L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

28 SEPTEMBER 2021

INDIRECT TAX

Notifications giving effect to decisions taken in 45th GST Council Meeting

UPDATE NO. 27 OF 2021

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

A. AMENDMENT TO CGST RULES

Notification No. 35/2021-Central Tax dated 24 September 2021

A.1 Furnishing of Bank Account details [Amendment to Rule 10A]

- Details of Bank account in the name of registered person, obtained on the PAN of the registered person, shall be furnished on common portal.
- Proviso has been inserted to the rule to provide that in case of proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhar number.

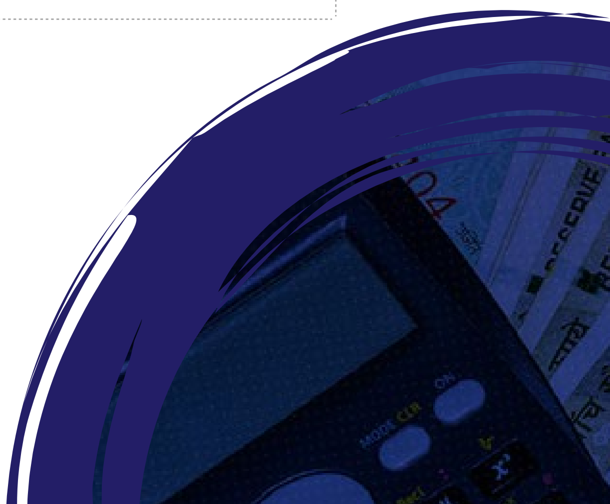
The above amendment shall be effective from a date to be notified later.

A.2 Aadhaar authentication for registered person [Insertion of Rule 10B]

- For the purpose of-
  i. filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
  ii. filing of refund application in FORM RFD-01 under rule 89
  iii. filing refund under rule 96 of the integrated tax paid on goods exported out of India

the registered person, other than those notified under Section 25(6D) shall authenticate Aadhar number of the **Authorized Signatory** and-

S. No.	Constitution of Business	Person required to undergo Aadhar authentication
1	Proprietorship firm	Proprietor
2	Partnership firm	Any Partner
3	Hindu undivided family	Karta
4	Company	Managing Director or any whole time Director
5	Association of persons or body of individuals or a Society	Any of the Members of the Managing Committee
6	Trust	Trustee in the Board of Trustees



- If Aadhaar number has not been assigned to such person, following identification documents shall be furnished-
  (a) her/his Aadhaar Enrolment ID slip; and
  (b) (i) Bank passbook with photograph; or
  (ii) Voter identity card issued by the Election Commission of India; or
  (iii) Passport; or
  (iv) Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988 (59 of 1988)
- Further the authentication of Aadhaar number shall be done within 30 days of the allotment of Aadhaar number

L&S Comments:

- The Aadhar authentication of registration has been made mandatory only for specified purposes for being able to file refund claim and application for revocation of cancellation of registration.

- Corresponding amendments have been made to Rule 23, 89 and 96 to provide for mandatory Aadhar authentication in accordance with Rule 10B in order to file application for revocation or refund, as the case may be.

The above amendment shall be effective from a date to be notified later.

A.3 Relaxation in the requirement of filing ITC-04 [Amendment to Rule 45(3)]

- Requirement for furnishing Form ITC-04 quarterly has been relaxed. Revised due dates **w.e.f 1 October 2021** shall be as under-

Principal whose aggregate turnover in immediately preceding financial year (FY)	Period	Due Date
Exceeds Rs. 5 Crores	1 April to 30 September	25 October
	1 October to 31 March	25 April
In other cases	1 April to 31 March	25 April

A.4 Filing of GSTR-1 allowed only if GSTR-3B of previous period is filed [Amendment to Rule 59(6)]

- W.e.f. **1 January 2022**, a registered person shall not be allowed to furnish GSTR-1, if GSTR-3B for the preceding month has not been furnished.

A.5 Time limit for filing refund for tax wrongly paid under Section 77 of CGST Act [Insertion of sub-rule(1A) to Rule 89]

- Refund application in Form RFD-01 under Section 77 in respect of a transaction which was considered to be an intra-State supply and subsequently held to be an inter-State supply shall be filed within time limit of ***2 years from the date of payment of the tax on inter-state supply.***
- Proviso to the aforesaid sub-rule provides that in case where any payment of tax on inter-State supply has been made before sub-rule coming into force i.e., prior to 24 September 2021, the application shall be filed before the expiry of a period of 2 years from 24 September 2021 i.e., up to 23 September 2023.

L&S Comments:

- The amendment clarifies that the refund under Section 77 of the CGST Act / Section 19 of the IGST Act is separate code dealing with refund of tax paid on a supply considering the incorrect nature of supply. The same is not governed by Section 54 of the CGST Act.

A.6 Bank Account for credit of refund [Insertion of Rule 96C]

- For the purpose of Rule 91(3) dealing with grant of provisional refund amount, Rule 92(4) relating to sanction of refund pursuant to refund order and Rule 94 prescribing credit of interest on delayed payment of refund; the term "bank account" shall mean bank account of the applicant which is in the name of applicant and obtained on his PAN.
- Further as per the proviso, in case of a proprietorship concern, PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor.

The above amendment shall be effective from a date to be notified later.

B. Relaxation from Aadhar Authentication to notified persons

Notification No. 36/2021-Central Tax, dated 24 September 2021

- Seeks to amend original Notification No. 3/2021-Central Tax to extend the relaxation of Aadhar authentication for existing registration of following notified persons-
  - (a) not a citizen of India; or.
  - (b) a Department or establishment of the Central Government or State Government; or
  - (c) a local authority; or
  - (d) a statutory body; or
  - (e) a Public Sector Undertaking or
  - (f) a person applying for registration under Section 25(9) of the CGST Act

C. Clarification in respect of refund of tax specified in section 77(1) of the CGST Act and section 19(1) of the IGST Act

Circular No. 162/18/2021-GST, dated 25 September 2021

- It has been clarified that the term "subsequently held" as appearing Section 77 of the CGST Act and under Section 19 of the IGST Act covers both the cases –
  - i. where the inter-State or intra-State supply made by a taxpayer is subsequently found by taxpayer himself as intra-State or inter-State supply respectively, or
  - ii. iwhere the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State supply respectively by the tax officer in scrutiny / assessment / audit / investigation, or as a result of any adjudication, appellate or any other proceeding
- Further, the relevant date for claiming refund under Section 77 of CGST Act and Section 19 of IGST Act, in light of amendment to Rule 89, has been illustrated as under-

  A taxpayer "A" has issued the invoice dated 10 March 2018 charging CGST and SGST on a transaction and accordingly paid the applicable tax (CGST and SGST) in the return for March, 2018 tax period. The following scenarios are explained hereunder:

S. No.	Scenario	Last date for filing refund claim
1	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on **10 May 2021.**	Since **"A"** has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24 September 2021, the last date for filing refund application in FORM GST RFD-01 would be **23 September 2023 (two years from date of notification)**
2	Having realized on his own that the said transaction is an inter-State supply, "A" paid IGST in respect of the said transaction on 10 November 2021 i.e. after issuance of notification No.35/2021-Central Tax dated **24 September 2021**	Since **"A"** has paid the correct tax on 10 November 2021, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be **09 November 2023 (two years from the date of payment of tax under the correct head, i.e. integrated tax)**
3	**Proper officer or adjudication authority or appellate authority** of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on **10 May 2019**	Since "A" has paid the tax in the correct head before issuance of notification No. 35/2021-Central Tax, dated 24 September 2021, the last date for filing refund application in FORM GST RFD-01 would be **23 September 2023 (two years from date of notification)**
4	**Proper officer or adjudication authority or appellate authority** of "A" has held the transaction as an inter-State supply and accordingly, "A" has paid the IGST in respect of the said transaction on **10 November 2022 i.e. after issuance of notification No. 35/2021-Central Tax, dated 24 September 2021**	Since "A" has paid the correct tax on 10 November 2022, in terms of rule 89 (1A) of the CGST Rules, the last date for filing refund application in FORM GST RFD-01 would be **9 November 2024 (two years from the date of payment of tax under the correct head, i.e. integrated tax)**

- To summarize, the time limit for 2 years shall be considered from the date of notification in case where correct tax on the transaction has been paid before issuance of notification. In case where the correct tax is paid on the transaction after the issuance of the notification, the time limit of 2 years shall be considered from the date of payment of such correct tax.

- It has also been clarified that refund under Section 77 of the CGST Act / Section 19 of the IGST Act would not be available where the taxpayer has made tax adjustment through issuance of credit note under Section 34 of the CGST Act in respect of the said transaction.

LOCATIONS

NEW DELHI

5 Link Road, Jangpura Extension,
New Delhi 110 014
PHONE: 011-4129 9800

B-6/10, Safdarjung Enclave,
New Delhi 110 029
PHONE: 011-4129 9900
E-MAIL: Lsdel@lakshmisri.com

MUMBAI

2nd Floor, CNERGY IT Park,
Old Standard Mill,
Appa Saheb Marathe Marg,
Prabhadevi,
Mumbai 400 025
PHONE: 022-2439 2500
E-MAIL: Lsbom@lakshmisri.com

CHENNAI

2, Wallace Garden, 2nd Street,
Chennai 600 006
PHONE: 044-2833 4700
E-MAIL: Lsmds@lakshmisri.com

BENGALURU

World Trade Center,
No. 404-406, 4th Floor, South Wing,
Brigade Gateway Campus,
No. 26/1 Dr. Rajkumar Road,
Malleswaram West,
Bengaluru 560 055
PHONE: 080-4933 1800
E-MAIL: Lsblr@lakshmisri.com

HYDERABAD

'Hastigiri', 5-9-163, Chapel Road,
Opp. Methodist Church, Nampally,
Hyderabad 500 001
PHONE: 040-2323 4924
E-MAIL: Lshyd@lakshmisri.com

AHMEDABAD

B-334, SAKAR-VII,
Nehru Bridge Corner, Ashram Road,
Ahmedabad 380 009
PHONE: 079-4001 4500
E-MAIL: Lsahd@lakshmisri.com

PUNE

607-609, Nucleus,
1 Church Road, Camp
Pune 411 001
PHONE: 020-6680 1900
E-MAIL: Lspune@lakshmisri.com

KOLKATA

2nd Floor, Kanak Building,
41, Chowringhee Road,
Kolkata 700 071
PHONE: 033-4005 5570
E-MAIL: Lskolkata@lakshmisri.com

CHANDIGARH

SCO No. 59, 1st Floor,
Sector 26, Madhya Marg,
Chandigarh 160 026.
PHONE: 0172-492 1700
E-MAIL: Lschd@lakshmisri.com

GURUGRAM

OS2 & OS3, 5th Floor,
Corporate Office Tower,
AMBIENCE Island, Sector 25-A,
Gurugram 122 001
PHONE: 0124-477 1300
E-MAIL: Lsgurgaon@lakshmisri.com

PRAYAGRAJ (ALLAHABAD)

3/1A/3, (Opp. Auto Sales)
Colvin Road, Lohia Marg,
Prayagraj 211 001
PHONE: 0532-242 1037/242 0359
E-MAIL: Lsallahabad@lakshmisri.com

KOCHI

1st Floor, PDR Bhavan,
Palliyil Lane, Foreshore Road,
Ernakulam, Kochi 682016
PHONE: 0484-486 9018/486 7852
E-MAIL: Lskochi@lakshmisri.com

JAIPUR

2nd Floor (Front side),
Unique Destination, Tonk Road,
Near Laxmi Mandir Cinema Crossing,
Jaipur, Rajasthan 302 015
PHONE: 0141-456 1200
E-MAIL: Lsjaipur@lakshmisri.com

NAGPUR

1st Floor, HRM Design Space,
90-A, Next to Ram Mandir,
Ramnagar, Nagpur 440033
PHONE: +91-712-2959038/2959048
E-MAIL: Lsnagpur@lakshmisri.com

www.lakshmisri.com

Lakshmikumaran & Sridharan attorneys

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