



UNION

BUDGET 2022



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Budget 2022
Proposed Changes in CGST Act

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Note -

- Applicable date of following amendments shall be 'date of enactment of Finance Bill, 2022, i.e., the date of which Finance Bill, 2022 receives the assent of President of India'
 - Rate of Interest as covered in S. No. 7
 - S. No. 12
 - S. No. 13
- Remaining amendments, i.e., listed at S. No. 1 to 11 of Index above shall come into effect from 'a date to be notified', after enactment of Finance Bill, 2022.

Last date to Avail ITC, tax benefit by way of Credit Note & Rectify any Error or Omission in GST Returns extended

1. Last date to avail ITC is proposed to be extended by way of amendment in sub-section (4) of Section 16 by **substituting** erstwhile words “due date of furnishing of the return under section 39 for the month of September” to “thirtieth day of November”. Amended sub-section (4) shall read as under-

“(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 thirtieth day of November following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier:”

2. Similar to above amendment, another amendment is proposed to be brought in sub-section (2) of Section 34 by **substituting** word “September” by “the thirtieth day of November”. Amended sub-section (2) of Section 34 shall read as under -

“(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:”

3. Further, another amendment is proposed to be brought in proviso to sub-section (3) of Section 37 by **substituting** words “furnishing of the return under section 39 for the month of September” by “the thirtieth day of November”. Amended proviso to sub-section (3) of Section 37 shall read as under -

“(3)

***Provided** that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier.”*

4. Similar amendment has been proposed in proviso to sub-section (9) of Section 39 which provides for rectification of error or omission in GST return. Amended proviso after **substitution**, as proposed, shall read as -

“(9)

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year to which such details pertain, or the actual date of furnishing of relevant annual return, whichever is earlier.”

5. Another similar amendment has been proposed in proviso to sub-section (6) of Section 52 which provides for rectification of error or omission in another GST return. Amended proviso after **substitution**, as proposed, shall read as -

“(6)

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the thirtieth day of November following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.”

Commentary - Presently, last date to avail ITC, to avail tax benefit as per credit note(s) issued as well as to rectify errors or omission in return furnished under Section 37 (Form GSTR-1), Section 39 (Form GSTR-3B) & Section 52 (Form GSTR-8 for TCS) is earlier of -

1. Due date of furnishing of return for the month of September following the relevant financial year; or
2. Date of furnishing of relevant annual return.

Whereas a relaxation is proposed to be provided in last dates of all the above by extending last date from erstwhile due date of furnishing of return for the month of September (which was 20th October) to 30th November of next financial year.

Removal of concept of matching of outward supplies & inward supplies

On advent of GST, a mechanism was introduced where a taxpayer had to furnish details of outward supplies, inward supplies, match the details with automated generated returns/statement, accept or reject the details in auto generated returns/statement, i.e. two way communication process in return filing. However, such schema of matching of details of outward & inward supplies was never implemented in GST regime after the introduction of GST till date. Therefore, such a mechanism (and corresponding GST provisions) is proposed to be omitted from the legislature by way of following amendments -

1. Section 42, 43 & 43A are proposed to be **omitted** which currently provides for -
 - a. Section 42 - Matching, reversal and reclaim of input tax credit
 - b. Section 43 - Matching, reversal and reclaim of reduction in output tax liability
 - c. Section 43A - Procedure for furnishing return and availing input tax credit
2. Following amendments are proposed in Section 37 (GSTR-1) in order to do away with matching requirement -
 - Words *"shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed"* in Sub-section (1) is proposed to be **substituted** by words *"shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies"*. Amended sub-section (1) shall read as -

"(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall subject to such conditions and restrictions and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies:"

- First proviso to sub-section (1) is proposed to be **omitted** which currently reads as -

*“**Provided** that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period.”*

- Words *“and which have remained unmatched under section 42 or section 43”* in sub-section (3) are proposed to be **omitted** after which sub-section (3) shall read as –

“(3) Any registered person, who has furnished the details under sub-section (1) for any tax period ~~and which have remained unmatched under section 42 or section 43~~, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.”

3. Corresponding amendment is proposed in Clause (c) of Sub-section (2) of Section 16 which deals with ‘Eligibility & Conditions for taking Input Tax Credit’ by **omitting** words *“or Section 43A”*. Amended clause (c) shall read as –

“(c) subject to the provisions of section 41 ~~or section 43A~~ the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilisation of input tax credit admissible in respect of the said supply; and”

4. Similar amendment is proposed in Sub-section (2) of Section 49 which deals with ‘Payment of Tax, Interest, Penalty & Other Amounts’ by **omitting** words *“or Section 43A”*. Amended sub-section (2) of Section 49 shall read as –

“(2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41 ~~or section 43A~~, to be maintained in such manner as may be prescribed.”

***Note** – Since Section 38 of CGST Act, 2017 also pertains to furnishing of inward return which is a part of matching mechanism, the same is also substituted in entirety and has been covered as a separate topic in later part of this budget analysis.

New Mechanism to avail ITC

Changes in Section 38 and corresponding changes

1. Consistent with the above proposed amendments for removal of matching mechanism, Section 38 of the CGST Act, 2017 which currently provides for “Furnishing details of Inward Supplies” is also proposed to be **substituted in entirety** to read as–

“38. Communication of details of inward supplies and input tax credit.

(1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an autogenerated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.

(2) The auto-generated statement under sub-section (1) shall consist of–

- (a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and*
- (b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,–*
 - (i) by any registered person within such period of taking registration as may be prescribed; or*
 - (ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or*
 - (iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or*
 - (iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that*

exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or
(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed; or
(vi) by such other class of persons as may be prescribed."

2. To give effect to amended Section 38 of CGST Act, 2017, following further amendments in other provisions are proposed -

- The pre-conditions listed in Section 16(2) of CGST Act, 2017 for availing Input Tax Credit (ITC) by any registered person have been proposed to be increased by way of **inserting** clause (ba) in sub-section (2) which provides for -

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

- Words "*Subject to the provisions of section 37 and 38, if*" in sub-section (9) of Section 39 (GSTR-3B) are proposed to be **substituted** by words "Where" and shall read as -

"(9) Where any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars [in such form and manner as may be prescribed][3], subject to payment of interest under this Act:"

- Words "*or inward*" & "*or section 38*" in sub-section (1) of Section 47 are proposed to be **omitted** and shall read as -

"(1) Any registered person who fails to furnish the details of outward ~~or inward~~ supplies required under section 37 ~~or section 38~~ or returns required under section 39 or section 45 or section 52 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees."

- Words “the details of inward supplies under section 38” used in sub-section (2) of Section 48 are proposed to be **omitted** and shall read as –

“(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, ~~the details of inward supplies under section 38~~ and the return under section 39 or section 44 or section 45 [and to perform such other functions in such manner as may be prescribed.]”

- Words “sub-section (2) of section 38” used in Section 168 which provides for ‘Power to issue instructions or directions’ are also proposed to be **omitted**.

Commentary – In order to do away with two-way communication process in return filing, i.e. filing of details of inward supplies, matching the same with details of outward supplies filed by the vendor/supplier, etc. (which was never implemented), Section 38 has been proposed to be substituted fully.

New Section 38 provides for amended/new Form GSTR-2A/2B where details of inward supplies is communicated to the taxpayer with a bifurcation as to which ITC is admissible to the taxpayer and what all ITC cannot be taken by a taxpayer owing to reasons, such as –

- a. Vendor/Supplier has defaulted in payment of output taxes; or,
- b. Output tax shown by vendor/supplier in its GSTR-1 exceeds by output tax shown in GSTR-3B by a prescribed limit; or,
- c. Vendor has availed ITC more than what is admissible to him, by a prescribed limit.

In line with this amendment in Section 38, a new condition is proposed to be added in Section 16(2), which provides for condition for availing ITC and clause (ba) provides that only such ITC can be availed by a taxpayer which has been shown as admissible in amended/new Form GSTR-2A/2B.

Further, pursuant to amendment in Section 38, amendments is proposed to be made in other sections so as to remove references to Section 38 therefrom.

Changes in Section 41

Commentary – Earlier, as per Section 41, ITC was availed ‘provisionally’ in E-credit ledger on self-assessment basis.

However, Section 41 is proposed to be **substituted in entirety** to do away with availment of ITC on self-assessment basis on provisional basis. Further, it is amended to bring provision for reversal of ITC (with interest) in case where tax thereon is not deposited by the supplier/vendor with Government exchequer and re-availment thereof in future upon supplier/vendor depositing the tax with Government exchequer.

Amended Section 41 shall read as –

“Availment of input tax credit

41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.”

Restrictions for utilizing ITC (to the extent it can be utilized)

Background - Rule 86B was inserted in CGST Rules, 2017 vide Notification No. 94/2020 - Central Tax dated 22 December 2020 w.e.f. 01 January 2021 and provided that only 99% ITC can be utilized while making payment of output taxes and 1% output tax has to be mandatorily paid by way of cash. This restriction was applicable only when output tax liability in a month was more than Rs. 50,00,000/- and was subject to certain exceptions as listed therein.

However, there was no power given in the statute to restrict the quantum of ITC which can be 'utilized' by a taxpayer for payment of his output tax liability and thus, constitutional validity of Rule 86B without any power in the Act was under question. One such matter was **R/Special Civil Application No. 917 of 2021** filed in the matter of **M/s AAP & Co. v. Union of India** before **Hon'ble Gujarat High Court** challenging the constitutional validity of Rule 86B.

Thus, in order to grant power to the Government to restrict amount of ITC that can be 'utilized' for payment of output tax, following amendments in Section 49 are proposed -

1. Words "*and restrictions*" proposed to be **inserted** in sub-section (4) which shall read as -

"(4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and restrictions and within such time as may be prescribed."

2. In order to give effect to 'restriction' contained in Rule 86B in statute, sub-section (12) is proposed to be **inserted** which shall read as -

"(12) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, subject to such conditions and restrictions, specify such maximum proportion of output tax liability under this Act or under the Integrated Goods and Services Tax Act, 2017 which may be discharged through the electronic credit ledger by a registered person or a class of registered persons, as may be prescribed."

Commentary – Though, sub-rule (12) is proposed to be inserted, however, since it will be inserted prospectively from a date to be notified (after 01 February 2022 only) while Rule 86B was inserted w.e.f. 01 January 2021, validity of Rule 86B during the intervening period & demand notices/departmental enquiries in pursuance of Rule 86B issued during this intervening period will still be litigative/debatable.

Sequential filing of GSTR-1

1. Certain conditions as may be prescribed by way of Rules is sought to be brought subject to which return of outward supplies (GSTR-1) shall be filed by a taxpayer. For the same, words “*subject to such conditions and restrictions and*” are proposed to be **inserted** in sub-section (1) of Section 37. Amended sub-section (1) will read as –

“(1) Every registered person, other than an Input Service Distributor, a non-resident taxable person and a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, subject to such conditions and restrictions and in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed:”

2. New condition has been proposed to be **inserted** as sub-section (4) in Section 37 which provides that –

“(4) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period, if the details of outward supplies for any of the previous tax periods has not been furnished by him:

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

Commentary – Power has been given to Government to notify/bring in certain ‘conditions and restrictions’ subject to which return under Form GSTR-1 shall be furnished by a taxpayer in future.

Further, as per newly introduced sub-section (4), a taxpayer cannot furnish GSTR-1 for a tax period if such taxpayer has not furnished GSTR-1 for previous tax periods. This has been done with an intent to provide for period – wise sequential filing of GSTR-1. However, Government may notify some class of taxpayers who will be allowed to furnish GSTR-1 for a tax period even if they have not furnished prior period’s GSTR-1, subject to such conditions & restrictions, as may be notified.

New restrictions while filing GSTR-3B

1. Due date of furnishing of return by a non-resident taxable person is proposed to be reduced from erstwhile 20th of next month to 13th of next month. For the same, word “twenty” is proposed to be **substituted** by word “thirteen” in sub-section (5) of Section 39 and shall read as –

“(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within ~~twenty~~ thirteen days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.”

2. Proviso to sub-section (7) is proposed to be **substituted** as –

“(7) Every registered person who is required to furnish a return under sub-section (1), other than the person referred to in the proviso thereto, or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return:

~~Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month, in such form and manner, and within such time, as may be prescribed:~~

Provided that every registered person furnishing return under the proviso to sub-section (1) shall pay to the Government, in such form and manner, and within such time, as may be prescribed,-

- (a) an amount equal to the tax due taking into account inward and outward supplies of goods or services or both, input tax credit availed, tax payable and such other particulars during a month; or*
- (b) in lieu of the amount referred to in clause (a), an amount determined in such manner and subject to such conditions and restrictions as may be prescribed.”*

3. Words “has not been furnished by him” in sub-section (10) is proposed to be **substituted** as and a proviso in sub-section (10) is proposed to be **inserted** which shall read as –

“(10) A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods ~~has not been furnished by him~~, or the details of outward supplies under sub-section (1) of section 37 for the said tax period has not been furnished by him:

Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return, even if he has not furnished the returns for one or more previous tax periods or has not furnished the details of outward supplies under subsection (1) of section 37 for the said tax period.”

Commentary – Presently, GSTR-3B cannot be filed by a taxpayer till the time the self-assessed tax as per GSTR-3B is not paid by such taxpayer to Government exchequer. However, proviso to section 39(1) provide option to file GSTR-3B on quarterly basis to certain notified class of registered persons. Such taxpayers can pay their monthly tax liability either in the Fixed Sum Method (FSM) (NN 85/2020-CT dated 10 November 2020) or use the Self-Assessment Method (SAM).

Under FSM, the taxpayer must pay an amount of tax mentioned in a pre-filled challan in the form GST PMT-06 for an amount equal to 35% of the tax paid in cash.

S. No	Type of Taxpayer	Tax to be paid
1	Who furnished GSTR-3B quarterly for the last quarter	35% of tax paid in cash in the preceding quarter
2	Who furnished GSTR-3B monthly during the last quarter	100% of tax paid in cash in the last month of the immediately preceding quarter

Therefore, to align sub-section (1) and (7), an option is proposed to be provided to the taxpayer by way of substitution in proviso to sub-section (7) to pay either the self-assessed tax or **‘an amount as may be prescribed’** in order to file GSTR-3B.

With respect to another amendment, presently, by virtue of sub-section (10) in Section 39, if a taxpayer has not furnished prior period GSTR-3B, he will not be eligible to furnish current

month's GSTR-3B. Another restriction has been added in sub-section (10) that GSTR-3B for a particular period cannot be filed until GSTR-1 for the same period is not filed by the taxpayer. The above restrictions are explained with an example as under -

For instance, if a taxpayer wishes to file GSTR-3B for the month of September 2022, all the previous period's GSTR-3B must be filed by such taxpayer and also, GSTR-1 for the month of September 2022 must be filed prior to filing GSTR-3B for the said month.

However, certain exceptions to this newly inserted condition (of filing GSTR-1 in advance for the same tax period) can be carved out by the Government by way of notification.

Reduction in rate of Interest

1. Sub-section (3) of Section 50 is proposed to be **substituted with retrospective effect** to provide levy of interest in case where ITC is wrongly availed and utilized. Sub-section (3) of Section 50 shall read as –

~~“(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four per cent., as may be notified by the Government on the recommendations of the Council.~~

“(3) Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding twenty-four per cent. as may be notified by the Government, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.”

2. Further, corresponding amendment is also proposed to be brought in Notification No. 13/2017 – Central Tax dated 28 June 2017 by way of **reducing rate of Interest from 24% to 18% under sub-section (3)**. Similar amendment is brought in Notification No. 06/2017 – Integrated Tax dated 28 June 2017 and Notification No. 10/2017 – Union Territory Tax dated 30 June 2017.

Commentary – Presently, sub-section (3) provides that interest will be levied in case of undue or excess claim of ITC as per matching mechanism, i.e. two way communication of return filing process. However, since the same is intended to be done away with in Finance Bill, 2022, the interest is levied on **retrospective basis w.e.f. 01 July 2017** in cases where Input Tax Credit is wrongly availed **and** utilized.

Here it is pertinent to note that Interest as per sub-section (3) is to be levied only where ITC is **both availed as well as utilized** and not in cases where ITC is only availed by the taxpayer and not utilized for payment of output tax liability. This amendment is in line with decision taken in 45th GST Council Meeting.

Changes in 'Refund' provisions

1. Words “the return furnished under section 39 in such” in proviso to sub-section (1) of Section 54 is proposed to be **substituted** by words “such form and”. Amended proviso which relates to refund of balance in e-cash ledger shall read as –

“Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in ~~the return furnished under section 39 in such~~ such form and manner as may be prescribed.”

Commentary – At present, though proviso to sub-section (1) provides for filing of refund of balance in e-cash ledger through GSTR-3B (Section 39), though, due to non-availability of any mechanism and column in GSTR-3B, refund applications under this category are being filed and processed through a separate refund application in Form RFD-01 (i.e., similar to other applications) and not through GSTR-3B and thus, this amendment is brought to rectify the statute.

2. Time period for filing refund under sub-section (2) of Section 54 **extended** from six month to 2 years by way of **substitution**. Amended sub-section (2) shall read as –

“(2) A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner as may be prescribed, before the expiry of ~~six months~~ two years from the last day of the quarter in which such supply was received.”

3. Words “under sub-section (3)” in sub-section (10) of Section 54 is proposed to be omitted which shall thereafter read as –

“(10) Where any refund is due ~~under sub-section (3)~~ to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any court, Tribunal or Appellate Authority by the specified date, the proper officer may-

- (a) *withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;*
- (b) *deduct from the refund due, any tax, interest, penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the existing law."*

Commentary – Effect of omission of words “under sub-section (3)” is that power to withhold refund application of a taxpayer which was erstwhile available only in case of refund filed under sub-section (3), i.e. in cases of refund of accumulated ITC on account of ‘zero rated supplies’ and ‘inverted duty structure’ **has now been extended to all refund applications.**

In simple words, proper officer will now be empowered to either withhold refund application of a taxpayer or deduct an amount from the refund sought/admissible, in case of all refund applications, irrespective of the category under which such refund is filed by the taxpayer.

4. Sub-clause (ba) is proposed to be **inserted** in Clause (2) of Explanation to Section 54 which shall read as –

“(ba) in case of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit where a refund of tax paid is available in respect of such supplies themselves, or as the case may be, the inputs or input services used in such supplies, the due date for furnishing of return under section 39 in respect of such supplies;”

Commentary – Specific ‘relevant date’ for the purpose of filing refund claim defined for cases wherein zero-rated supply is made to SEZ unit or developer. Presently, it falls under residual sub-clause (h), i.e. last date of filing refund in case of zero rated supplies to SEZ is two years from the ‘date of payment of tax’. However, post amendment, last date of filing refund in case of zero rated supplies to SEZ shall be two years from the ‘the due date of furnishing GSTR-3B in which such supplies was made’.

Amendment in scenarios wherein proper officer can cancel GST registration of a taxpayer

Two amendments are proposed to be carried out in sub-section (2) of Section 29 which contains 5 scenarios wherein a proper officer can cancel registration of a registered taxpayer.

1. Words “returns for three consecutive tax periods” in Clause (b) are proposed to be **substituted** by the words “the return for a financial year beyond three months from the due date of furnishing the said return”.
2. Further, words “a continuous period of six months” in Clause (c) are also proposed to be **substituted** by the words “such continuous tax period as may be prescribed”.

Amended sub-section (2) of Section 29 shall read as –

“29. Cancellation or suspension of registration.

(1)

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,–

(a) a registered person has contravened such provisions of the Act or the rules made there under as may be prescribed; or

(b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for such continuous tax period as may be prescribed; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, willful misstatement or suppression of facts:”

Commentary – Until F.Y. 2018-19, registered persons paying tax under the provisions of Section 10 (Composition Scheme) were supposed to file Quarterly returns in Form GSTR-4. However, *vide* Notification No. 20/2019 – Central Tax dated 23 April 2019, Rule 62 of CGST

Rules was amended and quarterly return for composition taxpayers was replaced with a one single return for every financial year, and in addition to that Form CMP-08 was introduced for furnishing the payment of self-assessed tax on quarterly basis.

However, pursuant to amendment made by aforesaid Notification in Rule 62, corresponding amendment was not made under Section 29 of CGST Act, wherein one of the clauses give the power to proper officer to cancel the registration if Composition taxpayer does not file the return for three consecutive tax periods.

Now in order to align the provisions of Section 29 with the changes made in Rule 62 of the CGST Rules, Finance Bill, 2022 has proposed to amend Section 29 of the Act wherein Proper officer can proceed to cancel the registration if registered Composition taxpayer did not file the return (Form GSTR-4) for a financial year beyond three month from the due date.

Similarly, an amendment is proposed to be brought for other registered assesseees [other than the ones paying tax under composition levy (Section 10)] whose registration can be earlier cancelled when no GST return is filed by such assessee for continuous period of 6 months. However, now such time period for which if returns are not furnished, GST registration can be cancelled by the proper officer, shall be defined separately by way of Rules.

Late fee proposed to be introduced for delay in filing GSTR-8 (TCS return) as well

Earlier, late fee as per Section 47(1) of Rs. 100/day (of CGST & SGST each) subject to a maximum of Rs. 5,000/- (of CGST & SGST each) was prescribed for delay in filing GSTR-1 (Section 37), GSTR-3B (Section 39) and GSTR-10 (Section 45).

Now the same is proposed to be extended to GSTR-8 also which is filed as per Section 52 by inserting words “*or section 52*” in sub-section (1) of Section 47. Amended sub-section (1) of Section 47 shall read as -

“(1) Any registered person who fails to furnish the details of outward supplies required under section 37 or returns required under section 39 or section 45 or section 52 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.”

Transfer of balance of E-cash ledger

In order to give effect to 45th GST Council Meeting decision regarding allowing transfer of E-cash ledger's balance within distinct persons having same PAN & different GSTIN, sub-section (10) of Section 49 is proposed to be **substituted in entirety** and to read as –

“(10) A registered person may, on the common portal, transfer any amount of tax, interest, penalty, fee or any other amount available in the electronic cash ledger under this Act, to the electronic cash ledger for,–

- (a) integrated tax, central tax, State tax, Union territory tax or cess; or*
- (b) integrated tax or central tax of a distinct person as specified in sub-section (4) or, as the case may be, subsection (5) of section 25,*

in such form and manner and subject to such conditions and restrictions as may be prescribed and such transfer shall be deemed to be a refund from the electronic cash ledger under this Act:

Provided that no such transfer under clause (b) shall be allowed if the said registered person has any unpaid liability in his electronic liability register.”

Retrospective exemption to certain activities

1. **Retrospective exemption** is proposed to be granted to *'supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil'*, during the period 01 July 2017 to 30 September 2019.

However, it has been provided that no refund of tax already paid on such supply shall be granted. Therefore, such exemption is brought for such cases wherein no tax is paid by a taxpayer on such supply during 01 July 2017 to 30 September 2019.

2. By way of Notification No. 25/2019 – Central Tax (Rate) dated 30 September 2019, it was notified that *"service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee or by whatever name it is called by the State Governments"* shall be treated neither as supply or goods nor supply of services.

This notification (and corresponding Notifications under IGST Act & UTGST Act) is proposed to be given **retrospective effect** from 01 July 2017. However, it has again been provided that no refund of tax already paid on such supply shall be granted. Therefore, such effect is brought for such cases wherein no tax is paid by a taxpayer on such supply during 01 July 2017 to 30 September 2019.

www.gst.gov.in notified as common portal

As per Section 146 of the CGST Act, 2017, the Government may notify the Common Goods and Services Tax Electronic Portal for -

- a. facilitating registration,
- b. payment of tax,
- c. furnishing of returns,
- d. computation and settlement of integrated tax,
- e. electronic way bill, and
- f. for carrying out such other functions and for such purposes as may be prescribed.

For point no. (a) to (d), Government has already notified www.gst.gov.in as the Common GST Electronic Portal and for point no. (e), Government has notified www.ewaybillgst.gov.in as the Common GST Electronic Portal (NN 9/2018-CT dated 23.01.2018). Further, for generation of e-invoices also, Common GST Electronic Portal has been notified *vide* NN 69/2019-CT dated 13.12.2019.

Now, NN 9/2018 - CT dated 23.01.2018, is proposed to be amended so as to notify www.gst.gov.in, retrospectively, with effect from 22nd June, 2017, as the Common GST Electronic Portal, **for all functions** provided under Central Goods and Services Tax Rules, 2017, other than those provided for e-way bill and for generation of invoices under sub-rule (4) of rule 48 of the CGST Rules.



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