

GOODS & SERVICES TAX / IDT UPDATE – 83

Press Release dated 24th March ,2020

Several relief measures relating to Statutory and Regulatory compliance matters across Sectors in view of COVID-19 outbreak

GST/Indirect Tax

1. **Extension of Due Date of filing GSTR-3B for registered persons having Turnover less than 5 Crores:-**Those having aggregate annual turnover less than Rs. 5 Crore, can file GSTR-3B for the month of Feb, March, April 2020 by the last week of June, 2020. No interest, late fee, and penalty to be charged.
2. **Reduction of Interest Rate & relaxation of Penalty & Late fees for registered persons having Turnover of 5 Crores or above:-**Others can file returns due in March, April and May 2020 by last week of June 2020 but the same would attract reduced rate of interest @9 % per annum from 15 days after due date (current interest rate is 18 % per annum). No late fee and penalty to be charged, if complied before till 30th June 2020.
3. **Extension of date of opting for Composition Scheme:-**Date for opting for composition scheme is extended till the last week of June, 2020. Further, the last date for making payments for the quarter ending 31st March, 2020 and filing of return for 2019-20 by the composition dealers will be extended till the last week of June, 2020.
4. **Extension of Due Date of GST Annual Return for F.Y. 2018-19:-**Date for filing GST annual returns of FY 18-19, which is due on 31st March, 2020 is extended till the last week of June 2020.
5. **Extension of Due Date for issuing notices etc:-**Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.
6. **Issuance of Legal Circulars:-**Necessary legal circulars and legislative amendments to give effect to the aforesaid GST relief shall follow with the approval of GST Council.
7. **Extension of Payment date under SVLDRS:-**Payment date under **Sabka Vishwas Scheme** shall be extended to 30th June, 2020. No interest for this period shall be charged if paid by 30th June, 2020.

Customs

8. 24X7 Custom clearance till end of 30th June, 2020
9. Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing applications, reports, any other documents etc., time limit for any compliance under the Customs Act and other allied Laws where the time limit is expiring between 20th March 2020 to 29th June 2020 shall be extended to 30th June 2020.

[Release ID: 1607942 dated 24th March,2020]

Extension of time limit for furnishing of the annual return for the financial year 2018-2019

The Central Government vide [Notification No. 15/2020- Central Tax dated 23rd March 2020](#) has **extended** the time limit for furnishing of the annual return specified under section 44 of the said Act read with rule 80 of the said rules, i.e. **Form GSTR-9** electronically through the common portal, for the financial year **2018-2019** till **30.06.2020**.

[Notification No. 15/2020- Central Tax dated 23rd March 2020]

Amendments in Central Goods & Services Tax Rules,2017

The Central Government vide [Notification No. 16/2020- Central Tax dated 23rd March 2020](#); has made the following amendments in the **Central Goods & Services Tax Rules, 2017 :-**

<u>Rule</u>	<u>Amendments</u>	<u>Comment</u>
Rule 8 : (Application for registration)	<u>Insertion of sub-rule (4A):-</u> “(4A) The applicant shall, while submitting an application under sub-rule (4), with effect from 01.04.2020, undergo authentication of Aadhaar number for grant of registration.”	<i>Comment: This sub-rule has been inserted to operationalize Aadhaar authentication for new taxpayers w.e.f. 1st April,2020.</i>
Rule 9: (Verification of the application and approval.)	<u>Insertion of sub-rule w.e.f. 01.04.2020 in sub-rule (1):-</u> “Provided that where a person, other than those notified under sub-section (6D) of section 25, fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8, then the registration shall be granted only after physical verification of the principle place of business in the presence of the said person, not later than sixty days from the date of application, in the manner provided under rule 25 and the provisions of sub-rule (5) shall not be applicable in	<i>Comment: This rule has been inserted to restrict the new registrations only to those persons who have undergone authentication of Aadhaar No. or only after the physical verification of the premises w.e.f. 1st April 2020. It also clarifies that the provision of deemed approval of registration as specified in sub-rule (5) shall not apply in the above cases. This step has been taken to stop</i>

	such cases.”.	<i>fraudulent persons to get registered under GST & to curb the fake invoicing and fraudulent passing of ITC by fraudulent businesses.</i>
<p>Rule 25: (Physical verification of business premises in certain cases.)</p>	<p>Substitution of Rule:- “ Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in FORM GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.”</p>	<p><i>Comment: This rule has been substituted to empower the proper officer to conduct the physical verification of the place of business of a person before the grant of registration, if aadhaar authentication is failed. Earlier, the rule provided for physical verification only after the grant of registration. This is again an important step to stop fraudulent persons to get registered under GST.</i></p>
<p>Rule 43: (Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases.)</p>	<p>Substitution of sub-rule (1) with effect from the 1st April, 2020 :-</p> <ul style="list-style-type: none"> • For clause (c), the following clause shall be substituted, namely:- <p>“c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as ‘A, being the amount of tax as reflected on the invoice, shall credit directly to the electronic credit ledger and the validity of the useful life of such goods shall extend upto five years from the date of the invoice for such goods.’</p> <p>Provided that where any capital goods earlier covered under clause (a) is subsequently covered under this clause, input tax in respect of such capital goods denoted as ‘A’ shall be credited to the electronic credit ledger subject to the condition that the ineligible credit attributable to the period during which such capital goods were covered by clause (a),denoted as ‘Tie’, shall be calculated at the rate of five percentage points for every quarter or part thereof and added to the output tax liability of the tax period in which such credit is</p>	

	<p>claimed:</p> <p>Provided further that the amount ‘Tie’ shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax and declared in FORM GSTR-3B.</p> <p>Explanation.- <i>An item of capital goods declared under clause (a) on its receipt shall not attract the provisions of sub-section (4) of section 18, if it is subsequently covered under this clause.”</i></p> <ul style="list-style-type: none"> • For clause (d), the following clause shall be substituted, namely:- <p>“the aggregate of the amounts of ‘A’ credited to the electronic credit ledger under clause (c) in respect of common capital goods whose useful life remains during the tax period, to be denoted as ‘Tc’, shall be the common credit in respect of such capital goods:</p> <p>Provided that where any capital goods earlier covered under clause (b) are subsequently covered under clause (c), the input tax credit claimed in respect of such capital good(s) shall be added to arrive at the aggregate value ‘Tc’;”;</p> <p><u>Insertion of Explanation:-</u></p> <ul style="list-style-type: none"> • In clause (e), the following Explanation shall be inserted, namely:- <p>“Explanation.- For the removal of doubt, it is clarified that useful life of any capital goods shall be considered as five years from the date of invoice and the said formula shall be applicable during the useful life of the said capital goods.”;</p> <p><u>Omission of Clause:-</u></p> <p>Clause (f) shall be omitted.</p>	
<p>Rule 80: (Annual return.)</p>	<p><u>Insertion of proviso in sub-clause (3):-</u></p> <p>“Provided that every registered person whose aggregate turnover during the financial year 2018-2019 exceeds five crore rupees shall get his accounts audited as specified under subsection (5) of section 35 and he shall furnish a copy of audited</p>	<p><i>Comment: This proviso has been inserted to increase the threshold limit for furnishing the Form GSTR-9C & thereby relaxing the said compliance for SME’s having turnover below Rs.5 Crores.</i></p>

	annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C for the financial year 2018- 2019, electronically through the common portal either directly or through a Facilitation Centre notified by the Commissioner.”	
Rule 86 : (Electronic Credit Ledger)	<u>Insertion of sub-rule (4A):-</u> “(4A) Where a registered person has claimed refund of any amount paid as tax wrongly paid or paid in excess for which debit has been made from the electronic credit ledger, the said amount, if found admissible, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03. ”.	<i>Comment: This sub-rule has been inserted to allow refund of excess tax/wrongly paid tax claimed by registered person, by re-crediting the electronic credit ledger.</i>
Rule 89 : (Application for refund of tax, interest, penalty, fees or any other amount)	<u>Substitution of sub-rule (4) clause (C) :-</u> “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, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;”	<i>Comment: This clause has been substituted to fix the ceiling for the value of the export supply for the purpose of calculation of refund on zero rated supplies.</i>
Rule 92 : (Order sanctioning refund)	<u>Insertion of sub-rule (1A):-</u> “(1A)Where, upon examination of the application of refund of any amount paid as tax other than the refund of tax paid on zero-rated supplies or	<i>Comment: This sub-rule has been inserted to empower the proper officer to sanction refund in both cash and credit in case of</i>

	<p>deemed export, the proper officer is satisfied that a refund under sub-section (5) of section 54 of the Act is due and payable to the applicant, he shall make an order in FORM RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability for the relevant period, mentioning therein the amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable and for the remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as Input Tax Credit in electronic credit ledger.”;</p> <p>in sub-rule (4), after the words, brackets and figure “amount refundable under sub-rule (1)”, the words, brackets, figure and letter “or sub-rule (1A)”, shall be inserted;</p> <p>in sub-rule (5), after the words, brackets and figure “amount refundable under sub-rule (1)”, the words, figures and letter “or sub-rule (1A)”, shall be inserted.</p>	<p><i>excess payment of tax.</i></p>
<p>Rule 96 : (Refund of integrated tax paid on goods or services exported out of India)</p>	<p><u>Insertion of Explanation in in rule 96, in sub-rule (10),in clause (b) with effect from the 23rd October, 2017:-</u></p> <p>“Explanation.- For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall</p>	

	<p>not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications.”.</p>	
<p>Rule 96B (Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realized)</p>	<p><u>Insertion of Rule 96B:-</u> “96B. Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised. – (1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50: Provided that where sale proceeds, or any part thereof, in respect of such</p>	<p><i>Comment: This Rule has been inserted to provide for recovery of refund on export of goods where export proceeds are not realized within the time prescribed under FEMA.</i></p>

	<p>export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.</p> <p>(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.”.</p>	
<p>Rule 141 : (Procedure in respect of seized goods)</p>	<p>Amendments in sub-rule (2):- for the word “Commissioner”. the words “proper officer” shall be substituted.</p>	<p><i>Comment: This sub-rule has been amended to empower the proper officer to dispose of the seized goods or things & adjust the amount realized thereby against the tax, interest, penalty, or any other amount payable in respect of such goods or things in cases where the taxable person fails to pay such amount in respect of the said goods or things.</i></p> <p><i>Earlier, only the Commissioner was</i></p>

		<i>empowered to take such action.</i>
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Amendment in GST Form:-

In **FORM GST RFD-01**, after the declaration under rule 89(2)(g), the following undertaking shall be inserted, namely

“UNDERTAKING

I hereby undertake to deposit to the Government the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017.

Signature

Name –

Designation / Status”.

[Notification No. 16/2020- Central Tax dated 23rd March 2020]

Exemption of specified class of persons from aadhar authentication.

The Central Government vide [Notification No. 17/2020- Central Tax dated 23rd March 2020](#) has specified that the requirement of Aadhaar authentication w.e.f. 1st April,2020 for GST Registration **shall not apply** to a person **who is not a citizen of India or to a class of persons other than the following class of persons, namely:-**

- (a) Individual;
- (b) authorised signatory of all types;
- (c) Managing and Authorised partner; and
- (d) Karta of an Hindu undivided family

[Notification No. 17/2020- Central Tax dated 23rd March 2020]

Notification of date of Aadhaar authentication for registration

The Central Government vide [Notification No.18/2020- Central Tax dated 23rd March 2020](#) has notified **1st April,2020** as the date from which an individual shall undergo authentication,

of Aadhaar number, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017 ,in order to be eligible for registration:

Provided that 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 of the said rules

[\[Notification No.18/2020- Central Tax dated 23rd March 2020\]](#)

Specified class of persons,other than individuals who shall undergo authentication, of Aadhaar number in order to be eligible for registration

The Central Government vide [Notification No.19/2020- Central Tax dated 23rd March 2020](#) has notified that w.e.f. 1st April,2020, **the following class of persons other than individuals who shall undergo authentication of possession of Aadhaar number**, as specified in rule 8 of the Central Goods and Services Tax Rules, 2017, **in order to be eligible for registration under GST:**

- (a) authorised signatory of all types;
- (b) Managing and Authorised partners of a partnership firm; and
- (c) Karta of an Hindu undivided family,

Provided that if Aadhaar number is not assigned to the said persons, they shall be offered alternate and viable means of identification in the manner specified in rule 9 of the said rules.

[\[Notification No.19/2020- Central Tax dated 23rd March 2020\]](#)

Extension of Due dates for filing various Returns under GST for Jammu & Kashmir

The Central Government vide [Notification No.20/2020- Central Tax dated 23rd March 2020](#) , [Notification No.21/2020- Central Tax dated 23rd March 2020](#), [Notification No.22/2020- Central Tax dated 23rd March 2020](#), [Notification No.23/2020- Central Tax dated 23rd March 2020](#), [Notification No.24/2020- Central Tax dated 23rd March 2020](#), [Notification No.25/2020- Central Tax dated 23rd March 2020](#), & [Notification No.26/2020- Central Tax dated 23rd March 2020](#) has further **provided/extended** the due dates of furnishing of the following Forms **for registered persons whose principal place of business** is in the erstwhile State of Jammu and Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh as under:-

<u>Sl. No</u>	<u>Form No.</u>	<u>Period</u>	<u>Due Date (as extended)</u>
1.	FORM GSTR-7 (Form	For each of the months of :-	

	for furnishing the monthly details of TDS) (For registered persons in the erstwhile State of Jammu & Kashmir)	July,2019; August,2019; September,2019; October,2019	24th March, 2020
2.	FORM GSTR-7 (Form for furnishing the monthly details of TDS) (For registered persons in the Union territory of Jammu and Kashmir or the Union territory of Ladakh)	For each of the months of :- November,2019; December,2019; January,2020; February,2020	24th March, 2020
3.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons in the erstwhile State of Jammu & Kashmir or the Union territory of Jammu and Kashmir or the Union territory of Ladakh)	For the Quarter :- October-December, 2019	24th March, 2020
4.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered	For the month of:- October, 2019	24th March, 2020

	<p>persons in the erstwhile state of Jammu & Kashmir & having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)</p>		
5.	<p>FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.)</p> <p>(For registered persons in the Union territory of Jammu and Kashmir or the Union territory of Ladakh & having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)</p>	<p>For each of the months of:-</p> <p>November,2019; December,2019; January,2020; February,2020</p>	<p>24th March, 2020</p>
6.	<p>FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.)</p> <p>(For registered persons in the erstwhile state of Jammu & Kashmir & having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)</p>	<p>For each of the months of:-</p> <p>July,2019 August,2019, September,2019</p>	<p>24th March, 2020</p>

7.	<p>FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.)</p> <p>(For registered persons in the erstwhile State of Jammu & Kashmir)</p>	<p>For the quarter:-</p> <p>July-September, 2019</p>	<p>24th March, 2020</p>
8.	<p>FORM GSTR-3B (Form to furnish monthly summary of data)</p> <p>(For registered persons in the erstwhile State of Jammu & Kashmir)</p>	<p>For the month of :-</p> <p>October, 2019</p>	<p>24th March, 2020</p>
9.	<p>FORM GSTR-3B (Form to furnish monthly summary of data)</p> <p>(For registered persons in the Union territory of Jammu and Kashmir or the Union territory of Ladakh)</p>	<p>For each of the months of :-</p> <p>November,2019; December,2019; January,2020; February,2020</p>	<p>24th March, 2020</p>
10.	<p>FORM GSTR-3B (Form to furnish monthly summary of data)</p> <p>(For registered persons in the erstwhile State of Jammu & Kashmir)</p>	<p>For each of the months of:-</p> <p>July,2019</p> <p>August,2019,</p> <p>September,2019</p>	<p>24th March, 2020</p>

[Notification No.20/2020- Central Tax dated 23rd March 2020 , Notification No.21/2020- Central Tax dated 23rd March 2020, Notification No.22/2020- Central Tax dated 23rd March

2020, Notification No.23/2020- Central Tax dated 23rd March 2020, Notification No.24/2020- Central Tax dated 23rd March 2020, Notification No.25/2020- Central Tax dated 23rd March 2020, & Notification No.26/2020- Central Tax dated 23rd March 2020]

Due Dates for furnishing GSTR-1 for April,2020 to September,2020

The Central Government vide [Notification No.27/2020- Central Tax dated 23rd March 2020](#) & [Notification No.28/2020- Central Tax dated 23rd March 2020](#),dated 23rd March 2020; has provided the due dates of the following Forms :-

<u>Sl. No</u>	<u>Form No.</u>	<u>Period</u>	<u>Due Date</u>
1.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons having aggregate turnover of up to 1.5 crore rupees in the preceding financial year or the current financial year)	For the Quarter :- April, 2020 to June, 2020 July, 2020 to September, 2020	31st July, 2020 31st October, 2020
2.	FORM GSTR-1 (Form for furnishing the details of outward supply of goods or services or both.) (For registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year)	For each of the months from April, 2020 to September, 2020.	11th day of the month succeeding such month

[[Notification No.27/2020- Central Tax dated 23rd March 2020](#) & [Notification No.28/2020- Central Tax dated 23rd March 2020](#)]

Clarification of issues in respect of apportionment of input tax credit (ITC) in cases of

business reorganization

The Central Board of Indirect Taxes & Customs vide [Circular No.133/03/2020-GST](#) ,dated [23rd March, 2020](#) has issued clarification in respect of apportionment of input tax credit (ITC) in cases of business reorganization under section 18 (3) of CGST Act read with rule 41(1) of CGST Rules as under:-

S. No	Issue / Question	Clarification
a.	(i) In case of demerger, proviso to rule 41 (1) of the CGST Rules provides that the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. However, it is not clear as to whether the value of assets of the new units is to be considered at State level or at all-India level.	Proviso to sub-rule (1) of rule 41 of the CGST Rules provides for apportionment of the input tax credit in the ratio of the value of assets of the new units as specified in the demerger scheme. Further, the explanation to sub-rule (1) of rule 41 of the CGST Rules states that "value of assets" means the value of the entire assets of the business, whether or not input tax credit has been availed thereon. Under the provisions of the CGST Act, a person/company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. Accordingly, for the purpose of apportionment of ITC pursuant to a demerger under sub-rule (1) of rule 41 of the CGST Rules, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level. Illustration A company XYZ is registered in two States of M.P. and U.P. Its total value of assets is worth Rs. 100 crore, while its assets in State of M.P. and U.P are Rs 60 crore and Rs 40 crore respectively. It demerges a part of its business to company ABC. As a part of such demerger, assets of XYZ amounting to Rs 30 Crore are transferred to company ABC in State of M.P, while assets amounting to Rs 10 crore only are transferred to ABC in State of U.P. (Total assets amounting to Rs 40 crore at all-India level are transferred from XYZ to ABC). The unutilized ITC of XYZ in State of M.P. shall be transferred to ABC on the basis of ratio of value of assets in State of M.P., i.e. $30/60 = 0.5$ and not on the basis of all-India ratio of value of assets, i.e. $40/100=0.4$. Similarly, unutilized ITC of XYZ in State of U.P. will be transferred to ABC in ratio of value of assets in State of U.P.,i.e. $10/40 = 0.25$.
	(ii) Is the transferor required to file FORM GST ITC - 02 in all States where it is registered?	No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.
b.	The proviso to rule 41 (1) of the CGST Rules explicitly	Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in

<p>mentions 'demerger'. Other forms of business reorganization where part of business is hived off or business is transferred as a going concern etc. have not been covered in the said rule. Wherever business reorganization results in partial transfer of business assets along with liabilities, whether the proviso to rule 41(1) of the CGST Rules, 2017 shall be applicable to calculate the amount of transferable ITC?</p>	<p>partial transfer of business assets along with liabilities.</p>
<p>c. (i) Whether the ratio of value of assets, as prescribed under proviso to rule 41 (1) of the CGST Rules, shall be applied in respect of each of the heads of input tax credit viz. CGST/SGST/IGST/ Cess?</p>	<p>No, the ratio of value of assets, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applied to the total amount of unutilized input tax credit (ITC) of the transferor i.e. sum of CGST, SGST/UTGST and IGST credit. The said formula need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). Further, the said formula shall also be applicable for apportionment of Cess between the transferor and transferee.</p> <p>Illustration A: The ITC balances of transferor X in the State of Maharashtra under CGST, SGST and IGST heads are 5 lakh, 5 lakh and 10 lakh respectively. Pursuant to a scheme of demerger, X transfers 60% of its assets to transferee B. Accordingly, the amount of ITC to be transferred from A to B shall be 60% of 20 lakh (total sum of CGST, SGST and IGST credit) i.e. 12 lakh.</p>
<p>(ii) How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of</p>	<p>The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) should not exceed the amount of ITC to be transferred, as determined under sub-rule (1) of rule 41 of the CGST Rules [refer 3 (c) (i) above]. However, the transferor shall be at liberty to determine the amount to be transferred under each tax head (IGST, CGST, SGST/UTGST) within this total amount, subject to the ITC balance available with the transferor under the concerned tax head. This is shown in the</p>

FORM GST ITC-02 by the transferor?

illustration below:

(1)	(2)	(3)	(4)	(5)	(6)
State	Asset Ratio of Transferee	Tax Heads	ITC balance of Transferor (pre-apportionment) as on the date of filing FORM GST ITC-02)	Total amount of ITC transferred to the Transferee under FORM GST ITC-02	ITC balance of Transferor (post-apportionment) after filing of FORM GST ITC-02) [Col (4) - Col (5)]
Delhi	70%	CGST	10,00,000	10,00,000	0
		SGST	10,00,000	10,00,000	0
		IGST	30,00,000	15,00,000	15,00,000
		Total	50,00,000	35,00,000	15,00,000
Haryana	40%	CGST	25,00,000	3,00,000	22,00,000
		SGST	25,00,000	5,00,000	20,00,000
		IGST	20,00,000	20,00,000	0
		Total	70,00,000	28,00,000	42,00,000

- d. (i) In order to calculate the amount of transferable ITC, the apportionment formula under proviso to rule 41(1) of the CGST Rules has to be applied to the unutilized ITC balance of the transferor. However, it is not clear as to which date shall be relevant to calculate the amount of unutilized ITC balance of transferor.
- According to sub-section (3) of section 18 of the CGST Act, *"Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provisions for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed."* Further, sub-rule (1) of rule 41 of the CGST Rules prescribes that the registered person shall file the details in **FORM GST ITC-02** for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee.
- A conjoint reading of sub-section (3) of section 18 of the CGST Act along with sub-rule (1) of rule 41 of the CGST Rules would imply that the apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of **FORM GST ITC - 02** by the transferor.

<p>(ii) Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?</p>	<p>According to section 232 (6) of the Companies Act, 2013, "<i>The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date</i>". The said legal provision appears to indicate that the "appointed date of demerger" is the date from which the scheme for demerger comes into force and it is specified in the respective scheme of demerger. Therefore, for the purpose of apportionment of ITC under rule sub-rule (1) of rule 41 of the CGST Rules, the ratio of the value of assets should be taken as on the "appointed date of demerger".</p> <p>In other words, for the purpose of apportionment of ITC under sub-rule (1) of rule 41 of the CGST Rules, while the ratio of the value of assets should be taken as on the "appointed date of demerger", the said ratio is to be applied on the ITC balance of the transferor on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.</p>
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[Circular No.133/03/2020-GST ,dated 23rd March, 2020]

Clarification of issues in respect of issues under GST law for companies under Insolvency and Bankruptcy Code, 2016

The Central Board of Indirect Taxes & Customs vide [Circular No.134/04/2020-GST ,dated 23rd March, 2020](#) has issued clarification in respect of various issues under GST law for the corporate debtors who are undergoing CIRP under the provisions of IBC and the management of whose affairs are being undertaken by IRP/RP under Insolvency and Bankruptcy Code, 2016 as under:-

S.No.	Issue	Clarification
1.	How dues under GST for pre-CIRP period are be dealt?	In accordance with the provisions of the IBC and various legal pronouncements on the issue, no coercive action can be taken against the corporate debtor with respect to the dues for period prior to insolvency commencement date. The dues of the period prior to the commencement of CIRP will be treated as 'operational debt' and claims may be filed by the proper officer before the NCLT in accordance with the provisions of the IBC. The tax officers shall seek the details of supplies made / received and total tax dues pending from the corporate

		debtor to file the claim before the NCLT. Moreover, section 14 of the IBC mandates the imposition of a moratorium period, wherein the institution of suits or continuation of pending suits or proceedings against the corporate debtor is prohibited.
2.	Should the GST registration of corporate debtor be cancelled?	It is clarified that the GST registration of an entity for which CIRP has been initiated should not be cancelled under the provisions of section 29 of the CGST Act, 2017. The proper officer may, if need be, suspend the registration. In case the registration of an entity undergoing CIRP has already been cancelled and it is within the period of revocation of cancellation of registration, it is advised that such cancellation may be revoked by taking appropriate steps in this regard.
3.	Is IRP/RP liable to file returns of pre-CIRP period?	No. In accordance with the provisions of IBC, 2016, the IRP/RP is under obligation to comply with all legal requirements for period after the Insolvency Commencement Date . Accordingly, it is clarified that IRP/RP are not under an obligation to file returns of pre-CIRP period.
<u>During CIRP period</u>		
4.	Should a new registration be taken by the corporate debtor during the CIRP period?	The corporate debtor who is undergoing CIRP is to be treated as a distinct person of the corporate debtor and shall be liable to take a new registration in each State or Union territory where the corporate debtor was registered earlier, within thirty days of the appointment of the IRP/RP. Further, in cases where the IRP/RP has been appointed prior to the issuance of notification No.11/2020 - Central Tax, dated 21.03.2020, he shall take registration within thirty days of issuance of the said notification, with effect from date of his appointment as IRP/RP.
5.	How to file First Return after obtaining new registration?	The IRP/RP will be liable to furnish returns, make payment of tax and comply with all the provisions of the GST law during CIRP period.

		The IRP/RP is required to ensure that the first return is filed under section 40 of the CGST Act, for the period beginning the date on which it became liable to take registration till the date on which registration has been granted.
6.	How to avail ITC for invoices issued to the erstwhile registered person in case the IRP/RP has been appointed before issuance of notification No.11/2020 - Central Tax, dated 21.03.2020 and no return has been filed by the IRP during the CIRP?	<p>The special procedure issued under section 148 of the CGST Act has provided the manner of availment of ITC while furnishing the first return under section 40.</p> <p>The said class of persons shall, in his first return, be eligible to avail input tax credit on invoices covering the supplies of goods or services or both, received since appointment as IRP/RP and during the CIRP period but bearing the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, <u>except the provisions of sub-section (4) of section 16 of the CGST Act and sub-rule (4) of rule 36 of the CGST Rules.</u> In terms of the special procedure under section 148 of the CGST Act issued vide notification No.11/2020 - Central Tax, dated 21.03.2020. This exception is made only for the first return filed under section 40 of the CGST Act.</p>
7.	How to avail ITC for invoices by persons who are availing supplies from the corporate debtors undergoing CIRP, in cases where the IRP/RP was appointed before the issuance of the notification No.11/2020 - Central Tax, dated 21.03.2020?	Registered persons who are receiving supplies from the said class of persons shall, for the period from the date of appointment of IRP / RP till the date of registration as required in this notification or 30 days from the date of this notification, whichever is earlier, be eligible to avail input tax credit on invoices issued using the GSTIN of the erstwhile registered person, subject to the conditions of Chapter V of the CGST Act and rule made thereunder, <u>except the provisions of sub-rule (4) of rule 36 of the CGST Rules.</u>
8.	Some of the IRP/RPs have made deposit in the cash ledger of erstwhile registration of the corporate debtor. How to claim refund for amount deposited in the cash ledger by the IRP/RP?	Any amount deposited in the cash ledger by the IRP/RP, in the existing registration, from the date of appointment of IRP / RP to the date of notification specifying the special procedure for corporate debtors undergoing CIRP, shall be available for refund to the erstwhile registration under the head refund of cash ledger, even

though the relevant **FORM GSTR-3B/GSTR-1** are not filed for the said period.

The instructions contained in Circular No. 125/44/2019-GST dt. 18.11.2019 stands modified to this extent.

[Circular No.134/04/2020-GST ,dated 23rd March, 2020]

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