LKS UPDATE
An e-update to clients from Lakshmikumaran & Sridharan

30 DECEMBER 2022

INDIRECT TAX

Statutory dues when proceedings finalized under IBC

UPDATE NO. 54 OF 2022

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CLARIFICATION REGARDING 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

Circular No. 187/19/2022-GST, dated 27 December 2022

- Earlier, Circular No.134/04/2020-GST, dated 23 March 2020 clarified that no coercive action can be taken against the corporate debtor with respect to the dues of the period prior to the commencement of Corporate Insolvency Resolution Process (**"CIRP"**). Such dues will be treated as 'operational debt' and the claims may be filed by the proper officer before the NCLT in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016 (**"IBC"**).
- Now, Circular No. 187/19/2022-GST has been issued to clarify the treatment of statutory dues under GST law in respect of the taxpayers for whom the proceedings have been finalized under IBC.
- As per Section 84 of CGST Act, if the government dues against any person under CGST Act are reduced as a result of any appeal, revision or other proceedings in respect of such government dues, then an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amount of government dues.
- CBIC has clarified that the word 'other proceedings' in Section 84 of CGST Act would cover the proceedings conducted by adjudicating authorities and appellate authorities under IBC as such proceedings also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor.
- Rule 161 of Central Goods and Services Tax Rules, 2017 (**"CGST Rules"**) prescribes FORM GST DRC-25 for issuing intimation for such reduction of demand specified under Section 84 of CGST Act.
- It has been clarified that in cases where a confirmed demand for recovery has been issued by the tax authorities for which a summary has been issued in FORM GST DRC-07/DRC 07A against the corporate debtor, and where the proceedings have been finalised against the corporate debtor under IBC reducing the amount of statutory dues payable by the corporate debtor to the government under CGST Act or under existing laws, the jurisdictional Commissioner shall issue an intimation in FORM GST DRC-25 reducing such

demand, to the taxable person or any other person as well as the appropriate authority with whom recovery proceedings are pending.

- For this purpose, the Central Government, *vide* Notification No. 26/2022-Central Tax dated 26 December 2022, has amended FORM GST DRC-25. Now, the dues reduced by the Appellate/Revisional authority/**Adjudicating authority or Appellate authority under Insolvency & Bankruptcy Code** can be intimated by the jurisdictional commissioner in FORM GST DRC-25 as required under Section 84 of CGST Act read with Rule 161 of CGST Rules. Further, the recovery of enhanced/ reduced amount stands continued from the stage at which the recovery proceedings stood immediately before disposal of appeal or revision or **any other proceedings**. Moreover, the revised amount of demand can be given in the FORM GST DRC-25 after giving effect of appeal or revision by Appellate/Revisional authority or **any other proceedings**.

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