



An Analysis of Finance Act, 2020 vis-à-vis GST



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INTRODUCTION

The Finance Act, 2020 has made several amendments to the CGST Act, 2017 and corresponding amendments to the IGST Act, 2017 and UTGST Act, 2017. We have attempted to analyse the provision wise amendment made by the Finance Act, 2020 to the CGST Act, 2017.

Section 2 - Amendment in the definition of Union Territory

Before Amendment	After Amendment
<p>SECTION 2. Definitions (114) “Union territory” means the territory of— (a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli; (d) Daman and Diu; (e) Chandigarh; and (f) other territory.</p>	<p>SECTION 2. Definitions (114) “Union territory” means the territory of— (a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli and Daman and Diu; (d) Ladakh; (e) Chandigarh; and (f) other territory.</p>

Analysis:

The above amendment has been made due to reorganization of Union Territories by way of merger in case of ‘Dadra and Nagar Haveli and Daman and Diu’ and constitution of new Union Territory ‘Ladakh’.



Section 10 - Person opting for Composition Scheme cannot make supply of non-taxable services, inter-state supply of services and supply of services through e-commerce operator

Before Amendment	After Amendment
<p>SECTION 10. Composition levy (2) The registered person shall be eligible to opt under sub-section (1), if :— (a) save as provided in sub-section (1), he is not engaged in the supply of services; (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act; (c) he is not engaged in making any inter-State outward supplies of goods; (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council; and (f) he is neither a casual taxable person nor a non-resident taxable person</p>	<p>SECTION 10. Composition levy (2) The registered person shall be eligible to opt under sub-section (1), if :— (a) save as provided in sub-section (1), he is not engaged in the supply of services; (b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act; (c) he is not engaged in making any inter-State outward supplies of goods or services; (d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council; and (f) he is neither a casual taxable person nor a non-resident taxable person</p>

Analysis:

Section 10(1) of the CGST Act, 2017 provides that a class of registered person may opt to pay a fixed rate of tax on his aggregate turnover subject to conditions and restrictions as may be prescribed. This facility is referred as Composition Scheme or Composition Levy. Section 10(2) of the CGST Act, 2017 provides the conditions upon satisfaction of which a person will be eligible to opt for Composition Scheme.



The above amendment provides for additional condition on the person who wants to opt for Composition Scheme under Section 10(1) of the CGST Act, 2017. **The additional conditions are as under:**

- a) Such person shall not be engaged in in making any supply of services which are not leviable to tax under the CGST Act;*
- b) Such person shall not be not engaged in making any inter-State outward supplies of services;*
- c) Such person shall not be engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52;*

There might be a confusion that ‘not leviable to tax under CGST Act’ will include supply of services which are exempt. In our view, ‘non-leviable to tax under CGST Act’ will only include non-taxable supplies and not exempt supplies.

*“(47) “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, **and includes non-taxable supply**;*

(78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;”

The above definitions make it clear that the ‘exempt supply’ includes ‘non-taxable supply’ but not vice versa. Thus, if the legislature intended to include both ‘exempt supply’ and ‘non-taxable supply’ it would have used the term ‘exempt supply’ instead of ‘not leviable to tax under CGST Act’.

It is important to note that the above conditions shall be applicable to the proviso to Section 10(1) of the CGST Act, 2017 which allows the person paying tax under Composition Scheme to make Supply of services upto 10% of turnover in a State or UT. Thus, the person who wants to opt for Composition Scheme can make Supply of services upto 10% of turnover but such supply of services shall not be a:

- a) Supply of services which are not leviable to tax under the CGST Act, 2017;
- b) Inter-state Supply of services;
- c) Supply of services through an electronic commerce operator who is required to collect tax under Section 52 of the CGST Act, 2017.



Section 16 - Time limit to avail ITC against Debit Note de-linked with the date of Invoice

Before Amendment	After Amendment
<p>SECTION 16. Eligibility and conditions for taking input tax credit</p> <p>(4) – A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.</p>	<p>SECTION 16. Eligibility and conditions for taking input tax credit</p> <p>(4) – A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.</p>

Analysis:

Section 16(4) of the CGST Act, 2017 provided a time limit for availing Input Tax Credit with respect to an invoice or debit note. The time limit for availing Input Tax Credit against a debit note was linked with the date of invoice against which such debit note was issued.

For example: An invoice was issued in FY 2017-18 and a debit note against the said invoice was issued in November 2018, than the recipient of supply shall not be eligible to avail Input Tax Credit based on such debit note as the due date for availing Input Tax Credit was *the due date of furnishing of the GSTR-3B for the month of September following the end of financial year to which such invoice relating to such debit note pertains*.

The lacuna in the law is addressed by the above amendment. However, unless the Central Government makes the above amendment effective from 1st July 2017, the said amendment will lead to the litigation with respect to its date of applicability.



Section 29 - Person who opted for Voluntary Registration can apply for Cancellation of Registration

Before Amendment	After Amendment
<p>SECTION 29. Cancellation or suspension of registration</p> <p>(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, —</p> <p>(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or</p> <p>(b) there is any change in the constitution of the business; or</p> <p>(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under section 22 or section 24</p>	<p>SECTION 29. Cancellation or suspension of registration</p> <p>(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, —</p> <p>(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or</p> <p>(b) there is any change in the constitution of the business; or</p> <p>(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to optout of the registration voluntarily made under sub-section (3) of section 25</p>

Analysis:

After the amendment, *the person who has taken voluntary registration* under Section 25(3) of the CGST Act, 2017, who was otherwise not required to get registered under Section 22 or Section 24 of the CGST Act, 2017, *can now apply for cancellation of registration.*



Section 30 - Provision for Condonation of Delay in filing application for Revocation of Cancellation

Before Amendment	After Amendment
<p>SECTION 30. Revocation of cancellation of registration</p> <p>(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order:</p> <p>Provided that the registered person who was served notice under sub-section (2) of section 29 in the manner as provided in clause (c) or clause (d) of sub-section (1) of section 169 and who could not reply to the said notice, thereby resulting in cancellation of his registration certificate and is hence unable to file application for revocation of cancellation of registration under sub-section (1) of section 30 of the Act, against such order passed up to 31-3-2019, shall be allowed to file application for revocation of cancellation of the registration not later than 22-7-2019.</p>	<p>SECTION 30. Revocation of cancellation of registration</p> <p>(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order:</p> <p><i>Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,—</i></p> <p><i>(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;</i></p> <p><i>(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a)</i></p>





Analysis:

Section 30(1) of the CGST Act, 2017 provides that if the registration of any person has been canceled *suomotu* by the proper officer than such person can apply for revocation of cancellation within 30 days of the order of cancellation. Many taxpayers faced difficulty to revoke the cancellation as they could make the revocation application within 30 days from the service of the order and the proper officer had no authority to condone the delay.

Accordingly, the Central Government inserted a proviso to Section 30(1) of the CGST Act, 2017 to provide that the registered persons who registration has been cancelled till 31st March 2019 can file a revocation application till 22nd July 2019.

The above amendment has addressed the above issue and empowered the Additional Commissioner and the Joint Commissioner to extend the time period of filing of application for revocation of cancellation by 30 days and thereafter, the Commissioner has been empowered to extend the said period further by 30 days. In other words, delay of upto 60 days, after the expiry of initial 30 days for filing of application for revocation of cancellation, can be condoned by the appropriate authorities.



Section 31 – Power of Central Government widened with respect to Tax Invoice

Before Amendment	After Amendment
<p>SECTION 31. Tax invoice (2) – A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which —</p> <p>(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or</p> <p>(b) tax invoice may not be issued.</p>	<p>SECTION 31. Tax invoice (2) – A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:</p> <p>Provided that the Government may, on the recommendations of the Council, by notification,—</p> <p>(a) specify the categories of services or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed;</p> <p>(b) subject to the condition mentioned therein, specify the categories of services in respect of which—</p> <p>(i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or</p> <p>(ii) tax invoice may not be issued.</p>

Analysis:

The proviso to Section 31(2) of the CGST Act has been amended to widen the powers to the Central Government to notify the categories of services in respect of which a tax invoice shall be issued within such time and in such manner as may be prescribed.

Thus, the Central Government can now even prescribe a different time limit for issuance of tax invoices for such categories of services as may be notified.



Section 51 - TDS Certificate

Before Amendment	After Amendment
<p>SECTION 51. Tax deduction at source. —</p> <p>(3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.</p> <p>(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.</p>	<p>SECTION 51. Tax deduction at source. —</p> <p><i>(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed.</i></p> <p><i>(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five days period until the failure is rectified, subject to a maximum amount of five thousand rupees.</i></p>

Analysis:

Section 51(1) of the CGST Act, 2017 mandates certain class of person, specified therein and as notified by the Central Government, to deduct tax at source at the time of making payment to the supplier.

The above amendment provides that the form and manner of issuing certificate for deduction of tax at source shall be provided in the CGST Rules, 2017. Further, the provision imposing late fee for not issuing the certificate within the prescribed time limit has been omitted.

The amendment seems to protect the interest of the Government as the class of persons liable to deduct tax includes the department of Central or State Government, Local Authorities, Government Agencies and PSUs.



Section 109 – Constitution of Appellate Tribunal and Benches for J&K

Before Amendment	After Amendment
<p>SECTION 109. Constitution of Appellate Tribunal and Benches thereof. — (6) The Government shall, by notification, specify for each State or Union territory except for the State of Jammu and Kashmir, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory :</p> <p>Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017</p>	<p>SECTION 109. Constitution of Appellate Tribunal and Benches thereof. — (6) The Government shall, by notification, specify for each State or Union territory except for the State of Jammu and Kashmir, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as “State Bench”) for exercising the powers of the Appellate Tribunal within the concerned State or Union territory :</p> <p>Provided that for the State of Jammu and Kashmir, the State Bench of the Goods and Services Tax Appellate Tribunal constituted under this Act shall be the State Appellate Tribunal constituted under the Jammu and Kashmir Goods and Services Tax Act, 2017</p>

Analysis:

The above amendment has been made due to reorganization of erstwhile State of Jammu and Kashmir. *The Central Government has been empowered to notify the bench of Appellate Tribunal for the newly constituted Union Territory of Jammu & Kashmir.*



Section 122 - Beneficiary to be Penalized

SECTION 122. Penalty for certain offences –

(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

Analysis:

Sub Section (1A) has been inserted to Section 122 of the CGST Act, 2017 to provide that the transactions where:

- a) any goods or services or both have been supplied without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
- b) any invoice or bill has been issued without supply of goods or services or both in violation of the provisions of the CGST Act, 2017 or the rules made thereunder;
- c) input tax credit has been taken or utilised 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) input tax credit has been taken or distributed in contravention of section 20, or the rules made thereunder

then a person who retains the benefit of the above transaction and at whose instance such transaction is conducted shall be liable to penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.

The purpose of the above amendment is to penalize the person who is the ultimate beneficiary of the fraud transactions and the person at whose direction the fraud transaction has been conducted.



Section 132- Beneficiary to be Penalized

Before Amendment	After Amendment
<p>SECTION 132. Punishment for certain offences. — (1) Whoever commits any of the following offences, namely :—</p> <p>(c) avails input tax credit using such invoice or bill referred to in clause (b);</p> <p>(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d)</p>	<p>SECTION 132. Punishment for certain offences. — <i>(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences :—</i></p> <p><i>(c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;</i></p> <p>(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d)</p>

Analysis:

The purpose to amend Sub-section (1) of Section 132 of the CGST Act, 2017 is to penalize the person who actually gets benefited from the fraudulent transactions and the person at whose instance such fraudulent transactions are committed.



Section 140 – Retrospective Amendment to empower Government to prescribe time limit to carry forward the Transitional Credit

Before Amendment	After Amendment
<p>SECTION 140. Transitional arrangements for input tax credit. — (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed :</p> <p>(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed :</p> <p>(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or</p>	<p>SECTION 140. Transitional arrangements for input tax credit. — (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law within such time and in such manner as may be prescribed :</p> <p>(2) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day within such time and in such manner as may be prescribed :</p> <p>(3) A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated the 20th June, 2012 or a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer,</p>



<p>a registered importer or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely :-</p>	<p>shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, <i>within such time and in such manner as may be prescribed,</i> subject to the following conditions, namely :--</p>
<p>...</p>	<p>...</p>
<p>...</p>	<p>...</p>
<p>(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.</p>	<p>(5) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, <i>within such time and in such manner as may be prescribed,</i> subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of account of such person within a period of thirty days from the appointed day.</p>
<p>(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely :—</p>	<p>(6) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, <i>within such time and in such manner as may be prescribed,</i> subject to the following conditions, namely :—</p>
<p>...</p>	<p>...</p>
<p>...</p>	<p>...</p>





<p>(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.</p> <p>(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed :</p> <p>(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.</p>	<p>...</p> <p>(7) Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act, <i>within such time and in such manner as may be prescribed</i>, even if the invoices relating to such services are received on or after the appointed day.</p> <p>(8) Where a registered person having centralised registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of CENVAT credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day, <i>within such time and in such manner as may be prescribed</i> :</p> <p>(9) Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed, <i>within such time and in such manner as may be prescribed</i>, subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.</p>
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Analysis:

The term “*within such time*” has been inserted among various provisions of Section 140 of the CGST Act, 2017. The said amendment has been given a retrospective effect from 1st July 2017.

There were several petitions filed before various High Courts challenging the validity of the time limit provided under Rule 117 of the CGST Rules, 2017 to carry forwards the balance of Cenvat Credit of the existing laws. However, the validity of Rule 117 of the CGST Rules, 2017 has been recently upheld by the Hon’ble High Court of Bombay in the case of ***NELCO Ltd. vs. UOI & Ors.*** (Writ Petition No.6998 of 2018).

The amendment seeks to regularize the lacuna in the law and end the litigation with respect to validity of Rule 117 of the CGST Rules, 2017.



Section 168 – Power to issue instructions or directions

Before Amendment	After Amendment
<p>SECTION 168. Power to issue instructions or directions. — (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (1) of section 44, sub-sections (4) and (5) of section 52, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.</p>	<p>SECTION 168. Power to issue instructions or directions. — (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (1) of section 44, sub-sections (4) and (5) of section 52, sub-section (5) of section 66, sub-section (1) of section 143 sub-section (1) of section 143, except the second proviso thereof, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.</p>

Analysis:

Section 168(2) of the CGST Act, 2017 provides that the Commissioner specified in various provisions of the Act mentioned therein shall mean the Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

The above amendment removed sub-section (5) of section 6 and the second proviso to sub-section (1) of section 143 from Section 168(2) of the CGST Act, 2017. *In other words, the Commissioner determining the expenses and the remuneration for the special audit directed under Section 66 of the CGST Act, 2017 need not be the Commissioner or Joint Secretary posted in the Board.*

Similarly, the Commissioner empowered under the second proviso to Section 143(1) of the CGST Act, 2017 to extend the period for bringing back the goods given for job-work shall also need not be the Commissioner or Joint Secretary posted in the Board.



Section 172 – Extension of powers to issue Removal of Difficulty orders

Before Amendment	After Amendment
<p>SECTION 172. Removal of difficulties. — (1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.</p>	<p>SECTION 172. Removal of difficulties. — (1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of <i>five years</i> from the date of commencement of this Act.</p>

Analysis:

Section 172 of the CGST Act, 2017 empowers the Central Government to issue orders to remove difficulties (for examples: extending due date of filing of annual return) arising in giving effect to the provisions of the CGST Act, 2017 or rules made thereunder.

The above provision was due to expire on 30th June 2020 but now the same has been extended upto 30th June 2022.



Schedule II - Entry No. 4

Before Amendment	After Amendment
<p>SCCHEDULE II - Activities or Transactions to be treated as supply of goods or supply of services:</p> <p>4. Transfer of business assets</p> <p>(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;</p> <p>(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.</p>	<p>SCCHEDULE II - Activities or Transactions to be treated as supply of goods or supply of services:</p> <p>4. Transfer of business assets</p> <p>(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;</p> <p>(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.</p>

Analysis:

The above amendment has been given retrospective effect from 1st July 2017. Schedule II of the CGST Act, 2017 provides classification of certain transaction or activities as goods or services.

In terms of Section 7(1)(c) of the CGST Act, 2017 the transaction or activities which will be deemed to be 'Supply' under the CGST Act, 2017 even if made without consideration are already enlisted under Schedule I of the CGST Act, 2017.

The intention of the above amendment may be the possible overlapping of Schedule II into Schedule I of the CGST Act, 2017.



Giving effect to the decision of 37th GST Council Meeting

(1) Notwithstanding anything contained in the notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 673(E), dated the 28th June, 2017, issued by the Central Government, on the recommendations of the Council, in exercise of the powers under sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017,—

(i) no central tax shall be levied or collected in respect of supply of fishmeal (falling under heading 2301), during the period commencing from the 1st day of July, 2017 and ending with the 30th day of September, 2019 (both days inclusive);

(ii) central tax at the rate of six per cent. shall be levied or collected in respect of supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery (falling under headings 8432, 8433 and 8436), during the period commencing from the 1st day of July, 2017 and ending with the 31st day of December, 2018 (both days inclusive).

(2) No refund shall be made of all such tax which has been collected, but which would not have been so collected, had sub-section (1) been in force at all material times.

Analysis:

The GST Council in its 37th meeting recommended that the Fishmeal shall be exempted from GST for the period 1st July 2017 to 30th September 2018 due to classification issue.

Similarly, the Council also recommended for concessional rate of GST @12% on supply of pulley, wheels and other parts used as a part of agriculture machinery for the period 1st July 2017 to 31st December 2018.

The above amendment give effect to the decision of the GST Council. The amendment also provides that if any tax (in case of Fishmeal) or tax at the higher rate (in case of supply of pulley, wheels and other parts) has been collected than the same shall not be refunded.



No Refund on account of Inverted Duty Structure – Retrospective Effect

The notification of the Government of India in the Ministry of Finance (Department of Revenue) number G.S.R. 708(E), dated the 30th September, 2019, issued by the Central Government, on the recommendations of the Council, in exercise of the powers under clause (ii) of the proviso to sub-section (3) of section 54 of the Central Goods and Services Tax Act, 2017, read with sub-section (2) of section 9 of the Goods and Services Tax (Compensation to States) Act, 2017, shall be deemed to have, and always to have, for all purposes, come into force on and from the 1st day of July, 2017

Analysis:

The above amendment gives retrospective effect to ***Notification No. 3/2019-CT (Rate) dated 30.09.2019***. The said notification has been issued under Section 54(3)(ii) of the CGST Act, 2017 and prohibits refund of accumulated Compensation Cess credit on account of inverted duty structure to the manufacturer of Tobacco and manufactured tobacco substitutes.

Thus, the manufacturer of Tobacco and manufactured tobacco substitutes will not be eligible to claim refund of accumulated Compensation Cess credit on account of inverted duty structure w.e.f. 1st July 2017.

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