

# G N LAW ASSOCIATES



## NEWS UPDATE

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### Budget 2023 – Important Changes in GST

Any changes in GST law has to be preceded by the recommendation of the GST Council, which are in public domain in the form of press releases, agenda and minutes of the GST Council. Thus the surprise elements on the Budget in so far as GST is concerned is almost absent, making it damp squib as far as GST amendments are concerned. Nevertheless, it is important to understand the amendments proposed through Finance Bill, 2023 to GST law.

(i) **Amendments in composition scheme.**

Section 10 of the CGST deals with the composition scheme, applicable for small suppliers. The said scheme is not applicable to certain categories of suppliers, one of which being, any supplier effecting supplies of goods or services, through E-commerce operators. Now this restriction has been removed and suppliers of goods though E-commerce operators have been allowed to opt for composition scheme and the prohibition will apply only for suppliers of services.

(ii) **Amendment in Section 16.**

As per the second provision under sub-section (2) of section 16, any taxable person who has availed Input Tax Credit (ITC) shall pay the value of supply and tax thereon to the supplier, within 180 days from the date of invoice, failing which the ITC availed “shall be added to his output tax liability”. Now, a semantic amendment has been made to the effect upon failure to make the payment as above, the “amount equal to ITC availed shall be paid” by the taxable person. The change is only semantic and the liability to reverse the credit continues as such.

(iii) **Restriction on ITC – Section 17.**

Schedule III of the CGST Act, lists out various activities, which shall neither be considered as supply of goods nor as supply of services. Sub-section (2) of Section 17 mandates that the ITC attributable to the extent the goods and services are used for making exempt supply, such ITC is ineligible and to be reversed. By way of Explanation under sub-section (3) it has been provided that the value of exempt supply for this purpose would not include the value of transactions mentioned in Schedule III (except to the extent of para 5 of the Schedule III which deals with sale of land and building). Now this Explanation has been amended where by the liability of reversal of ITC is extended to transactions covered under para 8 (a) of Schedule III also. In other words, a person making sale of warehoused goods (sale of imported goods before they are cleared from customs for home consumption), who is not required to pay any GST on such sale (as it is covered under para 8 (a) of Schedule III) would be liable to reverse proportionate ITC attributable to such transaction.

(iv) **Restriction of ITC for CSR activities.**

It has been specifically provided that ITC of taxes paid on goods and services which are used in discharge of Corporate Social Responsibility obligations under the Companies Act is not admissible. It may be noted that in view of this specific amendment, such ITC is admissible, till the amendment comes into effect.

(v) **Incongruity in Registration provisions removed.**

Section 23 of the Act lays down that (i) any person who is exclusively engaged in making non taxable supplies or exempt supplies; and (ii) agriculturalist are not required to obtain registration. Section 22 of the Act which deals with registration lays down any person whose aggregate turnover exceeds the minimum threshold limit is liable to be registered. Section 24 of the Act makes registration compulsory in certain cases. To this extent, there is an incongruity in the provisions and a person who is not liable to be registered under Section 23 may require registration if he fulfils any of the conditions under Section 22 or 24. In order to remove this anomaly, the provisions of Section 23 has been made as *non obstante*, the provisions of Section 23 shall prevail over Section 22 and 24.

(vi) **No return to be filed after three years.**

Section 37 dealing with return of outward supplies (GSTR-1), Section 39 dealing with monthly return (GSTR-3B), Section 44 dealing with annual return (GSTR-9 / 9C) and Section 52 of the Act dealing with filing of return by Electronic Commerce Reporter who is liable to collect tax at source, have been amended to the effect that no such return shall be required to be filed after the expiry of three years from the due date for filing such return.

The present dispensation requires that any return can be filed only if the said return for the preceding periods are filed. Non filing of returns also attracts late fee. By virtue of these amendments, if the above returns are not filed for a period of three years from the due date, there is no requirement to file such return and the taxpayer can proceed to file the subsequent returns. However this will not erase the liability to pay any tax for the said period, which can be recovered under Section 73 or 74. This amendment will provide some relief from payment of huge late fee.

(vii) **Amendment in penal provisions.**

Section 122 has been amended to provide for imposition of penalty on E-commerce operators, who (i) allows supply of goods or services by an unregistered person through such Electronic Commerce Operator; (ii) allows making inter-state supply, where it is not permitted (a supplier of goods through E-commerce operator can now opt for composition scheme. But under composition scheme, making inter-state supply is prohibited); and (iii) fails to furnish correct details in the return.

(viii) **Decriminalisation.**

The following offences would no more be punishable with imprisonment.

- obstructing or preventing any officer in the discharge of his duties under this Act;
- tampering with or destroying any material evidence or documents;
- failure to supply any information which he is required to supply under this Act or the rules made thereunder or supplying false information; and
- attempting to commit or abetting any of the above offences.

The following punishments are prescribed under sub-section (1) of Section 132.

(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;*

Clause (iii) above has been amended and the words “any other offence” is substituted with “an offence specified in clause (b) which deals with issuing fake invoice. As a result of this amendment, for any offence other than issuing fake invoice, the minimum threshold for launching prosecution is Rs. 2 crore.

(ix) **Changes in compounding provisions.**

As per Section 138 of the Act, any offence under the Act can be compounded by paying the prescribed compounding amount. The said Section also contains certain restrictions for claiming the benefit of compounding.

The minimum and maximum limits on the compounding amount have been amended as below.

Prior to amendment		Post amendment	
Minimum limit	Maximum limit	Minimum limit	Maximum limit
Rs.10,000 or 50 % of the tax, whichever is higher	Rs.30,000 or 150 % of the tax, whichever is higher	25 % of the tax	100 % of the tax

The decriminalised offences are removed from compounding scheme. This is a consequential amendment.

Clause (a) of sub-section (1) of Section 138 provides that a person who has once compounded any offence under clauses (a) to (f), (h), (i) and (l) of sub-section (1) of Section 132 shall not be allowed to compound such offence once again. Clause (b) of sub-section (1) of Section 138 provided, second time compounding of any other offence is not allowed. This restriction is now removed. Person committing the offence of issue of fake invoice cannot opt for compounding.

(x) **Retrospective effect to certain amendments in Schedule III.**

Para 7 and 8 have been added in Schedule III, with effect from 01.02.2019. Hence these transactions would not at all be considered as a supply and no GST is payable. The said paras are reproduced below.

*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.*

Now, retrospective effect is being given to these amendments from 01.07.2017. But if anybody has paid GST on such transactions, before they are placed under Schedule III, no refund can now be claimed.

(xi) **Change in the definition of “non-taxable online recipient”.**

Existing definition	Proposed definition
<p>“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.</p> <p><b>Explanation.</b> - For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body, -</p>	<p>“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’</p>

<p>(i) set up by an Act of Parliament or a State Legislature; or</p> <p>(ii) established by any Government,</p> <p>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.</p>	
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Let us see the effect of this amendment.

Section 14 of the IGST Act reads as below.

**SECTION 14. Special provision for payment of tax by a supplier of online information and database access or retrieval services.** — (1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services :

**Provided** that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely :-

(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorise delivery; and

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

(2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government :

***Provided*** that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier :

***Provided*** further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

It may be observed that if “online information access and retrieval service” is provided to a “non-taxable online recipient”, by a supplier outside India, the tax thereon shall be paid by the supplier abroad or by the intermediary of the transaction.

The phrase “in relation to any purpose other than commerce, industry or any other business or profession” in the definition of “non-taxable online recipient is removed and the definition is also simplified to mean an unregistered person. As a result of this amendment, the liability to pay GST would be on the supplier of such service, whenever such services are supplied to any unregistered person, irrespective of whether it is used for the business of the recipient or not. Any person who has obtained registration only for the purpose of deduction of tax at source would be considered as unregistered person for this purpose.

(xii) **Omission of proviso Section 12 (8) of the IGST Act.**

Section 12 (8) of the IGST Act, reads as below.

*12(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.*

As per the above, the place of supply of the services of transportation of export consignment of an Indian exporter, by an Indian transporter would be in India and attract GST.

The following proviso was added to the said sub-section, with effect from 01.02.2019.

***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.



By virtue of this proviso, the place of supply in case of transport of export consignments would be outside India, i.e. the destination. As per Section 7 (5) (a) of the IGST Act, when the supplier is in India and the place of supply is outside India, it shall be an inter-state supply and attract IGST.

But vide S.Nos. 20 A and 20B of Notification 9/2017 Integrated Tax (Rate) Dt. 28.06.2017, as introduced vide Notification 2/2018 Integrated Tax (Rate), Dt. 25.01.2018, exemption from payment of GST for such transportation service was granted upto 30.09.2018, which was extended from time to time, upto 30.09.2022. The said exemption was not extended from 01.10.2022 and hence export freight became taxable from this date.

Now, the above proviso has been omitted and the place of supply for transportation services, where both the supplier and recipient are situated in India, would be determined as per sub-section (8) of Section 12, without this proviso. If the recipient of the service is registered, the place of supply shall be the recipient's location and if the recipient is not registered the place of supply shall be the location at which the goods are handed over transportation.

Example.

Location of Shipping Line / Airline	Exporter Registered under GST?	Location of exporter	Place of supply prior to amendment	Place of supply after amendment
Tamil Nadu	Yes	Tamil Nadu	Outside India – Destination is payable (IGST is payable)	Tamil Nadu (CGST and SGST is payable)
Tamil Nadu	Yes	Kerala	Outside India – Destination is payable (IGST is payable)	Kerala (IGST is payable)
Tamil Nadu	No	Tamil Nadu	Outside India – Destination is payable (IGST is payable)	Where the goods are handed over for transportation. Tamil Nadu (CGST and SGST is payable)
Tamil Nadu	No	Kerala	Outside India – Destination is payable (IGST is payable)	Where the goods are handed over for transportation. Tamil Nadu (CGST and SGST is payable)

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