



June 2020

Newsletter

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Chartered Accountants

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INDIRECT TAX

THE GOODS AND SERVICE TAX

CIRCULARS AND NOTIFICATIONS

▲ **The general due dates of compliance extended to 31.08.2020**

The Govt. has extended the due date for various compliances which was earlier extended to 30.06.2020, by further period until 31.08.2020.

Notification No. 55/2020 – Central Tax dated 27th June 2020

▲ **Due date notified for filing the GSTR3B for the month of August 2020**

The Govt. has notified the due date for filing the GSTR3B for the month of August 2020 for the taxpayers having the **turnover up to Rs. 5 crores** during the previous financial year as under:

- Whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep – on or before the **01.10.2020**.
- 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, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi – on or before the **03.10.2020**.

Notification No. 54/2020 – Central Tax dated 24th June 2020

▲ **Waiver of late fee for filing GSTR 3B**

The Govt. has extended the waiver of the late fees for the delayed filing of the GSTR 1 for the period from March 2020 to June 2020 for some more time. The late fee waiver shall apply only if the GSTR1 is filed within the stipulated time. The dates for the different class of persons are given below:

Tax Period	Stipulated date
January to March 2020 (Quarterly Return)	17.07.2020
April to June 2020 (Quarterly Return)	03.08.2020
March 2020	10.07.2020
April 2020	24.07.2020
May 2020	28.07.2020
June 2020	05.08.2020

Quarterly return is applicable for the taxpayers whose aggregate turnover is less than Rs. 1.5 crores

Notification No. 53/2020 – Central Tax dated 24th June 2020

▲ **Waiver of late fee for filing GSTR 3B**

The Govt. has provided the waiver of the late fees for the delayed filing of the GSTR 3B for the period from February 2020 to July 2020. The late fee waiver shall apply only if the GSTR3B is filed within the stipulated time. The dates for the different class of persons are given below:

- For taxpayers having **turnover more than Rs. 5 crores** in the preceding financial year:

Tax Period	Stipulated date
February 2020, March 2020, April 2020	24.06.2020

- Taxpayers having an aggregate **turnover of up to Rs. 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:

Tax Period	Stipulated date
February 2020	30.06.2020
March 2020	03.07.2020
April 2020	06.07.2020
May 2020	12.09.2020
June 2020	23.09.2020
July 2020	27.09.2020

- Taxpayers having an aggregate **turnover of up to Rs. 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:

Tax Period	Stipulated date
February 2020	30.06.2020
March 2020	05.07.2020
April 2020	09.07.2020
May 2020	15.09.2020
June 2020	25.09.2020
July 2020	29.09.2020

The Govt. has also waived off the late fees in excess of Rs. 250 (under CGST – equal amount under SGST – total Rs. 500) for the persons who have failed to file the GSTR3B for the period July 2017 to January 2020 provided the GSTR3B for such period is filed during 01.07.2020 to 30.09.2020. It is also provided that if it is Nil return, then the entire late fee is waived off provided the returns if furnished during 01.07.2020 to 30.09.2020.

Notification No. 52/2020 – Central Tax dated 24th June 2020

▲ **Seeks to provide relief by lowering the interest rate for a prescribed time for tax periods from February 2020 to July 2020**

The Govt. has reduced the rate of interest applicable to the delay in the payment of GST for the following category of the taxpayers:

- For taxpayers having **turnover more than Rs. 5 crores** in the preceding financial year:

Tax Period	Nil Rate of Interest period	9% Rate of Interest period
February 2020, March 2020, April 2020	First 15 days from the due date	Till 24.06.2020

- Taxpayers having an aggregate **turnover of up to Rs. 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:

Tax Period	Nil Rate of Interest period	9% Rate of Interest period
February 2020	30.06.2020	30.09.2020
March 2020	03.07.2020	30.09.2020
April 2020	06.07.2020	30.09.2020
May 2020	12.09.2020	30.09.2020
June 2020	23.09.2020	30.09.2020
July 2020	27.09.2020	30.09.2020

- Taxpayers having an aggregate **turnover of up to Rs. 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:

Tax Period	Nil Rate of Interest period	9% Rate of Interest period
February 2020	30.06.2020	30.09.2020
March 2020	05.07.2020	30.09.2020
April 2020	09.07.2020	30.09.2020
May 2020	15.09.2020	30.09.2020
June 2020	25.09.2020	30.09.2020
July 2020	29.09.2020	30.09.2020

Notification No. 51/2020 – Central Tax dated 24th June 2020

▲ **Amendment made to the GST Rules**

The Govt. has amended Rule 7 to include the rate of composition tax for the service providers also in the rules itself.

Notification No. 50/2020 – Central Tax dated 24th June 2020

▲ **Certain amendments made to the CGST Act notified**

The Govt. has notified 30th June 2020 as the date from which the provisions of sections 118, 125, 129, and 130 of the Finance Act 2020 shall come into force.

Notification No. 49/2020 – Central Tax dated 24th June 2020

Note: The notification brings into effect the following provisions:

- *Section 118: The definition of Union Territory amended.*
- *Section 125: Reference to the State of Jammu & Kashmir omitted in section 109.*
- *Section 129: The meaning of the Commissioner for the purpose of issuing the instructions/directions amended to exclude the reference to the second proviso to section 143 (1).*
- *Section 130: The time limit to issue the removal of difficulty order has been extended from the existing 3 years to 5 years from the date of implementation of the GST.*

▲ **Amendment made to the GST Rules**

The Govt. has amended the GST Rules to enable even the companies also to file the GSTR3B during the 21st day of April 2020 to the 30th day of September 2020 through EVC.

Similarly, the filing of GSTR1 during the 27th day of May 2020 to the 30th day of September 2020 is allowed to file through EVC.

Notification No. 48/2020 – Central Tax dated 19th June 2020

▲ **The validity of e-way bill generated on or before 24.03.2020 (whose validity has expired on or after 20th day of March 2020) extended till the 30th day of June**

The Govt. has extended the validity of the e way bills generated on or before 24.03.2020 to 30th June 2020.

Notification No. 47/2020 – Central Tax dated 9th June 2020

▲ **Seeks to extend the period to pass an order under Section 54(7) of the CGST Act**

The Govt. has extended the due date for passing the order for the processing of the refund claim under section 54 (7) which is falling due between 20th day of March 2020 to the 29th day of June 2020 to fifteen days after the receipt of the reply to the notice from the registered person or the 30th day of June 2020, whichever is later.

The period has been further extended until 31st August 2020 on 27th June 2020 vide Notification No 56/2020 – Central Tax.

Notification No. 46/2020 – Central Tax dated 9th June 2020

Notification No. 56/2020 – Central Tax dated 27th June 2020

▲ **The date for transition under GST on account of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Haveli extended**

The Govt. has extended the date for transition under GST on account of merger of erstwhile Union Territories of Daman and Diu & Dadar and Nagar Haveli from 31st May 2020 to 31st July 2020.

Notification No. 45/2020 – Central Tax dated 9th June 2020

▲ **The effect is given to the provisions of Rule 67A for furnishing a nil return in FORM GSTR-3B by SMS**

The Govt. has notified 67A of the CGST Rules, which allows the taxpayers to file the Nil GSTR 3B SMS. The Nil return can be filed by using the registered mobile number.

Notification No. 44/2020 – Central Tax dated 8th June 2020

▲ **Clarification issued regarding payment of GST by real estate promoter/developer on the shortfall value of inward supplies from a registered supplier**

As per the amended provisions relating to the real estate sector, the developer/promoter shall purchase at least 80% of the inward supplies from the registered persons [other than services by way of grant of development rights, long term lease of land or FSI, electricity, high-speed diesel, motor spirit, natural gas]. In case of any shortfall, such a differential amount shall be paid under reverse charge by the promoter/developer on or before 30th June 2020.

The CBIC has clarified that the promoter/developer who is liable to pay the shortfall, shall pay the amount by using the DRC03.

Instruction No. 3/2/2020- GST dated 24th June 2020

▲ **Clarification in respect of various measures announced by the Government for providing relief to the taxpayers in view of the spread of Novel Corona Virus (COVID-19)**

The CBIC has issued clarification clarifying the issues relating to the various relief measures announced by the Govt. on account of COVID-19:

- **Manner of calculation of interest for taxpayers having aggregate turnover above Rs. 5 Cr:** It is clarified that after the specified date, the normal rate of interest i.e. 18% per annum shall be charged for any further period of delay in furnishing of the returns. The same is explained through the following illustration:

Sl. No.	Date of filing GSTR-3B	No. of days of delay	Interest
1	02.05.2020	12	Zero interest
2	20.05.2020	30	Zero interest for 15 days, thereafter interest rate @9% p.a. for 15 days
3	20.06.2020	61	Zero interest for 15 days, thereafter interest rate @9% p.a. for 46 days
4	24.06.2020	65	Zero interest for 15 days, thereafter interest rate @9% p.a. for 50 days
5	30.06.2020	71	Zero interest for 15 days, thereafter interest rate @9% p.a. for 50 days and interest rate @18% p.a. for 6 days

- **Manner of calculation of interest for taxpayers having aggregate turnover below Rs. 5 Cr:**

S. No.	Tax period	Applicable rate of interest	Date of filing GSTR-3B	No. of days of delay	Interest
1	March 2020	Nil till the 3 rd day of July 2020, and 9% thereafter till the 30 th day of September 2020	22.06.2020	61	Zero-interest
2			22.09.2020	153	Zero-interest for 72 days, thereafter interest rate @9% p.a. for 81 days
4			22.10.2020	183	Zero-interest for 72 days, thereafter interest rate @9% p.a. for 89 days and interest rate @18% p.a. for 22 days
4			28.08.2020	37	Zero-interest

5	June 2020	Nil till the 23 rd day of September 2020, and 9 percent thereafter till the 30 th day of September 2020	28.09.2020	68	Zero-interest for 63 days, thereafter interest rate @9% p.a. for 5 days
6			28.10.2020	98	Zero-interest for 63 days, thereafter interest rate @9% p.a. for 7 days and interest rate @18% p.a. for 28 days

- **Manner of calculation of the late fee:** It is clarified that the waiver of late fee is conditional to filing the return of the said tax period by the dates specified in the said notification. In case the returns in FORM GSTR- 3B for the said months are not furnished on or before the dates specified in the said notification, then late fee shall be payable from the due date of return, till the date on which the return is filed.

Circular No.141/11/2020-GST dated 24th June 2020

▲ **Clarification in respect of levy of GST on Director's remuneration**

The CBIC has issued a clarification regarding the taxability of the remuneration paid to the Directors. The summary of the clarification is given below:

- **Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company:** It is clarified that the remuneration paid to such independent directors, or those directors, who are not employees of the said company, **is taxable in hands of the company, on reverse charge basis.**
- **Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company:** It is clarified that the part of Director's remuneration which is declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act is **not taxable** being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

It is further clarified that the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is, therefore, taxable, in respect of which the Company, is liable to discharge the applicable GST on it on reverse charge basis.

Circular No. 140/10/2020-GST dated 10th June 2020

▲ **Clarification on refund related issues**

The CBIC has issued a clarification clarifying that the refund of the input tax credit availed on imports, ISD invoices, and the inward supplies liable to Reverse Charge (RCM supplies) shall be granted even if the details of such invoices are not appearing in the GSTR2A.

Circular No. 139/09/2020-GST dated 10th June 2020

 RECENT JUDICIAL PRONOUNCEMENTS

 ▲ **Electronically upload form TRAN-1 or avail input tax credit in monthly return GSTR-3B**

Facts: The Petitioner through instant petition is challenging vires of Rule 117(1A) of Central Goods and Service Tax Act, 2017 (for short 'Rules') and seeking direction to Respondent to permit Petitioner to electronically upload form TRAN-1 or avail input tax credit (for short 'ITC') in monthly return GSTR-3B. **Rulings:** The department was directed to permit Petitioner to upload TRAN-1 on or before 30.06.2020 and in case Respondent fails to do so, the Petitioner would be at liberty to avail ITC in question in GSTR-3B of July 2020.

2020-TIOL-1130-HC-P&H-GST Modern Motor Works Vs UoI

 ▲ **Not passed on the benefit of GST at the time of implementation of GST**

Facts: GST rate on the product was reduced from 28% to 18% vide notification 18/2018-CTR. The product was imported from outside India and was liable to countervailing duty @ 12.50% on the abated MRP apart from VAT. Therefore, the average tax incidence in the pre-GST era was 29.80% which was reduced to 28% upon implementation of GST. The registered person increased the basic price of the product consequent upon reduction in the rate of tax, the commensurate benefit of the implementation of GST was not passed on to the recipients.

Ruling: Appellate authority directed to deposit the profiteered amount along with interest @ 18% in the Consumer Welfare Fund of the Centre as well as State equally as per the provisions of rule 133(3)(c) of the CGST Rules. This amount to be deposited within three months and report be submitted by the Commissioners concerned. The penalty is imposable u/s 171(3A) of the Act for the contravention.

2020-TIOL-27-NAA-GST, Phillips India Ltd Vs UoI

 ▲ **If the Location of supplier' and the 'place of supply' fall under different States and the supply qualifies as inter-State supply**

Facts: Applicant is a manufacturer of cement having two cement plants in Telangana. They occasionally made the inter-state sale of cement on ex-factory/works basis from their plants in Telangana. When they make ex-factory sales from their plant, delivery terminates at their factory gate itself but the further movement is carried by recipient or transporter of goods up to the billing address State.

Ruling: IGST is chargeable on ex-factory inter-state supplies since although the goods are made available by the supplier to the recipient at the factory gate, this is not the point where the movement terminates since the recipient subsequently assumes the charge for transportation of the goods up to the destination in another state. Place (in the other State) where the goods are destined turns out to be 'place of supply' in terms of section 10(1)(a) of the IGST Act - consequently, the 'location of supplier' and the 'place of supply' fall under different States and the supply qualifies as inter-State supply.

2020-TIOL-112-AAR-GST, TSAAR Order No.03/2020, M/s Penna Cement Industries Ltd

 ▲ **Provision of taking tests online at designated test centers are naturally bundled activities**

Facts: The applicant offers three types of test-administrative solutions on behalf of its clients to the test-takers/candidates in India. The applicant has sought advance ruling on the following viz. whether the Type 2 test classifies as OIDAR service; if Type 2 test does not qualify as OIDAR, whether the applicant is liable to pay Integrated Tax.

Ruling: 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 the 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 applicant to non-taxable online recipients. Type 3 test does not classify as OIDAR services since Type 3 tests require more than minimal human intervention in order to complete the provision of the service, however, IGST is exempted by virtue of Sl. no. 10 of 9/2017-ITR.

2020-TIOL-115-AAR-GST, Advance Ruling No. KAR ADRG 37/2020, M/s NCS Pearson Inc.

▲ **Supply of service under maintenance contract entered by Foreign entity liable to GST**

Facts: Applicant is the local branch of a Russian business entity by the same name ('Foreign Company'), which entered into a Maintenance and Repair Contract ("MARC") with Bharat Coking Coal Ltd ("BCCL") with respect to the machinery and equipment it had supplied. The applicant wants to know whether the Maintenance and Repair Contract makes the supplier liable to pay GST.

Ruling: MARC holder maintains suitable structures in terms of human and technical resources at the sites of BCCL. It ensures supervision of the equipment, supply of spares and consumables, and overheads for 5000 annual working hours for seventeen years, indicating a sufficient degree of permanence to the human and technical resources employed at the sites. The MARC Holder, therefore, supplies the service at the sites from fixed establishments as defined under section 2(7) of the IGST Act. The location of the supplier should, therefore, be in India in terms of section 2(15) of the IGST Act. Consequently, the supply of the MARC Holder to BCCL is not, therefore import of service within the meaning of section 2(11) of the IGST Act. The MARC Holder should be treated as a supplier located in India triggering clause 9.2.2 of the MARC, and made liable to pay GST, the place of supply being determined in terms of section 12 (2) (a) of the IGST Act. The applicant, being the registered branch of the Foreign Company, should be treated as the domestic MARC Holder in terms of clause 9.2.2 of the MARC and be liable to pay tax accordingly. The recipient is not, therefore, liable to pay GST on reverse charge basis in terms of Notification No. 10/2017- Integrated Tax (Rate) dated 28/06/2017.

2020-TIOL-147-AAR-GST M/s IZ-Kartex Named After P G Korobkov Ltd

▲ **Cancellation of Regsitration**

Facts: The petitioner did not file the return and this resulted into a show cause notice for cancellation of registration on 9.01.2020 to submit a reply within 7 days and in case of any failure or personal appearance would entail into an exparte order. The aforementioned notice was replied and thereafter cancellation order dated 11.01.2020 was issued. The petitioner contends that the SCN was not issued in the required format and did not mention about the date, month and year as well as the time for appearance of the petitioner.

Ruling: It was held that the SCN was not in line with GST REG-17, the reference of date, month, year and time is conspicuously wanting. Accordingly the notice and the order is cancelled and the matter is remitted back for compliance.

Pazhayidom Food Ventures Pvt Ltd Vs Superintendent Commercial Taxes [2020-TIOL-1053-HC-KERALA-GST]

CENTRAL EXCISE, CUSTOMS AND SERVICE TAX

CIRCULARS AND NOTIFICATIONS

▲ CESTAT issues instructions for conducting the hearing through Video Conferencing Platform

The CESTAT has issued a detailed instruction for conducting the hearing of the urgent matters through the Video Conferencing Platform. The instruction can be accessed [here](#).

Public Notice No 1 dated 30th June 2020.

▲ Change in effective rate of duty for Bamboo

Notification No. 50/2017-Customs dated 30th June 2017 so as to withdraw the concessional rate of 10% available to the import of Bamboo for the manufacture of Agarbattis, and to levy a uniform rate of 25% on import of Bamboos [HS 1401 10 00].

With Effect from 9th June 2020.

Notification No. 27/2020-Customs dated 9th June 2020

▲ Empowerment of Customs Officers

The Notification empowers below custom officer as 'proper officers' to conduct a faceless or remote assessment of Bills of Entry filed under Section 46 of the Customs Act, 1962 for import:

Sl.No	Designation of the officer	Functions under Section of the Customs Act, 1962
(1)	(2)	(3)
1.	(i) Superintendent of Customs, GST and Central Excise or Appraiser,	(a) under sub-sections (2), (3), and (4) of section 17;
2.	(i) Deputy Commissioner or Assistant Commissioner of Customs.	(a) under sub-section (5) of section 17; (b) Section 18.

Notification No. 50/2020-Customs (N.T.) dated 5th June, 2020.

▲ Jurisdiction of Commissioner (Appeals)

Amendment made to Notification No.92/2017-Customs (NT), dated 28.09.2017 by inserting a proviso to empowering the jurisdictional Commissioners of Customs (Appeals) at Bengaluru and Chennai to take up appeals filed in respect of Faceless Assessments pertaining to imports made in their jurisdictions even though the assessing officer may be located at the other Customs station.

To illustrate, Commissioners of Customs (Appeals) at Bengaluru would decide appeals filed for imports at Bengaluru though the assessing officer is located at Chennai. This has been done to ensure the trade is not put to any hardship and can get their appeals heard locally, as at present.

Notification No. 51/2020 (N.T.)-Customs dated 5th June, 2020.

▲ Extension of Validity of AEO Certificates

The board has decided to extend the validity of all AEO certificates expiring/expired between 1-3-2020 and 31-5-2020 to 30-6-2020, except for those entities against which a negative report is received during this period.

Circular No. 27/2020-Cus, dated 2nd June, 2020

▲ **Nodal commissioners assigned and set up of Turant Suvidha Kendra**

Board hereby nominates Principal Commissioner/Commissioner of Customs, Bengaluru City, Bengaluru, Principal Commissioner/Commissioner of Customs, Airport and Air Cargo Complex, Bengaluru, Principal Commissioner/Commissioner of Customs (II), Chennai and Principal Commissioner/Commissioner of Customs (VII), Air Cargo Complex Chennai to act as nodal Commissioners for the purpose of administratively monitoring the assessment practice.

The Principal Chief Commissioners/ Chief Commissioners concerned shall set up dedicated cells called Turant Suvidha Kendras, in every Customs station to cater to functions and roles as provided.

Circular No. 28/2020-Cus, dated 5th June, 2020

▲ **Transshipment from Bangladesh to Third Countries**

Procedure for Transshipment of Export Cargo from Bangladesh to third countries through Land Customs Stations (LCSs) to Port/Airport, in containers or closed bodied trucks) issued.

Circular No. 29/2020 dated 22nd June, 2020

▲ **Electronic communication Shipping Bill & E-Gatepass**

Board directs that only the digital copy of the Shipping Bill bearing the Final LEO would be electronically transmitted to the exporter and the present practice of printing copies of the said document would stand discontinued.

Further, the Directorate General of Systems would henceforth communicate through email, the eGatepass PDF copy of the Shipping Bill to the Customs Broker and the Exporter, if registered. Accordingly, the Board has decided to do away with the printing of Transference copies of Shipping Bill.

With Effect from 22.06.2020

Circular No. 30/2020 dated 22nd June, 2020

RECENT JUDICIAL PRONOUNCEMENTS

▲ **DRI Can investigate the dealer even though he is not an exporter/importer**

Facts: The petitioner had supplied material to certain dealers. Records were seized and panchanama was prepared. Petitioner contends that panchanama should be quashed as officials of DRI had no jurisdiction to conduct the search at the premises of the petitioner as he is not an exporter. The argument is that investigation is with regard to Ludhiana dealer who is not importer/exporter and in case of any doubt or dispute, it was only the officials of GST Department who could have proceeded. Also contested that there is error in panchanama filed.

Ruling: Section 105 of the Customs Act is widely worded and search can be conducted if the Assistant or Deputy Commissioner of Customs has reasons to believe that there are any document or things, which in his opinion, will be useful or relevant to any proceedings under this Act or secreted at any place. The section does not restrict the search only with regard to importer or exporter, the other premises can also be searched. The mistake in panchanama in recording the contents and the same may be rectified.

2020-TIOL-993-HC-P&H-GST, Shri Vishnu Processors Vs Union of India and Others

▲ **SCN issuance before disallowance of credit**

Facts: Refund application was rejected on the ground that the refund claims are barred by limitation, no correlation established between exports and invoices, and payment realized in convertible foreign exchange. Further, it was contended that the Assessee had made payment to most of the service provider after the refund claim period.

Ruling: Admittedly, no SCN has been issued to the assessee to deny CENVAT credit in question. Therefore, at the time of entertaining refund claims, the admissibility of CENVAT credit cannot be denied. Further, at present the assessee is entitled to avail credit in terms of Rule 4(7) of CCR, 2004, therefore, the refund claims cannot be rejected.

Orange Business Services India Solutions Pvt Ltd Vs CST[2020-TIOL-857-CESTAT-CHD]

▲ **SVLDRS rejection incorrect**

Facts: The Petitioner had received an order for ST along with penalty against which the assessee had opted to file an Appeal before the CESTAT after paying the pre-deposit of 7.5%. Later the Petitioner had opted for SVLDRS, 2019. However, while filling the application, he had failed to disclose the penalty imposed. Because of such a mistake, the application was rejected on the grounds that the application was incorrect.

Ruling: Not mentioning about penalty imposed in SVLDRS-1 form cannot be called a mistake by which petitioner intended to claim undue benefit which they were otherwise not entitled.

Assam Cricket Association Vs UOI [2020-TIOL-985-HC-GUW-ST]

▲ **Availment of credit by the job worker**

Facts: The issue is whether the credit taken by the appellant who is job workers of M/s. Hindustan Unilever Ltd. (HUL), on the basis of Bills of Entry showing M/s. HUL as the importer is eligible or not.

Ruling: Rule 9 of CCR does not lay down any requirement that the name of the person who is availing credit has to be mandatorily mentioned in the Bill of Entry. Therefore relying upon High Court decisions, credit was allowed.

Naga Ltd Vs CCGST & CE [2020-TIOL-874-CESTAT-MAD]

▲ **Nil duty paid cannot be considered as exempted goods**

Facts: Respondent is an EOU unit engaged in the manufacture and clearance of Freeze-Dried Fruits, Culinary Herbs, and spices for export as well as in DTA which carry nil rate of duty as per Central Excise Tariff. Refund of unutilized Cenvat credit of service tax availed on input services claimed was rejected on the ground that the refunds were not admissible as the goods exported and cleared in DTA carried "NIL" rate of tariff duty, that they were not entitled to take credit under Rule 6 read with rule 3 of the Cenvat Credit Rules; that the duty that was paid by the respondent under Section 3 of the Central Excise Act, 1944 as applicable to EOUs was a customs duty and hence it cannot be said that the products manufactured by the respondent were leviable to central excise duty. However, the Commissioner (A) had allowed the case, and hence the revenue is in appeal.

Ruling: Nil Duty paid by 100% EOU at the time of clearance to DTA was a duty of excise and, therefore, goods cleared cannot be considered as exempted goods - refund u/r 5 of CCR cannot be denied.

CCGST Vs Flex Food Ltd [2020-TIOL-901-CESTAT-DEL]

▲ **Refund of excess duty paid**

Facts: The issue is whether the appellant is eligible for a refund of the excess duty paid without challenging the assessment.

Ruling: Decisions relied upon wherein it was held that the appellant need not challenge the assessment before claiming the refund of excess duty paid. Following the same, Bench is of the view that the adjudicating authority ought to have considered the refund claim on merits -

SGM Enterprises Vs CC [2020-TIOL-883-CESTAT-MAD]

▲ **Reversal of CENVAT Credit under Rule 6 applies for common credit**

Facts: The assessee is engaged in manufacture of safety shoes and hand gloves and work wears. They are also engaged in clearing the safety shoes on payment of duty and clearing hand gloves and work wear without payment of duty. The department observed that the assessee has availed and utilised cenvat credit of service tax paid on certain input services both in dutiable and exempted goods which amounts to contravention of provisions of Rule 6 of CCR, 2004 and hence appeal by Assessee.

Ruling: There is no evidence found to quantify the credit which relates to exempted goods. Assessee was not maintaining separate accounts of inputs/input services despite manufacturing dutiable as well as exempted goods, however, were availing the cenvat credit on the common inputs, which definitely amounts violation of Rule 6 of CCR, 2004, therefore the order is upheld.

M/s Prosafe International Ltd vs CCE [2020-TIOL-835-CESTAT-DEL]

▲ **Interest for refund period**

Facts: Order passed by CESTAT dated 24.07.2017 allowing the appeal filed by the respondent by arriving at a conclusion that interest is to be paid by the department from 27.01.2010 namely from the date on which the interest claimed is to be paid, has been challenged by Revenue.

Ruling: Claiming interest would arise after 3 months from the date of filing of said refund claim. If at all the application is defective, it would only be an irregularity, not illegality. If deficiencies pointed out are cured and on such compliance of the said application the application is adjudicated, then the revenue cannot take the stand that since the application was defective, interest cannot be claimed from the date of application.

CC Vs Gimpex Ltd [2020-TIOL-1001-HC-KAR-CUS]

▲ **NO clubbing of rent for Joint-owners**

Facts: Appellant is providing taxable services under the category of 'Renting of Immovable Property Services'. Demand notice for recovery of service tax short paid. Lower authorities confirmed the demand and imposed interest and penalties, hence appeal to CESTAT.

Ruling: Appellant was the joint owner of the property along with her husband which can be confirmed by the purchase agreement and lease agreements. Just because land revenue records shows the name of the appellant, it cannot be a basis for confirmation of the demand. It is held that rent received separately by the Appellant and her husband shall be treated separately and the threshold limit will also be computed respectively.

P Dhanalakshmi Vs Commissioner Of GST & CE [2020-TIOL-904-CESTAT-MAD]

▲ **Warehousing rent to take precedence over interest on customs duty**

Facts: Chapter 21 of the CBEC Manual along with the CBEC Circular No.71/2001 dated 28.11.2001 had stated that the sale proceeds from the sale of unclaimed/uncleared goods is taken as cum-duty price (value + duty) and customs duty is calculated working backwards on the price realised. The clarification further clarifies that total proceeds without allowing any deduction towards sale expenses or any other charge is to be taken as cum-duty price. In the case on hand, admittedly, the customs duty has not been arrived by following the cum-duty method

Ruling: On the question whether the interest on customs duty can have precedence over the right of the warehouse keeper, Section 150 of the Act does not speak of interest on customs duty. Therefore a strict interpretation of the words used in the Section 150 does not, hence, allow any precedence for claim for interest on customs duty over the warehousing charges or rent.

CC Vs Konkan Storage Systems Kochi Pvt Ltd [2020-TIOL-1072-HC-KERALA-CUS]

▲ **Drug were exported in violation and therefore such exports could amount to smuggling**

Facts: The assessee is a manufacturer of pharmaceutical bulk drugs and had exported 22 consignments of drug called "Cisapride Monohydrate BP". The allegation in SCN is that the export of drug in question was prohibited and 22 consignments of this drug were exported in violation of this prohibition and therefore such exports could amount to smuggling in terms of Section 2 r/w section 113 of Customs Act. Accordingly, the sale proceeds which they received are liable to confiscation under Section 121 of Customs Act. Penalties were proposed under Section 114 and 114 AA.

Ruling: It was wrong on the part of assessee to export drug without obtaining NOC. It was equally wrong on behalf of Customs Officer to have cleared the export consignment without the NOC. The lapse of assessee in not obtaining an NOC before exporting the drug does not require confiscation of goods which were already exported under Section 113. This section provides for confiscation of goods attempted to be improperly exported. The impugned order is not sustainable.

2020-TIOL-854-CESTAT-HYD, Vasudha Pharma Chem Ltd Vs CC

▲ **Delay from Counsel's end with respect to provide documents while filing Appeal before CESTAT – shall be condoned**

Facts: Commissioner (A) dismissed the appeal on the ground of limitation. In the appeal before CESTAT, Appellant submits that they were quite vigilant about the limitations to file the appeal before Commissioner Appeals and the mandatory payment @ of 7.5% of the demand confirmed was also made by the Appellant that too within 60 days of receiving the order in original. The payment proof along with requisite documents was given to the Counsel and the subsequent delay has occurred at Counsel's end for which the Appellant is prayed to not to be burdened with.

Ruling: Held that the liberal approach is adaptable for condonation of delay as a litigant does not stand to benefit by lodging an appeal late and refusing to condone the delay can result in a meritorious matter being thrown out at the very threshold and the cause of justice being defeated. Held that Commissioner (Appeals) had no option but to dismiss the appeal being time barred as the delay was more than 30 days, but keeping in view, the power of this Tribunal and that the delay is attributable to the Counsel of the appellant, the said delay is hereby condoned.

2020-TIOL-819-CESTAT-DEL, Jagdish Ispat Pvt Ltd Vs Commissioner CGST, CE & Customs GST

▲ **Penalty on Imported cloves which not conform to the said Act i.e. FSSAI**

Facts: The assessee imported 10,000 kgs of Cloves of Indonesian origin. The department after inspection of the goods ordered for testing by FSSAI and as it did not conform to the said Act and directed for re-export of the goods on payment of redemption fine. Penalty under section 112(a) of Customs Act, 1962 was also imposed.

Ruling: Redemption fine imposed for re-export of the goods cannot sustain and is set aside. The assessee has also contested the penalty of Rs.2,00,000/- imposed. Taking into consideration that the goods have been re-exported, the penalty imposed is on the higher side, same is reduced to Rs.50,000/-. The impugned order is modified to the above extent of setting aside the redemption fine and reducing the penalty.

2020-TIOL-817-CESTAT-MAD, Rose Mary International Vs CC

FOREIGN TRADE POLICY

▲ **Launch of new DGFT platform for IEC related services**

The DGFT has issued Trade Notice No. 16/2015-20 dated 25 June 2020 in order to launch new DGFT platform and Digital delivery of IEC related services as a part of Digital India programme and for Ease of Doing Business.

The first phase of a new digital platform of DGFT is scheduled to Go-Live on 13th July 2020. The platform will become accessible through the existing website: <https://www.dgft.gov.in>.

In the first phase, the website will be catering to the services related to the IEC issuance, Modification, amendments etc. processes along with a Chatbot (a virtual assistant) catering to queries of users.

Other online modules relating to Advance Authorisation, EPCG, and Exports Obligation Discharge which are part of next phase will be rolled out subsequently after the first phase stabilizes

It is further informed that for the purposes of go-live of first phase and the required systems configurations, the IEC applications and modification process would be suspended from 3:00 pm on 10.07.2020 till 13.07.2020. Stakeholders are requested to plan in advance about the IEC services.

DIRECT TAX

RECENT JUDICIAL PRONOUNCEMENTS

▲ **Supreme Court denies deduction u/s. 80-O (Deduction in respect of royalties, etc., from certain foreign enterprises) on service charges from foreign buyers; Assessee, merely a “procuring agent”**

SC upholds Kerala HC judgement and rules in favour of Revenue, denies Sec. 80-O deduction to assessee [in a batch of appeals] on service charges received from foreign buyers during AYS 1993-94 to 1997-98.

Assessee in the lead case is engaged in providing services to foreign buyers of frozen seafood and/or marine products, the agreements with the foreign entities primarily show that the assessee was –

- 1) to locate the source of supply of the referred merchandise and inform the principals,
- 2) to liaison with the agencies carrying out organoleptic/bacteriological analysis and communicate the result of inspection,
- 3) to make available to the foreign principals the analysis of seafood supply situation and prices and
- 4) to keep the foreign principals informed of the latest trends in the market and
- 5) also to negotiate and finalise the prices; Referring to these activities,

SC holds that assessee is essentially doing the job of a “procuring agent”, and it was his responsibility to ensure that proper goods are supplied in proper packing to the satisfaction of the principal.

SC remarks that “Though the expressions “expert information and advice”, “analysis”, “technical guidance” etc., have been used in the agreements but, these expressions cannot be read out of context and de hors the purpose of the agreement.”

Analysing Sec. 80-O and discussing plethora of judgements, SC rules that “every consideration received therein in foreign exchange will not ipso facto fall within the ambit of Section 80-O. It has to be attributable to the information or service contemplated by the provision and only that part of foreign exchange receipt, which is so attributable to the activity contemplated by Section 80-O, would qualify for claiming deduction.”, relies on co-ordinate bench ruling in Continental Construction and in B. L. Passi.

On the findings of the Appellate Authority as also the ITAT, SC states that “it was not examined as to what and which part of the consideration was attributable to the services envisaged by Section 80-O of the Act, which were rendered from India the Appellate Authority assumed that every information is scientific knowledge”.

[Click here](#) to read the Judgement.

▲ **Sec. 195 TDS applicable on spare parts purchase from Swiss co. through Indian subsidiary**

Indore ITAT holds that TDS u/s 195 was applicable on purchase of spare parts by assessee [an Indian Co.] from Swiss Co. through its Indian subsidiary, upholds AO's stand that there was 'business connection' between Swiss co. and its wholly owned Indian subsidiary (BIPL) and thus "the income portion in the transaction between the Buhler AG, Switzerland and the assessee is subject to tax”.

Takes note of the mail correspondences between assessee-company and BIPL which evidenced that the purchase order was finalised between these two companies based in India and finally the orders were placed to the Swiss Co, who issued the invoice.

Refers to AO's investigation which evidenced that “Buhler AG is having regular business activity in India and apart from the trading business, it is also regularly providing marketing services to Buhler AG, Switzerland”, further opines that the investigation conducted by the AO and CIT(A) clearly shows that the role of BIPL cannot be ignored at any stage.

Holds that the activities carried out by BIPL for Buhler AG is squarely covered under clause (a) (b) & (c) of the Explanation 2 to Sec.9(1).

Lastly, distinguishes co-ordinate bench decision in case of Hind Energy & Coal Benefication, states that in that case the transaction was not carried on by subsidiary/group company of non-resident company but through an agent whereas in the instant case the activity of supply of goods/providing quotation/confirming orders have been carried through the Indian subsidiary i.e. BIPL.

[Click here](#) to read the judgement.

▲ **‘Actual sale-consideration’, not stamp-value to be reduced from ‘block’ for depreciation computation**

Delhi ITAT holds that for the purpose of computing depreciation u/s. 32, ‘actual sale consideration’ of the property transferred is to be reduced from the block of assets and not the stamp duty value of the asset u/s. 50C.

The assessee transferred a property used for business during the year and received Rs. 2 crores towards the same but did not record the same as sale in his books as the title of the property was not clear and thereby the possession was not given.

AO treated the sale as transfer made during the year and reduced the stamp duty value of the asset u/s. 50C from the block of assets while allowing depreciation.

ITAT, noting that the full value of consideration was received before the sale deed was executed, upholds AO’s view that the transfer was completed during the year.

However, directs the AO to consider the actual value of sale consideration for reducing from the block of asset for depreciation computation and not the stamp duty value u/s. 50C.

Explains that the stamp duty value u/s. 50C only substitutes the ‘full value of the consideration received or accruing as a result of transfer for the purposes of section 48’ and the same cannot be incorporated in the computation of block of the assets

[Click here](#) to read the judgement.

▲ **Guarantee fees payment to Dutch parent, neither interest nor FTS under DTAA**

Delhi ITAT rules that TDS u/s. 195 is not applicable on payment of corporate guarantee fees by assessee [an Indian Co.] to its Dutch holding co. [AE] during AYs 2009-10 & 2010-11, holds that guarantee fee neither partakes the nature of interest under Article 11 of the India-Netherlands DTAA nor Fees for Technical Services [FTS] under Article 12 of the DTAA.

Rejects treatment of the amount as interest, observes that in the present case, the AE did not provide any capital to the assessee on which income is earned, cites US Tax Court ruling in Container Corporation to hold that “in absence of provision of capital and any debt claim between the parties the impugned guarantee fees” cannot be considered as an interest.

On FTS trigger, ITAT observes that “Looking to the nature of ‘Service’ provided by the Netherlands company in providing guarantee, it is a financial service and can by no stretch of imagination is called a ‘Consultancy services’”, moreover holds that the ‘make available’ condition is also not met.

With respect to co-ordinate bench ruling in Johnson Matthey Public Ltd. upholding guarantee fee taxability as ‘other income’, ITAT remarks that “India Netherlands Treaty do not have article for ‘Other income’.”

Lastly, states that in absence of PE, even taxability under Article 7 cannot be invoked, thus deletes disallowance u/s. 40(a)(i).

[Click here](#) to read the Judgement.

▲ **ITAT adopts income shown in Form-26AS over TDS Certificate in Form-16A issued by payer**

Kolkata ITAT allows relief to assessee-individual, holds that the amount shown in the Form 26AS must be considered for computation of taxable income and not the amount shown as TDS credit in TDS certificate issued in Form 16A.

Observes that there was a discrepancy in the amount of commission income of assessee shown in TDS certificate in Form 16A (issued by the payer) and Form 26AS (downloaded from the IT website) and that AO considered the amount in the TDS certificate and made the impugned addition.

States that Form 16A is generated by the payer and the assessee who is the payee has no control over it, remarks that AO being in possession of the Form 26AS as well, and being a quasi judicial authority should be fair while framing the assessment of the assessee under the Act.

Remarks that “Simply because there is difference in the claim of assessee in respect of TDS credit and the corresponding income, the AO has made the addition which cannot be accepted when the Form 26AS gives a different picture”.

Accordingly, directs the AO to adopt the figures in Form 26AS and compute taxable income.

[Click here](#) to read the Judgement.

▲ **CBDT releases synthesised texts for MLI modified India's DTAA's with Canada, Belgium and Slovenia**

CBDT releases synthesised texts for MLI modified India's DTAA's with Canada, Belgium and Slovenia.

[Click here](#) to download Synthesised text of the MLI and respective DTAA's.

CIRCULARS AND NOTIFICATIONS

▲ **CBDT notifies Cost Inflation Index for FY 2020-21 at 301**

CBDT notifies Cost Inflation Index for FY 2020-21 at 301; This notification shall come into force with effect from April 1, 2021 and shall accordingly apply to the AY 2021-22 and subsequent years.

[Click here](#) to read and download CBDT Notification 32/2020 dated 12th June 2020.

▲ **CBDT further extends various time-limits under Taxation Laws, offers significant relaxation for taxpayers**

In view of the challenges faced by taxpayers in meeting the statutory and regulatory compliance requirements across sectors due to the outbreak of Novel Corona Virus (COVID-19), the Government brought the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 on 31st March, 2020 which, inter alia, extended various time limits.

Chart of Extension in various time limits under direct tax w.e.f. 24th June 2020:

Topic	Due Date
Original and revised Income Tax Return for F.Y 2018-19	31 st July 2020
Income Tax Return for F.Y 2019-20 (audited and non-audited)	30 th November 2020
Tax Audit Report for F.Y 2019-20	31 st October 2020
Payment of self-assessment tax having self-assessed tax liability upto Rs. 1 lakh	30 th November 2020
Time limit for investments u/s 80C etc. extended	31 st July 2020
Time for investments, etc. for deduction u/s 54 to 54GB extended	30 th September 2020
Date for commencement of operation for the SEZ units extended	30 th September 2020
Time Limit for furnishing of the TDS/ TCS statements and issuance of TDS/ TCS certificates extended	31 st July 2020 and 15 th August 2020 respectively
Time limit to issue notices and PAN-Aadhaar linking date extended	31 st March 2021

Note:

- a. *There will be no extension of date for the payment of self-assessment tax for the taxpayers having self-assessment tax liability exceeding Rs. 1 lakh. In this case, the whole of the self-assessment tax shall be payable by the due dates specified in the Income-tax Act and delayed payment would attract interest under section 234A of the Act.*

Interest under section 234B is already accrued on such tax liability, hence it continues to apply. Hence the assessee who are having self-assessment tax payable for financial year 2019-20 are requested to pay taxes on or before original due date of filing the return of income.

- b. *Benefit of reduced interest rate 9% after 30th June withdrawn.*

[Click here](#) to read and download CBDT Notification 35/2020 dated 24th June 2020

▲ **CBDT issues corrigendum to notification extending various time-limits under Taxation Laws**

CBDT issues corrigendum to notification dated June 24th extending various time-limits under Taxation Laws; Corrects typographical error, clarifies that for “section 54 **or** 54GB” read “sections 54 **to** 54GB”.

Also, rectifies referencing error with respect to claiming deduction under Chapter VI-A for making various investments, states that " in line 35, for “sub-clause (i)” read “sub-clause (i) of clause (c)”."

[Click here](#) to read and download Corrigendum to CBDT Notification 35/2020.

▲ **CBDT amends Rule 2BB and Rule 3 for employees opting for new tax regime**

- a. CBDT amends Rule 2BB [which prescribes allowances for the purposes of Sec. 10(14)], allows exemption claim u/s. 10(14) in respect of salaried employees opting for new tax regime u/s. 115BAC, in certain cases.

Clarifies that such an assessee can claim exemption u/s. 10(14) only in respect of –

- 1) Tour / Transfer allowance,

- 2) Daily travel allowance
 3) conveyance allowance and 3) Transport allowance for handicapped, subject to the conditions mentioned therein.
- b. Also amends Rule 3 [dealing with perquisites valuation], states that “the exemption provided in the first proviso in respect of free food and non-alcoholic beverage provided by such employer through paid voucher shall not apply to an employee, being an assessee, who has exercised option under sub-section (5) of section 115BAC.”

Amended Rule shall come into force from the 1st day of April 2021 and shall accordingly apply in relation to the assessment year 2021-22 and subsequent assessment years.

[Click here](#) to read and download CBDT Notification 38/2020 dated 26th June 2020.

▲ **Yes Bank Reconstruction Scheme, NCLT approved ‘oppression-mismanagement’ related resolution plan out of Sec. 56(2)(x) taxability**

CBDT amends Rule 11UAC prescribing class of persons for the purpose of clause (XI) to Sec. 56(2)(x) proviso vide Finance Act, 2019.

Inserts new sub-clause (2) and (3), provides that Sec.56(2)(x) shall not apply to receipt of unquoted shares by shareholders, received pursuant to resolution plan approved by NCLT u/s.241/242 of Companies Act 2013 (dealing with oppression and mismanagement).

Further, states that Sec.56(2)(x) shall not apply to receipt of equity shares of the reconstructed bank, “by the investor or the investor bank, as the case may be, where the said share has been allotted by the reconstructed bank under the scheme at a price specified in sub-paragraph (3) of paragraph 3 of the scheme [i.e. Yes Bank Limited Reconstruction Scheme, 2020].”

Note: Finance Act, 2019 has inserted new clause XI to Sec. 56(2)(x) proviso empowering CBDT to prescribe a transaction undertaken by certain classes of persons to which the provisions of section 56(2)(x) [which provides for taxability for property/shares received for inadequate consideration] shall not be applicable.

[Click here](#) to read and download the CBDT Notification No. 40 of 2020 dated 29th June 2020.

▲ **CBDT - NCLT approved ‘oppression-mismanagement’ related resolution plan out of Sec.50CA taxability**

CBDT notifies new rule 11UAD prescribing class of persons for the purpose of proviso to Sec.50CA. Provides that Sec.50CA shall not apply to receipt of unquoted shares by shareholders, received pursuant to resolution plan approved by NCLT u/s.241/242 of Companies Act 2013 (dealing with oppression and mismanagement); States that the rules “...shall come into force from the 1st day of April, 2020 and shall be applicable for assessment year 2020-21 and subsequent assessment years.”

Note: Section 50CA provides that where consideration for transfer of unquoted equity share of a company is less than the FMV of such share determined in accordance with the prescribed manner, the FMV shall be deemed to be the full value of consideration for the purposes of computing income under the head "Capital gains". Proviso thereto provides for 'prescribed class' of persons to whom 50CA is not applicable.

[Click here](#) to read and download CBDT Notification 42 of 2020.

▲ **CBDT - Relaxes eligibility conditions u/s. 9A for investment funds set-up by Category-I FPIs under SEBI, 2019 regulations**

CBDT relaxes eligibility conditions u/s. 9A for an investment fund set up by Category-I foreign portfolio investor registered under the SEBI (Foreign Portfolio Investors) Regulations, 2019.

Notifies that the conditions specified in clauses (e), (f) and (g) of the sub-section (3) to Sec. 9A shall not apply in case of the aforesaid investment fund; This notification shall be deemed to have come into force from the 23rd September, 2019 [i.e. the date of notifying the SEBI (FPI) Regulations, 2019].

[Click here](#) to read and download the CBDT Notification 41 of 2020 dated 30th June 2020.

CORPORATE & OTHER LAWS

▲ **MCA: Allows startups to issue sweat equity shares for up to 10 years from incorporation**

Applicability: Startup Companies / Companies who have issued debentures

- MCA amends the Companies (Share Capital and Debentures) Rules, 2014 inter alia allowing a startup company to issue sweat equity shares not exceeding 50% of its paid-up capital up to 10 years (earlier, 5 years) from the date of its incorporation or registration;
- Further removes the requirement with regard to Debenture Redemption Reserve (DRR) and investment or deposit of sum in respect of debentures maturing during the year, for NBFCs and listed companies issuing privately placed debentures: MCA

http://www.mca.gov.in/Ministry/pdf/Rule_08062020.pdf

▲ **MCA: Allows companies to conduct members' meetings via VC till September 30**

Applicability: All Companies

MCA extends timeline for companies to conduct EGMs through video conferencing ('VC') or other audio visual means (OAVM) or passing of certain items only through postal ballot without convening general meeting, till September 30, 2020 (earlier, June 30, 2020);

States that the companies will have to follow the procedure laid down in earlier Circulars issued in this behalf: MCA

http://www.mca.gov.in/Ministry/pdf/Circular22_15062020.pdf

▲ **MCA: Introduces scheme for relaxation of time in filing charge creation/ modification forms**

Applicability: Companies

- MCA notifies a scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 for the purpose of condoning the delay in filing certain forms related to creation/ modification of charges in view of the representations received in this regard due to the COVID-19 pandemic;
- States that the scheme will be applicable for filling of Form No. CHG-1 and CHG-9 by a company or a charge holder, where the date of creation/modification of charge –
 - is before March 1, 2020, but the timeline for filing such form had not expired u/s 77 of the Act as on March 1, 2020, or

- falls on any date between March 1 to September 30, 2020;
- Specifies that the period from March 1 to September 30, 2020, shall not be reckoned for the purpose of counting the number of days u/s 77 or 78 of the Act and in case, the form is not filed within such period, the first day after February 29, 2020, will be taken as October 1, 2020, for counting such timeline;
- Lastly clarifies that the scheme will inter alia not apply:
 - to forms already filed before the Circular date,
 - where the timeline for filing the form has already expired prior to March 1, 2020
 - to the filing of Form CHG-4 for the satisfaction of charges.

http://www.mca.gov.in/Ministry/pdf/Circular23_17062020.pdf

▲ **MCA: Extends timeline for the creation of deposit repayment reserve to September 30:**

- MCA extends the time limit for the creation of the deposit repayment reserve of 20% u/s 73(2)(c) of the Companies Act, 2013, from June 30 to September 30, 2020, on account of requests received from various stakeholders seeking an extension of time for the said compliance in the wake of COVID-19; According to Sec. 73(2)(c), for a company to be able to accept deposits, one of the pre-requisites is depositing on or before April 30 of each year, at least 20% of the amount of its deposits maturing during the following financial year, which amount shall be kept in a scheduled bank in a separate bank account called 'deposit repayment reserve account';
- Also clarifies that the time for investing/depositing 15% of amount of debentures under Rule 18 of the Companies (Share Capital and Debentures) Rules 2014, stands extended to September 30; Regulation 18 inter alia requires a company issuing secured debentures, to invest or deposit on or before April 30 of every year, 15% of the amount of its debentures maturing during the year: MCA

http://www.mca.gov.in/Ministry/pdf/Circular24_20062020.pdf

▲ **MCA: Further extends the period for name reservation by LLPs and Companies**

- MCA further extends the period for names reserved and resubmission of forms by Companies and LLPs;
- Provides 20 additional days beyond June 30, 2020, for filing SPICE+ Part B (to be filed within 20 days of name reservation);
- Further grants 60 more days beyond June 30, for filing INC-24 for change of name of a company, for names expiring between March 15 and June 30;
- Similarly, for LLPs, extends name reservation in case of new incorporation/change of name (for which FiLLiP/Form 5 needs to be filed), by 20 days, beyond June 30; For Resubmission ('RSUB') validity for companies as well as LLPs, allows additional 15 days beyond June 30, for SRNs where the last date of Resubmission (RSUB) falls between March 15 to June 30;
- Lastly, providing an extension for marking Form IEPF-5 SRNs to 'Pending for Rejection u/r 7(3)' and 'Pending for Rejection u/r 7(7)' of the IEPF Rules, states that SRNs where the last date of filing eVerification Report (for both Normal as well as Re-submission filing) falls between March 15 to June 30, the filing would be allowed till September 30, 2020: MCA

http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

▲ **MCA: Allows Companies to conduct board meetings on ‘restricted matters’ via VC till September 30**

- MCA notifies amendment to the Companies (Meetings of Board and its Powers) Rules, 2014 allowing companies to conduct meeting through VC or OAVM till September 30, 2020 (earlier June 30) on the ‘restricted matters’ referred in Rule 4;
- Rule 4 specifies that meetings for approval of –
 - i. annual financial statements,
 - ii. board’s report,
 - iii. prospectus,
 - iv. matters relating to amalgamation, merger, demerger, acquisition and takeover and
 - v. audit Committee meetings cannot be held through VC or OAVM;
- Separately, allows 3 more months i.e. till September 30, 2020, to independent directors appointed in a company to apply for inclusion of their name in the data bank as required under the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019: MCA

http://www.mca.gov.in/Ministry/pdf/Rule1_25062020.pdf

Notes:

1. Earlier, in March, MCA had allowed Board meetings to be held through VC or OAVM on ‘restricted matters’ upto June 30, 2020.
2. In April, MCA had provided 2 more months to individuals appointed as Independent Directors, to apply for inclusion of their name in the data bank.

▲ **The Government floats consolidated guidelines for MSME classification and registration**

- Ministry of MSMEs floats a detailed, consolidated Notification in the form of guidelines for classification and registration of an MSME, which shall be called as “Udyam” now on, accordingly, registration process to be known as “Udyam Registration”;
- Laying down the detailed criteria for the classification of MSMEs and the procedure for registration and the arrangements made for facilitation in this process, Ministry states that henceforth, entrepreneurs, enterprises, and MSMEs will have to refer only to this consolidated Notification for matters relating to classification or registration;
- Notifies that Udyam Registration can be filed online based only on the Aadhaar number, and on self-declaration with no requirement to upload documents, papers, certificates or proof, which is possible because the Udyam Registration process has been fully integrated with the Systems of Income Tax and GST;
- Further, states that the Udyam registration process can be done online through the portal which will be made known to the public before July 1, 2020, i.e. the date from which this new arrangement is going to be effective;
- Ministry also notifies establishment of a facilitation and grievance redressal system for easing the registration process and further handholding of MSMEs in all possible manner, and states that, “...this is one more step towards fulfillment of Ministry’s commitment of making Indian MSMEs National and International Champions and to enable them to break their barriers and capture global markets.”: Ministry of MSMEs

http://www.dcmsme.gov.in/IndianGazzate_0.pdf

▲ **MCA: Requires specified Govt. companies to give indemnity under Form STK-3A for name removal**

- MCA notifies Form No. STK-3A which is an indemnity bond required to be filed with Form SKT-2 for removal of company's name by a
 - i. Govt. company in which the entire paid up share capital is held by the Central Govt., or by any State Government or Governments, or
 - ii. subsidiary of a Govt. company, referred above;
- Specifies that the said indemnity bond shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Govt. of India or the State Govt., as the case may be, on behalf of the company;
- Accordingly amends Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016: MCA

http://www.mca.gov.in/Ministry/pdf/Rule3_30062020.pdf

▲ **FinMin: Indian Stamp Act amendments brought through Finance Act, 2019 to be effective from July 1**

- Finance Ministry apprises that the amendments to the Indian Stamp Act, 1899 brought through Finance Act, 2019 and Rules made thereunder will come into effect from i.e. July 1, 2020;
- States that in order to facilitate ease of doing business and to bring in the uniformity of the stamp duty on securities across States and thereby build a pan-India securities market, the Central Govt. has created the legal and institutional mechanism to enable states to collect stamp duty on securities market instruments at one place by one agency, through one instrument;
- Further states that this measure has been taken, since the present system of collection of stamp duty on securities market transactions led to multiple rates for the same instrument, resulting in jurisdictional disputes and multiple incidences of duty, thereby raising the transaction costs in the securities market and hurting capital formation;
- Thus, anticipates that the rationalized and harmonized system through centralized collection mechanism will ensure minimize the cost of collection and enhance revenue productivity, and develop equity markets and equity culture across the length and breadth of the country, ushering in balanced regional development;
- Lastly, outlining the salient features of the amendments so introduced, notifies that even during strict lockdown phases in view of the pandemic situation, all efforts were made to ensure market continuity because Stock Markets are critical for the economy: Ministry of Finance.

▲ **Extension of timeline for compliance with various payment system requirements**

Keeping in view the present Covid -19 situation it has been decided to extend the timeline for compliance in respect of a few areas as under:

SL.No	Instruction / Circular	Present Timeline	Revised Timeline
1	PPI-MD dated October 11, 2017 (as updated from time to time): (i) All existing non-bank PPI issuers (at the time of issuance of PPI-MD) to comply with the minimum positive net-worth requirement of Rs. 15 crore for the financial position as on March 31, 2020 (audited balance sheet). (ii) Authorised non-bank entities shall submit the System Audit Report, including cyber security audit conducted by CERT-IN empanelled auditors, within two months of the close of their financial year to the respective Regional Office of DPSS, RBI.	Financial position as on June 30, 2020 By August 31, 2020	Financial position as on September 30, 2020 By October 31, 2020
2	Implementing provisions of circular on “Enhancing Security of Card Transactions”.	w.e.f. June 16, 2020	By September 30, 2020
3	“Harmonisation of Turn Around Time (TAT) and customer compensation for failed transactions using authorised Payment Systems”, “calendar days” to be read as “working days”.	w.e.f. March 24, 2020	Until December 31, 2020
4	“Guidelines on Regulation of Payment Aggregators and Payment Gateways”, the activities for which specific timelines are not mentioned and were supposed to come into effect from April 1, 2020.	w.e.f. June 01, 2020	By September 30, 2020

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▲ **Further extension of time for submission of financial results for the quarter /half Year /financial year ending 31st March 2020 due to the continuing impact of the CoVID-19 pandemic**

After taking into consideration from the listed entities, Chartered Accountant firms, and industry bodies/associations, it has been decided to further extend the timeline for submission of financial results under Regulation 33 of the LODR Regulations, by a month to July 31, 2020, for the quarter and the year ending 31st March 2020. Similarly, the timeline under Regulation 52 of the LODR for submission of half yearly and/or annual financial results for the period ending March 31, 2020 for entities that have listed NCDs, NCRPS’, CPs, MDS’ is also extended to July 31, 2020.

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▲ **Section 24 of the Banking Regulation Act, 1949 – maintenance of a percentage of assets - maintenance of statutory liquidity ratio (SLR) – marginal standing facility (MSF)**

As announced in the Statement of Developmental and Regulatory Policies dated March 27, 2020, the borrowing limit of scheduled banks under the MSF scheme, by dipping into the prescribed SLR, was increased from 2 per cent to 3 per cent of their Net Demand and Time Liabilities

(NDTL) outstanding at the end of the second preceding fortnight with immediate effect. This relaxation was available up to June 30, 2020.

On a review, it has now been decided to extend this enhanced limit till September 30, 2020.

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▲ **Section 42 of the Reserve Bank of India Act, 1934 - cash reserves of scheduled banks to be kept with the bank - change in minimum daily - maintenance of cash reserve requirement**

Section 42(1) of the Reserve Bank of India Act, 1934 - Change in Minimum Daily Maintenance of the Cash Reserve Requirement

1. As announced in the Statement of Developmental and Regulatory Policies of March 27, 2020, the minimum daily maintenance of the Cash Reserve Ratio (CRR) was reduced from 90 per cent of the prescribed CRR to 80 per cent effective the fortnight beginning March 28, 2020 till June 26, 2020.
2. Keeping in view the continuing of hardships faced by banks in terms of social distancing of staff and consequent strains on reporting requirements, it has now been decided to extend the relaxation of the minimum daily maintenance of the Cash Reserve Ratio of 80 per cent for a further period of three months, i.e., up to September 25, 2020.

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▲ **Increasing instances of payment frauds - enhancing public awareness campaigns through multiple channels**

As you are aware, safety and security of digital transactions are of paramount importance. Reserve Bank has been taking measures to improve awareness through its e-BAAT programmes and organising campaigns on safe use of digital payment modes, to avoid sharing critical personal information like PIN, OTP, passwords, etc.

In spite of these initiatives, incidence of frauds continue to bedevil digital users, often using the same modus operandi users were cautioned about, such as luring them to disclose vital payment information, swapping sim cards, opening links received in messages and mails, etc. There are also cases of users being tricked into downloading spurious apps that access critical information stored on devices. It is, therefore, essential that all payment systems operators and participants - banks and non-banks - continue and reinforce efforts to spread awareness about digital safety.

All authorised payment systems operators and participants are hereby advised to undertake targeted multi-lingual campaigns by way of SMSs, advertisements in print and visual media, etc., to educate their users on safe and secure use of digital payments.

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DUE DATES

Compliance due dates during the month of July 2020:

Compliance Requirement	Due Date
	GST
GSTR1 of March 2020	10 th July 2020
GSTR1 of March 2020	24 th July 2020
GSTR1 of March 2020	28 th July 2020
GSTR1 – Quarterly return for the period January 2020 to March 2020	17 th July 2020

GSTR3B for June 2020 <i>Note: Only for those registered persons whose aggregate turnover in the preceding financial year is above Rs. 5 Crore.</i>	20 th July 2020 (No late fee if it is filed on or before 30 th September. However Interest @18% will be payable if filed after 20 th July 2020)
GSTR3B of March 2020	3 rd July 2020
GSTR3B of April 2020 (Taxpayers having an aggregate turnover of up to Rs. 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)	6 th July 2020
GSTR3B of March 2020	5 th July 2020
GSTR3B of April 2020 (Taxpayers having an aggregate turnover of up to rupees 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)	9 th July 2020
ISD Return for June 2020	13 th July 2020
SEZ	
MPR for June 2020	5 th July 2020
SERF Return for June 2020	10 th July 2020
Gist of Contract Return for June 2020	30 th July 2020
Softex Return for June 2020	30 th July 2020
Service Procurement reporting form for June 2020	30 th July 2020
NON STPI/STPI Units	
MPR for May 2020	30 th July 2020
Softex return for May 2020	30 th July 2020
Provident Fund	
Payment and Filing of PF – ECR for June 2020	15 th July 2020
ESI	
ESI Contribution for June 2020	15 th July 2020
Professional Tax	
PT Return for June-2020	20 th July 2020

CONTACT US

About Us

Vishnu Daya & Co LLP is a Professional Services Firm under which dedicated professionals have developed core competence in the field of audit, financial consulting services, financial advisory, risk management, direct and indirect taxation services to the clients.

Started in the year 1994 as audit firm in Bangalore with an ambition to provide services in the area of accountancy and audit, our legacy of vast experience and exposures to different types of industries made us rapidly adaptable to the changing needs of the time and technology by not only increasing our ranges of services but also by increasing quality of service. With diversification, our professional practice is not only limited to Bangalore but has crossed over to the other parts of India with a motto to provide “One Stop Solutions” to all our clients.

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