L&S Update

an e-update to clients from
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GST Update No. 3 of 2019
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CBIC Circulars clarifying various issues on

- **Export of services**
- **Filing refund claims**
- **Refund of accumulated ITC**
- **GSTR-3B filed after due date**
- **Composition scheme**
- **GST rate applicable on certain goods**

Circular No. 76 clarifying various issues

- CBIC has issued **Circular No. 76/2018- GST** dated 31.12.2018 to provide clarification in respect of following miscellaneous issues:

➢ **Sale by government departments to unregistered persons**

  - Sale of used goods viz., scraps, used vehicles, etc. by a government department to unregistered persons shall be taxable but tax thereon shall be paid under Forward Charge Mechanism.
  - In such cases, supplier (govt. department) shall be liable to take registration under GST.

➢ **GSTR-3B Return filed after due date - Penalty**

  - Penalty as per Section 73(11) of CGST Act shall not be imposed in cases where GSTR-3B Return has been filed after the due date as there is no default of payment of taxes.
  - However, in such cases, penalty under Section 125 may be imposed.

Tax rate for debit /credit notes issued under Section 142(2)

- In cases where debit/credit note is to be issued under Section 142(2) of CGST Act, pertaining to a supply made in pre GST regime, the GST rate as per the GST Acts would be applicable.

Applicability of TDS provisions

- Section 51 of the CGST Act (TDS) is also applicable to authority or a board or any other body set up by an Act of Parliament or a State legislature or established by any Government with 51% or more participation by way of equity or control is with the Government.

Taxable value under GST to include TCS under Income Tax Act

- Taxable value for GST shall include the TCS amount collected under the provisions of Income Tax Act since the value to be paid to the supplier by the buyer is inclusive of the said TCS.

- **<u>"Owner of Goods" for the purposes of Section 129(1) on detention / seizure of goods in transit</u>**
  - If the invoice or any other specified document is accompanying the consignment of goods, then either the consignor or the consignee should be deemed to be the owner.
  - If the invoice or any other specified document is not accompanying the consignment of goods, then the proper officer should determine who should be declared as the owner of the goods.

Composition Scheme - Clarification on withdrawal / denial

- CBIC has issued **Circular No. 77/2018-GST** dated 31.12.2018 to provide clarification in respect of denial of composition option by tax authorities and effective date thereof.
- The clarification is summarised below:

S. No.	Reason of withdrawal	Effective Date
1.	Suo motu application by composition scheme dealer for withdrawal from the scheme	▪ Date indicated by the dealer in his application FORM GST CMP-04. ▪ Such date cannot be prior to the commencement of the FY in which application is filed
2.	Denial of option by the tax authorities when taxpayer has contravened provisions of the CGST Act or the CGST Rules	▪ Date of order passed in Form GST CMP-07 ▪ For Section 18(1)(c) [ITC on inputs held in stock, etc], the effective date shall be date immediately preceding the date of order in FORM GST CMP-07

Clarification on export of services

- CBIC has issued **Circular No. 78/2018-GST** dated 31.12.2018 to provide clarification relating to export of services in a particular situation.

Issue: In case an exporter of services outsources a portion of the services contract to another person located outside India, what would be the tax treatment of the said portion of the contract at the hands of the exporter?

Clarification:

- Total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services.
- Supplier of services located in India would be liable to pay IGST under RCM on the import of services on that portion of services which has been provided by the supplier located outside India.
- Supplier in India eligible to avail ITC of IGST paid under RCM.

Clarification on refund related issues

- CBIC has issued **Circular No. 79/2018-GST** dated 31st December, 2018 to clarify certain issues relating to refund.

Physical submission of refund claims:

- All documents/undertaking/statements to be submitted along with the claim for refund in Form GST RFD-01A shall be uploaded on the common portal. Neither the application nor any of the supporting documents, shall be required to be submitted physically.
- However, the taxpayer will have the option to physically submit the refund application along with supporting documents, if he so chooses.

- **<u>Calculation of refund of accumulated ITC on account of inverted duty structure</u>:**

  In case of multiple inputs attracting different rates of tax, the term "Net ITC" *[in the formula provided in Rule 89(5) of the CGST Rules]* covers ITC availed on all inputs in the relevant period, irrespective of their rate of tax.

- **<u>Refund of accumulated ITC of Compensation Cess (Cess):</u>**

  In this context, the circular addresses the following three issues-

  <u>Issue 1:</u> How should the amount of cess to be refunded be calculated post issuance of Circular No. 45/19/2018-GST dated 30.05.2018 (*where it was clarified that refund of accumulated ITC of cess is available)* but ITC was not availed of the cess paid on the inputs.

  <u>Clarification:</u>

  - Refund on account of cess is to be recomputed as if the same was available in the respective months in which the refund of unutilized ITC was claimed on account of exports made under LUT/bond.

- If the aggregate of these recomputed amounts of refund of cess is less than or equal to the eligible refund of cess calculated in respect of the month in which the same has actually been claimed, then the aggregate of the recomputed refund of cess of the respective months would be admissible.

Issue 2: Can the refund of accumulated ITC of cess paid on coal be rejected on the ground that coal is used for generation of electricity which is an intermediate product and not the final product which is exported and since electricity is exempt from GST, the ITC of the tax paid on coal for generation of electricity is not available?

Clarification: There is no distinction between intermediate goods / services and final goods/services under GST. Since coal is an input used in the production of, for example aluminium, albeit indirectly through the captive generation of electricity, which is directly connected with the business of the registered person, ITC in relation to the same cannot be denied.

Issue 3: Can the ITC which is reversed be held as 'Net ITC' and the same can be used in calculating the maximum refund amount on account of zero-rated supplies?

Clarification: ITC which is reversed cannot be held to have been 'availed' in the relevant period and therefore, the same cannot be part of refund of unutilized ITC.

- **Non-consideration of ITC of GST paid on invoices of earlier tax period availed in subsequent tax period:**
  - "Net ITC" [as defined in Rule 89(4) of the CGST Rules] means ITC availed on inputs and input services during the period for which the refund claim has been filed.
  - ITC can be said to have been "availed" when it is entered into the electronic credit ledger.
  - Therefore, ITC of invoices issued in earlier tax period but availed in subsequent tax period cannot be excluded from the calculation of the refund amount for the subsequent tax period.

- **<u>Misinterpretation of the meaning of the term “inputs”:</u>**
  - GST paid on inward supplies of stores and spares, packing materials etc. shall be available as ITC as long as these inputs are used for the purpose of the business and/or for effecting taxable supplies, including zero-rated supplies, and the ITC for such inputs is not restricted.
  - Stores and spares, the expenditure on which has been charged as a revenue expense in the books of account, cannot be held to be capital goods.
- **<u>Refund of accumulated ITC on input services and capital goods arising on account of inverted duty structure:</u>**

  Refund of tax paid on input services and capital goods as part of refund of input tax credit accumulated on account of inverted duty structure is not allowed.

Clarification regarding GST rates & classification of Goods

- CBIC has issued **Circular No. 80/2018-GST** dated 31st December, 2018 to clarify the applicable HSN & GST rates on the following items:

➢ **Chhatua or Sattu :**

HSN - 1106

GST Rate - If unbranded : Nil

If branded and packed : 5%

➢ **Fish meal and other raw materials used for making cattle / poultry / aquatic feed**

HSN - 2301

GST Rate - 5%

➢ **LPG supplied in bulk for ultimate supply for domestic use**

LPG supplied in bulk, whether by a refiner/fractionator to an Oil Marketing Companies (OMC) or by one OMC to another for bottling and further supply for domestic use will attract GST rate of 5%.

(S. No. 165A of the N. No. 1/2017- Central Tax (Rate) dated 28.06.2017)

- **<u>Polypropylene Woven and Non-Woven Bags and PP Woven and NonWoven Bags laminated with BOPP</u>**

  HSN - 3923
  GST Rate - 18%

  - Non-laminated woven bags would be classified as per their constituting materials.

- **<u>Wood logs for pulping</u>**
  HSN - 4403
  GST Rate - 18%

- **<u>Bagasse based laminated particle board</u>**
  Chapter - 44
  GST Rate - 12%

- **<u>Three pieces of fabrics sold in pack as ladies salwar suit</u>**
  Chapter - 50 to 55 and 60 on the basis of their constituent materials
  GST Rate - 5%

- **<u>Waste to Energy Plant (WTEP) - Scope of entry No. 234 of Schedule I of Notification No.1/2017- Central Tax (Rate) dated 28.6.2017</u>**
  - The said notification specifically applies only to the goods falling under chapters 84, 85 and 94.
  - Concessional GST rate of 5% would be available only to such machinery, equipment etc., which fall under Chapter 84, 85 and 94 and used in the initial setting up of renewable energy plants and devices including WTEP.
- **<u>Turbo Charger for railways</u>**

  HSN - 8414

  GST Rate - 18%
- **<u>Rigs, tools & Spares moving inter-State for provision of service</u>**

  Any such movement on own account (not involving distinct person in terms of Section 25), where such movement is not intended for further supply of such goods does not constitute a supply and would not be liable to GST.

Clarification on GST rate for Sprinkler & Drip irrigation System

- The term “sprinklers”, at entry no. 195B of the Schedule II to Notification No. 1/2017- Central Tax (Rate) dated 28.06.2017, covers sprinkler irrigation system consisting of nozzles, lateral and other components and would attract 12% GST rate. **(Circular No. 81/2018- GST dated 31.12.2018)**

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