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भारतीय कम्पनी सचिव संस्थान

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for

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TAX LAWS

(PART II – INDIRECT TAXES)

MODULE 1

PAPER 4

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Note: Students are also required to update themselves on all the relevant Rules, Notifications, Circulars, Clarifications, etc. issued by the CBIC on or before 31st May, 2022 pertaining to GST and Customs Act, 1962.

Lesson 14

Input Tax Credit and Computation of GST Liability-Overview

1. Central Goods and Services Tax (Tenth Amendment) Rules, 2021

Notification No. 40/2021- Central Tax dated December 29, 2021

The Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely: —

1. Short title and commencement. -(1) These rules may be called the Central Goods and Services Tax (Tenth Amendment) Rules, 2021.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, —

(i) in rule 36, for sub-rule (4), the following sub-rule shall be substituted, with effect from the 1st day of January, 2022, namely: -

“(4) No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 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.”;

(ii) in rule 80,—

(a) after sub-rule (1), the following sub-rule shall be inserted, namely:- —

“(1A) Notwithstanding anything contained in sub-rule (1), for the financial year 2020-2021 the said annual return shall be furnished on or before the twenty-eighth day of February, 2022.”;

(b) after sub-rule (3), the following sub-rule shall be inserted, namely:- —

“(3A) Notwithstanding anything contained in sub-rule (3), for the financial year 2020-2021 the said self-certified reconciliation statement shall be furnished along with the said annual return on or before the twenty-eighth day of February, 2022.”;

(iii) in rule 95, in sub-rule (3), after clause (c), the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2021, namely:- —

“**Provided** that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the

invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in **FORM GST RFD-10.**”;

(iv) in rule 142, with effect from the 1st day of January, 2022,—

(a) in sub-rule (3), for the words and letters, “fourteen days of detention or seizure of the goods and conveyance”, the words, brackets and figures, “seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3)” shall be substituted;

(b) in sub-rule (5), for the words, “tax, interest and penalty payable by the person chargeable with tax”, the words, “tax, interest and penalty, as the case may be, payable by the person concerned” shall be substituted;

(v) after rule 144, the following rule shall be inserted with effect from the 1st day of January, 2022, namely:-

“Recovery of penalty by sale of goods or conveyance detained or seized in transit.- 144A. (1) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) of section 129 within fifteen days from the date of receipt of the copy of the order passed under sub-section (3) of the said section 129, the proper officer shall proceed for sale or disposal of the goods or conveyance so detained or seized by preparing an inventory and estimating the market value of such goods or conveyance:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(2) The said goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in **FORM GST DRC 10** clearly indicating the goods or conveyance to be sold and the purpose of sale:

Provided that where the person transporting said goods or the owner of such goods pays the amount of penalty under sub-section (1) of section 129, including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period mentioned in sub-rule (1) but before the issuance of notice under this sub-rule, the proper officer shall cancel the process of auction and release such goods or conveyance.

(3) The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(4) The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be

returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.

(5) The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(6) On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in **FORM GST DRC-12**.

(7) The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.

(8) Where an appeal has been filed by the person under the provisions of subsection (1) read with sub-section (6) of section 107, the proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed:

Provided that this sub-rule shall not be applicable in respect of goods of perishable or hazardous nature.”;

(vi) for rule 154, the following rule shall be substituted with effect from the 1st day of January, 2022, namely:—

”Disposal of proceeds of sale of goods or conveyance and movable or immovable property.—

154. (1) The amounts so realised from the sale of goods or conveyance, movable or immovable property, for the recovery of dues from a defaulter or for recovery of penalty payable under sub-section (3) of section 129 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 sub-section (3) of section 129, as the case may be;

(c) next, be appropriated against any other amount due from the defaulter under the Act or the Integrated Goods and Services Tax Act, 2017 or the Union Territory Goods and Services Tax Act, 2017 or any of the State Goods and Services Tax Act, 2017 and the rules made thereunder; and

(d) the balance, if any, shall be credited to the electronic cash ledger of the owner of the goods or conveyance as the case may be, in case the person is registered under the Act, and where the said person is not required to be registered under the Act, the said amount shall be credited to the bank account of the person concerned;

(2) where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund; `

(vii) in rule 159, with effect from the 1st day of January, 2022,—

(a) in sub-rule (2)-

(A) after the words “copy of the order of attachment”, the words, letters and figures —”in **FORM GST DRC-22**” shall be inserted;

(B) after the words “Commissioner to that effect”, the words and figures, “and a copy of such order shall also be sent to the person whose property is being attached under section 83” shall be inserted;

(b) in sub-rule (3)-

(A) for the words “and if the taxable person”, the word “and if the person, whose property has been attached,” shall be substituted;

(B) for the words “by the taxable person”, the words, “by such person” shall be substituted;

(c) in sub-rule (4), for the words “the taxable person” occurring at both the places, the words “such person” shall be substituted;

(d) in sub-rule (5), for the words brackets and figure —, within seven days of the attachment under sub-rule (1), file an objection, the words, letters and figures “file an objection in **FORM GST DRC-22A**” shall be substituted;

Brief Analysis

Rule 36(4) of Central Goods and Services Tax Rules, 2017 shall be substituted, with effect from January 01, 2022, to provide that Input Tax Credit shall not be available to the registered person unless such invoices/debit notes have been reflected in GSTR-2B of the said person.

Rule 95 has been amended to provide that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10.

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-40-central-tax-english-2021.pdf>

Lesson 15
Procedural Compliance under GST

1. Central Goods and Services Tax (Ninth Amendment) Rules, 2021

Notification No. 37/2021- Central Tax dated December 01, 2021

The Central Government, on the recommendations of the Council, hereby makes the following rules further to amend the Central Goods and Services Tax Rules, 2017, namely:—

1. Short title and commencement. – (1) These rules may be called the Central Goods and Services Tax (Ninth Amendment) Rules, 2021.

(2) Save as otherwise provided in these rules, they shall come into force on the date of their publication in the Official Gazette.

2. In the Central Goods and Services Tax Rules, 2017, — (i) in rule 137, with effect from the 30th day of November 2021, for the words “four years”, the words “five years” shall be substituted.

(ii) in FORM GST DRC-03, —

(a) in the heading, after the words “or statement”, the words, letters and figures “or intimation of tax ascertained through FORM GST DRC-01A” shall be inserted;

(b) against item 3, in column (3), for the word and letters “Audit, investigation, voluntary, SCN, annual return, reconciliation statement, others (specify)”, the words, letters, figures and brackets “Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC-01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)” shall be substituted;

(c) against item 5, in column (1), after the word and figures “within 30 days of its issue”, the words, letters, figures and brackets “, scrutiny, intimation of tax ascertained through Form GST DRC01A, audit, inspection or investigation, others (specify)” shall be inserted;

Brief Analysis

With effect from November 30, 2021, Rule 137 of the CGST Rules, 2017 has been amended to extend the tenure of National Anti-Profitteering Authority from existing 4 years to 5 years. Amendments have been made in Form GST DRC-03. The heading of the Form has been changed as under: “Intimation of payment made voluntarily or made against the SCN or statement or intimation of tax ascertained through FORM GST DRC-01A”. The causes of payment in item no. 3 have been expanded. The drop-down list provides “Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC-01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)”. Item no. 5 which require to provide the “details of SCN, if payment is made within 30 days of its issue” has been amended to further include “scrutiny, intimation of tax

ascertained through Form GST DRC-01A, audit, inspection or investigation, others (specify)”. A separate column mentioning “Fee” has been inserted in the table of serial No. 7 which requires the details of payments made.

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-37-central-tax-english-2021.pdf>

2. Mandatory Aadhaar authentication for GST Refund and revocation application

Notification No. 38/2021 – Central Tax dated December 21, 2021

This notification seeks to bring sub-rule (2) and sub-rule (3), clause (i) of sub-rule (6) and sub-rule (7) of rule 2 of the Central Goods and Services Tax (Eighth Amendment) Rules, 2021 into force w.e.f. January 01, 2022.

Brief Analysis

As per this notification Aadhaar authentication is mandatory for GST refund and revocation application.

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-38-central-tax-english-2021.pdf>

3. Government notifies Sections 108, 109 and 113 to 122 of Finance Act, 2021

Notification No. 39/2021 – Central Tax dated December 21, 2021

This notification seeks to notify January 01, 2022 as the date on which provisions of section 108, 109 and 113 to 122 of the Finance Act, 2021 shall come into force. These are GST provisions related to communication of details of invoice or debit note to the recipient.

Brief Analysis

The provisions of Finance Act, 2021 which amends CGST Act, 2017 are notified w.e.f. January 01, 2022. New clause (aa) is added in Section 7 of CGST Act, 2017 which defines scope of supply. New clause (aa) is also added in Section 16(2) of CGST Act, 2017 which states that Input Tax Credit can be claimed only if it appears in GSTR-2B.

For further details please visit:

<https://www.cbic.gov.in/resources/htdocs-cbec/gst/notfctn-39-central-tax-english-2021.pdf>

4. Deployment of Interest Calculator in GSTR-3B (January 26, 2022)

The new functionality of interest calculator in GSTR-3B will facilitate & assist the taxpayers in doing self-assessment. This functionality will arrive at the system computed interest on the basis of the tax liability values declared by the taxpayers, along with the details about the period to which it pertains. The interest applicable, if any, will be computed after the filing of

the said GSTR-3B and will be auto-populated in the Table-5.1 of the GSTR3B of the next tax-period. The facility would be similar to the collection of Late fees for GSTR-3B, filed after the Due date, posted in the next period's GSTR-3B. This functionality will inform the taxpayers about the manner of system computed interest for each tax head and hence will assist the taxpayers in doing correct computation of interest for the tax liability of any past period declared in the GSTR-3B for the current tax period.

For further details please visit:

<https://www.gst.gov.in/newsandupdates/read/520>

5. E-invoicing will be mandatory for taxpayers whose aggregate turnover is more than Rs. 20 crores

Notification No. 01/2022- Central Tax dated February 24, 2022

E-invoicing is now mandatory for registered persons having aggregate turnover above Rs. 20 crores in any of the previous years from 2017-18 till 2021- 22 with effect from April 01, 2022. The existing limit of Rs. 50 crores has been reduced to Rs. 20 crores.

For further details please visit:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-01-central-tax-english-2022.pdf>

Lesson 16

Basic overview on Integrated Goods and Service Tax (IGST), Union Territory Goods and Services Tax

1. Mechanism for filing of refund claim by the taxpayers registered in erstwhile Union Territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli

Circular No. 168/24/2021- GST dated December 30, 2021

New GSTINs with UT Code 26 were created for the taxpayers of erstwhile UT of Daman and Diu w.e.f August 01, 2020 on merger of the UT of Dadra & Nagar Haveli and UT of Daman & Diu. During the transition, the taxpayers have transferred their ITC balance from their electronic credit ledger of the old GSTIN (by reversing the balance amount available in electronic credit ledger through the last return in FORM GSTR 3B filed for the old GSTIN prior to merger) to the new GSTIN (by availing the ITC for the said amount in the first return in FORM GSTR 3B filed for the new GSTIN) as per procedure specified under Notification No. 10/2020-CT dated 21.03.2020.

The application for refund shall be filed under 'Any other' category on the GST portal using their new GSTIN. In the Remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilised ITC on account of export of goods/services, in remarks column, he shall enter 'Refund of unutilised ITC on account of export of goods/services without payment of tax for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.

For further details please visit:

<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Circular-168-2021-GST.pdf>
