L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

18 NOVEMBER 2021

INDIRECT TAX

GST Update on recent CBIC Circulars

UPDATE NO. 35 OF 2021

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

A. CLARIFICATION REGARDING APPLICABILITY OF DYNAMIC QUICK RESPONSE (QR) CODE

[Circular No. 165/21/2021-GST dated 17 November 2021]

- Entry at S. No. 4 of the Circular No. 156/12/2021-GST dated 21 June 2021 has been substituted to read as

Description	Clarification
"In cases, where receiver of services is located outside India, and payment is being received by the supplier of services, through RBI approved modes of payment, but as per provisions of the IGST Act 2017, the place of supply of such services is in India, then such supply of services is not considered as export of services as per the IGST Act 2017; Whether in such cases, the Dynamic QR Code is required on the invoice issued, for such supply of services, to such recipient located outside India?	No. Wherever an invoice is issued to a recipient located outside India, for supply of services, for which the place of supply is in India, as per the provisions of IGST Act 2017, and the payment is received by the supplier, in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI, such invoice may be issued without having a Dynamic QR Code, as such dynamic QR code cannot be used by the recipient located outside India for making payment to the supplier."

L&S Comments

- Earlier, Serial No. 4 of Circular No.156/12/2021-GST provided for relaxation from the requirement of Dynamic QR code in cases where *inter-alia* the payment is received in foreign currency through RBI approved medium. This led to doubts in cases where payment is received by the service provider not in foreign exchange, but through other modes approved by RBI.

- The above circular intends to give relaxation from mentioning Dynamic QR code on invoice where supplier receives the payment either in convertible foreign exchange or in Indian Rupees wherever permitted by the RBI.

B. CLARIFICATIONS REGARDING REFUND RELATED ISSUES

[Circular No. 166 /22 /2021-GST dated 17 November 2021]

S. No.	Issue	Clarification
1	Whether the provisions of section 54 (1) of the CGST Act regarding time period, within which an application for refund can be filed, would be applicable in cases of refund of excess balance in electronic cash ledger?	**Not applicable**
2	Whether certification / declaration under Rule 89(2)(l) or 89(2)(m) of CGST Rules, 2017 is required to be furnished along with the application for refund of excess balance in electronic cash ledger?	Not required, as this certification / declaration pertains to not passing the incidence of tax to any other person and unjust enrichment clause which is not applicable in cases of refund of excess balance in electronic cash ledger.
3	Whether refund of TDS/TCS deposited in electronic cash ledger under the provisions of section 51 /52 can be refunded as excess balance in cash ledger?	• The amount deducted / collected as TDS /T CS by TDS / TCS deductors under the provisions of section 51 /52 of the CGST Act, as the case may be, and credited to electronic cash ledger of the registered person, is equivalent to cash deposited in electronic cash ledger. • The registered person is at full liberty to discharge his tax liability in respect of the supplies made by him during a tax period, either through debit in electronic credit ledger or through debit in electronic cash ledger, as per his choice and availability of balance in the said ledgers.

S. No.	Issue	Clarification
		• Any amount, which remains unutilized in electronic cash ledger, after discharge of tax dues and other dues payable under CGST Act and rules made thereunder, can be refunded to the registered person as excess balance in electronic cash ledger in accordance with the proviso to section 54(1), read with section 49(6) of the CGST Act. **L&S Comments** The same view was given by the Telangana High Court in the case of *Appario Retail Private Limited v. The Union of India*[1].
4	Whether relevant date for the refund of tax paid on supplies regarded as deemed export by recipient is to be determined as per clause (b) of Explanation (2) under section 54 of CGST Act and if so, whether the date of return filed by the supplier or date of return filed by the recipient will be relevant for the purpose of determining relevant date for such refunds?	Clause (b) of Explanation (2) under Section 54 of CGST Act reads as under: "(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;" Clause (b) of Explanation (2) under section 54 of the CGST Act is applicable for determining relevant date in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient.

[1] *2021 (11) TMI 153*

S. No.	Issue	Clarification
		Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the relevant date for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, by the supplier.

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