Lakshmikumaran & Sridharan attorneys

L&S Update

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

GST Update No. 7 of 2020
25th March, 2020

- **Input Tax Credit**
- **Refund**

Clarification on apportionment of ITC in cases of business reorganization
Circular No. 133 03/2020-GST

Issue	Clarification
For apportioning ITC in case of demerger, whether the value of assets of the new units is to be considered at State level or at all-India level?	• Under CGST Act, a person/ company (having same PAN) is required to obtain separate registration in different States and each such registration is considered a distinct person for the purpose of the Act. • Accordingly, the value of assets of the new units is to be taken at the State level (at the level of distinct person) and not at the all-India level.
Is the transferor required to file FORM GST ITC – 02 in all States where it is registered?	• No. The transferor is required to file FORM GST ITC-02 only in those States where both transferor and transferee are registered.

Clarification on apportionment of ITC in cases of business reorganization

Issue	Clarification
The proviso to rule 41 (1) of the CGST Rules which prescribes apportionment on basis of value of assets, explicitly mentions 'demerger'. Is it applicable to all forms of business re-organisation?	• Yes, the formula for apportionment of ITC, as prescribed under proviso to sub-rule (1) of rule 41 of the CGST Rules, shall be applicable for all forms of business re-organization that results in partial transfer of business assets along with liabilities

Clarification on apportionment of ITC in cases of business reorganization

Issue	Clarification
Whether the ratio of value of assets shall be applied in respect of each of the heads of input tax credit viz. CGST/ SGST/ IGST/ Cess separately?	• No, the ratio shall be applied on sum of CGST, SGST/UTGST and IGST credit and need not be applied separately in respect of each heads of ITC (CGST/SGST/IGST). L&S Comments: The above clarification lacks supporting of legal provisions. However, this appears to be beneficial for taxpayers.
How to determine the amount of ITC that is to be transferred to the transferee under each tax head (IGST/CGST/SGST) while filing of FORM GST ITC–02 by the transferor?	• The total amount of ITC to be transferred to the transferee (i.e. sum of CGST, SGST/UTGST and IGST credit) can be transferred under any head (IGST, CGST, SGST/UTGST) provided the same is available as unutilised balance and does not exceed the amount of ITC to be transferred.

Clarification on apportionment of ITC in cases of business reorganization

Issue	Clarification
Which is the relevant date to calculate the amount of unutilized ITC balance of transferor?	• Section 18(3) states that the transferor shall transfer the ITC which remains unutilized in his electronic credit ledger. Rule 41 prescribes that ITC shall be transferred through FORM GST ITC – 02. • The apportionment formula shall be applied on the ITC balance of the transferor as available in electronic credit ledger on the date of filing of FORM GST ITC – 02 by the transferor.
Which date shall be relevant to calculate the ratio of value of assets, as prescribed in the proviso to rule 41 (1) of the CGST Rules, 2017?	• According to section 232 (6) of the Companies Act, 2013the "appointed date of demerger" is the date from which the scheme for demerger comes into force. • The ratio of the value of assets taken as on the "appointed date of demerger", shall be applied on the ITC balance on the date of filing FORM GST ITC - 02 to calculate the amount to transferable ITC.

Amendment in CGST Rules
Reversal of common ITC in respect of capital goods

✓ **Amendment in Rule 43: Reversal of common ITC in respect of capital goods**

- The Amendment has provided that ITC in respect of capital goods which were earlier used for non-business supplies or exempt supplies but subsequently covered in the category of common capital goods shall be directly credited to electronic credit ledger in entirety.
- Later, the proportionate amount of ITC pertaining to prior period shall be added in the output tax liability for which credit is claimed.
- There are other miscellaneous changes.

Refund Changes
Amendment in CGST Rules

✓ **Refund of tax wrongly paid or paid in excess [Rule 86(4)]**

- for which debit has been made from the electronic credit ledger,

the said amount, if found admissible,

- shall be re-credited to electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.

L&S Comments: The above amendment provides for refund in the form of ITC in case the tax was paid through ITC.

Amendment in CGST Rules
Refund Changes

✓ **Ceiling in definition of export turnover in case of zero-rated supplies without payment of tax [Rule 89(4)]**

Turnover of zero-rated supply of goods" means

- the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking, or
- **the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,**

whichever is less, other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both.

L&S Comments: The above amendment restricting the value of export for the purpose of refund to 1.5 times of value of domestic supplies may face valuation disputes. The purpose of this amendment is to put a check on over-valuation of export turnover.

Amendment in CGST Rules
Refund Changes

- ✓ **Order Sanctioning Refund [Rule 92(1A)]**

  Refund of any amount other than the refund of tax paid on zero-rated supplies or deemed export,

  - **Refund in cash for the tax paid through cash:** Order in RFD-06 sanctioning the amount of refund to be paid, in cash, proportionate to the amount debited in cash against the total amount paid for discharging tax liability
  - **Refund in ITC for the tax paid through ITC:** Remaining amount which has been debited from the electronic credit ledger for making payment of such tax, the proper officer shall issue FORM GST PMT-03 re-crediting the said amount as ITC in electronic credit ledger.

- ✓ **Explanation added to clarify restriction for refund in case of specified notifications apply only when BCD is exempted and refund allowable when IGST and Cess has been paid. [Rule 96(10)]**

Refund changes
Amendment in CGST Rules

✓ **Recovery of refund of unutilized ITC or IGST paid on export goods where export proceeds not realized [Rule 96B]**

Refund of

- unutilised ITC on account of export of goods or
- IGST paid on export of goods, has been paid to an applicant

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The sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the FEMA, including any extension

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Deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with interest within 30 days.

Refund changes
Amendment in CGST Rules

- ✓ **Recovery of refund of unutilized ITC or IGST paid on export goods where export proceeds not realized [Rule 96B]**

- If RBI writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.

- If after payment, the applicant produces evidence about such realisation within a period of 3 months from the date of realisation of sale proceeds, the amount shall be refunded back by the proper officer, to the applicant to the extent of realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by RBI.

- ✓ **Amendment in GST RFD-01 to add undertaking that the amount of refund sanctioned along with interest in case of non-receipt of foreign exchange remittances as per the proviso to section 16 of the IGST Act, 2017 read with rule 96B of the CGST Rules 2017.**

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