L&S Update

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

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CGST Rules, 2017 –
Recent amendments made by Notification No. 74/2018-Central Tax dated 31-12-2018

TCS registration related changes:

Insertion of sub-rule (1A) in Rule 12

- Rule 12 deals with grant of registration to persons required to deduct tax at source or to collect tax at source.
- In Rule 12, after sub-rule (1), sub-rule (1A) has been inserted to provide:
  - A person liable to collect TCS in a particular State in which he does not have an office or any other establishment, will be required to mention name of the State where his principal place of business is located in Part-B of the relevant application form.
  - The State in which such TCS is required to be made, shall be mentioned in Part-A of the relevant application form.

Job work reporting in Form ITC-04

- Rule 45 deals with conditions and restrictions in respect of inputs and capital goods sent to the job worker.

- In the said Rule, after the words —*'received from a job worker'*, the words, —*'or sent from one job worker to another'* have been omitted.

- Rule 45(3), after this amendment, reads as:

  "The details of challans in respect of goods dispatched to a job worker or received from a job worker ~~or sent from one job worker to another~~ during a quarter shall be included in FORM GST ITC-04 furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter[or within such further period as may be extended by the Commissioner by a notification in this behalf."

- In view of the above amendment, the details of challan issued when goods are sent from one job worker to another need not be included while filing Form ITC-04.

Electronic tax invoice related changes

- Rule 46 deals with tax invoice.

- After the fourth proviso, the following proviso has been inserted:

  "Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000)."

- In light of the above amendment, taxpayer can issue tax invoice complying with the requirements of Information Technology Act, 2000 without affixing signature or digital signature (of the supplier or authorized representative).

Electronic bill of supply related changes

- Rule 49 of CGST Rules deals with bill of supply.

- After the second proviso, the following proviso has been inserted namely:

  "Provided also that the signature or digital signature of the supplier or his authorised representative shall not be required in the case of issuance of an electronic invoice in accordance with the provisions of the Information Technology Act, 2000 (21 of 2000)."

- After the above amendment, signature or digital signature of supplier or his authorised representative is not more required in bill of supply issued in accordance with Rule 49 and complying with the requirements of Information Technology Act, 2000.

Tax invoice related changes

- Rule 54 deals with tax invoice in special cases.

- In sub-rule (2) and sub-rule (4), provisos have been inserted relaxing the requirement of signature on consolidated tax invoice or ticket in respect of certain services.

- In respect of consolidated tax invoice / ticket complying the requirements of Information Technology Act, 2000, signature or digital signature of supplier or his authorised representative will not be required in the following cases:
  - Where supplier is an insurer or a banking company or a financial institution, including a non-banking financial company.
  - Where supplier is providing passenger transportation service.

Refund on account of inverted duty / tax structure

- Rule 89(5) deals with refund on account of inverted duty structure.

- In explanation (b) to sub-rule (5) of Rule 89, the following clause has been substituted, namely:-

  " 'Adjusted Total turnover' and —'relevant period' shall have the same meaning as assigned to them in sub-rule (4)".

- In view of the above amendment, the definition of 'relevant period' for the purpose of sub-rule (5) has been aligned as defined in sub-rule (4). Definition of adjusted total turnover was aligned earlier as well.

Refund application related changes

- Rule 96 deals with refund of IGST paid on goods or services exported out of India.
- In Rule 96, in sub-rule (1), in clause (a), after the words —'export goods duly files', the words —'a departure manifest or' has been inserted.
- Rule 96(1) shall now read as

  "The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

  (a) the person in charge of the conveyance carrying the export goods duly files a departure manifest or an export manifest or an export report covering the number and the date of shipping bills or bills of export; and

  (b) the applicant has furnished a valid return in FORM GSTR-3or FORM GSTR-3B, as the case may be"

- As per the above amendment, departure manifest filed along with shipping bill will also be considered sufficient compliance for the purpose of application for refund.

Order of Revisional Authority – Hearing mandatory in certain cases

- After Rule 109A, the following rule shall be inserted, namely:
  *"**109B.Notice to person and order of revisional authority in case of revision.***
  (1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in FORM GST RVN-01 and shall give him a reasonable opportunity of being heard.
  (2) The Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed."

- As per the above amendment, Revisional Authority is required to provide opportunity of hearing if his order is likely to impact the taxpayer adversely.

Meaning of handicraft goods in e-waybill

- Rule 138 deals with information to be furnished prior to commencement of movement of goods and generation of e-way bill.

- In Rule 138, in sub-rule (1), for Explanation 1, the following Explanation has been substituted, namely-.

  "Explanation 1. – For the purposes of this rule, the expression handicraft goods has the meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 56/2018-Central Tax, dated the 23rd October, 2018, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), vide number G.S.R 1056 (E), dated the 23rd October, 2018 as amended from time to time."

- Earlier explanation was referring to the meaning assigned in Notification No. 32/2017-Central Tax dated the 15th September, 2017. However, Notification No. 56/2018-Central Tax has superseded the said notification. Accordingly, the above explanation has provided reference to Notification No. 56/2018-Central Tax.

Restriction on generation of e-waybill

✓ The following rule shall be inserted, **from a date to be notified later**, namely:-.

*“**138E. Restriction on furnishing of information in PART A of FORM GST EWB-01.-***

Notwithstanding anything contained in sub-rule (1) of rule 138, no person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who,—

(a) being a person paying tax under section 10, has not furnished the returns for two consecutive tax periods; or

(b) being a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months:

Provided that the Commissioner may, on sufficient cause being shown and for reasons to be recorded in writing, by order, allow furnishing of the said information in PART A of FORM GST EWB 01, subject to such conditions and restrictions as may be specified by him:

Provided further that no order rejecting the request of such person to furnish the information in PART A of FORM GST EWB 01 under the first proviso shall be passed without affording the said person a reasonable opportunity of being heard:

Provided also that the permission granted or rejected by the Commissioner of Stat tax or Commissioner of Union territory tax shall be deemed to be granted or, as the case may be, rejected by the Commissioner.

Explanation:– For the purposes of this rule, the expression —Commissioner shall mean the jurisdictional Commissioner in respect of the persons specified in clauses (a) and (b)"

- The above amendment is consequent to the announcement by GST Council recently that taxpayers who default in filing of returns for two consecutive tax periods will be restricted from generating e-way bills.

- The aforesaid provision will be made effective once GSTN/NIC make available the required functionality and date of effect is separately notified.

Demand notice & order for amounts payable under CGST Act

- Rule 142 deals with notice and order for demand of amounts payable under the CGST Act.
- In sub-rule (5) of Rule 142, after the words 'section 74', the words 'or sub-section (12) of section 75' have been inserted.
- Sub-rule (5) will now read as:

  "A summary of the order issued under sub-section (9) of section 73 or sub section (9) of section 74 or sub-section (12) of section 75 or sub-section (3) of section 76 or section 125 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax"

- Section 75(12) provides that where any amount of self-assessed tax in accordance with a return furnished under Section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of Section 79.

- Thus, summary of order issued under this section shall also be uploaded electronically.

Substitution & Insertion of Forms in CGST Rues

Following forms have been substituted with new one

- Form GST RFD-01 for application of refund prescribed in accordance with Rule 89(1).
- Form GST RFD-01A for application of refund (manual) prescribed in accordance with Rule 89(1) and 97A.
- **Form GSTR 9 (i.e. annual return) for filing annual return as prescribed in accordance with Rule 80.**
- Form GSTR 9A for filing annual return (for composition taxpayers) as prescribed in accordance with Rule 80.
- **Form GSTR 9C for filing reconciliation statement and certification as prescribed in accordance with Rule 80.**
- Form GST APL-04 for summary of the demand after issue of order by the appellate authority, revisional authority, tribunal or court as prescribed in accordance with Rule 109B, 113 (1) and115.

Following form has been newly inserted

- Form GST RVN-01 prescribed in accordance with Rule 109B

CHANGES IN GST FORMS

Changes in Form GST RFD-01 [Application for Refund (Manual)]

Certain changes have made in GST RFD-01 like:

- Following types of refunds shall also be made available through FORM GST RFD-01A:
  - Refund on account of Assessment/ Provisional Assessment / Appeal / Any Other Order;
  - Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice-versa;
  - Taxes paid on advances where invoice not issued
  - Excess payment of Tax; and
  - Any other refund.

CHANGES IN GST FORMS

- **Changes in GSTR-9 (Annual Return)**

  - Now, additional liability not declared in FORM GSTR-1 and FORM GSTR-3B for FY 2017-18 may be declared in GSTR-9. However, taxpayers cannot claim input tax credit unclaimed during FY 2017-18 through this return.
  - Taxpayers shall be given an option to pay any additional liability declared in this form, through FORM DRC-03. Taxpayers shall select —Annual Return in the drop down provided in FORM DRC-03. Such liability can be paid through electronic cash ledger only.
  - Certain changes have been made in the format of GSTR-9 like
    - Headings changed from 'declared during the financial year' to made during the financial year in Part II- Table 4.
    - Omission of words 'declared during the financial year' from Table 5, Table 6, Table 7.

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CHANGES IN GST FORMS

- **Changes in GSTR-9C (Reconciliation & Certificate)**

  - Sign for Item E of Table 5 (+) is replaced with (-)
  - Similarly, Sign for Item J of Table 5 (-) is replaced with (+)
  - It is clarified through instructions that it is mandatory to file FORM GSTR -9 for the FY 2017-18 before filing GSTR-9C.
  - Verification of registered person introduced in GSTR-9C in addition to verification by auditor.

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