 18% per annum was to be charged from the due date of return, till the date on which the return is filed, in case the return was not filed till 24 June 2020 by the taxpayers having aggregate turnover more than Rs. 5 crore.

[Notification No. 51/2020-Central Tax and Circular No. 141/11/2020-GST, both dated 24 June 2020](#)

## **Clarification on Refund of accumulated ITC in respect of Imports, ISD invoices, RCM etc.**

- Refund sanctioning authorities were rejecting the refund of accumulated ITC in respect of ITC availed on Imports, ISD invoices, RCM etc. on the basis that the details of the said invoices/

documents were not reflected in Form GSTR 2A of the applicant. It was clarified that the treatment of refund in respect of above invoices shall not be restricted to Form GSTR 2A. In other cases, refund relating to missing invoices in GSTR 2A shall be restricted since issuance of Circular No. 135/05/2020- GST dated 31 March 2020

[Circular No. 139/09/2020-GST dated 10 June 2020](#)

# CUSTOMS

A person wearing a dark blue suit jacket is shown from the chest down. A bright red horizontal banner is superimposed over the upper part of the image, containing the word 'CUSTOMS' in large, white, bold, sans-serif capital letters. The person's right hand is visible, holding the edge of the banner. The background is a plain, light grey.

## Enhancement of Value under Customs without assessing under Customs Valuation Rules is invalid

- There are multiple appeal for the same applicant relating to identical issue of valuation of various types of aluminum scrap namely Taint Tabor, Tread, Tense, Zorba, Talk, Troma, terse, Twitch, Telic, etc. imported from various countries during the period August 2018 to May 2019. Based on the consent letter given by the Company, the adjudicating authority enhanced the value on the basis of DGOV (Director General of Valuation) circular dated 01 December 2016 and without applying Customs Valuation Rules sequentially.
- The CESTAT held that contemporaneous import data was either available or relied upon for enhancement of the value and therefore, the enhancement of value is absolutely illegal and incorrect and are of the clear view that merely based on DGOV circular also, value cannot be enhanced which is without authority of law.

**DA's comments:** Any increase or decrease in the Customs Valuation needs to be decided as per Customs Valuation Rules, 2007 and cannot be decided based on any circular or own valuation methodology. The similar

judgment has also been decided earlier in number of matters.

*M/s Guru Rajendra Metalloys India Pvt Ltd vs. CC Ahmedabad [Customs Appeal No. 12338 of 2019]*

## Discount provided on excisable goods cannot be considered as provision of services

- The Company is engaged in the business of manufacture and sale of heavy commercial vehicles falling under Chapter 87 of the Schedule to the Central Excise Tariff Act, 1985 and entered into an Agreement with M/s Man Trucks & Bus AG, Germany bearing the "MAN" trademark for sale outside India. MAN Germany alone has to arrange for the after sale services for its customers on its own account and accordingly extended a price reduction of 500 Euros to MAN Germany on sale of each heavy commercial vehicle to MAN Germany as per Article 9.5 of the Agreement.
- The adjudicating authority imposed service tax levy under reverse charge mechanism (RCM) on the discount allowed by the applicant on the allegation that they agreed to refrain from providing warranty service and accordingly giving such discount under the taxable category of Business Auxiliary Services (BAS) under Chapter V of



Finance Act, 1994.

- The CESTAT held that it cannot be said, under any circumstances, that MAN Germany was providing after sale service on behalf of the Appellant. After sale service was agreed to be provided by MAN Germany on its own account. The discount that is being offered to MAN Germany is merely an adjustment in the price of goods sold and is not towards provision of any service to be undertaken by MAN Germany on behalf of the company. The service provided by MAN Germany would, therefore, not classify as BAS and accordingly set aside the adjudicating authority's order.

**DA's Comments :** There are number of transactions where service tax levy was disputed based on agreeing to refrain/ tolerate an act/situation clause under Service Tax law and the same is continuing under GST law too.

*M/s MAN Trucks India Pvt. Ltd. Vs CCE [2020-TIOL-824-CESTAT-DEL]*

## Service tax not leviable when consideration is not involved

- M/s DLF Projects is engaged in the providing various taxable services and are registered with the service tax authorities. The Service tax authority during the course of Audit

found that they have provided corporate guarantee to various banks/financial institutions on behalf of their holding companies /Associate enterprises/ Joint Venture and Other loan facilities and alleged that the activity is taxable under Banking and Finance Institution Services. However, M/s DLF Projects contested that they are not liable to pay service tax on the said activity as they have not received any consideration for providing corporate guarantee to various banks on behalf of their associates.

- The CESTAT held that the demand raised in the show cause notices are on the basis of assumption and presumption presuming that their associates have received the loan facilities from the financial institution at lower rate, therefore, the differential amount of interest is consideration, but there is no such evidence produced by the CCE on that behalf and accordingly M/s DLF Project is not liable to pay any service tax on corporate guarantee provided by the appellant to various banks/financial institutions on behalf of their holding company/associate enterprises for their loan or over draft facility under Banking and Financial Institutions on or before 01 July 2012.

**DA's comments:** Under service tax law, any activity falls under the

definition of 'Service' when the consideration is involved unlike GST law where there are transactions which are considered as 'Deemed Supply' and liable to GST whether the consideration is involved or not.

*M/s DLF Project Ltd. vs. CCE [2020-TIOL-870-CESTAT-CHD]*

### **Incidental charges for delayed payment of installment is not liable to Service tax**

- The Company is engaged in providing Hire Purchase Finance Services to its clients and registered with the Service Tax authority under the category of 'Banking and other Finance Services'. During the course of audit, it was found that apart from recovery of hire purchase charges, the appellant was recovering the incidental charges from their customers on the delayed installment by the customers which were not included in the value of taxable services. Both the authorities below have confirmed the demand against the show cause notice issued and accordingly the appeal is filed to CESTAT. The Company also filed an application for additional grounds which was considered as legal in nature.

- The Company relied on CBEC Circular No.96/7/2007, Circular No.121/02/2010-ST dated 26 April 2010 and CBEC letter F.No.137/25/2011 dated 3 August 2011 which clarified with many instances that delayed charges are in the nature of penal charges and not part of taxable value under Service Tax law.

- The CESTAT held that as the CBEC has clarified that the delayed payment charges are not includible in the taxable value of service and accordingly the said charges are not liable to service tax.

**DA's comments:** Taxability of collection of any amount in the nature of penal charges cannot be considered for levy of service tax.

*Chittosho Finance Pvt. Ltd. Vs CCE [2020-TIOL-848-CESTAT-CHD]*

### **Technical know how is not taxable as IPR services under Service Tax regime**

- The Company is engaged in manufacture of cosmetics and skin care products. Two agreements were entered into by the Company with Revlon Mauritius Limited, Mauritius and Freya Holdings Limited, British Virgin Island. Under the former agreement, Revlon Mauritius granted the exclusive right to use the "know how" in connection

with the manufacture, marketing, sale and distribution of Revlon products in the territory and was required to pay a royalty of 5 per cent of its net sales per annum. The latter agreement was executed under which an exclusive license to use the Licensed Marks as trademarks and all other intangible rights and the exclusive right to import, made and sell Revlon Products subject to the terms and conditions of the agreement were given and does not involve any consideration.

- The adjudicating authority confirmed the demand under “Intellectual Property Services” category under Chapter V of Finance Act, 1994 for the period prior to the introduction of negative list with effect from 1 July 2012.
- The “Know how” is not specifically mentioned in the definition of “intellectual property right”. The issue that has to be examined is whether “Know how” would be included in any other similar intangible property under any law for the time being in force. This issue was also examined at length in the case of ABB Ltd. Vs Commissioner of C.EX & S.T., LTU, Bangalore [2019 (24) G.S.T.L.55 (Tri.-Bang.)] and it was observed that since “Know how” is not recognized as “intellectual property right” under Indian law,

and thus no “intellectual property right” service can be said to be provided.

- The CESTAT stated that “Know-how” is not recognized as Intellectual Property law by any Indian Law for the time being in force. In fact “Know-how” is the undisclosed information cited by the Department clarification dated 10 September 2004 as example of intellectual property right not covered by any Indian law. The transaction in the present case it was for know-how which is in the nature of intellectual property, no service was provided by the foreign companies
- Accordingly, CESTAT held that the grant of exclusive right by Mauritius Revlon to use the “know how” in any plant in accordance with the processes, specifications and recipes thereof in connection with the manufacture, marketing, sale and distribution of Revlon Products would not fall in the definition of “intellectual property right” so as to make it taxable under Service Tax law and set aside the order.

**DA’s comments:** It was very common trend where any royalty paid by the person is assumed to be taxable by the authorities under service tax law irrespective of nature of transaction. The said ruling provides concrete view that technical know how is not liable to

service tax being not recognised under India law.

*M/s Modi-Mundipharma Beauty Products Pvt. Ltd. Vs CST [2020-TIOL-859-CESTAT-DEL]*

## Faceless, Contactless, Paperless Customs-Electronic Communication of PDF Based Copies of Shipping Bill & e-Gatepass to Exporters w.e.f 22 June 2020

- In the paperless customs, only digital copy of the Shipping Bill (SB) bearing the Final LEO (Let Export Order) would be electronically transmitted to the exporter as against the current practice of printing the copy for exporters and also maintaining a docket in the Customs House.

### Key features:

#### Final LEO copy of SB

1. PDF version to be digitally signed and having encrypted QR code
2. Authenticity can be checked on Mobile app ICETRAK
3. Key details like SB no., SB date, FOB value, package details available in secured QR code
4. Version number also embedded in QR code to ascertain whether it's latest version or not (in case of cancellation of LEO etc)
5. LEO message also sent to

custodians who integrate with ICEGATE

6. SB LEO message only when custodians registered with ICEGATE

#### eGatepass Copy of SB

1. Through email to Customs Brokers, communication related to eGatepass PDF copy of SB
2. No printing of transference copy of SB is required
3. Provide key summary details for easy and quick verification at the point of Entry/Exit
4. Two types of QR code :
  - (i) For entire eGatepass document
  - (ii) For each containers/package covered under eGatepass
5. In case of packaged and other bulk cargo, eGatepass of SB will be generated during LEO
6. In case of containerized cargo, eGatepass copy of SB will be generated after receipt of container stuffing information for SB

Printouts allowed only in **exceptional circumstances**.

[Circular No.30/2020-Customs dated 22 June 2020](#)

## TURANT Customs - Faceless Assessment (1st Phase) w.e.f 8 June 2020

- First phase of Faceless /anonymised/virtual assessment

began at Bengaluru and Chennai w.e.f 8 June 2020 for imports primarily under Chapter 84 and 85 of Customs Tariff Act, 1975. It will be implemented pan India by 31 December 2020.

## Key features:

- Separate faceless assessment groups for each tariff chapter as of now
- Port Assessment Groups (PAGs) as appraising groups for faceless and non faceless functions for verification of the assessment
- TURANT Suvidha Kendra as dedicated cell catering to faceless assessment for accepting bond/BG, carrying out verifications, defacing/debit of documents and other functions
- Appellate Proceedings at Commissioner (Appeals) for faceless assessment lie with respective jurisdiction over the port of import
- Principal Commissioner at Bengaluru and Chennai as Nodal Commissioner and further to establish National Assessment Commissionerate for pan India implementation

[Instruction No. 09/2020-Customs dated 5 June 2020](#)

## AEO certification – Extension of validity

- The validity of Authorized Economic Operator (“AEO”) certificates where the same has expired between 1 March 2020 and 31 May 2020, has been extended to 30 June 2020. However this extension will not be granted to those AEO entities against which have received a negative report by CBIC in the abovementioned period. The AEO entities had expressed difficulties in renewing their certifications owing to the restrictions imposed under national lockdown

[Circular No. 27/2020-Customs dated 2 June 2020](#)

## Launch of new DGFT platform and Digital delivery of IEC related services w.e.f 13 July 2020

- This new platform enables the user to electronically file their application related to Import and Export Code (IEC), Advance Authorization (AA), Export Promotion Capital Goods (EPCG), including amendments & redemption, monitoring the status of the application, raising queries, replying to the deficiencies etc. among other services related to the Foreign Trade policy along with a Chatbot (a virtual assistant) for queries of users.
- To start the new platform, the IEC

applications and modification process would be suspended from 3:00 pm on 10 July 2020 till 13 July 2020

[Trade Notice No. 16/2020-21 dated 25 June 2020](#)

### **Increase in duration of validity of MEIS/SEIS scrips and relaxation in last dates for filling applications under MEIS/SEIS**

1. Validity of MEIS/SEIS extended till 30 September 2020 (Scrips issued between 1 March 2018 to 30 June 2018)
2. Late cut to be accordingly redetermined for MEIS application as on 1 March 2020 (Period between 1 March 2020 to 30 June 2020)
3. SEIS for FY 2016-17 can be filed till 30 June 2020
4. Late Cut for FY 2017-18 for SEIS would be 5% if filed till 30 June 2020

[Public Notice no. 08/2015-2020 dated 1 June 2020](#)



# Protect yourself and others!

## Follow these Do's and Don'ts

### Do's ✓



Practice frequent hand washing. Wash hands with soap and water or use alcohol based hand rub. Wash hands even if they are visibly clean



Cover your nose and mouth with handkerchief/tissue while sneezing and coughing



Throw used tissues into closed bins immediately after use



See a doctor if you feel unwell (fever, difficult breathing and cough). While visiting doctor wear a mask/cloth to cover your mouth and nose



If you have these signs/symptoms please call State helpline number or Ministry of Health & Family Welfare's 24\*7 helpline at 011-23978046



Avoid participating in large gatherings

### Don'ts ✗



Have a close contact with anyone, if you're experiencing cough and fever



Touch your eyes, nose and mouth



Spit in public

# Together we can fight Coronavirus

## About Darda Advisors LLP

Darda Advisors LLP offers a wide range of services in the tax and regulatory space to clients in India with professionals having extensive consulting experience. Our service offerings are:

- Goods and Service Tax (GST) Services
- Other Indirect Tax Services
- SEZ/EOU Incorporation and Compliance
- Foreign Trade Policy (FTP) Assistance
- Company Secretarial Services
- Incentives (Central and State) Assistance
- Valuation Services
- Virtual Tax Head Services
- Corporate Tax and International Tax Services

## Key Professionals

### **Mitu Surana** [B.Com, ACA] – Litigation and Tax Expert

Mitu has experience of over 16 years in Indirect tax including GST (around 10 yrs in Big 4)

### **D. Vineet Suman** [FCA, CS, CMA(I)] – Strategic Management and Tax Expert

Vineet has over 15 years of consulting experience in leadership role in Indirect tax including GST (around 13 years in Big 4)

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Ping 'Hi' for regular updates on **+91 99529 26239**

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