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# BUDGET AMENDMENTS INDIRECT TAX

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# 2023

## 1. Clause No.128 of Finance Bill, 2023

It has been proposed that Section 10(2) and section 10(2A) of the CGST Act,2017 is being amended for relaxing the condition on the person opting to make the payment of tax at composition rate. Now such person may also make intra state supply of goods through e-commerce operator.

**Suri View:** This amendment helps the small compositions dealers (up to 1.50 Crores (75 Lakhs for certain states) of aggregate supplies in a year) to explore sales through E-Commerce without additional tax burden.

However, the E-Commerce Service Providers are still not eligible for Composition Scheme.

## 2. Clause No.129 of Finance Bill, 2023

The following Proviso under Section 16 (2) of the CGST Act,2017 has been proposed to be amended:

a) in the second proviso, for the words "added to his output tax liability, along with interest thereon", the words and figures "paid by him along with interest payable under section 50" shall be substituted.

b) in the third proviso, after the words "made by him", the words "to the supplier" shall be inserted.

**Suri View:** Currently in the GST portal, reversal of ITC in case of failure to make payment to the supplier within 180 days from the date of invoice and its subsequently re-availed is shown under the ITC part in GSTR-3B. Hence, such ITC reversal is not practically getting added to the Output tax liability as mentioned in Section 16, instead it gets reduced from the ITC. Now the Act has aligned to the practical procedure followed for ITC reversal. Further, third proviso amendment now give clarity that such ITC reversed can be re-availed only when the payment is made to the supplier.

## 3. Clause No.130(a) of Finance Bill, 2023

Explanation to Section 17(3) is proposed to be amended to further include supply of warehoused goods before clearance for home consumption (Paragraph 8(a) of Schedule III) within the ambit of exempt supply for the purpose of reversal of ITC under Section 17(2) r/w Rule 42 and Rule 43 of the CGST Rules, 2017.

**Suri View:** Section 17(2) restricts the availability input credit to the extent attributable only to taxable supply. Hence, the proportionate common credit to the Exempted supply is not eligible for the recipient. Section clearly states that for considering the value of Exempted Supply the Schedule III transactions (i.e., activities or transactions which are treated neither as supply of goods nor as supply of services) should not be considered except the 'Paragraph 5 - Sale of land and sale of building'. Now, through this proposed amendment Paragraph 8 is also added along with Paragraph 5. Which means supply of warehoused goods before clearance for home consumption will now to be considered as Exempted Supply for the purpose of Input Tax Credit reversal. The same is coming in Schedule III in order to avoid double taxation since the IGST will be already paid the Importer under Customs Act.

It is interesting to note that High Seas Sales is still not considered as part of Exempted Turnover for the purposes of reversal and hence no reversal is warranted.

This amendment may reduce the attraction of in-bond sales. Instead, the Importer may clear the goods on payment of IGST and then make a normal sale to his customer outside the warehouse and thus retaining the benefit of ITC.

Thus, the warehoused goods sales will either be preponed, i.e., converted into a High Seas sales or postponed – i.e., regular post import sale.

## 4. Clause No.130(b) of Finance Bill, 2023

### ITC restricted on goods and services in relation to CSR activities.

Section 17(5) of the CGST Act to restrict availability of ITC in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities of corporate social responsibility (CSR) as provided for under Section 135 of the Companies Act, 2013.

**Suri View:** ITC related to an expenditure which is in the nature of CSR cannot be availed. This is not a retrospective amendment hence ITC already availed may be allowed subject to the dispute on whether the same can be considered as Business Expenditure or not. Further, many are taking a view that the restriction on availing ITC is only on the CSR requirement as per Section 135 of the Companies Act,2013, which means ITC on any excess expenditure spent in addition to the statute requirement may be eligible. However, the same may also has to be considered as not eligible if the view taken is the excess amount spent is not a business expenditure since the same is not mandated by a statute.

It may also be worthwhile pondering whether any ITC taken can be considered as fulfilment of CSR percentage and may entail further spend.

#### **5. Clause No.131 of Finance Bill, 2023**

Section is proposed to be amended retrospectively from 01.07.2017 to give overriding powers over the Section 22(1) and Section 24.

**Suri View:** Section 24 provides the cases where mandatory registration is needed, and Section 22(1) provides for Registration requirement. As per Section 24 it is needed to take mandatory registration for a person liable to pay tax under reverse charge mechanism. Post recent amendments are certain goods and services where tax need be paid by registered person (For example: GTA, Renting of residential dwelling etc). Currently it is disputable that if the person is exclusively providing exempted supply and received GTA service or similar service as mentioned above whether there is a need for registration and payment of tax. Now, with this proposed amendment, which gives overriding effect Section 23 over Section 24 and Section 22(1), it is clear that registration and payment of taxes are not needed in such scenario.

In summary, if a person is exempted from Registration under Section 23, then he need not register with GST even he is covered under compulsory registration under Section 24. Thus, Section 23 is final.

#### **6. Clause No.132,133,134 & 135 of Finance Bill, 2023**

Proposed to amend the Section 37,39,44 & 55 of the Act to restrict a registered person from filing return in Form GSTR-1, From GSTR 3B, Form GSTR 8 and Form GSTR 9 after the expiry of a period of 3 years from the due date.

**Suri View:** A cap for the maximum period by which one has to file the above returns has been bought in with these proposed amendments.

#### **7. Clause No.136 of Finance Bill, 2023**

Sub-section (6) of section 54 of the CGST Act is being proposed to be amended by removing the words "excluding the amount of input tax credit provisionally accepted."

**Suri View:** This is only a rectification amendment. The provisional credit scheme which was provided under section 42 of the Act was omitted and concept of provisional credit is absent. Hence, Section 54(6) need not have such exclusion. Therefore, this amendment is proposed.

#### **8. Clause No.137 of Finance Bill, 2023**

It is proposed to amend section 56 of the Act. For the words "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", the words "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" shall be substituted.

**Suri View:** Interest period is not changed. Now it gives the power to government for computing interest based on conditions and restrictions on such interest. This has to be prescribed through rules after enactment of this amendment.

#### **9. Clause No.138 of Finance Bill, 2023**

A new sub-section (1B) in section 122 of the CGST Act is proposed to be inserted so as to provide for penal provisions applicable to Electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers. Penalty will be Rs. 10,000 or the amount of tax involved which ever is higher.

#### **10. Clause No.139 of Finance Bill, 2023**

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

(g) obstructs or prevents any officer in the discharge of his duties under this Act;

(j) tampers with or destroys any material evidence or documents;

(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information.

### 11. Clause No.141 of Finance Bill, 2023

A new section 158A in the CGST Act is being inserted so as 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 including the details uploaded by him for generation of electronic 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.

The details as mentioned above, which discloses the identity of the recipient would be shared on prior consent of the recipient.

It is also provided that the government or the common portal cannot be sued for any additional liability to the registered person due to sharing of the information and the liability of the taxpayer would not have any impact.

### 12. Clause No.142 of Finance Bill, 2023

Retrospective effect from 01-07-2017 has been proposed for the amendments made to Schedule III w.e.f 01-02-2019 through CGST (Amendment) Act, 2018.

**Suri View:** *The proposed amendment clarifies that supply of goods without such goods entering India, high seas sales and sale of warehoused goods before clearance for home consumption would not be taxable under GST from 1.07.2017. This amendment will reduce the dispute from the department for the period from 1.07.2017 to 31.1.2019 where there was uncertainty on taxability of these transaction. However, it has clarified that refund would not be granted where the taxes were actually paid for these transactions during this period.*

## AMENDMENTS IN THE IGST ACT, 2017

### 13. Clause No.143 of Finance Bill, 2023

Clause (16) of section 2 of the IGST Act is being amended so as to revise the definition of 'non-taxable online recipient' to remove the purpose of the import. Earlier, the unregistered person had to import the service for non-business purposes. Now as per the new definition 'nontaxable online recipient' means any unregistered party receiving online information and database access or retrieval services located in taxable territory for any purposes will be treated as a non-taxable online recipient.

Clause (17) of the said section is being amended to revise the definition of 'online information and database access or retrieval services' to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.

**Suri View:** *This might bring more services into Online Service and the impact needs to be analysed on case-to-case basis.*

### 14. Clause No.144 of Finance Bill, 2023

Proviso to sub-section (8) of section 12 of the IGST Act is being omitted so as to specify that the place of supply will be the place of registered recipient/location at which such goods are handed over for their transportation if the recipient is not registered, in cases where the supplier of services and recipient of services are located in India.

**Suri View:** *Where the location of supplier of services and the location of the recipient of services is in India as per proviso to sub-section (8) of section 12 of the IGST Act if the goods are transported to a place outside India then place of supply of Goods will be destination of such goods.*

*This proviso was omitted which means for Transportation services, post this amendment, if the location of the supplier and recipient is in India then the place of supply of Service will be either :*

- a) *the place of registered recipient or*
- b) *location at which such goods are handed over for their transportation if the recipient is not registered.*

The following table highlights the place of supply in different scenarios since the inception of the Act:

Location of recipient and supplier	From 1st July 2017	W.E.F. 01.02.2019	Pursuant to Finance Bill 2023, Proposed Amendment
Where the location of supplier of services and the location of the recipient of services is in India	<p>Place of Supply of Service will be:</p> <p>(a) the location of registered recipient; (or)</p> <p>(b) if unregistered, the location at which such goods are handed over for their transportation.</p>	<p>Place of Supply of Service will be:</p> <p>(a) the location of registered recipient; (or)</p> <p>(b) if unregistered, the location at which such goods are handed over for their transportation.</p> <p><b>Further, where the transportation of goods is to a place outside India, then the place of supply shall be the place of destination of such goods.</b></p> <p><b>Impact: If POS is outside India – IGST Invoice even when the recipient will be in the same state.</b></p> <p><b>ITC for the Exporters became a challenge as POS was different (Outside India) compared to the State of the Exporter.</b></p> <p><b>However, Government gave a clarification, ITC can be availed.</b></p>	<p>Place of Supply of Service will be:</p> <p>(a) the location of registered recipient; (or)</p> <p>(b) if unregistered, the location at which such goods are handed over for their transportation.</p> <p><b>Impact: Even when the destination is outside India, the POS now will be the recipient’s location. If it is the same state of the Service provider then it will be CGST/SGST invoice, else IGST Invoice and thus the provision had returned back to Pre-Feb-2019 state.</b></p>
Where the location of the supplier of services OR the location of the recipient of services is outside India	<p>The place of supply of services of transportation of goods, other than by way of mail or courier, was always be the place of destination of such goods. (Section 13).</p> <p><i>This position has not been changed and remains the same.</i></p>		

## **AMENDMENTS IN CUSTOMS ACT, 1962, CUSTOMS TARIFF ACT, 1975 & Central Excise**

1. Time limit for few customs exemptions, which are currently conditional, is not applicable for certain cases.
2. The order under sub-section (5) shall be passed by the Settlement Commission within a period of nine months from the last day of the month in which the application under section 127B is made.
3. Refer finance bill for the rate changes in First schedule to the Customs Tariff Act, 1975 & Changes in Customs duty rates.
4. Excise duty proposed to be exempted on blended Compressed Natural Gas (CNG) from so much of the amount as is equal to GST paid on biogas /compressed bio gas contained in such blended CNG