



## Dhruva Alert – CBIC issues enabling Notifications and clarifications pursuant to the 39<sup>th</sup> GST Council meet held on 14 March 2020

The Goods and Services Tax (GST) Council held their 39th Council Meeting on March 14, 2020 in New Delhi, wherein various recommendations were announced by the Council with regard to measures of trade facilitation, deferment of returns and schemes, rate changes, clarifications, etc.

The recommendations of the Council meeting have been notified by the Central Board of Indirect Taxes and Customs. Our alert provides an insight into some of these key amendments/clarifications.

Notification No. 16/2020 - Central Tax dated 23.03.2020 is issued wherein following rules of Central Goods and Services Tax Rules, 2017 (“CGST Rules”) has been amended –

### Amendments applicable from 01.04.2020

#### 1. Rule 43 – Determining input tax credit and reversal in respect of capital goods

**Amendment  
and Dhruva  
Comments**

Rule 43 of the CGST Rules has been amended as under:

**Amendment in sub-clause (c)**

- a. Credit on common capital goods have to be claimed basis the tax reflected on the invoice
- b. Input tax credit on capital goods earlier used exclusively for non-business / exempt supplies, and subsequently to be used for both exempt and taxable supplies, shall be availed as credit in the Electronic Credit Ledger
- c. Ineligible credit attributable to period during which it was used for exempt supplies – Credit amount shall be reduced by 5% for every quarter / part thereof, to be denoted as ‘Tie’;



d. Such amount computed above must be added directly to the output tax liability and computed separately for each tax head, i.e., CGST / SGST / UTGST and IGST in FORM GSTR-3B

**Amendment in sub-clause (d)**

Input tax credit on capital goods earlier used exclusively for taxable supplies, and subsequently to be used for both exempt and taxable supplies shall be added directly to pool of common credit for the purposes of credit reversals to be done monthly based on the useful life of 5 years

**Amendment in sub-clause (e)**

An explanation has been added in the sub-clause which clarifies that the useful life of the capital goods shall be 5 years **from date of invoice** and provides that the formula for arriving at such reversals must be applied only during the useful life of capital goods.

**Amendment in sub-clause (f)**

Sub-clause (f) has been omitted thereby removing the concept of 'Tr' which is a sum of all credits on capital goods attributable to each tax period

**Dhruva Comments:**

*The aforesaid amendments seem to be more clarificatory in nature. In case of capital goods which were exclusively used for taxable supplies and later for common purposes, credit on such capital goods will be subject to reversal for remaining useful life.*

*Further, the hardship of reversing the credit on month on month basis and keeping a track of each capital goods and reversals thereof continues for the Companies. The issue of payment of interest on credit that is required to be reversed every month remains.*

**Amendments applicable from date of issuing the notification**

**2. Rule 80 – Annual return**

**Amendment and Dhruva Comments**

**Amendment**

An exception is created for FY 2018-19, wherein only registered persons with aggregate turnover of more than INR 5 crore will have to get the accounts audited and file reconciliation statement in FORM GSTR-9C.



	<p><b>Dhruva Comments</b> <i>A transient relief given to small taxpayers in filing GSTR-9C for a limited period.</i></p>
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### 3. Rule 86– Electronic Credit Ledger

<p><b>Amendment and Dhruva Comments</b></p>	<p><b>New sub-Rule 4A has been inserted in Rule 86</b> Refund claimed on account of tax paid wrongly or paid in excess by debiting electronic credit ledger ('ECL'), if found admissible, shall be re-credited to the ECL by order in FORM GST PMT-03.</p> <p>Earlier, the only option available was to apply for refund on the basis that tax has been wrongly paid, irrespective of whether the GST was paid in cash or by credit.</p>
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### 4. Rule 89(4)(C) – Application for refund of tax for unutilised credit for exporters

<p><b>Amendment and Dhruva Comments</b></p>	<p>"Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, whichever is less.</p>
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### 5. Rule 92 – Order sanctioning Refunds

<p><b>Amendment and Dhruva Comments</b></p>	<p>New sub-rule (1A) is inserted wherein refund of tax paid other than on zero-rated supplies / deemed export shall be sanctioned in Form RFD-06 [cash component] post necessary adjustment for outstanding demands and Form GST PMT – 03 for re-crediting tax paid by utilizing ITC</p>
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### 6. Rule 96 – Refund of IGST on goods or services exported out of India

<p><b>Amendment and Dhruva Comments</b></p>	<p>New explanation is added to Rule 96(10)(b) – refund of IGST paid on export of goods/ services, retrospectively with effect from 23 October 2017 to clarify that benefit of Customs exemption notifications with respect to exemption of Customs duty and additional duty, IGST and Compensation Cess on import of goods under Advance Authorization or goods imported by an EOU, shall not be considered to be have been availed where the registered person has availed exemption of only BCD under said notifications and has paid IGST and Compensation Cess on inputs.</p> <p><b>Dhruva Comments</b> <i>Earlier, the refund authorities were rejecting the refund claims of IGST paid on exports on the premise that the assessee has claimed benefit of</i></p>
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*the aforesaid notifications even though the exemption of IGST & Compensation Cess was not claimed on procurement of goods. This Explanation allowing refund where the assessee claims only BCD exemption on inputs under the relevant notifications comes as a sigh of relief to the industry.*

## **7. Rule 96B – Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised**

### **Amendment and Dhruva Comments**

#### **Amendment**

Where the exporter fails to realise the sale proceeds [within the time limits prescribed in the Foreign Exchange Management Act, 1999], the exporter shall be liable to deposit the refund [sanctioned against such exports] along with interest within 30 days of expiry of the said time limit. Such amounts shall not be recovered where the realization of the amounts is written off by the Reserve Bank of India.

If the amounts are realized by the exporter later [but within the extended period as permitted by RBI], the exporter can apply for the refund of such amounts within 3 months of realization.

#### **Dhruva Comments**

- *The provisions have been made stringent to ensure receipt of sale proceeds, failing which the exporters would lose the right of refund and would be saddled with additional interest liability. Option has also been made available to re-apply for refund upon receipt of the foreign exchange at a later date.*
- *As per FEMA guidelines, time limit to receive the proceeds for export of goods is 9 months, which is extendable subject to approvals and authorizations specified therein.*
- *Definition of 'export of goods' under the IGST Act does not stipulate condition of receipt of convertible foreign exchange, as in case of export of services, thus, imposing this as a condition for claiming refund in case of unutilized credit/ payment of IGST on export of goods could be challenged as substantive provisions cannot be brought out by way of subordinate legislation i.e. Rules.*



## Other Amendments and Clarifications

### 8. Notifications issued by CBIC

**Special procedures notified by CBIC and clarifications on issues faced under the GST Law by Companies undergoing Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code 2016.**

CBIC has notified<sup>1</sup> special procedures to be followed by the Companies under CIRP ('Corporate Debtor') post insolvency commencement date:

- **Registration:** Corporate Debtor to obtain parallel registration as distinct persons in each State of presence, within 30 days from of appointment of Interim Resolution Professional (IRP)/ Resolution Professional (RP) or release of the notification, whichever is later.
- **First Return:** File first return for the period from the date of appointment of RP / IRP till the date of grant of registration [Section 40 of the CGST Act, 2017]. Further, ITC can be taken on supplier invoices bearing the GSTIN of the erstwhile registered person received during this period. The condition relating to time limit for availment of credit (i.e. due date of filing return for September of subsequent year or annual return, whichever is earlier) and matching of credit under Rule 36(4) of the CGST Rules will not be applicable to the ITC to be availed in the first return
- **Refund:** Amount deposited in cash ledger by IRP/RP in existing registration for the aforesaid period shall be available for refund.
- **Input tax credit to Recipients:** Recipients of such corporate debtors can avail ITC for the period from the date of appointment of RP / IRP till the date of registration on the basis of the tax invoices bearing GST registration number of erstwhile registered person. In this case as well, the provision relating to matching of credit would be inapplicable

It has been further clarified<sup>2</sup> as under:

- **Dues of the period prior to insolvency commencement date:** No coercive action can be taken against the Company with respect to tax dues. The said dues will be treated as operational debt and the proper officer can file a claim before NCLT for the same. The GST authorities cannot institute suits or pursue / close any pending proceedings in cases where moratorium order has been issued under the IBC provisions.
- GST registration during CIRP cannot be cancelled but can be suspended, if required by the Proper Officer. In case the

<sup>1</sup> Notification No. 11/2020 – Central tax dated 21.03.2020

<sup>2</sup> Circular No. 134/04/2020 dated March 25, 2020



registration is cancelled, the cancellation order must be revoked, if it is within the period of revocation of cancellation of registration.

- The RP / IRP is not liable to file returns under the new registration taken by the corporate debtor for the period prior to the Insolvency Commencement Date

**Dhruva Comments:**

- *The above changes have been introduced to conform with the directions of the National Company Law Tribunal to permit RP / IRP to file returns during corporate insolvency resolution period.*
- *The process of obtaining separate registration in all States of operations would be cumbersome; however, the same is essential as the GSTN currently does not permit the filing of returns by a taxpayer where returns for past periods have not been filed. The process though burdensome, would enable compliance, availment of credit by corporate debtor, guaranteeing ITC to recipients at least post the initiation of the insolvency resolution period.*
- *The provisions on refund of tax / monies deposited by the RP / IRP in the cash ledger of old registration indicates that the same would be applicable only where the corresponding GSTR-3B / GSTR-1 have not been filed. However, this aspect is unclear. Further, the process indicates that the RP /IPR would be required to file returns and pay taxes for the entire period from the date of appointment to date of obtaining fresh registration. It is unclear whether this process would have to be followed even where monies for that period has been deposited and GSTR-3B filed under the old / erstwhile registration.*
- *Also, the carve out created for non-application of Section 16(4) and Rule 36(4) allows the RP/IPR to avail credit irrespective of the (a) the outer time-line imposed for availing credit i.e. due date of filing return u/s. 39 for the month of September following the end of the financial year or any extension to the said date as the case may be (b) without any restriction as to the quantum of credit i.e. 10% restriction applicable in terms of Rule 36(4). It needs to be seen whether the issue of availment of ITC would still be strife with dispute and litigation in a situation where vendor/supplier has not paid the tax. Also, in a situation where the Company might have Suo-moto reversed the credit / taken restricted credit for the*



	<p><i>past period and paid the GST in cash, whether such amount paid in cash would now be available as adjustment or refund to the RP/IPR.</i></p>
<b>E-invoicing provisions<sup>3</sup></b>	<ul style="list-style-type: none"><li>• Defers E-invoicing [for persons making B2B supplies and having annual turnover above 100 crores] and Dynamic Quick Response (QR) [for persons having aggregate turnover of 500 crores having B2C supplies and suppliers registered for supply of OIDAR services] provisions from April 1, 2020 to October 1, 2020</li><li>• Exemption from E-invoicing and QR Code provisions to a certain class of registered persons such as banking company, financial institution, non-banking financial institution, goods transport agency, passenger transportation service and cinemas in multiplex screens.</li></ul> <p><b>Dhruva Comments:</b></p> <ul style="list-style-type: none"><li>• <i>The extension will help the industry to better prepare for the system changes and also to align with their eco-system. Further, in this time the Government can also ensure that the technology framework is robust to handle the load;</i></li><li>• <i>While the exemption to the specific industries is a welcome move and would bring relief to the specific sectors, however, on the other hand would lead to a situation where the recipients will have to continue to rely upon reporting of transactions in GSTR-1 by companies in these sectors in order to be entitled to avail ITC. Currently, the same situation prevails for Assesseees with a turnover of less than 100 crores where e-invoicing is not mandatory.</i></li></ul>
<b>Aadhaar Number Verification</b>	<p>CBIC has notified<sup>4</sup> persons required to undergo verification of Aadhaar Number for registration purposes, list of persons exempted from such process and the effective date:</p> <p>Amendment in CGST Rules, 2017:</p> <ul style="list-style-type: none"><li>• <b>Rule 8 of CGST Rules – Application for Registration</b> Applicant shall be required to undergo Aadhar authentication while making electronic application in FORM GST REG-01</li><li>• <b>Rule 9 and Rule 25 of CGST Rules – Verification of application for registration and approval</b></li></ul>

<sup>3</sup> Notification No. 13/2020 – Central tax dated 21.03.2020 and Notification No. 14/2020 – Central tax dated 21.03.2020

<sup>4</sup> Notification No. 16/2020 - Central Tax dated 23.03.2020, Notification No. 17/2020 - Central Tax dated 23.03.2020, Notification No. 18/2020 - Central Tax dated 23.03.2020, Notification No. 19/2020 - Central Tax dated 23.03.2020



On failure to undergo Aadhaar authentication, physical verification of the principle place of business shall be undertaken, in presence of said person, within 60 days from date of application. Provisions of deemed approval in case proper officer fails to take any action within prescribed timelines, shall not be applicable in such cases.

**Other Notified Amendments:**

- Aadhaar Verification applies to Individual, Authorized signatories, Managing / authorized partners and Karta of HUF - If Aadhaar number is not assigned to the said individual, he shall be offered alternate and viable means of identification in the manner specified in rule 9 above.
- It exempts persons who are not Citizens of India and persons other than those mentioned above.

**Dhruva Comments**

- *Aadhaar is a default platform to authenticate or verify the identity of individual or authorized signatories of companies. Like Income Tax, where linking Aadhaar to ITR is mandatory, making mandatory linking of Aadhaar in GST registration shall ease the verification process for authorities;*
- *The above process shall help reduce setting up of bogus companies and reduce the menace of fake invoicing;*
- *As the registration process would get delayed on account of physical verification where Aadhaar verification cannot be done, issue remains unanswered on eligibility of ITC on input services in the transition period.*

**8. Notifications<sup>5</sup> providing for extended due dates**

**Amendment and Dhruva Comments**

**Due dates of filing returns have been notified for specified class of persons**

- For persons having aggregate turnover upto INR 1.5 Crores in the preceding financial year or current financial year shall furnish Form GSTR 1 quarterly within the below mentioned time limit:
  - For quarter April 2020 to June 2020 – July 31, 2020
  - For quarter July 2020 to September 2020 – October 31, 2020
- For persons having aggregate turnover exceeding INR 1.5 Crores in the preceding financial year or current financial year shall furnish Form GSTR 1 for each of the months from April 2020 to September 2020 till 11<sup>th</sup> of the subsequent month For persons having

<sup>5</sup> Notification No. 27/2020 - Central Tax dated 23.03.2020, Notification No. 28/2020 - Central Tax dated 23.03.2020, Notification No. 29/2020 - Central Tax dated 23.03.2020





	<p>aggregate turnover upto INR 5 Crores in the previous financial year has to furnish Form GSTR 3B by 22<sup>nd</sup> or 24<sup>th</sup> of the subsequent month, based on the State in which the principal place of business is located</p> <ul style="list-style-type: none"><li>• For persons having aggregate turnover above INR 5 Crores in the previous financial year have to furnish Form GSTR 3B by 20<sup>th</sup> of the subsequent month</li><li>• Extended<sup>6</sup> time limit to furnish annual return for Financial year 2018-2019 till June 30, 2020</li></ul> <p><b><u>Payment of taxes will coincide with the aforesaid dates</u></b></p> <p><b>Dhruva Comments</b></p> <p><i>The notifications have continued the current due dates notified for specified class of persons as a measure of easing compliance until the new returns system is notified.</i></p>
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## 9. Clarifications issued by CBIC vide Circulars

<p><b>Clarification in relation to apportionment of Input Tax Credit (ITC) in case of De-merger</b></p>	<p>The Circular<sup>7</sup> clarifies the method of credit apportionment and transition of such ITC by the transferor:</p> <ul style="list-style-type: none"><li>• The exercise of apportionment of unutilised ITC, factoring the 'value of assets', to be undertaken for each State separately and not on a PAN India level</li><li>• Form GST ITC-02 for transferring ITC by demerged company to the resulting company to be filed only in those states where both parties are registered</li><li>• The methodology of apportionment of ITC on the basis of value of assets being transferred [as per proviso to Rule 41(1) of CGST Rules, 2017], shall apply to all forms of business re-organisation where partial business is transferred along with liabilities. – Thus, apart from the demerger scheme under a High Court/ NCLT order, the methodology would also apply to part business transfer under slump sale</li><li>• Ratio of apportionment of ITC need not be applied to each head of tax separately, i.e., CGST, SGST and IGST. Hence, ratio to apply to <b>total</b> unutilised ITC</li><li>• Formula of apportionment must also be applied to Cess amounts</li><li>• Option provided to allocate the total ITC transferable in any of the GST heads</li></ul>
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<sup>6</sup> Notification No. 15/2020 – Central tax dated 23.03.2020

<sup>7</sup> Circular No. 133/03/2020 dated March 23, 2020



	<ul style="list-style-type: none"><li>• Formula of apportionment to apply on the unutilised ITC available in the electronic credit ledger as on <u>date of filing Form GST ITC-02</u></li><li>• The formula for apportionment of unutilised ITC must be based on the value of assets <u>as on the “appointed date” of demerger under the Companies Act, 2013</u></li></ul> <p><b>Dhruva Comments:</b> <i>Issuance of these clarifications is welcome as it would resolve various anomalies around calculation of the ratio of apportionment, filings of ITC-02, etc. This has been much awaited considering business re-organisation has become a phenomena in today’s time. There was also an unclarity on whether the formula applies to slump-sale/transfer of business as a going concern, which now gets clarified.</i></p> <p><i>However, questions around availment and transfer of ITC by the transferor to transferee still remain answered, especially in case of delayed receipts / disclosure of invoices by the suppliers It may be relevant to note that the system currently allows filing of multiple ITC-02.</i></p>
<p><b>Filing of appeal in case of non-constitution of Appellate Tribunal</b></p>	<p>In December 2019, the Government had clarified [Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019] that the time limit to file appeal before the Tribunal against the Order shall be within 3 months (6 months in case appeal by Government) from the date of communication of order or date on which President/State President of Appellate Tribunal enters office, <i>whichever is later</i>.</p> <p>In this regard, the Circular<sup>8</sup> has been issued stating -</p> <ul style="list-style-type: none"><li>• The Appellate authorities have been directed to dispose off the pending appeals expeditiously without waiting for constitution of the Appellate Tribunal</li><li>• The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office</li></ul> <p><b>Dhruva Comments:</b> <i>The aforesaid clarification was the need of the hour considering the quantum of pending appeals which were not being addressed due to non-constitution of the Appellate Tribunal</i></p>

<sup>8</sup> Circular No. 132/2/2020 - GST dated March 18, 2020



The discussions in the GST Council Meeting relating to retrospective amendment with respect to interest on net liability under Section 50, extension in time limit for filing application for revocation of cancellation of registration, introduction of the 'Know your Supplier' facility, refund related clarifications, rate changes, etc., are yet to be notified/clarified by CBIC.



## ADDRESSES

### Mumbai

1101, One IndiaBulls Centre,  
11th Floor, Tower 2B,  
841, Senapati Bapat Marg,  
Elphinstone Road (West),  
Mumbai 400 013  
Tel:+91 22 6108 1000 / 1900

### Ahmedabad

B3, 3rd Floor, Safal Profitaire,  
Near Auda Garden,  
Prahladnagar, Corporate Road,  
Ahmedabad - 380 015  
Tel: +91-79-6134 3434

### Bengaluru

Prestige Terraces, 2nd Floor  
Union Street, Infantry Road,  
Bengaluru 560 001  
Tel: +91-80-4660 2500

### Delhi / NCR

101 & 102, 1st Floor, Tower 4B  
DLF Corporate Park  
M G Road, Gurgaon  
Haryana - 122 002  
Tel: +91-124-668 7000

### Pune

305, Pride Gateway, Near D-Mart, Baner,  
Pune - 411 045  
Tel: +91-20-6730 1000

### Kolkata

4th Floor, Unit No 403, Camac Square,  
24 Camac Street, Kolkata  
West Bengal – 700016  
Tel: +91-33-66371000

### Singapore

Dhruva Advisors (Singapore) Pte. Ltd.  
20 Collyer Quay, #11-05  
Singapore 049319  
Tel: +65 9105 3645

### Dubai

WTS Dhruva Consultants  
U-Bora Tower 2, 11th Floor, Office 1101  
Business Bay P.O. Box 127165  
Dubai, UAE  
Tel: + 971 56 900 5849

### New York

Dhruva Advisors USA, Inc.  
340 Madison Avenue, 19th Floor, New York,  
New York 10173 USA  
Tel: +1-212-220-9494

## KEY CONTACTS

### Dinesh Kanabar

Chief Executive Officer  
dinesh.kanabar@dhruvaadvisors.com

### Ritesh Kanodia

ritesh.kanodia@dhruvaadvisors.com

### Niraj Bagri

niraj.bagri@dhruvaadvisors.com

### Ranjeet Mahtani

ranjeet.mahtani@dhruvaadvisors.com

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