LKS UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

5 APRIL 2023

INDIRECT TAX

GST Updates on changes by Finance Act, 2023

UPDATE NO. 23 OF 2023

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exceeding expectations
SINCE 1985

The Finance Act, 2023 has received the presidential assent on 31 March 2023.

According to Section 1(2)(b) of the Finance Act, 2023, the provisions of Finance Act 2023 amending Central Goods and Services Tax Act, 2017 (**'CGST Act'**) and Integrated Goods and Services Tax Act, 2017 (**'IGST Act'**) shall come into force on such date as the Central Government may appoint by notification in the Official Gazette.

The changes as are as under:

I. CHANGES BY FINANCE ACT

A. Amendment to Section 23 (w.e.f. 1 July 2017)

- Section 23 provides for persons not liable for registration. Sub-section (2) of the provision has been substituted to give an overriding effect over Sections 22 and 24 of the CGST Act.

- Further, Section 23(2) of the CGST Act provides that the government may by notification specify category of persons who may be exempted from obtaining registration under the Act.

- The provision additionally provides that the government may impose 'conditions and restrictions' in the notification specifying categories of persons who may be exempted from obtaining registration under the CGST Act.

LKS COMMENTS

- Some persons are required to compulsorily register under GST in terms of Section 24 (such as to discharge GST liability under reverse charge).

- It is to be noted that particularly, sub-section (1) of Section 23 does not have an overriding effect over Sections 22 and 24. Hence, the requirement of registration of persons under Section 24 even though they may be covered by Section 23 may be settled by issuance of a notification under Section 23(2) to the said effect.

B. Time Limit for application for revocation of cancellation of registration

- Section 30 provides for revocation of cancellation of registration.

- Sub-section (1) of Section 30 has been amended to state that the registered person whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration **in such manner, within such time and subject to such conditions and restrictions, as may be prescribed.**

- Previously, it was stated that the registered person shall apply in "the prescribed manner within thirty days from the date of service of the cancellation order".

LKS COMMENTS

- It appears that the above provision has been proposed to be amended to empower the Government to prescribe time, manner, conditions and restrictions subject to which the registered person may apply for revocation of cancellation of registration.

C. Composition Levy extended to suppliers making supply of goods through E-commerce operators

- Section 10(2)(d) of the CGST Act stated that a registered person shall not be eligible to opt for composition scheme under sub-section (1) if he is engaged in making supply of goods or services through electronic commerce operator ('ECO') who is required to collect tax at source under Section 52 ('TCS').

- The provision has been amended to omit the words 'goods or'.

- Accordingly, if a registered person is engaged in making supply of goods through an ECO (required to collect TCS), such person shall be eligible to opt for composition scheme under Section 10(1).

Similar changes have been made to Section 10(2A)(c) of the CGST Act. The provision prescribes for an alternative composition scheme for persons not eligible to opt for composition scheme under sub-sections (1) and (2) of Section 10 with prescribed turnover.

D. Interest under Section 50 for non-payment within 180 days

- Second Proviso to Section 16(2) has been amended to state that where a recipient fails to pay an amount towards value of supply (with tax) within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit (**'ITC'**) availed by the recipient shall be paid by him along with interest payable under Section 50.

- Previously, the provision stated that an amount equal to ITC availed by the recipient shall be added to his output tax liability, along with interest thereon, in manner prescribed.

E. Apportionment of ITC - Amendment in Explanation to Section 17(3)

- Explanation to Section 17(3) has been amended to include value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of Schedule III in the value of exempt supply.

- This is in addition to the activities or transactions specified in paragraph 5 of the said Schedule which is currently covered under the said Explanation.

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LKS COMMENTS

- As a result of this amendment, the transaction of sale of supply of warehoused goods to any person before clearance for home consumption (in-bond sale) will be treated to be an exempt supply for the purpose of reversal of ITC.

F. No ITC on supplies used for activities/obligations under CSR)

- Clause (fa) is being inserted under Section 17(5) of the CGST Act to state that ITC shall not be available in respect of goods or services, or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in Section 135 of the Companies Act, 2013

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LKS COMMENTS

- The availability of ITC on goods or services used for activities relating to obligations under corporate social responsibility has been a subject matter of dispute due to contrary Advance Rulings[1] .

1 2022 (11) TMI 482; 2023 (53) G.S.T.L. 482; 2019 (24) G.S.T.L. 103 (A.A.R. – GST)

Once the proposed amendment comes into force, ITC will not be available on goods or services used / intended to be used for discharge of corporate social

II. RETURN AND REFUND RELATED CHANGES

G. Introduction of time limit for furnishing various returns / statements

- A new sub-section (5) has been inserted in Section 37 of the CGST Act so as to provide a time limit of three years up to which the details of outward supplies under sub-section (1) of the said section for a tax period can be furnished by a registered person.

- It has inserted a new sub-section (11) in Section 39 of the CGST Act so as to provide a time limit of three years up to which the return for a tax period can be furnished by a registered person.

- It has inserted a new sub-section (2) in Section 44 of the CGST Act so as to provide a time limit of three years up to which the annual return under sub-section (1) of the said section for a financial year can be furnished by a registered person.

- It has inserted a new sub-section (15) in Section 52 of the Central Goods and Services Tax Act so as to provide a time limit of three years up to which the statement under sub-section (4) of the said section for a month can be furnished by an electronic commerce operator.

- Further, a proviso has been inserted in all the aforesaid cases to empower the Government, on the recommendation of the Council, to extend by notification, the said time limit, subject to certain conditions and restrictions as may be prescribed.

LKS COMMENTS

- This amendment has been made pursuant to recommendation of GST Council in its 48th Meeting.

- As a result of above amendment, the registered person will not be allowed to furnish GSTR1, GSTR 3B, GSTR 9, GSTR 8 after a period of 3 years from the due date of furnishing of such returns / statements.

H. Changes in Section 54

- Section 54(6) provides that proper officer may, in case of any claim for refund on account of zero-rated supply made by registered persons, (other than notified categories), refund on a provisional basis, ninety per cent. of total amount so claimed, excluding amount of ITC provisionally accepted, in manner prescribed and thereafter make order under Section 54 (5).

- In the aforesaid sub-section, the words "excluding the amount of input tax credit provisionally accepted," shall be omitted.

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LKS COMMENTS

- With effect from 1 January 2022, Section 41 of the CGST Act has been substituted by Finance Act, 2022 to provide availment of ITC on self-assessed basis and has omitted the provision related to availment of ITC on provisional basis & matching thereof.

- The above changes have been proposed to be made to ensure uniformity.

I. Changes in Section 56 - Interest on delayed refund

- In Section 56 of the CGST Act, for the words "from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax", the words "for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed" have been substituted.

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LKS COMMENTS

- It appears that the above provision has been proposed to be amended to empower the Government to prescribe the manner of computation of interest in such cases.

J. Extension of time of limit to file return under Section 62

- Section 62 provides for assessment of non-filers of returns.

- In sub-section (2) of this section, the period to furnish a valid return has been increased from thirty days to sixty days from the service of assessment order under sub-section (1).

- A proviso has been inserted to state that the registered person who fails to furnish a valid return within 60 days of the service of the assessment order, may furnish the same within a further period of 60 days on payment of an additional late fee of INR 100 for each day of delay beyond 60 days of the service of the said assessment order.

- It states that in case he furnishes valid return within such extended period, assessment order shall be deemed to have been withdrawn, but the liability to pay interest under Section 50(1) or to pay late fee under Section 47 shall continue.

III. CONSTITUTION OF GST APPELLATE TRIBUNAL

K. Constitution of GST Appellate Tribunal

- Section 109 provides for the "Constitution of Appellate Tribunal and Benches thereof".

- It provides that the jurisdiction, powers and authority conferred on the Appellate Tribunal shall be exercised by the Principal Bench and the State Benches constituted under sub-section (3) and (4).

- It has been stated under sub-section (3) and (4)
    - i. Principal Bench of the Appellate Tribunal at New Delhi shall consist of the President, a Judicial Member, a Technical Member (Centre) and a Technical Member (State) which shall be notified by the government.
    - ii. State Benches shall consist of two Judicial Members, a Technical Member (Centre) and a Technical Member (State).

- The government on the request of the State may constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council.

- The reference of Area Benches and Regional Benches has been substituted. Parallel changes have been brought in Section 117

L. Amendment to Section 110

- Section 110 provides for "President and Members of Appellate Tribunal; their qualification, appointment, conditions of service, etc.'. The provision has been substituted. Certain amendments to the same are as follows:

- A person shall not be qualified for appointment as a Judicial Member, unless he—
    - i. has been a Judge of the High Court; or
    - ii. has, for a combined period of ten years, been a District Judge or an Additional District Judge.

M. Amendment to Section 114

- Section 114 has been substituted to provide for the financial and administrative powers of President over the Appellate Tribunal. The reference of National Bench and Regional benches have been removed.

- Parallel changes have been brought in Sections 118 and 119.

IV.OFFENCES UNDER GST LAW

N. Insertion of a separate set of offences for the ECOs

- *Vide* Section 155 of the Finance Act 2023, a new sub-section (1B) has been inserted in Section 122 of the CGST Act, which prescribes the penalty that can be imposed for a set of offences committed by e-commerce operators ('**ECOs**').

- The offences that have been specified for ECOs are as follows:
    - i. Allowing the supply of goods and/or services through it by an unregistered person, unless such person is exempt from registration in terms of any GST notification,
    - ii. Allowing inter-state supply of goods and/or services through it by a person who is not eligible to make such supplies,
    - iii. Failing to furnish the correct details in Form GSTR-8 in relation to any outward supply of goods erected through it by a person exempted from obtaining registration under this Act.

In case any of these offences are committed by an ECO, it becomes liable to pay a penalty of INR 10,000, or an amount equivalent to the amount of tax involved, had such supply been made by a registered person other than a person paying tax under Section 10, whichever is higher.

LKS COMMENTS

- Specific provisions have been made for the liability of ECOs on supplies taking place through their platforms both by registered and unregistered persons. Resultantly, responsibilities and compliance requirements at the end of ECOs shall increase.

- ECOs in a manner have been mandated to check the registration requirements of the persons supplying through it.

O. Decriminalisation of offences under the GST law

- The following offences have been decriminalized, and thereby omitted from the purview of Section 132(1) of the CGST Act:
  i. The offence of obstruction or prevention of any officer in the discharge of his duties under the CGST Act;
  ii. The offence of tampering with or destroying any material evidence or documents;
  iii. The offence of failing to supply any information which he is required to supply under the CGST Act or the CGST Rules or supplying false information, unless the person is under a reasonable belief (the burden of proving which shall be upon him) that the information supplied by him is true;
  iv. The attempts to commit, or abetment of the commission of the aforesaid offences.

- The applicable imprisonment and fine have been removed in case of any other offences (other than those specified under Section 132), where the amount of tax evaded / ITC wrongly availed or utilised / refund wrongly taken is between INR 1 crore and INR 2 crore.

In its place, such imprisonment and fine has been made applicable in cases where invoices are being issued without the supply of goods and /or services, in violation of the provisions of the CGST Act, or the CGST Rules, leading to wrongful availment or utilisation of ITC or refund of tax.

LKS COMMENTS

- These amendments are in line with the recommendations of the GST Council at its 48th Meeting, to bifurcate between minor offences with no component of *mala fide* intent, and the major offences where the intent to evade GST is involved.

- After the amendment is effective, no offences other than those specified under Section 132 of the CGST Act can be punished by way of criminal proceedings, imprisonment and fine.

- The threshold for launching criminal proceedings has been raised from INR 1 crore to INR 2 crore for all offences under Section 132, except for the offence of issuance of fake invoices

- This strict emphasis on the offence of issuance of fake invoices is in keeping with the earlier clarifications issued on the demand and penalty proceedings in cases involving fake invoicing, vide the Circular No. 171/03/2022-GST dated 6 July 2022 (after the 47th GST Council Meeting).

P. Changes relating to compounding of offences

The following changes have been brought about in Section 138 of the CGST Act:

- Compounding of offences is now allowed only once for all the offences specified under the amended Section 132(1).

- The option of compounding will not be available to any person who has been accused of committing the offence of issuance of fake invoices, leading to the wrongful availment / utilisation of ITC or refund of tax.

- The restrictions relating to availing the option of compounding of offences has been omitted for the following circumstances:
    i. If the person has been allowed to compound any offence once under any SGST/UTGST Act or the IGST Act in respect of supplies of value exceeding INR 1 crore.
    ii. If the person is accused of committing an offence under the CGST Act, which is also an offence under any other law in force.

The amount to be paid for such compounding of offences has been reduced, i.e. the minimum amount payable would be 25% of the tax involved, and the maximum amount would be 100% of the tax involved.

Q. Insertion of Section 158A in the CGST Act

- Section 158A is being inserted in the CGST Act so as to prescribe the manner and conditions for sharing of the information furnished by a registered person in his return or in his:
    a. Application for registration or the monthly return filed under Form GSTR-3B,
    b. Statement of outward supplies, or the Form GSTR-1,
    c. Details uploaded by him for generation of electronic invoice, or
    d. E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

- For the purposes of sharing the above details under sub-section 158A(1), the consent shall be obtained, of:
    a. the supplier, in respect of all such details,
    b. the recipient, in respect of details furnished under GSTR-1, E-waybill or any other documents as may be prescribed.

Notwithstanding anything contained in any law for the time being in force, there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

LKS COMMENTS

- The said changes have been to enable the sharing of information furnished by the registered person in his return while making other compliances with other systems in a manner to be prescribed.

- Pertinently, such details shall only be shared with the consent of the supplier and in some cases, as well as the recipient and shall not impact the liability to pay tax on any relevant supply, or the relevant return.

- The purpose of this insertion appears to make compliance efficient.

R. Amendment to Schedule III of CGST Act

- In Schedule III to the CGST Act, paragraphs 7 and 8 and the Explanation 2 thereof (as inserted vide Section 32 of the Act No. 31 of 2018) shall be deemed to have been inserted therein with effect from the 01.07.2017. The said paragraphs covers supplies of goods from a place outside the taxable territory to another place outside the taxable territory, high sea sales and supply of warehoused goods before their home clearance.

- No refund shall be granted with respect to the GST which has already been collected on such activities during the period from 1 July 2017 till 31 January 2019.

V. CHANGES TO THE IGST ACT, 2017

Section	Amendment (yet to be brought into force)
2	**Simplifying and widening the taxability of OIDAR service** • The definition of OIDAR services under Section 2(17) of the IGST Act has been altered to exclude the requirement of the supply being "essentially automated and involving minimal human intervention" for a supply to qualify as supply of OIDAR services. • The definition of "non-taxable online recipient" under Section 2(16) has been substituted, and now it covers any unregistered person. Earlier, it covered any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory. • Further, an Explanation has been added to Section 2(16), which adds that any person who has taken registration solely under Section 24(vi) of the CGST Act, i.e. persons who have registered only for the deduction of TDS under Section 51, will also be considered to be an unregistered person for the purpose of this definition.

Section	Amendment (yet to be brought into force)
	●●● **LKS COMMENTS** • These amendments are in line with the recommendations of the GST Council at its 48th Meeting, which recommended making changes to these definitions in order to reduce interpretational and litigation issues. • The definition of "non-taxable online recipient" has been simplified and substantially widened to cover any unregistered person. • The removal of the requirement of the services being "essentially automated and involving minimal human intervention" will lead to various interpretational issues. The said phrase has been a crucial factor for the determination of the nature of the services. • Thus, Suppliers engaged in cross-border OIDAR services need to re-examine their positions. The impact on the position taken in past also needs to be seen.
12	**Amendment in relation to Place of Supply of Services of Transportation of Goods under Section 12 of the IGST Act** The provision under Section 12(8) of the IGST Act has been omitted; this proviso states that the place of supply of services by way of transportation of goods outside India as the destination of the goods, where both the supplier and the recipient of such services are located in India. ●●● **LKS COMMENTS** • As per the prevailing proviso, the relevant supplies amount to inter-state supplies, but notably, they fail to qualify as export of services. • The proposed omission would bring a welcome change to eliminate any confusion with regards to nature of tax applicable on such supplies.

Section	Amendment (yet to be brought into force)
13	**Omission of Section 13(9) in relation to place of Supply of Services of Transportation of Goods** The Section 13(8) of the IGST Act has been omitted; this sub-section provided for the place of supply of services by way of transportation of goods, including by mail or courier. ●●● **LKS COMMENTS** • This omission is in line with the recommendations of the GST Council at its 49th Meeting and object behind the omission of proviso to Section 12(8).

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