LKS UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

25 OCTOBER 2023

INDIRECT TAX

Changes in GST rate notifications effective from 20 October 2023

UPDATE NO. 39 OF 2023

Lakshmikumaran & Sridharan attorneys

exceeding expectations
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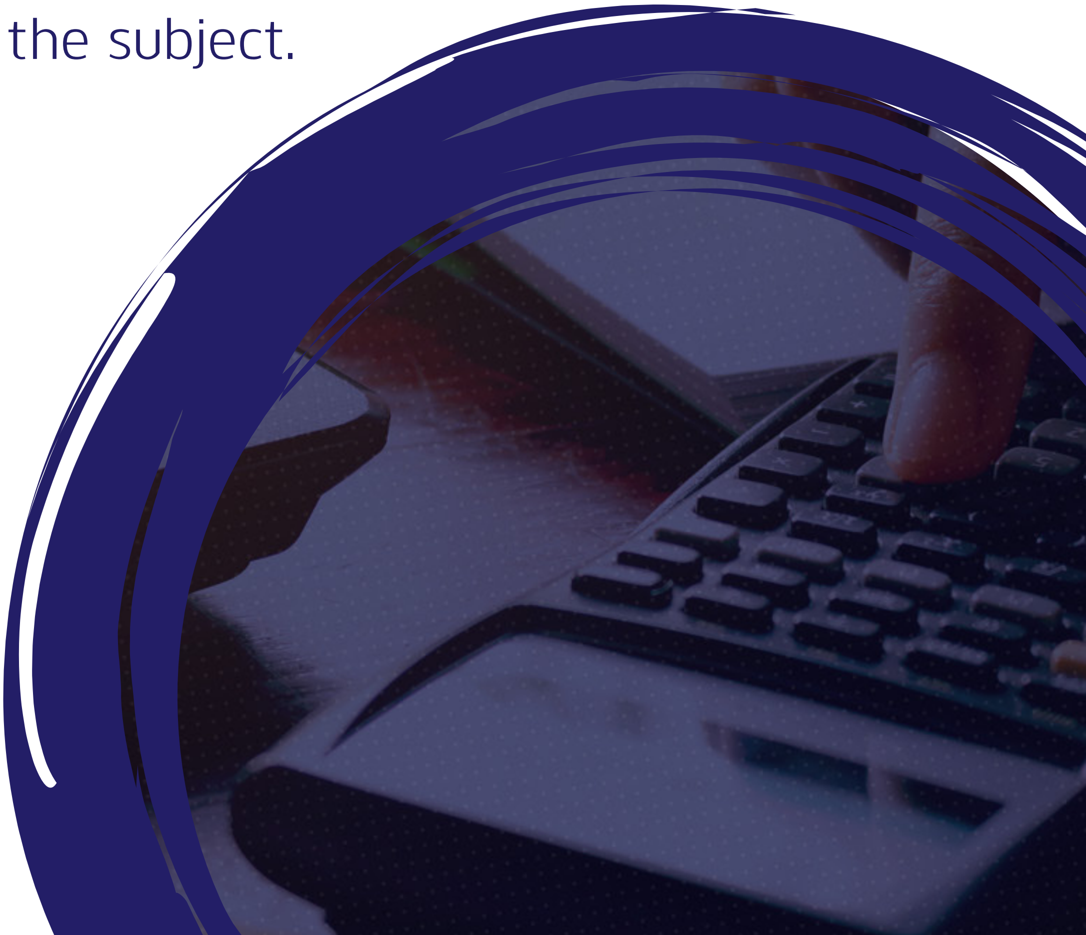
The Update covers amendments made to Notification No. 11/2017-Central Tax (Rate) dated 28 June 2017 **("Services Rate Notification")**, Notification No. 12/2017-Central Tax (Rate) dated 28 June 2017 **("Services Exemption Notification"),** Notification No. 13/2017-Central Tax (Rate) dated 28 June 2017 **("Services Reverse Charge Notification"),** Notification No. 01/2017-Central tax (Rate) dated 28 June 2017 **("Goods Rate Notification"),** amongst other notifications applicable w.e.f. 20 October 2023.

Corresponding changes have also been made in the Integrated Tax Rate and State Tax Rate notifications on the subject.



1. **ITC on input services in the same line of business to be restricted further where suppliers of passenger transportation service and renting of motor vehicle opt to discharge GST at 5%**

(w.e.f. 20 October 2023)
[Notification No. 12/2023-Central Tax (Rate) dated 19 October 2023]

- As per Sl. No. 8(vi) of Services Rate Notification, GST of 5% (with restriction on availment of ITC) may be discharged on supply of passenger transportation service where cost of fuel is included in consideration charged from service recipient.

- Similarly, as per Sl. No. 10(i) of Services Rate Notification, GST of 5% (with restriction on availment of ITC) may be discharged on service of renting of motor vehicle designed to carry passengers where cost of fuel is included in consideration charged from service recipient.

- Another condition has been added to state that where supplier of input service in same line of business charges central tax at rate higher than 2.5%, ITC of such input service in excess of tax paid or payable at 2.5%, shall not be taken by such supplier.

- The said restriction has been illustrated as follows:
  'A' engages 'B' for transport from New Delhi to Jaipur in a motor cab for Rs. 1000. 'B', for supplying the said service, hires a motor cab with operator from 'C' for Rs. 800. 'C' charges 'B' central tax at the rate of 6% (Rs. 48). If 'B' charges 'A' central tax at the rate of 2.5%, he shall be entitled to take input tax credit on the input service in the same line of business supplied by 'C' only to the extent of Rs. 20 (2.5% of Rs. 800) and not Rs. 48.

LKS Comments:
- The amendment intends to correct the inverted tax structure in cases where the suppliers of passenger transportation service and service of renting of any motor vehicle were in receipt of services in the same line of business and the said inward supply was chargeable at a GST rate higher than 5%.

2. **Entries relating to services provided by a race club to totalisator and gambling service omitted**

(w.e.f. 20 October 2023)
[Notification No. 12/2023-Central Tax (Rate) dated 19 October 2023]

- In Sl. No. 34(iv), service provided by a race club by way of totalisator is removed from the rate entry. Further, Sl. No. 34(v) pertaining to the service of Gambling providing for a rate of 28% has also been omitted.

- In line with the above changes, in the Annexure providing for the Scheme of Classification of Services, entries 696 and 698 pertaining to gambling and betting services including similar online services and lottery services are removed from group 999692 of heading 999694.

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LKS Comments:

- Pursuant to the changes recommended by the Government in the 51st GST Council Meeting, 'specified actionable claims' are to be taxed as 'goods', hence, the said entries previously taxable as 'services' in the Services Rate Notification have been omitted.

3. GST exemption on specified services provided to Governmental Authority

(w.e.f. 20 October 2023)

[Notification No. 13/2023-Central Tax (Rate) dated 19 October 2023]

- Entry 3B has been inserted in the Services Exemption Notification to provide an exemption from payment of GST on the services provided to a Governmental Authority by way of water supply, public health, sanitation conservancy, solid waste management and slum improvement and upgradation.

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LKS Comments:

- The said exemption has been issued pursuant to the recommendations made in the 52nd Meeting of the GST Council.

4. Services provided by the Ministry of Railways (Indian Railways)

(w.e.f. 20 October 2023)

[Notification No. 13/2023-Central Tax (Rate) dated 19 October 2023]

[Notification No. 14/2023-Central Tax (Rate) dated 19 October 2023]

Amendment of Services Reverse Charge Notification

- Entry No. 5 has been amended to add the services provided by Ministry of Railways (Indian Railways) in the list of exclusions where tax is not payable under reverse charge.

- Entry 5A has been amended to state that services supplied by Ministry of Railways by way of renting of immovable property to a registered person shall not be taxable on reverse charge basis.

Amendment of Services Exemption Notification

- Entry 6(a) has been amended to state that the services by the Central Government, State Government, Union territory or local authority excluding the Ministry of Railways shall be exempt.

- Explanation to Entry 7 has been amended to provide that the services provided by Central Government, State Government, Union territory or local authority to a business entity of specified turnover shall not be available to services provided by the Ministry of Railways. Hence, service provided by Ministry of Railways to a business entity shall not be exempt from GST.

- Proviso (i) to Entry 8 has been amended to provide that services by Ministry of Railways to another Central Government, State Government, Union Territory or Local Authority shall not be exempted.

LKS Comments:

- The rate notification has been amended pursuant to the recommendations made in the 52nd Meeting of the GST Council.

- The services provided by Indian Railways to any business entity have been excluded from the ambit of reverse charge and will now be taxable under forward charge.

- These amendments will enable the Railways to avail and utilise Input Tax Credit on inward supplies. The intention behind the same is to reduce the cost for Indian railways.

5. Goods provided by the Ministry of Railways (Indian Railways)

(w.e.f. 20 October 2023)

[Notification No. 19/2023 – Central Tax (Rate) dated 19 October 2023]

- Entry No. 6 of Notification No. 04/2017-Central Tax (Rate) has been amended to exclude the goods provided by Ministry of Railways (Indian Railways) from the ambit of reverse charge.

LKS Comments:

- The rate notification has been amended pursuant to the recommendations made in the 52nd Meeting of the GST Council.

- The goods provided by Indian Railways to any business entity have been excluded from the ambit of Reverse Charge and will now be taxable under forward charge.

- These amendments will enable railways to avail and utilise Input Tax Credit on inward supplies with an aim to reduce the cost for Indian railways.

6. Refund on account of inverted tax structure on construction services

(w.e.f. 20 October 2023)
[Notification No. 15/2023-Central Tax (Rate) dated 19 October 2023]

The notification amends Notification No 15/2017-Central Tax (Rate) dated 28 June 2017 by substituting the words *"specified in sub-item (b) of item 5 of Schedule II of the Central Goods and Services Tax Act"* with *"of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier"*

LKS Comments

- This provides that no refund of unutilised input tax credit shall be allowed under Section 54(3) in case of supply of services of construction of a complex, building or a part thereof, intended for sale to a buyer, wholly or partly, where the amount charged from the recipient of service includes the value of land or undivided share of land, as the case may be, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

- The availability of refund of unutilized ITC in the aforesaid case has hence been clarified.

7. Reverse Charge on services supplied through an ECO

(w.e.f. 20 October 2023)
[Notification No. 16/2023-Central Tax (Rate) dated 19 October 2023]

- With effect from 1 January 2022, the liability to pay GST on bus transportation services supplied through Electronic Commerce Operators (ECOs) has been placed on the ECO under Section 9(5) of the CGST Act, 2017. This trade facilitation measure was taken based on the representation of industry association that most of the bus operators supplying service through ECO owned one or two buses and were not in a position to take registration and meet GST compliances.

- The notification amends Notification No. 17/2017-Central Tax (Rate) dated

28 June 2017 by making the following amendments:-

a) in clause (i), for the words "omnibus or any other motor vehicle", the words "or any other motor vehicle except omnibus" has been substituted.

b) Clause (ia) has been inserted after clause (i), stating that "services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company."

c) In the Explanation, after item (c), the following item shall be inserted, namely,-

"(d) "Company" has the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013)."

LKS Comments

- Now, bus operators working as a company/body corporate would be required to discharge GST under forward charge. This change has been recommended to enable them to utilise ITC on inward supplies which can be used to discharge GST on outward supplies.

- It is a beneficial amendment striking a balance between the demand and requirement of large and small bus operators.

8. GST rate on molasses reduced to 5% from 28%

(w.e.f. 20 October 2023)

[Notification No. 17/2023-Central Tax (Rate) dated 19 October 2023]

- S. No. 92A has been inserted to Schedule I of the Goods Rate Notification to provide that GST at 5% shall be applicable on 'Molasses' classifiable under Chapter Heading 1703. Correspondingly, Entry 1 to Schedule IV charging GST at 28% on the said product has been omitted.

LKS Comments

- The said amendment has been made pursuant to the recommendation made in the 52nd GST Council Meeting to increase liquidity with the mills and enable faster clearance of cane dues to sugarcane farmers. It has been specified that the same will also lead to reduction in cost for manufacture of cattle feed as molasses is also an ingredient in its manufacture.

9. GST rate on millet -based health mix consisting of at least 70% of millets to be reduced to 0%/5% from 18%

(w.e.f. 20 October 2023)

Notification No. 18/2023-Central Tax (Rate) dated 19 October 2023

- Unpackaged millet food preparations which are in powder form containing at least 70% millets by weight have been included in the list of exempted goods at Serial No. 94A under Notification No. 2/2017-Central Tax (Rate).

Notification No. 17/2023-Central Tax (Rate) dated 19 October 2023

- S. No. 96A has been inserted to Schedule I of the Goods Rate Notification to provide that GST at 5% shall be applicable on 'Food preparation of millet flour, in powder form, containing at least 70% millets by weight, pre-packaged and labelled' classifiable under Chapter Heading 1901.

- S. No. 13 of Schedule III has been amended to substitute the words "of heading 1905" with "of heading 1905; food preparation of millet flour, in powder form, containing at least 70% millets by weight, pre-packaged and labelled" on which GST at 18% shall be applicable.

LKS Comments

- The GST Council in its 52nd Council Meeting has recommended the rate of 5% on the aforesaid product when sold in pre-packaged and labelled form and exemption when sold in unpackaged and loose form.

- The aforesaid rates for food preparation of millet flour classifiable under Chapter Heading 1901 or 2106 were recommended by the Fitment Committee after a representation was received for reduction of tax rate on millet-based health mix products (in which products like pulses, cardamom, pepper is added).

10. GST at 18% on ENA for industrial use

- S. No. 25A to be inserted to charge 18% GST on spirits for industrial use classifiable under Tariff Entry 2207 10 12.

LKS Comments

- The issue of applicability of GST on ENA has been discussed twice in the meetings of GST Council i.e., in the 20th meeting dated 05.08.2017 and 31st meeting dated 22.12.2018. However, the Council maintained the status quo as existed before the meetings i.e., GST would be applicable only on the denatured ENA for industrial use and not on undenatured ENA for use in liquor industry.

- The State of U.P. vide Notification No. KA.NI-2-1793 dated 17.12.2019, had introduced levy of 5% VAT on sale of ENA used for manufacture of alcohol. On similar lines State of Maharashtra has also added undenatured ENA in their VAT Schedule. Moreover, State of West Bengal has also started charging purchase tax on purchase of ENA in their States.

- In this regard, the Hon'ble Allahabad High Court in *Jain Distillery Private Limited* v. *State of U.P.* [writ tax no. 385/2021] relying on the decision of seven member bench in the case of *Synthetics and Chemicals* (1990) 1 SCC 109, quashed the aforesaid notification and held that the ENA is not alcoholic liquor for human consumption. Further, it was held that by employing the phraseology 'non-GST alcohol when sold for use in the process of manufacture of alcoholic liquor for human consumption', ENA cannot be taxed under UP VAT Act.

- The said amendment has been brough pursuant to the recommendation in the 52nd GST Council Meeting, and ENA supplied for industrial use other for manufacturing of alcoholic liquor is to be taxed.

11. Imitation zari thread or yarn made out of metallised polyester film /plastic film

(w.e.f. 20 October 2023)
[Notification No. 20/2023-Central Tax (Rate) dated 19 October 2023]

- Entry 6AA has been added to Notification No. 5/2017-Central Tax (Rate) restricting refund of unutilised/accumulated credit for imitation zari thread or yarn made out of metallised polyester film /plastic film, even when rate of tax on input is higher than the rate of tax on output supplies.

- An explanation has also been added in the entry which provides that the entry shall apply for refund of input tax credit only on polyester or plastic film.

LKS Comments:

- The rate notification has been issued pursuant to the recommendations made in the 52nd GST Council Meeting.

- As per Circular No. 52/26/2018-GST dated 9 August 2019, all types of metallised yarns/kasab or threads classifiable under Chapter Heading 5605 attract 12% GST.

- The GST Council, among other things, recommended in its 50th meeting to reduce the GST on imitation zari thread or yarn, known by any name in trade parlance, from 12% to 5%.

- The said change has been brought to correct the taxation structure where embroidery articles including imitation zari are taxed at 5% but the input thread is taxed at 12%.

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

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

exceeding expectations
SINCE 1985