Changes in GST Laws

L&S GST Update No. 4 of 2020 - Budget 2020

Lakshmikumaran & Sridharan attorneys

exceeding expectations

SINCE 1985

ITC in respect of Debit Notes

Amendment under Section 16(4)

- A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or ~~invoice relating to such~~ debit note pertains or furnishing of the relevant annual return, whichever is earlier.

Effect of Amendment

- Benevolent provision to extend the time period to avail ITC on debit notes i.e. upto due date of September month return or annual return following the financial year corresponding to debit note instead of underlying invoice which was under dispute earlier.

- The intent of amendment is to delink the date of issuance of debit note from the date of issuance of the underlying invoice for the purpose of ITC.

Open Issue

- Issuance of debit note relates to the invoice issued for the underlying supply made in the financial year. It will still be under dispute whether ITC can be claimed in respect of such debit notes which are still linked with the supply made in the financial year to which such debit note pertains.

- The dispute can be understood through the following illustration:

Period of supply	**Date of issuance of invoice**	**Date of issuance of deb it note**	**Time limit for claiming ITC on debit note**
May 2018	June 2018	December 2019	September 2019 Or September 2020?

Issues in Transitional Credit

Amendment under Section 140

- On-going dispute relating to what shall be the time limit for filing TRAN-1. Various matters pending with different High Courts.

- It has been held by various HC in the past that there is no time limit prescribed under Section 140 and the relevant rule cannot travel beyond substantive provisions to prescribe the time limit (*STO* Vs. *K.I Ibrahim*, 1967 SC 1823).

- This was one amongst other grounds for allowing manual filing of TRAN 1.

Amendment under Section 140

<u>Retrospective amendment</u> <u>w.e.f. 01-07-2017</u>

- Section 140(1), (2),(8) – insertion/substitution of "*within such time*"
- Section 140(3),(5),(7) (9)- insertion /substitution of "*within such time and in such manner*"
- As an effect of proposal, the late filing of TRAN-1 may not be permitted on the ground of absence of time limits in Section itself.

Open Issues

- Whether the pending cases become infructuous?

- Whether delayed filing of TRAN-1 can still be contested on other grounds?

- Impact on the decided/ pending cases?
  - Carry forward of credits- a constitutional right?- *Siddharth Enterprises* Vs. *Nodal officer, Gujarat High Court*
  - *A.B Pal Electricals (P) Limited Vs. Union of India & Ors., Delhi High Court , 2020-VIL-06-DEL*

Retrospective Amendments

Retrospective Amendments w.e.f. 01-07-2017

- Clarificatory amendment made to entry 4(a) & (b) of Schedule II by omitting phrase "whether or not for a consideration". The entry would be relevant to determine classification as "goods" or "services" provided the same constitutes supply under Section 7.

- Notification No. 3/2019- Compensation Cess (Rate) dated 30.9.2019 disallowing inverted duty structure refund for tobacco and manufactured tobacco substitutes given effect from 01.07.2017.
  - The move is to discourage traders from claiming refund of compensation cess under the guise of manufacture only to claim refund.

Retrospective Amendments w.e.f. 01.07.2017

- Effect given to 37th Council meeting held on 20th September 2019-
- Exemption to Fishmeal for the period 1-7-2017 to 30-9-2019 owing to confusion on applicable rate under S. No. 102 of notification No. 2/2017- Central Tax (Rate) vs S. No. 103 of notification No. 1/2017- Central Tax (Rate) dated 28.6.2017.
  - Exemption has been granted to overcome doubts regarding taxability of these goods owing to interpretational issues involved in relevant notification.

- 12% GST during the period 1-7-2017 to 31-12-2018, on pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery.
  - **Amendment is made owing to representation by domestic agricultural manufacturing industry since 12% GST was recovered during this period.**
  - In both the above cases, no refund for tax already collected and deposited.

Miscellaneous

Amendment under Section 10(2)

- Amendment to exclude from the ambit of the Composition scheme certain categories of taxable persons, engaged in making-
  (i) supply of "services" not leviable to tax under the CGST Act, or
  (ii) inter-State outward supply of "services", or
  (iii) outward supply of "services" through an eCommerce operator.

- Harmonization of conditions for eligibility for Composition Scheme after inclusion of certain categories of service providers within the Scheme.

Amendment under Sections 29 and 30

- Amendment to provide for cancellation of registration which has been obtained voluntarily.

- Amendment to empower the tax authorities to extend the date for application of revocation of cancellation of registration on sufficient cause being shown, and for reasons to be recorded in writing, in the following manner:
  (a) by Additional Commissioner/Joint Commissioner, to extend for a period not exceeding thirty days;
  (b) by Commissioner, for a further period not exceeding thirty days.

Amendment under Section 31(2)

- Amendment made to empower the Central Government to prescribe the “manner” of issuance of invoice in respect of supply of services.

- Similar provision already exists under Section 31 for supply of goods.

- Enabling provision for mandating taxpayers to issue e-invoice in respect of supply of services as well.

Amendment under Section 51

- Section 51(3) proposed to be substituted to state that a certificate of TDS shall be issued in such form and such manner as may be prescribed <u>without making deductor explicitly liable for issuance of TDS certificate</u>.

- On similar lines, it is proposed that late fees on delayed issuance of TDS certificate shall also be waived off.

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Amendment under Sections 2 and 109

- Amended definition of 'Union Territory' to include "Ladakh".

- Provisions for the Appellate Tribunal and its benches made applicable in the Union Territories of Jammu and Ladakh.

Amendment under Section 122

- Section 122 (1) provides for penalty for certain offenses including the following:
  - Supply of goods/services without issuance of invoice or by issuing incorrect or false invoice.
  - Issuance of invoice without supply of goods/services.
  - Taking of or availment of credit without actual receipt of goods/services fully or partially.
  - Distribution of credit by input service distributor in contravention of section 20.
- A penalty of ten thousand rupees or an amount equivalent to tax evaded or ITC availed or distributed irregularly was prescribed for above offences.

Amendment under Section 122

- It is proposed to insert new section (1A) vide which a penalty equivalent to tax evaded or ITC wrongly availed or passed on has now been prescribed for the above offences on the following person(s):
  - *The person who retains the benefit and on whose instance the transaction is conducted*

Amendment under Section 132

- Section 132 being amended to make certain specific offence as cognizable and non-bailable. Such offense(s) now covers fraudulent availment of input tax without invoice or bill.

- Further, it is proposed to make liable person(s) who causes to commit and retains the benefit apart from the person committing the offences for the punishment.

Amendment under Section 143

- Only jurisdictional commissioner shall-
  - determine and pay special audit expense and auditor fee under Section 66(5); and
  - extend time limit of 1/ 3 years for bringing back inputs/ capital goods after job work under second proviso to 143(1).

Amendment under Section 172

- Time limit for issuance of removal of difficulties order extended for another 2 years (upto 31.06.22).

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