



The Institute of Chartered Accountants of India GST & Indirect Taxes Committee

GOODS & SERVICES TAX UPDATE-213

1. **CGST (Second Amendment) Bill, 2023**

As recommended in the 52nd GST Council Meeting, to align the CGST Act, 2017 with the Tribunal Reforms Act, 2021, CGST (Second Amendment) Bill, 2023 has been introduced in the Lok Sabha to amend section 110 of the CGST Act, 2017 (President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc). As per the Bill,

- a person who has been an advocate for 10 years with substantial experience in litigation in matters relating to indirect taxes in the Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunal, State VAT Tribunal, High Court or Supreme Court shall also be eligible for appointment as a Judicial Member.
- a minimum age of 50 years has been prescribed for appointment as a President or Member of the Tribunal.
- the maximum age of the President has been suggested to increase from 67 years to 70 years. Hence, the President of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of 70 years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.
- the maximum age of the Members have been said to increase from 65 years to 67 years. Hence, Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of four years from the date on which he enters upon his office, or until he attains the age of 67 years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years.

[CGST \(Amendment\) Bill, 2023](#)

2. **Judgment of the Hon'ble Supreme Court in the case of *Northern Operating Systems Private Limited (NOS)* not to be made applicable to all cases universally**

Subsequent to the judgment of the Hon'ble Supreme Court's judgment dated

19.05.2022 in the case of *CC, CE and ST, Bangalore (Adj.) etc Vs. Northern Operating Systems Private Limited (NOS)*, proceedings have been initiated for the alleged evasion of GST on the issue of secondment under section 74(1) of the CGST Act, 2017. It was held in the said case that the secondment of employees by the overseas group company to NOS was a taxable service of 'manpower supply' and Service Tax was applicable on the same. It is noted that secondment as a practice is not restricted to Service Tax and the issue of taxability on secondment shall arise in GST also. However, there may be multiple types of arrangements in relation to secondment of employees of overseas group company in the Indian entity. In each arrangement, the tax implications may be different, depending upon the specific nature of the contract and other terms and conditions attached to it. Therefore, the decision of the Hon'ble Supreme Court in the NOS judgment should not be applied mechanically in all the cases.

The instruction has been issued to inform that section 74(1) cannot be invoked merely on account of non-payment of GST, without specific element of fraud or willful misstatement or suppression of facts to evade tax. Therefore, only in the cases where the investigation indicates that there is material evidence of fraud or willful misstatement or suppression of fact to evade tax on the part of the taxpayer, provisions of section 74(1) of CGST Act may be invoked for issuance of show cause notice, and such evidence should also be made a part of the show cause notice.

[Instruction No. 05/2023-GST dt. 13.12.2023](#)

3. Serving of the summary of notice in FORM GST DRC-01 and uploading of summary of order in FORM GST DRC-07 electronically on the portal by the proper officer

Non-issuance of the summary of such notices/ orders electronically on the portal is in clear violation of the explicit provisions of CGST Rules. Further, to keep track of the proceedings and consequential action in respect of recovery, appeal etc, subsequent to issuance of notices/ orders, the proper officers have been directed:

- to serve summary of the notice required to be issued under sections 52, 73, 74, 122, 123, 124, 125, 127, 129 and 130 of the CGST Act, 2017 in Form DRC-01 as required under rule 142(1), electronically on the common portal, and
- to issue summary of the orders required to be issued in sections 52, 62, 63, 64, 73, 74, 75, 76, 122, 123, 124, 125, 127, 129 and 130 of the CGST Act, 2017 in Form DRC-07 as prescribed under rule 142(5), electronically on the common portal.

[Instruction No. 04/2023-GST dt. 23.11.2023](#)

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