

GST Charcha on Union Budget 2021:

Amendments proposed in Section 74, 107, 151, 152 and 168 of the CGST Act, 2017

The Hon'ble Finance Minister, in Budget 2021-22, hailed as a 'development-oriented' and 'visionary' budget amid the pandemic-induced disruptions, *inter alia*, announced multiple changes to the Goods and Services Tax ("GST") framework. The changes have been proposed vide the Finance Bill, 2021, that amends the Central Goods and Services Tax Act, 2017 ("CGST Act") and the Integrated Goods and Services Tax Act, 2017 ("IGST Act"), in order to ease doing of business, curb input credit frauds, safeguard Government revenues and to provide statutory backing to debated Rules.

This GST Charcha deciphers into recent changes in GST Laws made vide Clause No. 104, 107, 110, 111 and 112 of the Finance Bill, 2021 with respect to amendments in Section 74, 107, 151, 152 and 168 of the CGST Act.

Relevant provisions:

- Explanation 1(ii) of the Section 74 of the CGST Act is proposed to be amended:

"74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts:

Explanation 1.- For the purposes of section 73 and this section,-

*(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under **sections 122 and 125** are deemed to be concluded."*

- Proviso to Section 107(6) is proposed to be inserted:

"107. Appeals to Appellate Authority

(6) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant”

- Section 151 of the CGST Act is proposed to be substituted:

“151. Power to collect statistics.

The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.”

- Section 152 of the CGST Act is proposed to be amended:

“152. Bar on disclosure of information.

*(1) No information ~~of any individual return or part thereof~~ with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act **without giving an opportunity of being heard to the person concerned.***

~~(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151”~~

- Section 168(2) of the CGST Act is proposed to be amended:

“168. Power to issue instructions or directions.

*The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, **section 44**, sub-sections (4) and (5) of section 52, sub-section (1) of section 143, except the second proviso thereof, ~~sub-section (1) of section 151~~, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.”*

Discussion and Comments:

- **Recovery of tax vs. Seizure and Confiscation:**

Amendment has been proposed in Explanation 1(ii) of Section 74 of the CGST Act so as to make seizure (Section 129 of the CGST Act) and confiscation of goods and conveyances in transit (Section 130 of the CGST Act), a separate proceeding from recovery of tax under Section 73 (determination of tax in non-fraud cases) or Section 74 (determination of tax in fraud cases) of the CGST Act.

With this amendment getting notified, conclusion of proceedings under Section 73 or 74 of the CGST Act against the main noticee will now mean conclusion of proceedings under Section 122 and 125 of the CGST Act (i.e., penalties) but not the proceedings against co-noticees under Section 129 and 130 of the CGST Act even if the main person liable to pay tax has discharged his liability and proceedings against him have been concluded.

- **Pre-deposit for Appeal before Appellate Authority:**

It is proposed to insert a proviso to Section 107(6) of the CGST Act, to provide that appeal against order passed under Section 129(3) of the CGST Act in Form MOV-09, can be filed before the Appellate Authority only after depositing 25% of the penalty imposed to the department.

It is to be noted that there is a requirement to deposit 10% of the disputed tax liability as pre-deposit in case of first appeal, which is proposed to be increased to 25% of the penalty amount in case of detention and seizure of conveyance and goods during transit.

- **Power to collect statistics**

It is proposed to substitute Section 151 of the CGST Act, in a manner to empower the jurisdictional commissioners to call for information from any person relating to any matter dealt with in connection with the CGST Act, within such time, in such form, and in such manner, as may be specified therein.

Correspondingly, Section 168 of the CGST Act has been amended to omit the power of the jurisdictional commissioner to exercise powers under Section 151(1) of the CGST Act.

- **Bar on disclosure of information:**

The proposed amendment to Section 152(1) clarifies that no information obtained under Sections 150 of the CGST Act and Section 151 of the CGST Act, shall be used by the commissioner or any officer authorized by him, for the purposes of any proceedings under CGST Act, without giving an opportunity of being heard to the person concerned.

Note: Amendments carried out in the Finance Bill, 2021 will come into effect from the date when the same will be notified and when the said clause also gets concurrently notified with the corresponding amendments passed by the respective States and Union territories in respective SGST/ UTGST Act.


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