Lakshmikumaran & Sridharan attorneys

L&S Update

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

L&S GST Update No. 32 of 2019
27th December 2019

Recent Notifications specifying:

- Waiver of Late Fees for non-filing of GSTR-1
- Restrictions on availing provisional credit
- Restrictions on utilizing credit available in the electronic credit ledger
- Blockage of E-way bills
- Other misc. provisions

Waiver of Late Fees for failure to furnish return in Form GSTR-1

Notification No. 74/2019-Central Tax, dated 26th December, 2019

- Late fees payable for failure to furnish return in form GSTR-1 for the period July 2017 to November 2019 has been waived subject to a condition that such return is furnished by the registered person between 19th December 2019 to 10th January 2020.

- Notification No. 4/2018-Central Tax has been amended for this purpose with effect from 19-12-2019.

Changes in CGST Rules

Notification No. 75/2019-Central Tax, dated 26th December, 2019

Amendment of Rule 36(4) to restrict the quantum of provisional ITC

- Rule 36(4) has been amended to restrict provisional ITC in respect of invoices/debit notes not reflected in Form GSTR-2A to the extent of **10% of the eligible credit** available in respect of invoices/ debit notes the details of which are reflected in Form GSTR-2A, from the existing limit of 20%.
- This provision would be applicable from 1st January 2020.

L&S Comments:

- In our view, the amended restriction of 10% on provisional ITC shall be applicable for GSTR-3B filed for the month of December, 2019 onwards limiting it to invoices issued on or after 1st December 2019.
- The department in the light of ***Circular No. 123/42/2019–GST*** may dispute that the amended restriction will be applicable on all the invoices/debit notes on which credit is availed after 1st January, 2020.

Notification No. 75/2019-Central Tax, dated 26th December, 2019

Insertion of a new Rule 86A to restrict utilisation of ITC in certain cases

- The Commissioner or any officer authorised by him (not below the rank of Assistant Commissioner) may disallow the amount of ITC available in the electronic credit ledger **for discharging output tax liability or for claiming refund of unutilised ITC,** for reasons to be recorded in writing if he has reasons to believe that such ITC has been fraudulently availed or is ineligible.

- The aforesaid authorities may allow such debit, upon being satisfied that conditions for disallowing debit no longer exist.

- The restriction imposed under this provision shall cease to exit after the expiry of one year from the date of imposition of restriction.

- Such bar on utilisation/claiming refund can be made in the following situations:
  a. ITC has been availed on the basis of document issued by a person who has been found to be non-existent or is not conducting any business from registered place;
  b. ITC has been availed without receiving goods or services;
  c. Tax charged by the supplier has not been paid to the Government;
  d. The recipient of supply is non-existent or not conducting any business from registered place;
  e. The recipient of supply is not in possession of documents basis which ITC can be availed.

L&S comments:

- This provision has been brought to check the menace of fake invoices.

Open Questions:

- Whether there is power under **CGST Act** to impose such restriction?
- Whether Rule 86A(1) can disallow even the provisional ITC of 10% as specified under Rule 36(4) upon non-payment of tax by the supplier?
- Whether the Authority shall be required to follow the principle of natural justice while exercising the power under this provision?
- Whether the time period for claiming refund of unutilized ITC would be extended by the period for which the debit to the electronic credit ledger was barred on account of above restriction?

Notification No. 75/2019-Central Tax dated 13th December, 2019

Blockage of E-way bill

- A new clause (c) has been inserted in Rule 138E providing that the persons who fail to furnish the statement of outward supplies in form **GSTR-1** for **any** two months of quarter, as the case may be, shall not be allowed to generate E-way bill.

L&S Comments:

- Now, registered persons (other than composition scheme tax-payers) shall be barred from generating e-way bill on failure to furnish Form GSTR-1 for **any** two months/quarters whereas the bar on failure to furnish Form GSTR-3B provides for failure for a **consecutive** period of two months.

Extension of due dates for few North Eastern States

Extension of due date

(Notifications Nos. 76, 77 and 78-Central Tax, dated 26-12-2019)

Principal place of business : Assam, Manipur or Tripura		
Return	**Tax period**	**Filed upto**
GSTR-1 (having aggregate turnover more than INR 1.5 Crores)	November 2019	31st December 2019
GSTR-3B	November 2019	31st December 2019
GSTR-7	November 2019	25th December 2019

In addition to above, the due date of furnishing of return GSTR-3B for the month of November 2019 of persons whose principal place of business is in the state of Meghalaya has also been extended upto 31st December 2019.

Extension of due date for filing

Annual Return and Reconciliation Statement

Vide CGST (Tenth Removal of Difficulties) Order, 2019, the due date of furnishing annual return in Form GSTR-9 and reconciliation statement in Form GSTR-9C, for the period 1-7-2017 to 31-3-2018, has been extended up to **31st January 2020**.

SOP in case of non-filers of returns

- Vide **Circular No. 129/48/2019-GST** dated 24th December 2019, the Board has specified the procedure to be followed in case of non-filers of returns namely GSTR-3B, GSTR-9 and GSTR-10 as under:

a. System generated message to be sent to all registered persons 3 days before the due date to nudge them to file return by due date.

b. After due date, system generated email/message to be sent to all registered persons who failed to file return.

c. 5 days after the due date of furnishing return, a notice in FORM GSTR-3A shall be issued to all defaulters to furnish return within 15 days.

d. If the defaulter fails to furnish return within the said time, the Authority shall proceed to assess tax liability to best of his judgement (Best Judgement Assessment) in Form ASMT-13 basis the documents available on record.

e. In case defaulter furnishes a valid return within 30 days of the service of assessment order, the said order shall be deemed to be withdrawn. If return remains unfurnished, recovery proceeding under Section 78 and 79 would be initiated.

Constitution of Grievance Redressal Committee (GRC) at Zonal/State Level (Instruction dated 24th December 2019)

- The order constituting the Zonal/State level GRC to be issued latest by 10th January 2020.

Functions of GRC

- Examining and resolving issues faced by taxpayers including procedural and IT related issues.
- Referring issue requiring change in GST Laws to the GST Council Secretariat and Policy Wing of CBIC.
- Referring IT related issues pertaining to GST portal to GSTN.

Working of GRC

- The stakeholders will send grievances/suggestions to the Secretary of GRC, who will place before GRC.
- Secretary to submit quarterly report to GST Council Secretariat as well as to GST Policy Wing, CBIC.
- The details of actions taken on all issues will be displayed on the portal, which shall be available for viewing to all stakeholders to check the status of resolution.

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