L&S UPDATE

An e-update to clients from Lakshmikumaran & Sridharan

20 DECEMBER 2022

INDIRECT TAX

Recommendations of 48th GST Council Meeting

UPDATE NO. 51 OF 2022

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exceeding expectations
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The GST Council in its 48th meeting held on 17 December 2022 recommended various changes in GST tax rates, measures for facilitation of trade and streamlining compliances in GST etc.

In this context, the update in ensuing paragraphs is bifurcated as under:

A. Changes in GST rates on supply of goods
B. Measures for facilitation of trade
C. Measures for streamlining compliances in GST

A. CHANGES IN GST RATES ON SUPPLY OF GOODS

Sr. No	Chapter Heading	Description of Goods	Old Rate	New Rate
1.	2302	Husk of pulses including chilka and concentrates including chuni/churi, khanda**.	5%	Nil
2.	2207	Ethyl alcohol supplied to refineries for blending with motor spirit (petrol)	18%	5%

** The Council has recommended to regularize the intervening period starting from the date of issuance of Circular No. 179/11/2022-GST dated 3 August 2022 in respect of GST on 'husk of pulses including chilka and concentrates including chuni/churi, khanda' on "as is basis" on account of genuine doubts.

- **Goods to be included under reverse charge**
  - The Council has recommended to include supply of Mentha arvensis under reverse charge mechanism.

- **Recommendation to issue clarifications**
  - Rab also known as rab-salwat is classified under CTH 1702 to be taxable at the rate of 18%.

  - Fryums manufactured using the process of extrusion is covered under CTH 19059030 to be taxable at the rate of 18%.

  - Compensation Cess @ 22% shall be applicable to the motor vehicle fulfilling the following conditions namely –
    - Popularly known as SUV
    - Engine capacity exceeding 1500 cc
    - Length exceeding 4000 mm
    - Ground clearance of 170 mm or above

- Goods falling in lower rate category of 5% under Schedule I of Notification No. 1/2017-CTR imported for petroleum operations will attract lower rate of 5% and the rate of 12% shall be applicable only if the general rate is more than 12%.

- Residential dwelling rented to a registered person will be exempt from payment of GST if such dwelling is used in the personal capacity by the registered person on his own account and not on account of business.

L&S comment:

This clarification seems to provide exemption for the service of renting of residential dwelling provided to registered persons such as proprietorship firm to be used by such persons for personal use as residence and not for the purpose of business.

It seems that amendment will be required to be made in the NN 12/2017-C.T.R. to give effect to the said clarification.

- GST is not payable on incentives paid to bank by the Central Government under the scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions as these are in the nature of 'subsidy'.

B. MEASURES FOR FACILITATION OF TRADE

- **Decriminalization of offences**
  - The Council has recommended to increase the minimum threshold limit for launching prosecution from one crore to two crores for all offences except the offence of issuance of invoice without supply of goods or services or both.

  - The Council has proposed to reduce the compounding amount from the present range of 50% to 150% of tax amount to the range of 25% to 100%.

- The Council has proposed to decriminalize the offences specified under clause (g), (j) and (k) of Section 132(1) of Central Goods and Services Tax Act, 2017, *namely-*
  - obstruction or preventing any officer in discharge of his duties;
  - deliberate tempering of material evidence; and
  - failure to supply the information.

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L&S comment:

The above recommendations made by the Council is a welcome move by the Government.

The aforesaid recommendations made by the Council would be made effective by amending the relevant provisions of the CGST Act.

- **Refund of Tax to Unregistered Persons upon Cancellation of Services**
  - The Council has acknowledged that currently there is no procedure to claim refund of tax borne by the unregistered customer in case of construction services and long-term insurance services when such supply is cancelled, and the time period of issuance of credit note by the supplier is over.
  - Now, the Council has recommended to amend CGST Rules along with issuance of Circular to prescribe the procedure for filing application of refund by the unregistered customers in such cases.

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L&S comment:

This is a welcome change for the real estate and insurance sector where cancellation of agreement is regular in nature. It will give huge relief to the customers where the developers and insurance companies are not in a position to issue credit note and/or refund the tax amount to the customer.

- **Supplies by unregistered persons and composition dealers-E-Commerce**
  - The Council had granted in-principle approval, in its 47th Council Meeting, allowing unregistered suppliers and composition taxpayers to make intra-state supply of goods through E-Commerce Operators (ECOs), subject to certain conditions.
  - The Council has approved amendment in the GST Laws (CGST Act, CGST Rules along with issuance of relevant Notification) for implementing the same.
  - The Scheme will be made effective from 1 October 2023 to enable the ECOs to get prepared for the same.
- **Amendment of Paras 7, 8(a) and 8(b) of Schedule III of CGST Act, 2017**
  - Vide CGST (Amendment) Act, 2018, with effect from 1 February 2019, the following transactions were included in Schedule III:
    - Supplies of goods from a place outside the taxable territory to another place outside the taxable territory [Para 7]
    - Supply of warehoused goods before their home clearance [Para 8(A)]
    - High sea sales [Para 8(B)]
  - Considering the doubts and ambiguities prevailing regarding taxability of such supplies during the period from 1 July 2017 to 31 January 2019, the Council has recommended to make the said amendments effective retrospectively from 1 July 2017.
  - The Council has also clarified that no refund of tax already been paid in respect of such transactions/ activities during the period from 1 July 2017 to 31 January 2019 would be available.

L&S comment:

This is a welcome move providing huge relief to the taxpayers specifically in those cases where department has initiated inquiry proceedings for recovery of tax on such transaction during the impugned period.

Notification is awaited to comment whether Government can restrict refund of tax paid on a transaction which was not taxable.

- **Amendment in Rule 37(1) of the CGST Rules**
  - The Council has recommended to amend Rule 37(1) of the CGST Rules retrospectively with effect from 1 July 2022 to provide for reversal of ITC, in terms of second proviso to Section 16 of the CGST Act, only in proportion to amount not paid to the supplier vis-à-vis the value of supply including tax component.

  L&S comment:

  It is a welcome amendment whereby the existing dispute as to whether ITC can be claimed in proportion to amount paid to the supplier will be put to rest. This recommendation is in line with the Rule prevalent prior to 1 October 2022.

- **Insertion of Rule 37A in CGST Rules, 2017**
  - The Council has recommended to insert Rule 37A in CGST Rules, 2017 to prescribe the mechanism for reversal of input tax credit by a registered person in the event of non-payment of tax by the supplier by a specified date and mechanism for re-availment of such credit, if the supplier pays tax subsequently.
  - This would ease the process for complying with the condition for availment of input tax credit under Section 16(2)(c) of CGST Act, 2017.

  L&S comment:

  This recommendation seems to provide the mechanism for reversal and re-availment of credit in the light of Section 41 of the CGST Act.

- **Amendment in Rule 108(3) and Rule 109 of CGST Rules, 2017**
  - The Council has recommended to amend Rule 108(3) and Rule 109 of the CGST Rules, 2017 to provide clarity on the requirement of submission of certified copy of the order appealed against and the issuance of final acknowledgment by the appellate authority to facilitate timely processing of appeals and ease the compliance burden for the appellants.

- **Facility for Withdrawal of an Application of Appeal**
  - The Council has recommended to insert Rule 109C and FORM GST APL-01/03 in the CGST Rules, 2017 to provide the facility for withdrawal of an application of appeal up to certain specified stage.
  - This would help in reducing litigations at the level of appellate authorities.

- **Claim Bonus offered by Insurance Companies**
  - The Council has proposed to issue a circular clarifying that no claim bonus offered by the insurance companies to the insured is an admissible deduction for valuation of insurance services.

- **Treatment of Statutory Dues under GST in respect of IBC Proceedings**
  - The Council has proposed to issue a circular for clarifying the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalised under Insolvency and Bankruptcy Code, 2016.
  - The Council has also recommended to amend Rule 161 of CGST Rules, 2017 and FORM GST DRC-25 for facilitating the same.

- **Facility for Cancellation of Registration under Rule 12(3) of CGST Rules, 2017**
  - The Council has proposed to amend Rule 12(3) of CGST Rules, 2017 to provide facility to the registered persons, who are required to collect tax at source under section 52 or deduct tax at source under Section 51 of CGST Act 2017, for cancellation of their registration on their request.

- **Place of Supply of Services of Transportation of Goods**
  - The Council has proposed to issue a circular for clarifying the issues pertaining to the place of supply of services of transportation of goods in terms of the proviso to Section 12(8) of the IGST Act, 2017 and availability of input tax credit to the recipient of such supply.
  - Further, the Council has recommended that proviso to Section 12(8) of the IGST Act, 2017 may be omitted.

  L&S comment:

  Upon omission of the proviso to Section 12(8), the place of supply of the services of transportation of goods when both the parties are in India shall remain to be in India.

- **Issuance of Circulars to remove ambiguity and legal disputes on the following GST related issues**
  - Procedure for verification of input tax credit in cases involving difference in input tax credit availed in FORM GSTR-3B vis a vis that available as per FORM GSTR-2A during FY 2017-18 and 2018-19.
  - Manner of re-determination of demand in terms of Section 75(2) of CGST Act, 2017.
  - Applicability of E-Invoicing with respect to an entity.

C. MEASURES FOR STREAMLINING COMPLIANCES IN GST

- **Aadhaar Authentication and Physical Verification of Registration Applicants**
  - The Council has proposed to amend Rule 8 and Rule 9 of CGST Rules, 2017 to make Aadhaar authentication mandatory to tackle the menace of fake and fraudulent registrations.

- **Verification of Permanent Account Number (PAN) at the time of GST Registration**
  - Rule 8(2)(a) of the CGST Rules provides that Permanent Account Number (PAN) shall be validated online by the common portal from the database maintained by the Central Board of Direct Taxes (CBDT).
  - Now, the Council has recommended to capture PAN-linked mobile number and e-mail address from database maintained by CBDT and record in FORM GST REG-01 at the time of GST registration.
  - Further, OTP-based verification of such PAN-linked mobile number and email address has been proposed to restrict misuse of PAN of a person by unscrupulous elements without knowledge of the PAN-holder.

- **Restriction on Filing of Returns / Statements Registration**
  - The Council has recommended to amend Section 37, 39, 44 and 52 of the CGST Act, 2017 to restrict filing of returns/ statements to a maximum period of three years from the due date of filing of the relevant return / statement.

- **Amendment in Form GSTR-1**
  - The Council has proposed to amend Form GSTR-1 to provide for reporting of details of supplies made by the supplier through E-Commerce Operators (ECOs) which are covered under Section 52 and Section 9(5) of CGST Act, 2017.
  - Further, amendment in Form GSTR-1 has been proposed to provide for reporting by the ECOs in respect of supplies made under Section 9(5) of CGST Act, 2017.

- **Intimation of Differential Liability between Form GSTR-1 and GSTR-3B**
  - The Council has recommended to insert Rule 88C in CGST Rules, 2017 and introduce a new FORM GST DRC-01B for intimation to the taxpayer by the common portal, about the difference between liability reported by the taxpayer in FORM GSTR-1 and in FORM GSTR-3B for a tax period, where such difference exceeds a specified amount and/or percentage. This would enable the taxpayer to either pay the differential liability or explain the difference.

  - Further, the Council has proposed to insert clause (d) in Rule 59(6) of CGST Rules, 2017 to restrict furnishing of FORM GSTR-1 for a subsequent tax period if the taxpayer has neither deposited the amount specified in the intimation nor has furnished a reply explaining the reasons for the amount remaining unpaid.

  - This would help in facilitating taxpayers to pay/ explain the reason for the difference in such liabilities reported by them without intervention of the tax officers.

- **Amendment in definition of 'Non-Taxable Online Recipient' and 'Online Information and Database Access or Retrieval Services' under IGST Act.**
  - The Council has recommended to amend the definition of "non-taxable online recipient" under Section 2(16) of IGST Act, 2017 and the definition of "Online Information and Database Access or Retrieval Services (OIDAR)" under Section 2(17) of IGST Act, 2017 to reduce interpretation issues and litigation on taxation of OIDAR Services.

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