

BUDGET HIGHLIGHTS - INDIRECT TAXES

Goods and Services Tax

Amendments proposed in the CGST Act, 2017

To be effective from a date to be notified after the enactment of the Finance Bill, 2023

- **Amendments in Section 10**

As recommended in the 47th GST Council Meeting, to allow the Composition taxpayers to make intra-State supply through e-commerce operators subject to certain conditions, clause (d) of sub-section (2) and clause (c) of sub-section (2A) in section 10 of the CGST Act which restrict the suppliers supplying goods through e-commerce operators required to collect tax at source under section 52 from opting to pay tax under composition levy are proposed to be amended so as to remove such restriction, thereby enabling the unregistered suppliers and composition taxpayers to make intra-state supply of goods through such e-commerce operators.

- **Amendment in Section 16**

2nd proviso to sub-section (2) of section 16 of the CGST Act which restricts a registered person from availment of input tax credit in case, the recipient fails to make the payment of consideration and tax to the supplier. Further, 3rd proviso specifies re-availment thereof whenever such payments are made. These are proposed to be amended to align with the return filing system provided in the said Act.

In order to make such alignment, reversal of input tax credit along with interest under section 50 has been proposed. Rule 37 has already been substituted to provide for reversal of input tax credit in case of non-payment of consideration to the supplier.

It has been further proposed that such input tax credit can be re-availed without any time limit as soon as such payment is made to the supplier.

- **Amendment in Section 17**

Explanation to section 17(3) of the CGST Act which states that the "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said Schedule is proposed to be amended to restrict availment of input tax credit in respect of supply of warehoused goods to any person before clearance for home consumption as specified in para 8(a) of Schedule III

of the said Act, by including the value of such transactions in the value of exempt supply for the purpose of input tax credit reversal.

Further, sub-section (5) of said section is also proposed to be amended so as to provide that input tax credit shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

- **Amendments in Section 23**

Acceding to the suggestion made by the GST and Indirect Taxes Committee of the ICAI, a retrospective amendment has been proposed in section 23 prescribing exemption from registration to bring clarity and establish its overriding effect over the provisions of liability to register on exceeding threshold limit and mandatory registration, thereby enabling a harmonious interpretation.

Consequently, sub-sections (1) and sub-section (2) of section 23 of the CGST Act are proposed to be amended, with retrospective effect from 01st July, 2017, so as to include the *non-obstante* clause, thereby having overriding effect over sections 22 and 24. In other words, persons liable for compulsory registration in terms of sub section (1) of section 22 and section 24 of the Act need not register if specifically exempt under sub section (1) of section 23.

- **Amendment in Sections 37, 39, 44 and 52**

New sub-sections (5), (11), (2) and (15) in sections 37, 39, 44 and 52 of the CGST Act respectively are proposed to be inserted so as to provide a time limit upto which the details of outward supplies under section 37 or return for a tax period furnished by a registered person under section 39 or the annual return under sub-section (1) of section 44 for a financial year or the statement under sub-section (4) of section 52 for a month can be furnished by an electronic commerce operator.

In other words, it has been proposed to set an outer limit on the time period upto which forms GSTR-1, GSTR-3B, GSTR-9 and GSTR-8 can be filed.

Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

- **Amendments in Section 54**

Sub-section (6) of section 54 which specifies the procedure for refund of tax is proposed to be amended so as to remove the reference to the provisionally accepted input tax credit to align the same with the present scheme of availment of self-assessed input tax credit as per sub-section (1) of section 41 of the said Act.

- **Amendments in Section 56**

Section 56 of the CGST Act which sets out the provision for interest on delayed refunds is proposed to be amended so as to provide for manner, conditions and restrictions as may be prescribed for computation of period of delay beyond 60 days from the date of receipt of refund application till the date of refund, for the purpose of calculation of interest on such delayed refunds.

- **Amendment in Section 122**

A new sub-section (1B) in section 122 which sets out the penalties for certain offences, is proposed to be inserted so as to provide for penal provisions applicable to Electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or allowing an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supplies or furnishes incorrect details in its monthly statement.

- **Amendment in Section 132**

Sub-section (1) of section 132 which sets out the provisions for punishment for certain offences, is proposed to be amended so as to decriminalize the following offences:

- obstructing or preventing any officer in the discharge of their duties under this Act
- tampering with or destroying any material evidence or documents
- failing to supply any information which he is required to supply under this Act or the rules made thereunder or supplies false information

Further, the monetary threshold for launching prosecution for the offences under the said Act has been proposed to be increased from one hundred lakh rupees to two hundred lakh rupees, except for the offences related to issuance of invoices without supply of goods or services or both.

- **Amendment in Section 138**

First proviso to sub-section (1) of section 138 of the CGST Act which sets out the provisions for compounding of offences is proposed to be amended so as to simplify the language of clause (a), to omit clause (b) and to substitute clause (c) of the said proviso so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences under the said Act.

It further seeks to amend sub-section (2) so as to rationalize the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.

- **Amendment in Section 158A**

A new section 158A in the CGST Act is proposed to be inserted so as to provide for the manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies or periodical returns or Annual Return or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified, with the consent of the supplier or the recipient (where such details include identity information).

- **Amendment in Schedule III**

Paras 7, 8(a) and 8(b) were inserted in Schedule III of the CGST Act, 2017 with effect from 01.02.2019 to keep certain transactions/ activities, such as supplies of goods from a place outside the taxable territory to another place outside the taxable territory, high sea sales and supply of warehoused goods before their home clearance, outside the purview of GST.

Such transactions or activities are proposed to be amended to give retrospective applicability to Paras 7, 8 (a) and 8 (b) of the said Schedule, with effect from 01st July, 2017.

It is also being clarified that where the tax has already been paid in respect of such transactions/ activities during the period from 01st July, 2017 to 31st January, 2019, no refund of such tax paid shall be available.

- Clause (16) of section 2 of the IGST Act is proposed to be amended so as to revise the definition of “non-taxable online recipient” by removing the condition of receipt of online information and database access or retrieval (OIDAR) services for purposes other than commerce, industry or any other business or profession so as to provide for taxability of OIDAR service provided by any person located in non-taxable territory to an unregistered person receiving the said services and located in the taxable territory, thereby widening the scope of such services.

Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of Section 24 (Compulsory Registration for persons who are required to deduct tax under section 51, whether or not separately registered under this Act) of CGST Act shall be treated as unregistered person for the purpose of the said clause.

Also, clause (17) of the said section is proposed to be amended to revise the definition of “online information and database access or retrieval services” to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.

- Proviso to sub-section (8) of section 12 of the IGST Act which sets out the provision for the determination of place of supply in case of transportation of goods to a place outside India, where the location of supplier and recipient is in India is proposed to be omitted so as to specify the place of supply, irrespective of destination of the goods.

Customs

Amendments proposed in the Customs Act, 1962

Effective from the date of enactment of the Finance Bill, unless otherwise specified

- Section 25(4A) of the Customs Act is proposed to be amended to insert a Proviso to the effect that the validity period of two years shall not apply to exemption notifications issued in relation to multilateral or bilateral trade agreements; obligations under international agreements, treaties, conventions including with respect to UN agencies, diplomats, international organizations; privileges of constitutional authorities; schemes under Foreign Trade Policy; Central Government schemes having a validity of more than two years; re-imports, temporary imports, goods imported as gifts or personal baggage; any duty of customs under any law for the time being in force including integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975, other than duty of customs leviable under section 12.

- A new sub section (8A) to section 127C is proposed to be inserted so as to specify a time limit of 9 months from the date of application, for disposal of the application filed before the Settlement Commission.