

Amendment in Finance Bill, 2021 with respect to GST

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Topic: Indirect Tax Provisions of Finance Bill, 2021 and Recent Changes under GST

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Several changes have been proposed in the Finance Bill, 2021 with respect to GST. The amendment to CGST Act proposed in Finance Bill 2021 does not become effective either immediately or when the Finance Bill becomes Finance Act. A separate notification is issued to give effect to each clause. It is experienced that it generally becomes effective from the beginning of next year i.e. January-2022. However, in case of few clauses the date of retrospective effect is given to the amendment. Thus, clauses become effective from such specified date. The clause wise amendments are discussed in the next slide.

Amendment in Section 7 which defines supply:

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The new clause (aa) with explanation is added which reads as follows:

“(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;”.

This amendment is proposed to neutralize the effect of Supreme Court judgment in the case of Calcutta Club reported in 2019 (10) TMI 160 - SUPREME COURT. It was held in this judgment that the club is an agent of the members and hence the members and club are not two separate persons. Therefore, it cannot be supply from club to member and vice versa. Further the clause (7) of Schedule (II) which reads as follows is also omitted.

7. “Supply of Goods

The following shall be treated as supply of goods, namely:--

Supply of goods by any unincorporated association or body of person to a member thereof for cash, deferred payment or other valuable consideration.”

This amendment is effective from 01/07/2017

Condition for availment of Input Tax Credit:

The following new condition for availment of credit has been added:

(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”.

Under the new scheme of return, the registered person will be provided by portal the details of the credit available to him in Form GSTR-2B. Further, based on the details furnished by the supplier, the details will be auto-populated in Form GSTR-2A. There was no mandatory condition in Section 16 of the CGST Act which requires the availment of credit only when the invoice is reflected in Form GSTR-2A. The same is now incorporated in the statute. Every taxpayer will have to ensure that the credit is reflected in Form GSTR-2A.

Form GSTR-9 & 9C (Audit)

Currently the reconciliation statement in form GTR-9C is to be certified by the Chartered Accountant or Cost Accountant. This condition is deleted. As per the proposed amendment self-certified reconciliation statement is required to be declared. Thus, the certification for the period 2020-2021 will be compulsory, thereafter it may not be required under law.

Interest

The manner of computing the interest was a subject matter of dispute. The department has been charging interest on the gross amount of tax whereas the assessee is contending that the interest is payable on the amount paid in cash. The new proviso to Section 50 of the CGST Act is inserted to provide that if the returns are filed before issuing Show Cause Notice either under Section 73 or 74 of the said Act, the interest will be charged on the amount paid in cash.

Conclusion of proceedings

In Explanation 1 clause (ii) of section 74, the Section 129 and Section 130 of the CGST Act has been deleted. The Section 129 and Section 130 relates to detention and confiscation of the goods and conveyance. The proceedings in such case can be taken against conveyance owner and other persons who have aided or abetted the evasion. The clause (ii) of explanation 1 provided that if proceeding of a show cause notice against the main person is concluded, then the proceedings against the other persons will also be concluded. However, with the amendment the department can proceed against the other person covered under section 129 and 130.

Recovery of Tax

The following explanation is proposed to be added in Section 75(12) which reads as follows:

“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.”

Thus, the tax is payable not only for supplies declared in Form GSTR-1, but self-assessed tax will include the tax payable on supplies which are not declared in the return.

Provisional Seizure of Account in Section 83 of the CGST Act:

The earlier law permitted the provisional attachment of the property/account of only taxable person. The experience has shown that the taxable persons are dummy person, and the benefit of activities like the invoices are retained by some other person. The Section 122(1A) is inserted to provide penalty on such person. Now Section 83 is amended to provide for provisional attachment of property of such person who retains the benefit or on person whose instance such transaction is conducted. The scope of Section 83 is widened to permit provisional attachment at the time of initiating the proceedings as against pendency of such proceeding.

Mandatory pre-deposit

The pre-deposit of ten percent of the deposited amount of tax is mandatory to file an appeal before First Appellate Authority. However, now in case of detention and confiscation of goods and vehicles, the deposit of twenty-five percent of the penalty is mandatory.

Release of goods and conveyance

The clause (a) & (b) of Section 129(1) which provides for release of goods and vehicles is proposed to be substituted with the following:

“(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. 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.

(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. 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.”

Prior to this it read as follows:

(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 per cent. 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.”

(b) on payment of the applicable tax and penalty equal to the fifty per cent. 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 per cent. 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.”

- As per the above amendment there will be no payment of tax and will be subject to penalty only. Further there is a change in the value of amount payable as penalty for the release of the goods and conveyance.
- Further, sub-section (3) is proposed to be amended to provide that the notice shall be issued within 7 days of the detention specifying the penalty payable and thereafter pass the Order within a period of 7 days from the date of serving of such a notice. The existing provision does not provide such time limit.
- The sub-section (6) is proposed to be amended to delink it from Section 130 of the said Act. As per the proposed amendment, if the penalty is not paid within 15 days from the date of receipt of Order then the goods or conveyance shall be liable to be sold and disposed-off to recover the penalty. The existing provision required the application of Section 130 of the said Act in such cases.
- Further, the proviso of the proposed amendment provides that the conveyance can be released by the transporter on payment of applicable penalty or Rupees one lac whichever is less. Further, in case the goods are perishable or hazardous in nature, then the said period of fifteen days can be reduced by the Proper Officer.

Confiscation of goods or conveyance

The Section 130 of the CGST Act which provides for confiscation of goods and conveyance is proposed to be delinked with Section 129 of the said Act. The proceedings under Section 129 will be concluded on payment of penalty and duty. If in addition the department wishes to confiscate the goods and vehicles, they should issue a separate notification for the same. This proceeding will be separately concluded.

Collection of statistics

The section 151 of GST Act is proposed to be amended by which the Commissioner or any officer authorised can direct any person to provide statistics by passing an order. Earlier he had to issue notification for the same.

Section 16 of the IGST Act

- The Rule 96B of the CGST Rules, 2017 provide for recovery of the refund amount where foreign exchange is not realized by exporter in case of refund of unutilized credit. There was no such condition under IGST Act. The said condition is now proposed to be incorporated in Section 16(3) of the IGST Act.
- In case of supplies to SEZ, there was no condition that the supply must be used in authorized operation. The said condition is now proposed to be incorporated.
- Further, in case of zero-rated supply, Section 16(3) of the said Act allowed the option to claim refund of either of ITC of Inputs or input services used in providing zero-rated supply or pay tax on zero-rated supply and pay refund of the same.
- The proposed amendment allows for refund of unutilized credit. However, the option to pay tax and claim refund on zero-rated supply will be available to certain class of persons notified by way of notification issued by the Government.

Other Amendments

The following measures have been announced through the amendment in various rules in para 174 of the speech of Finance Minister.

- i. Nil return through SMS;
- ii. Quarterly return and monthly payment for small taxpayers;
- iii. Electronic invoice system;
- iv. Validated input tax statement;
- v. Pre-filled editable GST return, and
- vi. Staggering of return filing;

1. Nil return through SMS

- The Government has by issuing various notifications No. 38/2020-CT dated 05-05-2020, 58/2020-CT dated 01-07-2020 and 79/2020-CT dated 15-10-2020 permitted the filing of return by SMS provided it is NIL return. The explanation in the notification provides that NIL return shall mean NIL or no entry in all the tables of return namely GSTR-3B, GSTR-1 and GST CMP – 08.

2. Quarterly return and monthly payment for small taxpayers

- In exercise of the power conferred under Section 39(1), the Government has vide Notification No. 84/2020-CT dated 10-11-2020 notified certain person other than those referred in section – 14 of the IGST Act as separate class of person and specified frequency of filing return. The Section – 14 of IGST Act refers to “person providing taxable service of online information and database access or retrieval services”. This can be discussed in following points:
 - **Eligibility.**
 - **Manner of exercising option.**
 - **Deemed option.**
 - **Manner of payment. (Normal)**
 - **Due date.**
 - **Special procedure of payment.**
 - **Ineligibility.**
 - **Invoice Furnishing Facility for turnover below Rs. 50 lacs.**

3. Electronic invoice system

The Government on recommendation of the council made amendment in Rule 48 and other provisions have also been notified to make E-invoices effective. The provisions are discussed in following sub paras:

- **Provisions in the Rule**
- **Class of persons**
- **Effective date**
- **Meaning of E-invoice**
- **Nature of documents and nature of standardization**
- **Creation of E-invoice**
- **Cancellation of Invoice**
- **FAQ and Clarifications**
- **Exemption**
- **QR-Code**
- **Special Procedure for 01-10-2020 to 31-10-2020**

4. Pre-filled editable GST return, and

The Government has all the data in their portal which are required to be uploaded in the GSTR-3B. The E-invoicing ensures details of outward supply made by registered person is available with the Government. The GSTR-2B which gives the details of credit available to the registered person is also available. Therefore, Government intends to provide pre-filed GST return based on the information available with Government. This will be editable and registered person will be able to change the figure.

5. Staggering of return filing

As mentioned above Section 39(1) permits the Government to specify the person who will file the return in the frequency specified in the notification. The Government has vide Notification No. 84/2020-CT dated 10-11-2020 specified the person who can file the return quarterly. The details are discussed under Heading Quarterly return and monthly payment for small taxpayers in point No. 2 above.

6. Availment and utilisation of Credit.

- A. The Rule 36(4) permits credit not exceeding 5% of the eligible credit in respect of invoice or Debit Note. the details of which have been furnished by the supplier in GSTR-1.
- B. As per Rule 86A, the Commissioner or any Authorised Officers can restrict the use of credit for the following reasons:
 - a) The credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-
 - i. issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
 - ii. without receipt of goods or services or both; or
 - b) The credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or
- C) The registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or
- d) The registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36

C. The Rule 86B has been incorporated in the GST Rules vide Notification No. 94/2020-CT dated 22-12-2020. This rule makes overriding provisions and provides that the registered person shall not use the amount available in Electronic credit ledger to discharge his tax liability in excess of 99% in case where the value of taxable supply other than exempt supply and zero-rated supply exceeds Rs. 50 lacs. Thus, this rule puts restriction on utilisation of credit available in Electronic credit ledger. The proviso to rule also make exception which are as follows:

- a. The payment of Income Tax of Rs. 1 lac in two Financial Year by specified person.
- b. Receipt of refund of more than Rs. 1 lac of unutilised credit for zero rated supply.
- c. Receipt of refund of more than Rs. 1 lac for inverted duty structure.
- d. Payment of tax through cash of 1% of the tax paid on output supply.
- e. Government Department; or
 - A public sector undertaking; or
 - A local authority; or
 - A statutory body.

Imposition of Agriculture Infrastructure and Development Cess on import of certain items (to be effective from 02/02/2021 [Clause (115) of the Finance Act, 2021]

An Agriculture Infrastructure and Development Cess (AIDC) has been proposed on import of specified goods. To ensure that imposition of cess does not lead to additional burden in most of these items on the consumer, the BCD rates has been lowered. This cess shall be used to finance the improvement of agriculture infrastructure and other development expenditure.

THANK YOU

BALANCED VIEW

PRESENTED BY

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