LKS UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

30 OCTOBER 2023

INDIRECT TAX

GST Update on recent developments

UPDATE NO. 40 OF 2023

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The update covers amendments made to the Central Goods and Services Tax Rules, 2017 (**'CGST Rules'**) and other notifications which have been issued under the Goods and Services Tax (**'GST'**) regime.

1. Value of service of corporate guarantee between related persons

(w.e.f. 26 October 2023)
[Notification No. 52/2023-Central Tax dated 26 October 2023]

- Sub-rule (2) has been inserted in Rule 28 of the CGST Rules to provide that the value of supply of services by a supplier to a recipient who is a related person, by way of providing a corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be 1% of
  - amount of such bank guarantee offered, or
  - actual consideration

  (whichever is higher)
- The said value has been prescribed notwithstanding the value prescribed under sub-rule (1) to Rule 28.

LKS Comments

- This sub-rule has been inserted pursuant to recommendations made by the Council in its 52nd meeting. This rule has been inserted to provide uniformity in valuation of services of providing corporate guarantee.
- Going forward, the supply of services of corporate guarantee shall be valued as per this rule irrespective of the fact that the recipient is entitled to full ITC. The benefit of second proviso to Rule 28 of the CGST Rules which provides that any value declared on the invoice would be deemed to be open market value would not be applicable going forward. The Board has also issued Circular clarifying this position pursuant to recommendation of the Council.
- It needs to be seen if GST on 1% of the value is to be discharged on a one-time basis or on an annual basis where tenure of the guarantee exceeds one year.
- This sub-rule will have prospective operation.

2. Other Changes

(w.e.f. 26 October 2023)
[Notification No. 52/2023-Central Tax dated 26 October 2023]

Amendment of Rule 142(3)

- Sub-rule (3) of Rule 142 of the CGST Rules has been amended to provide that proper office shall issue an 'intimation' in Form GST DRC-05 upon conclusion of proceedings upon payment of amounts of tax, interest and/or penalty, as the case may be.

- The rule previously provided for issuance of an 'order' in Form GST DRC-05 by the proper officer where proceedings in respect of the impugned notice are concluded.

Provisional attachment of property – Changes in Rule 159 and Form GST DRC-22

- Sub-rule (2) of Rule 159 now provides that the copy of order of attachment which is to be placed by specified Authority on the movable or immovable property shall be removed either on written instructions from the Commissioner to the said effect '*or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier.*'

- Hence, the words 'or on expiry of a period of one year from the date of issuance of order under sub-rule (1), whichever is earlier' have been added to provide that in case the Commissioner has not instructed of removal of such copy of order of attachment within one year from the date of issuance of such order, there is no requirement of written instructions for removal of the same.

- Parallel amendments have been made to Form GST DRC-22.

Amendments in GST Forms

- Amendments have also been made in forms GST REG-08, GSTR-8 and PCT-01.

3. Supply to SEZ can be made on payment of integrated tax under the notification

(w.e.f. 1 October 2023)
[Notification No. 05/2023-Integrated Tax dated 26 October 2023]

- Notification No. 1/2023-Integrated Tax issued in the exercise of power conferred by Section 16(4) of the Integrated Goods and Services Tax Act, 2017, provided for export of goods and/or services (other than restricted goods) on payment of integrated tax.

- The said notification has been amended to allow the suppliers to supply goods or services (except the commodities like pan masala, tobacco, gutkha, etc. mentioned in the Notification No. 1/2023-Integrated Tax dated 31 July 2023) to the SEZ developer or a SEZ unit for authorised operations on payment of integrated tax and claim the refund of tax so paid.

- The amended notification also provides the definitions for the terms 'authorised operations', 'Developer', 'Special Economic Zone' and 'unit'.

LKS Comments

- The insertion has been made pursuant to recommendation by the 52nd GST Council meeting.

4. Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 notified.

- The said rules supersede the erstwhile Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019 except as respects things done or omitted to be done before supersession.

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