

# **Union Budget 2023**

## **Recent Changes under Indirect Tax(GST)**

**J B Nagar CPE Study  
Circle of WIRC**

**26th February, 2023**

**Presented by  
CA Leena Talathi**

# Category wise and Clause wise Analysis of proposed amendments in GST vide Union Budget 2023



Under GST Proposed amendments are related to following categories:

- 1) Outward Supply
- 2) Inward Supply
- 3) Compliances
- 4) Litigation

# Proposed Amendments related to outward Supply

- Clause 128 of The Finance Bill, 2023 proposes to amend Section 10 of The CGST Act, so as to allow the Person Making Supply Of Goods through E-commerce to avail the benefit of The Composition Scheme :

## **Section 10. Composition levy.-**

(2) The registered person shall be eligible to opt under sub-section (1), if :-

[(a) save as provided in sub-section (1), he is not engaged in the supply of services;]

(b) he is not engaged in making any supply of goods [or services] which are not leviable to tax under this Act;

(c) he is not engaged in making any inter-State outward supplies of goods [or services];

(d) he is not engaged in making any supply of ~~goods for~~ services] through an electronic commerce operator who is required to collect tax at source under section 52;

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the [Council ;and]

[(f) he is neither a casual taxable person nor a non-resident taxable person:]

**Provided** that where more than one registered persons are having the same Permanent Account Number [issued under the Income-tax Act, 1961(43 of 1961)], the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

# Proposed Amendments related to outward Supply

## Clause 128 : Section 10. Composition levy, Goods Sale through E-commerce :

[(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not-

- (a) engaged in making any supply of goods or services which are not leviable to tax under this Act;
- (b) engaged in making any inter-State outward supplies of goods or services;
- (c) engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under section 52;
- (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
- (e) a casual taxable person or a non-resident taxable person:

**Provided** that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961), the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.]

# Proposed Amendments related to outward Supply

## Clause 128 : Section 10. Composition levy, Goods Sale through E-commerce :

Rationalizing and promoting micro and small sellers supplying their goods through ECOs has been a recommendation of the Council in their 47th and 48th meeting. With this amendment, the supplier of goods making intra-state supplies through ECOs will be able to opt for composition levy and pay tax at specified reduced rates. This is a positive and welcomed change by the industry, as this will be of aid in their ease of doing business.

This amendment also has an implication on the ECOs, They have to do necessary changes in their IT systems etc. for implementing this change. No exemption from TCS provision is provided thus ECOs would be required to collect tax on such supplies made by Composition dealers as CGST and SGST.

Concerns : Why Services still excluded ?

ITC ?

TCS ?

# Amendments related to outward Supply

- Clause 142 of The Finance Act, 2023 proposes to grant retrospective exemptions to Para 7 & Para 8 of schedule III w.e.f. 01.07.2017. Further mentioned as no refund of tax already paid during the period 01<sup>st</sup> July 2017 to 31<sup>st</sup> January 2019 would be available.

## **SCHEDULE III.**

[ See section 7 ]

### **ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES**

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.

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.]

[**Explanation 1.**-For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

[**Explanation 2.**- For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (50 of 1962).]

# Amendments related to outward Supply

Clause 142 of The Finance Act, 2023 proposes to grant retrospective exemptions to Para 7 & Para 8 of schedule III w.e.f. 01.07.2017 :

Schedule III of CGST Act was amended with effect from 01 February 2019, to provide that no tax would be levied in these cases, commonly known as High Sea Sales and eliminate all ambiguities surrounding it. This is definitely a welcome change. However, the authorities were demanding GST for the period prior to 01 February 2019.

The GST Council in its 48th meeting also recommended making this entry effective from 01 July 2017 and disallow refund for the tax paid, if any to further clear all doubts. The Finance Bill 2023, has considered both such recommendations of the Council. The retrospective exemption will curb the superfluous demands from the authorities; and at the same time, the denial of refund seems unjustified.



# Amendments related to outward Supply

Clause 142 of The Finance Act, 2023 proposes to grant retrospective exemptions to Para 7 & Para 8 of schedule III w.e.f. 01.07.2017 :

Further, the refund denial may be challenged before the Courts. On a technical analysis, such transactions prior to the amendment (i.e., 01 February 2019) could have qualified as a non-taxable supply and thus included within the scope of 'Exempt supply'. Therefore, up to the date of the amendment, Input Tax Credit (ITC) on common goods/services would have required reversal in terms of Rules 42 & 43 of the CGST Rules, 2017. Nevertheless, now upon its inclusion under schedule III (w.e.f. 01 July 2017), any ITC reversed can be reclaimed and the limitation period for availing the ITC, in this case, may not be applied.

# Amendments related to outward Supply

- Clause 143 : proposed to substitute Clause (16) of Section 2 of the IGST, Act 2017 – Non-taxable Online Recipient :

## Section 2. Definitions.-

In this Act, unless the context otherwise requires,-

(16) "non-taxable online recipient" means any *unregistered person receiving online information and database access or retrieval services located in taxable territory. ~~Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.~~*

**Explanation** .- For the purposes of this clause, the expression "*unregistered person*" includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017'; "~~governmental authority~~" means ~~an authority or a board or any other body, (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted [to a Panchayat under article 243G or] to a municipality under article 243W of the Constitution;~~

# Proposed Amendments related to outward Supply

- Clause 143 : proposed to substitute Clause (16) of Section 2 of the IGST, Act 2017 – Non-taxable Online Recipient :

## **Section 24. Compulsory registration in certain cases.-**

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,-

(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

## **Section 51. Tax deduction at source.-**

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,-

- (a) a department or establishment of the Central Government or State Government; or
- (b) local authority; or
- (c) Governmental agencies; or
- (d) such persons or category of persons as may be notified

# Proposed Amendments related to outward Supply

- Clause 143 : proposed to amend Clause (17) of Section 2 of the IGST, Act 2017 – online information and database access or retrieval services (OIDAR):

Sec 2(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply ~~essentially automated and involving minimal human intervention and~~ impossible to ensure in the absence of information technology and includes electronic services such as,-

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

# Proposed Amendments related to outward Supply

Clause 143 : Non-taxable Online Recipient(NTOR) and online information and database access or retrieval services (OIDAR) :

**IGST Act, 2017, Section 14. Special provision for payment of tax by a supplier of online information and database access or retrieval services. -**

On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services.

In short, a supplier located in the non-taxable territory who is providing OIDAR services to a NTOR, is liable to pay IGST to the Government (under forward charge mechanism). For any recipient, other than the NTOR, the liability to discharge tax is on such recipient under reverse charge as import of service.

# Proposed Amendments related to outward Supply

## Clause 143 : Non-taxable Online Recipient(NTOR) and online information and database access or retrieval services (OIDAR) :

In line with the 48th Council Meeting recommendations, the said amendments in the definition of NTOR, have broadened the scope of the recipients, to specify such recipients as unregistered recipient receiving OIDAR services. further, the clause pertaining to receipt of OIDAR services for reason other than business / commerce has also been proposed to be omitted, as it was getting challenging to determine and prove the business or personal reasons for usage. In short, the intent is to enhance the supplier's (located in non-taxable territory) taxability under forward charge for OIDAR services, to all unregistered persons that are receiving said services and are located in the taxable territory.

# Proposed Amendments related to outward Supply

Clause 143 : Non-taxable Online Recipient(NTOR) and online information and database access or retrieval services (OIDAR) :

Further, the amendment to definition of OIDAR services drops the requirement of the service being '*essentially automated and requiring minimal human intervention*', thereby avoiding any ambiguity to the meaning of such terms, which was earlier prevalent. This widened definition will engulf a wide scope of online services to qualify as an OIDAR service.

# Proposed Amendments related to outward Supply

## ➤ Clause 144 Place of Supply of Service (Section 12)

Clause 144 of The Finance Bill, 2023 proposes to omit Proviso to Sub-section (8) to Section 12 of The IGST Act, 2017. It proposes to omit the Provision that the Place of Supply in case of Transportation of Goods to a place Outside India shall be the Place of Destination of such Goods:

**Section 12. Place of supply of services where location of supplier and recipient is in India.-**

(8) The place of supply of services by way of transportation of goods, including by mail or courier to,-

(a) a registered person, shall be the location of such person;

(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

~~*[Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.]*~~



# Proposed Amendments related to outward Supply

## Clause 144 Place of Supply of Service (Section 12)

After the discontinuance of exemptions for tax applicability in case of supply of goods transportation services, where the 'destination of goods is outside India'. In short Export Freight taxable since October 2022, this proviso was bound to have been eliminated. Now all the provisions would be aligned and the tax position will be constant.

If a Indian Transport service provider provides transport services to a Indian recipient, and even when the 'destination of goods' is outside India, the 'transaction would be having place of supply as either 'location of recipient in case of registered recipient' or 'location where goods are handed over, in case of unregistered recipient'. Accordingly tax would be determined.

# Proposed Amendments related to inward Supply

Clause 129 of The Finance Bill, 2023 proposes to amend provisos to Section 16(2) of CGST Act, 2017, In case the vendors are not paid within 180 days then the same shall not be added to the output tax liability but the taxpayer would be required to pay the same along with interest.

## Section 16. Eligibility and conditions for taking input tax credit.-

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, -...

**Provided** that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

**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 *paid by him along with interest payable under section 50 added to his output tax liability, along with interest thereon*, in such manner as may be prescribed:

**Provided** also that the recipient shall be entitled to avail of the credit of input tax on payment made by him *to the supplier* of the amount towards the value of supply of goods or services or both along with tax payable thereon.

# Proposed Amendments related to inward Supply

## Clause 129 Non-payment to vendor within 180 days :

With this proposed amendment, the ITC reversal required due to non-payment to the vendor within the stipulated time may not be characterized as the output liability. The second proviso to Section 16 which makes it mandatory to reverse the quantum of Input tax credit which relates to the amount to the extent the same is not paid within 180 days from the date of Invoice. The proposed amendments are made in order to bring the provisions in line with the compliance under the GSTR-3B returns, wherein the (Reversal under 37 is to be reported under Other reversal.).

However, the Finance Bill has given reference to Section 50 of CGST Act for levying interest. Whilst the intent of the government to levy interest is logical, the reference to Section 50 of CGST Act can be challenged as it levies interest on outward liability or ineligible availment and utilization of ITC.

# Proposed Amendments related to inward Supply

## Clause 129 Non-payment to vendor within 180 days :

### **Section 50. Interest on delayed payment of tax.-**

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:

[**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.]

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.

[(3) Where the **input tax credit has been wrongly availed and utilised**, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed]

# Proposed Amendments related to inward Supply

## Clause 129 Non-payment to vendor within 180 days :

We may note that the interest is an independent levy under tax laws. In the case of ***India Carbon Ltd. v. State of Assam***, the Hon'ble Supreme Court (S.C.) held that interest could not be levied until there is a substantive provision in the Act for the applicability of the same. Further, in the case of ***J.K. Synthetics Ltd. v. The Commercial Tax Officer***, the Hon'ble S.C. held that the provision of payment of interest must be construed as substantive law and not an adjectival law. It must be construed strictly and cannot be levied unless there is a specific provision for recovery of interest. Given this, we hope to see a corresponding amendment in Section 50 to provide a specific levy of interest in this scenario in future.

# Proposed Amendments related to inward Supply

## Clause 129 Non-payment to vendor within 180 days :

What if trade supply terms provide a credit period of more than 180 days which is officially stated in the documentation?

If agreement provides for retention of monies for effecting supply to safeguard the interests of such supplies? Alternatively, can we explore Security Deposit route?

# Proposed Amendments related to inward Supply

## Computation of valuation of exempt supply (Section 17(3))

Clause 130 (a) of The Finance Bill, 2023 proposed to exempt the value of supply for the apportionment of the common input tax credit to include the supply of warehoused goods before the clearance for home consumption.

### **Section 17. Apportionment of credit and blocked credits.-**

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

[**Explanation.-** For the purposes of this sub-section, the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, ~~except those specified in paragraph 5 of the said Schedule~~ "except,—

- (i) the value of activities or transactions specified in paragraph 5 of the said Schedule; and*
- (ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule";]*

# Proposed Amendments related to inward Supply

## Clause 130(a) Computation of valuation of exempt supply (Section 17(3))

### CGST Act, 2017, Section 2. Definitions.-

(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes nontaxable supply;

While determining the reversal of common Input tax credit, the exempted turnover would include the value of Supplies which are made by way of 'Bond to Bond transfer', wherein such transaction is not liable for GST, is a schedule III (**i.e. neither considered as supply of goods nor supply of services**) transaction, however, for the purpose of reversal calculation, such turnover will form part of 'exempted turnover'.

It is surprising to see that a differential treatment is given for 'High Seas Sales' and 'Out to Out supply', which are not included in determining quantum of exempted turnover.



# Proposed Amendments related to inward Supply

## Clause 130(a) Computation of valuation of exempt supply (Section 17(3))

The proposed amendment attempts to overturn the decision of Bombay High Court in case of **Sandeep Patil V. UOI [2019 (31) GSTL 398]** and Kerala High Court in case of **CIAL Duty Free & Retail Services Limited [2020 (42) GSTL 481]**, wherein it was held that supply of warehoused goods before clearance for home consumption would not disentitle the supplier of ITC on corresponding procurements even if No GST is paid on such supplies.

# Proposed Amendments related to inward Supply

## ITC not eligible in case of goods or services procured for CSR activities (Section 17(5))

Clause 130 (b) of The Finance Bill, 2023 proposed to restrict availment of Input Tax Credit by the taxable persons in respect of Goods or Services received by him for fulfilment of his obligations under Corporate Social Responsibility.

New Sub Clause (fa) proposed to inserted after Sub Clause (f) to Clause (5) of Section 17 of CGST Act 2017, as follows :

### **Section 17. Apportionment of credit and blocked credits.-**

(5) Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following, namely:-...

*(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013;”.*

# Proposed Amendments related to inward Supply

## Clause 130 (b) ITC not eligible in case of goods or services procured for CSR activities (Section 17(5))

With some judgements in pre-GST regime wherein the cenvat credit eligibility was seeing blooming, in respect of CSR outward sales/services, it was very much possible that the ITC benefits would have been taken in lines of such judgements.

The ray of hope to this in fact is no more to exist. Now any goods, input services which are used for meeting obligation under CSR compliances, the ITC on such goods or services shall be blocked.

Points to ponder would be, what happens if the CSR activity is done by a proprietary, partnership firm not as a obligation under any law. Or even companies where by virtue of Section 135 it is not mandatory. Possibly it would be denied, still legally there might be some room to fight on.

# Amendments related to compliances

## Incongruity in Registration provisions removed

Clause 131 of The Finance Bill, 2023 proposes to amend Section 23 to override Section 22(1) and Section 24. This amendment will have retrospective effect from 1<sup>st</sup> July, 2017

### Section 23. Persons not liable for registration.-

~~(1) The following persons shall not be liable to registration, namely:-~~

~~(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;~~

~~(b) an agriculturist, to the extent of supply of produce out of cultivation of land.~~

~~(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.~~

# Amendments related to compliances

## Clause 131 Incongruity in Registration provisions removed

### Section 23. Persons not liable for registration.-

*Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24,—*

*(a) the following persons shall not be liable to registration, namely:—*

- (i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act, 2017;*
- (ii) an agriculturist, to the extent of supply of produce out of cultivation of land;*

*(b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.”.*

# Amendments related to compliances

## Clause 131 Incongruity in Registration provisions removed

### Section 24. Compulsory registration in certain cases.-

Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act,-

- (i) persons making any inter-State taxable supply;
- (ii) casual taxable persons making taxable supply;
- (iii) persons who are required to pay tax under reverse charge;**
- (iv) person who are required to pay tax under sub-section (5) of section 9;
- (v) non-resident taxable persons making taxable supply;
- (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
- (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;
- (viii) Input Service Distributor, whether or not separately registered under this Act;
- (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;
- (x) every electronic commerce operator <sup>1</sup>[who is required to collect tax at source under section 52;]
- (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and
- (xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

# Amendments related to compliances

## Clause 131 Incongruity in Registration provisions removed

What about registrations obtained earlier ? Whether they can apply for cancellation of their registrations ?

What about tax payment ? Can obtain refund or time already lapsed ?

What about future tax liability for services under RCM, if provided by unregistered dealer to unregistered dealer, no GST to be charged and no GST to paid ?

# Proposed Amendments related to compliances

## Introduction of time limit to furnish various returns

Clause 132, 133, 134 And 135 of The Finance Bill, 2023 propose to amend Sections 37 dealing with Return of Outward Supplies (GSTR-1), 39 dealing with Monthly Return (GSTR-3B), 44 dealing with Annual Return (GSTR-9 / 9C) and 52 dealing with Tax Collected at Source (GSTR-7) of The Act respectively by Inserting new sub-section in all the above mentioned Sections to restrict a Registered Taxpayer from filing Form GSTR 1, Form GSTR 3B, Form GSTR 9 and Form GSTR 8 after the expiry of three years from the due date of furnishing the returns for the said tax period.

Practically, currently the returns for a particular tax period cannot be filed unless previous tax period returns are filed. Now this possibly covers a case where the returns are not filed perpetually. But subsequently a revocation is permitted to file past tax period returns, then the same can be done for a period of 3 years from actual due date. If this is to be considered then there are several notices which are limiting Input tax credit since supplier has filed his returns after due date u/s 16(4). Such notices will lose the existence as and when this provision is made applicable. It would be interesting to see from when this provision is being made applicable.

Also, permissible filing in specific circumstances beyond 3 years would be permitted.



# Proposed Amendments related to compliances

Clause 132, 133, 134 And 135 Introduction of time limit to furnish various returns

Time limit 3 years reasonable ?

GSTR 1 / GSTR 3B not filed for 6 months – registration cancelled – restored –time limit of 3 years will apply or not

# Proposed Amendments related to compliances

## Refund of Tax

Clause 136 of The Finance Bill, 2023 propose to amend Sub-section (6) of Section 54 so as to provide that the Refund on provisional basis, shall be calculated at 90% of the amount of Refund claimed. The words “excluding the amount of Input Tax Credit claimed on provisional basis” has been proposed to be omitted.

## **Section 54. Refund of tax.-**

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, ~~excluding the amount of input tax credit provisionally accepted,~~ in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

# Proposed Amendments related to compliances

## **Clause 136 Refund of Tax Section 54(6)**

The Finance Bill 2023 proposes to remove the reference to “excluding the amount of ITC provisionally accepted” in Section 54(6) of the CGST Act, 2017 to align the same with the present scheme of availment of self-assessed input tax credit as per Section 41(1) of the CGST Act, 2017.

The provisions of matching of transactions of supplier and recipient were omitted by the Finance Act, 2022 from the statute books and in this regard Section 42, 43 and 43A were deleted from the statute books. In view of the above change, as there would be no matching of transactions, the concept of availing ITC on a provisional basis under Section 41 was also omitted from the statute books.

With this amendment by the Finance Act, 2022, the ITC availed by the registered person in the electronic credit ledger would be treated as a final ITC. In other words, there is no concept of provisional ITC under GST.

The proposed amendment in the refund provisions are aligned with the above amendment of Finance Act, 2022. In simple words, the refund of 90% on a provisional basis would be computed on total ITC claimed by the supplier in its GSTR 3B.

# Proposed Amendments related to compliances

## Interest on delayed refund

Clause 137 of The Finance Bill, 2023 proposes to amend Section 56 so as to provide for an enabling provision to prescribe manner of Computation of Period of Delay for Calculation of Interest on Delayed Refunds.

### **Section 56. Interest on delayed refunds.-**

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax:

**Provided** that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund **for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed.** ~~from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund~~

# Proposed Amendments related to compliances

## Clause 137 Interest on delayed refund

The Finance Bill has retained the terms “for the period of delay beyond sixty days from the date of receipt of such application till the date of refund”. The Rules would determine whether such an amendment will be detrimental to the taxpayers or not as prima facie, the period of interest continues to be the same with additional powers vested in the hands of the government.

# Proposed Amendments related to compliances

## **Power of Government to share the information of the taxpayer**

**Clause 141 of The Finance Act, 2023 proposes to introduce Section 158A to enable sharing of information across regulators.**

A new Section 158A in The CGST Act is proposed to be inserted to provide that the information furnished by the Registered Person in his Returns, Viz. Form GSTR 3B, Form GSTR 5, Form GSTR 6 Etc.; Annual Returns; Application of Registration; Statement of Outward Supplies (Form GSTR 1); Details uploaded for generation of Electronic Invoice; E-way Bill or any other details, as may be prescribed, can be shared by the Common Portal with such other systems, as may be Notified, Subject to prescribed consent and conditions.

### ***SECTION 158A. Consent based sharing of information furnished by taxable person.***

***(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (2), and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:—***

# Proposed Amendments related to compliances

## Clause 141 Power of Government to share the information of the taxpayer

*(a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;*

*(b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;*

*(c) such other details as may be prescribed.*

*(2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of –*

*(a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and*

*(b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.*

# Proposed Amendments related to compliances

## Clause 141 Power of government to share the information of the taxpayer

*(3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.”*



# Proposed Amendments related to compliances

## **Clause 141 Power of Government to share the information of the taxpayer**

The information covered under such provision and the person from whom consent is required regarding the same has been tabulated as under:

S. No.	Type of Information	Person from whom consent is required
a)	Details in Application of Registration Details furnished in Monthly return (GSTR-3B) Details furnished in Annual return	Supplier
b)	Details furnished GSTR-1 Details in E-invoice Details in E-way bill	Consent of both Supplier and Receiver
c)	Any other details, as may be prescribed	Receiver, where such details include identity information of the recipient

# Proposed Amendments related to compliances

## **Clause 141 Power of Government to share the information of the taxpayer**

It seems a welcome change which considers right to privacy at one hand and the same time allows the sharing of authentic data in respect of business transactions for the benefit of consenting party with other systems or agencies. It can be most useful for MSMEs / SMEs as given data can be used for getting credit facility, loan sanction, bill discounting etc.

# Proposed Amendments related to Litigation

## Amendment in Penal provisions with respect to E-Commerce Operators

### Section 122(1B)

Clause 138 of The Finance Bill, 2023 proposes to amend Section 122 by inserting Clause (1B) after Clause (1A). This Clause will make the E-Commerce Operators liable to penalty in case there is a non-compliance of any provisions made in relation to supply of goods made through the said ECO by Unregistered Persons or Composition Tax Payers.

**Section 122. Penalty for certain offences.-**

*[(1B) Any electronic commerce operator who—*

*(i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;*

# Proposed Amendments related to Litigation

## Clause 138 Amendment in Penal provisions with respect to E-Commerce Operators Section 122(1B)

*(ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or*

*(iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act, shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.*

The aforesaid amendment is in line with the globally followed trends wherein the liability is vested on the ECO for any contravention by the unregistered persons or persons registered under composition levy. It would be intriguing to see whether the tax authorities would penalize the same non-compliance twice or do the unregistered persons or a composition taxpayers get immunity from the penal provisions, if the same is being already paid by the ECO.

# Proposed Amendments related to Litigation

## **Clause 138 Amendment in Penal provisions with respect to E-Commerce Operators Section 122(1B)**

This seems to be a welcome change to plug the loophole of revenue leakages by ECO for distributing supplies procured from unregistered persons or if they are procured from composition taxpayers and supplied by way of inter-state supply and consequentially depositing TCS u/s 52 incorrectly, this could involve the exposure u/s 74 and 125 of the CGST Act.2017 as well.

# Proposed Amendments related to Litigation

## Decriminalization

Clause 139 of The Finance Bill, 2023 provides for the punishment under certain offences U/S 132 of The CGST Act, 2017.

Section 132 has been proposed to amend by deleting the following Offences :

- (g) obstructs or prevents any Officer in the discharge of his duties under this Act;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the Rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information.

Further, sub-section 1 of Section 132, of the CGST Act, 2017 has also been proposed to be amended to increase the minimum threshold limit for launching prosecution from INR 1 Cr to INR 2 Cr, except for cases involving availment of ITC on the basis of fake invoices.

# Proposed Amendments related to Litigation

## **Decriminalization**

Clause 139 of The Finance Bill, 2023 provides for the punishment under certain offences U/S 132 of The CGST Act, 2017.

The said amendment ensures no abuse of powers by the tax authorities by decriminalizing certain offenses. The intention is to curb the act of launching prosecution by the tax authorities for frivolous issues and reduce the burden of additional litigation. Further, the government has also clearly spelled out its intention of continuing to take strict action against taxpayers involved in matters of issuance of invoices without supply of goods or services or both.

# Proposed Amendments related to Litigation

## Compounding of Offence

Clause 140 of The Finance Bill, 2023 proposes an amendment to Section 138 (A) of The CGST Act, 2017 to reduce the Compounding Fees for various Offences.

### Existing Provision :

The existing law contains provisions for compounding of offences where Commissioner can allow a person to pay an amount to get relieved of the punishment of prosecution.

### Amendment:

#### **1) Amendment in category of persons for whom compounding is restricted**

An amendment has been brought to remove restriction on compounding for a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force.

Further on account of change in limit for launch of prosecution in Section 132, respective amendments have been made in provisions of option of compounding.



# Proposed Amendments related to Litigation

## Compounding of Offence

Clause 140 of The Finance Bill, 2023 proposes an amendment to Section 138 (A) of The CGST Act, 2017 to reduce the Compounding Fees for various Offences.

### 2) Rationalization of compounding amount of offences by reduction in limits:

Minimum Limit	25% of the tax involved
Minimum Limit	100% of the tax involved

# Proposed Amendments related to Litigation

## Compounding of Offence

Clause 140 of The Finance Bill, 2023 proposes an amendment to Section 138 (A) of The CGST Act, 2017 to reduce the Compounding Fees for various Offences.

Compounding would be permitted only once but compounding won't be permitted for fake invoices.

Permitting only once for Compounding should be relooked upon by the Govt. as there are many other instances where such inadvertent issues may arise which are beyond the control of the taxpayers.

# Recommendations of 49<sup>th</sup> GST Meeting

## **Extension of time limit for application for revocation of cancellation of registration and one time amnesty for past cases:**

The Council has recommended amendment in section 30 of CGST Act, 2017 and rule 23 of CGST Rules, 2017 so as to provide that -

- the time limit for making an application for revocation of cancellation of registration be increased from 30 days to 90 days;
- where the registered person fails to apply for such revocation within 90 days, the said time period may be extended by the Commissioner or an officer authorised by him in this behalf for a further period not exceeding 180 days.

The Council has also recommended that an amnesty may be provided in the past cases, where registration has been cancelled on account of non-filing of the returns, but application for revocation of cancellation of registration could not be filed within the time specified in section 30 of CGST Act, by allowing such persons to file such application for revocation by a specified date, subject to certain conditions.

# Recommendations of 49<sup>th</sup> GST Meeting

## **Amendment to Section 62 of CGST Act, 2017 to extend timelines under sub-section (2) thereof and one time amnesty for past cases:**

As per sub-section (2) of section 62 of CGST Act, 2017, the best judgment assessment order issued under sub-section (1) of the said section is deemed to be withdrawn if the relevant return is filed within 30 days of service of the said assessment order. The Council recommended to amend section 62 so as to increase the time period for filing of return for enabling deemed withdrawal of such best judgment assessment order, from the present 30 days to 60 days, extendable by another 60 days, subject to certain conditions.

The Council has also recommended to provide an amnesty scheme for conditional deemed withdrawal of assessment orders in past cases where the concerned return could not be filed within 30 days of the assessment order but has been filed along with due interest and late fee upto a specified date, irrespective of whether appeal has been filed or not against the assessment order, or whether the said appeal has been decided or not.

# Recommendations of 49<sup>th</sup> GST Meeting

## Rationalisation of Late fee for Annual Return:

Presently, late fee of Rs 200 per day (Rs 100 CGST + Rs 100 SGST), subject to a maximum of 0.5% of the turnover in the State or UT (0.25% CGST + 0.25% SGST), is payable in case of delayed filing of annual return in FORM GSTR-9. The Council recommended to rationalise this late fee for delayed filing of annual return in **FORM GSTR-9 for FY 2022-23 onwards**, for registered persons having aggregate turnover in a financial year **upto Rs 20 crore**, as below:

- **Registered persons having an aggregate turnover of up to Rs. 5 crores in the said financial year:** Rs 50 per day (Rs 25 CGST + Rs 25 SGST), subject to a maximum of an amount calculated at 0.04 per cent. of his turnover in the State or Union territory (0.02% CGST + 0.02% SGST).
- **Registered persons having an aggregate turnover of more than Rs. 5 crores and up to Rs. 20 crores in the said financial year:** Rs 100 per day (Rs 50 CGST + Rs 50 SGST), subject to a maximum of an amount calculated at 0.04 per cent. of his turnover in the State or Union territory (0.02% CGST + 0.02% SGST).

# Recommendations of 49<sup>th</sup> GST Meeting

**Amnesty in respect of pending returns in FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10:**

To provide relief to a large number of taxpayers, the Council recommended amnesty schemes in respect of pending returns in **FORM GSTR-4, FORM GSTR-9 and FORM GSTR-10** by way of conditional waiver/ reduction of late fee.

# Recommendations of 49<sup>th</sup> GST Meeting

## **Rationalization of provision of place of supply of services of transportation of goods:**

Council recommended to rationalize the provision of place of supply for services of transportation of goods by deletion of section 13(9) of IGST Act, 2017 so as to provide that the place of supply of services of transportation of goods, in cases where location of supplier of services or location of recipient of services is outside India, shall be the location of the recipient of services.



Don't Worry. Be Happy.  
KEEP LEARNING.



# Words of Caution

- Views expressed in the presentation are the personal views of faculty based on her interpretation of law.
- Presentation needs to be revised and revisited on amendment in GST Law.
- Presentation is made for educational meeting arranged with a clear understanding that neither the Faculties nor the study circles will be responsible for any error, omission, commission and result of any action taken by a participant or anyone on the basis of this presentation.
- Views expressed by the faculty should not be treated as professional advice or legal opinion on the issue discussed.

**Thank  
You**



**CA Leena A. Talathi  
LEENA TALATHI AND CO**

19, Alankar,  
M. G. Road

Goregaon West

Mumbai – 400062

Cell : 9820923371

Email : [leena.talathi@gmail.com](mailto:leena.talathi@gmail.com)