L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

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INDIRECT TAX

47th Meeting of the GST Council – Highlights of recommendations in GST law and procedure

UPDATE NO. 26 OF 2022

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exceeding expectations
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GST law and procedure related recommendations made by the GST Council in its 47th Meeting held on 28 and 29 June 2022

I. Recommendations in respect of supplies made through E-commerce Operator
II. Recommendations for resolving refund related discrepancies
III. Provisions of Finance Act, 2022 to be notified soon
IV. Imports and exports including deemed exports
V. GST Compliances
VI. Issuance of Circulars to remove ambiguity and legal disputes
VII. Limitation for demand and refunds
VIII. Resolving disputes over constitution of Tribunals
IX. Miscellaneous

I. RECOMMENDATIONS IN RESPECT OF SUPPLIES MADE THROUGH E-COMMERCE OPERATOR ('ECO')

- **Waiver from registration by persons operating through ECO**
  - Persons who supply goods or services or both, other than supplies specified under section 9(5) of the CGST Act, through ECO, who are required to collect tax at source under Section 52, are not required to obtain mandatory GST registration under Section 24(ix) on fulfillment of following conditions:
    - The aggregate turnover on all India basis does not exceed the threshold limit prescribed under Section 22(1) and notifications issued thereunder.
    - the person is not making any inter-State taxable supply

- **Benefit to composition taxpayers for allowing intra-State supplies through ECO**
  - Section 10(2) provides that a registered person cannot opt for composition scheme if such person is *inter-alia* engaged in making any supplies through an ECO.

  - GST Council has recommended that taxpayers who have opted for Composition Scheme would be allowed to make intra-State supply through ECO subject to certain conditions.

  - The details of such scheme will be worked out by the Law Committee of the Council. The scheme would be tentatively implemented with effect from 1 January 2023.

II. RECOMMENDATIONS FOR RESOLVING REFUND RELATED DISCREPANCIES

- **Amendment in formula prescribed for refund of unutilised ITC on account of inverted duty structure under Rule 89(5)**
  - Formula prescribed for determining the refund of unutilised ITC on account of inverted duty structure under Rule 89(5) would be amended to take into account utilization of ITC on account of inputs and input services for payment of output tax on inverted rated supplies in the same ratio in which ITC has been availed on inputs and input services during the said tax period.

  - This would help those taxpayers who are availing ITC on input services also.

L&S Comments:

This recommendation is in line with the Supreme Court suggestion to GST Council to reconsider the formula prescribed under Rule 89(5) and take a policy decision regarding the same. (*VKC Footsteps India Pvt. Ltd.* reported at 2021-VIL-81-SC)

The above amendment is a welcome step for the industry, and it appears to remove the existing anomaly wherein the formula seeks to deduct the total output tax from only one component of the ITC, namely ITC on input goods. However, the ITC on both input goods and input services is accumulated in the electronic ledger and is then utilised for the payment of output tax. The existing formula tilts the balance in favour of the Revenue by reducing the refund granted. Now, the proposed amendment provides for a statutory assumption that utilization of ITC, on account of inputs and input services for payment of output tax on inverted rated supplies, is in the same ratio in which ITC has been availed on inputs and input services.

Further, it is to be seen if the formula is going to be amended retrospectively.

- **Amendment in Rule 96**
  - Rule 96 of the CGST Rules deals with the aspect of refund of integrated tax paid on goods or services exported out of India

  - In some cases, refund claims in respect of export of goods are suspended / withheld where the exporter is identified as risky exporter requiring verification by GST officers, or where there is a violation of provisions of Customs Act.

  - Now, GST Council has proposed to amend Rule 96 of the CGST Rules for allowing transmission of IGST refund claims on the portal in FORM GST RFD-01 to the jurisdictional GST authorities for processing so as to expedite disposal of IGST refund claims after due verification by GST officers.

- **Refund of unutilized Input Tax Credit on account of Export of Electricity.**
  - Amendment has been recommended in the CGST Rules to provide for refund of unutilized Input Tax Credit on account of Export of Electricity. This would facilitate the exporters of electricity in claiming refund of utilized ITC on zero rated supplies.

L&S Comments:

Supply of electricity is not accompanied by shipping bill at the time of export which resulted in disputes while granting refund of unutilised ITC.
The recommendation proposes to resolve the dispute.

- **Re-credit of amount in Electronic Credit Ledger ('ECL')**
  - GST council has proposed to re-credit the amount of erroneous refund in the ECL of the taxpayer in scenarios where taxpayer deposits the amount of refund, which was erroneously refunded, in contravention of rule 96(10) of the CGST Rules, along with interest and penalty in following cases:
    - Accumulation of ITC
    - IGST paid on zero rated supply of goods or services,

    Thus, a new Form GST PMT-03A has been proposed to be introduced in order to enable taxpayers to get the re-credit in their ECL.

L&S Comments:

- At present, there is Form GST PMT-03 prescribing the order for re-credit of the amount into cash or credit ledger on rejection of refund claim. This form was not catering to the specific situation wherein firstly the refund was sanctioned and thereafter, the amount of erroneous refund was deposited back. Therefore, a new form has been proposed to grant re-credit of amount of erroneous refund, paid back by them, in their ECL.

- **Clarification in respect of term "Specified officer" under Rule 89(1)**
  - Rule 89(1) of the CGST Rules provides that refund on account of supplies to SEZ shall be available after an endorsement from specified officer regarding receipt of supply of goods or services by SEZ. However, the term "Specified Officer" was not defined.

  - Now, the GST Council has recommended insertion of an explanation to Rule 89(1) to clarify that "specified officer" under the said sub rule shall mean the "specified officer" or "authorized officer", as defined under SEZ Rules, 2006.

  - Further, SEZ Rules, 2006 defined the term "Specified officer" to mean an Inspector or Preventive officer, or Appraiser or Superintendent of Customs posted in the Special Economic Zone and authorized by the Specified Officer to discharge any of his functions under Special Economic Zone Rules, 2006.

- **Restriction on refund of accumulated ITC**
  - Refund of accumulated ITC would not be allowed on following goods:
    - Edible oils
    - Coal

III. PROVISIONS OF FINANCE ACT, 2022 TO BE NOTIFIED SOON

- **Recommendation to Central Government to notify Section 110(c) and Section 111 of the Finance Act 2022**
  - Clause (c) of Section 110 of the Finance Act 2022 provides for amendment in Sub section (10) of Section 49 to allow for transfer of CGST and IGST amount from a registered person's cash ledger between distinct persons. Further, the said transfer is subject to the condition that there is no unpaid liability in the electronic liability register.

  - Section 111 of the Finance Act provides for retrospective amendment in Section 50 (3) of the CGST Act w.e.f. 01.07.2017, to provide that interest is to be paid by a taxpayer on "ineligible ITC availed and utilized" and not just on "ineligible ITC availed".

  - Further, Rules would also be prescribed for providing the manner of calculation of interest under section 50 of the CGST Act and for transfer of balance in CGST and IGST cash ledgers between distinct persons.

IV. IMPORTS AND EXPORTS INCLUDING DEEMED EXPORTS

- **Exemption of IGST on import of goods under AA / EPCG / EOU scheme is to be continued and E-wallet scheme is not to be pursued further.**
  - Exemption of IGST on import of goods under Advance Authorization (AA) / Export Promotion Capital Goods (EPCG) / Export Oriented Units (EOU) scheme was extended up to 30 June 2022 *vide* DGFT Notification No. 66/2015-20 dated 1 April 2022.
  - Now, GST Council has recommended that import of goods under AA / EPCG / EOU scheme will continue to be exempt from IGST.
  - Further, in 22nd GST Council Meeting, E-wallet scheme was proposed as solution to prevent cash blockage of exporters due to upfront payment of GST on inputs[1]. E-wallet scheme is basically the creation of electronic wallets, which would be credited with notional or virtual currency by the DGFT. This notional / virtual currency would be used by the exporters to make the payment of GST / IGST on the goods imported / procured by them so their funds are not blocked[2].
  - GST Council has recommended that E-wallet scheme will no longer be pursued.

L&S Comments:

The date upto which exemption from payment of IGST on import of goods under AA / EPCG / EOU would continue is yet to be notified.

[1] 22nd GST Council Meeting, New Delhi dated 06 October 2017
[2] Recommendations of GST Council, 26th GST Council Meeting, New Delhi dated 10 March 2018.

- **No reversal of ITC on supply of Duty credit scrips by the exporter**
  - Entry No 122A of the Notification No. 2/2017- Central Tax (Rate) provides that sale of duty credit scrips is an exempt supply.
  - Now, GST council has proposed to amend Explanation 1 after Rule 43 of CGST Rules in order to provide that there is no requirement of reversal of input tax credit on exempt supply of Duty Credit Scrips by the exporters.

L&S Comments:

- This is a welcome amendment to put an end to ongoing industry dispute wherein the department is contending to reverse proportionate ITC under Rules 42 and 43 pertaining to exempt turnover of duty credit scrips.
- It is to be analyzed whether the above referred amendment would also be applicable to persons trading in duty credit scrips and if online RoDTEP scrips would be covered under Duty Credit Scrips referred to here.

- **Supplies from Duty Free Shops (DFS) to outgoing international passengers to be considered as Exports**
  - Presently, there is ambiguity in the GST law pertaining to supply of goods by duty free shops to outgoing international passengers as exports.
  - Rule 95A of the CGST Rules grants refund (tax paid on inward supply of goods) to DFS established in departure area of an international airport, beyond the immigration counters, on supplying goods to an outgoing international tourist who is leaving India. Simultaneously, related notifications and circulars were introduced.
  - Now, GST Council has recommended that "Supplies from Duty Free Shops (at international terminal to outgoing international passengers are to be treated as exports by DFS and consequential refund benefit to be available to them on such supplies"
  - After carrying out requisite amendments based upon this recommendation, Rule 95A of the CGST Rules, Circular No 106/25/2019-GST, dated 29.06.2019 and related notifications shall be rescinded accordingly.

L&S Comments:

Dispute regrading treatment of supplies from DFS to outgoing international passengers as export has been resolved.

V. GST COMPLIANCES

- **Inclusion of Unified Payment Interface (UPI) and Immediate Payment Service (IMPS) as a mode payment in Electronic Cash Ledger**
  - Rule 87(3) of the CGST Rules provides various modes for depositing the amount in electronic cash ledger towards tax, interest, penalty, fees or any other amount.
  - It has been recommended to include following as an additional mode for payment:
    - UPI
    - IMPS

- **Waiver of late fee imposed on filing of FORM GSTR-4 after due date**
  - GST Council has recommended to extend the waiver of late fee on delay in filing FORM GSTR-4 for FY 2021-22 till 28 July 2022.
  - The existing waiver is for the period from 01 May 2022 till 30 June 2022.

- **Extension of due date for filing of Form GST CMP-08**
  - GST Council has recommended to extend the due date of filing of FORM GST CMP-08 for the tax period FY 2022-23 (Quarter 1) from 18 July 2022 to 31 July 2022.

- **Exemption from filing of Form GSTR-9/9A**
  - Registered person having annual aggregate turnover (AATO) upto INR 2 crore shall be exempted from filing of annual return in Form GSTR-9/9A for the FY 2021-22.

- **Provision for automatic revocation of suspension of registration under Rule 21A CGST Rules**
  - As per Section 29(2) (b) and (c), the proper officer may cancel the registration of a person *inter-alia* in scenarios where a person has not furnished the prescribed return for a prescribed period.

- Further, Rule 21A(2A) of CGST Rules provides for suspension of registration by system when comparison of details of outward supplies in Form GSTR-3B with corresponding outward supplies furnished by him in Form GSTR-1 or inward supplies in Form GSTR-3B with corresponding inward supplies reported by suppliers in their Form GSTR-1, shows significant differences or anomalies indicating contravention of provision of the CGST Act.

- GST Council has recommended to introduce provision for automatic revocation of suspension of registration in cases where suspension of registration was done by the system under Rule 21A(2A) of CGST Rules, for non-compliance in terms of clause (b) or clause (c) of section 29(2) of CGST Act (continuous non-filing of specified number of returns), once all the pending returns are filed on the portal by the taxpayer.

VI. ISSUANCE OF CIRCULARS TO REMOVE AMBIGUITY AND LEGAL DISPUTES ON THE FOLLOWING GST RELATED ISSUES

- Claiming refund under inverted duty structure where the supplier is supplying goods under some concessional notification.

- Applicability of demand and penalty provisions under the CGST Act in respect of transactions involving fake invoices

- Mandatory furnishing of correct and proper information of inter-State supplies and amount of ineligible/blocked Input Tax Credit and reversal thereof in return in FORM GSTR-3B

- Refund claimed by the recipients of supplies regarded as deemed export

- Interpretation of Section 17(5) of the CGST Act

- Perquisites provided by employer to the employees as per contractual agreement

- Utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

VII. LIMITATION FOR DEMAND AND REFUNDS

- **Exclusion of Covid time period from calculation of limitation period under section 54, 55 and 73 of CGST Act**
    - The Supreme Court took cognizance of the challenges faced by the country on account of Covid-19 pandemic and passed an Order, for the first time on 23 March 2020 *vide* Suo Moto Writ (Civil) No. 3 of 2020, extending the period of limitation in all petitions, applications, suits, appeals and all other proceedings w.e.f. from 15 March 2020 till further orders.

    - Considering the multiple Covid pandemic waves, the Hon'ble Supreme Court kept on extending the period of limitation.

    - Lastly, *vide* Order dated 10 January 2022 reported at 2022 VIL SC 03, the Hon'ble Supreme Court directed that the period from 15 March 2020 till 28 February 2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

    - In order to implement the above Supreme court order, the GST Council has recommended to exclude time period from 1 Mar 2020 to 28 Feb 2022 for calculation of limitation period in following scenarios:
        - Filing of refund under claim under Section 54 and 55 of the CGST Act;
        - Issuance of demand / order in respect of erroneous refund under Section 73.

    - Further, limitation period under Section 73 for the FY 2017-18 for issuance of order in respect of other demands linked with due date of annual return shall be extended till 30th September 2023.

VIII. RESOLVING OF DISPUTES OVER CONSTITUTION OF TRIBUNALS

- **Constitution of Group of Ministers to address state government concerns pertaining to formation of GST Appellate Tribunal**
  - Section 109(1) of CGST Act empowers the Government, on the recommendations of the Council, to constitute an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

  - GST Council has decided to create a Group of Ministers to address various concerns expressed by the States regarding the establishment of the GST Appellate Tribunal and to provide recommendations for necessary amendments to the CGST Act.

L&S Comments:

Earlier, Madras High Court struck down Section 110(1)(b)(iii), 109(3) and 109(9) of CGST Act in the case of *Revenue Bar Association* v. *Union of India, GST Council*, 2019(9) TMI 983 (Mad HC) holding it to be unconstitutional.

IX. MISCELLANEOUS

- GSTN has been asked to expeditiously resolve the issue of negative balance in Electronic Cash Ledger being faced by some of the composition taxpayers.

- Proposal for comprehensive changes in FORM GSTR-3B to be placed in public domain for seeking inputs / suggestions of the stakeholders.

- The GST Council approved *ad-hoc* apportionment of IGST to the extent of INR 27,000 crore and release of 50% of this amount, i.e. INR 13,500 crore to the States.

- The GoM on IT Reforms, inter alia, recommended that the GSTN should put in place the AI / ML based mechanism to verify the antecedents of the registration applicants and an improved risk-based monitoring of their behavior post registration so that non-compliant tax payers could be identified in their infancy and appropriate action be taken so as to minimize risk to exchequer.

Note:

- The aforesaid interpretations and analysis are based on the press release and subject to change basis the notifications and circulars which are yet to be issued.

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