



BUDGET 2023

By:

CA ANCHAL KAPOOR

M. No. 9988692699, 9888069269

aanchalkapoor_ca@yahoo.com





BUDGETARY PROPOSALS



Important proposals in CGST and IGST Acts: -

CGST Act.

Sec 10 – Composition dealers of goods in 10(2)& 10(2(A) are allowed to sell through ECO

Sec 16 – Where the payment has not been made to the supplier within 180 days the ITC is to be paid along with interest u/s 50 (as against presently to be added to the output tax liability)

Sec 17(3) – In - Bond transfer is added to the scope of exempt supply for Rule 42/43 thereby increasing Scope of Reversal

Sec 17(5)(fa) added – Goods or services or both used for mandatory CSR activities are not eligible for ITC prospectively. For period before amendment will remain disputable issue

Sec 23 – Retrospective amendment has been made to provide that sec 23 shall prevail over sec 22 and sec 24. In other words wholly exempt suppliers need not go for registration. RCM ???

Sec 37 – No GSTR1 can be filed after 3 years from its due date.

Sec 39 – No GSTR3B can be filed after 3 years from its due date.

SUMMARY

Sec 44 - No GSTR 9 can be filed after 3 years from its due date.

Sec 52 - No TCS return can be filed after 3 years from its due date.

Sec 54(6)– 90% provisional refund may be given without reducing the amount of ITC provisionally accepted. (change is due to no concept of provisional ITC now Sec 41)

Sec 56 – Interest on delayed refund – manner and conditions and restrictions shall be provided by way of rules.

Sec 122 – sub section (1B) has been inserted to make ECO liable for penalties for 3 defaults pertaining allowing certain transaction through him and pertaining incorrect data in return

Sec 132 – Changes are made to remove certain activities liable for punishment. Clause g,j,k Minimum Threshold raised to Rs. 2 crores from 1 crore for launching prosecution except Issuance of invoices without supply.

Sec 138 – Changes are made with regard to compounding of offence. Also compounding fees reduced.



Sec 158A– Consent Based Sharing of information by common portal with other systems.

Schedule III – Explanation with regard to High Sea sales, bond sales, Merchant Trading Transactions has been made effective from 01.07.2017. No refund can be claimed on account of this change.-

IGST Act:

Sec 2(16) – Definition of non taxable online recipient has been changed (rationalised).

Sec 2(17) – in the definition of OADR has been amended wherein “essentially automated and involving a minimal human intervention and” has been omitted.

Section 12(8)Proviso omitted related to POS as Destination of Goods for Transportation of Goods outside India due to ITC issues. For past Circular 184 issued.

Clause 128-142 of Finance Bill, 2023

CGST Act

Clause 143-144 of Finance Bill, 2023

IGST Act

Amendments carried out in the Finance Bill, 2023 except those in clause 142 will come into effect from the date when the same will be notified concurrently, as far as possible, with the corresponding amendments to the similar Acts passed by the States & Union territories with legislature. Amendments carried out in the Finance Bill, 2023, vide clause 142 will come into effect retrospectively from 1st July, 2017

Amendments carried out through the Finance Bill, 2023 come into effect on the date of its enactment, unless otherwise specified.

THE FINANCE BILL, 2023

A
BILL

to give effect to the financial proposals of the Central Government for the financial year 2023-2024.

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

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance Act, 2023.

(2) Save as otherwise provided in this Act, sections 2 to 122 shall come into force on the 1st day of April, 2023.

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, 2023, income-tax shall be charged at the rates specified in Part I of the First Schedule and such tax shall be increased by a surcharge, for the purposes of the Union, calculated in each case in the manner provided therein.

Short title and commencement.

Income-tax.

Sections of CGST Act to be amended by Finance Bill, 2023

Clause of Finance Bill	Corresponding Section of GST Act	Particulars
128	Section 10	Amendment of section 10
129	Section 16	Amendment of section 16
130	Section 17	Amendment of section 17
131	Section 23	Substitution of new section for section 23
132	Section 37	Amendment of section 37.
133	Section 39	Amendment of section 39
134	Section 44	Amendment of section 44.
135	Section 52	Amendment of section 52
136	Section 54	Amendment of section 54
137	Section 56	Amendment of section 56
138	Section 122	Amendment of section 122
139	Section 132	Amendment of section 132
140	Section 138	Amendment of section 138
141	Section 158A	Insertion of new section 158A
142	Schedule III	Retrospective exemption to certain activities and transactions in Schedule III to the Central Goods and Services Tax Act.

Sections of IGST Act to be amended by Finance Bill, 2023

<u>Clause of Finance Bill</u>	<u>Corresponding Section of GST Act</u>	<u>Particulars</u>
143	Section 2	Amendment of section 2 2(16) NTOR 2(17) OIDAR
144	Section 12 (8) Proviso	Amendment of section 12(8) Proviso POS as Destination of Goods for Transportation of Goods outside India due to ITC issues. For past Circular 184 issued.



CGST

Clause 128 of the Bill seeks to amend clause (d) of sub-section (2) and clause (c) of sub-section (2A) in section 10 of the Central Goods and Services Tax Act so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the composition levy.

PROPOSAL BY 48TH COUNCIL MEETING

BASIS

Unregistered Supply & Composition



Intra State Supply



Goods



With effect from 01-10-2023

PROPOSAL BY 47TH COUNCIL MEETING

BASIS

Section 24(ix) + Intra State Supply thru E Com



Intra State Supply



Goods



With effect from 01-01-2023

In line to the same Act amended only for Composition Sec 10

SECTION 10: Composition levy

Budgetary Amendment



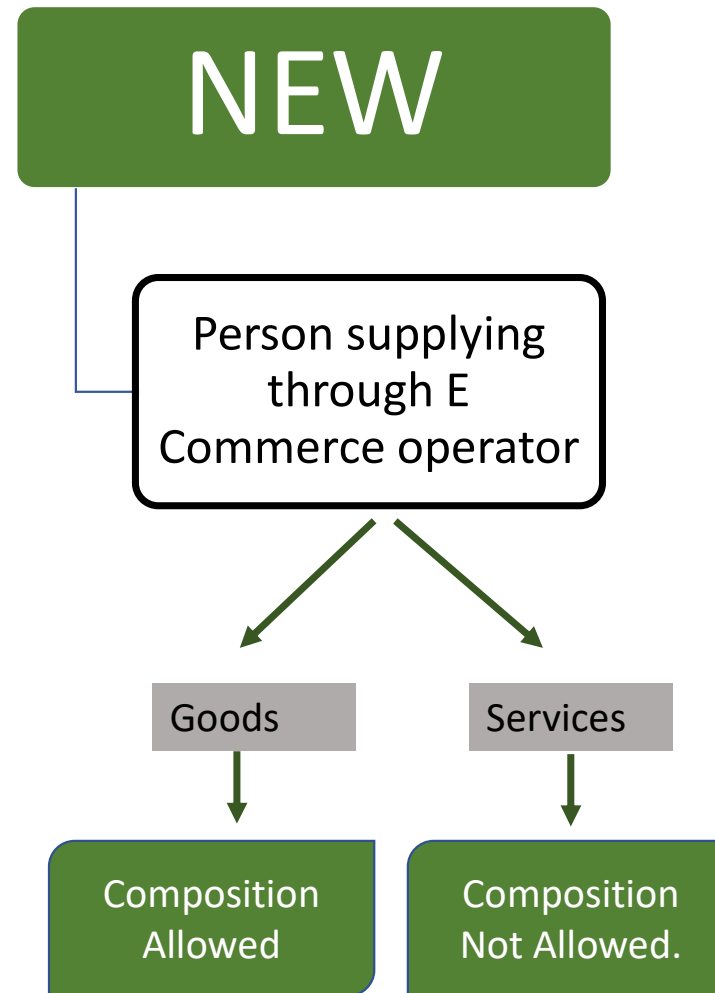
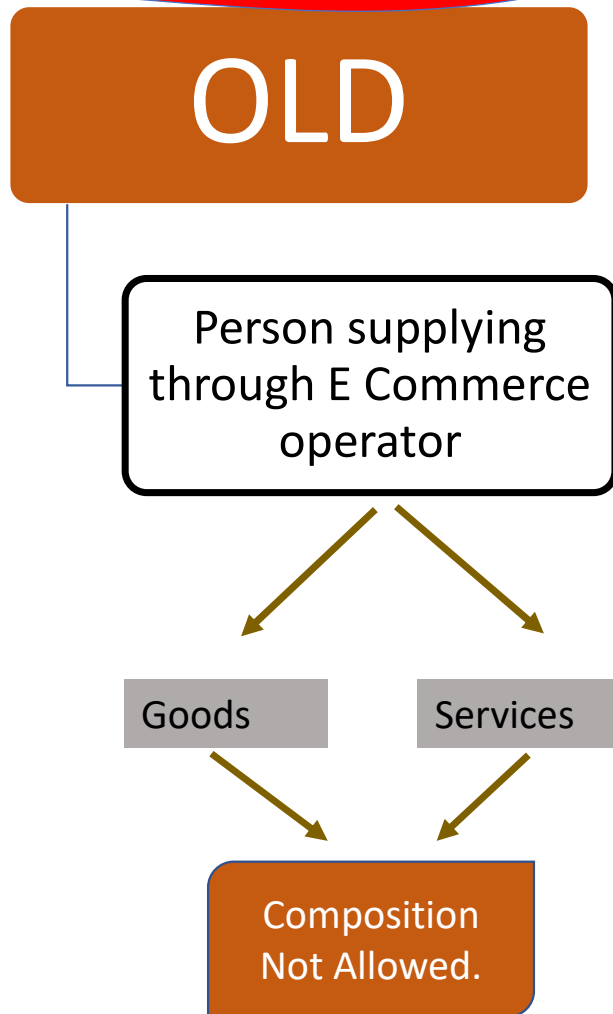
Section 10(2)(d)

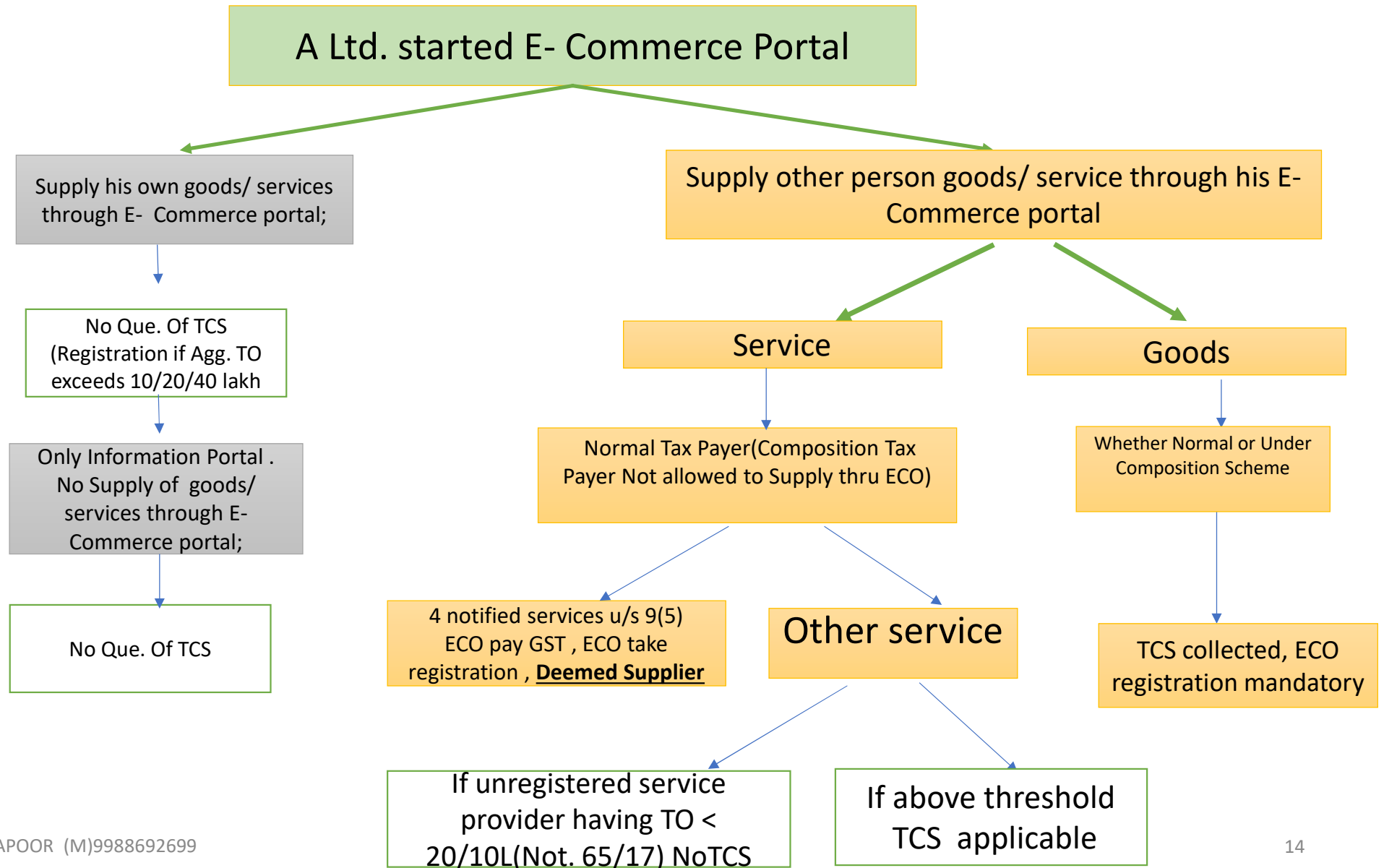
He is not engaged in making any supply of ~~goods or~~ services through an electronic commerce operator who is required to collect tax at source under section 52.

Section 10(2A)(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;

Amendment in section 10 vide Clause 128





Clause 129 of the Bill seeks to amend second and third provisos to sub-section (2) of section 16 of the Central Goods and Services Tax Act to align the said sub-section with the return filing system provided in the said Act.

Amendment in section 16 vide Clause 129

Section 16

Eligibility and Conditions for taking Input Tax Credit (ITC)



Section 16(2):

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~~ paid by him along with interest payable under section 50, along with interest thereon, in such manner as may be prescribed.

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.

➤ Substituted by THE FINANCE BILL, 2023

➤ Inserted by THE FINANCE BILL, 2023 If a recipient makes the payment of the value of supply to any other person other than the supplier (e.g. Payment to Y in behalf of X (the supplier), disputed rent paid under the Rent Control law, Section 79 direct payment to the Government instead of the creditor as part of recovery provisions etc.

Rule 37 Of CGST/SGST Rules

Reversal of input tax credit in the case of non-payment of consideration

As modified by Notification no. 19/2022 dated 28th Sept, 2022

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply wholly or partly along with the tax payable thereon, within the time limit specified in the second proviso to sub-section(2) of section 16, shall pay or reverse an amount equal to the input tax credit availed in respect of such supply proportionate to the amount not paid to the supplier along with interest payable thereon under section 50, while furnishing the return in FORM GSTR-3B for the tax period immediately following the period of one hundred and eighty days from the date of the issue of the invoice:

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

Provided further that the value of supplies on account of any amount added in accordance with the provisions of clause (b) of sub-section (2) of section 15 shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished

❖ Inserted by Notification no. 26/2022 dated 26th Dec, 2022

Bcoz Automatic Mechanism Not
implemented GSTR2 not in picture

Clause 130 of the Bill seeks to amend Explanation to sub-section (3) of section 17 of the Central Goods and Services Tax Act so as to **restrict availment of input tax credit in respect of certain transactions specified in clause (a) of paragraph 8 of Schedule III** of the said Act, as may be provided by rules, by including the value of such transactions in the value of exempt supply.

It also seeks to amend sub-section (5) so as to provide that **input tax credit shall not be available in respect of 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. As Section 17(5)(h) has been a dicy provision due to CSR being Mandatory Option and not gratuitous.

- **Section 17. Apportionment of credit and blocked credits**

- (1) Where the
- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
- (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;]**¹⁴

“except,— (i) the value of activities or transactions specified in paragraph 5 of the said Schedule;

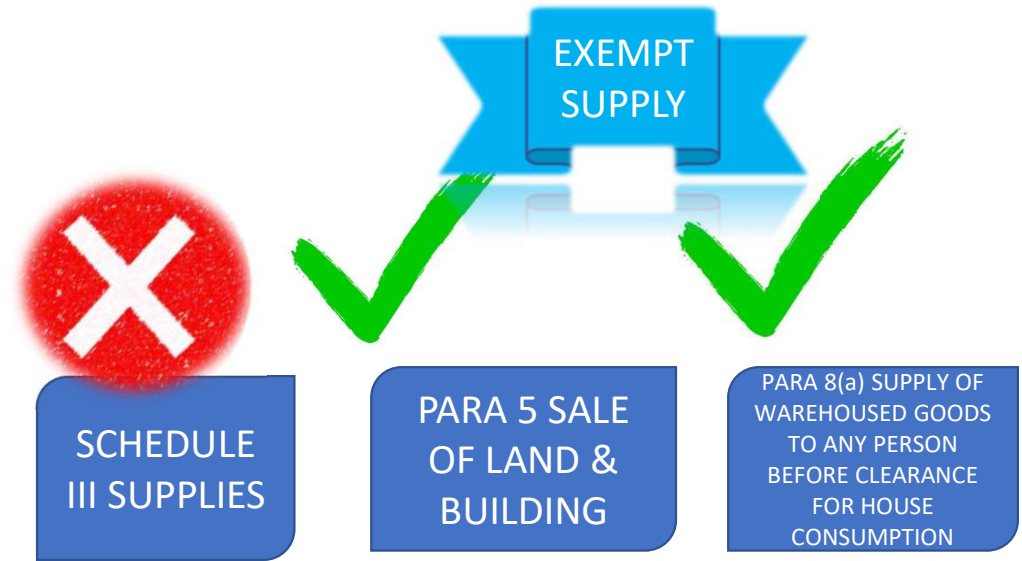
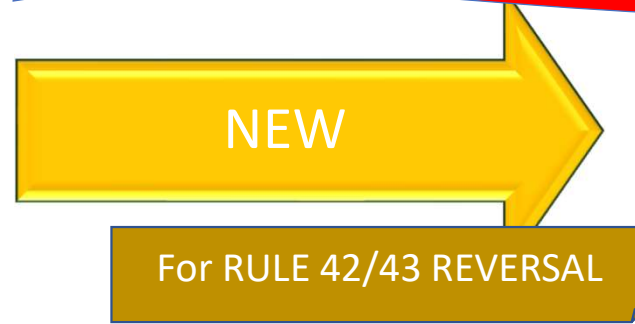
and

(ii) the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule”;

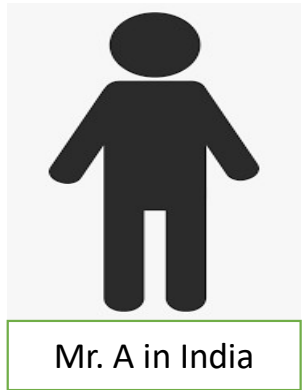
Apportionment of credit and blocked credits

Amendment in section 17 (3) EXPLANATION vide Clause 130

SECTION
17(3)
Explanation



In bond Sales



Purchase from Mr. B

Sale to Mr. C while the goods are in warehouse

KEPT in Bonded Warehouse
Before filling Bill of Entry for
Home consumption sold to Mr. C
Mr. C will not file Bill of Entry

SCHEDULE 3 not a supply but
part of EXEMPT SUPPLY for
Section 17 for Reversal

SECTION
17(5)

Notwithstanding anything contained in sub-section (1) of section 16 and sub-section (1) of section 18, input tax credit shall not be available in respect of the following , namely:-

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;



(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.”



Pre Amendment Period Litigation



Amendment in section 23 vide Clause 131
With retrospective effect from 01.07.2017

Sec. 23(1) Persons not liable for registration

NOTWITHSTANDING anything contrary to
SEC 22(1) OR SEC 24

Exclusively engaged in
supply of **exempt/not
liable to tax** goods or
services or both.

**Agriculturist (Sec. 2(7))
to the extent of supply
of produce out of
cultivation of land**



SEC 24 RCM ?

e.g Liquor
Trader paying
to GTA

Sec. 2(7):- agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land—
(a) by own labour, or
(b) by the labour of family, or
(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;

Sec. 23(2)

The Government may, on the recommendations of the council , by notification, specify the category of persons who may be exempted from registration under this Act.

Persons **exclusively** making reverse
charge supply(**Not. 5/2017 CT**) e.g
Advocates, GTA

Not. 65/2017 CT dated 15.11.2017
Person supplying thru E-Com &
Not. 56/18 CT for CTP

Not. 10/2019 CT dated 07.03.2019
Threshold Rs. 40 lacs

Clause 131 of the Bill seeks to substitute, with effect from the 1st day of July, 2017, section 23 of the Central Goods and Services Tax Act relating to persons not liable for registration so as to provide overriding effect to the said section over sub-section (1) of section 22 and section 24 of the said Act.

Clause 132 of the Bill seeks to insert a new sub-section **(5) in section 37** of the Central Goods and Services Tax Act so as to provide a time limit of three years upto which the details of outward supplies under sub-section (1) of the said section for a tax period can be furnished by a registered person. It further seeks to empower the Government, on the recommendation of the Council, to extend by notification, the said time limit for a registered person or a class of registered persons, subject to certain conditions and restrictions.

Clause 133 of the Bill seeks to insert a new sub-section **(11) in section 39** of the Central Goods and Services Tax Act so as to provide a time limit of three years upto which the return for a tax period can be furnished by a registered person. It further seeks to empower the Government, on the recommendation of the council, to extend by notification, the said time limit for a registered person or a class of registered persons, subject to certain conditions and restrictions.

Clause 134 of the Bill seeks to insert a new sub-section **(2) in section 44** of the Central Goods and Services Tax Act so as to provide a time limit of three years upto which the annual return under sub-section (1) of the said section for a financial year can be furnished by a registered person. It further seeks to empower the Government, on the recommendation of the Council, to extend by notification, the said time limit for a registered person or a class of registered persons, subject to certain conditions and restrictions.

Clause 135 of the Bill seeks to insert a new sub-section **(15) in section 52** of the Central Goods and Services Tax Act so as to provide a time limit of three years upto which the statement under sub-section (4) of the said section for a month can be furnished by an electronic commerce operator. It further seeks to empower the Government, on the recommendation of the Council, to extend by notification, the said time limit for an operator or a class of operators, subject to certain conditions and restrictions.

Section 37



GSTR-1



**Section 37(5)
Added vide
Clause 132**

Section 39



GSTR-3B



**Section 39(11) Added
vide Clause
133**

Section 44



**GST
ANNUAL
RETURN
(9/9A)**



**Section 44(2)
Added vide
Clause 134**

Section 52



GSTR-8



**Section 52(15) Added
vide Clause
135**

**Recommended
By 48th
Meeting of
GST Council**

**Last Date: 3 Years
from due date of
filing of GST Return**



**Power to Government
to provide conditions
or restrictions to
furnish GSTR even after
expiry of period**

Clause
136

Section 54: Refund of tax



Section 54: Refund of tax

- (1)
- (2)
- (3)
- (4)
- (5)

90% provisional refund may be given without reducing the amount of ITC provisionally accepted

(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.

Provisional
ITC Concept
over

**Amendment in Section 41 vide
Section 106 BUDGET 2022**

**Claim of input tax credit and provisional
acceptance thereof**

To do away with the concept of “claim” of eligible input tax credit on a “provisional” basis and to provide for availment of self assessed input tax credit subject to such conditions and restrictions as may be prescribed

~~41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.~~

~~(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.~~

41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount **shall be credited to his electronic credit ledger.**

In light of changed Sec 38(2)(b)

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the **tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest,** by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may **re-avail the amount of credit reversed by him** in such manner as may be prescribed.”

There should be no time limits of 16(4)

Clause 136 of the Bill seeks to amend sub-section (6) of section 54 of the Central Goods and Services Tax Act by removing reference to the provisionally accepted input tax credit so as to align the same with the present scheme of availment of self-assessed input tax credit as per sub-section (1) of section 41 of the said Act.

Amendment in section 56 vide Clause 137

Interest on delayed refunds

In section 56 of the Central Goods and Services Tax Act, for the words “from the date immediately after the expiry of sixty days from the date of receipt of application under the said subsection 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.

Clause 137 of the Bill seeks to amend section 56 of the Central Goods and Services Tax Act so as to provide by rules the manner of computation of period of delay for calculation of interest on delayed refunds.

RULE MAKING POWER INSERTED

Clause 138 of the Bill seeks to insert a new sub-section (1B) in section 122 of the Central Goods and Services Tax Act so as to provide for penal provisions applicable to electronic commerce operators in case of contravention of provisions relating to supplies of goods or services made through them by unregistered persons or composition taxpayers.

Amendment in section 122 vide Clause 138

Clause 138

Penalty for certain offences

Inserted after sub-section 122(1A)



(1B) Any electronic commerce operator who—

(i) Allows
Supply of Goods
& Services

By

Unregistered
Person

Other than a person
exempted from
registration by
Notification

(ii) Allows
INTER STATE Supply
of Goods & Services

By

In eligible
Person

who is not eligible
to make such inter-
State supply

(iii) Fails to furnish
Correct details in
GSTR-8

Of

outward
supply of
goods

by a person exempted
from obtaining
registration under this
Act

Shall be
Liable
To pay

Rs.10000/-

(or)

**amount
equivalent
to the
amount
of tax
involved**



DEFAULTS

Decriminalization under GST



Proposed 48th Council Meeting

The Council has recommended to -

- raise the minimum threshold of tax amount for launching prosecution under GST from Rs. One Crore to **Rs. Two Crores**, except for the offence of issuance of invoices without supply of goods or services or both;
- • reduce the compounding amount from the present range of 50% to 150% of tax amount **to the range of 25% to 100%**;
- • decriminalize certain offences specified under clause (g), (j) and (k) of sub-section (1) of section 132 of CGST Act, 2017, viz.-
 - o obstruction or preventing any officer in discharge of his duties;
 - o deliberate tempering of material evidence;
 - o failure to supply the information.

Clause 139 of the Bill seeks to amend sub-section (1) of section 132 of the Central Goods and Services Tax Act so as to decriminalise offences specified in clauses (g), (j) and (k) of the said sub-section and to increase the monetary threshold from one hundred lakh rupees to two hundred lakh rupees for launching prosecution for the offences under the said Act, except for the offences related to issuance of invoices without supply of goods or services or both.

(1) ^{79a}[Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences],
namely:—

Invoice ~~X~~ Supply

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;

Invoice but No G/S ~~X~~
BOGUS BILL

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, ^{79c}[****] or **fraudulently obtains refund and where such offence** is not *Transporter also covered* as (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;

Section 132 :- Punishment for certain offences.

- 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)~~ of this section,

Clause (a) to (f) and clause (h) and (i)

Section 132 :- Punishment for certain offences.

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; **Max**
- (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

Persons covered under Sec 132

Whoever commits, or causes to commit and retain the benefits.

Punishments

Amount of default	Punishment
Exceeds 5 crores	Imprisonment upto 5 years with Fine*
Exceeds 2 crores but less than 5 crores	Imprisonment upto 3 years with Fine*
Exceeds 1 crores but less than 2 crores ONLY for CLAUSE (b)	Imprisonment upto 1 year with Fine*
Other Specified offence in CLAUSE (f)	Imprisonment upto 6 months with fine or both

Note 1 *Minimum period shall be 6 months

Note 2 Repeated offence period shall be upto 5 years with fine

Section 132 :- Punishment for certain offences.

(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the **second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.** 5 years

(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a **term not less than six months.** Min 6 mnths

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.

a/b/c/d—cognizable+ non bailable	Others non- cognizable + bailable
----------------------------------	-----------------------------------

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) **and** punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

Section 132 :- Punishment for certain offences.

(Explanation.— For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

Cognizable means Arrest without Warrant
(Immediate Arrest)

[79.](#) Enforced with effect from 1-7-2017.

[79a.](#) Substituted for 'Whoever commits any of the following offences' by the Finance Act, 2020

[79b.](#) Clause (c) Substituted by the Finance Act, 2020 w.e.f. a date yet to be notified. Prior to substitution said clause

(c) read as under:

"(c) avails input tax credit using such invoice or bill referred to in clause (b);"

[79c.](#) Words "fraudulently avails input tax credit" omitted by the Finance Act, 2020

Section 132 :- Punishment for certain offences.

(a)

/

(b)

/

(c)

/

(d)

+

(i)

=

Cognizable +
non bailable

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;









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;**

*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;***

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;**

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;**

Section 132 :- Punishment for certain offences.

Offence involving	Punishment extending to		
Tax evaded exceeding Rs. 5 crore	5 years	 and	 Cognizable Not bailable if under clause (a,b,c,d)
Repeat offenders	5 years	and	Fine
Tax evaded between Rs. 2 crore to Rs. 5 Crore	3 years	 and	 NON cognizable & bailable
Tax evaded between Rs. 1 Crore to Rs. 2 Crore only for clause (b)	1 years	 and	 NON cognizable & Bailable
attempts to commit, or abets the commission of any of the offences mentioned in clause (a) to (f) and clause (h) and (i)	6 months	 or	 or both

Clause 140 of the Bill seeks to amend first proviso to sub-section (1) of section 138 of the Central Goods and Services Tax Act so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences under the said Act.

It further seeks to amend sub-section (2) so as to rationalise the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.

Amendment in section 138 vide Clause 140

Compounding of offences

(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) 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 clause (b) of sub-section (1) of section 132; ~~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:

- The following points are worth considering:
 - a) Irrespective of the amount, if a person deals with goods liable for confiscation or services in contravention of the provisions, he can apply for compounding.
 - b) The limit of value earlier was Rs. 1 crore to apply for compounding of certain offences has now been removed.
 - c) Earlier, a person accused of committing an offence under any other law could not apply for compounding. This restriction has now been removed
 - d) A person who is accused of issuing fake invoices without an actual supply of goods or services would not be allowed to apply for compounding now

OLD

NEW



MINIMUM

10000
OR
50% OF TAX } **Whichever is higher**

25% OF TAX involved

MAXIMUM

30000
OR
150% OF TAX } **Whichever is higher**

100% OF TAX involved

Clause 141 of the Bill seeks to insert a new section 158A in the Central Goods and Services Tax Act so as to provide for the manner and conditions for sharing of the information furnished by the registered person in his application for registration or in his return filed or in his statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details, as may be provided by rules, on the common portal with such other systems, as may be notified.

Inserted Section 158A vide Clause 141

CONSENT BASED SHARING OF INFORMATION FURNISHED BY TAXABLE PERSON



Inserted after Section 158

Empowerment for sharing of
Information for Government

158(A)

(1) Notwithstanding anything contained in sections 133, 152 and 158, the following details furnished by a registered person may, subject to the provisions of subsection (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.

EMPOWERMENT FOR SHARING OF INFORMATION FOR GOVERNANCE



(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.

- 1) Application for registration
- 2) GSTR-1, GSTR-3B and GSTR-9 / 9C
- 3) Invoices uploaded on the GST portal for e-invoice
- 4) E-waybill particulars
- 5) Other prescribed details

Retrospective Effect from 01.07.2015 to Para 7 & 8 of SCHEDULE III vide Clause 142

SCHEDULE III

• ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

- [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.]
- [Explanation 2.—For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).]

- **PARAGRAPHS 7 & 8 & Explanation 2 there of deemed to be inserted w.r.e.f 01.07.2017.**
- **Clause 142 of the Bill seeks to amend Schedule III of the Central Goods and Services Tax Act to give retrospective applicability to paragraphs 7 and 8 and the Explanation 2 to the said Schedule with effect from the 1st day of July, 2017**
- **No refund in respect of such transactions/ activities during the period from 01st July, 2017 to 31st January, 2019 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.**

High Sea Sales



Mr. X

Person who originally imported the goods

Goods before Clearance from Custom Frontier Sold by Mr. X to Mr. Y

Schedule 3
No Supply

No ITC reversal , as not part of Exempt Supply due to Explanation in Sec 17(3)

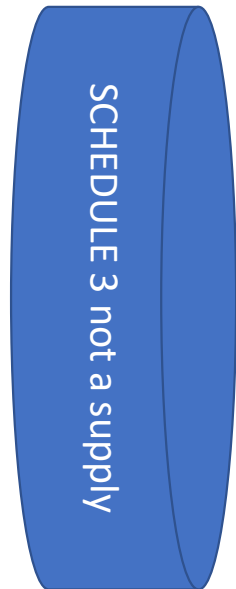
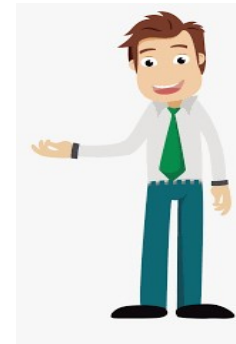


Mr. Y

Will Step into Shoes of Importer

GSTN of Mr. Y will be in Bill of Entry

In bond Sales

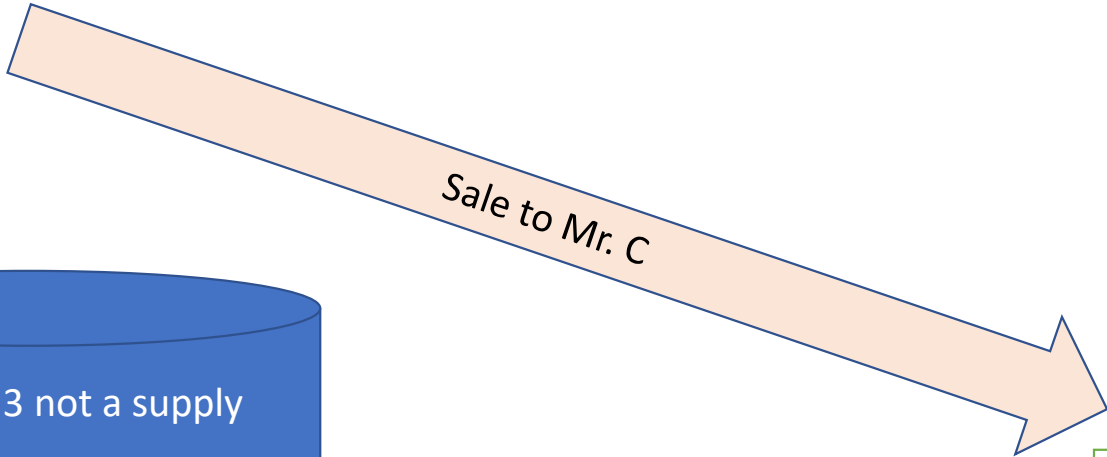
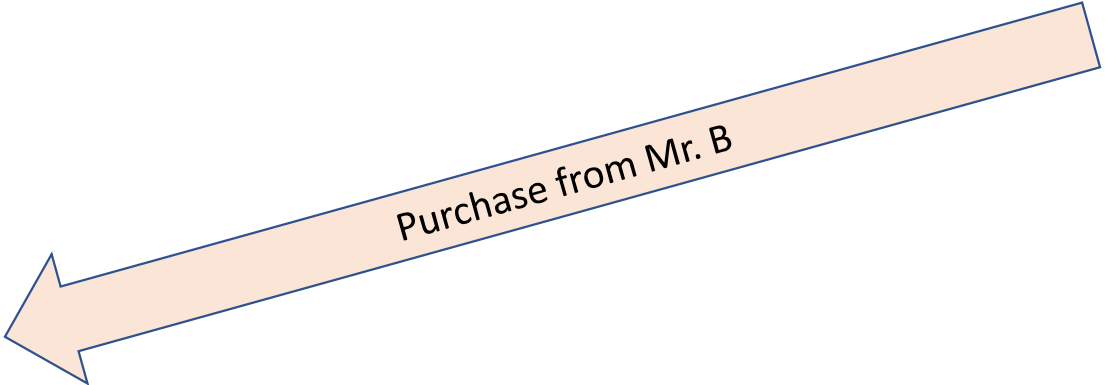
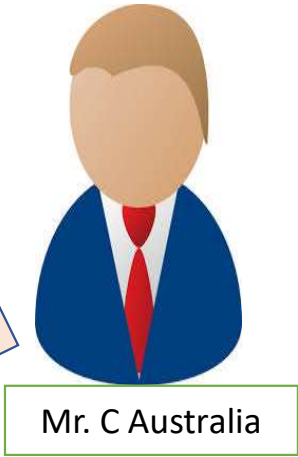
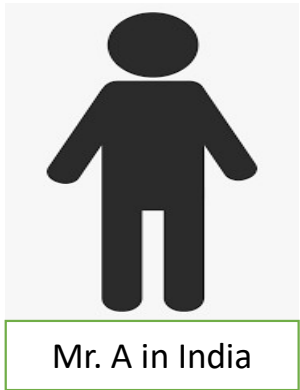


Purchase from Mr. B

Sale to Mr. C while the goods are in warehouse

KEPT in Bonded Warehouse
Before filling Bill of Entry for
Home consumption sold to Mr. C
Mr. C will not file Bill of Entry

Merchant Trading Transaction



Goods sent directly from B to C without entering into India

SCHEDULE 3 not a supply

Integrated Goods and Services Tax



www.aubsp.com

Clause 143 of the Bill seeks to amend clause (16) of section 2 of the Integrated Goods and Services Tax Act, by omitting certain words therein, so as to restrict the meaning of the term “non-taxable online recipient” to mean any unregistered person receiving online information and database access or retrieval services located in the taxable territory.

Clause (16) of section 2 of the IGST Act is being amended so as to revise the definition of “non-taxable online recipient” by removing the condition of receipt of online information and database access or retrieval services (OIDAR) for purposes other than commerce, industry or any other business or profession so as to provide for taxability of OIDAR service provided by any person located in nontaxable territory to an unregistered person receiving the said services and located in the taxable territory.

It further seeks to clarify that the persons registered solely in terms of clause (vi) of section 24 of the Central Goods and Services Tax Act shall be treated as unregistered person for the purpose of the said clause.

It also proposes to amend clause (17) of the said section by removing certain words therein so as to remove the condition of “essentially automated” and “involving minimal human intervention” from the said definition to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.

(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]**^[2] 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’;

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;

Scope of OIDAR widened with only condition, being impossible without IT

Clause 144 of the Bill seeks to omit the proviso to sub-section (8) of section 12 of the Integrated Goods and Services Tax Act so as to remove the confusion regarding availment of input tax credit and other matters.

Amendment in section 12 IGST vide Section 144

Clause 144

Section 12 of IGST

Place of supply of services where location of supplier and recipient is in India

- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)



(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.~~

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.



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please WHATS APP
YOURNAME_CITY on
9988692699

BY:

CA AANCHAL ROHIT KAPOOR

M. No. 9988692699, 9888069269

E-mail :aanchalkapoor_ca@yahoo.com