

Amendments

to

CGST Act

2018 Amended CGST
Act

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Agenda for Discussion

Changes to the Act

Impact on Business

Q&A

Changes in Definition Section

2(4) “adjudicating authority”

BEFORE

“adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of ~~Excise~~ and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority ~~and~~ the Appellate Tribunal;

AFTER

“adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and **the Authority referred to in subsection (2) of section 171;**

Effect

- Change in the name CBEC to CBIC.
- The National Anti-Profiteering Authority constituted under Section 171 of the CGST Act has been excluded from the definition of adjudicating authority

2(17)h “Business”

BEFORE

2 (17) (h) ~~services provided~~ by a race club by way of totalisator or a licence to book maker in such club; and

AFTER

2 (17) (h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and

Effect

- Activities of licensed bookmakers in the race club has been explicitly covered within the definition of business through this amendment.

2(69) “a local authority

BEFORE

2(69) “a local authority “means –
(f) a Development Board constituted under article 371 of the Constitution; or

AFTER

2(69) “a local authority “means –
(f) “a Development Board constituted under article 371 and article 371J of the Constitution; or

1. Article 371J has been inserted in the definition of local authority on special request received from the State of Karnataka.
2. Special status is granted by this article to 6 backward districts of Karnataka-Hyderabad regions.
3. As per this article, the President is empowered to establish a separate Board. This purpose of the Board is to ensure equitable distribution of fund in the State’s budget for the developmental needs of these regions

Effect

Section 2(18) Business Vertical Omitted

BEFORE

2(18) Business Vertical

AFTER

Omitted

Effect

Multiple registrations were allowed earlier only in case of separate business verticals. The law now allows a separate registration for each place of business in respect of persons having multiple places of business in a state. So, the definition of business verticals is not required anymore under the GST law

2(102) "services"

BEFORE

means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

AFTER

+

Explanation-For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.

Effect

service charges or service fees or documentation fees or broking charges or such like fees or charges are charged in relation to transactions in securities, the same would be a consideration for provision of service and chargeable to GST.

Supply Related Changes

7(1)(d) – Sch II – Retrospective Amendment

BEFORE

Part of Supply Definition

AFTER

Certain activities or transactions, when constituting a supply in accordance with the provisions of sub-section (1), shall be treated either as supply of goods or supply of services as referred to in Schedule II.

Effect

The intent of the Act was only for classification between goods or services once it was held to be a supply as per the first three clauses. To carry out this intention, a retrospective amendment was made in the definition of supply with effect from 1st July 2017

Sch I : Deemed Supply – Widened

BEFORE

Import of services by a **taxable** person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

AFTER

Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Effect

The provision has been amended so as to bring any unregistered person involved in import of services under the purview of GST if carried out in the course or furtherance of business from a related person or an or any of their other establishments outside India. Such person is now liable to register and pay taxes on such import of services

Sch III : NO Supply – Widened

BEFORE

Clause 1-6

AFTER

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 the taxable territory.

8.(a) Supply of warehoused goods to any person before clearance for home consumption.

(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.

Effect

- Earlier, these transactions were covered vide the definition of supply. However, they were not leviable to tax under the IGST Act which requires the chargeability only as per the Customs law. So, they were considered as Non-GST supply.
- These resulted in reversal of input tax credit as the outward supply was considered as exempt in nature (exempt covers Non-GST supply)

9(4)

BEFORE

The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both

AFTER

The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of taxable goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Effect

Only a notified class of registered taxpayers are purported to be covered by this substituted section now. This will bring a huge sigh of relief to those registered taxpayers who will now be outside the scope of this section

Composition Supplier Sec 10

- Limit

- Enhanced threshold of INR 1.5 crores and

- Scope

- Provided further that a person who opts to pay tax under Composition may supply services of value not exceeding
 - ten percent (10%) of turnover in the preceding financial year in a State or Union territory or
 - five lakh rupees,
- whichever is higher.

Rationalization of time of supply provisions

- Time of Supply of goods and services

To ensure that the invoice is required before removal of goods in **all** possible situations envisaged in Section 31 and not just 31(1) or 31(2) {12(2) & 13(2) of the CGST Act.}

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Input Tax Credit

'Bill to Ship to' – Extended to Service

- ITC on Bill to Ship to
 - Currently in case of “Bill to Ship to” model it is assumed that goods are deemed to be received by the recipient even though received by a third person. Such deemed received has now been extended to services. It is enabling service providers to claim credit. [Section 16(2)]
- Example
 - Services provided by “A” to “C” on direction of “B”. B can take the credit of A’s invoice inspite of not having received the service due to the proposed deeming fiction.
- Effect of the Amendment
 - To avail ITC the registered person must be in receipt of goods or services
 - In Bill-to-ship-to model, it is deemed that goods are received when the supplier delivers the goods to any other person on direction of the recipient
 - This deemed assumption shall now be applicable in case of services as well.
 - So, ITC will be allowed to a person on whose direction and account, the third person receives the services.

ITC on Payment of Tax

- Section 16(2)(c) Second Proviso

- subject to the provisions of section 41 or 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and

- Impact

1. One of the conditions for availing input tax credit is that the payment of tax should have been made by the supplier
2. The new return filing mechanism may allow taking of input tax credit to the recipient in certain situations and subject to certain conditions even if the payment of tax is not made by the supplier
3. So, this condition of requirement of payment of tax by the supplier has been made subject to the procedure in the new return filing mechanism

ITC on SCH III Supplies

- Section 17(3) Exempt Supply include...
 - but **shall not include** the value of activities or transactions (other than sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building) specified in Schedule III.
- Impact
 1. The new provision has been inserted so as to allow ITC on activities mentioned in Schedule III (other than sale of land and subject to clause(b) of paragraph 5 of Schedule II, sale of building) by removing it from the ambit of exempt supplies. Hence, these clauses will not entail any reversal of credit.
 2. Excluding of supplies covered under Schedule III from the scope of exempt supplies under Section 17(3) will result in lower reversal of credit particularly in case of high sea sales, merchant trade transactions and supply of warehoused goods before clearance for home consumption

Expansion of Scope of ITC on motor vehicles

- New
 - (a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) except when they are used—.....A,B,C
- Impact
 - Further, the words 'other conveyances' have been removed.
 - The amendment is sought to make it clear that input tax credit would now be available in respect of dumpers, work-trucks, fork-lift trucks and other special purpose motor vehicles.
 - ITC shall not be available in respect of motor vehicles having capacity of not more than 13 persons (including the drivers), vessels and aircrafts if they are used for personal purpose.

Expansion of Scope of ITC on motor vehicles

- Impact

- A new provision has been inserted allowing ITC on motor vehicles if they are used for transportation of money for or by banking company and financial institutions.
- *ITC in respect of services of general insurance, servicing, repair and maintenance in respect of those motor vehicles, vessels and aircraft on which ITC is not available under clause (a) or (aa)*
- In respect of vessels and aircrafts, ITC will be blocked except if it is used for certain specified purposes
- When used for an insurance company for supply of insurance services, Input tax credit will be available in respect of motor vehicles, vessels or aircraft insured by him.
- For all other conveyances, Input tax credit will be freely available (eg. motor vehicles for transportation of persons > 13 persons)

17(5)(b) Food, Health, Travel etc

- Now,
 - in accordance with the provisions of Section 17(5)(b), ITC is not available in respect of food and beverages, health services, travel benefits to employees etc..
- Proposed,
 - it is proposed that ITC in respect of food and beverages, health services, renting or hiring of motor vehicles, vessels and aircraft, travel benefits to employees etc., can be availed where the provision of such goods or services is obligatory for an employer to provide to its employees under any law for time being in force.
 - Renting or hiring of motor vehicles, vessels and aircraft are blocked only if the purchase of such motor vehicles, vehicles and aircrafts are blocked as per clause (a) of (aa)

Registration Provisions

- **Multiple Verticals:**
 - The amendment in Section 25(2) of the CGST Act allows multiple places of business of the taxpayers in addition to the different business verticals within the state to be registered separately. This provides a major relief to certain industries like transporters, PSU etc.. by increasing the ease of doing business.
- **Threshold Limit increased to 20 lacs for :**
 - State of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand be removed from special category States along with J&K in explanation (iii) to Section 22 of the CGST Act

eCom Registration

- Mandatory Registration only if TCS is applicable:
 - Clause (x) of Section 24 is being amended to provide that only those e-commerce operators who are required to collect tax at source under Section 52 of the CGST Act would be required to take compulsory registration.
 - Other e-commerce operators who are not required to collect tax at source under Section 52 would henceforth not be required to take registration if their aggregate turnover in a financial year did not exceed Rs. 20 lakhs.
- SEZ registration as distinct person for DTA unit
 - Provision inserted for separate registration of a person having a unit(s) in a SEZ or being a SEZ developer as a business vertical distinct from his other units located outside the SEZ. This provision is already contained in Rule 8 of the CGST Rules, 2017.

Section 29 “Cancellation or Suspension of registration.”

- Inserted

- Sec 29(1) ... Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.
- Sec 29(2) ... Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed

- Effect

1. The new proviso ensures that once the registration has been sought to be cancelled, the proper officer may suspend the registration till the procedural formalities have been completed
2. The suspension will only be for the period and the manner as may be prescribed in the rules
3. The registration suspended will not be required to file returns till the suspension is in effect
4. This can be a double edged sword because a person who applied for cancellation and stopped collection and payment of taxes may face extreme hardships if the application for cancellation is rejected. He may not have any recourse as to collect the tax and paying the taxes out of his own pocket may be a huge burden for him.

Issue of consolidated credit note in a financial year.

- **New Provision**

- 34(1). Where one or more tax invoice have been issued for supply of any goods or services or both and the taxable value or tax charged in that invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient one or more credit notes for supplies made in a financial year containing such particulars as may be prescribed.
- Same for Debit note also

- **Impact**

- The suppliers are now not required to link Credit / Debit notes with individual invoices.
- The supplier may now issue a consolidated Credit/ Debit note in respect of multiple invoices issued in the financial year.

Returns

Return filing periodicity

- Change to Section 39(1) of the CGST Act 2017
- Impact
 - Earlier the provisions of the Act required a person to file their GSTR 3/GSTR 3B by 20th of the next month. So, even though the government wished to make this return quarterly for a select group of taxpayers, it could not circumvent the provisions of the Act
 - Through this amendment, the periodicity and time for filing of this return is now allowed to be prescribed through the rules
 - Further, an enabling proviso has been inserted to allow the Government to notify certain category of taxpayers who will be allowed to file this return on a quarterly basis.

Revised Return

- **Sec 39(9) - Subject to the provisions of sections 37 and 38,**
 - if any registered person after furnishing a return under sub-section (1), he shall rectify such omission or incorrect particulars in such form and manner as may be prescribed subject to payment of interest under this Act:
- **Effects of the amendment**
 1. Earlier, any mistake or omission could be corrected through the return of the month in which the mistake/omission is noticed
 2. Now, the process of correction of such mistakes will be notified through the rules.
 3. It is proposed to introduce amendment return as per the new return filing mechanism for correction of past mistakes.
 4. So, the complete mechanism for correction may be notified through the rules

Section 43A-Procedure for furnishing return

- Insertion of New Section 43A-Procedure for furnishing return and availing input tax credit
 - Every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.
 - The procedure for availing input tax credit in respect of outward supplies not furnished on the common portal may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent of the input tax credit available, on the basis of details furnished by the suppliers under 43A(3)
 - Details furnished under 43A(3) shall be deemed to be the tax payable by him
 - The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed where the details have been furnished but the return is not filed
 - The limit for recovery of the above amount shall not exceed one thousand rupees

Impact of 43A

- **Recipients**

- ITC is subject to 43A overriding sec 16.
- GSTR 2 in new form : The registered recipient is required to verify, validate, modify or delete the details of supplies furnished by the suppliers
- Missing Credit: Where the outward supplies are not furnished by the supplier, the maximum amount of ITC will be given through the procedure. This will not exceed 20% of the ITC available in any situation

- **Supplier**

- Procedure for declaration of outward supplies will also be prescribed therein.
- The tax on details of outward supplies declared by the supplier will be deemed to be payable by the supplier.

- **Joint Liability :**

- The supplier and recipient have been made jointly and severally liable to pay tax for details furnished/not furnished by the supplier in respect of which the return has not been furnished
- The procedure of recovery of this amount may be prescribed through the rules.

- The procedure, safeguards and threshold of the tax amount in relation to outward supplies for the supplier can be prescribed separately for a registered person:

- Within six months of taking registration
- Who has defaulted in payment of tax and the default of which continues for more than 2 months from the due date of payment of the default

GST Amendment Act 2018

- **Simplification of Returns:**
 - A new provision is being introduced by inserting section 43A, to enable the new return filing procedure as proposed by the Returns Committee and approved by the GST Council. However, the detailed mechanism of giving effect to the above proposal is awaited.
 - Provisions have been inserted to provide for prescribing the procedure for quarterly filing of returns for specified class of Registered persons.
- **GST Practitioners: Widening scope of functions**
 - It is proposed to allow the GST practitioner to perform other functions such as, filing refund claim, filing application for cancellation of registration etc., apart from furnishing the details of outward and inward supplies and various returns on behalf of a registered person.

Sections 49A and 49B-Method of utilisation of ITC - IGST

- Change

- Utilisation of input tax credit subject to certain conditions and Order of utilisation of input tax credit
- The input tax credit on account of central tax, State tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.

- Impact

- The new process of utilization requires the utilization of IGST first against payment of any output tax liability in the form of CGST/SGST/UTGST/IGST
- The balance of CGST/SGST/UTGST can be used only when the balance of IGST is exhausted
- This proviso has been inserted to minimise fund settlement on account of IGST
- This has been amended to restrict the utilisation of SGST/UTGST credit available against payment of IGST only when the balance in CGST credit is not available for payment of IGST.

GST Amendment Act 2018

- **Payment of Tax: Order for utilization of credits**
 - To allow fund settlement on account of IGST, it has been proposed that a registered person would be able to utilize credit on account of CGST, SGST/UTGST once the registered person has exhausted all the ITC on account of IGST.
 - It has been further proposed to insert an enabling provision 5A in Section 49 of the CGST Act that allows the Government, on the recommendation of the GST council, to provide a specific order in which a registered person can utilize Input tax credit viz. integrated tax, central tax, State tax or Union territory for the settlement of the tax liability.

Matching concept – Ecom Operators

- **Sec 52(9).**
 - Where the details of outward supplies furnished by the operator under subsection (4) do not match with the corresponding details furnished by the supplier under section 37 **or section 39**, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.
- **Impact**
 - Due to the continuation of GSTR 3B under Section 39, the concept of matching against GSTR 2 could not be put in place.
 - The provision to carry out matching between the following has been enabled:
 - Return by Ecommerce operator under GSTR 8
 - Statement of outward supplies under GSTR 1 or Monthly return as per GSTR 3 / GSTR 3B

Transition Provisions

This amendment is retrospective and in applicable w.e.f 1st July 2017.

• Amendment to Sec 140

- As per the CGST Act transitional credit of cesses like Krishi Kalyan Cess, Education Cess, Secondary and Higher Education Cess etc. would be available.
- However through a retrospective amendment, such credit has now been barred.
- If KKC already availed?

• Amendment to Sec 143(1)

- New proviso has been inserted to allow the extension of the time limit for receiving back the goods sent on job work.
- The time period of 1 year or 3 years may be extended on approval of the Commissioner for a further period not exceeding one year or two years respectively.

Relevant date in case of refund of unutilised credit – 54(2)

- GST Refunds:

- Relevant date for filing refunds in case of unutilized ITC - Amendments are proposed under explanation 2(e) to Section 54 of the CGST Act to prescribe that the relevant date in the case of refund of unutilised ITC arising out of inverted duty structure, shall be the due date for furnishing of return under section 39 for the period in which such claim for refund arises.

- Impact

- As per this amendment the relevant date for calculation of time period for refund of unutilised ITC shall henceforth be the due date for furnishing the return under section 39 for the period in which the claim arises
- This amendment has been brought to remove the contradiction involved between section 54(3) and explanation 2(e) of Section 54 which used to earlier provide two different time periods for calculation of relevant date.

Service Exports in INR

- Refunds in case of export of services –
 - Amendments are proposed under explanation 2(c) to Section 54 of the CGST Act which allows receipt of payment in Indian rupees, where permitted, by the RBI in case of export of services since particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations.
- In this respect, the provisions of Section 2(6)(iv) of the IGST Act are also being amended to provide that services shall qualify as exports even if the payment for the services supplied is received in Indian rupees as per RBI regulations.

Tax Recovery and Pre-Deposit

- 79 (4) Recovery of Taxes determined:
 - Can be made from distinct persons of the defaulter.
- Pre-deposits for filing an appeal to Appellate Authority and Appellate Tribunal:
 - It is proposed under Section 107(6) of the CGST Act to put a ceiling on the limit of the amount to be deposited before filing an appeal to the appellate authorities which is 10% of the disputed tax amount subject to maximum limit of Rs.25 crores.
 - Further, it is also proposed under Section 112(8) of the CGST Act, the maximum amount to be deposited to file appeal from the appellate authority to appellate tribunal is 20% of the disputed tax amount along with the amount deposited u/s 107(6) subject to maximum of Rs. 50 crores.

Increase in Time Limit for Penalty u/s129

- Detention, seizure and release of goods and conveyances in transit:
 - New amendment in the CGST Amendment Bill seeks to increase the time limit before which proceedings under Section 130 can be initiated from seven to fourteen days.

Time Limit for Jobwork Returns.

- 143(1)
 - Provided that the period of one year or three years, as the case may be, may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding one year and two years respectively
- Impact
 - New proviso has been inserted to allow the extension of the time limit for receiving back the goods sent on job work.
 - The time period of 1 year or 3 years may be extended on approval of the Commissioner for a further period not exceeding one year or two years respectively.
 - The proviso has been inserted because some job work processes cannot be completed within 1 year (such as hull construction, fabrication of vessels etc.)

Thank You

For Clarifications, mail to
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