

CGA Legal

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The GST Bulletin

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In this Issue.....

S. No.	Particulars
1	GST Compliance Calendar – February 2021
2	GST Updates
	❖ Notifications
	❖ GSTN Portal
3	GST – Legal Precedents
4	GST Article - Analysis of Proposed Amendments in GST in Budget 2021

GST Compliance Calendar - February 2021

Statutory Due Date	Type of Return & Tax Period	Period	Type of Taxpayer
10-02-21	GSTR-7	Jan-2021	TDS Deductor
10-02-21	GSTR-8	Jan-2021	E-Commerce Operator
11-02-21	GSTR-1	Jan-2021	GSTR 1 filing by the registered person with an aggregate turnover of more than 5 crores or who is not opting for QRMP Scheme having Turnover up to 5 crores.
13-02-21	Details of Outward Supplies through Invoice Furnishing Facility	IFF	Taxpayer who are under QRMP Scheme
13-02-21	GSTR-6	Jan-2021	ISD
20-02-21	GSTR-3B	Jan-2021	Agg Turn > 5 cr
20-02-21	GSTR-5	Jan-2021	Non-Resident Taxable Person
20-02-21	GSTR-5A	Jan-2021	OIDAR
25-02-21	GST PMT-06	PMT-06	Taxpayer who is opting for QRMP Scheme has to deposit tax using form GST PMT-06 by the 25th of the following month, for the first and second months of the quarter
28-02-21	GSTR-9	FY 2019-20	Registered Person with Agg Turn > INR 2Cr Others- Option not to file
28-02-21	GSTR-9C	FY 2019-20	Registered person with Agg Turn > INR 5Cr

GST Updates - Notifications

S. No.	Notification No.	Summary of Notifications
1.	02/2021- CT dt. 12.01.2021	<p>Amendment in Jurisdiction of Commissioner (Appeals I) Delhi & Commissioner (Appeals II) Mumbai</p> <p>Seeks to amend NTN 02/2017-CT dt 19.06.2017 specifying the jurisdiction of Central tax Commissioners.</p> <p>As per the Amendment; the Commissioner (Appeals I) Delhi shall have jurisdiction over Delhi I and Delhi II as mentioned in the said NTN and Commissioner (Appeals II) Mumbai shall have jurisdiction over Mumbai I and Mumbai II .</p>
2	01/2021 CT dt. 01.01.2021	<p>Additional Restrictions in Filing GSTR-1</p> <p>Rule 59(6) is inserted whereby the registered person will not be allowed to file outward supplies through GSTR 1/ Invoice Furnishing facility (IFF) in the following cases;</p> <ul style="list-style-type: none"> • In case of Monthly filers of GSTR 1: If he has not furnished the return in FORM GSTR 3B for preceding two months; • In case of filers under QRMP Scheme: if he has not furnished the return in FORM GSTR 3B for preceding tax period; • Registered person to whom Rule 86B is applicable i.e restricting ITC utilization to 99% of tax liability: If he has not furnished the return in FORM GSTR 3B for preceding tax period.

GST Technical Updates – GSTN

Payment of Tax by Fixed Sum Method under QRMP Scheme

Date: 03-02-2021

W.e.f. 1st January 2021, following two options are available to the Taxpayers who are under Quarterly Returns and Monthly Payment of Tax (QRMP) Scheme for tax payment for first 02 months of a quarter:

- **Fixed Sum Method:** Portal can generate a pre-filled challan in Form GST PMT-06 based on his past record.
- **Self-Assessment Method:** The Tax due is to be paid on actual supplies after deducting the Input Tax Credit available.
- In fixed sum method, the 35% Challan can be generated by selecting the Reason For Challan>Monthly Payment for Quarterly Return> 35% Challan which is in turn calculated as per following situation:
 - a) 35% of amount paid as tax from Electronic Cash Ledger in their preceding quarter GSTR 3B return, if it was furnished on quarterly basis; or
 - b) 100% of the amount paid as tax from Electronic Cash Ledger in their GSTR-3B return for the last month of the immediately preceding quarter, if it was furnished on monthly basis.
- It is to note that, for the months of Jan and Feb 2021, in Q4 of 2020-21, the auto-populated challan generated under 35% Challan would contain 100% of the tax liability discharged from Electronic Cash Ledger for the month of December 2020 (and not 35%). [Reason: Till December 2020, all taxpayers were filing GSTR-3B return on a monthly basis.]
- From April, 2021 onwards, the pattern as suggested at Para above would follow.
- It is noteworthy, that the taxpayers are not required to deposit any amount for the first 02 months of a quarter, if:
 - i. Balance in Electronic Cash Ledger / Electronic Credit Ledger is sufficient for tax due for the first/ second month of the quarter; or
 - ii. There is NIL tax liability

GST Technical Updates – GSTN

Auto-population of e-invoice details into GSTR-1

Date: 11-01-2021

It is observed that, while pulling the e-invoice data into GST System, details of some invoices were not getting populated into GSTR-1. Troubleshooting has been done and efforts to correct this inadvertent gap are still on. Complete data pull is likely to take some more time.

Hence, taxpayers are hereby advised not to wait for the complete auto-population, and instead proceed with preparation and filing of GSTR-1 (by the due date), based on actual data as per their records.

GST – Judicial Precedents

1. Levy

Effective date of Notification amending the rate of tax

In **Re: M/s. Dee Vee Projects Limited [2021 (1) TMI 694 - Authority for Advance Ruling, Madhya Pradesh]**, the rate of tax applicable to the composite supply of works contract as defined in clause (119) of Section 2 of CGST Act, 2017, undertaken by the supplier (applicant) is 18% (9% CGST+ 9% SGST) as prescribed in serial no. 3, against heading no. 9954 (construction services), specified in Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017.

However, the Notification No. 11/2017-Central Tax (Rate) dated 28th June 2017 has been amended by:

I. Notification No. 20/2017-Central Tax (Rate), dated 22nd August 2017

II. Notification No.24/2017-Central Tax (Rate), dated 21st September 2017

Wherein the GST rate of 12% (6% CGST + 6% SGST) has been notified in respect of works contract as defined in clause (119) of Section 2 of the Act.

Question raised by the applicant: *Whether the amendment through Notification No. 20/2017 and 24/2017 will be effective from the date of Notification No. 11/2017 and whether it would be in order for the applicant to charge GST at the rate of 12% (6% CGST+6% SGST) instead of GST rate 18% (9% CGST 9% SGST).*

Held That: In case of a notification in the body of which the effective date is not written, the effect of the amending notification thus shall be the date on which the amending notification is published in the Official Gazette. Therefore, the effective date for the levy of the amended rate of tax as per amended Notification No. 11/2017 - Central Tax (Rate) shall be the date on which Notification No 20/2017 - Central Tax (Rate) and Notification No. 24/2017 - Central Tax (Rate) were published in the Official Gazette.

Comments:

This ruling seems to lay down the correct legal position. The date on which a notification is published in the Official Gazette shall be the date when such notification comes into effect. However, at the same time, it also important to ensure compliance with time of supply provisions.

GST – Judicial Precedents

2. Levy

Levy of GST on the recovery of Notice Pay from the employees

In RE: M/s. Amneal pharmaceuticals Pvt. Ltd. [2021 (1) TMI 431 - Authority for Advance Ruling, Gujarat] the applicant had employment contract with its employees with a clause that an employee is mandatorily required to serve 3 months after giving resignation or pay compensation (notice pay) to the Applicant. The Applicant did not treat notice pay as separate consideration, rather deducted it from salary payable to resigning employee.

The question before AAR was whether recovery of notice pay qualifies to be supply and exigible to GST or not.

Held That: The said Notice Pay is nothing but the amount stipulated in the employment contract for breach in serving the stipulated notice period. In other words, notice pay is a sum mutually agreed between the employer and the employee for breach of contract. It can be regarded as a consideration to the employer for “tolerating the act” of the employee to not serve the notice period, which was the employee’s agreed contractual obligation.

Clause 5(e) to Schedule II to CGST Act 2017, declares that 'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act' shall be treated as supply of service. The condition to pay an amount as notice pay in lieu of notice period, for the employer to agree to let go an employee, normally forms part of the terms and conditions of employment. This would mean that the employee while accepting the offer of employment, has not only understood the intent on the part of the employer in prescribing this exit condition, but has also accepted it.

Thus, the applicant is liable to pay GST @ 18% under the entry of “services not elsewhere classified, on recovery of Notice Pay from the employees.

Comments:

In our view, the levy of GST on notice pay recovery depends upon the “test of supply” i.e., one has to satisfy that notice pay in itself is a supply, then only GST could be levied on it.

This issue has been challenged at various Courts in pre-GST and post GST era. Recently, in the case of GE T&D India Limited v. Deputy Commissioner of Central Excise, [2020 (1) TMI 1096 - Madras High Court], the Madras High Court held that Service Tax is not payable on notice pay.

With due respect, the subject ruling by the Hon’ble AAR doesn’t seem to be the true intent of the legislature and complicated the issue, due to which department may continue to issue notice to taxpayers for non-payment of GST on notice pay recoveries. However, the issue is contestable before higher judicial forums.

GST – Judicial Precedents

3. Valuation

Change in method of valuation for transfer to branches located outside the state

In Re: M/s. Thirumalai Chemicals Limited [2021 (1) TMI 697 - Authority for Advance Ruling, Tamilnadu], Appellant is engaged in the business of manufacture and trading of chemicals. Amidst of the domestic and export sales they are also engaged in Stock transfer of their finished products to their units (depots) located in other states, who are distinct units as per Section 25 of the Act and to their agents in other States. At present, stock transfers from Ranipet are made to warehouses (depots) situated in Gujarat & Maharashtra being distinct entities.

They have stated that the distinct units have excess accumulated credits owing to various reasons and therefore they propose to change their valuation being adopted presently, which is the 'Open Market Value' as per Rule 28(a) of the CGST Rules 2017 to that provided under the second proviso to Rule 28 of the CGST Rules 2017.

The question raised by the Applicant is to decide whether the method of valuation prescribed under the second proviso is applicable to the supply to distinct persons of the applicant.

Held That: In the case at hand, the applicant and the distinct persons outside the state of Tamil Nadu are different legal persons hence, both are said to be related as per the explanation to Section 15. Therefore, the value to be adopted is governed by rules prescribed as per Section 15(4) of CGST Act. Rule 28 of CGST Rules, 2017 provides the value to be adopted when the supply is between distinct persons - In the case at hand, the applicant supplies to their distinct persons, for which presently they adopt the approximate sale value of the distinct person. The distinct person undertakes supply to their ultimate-unrelated customer 'as such' and the value adopted is that on the Purchase Order issued to such distinct persons by the ultimate customer. Also, the distinct units are eligible to avail full Input Tax credit of the tax paid by the applicant. Therefore, following the judicial discipline, we hold that the value to be adopted by the applicant can be arrived at following the methodology of either of the three methods i.e. methods prescribed under clause (a), (b), (c) of Rule 28 of CGST Rules.

Comments:

This ruling seems to lay down the correct legal position. When the distinct person is eligible to take the ITC of the goods/ services procured from the distinct person, there should be discretion of the supplier to adopt the method of valuation as it remains a revenue neutral effect on the part of Government.

GST – Judicial Precedents

4. Input Tax Credit

Reversal of ITC on inputs used in the manufacture of intermediate goods

In Re: M/s. Jay Chemical Industries Ltd [2021 (1) TMI 331 - Authority for Advance Ruling, Gujarat] the Applicant was engaged in manufacturing of dyes and dye intermediaries ('finished goods') at its premises. Fire broke out at Applicant's premises and finished goods got destroyed. The Applicant entertained a view that it is not required to reverse ITC since Section 17(5) of the CGST Act requires reversal of ITC only in respect of such goods on which ITC is availed.

The question before the AAR was whether ITC availed on inputs used in manufacturing finished goods destroyed in fire is required to be reversed or not.

Held that:- In GST regime, the scope of definition of inputs, capital goods and input services is very wide and covers almost all the imaginable goods and services that are directly or indirectly used in course or furtherance of business. However, Section 17(5) of the CGST/SGST Act, 2017 prescribes a list of goods or services on which ITC is not admissible. The bare analysis of the section makes it clear that this section has overriding effect and it states that the ITC shall not be available in respect of goods lost, stolen, destroyed or written off. Section 16 (1) of the CGST Act, 2017 provides that any registered person can avail credit of tax paid on the inward supply of goods or services or both, which is used or intended to be used in the course or furtherance of business.

Since the said inputs and capital goods have been used in manufacture of finished goods that have been destroyed, the same are not used in course or furtherance of business. We, therefore, hold that the Input Tax Credit taken on the inputs used in the manufacture or production of goods i.e. intermediate dye and the Input Tax Credit taken on input services used in or in relation to the manufacture or production of said goods shall be reversed.

Comments:

This ruling does not seem to provide the correct proposition of law as Section 17(5) of CGST Act only the list of goods or services where ITC is not available, it does not specify that ineligible ITC on goods and services require reversal.

On the other hand, wherever the intention of law is to deny ITC on input used in finished good or semi-finished goods or input services, it specifically mentions the same with the appropriate provisions.

GST – Judicial Precedents

5. Supply

Levy of tax on one time long term lease premium paid on purchase of plot

In Re: M/s. Jinmagal Corporation [2021 (1) TMI 549 - Authority for Advance Ruling, Gujarat], The applicant is required to pay one time lease premium /salami for plot through e-auction conducted by AUDA. The applicant is also required to pay annual lease premium as per the tender document.

The applicant, therefore, raised the question whether, the One-time premium/salami and annual lease premium paid by the applicant to the AUDA for leasing of commercial plot/land is covered under supply of service in terms of Section 7 (1) of CGST Act, 2017 and whether the said One-time premium/salami and annual lease premium paid by the applicant are taxable. Also, the applicability of GST under reverse charge mechanism on the same.

Held that: As per the detailed agreement made between the applicant and the lessee, the lease of plot for the 99 years by the applicant is not “sale of land” but is a lease of plot/land and therefore, does not get covered under clause 5 of Schedule III of CGST Act, 2017.

Hence, it is concluded that this activity i.e. lease of plot and payment of one time lease premium / salami and annual premium paid by the applicant for lease of commercial plot/land is a ‘supply’ and covered under Section 7(1) of CGST Act, 2017 read with clause 2 of Schedule II of CGST Act, 2017.

Therefore, the One-time premium/salami and annual lease premium paid by the applicant to the AUDA for leasing of commercial plot/land is covered under supply of service in terms of Section 7 (1) of CGST Act, 2017 - the said One-time premium/salami and annual lease premium paid by the applicant to the Ahmedabad Urban Development Authority (AUDA) are taxable under GST in terms of the Notification No. 11/2017-CT (Rate) dated 28.06.2017.

Liability of GST under Reverse Charge Mechanism under Section 9(3) of CGST Act, 2017 - In view of the Notification No. 05/2019-CT (Rate) dated 29.03.2019, applicant is liable to pay GST under reverse charge mechanism on the One-time premium/salami and annual lease premium paid by the applicant to the AUDA.

GST – Judicial Precedents

6. Exemption

Exemption on Fumigation service provided in a Bonded/Customs warehouse of agriculture produce

In Re: M/s. Shri Sai Pest Control [2021 (1) TMI 335 - Authority For Advance Ruling, Gujarat], the applicant submitted that they are providing fumigation service to their clients. Further, normally Fumigation Services chargeable to GST @18%.

However, Fumigation Services provided to a warehouse of Agricultural Produce is totally exempt under Entry No. 54 of Not. No. 12/2017-CT (Rate) dated 28.06.2017.

The applicant submitted that they have order from their client to Fumigation Services in a bonded/ customs warehouse of Food Grain, Pulses and similar to the agri products. Now the applicant sought clarification about the taxability or exemption of such fumigation services.

Held that: The term “agriculture produce” is defined under Explanation 2(d) of the Notification No. 12/2017-CT (Rate) dated 28.06.2017 and same is reproduced as under :

“**agricultural produce**” means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for **primary market**.

The term ‘**primary market**’ is not defined in the GST Act. It is understood in common parlance as a platform or a place, like a mandi, where the farmers are directly selling to the buyers, including the wholesalers, mills, food processing units, exporters, etc. All services and processes beyond the realm of the primary market are excluded.

In the custom bonded warehouse agri produce stored for export do not cover under the definition given under explanation 2(d) of Notification No. 12/2017-CT (Rate) dated 28.06.2017. Further it is observed that applicant in his application has submitted that in the custom bonded warehouse imported agri produce are also stored. The imported produce has been procured from the farmers in the foreign and exported to India. Clearly, it is, whether processed in a mill, no longer in the domain of the primary market or at the farmer’s hand. Therefore, the fumigation service provided by the applicant in custom bonded warehouse where in exported and imported agriculture produce are stored is not covered under the Exemption Notification, therefore, applicant service is liable to GST.

GST – Judicial Precedents

7. Detention and Confiscation of Goods

Violation of Principal of Natural Justice

In **M/s. Lakshay Logistics v State of Gujarat [2021 (1) TMI 99 - Gujarat High Court]**, The writ petitioner M/s. Lakshay Logistics engaged in the business of transportation. The petitioner's vehicle was hired by Rifty Vinimay Enterprises for transportation of goods. The vehicle was detained and upon certain discrepancies and deficiencies being noticed, the proceedings were initiated for detention and confiscation under the GST Act.

One of the arguments advanced on behalf of the petitioner is to the effect that the petitioner M/s. Lakshay Logistics was never served with any notice before the order of confiscation was passed on 16.03.2020 in Form MOV-11. The perusal of the said notice indicates that it is addressed to Rifty Vinimay Enterprises, Ahmedabad. There is no mention of the petitioner M/s. Lakshay Logistics, which is the firm registered in Rajasthan and not Ahmedabad and even otherwise Rifty Vinimay Enterprises was the consignor and not the transporter or the owner of the vehicle.

Therefore, this petition under Article 226 of the Constitution of India has been preferred assailing the correctness of the detention order passed under Section 129(1) of the Central Goods and Services Act, 2017, the detention / confiscation notice in Form GST MOV-10 and lastly the order of confiscation in Form GST MOV-11. Further prayer has been made to release the conveyance (truck) along with the goods contained therein.

Held that:- Section 130 of the GST Act, provides for confiscation of goods or conveyance under given circumstances. Subsection (4) of Section 130 of the GST Act specifically provides that no order for confiscation of goods or conveyance or for imposition of penalty would be issued without giving the person an opportunity of being heard. The person in the said context would be the person interested in the goods as also the conveyance - Therefore, opportunity of being heard is to be given to both the owner of the goods as also the owner of the conveyance. In the present case, we do not find any notice affording opportunity of hearing to the owner of the conveyance. As such the impugned order of confiscation would be in violation of Section 130(4) of the GST Act. The order of confiscation would be without affording due opportunity of hearing. The impugned order as such cannot be sustained as the same has serious civil and financial consequences.

GST – Judicial Precedents

8. Detention of Goods and Vehicle

Challenge to the legality of orders of detention of goods and vehicle

In **M/s. Podaran Foods India Private Limited versus State of Kerala [2021 (1) TMI 552 - Kerala High Court]** the petitioner was transporting fruit drinks from Tamil Nadu to Kerala, after ensuring that the transportation of the goods was duly accompanied by valid invoices and e-way bills that described the goods as 'fruit drinks'. The goods and the vehicles were, however, detained by the respondents on the ground that the description of the goods in the invoice was incorrect in that, the goods were actually classifiable as 'aerated soft drinks with added flavours attracting a different HSN classification and rate of tax. Although the petitioner furnished bonds and bank guarantees for the tax and penalty demanded in the notices issued to it in Form GST MOV-7 and obtained a provisional release of the goods and conveyance on 14.08.2020, it has chosen to challenge the detention orders in Form GST MOV-6 and the notices in Form GST MOV-7 in this writ petition. The main contention urged in the writ petition is that an alleged mis-classification of goods cannot be the basis for a detention under Section 129 of the GST Act.

Held that: The procedure to be sequentially followed from the stage of recording the statement of the driver in Form GST MOV-1 to the stage of issuing an order in Form GST MOV-6 detaining the goods, is for the purpose of determining whether the goods were being transported, or stored during transit, in contravention of the provisions of the Act and Rules. The proper officer is required to apply his mind to the statement given by the driver of the vehicle, as also other documents produced by or on behalf of the owner of the goods or conveyance, to determine whether a contravention of the statutory provisions has indeed been occasioned. It is only if he is satisfied of such contravention, based on the material before him, that he must proceed to pass the order of detention in Form GST MOV-6. If there is no material to come to such a conclusion, he has to issue a release order in Form GST MOV-5 and permit an unconditional clearance of the goods and vehicle.

A mere suspicion of mis-classification of goods cannot be the basis for a detention under Section 129 of the Act. It has to be borne in mind that Section 129 forms part of the machinery provisions under the Act to check evasion of tax and a detention can be justified only if there is a contravention of the provisions of the Act in relation to transportation of goods or their storage while in transit. No doubt, it may be open to an inspecting authority to detain goods if there is a patent mis-description of the goods in the transportation documents, to such an extent that it can only be seen as referring to an entirely different commodity.

Comments:

Similar view has been taken in case of M/s. Hindustan Coca Cola Private Limited v. ASTO [2020 (3) TMI 1125] - Kerala High Court and Daily Fresh Fruits India Private Limited v. ASTO [2020 (3) TMI 439] - Kerala High Court.

GST – Judicial Precedents

9. Input Tax Credit

Scope of exercise of power under Rule 86A of the CGST Rules

In **M/s S.S. Industries Versus Union Of India [2020 (12) TMI 1120 - Gujarat High Court]**, the Court while explaining the scope of powers under Rule 86A held that Rule 86A talks about “reason to believe” which is necessary to be formed for the purpose of blocking the input tax credit in cases of inquiry or investigation into fraudulent transactions. Any opinion of the authority to be formed is not subject to objective test. The language leaves no room for the relevance of an official examination as to the sufficiency of the ground on which the authority may act in forming its opinion - there must be material, based on which alone the authority could form its opinion that it has become necessary to block the input tax credit pending an inquiry or investigation into the fraudulent transactions of fake/bogus invoices. The existence of relevant material is a pre-condition to the formation of the opinion.

In the absence of any cogent or credible material, if the subjective satisfaction is arrived at by the authority concerned for the purpose of blocking the ITC in exercise of power under Rule 86A of the Rules, then such action would definitely amount to malice in law. Malice, in its legal sense, means such malice as may be assumed from the doing of a wrongful act intentionally but also without just cause or excuse or for want of reasonable or probable cause. Any use of discretionary power exercised for an unauthorized purpose amounts to malice in law. It is immaterial whether the authority acted in good faith or bad faith.

Thus, it cannot be said that the inquiry or investigation initiated as regards the fake/bogus invoices for the purpose of ITC is malafide or based on absolutely no materials. From what has been stated in the reply affidavit filed on behalf of the respondents, it could be said that prima facie, there is something which the Revenue has noticed and, therefore, are looking into the same before taking any final call as regards the claim of the writ applicants to avail the ITC. Even, otherwise, Rule 86A provides that on expiry of the period of one year, the restriction shall cease to have effect from the date of imposition of such restriction.

GST – Judicial Precedents

9. Input Tax Credit

Scope of exercise of power under Rule 86A of the CGST Rules

The Court also opined that Rule 86A of the CGST Rules casts an obligation upon the authority concerned to form an opinion but is silent with regard to passing of any specific order assigning prima facie reasons for invoking Rule 86A of the CGST Rules. To this extent, the Government needs to look into the matter and issue appropriate guidelines and also lay down some procedure to be followed for the exercise of power under the provision. Although, no specific order has been passed and communicated to the Writ Applicants in this regard, yet in the facts of the present case, it cannot be said that exercise of power under Rule 86A for the purpose of blocking the ITC is mala fide or without any application of mind.

There are highly disputed questions of fact as regards the debit of the ITC from the electronic credit ledger. Indisputably, the investigation is in progress. A prima facie case could be said to have been made out against the writ applicants. However, we may only say that the investigation cannot continue for an indefinite period of time. Almost more than a year has elapsed and, in such circumstances, the authorities concerned should arrive at some conclusion or the other. Even Rule 86A of the Rules prescribes one year time limit - the respondents are directed to complete the investigation within a period of four weeks from the date of the receipt of this order and take an appropriate decision whether any case has been made out for issue of show-cause notice under Section 74 of the Act or not.

Analysis of Proposed Amendments in GST in Budget 2021

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.

Analysis of Proposed Amendments in GST in Budget 2021

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.

Analysis of Proposed Amendments in GST in Budget 2021

4. Non-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 1st 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.~~

Analysis of Proposed Amendments in GST in Budget 2021

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 1st 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:

Analysis of Proposed Amendments in GST in Budget 2021

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).

Analysis of Proposed Amendments in GST in Budget 2021

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.

Analysis of Proposed Amendments in GST in Budget 2021

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;

Analysis of Proposed Amendments in GST in Budget 2021

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:

Condition	Earlier	Amended
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).

Analysis of Proposed Amendments in GST in Budget 2021

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.

Analysis of Proposed Amendments in GST in Budget 2021

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 —

- 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
- does not account for any goods on which he is liable to pay tax under this Act; or
- supplies any goods liable to tax under this Act without having applied for registration; or
- contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
- 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.

Analysis of Proposed Amendments in GST in Budget 2021

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.*

Analysis of Proposed Amendments in GST in Budget 2021

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

Analysis of Proposed Amendments in GST in Budget 2021

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

Analysis of Proposed Amendments in GST in Budget 2021

- **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:

Analysis of Proposed Amendments in GST in Budget 2021

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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