

HIGHLIGHTS OF AMENDMENTS PROPOSED BY THE FINANCE BILL, 2023

CLAUSE BY CLAUSE ANALYSIS OF PROPOSED AMENDMENTS

PROPOSED AMENDMENTS IN THE CGST ACT, 2017

1. Clause 128 of the Finance Bill, 2023

(a) Section 10(2)(d) - Eligibility for opting composition scheme

Existing provision

10(2) The registered person shall be eligible to opt under sub-section (1), if--
(d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52.

Proposed amendment

10(2) The registered person shall be eligible to opt under sub-section (1), if--
(d) he is not engaged in making any supply ~~of goods~~ or services through an electronic commerce operator who is required to collect tax at source under section 52.

Author's comments on proposed amendment

The amendment seeks to allow a supplier of goods, engaged in making supply of goods through e-commerce operator like Amazon, Flipkart, etc., to opt for composition scheme u/s 10(1) which was earlier restricted. This will enable small scale suppliers of goods to sell their goods through the ever-growing electronic marketplace which will increase their presence, customer-base and ultimately their sales. Having said that, the supplier shall not be allowed to supply to customers outside his state (inter-state) as the said condition u/s 10(2) remains unchanged, and the e-commerce operator has been made responsible to ensure the same through insertion of a penal provision - sub-section (1B) u/s 122.

(a) Section 10(2A)(c) - Eligibility for opting composition scheme

Existing provision

10(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not--

(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;

Proposed amendment

10(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not--

(c) engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under section 52;

Author's comments on proposed amendment

The amendment seeks to allow a supplier of goods or services or both, engaged in making supply of

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goods through e-commerce operator like Amazon, Flipkart, etc., to opt for composition scheme u/s 10(2A) which was earlier restricted. This will enable small scale suppliers of goods to sell their goods through the ever-growing electronic marketplace which will increase their presence, customer-base and ultimately their sales. Having said that, the supplier shall not be allowed to supply goods through ECO to customers outside his state (inter-state) as the said condition u/s 10(2A) remains unchanged, and the e-commerce operator has been made responsible to ensure the same through insertion of a penal provision – sub-section (1B) u/s 122.

2. Clause 129 of the Finance Bill, 2023

(i) Second Proviso to Section 16(2) – Condition for claiming input tax credit

Existing provision

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Proposed amendment

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be **added to his output tax liability, along with interest thereon paid by him along with interest payable under section 50**, in such manner as may be prescribed:

Author's comments on proposed amendment

The amendment seeks to eliminate ambiguity in as much as reversal of credit on account of non-payment of consideration to supplier within 180 days was interpreted as payment of output tax liability. Post-amendment the same will be interpreted as payment/reversal of credit. As a result of this amendment, interest should be levied on payment of such credit in accordance with Section 50(3) instead of 50(1).

(ii) Third Proviso to Section 16(2) – Condition for claiming input tax credit

Existing provision

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

Proposed amendment

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

Author's comments on proposed amendment

The amendment is a clarificatory amendment that only seeks to improve the language of the provision so that it does not result in any unintended interpretation.

3. Clause 130 of the Finance Bill, 2023

(a) Section 17(3) – Value of exempt supply for the purpose of reversal of common ITC

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Existing provision

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

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

Proposed amendment

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

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

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

Author’s comments on proposed amendment

The amendment seeks to enhance the value of exempt supply ascertained for the purpose of quantifying reversal of common credit in proportion to value of exempt supplies. The value of exempt supplies shall now include the value of supply of warehoused goods (customs warehouse) before clearance for home consumption which is non-taxable supply under Para 8(a) of Schedule III. The valuation may be prescribed by way of Rules. Interestingly, high sea sales covered under Para 8 (b) and third-country sales covered under Para 7 have not been included in the value of exempt supply.

(b) Section 17(5) – Blocked credits

Proposed amendment – insertion of a new clause (fa)

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

Author’s comments on proposed amendment

The amendment seeks to disallow the credit of input tax incidence borne on goods or services or both received by a registered person to fulfill his obligation of corporate social responsibility u/s 135 of the Companies Act, 2013. Although, the obligation being mandatory in nature arises in the course of business and passes the test of Section 16(1) but has been disallowed by inserting clause (fa) under the overriding provision of Section 17(5). **The amendment will result in diversion of CSR funds to government’s kitty as the entity would consider the blocked GST incidence as its fulfillment towards CSR. To say, if XYZ Pvt. Ltd. was earlier spending Rs. 2 crores towards CSR excluding GST (which was available as credit to XYZ), it will now spend Rs. 2 crores including GST on CSR (as the amendment will block the credit).**

4. Clause 131 of the Finance Bill, 2023 – Substitution of new section for section 23

Section 23 – Persons not liable for registration

Existing provision

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

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- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
 - (b) an agriculturist, to the extent of supply of produce out of cultivation of land.
- (2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Proposed amendment with retrospective effect from 01.07.2017

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

- (a) the following persons shall not be liable to registration, namely: -
 - (i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act, 2017;
 - (ii) an agriculturist, to the extent of supply of produce out of cultivation of land;
- (b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.

Author's comments on proposed amendment

The amendment seeks to give Section 23 an overriding effect over Sections 22 and 24 retrospectively. It is a welcome amendment for entities like educational institutes, clinical establishments who are exclusively engaged in making exempt supplies yet liable to obtain registration under GST on account of availing services of GTA, Advocate, etc. taxable under reverse charge. The overriding effect of Section 23 will save such entities from obtaining registration otherwise mandatory u/s 24.

5. Clause 132 of the Finance Bill, 2023

Section 37 - Statement of outward supplies [GSTR-1]

Proposed amendment - insertion of new sub-section (5)

(5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after the expiry of a period of three years from the due date of furnishing the said details:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details.

Author's comments on proposed amendment

The amendment seeks to prevent registered persons from filing GSTR-1 after the expiry of 3 years from the due date. The amendment provides the maximum time up to which a person can file the GSTR-1 statement. The proviso empowers the government to notify exclusion in special cases.

6. Clause 133 of the Finance Bill, 2023

Section 39 - Return [GSTR-3B]

Proposed amendment - insertion of new sub-section (11)

(11) A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to

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such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return.

Author's comments on proposed amendment

The amendment seeks to prevent registered persons from filing GSTR-3B return after the expiry of 3 years from due date. The amendment provides the maximum time up to which a person can file the GSTR-3B. Facility of DRC-03 could be used after expiry of 3 years. The proviso empowers the government to notify exclusion in special cases.

7. Clause 134 of the Finance Bill, 2023

Section 44 - Annual Return

Existing provision

44. 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.

Proposed amendment

(1) 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.

(2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.

Author's comments on proposed amendment

The amendment seeks to prevent registered persons from filing GSTR-9 and 9C after the expiry of 3 years

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from due date. The amendment provides the maximum time up to which a person can file these returns. The proviso empowers the government to notify exclusion in special cases.

8. Clause 135 of the Finance Bill, 2023

Section 52 – Collection of tax at source by e-commerce operator

Proposed amendment – insertion of sub-section (15)

(15) The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement.

Author's comments on proposed amendment

The amendment seeks to prevent e-commerce operators liable to collect TCS on supplies made through them from filing GSTR-8 after the expiry of 3 years from due date. The amendment provides the maximum time up to which the operator can file the statement. The proviso empowers the government to notify exclusion in special cases.

9. Clause 136 of the Finance Bill, 2023

Section 54(6) – Grant of provisional refund on account zero-rated supply of goods or services or both

Existing provision

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

Amended provision

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

Author's comments on proposed amendment

The amendment seeks to remove the reference to provisionally accepted credit in the above provision to align it with the present scheme of self-assessment of credit as per Section 41(1). Although the concept of 90% provisional refund is more theoretical than practical as the same is rarely granted to exporters.

9. Clause 137 of the Finance Bill, 2023

Section 56 – Interest on delayed refunds

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Existing provision

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

Proposed amendment

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

Author's comments on proposed amendment

The amendment seeks to empower the government to prescribe the manner of computation of grant of interest on delayed refunds, and the conditions and restrictions subject to which such interest shall be granted for the period of delay beyond 60 days from the date of receipt of the application.

10. Clause 138 of the Finance Bill, 2023

Section 122 – Penalty for certain offences

Proposed amendment – insertion of a new sub-section (1B)

(1B) Any electronic commerce operator who–

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- (ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
- (iii) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

Author's comments on proposed amendment

- (i) The amendment seeks to impose penalty on e-commerce operators who allow unregistered suppliers to make supply of goods or services through their electronic platform. Suppliers of goods or services are mandatorily liable to obtain registration when supplying goods through an e-commerce operator u/s 24. If an e-commerce operator allows an unregistered supplier to supply goods or services through it, then the operator shall be liable to penalty equivalent to the tax payable on such supply when made by a registered supplier or Rs. 10,000/-, whichever is higher. It is to be noted that suppliers of services whose aggregate turnover does not exceed Rs. 20 lakhs are exempted from obtaining registration even if supplying services through e-commerce operator u/s 23(2) r.w.

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Notification 65/2017-Central Tax. In the cases of such suppliers of services, penalty shall not be imposable. Similarly, in cases of suppliers who are exclusively engaged in making exempt supplies and are exempted from obtaining registration under the Act, no penalty shall be imposable on the e-commerce operator as TCS is not liable to be deducted u/s 52 on their supplies.

- (ii) The amendment seeks to impose penalty on e-commerce operators who allow suppliers of goods opting to pay tax under Section 10 (i.e., composition scheme) to make inter-state supplies through their platform while they are restricted from making such inter-state supplies u/s 10. The operator shall be liable to pay a penalty equivalent to the tax payable on such supply when made by a registered supplier or Rs. 10,000/-, whichever is higher.
- (iii) The amendment seeks to impose penalty on e-commerce operators who fail to furnish correct details in GSTR-8 of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act. The operator shall be liable to pay a penalty equivalent to the tax payable on such supply when made by a registered supplier or Rs. 10,000/-, whichever is higher.

11. Clause 139 of the Finance Bill, 2023

Section 132(1) - Punishment for certain offences

Existing provision

- (1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:-
 - (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
 - (b) issues 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 leading to wrongful availment or utilisation of input tax credit or refund of tax;
 - (c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;
 - (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
 - (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
 - (g) obstructs or prevents any officer in the discharge of his duties under this Act;
 - (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
 - (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
 - (j) tampers with or destroys any material evidence or documents;
 - (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

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(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,

shall be punishable--

- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- (iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
- (iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Proposed amendment

Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:-

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues 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 leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- ~~(g) obstructs or prevents any officer in the discharge of his duties under this Act;~~
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;
- ~~(j) tampers with or destroys any material evidence or documents;~~
- ~~(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or~~
- ~~(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k)~~ clauses (a) to (f) and clauses (h) and (i) of this section,

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shall be punishable--

- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;
- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;
- (iii) in the case of ~~any other offence~~ **an offence specified in clause (b)** where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;
- (iv) in cases where he commits or abets the commission of an offence specified in clause (f) ~~or clause (g) or clause (j)~~, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Author's comments on proposed amendment

The amendment seeks to decriminalize offences like obstructing or preventing an officer from discharging his duties, or tampering with material evidence, or failing to supply information required under the Act, or supplying false information. For such offences prosecution shall not be launched, but the penalties specified u/s 122 shall be imposable. The amendment also seeks to increase the monetary threshold for launching prosecution for the offences from Rs. 1 crore to Rs. 2 crores, except for the offence related to issuance of invoices without supply of goods or services or both leading to wrongful utilisation of input tax credit.

12. Clause 140 of the Finance Bill, 2023

Section 138 - Compounding of offences

Existing provision

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to-

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
- (f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the

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proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Proposed amendment

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to-

- (a) ~~a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section~~ **a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132;**
- ~~(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;~~
- (c) ~~a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force~~ **a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132;**
- (d) a person who has been convicted for an offence under this Act by a court;
- ~~(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132;~~ and
- (f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ~~ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher~~ **twenty-five per cent. of the tax involved and the maximum amount not being more than one hundred per cent. of the tax involved.**

(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

Author's comments on proposed amendment

The amended in the first proviso to Section 138 seeks to simplify the language of clause (a), to omit clause

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(b), and to substitute clause (c) of said proviso so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both leading to wrongful utilisation of input tax credit from the option of compounding of the offences under the said Act. It further seeks to amend sub-section (2) so as to rationalize the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.

13. Clause 141 of the Finance Bill, 2023

Insertion of Section 158A – Consent based sharing of information furnished by taxable person

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

- (a) particulars furnished in the application for registration under section 25 or in the return filed under section 39 or under section 44;
 - (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;
 - (c) such other details as may be prescribed.
- (2) For the purposes of sharing details under sub-section (1), the consent shall be obtained, of --
- (a) the supplier, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and
 - (b) the recipient, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) only where such details include identity information of the recipient, in such form and manner as may be prescribed.
- (3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

Author's comments on proposed amendment

The amendment seeks to provide for prescribing manner and conditions for sharing of the information furnished by the registered person in his return or in his application of registration or in his statement of outward supplies, or the details uploaded by him for generation of e-invoice or E-way bill or any other details, as may be prescribed, on the common portal with such other systems, as may be notified.

14. Clause 142 of the Finance Bill, 2023

Para 7 and 8 and Explanation 2 to Schedule III – Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

Existing provision

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8. (a) Supply of warehoused goods to any person before clearance for home consumption;
- (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Proposed amendment

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(1) In Schedule III to the Central Goods and Services Tax Act, paragraphs 7 and 8 and the Explanation 2 thereof (as inserted vide section 32 of Act 31 of 2018) shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.

(2) No refund shall be made of all the tax which has been collected, but which would not have been so collected, had subsection (1) been in force at all material times.

Author's comments on proposed amendment

The amendment seeks to give retrospective effect to transactions covered under Para 7 and 8 as neither supply of goods nor supply of services, not leviable to tax. Para 7 and 8 were inserted by Finance Act, 2017 w.e.f. 01.02.2019. The Finance Bill 2023 proposes to insert them retrospectively w.e.f. 01.07.2017. The department has issued several SCNs to persons engaged in Para 7 and 8 transactions for the period 2017-18, and 2018-19 (upto 01.02.2019). Although, the case was good to contest on merits as the said transactions were not even covered by the charging provision, the retrospective effect of Schedule III to such transactions shall settle the dispute at lower level itself. However, the amendment also proposes that where the tax has already been paid in respect of such transactions during the period from 01.07.2017 to 31.01.2019, no refund of such tax paid shall be available. **The question arises about the cases where such tax has been paid as deposit under protest. Whether retention of such deposit shall be within the limits of Article 265 of COI.**

PROPOSED AMENDMENTS IN THE IGST ACT, 2017

1. Clause 143 of the Finance Bill, 2023

a. Section 2(16) - Non-taxable online recipient

Existing provision

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

Explanation.--For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,--

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or] to a municipality under article 243W of the Constitution;

Proposed amendment

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

~~Explanation. For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,--~~

~~(i) set up by an Act of Parliament or a State Legislature; or~~

~~(ii) established by any Government,~~

HIGHLIGHTS OF AMENDMENTS PROPOSED BY THE FINANCE BILL, 2023

~~with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or] to a municipality under article 243W of the Constitution;~~

(16) “non-taxable online recipient” means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation.--For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017^(12 of 2017).

Author’s comments on proposed amendment

The amendment seeks to change the meaning of non-taxable online recipient. The significance of the term is with reference to online information and database access or retrieval (OIDAR) services. When OIDAR services are supplied by an entity located in a non-taxable territory to a non-taxable online recipient, the entity is liable to obtain registration and discharge IGST on supply of such services in terms of Section 14 of the IGST Act. Earlier, the term non-taxable online recipient covered any person receiving OIDAR services in relation to any purpose other than business or profession. The amendment seeks to cover any person unregistered under GST receiving OIDAR services and located in India under the ambit of non-taxable online recipient. Accordingly, if an unregistered person in India will receive OIDAR services from an entity located outside India, whether for the purpose of business or profession, the supplier entity located outside India shall be liable to pay GST. Further, the person who is registered only for the purpose of TDS u/s 51 shall also be considered as unregistered person and the supplier entity located outside India shall be liable to pay IGST on the OIDAR services supplied to such person.

b. Section 2(17) - Online information and database access or retrieval services

Existing provision

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

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

Proposed amendment

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

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

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- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

Author's comments on proposed amendment

The amendment seeks to increase the scope of OIDAR services to cover even those services which involve significant human intervention, but their delivery is mediated over the internet and in the absence of internet they cannot be rendered. A few examples of these services can be online live coaching, webinars, online consultations, etc. which were earlier not covered under OIDAR services as they involve significant human intervention. Now, these services when provided by a foreign entity to an Indian who is not registered under GST shall be taxable and the service provider shall be liable to obtain registration and discharge IGST on such services by virtue of Section 14.

2. Clause 144 of the Finance Bill, 2023

Section 12(8) - Place of supply of transportation of goods

Existing provision

- (8) The place of supply of services by way of transportation of goods, including by mail or courier to,--
- (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

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

Proposed amendment

- (8) The place of supply of services by way of transportation of goods, including by mail or courier to,--
- (a) a registered person, shall be the location of such person;
 - (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

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

Author's comments on proposed amendment

The amendment seeks to omit the proviso that prescribed the place of supply as destination of goods irrespective of the location of recipient if the goods were destined outside India. The Proviso was inserted by the Finance Act, 2018 w.e.f. 01.02.2019. But the Finance Bill, 2023 restores the position prior to the said date. The place of supply of transportation of goods shall be determined in the regular manner u/s 12 irrespective of destination. Recently, Circular 184 was also issued in relation to above existing Proviso by the Board regarding the admissibility of credit to recipient in case the place of supply as per the existing Proviso falls outside India. As a result of the amendment, the entire tax would not accrue to the Union Government but also the Government of the State in which the place of supply as per clause (a) or (b) will fall.
