

# Decoding of Finance Bill 2021

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Clause 99-113 of Finance Bill, 2021

CGST Act

Clause 114 of Finance Bill, 2021

IGST Act

## THE FINANCE BILL, 2021

A

BILL

*to give effect to the financial proposals of the Central Government for the financial year 2021-2022.*

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

### CHAPTER I

#### PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Finance Act, 2021.

(2) Save as otherwise provided in this Act,—

(a) sections 2 to 79 shall come into force on the 1st day of April, 2021;

(b) sections 99 to 114 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

### CHAPTER II

#### RATES OF INCOME-TAX

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, 2021, 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

## Sections of CGST Act to be amended by Finance Bill, 2021

<u>Section of Finance Bill</u>	<u>Corresponding Section of GST Act</u>	<u>Particulars</u>	<u>Source Notification and Date of Enforcement</u>
99	7	<u>Scope of supply.</u>	w.r.e.f 1.7.2017 from a date to be notified.
100	16	<u>Eligibility and conditions for taking input tax credit.</u>	to be notified
101	35	<u>Accounts and other records.</u>	to be notified
102	44	<u>Annual return.</u>	to be notified
103	50	<u>Interest on delayed payment of tax.</u>	w.r.e.f 1.7.2017 from a date to be notified.
104	74	<u>Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts.</u>	to be notified
105	75	<u>General provisions relating to determination of tax.</u>	to be notified
106	83	<u>Provisional attachment to protect revenue in certain cases.</u>	to be notified
107	107	<u>Appeals to Appellate Authority.</u>	to be notified
108	129	<u>Detention, seizure and release of goods and conveyances in transit</u>	to be notified
109	130	<u>Confiscation of goods or conveyances and levy of penalty.</u>	to be notified
110	151	<del>Power to collect statistics.</del> Power to call for information.	to be notified
111	152	<u>Bar on disclosure of information.</u>	to be notified
112	168	<u>Power to issue instructions or directions.</u>	to be notified
113	Schedule II	Activities or transactions to be treated as supply of goods or supply of services	to be notified <sup>3</sup>

## Sections of IGST Act to be amended by Finance Bill, 2021

<u>Section of Finance Bill</u>	<u>Corresponding Section of GST Act</u>	<u>Particulars</u>	<u>Source Notification and Date of Enforcement</u>
114	16	<u>Zero rated supply.</u>	w.r.e.f 1.7.2017 from a date to be notified.

Amendment in section 7

## 1. Scope of Supply

w.e.f. 01.07.2017

7) (1) For the purposes of this Act, **the expression “supply” includes—**

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

**(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.**

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;”.

(b) Import.....

Amendment in schedule II

## 2. Activities <sup>1</sup>[or transactions] to be treated as supply of goods or supply of services

~~(7) The following shall be treated as supply of goods, namely:—~~

~~Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.~~

# Analysis

## Impact

- The said retrospective amendment is proposed to **safeguard levy of the tax on the amount collected by clubs, associations, society or any such bodies from its members or constituents.**
- Non applicability of Doctrine of Mutuality.

## Reason

To put end to litigation

### **Calcutta Club Ltd. [2019]110 taxmann.com 47 SC**

- The **doctrine of mutuality** continues to be applicable to incorporated and unincorporated members club after the 46<sup>th</sup> Amendment adding article 366(29-A) to the Constitution of India.
- The **Young Men's India Association**[1970] 1 SCC 462] (Supra) and other judgments which applied this doctrine continue to hold the field even after 46<sup>th</sup> Amendment.
- Sub- clause (f) of **article 366(29-A)** has no application to members clubs.

Article 366(29-A) :- (46<sup>th</sup> Amendment)

tax on the sale or purchase of goods includes:-

(a)...

(e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

**Rotary Club [2019] 110 taxmann.com 182 (AAR- Maharashtra)P-**

GST : Only membership fee recovered by club from their members, spent towards incurring various administrative expenses will be exempted from GST

**[2020] 117 taxmann.com 746 (AAR - MAHARASHTRA) Apsara Co-operative Housing Society Ltd.**

GST : Activities of a co-operative housing society, such as obtaining conveyance from builder, managing, maintaining and administering property of society, raising funds for achieving objects of society, undertaking and providing social, cultural or recreational activities, can be considered as rendering of 'supply' of services to its members under section 7

Litigation put to end, Government proposed a retrospective amendment by way of insertion of this sub clause (aa) to ensure the levy of tax on the amounts collected from the members towards the supply of goods/services.

## Critical Analysis

### Two Deeming Fictions

the person and its members or constituents shall be **deemed to be two separate persons**

**supply of activities or transactions** inter se shall be deemed to take place from one such person to another

### Points to Ponder

- **Validity of Retrospective amendment, in light of Test of Justice and fairness. Another round of Litigation. Additional burden on taxpayer being retrospective.**
- Definition of **Distinct person not amended** to overcome the concept of Doctrine of Mutuality, deeming fictions applied.
- **Ill drafting of the language** of the proposed amendment.(e.g Supply of activities or transactions ? )
- **Issue of Consideration** in light of Indian Contract Act, **being passed from one person to another.**



Section 16

(1).....

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,—

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

**(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;”**

## Impact

- ❑ Rule 36(4) (inserted vide N.N. 49/2019-CT )provided statutory backing to the most disputed CGST Rules.
- ❑ This provision would give force to entries appearing in GSTR 2A/ 2B as a valid proof of supply.

## Reason

- ❑ To put end to litigation, regarding Legal sanctity of Rule 36(4) which was challenged being ultra vires the Act in various Writ Petitions.
- ❑ To overcome in a way to pre-GST legal jurisprudence that supports the view that as long as the purchasing dealer has taken all the steps required for being eligible for ITC, he could not be expected to keep track of whether the selling dealer has in fact deposited the tax collected with the government or has lawfully adjusted it against his output tax liability .
- ❑ To overcome Fake Invoicing issues, when read in conjunction with other Amendments pertaining Suspension of GSTN in case of mismatch of ITC in returns as per GSTR 2A/2B and blocking on non filing of GSTR 1.

## Critical Analysis

- The proposed amendment although giving force to Rule 36(4), but somewhere challenging the leverage of Additional 5% as provided by the Rule.
- Asking the impossible:- The above provision leads to controls the action of supplier by the recipient, thereby overruling the past decisions like Arise India .Ltd (Delhi HC), Kay Kay Industries, where it was held to be unreasonable.
- The amendment being prospective in nature, the validity of Rule 36(4) prior to its insertion is highly disputed.

~~(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 documents in such form and manner as may be prescribed.~~

~~1[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 under any law for the time being in force.]~~

In section 35 of the Central Goods and Services Tax Act, sub-section (5) shall be omitted.

**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:**

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.”.**

## Analysis



### Annual Return + Self Certified Reconciliation Statement

- Section 35 and 44 has been amended to **remove the Mandatory requirement of GST audit by professionals.**
- The requirement for audited reconciliation has been **replaced by 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.
- Thus, every person required to file annual return would be required to file a self certified reconciliation of his as well.  
**Shift of responsibility from auditor to taxpayer.**
- This proposition although is a loss of opportunity for the professionals, but on the other side of the coin, it is **lesser responsibility on the part of professional** and more on the part of taxpayers. This may further **lead to loss of revenue to the government** and **more tax burden at the time of assessment to the taxpayers.** Need to **compare tax cost vs. compliance cost.**
- This proposed amendment is **not applicable for FY 2019-20**

**6 Interest on delayed payment of tax.**

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

~~<sup>1</sup>[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.]~~

w.e.f. 01.07.2017

***“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 by debiting the electronic cash ledger.”***

## Impact

- **Retrospective amendment** made that interest to be paid on Net liability and not on gross liability in case of short payment of Tax with effect from 01.07.2017.
- **Right to claim refund arises, wherever the interest has been paid on gross GST liability.**

## Reason

- The said amendment was proposed to be retrospective in one of GST Council Meeting dated 14.03.2020 and later on the said proviso not being brought retrospectively, it was assured that no recovery would be made from the tax payers for the preceding periods.

## Critical Analysis

This provision **does not give relief** on the following amounts:-

- On **Any unpaid tax amount, even if the balance is lying in electronic cash / credit ledger.**
- **Tax payable in one tax period but paid later with subsequent return, would not enjoy such relief even when paid through ITC.** As the words in proviso says, Payable and declared in the return for the said period.

**eg.** A taxpayer paid short tax of Rs. 50000 in December, 2020. The same was paid using the carried forward ITC in the month of January, 2021. The interest on tax of Rs. 50,000/- for the period of delay is required to be paid, even if the same is paid by ITC.

- **Return not filed and tax not paid upto initiation of any proceedings under Section 73/74** in respect of such tax period would not get this benefit even when amount is lying in Cash / Credit ledger of the taxpayer.

Explanation to section 74(1):-

**Explanation 1.**- For the purposes of section 73 and this section,-

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;
- (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~~ **122 and 125** are deemed to be concluded.

### Analysis

- Delinking of proceedings under section 73, 74 from the proceedings u/s 129(Detention), 130(Confiscation).(prevailing Anomaly removed)
- Section 74 of the CGST Act is being amended so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from recovery of tax.
- The proceedings against other persons u/s 129, 130 would still continue even after conclusion of proceedings u/s 73 or 74.
- This means that the conclusion of proceedings for a tax period under Section 74 would not bring conclusion to proceedings under Section 129 / 130 in respect of transactions recorded by the taxpayer for such tax period and made part of proceedings under section 74.

Explanation inserted:-

‘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.’

### Analysis

- This proposed amendment **widens the scope of self assessed tax** by including tax payable in respect of output supplies in GSTR 1 but not included in GSTR 3B.
- In cases where the liability in **GSTR-1 exceeds that from GSTR-3B, the same would be construed as “Self Assessed Tax”**
- Such short payment may give rise to invocation of **recoveries u/s 79** by virtue of sec. 75(12) and even attachment of **bank accounts through amended provision of Sec. 83.**
- In case of mismatch between GSTR 1 and 3B, **SCN need not to be issued and Opportunity of being heard need not to be provided.** (Although one may rely upon the judgment of LC infra [2020] 116 taxmann.com 205 (Karnataka) and Mahadeo Construction Co. [2020] 116 taxmann.com 262.)
- This will **curb the malpractices whereby liability was shown more in GSTR 1 rather than GSTR-3B, to avoid tax payments.**



Amendment of section 83.

## 9 Provisional attachment to protect revenue in certain cases.

~~(1) 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.~~

*“(1) 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.**”*

### Analysis

Provisional attachment allowed in following chapters:-

- **Chapter XII : Assessment (sec. 59- 64) (Audit not covered Sec65,66))**
- **Chapter XIV: Inspection, search, seizure & Arrest.(Sec. 67-72)**
- **Chapter XV : Demand and recovery(sec. 73-84)**

**Thus**, in place of specified sections, entire Chapters have been prescribed to enlarge the scope of proceedings under which provisional attachment of property can be made.

Sec 62:-Assessment of non-filers of returns.

Sec. 63:- Assessment of unregistered persons.

Sec. 64:- Summary assessment in certain special cases.

Sec. 67:- Power of inspection, search and seizure.

Sec. 73:- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful-misstatement or suppression of facts.

Sec. 74:- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts.

- This proposed amendment has impact that the **gravity and the reach is further widened** meaning thereby this proposition intends to increase the ambit of provisional attachment by way of substitution of section by chapters of the CGST Act.
- **Eg. Now even a proceeding u/s. 71(Access to business premises) empowers the officer to attach the property/bank accounts because Section 71 falls within Chapter XIV of the CGST Act.**
- **Attachment of property of person covered 122(1A)**

To attach provisionally property including bank account of the taxable person or any person who retains the benefit and at whose order or instance the following transactions undertaken:

- a. Supply of any goods or services or both without issue of any invoice or issue of an incorrect or false invoice.
- b. Issuing 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.
- c. Taking or utilising input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder.
- d. Taking or distributing input tax credit in contravention of section 20 (Input service distributor), or the rules made thereunder.

From the initiation of the proceeding under the provisions of Assessment, Inspection, Search, Seizure & Arrest and Demand & Recovery till the expiry of one year from the date of the order made thereunder.

- **Initiation of any proceeding**

It is settled position of law that **property can be attached only when the authority is of the opinion that after closer of proceedings there may be ultimate default of tax payment.** How can the revenue officers determine the tax evasion or quantum of tax evasion or ultimate default of tax payment by the tax payer in the beginning of proceedings are not clear. These provisions are challengeable before the Court.

## Amendment of section 107.

## 10 Appeals to Appellate Authority.

Section 107(6):- No appeal shall be filed under sub-section (1), unless the appellant has paid-

- (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 ten per cent. of the remaining amount of tax in dispute arising from the said order <sup>1</sup>[subject to a maximum of twenty-five crore rupees], in relation to which the appeal has been filed.*

**“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.”**

## Analysis

- Appeal against order of detention and seizure of goods in transit can now be made only after making pre deposit of 25% of penalty as levied under Section 129(3).
- This is in lieu of deposit of 10% of tax amount .
- This will lead to blockage of working capital.

Amendment of section 129.

**11 Detention, seizure and release of goods and conveyances in transit**

Section	Old	New
129(1)	(1) Notwithstanding anything contained in this Act, where <u>any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act</u> or the rules made thereunder, <u>all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance</u> shall be liable to detention or seizure and after detention or seizure, <u>shall be released</u> ,—	Same
129(1)(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 goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;	on payment of the <del>applicable tax</del> <u>penalty equal to two hundred per cent. of the tax payable on such goods and</u> , 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, whichever is less, where the owner of the goods comes forward for payment of such penalty;
129(1)(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;	on payment of penalty equal to <u>fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher.</u> 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;”;
129(2)	The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.	omitted

Section	Old	New
129(3)	The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).	The proper officer detaining or seizing goods or conveyance shall issue a notice <u>within seven days of such detention or seizure</u> , specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;
129(4)	<u>No tax, interest or penalty</u> shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.	<u>No tax, interest or penalty</u> shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.
129(5)	On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.	Same
129(6)	Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within 1[fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:  Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period <u>of seven days may be reduced by the proper officer.</u>	Where the <u>person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3)</u> , the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3): ➤ Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less: ➤ Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be <u>reduced by the proper officer.”</u>

## Section 129 :- Detention, seizure and release of goods and conveyances in transit.

Penalty for release of such detained goods & conveyance

Owner comes forward

If goods taxable

Penalty equal to  
200% of tax payable  
on such goods

If goods exempted

2% of value of goods  
or Rs. 25000/- w.e. is  
Less

Owner does not comes forward

If goods taxable

Penalty equal to 50% of  
value of goods  
Or  
200% of the tax payable  
on such goods, whichever  
is higher,

If goods exempted

5% of value of goods  
or Rs. 25000/- w.e.  
Less

## Examples

**When the goods are taxable and the owner comes forward to pay penalty – then the amount payable would be equal to:  
Penalty equal to 200% of tax payable on such goods**

Example 1:- if the taxable goods valued at ` 100,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods comes forward, the amount payable would be equal to:

Penalty ` 200% of 12,000/- = ` 24,000/-.

**When the goods are exempt and the owner comes forward to pay the penalty – then the amount payable would be equal to: Penalty at 2% of value of goods or ` 25,000/-, whichever is lower.**

Example 2:- , if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods comes forward to pay the penalty the amount payable would be equal to: ` 2,000/- or ` 25,000/- whichever is lower, in this case it is ` 2,000/-

## Examples

**When the goods are taxable and the owner does not come forward to pay the tax and penalty– then the amount payable would be equal to:** Penalty equal to 50% of value of goods Or 200% of the tax payable on such goods, whichever is higher,

The taxable goods valued at ` 1,00,000/- (tax rate 12%) is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay tax and penalty the amount payable would be equal to:

Penalty ` 50,000/- [i.e. 50% of value of goods}

Or

200% of Rs. 12000=24000

i.e Rs. 50000/-

**When the goods are exempt and the owner does not come forward to pay the penalty – then the amount payable would be equal to: Penalty at 5% of value of goods or ` 25,000/-, whichever is lower.**

Example: if the exempt goods valued at ` 1,00,000/- is being transported without documents and subject to detention, then if the owner of goods does not come forward to pay the penalty the amount payable would be equal to: ` 5,000/- or ` 25,000/- whichever is lower, in this case it is ` 5,000/-.

NOTE: 1) Penalty under section 129 is an '**penalty in action**', that is, penalty cannot be imposed after completion of movement in case goods are NOT intercepted during movement and found to be deficient on the prescribed documents. If subsequent evidence is collected that clearly proves that goods have been moved without issuing EWB, even then penalty under section 129 CANNOT be imposed if such investigation is conducted after movement has ended. (**Patna HC in the case of Ram Charitra Ram Harihar Prasad vs State Of Bihar (CWP 11221 of 2019)**)



## Analysis

- Conveyance and goods released, **only penalty** is required to be paid by the concerned person.
- Instead of 100% Tax and 100% Penalty payment, now penalty of 200% of tax payable is applicable.
- Goods cannot be released **provisionally** upon execution of bond or furnishing of security.
- Time limit prescribed (i.e. 7 days) for issue of notice Mov-07 after detention order in MOV-06.
- Further time limit for issue of order in MOV-09 restricted to 7 days from service of such notice on MOV-07.
- Prior to proposed amendment the time period for payment of tax and penalty was 14 days from the date of seizure of conveyance and goods detained were liable for confiscation. Now, the goods or conveyance detained or seized shall become liable to be sold or disposed off within 15 days from date of receipt of copy of order imposing penalty. Earlier it was confiscation and now it is sale for recovery of penalty.
- The transporter can now release the conveyance on payment of **penalty imposed by the officer or RS. 100000/- whichever is less.** **This provision will give relief to transporter against whom the detention proceedings were initiated due to default of supplier or receiver.**

## Amendment of section 130

## 12 Confiscation of goods or conveyances and levy of penalty

Section	Old	New
130(1)	<del>Notwithstanding anything contained in this Act,</del> if any person-	where, if any person-
130(2) second proviso	Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of <b>penalty leviable under sub-section (1) of section 129:</b>	Provided further that the aggregate of such fine and penalty equal to hundred per cent. of the tax payable on such goods"
130(3)	Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.	Omitted

## Analysis

- The **non-obstante clause is no more there** which means section 130 is now not having any overriding impact.
- Section **130 proceedings delinked from Section 129**. Penalty of 100% of tax payable will become applicable.
- Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.
- Relief to taxpayer, in case of **fine in lieu of confiscation of goods or conveyance** is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable shall be omitted.
- The **above amendment has follows the ruling of Hon'ble Gujrat HC in Synergy Fertichem Pvt. Ltd. Which held that these are two differently operating sections as against Kerala HC judgment in Age Industries which stated 130 cannot be restored with putting 129 in operation**

Substitution of new section for section 151.

### 13 Power to call for information.

“151. 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.”

#### Analysis

Empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

The power can be exercised on any person and in respect of any information relating to any matter dealt with in connection with this Act.

This is a very wide power and allows officer to call for any information like call records from telecommunication authority (though guidelines issued in this regard may need to be followed), detail of money transaction from banks in any account, construction records from Municipal bodies, records of transactions from any website, purchase details of its customers from any supplier etc.

Jurisdictional Commissioner  
in memo ?????

Amendment of section 152.

## 14 Bar on disclosure of information

Section	Old	New
152(1)	<p><del>No information of any individual return or part thereof with respect</del> to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of <u>any proceedings under this Act.</u></p>	No information <del>of any individual return or part thereof</del> with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act <u>without giving an opportunity of being heard to the person concerned</u>
152(2)	Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.	omitted

### Analysis

Section 152 has been amended to allow use of such information so collected against a person after affording him an opportunity of being heard. Thus, information collected from different sources may be used to confirm and recover tax after affording reasonable opportunity of being heard to the person against whom such information is being used.

Section	Old	New
16(1)	<p>“zero rated supply” means any of the following supplies of goods or services or both, namely:—</p> <p>(a) export of goods or services or both; or</p> <p>(b) <u>supply of goods or services or both</u> to a Special Economic Zone developer or a Special Economic Zone unit.</p>	<p>“zero rated supply” means any of the following supplies of goods or services or both, namely:—</p> <p>(a) export of goods or services or both; or</p> <p>(b) <u>supply of goods or services or both for authorised operations</u> to a Special Economic Zone developer or a Special Economic Zone unit.</p>
16(3)	<p><del>A registered person making zero rated supply shall be eligible to claim refund under either of the following options namely:—</del></p> <p><del>(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguard and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit or</del></p> <p><del>(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.</del></p>	<p><i>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:</i></p> <p><i>Provided that the registered person making <b>zero rated supply of goods</b> 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 <b>receipt of foreign exchange remittances</b>, in such manner as may be prescribed.</i></p>

**ZERO RATED SUPPLY**

Section	Old	New
16(4)	==	<p><i>The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—</i></p> <p><i>(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;</i></p> <p><i>(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.”.</i></p>

**Analysis**

**Rule 96B now provided sanctity by proviso to S. 16(3)**

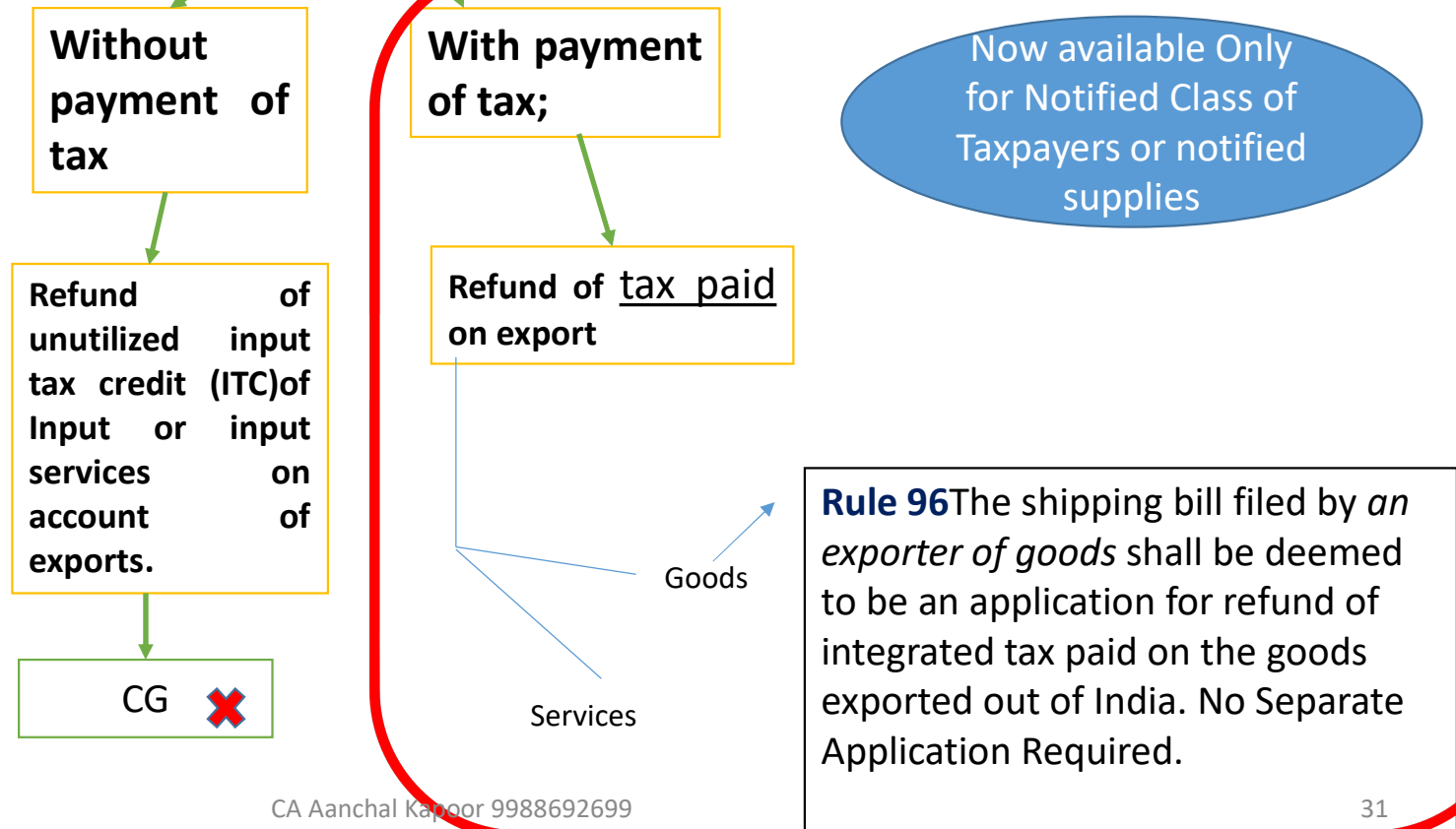
- Scope widened by covering Zero Rated as against only Exports under Rule 96B
- Proviso says that refund is liable to be recovered with interest if proceeds not received within time limit as provided in FEMA. For SEZ supplies, there is ambiguity as to Time Period.

**Refund of output tax on exports(with Payment) shall be available to –**

- Notified class of persons
- Notified class of goods or services

Restricted Scope of  
Zero Rated Supplies  
With Payment of Tax

# EXPORTS/SEZ supplies of goods or services



This proposed amendment restricts the enjoyment of benefits of zero rating in case the supplies are made to SEZ developer or SEZ Unit in a way that now post this amendment the **benefits will be available only** to the supplies to SEZ developer or SEZ Unit **which are for authorised operations and not for any other supplies**.

Such authorised operations must be as per the SEZ Act, Rules and other relevant notifications.

### Before Amendment

- All the supplies to SEZ unit/ developer were considered as Zero Rated.
- At the time of refund, it was ensured whether these are for authorised operations.
- The said restriction was in Refund Rules, not part of parent Act.

### Before Amendment

- Zero Rated supplies (Exports or SEZ) **With payment of tax** was allowed **to all supplies**

### After Amendment

- Supplies to SEZ unit / developer would be considered as zero rated only if these are for authorised operations, and if not these would be taxable supplies.
- Such authorised operations must be as per SEZ Act.

### After Amendment

- In case of supplies to SEZ units/ developers:- **only to the notified class of person**.
- In case of export of goods/ services:- only to notified class of persons and **notified class of goods/ services**.



**Step1:- Export Of Goods.**



**Supply of Goods to SEZ**



MEMO: Link the Foreign Exchange Remittance in case of **EXPORTS OF GOODS with REFUND** (SEZ not covered)

For Export of Services Non Realisation Rule 96A is applicable

**Step 2:-**

**Refund**

Unutilised ITC

**Step 3:- Sale Proceeds (Foreign Exchange) not realized (Part or Full)**  
**Within period allowed by FEMA**

Time Period as per FEMA -9 months  
Extended to 15 months due to Covid

**Step 4:- Within expiry of 30 days from above said period**

Deposit the refunded amount + interest

**Step 5:- On Non payment= Recovery of amount u/s 73 or 74**

**Step 6:- Realisation of proceeds after recovery of refund amount**

**AND**

**evidence produced by applicant within three month from realization of sale proceeds**  
**The Amount recovered be refunded**

### Reason

- In some cases vendors of exporters claimed the bogus credits and discharged their liability through such credit. Because of these reasons Govt wants to restrict that IGST refund option only to few Organized Sectors.
- **Under with payment of tax method, there was encashment of ITC of capital goods, which will not be available.**
- Now the applications for refunds has to be made by exporters, from time to time.

The exporters were having an option

- (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.**

Section 16 of IGST Act has been amended to limit the option of making export with payment of duty. The option is not made limited to notified class of goods or suppliers. Thus, in all cases refund shall be available to persons of tax paid on inward supplies. Also, this would take away the benefit of claiming refund of tax paid on capital goods by way of using such tax for payment of IGST and claiming refund of such IGST so paid.

Further, any person who has received refund but yet not received the payment against the export shall also be required to deposit the refund so received along with the applicable interest under section 50 of the CGST Act within 30 days after the expiry of the time limit prescribed under the FEMA, for receipt of foreign exchange remittances. Whether the provision shall be used to recover refunds so granted in past shall be seen in coming days.

## To curb Malpractices

## Some linked Custom provisions

1. Goods entered for exports could be **confiscated** in situations of a **wrongful claim for remission or refund** of any duty or tax or levy in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force
2. There shall be levied a **penalty not exceeding five times of the refund claimed on export of goods by utilizing Input Tax Credit** (under the GST Laws) on **invoices obtained by fraud, collusion, wilful misstatement or suppression of facts**.
3. **Common Customs Electronic Portal to be notified by the CBIC** for facilitating registration, filing of bill of entry, shipping bills, payment of duty and other documents/ forms prescribed under the Customs Act or any other law for the time being in force. Provisions have been inserted to allow amendments of documents (bill of entry, shipping bill etc.) using the customs automated system based on certain criteria. Furthermore, documents can be amended on the Common Portal by the importer or exporter in certain situations to be specified by the CBIC. Amendment has been proposed for enabling online service of orders, decisions, summons, or notices issued under the Customs Act, 1962 or Rules thereunder on the common portal.
4. Any **conditional exemption notification issued henceforth shall be valid for 2 years** till March 31 falling immediately from the date of such grant or variation. Further, any exemption which is in force as on the date on which Finance Bill 2021 receives Presidential assent, the period of 2 years shall be reckoned from February 1, 2021 and shall remain valid until March 31, 2023
5. The importer of goods is now required **to present the bill of entry one day** (including holidays) prior to arrival of the aircraft/ vehicle/ vessel at the custom station. Previously, bill of entry was to be presented by end of the next day following the day (excluding holidays) on which the aircraft/ vessel/ vehicle arrives at the custom station. Further, CBIC in certain cases may specify the time limit for presentation of the bill of entry which shall not be later than the date of arrival of the vessel/ aircraft/ vehicle

# 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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