L&S Update

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

**L&SGST Update No.
25 of 2019
1st July, 2019**

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Amendments in CGST Rules 2017 (*Notification No. 31/2019-CT dated 28.06.2019*)

CGST Fourth Amendment Rules, 2019

Central GST Rules have been amended on 28-6-2019 in respect of following,

- Amendment in Valuation Rules (Kerala Flood Cess)
- Relief to taxpayers in case of deposit of tax in wrong head in electronic cash ledger
- Refund of taxes to the retail outlets established in departure area of an international Airport
- Changes in E-way Bill provisions
- Changes in Anti-profiteering provisions
- Change in Forms
- Other Changes

Amendment in Valuation Rules (Kerala Flood Cess)

✓ **Insertion of Rule 32A**

32A. Value of supply in cases where Kerala Flood Cess is applicable.-
The value of supply of goods or services or both on which Kerala Flood Cess is levied under clause 14 of the Kerala Finance Bill, 2019 shall be deemed to be the value determined in terms of section 15 of the Act, but shall not include the said cess.

L&S Comments:

The above rule provides that the taxable value for the purpose of payment of GST shall exclude Kerala Flood Cess (KFC). The above insertion of valuation Rule is a welcome relief for the taxpayers.

Relief to taxpayers in case of deposit of tax in wrong head in electronic cash ledger

- ✓ **Amendment in Rule 87**

  Electronic Cash Ledger.-

  Addition of new sub-rule 13

  (13) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09.

L&S Comments:

CGST Rules are being amended for inter-adjustment of balance in electronic cash ledger. A registered person shall be able to transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under the Act to the electronic cash ledger for integrated tax, central tax, State tax or Union territory tax or cess in FORM GST PMT-09. This amendment will come into effect from a date to be notified.

FORM GST PMT –09

[See rule 87(13)]

Transfer of amount from one account head to another in electronic cash ledger

1.	GSTIN	
2.	(a) Legal name	<Auto>
	(b) Trade name, if any	<Auto>
3.	ARN	
4.	Date of ARN	

5. Details of the amount to be transferred from one account head to another

(Amount in Rs.)

Amount to be transferred from			Amount to be transferred to		
Major head	Minor head	Amount available	Major Head	Minor head	Amount transferred
1	2	3	4	5	6
<Central tax, State/ UT tax, Integrated tax, Cess>	Tax		<Central tax, State / UT tax Integrated tax, Cess>	Tax	
	Interest			Interest	
	Penalty			Penalty	
	Fee			Fee	
	Others			Others	
	Total			Total	

6. Verification

I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place

Signature

Name of Authorized Signatory

Date

Designation /Status

Instructions -

1. Major head refers to - Integrated tax, Central tax, State/UT tax and Cess.
2. Minor head refers to – tax, interest, penalty, fee and others.
3. The form may be filled up if amount from one major / minor head is intended to be transferred to another major/minor head. Minor head for transfer of amount may be same or different.
4. The amount from one minor head can also be transferred to another minor head under the same major head.

Refund of taxes to the retail outlets established in departure area of an international Airport

- **Insertion of Rule 95A**

  Refund of taxes to the retail outlets established in departure area of an international Airport beyond immigration counters making tax free supply to an outgoing international tourist.-

  (1) Retail outlet established in departure area of an international airport, beyond the immigration counters, supplying indigenous goods to an outgoing international tourist who is leaving India shall be eligible to claim refund of tax paid by it on inward supply of such goods.

  (2) Retail outlet claiming refund of the taxes paid on his inward supplies, shall furnish the application for refund claim in FORM GST RFD- 10B on a monthly or quarterly basis, as the case may be, through the common portal either directly or through a Facilitation Centre notified by the Commissioner.

  (3) The self-certified compiled information of invoices issued for the supply made during the month or the quarter, as the case may be, along with concerned purchase invoice shall be submitted along with the refund application.

  (4) The refund of tax paid by the said retail outlet shall be available if-

a) *the inward supplies of goods were received by the said retail outlet from a registered person against a tax invoice;*

b) *the said goods were supplied by the said retail outlet to an outgoing international tourist against foreign exchange without charging any tax;*

c) *name and Goods and Services Tax Identification Number of the retail outlet is mentioned in the tax invoice for the inward supply; and*

d) *such other restrictions or conditions, as may be specified, are satisfied.*

(5) *The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.*

Explanation.- For the purposes of this rule, the expression "outgoing international tourist" shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

L&S Comments:

- **Procedure for claiming refund of taxes paid on inward supplies of goods received by retails outlets established in departure area of an international Airport beyond immigration counters has been specified. The above rules does not specify the mechanism of refund of taxes paid on inward supplies of services.**
- **The government has prescribed application for refund by Duty Free Shops/Duty Paid Shops (Retail outlets) in Form GST RFD-10B.**

Changes in E-way Bill provisions

✓ Amendment in Rule 138

Information to be furnished prior to commencement of movement of goods and generation of e-way bill.-

A. Validity of E-way Bills

Over Dimensional Cargo or multimodal shipment in which at least one leg involves transport by ship	Validity Period in other cases
One Day for upto 20 km	One Day for upto 100 km
One additional Day for every 20 km or part thereof after	One additional Day for every 100 km or part thereof after

B. New proviso inserted in Rule 138(10):

Provided also that the validity of the e-way bill may be extended within eight hours from the time of its expiry.

L&S Comments:

- **The amendment provides that the validity period of e-way for multimodal shipment (at least one leg involves transport by ship) shall be as applicable to over dimensional cargo.**
- **The timeline for extension of E-way Bill has been specifically provided in the rules.**

✓ Amendment in Rule 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 or availing the benefit of notification of the Government of India, Ministry of Finance, Department of Revenue No. 02/2019-Central Tax (Rate), dated the 7th March, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i) vide number G.S.R. 189, dated the 7th March, 2019, has not furnished the statement in FORM GST CMP-08 ~~returns~~ for two consecutive quarters ~~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:

....

L&S Comments:

- **CMP-08 is a statement for payment of self-assessed tax which is required to be filed by composition taxpayers (goods or services)**
- **Rule 138E has been extended till 21.08.2019 through NN 25/2019-CT**

Changes in Chapter-X (Anti-profiteering) of CGST Rules

Heading	Changes
Screening Committee **(SC)**	• NAPA can allow additional period of one month to SC for examining complaint
State Screening Committee **(SSC)**	• Applications forwarded by SC shall also be examined by SSC in addition to applications on issues of local nature. • Further, SSC shall examine application within 2 months from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority
DGAP	• The timeline for completion of investigation by DGAP has been extended to 6 months from earlier 3 months.

Changes in Chapter-X (Anti-profiteering) of CGST Rules

Heading	Changes
NAPA	• The power to issue summon has been provided to NAPA. • NAPA can seek clarification from DGAP in respect of report submitted by DGAP. • NAPA can order for interest at rate of 18% even in cases where amount is required to be deposited in Consumer Welfare Fund. • NAPA can direct DGAP to cause investigation or inquiry with regard to such other goods or services or both which are not covered by the report submitted by DGAP. The reasons for such investigation or inquiry have to be recorded in writing.

✓ The relevant extracts of amended Rules are mentioned in the next slides

- **Amendment in Rule 128 – Anti-profiteering**
  Examination of application by the Standing Committee and Screening Committee.-

  (1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority, in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.

✓ Amendment in Rule 128 (contd.)

(2) All applications from interested parties on issues of local nature or those forwarded by the Standing Committee shall first be examined by the State level Screening Committee and the Screening Committee shall within two months from the date of receipt of a written application, or within such extended period not exceeding a further period of one month for reasons to be recorded in writing as may be allowed by the Authority, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.

✓ **Amendment in Rule 129**

Initiation and conduct of proceedings.-

…….

(6) The Director General of Anti-profiteering shall complete the investigation within a period of six ~~three~~ months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as may be allowed by the Authority] and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

✓ **Amendment in Rule 132**

Power to summon persons to give evidence and produce documents.-

(1) The Authority, Director General of Anti-profiteering, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

- **Amendment in Rule 133**

  Order of the Authority.-

  (1) The Authority shall, within a period of six ~~three~~ months from the date of the receipt of the report from the Director General of Anti-profiteering determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.

  (2) An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.

  (2A) The Authority may seek the clarification, if any, from the Director General of Anti Profiteering on the report submitted under sub-rule (6) of rule 129 during the process of determination under sub-rule (1).

✓ Amendment in Rule 133 (contd.):

(3) Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-

(a) reduction in prices;

(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be;

(c) the deposit of an amount equivalent to fifty per cent. of the amount determined under the above clause along with interest at the rate of eighteen per cent from the date of collection of the higher amount till the date of deposit of such amount in the Fund constituted under section 57 and the remaining fifty per cent. of the amount in the Fund constituted under section 57 of the Goods and Services Tax Act, 2017 of the concerned State, where the eligible person does not claim return of the amount or is not identifiable;

(d) imposition of penalty as specified under the Act; and

(e) cancellation of registration under the Act.

✓ Amendment in Rule 133 (contd.):

(5) (a) Notwithstanding anything contained in sub-rule (4), where upon receipt of the report of the Director General of Anti-profiteering referred to in sub-rule (6) of rule 129, the Authority has reasons to believe that there has been contravention of the provisions of section 171 in respect of goods or services or both other than those covered in the said report, it may, for reasons to be recorded in writing, within the time limit specified in sub-rule (1), direct the Director General of Anti-profiteering to cause investigation or inquiry with regard to such other goods or services or both, in accordance with the provisions of the Act and these rules.

(b) The investigation or enquiry under clause (a) shall be deemed to be a new investigation or enquiry and all the provisions of rule 129 shall mutatis mutandis apply to such investigation or enquiry.

Changes in Forms

- Following forms have been amended to provide for bank account details
  - Form GST REG-01 (Application For registration)
  - Form GST REG-07 (Application for Registration as Tax Deductor at source (u/s 51) or Tax Collector at source (u/s 52))
  - Form GST REG-12 (Order of Grant of Temporary Registration/ Suo Moto Registration)

- **GSTR-4** has been substituted and a new format has been notified (Return for financial year of registered person who has opted for composition levy or availing benefit of notification No. 02/2019- Central Tax (Rate))

- **Form GST DRC-03** (Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement): It has been substituted and a new format has been notified
  - Annual return and Reconciliation statement has been added as one of the cause of payment through DRC-03

- **Changes in Form GSTR-9 (Annual Return).**
  Some of the significant changes are mentioned below:
  - Table 8C heading now read as "ITC on inward supplies (other than imports and inward supplies liable to reverse charge but includes services received from SEZs) received during 2017-18 but availed during April 2018 to ~~September~~ March, 2019"
  - Part V heading now read as "Particulars of the transactions for the ~~previous FY declared in returns of April to September of current FY or upto date of filing of annual return of previous FY whichever is earlier~~ FY 2017-18 declared in returns between April 2018 till March 2019"
  - Instruction to Table 8A now read as: "It may be noted that the FORM GSTR-2A generated as on the 1st May, 2019 shall be auto-populated in this table".

Other Changes:

- ✓ **Insertion of Rule 10A:**

  10A. Furnishing of Bank Account Details.-

  After a certificate of registration in FORM GST REG-06 has been made available on the common portal and a Goods and Services Tax Identification Number has been assigned, the registered person, except those who have been granted registration under rule 12 or, as the case may be rule 16, shall as soon as may be, but not later than forty five days from the date of grant of registration or the date on which the return required under section 39 is due to be furnished, whichever is earlier, furnish information with respect to details of bank account, or any other information, as may be required on the common portal in order to comply with any other provision".

- ✓ **Amendment in Rule 21**

21.Registration to be cancelled in certain cases.-

The registration granted to a person is liable to be cancelled, if the said person,-

(a) does not conduct any business from the declared place of business; or

(b) issues invoice or bill without supply of goods or services in violation of the provisions of the Act, or the rules made thereunder; or

(c) violates the provisions of section 171 of the Act or the rules made thereunder.

(d) violates the provision of rule 10A.

L&S Comments:

Newly registered person are required to submit details of bank account or any other information asked by portal within 45 days from the date of grant of registration or due date of filing of return, whichever is earlier. Otherwise, GST registration may be cancelled.

✓ **Insertion of Proviso in Rule 46 - Tax Invoice**

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the tax invoice shall have Quick Response (QR) code.

✓ **Insertion of Proviso in Rule 49 – Bill of Supply**

Provided also that the Government may, by notification, on the recommendations of the Council, and subject to such conditions and restrictions as mentioned therein, specify that the bill of supply shall have Quick Response (QR) code.

L&S Comments:

- **QR code is a machine-readable code consisting of an array of black and white squares, typically used for storing URLs or other information for reading by the camera on a smartphone**
- **At present, no notification has been issued under the above rule.**

✓ **Amendment in Rule 66 - TDS**

Form and manner of submission of return by a person required to deduct tax at source.-

1) *Every registered person required to deduct tax at source under section 51 (hereafter in this rule referred to as deductor) shall furnish a return in FORM GSTR-7 electronically through the common portal either directly or from a Facilitation Centre notified by the Commissioner.*
2) *The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the ~~suppliers in Part C of FORM GSTR-2A and FORM GSTR- 4A~~ deductees on the common portal after ~~the due date of~~ filing of FORM GSTR-7 for claiming the amount of tax deducted in his electronic cash ledger after validation.*
3) *The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the common portal in FORM GSTR-7A on the basis of the return furnished under sub-rule (1).*

L&S Comments:

There is already an existing mechanism at the GST portal for acceptance of TDS by deductee. This amendment is in line with the facility already available at portal.

✓ **Amendment in Rule 67 - TCS**

Form and manner of submission of statement of supplies through an ecommerce operator.-

(1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in FORM GSTR-8 electronically on the common portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.

(2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers ~~in Part C of FORM GSTR-2A~~ on the common portal after ~~the due date of~~ filing of FORM GSTR-8 for claiming the amount of tax collected in his electronic cash ledger after validation.

L&S Comments:

There is already an existing mechanism at the GST portal for acceptance of TCS by supplier. This amendment is in line with the facility already available at portal.

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