L&S UPDATE

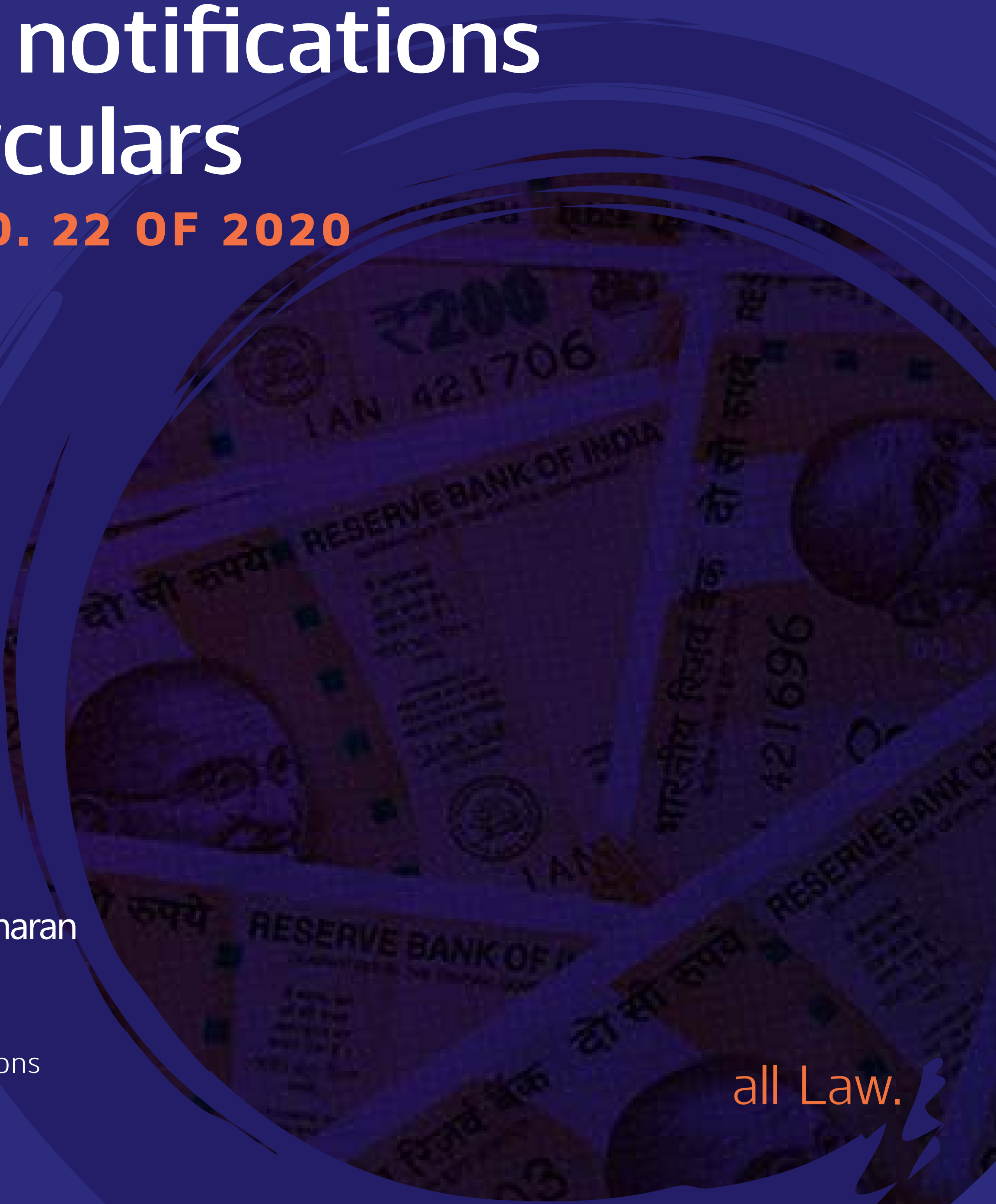
An e-update to clients from Lakshmikumaran & Sridharan

JUNE 13, 2020

GST

Latest updates on recent notifications and circulars

UPDATE NO. 22 OF 2020



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SPECIAL SMS FACILITY FOR FURNISHING NIL RETURNS

[Notification No. 44/2020-CT, dated June 6, 2020]

Manner of furnishing of return by Short Messaging Service ("SMS") facility w.e.f. June 8, 2020

- Form GSTR-3B for a month having nil or no entry in all the Tables can be filed through a SMS using the registered mobile number and the said return shall be verified by a registered mobile number based One Time Password facility.

- This facility introduced vide Rule 67A of the Central Goods and Services Tax Rules, 2017 (**"CGST Rules"**) has been made effective w.e.f. **June 8, 2020**.

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L&S COMMENTS

This will ease GST compliance for the registered persons having NIL returns.

EXTENSION OF TRANSITION DATE FOR PERSONS IN THE MERGED UT OF DAMAN & DIU AND DADRA & NAGAR HAVELI

[Notification No. 45/2020-CT, dated June 6, 2020]

- Notification No. 10/2020-CT dated March 21, 2020 had notified special procedure for persons in the merged Union Territory of Daman and Diu and Dadra and Nagar Haveli from January 27, 2020 onwards, to be followed till May 31, 2020 (old transition date).

- The transition date has been extended from May 31, 2020 to **July 31, 2020** (new transition date).

- This amendment has been given retrospective effect from **May 31, 2020**.

EXTENSION OF TIME LIMIT FOR ISSUANCE OF REFUND ORDER

[Notification No. 46/2020-CT, dated June 9, 2020]

- This notification has extended the time limit for issuance of refund order by proper officer under Section 54(5) read with Section 54(7) of the *Central Goods and Services Tax Act, 2017* (**"CGST Act"**), if the said time limit falls between March 20, 2020 to June 29, 2020 and the proper officer had issued a notice for rejection of refund claim in this case.

- In such a case, the time limit for issuance of refund order shall be the later of the following dates:
  - **Fifteen days** after the receipt of reply to the notice from the registered person; or
  - **June 30, 2020.**

- This notification has been given retrospective effect from **March 20, 2020.**

L&S COMMENTS

- Before this amendment, the time limit for furnishing the reply to notice for rejection of refund claim by the applicant as well as issuance of refund order by proper officer were extended till the same date i.e. June 30, 2020 *vide* Notification No. 35/2020-CT.

- The extended time limit will now allow the proper officer additional window of 15 days to issue the refund order specifically in those cases where the reply to notice is furnished by June 30, 2020 by the applicant.

EXTENSION OF VALIDITY PERIOD OF EXPIRED E-WAY BILL

[Notification No. 47/2020-CT, dated June 9, 2020]

Extended validity period of E-Way Bill

- Validity period for such E-Way bills which were generated on or before March 24, 2020 and whose validity has expired on or after March 20, 2020 has been extended till **June 30, 2020**.

- This amendment has been made effective w.e.f. **May 31, 2020.**

Earlier Position

- The validity of E-Way bills generated on or before March 24, 2020 and expiring between March 20, 2020 to April 15, 2020 was extended till May 31, 2020.

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L&S COMMENTS

- The notification is silent for the validity period of those E-Way bills which were generated after March 24, 2020 and got expired during the lockdown period or after that.

CLARIFICATION ON EXPORT RELATED REFUND ISSUES

[Circular No. 139/09/2020-GST, dated June 10, 2020]

Background

- Circular No. 135/05/2020, dated March 31, 2020 had restricted the exporter from claiming refund of accumulated ITC for those invoices which were not reflected in the GSTR-2A of the exporter in the wake of Rule 36(4) of CGST Rules.

- It was reported that the refund sanctioning authorities had started rejecting the refund claims of accumulated ITC in respect of Imports, ISD invoices, RCM, etc.

Clarification

- The refund of ITC availed on the invoices / documents relating to imports, ISD invoices and RCM supplies shall not be impacted by the March circular.

- The refund application in these cases shall continue to be treated in the same way as it was done before issuance of Circular No. 135/05/2020-GST.

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L&S COMMENTS

- The circular is benevolent for registered persons to the extent it clarifies the position of eligibility to claim refund in respect of ITC availed on Imports, ISD invoices, RCM etc.

- However, the circular is silent on the issue as to whether 10% provisional ITC amount would be available for refund to an exporter.

CLARIFICATION IN RESPECT OF LEVY OF GST ON DIRECTOR'S REMUNERATION

[Circular No. 140/10/2020-GST, dated June 10, 2020]

A. Leviability of GST on remuneration paid to non-employee directors or independent directors

- The following categories of directors are recognised in the circular as non-employee director:
  - A whole time director may not be an employee of the company.

  - An independent director cannot be an employee in terms of Section 149(6) of the *Companies Act, 2013*, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014.

- It has been clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is **taxable in hands of the company, on reverse charge basis.**

B. Leviability of GST on remuneration paid to employee directors

- The circular pointed out the following observations:
  - A director can function in dual capacities; namely, as a director of the company and on the basis of the contractual relationship of master and servant with the company.

  - Similar identification is also present in the *Income Tax Act, 1961* (**"IT Act"**) for the purpose of deduction of TDS under IT Act.

- Basis the above observation, it has been clarified that:
  - Remuneration treated as salary in the books and subjected to TDS under Section 192 is covered under Schedule III of the CGST Act and therefore is not leviable to GST.

  - Remuneration declared as 'other than salary' and subjected to TDS under Section 194J of the IT Act is not covered under Schedule III of the CGST Act and therefore leviable to GST.

L&S COMMENTS

- This circular put to rest the anomaly raised by recent advance rulings in case of *Clay Craft India* and *Alcon Consulting Engineers* which ruled that directors cannot be employees of the company.

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