



SECTIONWISE ANALYSIS – GST AMENDMENTS (FINANCE BILL 2020)

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GST AMENDMENTS – HIGHLIGHTS AT A GLANCE

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1. Union Territory to include 'Ladakh' & 'Dadra and Nagar Haveli and Daman and Diu'

Source

Clause 116 of the Finance Bill, 2020.
Clause 135 of the Finance Bill, 2020

Effective Date

Date to be notified by the government.

Affected Provision

Section 2(114) of the CGST Act, 2017.
Section 2(8) of the UTGST Act, 2017

Provision before amendment

CGST ACT (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.

Explanation. —For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory

Provision after Amendment

CGST ACT (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.

Explanation. —For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory

Effect of the Amendment

The definition of Union Territory now recognizes 'Ladakh' as a separate Union Territory in the CGST Act 2017.
'Dadra and Nagar Haveli and Daman and Diu' have been combined in the definition of Union Territory as they are now considered as part of the same Union Territory

2. Composition Scheme to restrict certain supply of services

Source

Clause 117 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 10(2) (b) (c) & (d) of the CGST Act, 2017.

Amendment

The provision marked in green has been inserted:

(2) The registered person shall be eligible to opt under sub-section (1), if: —

(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;

(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; and

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

Effect of the Amendment

In the composition scheme, the following group of persons will also be excluded from opting for the said scheme:

- a) Persons engaged in making inter-state outward supply of services
- b) Persons engaged in making any supply of services which are not leviable to tax
- c) Persons engaged in making supply of services through electronic commerce operator required to collect TCS

Though the above category of persons were excluded in respect of 'supply of goods', exclusion for 'supply of services' has now been provided.

3. Last date for availment of ITC for debit notes

Source

Clause 118 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 16(4) of the CGST Act, 2017

Amendment

The provision marked in red has been omitted

16 (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.

Effect of the Amendment

This provision is a relief for the time limit allowed for the availment of input tax credit on debit notes. The time limit of due date of September return of the next financial year for availment of input tax credit on debit notes will be taken as per the date of the issuance of the debit note and not the date of invoice to which such debit note is linked.

Let us take an example. An invoice is issued for Rs. 1,00,000 plus 18% GST on 1st March 2019. The debit note against such invoice is issued for Rs. 10,000 plus 18% GST on 1st August 2019. Before this amendment, the due date for availment of such credit was the due date of September return of subsequent financial year to which the invoice related i.e. 20th October 2019. If the said debit note is itself issued after the said date (say 1st November 2019), the time limit of availment of such credit would have already expired.

To correct this anomaly, the last date of taking the input tax credit now will be the due date of the September return of the subsequent financial year to which the debit note pertains. In the above example, the time limit for availing such credit for which the debit note is issued during the year 2019-20 will be 20th October 2020.

4. Voluntary registration allowed to be cancelled

Source

Clause 119 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 29(1)(c) of the CGST Act, 2017

Provision before amendment

~~29(1)(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.~~

Provision after amendment

29(1)(c) the taxable person is no longer liable to be registered under section 22 or section 24 or intends to opt out of the registration voluntarily made under sub-section (3) of section 25:"

Effect of the Amendment

The provisions of cancellation of registration has now been modified to allow those cases wherein a person had obtained their registration voluntarily

5. Extension of the application period for 'revocation of cancellation of registration'

Source

Clause 120 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

New Section

Section 30(1) of the CGST Act, 2017

Provision before amendment

~~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.~~

Provision after amendment

“Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended—

(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;

(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).”.

Effect of the Amendment

Currently, a person is allowed to revoke their cancellation of registration by making an application within 30 days from the date of service of cancellation order.

After this amendment, upon ‘sufficient cause being shown’ and ‘for reasons recorded in writing’, the time period can be extended as follows:

- a) Upto 30 days – by Additional Commissioner or Joint Commissioner
- b) Further period of 30 days after (a) above - by Commissioner

6. Time and manner for invoicing to be prescribed for certain category of services

Source

Clause 121 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 31(2) of the CGST Act, 2017

Provision before Amendment

~~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—~~

~~(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or~~

~~(b) tax invoice may not be issued.~~

Provision after Amendment

“Provided that the Government may, on the recommendations of the Council, by notification, —

- (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;
- (b) subject to the condition mentioned therein, specify the categories of services in respect of which—
 - (i) any other document issued in relation to the supply shall be deemed to be a tax invoice; or
 - (ii) tax invoice may not be issued.”.

Effect of the Amendment

The Government has been empowered to specify certain categories of services or supplies in respect of which a tax invoice is to be issued within the prescribed time and manner.

7. TDS certificate to be furnished in prescribed form and manner

Source

Clause 122 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 51(3) &(4) of the CGST Act, 2017

Provision before Amendment

~~(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.~~

~~(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.~~

Provision after Amendment

(3) A certificate of tax deduction at source shall be issued in such form and in such manner as may be prescribed

Effect of the Amendment

The law earlier prescribed the furnishing of certificate with the relevant particulars, the time period within which such certificate is to be furnished and the late fees in case of any default.

Now, the specific provisions for the certificate have been removed from the law.

The power has been delegated to the Government to specify form and manner in which such certificate is to be issued.

8. Appellate Tribunal for Jammu and Kashmir and Ladakh

Source

Clause 123 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 109(6) of the CGST Act, 2017

Amendment

The Provision marked in red is omitted:

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 :

~~{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.~~

Effect of the Amendment

The provisions for Appellate Tribunal and its benches thereof have been made applicable in the Union Territories of Jammu and Kashmir and Ladakh.

9. Penalty on the beneficiary of the transaction in case of fake invoicing**Source**

Clause 124 of the Finance Bill,2020.

Effective Date

Date to be notified by the government.

New Provision

Section 122(1A) of the CGST Act, 2017.

Amendment

The provision marked in green has been newly inserted.

(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."

Effect of the Amendment

In case of fake invoicing (invoice without supply, supply without invoice, taking ITC without the actual receipt of supply), the beneficiary of the transaction is usually found to be different to the 'directors', 'promoters', 'partners' etc. of the entity involved in such activity. It may happen that the name of the actual beneficiary does not appear anywhere in the entire fraud chain.

However, the Government has now been given the power to penalize the beneficiary (if established) in such fraudulent transactions to the extent of the tax evaded or input tax credit availed.

10. Non-bailable offence to cover fraudulent availment of ITC**Source**

Clause 125 of the Finance Bill,2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 132 (1) of the CGST Act, 2017.

Section 132 (1) (c) & (e) of the CGST Act, 2017.

Provision Before Amendment

132(1) “~~Whoever commits any of the following offences~~, namely: —

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues 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 leading to wrongful availment or utilisation of input tax credit or refund of tax;

~~(c) avails input tax credit using such invoice or bill referred to in clause (b);~~

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, ~~fraudulently avails input tax credit~~ or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

Provision After Amendment

132(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences

(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(b) issues 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 leading to wrongful availment or utilisation of input tax credit or refund of tax;

(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

(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(e) evades tax, or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);

Amendment

The provision marked in red has either been substituted by provision marked in green or omitted.

Effect of the Amendment

- (i) Earlier only input tax credit on fake bills were considered as cognizable and non-bailable. Now, the offence of fraudulent availment of input tax credit without invoice or bill cognizable and non-bailable.
- (ii) Further, the prosecution has been extended to the person who retains the benefit of the transactions and at whose instance such transactions are conducted.

11. Transitional provisions retrospectively prescribe the time**Source**

Clause 126 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 140 of the CGST Act, 2017

Effect of the Amendment

The transitional provisions under the CGST Act did not empower the Government to specify the time limit within the said credit could be taken. It has only been provided by means of the CGST Rules 2017. To counter the litigation wherein this aspect had been challenged, a retrospective amendment has been carried out in the transitional provisions to provide for the time limit. This means that the statute after the amendment allows the Government to specify the time and manner of availment of input tax credit.

12. Jurisdictional Commissioner provided with additional powers**Source**

Clause 127 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 168(2) of the CGST Act, 2017

Provision before amendment

168 (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 (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.

Provision after amendment

168 (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 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

Effect of the Amendment

The provisions for allowing the jurisdictional Commissioners to exercise powers have not been enabled for the following:

- (i) The expenses of the examination and audit of records under Special Audit including the remuneration of Chartered Accountant is to be determined and paid by the Commissioner.
- (ii) The period of one year for inputs and three years for capital goods may on sufficient cause being shown can be extended by a further period not exceeding one year and two years respectively by the Commissioner

13. Time period for issuance of removal of difficulties order**Source**

Clause 128 of the Finance Bill, 2020.
Clause 132 of the Finance Bill, 2020.
Clause 136 of the Finance Bill, 2020.
Clause 138 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Section 172(1) of the CGST Act, 2017

Section 25 of the IGST Act, 2017.

Section 26 of the UTGST Act, 2017

Section 14 of the GST (Compensation to the States) Act.

Provision Before Amendment**CGST Act**

172. (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:

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.

Provision After Amendment**CGST Act**

172. (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:

Provided that no such order shall be made after the expiry of a period of ~~three years~~ **five years** from the date of commencement of this Act.

Effect of the Amendment

The time period for issuance of removal of difficulties order was only prescribed upto three years from the commencement of the Act. This has now been extended upto 5 years. Thereby, the Government has the power to issue Removal of Difficulties order upto 30th June 2022 (earlier it was upto 30th June 2020 only).

14. Clarification on the scope of certain Schedule II supplies**Source**

Clause 129 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Affected Provision

Schedule II Paragraph 4 of the CGST Act, 2017

Provision before Amendment**4. Transfer of business assets**

(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;

(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;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

Amendment

The provision marked in red has been omitted.

Effect of the Amendment

Schedule II of the CGST Act 2017 classifies activities or transactions which are to be treated as supply of goods or services or both. However, it must be noted that the coverage of this schedule is only for the purpose of classification between 'goods' or 'services' and not for determination of what is a supply.

In Paragraph 4, 'transfer of business assets' and 'goods put to private use' used to cover those situations wherein consideration was not involved at all. This used to create confusion that even if such transaction is not a supply under the CGST Act 2017, they may be treated as 'supply of goods' in terms of Schedule II.

To alleviate such concerns, a retrospective amendment has been brought in to remove the portion of 'whether or not for consideration'. This seeks to bring clarify that the classification between 'goods' or 'services', if it is held to be a supply as per the definition under the CGST Act 2017.

15. Retrospective provisions on rates and exemptions

Source

Clause 130 of the Finance Bill, 2020.
Clause 133 of the Finance Bill, 2020.
Clause 137 of the Finance Bill, 2020.

Effective Date

Date to be notified by the government.

Effect of the Amendment

This clause seeks to provide retrospective exemption from central tax on supply of fishmeal, during the period from the 1st day of July, 2017 up to 30th day of September, 2019 (both days inclusive).

It further seeks to retrospectively levy central tax at the reduced rate of six per cent. on supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery of headings 8432, 8433 and 8436, during the period from the 1st day of July, 2017 up to 31st day of December, 2018 (both days inclusive). It also seeks to provide that no refund shall be made of the tax which has already been collected

16. Retrospective restriction on refund of tobacco under inverted duty structure

Source

Clause 131 of the Finance Bill, 2019.

Effective Date

Date to be notified by the government.

Effect of the Amendments

The non-applicability of refund under inverted duty structure for tobacco and manufactured tobacco substitutes had been introduced from 30th September 2017. This has been given a retrospective effect from 1st July 2017.

This publication contains information for general guidance only. It is not intended to address the circumstances of any particular individual or entity. Although the best of endeavour has been made to provide the provisions in a simpler and accurate form, there is no substitute to detailed research with regard to the specific situation of a particular individual or entity. S. Khaitan & Associates or any of its officials do not accept any responsibility for loss incurred by any person for acting or refraining to act as a result of any matter in this publication



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