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# The Chamber of Tax Consultants

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## Pre-Budget Memorandum 2021

Suggested Amendments in respect of Goods and Services Tax for  
Finance Bill, 2021

Dated: 4th December, 2020

# The Chamber's Journal

(A Monthly Journal of The Chamber of Tax Consultants)



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7<sup>th</sup> December, 2020

Shri G. D. Lohani  
Joint Secretary (TRU – I), CBIC,  
Government of India, Ministry of Finance,  
Department of Revenue,  
New Delhi –110001

Respected Sir,

**Subject: Pre-Budget Memorandum 2021-2022 –Suggestions on Goods & Service Tax**

We are pleased to submit our suggestions on Goods & Service Tax for the Budget of 2021.

We have concentrated on only few suggestions which, we are sure, will meet with your approval. Each of the suggestions has been necessitated on account of the hardship or inconsistency in the law.

Thanking you,

Yours Sincerely,

For THE CHAMBER OF TAX CONSULTANTS

Sd/-

ANISH M. THACKER  
PRESIDENT

Sd/

MAHENDRA SANGHVI  
CHAIRMAN  
LAW & REPRESENTATION

Sd/-

APURVA SHAH  
CO-CHAIRMAN  
COMMITTEE

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## THE CHAMBER OF TAX CONSULTANTS

### PRE-BUDGET REPRESENTATION/SUGGESTIONS ON “GOODS AND SERVICE TAX”

Sr No	Existing Provisions	Issue/concern	Suggestion
<b>1. INPUT TAX CREDIT</b>			
1.1	<p>Matching of ITC – Rule 36 of CGST Rules, 2017 As per Rule 36(4), Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under Section 37(1), shall not exceed 10% of the eligible ITC available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under Section 37(1).</p>	<p>For a small taxpayer matching the eligible ITC on a monthly basis is a herculean task and require considerable time and resources which adds up to the cost of operations.</p> <p>Such small taxpayers are made to suffer for non-compliance by their vendors</p>	<p>The matching of ITC for the purpose of Rule 36 should be carried out on yearly basis for a small-taxpayers who are required to file proposed GST returns on a quarterly basis</p>
1.2	<p>Section 16(4) provides for time limit for availing ITC, which is earliest of due date for filling GST return for September following the year or date of filling annual return for respective financial year.</p>	<p>The review and finalization of GST records is made at the time of filing of Annual Return and accordingly the time limit should be linked to filing of Annual return.</p>	<p>The time limit for availment of ITC should be taken as the due date of annual return or actual date of filing the annual return, whichever is earlier, to bring in line the details of ITC as reported in financial statements and the Annual Return.</p>
1.3	<p>Section 16 (2) (c) – Claim of Credit subject to payment of Tax by the Supplier</p>	<p>One of the conditions for availment of ITC is that recipient should ensure that supplier has paid tax. Such condition should be applied only in exceptional circumstances i.e. where recipient has colluded with supplier and proceedings are concluded against supplier.</p> <p>Further, there are concerns in cases wherein GST is paid, returns are also filed but such transactions have been wrongly reported as B to C Supplies instead of B to B Supplies.</p>	<p><i>Bona fide</i> purchasers should not be penalized for deliberate defaults made by suppliers. Such provisions are already held unconstitutional in erstwhile VAT Laws by Hon’ble Delhi High Court in case of <b>Arise India Limited and others Vs. Commissioner of Trade &amp; Taxes, Delhi and others [TS-314-HC-2017(Del)-VAT]</b> for which SLP was dismissed by Hon’ble Supreme Court in <b>Commissioner of Trade &amp; Taxes, Delhi and others Vs. Arise India Limited and others [TS-2-SC-2018-VAT]</b>.</p> <p>Suitable amendment should be incorporated by inserting proviso to Section 16(2)(c) as under: Provided that this clause shall apply only in cases where recipient has colluded with supplier and</p>

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			proceedings are concluded against supplier.
1.4	Manner of Utilization of Input Tax Credit of CGST/SGST/UTGST	<p>Presently the Order of Utilization of ITC in respect of CGST and SGST for payment of IGST is in order of preference of CGST to be utilized first and SGST to be utilized later. This is resulting in SGST ITC accumulation, whereas CGST getting utilized against IGST liability. In future, months, assessee is required to pay CGST due to lack of CGST ITC and SGST ITC is carried forward.</p> <p>Rule 88A does not restrict such order of utilization but provides for utilization in any order, however the GST portal does not permit such utilization of ITC of SGST prior to utilizing the ITC of CGST.</p>	The GST portal should be modified to allow the manner of utilization of ITC of CGST/SGST/UTGST should be allowed in any order to avoid accumulation of credits under one head of tax.
1.5	Rule 43 – Reversal of ITC on Capital Goods	<p>Post amendment made by Notification No. 16/2020 CT w.e.f. 1 April 2020, sub-rule 43(1)(f) has been deleted so now there is no linkage in the formulas prescribed under rule 43(1)(e) and 43(1)(g) i.e. the total ITC on common Capital Goods ('Tr') which is aggregate of ('Tm') has not been defined but is used in formula under Rule 43 (1) (g).</p>	<p>The formulae in sub-clause (g) which currently reads as <math>T_e = (E \div F) \times \underline{T_r}</math> should be amended as under:</p> $T_e = (E \div F) \times \underline{T_m}$

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### 2. SCOPE OF SUPPLY

2.1	<p>Schedule III to Central Goods and Services Tax Act, 2017 provides for transactions which are neither supply of goods nor supply of services. The entries 7 &amp; 8 have been incorporated w.e.f. 01.02.2019, the same are reproduced below:</p> <p><i>7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.</i></p> <p><i>8. (a) Supply of warehoused goods to any person before clearance for home consumption;</i>  <i>(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.</i></p>	<p>The said amendment is clarificatory in nature and should be made effective from a retrospective date.</p> <p>Due to lack of clarity, the field officers are demanding GST on transactions which may be considered as beyond the purview of GST Law</p> <p>Further, Section 17 was amended from 01.02.2019 to provide that such transactions should not be considered as exempted supply for the purpose of reversal of ITC.</p>	<p>The entries 7 and 8 in Schedule III of the CGST Act, 2017 should be given a retrospective effect from 01.07.2017.</p> <p>The explanation to Section 17(3) providing that the said transactions should not be treated as exempted supply for the purpose of reversal of ITC should consequentially be given retrospective effect from 01.07.2017.</p>
2.2.	<p>Section 13(8)(b) Place of Supply of Intermediary Service</p> <p>The place of supply of the following services shall be the location of the supplier of services, namely:—</p> <p>(b) intermediary services;</p>	<p>The GST law is a consumption based law and accordingly any services consumed outside India should not be made taxable in India.</p> <p>The indenting agents services are made taxable in India although the consumption of such services are outside India</p>	<p>The intermediary services should be covered under Rule 13(2) of IGST Act, 2017.</p>

### 3. REFUND

3.1	<p>Rule 89(4) of the CGST Rules – In case of zero rated supply of goods or services or both without payment of tax</p> <p>(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both;</p>	<p>Section 54(3) provides for refund of any unutilized Input Tax Credit in case of Zero-Rated supplies without payment of tax. However, Rule 89(4) restricts the claim of refund only to ITC on account of Inputs and Input services.</p>	<p>Rule 89(4) defining NET ITC should be amended to include the ITC on account of Capital Goods also.</p>
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3.2	<p>Rule 89(5) – Inverted Duty Structure Net ITC shall mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed</p>	<p>Section 54(3) provides for refund of any unutilized Input Tax Credit in case of Inverted duty structure supplies. However, Rule 89(5) restricts the claim of refund only to ITC on account of Inputs.</p>	<p>Rule 89(5) defining NET ITC should be amended to include the ITC on account of Input Services and Capital Goods also</p>
<b>4.INTEREST ON DELAYED PAYMENT</b>			
4.1	<p>Proviso to Section 50 (1)  <i>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 levied on that portion of the tax that is paid by debiting the electronic cash ledger.</i></p>	<p>The said proviso has been inserted w.e.f. 01.09.2020. Further, it has been clarified by CBIC that the said proviso is to be effective from 01.07.2017.  The said proviso applies only in cases where the tax demand if any has been paid through Electronic Cash Ledger. The proviso should also cover scenarios where ITC has been reversed without utilization of the same, since there is no revenue loss on this count.</p>	<p>The proviso should be given retrospective effect from 01.07.2017.  The proviso should be suitably amended to include reversal of ITC without utilization of the same</p>
<b>5. GST PAID ON ADVANCES/TAX ADJUSTMENTS</b>			
5.1	<p>GST paid on Advances against supply of services, but later no supply made Section 13(2) provides for payment of GST on advances received for services to be supplied.</p>	<p>Currently the statute provides for filing of refund claim as per section 54(8)(c).  However, Circular No 137/07/2020 dated 13.04.2020 clarifies that the tax so paid can be adjusted against the current liability by issuing a credit note under section 34 of CGST Act, 2017 and there is no need to file refund claim.</p>	<p>Section 34(1) should be amended to allow issuance of credit notes in cases where an advance is received by supplier for a service contract which subsequently got cancelled  Section 54(8)(c) should be made applicable only in cases, where assessee opts not to adjust such tax paid.</p>
5.2	<p>Taxpayer while filing Monthly/quarterly GSTR1 &amp; GSTR 3B has disclosed the Taxable turnover &amp; Tax liability incorrectly &amp; paid excess tax thereon. The said error was found while filing Annual return for said Financial year. Section 54(8)(e) of CGST Act provide for refund of such excess paid. However, CBIC vide circular bearing number</p>	<p>Although the circular clarifies that adjustment of excess payment of tax against GST liability for subsequent month, there is no specific section or rule in the statute permitting such adjustment. We therefor request for insertion of Provision in statute for retrospective effect i.e. w.e.f.1<sup>st</sup></p>	<p>Rule 6 (3) of The Finance Act,1994 was permitting such adjustment of excess payment of service tax against liability for subsequent period. By inserting such provision in GST, there will substantial reduction of hardship of assessee for claiming refund and avoid litigation.</p>

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	26/26/2017-GST dated 29 <sup>th</sup> December 2017 has provided for adjustment of such excess paid GST in any subsequent months(s).	July,2017.	A provision should be added to allow adjustment of excess tax paid for a particular year against the liability of subsequent year/years.
5.3	<p>Section 77(1) - A registered person who has paid the Central Tax and State tax or, as the case may be, the Central tax and the Union territory tax, but which is subsequently held to be an inter-state supply shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed</p> <p>(2) A registered person who has paid integrated tax on a transaction considered by him to be an inter-state supply, but which is subsequently held to be an intra-state supply, shall not be required to pay any interest on the amount of central tax and state tax or as the case may be, the Central tax and the Union territory tax payable.</p>	<p>The above provision is only with respect to supply wrongly considered as inter-state instead of intra-state and vice-versa. However, there is no provision when input tax credit is wrongly claimed as CGST SGST instead of IGST and vice-versa.</p> <p>Further the provision suggest that the payment of actual applicable tax and also the refund of earlier tax so paid shall be at the time when it is held to be an intra-state transaction has been held as inter-state transaction. The term "held" implies as held by the officer of revenue. However, this provision should be made applicable also in cases where such error has been identified suo-moto by the assessee.</p> <p>Also, instead of refund of tax, there should be an option of adjustment of wrong taxes paid or wrong input tax credit claimed.</p>	<p>Adequate clarifications should be issued to clarify that the term "held" should include even suo-moto identification of error made by the assessee.</p> <p>The said provision should also be made applicable in case of availment of ITC under wrong head with a facility to allow the same on GST portal. Also, no time limit for such availment of ITC should be applicable.</p>
<b>6. OTHER PROVISIONS</b>			
6.1	Instructions of GSTR-9 and GSTR-9C	<p>The instructions of GSTR 9 and 9C state that any shortfall in payment of tax or excess claim of ITC should be paid in cash only. However, the provisions of GST law recognize the payment either by debit in Electronic Cash Ledger or by Electronic Credit Ledger. To that extent the instructions runs in violation to the provisions of GST Law.</p> <p>Instruction relating to payment under DRC-03 for liability under GSTR-9 and GSTR-9C should be omitted.</p>	<p>For better tax administration in the Country, assesseees should be allowed to use ITC available in Electronic Credit Ledger for payment of any GST liability including liability arising during GSTR-9 and GSTR-9C. Considering the core concept of indirect taxes observed by Hon'ble Supreme Court in case of <b><i>Eicher Motors Ltd. vs. Union of India 1999 (106) ELT 3 (SC)</i></b>, credit is as good as tax paid.</p>

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6.2	<p>Time of Supply in case of introduction of provisions for Reverse Charge Mechanism</p>	<p>Due to lack of a transitional provision for cases getting covered under reverse charge mechanism or being brought under normal charge mechanism, issues arise in determination of time of supply, especially if such change in law is brought in between issuance of invoice (ToS for Supplier) and date of payment of such invoice (ToS for recipient)</p>	<p>The following provisions should be incorporated</p> <p><b>Transitional provision for Time of Supply under Reverse Charge Mechanism:</b>                  Notwithstanding anything contrary contained in section 12 or section 13, in case of change in the liability or extent of liability of a person required to pay tax as recipient of supply notified under sub-section (3) of section 9 of the Act, in case supply has been made and the invoice issued before the date of such change, but payment has not been made as on such date, the time of supply shall be the date of issuance of invoice</p>
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## The Chamber of Tax Consultants



## Vision Statement

The Chamber of Tax Consultants (The Chamber) shall be a powerhouse of knowledge in the field of fiscal laws in the global economy.

The Chamber shall contribute to the development of law and the profession through research, analysis and dissemination of knowledge.

The Chamber shall be a voice which is heard and recognised by all Government and Regulatory agencies through effective representations.

The Chamber shall be pre-eminent in laying down and upholding, among the professionals, the tradition of excellence in service, principled conduct and social responsibility

Unveiled by **Shri S. E. Dastur**, *Senior Advocate* on 30th January, 2008

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## NOTES

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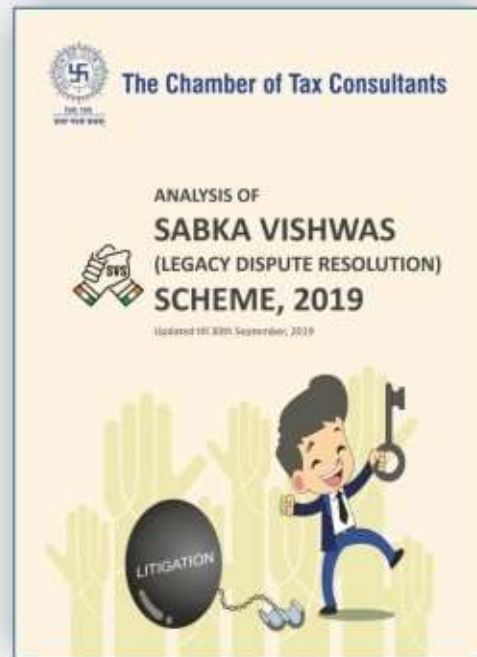
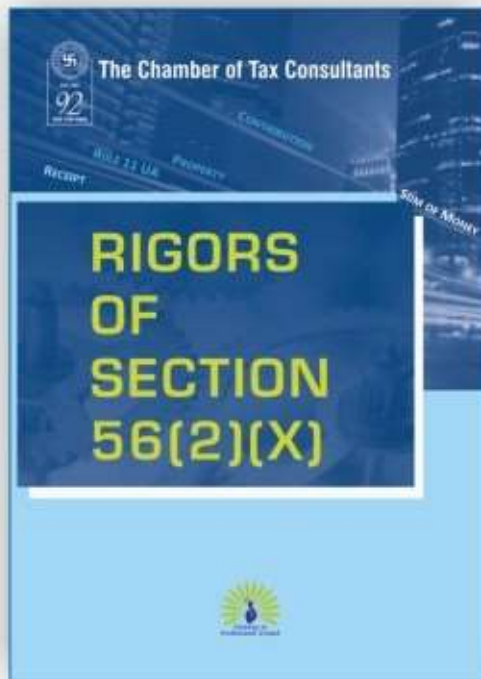


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## ABOUT THE CHAMBER OF TAX CONSULTANTS

The Chamber of Tax Consultants (CTC) was set up in 1926 and is one of the oldest voluntary non-profit making professional organisations. It is the voice of more than 4000 professionals on PAN India basis which comprises of Advocates, Chartered Accountants, Company Secretary, Cost Accountants, Corporates, Tax Consultants and Students.

The Chamber is in its 91st year and is a young dynamic organisation which has a glorious past and undisputedly ambitious future. The Chamber is a great institution with a tradition of high integrity, independence and professionalism.

The Chamber acts as power house of knowledge in the field of fiscal law, always proactive in contributing to the development of law and profession through research, analysis and dissemination of knowledge and by tendering suggestions to authorities. The Chamber provides networking platforms to professionals through interactive meetings and seminars

Some of the renowned personalities like Shri Soli Dastur, Shri Y.P. Trivedi, Shri V.H. Patil, Shri S.N. Inamdar have led the Chamber as President.

The Chamber shall preeminent in upholding among the professional, tradition of excellence in service, principal conduct and social responsibility.