Lakshmikumaran & Sridharan attorneys

L&S Update

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

GST Update No. 11 of 2020
2nd April, 2020

- **Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020**
- **Circular on refund related issues**

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020
[*Indirect Tax Portion*]

Objective

In view of the spread of pandemic COVID-19 across many countries of the world including India, causing immense loss to the lives of people, this Ordinance has relaxed certain provisions, including extension of time limit.

A. Time limit under Central Excise Act, 1944, Customs Act, 1962, Customs Tariff Act, 1975 and Finance Act, 1994 extended to 30-6-2020

- Time limit **falling between 20-3-2020 to 29-6-2020 extended to 30-6-2020** for
  i. completion of any proceedings, order, notice, by whatever name called, by any authority, commission, tribunal, by whatever name called.
  ii. filing of any appeal, reply or application or furnishing of any report, document, return or statement, by whatever name called.
- The period and the date can be extended beyond 30-6-2020 by the Central Government vide notification.

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020
[*Indirect Tax Portion*]

B. Extension of Time-lines under Sabka Vishwas Scheme

Particulars	Originally	Extended
Section 127: Statement by Designated Committee (DC)		
• Amount declared = Estimate by DC [Section 127(1)]	Within 60 days	31.05.2020
• Amount Declared < Estimate by DC [Section 127(2)]	Within 30 days	01.05.2020
• Amount finalization after hearing [Section 127(4)]	Within 60 days	31.05.2020
Payment by the declarant after issuance of statement by DC [Section 127(5)]	Within 30 days	30.06.2020

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 [*Indirect Tax Portion*]

C. New Section 168A under CGST Act: Power of Government to extend time limit in special circumstances.

- Insertion of new Section 168A
- On the recommendations of the Council, the Government may **by notification**, **extend the time limit** under CGST Act in respect of actions which cannot be **completed or complied with due to force majeure**.
- Power to give retrospective effect from 01-7-2017.
- Force Majeure means a case of war, epidemic, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act

L&S Comments: Extension of various time lines under GST law as announced in the press release dated 24-3-2020 may be notified under Section 168A. Official notifications in this regard are awaited.

Circular on refund related issues [Circular No.135/05/2020-GST]

A. Bunching of refund claims across Financial Years

Background

- Circular no. 125/44/2019-GST dated 18.11.2019 (Master Circular) provided that the applicant, at his option, may file a refund claim for a tax period or by clubbing successive tax periods. The period for which refund claim has been filed, however, cannot spread across different financial years.
- Hon'ble Delhi High Court in the case of *M/s. Pitambra Books Pvt. Ltd.* stayed the above clarification and directed government to allow petitioner to file refund claim.

Clarification

- No bar under Section 16(3) of the IGST Act, 2017 read with Section 54(3) of the CGST Act, in claiming refund by clubbing different months across successive Financial Years.
- Restriction in circular on clubbing of tax periods across Financial Years removed. Restriction on bunching of refund claims across financial years shall not apply.

Circular on Refund Related Issues [Circular No.135/05/2020-GST]

B. Refund of accumulated input tax credit (ITC) on account of reduction in GST Rate

Background

- Refund claims filed for unutilized ITC on account of inverted duty structure where the inversion is due to change in the GST rate on the same goods.
- Say, an applicant trading in goods has purchased, say goods “X” attracting 18% GST. However, subsequently, the rate of GST on “X” has been reduced to 12%.

Clarification

- The input and output being the same in such cases, though attracting different tax rates at different points in time, do not get covered under Section 54(3)(ii).
- Refund will not be eligible in such cases.

L&S Comments: The above clarification may be challenged in the court of law since Section 54 read with rules does not provide for any such restriction.

Circular on Refund Related Issues [Circular No.135/05/2020-GST]

C. Change in manner of refund of tax paid on supplies other than Zero rated supplies and Deemed export

- Clarification on newly inserted Rule 86(4A) and Rule 92(1A).
- **Earlier, unintended encashment of credit balances**, in case of refund of excess payment of tax; Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa; Refund on account of assessment/provisional assessment/appeal/any other order; etc.
- Now, refund under above circumstances will be admissible proportionately in the respective original mode of payment.
  - Where the tax to be refunded has been paid by debiting both electronic cash and credit ledgers , the refund to be paid in cash and credit shall be calculated in the same proportion in which the cash and credit ledger have been used.
  - Order in GST RFD-06 for cash and order in GST PMT-03 to re-credit in the electronic credit ledger.

Circular on Refund Related Issues [Circular No.135/05/2020 – GST]

D. Restriction on refund amount due to Rule 36(4)

- In the wake of Rule 36(4), refund of accumulated ITC shall be restricted to the ITC for those invoices, the details of which are uploaded by the supplier in GSTR-1 and are reflected in the GSTR-2A of the applicant.

L&S Comments:

- Whether 10% provisional ITC amount would be available for refund?
- What would be the status of pending refunds?

E. Requirement to provide HSN/SAC code in refund application

- A distinction is important in view of the provisions relating to refund where refund of credit on Capital goods and/or services is not permissible in certain cases.
- Hence, Annexure-B amended to insert HSN/SAC in the statement of invoices relating to inward supply for refund application except in cases where supplier is not mandated to mention HSN/SAC

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