



ANALYSIS ON GST PROPOSALS IN FINANCE BILL 2021

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Finance Bill, 2021 – The GST perspective?

Key Amendments in CGST Act, 2017 vide Finance Bill, 2021

Sr. No.	Section No.	Type of Amendment	Existing Provisions	Proposed Amendment	Author's Comment
1	Section 7(1)(aa)	Inserted	N/A	<p>Insertion:</p> <p>(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.</p> <p>Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;”</p>	<p>The Apex Court in the case of Calcutta Club under the erstwhile Service tax regime held that there cannot be the sale of goods or provision of services between the unincorporated private clubs/ associations and its members owing to the principle of mutuality which treats such clubs/ associations and its members as the same person.</p> <p>Stress: The entry has been made under section 7 and under schedule I, thus it can be argued that one person cannot give a consideration to one oneself.</p> <p>The explanation acknowledges the fact that the supply between the member and the club are effectively the same person.</p> <p>This concept has been introduced without amending the CoI, as the CoI does not provide for any deeming fiction for the term 'Supply', unlike 46th CoI Amendment.</p>
2	Section 16(2)(aa)	Inserted	N/A	<p>(aa) the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;</p>	<p>As per 29th GST council meeting, it was already in place to introduce ITC availment with GSTR 1 linkage. [Refer Para 4.11]</p> <p>Whether the provision as introduced is prospective or retrospective, is yet to be clarified.</p>
3	Section 35(5)	Omitted	<p>(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other</p>	N/A	<p>Keeping emotions aside for a moment, additional tax and interest collected through GSTR 9 – Rs. 3176 crore and 575.76 crore respectively, whereas additional tax and interest collected through GSTR 9C – Rs. 392 crore and Rs. 81.16 crore respectively. (source: GST Council meeting)</p>

			<p>documents in such form and manner as may be prescribed</p> <p>Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor- General of India or an auditor appointed for auditing the accounts of local authorities</p>		<p>minutes). If we talk about figures, then what value addition did Audit bring to the table of the Government is to be thought about, apart from negative feedback and extension of time limit of 2017-18 by 7 times?</p>
4	Section 44	Substituted	<p>(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year:</p> <p>Provided that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein:</p> <p>Provided further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.</p> <p>(2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.</p> <p>Explanation.- For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 31st January, 2020 and the annual return for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or</p>	<p>Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self-certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed: Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:</p> <p>Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”.</p>	<p>The responsibility of reconciliation has been shifted from the auditor to the Tax Payer.</p> <p>This proposition is good for professionals because now it is the duty and responsibility of tax payer to reconcile and furnish and not the responsibility of the auditor anymore, if we keep aside the negative traits of ‘revenue loss’ or ‘loss of brand image of the professionals’</p>

			before the 31st December, 2020.		
5	50(1) proviso	Substituted	Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.	Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid debiting the electronic cash ledger.	The existing proviso was inserted from 01.08.2019, can it be substituted retrospectively from 01.07.2017? Taxpayers who have already paid interest on gross value in previous instances should opt for refund once the provision is made effective.
6	Section 74 Explanation – 1(ii)	Substituted	(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.	(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.	Section 129 & 130 have been given a separate identity and and its relation with Section 74 has been omitted. In other words, penal consequences under section 129 & 130 would need to be dealt with separately.
7	Section 75(12)	Inserted	N/A	Explanation.--For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.	The Hon'ble Madhya Pradesh HC in the case of Kabeer Realty Private Limited, upheld the action of the department of initiating recovery without determining tax under section 73 or 74 as the tax was duly declared and accepted by taxpayer in its GSTR 1.
8	Section 83(1)	Substituted	Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.	Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.	Chapter – XII : Assessment Chapter – XIV: Inspection, Search, Seizure & Arrest Chapter – XV: Demand & Recovery Stress: No mechanism to provide provisional attachment in respect of persons mentioned above.
9	Section 107(6)	Inserted	NA	Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty- five per cent. of the penalty has been paid by the appellant.	The pre-deposit prior to the amendment was only 10% of Tax Liability in case of dispute which is now proposed to be 25% of the penalty amount in case of detention and seizure of conveyance and goods during transit. However, no mention of pre-deposit in case of second appeal is made.
10	Section 129(1)(i) (a)(b)	Substituted	(a) on payment of the applicable tax and penalty equal to one hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of	(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees,	Prior to amendment, liable to pay 200% (Tax + Penalty) and now after amendment also, liable to pay 200%. Prior to amendment: 1+1 = 2 After amendment: 2 x 1 = 2

			goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty; (b) on payment of the applicable tax and penalty equal to the fifty per cent of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;	whichever is less, where the owner of the goods comes forward for payment of such penalty; (b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;	
11	Section 151	Substituted	(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act. (2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.	The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.	It is pertinent to note that, information can be sought from any person, whether employee, consultant, auditor, director, and the list goes on. To a certain extent it takes the colour of summon proceedings.

Key Amendment in IGST Act, 2017 vide Finance Bill, 2021

Sr. No.	Section No.	Type of Amendment	Existing Provisions	Proposed Amendment	Author's Comment
1	Section 16 (3)	Substituted	(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:-- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or (b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.	(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed: Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as	Prior to the amendment, the exporters were having two options: (i) to export with payment of IGST and claim refund thereof; or (ii) to export without payment of Tax under LUT and claim refund thereof. After the amendment, export could be made only under LUT i.e without payment of tax, except for notified class of persons/goods/services. Thus, this amendment has taken away the refund on capital goods when made under LUT. Moreover, Rule 96B now has a statutory underlying provision.

				<p>may be prescribed</p> <p>(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify--</p> <p>(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;</p> <p>(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”.</p>	
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