

UPDATE ON AMENDMENTS TO CGST ACT, 2017

TEAM TRD

August 31, 2018

Dear Person,

An amendment to CGST Act, 2017 has been introduced on 29th August, 2018 with the following objective by The Central Government:-

- To remove the certain difficulties faced by the tax payers.
- To propose new return filing system envisages quarterly filing of return and tax payment for small taxpayers along with minimum paperwork.
- To implement the new return filing system.

Given below is the gist of important amendments to CGST Act, 2017

Clause 3 of the Bill seeks to amend section 7 of the principal Act relating to "Scope of Supply" in order to clarify the scope of supply.

1. Amendment to section 9 of the principal Act relating to restriction on purchase from unregistered suppliers under Reverse Charge Mechanism:-

Sec. 9(4) of CGST Act, 2017, in respect of payment of GST by registered person on supplies received by him from unregistered person on reverse charge basis is amended to restrict the levy of tax on reverse charge basis to receipt of supplies of certain specified categories of goods or services or both by notified classes of registered persons from unregistered suppliers on the recommendations of the Council.

2. Amendment to Section 10 of the principal Act relating to Composition levy:-

Sec. 10 of CGST Act, 2017 is amended to increase the statutory threshold of turnover for the composition scheme from One Crore Rupees to One Crore and Fifty Lakh Rupees. Thus, a person whose turnover is below Rs. 1.50 Crore is eligible to obtain the composition scheme for payment of GST.

Further a provision is made to allow the composition taxpayer to supply the services other than restaurant services up to a value not exceeding ten per cent. of turnover in the preceding financial year, or five lakh rupees, whichever is higher.

Earlier, a composition tax payer was not allowed to supply any services except restaurant services.

3. Amendment to Section 12 of the principal Act relating to "Time of supply of goods":-

Time of Supply of goods was earlier of the following:-

The date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply;

Sub-section (1) of Section 31 of CGST Act, 2017 covers only issuance of tax at the time of movement of goods.

Now, amendment has been made to provide that, Time of Supply of goods is the date of issue of invoice by the supplier or the last date on which he is required, under Section 31 of CGST Act, 2017 to issue the invoice with respect to the supply.

Thus, last date of issuance of tax invoice; invoice when goods sent on approval basis, revise invoice, invoice in case of continuous supply of goods needs to be considered for determination of time of supply of goods.

4. Amendment to section 13 of the principal Act relating to "Time of supply of services":-

Time of Supply of services was earlier of the following:-

The time of supply of services shall be the earliest of the following dates, namely: -

- a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- b) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply:

Vide amended CGST Act, 2017, the words "sub-section (2)" are omitted to widen the scope of time of supply of services.

Now, last date of issuance of tax invoice; revised invoice, invoice in case of continuous supply of services needs to be considered for determination of time of supply of goods.

5. Amendment to Sec. 17(5) of CGST Act, 2017 to provide inadmissible list of goods or services for availment of Input Tax Credit:-

Given below the amended list of inadmissible goods or services :-

“(a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:-

- (A) further supply of such motor vehicles; or
- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles;

(aa) vessels and aircraft except when they are used-

(i) for making the following taxable supplies, namely:-

- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;

(ii) for transportation of goods;

(ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available-

(i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;

(ii) where received by a taxable person engaged-

- (I) in the manufacture of such motor vehicles, vessels or aircraft; or
- (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

(b) the following supply of goods or services or both-

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre; and

(iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force.”.

6. Amendment to section 16 of the principal Act relating to deemed provision of receipt of services in case of provision of services to third party and introduction of provisions relating to the new return format as specified in the proposed new section 43A, for availment of input tax credit:-

In case of supply of goods and services on the direction of third person, it was provided that to consider that goods are deemed to be received to such third person for availing the input tax credit by third person.

Now, deemed provision of receipt of services is made applicable to supply of services to recipient on the direction of third person also. In other words, if services are supplied to recipient on the direction of third person then it is deemed that such third person has received the services.

Further New Sec. 43A is inserted to provide new return formats for matching concept. Format of the return will be notified.

A registered person can avail the input tax credit only if supplier of goods has filed the new prescribed returns as per Sec. 43A of CGST Act, 2017.

7. Amendment to section 17 of the principal Act relating to the scope of determination value of exempt supply for determination of common ITC:-

An Explanation is inserted to Sec. 17 (3) of CGST Act, 2017 i.e. determination of value of exempt supply for apportionment of input tax credit used 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.

Following explanation is inserted:-

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.;

In other words, following activities or transactions which shall be treated neither as a supply of goods nor a supply of services as per Schedule III shall not be treated as exempt supply for apportionment/ reversal of ITC used for taxable supply including zero rated supply and exempt supply.

1. Services by an employee to the employer in the course of or in relation to his Employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Actionable claims, other than lottery, betting and gambling.

However, sale of land shall be treated as exempt supply for apportionment/reversal of common input tax credit used for supplying taxable supply including zero rated supply as well as exempt supply.

8. Amendment to section 20 of the principal Act relating to determination of value of turnover for the purposes of distribution of credit by ISD:-

It has been clarified that for determination of state turnover for distribution of input tax credit by Input Service Distributor, the amount of tax levied under Entry 92A of List I of the Seventh Schedule of the Constitution i.e. Central Sales Tax on goods other than newspapers shall be excluded.

9. Amendment to section 22 of the principal Act relating to increase the threshold limit of turnover for registration in special category States:-

Vide amendment to Sec. 22 of CGST Act, 2017, the threshold turnover for registration under GST Act in special category States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand has been increased from ten lakh rupees to twenty lakh rupees

10. Amendment to section 24 of the principal Act relating to mandatory registration for only those e-commerce operators who are liable to collect tax at source under section 52 of the principal Act:-

Amendment in Section 24 of CGST Act, 2017, to provide that compulsory registration is required for those e-commerce operators who are liable to collect tax at source under section 52 of the principal Act.

11. Amendment to section 25 of the principal Act relating to separate registration for each such place of business, and for separate registration for Special Economic Zone:-

A proviso has been inserted for separate registrations to a person having a unit(s) in a Special Economic Zone or being a Special Economic Zone developer, distinct from his other units located outside the Special Economic Zone.

A proviso to Sec. 25 of CGST Act, 2017 is inserted to allow separate registrations to a person having multiple place of business for each place of business in a state or union territory. Thus, multiple registrations for each place of business within a state can be obtained.

By making this amendment and by omitting clause (18) of Sec. 2, the concept of business vertical has been removed. Now any taxpayer having multiple place of business can have option to obtain separate registration for each premise.

12. Amendment to section 29 of the principal Act relating to temporary suspension of registration while cancellation of registration is under process:-

Provided that registration may be suspended during the proceedings related to Cancellation of registration by the registered person who is no longer required to be registered.

13. Amendment to section 34 of the principal Act relating to Credit and debit notes.

Sec. 34 is amended to allow registered persons to issue consolidated credit or debit notes in respect of multiple invoices issued in a Financial Year.

14. Amendment to section 35 of the principal Act relating to Accounts and other records.

A proviso is inserted in Sec. 35 of CGST Act, 2017 to provide that GST audit by Chartered Accountant or Cost Accountant of a registered person whose turnover is more than 2 crores is not required to any Department of the Central or State Government or local authority which is subject to audit by the Comptroller and Auditor-General of India.

15. Amendment to section 39 of the principal Act relating to furnishing of returns:-

Specific provision for due date of payment of taxes and filing of GST return on or before the twentieth day of the month succeeding such calendar month or part thereof is omitted.

So that Central government may notify certain class of person who shall furnish their return quarterly and pay taxes quarterly.

Government may notify form and manner for rectification of omission or incorrect particulars in GST return.

16. Insertion of new section 43A relating to the procedure for furnishing return and availing input tax credit:-

New Sec. 43A is inserted to prescribe the procedure for furnishing return and availing input tax credit. As per Sec. 43A, government may prescribe the procedure for furnishing the return and avail the input tax credit after matching.

17. Amendment to section 48 of the principal Act relating to Goods and Services Tax Practitioners:-

Amendment is made in Sec. 48 of CGST Act, 2017 to allow Goods and Services Tax Practitioners to perform other functions such as filing refund claim, filing application for cancellation of registration, etc. on behalf of registered person.

18. Amendment to section 49 of the principal Act relating to payment of tax, interest, penalty and other amounts:-

Proviso is inserted in Sec. 49 of CGST Act, 2017 to provide that Input Tax Credit of State Tax and Union Territory Tax can be utilized against the payment of IGST only when there is no balance of Central Tax Credit.

In other words, ITC of Central Tax to be utilized first for payment of CGST then IGST and then ITC of State Tax or Union Territory tax can be utilized for payment of IGST.

19. Insertion of two new sections, namely, section 49A and section 49B to prescribe specific order of utilisation of input tax credit and for payment of any tax

Section 49A is inserted to provide that IGST shall be utilized fully first for payment of IGST, Central Tax, State Tax or Union Territory Tax as the case may be.

Section 49B seeks to empower the Government to prescribe any specific order of utilisation of input tax credit of any of the taxes for payment of any tax i.e. cross utilization of Central tax and State Tax or Union Territory Tax.

20. Amendment to section 52 of the principal Act relating to Collection of tax at source:-

If the details of outward supplies furnished by the operator in his return do not match with the corresponding details furnished by the supplier under section 37 (return for outward supply) and under Sec. 39 i.e. GST return, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

21. Amendment to section 54 of the principal Act relating to appliance of principle of unjust enrichment in case of refund claim arising out of supplies to SEZ and to allow receipt of payment in Indian rupees, where permitted, by the Reserve Bank of India in case of export of services:-

In Sec. 54 (8) of CGST Act, 2017 it has been provided that the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies.

Now, thus this provision is applicable to export of goods or services or on inputs or input services used in making such exports and not applicable to supplies to SEZ Units or SEZ Developers.

In other words, principle of unjust enrichment will be applicable to refund claims arising out of supplies to SEZ unit or SEZ Developer.

Amendment in explanation to Sec. 54 of CGST Act, 2017 is made to provide the refund claim on account of export of services on receipt of foreign exchange as well as receipt of Indian Rupees whenever permitted by the Reserve Bank of India.

Relevant date for refund claim in case of inverted duty structure shall be the due date for furnishing the GST return for the period in which such claim for refund arises.

Refund claim shall be filed within 2 years from relevant date.

22. Amendment to section 79 of the principal Act relating to recovery of tax:-

Sec. 79 of CGST Act, 2017 relating to "Recovery of tax", to enable recovery to be made from distinct persons registered in different States or Union territories in order to ensure speedy recovery from other establishments of the registered person.

23. Amendment to section 107 of the principal Act relating to payment of pre-deposit before filing an appeals before Appellate Authority"

Maximum cap of Rs. 25 Crore is provided for payment of pre-deposit before filing an appeal to Appellate Authority (i.e. 1st Appeal).

As per Sec. 107 of CGST Act, no appeal can be filed before Appellate Authority unless the appellant pre-deposit the following amounts:-

In full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, **subject to maximum of Rs. 25 crore**, in relation to which the appeal has been filed.

24. Amendment to section 112 of the principal Act relating to payment of pre-deposit before "Appeals to Appellate Tribunal"

Maximum cap of Rs. 50 Crore is provided for payment of pre-deposit before filing an appeal to Tribunal

As per Sec. 112 of CGST Act, no appeal can be filed before Appellate Tribunal unless the appellant pre-deposit the following amounts:-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to twenty per cent. of the remaining amount of tax in dispute, in addition to the amount paid at the time of filing appeal before Appellate Authority under sub-section (6) of section 107 (i.e. 10% of amount of tax in dispute), **subject to maximum of Rs. 50 crore**, arising from the said order, in relation to which the appeal has been filed.

25. Amendment to section 129 of the principal Act relating to "Detention, seizure and release of goods and conveyances in transit"

Time limit for payment of taxes, interest and penalty on goods detained or seized in order to release of goods is extended from 7 days to 14 days.

26. Amendment to section 140 of the principal Act in respect of carry forward of Cesses in Transitional ITC

Amended Section 140 of CGST Act, 2017 in respect of carry forward of closing balance Cenvat Credit on inputs and input services to GST to clarify with retrospective effect from 1st July, 2017 that the cesses and additional duty of excise (on textile and textile articles) levied under the pre-Goods and Services Tax laws shall not be a part of transitional input tax credit under the goods and services tax.

In other words, it is clarified that Cenvat Credit balance pertaining to cesses and additional duty of excise (on textile and textile articles) levied under Central Excise, Service tax or Sales tax was not eligible to carry forward in GST regime.

27. Amendment to section 143 of the principal Act relating to extension of time limit for return of inputs and capital goods sent on job work:-

Provision to Section 143 of CGST Act, 2017 is inserted to empower the Commissioner to extend the time limit for return of inputs and capital goods sent on job work, upto a period of one year and two years, respectively.

In other words, time limit one year for return of inputs sent on job work can be extended by Commissioner upto further one year and time limit of three years for return of capital goods sent on job work can be extended by Commissioner for further two years.

28. Amendment to Schedule I of the principal Act relating to "Activities to be treated as supply even if made without consideration":-

As per paragraph 4 of Schedule I of CGST Act, 2017, Import of services by a **taxable** person from a related person or from any of his other establishments outside India, in the course or furtherance of business even if made without consideration was to be treated as taxable supply.

An amendment is made in Paragraph 4 of Schedule I to omit the words taxable person.

In other words, a person **even if he is not registered under GST** is liable to pay GST on import of services from a related person or from any of his other establishments outside India, in the course or furtherance of business even if made without consideration

29. Amendment to Schedule III of the principal Act relating to "Activities or transactions which shall be treated neither as a supply of goods nor a supply of services":-

Following activities or transaction shall be treated neither as a supply of goods nor a supply of services as per Schedule III of CGST Act, 2017.

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 this paragraph, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.”.