L&S UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

30 MAY 2021

INDIRECT TAX

43rd GST Council Meeting – Recommendations

UPDATE NO. 17 OF 2021

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

I. Rationalization of late fee imposed under section 47 of the CGST Act prospectively

- For taxpayers having aggregate turnover in the preceding FY

(Amounts in INR)

Return / Statement	Category	Annual Aggregate Turnover (Preceding year)	Late fee[1] capped per day (per return)	Maximum Late Fee Capped (per return)
Form GSTR-3B & Form GSTR-1	**GSTR 3B:** Summary ofoutward and inward supplies **GSTR-1:** Details of outward supplies of goods or services	More than INR 5 Crore	50	10,000
		More than INR 1.5 crore and up to INR 5 crore	50	5000
		Up to INR 1.5 crore	50	2000
Form GSTR-4	Return for registered person opting for composition levy	-	50	2000
Form GSTR-7	Return for Tax Deducted at Source	-	50	2000

- However, Late fee is to be capped at INR 500 (CGST + SGST) per return in following cases:
  - Nil outward supplies in Form GSTR-1
  - Nil Tax liability in Form GSTR-3B
  - Nil Tax liability in Form GSTR-4

[1]This includes CGST and SGST both

II. Relaxation of Interest and Late fee

- For taxpayers having an aggregate turnover in the preceding FY

Class of Registered person	Return	Tax period	Due date	Relief in respect of Interest	Relief in respect of Late Fee
Aggregate turnover more than INR 5 Crore	GSTR-3B	May 2021	20 June 2021	• **9%** - Return filed within first 15 days from due date.	**No late fee** - Return filed within first 15 days from due date Late fee shall be payable from the due date of return in case the return is not filed within 15 days from due date
Aggregate turnover upto INR 5 Crore		March 2021	**GSTR 3B:** 20 April 2021[2] **PMT 06:** 22 April 2021 / 24 April 2021[3]	• **Nil –** Return filed within first 15 days from due date • **9% p.a-** Return filed after 15th day but before 60th day	**No late fee** - Return filed within first 60 days from due date Late fee shall be payable from the due date of return in case the return is not filed within 60 days from due date
	GSTR-3B & PMT - 06 challan	April 2021	**GSTR 3B:** 20 May 2021 **PMT 06:** 25 May 2021	• **Nil –** Return filed within first 15 days from due date	**No late fee** - Return filed within first 45 days from due date

[2]For registered persons whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep.

[3]For registered persons whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi.

Class of Registered person	Return	Tax period	Due date	Relief in respect of Interest	Relief in respect of Interest
				• **9%** - Return filed after 15th day but before 45th day	Late fee shall be payable from the due date of return in case the return is not filed within 45 days from due date
		May 2021	**GSTR 3B:** 20 June 2021 **PMT 06:** 25 June 2021	• **Nil –** Return filed within first 15 days from due date • **9% p.a–** Return filed after 15th day but before 30th day	**No late fee** - Return filed within first 60 days from due date Late fee shall be payable from the due date of return in case the return is not filed within 60 days from due date
	CMP-08	Quarter ending March 2021	18 April 2021	• **Nil –** Return filed within first 15 days from due date • **9% p.a–** Return filed after 15th day but before 60th day	None

III. Amnesty Scheme regarding late fee for pending returns

- Waiver/ Reduction in late fee for non-furnishing of return in Form GSTR-3B for all categories of taxpayers
  For the tax period **July 2017 to April 2021**, late fee will be levied as under:
    I. **Maximum Rs 500 (CGST + SGST) per return** - If there is no tax liability
    II. **Maximum Rs. 1000 (CGST+SGST) per return** - If there is any tax liability

  Above rate will be applicable only if Form GSTR-3B is filed between 1 June 2021 to 31 August 2021.

IV. Extension of Due dates

Form	Tax Period	Due Date	Extended Due Date
GSTR-4	FY 2020-21	31 May 2021	31 July 2021
ITC -04	Quarter ending March 2021	31 May 2021	30 June 2021
GSTR-1	May 2021	11 June 2021	26 June 2021
Invoice Furnishing Facility	May 2021	13 June 2021	28 June 2021

V. Covid relief items

Heading	Present Coverage	Decision by 43rd GST Council Meeting
Relaxation from IGST on imports of specified COVID-19 material for donation. *[Ad hoc Exemption Order No. 04/21-Cus., dated 3 May 2021]*	Earlier exemption up to 30 June 2021 subject to various conditions including imports should be on free-of-cost basis by State Government or, any entity, relief agency or statutory body authorised for free distribution for Covid relief.	• Exemption extended till 31 August 2021. • Exemption applicable even if imported on payment basis for free distribution for Covid relief. • Exemption extended for Amphotericin B (used for treating Black Fungus).

Group of Ministers (GoM) constituted to analyse further relief to COVID-19 related individual items who shall give its report by 08.06.2021.

VI. Amendments / Clarifications for other goods

Goods	Decision by 43rd GST Council Meeting
Diethylcarbamazine (DEC) tablets	GST rate to be reduced from 12% to 5% to support the Lymphatic Filariasis (an endemic) elimination programme being conducted in collaboration with WHO.
Repair value of goods re-imported after repairs	Clarification / clarificatory amendment on levy of IGST on repair value of goods re-imported after repairs. **L&S Comments** The clarification seems to address levy of IGST on repair value of goods re-imported after repairs in light of decision by CESTAT, New Delhi in the case of *Interglobe Aviation Ltd.* v. *Commissioner of Customs* [2020-VIL-495-CESTAT-DEL-CU]. However, issuance of circular is awaited.

Goods	Decision by 43rd GST Council Meeting
Parts of sprinklers / drip irrigation systems	Clarification / clarificatory amendment that GST at the rate of 12% to apply on parts of sprinklers / drip irrigation systems falling under tariff heading 8424 (nozzle / laterals) even if these goods are sold separately. **L&S Comments** • Earlier, Circular No. 81/55/2018-GST, dated 31 December 2018 clarified that the term "sprinklers", in the entry 195B, covers sprinkler irrigation system. Accordingly, sprinkler system consisting of nozzles, lateral and other components would attract 12% GST rate. • The present clarification seems to further clarify that parts of sprinklers / drip irrigation systems shall attract 12% even if these goods are sold separately. However, issuance of circular is awaited.

VII. Amendments / Clarifications for Services

Services	Decision by 43rd GST Council Meeting
Amendments	
ITC on Construction services provided by Developer to Promoter	• Explicit provision in rate notification to make it clear that land owner promoters could utilize credit of GST charged to them by developer promoters in respect of such apartments that are subsequently sold by the land promotor and on which GST is paid. • The developer promotor shall be allowed to pay GST relating to such apartments any time before or at the time of issuance of completion certificate

Services	Decision by 43rd GST Council Meeting
Amendments	
	L&S Comments • Fourth proviso to conditions of S. No. 3(i) to 3(id) of Notification No. 03/2019-CTR (New Rates) provided that Landowner-Promoter can avail ITC for the GST charged by Developer-Promoter, however, first proviso to conditions of new rates provided that ITC cannot be used for payment of new rates. The above decision appears to remove this anomaly. • Decision to allow developer to pay GST any time before issuance of completion certificate appears to be clarificatory in nature.
MRO of Ships / Vessels	Extension of same dispensation as provided to MRO units of aviation sector to MRO units of ships / vessels so as to provide level playing field to domestic shipping MROs vis a vis foreign MROs: (a) GST on MRO services in respect of ships / vessels shall be reduced to 5% (from 18%). (b) Place of Supply of B2B supply of MRO Services in respect of ships / vessels would be location of recipient of service **L&S Comments** • Impact on Domestic Shipping Lines receiving services from Foreign MROs Double taxation disputes may arise due to payment of IGST under Section 3(7) of CTA on import of repaired goods and payment of IGST as import of service under this notification.

Services	Decision by 43rd GST Council Meeting
Amendments	
	• Impact on Domestic MROs • Domestic MROs are given level playing field with Foreign MROs • Benefit of concessional rate of 5% with ITC benefit • Services to Foreign Shipping lines would amount to export of services.
Clarifications	
Services provided to educational institution	Services supplied to an educational institution including anganwadi (which provide pre-school education also), by way of serving of food including mid- day meals under any midday meals scheme, sponsored by Government is exempt from levy of GST irrespective of funding of such supplies from government grants or corporate donations. **L&S Comments** S. No. 66 of Notification No. 12/2017-CTR exempts services provided to an educational institution, by way of catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory. However, Council has decided to provide exemption even in case of funding from corporate donations.
Services by National Board of Examination (NBE) or similar Boards	Services provided by way of examination including entrance examination, where fee is charged for such examinations, by NBE, or similar Central or State Educational Boards, and input services relating thereto are exempt from GST.

Services	Decision by 43rd GST Council Meeting
Clarifications	
Services of milling of wheat / paddy into flour	Service by way of milling of wheat/paddy into flour (fortified with minerals etc. by millers or otherwise)/ rice to Government/ local authority etc. for distribution of such flour or rice under PDS is exempt from GST if the value of goods in such composite supply does not exceed 25%. Otherwise, such services would attract GST at the rate of 5% if supplied to any person registered in GST, including a person registered for payment of TDS **L&S Comments** The above clarification seems to be in line with Memo No. 7300 CT issued by Commissioner of State Tax, West Bengal and West Bengal AAR decision in the case of *Sakshi Jhajharia* [2020-VIL-40-AAR]. However, issuance of circular is awaited.
Annuity received from NHAI	GST is payable on annuity payments received as deferred payment for construction of road. Benefit of the exemption is for such annuities which are paid for the service by way of access to a road or a bridge. **L&S Comments** The clarification seems to be inconsistent with intention of exemption notification as reflected in press release of GST Council and agenda notes. The annuity received from NHAI are for construction of road under Hybrid Annuity Model and not for any access services. However, issuance of circular is awaited.
Construction of rope-way	Services supplied to a Government Entity by way of construction of a rope-way attract GST at the rate of 18%.

Services	Decision by 43rd GST Council Meeting
Clarifications	
Guaranteeing of Loans	Services supplied by Govt. to its undertaking/PSU by way of guaranteeing loans taken by such entity from banks and financial institutions is exempt from GST. **L&S Comments** The clarification seems to be in line with S. No. 34A of Notification No. 12/2017-CTR. However, issuance of circular is awaited

VIII. Other Matters

GST Council recommended amendments in certain provisions of the Act so as to make the present system of GSTR-1/3B return filing as the default return filing system in GST.

L&S Comments

The above decision was taken by 42nd GST Council Meeting on 5 October 2020 originally. However, the amendments are yet to be made.

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