



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

GST, Customs and DGFT Updates

From 22.04.2021 to 05.05.2021

GSTiDEA

Knowledge Portal on Goods & Services Tax

GST

Relaxation on interest rate for the month of March 21 & April 21

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Particulars	Delay in days	Interest rate	Period
Aggregate turnover more than 5crore	15 days from Due date (4th May, 5th June)	9%	March 2021, April 2021
	After 15days (5th May, 6th June)	18%	
Aggregate turnover upto 5crore	15 days from Due date (6th May, 7th June)	Nil	
	Next 15days (7th May, 8th June)	9%	
	After 30days (9th June onwards)	18%	
Composition Dealer	Same as above	Same as above	

Relaxation on levy of late fee for delayed filing of Return

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Particulars	Delay in days	Late fees	Period
Aggregate turnover more than 5crore	15 days from Due date (4th May, 5th June)	waived	March 2021, & April 2021
	After 15days (5th May, 6th June)	Applicable	
Aggregate turnover upto 5crore	30days from Due date	waived	January- March 2021, March 2021, & April 2021

- . Companies allowed to furnish GSTR-3B and GSTR-1 / IFF using EVC instead of DSC from April 27, 2021 to May 31, 2021.¹
- Extension of time limit for filing various return is mentioned below:-

Particulars	Period	Extended Period
GSTR-4	FY 2020-2021	31 st May 2021 ²
ITC-04	January 21 –March 21 Quarter	31 st May 2021 ³
GSTR-1	April 21	26 th May 2021 ⁴
Option to furnish details using IFF	April 21	28 th May 2021 ⁵

- Cumulatively application of condition of 105% of eligible credit as reflected in GSTR-2A shall apply for the period April and May, 2021 and GSTR-3B for the tax period May 2021 should be furnished in accordance with the above condition of cumulative adjustment of input tax credit.⁵

1. Notification No 7/2021 –Central Tax dated 27th April 2021 w.e.f 27.04.2021

2. Notification No 10/2021 –Central Tax dated 1st May 2021 w.e.f 30.04.2021

3. Notification No 11/2021 –Central Tax dated 1st May 2021 w.e.f 25.04.2021

4. Notification No 12/2021 –Central Tax dated 1st May 2021

5. Notification No 13/2021 –Central Tax dated 1st May 2021

Extension of timeline for various compliance under GST Act

- Any time limit for completion or compliance of any action which falls during the period from the **15th day of April, 2021 to the 30th day of May, 2021**. In such case the time limit for compliance of such action, shall be extended upto the **31st day of May, 2021**. The above extension shall include the following:-
 - 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 Act.
 - filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record under the provisions of the Acts
- The above extension shall **not include** the following:-
 - Chapter IV that deals with registration;
 - Register person avail Sec 10 shall lapse from the day on which Turnover exceeds the limit,
 - Procedure for registration, Provisions related to casual taxable and non resident taxable person,
 - Provision for tax invoices, provisions for furnishing details of outward supplies;

Extension of timeline for various compliance under GST Act

- The above extension shall **not include** the following:-
 - Sec-47, Levy of late fee
 - Sec-50, Interest on delayed payment of Tax
 - Sec-69, Power to arrest
 - Sec-90, Liability of partners of firm to pay tax;
 - Sec-122, Penalty for certain offences;
 - Sec-129, Detention, seizure and release of goods and conveyances in transit
 - section 39-Furnishing RETURNS, except sub-section (3), (4) and (5);
 - section 68, in so far as e-way bill is concerned; and

- Time limit for issuance of refund order falling during the period 15th April, 2021 to the 30th May, 2021, shall be 15days from the date of receipt of reply to the notice or 30th May whichever is later.

Relaxation by Supreme Court for Computing the Period of limitation



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- While computing the period of limitations for any suit, appeal, application or proceeding, the period from 15.03.2021 onwards shall be excluded till further order.
- Earlier the period from 15.03.2020 till 14.03.2021 was excluded from limitations. In case where the limitations was expired during the period between 15.03.2020 till 14.03.2021 the actual balance period of limitations was period of 90 days from 15.03.2021; or
- Where the actual balance period of limitations remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.
- In continuations of the original order another order dated 27th April, 2021 was passed and direct that the period of limitations as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders.

Writ Petition: Madras High Court Judgment



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

ITC benefit cannot be denied on the fault of the supplier to make payment of tax to the Government.

□ Facts:-

- Petitioners had purchased goods from supplier and a substantial portion of the sale consideration was paid only through banking channels; that the payments made included the tax component also and that they had availed ITC of the tax so paid.
- Later, during inspection by the respondent herein, it came to light that supplier, did not pay any tax to the Government and that necessitated initiation of the impugned proceedings.
- Petitioners submitted their replies specifically taking the stand that all the amounts payable by them had been paid to the supplier and that, therefore, those sellers will have to be necessarily confronted during enquiry.
- However without involving the supplier, the impugned orders came to be passed levying the entire liability on the petitioners herein.
- Petitioner moved on to High Court challenging the above order.

Writ Petition: Madras High Court Judgment



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

ITC benefit cannot be denied on the fault of the supplier to make payment of tax to the Government.

□ Held:-

- It was held that If the tax had not reached the Government, then the liability may have to be eventually borne by one party, either the seller or the buyer.
- In the present case, the respondent does not appear to have taken any recovery action against the seller When it has come out that the seller has collected tax from the purchasing dealers, the omission on the part of the seller to remit the tax in question must have been viewed very seriously and strict action ought to have been initiated against him –
- It was held that during the course of inquiry the seller was not confronted because the respondent has taken a stand that the petitioners have not even received the goods and had availed input tax credits on the strength of generated invoices.
- Since according to the respondent, there was no movement of the goods, hence, examination of supplier become all the more necessary and imperative –
- Thus, the impugned orders suffers from certain fundamental flaws and was order to be quashed. The stage up to the reception of reply from the petitioners herein will hold good.
- Enquiry alone will have to be held afresh - In the said enquiry, Supplier will have to be examined as witnesses.

Writ Petition: Tripura High Court Judgment



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

Without resorting to the power of suspending registration, respondent surely cannot block the petitioner's GST account on the official portal

□ Facts:-

- Petitioner engaged in purchase and sale of consumables and other taxable goods for which purpose the petitioner enjoys registration under the State as well as Central GST Acts.
- Superintendent of Taxes issued a show cause notice to the petitioner for cancellation of such registration due to non-compliance of provisions of GST Act and directed to reply within seven days.
- The petitioner didn't reply to the SCN. Thereafter, the Superintendent blocked the GST account of petitioner without issuing any order against which the petition has filed.

□ Held:-

- Whatever be the tax demand of the department against the petitioner, the action under challenge cannot survive the test of law.
- The impugned notice has been issued only for cancellation of registration, that too without citing any particular reason without specifying which provisions of the Act or the Rules and in what manner the petitioner has approached, granting hearing to the petitioner would be an empty formality.

Writ Petition: Tripura High Court Judgment



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

Without resorting to the power of suspending registration, respondent surely cannot block the petitioner's GST account on the official portal

□ **Held:-**

- No order cancelling the petitioner's GST registration has been passed.
- If that be so, without resorting to the power of suspending the registration, the **respondent surely cannot block the petitioner's GST account on the official portal.**
- Any such action would prevent the petitioner from carrying on his business in lawful manner - Such an action would have the effect of suspension of the petitioner's registration - Impugned SCN is quashed on the ground of being vague and imprecise.
- Respondents are directed to unblock the petitioner's GST account on its official portal.

Writ Petition: Jharkhand High Court Judgment

GST/ST – Grant of Mining Lease/royalty- no case for granting interim protection insofar as levy of CGST/IGST

❑ Facts-

- Petitioners have sought declaration that royalty is not a payment in respect of any taxable service at all as it is imposed under Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957 in respect of any minerals 'removed or consumed' by the holder of a mining lease from the leased area, at the rate specified.
- They have also sought declaration that Notification No. 22/2016-ST dated 13.04.2016 and its clarification is ultra-vires the provisions of the Finance Act, 1994, that there is no liability to pay service tax under this Finance Act, 1994 on royalty in quarrying stones.

❑ Held:-

- The challenge in these writ petitions are in two parts. One relating to levy of service tax on royalty till the coming of the GST regime.
- It appears that in similar challenges made to the levy of service tax on royalty paid on minerals, the matter went up to the Apex Court in the case of **Udaipur Chambers of Commerce and Industry and Others**, The Apex Court has passed an interim order.

Writ Petition: Jharkhand High Court Judgment

GST/ST – Grant of Mining Lease/royalty- no case for granting interim protection insofar as levy of CGST/IGST

❑ **Held:-**

- It was held by the court that until further orders payment of service tax for grant of mining lease/royalty by the petitioners shall remain stayed.
- While the revenue is not restrained from conducting and completing the assessment proceedings, until further orders recovery of service tax for grant of mining lease/royalty from the petitioners shall remain stayed.
- However, we are not satisfied at this stage that any case for granting interim protection is made out so far as the levy of CGST and/or JGST is concerned.

Writ Petition: Rajasthan High Court Judgment



HELPING CLIENTS KEEP MORE OF WHAT THEY EARN

GST – Extension- since the period for filing return is fixed by the statute, it is the statutory authority alone who has power and authority to extend any period for compliance :

❑ **Facts:-**

- A prayer has been made in the present writ petition seeking a direction to the respondents to extend the period of time for submitting of Form GSTR-9 and GSTR-9C for the financial year 2019-20.
- Petitioner submits that an assessee had a right to file the forms within nine months from the date of conclusion of the financial year in question .
- Form GSTR-9 and GSTR-9C were finally notified on 10.12.2020 & 30.12.2020 respectively and consequently, the period of nine months would start from the date of last publication..

❑ **Held:-**

- The aforesaid arguments placed by the petitioner cannot be accepted since the period for filing of the return is fixed by the Statute and it is the statutory authority alone who has power and authority to extend any period for compliance.
- Therefore, it was held that court was not inclined to entertain the instant writ application and leave it to the petitioner, if so advised, to approach the statutory authority to seek further extension.
- If such a representation is filed, Bench hopes and trusts that the same would be considered and disposed of at an early date.

Appellate
Authority of
Advance Ruling
(AAR)

Appellate Authority of Advance Rulings : AAAR

GST- Unless amendment to Sec 7 as proposed by Finance Act,2021 is notified the applicant is not liable to pay GST on subscription fees and infrastructure development fund collected from members

□ Facts:-

- Applicant is a club is and a NPO established by the British as a literary and scientific society.
- Applicant has sought advance ruling on the following questions :-
 - Whether amount collected as **membership subscription fees** paid by the members of the applicant towards facility provided by the applicant **are liable as supply of service** under GST?
 - Whether amount **collected as infrastructure development fund** for the development and maintenance of the facilities provided by the applicant are liable as supply of service under GST?

GST- Unless amendment to sec 7 as proposed by Finance Act,2021 is notified the applicant is not liable to pay GST on subscription fees and infrastructure development fund collected from members

❑ **Held:-**

- SC judgement in the case of **M/s Calcutta Club Limited** is fully applicable to the applicant It is held therein that the **doctrine of mutuality** applied and these clubs which are similar to that of the Applicant are not eligible to service tax - Finance Act, 2021 has overruled what the Courts have held till now and has countered the Principle of Mutuality by way of Explanation which states that the members or constituents of the club and the club are **two separate entities** and persons for the purpose of **Section 7 of CGST Act, 2017** which defines Supply.
- However, by virtue of Section 1(2)(b) of Finance Act, 2021, the amendment brought in Section 7 of CGST Act, 2017 by way of Section 108 of Finance Act, 2021, will come into effect only on the date when Central Govt notifies the same and then the same will be notified with the corresponding amendments passed by the respective States and Union territories in respective SGST/ UTGST Act.
- Therefore, AAR concludes that **unless the amended Section 7 of CGST Act, 2017 is notified, the applicant is not liable to pay GST on subscription fees and Infrastructure development fund collected from the members as per the Supreme Court judgment in the case of M/s. Calcutta Club Ltd.**

Appellate Authority of Advance Rulings : AAAR

Credit card expenses- Reimbursements paid by appellant to holding company for expenses incurred initially by its employees are nothing but part of software development cost and consequently part of taxable value of services

□ Facts:-

- Appellant is engaged in the business of software development for the infusion system manufactured by its ultimate holding company, ICU Medical Inc. - The ultimate **holding company has entered** into a **contract with Wells Fargo Bank** through which certain employees of the appellant/applicant are extended with the credit card issued by the said bank.
- The card is to be used by the employees for the travel requirements on business needs - Ultimate **holding company settles the amount payable with the bank** and in turn **raises invoices** on the **appellant/applicant and collects the charges** used by the employees.
- Appellant/Applicant had sought a ruling as to whether GST is leviable on the reimbursement of expenses from the subsidiary company to its ultimate holding company located in a foreign territory outside India and, in case GST is leviable, what is the rate of GST applicable to the said reimbursement of expenses.

Credit card expenses- Reimbursements paid by appellant to holding company for expenses incurred initially by its employees are nothing but part of software development cost and consequently part of taxable value of services

□ **Held:-**

- **Reimbursements** paid by the appellant to the holding company for the **expenses incurred initially by its employees** are nothing but **part of software development cost** and consequently **part of the taxable value of services** of appellant.
- Applicable rate of GST on such expenses incurred by the recipient and reimbursed by the appellant is the **same rate** at which the appellant charges for **the software development service** supplied by the appellant to the overseas holding company, on the ground that the expenses are part of the taxable value of such services and attract the same rate indicated in the tax invoice for the software development charges issued by the appellant on the overseas holding company.
- Ruling pronounced by the Advance Ruling Authority is modified to the extent that GST is leviable on the reimbursement amount, being **advance payment made by the holding company towards the cost incurred for the provision of Software Services supplied by the appellant**, as per the Time of Supply provided under Section 13 of the CGST/TNGST Act 2017 and applicable rate is that applicable to the supply of Software Services made by them

Customs

Anti-dumping Duty (ADD)

Tariff Head	Subject Goods/Country	Then	Now
3904 61 00	‘Polytetrafluoroethylene (PTFE) originating in or exported from Russia¹	Leviable by notification no. 23/2016-Customs (ADD), dated the 6th June, 2016.	Anti Dumping Duty will be leviable from 26.04.2021 till 5 years unless revoked or superseded earlier.
3904 61 00	‘Polytetrafluoroethylene (PTFE) originating in or exported from China PR²	Duty was leviable earlier via notification no. 36/2017-ADD dated 28.07.2017.	Anti Dumping Duty will be leviable from 26.04.2021 till 5 years unless revoked or superseded earlier.
2933	‘1-Phenyl-3-Methyl-5-Pyrazolone’ originating in or exported from China PR³	Duty was leviable from 09.06.2020 on provisional basis.	On finalization of investigation Anti Dumping Duty will be leviable from 09.06.2020 till 5 years unless revoked or superseded earlier.
2929 10 20	Toluene Di Isocyanate (TDI) originating in or exported from European Union, Saudi Arabia, Chinese Taipei and United Arab Emirates⁴	Duty was leviable from 02.12.2020 on provisional basis.	On finalization of investigation Anti Dumping Duty will be leviable from 02.12.2020 till 5 years unless revoked or superseded earlier.

1. Notification No. 24/2021 -Customs (ADD)
2. Notification No. 25/2021 -Customs (ADD)
3. Notification No. 26/2021 -Customs (ADD)
4. Notification No. 28/2021 -Customs (ADD)

Miscellaneous

1. Exemptions on COVID-19 related imports

CBIC vide Notification No. 30/2021–Customs dated 01.05.21 reduced the rates of Oxygen concentrator, imported for personal use at 12% from 18%.¹

CBIC to exempt customs duty and health cess on import of oxygen, oxygen related equipment and COVID-19 vaccines, up to 30th June, 2021².

1. Notification No. 30/2021 –Customs dated 01.05.2021

2. Notification No. 28/2021 -Customs dated 24.04.2021 and 04/2021-customs dated 03-05-2021

CESTAT Judgement

Order passed without taking appropriate information for classification and raised demand of duty.

❑ Facts

- Petitioner is engaged in the business of development/manufacturing of components and systems for vehicles and providing the most modern automotive technologies. It was importing Liquid Crystal Displays (LCD) however for some consignment it has incorrectly mentioned LCD Modules classifiable in tariff head 9013 having 0% rate of Customs Duty.
- However Customs had intended that the the product is classifiable in Tariff heading 9029 having 10% rate of duty. It was contended that the items it a part of speedometer. After a personal hearing O-I-O passes imposing duty and classified under tariff head 9029.
- Petitioner filed an appeal before CESTAT, Bangalore to quash the order in original.

❑ Held

- Hon'ble CESTAT had held that the O-i-O passes without serving a Show Cause Notice which is a violation of Natural Justice and in the O-i-O basis of classification also not provided. Petitioner has submitted the technical specification but the same is not taken in consideration.
- It was also appears that the petitioner had already cleared consignments in past by classifying in the same tariff head. After petitioner taken reliance in the Hon'ble Supreme Court Judgement in case of Secure Meters 2015-TIOL-100-SC-CUS Hon'ble Bench has quash the O-i-O by classifying the items in tariff head 9013. Accordingly order passed.

Writ Petition: High Court Judgement

Petitioner identified as Risky Exporter, IGST refund is in abeyance from a long period. Writ filed for release of IGST amount along with interest.

❑ Facts

- Petitioner was identified as 'risky exporter' and its total IGST refund was hold by the department.
- Petitioner filed writ before the Hon'ble High Court of Delhi for release of IGST hold in abeyance with interest.

❑ Held

- Hon'ble Delhi High Court has asked department to provide a proper reply as it is not appreciating as to why the entire amount is stuck. Accordingly, it has asked for a proper reply.

Writ Petition: High Court Judgement

Department passed non-speaking order rejecting application for amendment in Shipping Bills, matter remanded.

❑ Facts

- Petitioner had obtained EPCG License and imported capital goods, however it has not been able to comply its export obligation, export obligation extension has been received from DGFT for 2 years. Accordingly, petitioner has exported its manufactured goods by a third party exporter, however third party failed to mention the details of EPCG license in the Shipping Bills.
- Accordingly, petitioner had filed application for amendment in shipping bills under Section 149 of the Customs Act, 1962.
- The application was rejected by the Customs without taking consideration of fact and it was not providing any justification for rejection. Accordingly, petitioner filed a writ petition before the Hon'ble High Court of Madras.

❑ Held

- Hon'ble **High Court of Madras** has taken note that the order rejecting amendment of the Shipping Bill is a non-speaking order and not providing justification for rejection.
- It was held that the petitioner will appear before the respondent to proceed the matter afresh and proper order shall be issued on merits of the case. It was also requested by the petitioner to not to invoke the Bank Guarantee given against the import under EPCG license, it is accepted by the Hon'ble Court till final order of the respondent.

DGFT

DGFT Helpdesk for Covid-19

DGFT vide Trade Notice No. 02/2021-2022 dated 26.04.2021 had created COVID-19 helpdesk for International Trade Issues. DGFT will be cater following helps via its helpdesk –

- COVID-19 Helpdesk' would look into issues relating to Department of Commerce/DGFT, Import and Export Licensing Issues, Customs clearance delays and complexities arising thereon, Import/Export documentation issues, Banking matters etc.
- Helpdesk would also collect and collate trade related issues concerning other Ministries/Departments/Agencies of Central Government and State Governments and will co-ordinate to seek their support and provide possible resolution(s)

International Trade community can take help of DGFT for solving above mentioned issues. To navigate the helpdesk following steps can be followed –

1. Navigate to the DGFT Website (<https://dgft.gov.in>) -> Services -> DGFT Helpdesk Service.
2. 'Create New Request' and select the Category as 'Covid-19'
3. Select the suitable sub-category, enter the other relevant details and submit.

Alternatively any one can avail the help of DGFT by sending a mail to Alternatively, you may to email id: dgftedi@nic.in with the subject header: Covid-19 Helpdesk or call at Toll Free No 1800-111-550.

Writ Petition: High Court Judgement

Whether SEIS benefit is available to the Service Providers providing Engineering Services to Telecom Sectors¹

❑ Facts

- Petitioners were providing whether Engineering Services i.e. Network Engineering Services, Management and Operation of Network Services (Managed Services in Telecom Sector or Management Consulting Services) in Telecom Sector. Petitioners filed an application before DGFT for SEIS benefit as per Foreign Trade Policy (FTP) provisions of Service Exports from India Scheme (SEIS).
- Application of Petitioner's were rejected for the period of 2015-2018 according to the instruction dated 22.05.2019 issued by the DGFT. Orders were issued rejecting the claim stating that the service providers of Telecom Sector are ineligible for SEIS benefit.
- However, FTP has only marked ineligible to service providers of Telecom Sectors for SEIS benefit not service providers who providing services to Telecom Sectors accordingly petitioner's had filed Writ before the Hon'ble High Court of Delhi.

❑ Held

- **Hon'ble Delhi High Court** held that Foreign Trade Policy is clear and unambiguous inasmuch as it excludes the Telecom Service Providers from the benefit of the SEIS and not the Service Providers who provide services to such Telecom Service Providers.

1. ERICSSON INDIA GLOBAL SERVICES PVT LTD Vs UNION OF INDIA AND ORS and HUAWEI TELECOMMUNICATIONS INDIA COMPANY PVT LTD Vs UNION OF INDIA AND ORS

Writ Petition: High Court Judgement

- It is noted herein above, the ambit of the term was clearly spelled out in S. No. 2(C) of Appendix-10 to HBPv1 to FTP 2009-14. No different intention regarding the same is discernible from the [FTP2015-20](#).
- Further it was understood that the provisions of the TRAI Act would clearly show that the 'Service Provider' is one who in terms of a license granted under Section 4 of the Indian Telegraph Act, 1885 provides Telecommunication Services as defined under Section 2(k) of the TRAI Act. Hon'ble Court held that 'I see no reasons to interpret 'Service Providers in Telecom Sector' in the FTP differently.
- Therefore, it will be held that exclusion of 'Service Providers in Telecom Sector' from benefit of SEIS is of a service provider providing telecom services. The Impugned Instructions dated 22.05.2019, therefore, sought to impose fresh restrictions on the eligibility of the service providers entitled to the benefit under SEIS, which amounted to amendment in the policy, and is therefore, **ultra vires** the Foreign Trade Policy.
- Hon'ble Court has held that impugned orders/communications dated 11.06.2019 and 03.06.2019, therefore, suffer from the same restriction explained above. the Instructions/Circular dated 22.05.2019 and rejection order set aside by this Court.

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