LKS UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

21 FEBRUARY 2023

INDIRECT TAX

Analysis of the recommendations of the 49th GST Council Meeting

UPDATE NO. 20 OF 2023

Lakshmikumaran & Sridharan
attorneys

exceeding expectations
SINCE 1985

A. GST APPELLATE TRIBUNAL

- Recommendations of Group of Ministers ('GoM') on setting up of GST Appellate Tribunal have been accepted with certain amendments.
- The final draft amendments to the GST laws shall be circulated to Members for their comments. The Chairperson has been authorized to finalize the same.

LKS COMMENTS

- The report submitted by the GoM on the Goods and Services Tax Appellate Tribunals ('GSTAT') which was set up in July last year has been considered by the Council. It is likely that amendment in the Goods and Services Tax ('GST') Laws would be made for setting up of GSTAT in this Budget Session.

B. CHANGES IN RATES OF GOODS AND SERVICES

1. **Coal rejects supplied by and to coal washery**
   Sl. No. 41A of Notification No. 01/2017-Compensation Cess (Rate) has been decided to be amended to extend exemption on coal rejects supplied to and by a coal washery arising out of coal on which compensation cess has been paid and no input tax credit thereon has been availed by any person.

LKS COMMENTS

- The proposed change will settle the ongoing dispute with respect to applicability of compensation cess on coal rejects supplied to and by a coal washery.
- As a result of the proposed change, compensation cess on supply of coal rejects by the supplier to the washery will get exempt.

2. **Reduction of GST rates for 'Rab' and 'Pencil Sharpeners':**
   The rate of GST on the following goods have been proposed to be reduced:
   - 'Rab' from 18% to 5% (if sold Pre-packaged and labelled) and Nil (if sold otherwise). For the past period, the Council has decided to regularize payment of GST on "as is basis" on account of genuine doubts over its classification and applicable GST rate.
   - Pencil sharpeners from 18% to 12%.

3. **Tax on tag tracking device or data logger affixed on durable containers:**
   Notification No. 104/94-Customs has been decided to be amended so as to provide that:
   - no separate IGST shall be levied on tag-tracking device or data logger as already affixed on durable containers.
   - 'Nil' IGST treatment available for such containers under said notification shall also be available to such affixed device subject to existing conditions.

4. **Exemption to National Testing Agency, authority, board for conduct of entrance examination for admission to educational institutions**
   - It has been decided that the services provided by any authority, board or a body set up by the Central Government or State Government including National Testing Agency for conduct of entrance examination for admission to educational institutions shall be exempted.
   - Currently the said exemption is available to educational institutions and Central and State educational boards for conduct of entrance examination for admission.

5. **Reverse Charge applicable where Courts and Tribunals supply taxable services**
   - GST on the supply of specified services by Courts and Tribunals shall be payable by the specified recipients under reverse charge.
   - It has been specifically stated that the tax on service of renting of premises to telecommunication companies for installation of towers, renting of chamber to lawyers, shall be payable on reverse charge basis.

L&S Comments:

Applicability of para 2 of Schedule III in respect of specified services provided by the Courts and Tribunal have to be analyzed.

C. PAN MASALA, GUTKHA ETC.

- The recommendations made by GoM were approved by the Council in order to improve revenue collection from commodities like pan masala, gutkha, and chewing tobacco.
- These recommendations, inter alia, include that:
  - The capacity-based levy not to be prescribed.
  - Exports of such commodities to be permitted only against Letter of Undertaking with consequential refund of accumulated Input Tax Credit. Hence, no exports of such commodities can be made with payment of taxes.
  - Compliance and tracking measures are to be implemented in order to plug leakages/evasion.

LKS COMMENTS

- Ongoing demand of tobacco manufacturers to levy capacity-based tax on such products has been rejected.

D. RATIONALIZATION OF PROVISION OF PLACE OF SUPPLY OF SERVICES OF TRANSPORTATION OF GOODS

- Currently as per section 13(9) of IGST Act, the place of supply for transportation of goods other than by way of mail or courier, would be destination of such goods.
- The above Section 13(9) is proposed to be deleted.

LKS COMMENTS

- It is proposed to delete the said provision so that the place of supply of such services shall be the location of the recipient of services.

- The said amendment is in line with the amendment proposed by the Finance Bill, 2023 to omit the proviso to Section 12(8) of the IGST Act.

E. EXTENSION OF TIME LIMIT FOR APPLICATION FOR REVOCATION OF CANCELLATION OF REGISTRATION

- Section 30(1) of the Central Goods and Services Tax Act, 2017 ('CGST Act') and Rule 23(1) of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') state that an application for revocation of cancellation of registration may be submitted by a registered person within 30 days from the date of cancellation by the proper officer. This could be further extended upon approval by Additional/Joint Commissioner.
- It has been decided that the time limit for making an application shall be increased from 30 days to 90 days, which is extendable for a further period of upto 180 days upon approval of the Commissioner/an officer authorized by him in this behalf.

One time Amnesty Scheme for cases where registration has been cancelled.

- For the past cases, where registration has been cancelled on account of non-filing of returns, but application could not be filed within the time limit prescribed by Section 31 of the CGST Act and Rule 23 of the CGST Rules, an amnesty scheme would be provided by allowing them to file an application for revocation by a specified date, subject to certain conditions.

F. EXTENSION OF TIME PERIOD OF BEST JUDGEMENT ASSESSMENT UPON NON-FILING OF RETURNS

- If a person fails to file the return within 15 days from the date of issuance of notice in Form GSTR-3A, then the officer has the power to perform best judgment assessment u/s 62 of CGST Act, 2017. Further, if the return is filed within 30 days of the service of the assessment order in FORM GST ASMT-13, then the order stands withdrawn.
- It has been proposed to increase this time limit prescribed for filing of the return from 30 days to 60 days for enabling deemed withdrawal of such best judgment assessment order. The said time limit shall be extendable by another 60 days subject to certain conditions.

One time amnesty scheme for conditional deemed withdrawal of assessment orders

- For the past cases, an amnesty scheme would be provided where the returns could not be filed within 30 days but were filed along with interest due and late fee upto a specified date.
- The said amnesty scheme shall be available even if an appeal was filed or decided against the assessment order.

G. REDUCTION OF LATE FEES FOR FILING OF ANNUAL RETURNS

- Presently, in case of delayed filing of annual return in FORM GSTR-9, late fee of INR 200 per day (INR 100 CGST + INR 100 SGST), subject to a maximum of 0.5% of turnover in the State or UT (0.25% CGST + 0.25% SGST), is payable.
- The Council has recommended to reduce the late fees for delayed filing of the annual return in FORM GSTR-9 for FY 2022-23 onwards for registered persons having aggregate turnover in a financial year upto INR 20 crore:

Aggregate Turnover in said FY	Late fee per day	Maximum late fee (% of turnover in State or Union Territory)
Upto INR 5 crore	INR 50 (INR 25 CGST + INR 25 SGST)	0.04% (0.02% CGST + 0.02% SGST).
More than INR 5 crore and upto INR 20 crore	INR 100 (INR 50 CGST + INR 50 SGST)	0.04% (0.02% CGST + 0.02% SGST).

H. AMNESTY SCHEME FOR FILING PENDING FORM GSTR- 4/ 9/ 10

- A large number of taxpayers have not been able to file the following pending returns:
  - GSTR-4 - composition dealers
  - GSTR-9 - annual returns
  - GSTR-10 - final return after cancellation of registration
- Amnesty scheme is recommended for such taxpayers for filing of pending returns by way of conditional waiver/ reduction of late fee.

LKS COMMENTS

- This amnesty scheme is proposed to give relief to a large number of taxpayers.
- Only conditioner waiver/ reduction is recommended in Council meeting.

I. RELEASE OF BALANCE GST COMPENSATION CESS

- Government of India has decided to clear the entire provisionally admissible outstanding balance of GST Compensation Cess due for five years to the tune of INR 16,982 crores for June 2022.
- Since there is no amount in the GST Compensation Fund, the Centre decided to release this amount from its own resources and the same amount will be recouped from the future compensation cess collection.
- The Centre will also clear the admissible final GST compensation to six states who have provided the revenue figures as certified by the accountant general of the states amounting to INR 16,524 crores.

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