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3rd January, 2023

To,
Smt. Nirmala Sitharaman,
Hon'ble Finance Minister,
Ministry of Finance,
North Block,
New Delhi 110 001

Shri Vivek Johri,
Chairman,
Central Board of Indirect Taxes and Customs,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi –110001

Respected Madam / Sir,

Subject: Pre-Budget Memorandum 2023-2024–Suggestions on GST

We are pleased to submit our suggestions on provisions related to GST.

They may kindly be considered, we are sure, it will meet your approval. It may kindly be put up for discussion at appropriate forum.

If desired by your Honors' we may be called upon to personally discuss.

Thanking you,

Yours Sincerely,

For THE CHAMBER OF TAX CONSULTANTS

Sd/-	Sd/-	Sd/-
PARAG VED	**MAHENDRA SANGHVI**	**KETAN VAJANI**
PRESIDENT	**CHAIRMAN**	**CO-CHAIRMAN**
	LAW & REPRESENTATION COMMITTEE	

PRE BUDGET-SUGGESTIONS/VIEWS ON "GOODS AND SERVICES TAX"			
Sr. No.	**Issue**		**Justifications**
	Existing Provisions	**Suggestions**	
1.	Section 169 of CGST Act, 2017 provides for service of any decision, order, summons or notices in manners prescribed under sub-section (1) of Section 169. The manner includes sending of communication to his email address or making the same available on common portal. It is observed that in various instances the email ids given at the time of registration may remain un-attended due to various circumstances. Also, the communication made available on GST portal is not apparently visible on the portal, as a result of which some of the communication remains unattended.	It is believed that the following pointers shall enable an effective communication between the assessee and departmental authorities: a) Enabling the portal to allow multiple email-ids for receiving communication. b) A pop-up/flash should be enabled to intimate the assessee about such communication.	An effective communication shall ensure that the principle of natural justice is achieved.
2.	Section 107(4) of CGST Act, 2017 provides that the Appellate Authority shall allow the appeal within a period of one month if the appeal could not be filed within the time limit as provided under Section 107(1) of CGST Act, 2017. It may be noted that due to various reasons such as not receiving information about the order etc, the above timeline to file the appeal is not met. Especially in cases of cancellation of registration, in case the assessee is not in a position to make payment of GST dues, the time limit to file the appeal is exhausted,	The provisions of Section 107(4) should be amended to condone the delay even beyond one month in cases where sufficient cause is proved.	This amendment would provide an assessee a fair chance to present their case, where the delay was on account of reasons beyond the control of assessee.
3.	Currently there are no powers provided to the proper officer / adjudicating authority to administratively condone the delay in	Powers to grant administrative relief to dealers by way of	There are instances where there is delay in refund

	making applications for refund, appeals, registration, cancellation of registration, revocation of cancellation of registration etc.	condonation of delay in making Refund Application, Filing Appeal, Obtaining Registration, application for Cancellation of Registration and application for revocation of cancellation of registration should be provided to the proper officer / adjudicating authority.	applications and filing appeal due to reasonable causes. The proper officer / adjudicating authority should be authorized to condone the delay in genuine cases to provide justice to the applicants.
4.	Any person who is aggrieved by any decision or order passed by authority can file an appeal to the appellate authority or tribunal only after making payment of a certain percentage of the disputed tax amount. No appeal is admitted before payment of the mandatory pre-deposit **<u>Relevant Provisions:</u>** **<u>CGST Act, 2017</u>** **Appeals to Appellate Authority:** "107 … *(6)* ***<u>No appeal shall be filed</u>*** *under sub-section (1),* ***<u>unless the appellant has paid</u>****-* *(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and* *(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.*	The provisions of Section 35F of Central Excise Act, 1944 and also applicable to Finance Act, 1994 by virtue of Section 83 of Finance Act, 2017 provided for a pre-deposit at Appellate Tribunal for incremental % of deposit. The provision under GST provides for additional pre-deposit as against incremental pre-deposit. Also, the percentage of pre-deposit in erstwhile laws were 7.5% and 10% at Appellate Authority and Appellate Tribunal respectively. However, the pre-deposit percentage in GST is 10% and 20% respectively. It is therefore recommended as below:	Mandatory pre-deposit creates a financial burden on the business entities which are under financial stress and in cases where the huge demands are created on passing of unreasonable orders or high pitch assessment orders.

	Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant." ***Appeals* to Appellate Tribunal** "112 … *(8)* ***No* appeal *shall be filed*** *under sub-section (1),* ***unless the appellant has paid****-* *(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and (b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of fifty crore rupees, in relation to which the appeal has been filed."*	a) The percentage of Pre-Deposit should be reduced and kept at par with the erstwhile Central Excise Act, 1944 b) Pre-Deposit at Appellate Tribunal should be incremental percentage only as against additional percentage.	
5.	Non-Constitution of Appellate Tribunal **Relevant Provisions:** Section 109. Constitution of Appellate Tribunal and Benches thereof.- (1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority. …..	Owing to Non-Constitution of Appellate Tribunal even after passage of 5 years of GST, taxpayers are facing Cash flow difficulty especially in case of High pitched Demand Orders and Adverse Refund Orders.	The government has issued various clarifications and issued notifications on matters involving interpretation of law, refund, limitation of period. Also, multiple issues are now already covered by judgements of Courts. However, in cases where Orders have already been passed by Adjudicating authority or 1st Appellate

			authority before the Clarifications/Notifications have been issued or judgements pronounced by Courts, the Revenue has commenced Recovery proceedings, especially where pre-deposit is not paid for Appeal before Appellate Tribunal. In such cases, the taxpayers are forced to deposit a high amount as Pre-deposit, resulting into Cash Flow Difficulties. To alleviate such troubles and to avoid backlog of appeal cases in GST, it is urged that GST Appellate tribunal be constituted without further delay.
6.	If a recipient fails to make payment to the supplier within a period of 180 days from the date of issue of invoice by the supplier, then an amount equal to the input tax credit availed by the recipient has to be reversed along with the payment of interest. Relevant Provision: Second Proviso to Section 16(2) of the CGST Act, 2017 "(2)…	It is recommended that the current provision appears to be a trade facilitation measure. It is important to bring to your notice that GST is payable by all assessee at the time of raising of invoice irrespective of the fact whether the payment has been received or not.	This amendment shall reduce the compliance burden on the assessee and also eases the process of audit conducted by departmental authorities.

	Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed: …"	Further, the provisions of Section 16(2) of CGST Act, 2017 already provides for a condition of claiming of Input Tax Credit is subject to payment of tax by the supplier. The reversal of ITC on non-payment within 180 days and subsequent re-credit at the time of making the payment casts an additional compliance burden on the assessee. It is therefore recommended to delete such proviso	
7.	As per clause (aa) to sub-section (2) of Section 16 of the CGST Act, 2017, input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in their Form GSTR-1/IFF i.e. appearing in Form GSTR2A/2B of the recipient. **<u>Relevant Provisions:</u>** **Section 16(2)(aa) of the CGST Act, 2017 -** "(2)… *(aa) the **<u>details of the invoice or debit note</u>** referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details **<u>have been communicated to the recipient</u>** of such invoice or debit note in the manner specified under section 37;"*	Functionality of reporting missing invoices in GSTR 2 as originally as envisaged under section 38,42 and 43 of the CGST Act,2017 should be enabled on the GST portal to verify, validate, add, modify or delete invoices and/or credit/ debit notes issued by the supplier which are not appearing in Form GSTR-2B of the recipient.	Currently, the availment of ITC by the recipient is dependent on the supplier's compliances. Supreme court in various cases has held that input tax credit is a vested right of every taxpayer and the core of any value added tax mechanism. Though every right is subject to reasonable restrictions, taxpayers should not be asked to do the impossible.

			Alternatively, a facility should be provided on GST portal for recipients to upload invoices missing in GSTR 2B, which would not only help the recipients claim their rightful due to ITC, but also help the Government plug tax leakages and collect taxes in timely manner from Suppliers.
8.	Section 24 of the CGST Act, 2017, mandates GST registration for persons who are liable to pay tax under the reverse charge mechanism irrespective of the turnover threshold limit. **<u>Relevant Provision:</u>** **Section 24 of the CGST Act, 2017** *"24. Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,--* *…* (iii) ***<u>persons who are required to pay tax under reverse charge</u>****;* *…"*	It is recommended that a facility of paying tax under reverse charge mechanism, through a PAN based challan cum return should be provided to unregistered recipients (upto their basic threshold limit of registration) without making them liable for mandatory registration u/s 24(iii).	Due to this provision, a person whose turnover is below the threshold limit is required to get registered if he receives specified categories of goods or services or both which are liable to GST under reverse charge mechanism. Once a person gets registered under the Act, he becomes liable to comply with all the provisions of the Act although otherwise he is not liable due to aggregate turnover being below the threshold limit. Allowing such facility will reduce the compliance burden and ensure ease of doing business.

9.	Section 31(3)(f) of the CGST Act, 2017, requires a registered person, who is liable to pay GST under reverse charge mechanism, to issue a self invoice for goods or services or both received by him from an unregistered supplier. Further, as per section 31(3)(g) of the CGST Act, 2017, a registered person is also required to issue a payment voucher at the time of making payment to the supplier (whether registered or not) for the inward supplies of goods or services or both which are liable to reverse charge. As per Rule 36(1)(b) of the CGST Rules, 2017, input tax credit of GST paid under reverse charge mechanism can be availed based on self-invoice issued in terms of section 31(3)(f) of the CGST Act, 2017, where the supplier is unregistered. **<u>Relevant Provisions:</u>** **Section 31(3)(f) and (g) of the CGST Act, 2017** "(3) … *(f) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9* ***<u>shall issue an invoice</u>*** *in respect of goods or services or both* ***<u>received by him from the supplier who is not registered</u>*** *on the date of receipt of goods or services or both;* *(g) a registered person who is liable to pay tax under sub-section (3) or sub-section (4) of section 9* ***<u>shall issue a payment voucher</u>*** *at the time of making payment to the supplier."*	It is recommended that the requirement to generate a self-invoice should be done away with by omitting sec.31(3)(f). Consequentially, Rule 36(1)(b) of the CGST Rules,2017 can be suitably amended to avail input tax credit on the basis of payment of tax under Reverse Charge Mechanism. Similar provisions also existed under the erstwhile CENVAT Credit Rules, 2004	Self-invoice as well as payment vouchers, both are required to be generated for each transaction by registered person liable to pay tax u/s 9(3) or 9(4) of the CGST Act, 2017 (i.e. under Reverse Charge Mechanism) Invoices are generally issued by the suppliers, whether they may be registered or unregistered. The payment voucher as per Rule 52 of the CGST Rules, 2017 covers the basic parameters as required in an Invoice. The recipient is eligible for Input tax Credit only after making payment of taxes under Reverse Charge Mechanism. Time of supply provisions are applicable to invoices issued by supplier and not to self-generated invoices.

	Rule 36(1) of the CGST Rules, 2017 "*(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely,-* … *(b)* ***<u>an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax</u>***; …"		Removing the requirement of generating self-invoices will reduce the compliance burden on the taxpayers.
10.	1. Currently, Rule 96B of the CGST Rules,2017 provides the process for recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds are not realized within the period allowed under the Foreign Exchange Management Act. The amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the CGST Act, as the case may be, as is applicable for recovery of erroneous refund. The procedure for repayment of refund recovered is provided in cases where the sale proceeds are realized after recovery of refund. 2. However no procedure is prescribed for re-credit of the ITC utilized from the electronic credit ledger at the time of payment of Intergrated Tax in case of exports on payment of tax or for re-credit of ITC debited from the electronic credit ledger at the time of claiming of refund for exports under LUT. The Circular No. 174/06/2022-GST dt 6th July 2022 caters to other scenarios (categorically mentioned in the circular) but doesnot provide a procedure for Rule 96B. **<u>Relevant Provisions:</u>**	1. Till the time, the provisions for requirement of realisation of export proceeds for export of goods is not enforced/made effective in Sec 16 of the IGST Act, the recovery of the refund amount must be kept in abeyance under the Rule 96B. 2. The Rule 96B should be made applicable to Exports made after the proviso to Sec.16(3) of the IGST Act is made effective. 3. Detailed circular/clarification must be prescribed entailing how a person who has received refund may deposit the amount so refunded on non realisation of export proceeds within the time	1. The proviso to Sec 16(3) of the IGST Act is not yet operative and thus, Rule 96B cannot be implemented till the proviso is made effective. 2. The Rule 96B should have prospective effect and should be made applicable to Exports made after the proviso to Sec.16(3) of the IGST Act is made effective. 3. There are no specific guidelines for depositing the refund amount being recovered, nor are there any guidelines for re-refunding the recovered amount. 4. (a)In case of Export of Goods with payment of tax, in many cases, the tax

	RULE 96B: Recovery of refund of unutilised input tax credit or integrated tax paid on export of goods where export proceeds not realised *(1) Where any refund of unutilised input tax credit on account of export of goods or of integrated tax paid on export of goods has been paid to an applicant but the sale proceeds in respect of such export goods have not been realised, in full or in part, in India within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within thirty days of the expiry of the said period or, as the case may be, the extended period, failing which the amount refunded shall be recovered in accordance with the provisions of section 73 or 74 of the Act, as the case may be, as is applicable for recovery of erroneous refund, along with interest under section 50:* *Provided that where sale proceeds, or any part thereof, in respect of such export goods are not realised by the applicant within the period allowed under the Foreign Exchange Management Act, 1999 (42 of 1999), but the Reserve Bank of India writes off the requirement of realisation of sale proceeds on merits, the refund paid to the applicant shall not be recovered.* *(2) Where the sale proceeds are realised by the applicant, in full or part, after the amount of refund has been recovered from him under sub-rule (1) and the applicant produces evidence about such realisation within a period of three months from the date of realisation of sale proceeds, the amount so recovered shall be refunded by the proper officer, to the applicant to the extent of*	limits prescribed under FEMA. 4. To the extent input tax credit was debited by the taxpayer from his Electronic Credit Ledger: a) For discharging the liability on Exports with Payment of Tax (EWPAY) OR b) While making refund application for Exports without payment of tax (EWOPAY) under LUT. There should be a procedure for re-crediting the input tax credit utilized/debited earlier in the electronic credit ledger while making exports/refund application. The refund recovery procedure would take care of the recovery of refund granted in cash, the deposit thereof in cash and the re-refund thereof on realization of exports proceeds as per the extended time limits as per FEMA.1. Circular 174/06/2022 (cited above) can be used as a base for the same.	liability is discharged by utilizing the credit lying in the electronic credit ledger. However, on non-realization of the export proceeds within the time limit under FEMA, no procedure is prescribed for depositing the amount of refund received in cash as well as re-credit of amount utilized from the electronic credit ledger. (b) In case of Refund applications with respect to Export of Goods without payment of tax under LUT , the electronic credit ledger is debited to the extent of amount of refund claimed. However, on non-realization of the export proceeds within the time limit under FEMA, no procedure is prescribed for depositing the amount of refund received in cash as well as re-credit of amount debited from the electronic credit ledger.

	realisation of sale proceeds, provided the sale proceeds have been realised within such extended period as permitted by the Reserve Bank of India.		