L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

31 DECEMBER 2021

INDIRECT TAX

GST Update: Amendment in CGST Rules[1]

UPDATE NO. 42 OF 2021

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

A. MANDATORY CONDITIONS FOR AVAILMENT OF ITC [AMENDMENT IN RULE 36(4)]

- Input tax credit shall not be availed by a registered person in respect of invoices or debit notes, which are required to be furnished under Section 37(1) of the CGST Act[2] unless -

  (a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; **and**

  (b) the details of such invoices or debit notes have been communicated to the registered person in **FORM GSTR-2B** under sub-rule (7) of rule 60

- The above amendment is effective from 1 January 2022.

L&S Comments:

- The above amendment is made to ensure Rule 36(4) is in alignment with newly inserted clause (aa) to Section 16(2) of the CGST Act, 2017. Accordingly, the facility of taking provisional credit of 5% is no longer available with effect from 1 January 2022 . Further, dispute regarding the ascertainment of eligible ITC as per GSTR-2A or GSTR-2B has been resolved.

Issue:

Whether the said amendment is going to be applicable on –

- Invoices raised prior to 1 January 2022 but received later?
- Invoices received and reported in the return of December 2021 which is filed / submitted in the month of January 2022 i.e. post amendment?

[1] Central Goods and Service Tax Rules, 2017
[2] Central Goods and Service Tax Act, 2017

B. EXTENSION OF DUE DATE FOR FILING OF RETURN IN FORM GSTR-9/9C FOR THE FY 2020-21 [AMENDMENT IN RULE 80]

- Annual return in Form GSTR-9 and Self-certified reconciliation statement in Form GSTR-9C shall be furnished on or before 28 February 2022 for the FY 2020-2021. [Rule 80(1A) and Rule 80(3A)]

L&S Comments:

Previously, due date for filing of return in Form GSTR-9/9C for the FY 2020-21 was 31 December 2021.

C. ELIGIBILITY TO CLAIM REFUND OF TAX PAID ON INWARD SUPPLIES AS PER NOTIFICATION ISSUED UNDER SECTION 55 OF THE CGST ACT, 2017 [INSERTION OF PROVISO IN RULE 95(3)]

- Section 55 is applicable for any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf

- The refund of tax paid by the applicant on his inward supplies, as per notification issued under Section 55, shall be available if the copy of the invoice is duly attested by the authorized representative of the applicant and is submitted along with the refund application in FORM GST RFD-10 in case Unique Identity Number of the applicant is not mentioned in a tax invoice.

- The above amendment is effective from 1 January 2022.

L&S Comments:

Previously, mentioning of name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant on the tax invoice were mandatory conditions for claiming refund of tax paid by applicant.

D. TIME LIMIT FOR MAKING PAYMENT OF AMOUNT REFERRED IN SECTION 129(1) [AMENDMENT IN RULE 142(3)]

- The payment of amount referred to in Section 129(1) shall be made within 7 days of the notice issued under Section 129(3) but before the issuance of order under the said sub-section (3).

- The above amendment is effective from 1 January 2022.

L&S Comments:

The above amendment is made to align Rule 142(3) with Section 129(3) of the CGST Act as amended by Finance Act, 2021.

The amended provision of Section 129(3) provides that 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.

E. RECOVERY OF PENALTY BY SALE OF GOODS OR CONVEYANCE DETAINED OR SEIZED IN TRANSIT [INSERTION OF NEW RULE 144A]

- Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under Section 129(1) within 15 days from the date of receipt of the order passed under Section 129(3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of, by preparing an inventory and estimating the market value of such goods or conveyance to recover the penalty payable under Section129 (3).

- In this respect, mechanism for sale of goods or conveyance through a process of auction, including e-auction has been prescribed and amendment has also been done to align the corresponding forms i.e. FORM GST DRC-10, Form GST DRC-11 and Form GST DRC-12.

- The above amendment is effective from 1 January 2022.

L&S Comments:

The above rule has been inserted in line with provisions of Section 129(6) of the CGST Act as amended by Finance Act, 2021

F. DISPOSAL OF PROCEEDS OF SALE OF GOODS OR CONVEYANCE AND MOVABLE OR IMMOVABLE PROPERTY [SUBSTITUTION OF RULE 154]

- The amount realised from the sale of goods or conveyance, movable or immovable property shall,-

  (a) first, be appropriated against the administrative cost of the recovery process;

  (b) next, be appropriated against the amount to be recovered or to the payment of the penalty payable under Section 129(3);

  (c) next, be appropriated against any other amount due from the defaulter under the CGST Act or the IGST Act[3] or the UTGS Act[4] or any of the SGST Act[5] and the rules made thereunder; and

  (d) the balance, if any, credited to the
    - Electronic cash ledger of the owner of the goods or conveyance if the person is registered under the Act,
    - Bank account of the person if the said person is not required to be registered under Act;

- Balance of sale proceeds shall be deposited with the Fund in case the same is not paid to the person within 6 months from the date of sale of goods or conveyance or such further period as the proper officer may allow.

- The above amendment is effective from 1 January 2022.

L&S Comments:

Amount recovered shall be specifically appropriated against penalty payable under Section 129(3). Earlier, there was no specific provision for appropriated of amount against penalty under Section 129(3). Further, if the same could not be paid to the concerned person, then the provision now requires balance amount to be deposited in the Fund.

[3] Integrated Goods and Services Tax Act, 2017
[4] Union Territory Goods and Services Tax Act, 2017
[5] State Goods and Services Tax Act, 2017

G. PROVISIONAL ATTACHMENT OF PROPERTY PRESCRIBED [AMENDMENT IN RULE 159]]

- Order of the provisional attachment of property under Section 83, issued in FORM GST DRC-22, shall also be sent to the person whose property is being attached.
- Application for filing objection against provisional attachment of property under Section 83 shall be filed in Form GST DRC-22A.
- The above amendment is effective from 1 January 2022.

H. INSERTION OR AMENDMENT IN VARIOUS GST FORMS WITH EFFECT FROM 1ST JANUARY 2022.

S. No.	Form No.	Title	Nature of Amendment
1.	FORM GST DRC -10	Notice for Auction under Section 79 (1) (b) or Section 129(6) of the Act	Amended to incorporate the issuance of notice for auction under Section 129(6)
2.	FORM GST DRC -11	Notice to successful bidder	Amended to give effect to changes done in Rule 144A in respect of Section 129(6)
3.	FORM GST DRC- 12	Sale Certificate	Amended to give effect to changes done in Rule 144A in respect of Section 129(6)
4.	FORM GST DRC- 22	Provisional attachment of property under Section 83	Amended to incorporate provisional attachment in respect of any person specified in sub-Section (1A) of Section 122. Provision for attachment of "vehicle" or "others" specifically prescribed

S. No.	Form No.	Title	Nature of Amendment
5.	FORM GST DRC- 23	Restoration of provisionally attached property / bank account under	Order for restoration of provisionally attached property before conclusion of proceedings against the defaulting person.
6.	FORM APL-01	Appeal to Appellate Authority	Amended to give effect to the mandatory requirement to deposit the specified amount for appeal against an order made under Section 129(3)
7.	FORM GST DRC-22A	Application for filing objection against provisional attachment of property	New form inserted in the rules for filing the objection against provisional attachment of property

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