L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

28 DECEMBER 2020

GST

Central Goods and Services Tax Rules, 2017 – 14th amendment of 2020

UPDATE NO. 48 OF 2020

Lakshmikumaran & Sridharan attorneys

exceeding expectations
SINCE 1985

AMENDMENT TO CENTRAL GOODS AND SERVICES TAX RULES, 2017 ('CGST RULES, 2017')

[NOTIFICATION NO. 94/2020-CT, DATED 22 DECEMBER 2020]

CGST Rules	Impact of amendment
Amendment in Rule 36(4)	Restriction on availment of credit
Insertion of Rule 86B	Restriction on utilization of credit
Amendment in Rule 59	Restriction on filing of GSTR-1
Amendment in Rule 138	Reduction in validity of E-way Bill
Amendment in Rule 21, 21A and 22	Cancellation and suspension of registration - Powers increased
Amendment in Rule 8 & 9	Application of registration and its verification

RESTRICTION ON AVAILMENT OF CREDIT OF RULE 36(4) [W.E.F. 1 JANUARY 2021]

- The term 'uploaded' appearing in the rule substituted with the term 'furnished'.
- In addition to reference of invoice or debit note furnished by supplier under Section 37(1), the words invoices or debit notes furnished in GSTR-1 or invoice furnishing facility added.
- Provisional credit of 10% reduced to 5%.

L&S COMMENTS

- Earlier invoices or debit notes uploaded by supplier in GSTR-1 were covered for the purpose of eligibility under Rule 36(4). Now, ITC is eligible only in respect of those invoices or debit notes whose GSTR-1 has been furnished.
- Compliance of Rule 36(4) – GSTR-2A or GSTR2B ?

RESTRICTION ON UTILIZATION OF CREDIT INSERTION OF RULE 86B INSERTED [W.E.F. 1 JANUARY 2021]

- In a month, use of electronic credit ledger for payment of output tax cannot exceed 99% of output tax liability.

- Restriction applicable only when value of taxable supply other than exempt supply and zero rated supply in a month exceeds INR 50 lakh.

- Restriction not to apply for following class of person:
  - Income tax of more than Rs. 1 lakh has been paid by
    - Person or Proprietor or Karta or Managing Director or
    - Any of 2 partners or Whole Time Directors or Members of Managing Committee of Associations or Board of Trustees.

    In each of last 2 F.Y.s for which time limit to file income tax return under Section 139(1) has expired,
  - Registered person who has received refund of unutilised input tax credit of more than INR 1 lakh in preceding F.Y. under proviso to Section 54(3) (Inverted Duty Structure and Zero-rated supplies made without payment of tax).
  - Registered person who has discharged output tax liability through e-cash ledger exceeding 1% of Total Output Tax Liability (applied cumulatively) up to said month in current F.Y.
  - Specific person – Government Department / PSU / Local Authority / Statutory Body.

- Commissioner / Officer authorized by him may remove the above restriction.

L&S COMMENTS

- Rule 86B is aimed to control passing of fraudulent credit.

- Condition is linked with output tax (Reverse Charge Liability not covered).

- Specific provision for restriction on filing of GSTR-1 and cancellation of registration for class of person mentioned in Rule 86B (mentioned in succeeding paragraphs).

RESTRICTION ON FILING OF GSTR-1 INSERTION OF RULE 59(5) INSERTED [W.E.F 22 DECEMBER 2020]

- **In case of monthly filers:**
  Not allowed to furnish GSTR-1 if GSTR-3B not furnished for preceding two months.

- **In case of quarterly filers**
  Not allowed to furnish GSTR-1 or invoice furnishing facility if GSTR-3B not furnished for preceding quarter.

- **Registered person restricted under Rule 86B**
  Not allowed to furnish GSTR-1 if GSTR-3B not furnished for preceding two months.

L&S COMMENTS

- Provision to ensure GSTR-3B has been filed for past period.

- Notification No. 82/2020-CT, dated 10 November 2020 has substituted Rule 59with effect from 1 January 2021 . Impact on Rule 59(5) inserted by present notification?

REDUCTION IN VALIDITY OF E-WAY BILL AMENDMENT IN RULE 138 [W.E.F. 1 JANUARY 2021]

- The computation of validity period enlisted under Rule 138(10) has been reduced from 1 day for every 100 km to 1 day for every 200 km in case goods are being transported by vehicle other than over dimensional cargo (ODC).

Present provisions	With effect from 1 January 2021
Up to 100 km: One day in cases other than ODC	**Up to 200 km:** One day in cases other than ODC
For every 100 km. or part thereof thereafter: One additional day in cases other than ODC	**For every 200 km. or part thereof thereafter:** One additional day in cases other than ODC

PROCEDURE FOR APPLICATION OF REGISTRATION [SUBSTITUTION OF RULE 8(4A) [FROM A DATE TO BE NOTIFIED]

- Along with application in Part-B of REG-1, following shall be submitted
    - **If opted for Aadhar Authentication:** Biometric based Aadhar authentication and photographs
    - **If not opted for Aadhaar Authentication:** Biometric information, photographs and other specified KYC documents.
    - Verification of the original copy of the documents uploaded with the application in GST REG-01 at one of the Facilitation Centres notified by the Commissioner.
- Application deemed to be complete only after the above process is complete.

VERIFICATION OF APPLICATION OF REGISTRATION AMENDMENT IN RULE 9 [W.E.F. 22 DECEMBER 2020]

- Proper Officer (if deems fits) can carry out physical verification of place of business before granting registration even when Aadhar authentication has been done while filing application.

- 30 days time-limit specified for granting registration in case of physical verification:
  - Aadhar Authentication failed or not opted for
  - Proper officer deems fit to carry out physical verification

- **Time-limit increased for following action by officer:**

Grant of registration under Rule 9(1)	From 3 to 7
REG-03 Notice in Rule 9(2)	**From 3 to 7**
REG-03 Notice in proviso to Rule 9(2): Physical Verification scenarios	From 21 to 30 days

CANCELLATION AND SUSPENSION POWERS AMENDMENT IN RULES 21, 21A AND 22 (W.E.F. 22.12.2020)

Cancellation of registration

- Registration can be cancelled in following cases:
  (a) ITC is availed in violation of Section 16 or the rules made thereunder;
  or (b) Details of outward supplies furnished in GSTR-1 under Section 37 for one or more tax periods is in excess of the outward supplies declared by him in his valid return under Section 39 for the said tax periods; or
  (c) **Rule 86B is violated.**

Suspension of registration

- Registration can be suspended without providing an opportunity of being heard.

- Registration can be suspended when,
  - Significant differences or anomalies when comparison is made of details furnished in GSTR-3B with
    - Outward supplies furnished in GSTR-1; or
    - Inward supplies based on the details of outward supplies furnished by suppliers in their GSTR-1, and
  - Indication of contravention of the Act or rules, leading to cancellation of registration.

- REG-31 to be issued to taxpayers to explain, within a period of 30 days, why registration not be cancelled.

- No refund shall be granted under Section 54 during suspension period.

- Registered person not allowed to make any taxable supply during suspension period and shall not be required to furnish any return under Section 39.

- Power to revoke suspension by officer during pendency of cancellation proceedings.

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