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L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

L&S GST Update No. 33
21st June, 2017

Draft Anti-profiteering Rules
&
Deferment of E-way Bill Rules

Anti-profiteering - Introduction

- Section 171 of CGST Act provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

- In this regard, government has released Draft Anti-profiteering Rules specifying the manner of application by the aggrieved parties and disposal of appeals by the authority.

Various bodies to be constituted

- National Anti-profiteering Authority, consisting of:
  - A Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India
  - Four Technical Members who are or have been Commissioners of State tax or Central Tax or have held an equivalent post under the existing law

  To be nominated by GST Council
- Standing Committee on Anti-profiteering, consisting of:
  - Such Officers of the State Government, as may be nominated by GST Council
  - Such Officers of the Central Government, as may be nominated by GST Council
- State level Screening Committee, consisting of:
  - One Officer of the State Government, to be nominated by the Commissioner
  - One Officer of the Central Government, to be nominated by the Chief Commissioner

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Procedure

Interested party aggrieved by the prices

Application in writing to be submitted to the State level Screening Committee

Screening by State Level Committee

Examine the application and if it is satisfied that supplier has contravened the provisions of Section 171, shall forward the same to the Standing Committee

An application by the Commissioner suo-moto shall be directly entertained by the Standing committee

Inspection by Standing Committee ("SC")

Within two months, SC shall examine the accuracy of the evidence provided and if satisfied, refer the matter to Director General of Safeguards ("DGS") for detailed investigation

Investigation by DGS

Conduct investigation and issue a notice to the interested party(s) containing the prescribed information

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Procedure

Help of Other agencies or statutory authorities	If required, DGS may also seek opinion from other agencies as part of his investigation
Power to Summon	DGS has been empowered to exercise power to summon any person for production of document or necessary evidence
DGS Report	A report should be submitted to the Authority within 3 months and extension of further 3 months if allowed by Standing committee
Order by the Authority	Within 3 months, Authority shall determine whether the supplier has passed on the benefits to the recipient, after giving opportunity of being heard to the parties, if requested by them in writing

Implications of the Order of the Authority

- Where the Authority determines that the supplier has not passed on the benefit of reduction in rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order the supplier to:
  - Reduce the prices of the supply that he is making
  - Return to the aggrieved party the amount of benefit not passed on by him
  - Pay Interest @ 18% from the date of collection of higher amount till the date of return of such amount
  - Pay penalty imposed as prescribed under the Act, and
  - Cancel the registration under the Act

Post order of Authority

- Supplier shall comply with the order of the authority failing recovery shall be made in accordance with the provisions of IGST Act, or CGST Act or UTGST Act or SGST Act as the case maybe.
- Any authority of CGST Act, SGST Act, or UTGST Act may also be asked to monitor the implementation of the order passed by the Authority

Tenure of the Authority

- The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise

Update on E-way Bill Rules

- Applicability of E-way Bill provisions has been deferred till such time the portal for generation of electronic way bill is in place.

  Until that time, government will specify the documents that the person in charge of a conveyance carrying any consignment of goods shall carry while the goods are in movement or in transit storage.

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