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Finance Act, 2021: Key Amendments in Indian GST

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Abstract

India is moving towards the fourth anniversary of Goods and Services Tax (GST), since its roll out on 1st July, 2017. In the post lockdown period in 2020-21 the country noticed record-high GST collections, may be due to the steady revival of economic activities post lockdown. Like the previous years, this year also the finance minister has taken several measures to further simplify the GST to provide relief from the pandemic. Despite the thorny issues faced under the GST

regime, focus has been kept on smoothening the GST structure and removing anomalies, rather than on introducing further taxes to compensate for collection shortfalls. Though industry has greeted the amendments but there are certain provisions that has made industry worried. The appropriate authority should take necessary steps to protect the interest of genuine and honest taxpayers and improve ease of doing business in India.

Keywords: CGST, IGST, Input tax credit, Supply, GSTN

Introduction

India is moving towards the fourth anniversary of Goods and Services Tax (GST), since its roll out on 1st July, 2017. In the post lockdown period in 2020-21 the country noticed record-high GST collections, may be due to the steady revival of economic activities post lockdown. However, it was coupled with enhancement of capacity of GSTN system and a slew of fraud prevention measures by closing loopholes to curb fraudulent practices, including deployment of Deep Analytics and Artificial Intelligence to identify tax evaders and fake billers and launch special drives against them. Gradually the provisions relating to GST becoming taxpayer-friendly. In this year also the finance minister has taken several measures to further simplify the GST to provide relief from the pandemic. The measures include nil returns through SMS, quarterly return and monthly payment for small tax payers, electronic invoice system, validated input tax statements, pre-filled editable GST return, and staggering of return filing. All these measures have been instrumental in smoothening the compliance experience of taxpayers. In addition, the GST Council has thoroughly hammered out thorny issues relating to GST. The finance minister, in her budget speech, promised to take every possible measure to smoothen the GST further and remove anomalies such as the inverted duty structure. The Finance Bill 2021 *inter alia* proposing amendments in GST has got the ascent of President of India on 28th March, 2021, and become the Finance Act 2021. The Finance Act 2021 has amended *inter alia* the Central Goods and Services Tax Act, 2017 (CGST Act, 2017) as well as the Integrated Goods and Services Tax Act, 2017 (IGST Act, 2017). The objective of this paper is to understand the key amendments in the CGST Act, 2017 and IGST Act, 2017. In the following paragraphs we will look into these amendments and their probable impacts.

Key Amendments under the CGST Act, 2017

- **Scope of Supply (Sec. 7):** In a recent judgement, Hon'ble Supreme Court in the case of Calcutta Club Limited and Ranchi Club Limited has held that the transactions between the associations and its members should not qualify as supply under the GST regime and the club and its member should be treated as one single entity. To overrule the above judgement, a new clause (aa) in sub-section (1) of section 7 of the CGST Act has been inserted retrospectively with effect from 1st July, 2017. It has been done so as to ensure levy of tax, also on the activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration. As per the explanation to clause (aa), the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one person to another. So, the transactions between an unincorporated private club, association, etc. and its members will be considered 'Supply' in the GST regime and liable to pay GST with retrospective effect from 1st July, 2017. The clubs are also required to analyse their tax positions during last four years and estimate tax liability and penalty, in view of the retrospective amendment.
- **Eligibility and conditions for taking Input Tax Credit (Sec. 16):** We have witnessed many cases of tax related

frauds in India. Central Board of Indirect Taxes and Customs (CBIC) also has detected a fraud of transaction worth INR 940 Crore in relation to Input Tax Credit (ITC). To address this issue a new clause (aa) in sub-section (2) of section 16 of the CGST Act has been inserted so as to grant ITC only on the basis of GSTR-2A (a form of dynamic statement showing details of inward supplies vis-à-vis ITC duly updated on a continuous basis) instead of ITC available as per Books of Accounts. No registered person is eligible to get ITC unless he holds a tax invoice or debit note issued by a registered supplier. But as per the amendment, now, the details of such tax invoice or debit note has also been furnished by the supplier in the statement of outward supplies and such details shall be communicated, or duly uploaded in its GSTR-1 showing details of sales and outward supplies, to the recipient of such invoice or debit note in the manner prescribed in section 37 relating to furnishing details of outward supplies. So, the invoices which are reflecting in the recipient's auto-populated form GSTR-2A will be eligible to avail the ITC.

- **Accounts and other records (Sec. 35):** Sub-section (5) of section 35 of the CGST Act has been removed with a view to ease the process of tax compliance and to make the process more streamlined. Henceforth, the mandatory requirements of getting annual accounts audited and filing reconciliation statements from practitioner like a Chartered Accountant (CA) or Cost Accountant (CMA) have been removed. By considering negative feedback regarding filing of annual return and reconciliation statement, frequent extension of due date of filing, high cost of compliance due to engagement of tax professionals, and collection of additional tax from GSTR-9 (annual return) as compared to GSTR-9C (reconciliation statement), CBIC has proposed for removal of audit.
- **Annual Return (Sec. 44):** Section 44 of the CGST Act has been fully substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by CA or CMA. It has been provided that the annual return furnished by every registered person, other than an Input Service Distributor, a person paying tax under section 51 (tax deduction at source) or section 52 (collection of tax at source), a casual taxable person and a non-resident taxable person will furnish an annual return which must include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, along with the audited annual financial statement for every financial year electronically within prescribed time and in prescribed manner. Henceforth, annual return GSTR-9 can be furnished with self-certified GSTR-9C (a reconciliation statement which reconcile the value of supplies declared). It has also been provided that the commissioner on recommendation of the Council may exempt any registered person from filing annual return under this section. It has been provided further that any department of Central Government or State Government or a local authority whose books of account are required to be audited by the Comptroller and Auditor General of India or any auditor appointed for the audit of accounts of local authorities under any law for the time being in force, shall be exempted from this section.
- **Interest on delayed payment of tax (Sec. 50):** Sub-

section (1) of section 50 of the CGST Act has been substituted so as to charge interest on net cash tax liability with retrospective effect from 1st July, 2017. It has been provided that 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 relating to furnishing of return, except where such return is furnished after commencement of any proceedings under section 73 (relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts) or section 74 (relating to determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any willful-misstatement or suppression of facts) in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger. So, interest on late filing of GSTR-3B (a consolidated summary return of inward and outward supplies) will be payable on the net cash tax liability with retrospective effect from 1st July, 2017.

- **General provisions relating to the determination of tax (Sec. 75):** In sub-section (12) of section 75 of the CGST Act, an explanation has been inserted to clarify that the expression "Self-assessed tax" shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37 (GSTR-1), but not included in the return furnished under section 39 (GSTR-3B). This was done to widen the scope of self-assessment by taking into account the amount of tax payable but not reported in GSTR 3B.
- **Provisional attachment to protect revenue in certain cases (Sec. 83):** Sub-section (1) of section 83 of the CGST Act has been substituted so as to provide that provisional attachment will remain valid for the entire period starting from the initiation of any proceeding under Chapter-XII (containing Assessment), Chapter-XIV (containing Inspection, Search, Seizure and Arrest) or Chapter-XV (containing Demands and Recovery) till the expiry of one year from the date of order made thereunder. It has been provided that where after the initiation of any proceeding under the aforesaid Chapters, the commissioner is of the opinion that for the purpose of protecting the interest of the government revenue, he may issue order in writing to attach any property provisionally, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in prescribed manner.

Persons specified in aforementioned sub-section (1A) of section 122 includes any person who retains the benefit of supplying any goods or services or both without issuing any invoice or issuing an incorrect or false invoice with regard to any such supply – section 122(1)(i); issues any invoice or bill without supplying of goods or services or both in violation of the provisions of this Act or the rules made thereunder – section 122(1)(ii); takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder – section 122(1)(vii); takes or distributes input tax credit in contravention of section 20 (relating to manner of distribution of credit by Input Service

Distributor), or the rules made thereunder – section 122(1)(ix) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

- **Appeals to Appellate Authority (Sec. 107):** In sub-section (6) of section 107 of the CGST Act, a proviso has been inserted to provide that no appeal shall be filed against a notice of detention or seizure of goods or conveyance specifying the penalty payable within 7 days of such detention or seizure, and thereafter, pass an order within 7 days of issue of such notice under sub-section (3) of section 129, for payment of penalty under clause (a) or clause (b) of sub-section (1) of section 129, unless a sum equal to 25% of the penalty has been paid by the petitioner.
- **Detention, seizure and release of goods and conveyances in transit (Sec. 129):** Section 129 of the CGST Act has been amended to delink the proceedings under that section from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.

Clause (a) in sub-section (1) of section 129 of the CGST Act has been substituted and provided that if the owner of the goods comes forward for payment of penalty, the amount of penalty will be equal to 200% (instead of 100% earlier) of the tax payable on such goods. In case of exempted goods the penalty will be equal to 2% of the value of goods or Rs. 25,000, whichever is less.

Clause (b) in sub-section (1) of section 129 of the CGST Act has been substituted and provided that if the owner of the goods does not come forward for payment of penalty, the penalty will be equal to 50% of the value of the goods or 200% of the tax payable on such goods, whichever is higher (earlier it was only 50% of the value of goods as reduced by taxes paid there on). In case of exempted goods, the penalty will be equal to 5% of the value of goods or Rs. 25,000, whichever is less.

Sub-section (2) has been omitted and the sub-section (3) has been substituted to provide that the proper officer responsible for detaining or seizing goods and conveyance will issue a notice within 7 days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within 7 days from the date of service of such notice, for payment of penalty under the above clauses (a) or (b) of sub-section (1). Sub-section (6) of section 129 has been substituted to provide that if the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within 15 days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in prescribed manner and within prescribed time, to recover the penalty payable under sub-section (3). It is provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or Rs. 1,00,000, whichever is less. It is also provided that the proper officer has the discretion to reduce the said period of 15 days if the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time.

- **Confiscation of goods or conveyances and levy of penalty (Sec. 130):** Sub-section (2) of section 130 of the

CGST Act has been amended to delink the proceedings under that section from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit. In the second proviso to sub-section (2), the amount of penalty in lieu of confiscation of any goods and conveyance is changed. Earlier the aggregate amount of fine and penalty could not be less than the penalty levied under sub-section (1) of section 129. Now the amount of penalty leviable will not be less than 100% of the tax payable on such goods. Sub-section (3) has been removed.

- **Power to collect statistics (Sec. 151):** Section 151 of the CGST Act has been substituted to empower the Jurisdictional Commissioner to call for information from any person relating to any matter dealt with in connection with the Act, within such time, form, and manner, as may be prescribed in the order. This amendment also widens the term statistics by using the term information.
- **Bar on disclosure of information (Sec. 152):** Sub-section (1) of section 152 of the CGST Act has been amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purpose of any proceedings under this Act without giving an opportunity of being heard to the person concerned. Sub-section (2) for prohibition of access of information by person not engaged in collection, compilation and computerization of statistics except for prosecution has been removed.
- **Power to issue instructions or directions (Sec. 168):** Section 168 of the CGST Act has been amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information.
- **Paragraph 7 of Schedule II shall be omitted:** Consequent to the amendment by introducing a new clause (aa) in sub-section (1) of section 7 of the CGST Act relating to Scope of Supply, paragraph 7 of Schedule II has been omitted from the CGST Act 2017 with effect from 1st July, 2017.

Key Amendments under the IGST Act, 2017:

- **Zero rated supply (Sec. 16):** Section 16 of the IGST Act has been amended so as to – (i) zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit only when the said supply is for authorized operations; (ii) restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and (iii) link the foreign exchange remittance in case of export of goods with refund.

Clause (b) of sub-section (1) of section 16 of the IGST Act has been amended to allow the supply of goods or services or both for authorized operations only. Sub-section (3) and (4) has been substituted in place of sub-section (3). It has been provided in substituted sub-section (3) that a registered person making zero rated supply shall be eligible to claim refund of unutilized input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act relating to refund of tax or the Rules made thereunder, subject to prescribed conditions, safeguards and procedure.

In case of non-realization of sale proceeds, the registered

person making zero rated supply of goods shall be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in the prescribed manner.

It has been provided in substituted sub-section (4) that the Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify – (i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid; (ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.

Conclusion and suggestions

The amendments to the GST Acts has brought great relief to small and medium sized businesses. Despite the thorny issues faced under the GST regime, focus has been kept on smoothening the GST structure and removing anomalies, rather than on introducing further taxes to compensate for collection shortfalls. The further tightening of the noose around fraudulent practices under GST is a step in the right direction. So far as GST annual compliance is concerned, the introduction of self-certification of GSTR-9C by taxpayers would lead to faster compliance and reduction of compliance cost. However, taxpayers should know, in most of the cases that GST audit by Chartered Accountant/Cost Accountant have led to rectify unintentional errors in GST Returns and suggest remedies for contentious tax positions adopted. Though the amendment introduces self-certification instead of audit but it would help the taxpayers if they get the annual return and reconciliation statement reviewed by Chartered Accountant/Cost Accountant before proceeding for self-certification of GSTR-9C. Though industry has greeted the amendments but there are certain provisions e.g., enhancement of penalty from 100% to 200% for detention, seizure and release of goods and conveyances in transit, upfront payment of 25% penalty on detained goods, enhancement of powers of the Jurisdictional Commissioner to call for any information has made industry worried. The appropriate authority should issue necessary clarification or circular to protect the interest of genuine and honest taxpayers and improve ease of doing business in India.

References

1. Budget Speech (2021, February 1). Retrieved from, 2021, <https://www.indiabudget.gov.in/doc/budget-speech.docx> budget-2021-22/budget-story/168/union-budget-2021---key-take-away-on-gst
2. Finance Act. (2021, March 28). The Gazette of India, New Delhi: Controller of Publications. Retrieved from, 2021, <https://egazette.nic.in/WriteReadData/2021/226208.pdf>
3. Finance Bill. Retrieved from, 2021, https://www.indiabudget.gov.in/doc/Finance_Bill.pdf
4. Krishnan PS, Vinod MD. Union Budget 2021 - Key Take away on GST, Taxmann: Tax & Corporate Laws of India, Retrieved from, 2021, <https://www.taxmann.com/budget-2021-22/budget-story/168/union-budget-2021--key-take-away-on-gst>
5. Rastogi A. Indirect Taxes: FM Sitharaman's Budget

- attempts a delicate balancing act, Business Standard (February 3, 2021). Retrieved from, 2021, https://www.business-standard.com/budget/article/indirect-taxes-fm-sitharaman-s-budget-attempts-a-delicate-balancing-act-121020202031_1.html
6. Taxindiaonline.Com. Union Budget 2021-A Vision for Atmanirbhar Bharat. Vision 360. Retrieved from, 2021, https://taxindiaonline.com/RC2/VISION_360/VISION_360_Issues/Vision_360_Union_Budget_2021_Analysis.pdf
7. The Central Goods and Services Tax Act, 2017 (2017, April 12). The Gazette of India, New Delhi: Controller of Publications. Retrieved from <https://www.cbic.gov.in/resources/htdocs-cbec/gst/cgst-act.pdf>
8. The Integrated Goods and Services Tax Act, 2017 (2017, April 12). The Gazette of India, New Delhi: Controller of Publications. Retrieved from <https://www.cbic.gov.in/resources/htdocs-cbec/gst/igst-act.pdf>