

# Analysis of Proposed Amendments in GST in Budget 2021

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Budget 2021 is hailed as a very development-oriented budget which aims for creating and augmenting social infrastructure. However Indirect Tax proposals indicate the intent of the government to tighten the compliance mechanism and increase the scope of GST through various retrospective amendments. Industry needs to be extra cautious while preparing their returns and even basic documents like Invoices, E-way Bill etc. GST which was earlier presented by the government and tax professionals alike as Good and Simple Tax has not remained so simple.

Kindly find below the analysis of various proposed amendments in GST:

## 1. Definition of Supply Amended Retrospectively: Transaction between a person (other than an individual) to its members for consideration to be treated as a supply

Clause 99 of Finance Bill, 2021 has inserted the following clause (aa) after clause (a) under Section 7(1) of CGST Act, 2017 which is made effective retrospectively from 01-07-2017:

*7(1)(aa) - the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.*

*Explanation. - For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another".*

### CGA Analysis:

This amendment aims to put a deeming fiction effective from 1st July 2017 within the law providing that the person (other than an individual) and its members should mandatorily be

treated as two separate persons. Also, the activities or transactions carried out between such person and the members for consideration should mandatorily be treated as a supply leviable to tax under GST.

There had been an area of dispute regarding the taxability of transactions carried out between the members and the association of persons / partnership firms / joint ventures. This was particularly after the Hon'ble Supreme Court judgment in the case of State of West Bengal & Ors. Versus Calcutta Club Limited [2019 (10) TMI 160 - Supreme Court]. It was held that the club / association and its members are not distinct persons and that there would be no leviability of service tax on any services provided by the club to its persons following the concept of mutuality.

Therefore, it is imperative to amend the CGST Act, 2017 so as to safeguard the levy of GST on supplies by an association or body of persons (whether incorporated or not) to its members. It is proposed that amendment to the CGST Act, 2017 as being proposed may be carried out to prevent litigation on this count.

## 2. Omission of entry of supply of goods by unincorporated association in light of the new insertion in the definition of supply

Clause 113 of Finance Bill, 2021 has omitted the following Paragraph 7 under Schedule II of CGST Act, 2017 which is made effective retrospectively from 01-07-2017:

*The following shall be treated as supply of goods, namely:—*

*Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.*

### CGA Analysis:

Reference the retrospective insertion of Section 7(1)(aa) of the CGST Act 2017 as discussed above, the above entry providing for supply of goods only by any unincorporated association or body of persons loses its significance. This entry gets automatically covered within the main definition as per Section 7(1)(aa) of the CGST Act 2017. Thereby, this entry has been omitted from Schedule II of the CGST Act 2017.

### 3. Appearance of transaction in GSTR-2A – a Mandatory condition for availment of ITC

Clause 100 of Finance Bill, 2021 has inserted the following clause (aa) after clause (a) under Section 16(2) of CGST Act, 2017 which is made effective from the date to be notified:

*16(2)(aa) - the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37.*

#### CGA Analysis:

Section 16 of the CGST Act provides for conditions and restrictions subject to which the input tax credit shall be credited to the electronic credit ledger. It would be logical to complete this linkage of outward supplies declared by the supplier with the tax liability, by also limiting the credit availed in Form GSTR 3B to that reflected in GSTR 2A of the recipient.

Further, the department officials were consistently issuing notices to the taxpayers for the differences between the input tax credit availed in GSTR-3B and the input tax credit reflecting in GSTR-2A and was asking for reversal of the input tax credit not covered in GSTR-2A.

However, the taxpayers had challenged such actions of the department on the basis that these actions lacks statutory powers under the GST statute. Through this amendment, it has been expressly provided in the Act itself that the input tax credit must be reflected in GSTR-2A for the availment of input tax credit by the recipient. This will put to rest all the claims where taxpayers were claiming credit of invoices not reflecting in GSTR-2A basis various judgements. Earlier, the taxpayers could claim 20% over and above Matched ITC. This percentage has been systematically reduced from 10% to 5%. Now it is reduced to zero.

### 4. No Requirement of GST Audit

Clause 101 of Finance Bill, 2021 has omitted the following Section 35(5) of CGST Act, 2017 which is made effective from the date to be notified:

*35(5) – Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed:*

*Provided that nothing contained in this sub section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.*

#### **CGA Analysis:**

This is a prospective amendment which need to be notified. It will be applicable from the Financial year in which the Notification to this effect will be published by the Government in the official Gazette of India. For Instance, if Notification comes on 1<sup>st</sup> April 2021, this condition will be applicable for FY 2021-22.

### **5. Self-certification of Reconciliation Statement by the registered person**

Clause 102 of Finance Bill, 2021 has substituted Section 44 of CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

*Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52 a casual taxable person and a non resident taxable person shall furnish **an annual return** which may include a **self-certified reconciliation statement**, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed.*

*Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section.*

*Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.*

#### **CGA Analysis:**

This is a prospective amendment which need to be notified. It will be applicable from the Financial year in which the Notification to this effect will be effected by the Government. For Instance, if Notification comes on 1<sup>st</sup> April, 2021, this condition will be applicable for FY 2021-22.

With effect from this amendment the mandatory requirement of getting the reconciliation in GSTR-9C certified by a Chartered Accountant/ Cost Accountant is proposed to be removed. Any registered person would be able to furnish the annual return along with a self-certified reconciliation statement reconciling the values between annual return and financial statements.

In real sense, taxpayer will still get this work done and verified from professionals, so as to ensure that information is correctly reported in, so that there will not be any issue during Departmental Audit / Assessment.

#### **6. Interest on net tax liability made applicable retrospectively**

Clause 103 of Finance Bill, 2021 has substituted the proviso to Sub-section (1) to Section 50 of CGST Act, 2017 as mentioned below which is made effective from 01-07-2017:

*Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.*

#### **CGA Analysis:**

Interest due to late furnishing of GSTR-3B was made applicable on the net tax liability i.e. on the amount paid from the electronic cash ledger only through the Finance Act 2020. However, this provision was given a prospective effect with effect from 1st September 2020. Now this relaxation has been given a retrospective effect from 1st July 2017 i.e. from the advent of GST.

Now, since the relevant amendment has been made in the GST Act itself, it has given the relief to the taxpayer and all the related controversies have been put to rest.

#### **7. Detention and Seizure or confiscation to be a separate proceeding from the Demand / Recovery provisions**

Clause 104 of Finance Bill, 2021 has made an amendment to the explanation 1 in Clause (ii) to Section 74 of CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

### Provision before Amendment

*Explanation 1. —For the purposes of section 73 and this section, —*

*(i) the expression all proceedings in respect of the said notice shall not include proceedings under section 132;*

*(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under **sections 122, 125, 129 and 130** are deemed to be concluded.*

### Proposed Amendment

*Explanation 1 - For the purposes of section 73 and this section,*

*(i) the expression all proceedings in respect of the said notice shall not include proceedings under section 132;*

*(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under **sections 122 and 125** are deemed to be concluded.*

### **CGA Analysis:**

With effect from this amendment the proceedings of the detention, seizure and confiscation of goods and conveyances in transit are made separate from the demand and recovery proceedings under Section 73 and 74 of the CGST Act 2017.

## **8. Direct recovery without SCN upon furnishing of details in GSTR-1 without tax payment in GSTR-3B**

Clause 105 of Finance Bill, 2021 has inserted the following explanation to Sub-section 12 of Section 75 of CGST Act, 2017 which is made effective from the date to be notified:

*Explanation: For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*

### **CGA Analysis:**

It has been observed that for several GSTINs, the GSTR-1 details are considerably larger than the details furnished under GSTR-3B. Furthermore, a lot of cases have been noticed where GSTR 1 has been filed without filing the corresponding GSTR-3B.

Till now, Section 75(12) provides that where any self-assessed tax remains unpaid, the same can be directly recovered without any issuance of show cause notice. Self-assessment provides for taxes declared in GSTR-3B as per Section 39. Thereby, only taxes declared in GSTR-3B but remaining unpaid through it (practical impossibility) could form the scope of this section 75(12).

Now, it has been provided that if a supplier only uploads details of outward supplies in GSTR-1 without including such supplies in GSTR-3B, then the Government can directly opt for recovery of taxes under Section 79 without issuance of any show cause notice u/s 73 or 74.

## **9. Provisional Attachment is now valid from initiation of proceedings**

Clause 106 of Finance Bill, 2021 has substituted Sub-Section 1 of Section 83 of CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

### Provision before amendment

*83(1) - Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.*

### Proposed Amendment

*83(1): Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.*

### **CGA Analysis:**

Earlier only upon **pendency** of certain proceedings of assessment, inspection, search and seizure and demand / recovery, the power of provisional attachment of property could be exercised.

Now, Section 83 has been modified to allow provisional attachment of property wherever any proceedings of assessment, inspection, search and seizure and demand / recovery have been **initiated**. Such provisional attachment will remain valid from such initiation of proceedings till the expiry of one year from the date of order.

Thus, in place of specified sections, entire Chapters have been prescribed to enlarge the scope of proceedings under which provisional attachment of property can be made. Thus, while earlier the provisions listed were more of those undertaken to check tax evasions (inspection, search, seizure, adjudication of SCN), the amended provision provides for such coercive measure in case of regular proceedings in case of regular taxpayers like scrutiny of returns, assessment of non filers, access to business premises etc. Thus, this may find misapplication in certain cases also.

Also, the provisions of provisional attachment of the property have been extended to include those persons who are the beneficiaries or at whose instance the fake invoicing transactions are carried out as provided under Section 122(1A) of the CGST Act 2017.

## **10. Filing of appeal against detention order upon payment of 25% penalty**

Clause 107 of Finance Bill, 2021 has inserted the following proviso to sub-section 6 of Section 107 of CGST Act, 2017 which is made effective from the date to be notified:

*107(6): Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five percent of the penalty has been paid by the appellant.*

### **CGA Analysis:**

With effect from this amendment, no appeal shall be filed against an order made under Sec 129(3), unless a sum equal to 25% of penalty has been paid by the appellant. Before this amendment, a person can file an appeal against a detention order passed u/s 129(3) of the CGST Act 2017 only upon payment of 10% of the tax in dispute.



## 11. Amendments proposed in Section 129 of CGST Act

- **Payment of only increased penalty for release of goods on account of Detention and Seizure**

Clause 108 (i) and (iv) of Finance Bill, 2021 has substituted Section 129(1)(a) & (b) and 129(4) of the CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

### Provision before amendment

129(1)(a) - *on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;*

129(1)(b) - *on payment of the applicable tax and penalty equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;*

129(4) - *No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

### Proposed Amendment

129(1)(a) - *on payment of penalty equal to two hundred percent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;*

129(1)(b) - *on payment of penalty equal to fifty percent of the value of the goods or two hundred percent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty*

129(4) - *No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

Upon detention and seizure of goods and conveyance u/s 129, one had to pay the tax along with 100% penalty to get the goods released. After this amendment, the 200% penalty needs to be paid to secure release of goods. Earlier one could have paid tax through available ITC balance and penalty in cash. Now post the amendment, all payment needs to be made through debiting electronic cash ledger only.

However, the penalty amount under this provision has been modified for non-exempted goods as follows:

<b>Condition</b>	<b>Earlier</b>	<b>Amended</b>
Where owner comes forward for payment of penalty	Tax Payable along with 100% of the tax as penalty	200% of the tax payable as penalty
Where owner does not come forward for penalty payment	Tax Payable along with 50% of the value of goods as penalty less tax paid	Higher of: a) 50% of the value of goods b) 200% of the tax payable

- **Time limit provided for issuance of notice and order u/s 129**

Clause 108 (iii) of Finance Bill, 2021 has substituted Section 129(3) of the CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

Provision before amendment

*129(3) - The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).*

Proposed Amendment

*129(3) - The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).*

The law now prescribes a time limit for issuance of notice and passing the order of detention or seizure. The time limit for issuance of notice has been provided as 7 days of such detention or seizure and that of order is 7 days from the date of such notice.

- **Delinking of Section 67(6) from Section 129 of CGST Act**

Clause 108 (ii) of Finance Bill, 2021 has omitted Section 129(2) of the CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

Omitted Provision

*129(2) - The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.*

With effect from this amendment the provisions of Section 67(6) for release of goods on provisional basis upon execution of bond and security as per the specified manner and quantum has been delinked with Section 129 of CGST Act.

- **Sell or dispose of goods upon non-payment of penalty for detention**

Clause 108 (v) of Finance Bill, 2021 has omitted Section 129(6) of the CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

Provision before amendment

*129(6) - Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:*

*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 [fourteen days] may be reduced by the proper officer.*

Proposed Amendment

*129(6) - Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):*

*Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:*

*Provided further 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.*

Earlier non-payment of tax and penalty within 14 days of detention and seizure u/s 129 led to introduction of confiscation proceedings u/s 130.

However, with effect from this amendment, now upon non-payment of penalty within 15 days (or less for perishable/hazardous goods) of receipt of order copy of detention, the detained goods or conveyance can directly sold or disposed of in the prescribed time and manner. Further, the transporter has been given an option to get his conveyance released upon payment of applicable penalty or Rs. 1 lakh whichever is less.

## 12. Delinking of Detention and Confiscation proceedings

Clause 109 of Finance Bill, 2021 has amended Section 130 of the CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

### Proposed Amendment

130(1) - **Where** any person—

- i. supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- ii. does not account for any goods on which he is liable to pay tax under this Act; or
- iii. supplies any goods liable to tax under this Act without having applied for registration; or
- iv. contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- v. uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

Second proviso to Section 130(2) - Provided further that the aggregate of such fine and penalty leviable shall not be less than the **penalty equal to hundred percent of the tax payable on such goods.**

~~130(3) - Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.~~

#### **CGA Analysis:**

With effect from this amendment, firstly, the confiscation provision no longer overrides any other provision of the Act.

Also, the minimum aggregate fine and penalty for confiscation was provided to be the penalty for detention under Section 129. This has now been modified to provide the amount to be equivalent to 100% of the tax payable on such goods.

Also, the requirement to pay fine in addition to the tax, penalty and charges payable in respect of the goods has been omitted.

### **13. Empowerment of Commissioner to call for information**

Clause 110 of Finance Bill, 2021 has substituted Section 151 of the CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

#### Provision before amendment

*151(1) - The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.*

*151(2) - Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.*

#### Proposed Amendment

*151 - The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.*

### CGA Analysis:

With effect from this amendment Jurisdictional Commissioner is empowered to call for information from any person relating to any matter dealt with in connection with the Act. This amendment enlarges the scope of power provided to Jurisdictional Commissioner.

## 14. Providing of opportunity of being heard before using the called for information in any proceedings

Clause 111 of Finance Bill, 2021 has amended Section 152 of the CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

*152(1) - No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorized representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act **without giving an opportunity of being heard to the person concerned.***

*~~152(2) - Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerization thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.~~*

### CGA Analysis:

With effect from this amendment, no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

## 15. Power under Section 151 to call for information transferred from the Board to the Jurisdictional Commissioner

Clause 112 of Finance Bill, 2021 has amended Section 168(2) of the CGST Act, 2017 as mentioned below which is made effective from the date to be notified:

168(2) - The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, ~~sub-section (1) of section 44~~, sub-sections (4) and (5) of section 52, sub-section (1) of section 143, except the second proviso thereof, ~~sub-section (1) of section 151~~, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

### CGA Analysis:

Section 168(2) of the CGST Act 2017 provides for the powers which can only be exercised by the Commissioner or Joint Secretary posted in the Board. This has been amended to enable the jurisdictional Commissioner (and not the Board) to exercise powers under section 151 to call for information.

## 16. Amendment made to Section 16 of IGST Act

- **Supply to SEZ for authorized operations only to be treated as a zero rated supply**

Clause 114 of Finance Bill, 2021 has amended 16(1)(b) of the IGST Act, 2017, as mentioned below which is made effective from the date to be notified:

### Provision before amendment

16(1)(b) - *supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit*

### Proposed Amendment

16(1)(b) - *supply of goods or services or both **for authorised operations** to a Special Economic Zone developer or a Special Economic Zone unit*

Earlier, all supplies made to SEZ unit were covered under the definition of Zero Rated Supply. However, Rule 89(1) of the CGST Rules, 2017 provided that refund would be allowed to be claimed by a supplier only when such supplies have been admitted for authorized operations. The department in its circular use to take reference of this rule to conclude that a supply to SEZ would be zero rated only when it is admitted for authorized operations. This conclusion however did not

have any statutory backing. Thus, the aforesaid amendment was carried out to include only supply on account of authorized operations as zero rated supplies.

- **Time limit for realization of Foreign Exchange in case of Exports**

Clause 114 of Finance Bill, 2021 has amended 16(3) of the IGST Act, 2017, as mentioned below which is made effective from the date to be notified:

Provision before amendment

*16(3) - A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—*

*(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or*

*(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.*

Provision after amendment

*16(3) - A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:*

*Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.*

Rule 96B provides for recovery of refund in case of non-realization of sale proceeds in case of export of goods. Till now, there was no empowering provision for this rule under the Act. Now, the Act itself provides that the registered person making zero rated supplies in case of non-



realization of sale proceeds within the specified time is liable to deposit the refund received along with interest. The time limit provided is 30 days after the expiry of time limit prescribed under the FEMA Act 1999 for receipt of foreign exchange remittances.

- **Export with payment of tax to be allowed to notified persons or notified goods /services only**

Clause 114 of Finance Bill, 2021 has inserted sub-section (4) to Section 16 of the IGST Act, 2017, as mentioned below which is made effective from the date to be notified:

*16(4) - The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—*

- a. a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;*
- b. a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid*

With effect from this amendment, now, the taxpayers cannot opt for zero rated supplies on payment of integrated tax. Instead, zero rated supplies without payment of integrated tax is the default mechanism.

Only notified class of person can claim refund of IGST paid on zero rated supplies. In addition, supplier of notified goods or services can claim refund of IGST paid on zero rated supplies.

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