



Newsletter for the
Day 01st Feb 2023
CA. PRADEEP JAIN

Location

Jodhpur | Ahmedabad

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UPDATE NO. 359 ON HIGHLIGHTS OF THE FINANCE ACT, 2023 PERTAINING TO GST LAWS

The gist of the amendments made in CGST Act and IGST Act is highlighted as follows:-

1. **Amendment in section 10 of CGST Act relating to composition levy:-** As pronounced by the GST Council, in order to promote supply of goods through e-commerce operators, it is proposed that the benefit of composition levy will be available even if the assessee is supplying goods through e-commerce operator. Prior to this amendment, registered person supplying goods or services through e-commerce operator was debarred from availing the benefit of composition scheme in GST.
2. **Amendment in section 16 of CGST Act relating to eligibility**

and conditions for availing ITC:-

The second proviso to section 16(2) of the CGST Act states that if the recipient fails to pay the supplier of goods or services within a period of 180 days from the date of issue of invoice, an amount equal to ITC shall be added to his output liability along with interest thereon. The amendment seeks to substitute the phrase "shall be added to his output liability" by simply mentioning that the ITC shall be paid by him along with interest. This is being done to remove the confusion as regards considering the credit reversal as output liability.

3. **Amendment in section 17 of the CGST Act relating to blocked credits:-** Two important amendments have been made in section 17. First is paragraph 8(a) of Schedule III has been included in the value of exempt supply as it

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is provided as exception in the explanation to section 17(3). The paragraph 8(a) states that supply of warehoused goods to any person before clearance for home consumption is neither supply of goods nor supply of services. The amendment seeks to include this paragraph 8(a) in the value of exempt supply which means that such supplies will be liable to credit reversal under Rule 42/43 of the CGST Rules. Second amendment that is proposed is insertion of clause (fa) wherein the ITC of CSR is being specifically disallowed. The admissibility of ITC on CSR activities was contentious and the amendment seeks to deny the said credit to the taxpayers. There were favourable rulings and decisions as regards availability of ITC on CSR expenses prior to this amendment. Moreover, this amendment is prospective in nature so the ITC on CSR expenses will be denied henceforth after enactment of the provision.

4. **Amendment in section 23 of the CGST Act:-** Section 23 pertaining to persons not liable for registration has been amended so as to give overriding effect over section 22(1) or section 24 of the CGST Act. It is provided in section

23 that 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 IGST Act shall not be liable to registration. It is worth mentioning here that section 22(1) prescribes threshold limit of Rs. 20 Lakhs and section 24 pertains to compulsory registration in certain cases. The impact of this amendment is that now assessee exclusively engaged in supply of wholly exempt goods or services will not be liable to get registered even if they have made inter state supplies or have availed services on which tax is to be paid under reverse charge mechanism. This amendment is welcomed by the trade and industry.

5. **Amendment in section 37, 39, 44 and 52 of the CGST Act:-** This amendment seeks to restrict filing of any kind of GST return after expiry of a period of three years from the due date of filing such return. Section 37 pertains to GSTR-1, section 39 pertains to GSTR-3B, section 44 pertains to annual return in GSTR-9 and section 52 pertains to TDS return. Furthermore, the government may on the recommendations of

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the Council and subject to such conditions and restrictions as may be specified allow a registered person or class of registered person to file such returns even after the expiry of the said period of three years from the due date of furnishing the said returns.

6. **Amendment in section 56 pertaining to interest on delayed refunds:-**

This amendment seeks to make procedural change in the language of the provision relating interest on delayed refunds wherein the government has been empowered to devise mechanism for computation of such interest subject to conditions and restrictions as may be prescribed. The amended provision states that if any tax ordered to be refunded is not refunded within 60 days from the date of receipt of application, interest at such rate not exceeding 6%, 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 for the period of delay beyond 60 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.

7. **New section 122 for penalty on e-commerce operator:-**

This section proposes penalty of Rs. 10,000/- or an amount equivalent to the amount of tax involved, whichever is higher if any e-commerce operator commits the specified defaults.

8. **Amendment in section 132 of the CGST Act:-** The following sub-clauses have been omitted:-

(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; or

The clause (iii) has been amended to restrict its

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application only with reference to offence committed under clause (b) of section 132.

necessary before common portal can share the data with any other system.

9. **Amendment in section 138 of the CGST Act:-** This section pertains to compounding of offences under GST. The quantum of the amount for compounding of offences is amended to minimum 25% of the tax involved and the maximum amount not being more than 100% of the tax involved. Earlier, the minimum was Rs. 10,000 or 50% of the tax involved, whichever is higher and the maximum amount not being less than Rs. 30,000/- or 150% of tax, whichever is higher.

10. **New section 158A introduced:-** A new section 158A relating to consent based sharing of information furnished by the taxable person. It is provided that the details furnished by a registered person on the common portal may 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 by taking consent from the supplier/recipient as required. Hence, consent of taxpayer is

11. **Clause 142 of Finance Bill provides retrospective effect to paragraph no. 7 and 8 and the Explanation 2 thereof of Schedule III:-** Paragraph 7 of Schedule III states that 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 is neither supply of goods nor supply of services. Paragraph 8(a) states that supply of warehoused goods to any person before clearance for home consumption is neither supply of goods nor supply of services. The above amendment seeks to provide retrospective effect to the above paragraphs w.e.f. 01.07.2017. It is also stated that no refund shall be granted of tax already collected and paid on such transactions.

12. **Amendment in section 2(16) of the IGST Act:-** The definition of “non taxable online recipient” has been amended. Earlier, non-taxable online recipient meant any Government, local authority, governmental authority, an individual or any other person not

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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. However, this definition was under constant dispute as only personal purpose was covered. Now, the amended definition states that “non-taxable online recipient” means **any unregistered person** receiving online information and database access or retrieval services located in taxable territory. Moreover, explanation clarified that government department registered only for the purpose of deducting TDS under GST will be considered as unregistered person. The proposed definition is more precise.

13. **Amendment in section 12(8) of IGST Act:-** The proviso to section 12(8) of the IGST Act has been omitted. The proviso states 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.

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UPDATE NO 360 ON ANALYSIS OF AMENDMENTS OF THE FINANCE ACT, 2023 PERTAINING TO CUSTOMS ACT, 1962

Amendment in section 25 of Customs Act, 1962

Section 25 gives power to Central Government to issue exemptions.

W.e.f. 28.3.2021, sub-section 4A was added to section 25. This sub-section states that where the Government has issued any notification which exempts Customs duty subject to fulfilment of certain conditions, shall be valid upto 31st day of March falling immediately after two years from date of such grant or variation; unless otherwise specified.

Budget 2023 has proposed to add a proviso to sub-section 4A. This proviso states that this period of 2 years shall not apply on any exemption granted to or in relation to certain categories of imports. The excluded categories are -

- (a) any multilateral or bilateral trade agreement;
- (b) obligations under international agreements, treaties, conventions or such other obligations including with

respect to United Nations agencies, diplomats and international organisations;

- (c) privileges of constitutional authorities;
- (d) schemes under the Foreign Trade Policy;
- (e) the Central Government schemes having validity of more than two years;
- (f) re-imports, temporary imports, goods imported as gifts or personal baggage;
- (g) any duty of customs under any law for the time being in force excluding custom duty leviable u/s 12 but including IGST leviable u/s 3(7) of Customs Tariff Act, 1975.

The impact of this amendment is that if any Customs exemption has been granted in respect of above referred categories, it will continue unless rescinded or prescribed otherwise. The

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period of deemed-cessation prescribed u/s 25(4A) shall not apply to it.

Amendment in section 127C of Customs Act, 1962

Section 127C prescribes the procedure to be followed on receipt of settlement application.

Budget 2023 has proposed to add new sub-section 8A to this section.

The proposed sub-section prescribes that –

- The order of settlement shall be made within 9 months from the last day of the month in which settlement application has been filed.
- If no order is passed within this period, the proceedings shall abate and case will be reverted to adjudicating authority.
- This period of 9 months may be extended by Settlement Commission for a further period not exceeding 3 months.
- If any settlement application is pending on the date Finance Bill 2023 receives the assent of President, the period of 9 months shall be counted from such date of receipt of assent.

AMENDMENT IN CUSTOMS TARIFF ACT, 1975

Amendment in section 9, 9A and 9C of Customs Tariff Act, 1975

Section 9 of Customs Tariff Act prescribes the Countervailing duty on subsidized articles

Section 9A of this Act prescribes the anti-dumping duty on dumped articles.

Section 9C of this Act prescribes the manner of filing appeal against order of determination or review of subsidy or dumping in relation to import of any article or in relation to imposition of safeguard duty.

Certain words have been omitted from these sections in order to clarify that the determination or review of safeguard duty / countervailing duty / anti-dumping duty are to be done by an authority in such manner as may be specified in the rules made under sections 8B, 9, 9A and 9B of the said Act.

Amendment in First Schedule to Customs Tariff Act, 1975

Budget, 2023 has proposed that the First Schedule shall be amended in the manner specified in Second schedule. First Schedule shall also be amended in the manner specified in Third Schedule. It shall also be amended w.e.f. 1st May

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2023 in the manner specified in the Fourth Schedule.

Amendment in Second Schedule to Customs Tariff Act, 1975

Budget 2023 has proposed that w.e.f. 1st May 2023, the Second Schedule shall be amended in the manner specified in Fifth Schedule.

Rate of BCD on Naphtha increased from 1% to 2.5%

Naphtha is used for manufacture of plastic granules which are the raw

material for plastic industry. Increase in rate of BCD of Naphtha will have adverse impact on the plastic industry.

Rate of BCD denatured ethyle alcohol reduced from 5% to NIL in specified cases

If ethyle alcohol is used in manufacture of industrial chemicals and it is imported by Import of goods at concessional rate of duty Rules, 2017; it will get benefit of NIL rate of BCD.

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LEGAL MAXIM FOR THE DAY

Doctrine of Noscitur a Sociis- the meaning of an unclear or ambiguous word (as in a statute or contract) should be determined by considering the words with which it is associated in the context.

News highlights



Per capita income at ₹1.97 lac more than double in last 5 years

Digital payments of 126 lac crores in 2022.

Government to support agri tech startup's. Agricultural accelerator fund to be set up

Public private partnership allowed in cotton manufacturing

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Agricultural credit target to be made till 20 lac crore with support to dairy.

PMAVAS to be increased to ₹79000 crores. Increase of 66%2.5 per

Capital investment outlay increased to ₹10 lac crores. Increase of 33%. Approx 3.3% of GDP

Vivad se Vishwas 2 launched. For contractual disputes. Voluntary settlement scheme.

E-courts phase 3 launched. ₹7000 crores for phase 3 of e-courts

₹9000 fresh allocation to credit guarantee scheme

Highest tax rate is 42.7%. Now reduced. Surcharge now at 25% from 37%. New tax now at 39%.

Some cigarette to be costlier by 16%

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Marine products- shrimp feed duty reduced.

Gst paid compressed biogas to be duty free.

100 Joint Commissioners to be appointed for disposal of small appeals.

Rebate limit increased to 7 lakh in new tax regime.

Number of slabs reduced from 7 to 5 in new tax regime.

Reducing cost of MSME Credit by 1%. Infusion of Rs. 9,000 crore in corpus for MSME credit.

This is solely for educational purpose.

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