L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

9 AUGUST 2023

INDIRECT TAX

Amendments to CGST Rules, 2017 and other notifications

UPDATE NO. 33 OF 2022

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

Notification No. 38/2023-Central Tax dated 4 August 2023 has been issued to further amend the Central Goods and Services Tax Rules, 2017 (**'CGST Rules'**). Except certain amendments, the same shall come into force on the date of their publication in the Official Gazette i.e., 4 August 2023.

The amendments as brought out in the CGST Rules, are as follows:

A. Verification of the application and approval

(w.e.f. 4 August 2023)

Amendment of Rule 9

- Earlier proviso to Rule 9 of CGST Rules provided that registration shall be granted within thirty days of submission of application, after physical verification of place of business in the presence of the said person, in the manner provided under rule 25 and verification of such documents as the proper officer may deem fit.

- In the said rule the words "in the presence of said person" has been omitted

B. Furnishing of Bank Account Details

(w.e.f. 4 August 2023)

Amendment of Rule 10A

- The rule has been amended to provide for furnishing of the details of bank account on the common portal within a period of thirty days from the date of grant of registration or before furnishing the details under Section 37 in Form GSTR-1 or using invoice furnishing facility, whichever is earlier.

C. Suspension of registration

(w.e.f. 4 August 2023)

Amendment of Rule 21A

The registration of the person shall be suspended, where:

- a comparison of returns in Form GSTR-3B vis-à-vis Form GSTR-1 or the details of inward supplies derived based on the details of outward supplies furnished by the suppliers of such persons or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, or

- there is a contravention of the provisions of rule 10A by the registered person the registration shall be suspended and the said person shall be intimated in **FORM GST REG-31,** electronically, on the common portal, or by sending a communication to his e-mail address, highlighting the said differences, anomalies or non-compliances and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.

Third Proviso to Rule 21 A (4) of CGST Rules has been inserted to state that where registration has been suspended under sub-rule (2A) for contravention of provisions of Rule 10A and the registration has not already been cancelled by the proper officer under Rule 22, the suspension of registration shall be deemed to be revoked upon compliance with the provisions of Rule 10A.

D. Revocation of cancellation of registration

(w.e.f. 1 October 2023)

Amendment of Rule 23

- The time period for filing of application for revocation of cancellation of registration has been extended to ninety days from the date of service of order of cancellation of registration.

- Further, a proviso has been inserted to state that such period can be extended by the Commissioner or an officer authorised by him in this behalf, not below the rank of Additional Commissioner or Joint Commissioner, as the case may be, for a further period not exceeding one hundred and eighty days on sufficient cause been shown and for reasons to be recorded in writing.

E. Physical verification of business premises in certain cases

(w.e.f. 4 August 2023)

Amendment of Rule 25

- Rule 25 has been amended to state that where physical verification of place of business of a person is required after the grant of registration, the proper officer may get such verification of place of business done and the verification report uploaded on the common portal within 15 working days following the date of verification.

- Further, where physical verification of place of business is required before grant of registration in circumstances specified in proviso to Rule 9(1), the proper officer shall get such verification of place of business done and verification report uploaded on common portal at least five working days prior to completion of the time period specified in the said proviso.

F. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases

Amendment of Rule 43

- Explanation 1 (c) to Rule 43 of CGST Rules which provides that the aggregate value of exempt supplies shall include value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India has been omitted. (w.e.f. 4 August 2023)

- Explanation 3 provides that for the purpose of rule 42 and this rule, the value of activities or transactions mentioned in paragraph 8(a) of Schedule III of the Act which is required to be included in the value of exempt supplies under clause (b) of the Explanation to Section 17(3) of the Act shall be the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers. (w.e.f. 1 October 2023)

LKS COMMENTS

- The omission in Explanation 1(c) to Rule 43 of CGST Rules, is in line with the recommendations of the GST council at its 49th meeting.

- As per Explanation 3, the value of supply of goods from Duty Free Shops at arrival terminal in international airports to the incoming passengers shall be the value of supply of warehoused goods before their home clearance for the purpose of inclusion under value of exempt supply in Rule 42 and Rule 43. This will be effective from 1 October 2023.

G. Address and PIN of unregistered recipient not mandatory on invoice issued by ECO or OIDAR service provider

(w.e.f. 4 August 2023)

Amendment in Proviso to Rule 46(f)

- The amended proviso deems the 'name of the state of the recipient' on the invoice issued by a registered person to be the address on record of the unregistered recipient where taxable service is supplied by or through electronic commerce operator ('ECO') or online information and database access or retrieval ('OIDAR') services.

LKS COMMENTS

The unamended provision provided for stating the name and address of the recipient along with its PIN code which was deemed to be the address on record of the recipient. This provision resulted in non-compliance by the suppliers of OIDAR and persons effecting supplies through ECO due to non-availability of the address of the recipient.

This amendment is a welcome move providing huge relief to suppliers of OIDAR services and persons effecting supplies through OIDAR service providers.

This amendment has been made effective from 4 August 2023. It needs to be seen if the benefit of the present amendment can be extended to the intervening period.

H. OIDAR service providers to furnish details of recipients who are registered in India

(w.e.f. 1 October 2023)

Amendment of Rule 64

- Every registered person providing OIDAR service from a place outside India to a non-taxable online recipient or to a registered person shall file a return in Form GSTR-5A on or before the 20^{th} day of the month succeeding the calendar month or part thereof.

- Earlier, the details of the registered persons to whom services were provided were not required to be furnished in Form GSTR-05A by the suppliers of OIDAR services.

- To give effect to the said changes, amendments have also been made to Form GSTR-5A. Separate rows 5B and 5C have been inserted to report the details of "taxable outward supplies made to registered persons in India, other than non-taxable online recipient, on which tax is to be paid by the said registered person on reverse charge".

LKS COMMENTS

The amendment is in line with the recommendations of the 50^{th} GST Council. It is expected that the same will help in tracking due payment of tax on reverse charge basis by such registered persons in India in respect of supplies received from OIDAR service providers.

I. Manner of dealing with difference in ITC available in Form GSTR-2B and GSTR-3B

(w.e.f. 4 August 2023)

Rule 88D inserted to provide as follows

- Where the amount of ITC availed for a tax period or periods in Form GSTR-3B exceeds the ITC available in GSTR-2B, by such amount and such percentage as may be recommended by the Council, an intimation in Part A of Form DRC-01C of such difference shall be given on the common portal and also on the e-mail address of such person with a direction to:
  - Pay excess ITC availed by the person along with interest payable under Section 50 through Form DRC-03, or
  - Explain the reasons for such differences on the common portal

  On receipt of DRC-01C, registered person shall within a period of 7 days,
  - Either pay such excess availed ITC fully or partially with interest payable under Section 50 through Form DRC-03 and furnish details thereof in Part B of Form DRC-01C electronically on the common portal, or
  - Furnish a reply electronically on the common portal in respect of such excess availed ITC, if any, in Part B of Form DRC-01C.

- In case, excess ITC availed is not paid within period specified, or where no explanation or reason is furnished by registered person or where such reason is not found to be acceptable by proper officer, the said amount shall be liable to be demanded under section 73 or 74 of the CGST Act.

- A new form, DRC-01C, has also been inserted for the said purposes.

LKS COMMENTS

The above amendment is in line with the recommendations of the 50th GST Council Meeting wherein it was stated that this amendment will help in reducing ITC mismatches and misuse of ITC facility in GST.

The agenda to 50th GST Council Meeting has discussed that a difference between the ITC availed in Form GSTR-3B and that available in GSTR-2B of more than 20% as well as more than INR 25 lakhs may be considered for the purpose of intimation to the concerned registered person under rule 88D. However, a notification to the said effect has not been issued yet.

J. Insertion of clause (e) to Rule 59(6)

(w.e.f. 4 August 2023)

In case a registered person has received intimation under Rule 88D for a tax period or periods, the said person shall not be allowed to furnish Form GSTR-01 for a subsequent tax period, unless he has either deposited the amount specified in intimation or has furnished a reply explaining the reasons for any amount remaining unpaid under Rule 88D (2).

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LKS COMMENTS

The amendment is in line with the recommendations of the 50th GST Council Meeting.

K. Insertion of clause (f) to Rule 59(6)

(w.e.f. 4 August 2023)

Where a registered person has not furnished details of the bank account as per provisions of Rule 10A of the CGST Rules, such person shall not be allowed to furnish GSTR-01 for a subsequent tax period.

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LKS COMMENTS

The amendment is a measure to interlink the provisions of GST law.

L. Amendment to Rule 67(2)

(w.e.f. 1 October 2023)

- Sub-rule (2) to Rule 67 has been amended to state that the details of tax collected at source under Section 52(1) furnished by the ECO shall be made available electronically to each of the registered suppliers on the common portal after filing of Form GSTR-8.

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LKS COMMENTS

- The said changes appear to merely cosmetically correct the terminology used in the provision.

M. Amendments to Rule 89

(w.e.f. 4 August 2023)

Third proviso to Rule 89(1)

- Refund of any amount, after adjusting the tax payable by the applicant out of advance tax deposited under Section 27 at the time of registration, shall be claimed only after the last return required to be furnished by him has been so furnished.

- The provision previously provided that the refund shall be allowed 'in' the last return required to be furnished by him.

Amendment to Rule 89(2)(k)

- Statement 7 as prescribed under Rule 89(2)(k) to be submitted for claiming refund of excess payment of tax shall also contain the details of interest, if any or any other amount paid along with amount of tax paid in excess.

N. Insertion of sub-rule (2) to Rule 94

(w.e.f. 1 October 2023)

- Sub-rule (2) has been inserted to provide that the following period shall not be included in the period of delay in disbursement of refunds:
  - Any period of time beyond 15 days of receipt of notice in Form GST RFD-08 that the applicant takes to (i) furnish a reply, or (ii) submit additional documents of reply; and

  - Any period of time taken either by applicant to furnish correct details of bank account or for validating details of bank account so furnished, where amount of refund could not be credited to the bank account of the applicant.

O. Omission of provisos to Rule 96(2)

(w.e.f. 4 August 2023)

The provisos to Rule 96(2) have been omitted.

P. Appeal to Appellate Authority

(w.e.f. 4 August 2023)

Amendment to Rule 108

- Sub rule (1) of Rule 108 has been amended and for the words "either electronically or otherwise as may be notified by the Commissioner", the word "electronically" is substituted. This would restrict the manner of filing an appeal electronically only.

- Proviso has been added to Rule 108 stating that FORM GST APL-01 can be filed manually only when-,

(i) the Commissioner has so notified, or
(ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal.

- In the above case, aprovisional acknowledgement is required to be issued to the appellant immediately.

LKS COMMENTS

The amendment is in line with the recommendations of the 50th GST Council Meeting. This amendment has been made to address the issue where the decision or order against which appeal is to be made has been passed manually and has not been uploaded on the common portal.

Q. Application to Appellate Authority

(w.e.f. 4 August 2023)

Amendment to Rule 109

- Sub rule (1) of Rule 109 has been amended and for the words "either electronically or otherwise as may be notified by the Commissioner", the word "electronically" is substituted. This would restrict the manner of filing an appeal electronically only.

- Proviso has been added to Rule 109 stating that FORM GST APL-03 can be filed manually only when-,
  (i) the Commissioner has so notified, or
  (ii) the same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal.

- In the above case, a provisional acknowledgement is required to be issued to the applicant immediately.

LKS COMMENTS

The amendment is in line with the recommendations of the 50th GST Council Meeting.

R . Information to be furnished in case of intra-State movement of gold, precious stones, etc. and generation of e-way bills thereof

(w.e.f. 4 August 2023)

Rule 138F inserted

- Rule 138F has been inserted wherein the information regarding the following goods in following serial numbers of Annexure of Rule 138 (14) has to be furnished:

- Sl. No. (4) i.e., natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal (Chapter 71) and
- Sl. No. (5) i.e., Jewellery, goldsmiths' and silversmiths' wares and other articles (Chapter 71) excepting Imitation Jewellery (CTH 7117).

- The information is required to be furnished when the commissioner of State Tax or Union Territory Tax mandates furnishing of information and the value of the goods is above rupees two lakhs. Every registered person who causes intra-state movement of goods in relation to a supply; or for reasons other than supply; or due to inward supply from an un-registered person, shall furnish information relating to such goods electronically as specified in Part A of FORM GST EWB-01.

- Where the goods to be transported are supplied through an e-commerce operator or a courier agency, the information in Part A of FORM GST EWB-01 may be furnished by such e-commerce operator or courier agency.

- No e-way bill is required where the goods are being transported from the customs port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs or where the goods are being transported-
  i. under customs bond from an inland container depot or a container freight station to a customs port, airport, air cargo complex and land customs station, or from one customs station or customs port to another customs station or customs port, or
  ii. under customs supervision or under customs seal.

- **Valuation:** The consignment value of goods shall be the value determined in accordance with the provisions of Section 15, as declared in an invoice, bill of supply or a delivery challan.

LKS COMMENTS

In the 37th GST Council Meeting held on 20th September 2019, a Group of Ministers was constituted with a mandate to examine the feasibility of implementation of e-way bill requirement for movement of gold and precious stones and their report was accepted in the 47th GST Council Meeting. Corresponding amendment to CGST Rules were recommended in 50th GST Council Meeting.

S. Intimation of certain amounts liable to be recovered under Section 79 of the Act.

(w.e.f. 4 August 2023)

Rule 142B inserted

- If in accordance with section 75 read with rule 88C, or otherwise, any amount of tax or interest has become recoverable under section 79 and the same has remained unpaid, the proper officer shall intimate, electronically on the common portal, the details of the said amount in FORM GST DRC-01D. The intimation shall be treated as a notice for recovery.

- The person in default has to pay the said amount, along with applicable interest, within seven days of the date of the said intimation and the said amount shall be posted in Part-II of Electronic Liability Register in FORM GST PMT-01.

- Corresponding Form DRC-01D has also been notified for the said purposes.

LKS COMMENTS

A separate procedure has been prescribed for recovery of amount referred in rule 88C since in such cases, no adjudication has been prescribed in accordance with Rule 142 of the CGST Rules.

T. Amendment to Rule 162 of the CGST Rules

(w.e.f. 1 October 2023)

- The words "has cooperated in the proceedings before him and" have been omitted from sub-rule (3). W.e.f. 1 October 2023, applicant's cooperation in the proceedings is not a relevant criterion for passing an order for compounding of offences by the Commissioner.

- The Commissioner shall now determine the compounding amount as follows:

S.No	Offence	Compounding amount if offence is punishable under section 132(1)(i)	Compounding amount if offence is punishable under section 132(1)(ii)
1	Offence specified in section 132(1)(a)	Up to 75% of amount of tax evaded or amount of ITC wrongly availed	Up to 50% of amount of tax evaded or amount of ITC wrongly availed or utilised or

2	Offence specified in section 132(1)(c)	or utilised or amount of refund wrongly taken, subject to minimum of 50% of such amount of tax evaded or amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.	amount of refund wrongly taken, subject to minimum of 40% of such amount of tax evaded or amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.
3	Offence specified in section 132(1)(d)		
4	Offence specified in section 132(1)(e)		
5	Offence specified in section 132(1)(f)	Amount equivalent to 25% of tax evaded.	Amount equivalent to 25% of tax evaded.
6	Offence specified in section 132(1)(h)		
7	Offence specified in section 132(1)(i)		
8	Attempt to commit the offences or abets commission of offences mentioned in clause (a), (c) to (f) and clauses (h) and section 132(1)(i)	Amount equivalent to 25% of such amount of tax evaded or amount of ITC wrongly availed or utilised or amount of refund wrongly taken.	Amount equivalent to 25% of such amount of tax evaded or amount of ITC wrongly availed or utilised or the amount of refund wrongly taken.

- Where the offence falls under more than one category, the compounding amount, shall be amount determined for the offence for which higher compounding amount has been prescribed.

LKS Comments

- The rule has been prescribed under Section 138 of the CGST Act introduced by the Finance Act, 2023.

U. Insertion of Rule 163 in the CGST Rules

(w.e.f. 1 October 2023)

[Serial No. 21 of Notification No. 38/2023-Central Tax dated 4 August 2023]

- The rule allows consent-based sharing of information furnished in Forms REG-01, GSTR-3B, GSTR-1 pertaining to invoices, debit notes and credit notes issued by him with a system referred in Section 158A i.e., the requesting system.

- The requesting system shall obtain the consent of the person and shall communicate the same along with the details of tax periods, where applicable to the common portal.

- Consent shall be given by a registered person only after obtaining consent from all of his recipients, to whom he has issued the invoice, credit notes and debit notes for sharing information with the requesting system.

LKS COMMENTS

- Rule 163 has been inserted in CGST Rules in furtherance of the recommendations made in the 50th GST Council meeting and to provide for manner and conditions of consent-based sharing of information of registered persons available on the common portal with other systems.

NOTIFICATIONS

A. Special procedure for ECO supplying services to taxpayer registered under Section 10

(w.e.f. 01.10.2023)

[Notification No. 36/2023-Central Tax dated 4 August 2023]

The ECO has been notified as the class of person who is required to follow the special procedure in case of a person supplying goods through it, is paying the tax under composition scheme under section 10. The special procedure is as follows:

- The ECO shall not allow any inter-State supply of goods through it by the said person.

- The ECO shall collect tax at source in respect of supply of goods made through it by the said person and pay to the Government.

- The ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

B. Special procedure for ECO supplying services to person exempt from taking registration

(w.e.f. 1 October 2023)

[Notification No. 37/2023-Central Tax dated 4 August 2023]

The ECO is required to follow the special procedures where the person supplying goods through it is exempted from obtaining registration. The special procedure are as follows:

- The ECO shall allow supply of goods through it by the said person only if enrolment number has been allotted to such person.

- The ECO shall not allow any inter-State supply of goods through it by the said person.

- The ECO shall not collect tax at source in respect of supply of goods made through it by the said person.

- The ECO shall furnish the details of supplies of goods made through it by the said person in the statement in FORM GSTR-8 electronically on the common portal.

In case multiple ECO's are involved in single supply then "The ECO" shall mean the ECO who finally releases the payment to the said person.

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