

RELAXATIONS PROPOSED IN THE 43RD GST COUNCIL MEETING

In the wake of the second wave of Covid-19, it became imperative for the Central Government to introduce measures of respite for the taxpayers. The GST Council ("Council") in its 43rd meeting held on 28th May, 2021, under the chairmanship of Finance Minister Smt. Nirmala Sitharaman, has sought to achieve the abovementioned objective by way of the recommendations discussed herein, relating to changes in the applicable GST law and procedure:-

Background:

As per section 47 of the Central Goods and Services Tax Act, 2017 ("Act"), a late fees of one hundred rupees for every single day would be imposed upon the taxpayer who fails to furnish the returns under section 39(1) of the Act, in FORM GSTR-3B. However, it has been observed that a lot of taxpayers have not filed their returns pertaining to a financial period, dating back to July 2017.

Section 44(1) of the Act read with rule 80(1) of the Central Goods and Service Tax Rules, 2017 ("Rules") requires a taxpayer to file an annual return in FORM GSTR 9, along with the copies of annual audited accounts and reconciliation statements. Section 35 (5) of the Act requires every registered person whose turnover during a financial year exceeds two crore rupees to get his accounts audited by a chartered accountant or a cost accountant. Furthermore, as per rule 80(3) of the Rules, the taxpayer is required to furnish a copy of the audited annual accounts and a reconciliation statement, duly certified by the auditor, in FORM GSTR 9C. For the financial period of 2018-2019, the limit for turnover has been increased upto five crore rupees vide notification No. 16/2020 dated 23rd March, 2020.

There are two modes of payment of tax at the GST portal. Taxpayers can make the payment in cash, which will be reflected in their electronic cash ledger, or they can use the input tax credit ("ITC") available to them, in their electronic credit ledger, to pay the tax. However, according to section 49 of the Act, the ITC in the electronic credit ledger can only be used to pay tax, and not interest, penalty or late fees. However, section 50 of the Act imposes an interest at the rate of eighteen percent on the delayed payment of tax by the taxpayer for the period for which the tax or any part thereof remains unpaid, irrespective of the mode of payment of tax.

In light of above background following were amendment proposed

Proposed Amendments:

(Amnesty Scheme)

In an effort to encourage the taxpayers to file their returns, dating back to July, 2017, the Finance Minister has announced an amnesty scheme which seeks to provide a relief to the taxpayers by providing exemptions in late fees for filing their returns in FORM GSTR-3B. According to this scheme, the registered taxpayers who have not filed their returns for the tax period of July, 2017 to April, 2021, would pay a late fee capped at a maximum amount of five hundred rupees in case they do not have any tax liability for the said period and one thousand rupees otherwise. The taxpayers can now file their pending returns and can avail the benefit of the amnesty scheme by paying reduced late fee. This scheme shall be available to the taxpayers from 1st June 2021 to 31st August 2021.

(Annual return filing)

The Council has proposed an amendment in section 44(1) of the Act and rule 80(1) of the Rules, thereby allowing an optional filing of annual return for the financial period of 2020-2021 for the taxpayers having an aggregate turnover of upto rupees two crores. Furthermore, the council has also proposed to section 35(5) of the Act and rule 80(3) of the Rules to allow self-certification of reconciliation statements by the taxpayers while filing annual returns in GSTR-9C instead of getting it verified from auditors. The auditor's role will only be limited to auditing the copy of annual accounts.

(Imposition of interest only on net cash basis)

The council has recommended an amendment in section 50 of the Act, to apply retrospectively from 1st July, 2017 to allow the imposition of interest only on net cash basis.

(Covid related exemptions)

In addition to the relief measures already provided to the taxpayers vide the notifications issued on 01.05.2021, the following further relaxations are being provided to the taxpayers:

Type of taxpayers	Financial Period	Interest (calculated from the due date of submission of GSTR-3B)	Late fee (calculated from the due date of submission of GSTR-3B)
Small taxpayers (aggregate turnover upto Rs. 5 Crores)	March, 2021	For first 15 days- Nil For next 45 days- 9 %	Waived for 60 days
	April, 2021	For first 15 days- Nil For next 30 days- 9 %	Waived for 45 days
	May, 2021	For first 15 days- Nil For next 15 days- 9 %	Waived for 30 days
Large taxpayers (aggregate turnover more than Rs. 5 Crores)	May, 2021	For first 15 days- 9% For any period thereafter- 18 %	Waived for 30 days

In addition to the above, certain other Covid-19 related relaxations are also proposed to be provided by the council, such as:-

- Extension of due date of filing return of outward and inward taxable supplies in FORM GSTR-1 for the month of May 2021 by fifteen days.
- Extension of due date of filing the return pertaining to inward and outward taxable supply under FORM GSTR-4 by a composition dealer for FY 2020-21 to 31st July, 2021.
- Extension of due date of filing form ITC-04 for quarter ending March 2021 to 30th June, 2021.
- Cumulative availment of ITC for tax periods April, May and June, 2021 in the return for the period June, 2021.
- Allowing filing of returns by companies using Electronic Verification Code (“EVC”), instead of Digital Signature Certificate (“DSC”) till 31st August, 2021.
- The time limit for completing compliances and taking actions under the GST law which were due for the period of 15th April, 2021 to 29th June, 2021, stands extended up to 30th June, 2021.

(Miscellaneous exemptions)

- The Council decided to keep the GST rate of five percent as it is on COVID vaccines. Also, the Council ruled out the possibility of notifying COVID related relief materials as zero-rated goods.
- GST exemption has been provided on import of all COVID relief materials and medicines (including free of cost) till 31st August 2021; Also, the medicine for Black fungus – Amphotericin B is included in the exemption list.
- A Group of Ministers (“GoM”) to be formed by 29th May 2021 and submit a report by 8th June 2021 on the need for further reductions and decide on any new rates in exemptions.

VA Comments:

- There is no mention of taxpayers who have already paid the late fees in the amnesty scheme.
- The Council has reduced the compliance burden on the taxpayers by simplifying section 44 and section 35 of the Act, by way of allowing optional filing and self certification, which is a welcome move for the taxpayers.
- The Council has tried to enunciate section 50 of the Act by introducing a clarification therein, by allowing the imposition of interest only on the electronic cash ledger, which is again a measure of respite for the taxpayers availing ITC.
- The Council has tried to keep the concerns of the taxpayers in the wake of the second wave of pandemic and have allowed various procedural relaxations to them, such as relaxations in due dates of furnishing returns, allowing the companies to file the returns by way of EVC in addition to DSC, considering the tangible nature of DSC and the lack of staff with the companies to produce the workings for filing the returns.
- These measures are only proposed to be introduced, and will take their full effect once the notifications/circulars in respect thereof, are introduced by the Government.

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