

GST **GUIDE**



Highlights of GST 40th Council Meeting

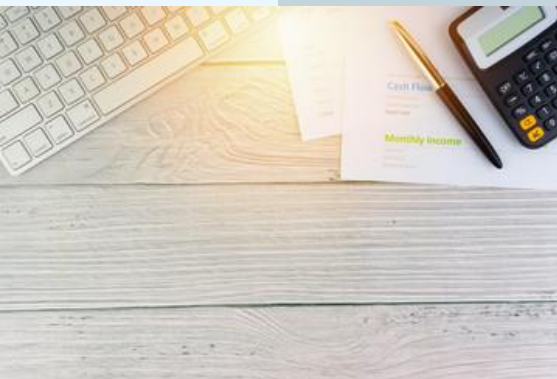
Delhi High Court allows Bharti Airtel to rectify GST Returns of 923 Cr.

Only supplier can claim refund of ITC/Integrated tax on supply to SEZ unit/developer (Case Law-Appellate Authority -AP)

Now 2P report gives a reconciliation category to identify missing invoices

GSTR-1 and 3B returns can now be filed with EVC for Companies

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GST News

Notifications, Circulars and Amendments to Law/Rule



Gist of 40th GST Council Meeting Held on 12-Jun-2020

Particulars	Return Period	Late Fee(Rs. In Amount)	Interest Rate(In %)	Applicability
Reduction in Late Fee for Past Returns				
GSTR3B - NIL Liability	Jul-17 to Jan-20	Waived off	As per Applicable Rate	If filed between 01-Jul-20 to 30-Sep-20
GSTR3B - Tax Liability		Rs.500 per return		
Relief for Taxpayers having Turnover upto Rs.5 crore				
GST Returns	Feb-20 to Apr-20	-	9%	Till 30-Sep-20 No Interest till notified date (06-Jul-20 in staggered manner)
GSTR3B	May-20 to Jul-20	Waived off		If Filed by Sep-20

One Time Extension till 30-Sep-20 for Taxpayers seeking revocation of cancellation of registration


Notifications, Circulars and Amendments to Law/Rule

Circular No. 138/08/2020-GST

Sr. No.	Issue	Clarification
Issues related to Insolvency and Bankruptcy Code, 2016		
1.	Difficulty faced in obtaining registration by interim resolution professional (IRP) or resolution professional (RP) during the period of lockdown.	The special procedure prescribed in Notification no. 11/2020-Central Tax, dated 21 March 2020, has been amended. Accordingly, IRP/RP can now obtain registration within 30 days of the appointment of the IRP/RP or by 30-Jun-20, whichever is later.
2.	The requirement prescribed under the special procedures that corporate debtors have to take fresh registration with effect from the date of appointment of IRP/RP	The special procedures have been amended and accordingly, it is clarified that IRP/RP would not be required to obtain new registration, where the corporate debtors have filed for all tax periods, the statement in GSTR-1 and return in GSTR-3B before the appointment of IRP/RP.
3.	Whether fresh registration would be required where the appointment of IRP has not been ratified and a separate RP is appointed?	<ul style="list-style-type: none">❖ Changes in the authorized signatory can be made by making an amendment in the registration form❖ However, in case the previous authorized signatory does not share the credentials with his successor, then the newly appointed person can get his details added through the Jurisdictional authority as primary authorized signatory.

Notifications, Circulars and Amendments to Law/Rule

Circular No. 138/08/2020-GST



Sr. No.	Issue	Clarification
Other COVID-19 related representations		
4.	<p>A registered supplier is allowed to supply goods to a registered merchant exporter at 0.1% provided that the merchant exporter exports the goods within 90 days from the date of issuance of invoice.</p> <p>In case of failure to export the goods within 90 days, the differential tax would be required to be paid along with interest.</p>	<p>Time limit for compliances falling between 20-Mar-20 to 29-Jun-20 has been extended till 30-Jun-20.</p> <p>Accordingly, the requirement of exporting the goods by the merchant exporter within 90 days from the date of issue of tax invoice by the registered supplier also gets extended to 30-Jun-20, provided the completion of such 90 days period falls within 20-Mar-20 to 29-Jun-20.</p>
5.	<p>Whether the due date for filing of ITC- 04 for the quarter ending Mar-20 also stands extended?</p>	<p>Time limit for compliances falling between 20-Mar- 20 to 29-Jun-20 has been extended till 30-Jun-20.</p> <p>Accordingly, it is clarified that the due date of furnishing of FORM GST ITC-04 for the quarter ending Mar-20 stands extended to 30-Jun-20.</p>

Notifications, Circulars and Amendments to Law/Rule

Circular No. 139:- Clarification related to Refund Related Issues

Representation have been made against circular no. 135 regarding inadmissibility of refund for the invoices which are not reflected in GSTR2A. There are certain instances where officers have disallowed refund of ITC with respect to Imports, RCM and ISD which are not reflected in GSTR2A.

Through this circular it is clarified that the treatment of refund of such ITC relating to Imports, ISD invoices and the inward supplies liable to RCM will continue to be same as it was before the issuance of Circular no. 135 /05/2020 GST dated 31-Mar-20

➤ **RAMA Says:-** The circular has benefitted several taxpayers who deals majorly in imports and exports of goods. Disallowance of ITC for inputs not reflecting in GSTR2A with respect to Imports and ISD is altogether harsh to the taxpayers who have discharged the liability but not eligible to claim refund of the same. Also department should also consider all those cases where the taxpayers have paid the tax amount to the vendors, availed ITC on the basis of valid tax invoice but due to vendors non-compliance, genuine refund had been disallowed.

Circular No. 140:- Clarification in respect of Levy of GST on Directors Remuneration

Through Circular 140, following things are clarified:-

- The remuneration paid to independent directors who are not employee of the said company, the said services provided by them to the company in lieu of remuneration as the consideration for the said service is outside the scope of Schedule III of CGST Act and therefore taxable. AS per notification no. 13/2017, the company is liable to discharge the applicable GST on RCM basis in case of availing Directors services.
- The part of Director remuneration which are declared as salaries in the books of companies and subject to TDS under section 192 of the IT Act are not taxable being consideration for services by an employee to an employer in the course of or in relation to his employment in terms of Schedule III of CGST Act 2017.
- Further it is clarified that the directors remuneration which is declared separately other than salaries and are subjected to TDS under section 194 J of the IT Act as professional or technical services will be taxable under GST and recipient company is liable to discharge GST liability on RCM.

➤ **RAMA Says:-** It is one of complicated issue of GST. Recent AAR of Rajasthan had even made it more complex. Due to confusions raised among taxpayers, CBIC has clarified the same. Now the taxpayer can assess the GST liability by simply looking at the income tax treatment of such consideration paid to the director.

1. Case Law: Delhi High Court allows to rectify GST Returns of 923 Cr.

Bharti Airtel Limited Vs Union of India & Ors.

Crux of the case:

Petitioner had inadvertently paid excess cash while filing GSTR-3B for the period Jul-17 to Sep-17 ('relevant period') owing to non-identification and non-availment of due Input Tax Credit ('ITC')

In Oct'18, when GSTR-2A was operationalized, petitioner realized that for the relevant period, ITC has been under-reported and estimates that there has been excess payment of taxes to the tune of INR 923 crore

The Petitioner now desires to correct its returns. However, in the absence of any enabling statutory provision, petitioner is unable to correct the returns filed.

Relevant circular is contrary to the scheme of Act since Act provided for the reconciliation of data through an IT system of Government and

rectification of errors in the same month to which data relates.

Inability of the Government to run IT system as per Act's structure resulting in a delay in the operationalization of GSTR-2A, cannot prejudice the rights of the taxpayer to take the ITC in the month it was due.

Decision by the High Court:

The scheme envisaged under Act, provided for a facility to reconcile the monthly data through the IT system of the Government.



The statutory provisions provide for a right and a facility, by which it can be ensured ITC availed and returns can be corrected in the very month to which they relate.

If the statutorily prescribed returns viz., GSTR-2 and GSTR-3 had been operationalized, the Petitioner would have known the correct ITC available to it in the relevant period, and could have discharged its liability through ITC.

FORM GSTR-3B is required to be filed manually and does not provide various checks as envisaged in the Act.

Para 4 of the relevant circular on GSTR-2A is not in consonance with the provisions of Act and accordingly **High Court permitted the petitioner to rectify GSTR-3B filed during the relevant period.**

High Court also observed that circulars issued by CBIC and Customs cannot be contrary to Act

> RAMA Says:

The High court has not yet communicated how the above judgement will be practically implemented. Thus, we may have to see whether the said rectification is allowed through GST portal or through manual filings. However, the above decision is welcomed by the taxpayers who could not avail the due ITC or paid excess tax in the starting phase of GST Implementation in India. But it is also important for taxpayers to understand that such decision shall have limited applicability to specific facts, situation and period.

Case Laws

2. **Case Law: Denial of refund claim by SEZ unit/developer stating 'only supplier can claim refund of ITC/integrated tax on supply to SEZ unit/developer.**

M/s Vaachi International India Private Limited
(Appellate Authority-AP Dt.10-02-2020)

Crux of the case: The Appellant is a SEZ unit primarily involved in export of goods. The said supplies fall under the definition of zero-rated supplies as per section 16(1)(a) of the IGST Act. The Appellant had received certain supplies from domestic tariff area (DTA) vendors on which GST had been charged and Appellant had made the payment to them along with GST.

The Appellant had filed the refund claim for such accumulated input tax credit (ITC) on which tax was paid to the vendor for the period Jul-17 to Mar-18. However, the claim was rejected by the Joint Commissioner (Assessing Authority) by stating that only the DTA vendors who make supplies to SEZ are eligible to claim the refund.

Aggrieved by the rejection order, the Appellant preferred an appeal before the Appellate Authority.

Contentions of the parties: The Appellant disputed the refund rejection order on the following grounds.

- Conjoined reading of section 54(3) of the CGST Act, 2017 and section 16 and section 2(5) of the IGST Act, 2017 provides that any person doing exports is eligible to claim refund of ITC. Accordingly, SEZ unit is very



well placed to claimed refund of unutilized ITC.

- GSTN portal allows SEZ unit to seamlessly file online refund application of unutilized ITC.
- Rule 89(2) of the CGST Rules requires a person claiming refund to obtain a declaration from a SEZ unit for non-availment of ITC. The intent of such declaration is obtained to avoid duplicity of refund claim. The Authority has erroneously interpreted the above provision stating that SEZ unit is not eligible to claim ITC.

Decision by High Court: Second proviso to rule 89(1) of CGST Rules, 2017 unambiguously stipulates that refund 'SHALL' be claimed only by the suppliers of goods to the SEZ unit and not by SEZ unit. Further, rule 89 (2)(f) of CGST Rules, states that SEZ units shall not avail ITC on the supplies received by them from non SEZ suppliers.

A conjoint reading of the aforesaid provisions concludes that SEZ units / developers shall not claim refund of unutilized ITC in respect of

Case Laws

supplies received by them from non-SEZ suppliers. The GST law facilitates the eligibility of refund claim to the suppliers who made supplies to SEZ units/developers with payment of tax.

Hence, the refund claimed by the Appellant is not in accordance with the provisions of the GST law and the Authority has rightly rejected the refund claim.

RAMA Says:

The judgment delivered by the honourable Appellate Authority does not hold good in law as there is no provision under the GST law which restricts a SEZ unit / developer to claim refund of the ITC on the GST paid to the vendors.

Further, entire objective of treating SEZ supplies as a different category is to promote exports and reduce the taxes. By allowing the supplier to claim refund and not the SEZ unit, the objective is not met and increases the tax burden for SEZ unit which will be eventually passed on outside India in form of increased cost.

Furthermore, in the case of M/s Lance Solar Pvt Limited Vs Commissioner, Central Tax, Central Excise Customs, (CG) Raipur wherein the appellate authority (AA) had denied the stand of Assessing Authority to deny the refund of service tax on ground of time barred. AA confirmed that – the ab initio exemption



provided under the SEZ provisions, has overriding effect on the service tax provision. Under such position of law, a notification under service tax cannot restrict or provide a time limit for grant of refund to the SEZ unit and developer. Accordingly, the appellant is entitled to consequential benefit, in accordance with law'. The same stand holds good under GST law as well.

RAMA IRIS GST / Portal Updates

CBIC has updated GST Portal with 2 Important Features as follows-

- 1) EVC option has been activated for GSTR-1 Return:**
Now Companies can also file GSTR-1 along with GSTR-3B through EVC option. Earlier this option was made available only to file GSTR3B in case of companies during lockdown due to Covid19 Virus Spread.

Goods and Services Tax

Dashboard Services - GST Law Downloads - Search Taxpayer - Help - e-Way Bill System New Return (Trial) -

Dashboard : Returns : File English

GSTIN - [REDACTED] Legal Name - [REDACTED] Return Type - GSTR1
FY - 2019-20 Return Period - December Status - Submitted

Returns Filing for GST GSTR1

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my/our knowledge and belief and nothing has been concealed therefrom.
Authorised Signatory*

[REDACTED]

BACK FILE WITH DSC FILE WITH EVC

- 2) GST ITC-02A is active on GST portal:**

It is notified under sec. 25(2) where two separate registrations can be obtained in single state due to different business vertical. Now to transfer ITC from one vertical to other this form can be used.

Goods & Service Tax (GST) | User x

return.gst.gov.in/returns2/auth/itcform/links

Goods and Services Tax

Dashboard Services - GST Law Downloads - Search Taxpayer - Help - e-Way Bill System New Return (Trial) -

Dashboard : Returns : GST ITC Forms English

GST ITC Forms

GST ITC-01
PREPARE ONLINE PREPARE OFFLINE

GST ITC-02
PREPARE ONLINE

GST ITC-02A
Declaration for transfer of ITC pursuant to registration under sub-section (2) of section 25
TRANSFER ITC TAKE ACTION

GST ITC-03
PREPARE ONLINE PREPARE OFFLINE

GST ITC-04 : Details of goods/capital goods sent to job worker and received back
PREPARE ONLINE PREPARE OFFLINE

RAMA IRIS GST / Portal Updates

Analyse and minimize the missing invoices

IRIS Sapphire, an end-to-end GST Compliance solution, is powered with reports to help us reconcile our invoices and ITC claim. Now an additional field is added in 2P report (our Purchase Register) where we get “Reconciliation Category” which categorize the invoices and helps us to identify the invoices where action is required to be taken. 2P report can be bulk downloaded for all GSTINs and for multiple financial years in one go.

Following are the list of categories given in the report:

1. **Matched**: The invoices booked by us is exactly matching with the invoices reflecting in our GSTR-2A. In such cases, no action is required to be taken.
2. **Not Matched**: The invoices booked by us is reflecting in our GSTR-2A but there is mismatch in value within tolerance limit. In such cases also, no action is required to be taken.
3. **Purchaser Only**: The invoices booked by us is not reflecting in our GSTR-2A return and follow up needs to be done with the respective vendor.
4. **Unacceptable Mismatch**: The invoices booked by us is reflecting in our GSTR-2A but there is mismatch in value above the tolerance limit as set by us. In such cases, we have to either accept supplier invoice or accept purchaser invoice (our invoice) and accordingly reconcile the ITC claim.



This helps us to know the status of ITC booked by us when compared with GSTR-2A. Smart reconciliation and insightful reports are handy tools to perform reconciliation on a continuous basis.

For demo enquiry, please contact –
Mr. Kapil Bansal: +91 97693 63338

1. Supreme Court Stays High Court Judgment Directing Department To Open GST TRAN-01 till 30-Jun-20.

The Supreme Court of India on 19-Jun-20 stayed Delhi High Court Judgment directing GST Department to open the facility to file GST TRAN-1 till 30-Jun-20.

Transition Form of TRAN-01 is filed by those taxpayers who are eligible to claim credit on the tax already paid in the pre-GST regime. In order to claim the complete amount as a credit, TRAN-1 is to be filed along with the particulars of stock carried forward.

The above ruling of the Delhi High Court and various other High Courts have held that the provision in the GST Act, prescribing a time limit to file TRAN-1 is ultra vires to the Constitution. The Courts were of the view that transitory credit is a vested right and any time limit cannot be fixed to avail that right.

In order to override the effects of these judgements, the Central Government amended section 140 of the CGST Act, 2017 through Finance Act 2020 with retrospective effect from 01-Jul-17.

A two judge bench of the Delhi High Court has directed the Central Government to allow the taxpayers to claim an Input Tax Credit under form TRAN01 till 30-Jun-20 since the statutory time limit to apply for the same is directory and therefore, the period of limitation of 3 years under the Limitation Act would apply.



Last month, the CBIC notified the above provision in the Finance Act which in effect, nullified the effect of the judgement. The judgement was an extraordinary help to every individuals who could not file TRAN-1 and claim the ITC.

Delhi High Court judgment was a major relief to taxpayers as there are huge credits which the taxpayers didn't carry forward due to technical glitches.

2. Parotta (commonly known as paranthas) taxable at 18% instead of 5%

The AAR Karnataka in the advance ruling filed by ID Fresh food held that GST applicable to whole wheat parottas and Malabar parottas would be liable to GST @ 18% as the 5% rate was applicable to rotis and chapatis. Both of them are Indian flat breads but evidently not for taxation purpose. Further both of them made from wheat /maida, only difference is the way of cooking. Still parotta should be subjected to 18% GST and 5% slab for Roti.

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