

Changes as brought out Budget 2020 in GST

Provisions Omitted

Provisions Inserted

Amendments to the central goods and services tax act, 2017

All amendments mentioned below are effective from the date to be notified.

1. Time limit of availing credit based on debit notes: Amendment of Section 16(4) of the CGST Act:

16. Eligibility and conditions for taking input tax credit;

(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.

Section 16(4) of the CGST Act 2017 restricts the ITC beyond due date of filing return for the month of September of the corresponding financial Year. In this restriction credit pertaining to debit note is linked with date of invoice against which debit note is issued. Now it is proposed to delink the debit note with date of invoice to avail ITC. Now last date of taking the input tax credit will be the due date of the September return of the subsequent financial year to which the debit note pertains and it will not be linked with date of Invoice.

2. Levy of penalty even on person neither supplier nor recipient of Supply: Insertion of Section 1(A) in Section 122 of the CGST Act:

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.

Section 122(1) of the CGST Act contains clauses I to xxi to provide penalty for certain offences. Clause (i), (ii), (vii) and (ix) of Section 122(1) levy of penalty on 'taxable person' for following offences:

- Making supply without invoice or on false or incorrect invoice
- Issuing invoice without supply
- Taking or utilizing ITC without actual receipt of supply
- Taking or distributing ITC in contravention of ISD provisions.

Section 122(1A) has been proposed to penalize the beneficiary and such person whose instance such transactions covered in Clause (i), (ii), (vii) and (ix) of Section 122(1) are conducted, to the extent of the tax evaded or input tax credit availed.

3. Punishment of offences-Amendment of Section 132:

132. Punishment for certain offences;

(1) Whoever commits any of the following offences, namely: -

Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences” namely: -

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

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

Section 132 provides for punishment for certain offences. Few offences are cognizable and non-bailable offences and others are non-cognizable and bailable offences. Earlier only input tax credit on fake bills were considered as cognizable and non-bailable. Now, the offence of fraudulent availing of input tax credit without invoice or bill is cognizable and non-bailable.

Section 132(1) is also being amended to expand the coverage of the offences thereunder to a person who causes the committing of the offences thereunder and retains the benefits thereof.

4. Extension of time to file application for 'revocation of cancellation of registration': Insertion of Proviso in Section 30(1) of the CGST Act:

30. Revocation of cancellation of registration;

- (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.

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 maybe, 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).

Section 30 of the CGST Act provides to file application to revoke the cancellation of registration by proper officer. Such application can be made within 30 days from the date of service of cancellation order. Now these 30 days can be further extended for a period up to 30 days by AC/JC and further 30 days by commissioner. Such extension can be done only on sufficient cause being shown and reason to be recorded in writing.

5. Cancellation of Voluntary Registration: Amendment of Section 29(1) by substituting clause c:

29. Cancellation of registration;

(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,—

(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

(b) there is any change in the constitution of the business; or

(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.

(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."

Section 29(1) of the CGST Act provides the power to cancel the registration either on own motion or application by the registered person. Clause c of the section 29(1) excludes the person registered under section 25(3) i.e. voluntary registration. The provisions of clause c of section 29(1) has now been modified to allow those cases wherein a person had obtained their registration voluntarily.

6. Tax Invoice for Services: Amendment in proviso to section 31(2) by substituting the proviso:

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:

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.

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.

Presently tax invoice for supply of services is to be raised within 30 days or 45 days from date of supply containing specified details. Proviso to section 31(2) empowers the Government on the recommendation of the council to specify the categories of services where either the other document to be deemed as tax invoice or tax invoice need not be issued. Now proviso to section 31(2) has been substituted to empower the Government to specify time limit also for specified categories of services.

7. TDS Certificate: Amendment of section 51(3) and omission of section 51(4):

51. Tax deduction at source;

(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.

(3) A certificate of tax deduction at source shall be issued in such form and 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.

Section 51(3) provides for issue of TDS certificate mentioning the contract value, rate of deduction, amount deducted, amount paid, and such other particulars as may be prescribed. Now section 51(3) has been substituted with new clause where no specific requirement has been mentioned and TDS certificate to be issued in such form and manner as may be prescribed.

Section 51(4) prescribing late fees for not issuing the TDS certificate within specified time period, omitted.

8. Retrospective amendments in transitional provisions: Amendment of section 140:

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 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:
- (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:
- (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, 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 "goods held in stock on the appointed day,

within such time and in such manner as may be prescribed, subject to” the following conditions, namely:

- (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 existing law, within such time and in such manner as may be prescribed, 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:
- (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 goods held in stock on the appointed day, within such time and in such manner as may be prescribed, subject to the following conditions, namely:–
- (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 credit under this Act, within such time and in such manner as may be prescribed, even if the invoices relating to such services are received on or after the appointed day.

- (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** **within such time and in such manner** as may be prescribed:
- (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** **credit can be reclaimed within such time and in such manner as may be prescribed,** **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.

Time limits to take transitional credits has been given only in CGST rules and had not been specified in CGST Act. Courts have upheld this position. Now transitional provisions amended with effect from 1st July,2017 so as to provide for time limit and manner of claiming transitional credit.

9. Restriction for composition dealer in goods for certain services-Amendment of section 10(2):

10. Composition levy;

- (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:

Section 10(2) of the CGST Act provides the restrictions when composition scheme under section 10(1) can not be opted. Composition dealer of goods can provide services up to 10% of the state turnover. Conditions in section 10(2) did not mention services in certain clauses. Now section 10(2) amended to provide that dealer in goods will not be entitled to composition scheme, if he undertakes the following supplies:

- Services not leviable to GST
- Inter-state supply of services
- Supply of services through electronic commerce operator

10. Retrospective exemption:

Retrospective exemption from, or levy or collection of, Central tax in certain cases;

- 130.** (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.

Fish meals (HSN 2301), attract 5% GST under S. No. 103 in notification No. 1/2017- Central Tax (Rate) as also clarified vide circular 80 dated 31st December 2018. Now clause 130 of the finance bill 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) & no refund shall be made of the tax which has already been collected.

Similar Changes notified vide Clause 133 of IGST Act, Clause 137 of UTGST Act.

11. Retrospective rate change:

Supply of pulley, wheels and other parts (falling under heading 8483) and used as parts of agricultural machinery (falling under heading 8432, 8433 and 8436) will be taxed at rate of 12% for the period 1st July, 2017 to 31st December, 2018 & no refund shall be made of the tax which has already been collected.

Similar Changes notified vide Clause 133 of IGST Act, Clause 137 of UTGST Act.

12. Denial of refund of unutilized ITC with retrospective effect for tobacco products: Retrospective effect to Notification No. 3/2019- Compensation Cess (Rate)

Retrospective effect to notification issued under clause (ii) of proviso to sub section (3) of section 54 of Central Goods and Services Tax Act.

131. 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.

The refund of accumulated credit of compensation cess on tobacco products arising out of inverted duty structure in Compensation Cess

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is disallowed w.e.f. October 1, 2019 vide Notification No. 3/2019-Compensation Cess (Rate) dt. September 30, 2019.

Clause 131 of the Bill seeks to give retrospective effect to the above notification w.e.f. July 1, 2017 onwards. Accordingly, no refund on account of inverted duty structure would be admissible on any tobacco products w.e.f. 1st July 2017.

Similar Changes notified vide Clause 133(2) of IGST Act, Clause 137(2) of UTGST Act.

13. Transfer of business assets-Retrospective amendment in Schedule II to the CGST Act:

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;

Schedule II of the CGST Act 2017 classifies activities or transactions which are to be treated as supply of goods or services or both in case activity/transaction is covered as 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. Now the entry at paragraph (4) of Schedule II relating to transfer of business assets is being amended retrospectively w.e.f. 01.07.2017 to exclude the condition of transfer of business assets 'with or without consideration'.

14. Time period for issuance of removal of difficulties order-Amendment of section 172:

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:

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.

The time period for issuance of removal of difficulties order u/s 172 was only prescribed upto three years from the commencement of the Act. This has now been extended upto 5 years.

Similar Changes notified vide Clause 132 of IGST Act, Clause 136 of UTGST Act & Clause 138 of Compensation to State Act.

15. Jurisdictional Commissioner provided with additional powers-Amendment of Section 168:

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 (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.

Section 66(5) and second proviso to section 143(1) has been omitted from section 168, consequently jurisdictional Commissioners to exercise powers have not been enabled for the following:

- 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 [Section 66(5)]
- 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 [second proviso to section 143(1)].

16. Union Territory to include 'Ladakh' & 'Dadra and Nagar Haveli and Daman and Diu'-Amendment of section 2:

2. Definitions;

(114) "Union territory" means the territory of—

a. the Andaman and Nicobar Islands;

b. Lakshadweep;

c. Dadra and Nagar Haveli;

c. Dadra and Nagar Haveli and Daman and Diu;

d. 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;

The definition of Union Territory now includes '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.

Similar Changes notified vide Clause 134 & 135 of UTGST Act.

17. Appellate Tribunal for Jammu and Kashmir and Ladakh-Amendment of Section 109:

109. Constitution of Appellate Tribunal and Benches thereof;

(6) The Government shall, by notification, specify for each State or Union territory, 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 the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Government is now empowered to constitute a bench of Appellate Tribunal for State of Jammu and Kashmir along with other states.

CONTACT US



203, Arunachal Building, Barakhamba Road,
Connaught Place, Delhi - 110001



011-23312707, 45014968, +91- 9810893243



info@gstindia.biz