L&S UPDATE

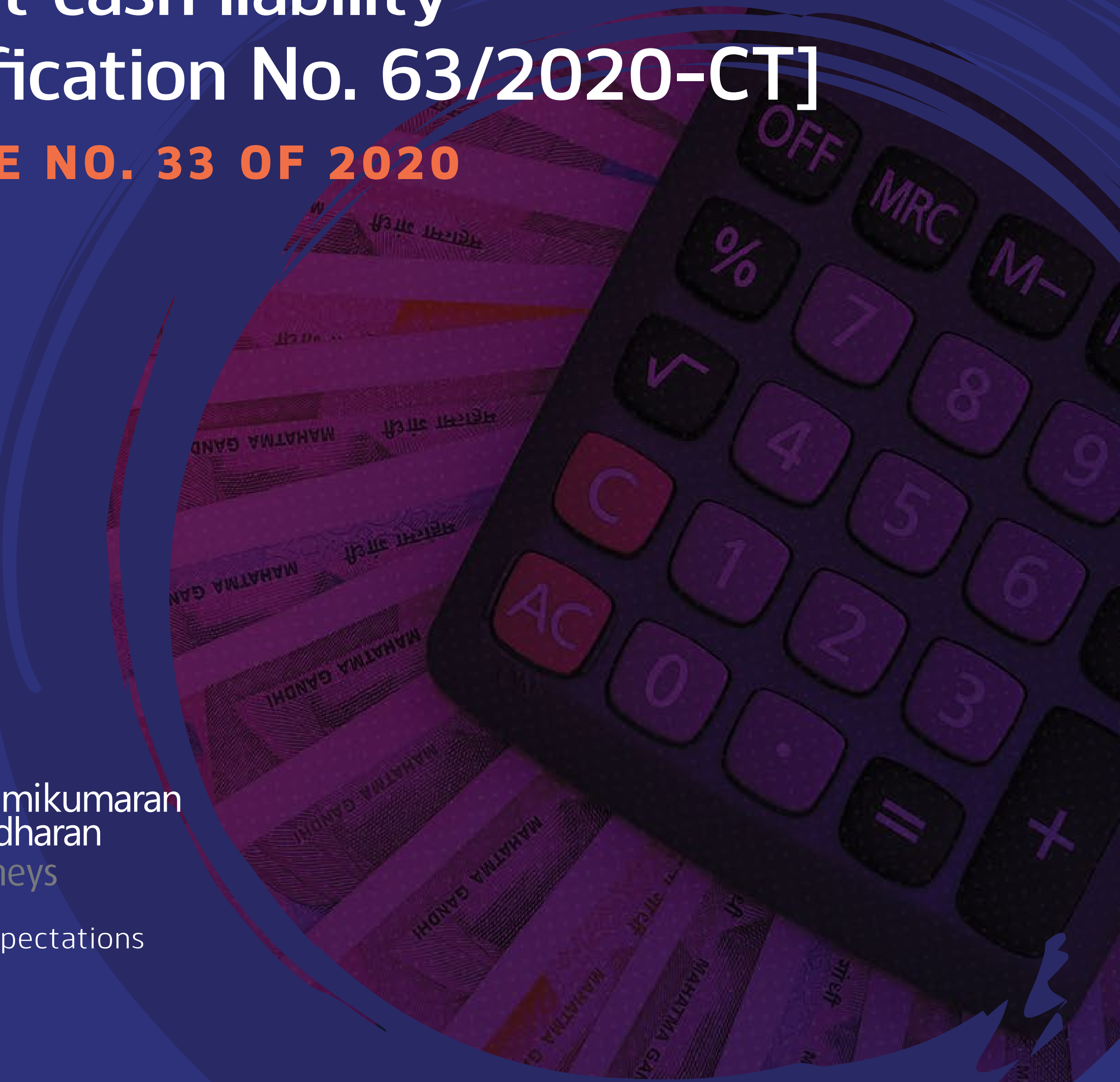
An e-update to clients from Lakshmikumaran & Sridharan

AUGUST 27, 2020

GST

Interest under Section 50 on net cash liability [Notification No. 63/2020-CT]

UPDATE NO. 33 OF 2020



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Amendment by Finance (No. 2) Act, 2019 inserting proviso in Section 50(1) notified w.e.f. September 1, 2020

- Notification No. 63/2020-CT notifies September 1, 2020 as the date on which proviso to Section 50(1) of Central Goods and Services Tax Act, 2017 comes into force.

- The proviso provides as follows:
  'Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger'

L&S COMMENTS:

- 39th GST Council meeting dated March 14, 2020 decided that - *Interest for delay in payment of GST to be charged on the net cash tax liability w.e.f. July 1, 2017 (Law to be amended retrospectively).*

- Government appointed September 1, 2020 for enforcement of proviso to Section 50(1).

- Press release dated August 26, 2020 clarified:
  - Notification issued prospectively due to technical limitation
  - No recoveries shall be made for the past periods

- Madras High Court in the case of *Refex Industries Limited* [2020 (2) TMI 794 - Madras HC] held that,
  - interest under Section 50 on delayed payment of tax can be levied only on 'cash' component of tax and not on 'Input Tax Credit (ITC)' component.
  - proposed amendment of Section 50(1) be read as clarificatory and operate retrospectively.

- Relying on above, whether it can be said that amendment to Section 50(1) will have retrospective effect?

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