Lakshmikumaran & Sridharan attorneys

L&S Update

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

L&S GST Update No. 30 of 2019
10th October 2019

Recent GST Notifications specifying:

- **Amendments in CGST Rules, 2017**
- **Time limits for specified returns**
- **Option for filing annual return**
- **Waiver of late fees**

Amendment in CGST Rules, 2017

Rule 21A : Suspension of registration (Effective from 09.10.2019)

- ✓ Sub-rule (3) provided that registered person, whose registration has been suspended, *shall not make any taxable supply* during the period of suspension.

- ✓ **Explanation** has been inserted to provide as under -

  "Explanation.-For the purposes of this sub-rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension".

- ✓ New sub-rule (5) has been inserted as follows-

  "(5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply."

L&S Comments:

- Explanation has been inserted to clarify that the registered person shall not issue tax invoice and collect tax during the suspension period. Also, it can be inferred that registered person can make supplies during the suspended period but shall not issue tax invoice and collect tax.

- Provisions of Section 31(3)(a) and Section 40 shall apply for issuance of invoices and reporting of transactions during the suspension period when the order for revocation for suspension is passed.
    - Section 31(3)(a) provides for issuance of revised invoice for the invoices issued between the effective date of registration till the date of issuance of certificate of registration.
    - Section 40 provides for filing of first return for reporting outward supplies between date on which supplier become liable for registration till the date on which registration has been granted.

Rule 36 : Documentary requirements and conditions for claiming ITC (Effective from 09.10.2019)

- ✓ New sub-rule (4) has been inserted as follows:

  "(4) Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 20 per cent. of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37."

L&S Comments:

- The sub-rule has been inserted in view of Section 43A of CGST Act which was inserted by CGST Amendment Act, 2018.
- The extent of available ITC has been restricted to "**the eligible**" ITC available.
- In the absence of implementation of matching procedure and new return system, this new condition for availment of credit will face practical challenges.

Open Issues:

- Meaning of 'Eligible Credit'?
- Computation of 20% threshold whether to be seen monthly or financial year wise?

Rule 61: Form and manner of submission of monthly return (Retrospectively with effect from 01.07.2017)

✓ In sub-rule (5), the following amendment has been carried out-

"Where the time limit for furnishing of details in FORM GSTR-1 under section 37 ~~and~~ or in FORM GSTR-2 under section 38 has been extended ~~and the circumstances so warrant, the Commissioner may, by notification, specify the manner and conditions subject to which the return shall~~ the return specified in sub-section (1) of section 39 shall, in such manner and subject to such conditions as the Commissioner may, by notification, specify, be furnished in FORM GSTR-3B electronically through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

Provided that where a return in FORM GSTR-3B is required to be furnished by a person referred to in sub-rule (1) then such person shall not be required to furnish the return in FORM GSTR-3."

✓ Sub-rule (6) has been omitted.

L&S Comments:

- Rule 61 has been amended retrospectively with effect from 01.07.2017.
- GST Council in its 37th Meeting had approved amendment to Rule 61 for providing that GSTR-3B is a return under Section 39 of the CGST Act.
- No need to furnish GSTR-3 if GSTR-3B has been furnished.
- Amendment has been carried out to invalidate the basis of the judgement pronounced by the Gujarat High Court?

Rule 91: Grant of provisional refund
(Effective from 24.09.2019)

- ✓ In sub-rule (3), the following amendment has been carried out-
  "(3) The proper officer shall issue a payment order in FORM GST RFD-05 for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice."

  ………

- ✓ New Sub-rule (4) has been inserted as follows:
  "(4) The Central Government shall disburse the refund based on the consolidated payment advice issued under sub-rule (3)."

L&S Comments:

- These are consequential amendments pursuant to amendments made in Rule 91 *vide* Notification No. 31/2019-Central Tax, dated 28.06.2019 effective from 24.09.2019.

Rule 117: Transitional provisions (Effective from 09.10.2019)

- Rule 117 deals with tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day.

- Due date for GST TRAN -1 and TRAN-2 extended to

  - *31st December, 2019 and*
  - *31st January 2020 respectively*

  in respect of registered persons who could not submit the said declaration by the due date on account of ***technical difficulties*** *on the common portal and in respect of whom the Council has made a recommendation for such extension.*

Rule 142: Notice and Order for demand of amounts payable (Effective from 09.10.2019)

- ✓ New sub-rule (1A) has been inserted as follows:

  "(1A) The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A."

- ✓ New Sub-rule (2A) has been inserted as follows

  "(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A."

Rule 142: Notice and Order for demand of amounts payable

- ✓ In sub-rule (2), following amendment has been carried out:

  "Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of sub-section (5) of section 73 or, as the case may be, tax, interest and penalty in accordance with the provisions of sub-section (5) of section 74, or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act, whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), he shall inform the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC–04"

- ✓ Form GST DRC-01A has also been prescribed for intimation of tax ascertained in Part A as per Rule 142(1A) and reply to the communication for payment before issue of SCN as per Rule 142(2A) in Part B.

L&S Comments:

- Rule 142 has been amended to provide that before issuance of SCN, proper officer shall communicate the details of any tax, interest and penalty as ascertained by the officer, in Part A of DRC-01A.

- Further, a person making partial payment or filing submission against proposed liability can file reply to the above communication in Part-B of DRC-01A.

Lakshmikumaran & Sridharan tax

Other Notifications

Due dates for filing GSTR-1 and GSTR-3B

(Notification No. 44/2019, 45/2019 and 46/2019-Central Tax, all dated 09-10-2019)

Category of Taxpayer	Form	Tax period	Due Date
Turnover more than INR 1.5 Crores	GSTR-1 (Monthly)	October, 2019 to March, 2020	11th of next month
Turnover upto INR 1.5 Crores	GSTR-1 (Quarterly)	October, 2019 to December, 2019	31st January, 2020
		January, 2020 to March, 2020	30th April, 2020
Regular Taxpayers	GSTR-3B (Monthly)	October, 2019 to March, 2020	20th of next month

Annual Return –

GSTR-9 made optional for specified taxpayer

(Notification No. 47/2019-Central Tax, dated 09-10-2019)

- For F.Y. 2017-18 and 2018-19, a registered person with **aggregate turnover in a financial year upto INR 2 crores** and who has **not furnished the annual return before the due date**, shall have **option** to furnish the annual return.

- The said return shall be **deemed to be furnished on the due date** if it has not been furnished before the due date.

Waiver of late fees

(Notification No. 48/2019 -Central Tax, dated 09-10-2019)

Principal place of business : Jammu and Kashmir		
Return	**Tax period**	**Filed up to**
GSTR-1 (having aggregate turnover of more than INR 1.5 Crores)	July 2019	11th October 2019
	August 2019	
GSTR-3B	July 2019	20th October 2019
	August 2019	
GSTR-7	July 2019	10th October 2019
	August 2019	

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