



INDIRECT TAX NEWSLETTER

November, 2020 (updated till 31.10.2020)



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REGULATORY UPDATES

GOODS & SERVICES TAX (GST) LAW

Notifications

❖ **Notification No. 74/2020 – CT, Notification No. 75/2020–CT, both dated 15.10.2020**

The CBIC has notified the following due dates for furnishing the details of outward supplies in FORM GSTR-1 for the period Oct 2020 to Mar 2021:

S. No.	Type of Registered person	Month/Quarter/Year	Due dates
1.	With an aggregate turnover of up to INR 1.5 Crores in the preceding financial year or the current financial year	Oct 2020 to Dec 2020	13 th Jan 2021
		Jan 2021 to Mar 2021	13 th Apr 2021
2.	With an aggregate turnover of more than INR 1.5 Crores in the preceding financial year or the current financial year	For each of the months from Oct 2020 to Mar 2021	11 th day of the succeeding such month

❖ **Notification No. 76/2020 – CT, dated 15.10.2020**

The CBIC has notified the following due dates for furnishing the details in FORM GSTR-3B for the period October 2020 to March 2021:

S. No.	Type of Registered person	Location of principal place of business	Month/Quarter/Year	Due dates
1.	With an aggregate turnover of more than Rs. 5 Crores in the preceding financial year or the current financial year	All states/UT	For each of the months from Oct 2020 to Mar 2021	20 th day of the succeeding such month
2.	With an aggregate turnover of upto Rs. 5 Crores in the preceding financial year or the current financial year	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	For each of the months from Oct 2020 to Mar 2021	22 nd day of the succeeding such month
3.		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		24 th day of the succeeding such month



❖ **Notification No. 77/2020 – CT, dated 15.10.2020**

The CBIC has made discretionary to file the annual return for F.Y. 2019-20 for the small taxpayers, whose aggregate turnover is **less than Rs. 2 crores**. Earlier, the same was discretionary only for the F.Y. 2017-18 and 2018-19 vide Notification No. 49/2019–CT, dated 09.10.2020.

❖ **Notification No. 78/2020 – CT, dated 15.10.2020**

The CBIC has stated that a tax invoice issued by a registered person, whose aggregate turnover in the preceding financial year is up to Rs. 5 Crores, requires mentioning of the HSN Code at the four-digit level. Also, it is discretionary to mention the HSN code when the supplies are made to unregistered person.

Further, the registered person whose aggregate turnover in the preceding financial year is more than Rs. 5 Crores, is required to mention the HSN code at the six-digit level in a tax invoice. This will be effective from 1st April 2021.

❖ **Notification No. 79/2020 – CT, dated 15.10.2020**

The CBIC has made certain amendments in various forms and continues to provide the various relaxation pertains to the Form GSTR-9 and 9C. A few relevant amendments have been reproduced below for ready reference:

- ✓ Extended the facility of furnishing of return by Short Messaging Service (SMS) facility for filing 'NIL' statement in Form GST CMP 08 (Statement for payment of self-assessed tax by a composition dealer);
- ✓ A registered person having turnover up to Rs. 5 Crores is not required to furnish GSTR 9C for the F.Y.2019-20;
- ✓ A registered person, who has not furnished returns in Form GSTR 3B or the statement of outward supplies in Form GSTR 1 or the statement in Form GST CMP 08 for a consecutive period of two months, is not allowed to furnish information in PART A of FORM GST EWB 01. The said restriction shall not apply during the period from 20 March, 2020 till the 15 October, 2020 in case the said returns have not been furnished for the period February, 2020 to August, 2020;
- ✓ The column 6 of HSN details of outward supplies table of Form GSTR 1 has been substituted with 'Rate of Tax' instead of 'Total value';
- ✓ Form GSTR-2A: –
 - Supplies attracting reverse charge also will be reflected in GSTR 2A;
 - Separate tables have been given for amendments in respect of the following:
 - Inward supplies received from a registered person including supplies attracting reverse charge;
 - Debit / Credit notes received during the current tax period;
 - ISD credit received.
 - Inserted new tables for:
 - Import of goods from overseas on Bill of Entry (BoE) (including amendments
 - Inward supplies of goods received from SEZ units/developers on BoE (including amendments thereof).

Circulars

❖ **Circular No. 142/2020 – GST, dated 09.10.2020**

The CBIC has elucidated w.r.t. the availment of the eligible ITC in terms of Rule 36 (4) of CGST Rules, 2017 for the months of Feb 2020 to Aug 2020. The manner of cumulative reconciliation for the said months in terms of proviso to sub-rule (4) of rule 36 of the CGST Rules is explained by way of illustration, in a tabulated form as given below:



Tax Period	Eligible ITC as per the provisions of Chapter V of the CGST Act and the Rules made thereunder, except rule 36(4)	ITC availed by the taxpayer (recipient) in GSTR3B of the respective months	Invoices on which ITC is eligible and uploaded by the suppliers till the due date of FORM GSTR-1 for the tax period of Sept., 2020	Effect of cumulative application of rule 36(4) on the availability of ITC.
Feb.,2020	3,000	3,000	2,700	Maximum eligible ITC in terms of rule 36 (4) is 24,500 + [10% of 24,500] =26,950.
Mar., 2020	4,000	4,000	3,800	
Apr.,2020	5,000	5,000	4,500	
May,2020	3,500	3,500	3,200	
Jun.,2020	4,500	4,500	4,000	The taxpayer had availed ITC of 27,500. Therefore, ITC of 55 [27,500-26,950] would be required to be reversed as mentioned in para 3.4. of the above-captioned circular.
Jul.,2020	5,500	5,500	4,800	
Aug.,2020	2,000	2,000	1,500	
Total	27,500	27,500	24,500	
ITC Reversal required to the extent of 55				
Sep.,2020	5,000	3,850	3,500	10% Rule shall apply independently for September, 2020
In the FORM GSTR-3B for the month of Sep 2020, the taxpayer shall avail ITC of 385 under Table 4(A) and would reverse ITC of 55 under Table 4(B)(2)				

CUSTOMS LAW

Circulars

❖ **Circular No. 45/2020 – Cus, dated 12.10.2020**

The CBIC has delineated several measures in relation to the timely assessment of Bills of Entry and elucidated in relation to the defacement of the physical document which pertains to the Re-assessment of B/E, Certificate of Origin, Grievance Redressal etc. for smooth implementation of Faceless Assessment at all ports.

❖ **Circular No. 48/2020 – Cus, dated 27.10.2020**

The CBIC has provided the clarification in relation to Manufacturing and other operations undertaken in bonded warehouses under Section 65 of the Customs Act, 1962. The CBIC has addressed the following issues, majorly pertaining to job work, in this regard:

- ✓ Procedure to be followed for the removal of goods for job work by unit registered in terms of Section 65;
- ✓ Whether the unit registered under Section 65 itself may undertake the process of job work for units;
- ✓ Whether the unit registered under Section 65 may procure the goods from FTWZ.

FOREIGN TRADE POLICY

Notifications

❖ **Notification No. 36/2015-2020, dated 06.10.2020**

The DGFT has amended the export policy of the Personal Protection Equipment/Mask (N95/FFP2 masks or its equivalent) from “Restricted” category to “Free” category.



❖ **Notification No. 38/2015-2020, dated 06.10.2020**

The DGFT has introduced the sub-para (d) under para 4.25 of FTP 2015-2020 wherein the import of “Tyres” under DFIA scheme is not permissible.

❖ **Notification No. 40/2015-2020, dated 15.10.2020**

The DGFT has revised the export policy of “Alcohol-Based Hand Sanitizer in containers with dispenser pumps” falling under ITC HS codes ex3004, ex3401, ex3402, 380894, which is now freely exportable, w.e.f. 15.10.2020.

❖ **Notification No. 41/2015-2020, dated 15.10.2020**

The DGFT has revised the import policy of “Air Conditioner with refrigerants” falling under ITC HS codes 84151010 and 84151090 from “Free” category to “Prohibited” category.

❖ **Notification No. 42/2015-2020, dated 15.10.2020**

The DGFT has revised the export policy of “Nitrile/NBR Gloves” falling under ITC HS codes 392690 and ex4015 from “Prohibited” category to “Restricted” category.

❖ **Public Notice No. 25/2015-2020, dated 13.10.2020**

The DGFT has delineated the procedure for application or issuance of duty credit scrips under the Rebate of State Levies Scheme. The said scheme will be permissible only to those shipping bills which have been transmitted from the ICEGATE server to DGFT server.

❖ **Public Notice No. 26/2015-2020, dated 16.10.2020**

The DGFT has provided the relaxation to all the Advance Authorization Holders, where the export obligation is expiring/has expired between 01.02.2020 to 31.10.2020. The time period for the fulfilment of export obligation has been extended till 31.12.2020.

Trade Notices

❖ **Trade Notice No. 30/2020-21, dated 13.10.2020**

The DGFT has provided e-platform which has been designed as single-point access for all FTAs/PTAs, all designated Certificate of Origin (CoO) issuing agencies and for all export products, and is accessible at the URL: <https://coo.dgft.gov.in>.

Further, the Preferential Certificate of Origin for exports to various other countries under the following four trade agreements shall also be applied and issued from the CoO e-platform with effect from 15th October 2020:

S. No.	Agreement
1.	Generalized System of Preferences (GSP)
2.	Global System of Trade Preferences (GSTP)
3.	India Malaysia Comprehensive Economic Cooperation Agreement (IMCECA)
4.	India Singapore Comprehensive Economic Cooperation Agreement (ISCECA)



❖ **Trade Notice No. 31/2020-21, dated 27.10.2020**

The DGFT has delineated the procedure and criteria for submission and approval of the application for the export of “Nitrile/NBR Gloves”. It is pertinent to note that the application filed from 02.11.2020 to 06.11.2020 will only be considered, any application applied after the said period will deem to be rejected. The export license will be valid only for 3 Months.

JUDICIAL UPDATES

GST LAW

❖ **Spirotech Heat Exchangers Pvt. Ltd. Vs. UOI - WP (C) 5705/2020**

In the instant case, the petitioner had exported goods on payment of IGST. However, there was mismatch between the tax paid as shown in the shipping bill and as shown in GSTR 3B. The petitioner duly complied with the circular also issued in this regard which prescribed for filing of reconciliation in Form RRR to the customs authority. The customs authority also accepted everything, however, stated that there is no system with them which allows them to refund the amounts. Thus, there was a technical glitch in this on the part of customs authority. The petitioner followed up the matter for a period of more than 2 years with the authorities but did not succeed with the lame excuses of the custom authorities. The petitioner filed the writ in the Delhi High Court where the Hon’ble High Court admonitioned the customs authorities and DG systems. Before the final date of hearing, the petitioner was disbursed the refund claim through the system by the customs authority:
Delhi High Court

This case was argued by partner from RSA Legal Solutions itself.

❖ **M/s. Cosmo Films India Vs. Union of India & Ors; R/Special C.A. No. 15833 of 2018: –**

In the instant matter, the petitioner is the Advance Authorization (AA) holder issued under FTP. The Petitioner was entitled to import raw materials without payment of IGST under the AA License and pay IGST on exports and later on, claim Rebate (Refund) of the IGST so paid on exports. The Petitioner has received benefits of rebate of IGST at the relevant point of time. Thereafter, sub-rule (10) of Rule 96 of the CGST Rules was amended by N. No. 39/2018–CT dated 04.09.2018 with retrospective effect from 23.10.2017, providing that rebate on exports cannot be availed by the Petitioner, if the inputs procured by the Petitioner have enjoyed AA benefits or Deemed Export Benefits under the said notification. The petitioner has challenged the validity of sub-rule (10) of Rule 96 of CGST Rules substituted vide Notification No. 54/2018-CT, dated 09.10.2018, denying the option to claim rebate to the Petitioner for importing goods under AA licenses. The Hon’ble High Court held that the validity of rule 96(10) of the CGST Rules, 2017 and rules that notification is required to be made applicable prospectively only w.e.f. 23.10.2017 and not prior thereto from the inception of Rule 96(10) of the CGST Rules w.e.f. 01.07., 2017: **Gujarat High Court**

❖ **M/s. Vertiv Energy Pvt. Ltd. (GST AAAR Maharashtra); MAH/AAAR/SS-RJ/22 /2019-20: –**

In the instant matter, the appellant entered into a contract with DMRC for supply, erection, installation, commissioning and testing of UPS system. Appellant sought for the clarification as to whether the said supplies of services will be construed as the supply of works contract in terms of Section 2(119) of CGST Act, 2017. The Hon’ble Appellant Advance Ruling Authority has set aside the ruling passed by the Advance Ruling, Maharashtra. It was held that just because the supply of the said goods, as well as the services, have been agreed to be provided by the Appellant to the Recipient under the single contract, it cannot be concluded that the supplies under the question to be the composite supply. The Hon’ble Authority is of the considered view that



the said supply of goods and services are made by the two distinct taxable persons, i.e. Maharashtra (GSTIN) unit and the Delhi (GSTIN) unit of the Appellant, and, hence, are distinct supplies. It was also observed that supplies under question do not satisfy essential conditions stipulated for the Composite Supply under section 2(30) of the CGST Act, 2017: **AAAR Maharashtra**

❖ **M/s. Maansarovar Motors Private Limited Vs. The Assistant Commissioner & Ors.; W.P.Nos.28437 of 2020 etc. batch: –**

The petition revolves around the interpretation of Section 50 of the CGST Act, 2017 particularly the effective date of application of the proviso inserted vide Section 100 of Finance (No.2) Act of 2019. Section 50 provides that every person who is liable to pay tax in terms of the Act shall remit the tax either in cash or by way of adjustment of credit available in the ITC register and in cases of delay in such remittance, interest is liable to be paid for the period of delay. While the levy of interest on remittances of tax in cash is not in question, the authorities have proceeded to levy interest on remittances of tax by adjustment of available ITC which is challenged. The Hon'ble Madras High Court allowed a batch of petitions challenging action taken by the Central GST Authorities levying interest on tax paid by reversal of ITC, quashing such levy. Further, the Hon'ble High Court opined that the Centre, the State and the CBIC are in agreement that the operation of the proviso of Section 50 should only be retrospective and the interpretation to the contrary by the authorities constituted under the Board has been misplaced as is the consequential coercive recovery: **Madras High Court**

CUSTOMS LAW

❖ **Union of India & Ors. Vs. M/s. G S Chatha Rice Mills & Anr.; C.A. No. 3249 of 2020: –**

This case before the Court is linked with India's response to Pakistan in the aftermath of the Pulwama terror attack. Two days after the attack, the notification was issued wherein the CBIC has introduced a tariff entry by which all goods originating in or exported from Pakistan were subjected to an enhanced customs duty of 200%. The notification was uploaded on the e-Gazette at 8:48 pm. Customs authorities at the land customs station at Attari sought to enforce the enhanced rate of duty on importers who had already presented bills of entry for home consumption before the enhanced rate was notified in the e-Gazette on the same day. The imported goods entered Attari at around 6 pm on that day, two hours before the notification was published. The Hon'ble Apex Court held that the purpose of the notification is to discourage the import of goods from Pakistan, it has prospective effects. The object and purpose are not to penalize Indian importers who had completed their imports, presented bills of entry for home consumption and had completed self-assessment, before the issuance of the notification even though the goods were still lying with the customs. The Apex Court held that the notification published under Section 8A of the Customs and Tariff Act, 1975, late in the evening of February 16, 2019, would have effect from that very time and date and not before that. **Supreme Court**

❖ **M/s. Sterlite Optical Technologies Ltd. Vs Commissioner of Cus. And C. Ex; C.A. No. 2869 of 2007:–**

In the instant matter, the appellant went under the Sabka Vishwas (Legacy Dispute Resolution) (SVLDR) Scheme, 2019 for the settlement of the disputes qua the excise component alone. Therefore, the appellant seeks to withdraw only that part of the dispute in the above appeal which relates to the excise component, but retaining the appeal insofar as the customs component is concerned. The Hon'ble Supreme Court held that the respondent cannot object to the appellant withdrawing any portion of the appeal, provided the appellant is not seeking any benefit from the Court on account of the withdrawal. Therefore, the appeal shall be treated as withdrawn only in respect of the dispute arising out of the excise component. The liberty is reserved to the respondent to raise question of maintainability of the appeal in relation to surviving dispute: **Supreme Court.**



NEWSFLASH

- ❖ Companies get GST audit notices from various States.¹
- ❖ GST Input Tax Credit: An avoidable controversy.²
- ❖ According to a government release, Pradhan said the call from industry to include LNG under the indirect tax regime was a genuine demand and that a consensus was likely to develop on the issue soon.³
- ❖ GST Compliance tightened: Buyers from big firms to show valid e-invoices for tax credit.⁴
- ❖ India-US relations get better with successive Presidents: Foreign Ministry.⁵
- ❖ Exports to improve in the coming months due to collaborative efforts of all stakeholders.⁶
- ❖ Tata's retail arm faces ₹1.9 crore penalty for GST-related profiteering.⁷
- ❖ Electronic Vehicle Manufacturer oppose GST cut on hybrid vehicles: Government.⁸
- ❖ Atmanirbharta: Striking a balance between free trade and protectionism.⁹
- ❖ Australia looks to boost trade with India after relations with China sour.¹⁰

¹ <https://www.thehindubusinessline.com/economy/companies-get-gst-audit-notice-from-various-states/article33023011.ece>

² <https://www.bloomberquint.com/bq-blue-exclusive/gst-input-tax-credit-an-avoidable-controversy>

³ <https://indianexpress.com/article/business/economy/dharmendra-pradhan-consensus-on-including-lng-under-gst-soon-6983389/>

⁴ <https://www.financialexpress.com/economy/gst-compliance-tightened-buyers-from-big-firms-to-show-valid-e-invoices-for-tax-credit/2122777/>

⁵ <https://www.livemint.com/news/india/india-us-relations-get-better-with-successive-presidents-foreign-ministry-11604676649249.html>

⁶ <https://economictimes.indiatimes.com/news/economy/foreign-trade/exports-to-improve-in-the-coming-months-due-to-collaborative-efforts-of-all-stakeholders-dgft/articleshow/79042656.cms>

⁷ <https://www.livemint.com/companies/news/naa-orders-tata-group-s-retail-arm-to-deposit-rs-1-9-cr-for-alleged-profiteering-11604574783949.html>

⁸ <https://www.livemint.com/companies/news/ev-makers-oppose-gst-cut-on-hybrid-vehicles-11604540967139.html>

⁹ <https://www.cnbctv18.com/economy/atmanirbharta-the-debate-continues-7355691.htm>

¹⁰ <https://www.financialexpress.com/economy/australia-eyes-trade-with-india-as-china-spat-exposes-dependence/2084376/>



About the Firm

RSA Legal Solutions is a top-tier Tax Law firm committed to providing world-class advisory, litigation, and compliance services to businesses, and singularly focused on serving the needs of business clients. The firm specializes in GST, Customs, Foreign Trade Policy, SEZ laws, FEMA, Income Tax, Corporate laws and other allied laws.

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