

UNION BUDGET **2024-25** (INTERIM)

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BUDGET 2024

Proposed Changes in GST Law

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A. Substitution in the Definition of ‘Input Service Distributor’ to clarify that ISD can distribute credit under Reverse Charge as well:

The definition of ‘Input Service Distributor’ as provided in sub-section (61) of Section 2 of CGST Act’2017 has been substituted to give effect to the fact that an ISD can distribute the credit of invoices in respect of services which are liable to tax under Reverse Charge Mechanism.

The substituted definition has been provided below:

“(61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, and liable to distribute the input tax credit in respect of such invoices in the manner provided in section 20;”

The earlier definition read as follows:

“(61) “Input Service Distributor” means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;”

Commentary: There has always been an ambiguity in the GST Act with respect to the distribution of credit through ISD, relating to invoices of input services which are liable to tax under reverse charge mechanism.

The lack of clarity with respect to the said distribution was on account of the fact that an ISD Registration can only distribute the credit of input services to registrations having the same PAN and they cannot pay the tax liability under reverse charge mechanism as the ISD registration is not required to file GSTR-3B.

Therefore, as the ISD is not paying the GST liability under reverse charge mechanism for the registrations having the same PAN, thus the distribution of the said ITC should be distributed through ISD was a question.

Now, as per the proposed amendment in the definition of Input Service Distributor it has been clarified that an Input Service Distributor can distribute the credit of input services including invoices in respect of services liable to be taxed under reverse charge mechanism.

It may further be noted that earlier there was a pre-condition as per the definition of Input Service Distributor to issue a prescribed document for the purpose of distributing the credit. However, as per the substituted definition the said pre-condition of issuing the prescribed document for distributing the credit has been omitted.

B. Mandatory Registration as Input Service Distributor:

Section 20(1) of CGST Act’2017 has been substituted to mandate the registration requirement as Input Service Distributor (ISD) under Section 24(viii) of the CGST Act, 2017. Now, any office of the supplier receiving tax invoices for distinct person towards input services, including invoices in respect of services liable to tax under reverse charge mechanism, must take registration as an Input Service Distributor. The ISD is then obligated to distribute the input tax credit for such invoices.

The relevant section has been produced below:

“20. (1) Any office of the supplier of goods or services or both which receives tax invoices towards the receipt of input services, including invoices in respect of services liable to tax under sub-section (3) or sub-section (4) of section 9, for or on behalf of distinct persons referred to in section 25, shall be required to be registered as Input Service Distributor under clause (viii) of section 24 and shall distribute the input tax credit in respect of such invoices.”

Commentary: Earlier through 50th Council Meeting held on 11.07.2023, followed by a CBIC Circular No. 199/11/2023-GST dated 17-07-2023, it was clarified that the Head Office (HO) had an option to distribute ITC in respect of such common input services either by following ISD mechanism or cross charge and that the ISD route was not mandatory as per the current provisions of the CGST Act and Rules.

Further in the 50th Council Meeting, the Council has also recommended that amendment may be made in GST law to make ISD mechanism mandatory prospectively for distribution of input tax credit of such common input services procured from third parties.

Furthermore, in continuation of the recommendation of the Council to mandate ISD Registration in the 50th Council Meeting, the Council in its 52nd Council Meeting held on 7th October 2023 recommended that amendments with this respect shall be made in Section 2(61) of CGST Act'2017 with respect to definition of ISD, Section 20 of CGST Act'2017 read with Rule 39 of CGST Rules with respect to manner of distribution of input tax Credit through ISD.

Now, to give effect to recommendations of 50th and 52nd Council Meeting, it has been proposed in the Budget to substitute the definition of ISD as discussed in the above para to include distribution of input tax credit on input services that tax on which is paid under reverse charge mechanism and to mandate the input service distribution registration for registered persons having more than one registration on same Permanent Account Number.

C. Distribution of credit by Input Service Distributor including the credit of tax paid under the Reverse Charge Mechanism paid by the distinct person registered in the same state as that of the Input Service Distributor:

Section 20(2) of CGST Act'2017 has been proposed to be amended to take into consideration the fact that an Input Service Distributor shall be allowed to distribute the credit of input service invoices received by him including the credit on such input service invoices the tax on which have to be paid under reverse charge mechanism where such tax has been paid by the distinct person registered in the state as that of the Input Service Distributor.

The relevant section has been produced below:

“20 (2) The Input Service Distributor shall distribute the credit of central tax or integrated tax charged on invoices received by him, including the credit of central or integrated tax in respect of services subject to levy of tax under sub-section (3) or sub-section (4) of section 9 paid by a distinct person registered in the same State as the said Input Service Distributor, in such manner, within such time and subject to such restrictions and conditions as may be prescribed.”

Commentary: The above substitution of Section 20(2) of CGST Act'2017, has been proposed to enable the Input Service Distributor to distribute the input tax charged on services, the tax on which has to

be paid under reverse charge mechanism in addition to the input tax credit on regular input services liable to tax under forward charge mechanism.

Further, it has also been stated that the Input Service Distributor shall distribute only such credit relating to input services the tax on which has been paid under reverse charge mechanism by the distinct person registered in the same state as that of the Input Service Distributor.

The mechanism available for the distribution of credit with respect to invoices of input services to be paid under reverse charge mechanism can be done by way of issuing an invoice from the registration of the distinct person which has paid the liability under reverse charge mechanism to the ISD Registration, in order to enable the ISD registration to distribute such input tax credit to the other registrations on the same PAN.

The manner in which the credit has to be distributed and the time line along with restrictions and conditions of such distribution shall be prescribed later.

D. Manner of Distribution of Credit by Input Service Distributor:

Sub-section (3) of Section 20 of CGST Act'2017, states the manner of distribution of credit to be distributed by the Input Service Distributor.

The relevant section is produced below:

"20 (3) The credit of central tax shall be distributed as central tax or integrated tax and integrated tax as integrated tax or central tax, by way of issue of a document containing the amount of input tax credit, in such manner as may be prescribed."

Commentary: As per Section 20(3) of CGST Act'2017, the manner of distribution shall be prescribed in the rules.

However, it has been stated in sub-section (3) of Section 20 of CGST Act'2017 that credit of Central Tax shall be distributed as Central Tax or Integrated Tax and that of Integrated Tax shall be Integrated Tax or Central Tax.

However, as per Rule 39 of CGST Rules, the manner of distribution earlier was as follows:

- the input tax credit on account of IGST shall be distributed as IGST to every recipient
- the input tax credit on account of CGST & SGST/UTGST shall:
 - i) in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as CGST & SGST/UTGST;
 - (ii) in respect of a recipient located in a State or Union territory other than that of the Input Service Distributor, be distributed as IGST which shall be the total of CGST & SGST/UTGST proposed to be distributed.

E. Penalty for failure to register certain machines used in manufacturing of pan masala, tobacco products, etc.

In the budget it is proposed to insert Section 122A wherein a penalty has been imposed on failure to register the machines used for manufacture of goods as specified in Section 148 of CGST Act'2017.

The penalty imposed is Rs. 1 Lakh under CGST Act'2017 for every machine which has not been registered. Eventually, the said penalty shall be Rs. 2 Lakhs (Rs. 1 lakh under CGST & SGST each) as the proposed changes shall also be introduced in SGST Act'2017.

The relevant extract of the newly inserted section is produced below:

“122A (1) Notwithstanding anything contained in this Act, where any person, who is engaged in the manufacture of goods in respect of which any special procedure relating to registration of machines has been notified under section 148, acts in contravention of the said special procedure, he shall, in addition to any penalty that is paid or is payable by him under Chapter XV or any other provisions of this Chapter, be liable to pay a penalty equal to an amount of one lakh rupees for every machine not so registered.

(2) In addition to the penalty under sub-section (1), every machine not so registered shall be liable for seizure and confiscation:

Provided that such machine shall not be confiscated where—

(a) the penalty so imposed is paid, and

(b) the registration of such machine is made in accordance with the special procedure within three days of the receipt of communication of the order of penalty.”

Commentary: Section 148 of CGST Act 2017, states that the Government may notify certain classes of registered persons and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons. In this regard Notification No. 30/2023 - Central Tax dated 31st July 2023 was issued notifying special procedures to be followed with respect to registration of details of packing machines by a registered person engaged in manufacturing of specified goods i.e., Pan Masala, tobacco etc.

In relation to the above notification No. 30/2023 – CT dated 31.07.2023, the said provision by way of insertion of Section 122A has been added stating that a penalty amounting to Rs 1 lakhs under CGST and Rs 1 Lakh under SGST shall be imposed on account of failure to get the machinery registered in addition to penalty under Chapter XV (Demand and Recovery) or any other provision of this chapter (Chapter XIX – Offenses and Penalty).

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