L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

23 DECEMBER 2021

INDIRECT TAX

GST Update Recent Notifications

UPDATE NO. 40 OF 2021

Lakshmikumaran & Sridharan attorneys

exceeding expectations
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A. **Certain provisions of the Finance Act, 2021 amending Central Good and Services Tax Act, 2017 shall come into force from 1st January 2022** ***[Notification No. 39/2021–Central Tax dated 21.12.2021]***

Finance Act, 2021	Central Goods and Services Tax Act, 2017 ("CGST Act, 2017")
Section 108	*Section 7 : Scope of Supply* Clause (aa) has been inserted in section 7(1) to widen the scope of supply retrospectively from 01.07.2017 to include activities or transactions carried out by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.
Section 109	*Section 16 : Condition for availing Input Tax credit* New clause (aa) to sub-section 16(2) has been inserted to provide that ITC on invoice/debit note may be availed only when details of the same have been furnished by supplier in the statement of outward supplies (Form GSTR-1) and such details have been communicated to recipient in the manner specified u/s 37.
Section 113	*Section 74 : Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilfull-misstatement or suppression of facts.* Earlier Explanation 1 (ii) to Section 74 provided that "where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded" Now reference to Section 129 and 130 in above explanation has been omitted.

Finance Act, 2021	Central Goods and Services Tax Act, 2017 ("CGST Act, 2017")
Section 114	*Section 75 : General provisions relating to determination of tax.* Explanation added to sub-section (12) of Section 75 to define 'Self-assessed tax' as: Self-assessed tax shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39. Therefore, if the tax is shown payable in GSTR-1 but remains unpaid in GSTR-3B, the same can be directly recovered under Section 79, without issuing a SCN under Sections 73 and 74.
Section 115	*Section 83 : Provisional attachment to protect revenue in certain cases* Provisional attachment of any property including bank account has been made applicable for any person specified in sub-section (1A) of section 122 in addition to the taxable person. Provisional attachment can be made after initiation of proceedings under Chapter XII (Assessment), XIV (Inspection, Search, Seizure and Arrest), XV (Demands and Recovery). The requirement of pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74 is no more a precondition for provisional attachment.
Section 116	*Section 107: Appeals to Appellate Authority.* **Mandatory requirement for deposit of specified amount for appeal** No appeal shall be filed to appellate authority against an order made under sub-section (3) of section 129, unless a sum equal to 25% of penalty has been paid by the appellant.

Finance Act, 2021	Central Goods and Services Tax Act, 2017 ("CGST Act, 2017")
Section 117	*Section 129: Detention, seizure and release of goods and conveyances in transit*

Goods or conveyances detained or seized, in case of taxable goods, shall be released on payment of penalty, as mentioned below, instead of payment of both tax and penalty.

Particulars	***Before Amendment***	***After Amendment***
Where the owner of the goods comes forward for payment,	Applicable tax and penalty equal to 100% of the tax payable	Penalty equal to 200% of the tax payable
Where the owner of the goods does not come forward for payment	Applicable tax and penalty equal to the 50% of the value of the goods reduced by the tax amount paid.	Penalty equal to 50% of the value of the goods or 200% of the tax payable on such goods, whichever is higher

Section 129(2) has been omitted i.e. provisions of sub-section (6) of section 67 shall not apply for detention and seizure of goods and conveyances. In effect, provisional release of goods has been done away with.

The proper officer detaining or seizing goods or conveyance shall issue a notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of 7 days from the date of service of such notice, for payment of penalty. Earlier, there was no time limit specified under the law for issuance of notice and order under Section 129.

Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty within 15 days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, to recover the penalty payable under sub-section (3).

Detained or seized conveyance can also be released by the transporter on payment of penalty under sub-section (3) or one lakh rupees, whichever is less.

Finance Act, 2021	Central Goods and Services Tax Act, 2017 ("CGST Act, 2017")
Section 118	*Section 130: Confiscation of goods or conveyances and levy of penalty.* The words "Notwithstanding anything contained in this Act" has been substituted with words "where". The aggregate of fine and penalty leviable shall not be less than the amount of penalty leviable equal 100% of tax payable on such goods. Section 130(3) has been omitted. Consequently, no additional liability to pay any tax, penalty and charges in respect of goods or conveyance confiscated where any fine in lieu of confiscation of goods or conveyance is already imposed.
Section 119	*Section 151: Power to call for information* The Jurisdictional Commissioner or an officer authorized by him empowered to direct any person to furnish information relating to any matter dealt with in connection with the CGST Act in manner specified. Earlier, Commissioner was empowered, by notification, to direct for collection of statistics relating to any matter dealt with by or in connection with the CGST Act. Also, Commissioner or person authorized by him may ask to furnish such information / returns after issuance of notification.
Section 120	*Section 152: Bar on disclosure of information.* Information collected u/s 150 and 151 can be used for the purposes of proceedings under the act after giving opportunity of being heard. Section 152(2) omitted. Resultantly, information collected u/s 151 can be shared even with persons who are not engaged in collection / compilation / computerization of information.

Finance Act, 2021	Central Goods and Services Tax Act, 2017 ("CGST Act, 2017")
Section 121	*Section 168: Power to issue instructions or directions.* To enable Jurisdictional Commissioner to exercise powers under Section 151 to call for information.
Section 122	*Schedule II: Activities or Transactions to be treated as supply of goods or supply of services* Paragraph 7 of Schedule II to the CGST Act which dealt with supply by unincorporated association to its members has been omitted retrospectively.notification.

Note: *Please refer LKS GST Update No. 1 of 2021 regarding Budget 2021 – Changes in the GST law dated 2nd February 2021 for detailed discussion on amended provisions.*

B. Certain provisions of the Central Good and Services Tax (Eighth Amendment) Rules, 2017 issued vide Notification No. 35/2021 – Central Tax, shall come into force from 1st January 2022 *[Notification No. 38/2021-Central Tax dated 21.12.2021]*

Following provisions shall be effective from 1st January 2022:

CGST Rules, 2017	Description
Insertion of Rule 10B	Aadhaar authentication for registered person have been made applicable 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
Amendment in Rule 23 ***Amendment in Rule 89*** ***Amendment in Rule 96***	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.

Note: *Please refer LKS Indirect Tax Update No. 27 of 2021 regarding notifications giving effect to decisions taken in 45th GST Council Meeting dated 28th September 2021 for detailed discussion on amended provisions*

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