



Felix Advisory

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Indirect Tax Insights

July 2020

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GST

1. Judgement

Retrofitted two wheelers for use of differently abled persons to be taxed as normal vehicle under HSN 87112019 @ 28% GST with ITC

It is held that where applicant purchases two wheeler scooter and also certain additional parts/accessories to retrofit said vehicle with said parts for differently abled customer, that retrofitting (means adding some components) does not change basic structure of said vehicle and, hence, retrofitted vehicle merits classification under Heading No. 8711 attracting GST @ 28% and not under Heading No. 8713 attracting 5% GST and the applicant is entitled for input tax credit of tax paid on purchase of scooter.

[Sai Motors (AAR Karnataka) - KAR ADRG 32/2020 dated 20th May, 2020]

Assessee can claim Transitional Credit in GSTR-3B of July 2020

Held that, where assessee failed to upload TRAN-1 for availing benefit of previous un-utilized input tax credit by last date i.e. 27th December, 2017, respondent GST authorities were to be directed to permit assessee to upload TRAN-1 on or before 30th June, 2020 and in case respondent failed to do so, assessee would be at liberty to avail ITC in question in GSTR-3B of July, 2020.

[Amba Industrial Corporation v. Union of India (Punjab & Haryana HC) - CWP No.8213 of 2020 dated 18th June, 2020]

Pre-GST CENVAT credit available till June 2020

It has been held that in the absence of any statutory limitation for availing input tax credit under Central Goods and Services Tax Act, 2017 ('CGST Act'), the provisions of the Limitation Act, 1963 would be applicable and as such the period of 3 years from 1 July 2017 i.e. 30 June 2020, would be the maximum period for availing of input tax credit.

In other words, all the persons migrating to and registered under the CGST Act, whether or not registered under the pre – GST regime, are permitted to file GST TRAN – 1 and avail input tax credit on its closing stock as on 30 June 2017.

As per Rule 117 of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') the taxpayers should have filed the application in TRAN -1 within 90 days from 1 July 2017 which was subsequently extended to 31 March 2020. However, the petitioner argued that it is discretionary in nature and would not result in forfeiture of rights, in case credit is not availed within period prescribed.

[Brand Equity Treaties Ltd. v. Union of India (Delhi HC) - Writ Petition [2020] 116 taxmann.com 415 dated 5 May 2020]

Aggrieved by the aforesaid judgement, Union of India had filed SLP, assailing the judgment and argued in the petition that time limit prescribed for availing transitional credit is 'mandatory', 'rational' & 'reasonable'. In response to the SLP, Supreme Court has stayed the operation of Delhi HC ruling in Brand Equity.

[Union of India v. Brand Equity Treaties Ltd. (SC) – SLP NO(S). 7425-7428 OF 2020 dated 19th June, 2020]

2. Notification

Extension of time limit for passing order in case of refund

The CBIC notifies that where a notice has been issued for rejection of refund claim, in full or in part and where the time limit for the issuance of order falls during the period from the 20th March, 2020 to the 30th August, 2020, then it shall be extended to 15 days after the receipt of the reply to the notice from registered person or 31st August, 2020 whichever is later.

[Notification No.56/2020-Central Tax dated 27th June, 2020]

Extension of date in case of compliance

The CBIC notifies that where any time limit for completion or compliance of any action (such as completion of any proceeding, passing of any order or issuance of any notice, intimation, notification, sanction of approval, filing of any appeal reply, furnishing of any report, document etc.) by the authority falls during the period from 20th March, 2020 to the 30th August, 2020 and where the completion or compliance has not been made within such time, then the time limit shall be extended up to 31st August, 2020.

[Notification No.55/2020-Central Tax dated 27th June, 2020]

Extension of validity of E-way Bill

In case of e-way bill issued on or before 24th March and whose validity has expired on or after 20th March 2020, then validity of such e-way bill is now be extended till 30th June, 2020.

[Notification No.47/2020-Central Tax dated 9th June, 2020]

Filing of GSTR-1 and GSTR-3B using EVC enabled at portal for companies also

EVC option has now been enabled for GSTR-1 also, for companies. Now, both, GSTR-1 as well as GSTR-3B can be filed using EVC till 30th September, 2020.

[Notification No.48/2020-Central Tax dated 19th June, 2020]

Filing of Nil GSTR-3B and GSTR-1 through SMS

CBIC has rolled out facility of filing of GSTR-1 and GSTR-3B through SMS. Now the taxpayers need not logon to the GST Portal and may file their return through SMS.

[Notification No.58/2020-Central Tax dated 1st July, 2020]

3. Circulars

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

The issue of remuneration to directors has been examined under following two different categories:

Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not employees of the said company

It is clarified that the services provided by independent directors, or those directors, who are not employee of the company, in lieu of remuneration are clearly outside the scope of Schedule III of CGST, Act 2017 and is taxable in the 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 Director's remuneration are declared as 'Salaries' in the books of a company subjected to TDS under Sec 192 of Income Tax Act are 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 CGST Act, 2017. However, in case where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

It is further clarified that part of Director's remuneration other than salary or in nature of professional fee, shall be treated as consideration for providing services which are outside the scope of Schedule III of CGST Act, 2017. And is taxable in the hands of the company, on **reverse charge basis**.

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

Clarification issued regarding refund of accumulated ITC relating to invoices whose details are not reflected in FORM GSTR-2A

CBIC has clarified that refund of accumulated ITC shall be restricted to the ITC available on those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant.

It is further clarified that refund of ITC relating to imports, ISD invoices and inward supplies attracting RCM, the details of which do not reflect in GSTR-2A, will be allowed even if the same is not reflecting in GSTR-2A.

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

4. Removal of difficulty order

Extension of filing of application for revocation or cancellation of registration

Taxpayer, who has been served a notice for cancellation of registration by e-mail or on the common portal and whose cancellation order is passed upto 12th June, 2020, and who couldn't get their cancelled GST registration restored within the given time, may file an application for revocation of cancellation of registration up to 30 days from "date of service of cancellation order or 31st August, 2020", whichever is later.

[Order No. 01/2020-Central Tax dated 25th June, 2020]

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