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L&S Update

an e-update to clients from
Lakshmikumaran & Sridharan

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**Revised Model GST Law -
Adjudication and Recovery**

Adjudication and Recovery

It may be recalled that a draft Model GST law was released earlier on the website of the Ministry of Finance (Department of Revenue), Government of India on June 14, 2016 inviting comments. A revised Model GST law has now been released on November 26, 2016.

The provisions in the revised Model GST law and the revisions made in respect of Assessment, Adjudication and Recovery provisions are as follows:

A. Self Assessment

- Every registered taxable person shall himself assess the taxes payable under the Act and furnish a return for each tax period.
- No person other than a registered taxable person shall collect any amount by way of CGST/SGST in respect of any supply of goods and/or services.
- Issue of credit notes for adjustment of tax liability is also permissible where the goods supplied are returned by the recipient, or where services supplied are found to be deficient.

B. Provisional Assessment

- It is explicitly provided that interest liability on finalisation shall be only on the tax short paid under provisional assessment.

C. Demand and adjudication in normal cases

- The provisions relating to demands in normal cases, i.e. not involving fraud, wilful mis-statement, etc., and the demands involving fraud, wilful mis-statement, etc. are dealt with in separate sections of the model law.
- Besides a time limit of three years from the due date for filing of annual return for adjudication of the demand, time limit has also been specified for issue of the demand notice. The notice is required to be issued at least three months prior to expiry of limitation period for issuance of order.
- The discretion in levy of penalty upto 10% of the amount of tax has been omitted. The penalty on adjudication shall be mandatory at 10% of the tax or Rs. 10,000 whichever is higher.

D. Demand and Adjudication in cases involving fraud, wilful mis-statement, etc.

- The time limit for issue of adjudication order shall be five years from the due date for filing of annual return. The notice is required to be issued at least six months prior to expiry of limitation period for issuance of order.
- The term ‘suppression’ is now explicitly defined to mean non-declaration of facts or information which a taxable person is statutorily required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

E. General Provisions relating to demands and recovery

- The amount payable under an order issued under the Act shall be paid within a period of ninety days from the date of service of such order. However, this 90-day period may be reduced by the tax official in the interest of revenue for reasons to be recorded in writing.

- Recovery of demand is barred until expiry of ninety days after the date of service of the order of demand. However, where the proper officer is satisfied that there is a likelihood that it may not be possible to recover the amount of demand if recovery is delayed, he may, with the prior approval of Addl. / Joint Commissioner may specify a date in the order of demand by which payment of the demand due and payable may commence.
- Provision has been inserted for automatic stay of recovery on filing of appeal before First Appellate Authority / Appellate Tribunal against the order of demand. The stay shall continue till the appeal is resolved by First Appellate Authority/ Appellate Tribunal. No such automatic stay is available on filing of appeal before High Court/ Supreme Court.
- Time limit of two years from the date of communication of direction has been prescribed for issue of the order where the order is required to be issued in pursuance of the direction of the Tribunal or a Court.

F. Tax wrongfully deposited as SGST/ CGST instead of IGST & vice-versa

- Earlier the provision allowed refund of SGST/ CGST wrongly deposited on an IGST transaction & vice-versa. Now the benefit under the provision has been extended to provide for non-payment of interest in such cases.

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