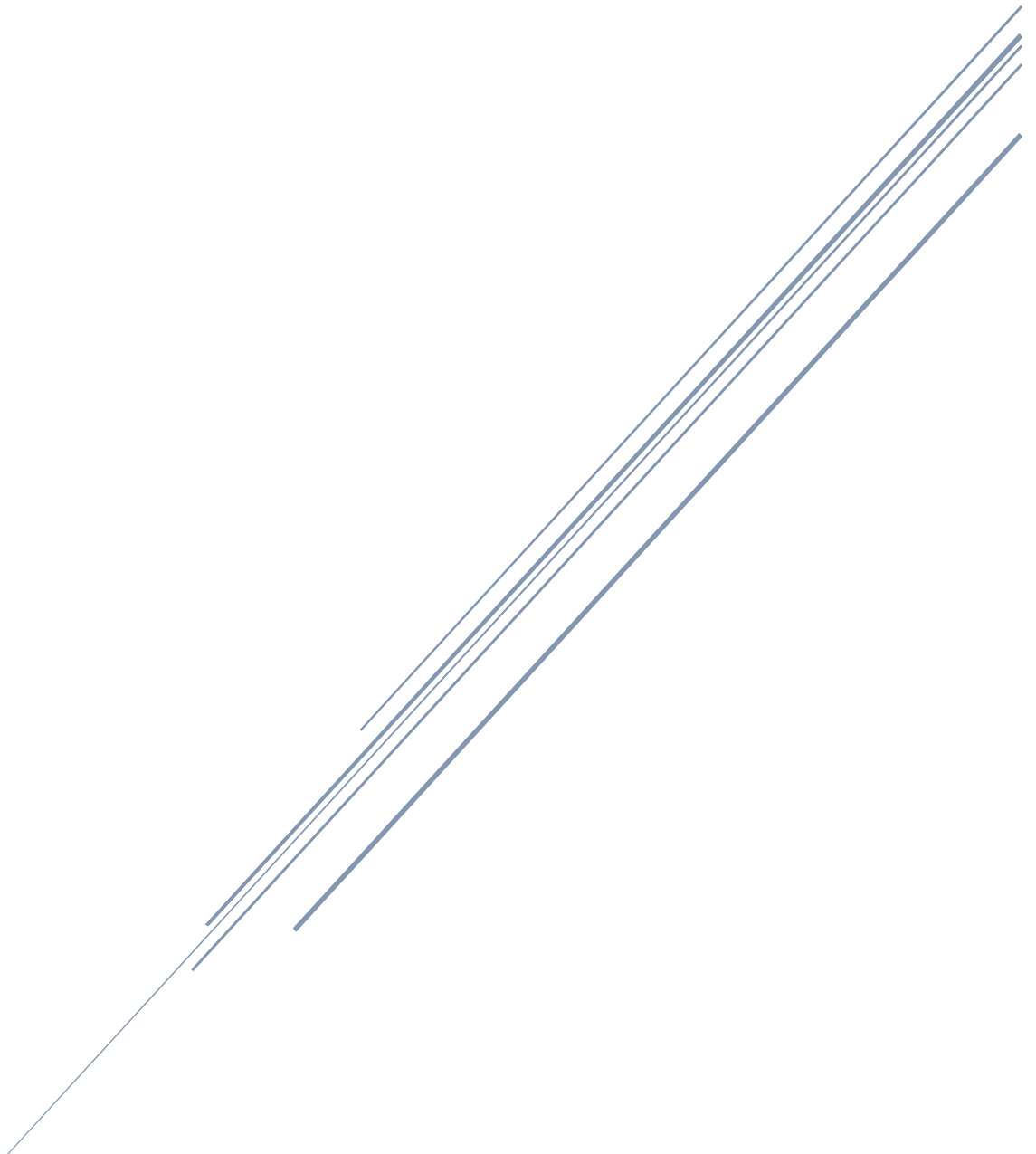


# RECENT CHANGES UNDER GST



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**GST Updates:**

**CBIC has amended various CGST Rules, 2017 vide Notification No. 15/2021 Central Tax, dated 18<sup>th</sup> May 2021 as under:**

**1. Rule 23-Revocation of cancellation of registration:**

*Amendment in sub-rule (1)*

The amendment in section 30 made vide the Finance Act, 2021 has been made effective from 01.01.2021. The amended provision provides for extension of time limit for applying for revocation of cancellation of registration on sufficient cause being shown and for reasons to be recorded in writing.

Consequential amendment has been made in rule 23(1) to provide that the time period of 30 days available for submission of an application for revocation of cancellation of registration in Form GST REG-21 can be extended by the ADC or the JC or the Commissioner, as the case may be, in exercise of the powers provided under the proviso to section 30 (1) of the CGST Act.

Further, consequential amendment has also been made in Form GST REG-21.

Till the time an independent functionality for extension of time limit for applying in Form GST REG-21 is developed on the GSTN portal, Circular No. 148/04/2021 GST dated 18<sup>th</sup> May, 2021 has been issued to prescribe the following SOP for implementation of the provisions of above rule across the field formations:

Where a person applies for revocation of cancellation of registration beyond a period of 30 days from the date of service of the order of cancellation of registration but within 60 days of such date, the said person may request, through letter or e-mail, for extension of time limit to the proper officer by providing the grounds on which such extension is sought. The proper officer shall forward the request to the jurisdictional Joint/Additional Commissioner for decision on the

request for extension of time limit, who, after examination of the request, may extend the time limit on sufficient cause being shown and for reasons to be recorded in writing.

In case the request is accepted, the extension of the time limit shall be communicated to the proper officer. The request will be rejected only after giving the person an opportunity of being heard and the grounds for such rejection may be communicated to the person concerned, through the proper officer.

On receipt of the decision of the Joint/Additional Commissioner, the proper officer shall process the application according to the law and procedure laid down in this regard. Similar procedure shall be followed *mutatis mutandis* in case a person applies for revocation of cancellation of registration beyond a period of 60 days from the date of service of the order of cancellation of registration but within 90 days of such date.

**2. Rule 90-Acknowledgement of refund application**

*Insertion of proviso in sub-rule (3)*

The time period of 2 years for filing a fresh refund application after rectification of deficiencies as communicated by proper officer shall now be computed after excluding the time period between the date of filing of the refund claim in Form GST RFD-01 and the date of communication of the deficiencies in Form GST RFD-03 by the proper officer.

*Note: The exclusion is only from the date of ARN to the date of issuance of the deficiency. The time taken for replying to the deficiency / filing the fresh application is not excluded. Hence, due care should be taken while computing the time limit for filing the refund applications.*

*Insertion of new sub-rules (5) and (6)*

The applicants are now allowed to withdraw refund application in Form GST RFD-01W at any time before issuance of provisional refund order or

final refund order or payment order or refund withhold order or notice, in respect of any refund application filed in Form GST RFD-01. The new Form RFD-01W has been inserted in Part B of the CGST Rules, 2017.

On such withdrawal, amount debited by the applicant from electronic credit ledger or electronic cash ledger, as the case may be, while filing application for refund in Form GST RFD-01, shall be credited back to the ledger from which such debit was made.

### 3. **Rule 92-Order sanctioning refund**

*Omission of proviso in sub-rule (1)*

The proviso requiring the issue of order giving details of the adjustment in Part A of Form GST RFD-07 when the amount of refund is completely adjusted against any outstanding demand, has been omitted.

*Substitution of words "Part B" in sub-rule (2) with "Part A"*

The proper officer or the Commissioner will now pass the order in Part A of Form GST RFD 07 instead of Part B for withholding the refund in case he is of the opinion that the amount of refund is liable to be withheld under the provisions of section 54(10) or, as the case may be, section 54(11).

*Insertion of proviso in sub-rule (2)*

The proper officer or the Commissioner, on being satisfied that the refund is no longer liable to be withheld, may pass an order for release of withheld refund in Part B of Form GST RFD- 07.

### 4. **Rule 96- Refund of IGST paid on goods (or services) exported out of India:**

*Substitution of words "Part B" with "Part A" in sub-rule (6)*

The proper officer shall now pass the order in Part A of Form GST RFD-07 instead of earlier Part B upon transmission of the intimation for withholding refund.

*Amendment in sub-rule (7)*

The jurisdictional officer shall now proceed to release the withheld refund amount in Form GST RFD 06 after passing an order for release of withheld refund in Part B of Form GST RFD-07.

Form GST RFD-07 has been accordingly amended.

### 5. **Rule 138E - Restriction on furnishing of information in Part A of Form GST EWB-01**

Rule 138E restricts a person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) from furnishing information in Part A of Form GST EWB-01 "in respect of a registered person, whether as a supplier or a recipient" in certain specified cases. The rule has been amended to specify that the information in Part A of Form GST EWB-01 cannot be furnished by a person "in respect of any outward movement of goods of a registered person" in the specified cases.

### **DGFT Updates:**

DGFT clarifies that no fee shall be charged on application for updation of Importer-Exporter Code (IEC) between April-June of each year; Inserts a new provision under Sl.No. 6 of para 1 Appendix 2K (Scale of Application Fee and procedure for Deposit/Refund of Application Fee/Penalty etc) of Foreign Trade Policy 2015-2020.

*Public Notice No. 49/2015-20 dated March 31, 2021*

### **Customs Updates:**

FinMin extends exemption from Integrated tax and Compensation Cess on goods imported against Advance Authorization (AA) / Export Promotion Capital Goods (EPCG) authorizations upto March 31, 2022.

*Notification No. 23/2021- Customs dated March 31, 2021*

CBIC extends exemption benefit of IGST and compensation cess to Export Oriented Units (EOU) on imports till April 01, 2022; Amends

Notification No.52/2003-Customs dated March 31, 2003

Notification No. 19/2021-Customs dated March 30, 2021

**Case Laws:**

▪ **CESTAT: Allows cash refund of unutilized CENVAT credit per Section 142 of CGST Act:**

The Assessee, being 100% EOU, had claimed the refund of the accumulated CENVAT Credit on export of goods and supply of goods to another 100% EOU. Order-in-original was passed denying the refund on the ground that insertion of clause (1A) in Explanation to Rule 5 of CENVAT Credit Rules effective from March 01, 2015 stipulates that "export goods" means any goods which are to be taken out of India to a place outside India and that in the present case, Assessee had cleared goods to another EOU.

CESTAT Bangalore holds Assessee entitled to cash refund of CENVAT credit availed by it under Rule 5 of CENVAT Credit Rules, 2004, as per sub-section 3 and sub-section 6(a) of Section 142 of CGST Act. On going through provision of Section 142(3) of CGST Act, finds that same envisages that very claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law. Further, provision states that any amount eventually accruing to Assessee shall be paid in cash, notwithstanding anything to contrary contained under provisions of existing law other than provisions of Section 11B(2) of Central Excise Act, 1944. Considers Assessee's submission that it had already debited the entire CENVAT credit in respect of which the claims had been filed as required under the then Notification No 27/2012-C.E dated June 18, 2012 under a bona fide belief that the cash refund would be sanctioned to it, which was not done. Finds the issue as "no more res integra" citing that same has been held in assessee's favour by various decisions

and follows co-ordinate bench ruling in Wave Mechanics.

*TS-109-CESTAT-2021(Bang)-EXC-VEER*

▪ **CESTAT: Allows credit on outdoor catering, courier & other 'business related activities' post April 1, 2011:**

The assessee had claimed the CENVAT Credit on the outdoor catering, courier, air travel services, etc. after 01.04.2011. The department denied the CENVAT Credit on the ground that after the amendment, these credits are ineligible.

CESTAT ruled that "In the definition of input service as introduced w.e.f. 01.04.2011, certain exclusion are provided under its sub clauses but as can be read from the definition ....., those are not absolute exclusion but are conditional exclusions that has a link to specific purpose of availment". In this context, derives that, outdoor catering or club membership or travel expenses as such would not disentitle a manufacturer to avail CENVAT credits on those expenses unless it fails to establish that those were not used primarily for employee's personal use or consumption. Held that in absence of finding in Wipro Limited judgment that has not dealt with reference to it on statutory requirement vis-a-vis availment of CENVAT credit and in view of Madras HC decision in Ganesh Builders that held it in favour of such availment of CENVAT credit on statutory requirement, infers that assessee is entitled to avail such credit provided the amount is paid by it and not collected from the individual employees to meet the expenses.

*TS-113-CESTAT-2021(Mum)-EXC-Hawkins\_Cookers\_Ltd*

▪ **CESTAT (LB): Upholds employer's eligibility to claim CENVAT on 'Workmen Compensation Policy':**

The issue before the larger bench was to decide whether the employer eligible for the CENVAT Credit on the workman compensation policy after 01.04.2011 considering the amendments made to the CENVAT Credit Rules.

The larger bench held that credit is available to assessee-employer, even

after certain types of services has been excluded from scope of 'input service' under Rule 2(l) of CENVAT Credit Rules, 2004 (CCR) by exclusion clause '(c)' inserted vide amendment dated April 01, 2011. Citing observation of Madras HC which overruled Ganesan ruling, explains the brief difference between 'health insurance' and 'workmen insurance' clarifying that in former case, health insurance is taken for benefit of employees, while in latter case, the insured is assessee-employer and not individual employees. Concludes that, since beneficiary is assessee itself and service is not meant for personal consumption of employees, present Workmen policy is not excluded by clause (c) of Rule 2(l) and as such view expressed by Tribunal in Hydus Technologies India and Madras HC in Ganesan Builders Ltd., lays down correct position in law.

*TS-137-CESTAT-2021(HYD)-ST-Dharti\_Dredging*

- **CESTAT: Profit earned from Mutual Fund Investment doesn't make Assessee a 'Service-Provider' in Securities:**

The issue involved in this case is that the appellant had earned profit from the investment in the mutual fund. The department demanded the reversal of CENVAT Credit under Rule 6 of the CENVAT Credit Rules.

CESTAT, Bangalore holds that just because Assessee, providing 'Commercial Training and Coaching Services', earned profit from investment in Mutual Fund (shown in books as other income), does not make it 'Service Provider' as it is not 'trading' in securities. CESTAT observes that, while "trading" has not been defined under Service Tax but in context of securities, "trading" means an activity where a person is engaged in selling the goods and occupy for the purpose of making profit but certainly trading is different from redemption of mutual fund units". Applying the said analogy to the present

case, infers that Assessee cannot transfer mutual fund units to third party and give only by redemption to mutual fund because it is not permitted to trade mutual fund units in the absence of a license from the SEBI. Further, holds demand as time barred noticing that Assessee has been filing returns and provided all records to Department during course of investigation and has not suppressed any material fact.

*TS-152-CESTAT-2021(Bang)-ST-Ace\_Creative\_Learning\_Pvt\_Ltd*

- **CESTAT: No service provider-recipient relationship between partner & firm, allows refund of service-tax paid inadvertently:**

CESTAT, Ahmedabad sets aside refund rejection order against a pharmaceutical company, holds that no instance of service tax arises w.r.t. remuneration paid to partner by partnership firm. Expresses in clear terms that "there cannot be service provider and a service recipient relationship between partner and partnership firm. Hence, all the activities performed by the appellant in the capacity of partner to the partnership firm is not liable to service tax". Opines that service is taxable if it is provided to a distinct person and such person, does not include 'firms' when the service is provided by a partner to the said partnership firm; Explains that definition of 'person' for first time was defined in the Finance Act, 1994 w.e.f July 1, 2012 and therefore, prior to such period (which is the period involved in the present case), definition of 'person' u/s 65B(37) of Finance Act was non-existent, hence, "same cannot be made applicable retrospectively".

*TS-155-CESTAT-2021(Ahd)-ST-Cadila\_Healthcare\_Limited*

## COVID RELAXATIONS FOR COMPLIANCES UNDER GST:

- **Relief in GSTR-3B & GSTR 1 (March 2021 and April 2021):**  
Aggregate turnover of more than Rs. 5 Crores in preceding F.Y.:

Tax Period	Type of Return	Original Due Date	Interest		Late fee
			9% p.a. if filed between	18% p.a. if filed after	Waived if filed on or before
March-2021	GSTR3B	20.04.2021	21.04.2021 to 05.05.2021	06.05.2021	05.05.2021
April-2021	GSTR3B	20.05.2021	21.05.2021 to 04.06.2021	05.06.2021	04.06.2021
April-2021	GSTR1	11.05.2021	NA	NA	26.05.2021

- **Aggregate turnover below Rs. 5 Crores and have opted Monthly Return Filing:**

Tax Period	Type of Return	Original Due Date	Interest			Late fee
			Nil if filed between	9% p.a. if filed between	18% p.a. if filed after	Waived if filed on or before
March-2021	GSTR3B	20.04.2021	21.04.2021 to 05.05.2021	06.05.2021 to 20.05.2021	21.05.2021	20.05.2021
April-2021	GSTR3B	20.05.2021	21.05.2021 to 04.06.2021	05.05.2021 to 19.05.2021	20.06.2021	19.06.2021
April-2021	GSTR1	11.05.2021	NA	NA	NA	26.05.2021

- **Aggregate turnover below Rs. 5 Crores and have opted QRMP (Quarterly Return Monthly Payment) Scheme:**

Tax Period	Type of Return	Original Due dates	Interest			Late fees
			NIL between	@ 9% p.a., between	@ 18% p.a., on or after	Waived if filed on or before
Jan-Mar 21	*GSTR 3B (Type A States)	22.04.2021	23.04.2021 to 07.05.2021	08.05.2021 to 22.05.2021	23.05.2021	22.05.2021
Jan-Mar 21	**GSTR 3B (Type B States)	24.04.2021	25.04.2021 to 09.05.2021	10.05.2021 to 24.05.2021	25.05.2021	24.05.2021
Apr-21	PMT-06	25.05.2021	NA	NA	26.05.2021	NA
May-21	PMT-06	25.06.2021	NA	NA	26.06.2021	NA

\*Type A States: 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

\*\*Type B States: 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,

Due date to file Invoice Furnishing Facility for April 2021 has been extended till 28<sup>th</sup> May 2021.

▪ **Reduction in Interest rate for Composition Taxpayers (GST CMP-08):**

Tax Period	Type of Return	Original Due dates	Interest		
			NIL between	@ 9% p.a., between	@ 18% p.a., on or after
Jan-Mar 21	CMP-08	18.04.2021	19.04.2021 to 03.05.2021	04.05.2021 to 18.05.2021	19.05.2021

▪ **Extension in filing of ITC-04 and GSTR 4:**

Particulars	Return Type	Tax Period	Existing Due date	Revised Due date
Intimation of goods sent on Job work	ITC-04	Jan 21- Mar 21	25.04.2021	31.05.2021
Annual Return for Composition Tax Payers	GSTR-4	Apr 20- Mar 21	30.04.2021	31.05.2021

*Notification No 08/2021 – C.T. to 12/2021 – C. T. dated 01.05.2021*

▪ **Cumulative application of Rule 36(4) for April 21 to May 21.**

Rule 36(4) of the CGST Rules, 2017, restricts availment of ITC to 105% of the ITC on Invoices/Debit Notes furnished by Suppliers in GSTR-1/IFF. With the relaxation in filing of GSTR-1/IFF, it has been provided that the said restriction shall apply cumulatively for the period April '21 to May '21 while filing GSTR-3B of May'21.

*Notification No. 13/2021-Central Tax dated 01.05.2021*

▪ **Due date of some specified compliances extended to 31<sup>st</sup> May, 2021:**

By way of CGST Notification No. 14/2021- dated 01.05.2021, where the time limit of any of the following actions fall between 15th April, 2021 to 30th May, 2021, the due date of the same would get extended to 31st May, 2021:

- Due date for completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action by any authority, commission or tribunal, under the provisions of the Acts (*Comment: From the perspective of the Department*)

- Filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the Acts stated above; (*Comment: From the perspective of the Taxpayer*)

**Exclusions:**

Reference to Section/ Rules	Exception to provisions related to
Section 12-15	Time and Value of Supply
Section 10(3)	Turnover of Composition Taxpayer exceeds the threshold
Section 25	Procedure for registration ( <b>This Section does not include cancellation of registration</b> )
Section 27	Special provisions relating to casual taxable person and non- resident taxable person
Section 31	Tax invoice
Section 37	Filing of Form GSTR-1 ( <b>Relief provided separately</b> )
Section 47	Levy of late fee for delay in submission of returns under Section 37/ 38 / 39 / 45 ( <b>Relief provided separately except in case of Final return u/s 45</b> )
Section 50	Interest on delayed payment of tax ( <b>Relief provided separately</b> )
Section 69	Power to arrest
Section 90	Liability of partners of firm to pay tax
Section 122	Penalty for certain offences
Section 129	Detention, seizure and release of goods and conveyances in transit
Section 39 except (3),(4) & (5)	Furnishing of returns in Form GSTR-3/3B (except GSTR-7, GSTR-6 and GSTR-5)
Section 68	Inspection of goods in movement, in so far as e-way bill is concerned
Respective Rules	Rules made under above Sections

- **Extension of timelines for GST Registration and Refund claims:**  
By way of the CGST Notification No. 14/2021 - CT dated 01.05.2021:
  - It has been notified that where the time limit for action by authorities relating to GST Registration in terms of issuance of notice in Form GST REG-03, rejection of order in Form GST REG-05 or grant of registration in Form GST REG-06 falls between 01<sup>st</sup> May, 2021 to 31<sup>st</sup> May, 2021, then such time limit shall be extended to **15<sup>th</sup> June, 2021**.



- Where a SCN for full or partial rejection of refund claim has been issued and the date of passing order to the same falls between 15<sup>th</sup> April to 30<sup>th</sup> May 2021, then the department can issue such order within
  - (i) 15 days from the date of reply or
  - (ii) 31<sup>st</sup> May 2021 Whichever is **later**.

- **Due dates for Returns for TDS, TCS, Non-resident taxpayers, ISDs:**

It is pertinent to note that there is no specific Notification extending the due dates to file other returns under GST like GSTR-5, GSTR-6, GSTR-7 & GSTR-8. However, the same is very well covered by the general CGST Notification No. 14/2021-CGST dated 01.05.2021 extending timelines for various compliances and actions. Hence, the due dates for all the above returns for those periods whose due date fall between 15<sup>th</sup> April 2021 to 30<sup>th</sup> May 2021 have been extended till 31<sup>st</sup> May 2021.

- **SC- Extension in limitation period due to COVID-19:**

Last year, the Hon'ble Supreme Court vide its order dated 23.03.2020 has granted an extension in respect of all proceedings w.e.f. 15<sup>th</sup> March 2020 onwards till further orders on account of challenges being faced due to the spread of the COVID-19. Then, on 8<sup>th</sup> March 2021, the limitation period was brought to an end till 14<sup>th</sup> March 2021.

However, the Hon'ble Supreme Court on **27<sup>th</sup> March, 2021** restored the Order to extend the aforesaid period of limitation of filing cases in various legal fora with effect from 14.03.2021 until further orders in view of hardships faced by litigants due to the alarming Covid-19 situation. Hence, the limitation period for filing any appeals/suits/applications before any appellate authority will exclude period between 15<sup>th</sup> March 2020 till further orders by SC.