

GOODS & SERVICES TAX (GST)

[CA (MS) Arti Shah]

1. INTRODUCTION:

Chapter IV of Finance Act 2022 covers the amendments relating to the 'Indirect Taxes' and includes amendments relating to Customs, Central Goods & Services Tax (CGST), Integrated Goods & Services Tax (IGST), Union Territory Goods & Services Tax (UTGST) and Goods and Services Tax (Compensation to States). Amendments to GST provisions are covered under clauses 100 to 124 of Finance Act, 2022.

Effective date of amendments:

The provisions relating to GST amendments will come into effect from the date to be notified by issuance of notification after receipt of presidential assent.

2. MAJOR / IMPORTANT AMENDMENTS:

2.1 SECTION 16(2)(BA) OF CGST ACT 2017: RESTRICTION ON ITC AVAILMENT

A new clause (ba) to sub-section (2) of section 16 of the CGST Act is being inserted to provide that input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38.

This clause seeks to insert a new eligibility criteria for the availment of Input Tax Credit (ITC) by a registered person. With the insertion of this provision, there would now be six conditions within Section 16(2) of the CGST Act, 2017 that have to be satisfied for the successful availment of ITC which are as follows:

- Assessee is in possession of a Tax Invoice or Debit Note issued by a registered supplier.
- Supplier has duly furnished the details of such invoice or debit note in his statement of outward supplies (i.e. GSTR-1) as per Section 37 and has duly communicated these details to the Assessee.
- Goods or services or both specified in such invoices has been actually received by the Assessee.
- Tax has been paid by the supplier.
- Supplier has filed their returns.

- Input Tax Credit communicated to assessee has not been restricted by Section 38.

2.2 SECTION 16(4) OF CGST ACT 2017: EXTENSION OF TIME LIMIT FOR CLAIM OF ITC

Section 16(4) of the CGST Act is being amended so as to provide for an extended time for availment of input tax credit by a registered person in respect of any invoice or debit note pertaining to a financial year up-to thirtieth day of November of the following financial year. Earlier the last date to claim input tax credit was the due date of filing GSTR 3B return for the month of September following the end of financial year to which such invoice or debit note relates.

2.3 SECTION 29 OF CGST ACT 2017: CANCELLATION OF REGISTRATION

If a person registered under composition scheme fails to furnish the designated return i.e. GSTR-4 beyond 3 months from the due date, the proper officer may proceed suo-moto for cancellation of registration after affording an opportunity of being heard.

Further, the law makers proposes to do away with the condition of non-filing of return for continuous period of six months by a registered person other than those registered under composition scheme. This means that now even non-filing of returns for a lesser period can lead to invocation of suo-moto cancellation power by the Proper officer. It seems that more power has been given to the officers and registration can be cancelled before six months as well, but only after providing opportunity of being heard.

2.4 SECTION 34 OF CGST ACT 2017: EXTENDED TIME FOR ISSUANCE OF CREDIT NOTES

Section 34 (2) of the CGST Act is being amended so as to provide for an extended time for issuance of credit notes in respect of any supply made in a financial year upto thirtieth day of November of the following financial year. Earlier this date was due date of filing return for the month of September following the end of financial year to which this credit note relates.

2.5 SECTION 37 OF THE CGST ACT: RESTRICTION AND CONDITION FOR FILING OUTWARD SUPPLY STATEMENT

Section 37 of the CGST Act is being amended so as to:

- Prescribe conditions and restrictions for furnishing the details of outward supply in GSTR 1 and for communication of the details of such outward supplies to concerned recipients in GSTR 2B;
- Do away with two-way communication process in return filing.
- Provide for an extended time up to 30th day of November of the following financial year for rectification of errors in respect of details of outward supplies furnished under sub-section (1) of Section 37 of the CGST Act (GSTR 1);
- Provide for tax period-wise sequential filing of details of outward supplies under sub-section (1) of Section 37 of the CGST Act (GSTR 1).

Two way communication process of filing GSTR 2 & GSTR 3 returns (as these provisions were anyways redundant) which was originally perceived in the return filing system by the Government has now been done away with.

2.6 SECTION 38 OF CGST ACT: SUBSTITUTION OF NEW SECTION FOR OLD SECTION

Clause 103 seeks to substitute a new section for section 38 of the Central Goods and Services Tax Act.

Sub section (1) seeks to provide for prescribing such other supplies as well as the manner, time, conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement and to do away with two-way communication process in return filing.

Sub-section (2) seeks to provide for the details of inward supplies in respect of which input tax credit may be availed and the details of supplies on which input tax credit cannot be availed by the recipient."

Following are the transactions in respect of which ITC cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,—

- by any registered person(supplier) within such period of taking registration as may be prescribed; or
- by any registered person (supplier), who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or
- by any registered person (supplier), the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output

tax actually paid by him during the said period by such limit as may be prescribed;
or

- by any registered person (supplier) who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or
- by any registered person (supplier), who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or
- by such other class of persons as may be prescribed.

Sub-section (2) as proposed seems to be restricting the ITC availment to the recipient through the auto generated statement. It is very surprising to see such kind of insertion of the provision which speaks about the auto generated statement with – (i) inward supplies – ITC available to recipient, (ii) inward supplies – ITC not available, wholly or partially, on account of the circumstances/ situations specified in sub-clause (i) to (vi) of section 38(2)(b).

This auto generated statement will become the main document relied upon by the tax officers for allowing or disallowing the ITC which is not the right approach. In fact this will cause more hardship to the taxpayers and therefore this restrictions seems to be arbitrary. Further, it could be noted that the total credit of recipient is now being subjected to the act of the supplier and therefore any non-compliance at the end of supplier will cause denial of ITC to the recipient irrespective of the fact that he has no control whatsoever on his suppliers.

2.7 SECTION 39 OF CGST ACT: EXTENSION OF TIME LIMIT & OTHER AMENDMENTS

- The due date of return filing for non-resident taxable person has been changed from twenty to thirteen of subsequent month.
- An option has been provided to quarterly return filers to pay tax for the first two months of the quarter either by self-assessment or a prescribed amount i.e. 35% of previous quarter tax paid in cash.
- The time limit for claiming input tax credit in the return furnished under section 39 has been extended upto thirtieth day of November of the following financial year

- Furnishing of details of outward supplies of a tax period under sub-section (1) of section 37 (GSTR 1) has been provided as pre- condition for furnishing the return under section 39 (GSTR 3B) for the said tax period.

Government is considering statement of outward supply as the most important compliance. They have proposed to amend sub-section (10) of Section 39 in a way that now even non-filing of statement of outward supplies for the concerned tax period can act as an embargo in furnishing the return under Section 39 except where the relaxation is given by way of Notification.

2.8 SECTION 41 OF CGST ACT: SUBSTITUTION OF NEW SECTION FOR OLD SECTION

Section 41 of the CGST Act is being substituted so as to do away with the concept of "claim" of eligible input tax credit on a "provisional" basis and to provide for availment of self-assessed input tax credit subject to such conditions and restrictions as may be prescribed.

The credit of input tax availed by a registered person under as mentioned above in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed.

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.

Prima facie, it could be said that the ITC which was provisionally taken as self-assessment is now no more to be considered as a provisional credit and therefore it would be the Final ITC.

2.9 SECTIONS 42, 43 AND 43A OF CGST ACT:

Sections 42, 43 and 43A of the CGST Act are being omitted so as to do away with two-way communication process in return filing.

2.10 SECTION 47 OF CGST ACT: LATE FEE PRESCRIBED FOR TCS RETURNS:

Section 47 of the CGST Act is being amended so as to provide for levy of late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees for delayed filing of return under section 52 (i.e. TCS return by e-commerce operator)

2.11 SECTION 49 OF THE CGST ACT:

Section 49 of the CGST Act is being amended so as to:

- provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger as well as provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger.

For utilising the balance of Electronic Credit Ledger in making payment towards output tax liability, the conditions as well as restrictions may be imposed which intern mean even after complying with all the necessary conditions as per the provisions of Section 16(2) read with the amended Section 38(2) and the other sections, the said balance of Electronic Credit Ledger may not be permitted to be used for making the payment of output tax.

- allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person;
- A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,—

(a) integrated tax, central tax, State tax, Union territory tax or cess; or

(b) integrated tax or central tax of a distinct person

in such form and manner and subject to such conditions and restrictions as may be prescribed.

By this, the Govt is continuing to allow the transfer of the balance of Electronic Cash Ledger from one head to another and along with this, by virtue of this proposition, the Govt is further allowing the transfer of balance lying in Electronic Cash Ledger to the Electronic Cash Ledger of distinct person.

2.12 SECTION 50 OF THE CGST ACT: INTEREST ON ITC:

Sub-section (3) of section 50 of the CGST Act is being substituted retrospectively, with effect from the 1st July, 2017, so as to provide for levy of interest on input tax credit 'wrongly availed and utilized' instead of input tax credit 'wrongly availed or utilised'.

By this, the government makes it clear that only wrongful availment of ITC will not attract interest. Meaning thereby it is not only, wrongful availment but also utilisation of such wrongfully availed ITC which will attract the Interest Liability.

2.13 SECTION 52 OF CGST ACT: EXTENSION OF TIME LIMIT FOR TCS RETURN:

Sub-section (6) of section 52 of the CGST Act is being amended so as to provide for an extended time upto thirtieth day of November of the following financial year for rectification of errors in the statement furnished under subsection (4) i.e. TCS return by e-commerce operator.

2.14 SECTION 54 OF CGST ACT:

Section 54 of the CGST Act is being amended so as to:

- explicitly provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed;

Since, there is no column or entry in GSTR-3B (Return u/s. 39). Therefore, this proposition has been made to substitute the words. Now, it is clear that claim of refund of extra balance lying in Electronic Cash Ledger has to be by way of filling the prescribed form in the prescribed manner.

- provide the time limit for claiming refund of tax paid on inward supplies of goods or services or both under section 55 as two years from the last day of the quarter in which the said supply was received;

By virtue of this proposed amendment, time limit has been changed from six months to Two Years for a specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55.

- provide clarity regarding the relevant date for filing refund claim in respect of supplies made to a Special Economic Zone developer or a Special Economic Zone unit by way of insertion of a new sub-clause (ba) in clause (2) of Explanation thereto.

This is a good move as in case of zero rated supply, the due date for furnishing return under section 39 will be considered as the relevant date.

2.15 NOTIFICATION NO 13/2017 CT DATED 28.06.2017 OF THE CGST ACT:

Notification No. 13/2017 - Central Tax, dated the 28th June, 2017, is being amended retrospectively, with effect from the 1st day of July, 2017, so as to notify rate of interest under subsection (3) of section 50 (i.e. reversal of ITC) under GST Law as 18%.

Accordingly, 18% interest will be applicable on reversal of ITC which has been wrongly availed and utilized.

2.16 WASTE GENERATED DURING THE PRODUCTION OF FISH MEAL:

"Clause 116 of Finance Act 2022 seeks to provide retrospective exemption from GST in respect of supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil, during the period from the 1st day of July, 2017 upto the 30th day of September, 2019 (both days inclusive).

It further seeks to provide that no refund shall be made of the said tax which has already been collected.

2.17 SERVICE BY WAY OF GRANT OF ALCOHOLIC LIQUOR LICENSE:

Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called by the State Governments, has been declared as an activity or transaction which shall be treated neither as a supply of goods nor a supply of service vide notification No. 25/2019- Central Tax (R) dated 30.09.2019, notification No. 24/2019- Integrated Tax (R) dated 30.09.2019 and notification No. 25/2019- Union Territory Tax (R) dated 30.09.2019. These notifications have been given retrospective effect from 01.07.2017.

However, no refund shall be made of tax which has been collected, but which would not have been so collected, had the said notifications been in force at all material times.

Conclusion:

GST law was introduced with the intention of seamless flow of input tax credit. In this budget, the Government's initiative of ensuring more time for input credit availment, availability to taxpayers for using GST balances at central level across states, retrospective amendment for levy of interest on ITC wrongly availed and utilized reaffirms its endeavor to further simplify GST regime. The steps are in a positive direction.