L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

GST Update No. 16 of 2018
29th October, 2018

- **Job work – Due date for declaration extended**
- **Final return by specified persons – Due date extended**
- **CGST Rule 96(10) amendment clarified**
- **Rectified refund application – Clarification**
- **Procedure in respect of time-expired drugs/ medicines**
- **ISD and Casual Taxable Persons – Certain clarifications**
- **Cancellation of registration – Clarification on processing of application**

Extension of due date for Form GST ITC-04 (Job work)

- Due date for filing **Form GST ITC-04** for **July, 2017 to September, 2018** has been extended to **31st December, 2018**. Notification No. 59/2018-Central Tax dated 26.10.2018 has been issued to supersede Notification No. 40/2018-Central Tax.

- GST ITC-04 declaration is required in respect of goods sent to a job worker or received from a job worker or sent from one job worker to another.

Extension of due date for filing final return

- **Final Return in Form GSTR-10** can be filed till **31st December, 2018** by persons whose **registration under CGST Act has been cancelled** on or before 30th September, 2018 [CBIC Notification No. 58/2018-Central Tax dated 26.10.2018 refers]

Clarification in respect of amendment in CGST Rule 96(10)

- Circular No. 70/44/2018-GST, dated 26th October, 2018 has been issued to clarify the amendment made to Rule 96(10) of CGST Rules by Central Tax Notification Nos. 53 and 54/2018 dated 9th October, 2018.

- It has been clarified that the exporter who himself/herself imported any inputs/capital goods in terms of Notification Nos. 78/2017-Customs and 79/2017-Customs both dated 13th October, 2017 shall be eligible to claim refund of the IGST paid on exports till 8th October, 2018 only.

- Exporters who are importing goods in terms of Notification Nos. 78/2017-Customs and 79/2017-Customs on or after 9th October, 2018 shall not be eligible for IGST refund.

- However, exporters who are receiving capital goods under the EPCG scheme, either through import in terms of notification No. 79/2017-Customs dated 13th October, 2017 or through domestic procurement in terms of Notification No. 48/2017-Central Tax, dated 18th October, 2017, shall continue to be eligible to claim refund of IGST paid on exports.

Clarification in respect of rectified refund application

- Facility for filing fresh application for refund after issuance of deficiency memo is not yet available in the GST portal. Till such time the same is developed, claimants will be required to submit rectified refund application under the earlier Application Reference Number (ARN) only.

- Circular No. 70/44/2018-GST, dated 26th October, 2018 has been issued to clarify the above. Field formations have been instructed not to re-credit in the electronic credit ledger (using FORM GST RFD-01B) in cases where deficiency memo in FORM GST RFD-03 has been issued.

- Separate clarification would be issued for cases in which re-credit has already been made.

Procedure in respect of time-expired drugs/ medicines

- Circular No. 72/46/2018-GST dated 26th October 2018 clarifies the procedure to be followed in cases where time expired drugs / medicines are returned.

- The circular states that though it discusses scenarios in relation to return of goods on account of expiry of the same, it may be applicable to such other scenarios where the goods are returned on account of other reasons.

- Two options have been provided:

   A. Return of goods to be treated as fresh supply:

   B. Return of goods by issuing credit note

A. Return of goods to be treated as fresh supply

- Registered person at each leg of the supply chain i.e. wholesaler and retailer will issue invoice for return of goods (‘**return supply**’)

- Value of goods in original invoice may be taken as the value of return supply

- Recipient of return supply i.e. manufacturer and wholesaler will be eligible to take credit subject to other conditions specified in CGST Section 16.

- Manufacturer is required to reverse the credit under Section 17(5)(h), **equivalent to credit availed on return supply,** if such goods are destroyed by him.

- Other Matters:

Person returning the goods	Procedure
Composition Taxpayer	Bill of Supply to be issued and tax at the rate applicable under composition to be paid
Unregistered Person	Commercial document without tax to be issued

B. Return of goods by issuing credit note

- Person who has earlier supplied the goods i.e. manufacturer and wholesaler may issue credit note.

- Wholesaler and trader may issue delivery challan for return of goods.

- Manufacturer is required to reverse credit under Section 17(5)(h), in case goods are destroyed by him, **equivalent to credit attributable to manufacture of such goods.**

Scenario	Condition
Credit Note issued within time limit without adjusting tax liability i.e. **Commercial Credit Note**	No Condition
Credit Note issued within time limit adjusting tax liability i.e. GST Credit Note	Person returning has either not availed credit or if availed has reversed the credit
Credit Note issued after the time limit	No requirement to upload credit note on common portal Tax liability cannot be adjusted

Clarification relating to Casual Taxable Person and ISD Circular No. 71/45/2018

Casual Taxable Person (CTP)

- Amount required to be deposited by CTP in advance shall be 'estimated net tax liability' only and not the gross tax liability. Estimated net tax liability means estimated tax liability after deducting the due eligible ITC which might be available to CTP.

- In case of long running exhibitions (for a period more than 180 days), the taxable person cannot be treated as a CTP and thus such person would be required to obtain registration as a normal taxable person.

- Allotment letter/consent letter granting him a permission to use the premises for the exhibition shall be treated as the proper document as a proof for his place of business to obtain normal registration.

Input Service Distributor (ISD)

- In case excess credit is distributed by ISD, it shall be recovered from such recipients along with interest and penalty if any.
- Recipient receiving excess credit may deposit voluntarily along with interest using FORM GST DRC-03.
- Otherwise, proceedings may be initiated against the said unit(s) under Section 73 or 74 of the CGST Act. FORM GST DRC-07 can be used by the tax authorities.
- ISD also liable to a general penalty under Section 122(1)(ix) of the CGST Act in case of excess credit distribution.

Clarification in respect of processing application for cancellation of registration

Circular No. 69/43/2018-GST dated 26th October, 2018:

- 30-day deadline given under Rule 20 of the CGST Rules for filing application for cancellation of registration to be liberally interpreted and application not be rejected for possible violation of deadline.

- Proper officer should accept all such applications within a period of 30 days from the date of filing the application, except in the following circumstances:
  a. application in FORM GST REG-16 is incomplete, i.e., the relevant information is missing
  b. In case of transfer, merger or amalgamation of business if the new entity has not got registered before submission of the application for cancellation.

Cancellation of registration (contd.)

- Order for cancellation should be issued in FORM GST REG-19 with the effective date of cancellation being the same as the date from which the applicant has sought cancellation in FORM GST REG-16.

- For reversal of credit under Section 29(5) of the CGST Act, read with Rule 20 of the CGST Rules, the stock of inputs, semi-finished goods, finished goods and capital goods shall be taken as on the day immediately preceding the date with effect from which the cancellation has been ordered by the proper officer i.e. the date of cancellation of registration.

- The requirement of debiting the electronic credit and/or cash ledger can be done at the time of submission of final return in FORM GSTR-10 and shall not be a prerequisite for applying for cancellation of registration.

Lakshmikumaran & Sridharan attorneys

NEW DELHI
5 Link Road, Jangpura Extension,
Opp. Jangpura Metro Station,
New Delhi 110014
Phone : +91-11-4129 9800

B-6/10, Safdarjung Enclave
New Delhi - 110 029
Phone : +91-11-4129 9900
E-mail : lsdel@lakshmisri.com

MUMBAI
2nd floor, B&C Wing,
Cnergy IT Park,
Appa Saheb Marathe Marg, (Near Century Bazar)
Prabhadevi, Mumbai - 400025.
Phone : +91-22-2439 2500
E-mail : lsbom@lakshmisri.com

CHENNAI
2, Wallace Garden, 2nd Street
Chennai - 600 006
Phone : +91-44-2833 4700
E-mail : lsmds@lakshmisri.com

BENGALURU
4th floor, World Trade Center
Brigade Gateway Campus
26/1, Dr. Rajkumar Road,
Malleswaram West,
Bangalore-560 055.
Ph: +91-80-4933 1800
E-mail : lsblr@lakshmisri.com

HYDERABAD
'Hastigiri', 5-9-163, Chapel Road
Opp. Methodist Church, Nampally
Hyderabad - 500 001
Phone : +91-40-2323 4924
E-mail : lshyd@lakshmisri.com

AHMEDABAD
B-334, SAKAR-VII,
Nehru Bridge Corner,
Ashram Road,
Ahmedabad - 380 009
Phone : +91-79-4001 4500
E-mail : lsahd@lakshmisri.com

PUNE
607-609, Nucleus, 1 Church Road,
Camp, Pune – 411 001
Phone : +91-20-6680 1900
E-mail : lspune@lakshmisri.com

KOLKATA
2ND Floor, Kanak Building
41, Chowringhee Road,
Kolkatta-700071
Phone : +91-33-4005 5570
E-mail : lskolkata@lakshmisri.com

CHANDIGARH
1st Floor, SCO No. 59,
Sector 26,
Chandigarh - 160026
Phone : +91-172-492 1700
E-mail : lschd@lakshmisri.com

GURGAON
OS2 & OS3, 5th Floor, Corporate Office Tower, AMBIENCE Island, Sector 25-A,
Gurgaon - 122001
Phone : +91-124-477 1300
E-mail :lsgurgaon@lakshmisri.com

ALLAHABAD
3/1A/3, (opposite Auto Sales), Colvin Road, (Lohia Marg),
Allahabad -211001 (U.P.)
Phone no. : (0532) – 2421037, 2420359
Email: lsallahabad@lakshmisri.com

www.lakshmisri.com www.gst.lakshmisri.com