

Recent amendments in GST

CA AANCHAL ROHIT KAPOOR

CA NEETU SHARMA

M. No. 9988692699, 9888069269,7009583179

aanchalkapoor_ca@yahoo.com

INPUT TAX CREDIT PROVISIONS

**Amendment
in Rule 21**

Cancellation of registration

The registration granted to a person is liable to be cancelled, if the said person:-

- a) does not conduct any business from the declared place of business; or
- b) *issues invoice or bill without supply of goods or services ²[or both] in violation of the provisions of the Act, or the rules made thereunder; or*
- c) *violates the provisions of section 171 of the Act or the rules made thereunder.*
- d) *violates the provision of rule 10A* **Bank a/c details in 45 days**
- e) **avails input tax credit in violation of the provisions of section 16 of the Act or the rules made thereunder; or**
- f) **furnishes the details of outward supplies in FORM GSTR-1 under section 37 for one or more tax periods which is in excess of the outward supplies declared by him in his valid return under section 39 for the said tax periods;** or
- g) **violates the provision of rule 86B.**

GSTR1 > GSTR 3B

Suspension of registration.

1. Where a **registered person has applied for cancellation of registration** under rule 20, the **registration shall be deemed to be suspended from the date of submission of the application or the date from which the cancellation is sought, whichever is later**, pending the completion of proceedings for cancellation of registration under rule 22.
OBH removed
2. Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29 or under rule 21, he may ²[***], **suspend** the registration of such person with effect from a date to be determined by him, pending the completion of the proceedings for cancellation of registration under rule 22.

GSTR 3B

(2A) **Where, a comparison of the returns furnished by a registered person under section 39 with**

a) **the details of outward supplies furnished in FORM GSTR-1 ; or**

b) **the details of inward supplies derived based on the details of outward supplies furnished by his suppliers in their FORM GSTR-1,**

GSTR 2A/2B

or such other analysis, as may be carried out on the recommendations of the Council, show that there are significant differences or anomalies indicating contravention of the provisions of the Act or the rules made thereunder, leading to cancellation of registration of the said person, his registration shall be suspended and the said person shall be intimated in FORM GST REG-31 , electronically, on the common portal, or by sending a communication to his e-mail address provided at the time of registration or as amended from time to time, highlighting the said differences and anomalies and asking him to explain, within a period of thirty days, as to why his registration shall not be cancelled.]

(3) A registered person, whose registration has been suspended under sub-rule (1) or sub-rule (2), ³[or sub-rule (2A)] shall not make any taxable supply during the period of suspension and shall not be required to furnish any return under section 39.

Explanation.-For the purposes of this sub-rule, the expression "shall not make any taxable supply" shall mean that the registered person shall not issue a tax invoice and, accordingly, not charge tax on supplies made by him during the period of suspension

4) The suspension of registration under sub-rule (1) or sub-rule (2) ³[or sub-rule (2A)] shall be deemed to be revoked upon completion of the proceedings by the proper officer under rule 22 and such revocation shall be effective from the date on which the suspension had come into effect:]

Provided that the suspension of registration under this rule may be revoked by the proper officer, anytime during the pendency of the proceedings for cancellation, if he deems fit.]

5) Where any order having the effect of revocation of suspension of registration has been passed, the provisions of clause (a) of sub-section (3) of section 31 and section 40 in respect of the supplies made during the period of suspension and the procedure specified therein shall apply.]

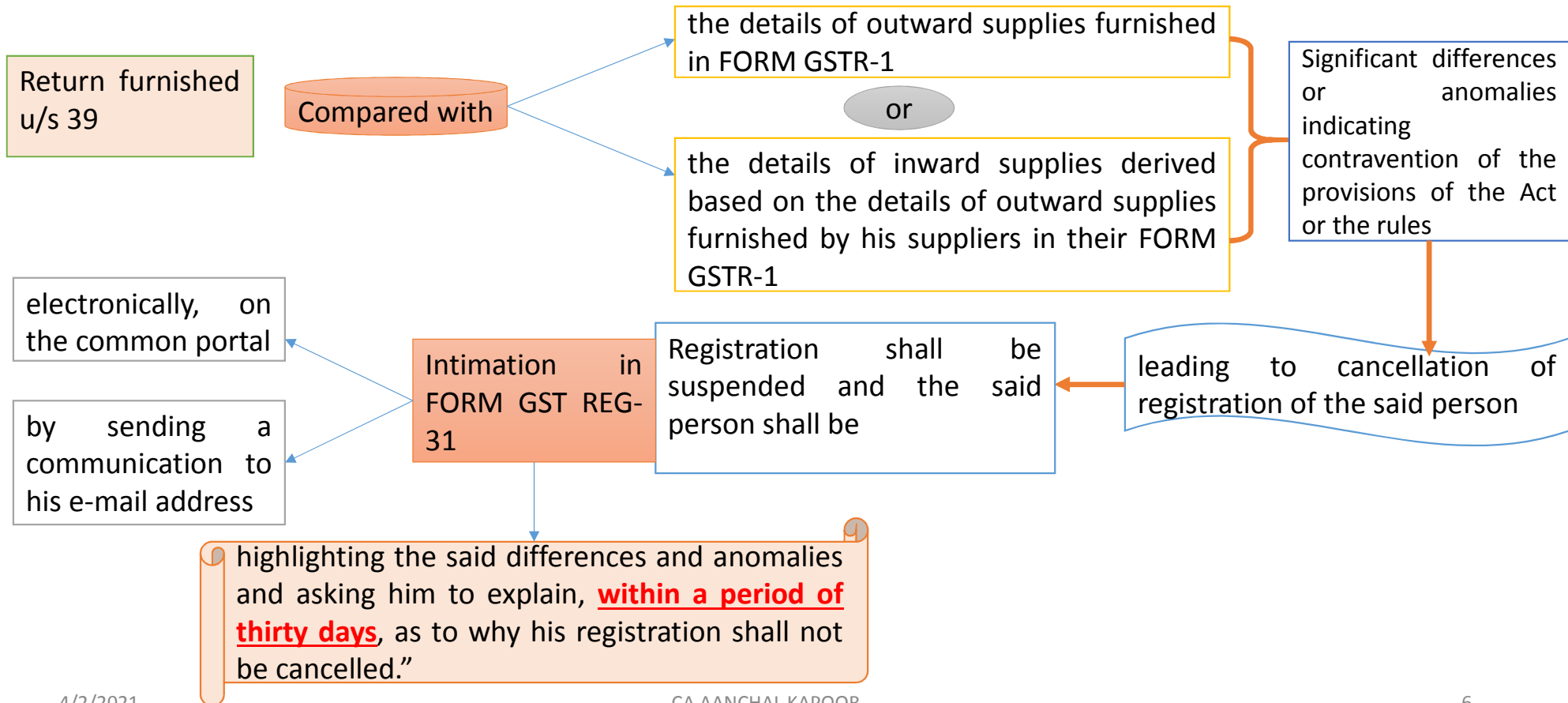
Rule 36(4) amended (effective from January 1, 2021)

Reduction in ITC entitlement for invoices not furnished by supplier from 10% to 5%

Rule 36(4):- Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which **have not been furnished by the suppliers under sub-section (1) of section 37, in FORM GSTR-1 or using the invoice furnishing facility** shall **not exceed 5 per cent of the eligible credit available** in respect of invoices or debit notes the details of which have been furnished by the suppliers under sub-section (1) of section 37 in **FORM GSTR-1 or using the invoice furnishing facility**

Circular No. 145/01/2021-GST

SOP for implementation of the provision of suspension of registrations under sub-rule (2A) of rule 21A of CGST Rules, 2017



Till the time functionality for FORM REG-31 is made available on portal, **such notice/intimation shall be made available to the taxpayer on their dashboard on common portal in FORM GST REG-17**

The taxpayers will be able to view the notice in the “View/Notice and Order” tab post login.

Taxpayer whose registration suspended

furnish reply to the jurisdictional tax officer within thirty days from the receipt of such notice / intimation, explaining the discrepancies/anomalies

reply to the jurisdictional officer against the notice for cancellation of registration sent to them, in FORM GST REG-18 online through Common Portal withing the time limit of thirty days from the receipt of notice/ intimation.

Post issuance of FORM GST REG-31 via email, the list of such taxpayers would be sent to the concerned Nodal officers of the CBIC/ States. Upon receipt of reply from the said person or on expiry of thirty days (reply period), a task would be created in the dashboard of the concerned proper officer under “Suo moto cancellation proceeding”.

In case the intimation for suspension and notice for cancellation of registration is issued on ground of non -filing of returns, the said person may file all the due returns and submit the response. Similarly, in other scenarios as specified under FORM GST REG-31, they may meet the requirements and submit the reply.

post examination of the response received from the said person, may pass an order either for dropping the proceedings for suspension/ cancellation of registration in FORM GST REG-20 or for cancellation of registration in FORM GST REG-19. Based on the action taken by the proper officer, the GSTIN status would be changed to “Active” or “Cancelled Suo-moto” as the case maybe.

N.N. 94/2020-CT Dated 22-12-2020

Rule 59

GSTR-1 to be blocked in case of non filing of GSTR 3B

- ✓ Where a taxpayer **fails to file GSTR 3B for two preceding months**, his GSTR 1 shall now be blocked.
- ✓ Similarly, for quarterly return filers, the taxpayer failing to file **GSTR 3B for the preceding quarter shall not be permitted to file GSTR 1 of subsequent quarter or IFF.**
- ✓ **Persons covered by provisions of Rule 86B, fails to file GSTR 3B for preceding Tax Period(M/Q)**, his GSTR 1 shall now be blocked
(Earlier non filing of GSTR 3B used to result in **blocking of E-way Bill facility but from now on it shall also result in blocking of GSTR 1 of the taxpayer.**)

Not. 94/2020 wrongly mentioned sub rule (5) of 59 Anomaly removed by not. 01/2021 by making it Rule 59(6)

Amendment in Section 16

Eligibility and Conditions for taking Input Tax Credit

Budgetary Amendment
(Effective date to be notified)

Section 16

- (1).....
- (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,—
- (a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”.

Impact

- ❑ Rule 36(4) (inserted vide N.N. 49/2019-CT)provided statutory backing to the most disputed CGST Rules.
- ❑ This provision would give force to entries appearing in GSTR 2A/ 2B **as a valid proof of supply.**

Reason

- ❑ To put end to litigation, regarding Legal sanctity of Rule 36(4) which was challenged being ultra vires the Act in various Writ Petitions.
- ❑ To overcome in a way to pre-GST legal jurisprudence that supports the view that as long as the purchasing dealer has taken all the steps required for being eligible for ITC, he could not be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the government or has lawfully adjusted it against his output tax liability .
- ❑ To overcome Fake Invoicing issues, when read in conjunction with other Amendments pertaining Suspension of GSTN in case of mismatch of ITC in returns as per GSTR 2A/2B and blocking on non filing of GSTR 1.

Critical Analysis

- The proposed amendment although giving force to Rule 36(4), but somewhere challenging the leverage of Additional 5% as provided by the Rule.
- Asking the impossible:- The above provision leads to controls the action of supplier by the recipient, thereby overruling the past decisions like Arise India .Ltd (Delhi HC), Kay Kay Industries, where it was held to be unreasonable.
- The amendment being prospective in nature, the validity of Rule 36(4) prior to its insertion is highly disputed.

Amendment of section 83.

9 Provisional attachment to protect revenue in certain cases.

**Budgetary Amendment
(Effective date to be notified)**

~~(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.~~

*“(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, **he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.**”*

Analysis

Provisional attachment allowed in following chapters:-

- **Chapter XII : Assessment (sec. 59- 64) (Audit not covered Sec65,66)**
- **Chapter XIV: Inspection, search, seizure & Arrest.(Sec. 67-72)**
- **Chapter XV : Demand and recovery(sec. 73-84)**

Thus, in place of specified sections, entire Chapters have been prescribed to enlarge the scope of proceedings under which provisional attachment of property can be made.

Sec 62:- [Assessment of non-filers of returns.](#)

Sec. 63:- [Assessment of unregistered persons.](#)

Sec. 64:- [Summary assessment in certain special cases.](#)

Sec. 67:- [Power of inspection, search and seizure.](#)

Sec. 73:- [Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.](#)

Sec. 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.](#)

➤ This proposed amendment has impact that the **gravity and the reach is further widened** meaning thereby this proposition intends to increase the ambit of provisional attachment by way of substitution of section by chapters of the CGST Act.

➤ **Eg. Now even a proceeding u/s. 71(Access to business premises) empowers the officer to attach the property/bank accounts because Section 71 falls within Chapter XIV of the CGST Act.**

➤ **Attachment of property of person covered 122(1A)**

To attach provisionally property including bank account of the taxable person or any person who retains the benefit and at whose order or instance the following transactions undertaken:

- a. **Supply of any goods or services** or both without issue of any invoice or issue of an incorrect or false invoice.
- b. **Issuing any invoice or bill without supply of goods or services** or both in violation of the provisions of this Act or the rules made thereunder.
- c. **Taking or utilising 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.
- d. **Taking or distributing input tax credit** in contravention of section 20 (Input service distributor), or the rules made thereunder.

From the initiation of the proceeding under the provisions of Assessment, Inspection, Search, Seizure & Arrest and Demand & Recovery till the expiry of one year from the date of the order made thereunder.

➤ **Initiation of any proceeding**

It is settled position of law that **property can be attached only when the authority is of the opinion that after closer of proceedings there may be ultimate default of tax payment.** How can the revenue officers determines the tax evasion or quantum of tax evasion or ultimate default of tax payment by the tax payer in the beginning of proceedings are not clear. These provisions are challengeable before the Court.

N.N. 94/2020-CT Dated 22-12-2020

Rule 138 amended
(effective from
January 1, 2021)

Validity of e-way bill narrowed by increasing distance from 100 km. to 200 km. per day

E-way bill will now be valid for 24 hours for every 200 km of travel, as against 100 km earlier, in cases other than Over Dimensional Cargo or multimodal shipment.

Rule 138E amended

Restriction on furnishing of information in Part A of FORM GST EWB-01.

Person shall not be allowed to furnish *information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who*

- *being a person, whose registration has been **suspended** under the provisions of sub-rule (1) or sub-rule (2) or sub-rule (2A) of rule 21A:]*

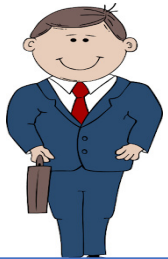
Notwithstanding anything contained in these rules, the **registered person shall not use the amount available in electronic credit ledger to discharge his liability towards output tax in excess of ninety-nine per cent. of such tax liability,** in cases **where the value of taxable supply other than exempt supply and zero-rated supply, in a month exceeds fifty lakh rupees:**

Provided that the **said restriction shall not apply where** –

- a) the said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors, Members of Managing Committee of Associations or Board of Trustees, as the case may be, **have paid more than one lakh rupees as income tax under the Income-tax Act, 1961(43 of 1961) in each of the last two financial years for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired;** or
- b) the registered person **has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit** under clause (i) of first proviso of sub-section (3) of section 54; or
- c) the registered person has received a refund amount of more than one lakh rupees in the preceding financial year on account of unutilised input tax credit **under clause (ii) of first proviso of sub-section (3) of section 54;** or
- d) the registered person **has discharged his liability towards output tax through the electronic cash ledger for an amount which is in excess of 1% of the total output tax liability, applied cumulatively,** upto the said month in the current financial year; or
- e) the registered person is –
 - (i) Government Department; or
 - (ii) a Public Sector Undertaking; or
 - (iii) a local authority; or
 - (iv) .statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf **may remove the said restriction after such verifications and such safeguards as he may deem fit.”.**

LEGAL PROVISION



Value of **taxable** supply in a **month** exceeds 50 Lacs

Shall not ~~use~~ **the amount available in electronic credit ledger**



99% of such tax liability

i.e Max 99% of Input can be used to discharge output liability

Registered Person

Exempt Supply

Zero Rated Supply

This provision is N.A (can use 100% credit)

Person

proprietor

Karta

Any of its two partners

whole-time Directors, Members of Managing Committee of Associations or Board of Trustees

Paid more than 1 lakh as income tax in each of last two F.Y.

MAT and TDS also considered as Income Tax (not necessarily Cash Payment)

Claimed Refund >100000 in preceding F.Y. on account of unutilized ITC of exports

Claimed Refund >100000 in preceding F.Y. on account of unutilized ITC of inverted duty structure

Output tax paid through cash ledger > 1% of total output, applied cumulatively, upto the said month in current F.Y.

Registered person is
 I. Government Department; or
 II. a Public Sector Undertaking; or
 III. a local authority; or
 IV. a statutory body:

Provided further that the Commissioner or an officer authorised by him in this behalf may remove the said restriction after such verifications and such safeguards as he may deem fit.”.

CASE STUDY

Registered Person	Exempt Turnover	Export turnover	Taxable turnover	Rule 86B applicable
February,2021	1 crore	2 crore	45 lakhs	No (Rs. 45 lakhs)
March,2021	40 lakhs	15 lakhs	1 crore	Yes (Rs. 1 crore)

March 2021

Taxable Sale = 1 Crore

Monthly turnover > 50 lakhs

Tax @ 5% = 500000

ITC = 800000

What if Export with Payment of Taxes ?

Old		New	
Output	500000	Output	500000
ITC utilized	500000	ITC Utilized (99 % of 500000)	495000
Tax payable	0.00	Tax payable (1%)	5000

Exceptions:- 100 % ITC (Old Rule)

1 F.Y. 19-20, F.Y. 18-19- 139(1) time expired, Income Tax paid > 100000

3

April, 2020- Feb, 2021

Output	ITC	Cash Ledger	
10 Cr	99 Lacs	100000	New Rule
10Cr <small>4/2/2021</small>	98.5 Lacs	150000	Old Rule

2

Refund > 1 lakh in F.Y 2019-20

Exports

or

Inverted Duty structure

Illustration 1

Particulars	CGST	SGST	IGST	Total
Output Turnover	5000000	5000000	3000000	1,30,00,000
Output Tax @18%	900000	900000	540000	23,40,000
Input Tax	960000	960000	500000	24,20,000
Minimum Tax payable as per Rule 86B	9000	9000	5400	23,400

Illustration 2

Particulars	CGST	SGST	IGST	Total
Output Turnover	5000000	5000000	3000000	1,30,00,000
Output Tax @18%	900000	900000	540000	23,40,000
Input Tax	820000	820000	540000	21,80,000
Minimum Tax payable as per Rule 86B	9000	9000	5400	23,400
Minimum tax otherwise payable through cash ledger without 86B	80000	80000	-	1,60,000
By paying Rs. 5400 in cash, IGST ITC of 5400 adjusted with C & S, so now Net Payable	77300	77300	5400	1,60,000

Illustration 3

Particulars	CGST	SGST	IGST	Total
Output Tax	900000	900000	540000	23,40,000
Input Tax	820000	1000000	540000	2360000
Minimum Tax payable as per Rule 86B	9000	9000	5400	23400
Payment if 86B not there	80000	0	0	80000
Tax payable as per 86B	80000-5400= 74600	9000 (not adjustable with CGST)	5400 paid in IGST adjusted with CGST.	89000

4/2/2021

CA ANCHAL KAPOOR

17

REFUND RELATED PROVISIONS

Section	Old	New
16(1)	<p>“zero rated supply” means any of the following supplies of goods or services or both, namely:—</p> <p>(a) export of goods or services or both; or</p> <p>(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.</p>	<p>“zero rated supply” means any of the following supplies of goods or services or both, namely:—</p> <p>(a) export of goods or services or both; or</p> <p>(b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.</p>
16(3)	<p>A registered person making zero rated supply shall be eligible to claim refund under either of the following options namely:—</p> <p>(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguard and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit</p> <p>or</p> <p>(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.</p>	<p><i>A registered person making zero rated supply shall be eligible to claim refund of unutilised 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 Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:</i></p> <p><i>Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.</i></p>

Amendments in section 16 of IGST Act, 2017

ZERO RATED SUPPLY

Section	Old	New
16(4)	=	<i>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.”.</i>

Analysis

Rule 96B now provided sanctity by proviso to S. 16(3)

- Scope widened by covering Zero Rated as against only Exports under Rule 96B
- Proviso says that refund is liable to be recovered with interest if proceeds not received within time limit as provided in FEMA. For SEZ supplies, there is ambiguity as to Time Period.

Refund of output tax on exports(with Payment) shall be available to –

- Notified class of persons
- Notified class of goods or services

Restricted Scope of
Zero Rated Supplies
With Payment of Tax

EXPORTS/SEZ supplies of goods or services

Without payment of tax

Refund of unutilized input tax credit (ITC) of Input or input services on account of exports.

CG ❌

With payment of tax;

Refund of tax paid on export

Goods
Services

Now available Only for Notified Class of Taxpayers or notified supplies

Rule 96 The shipping bill filed by *an exporter of goods* shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India. No Separate Application Required.

This proposed amendment **restricts the enjoyment of benefits of zero rating in case the supplies are made to SEZ developer or SEZ Unit in a way that now post this amendment the benefits will be available only to the supplies to SEZ developer or SEZ Unit which are for authorised operations and not for any other supplies.**

Such authorised operations must be as per the SEZ Act, Rules and other relevant notifications.

Before Amendment

- All the supplies to SEZ unit/ developer were considered as Zero Rated.
- At the time of refund, it was ensured whether these are for authorised operations.
- The said restriction was in Refund Rules, not part of parent Act.

Before Amendment

- Zero Rated supplies (Exports or SEZ) **With payment of tax** was allowed **to all supplies**

After Amendment

- Supplies to SEZ unit / developer would be considered as zero rated only if these are for authorised operations, and if not these would be taxable supplies.
- Such authorised operations must be as per SEZ Act.

After Amendment

- In case of supplies to SEZ units/ developers:- **only to the notified class of person.**
- In case of export of goods/ services:- only to notified class of persons and **notified class of goods/ services.**

Step 1:- Export Of Goods.



Supply of Goods to SEZ



MEMO: Link the Foreign Exchange Remittance in case of EXPORTS OF GOODS with REFUND (SEZ not covered)

For Export of Services Non Realisation Rule 96A is applicable

Step 2:- Refund

Unutilised ITC

Step 3:- Sale Proceeds (Foreign Exchange) not realized (Part or Full) Within period allowed by FEMA

Time Period as per FEMA -9 months
Extended to 15 months due to Covid

Step 4:- Within expiry of 30 days from above said period

Deposit the refunded amount + interest

Step 5:- On Non payment= Recovery of amount u/s 73 or 74

Step 6:- Realisation of proceeds after recovery of refund amount

AND

evidence produced by applicant within three month from realization of sale proceeds

The Amount recovered be refunded

Reason

- In some cases vendors of exporters claimed the bogus credits and discharged their liability through such credit. Because of these reasons Govt wants to restrict that IGST refund option only to few Organized Sectors.
- **Under with payment of tax method, there was encashment of ITC of capital goods, which will not be available.**
- Now the applications for refunds has to be made by exporters, from time to time.

The exporters were having an option

- (i) to **export with payment of IGST** and claim refund thereof; or
- (ii) to **export without payment of Tax under LUT and claim refund thereof.**

Section 16 of IGST Act has been amended to limit the option of making export with payment of duty. The option is not made limited to notified class of goods or suppliers. Thus, in all cases refund shall be available to persons of tax paid on inward supplies. Also, this would take away the benefit of claiming refund of tax paid on capital goods by way of using such tax for payment of IGST and claiming refund of such IGST so paid.

Further, any person who has received refund but yet not received the payment against the export shall also be required to deposit the refund so received 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 FEMA, for receipt of foreign exchange remittances. Whether the provision shall be used to recover refunds so granted in past shall be seen in coming days.

To curb Malpractices

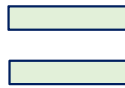
Some linked Custom provisions

1. Goods entered for exports could be **confiscated** in situations of a **wrongful claim for remission or refund** of any duty or tax or levy in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force
2. There shall be levied a **penalty not exceeding five times of the refund claimed on export of goods by utilizing Input Tax Credit** (under the GST Laws) on **invoices obtained by fraud, collusion, wilful misstatement or suppression of facts**.
3. **Common Customs Electronic Portal to be notified by the CBIC** for facilitating registration, filing of bill of entry, shipping bills, payment of duty and other documents/ forms prescribed under the Customs Act or any other law for the time being in force. Provisions have been inserted to allow amendments of documents (bill of entry, shipping bill etc.) using the customs automated system based on certain criteria. Furthermore, documents can be amended on the Common Portal by the importer or exporter in certain situations to be specified by the CBIC. Amendment has been proposed for enabling online service of orders, decisions, summons, or notices issued under the Customs Act, 1962 or Rules thereunder on the common portal.
4. Any **conditional exemption notification issued henceforth shall be valid for 2 years** till March 31 falling immediately from the date of such grant or variation. Further, any exemption which is in force as on the date on which Finance Bill 2021 receives Presidential assent, the period of 2 years shall be reckoned from February 1, 2021 and shall remain valid until March 31, 2023
5. The importer of goods is now required **to present the bill of entry one day** (including holidays) prior to arrival of the aircraft/ vehicle/ vessel at the custom station. Previously, bill of entry was to be presented by end of the next day following the day (excluding holidays) on which the aircraft/ vessel/ vehicle arrives at the custom station. Further, CBIC in certain cases may specify the time limit for presentation of the bill of entry which shall not be later than the date of arrival of the vessel/ aircraft/ vehicle

Refund amount calculation

**Rule
89(4)**

**Maximum
Refund
Amount**



**Turnover of Zero rated
supply**

X

Net ITC

Credit availed
on **inputs and
input services**

Adjusted Total Turnover

All turnover except Exempt
Turnover

Turnover of zero-rated supply of goods means

- the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking or
- **the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,**
- whichever is less

Turnover of zero-rated supply of services means

- Payments received during the tax period
- Add: Services completed in current tax period for which advance was received in previous tax periods
- Less: Advance received

Note: Balance Checks in calculating refund amount are same as in REFUND OF UTILISED ITC ON ACCOUNT OF INVERTED DUTY

4/7/2021

CA ANCHAL KAPOOR

26

Rule 89(4)(c) Substituted:- (Refund on Zero Rated Supply Without Tax under Bond)

“Turnover of zero-rated supply of **goods**” means

- the value of zero-rated supply of **goods made during the relevant period** without payment of tax under bond or letter of undertaking **or**
- **the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier,**

whichever is less,

other than the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both;”.

Particulars	Before amendment	After amendment
Zero Rated (10000 Kg @8036/100kg)	803600	787500
Domestic (2000Kg @ 5250/100kg)	105000	105000
Total Sales	908600	892500
ITC	100000	100000
Refund= ITC* $\frac{\text{Turnover of Zero Rated Supply}}{\text{Adjusted total Turnover}}$	$100000 * 803600 / 908600$	$100000 * 787500 / 892500$
Turnover of Zero Rated Supply	803600	803600 or $10000 * 5250 / 100 * 1.5 = 787500$ Whichever is less i.e 787500
Refund	88443	88235
Adjusted Total Turnover	$105000 + 803600 = 908600$	$105000 + 787500 = 892500$

Extension of relaxation for filing refund claim in cases where zero-rated supplies has been wrongly declared in Table 3.1(a).

EXPORT ENTERED AS TAXABLE INADVERTANTLY BY TAXPAYER THUS UNABLE TO CLAIM REFUND OF WRONGLY ENTERED AMOUNT

This was because of a validation check placed on the common portal which prevented the value of refund of integrated tax/cess in FORM GST RFD-01A from being more than the amount of integrated tax/cess declared in table 3.1(b) of FORM GSTR-3B.

it is clarified that for the tax periods commencing **from 01.07.2017 to 31.03.2021**, such registered persons **shall be allowed to file the refund application in FORM GST RFD-01** on the common portal subject to the condition that **the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c)** of FORM GSTR-3B filed for the corresponding tax period.”

HSN CODES

Notification No. 78/2020 – Central Tax

Following HSN Codes are mandatory from **01.04.2021**

TAX
INVOICE

Serial Number (1)	Aggregate Turnover in the <u>preceding Financial Year</u> (2)	Number of Digits of Harmonised System of Nomenclature Code (HSN Code) (3)
1.	Up to rupees five crores	4
2.	more than rupees five crores	6

Provided that a registered person having aggregate turnover **up to five crores rupees** in the previous financial year **may not mention** the number of digits of HSN Code, as specified in the corresponding entry in column (3) of the said Table in a **tax invoice issued by him under the said rules in respect of supplies made to unregistered persons.**

Not on B2C invoices

HSN/SAC codes shall be mentioned mandatorily in **GSTR-1** for a class of registered persons as may be specified in notifications issued from time to time.

Notification No. 79 /2020 – Central Tax (Changes in various forms)

GSTR-1

In **column 6 of Table No.12** where HSN summary of outward supplies are reported, for the words “Total Value”, the words “Rate of tax” shall be substituted

SECTION 50 (INTEREST)

Amendment in section 50

6 Interest on delayed payment of tax.

Budgetary Amendment
(Effective date to be notified)

(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.

~~⁴[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.]~~

w.e.f. 01.07.2017

“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 payable on that portion of the tax which is paid by debiting the electronic cash ledger.”

Impact

- **Retrospective amendment** made that interest to be paid on Net liability and not on gross liability in case of short payment of Tax with effect from 01.07.2017.
- **Right to claim refund arises, wherever the interest has been paid on gross GST liability.**

Reason

- The said amendment was proposed to be retrospective in one of GST Council Meeting dated 14.03.2020 and later on the said proviso not being brought retrospectively, it was assured that no recovery would be made from the tax payers for the preceding periods.

Critical Analysis

This provision **does not give relief** on the following amounts:-

- On **Any unpaid tax amount, even if the balance is lying in electronic cash / credit ledger.**
- **Tax payable in one tax period but paid later with subsequent return, would not enjoy such relief even when paid through ITC.** As the words in proviso says, Payable and declared in the return for the said period.
eg. A taxpayer paid short tax of Rs. 50000 in December, 2020. The same was paid using the carried forward ITC in the month of January, 2021. The interest on tax of Rs. 50,000/- for the period of delay is required to be paid, even if the same is paid by ITC.
- **Return not filed and tax not paid upto initiation of any proceedings under Section 73/74** in respect of such tax period would not get this benefit even when amount is lying in Cash / Credit ledger of the taxpayer.

OTHER AMENDMENTS

Suppressed by
Not. 83/2020

Notification No. 74/2020 – Central Tax

Registered persons having aggregate turnover of up to **1.5 crore rupees** in the preceding financial year or the current financial year

Sl. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
1	October, 2020 to December, 2020	13th January, 2021
2	January, 2021 to March, 2021	13th April, 2021

Notification No. 75/2020 – Central Tax

Registered persons having aggregate turnover of more than 1.5 crore rupees in the preceding financial year or the current financial year

Sl. No.	Quarter for which details in FORM GSTR-1 are furnished	Time period for furnishing details in FORM GSTR-1
1	October, 2020 to March 2021	11 th day of the month succeeding such month

Effective from 01.01.2021

Notification No. 83/2020 – Central Tax

N.N. 83/2020

In suppression of Not. 74/2020 and 75/2020. **Time Limit for furnishing GSTR-1**

Sl. No.		Time period for furnishing details in FORM GSTR-1
1	Monthly	11 th day of the month succeeding such month
2	Quarterly	13 th day of the month succeeding such quarter

N.N.
86/2020

Not. 76/2020 rescinded.(GSTR 3B dates for Oct,20-March,21)

N.N.
87/2020

Extension of time limit for furnishing the declaration in **FORM GST ITC-04, in respect of goods dispatched to a job worker or received from a job worker**, during the period from **July, 2020 to September, 2020 till the 30th day of November, 2020. (Effective 25th October,2020)**

N.N.
88/2020

E-invoicing is mandatory from 01.01.2021 for every taxpayer (other than SEZ unit) whose aggregate TO in **any** of the **FY from 17-18** exceeds 100 Crores

N.N.
89/2020

Waiver of penalty payable by registered person u/s 125 for non compliance of N.N. 14/2020 till 01.04.2021

N.N.
90/2020

8 digits HSN codes in tax invoice mandatory for some items

N.N.
91/2020

Anti- Profiteering Action by department time extended till March 2021

N.N.
92/2020

The Central Government hereby appoints the 1st day of January, 2021, as the date on which the provisions of sections 119, 120, 121, 122, 123, 124, 126, 127 and 131 of the said Act shall come into force.

N.N.
93/2020

Late fee payable for delay in furnishing of FORM GSTR-4 for the Financial Year 2019-20 under section 47 of the said Act, from the 1st day of November, 2020 till the 31st day of December, 2020 shall stand waived for the registered person whose principal place of business is in the Union Territory of **Ladakh**."

4/2/2021

CA SANJAY KUMAR

A red scroll graphic with a white border and a white shadow, featuring a white scroll edge on the left and top. The text "REGISTRATION PROCEDURES" is centered on the scroll in a bold, black, sans-serif font.

REGISTRATION PROCEDURES

New
Registration

Business Details ✓ Promoter / Partners ✓ Authorized Signatory Authorized Representative Principal Place of Business ✓ Additional Places of Business Goods and Services ✓ State Specific Information Aadhaar Authentication ✓ Verification

Aadhaar Authentication

Would you like to opt for Aadhaar authentication of Promoters/ Partners, Authorized Signatories?

Yes

- 1. If you select 'Yes' the authentication link shall be shared on mobile number and e-mail IDs of the Promoters/ Partners, Authorized Signatories.
- 2. ARN of your application shall be generated once Aadhaar authentication of Promoters/ Partners, Authorized Signatories are completed.

SI No	Name	Citizen/ Resident of India	Promoter/ Partner	Authorized Signatory	Designation	Email Address	Mobile Number	Status
1	[Redacted]	Yes	Yes	Yes	[Redacted]	[Redacted]	[Redacted]	Authentication Required

Note: Please make sure that email and mobile numbers of Promoters/ Partners, Authorized Signatories provided by you are correct. The Aadhaar validation links shall be forwarded on the emails/ mobile No.s provided by you.

BACK SAVE & CONTINUE

Existing Registration

The screenshot shows the GST Common Portal dashboard for user MANGAL SINGH. A white notification box is overlaid on the dashboard, containing the text: "Aadhaar Authentication facility is available. Would you like to authenticate Aadhaar of Partner/Promoter and Primary Authorized Signatory?". Below this text are two buttons: "YES, NAVIGATE TO MY PROFILE" and "REMIND ME LATER". A note below the buttons states: "NOTE : For future reference you can access this link again through [Dashboard>My Profile>Aadhaar Authentication Status](#)". The background dashboard shows a navigation menu with "Dashboard" and "Services", a welcome message "Welcome MANGAL SINGH to GST Common Portal", and several action buttons: "RETURN DASHBOARD >", "CREATE CHALLAN >", "VIEW NOTICE(S) AND ORDER(S) >", and "ANNUAL RETURN >". On the right side, there is a "Quick Links" section with "Check Cash Balance", "Liability ledger", and "Credit Ledger".

The screenshot shows the "Aadhaar Authentication Status" page. The header is "Goods and Services Tax". The navigation menu includes "Dashboard", "Services", "GST Law", "Downloads", "Search Taxpayer", "Help and Taxpayer Facilities", and "e-Invoice". The breadcrumb trail is "Dashboard > My Profile > Aadhaar Authentication Status".

Would you like to Authenticate Aadhaar or Upload E-KYC Documents of Partner/Promoter and Primary Authorized Signatory?

Two blue buttons are displayed: "SEND AADHAAR AUTHENTICATION LINK" and "UPLOAD E-KYC DOCUMENTS".

Existing Registration

Would you like to Authenticate Aadhaar or Upload E-KYC Documents of Partner/Promoter and Primary Authorized Signatory?

Select for Aadhaar Authentication	Name	Citizen/Resident of India	Promoter/Partner	Primary Authorized Signatory	Designation	Email	Mobile Number
<input type="checkbox"/>		No	Yes	Yes	PROPRIETOR		

Would you like to Authenticate Aadhaar or Upload E-KYC Documents of Partner/Promoter and Primary Authorized Signatory?

Select for Aadhaar Authentication	Name	Citizen/Resident of India	Promoter/Partner	Primary Authorized Signatory	Designation	Documents Upload
<input type="checkbox"/>	MANGAL SINGH	No	Yes	Yes	PROPRIETOR	<div style="display: flex; align-items: center;"> ✗ <div style="border: 1px solid #ccc; padding: 2px;"> Type of E-KYC Document Select ▼ </div> </div> <p style="font-size: 0.8em; margin-top: 5px;"> i File with PDF or JPEG format is only allowed. </p> <div style="display: flex; align-items: center; margin-top: 5px;"> <input type="button" value="Choose File"/> No file chosen </div>

Notification No. 17/2020 dated 23.03.2020

The class of persons who shall be exempted from Aadhaar authentication has been notified

Any person who is not a citizen of India or belong to a class of persons, except the persons mentioned below, are not required to get an aadhaar authentication done, from 1st April 2020:

1. Individual
2. Authorised signatory of all types
3. Managing and Authorised partner, and
4. Karta of an Hindu undivided family.

Aadhar Authentication not applicable

Not a citizen of India

Department of Cg or SG

Local Authority

Statutory Body

PSU

Person applying for registration u/s 25(9)

Notification No. 18/2020 dated 23.03.2020

The effective date for Aadhaar authentication before obtaining GST registration is notified.

The effective date for Aadhaar authentication before obtaining GST registration is notified----- 01-04-2020.

Notification No. 19/2020 dated 23.03.2020

The class of persons, other than individuals who shall undergo authentication of Aadhaar number to be eligible for registration, has been notified.

The following persons shall undergo the aadhaar authentication from 1st April 2020:

1. Authorised signatory of all types,
2. Managing and Authorised partners of a partnership firm, and
3. Karta of an Hindu undivided family

Every application made under rule (4) shall be followed by—

- (a) **biometric-based Aadhaar authentication** and taking photograph, unless exempted under sub-section (6D) of section 25, if he has opted for authentication of Aadhaar number; or
- (a) taking biometric information, photograph and verification of such other KYC documents, as notified, unless the applicant is exempted under sub-section (6D) of section 25, if he has opted not to get Aadhaar authentication done,
- of the applicant where the applicant is an individual or of such individuals in relation to the applicant as notified under sub-section (6C) of section 25 where the applicant is not an individual, along with the verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the **Facilitation Centres** notified by the Commissioner for the purpose of this sub-rule and the application shall be deemed to be complete only after completion of the process laid down under this sub-rule.”.

Rule 25 substituted with following:-

“**Physical verification** of business premises in certain cases.-Where the proper officer is satisfied that the physical verification of the place of business of a person is required due to failure of Aadhaar authentication or due to not opting for Aadhaar authentication before the grant of registration, or due to any other reason after the grant of registration, he may get such verification of the place of business, in the presence of the said person, done and the verification report along with the other documents, including photographs, shall be uploaded in **FORM GST REG-30** on the common portal within a period of **fifteen working days** following the date of such verification.”.

Rule 9:- (Verification of the application and approval)**Cases of Deemed Registration:-**

Rule 9(5) Proper officer fails to take any action within a period of :-

person successfully undergoes authentication of Aadhaar number

three working days from the date of submission of the application

fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8

twenty one days from the date of submission of the application

person does not opt for authentication of Aadhaar number

twenty one days from the date of submission of the application

within a period of seven working days from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

UPTO
22.12.2020

N.N. 94/2020-CT Dated 22-12-2020

**Amendment
in Rule 9**

Verification of the application and approval

w.e.f 22-12-2020

Rule 9:- (Verification of the application and approval)

Cases of Deemed Registration:-

Rule 9(5) Proper officer fails to take any action within a period of :-

person successfully undergoes authentication of Aadhaar number

→ **Seven working days** from the date of submission of the application

fails to undergo authentication of Aadhaar number as specified in sub-rule (4A) of rule 8

→ **Thirty days** from the date of submission of the application*

person **does not opt** for authentication of Aadhaar number

→ **Thirty days** from the date of submission of the application*

within a period of **seven working days** from the date of the receipt of the clarification, information or documents furnished by the applicant under sub-rule (2),

*PO not below rank of AC authorized by Commissioner may carry the Physical Verification of Place of Business, in presence of said person.

*Notice in Form GST REG-03 may be issued upto 30 days from date of submission of application.

A red banner with a white border and a white shadow, featuring the text 'OTHER BUDGETARY PROPOSALS' in black, bold, uppercase letters. The banner has a slight 3D effect with a white highlight on the top edge.

OTHER BUDGETARY PROPOSALS

Clause 108-122 of Finance Act, 2021 CGST Act

Clause 123 of Finance Act, 2021 IGST Act

New Delhi, the 28th March, 2021/Chaitra 7, 1943 (Saka)

The following Act of Parliament received the assent of the President on the 28th March, 2021, and is hereby published for general information:—

THE FINANCE ACT, 2021

NO. 13 OF 2021

[28th March, 2021.]

An Act to give effect to the financial proposals of the Central Government for the financial year 2021-2022.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance Act, 2021.

Short title and commencement.

(2) Save as otherwise provided in this Act,—

(a) sections 2 to 88 shall come into force on the 1st day of April, 2021;

(b) sections 108 to 123 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

CHAPTER II

RATES OF INCOME-TAX

2. (1) Subject to the provisions of sub-sections (2) and (3), for the assessment year commencing on the 1st day of April, 2021, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax

Income-tax.

Sections of CGST Act to be amended by Finance Act, 2021

<u>Section of Finance Act</u>	<u>Corresponding Section of GST Act</u>	<u>Particulars</u>	<u>Source Notification and Date of Enforcement</u>
108	7	Scope of supply.	w.r.e.f 1.7.2017 from a date to be notified.
109	16	Eligibility and conditions for taking input tax credit.	to be notified
110	35	Accounts and other records.	to be notified
111	44	Annual return.	to be notified
112	50	Interest on delayed payment of tax.	w.r.e.f 1.7.2017 from a date to be notified.
113	74	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 wilful-misstatement or suppression of facts.	to be notified
114	75	General provisions relating to determination of tax.	to be notified
115	83	Provisional attachment to protect revenue in certain cases.	to be notified
116	107	Appeals to Appellate Authority.	to be notified
117	129	Detention, seizure and release of goods and conveyances in transit	to be notified
118	130	Confiscation of goods or conveyances and levy of penalty.	to be notified
119	151	Power to collect statistics. Power to call for information.	to be notified
120	152	Bar on disclosure of information.	to be notified
121	168	Power to issue instructions or directions.	to be notified
122	Schedule II	Activities or transactions to be treated as supply of goods or supply of services	to be notified

Sections of IGST Act to be amended by Finance Act, 2021

<u>Section of Finance Act</u>	<u>Corresponding Section of GST Act</u>	<u>Particulars</u>	<u>Source Notification and Date of Enforcement</u>
123	16	<u>Zero rated supply.</u>	w.r.e.f 1.7.2017 from a date to be notified.

Amendment in section 7

1. Scope of Supply

w.e.f. 01.07.2017

7) (1) For the purposes of this Act, **the expression “supply” includes—**

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, 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 such person to another;”.

(b) Import.....

Amendment in schedule II

2. Activities ¹[or transactions] to be treated as supply of goods or supply of services

~~(7) The following shall be treated as supply of goods, namely:—~~

~~Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.~~

Omitted w.e.f.
1.7.2017

Analysis

Impact

- The said retrospective amendment is proposed to **safeguard levy of the tax on the amount collected by clubs, associations, society or any such bodies from its members or constituents.**
- Non applicability of Doctrine of Mutuality.

Reason

To put end to litigation

Calcutta Club Ltd. [2019]110 taxmann.com 47 SC

- The **doctrine of mutuality** continues to be applicable to incorporated and unincorporated members club after the 46th Amendment adding article 366(29-A) to the Constitution of India.
- The **Young Men's India Association**[1970] 1 SCC 462] (Supra) and other judgments which applied this doctrine continue to hold the field even after 46th Amendment.
- Sub- clause (f) of **article 366(29-A)** has no application to members clubs.

Article 366(29-A) :- (46th Amendment)

tax on the sale or purchase of goods includes:-

(a)...

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

Rotary Club [2019] 110 taxmann.com 182 (AAR- Maharashtra)P-

GST : Only membership fee recovered by club from their members, spent towards incurring various administrative expenses will be exempted from GST

[2020] 117 taxmann.com 746 (AAR - MAHARASHTRA) Apsara Co-operative Housing Society Ltd.

GST : Activities of a co-operative housing society, such as obtaining conveyance from builder, managing, maintaining and administering property of society, raising funds for achieving objects of society, undertaking and providing social, cultural or recreational activities, can be considered as rendering of 'supply' of services to its members under section 7

Litigation put to end, Government proposed a retrospective amendment by way of insertion of this sub clause (aa) to ensure the levy of tax on the amounts collected from the members towards the supply of goods/services.

Critical Analysis

Two Deeming Fictions

the person and its members or constituents shall be **deemed to be two separate persons**

supply of activities or transactions inter se shall be deemed to take place from one such person to another

Points to Ponder

- **Validity of Retrospective amendment, in light of Test of Justice and fairness. Another round of Litigation. Additional burden on taxpayer being retrospective.**
- Definition of **Distinct person not amended** to overcome the concept of Doctrine of Mutuality, deeming fictions applied.
- **Ill drafting of the language** of the proposed amendment.(e.g Supply of activities or transactions ?)
- **Issue of Consideration** in light of Indian Contract Act, **being passed from one person to another.**

~~(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.~~

~~*[Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.]~~

In section 35 of the Central Goods and Services Tax Act, sub-section (5) shall be omitted.

Substitution of new section for section 44.

5 Annual return

Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person **shall furnish an annual return which may include a self certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year,** with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:

Provided that the Commissioner may, on the recommendations of the Council, by notification, **exempt any class of registered persons from filing annual return under this section:**

Provided further that **nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force."**

Analysis



Annual Return + Self Certified Reconciliation Statement

- Section 35 and 44 has been amended to **remove the Mandatory requirement of GST audit by professionals.**
- The requirement for audited reconciliation has been **replaced by a self certified reconciliation statement** reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically.
- Thus, every person required to file annual return would be required to file a self certified reconciliation of his as well.
Shift of responsibility from auditor to taxpayer.
- This proposition although is a loss of opportunity for the professionals, but on the other side of the coin, it is **lesser responsibility on the part of professional** and more on the part of taxpayers. This may further **lead to loss of revenue to the government** and **more tax burden at the time of assessment to the taxpayers.** Need to **compare tax cost vs. compliance cost.**
- This proposed amendment is **not applicable for F.Y. 2019-20.**

Amendment in section 74

7 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 to section 74(1):-

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

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;
- (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, 125, 129 and 130~~ **122 and 125** are deemed to be concluded.

Analysis

- **Delinking of proceedings under section 73, 74 from the proceedings u/s 129(Detention), 130(Confiscation).**(prevailing Anomaly removed)
- Section 74 of the CGST Act is being amended so as make seizure and confiscation of goods and conveyances in transit **a separate proceeding from recovery of tax.**
- The proceedings against other persons u/s 129, 130 would still continue even after conclusion of proceedings u/s 73 or 74.
- This means that the conclusion of proceedings for a tax period under Section 74 would not bring conclusion to proceedings under Section 129 / 130 in respect of transactions recorded by the taxpayer for such tax period and made part of proceedings under section 74.

Amendment of section 75.

8 General provisions relating to determination of tax.

Explanation inserted:-

‘Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.’

Analysis

- This proposed amendment **widens the scope of self assessed tax** by including tax payable in respect of output supplies in GSTR 1 but not included in GSTR 3B.
- In cases where the liability in **GSTR-1 exceeds that from GSTR-3B, the same would be construed as “Self Assessed Tax”**
- Such short payment may give rise to invocation of **recoveries u/s 79** by virtue of sec. 75(12) and even attachment of **bank accounts through amended provision of Sec. 83.**
- In case of mismatch between GSTR 1 and 3B, **SCN need not to be issued and Opportunity of being heard need not to be provided.** (Although one may rely upon the judgment of LC infra [2020] 116 taxmann.com 205 (Karnataka) and Mahadeo Construction Co. [2020] 116 taxmann.com 262.)
- This will **curb the malpractices whereby liability was shown more in GSTR 1 rather than GSTR-3B, to avoid tax payments.**

Amendment of section 107.

10 Appeals to Appellate Authority.

Section 107(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 ¹[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.”.

Analysis

- Appeal against order of detention and seizure of goods in transit can now be made only after making pre deposit of 25% of penalty as levied under Section 129(3).
- This is in lieu of deposit of 10% of tax amount .
- This will lead to blockage of working capital.

Amendment of section 129.

11 Detention, seizure and release of goods and conveyances in transit

Section	Old	New
129(1)	(1) Notwithstanding anything contained in this Act, where <u>any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act</u> or the rules made thereunder, <u>all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance</u> shall be liable to detention or seizure and after detention or seizure, <u>shall be released</u> ,—	Same
129(1)(a)	on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;	on payment of the applicable tax <u>penalty equal to two hundred per cent. of the tax payable on such goods</u> and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;
129(1)(b)	on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;	on payment of penalty equal to <u>fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher</u> , and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;”;
129(2)	The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.	omitted

Section	Old	New
129(3)	The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).	The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure , specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).";
129(4)	No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.	No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
129(5)	On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.	Same
129(6)	<p>Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within 1[fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:</p> <p>Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.</p>	<p>Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen 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 such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):</p> <ul style="list-style-type: none"> ➤ Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less: ➤ Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer."

Section 129 :- Detention, seizure and release of goods and conveyances in transit.

Penalty for release of such detained goods & conveyance

Owner comes forward

Owner does not comes forward

If goods taxable

If goods exempted

If goods taxable

If goods exempted

Penalty equal to
200% of tax payable
on such goods

2% of value of goods
or Rs. 25000/- w.e. is
Less

Penalty equal to 50% of
value of goods
Or
200% of the tax payable
on such goods, whichever
is higher,

5% of value of goods
or Rs. 25000/- w.e.
Less

Examples

When the goods are taxable and the owner comes forward to pay penalty – then the amount payable would be equal to: Penalty equal to 200% of tax payable on such goods

Example 1:- if the taxable goods valued at ` 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward, the amount payable would be equal to:

Penalty ` 200% of 12,000/- = ` 24,000/-.

When the goods are exempt and the owner comes forward to pay the penalty – then the amount payable would be equal to: Penalty at 2% of value of goods or ` 25,000/-, whichever is lower.

Example 2:- , if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: ` 2,000/- or ` 25,000/- whichever is lower, in this case it is ` 2,000/-

Examples

When the goods are taxable and the owner does not come forward to pay the tax and penalty– then the amount payable would be equal to: Penalty equal to 50% of value of goods Or 200% of the tax payable on such goods, whichever is higher,

The taxable goods valued at ` 1,00,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay tax and penalty the amount payable would be equal to:

Penalty ` 50,000/- [i.e. 50% of value of goods}

Or

200% of Rs. 12000=24000

i.e Rs. 50000/-

When the goods are exempt and the owner does not come forward to pay the penalty – then the amount payable would be equal to: Penalty at 5% of value of goods or ` 25,000/-, whichever is lower.

Example: if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to: ` 5,000/- or ` 25,000/- whichever is lower, in this case it is ` 5,000/-.

NOTE: 1) Penalty under section 129 is an '**penalty in action**', that is, penalty cannot be imposed after completion of movement in case goods are NOT intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 CANNOT be imposed if such investigation is conducted after movement has ended. (**Patna HC in the case of Ram Charitra Ram Harihar Prasad vs State Of Bihar (CWP 11221 of 2019)**)

Analysis

- Conveyance and goods released, **only penalty** is required to be paid by the concerned person.
- Instead of 100% Tax and 100% Penalty payment, now penalty of 200% of tax payable is applicable.
- Goods cannot be released **provisionally** upon execution of bond or furnishing of security.
- Time limit prescribed (i.e. 7 days) for issue of notice Mov-07 after detention order in MOV-06.
- Further time limit for issue of order in MOV-09 restricted to 7 days from service of such notice on MOV-07.
- Prior to proposed amendment the time period for payment of tax and penalty was 14 days from the date of seizure of conveyance and goods detained were liable for confiscation. Now, the goods or conveyance detained or seized shall become liable to be sold or disposed off within 15 days from date of receipt of copy of order imposing penalty. Earlier it was confiscation and now it is sale for recovery of penalty.
- The transporter can now release the conveyance on payment of **penalty imposed by the officer or RS. 10000/- whichever is less.** **This provision will give relief to transporter against whom the detention proceedings were initiated due to default of supplier or receiver.**

Amendment of section 130

12 Confiscation of goods or conveyances and levy of penalty

Section	Old	New
130(1)	Notwithstanding anything contained in this Act, if any person-	where, if any person-
130(2) second proviso	Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:	Provided further that the aggregate of such fine and penalty equal to hundred per cent. of the tax payable on such goods"
130(3)	Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.	Omitted

Analysis

- The **non-obstante clause is no more there** which means section 130 is now not having any overriding impact.
- Section **130 proceedings delinked from Section 129**. Penalty of 100% of tax payable will become applicable.
- Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.
- Relief to taxpayer, in case of **fine in lieu of confiscation of goods or conveyance** is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable shall be omitted.
- The **above amendment has follows the ruling of Hon'ble Gujrat HC in Synergy Fertichem Pvt. Ltd. Which held that these are two differently operating sections as against Kerala HC judgment in Age Industries which stated 130 cannot be restored with putting 129 in operation**

Substitution of new section for section 151.

13 Power to call for information.

“151. 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.”

Analysis

Empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

The power can be exercised on any person and in respect of any information relating to any matter dealt with in connection with this Act.

This is a very wide power and allows officer to call for any information like call records from telecommunication authority (though guidelines issued in this regard may need to be followed), detail of money transaction from banks in any account, construction records from Municipal bodies, records of transactions from any website, purchase details of its customers from any supplier etc.

Jurisdictional Commissioner
in memo ?????

THANK YOU

Disclaimer

The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.



For GST updates
please WHATS APP
YOURNAME_CITY on
9988692699

BY:

CA AANCHAL ROHIT KAPOOR

M. No. 9988692699, 9888069269

E-mail :aanchalkapoor_ca@yahoo.com