L&S Update

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

L&S GST Update No. 9 of 2019
30th January, 2019

- **CGST Act, 2017 - Amendments made by CGST (Amendment) Act, 2018 to come into force from 1st February, 2019**

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Definitions - Major amendments in Section 2 of CGST Act

- In the definition of adjudicating authority, the words Central Board of Excise and Customs have been substituted with Central Board of Indirect Taxes and Customs. [Section 2(4)]
- Term ‘adjudicating authority’ will not include authority referred to in Section 171(2) – National Anti-profiteering Authority. [Section 2(4)]
- Definition of business vertical omitted. Relevant provisions in CGST Act and Rules amended to provide option to taxpayers for separate registration for each place of business within a State / Union Territory.
- Definition of local authority amended to include a development board constituted under Article 371J of Constitution of India.

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Meaning of Supply - Amendment in Section 7

- Clause (d) of Section 7(1) on scope of supply which provided that supply includes the activities to be treated as supply of goods or supply of services as referred to in Schedule II, omitted

- However, new sub-section (1A) inserted in Section 7 which provides that where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Supplies from unregistered persons - Section 9(4) substituted

- Section 9 has been amended to provide that tax shall be liable to be paid under reverse charge by specified class of persons on supply of specified categories of goods or services received from unregistered persons.

- Earlier, taxpayers were liable to pay tax under reverse charge in case of receipt of supplies from unregistered persons (though this provision has been kept in abeyance).

Composition levy / scheme – Section 10 amended

- Section 10(1) amended to clearly provide that the composition option is with respect to tax payable under Section 9(1).

- Government empowered to increase threshold limit for composition taxpayers to Rs. 1.5 Crores, as per GST Council's recommendation.

- Composition taxpayers shall be allowed to supply services upto a value of 10% of turnover or Rs. 5 lakhs, whichever is higher.

Time of supply of goods and services – Amendment in Section 12 and Section 13

- Section 12, inter alia, deals with determining time of supply of goods where invoice is required to be raised as per Section 31(1). Section 13 deals with determining time of supply of services where invoice is required to be issued as per provisions of Section 31(2). After amendment, both Sections 12 and 13 refer to entire Section 31.

Amendment in Section 16 (Input tax credit)

- Section 16 of CGST Act amended to provide for deemed receipt of services by registered person where the services are provided by the supplier to any person on the direction and on account of such registered person.

Credit distribution by ISD – Turnover - Amendment in Section 20

- Definition of turnover for the purpose of distribution of ITC by an input service distributor not to include CST paid on non-GST supplies.

Amendment in Section 22 (Persons liable for registration)

- Threshold limit for registration can be increased to Rs. 20 lakhs from Rs. 10 lakhs on request by special category State and based on recommendations of GST Council.

- Special Category States – meaning amended to exclude Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

Input Tax Credit - Amendment in Section 17
Proportionate credit reversal / ITC restrictions

- Value of exempt supply (for proportionate reversal) will not include activities specified in Schedule III, except sale of land & sale of building in respect of which construction has been completed prior to sale.

- Section 17(5)(a) amended to provide ITC in respect of motor vehicles only in certain cases.

- ITC will be available in respect of motor vehicles having approved seating capacity of more than 13 persons.

- For motor vehicles having approved seating capacity upto 13 persons, ITC will be available only when such vehicles are used for:

    1. Further supply of such motor vehicles
    2. Transportation of passengers
    3. Imparting training on driving such motor vehicles

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- ITC in respect of vessel and aircraft will not be available except when they are used:
  - (*i*) for making the following taxable supplies:
    - (*a*) further supply of such vessels or aircraft
    - (*b*) transportation of passengers
    - (*c*) imparting training on navigating such vessels
    - (*d*) imparting training on flying such aircraft
  - (*ii*) for transportation of goods

- ITC in respect of general insurance, servicing, repair and maintenance relating to motor vehicles, vessels and aircraft will not be available if credit of motor vehicles is restricted.

- ITC, however, will be available if the recipient is engaged in the:
  - (i) manufacture of such motor vehicles, vessels or aircraft; or
  - (ii) supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

- Credit shall not be available in cases of leasing, renting or hiring of motor vehicles, vessels or aircrafts except when they are used for eligible purposes.

Compulsory registration - Section 24 amended

- Electronic commerce operator shall be mandatorily required to register if he is required to collect tax at source under GST law.

Amendments in Section 25 (Procedure for registration)

- SEZ developer or SEZ unit shall be required to obtain separate registration distinct from its registration for place of business located outside SEZ.

- A person having multiple places of business in a State/UT shall be allowed to obtain a separate registration for each such place of business subject to prescribed conditions.

Amendment in Section 29 (Cancellation of registration)

- Provisions included for suspension of registration when cancellation proceedings are pending.

Amendment in Section 34 (Credit / debit notes)

- Section 34 has been amended to enable issuance of single debit / credit note in respect of multiple invoices issued for supplies made during a financial year.

C&AG audited entities - Amendment in Section 35

- Audit by Chartered Accountant as per Section 35 not required for department of Central / State Government or local authority whose accounts are subject to audit by C&AG.

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Amendment in Section 49 (Credit utilisation – priority rule)

- Balance of ITC in SGST / UTGST ledger shall be allowed for payment of IGST only when balance of ITC in CGST ledger is not available for payment of IGST.

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Insertion of new Section 49A (Credit utilisation)

- ITC on account of CGST, SGST or UTGST to be first utilised for payment of IGST, CGST, SGST or UTGST only after ITC available on account of IGST has been first utilised fully towards such payment.

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Amendment in Section 54 (Refund)

- Section 54(8)(a) has been amended to provide that tax paid at the time of exports shall be refunded to the applicant in case of exports – reference to zero rated supply effectively omitted and amended to reflect only exports .

Amendment in Section 107 (Pre-deposit before Appellate Authority)

- Maximum pre-deposit amount in case of appeal before an Appellate Authority capped at Rs. 25 Crores.

Amendment in Section 112 (Pre-deposit before Tribunal)

- Maximum pre-deposit amount in case of appeal before Appellate Tribunal capped at Rs. 50 Crores.

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Amendment in Section 129

- Time period for payment of tax and penalty by a transporter or owner on seizure of goods increased from 7 to 14 days.

Amendment in Section 143 (Job work)

- Time period for which goods/capital goods can be retained by job-worker may be extended by Commissioner for one more year in case of inputs and two more years in case of capital goods.

Amendment in Schedule I

- Entry 4 of Schedule I amended to provide that import of services by any person from a related person or from any of his other establishments outside India, in the course or furtherance of business shall be deemed to be supply even if made without consideration. *[‘Taxable person’ substituted with ‘person’]*

Amendment in Schedule III (Neither supply of goods nor services)

Following new entries inserted in Schedule III:

- Supply of goods from a place in non-taxable territory to another place in non-taxable territory without such goods entering into India.
- Supply of warehoused goods to any person before clearance for home consumption.
- Supply of goods by consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Explanation 2 inserted to refer meaning for “warehoused goods” as provided in the Customs Act, 1962.

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