

# BUDGET 2022- INDIRECT TAX

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# AMENDMENTS IN THE CGST ACT, 2017

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# ADDITION OF SEC. 16(2)(ba)

*In sub-section (2), after clause (b), the following clause shall be inserted, namely:—*

*“(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;”;*

*in clause (c), the words, figures and letter “or section 43A” shall be omitted;*

A new clause (ba) to sub-section (2) of section 16 of the CGST Act is being inserted to provide that **input tax credit with respect to a supply can be availed only if such credit has not been restricted in the details communicated to the taxpayer under section 38.**

**Comment – Restriction of ITC can be stated in GSTR-2**

# AMENDMENT OF SECTION 16(4)

- ◉ *In sub-section (4), for the words and figures “due date of furnishing of the return under section 39 for the month of September”, the words “thirtieth day of November” shall be substituted.*
- ◉ Section 16(4) of CGST Act amended so as to provide for an extended time for availment of input tax credit by a registered person in respect of any invoice or debit note pertaining to a financial year **up to thirtieth day of November** of the following financial year.

**Comment – Time limit for taking credit which was due date of September return extended up to 30<sup>th</sup> November. Majority of litigation on Section 16(4) will end. However, certain issues remains pending.**

# AMENDMENT OF SECTION 29(2) (b) and (c)

- *In clause (b), for the words “returns for three consecutive tax periods”, the words “the return for a financial year beyond three months from the due date of furnishing the said return” shall be substituted.*
- *Further, in clause (c), for the words “a continuous period of six months”, the words “such continuous tax period as may be prescribed” shall be substituted.*
- Clause (b) and (c) of sub-section (2) of section 29 of the CGST Act are being amended so as to provide that the registration of a person is liable for cancellation, where –
  - (i) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return; **Earlier it was three consecutive tax periods**
  - (ii) a person, other than those paying tax under section 10, has not furnished returns for such continuous tax period as may be prescribed. **“Earlier, It was six months.”** [clause 100 of the Fin. Bill, 2022]

# AMENDMENT IN SECTION 34(2)

- In sub-section (2), for the word “September”, the words “the thirtieth day of November” shall be substituted.
- Sub-section (2) of section 34 of the CGST Act is being amended so as to provide for an extended time for issuance of credit notes in respect of any supply made in a financial year upto thirtieth day of November of the following financial year [clause 101 of the Fin. Bill, 2022]

**Comment – Time limit extended for issue of credit notes.**



# AMENDMENT IN SECTION 37

- *in sub-section (1), —*
- *(i) after the words “shall furnish, electronically,”, the words “subject to such conditions and restrictions and” shall be inserted;*
- *(ii) for the words “shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed”, the words “shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies” shall be substituted;*
- *(iii) the first proviso shall be omitted;*
- *(iv) in the second proviso, for the words “Provided further that”, the words “Provided that” shall be substituted;*
- *(v) in the third proviso, for the words “Provided also that”, the words “Provided further that” shall be substituted; (b) sub-section (2) shall be omitted;*

# AMENDMENT IN SECTION 37

- (c) in sub-section (3),—
- (i) the words and figures “and which have remained unmatched under section 42 or section 43” shall be omitted;
- (ii) in the first proviso, for the words and figures “furnishing of the return under section 39 for the month of September”, the words “the thirtieth day of November” shall be substituted;
- (d) after sub-section (3), the following sub-section shall be inserted, namely:— “(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:”



# AMENDMENT IN SECTION 37

- *Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies under sub-section (1), even if he has not furnished the details of outward supplies for one or more previous tax periods.”*

# AMENDMENT IN SECTION 37

- Section 37 of the CGST Act is being amended so as to:
- (i) provide for prescribing conditions and restrictions for furnishing the details of outward supply and for communication of the details of such outward supplies to concerned recipients;
- (ii) do away with two-way communication process in return filing;
- (iii) provide for an extended time upto thirtieth day of November of the following financial year for rectification of errors in respect of details of outward supplies furnished under sub-section (1);
- (iv) provide for tax period-wise sequential filing of details of outward supplies under sub-section (1). [clause 102 of the Fin. Bill, 2022]

**Comment – Time limit extended for rectification of errors of outward supplies. Process can be notified. Restriction of filing details of GSTR-1 between certain dates removed.**

# **SUBSTITUTION OF SECTION 38**

- *The following section shall be substituted, namely:—*
- *“38. (1) The details of outward supplies furnished by the registered persons under sub-section*
- *(1) of section 37 and of such other supplies as may be prescribed, and an auto generated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.*
- *(2) The auto-generated statement under sub-section (1) shall consist of—*
- *(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and*
- *(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37...*

# SUBSTITUTION OF SECTION 38

- ◉ (i) by any registered person within such period of taking registration as may be prescribed; or *(New Registration)*
- ◉ (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or *(Defaulter)*
- ◉ (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or *(Mismatch Between 3b And Gstr-1)*

# SUBSTITUTION OF SECTION 38

- ◉ (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or *(Mismatch Between 3B And GSTR-2)*
- ◉ (v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or *(claimed ITC excess than restricted under 49(12) )*
- ◉ (vi) by such other class of persons as may be prescribed.” *(residuary power)*



# **SUBSTITUTION OF SECTION 38**

- Section 38 of the CGST Act is being substituted for prescribing the manner as well as conditions and restrictions for communication of details of inward supplies and input tax credit to the recipient by means of an auto-generated statement and to do away with two-way communication process in return filing. [clause 103 of the Fin. Bill, 2022]

**Comment – Complete process changed and new process for GSTR-2 to be notified.**

# AMENDMENT OF SECTION 39

- *In section 39 of the Central Goods and Services Tax Act,—*
  - *(a) in sub-section (5), for the word “twenty”, the word “thirteen” shall be substituted;*
  - *(b) in sub-section (7), for the first proviso, the following proviso shall be substituted, namely: — “Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,—*
    - *(a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or*
    - *(b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.”;*

# AMENDMENT OF SECTION 39

- ◉ *(c) in sub-section (9), — (i) for the words and figures “Subject to the provisions of sections 37 and 38, if”, the word “Where” shall be substituted; (ii) in the proviso, for the words “the due date for furnishing of return for the month of September or second quarter”, the words “the thirtieth day of November” shall be substituted;*
- ◉ *(d) in sub-section (10), for the words “has not been furnished by him”, the following shall be substituted, namely:— “or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:*

# AMENDMENT OF SECTION 39

⦿ *Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not*

# AMENDMENT OF SECTION 39

- Section 39 of the CGST Act is being amended so as to: (i) provide that the non-resident taxable person shall furnish the return for a month by thirteenth day of the following month; (ii) provide an option to the persons furnishing return under proviso to sub-section (1), to pay either the self-assessed tax or an amount that may be prescribed; (iii) provide for an extended time upto thirtieth day of November of the following financial year, for rectification of errors in the return furnished under section 39; (iv) provide for furnishing of details of outward supplies of a tax period under sub-section (1) of section 37 as a condition for furnishing the return under section 39 for the said tax period.

[clause 104 of the Fin. Bill, 2022]

**Comment – Time limit extended for non resident taxable person and option to be provided for specified Registered person for payment of tax. Time limit for rectification being extended to 30<sup>th</sup> November and filing of GSTR-1 made mandatory.**



# **AMENDMENT OF SECTION 41**

- *The following section shall be substituted, namely:—*
- *“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.*
- *(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.”.*

# AMENDMENT OF SECTION 41

- Section 41 of the CGST Act is being substituted so as 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.  
[clause 105 of the Fin. Bill, 2022]

**Comment – Input Tax Credit to be claimed on actual or on terms and conditions as may be prescribed if supplier not paid tax ITC will be reversed and can be reclaimed on payment of tax by supplier.**

# **DELETION OF SECTION 42, 43 AND 43A**

- ◉ *Sections 42, 43 and 43A of the Central Goods and Services Tax Act shall be omitted.*
- ◉ Sections 42, 43 and 43A of the CGST Act are being omitted so as to do away with two-way communication process in return filing.  
[clause 106 of the Fin. Bill, 2022]

**Comment – Complete return filing process being changed and two way communication in return filing being deleted.**

# AMENDMENT OF SECTION 47

- *In sub-section (1), —*
- *(a) the words “or inward” shall be omitted;*
- *(b) the words and figures “or section 38” shall be omitted;*
- *(c) after the words and figures “section 39 or section 45”, the words and figures “or section 52” shall be inserted.*
- Section 47 of the CGST Act is being amended so as to provide for levy of late fee for delayed filing of return under section 52. Further, reference to section 38 is being removed consequent to the amendment in section 38 of the CGST Act. [clause 107 of the Fin. Bill, 2022]

**Comment – Late fee for GSTR-2 deleted in view of amendment and TCS return liable to late fee now.**

# AMENDMENT IN SECTION 48(2)

- *In sub-section (2), the words and figures “, the details of inward supplies under section 38” shall be omitted.*
- Consequent to the amendment in section 38 of the CGST Act, sub-section (2) of section 48 of the CGST Act is being amended so as to remove reference to section 38 therefrom. [clause 108 of the Fin. Bill, 2022]

Comment – Reference to section 38 deleted i.e. GSTR-2.



# AMENDMENT IN SECTION 49

- *In section 49 of the Central Goods and Services Tax Act,— (a) in sub-section (2), the words, figures and letter “or section 43A” shall be omitted; (b) in sub-section (4), after the words “subject to such conditions”, the words “and restrictions” shall be inserted; (c) for sub-section (10), the following sub-section shall be substituted, namely:—*
- *“(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,—*
- *(a) integrated tax, central tax, State tax, Union territory tax or cess; or*
- *(b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, subsection (5) of section 25, in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:*

# AMENDMENT IN SECTION 49

- *Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.”;*
- *(d) after sub-section (11), the following sub-section shall be inserted, namely:—*
- *“(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed.”*

# **AMENDMENT IN SECTION 49**

- Section 49 of the CGST Act is being amended so as to:
- (i) provide for prescribing restrictions for utilizing the amount available in the electronic credit ledger; (ii) allow transfer of amount available in electronic cash ledger under the CGST Act of a registered person to the electronic cash ledger under the said Act or the IGST Act of a distinct person;
- (iii) provide for prescribing the maximum proportion of output tax liability which may be discharged through the electronic credit ledger.  
[clause 109 of the Fin. Bill, 2022]

**Comment – Restrictions being inserted in Section 49(12) to claim ITC. It is also to give legal backing to Rule 86B.**

# AMENDMENT IN SECTION 50(3)

- For sub-section (3), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—
- “(3) Where the input tax credit has been wrongly availed and utilized, the registered person shall pay interest on such input tax credit wrongly availed and utilized, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”.
- Sub-section (3) of section 50 of the CGST Act is being substituted retrospectively, with effect from the 1st July, 2017, so as to provide for levy of interest on input tax credit wrongly availed and utilized. [clause 110 of the Fin. Bill, 2022]  
**Comment - Rate of interest under 50(3) reduced from 24% to 18% w.e.f. 01.07.2017 for ITC issues and sub section 3 substituted.**

# AMENDMENT IN SECTION 52

- *In sub-section (6), in the proviso, for the words “due date for furnishing of statement for the month of September”, the words “thirtieth day of November” shall be substituted.*
- Sub-section (6) of section 52 of the CGST Act is being amended so as to provide for an extended time upto thirtieth day of November of the following financial year for rectification of errors in the statement furnished under subsection (4).  
[clause 111 of the Fin. Bill, 2022]

**Comment - Time limit extended up to 30<sup>th</sup> November for rectification of TCS returns.**



# AMENDMENT IN SECTION 54

- ◉ *In section 54 of the Central Goods and Services Tax Act, —*
- ◉ *(a) in sub-section (1), in the proviso, for the words and figures “the return furnished under section 39 in such”, the words “such form and” shall be substituted;*
- ◉ *(b) in sub-section (2), for the words “six months”, the words “two years” shall be substituted;*
- ◉ *(c) in sub-section (10), the words, brackets and figure “under sub-section (3)” shall be omitted;*

# AMENDMENT IN SECTION 54

- (d) in the Explanation, in clause (2), after sub-clause (b), the following sub-clause shall be inserted, namely:— “(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;”.

# **AMENDMENT IN SECTION 54**

- Section 54 of the CGST Act is being amended so as to:
- (i) explicitly provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed;
- (ii) provide the time limit for claiming refund of tax paid on inward supplies of goods or services or both under section 55 as two years from the last day of the quarter in which the said supply was received;

# AMENDMENT IN SECTION 54

- (iii) extend the scope of with holding of or recovery from refunds in respect of all types of refund;
- (iv) provide clarity regarding the relevant date for filing refund claim in respect of supplies made to a Special Economic Zone developer or a Special Economic Zone unit by way of insertion of a new sub-clause (ba) in clause (2) of Explanation thereto.  
[clause 112 of the Fin. Bill, 2022]
- **Comment - Amendment to provide that claim of refund in cash ledger to be on conditions to be prescribed.**

## **AMENDMENT IN SECTION 54 (contd.)**

- ◉ Time limit of two years provided for refund under section 54(2) UNO etc.
- ◉ Sub section 10 extended to all refunds meaning that refund can be withheld or amount can be deducted from it.
- ◉ Comment – To provide clarify regarding the relevant date for filing refund claim for supplies made to SEZ Developer / Unit.



# AMENDMENT IN SECTION 168

- *In sub-section (2), the words, brackets and figures “subsection (2) of section 38,” shall be omitted.*
- Consequent to the amendment in section 38 of the CGST Act, sub-section (2) of section 168 of the CGST Act is being amended so as to remove reference to section 38 therefrom.  
[clause 113 of the Fin. Bill, 2022]

**Comment – Reference to section 38 deleted**

# **PORTAL NOTIFIED**

- Notification No. 9/2018 – Central Tax, dated the 23rd January, 2018, is being amended so as to notify [www.gst.gov.in](http://www.gst.gov.in), retrospectively, with effect from 22nd June, 2017, as the Common Goods and Services Tax Electronic Portal, for all functions provided under Central Goods and Services Tax Rules, 2017, other than those provided for e-way bill and for generation of invoices under sub-rule (4) of rule 48 of the CGST Rules.  
[clause 114 of the Fin. Bill, 2022]

**Comment – GST Portal notified with retrospective effect for all functions. Other than E Way Bill.**

# **INTEREST RATE REDUCTION**

- Notification No. 13/2017 – Central Tax, dated the 28th June, 2017, is being amended retrospectively, with effect from the 1st day of July, 2017, so as to notify rate of interest under subsection (3) of section 50 of the CGST Act as 18%.

[clause 115 of the Fin. Bill, 2022]

- **Comment – Rate of interest reduced.**

# **AMENDMENTS IN THE IGST ACT, 2017**

# **INTEREST RATE REDUCTION**

- Notification No. 6/2017 – Integrated Tax, dated the 28th June, 2017, is being amended retrospectively, with effect from the 1st day of July, 2017, so as to notify rate of interest under subsection (3) of section 50 of the CGST Act as 18%.
- [clause 118 of the Fin. Bill, 2022]



# **AMENDMENTS IN THE UTGST ACT, 2017**

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# **INTEREST RATE REDUCED**

- Notification number 10/2017 – Union Territory Tax, dated the 30th June, 2017, is being amended retrospectively, with effect from the 1st day of July, 2017, so as to notify rate of interest under sub-section (3) of section 50 of the CGST Act as 18%.

[clause 121 of the Fin. Bill, 2022]

# **RETROSPECTIVE AMENDMENTS OF GST RATE NOTIFICATIONS**

# **RATE REDUCED**

- Central Tax, Union Territory Tax and Integrated Tax on **supply of unintended waste generated during the production of fish meal** (falling under heading 2301), except fish oil, is being exempted during the period commencing from **1st day of July, 2017, and ending with the 30th day of September, 2019** (both days inclusive), subject to the condition that if said tax has been collected, the same would not be eligible for refund.
- [clause 116, 119, 122 of the Fin. Bill, 2022]

# **RETROSPECTIVE EXEMPTION**

- Service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called by the State Governments, has been declared as an activity or transaction which shall be treated neither as a supply of goods nor a supply of service vide notification No. 25/2019- Central Tax (R) dated 30.09.2019, notification No. 24/2019- Integrated Tax (R) dated 30.09.2019 and notification No. 25/2019- Union Territory Tax (R) dated 30.09.2019.



# **RETROSPECTIVE EXEMPTION +**

- These notifications have been given retrospective effect from 01.07.2017. However, no refund shall be made of tax which has been collected, but which would not have been so collected, had the said notifications been in force at all material times.
- [clause 117, 120, 123 of the Fin. Bill, 2022]



# *THANK YOU*

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