



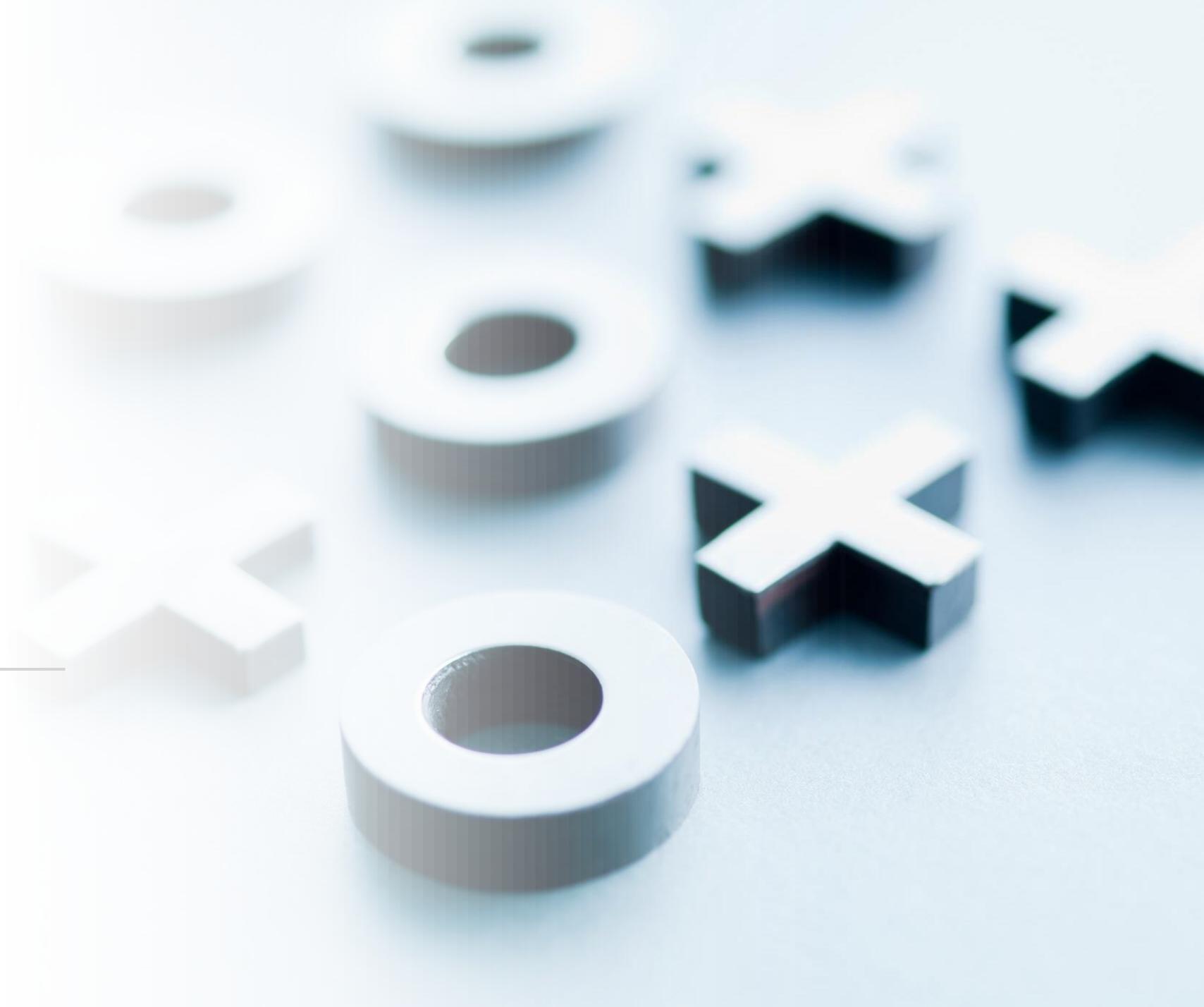
Budget 2021 – GST

Things You Must
Know!

01.02.2021

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and Associates

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Key Points!



Legal
Provisions



What has
changed



Impact of change



Action to be
taken



Unanswered
Questions

Path to Tread Today!



Revamping of
provisions



Addition of
provisions



Overruling of
judgments

- ✓ The amendments in this presentation are shown in **red** colour.
- ✓ All amendments will be applicable from a date to be notified except section 7, Section 50 and Schedule II (which are applicable retrospectively from 1.07.2017)

Unanswered Questions



Will every amendment be adopted by each State



From which date Centre will notify the amendment



From which date State will adopt the same



Whether any further changes expected

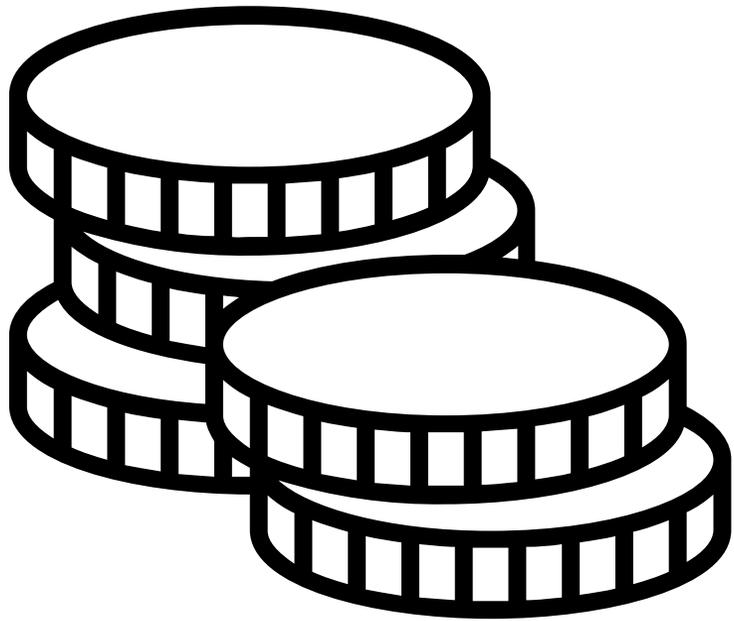




CGST Act

Amendments in CGST Act

Section 7	Section 16	Section 35	Substitution of new section for section 44	Section 50
Section 74	Section 75	Section 83	Section 107	Section 129
Section 130	Substitution of new section for section 151	Section 152	Section 168	Amendment of Schedule II



Supply!
Section 7

Section 7. Scope of supply (To be amended w.e.f. 1.07.2017)

(1) For the purposes of this Act, the expression “supply” includes —

(a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business**,

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or viceversa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, **notwithstanding** anything contained in any other law for the time being in force or any **judgment**, decree or order of **any Court**, tribunal or authority, **the person and its members** or constituents shall be **deemed to be two** separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another

Calcutta Club Ltd [2019 (29) GSTL 545 (SC)] – What Apex Court said!

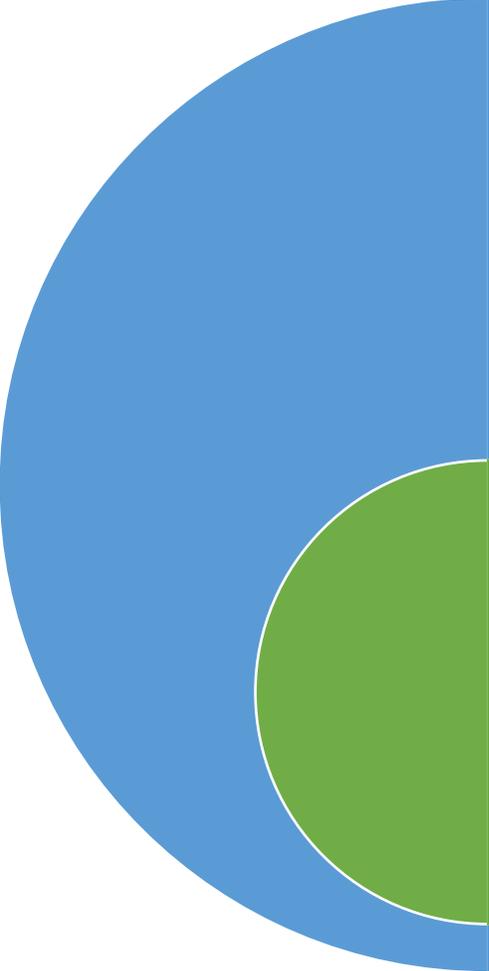
Members club

- Members are owners
- No Shareholders – No Dividend – No distribution of profits
- Even if legal entity (constituted or not) – No difference
- Member Club cannot be treated as separate from members

Principle of Mutuality, there is no sale between club and its members

- One cannot profit from oneself
- Young Men Association relied upon
- Even 366 (29A) (f) has no application to member club
- Doctrine of mutuality is not been done away with by 366 (29A) (e)

Calcutta Club Ltd [2019 (29) GSTL 545 (SC)] – What Apex Court said!



*We have seen how in the judgment relating to Sales Tax, the fact is that in members' clubs there is no sale by one person to another for consideration, **as one cannot sell something to oneself**. This would apply on all fours when we are to construe the definition of "service" under Section 65B(44) as well.*

Consequently, show cause notices, demand notices and other action taken to levy and collect Service Tax from incorporated members' clubs are declared to be void and of no effect in law

Analysis of the change



Whether the retrospectivity could be construed as excessively harsh!

This amendment is expected to impact societies, clubs, RWA, etc.

In case the position of non-payment of GST has been adopted based on Calcutta Club judgement, then the same may be revisited!

To align with the change in Section 7, Schedule II of CGST Act is also amended!

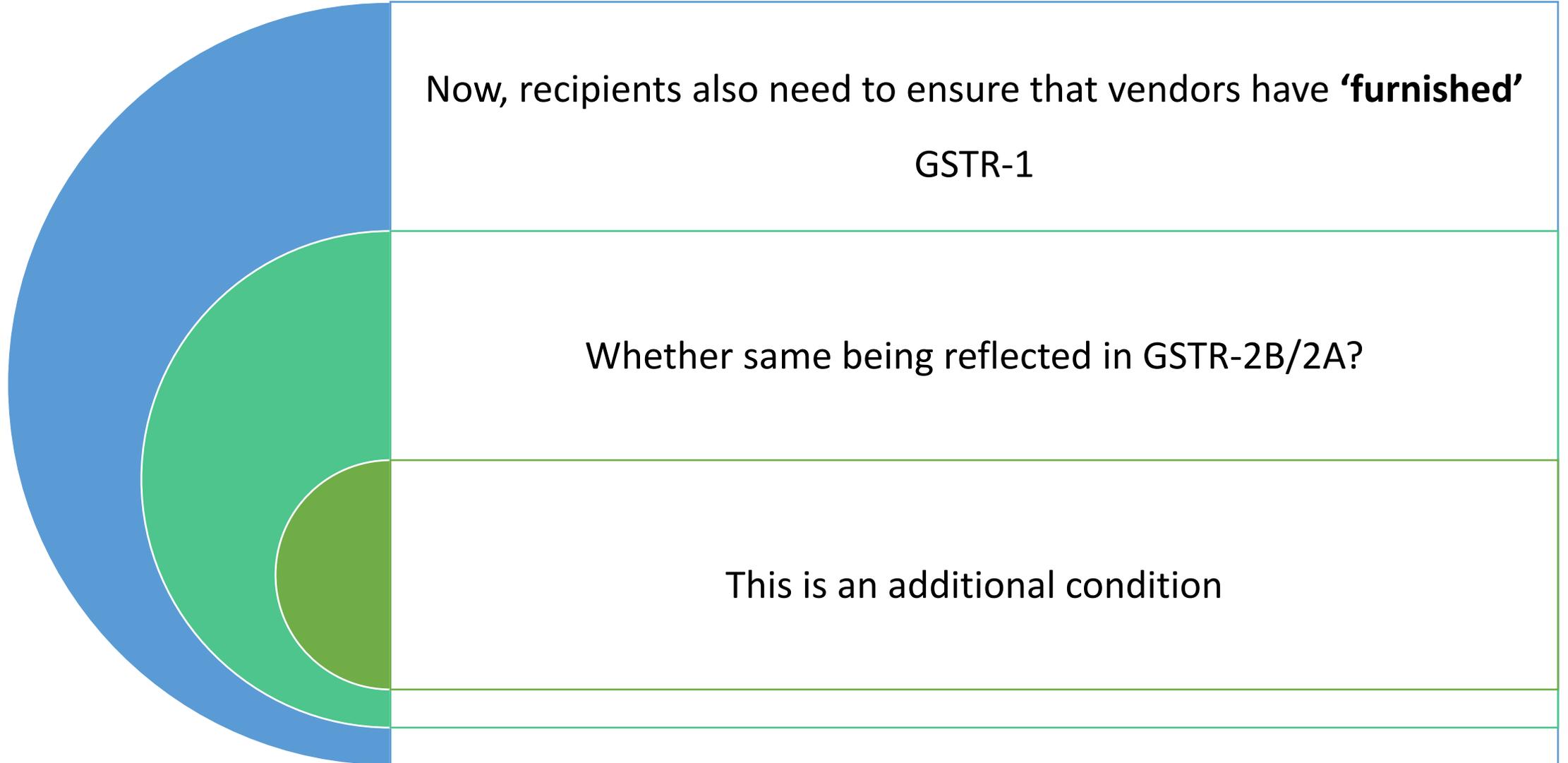


ITC – Eligibility and conditions
Section 16

Section 16. Eligibility and conditions for taking ITC

- *Notwithstanding anything contained in this section, but subject to the provisions of section 36, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services to him **unless**,*
 - (a) he is in possession of a **tax invoice** or debit note issued by a supplier registered under this Act, or such other taxpaying document(s) as may be prescribed;*
 - ‘(aa) the details of the invoice or debit note referred to in clause (a) has been **furnished** by the supplier in the statement of outward supplies and such details have been **communicated** to the recipient of such invoice or debit note in the manner specified under section 37’*
 - (b) he has **received** the goods or services or both*

Analysis of the change





RIP Audit

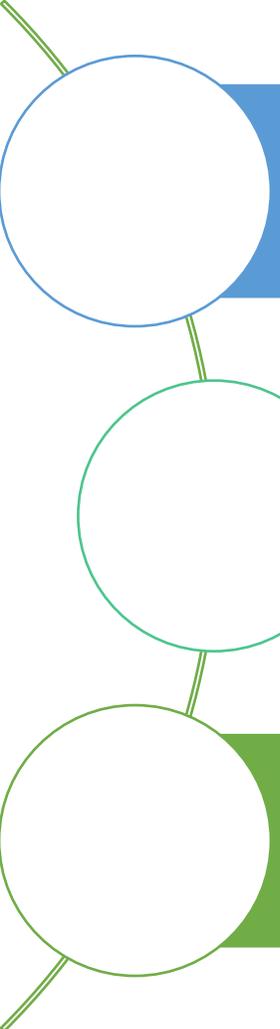
Section 35 ~~(5)~~

Section 35. Accounts and other records

⋮

~~(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under subsection (2) of section 44 and such other documents in such form and manner as may be prescribed~~

Analysis of the change



There would be no compulsory Audit *from GST perspective (i.e. GSTR-9C)*

But it also comes up with the risk that there could be differences in GST vis-à-vis Financial Statements which could go unnoticed

It could lead to higher interest and penal consequences during Audit by Tax Authorities



Reconciliation Statement Section 44

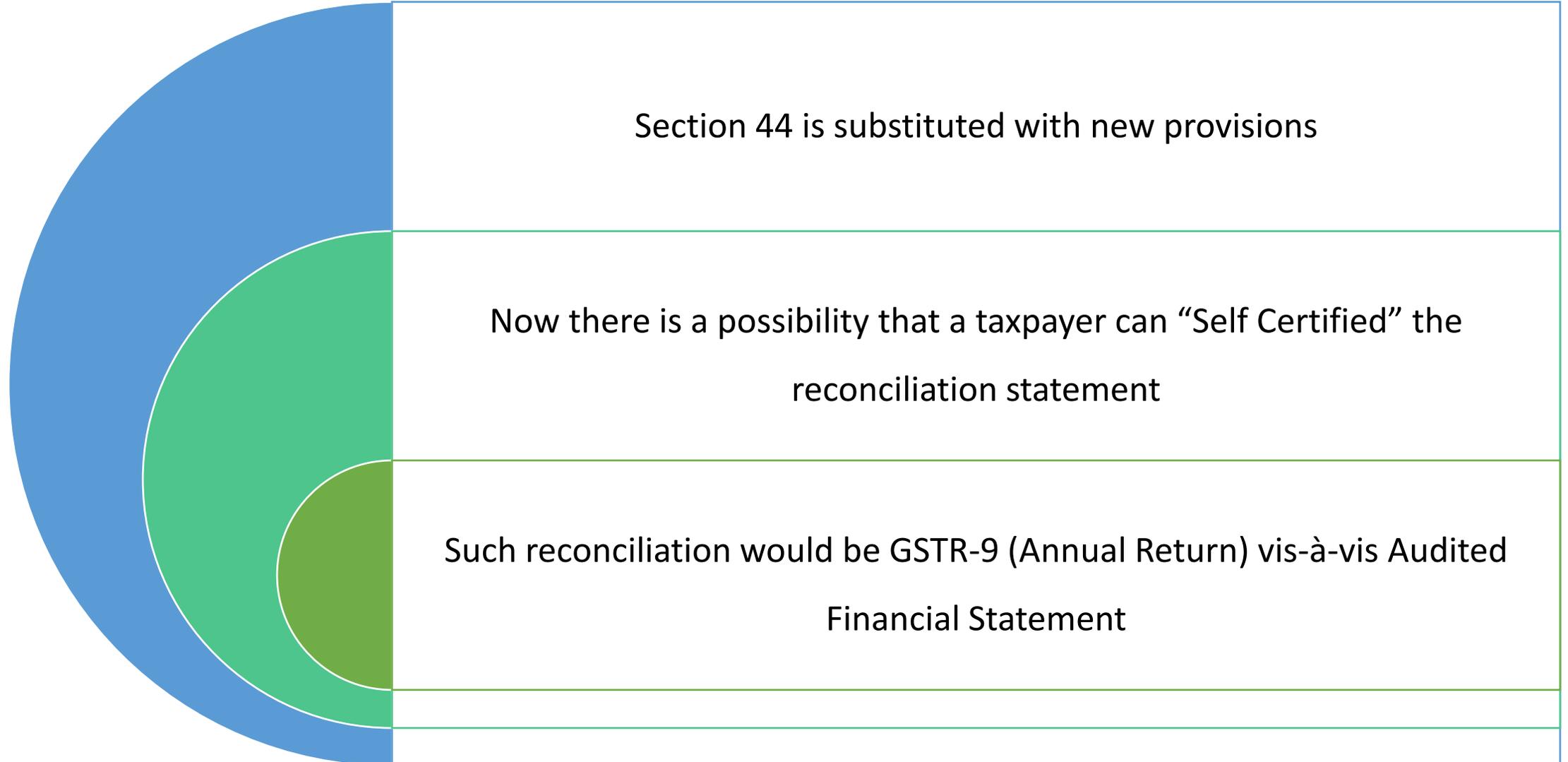
Section 44. Annual Returns

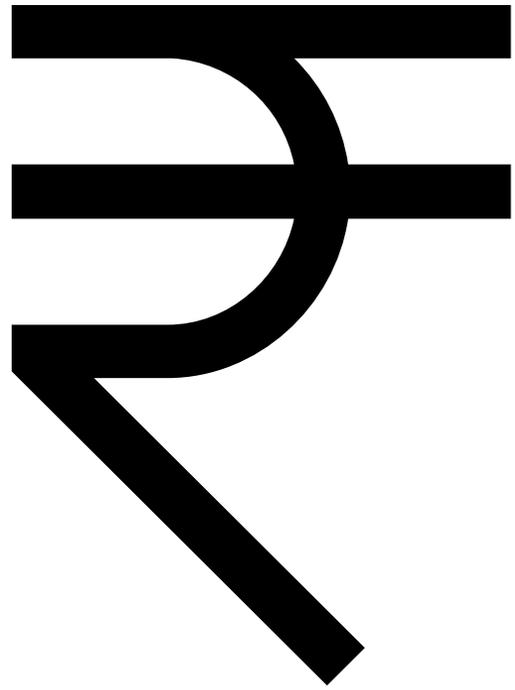
*Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an **annual return** which may include a **self-certified reconciliation statement**, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:*

*Provided that the Commissioner may, on the recommendations of the Council, by notification, **exempt** any class of registered persons from filing annual return under this section:*

Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.

Analysis of the change





Interest
Section 50

Section 50. Interest

(1) *Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council:*

~~*Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.*~~

*Provided that the **interest on tax payable** in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the **tax** which is paid by debiting the **electronic cash ledger**.*

Analysis of the change



Decision taken in 39th GSTC meeting



Retrospective amendment made that interest to be paid on Net liability and not on gross liability in case of short payment of Tax!



Separate Proceedings
Section 74

Section 74. Determination of tax not or short paid

Explanation 1. —

For the purposes of section 73 and this section, —

- (i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;*
- (ii) where the notice under the same proceedings is issued to the **main person** liable to pay tax and **some other persons**, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections ~~122, 125, 129 and 130-122~~ and 125 are deemed to be concluded.*

Analysis of the change

01

Even after of payment u/s 73/74, the proceedings u/s 129 and 130 may continue

02

This change may have long term implication and may increase litigation in days to come



Self Assessed Tax Section 75

Section 75. Determination of tax

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Explanation.—*For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*

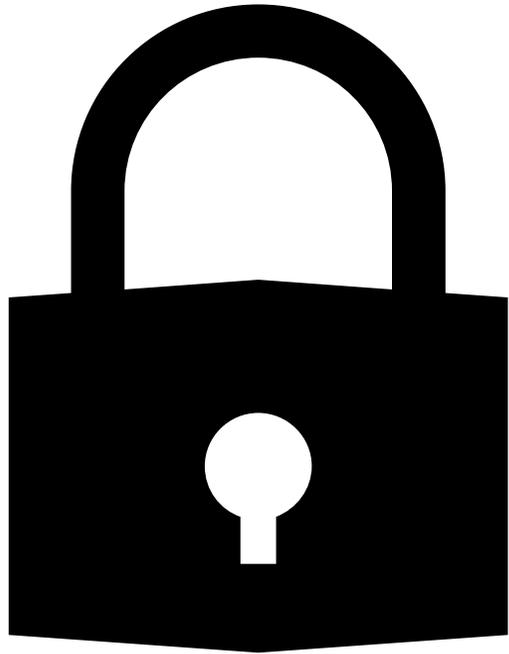
Analysis of the change



In cases where the liability in GSTR-1 exceeds that from GSTR-3B, the same would be construed as “Self Assessed Tax”



Such short payment may give rise to invocation of recoveries u/s 79



Provisional attachment
Section 83

Section 83. Provisional attachment

*(1) Where, after the initiation of **any proceeding** under **Chapter XII, Chapter XIV or Chapter XV**, the Commissioner is of the opinion that for the purpose of **protecting** the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach **provisionally**, any **property, including bank account**, belonging to the **taxable person** or any person specified in **sub-section (1A) of section 122**, in such manner as may be prescribed*

~~*(1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.*~~

Analysis of the change

Property/ bank account of any other person may also be attached [Sec. 122 (1A)]!



It is to protect the interest of revenue and shall be valid up to one year from passing the order!



Situations covered in Sections 59 to 64, Sections 67 to 72 and Sections 72 to 84 would lead to invocation of Section 83!



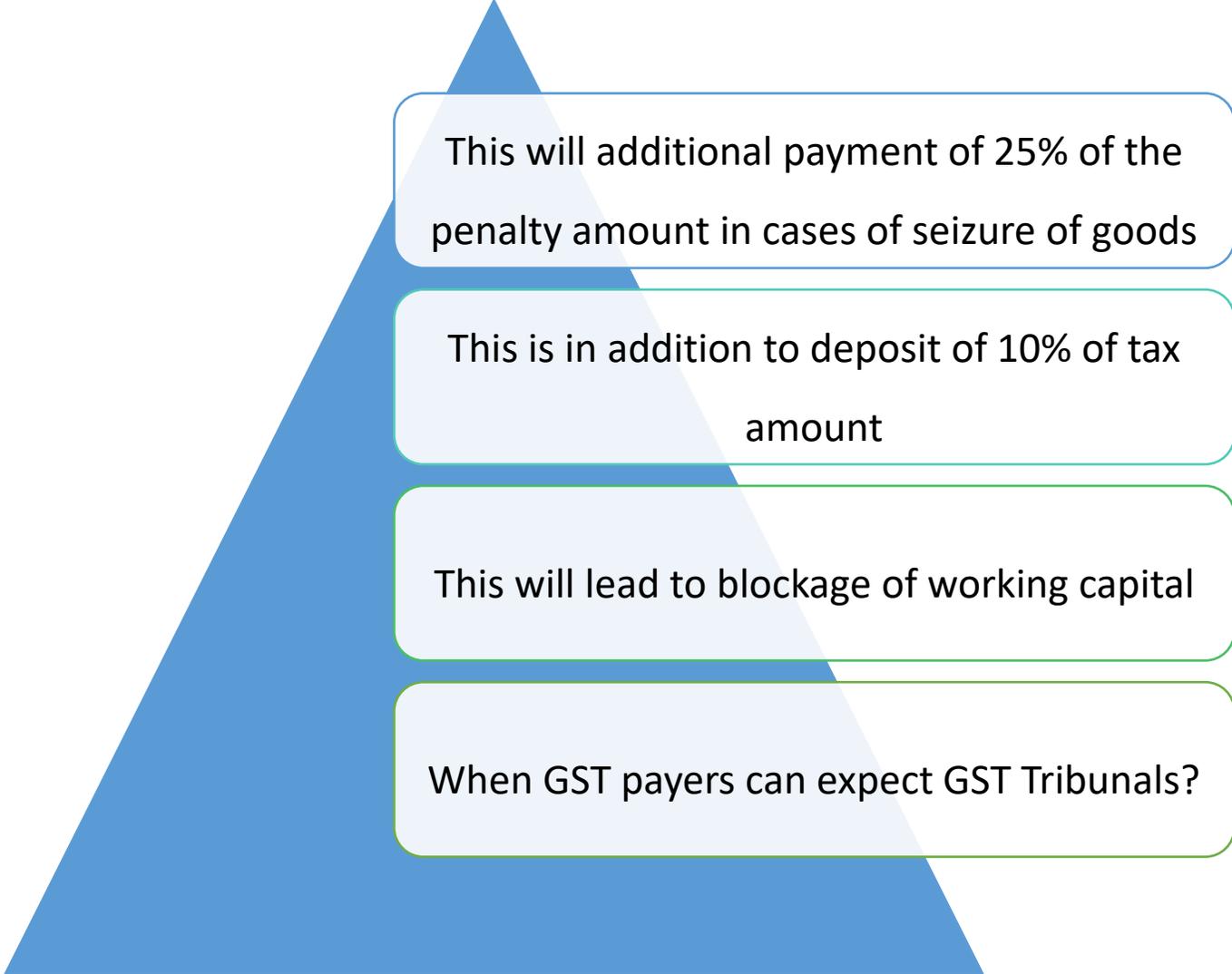
Appeal
Section 107

Section 107. Appeals to Appellate Authority

(6) ...

*Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to **twenty-five per cent. of the penalty** has been paid by the appellant.*

Analysis of the change

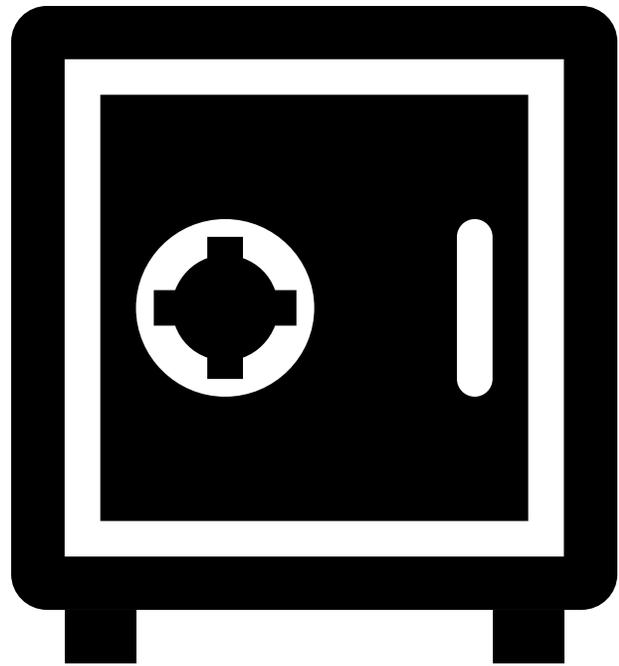


This will additional payment of 25% of the penalty amount in cases of seizure of goods

This is in addition to deposit of 10% of tax amount

This will lead to blockage of working capital

When GST payers can expect GST Tribunals?



Detention/ Seizure of Goods/
Conveyance in-transit

Section 129

Section 129. Detention and Seizure

Earlier	Proposed
<p>(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;</p>	<p>(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty</p>

Section 129. Detention and Seizure

Earlier	Proposed
<p>(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;</p>	<p>(b) on payment of penalty equal to fifty per cent. of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;”;</p>

Section 129. Detention and Seizure

~~(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.~~

Section 129. Detention and Seizure

Earlier	Proposed
<p>(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).</p>	<p>(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;</p>

Section 129. Detention and Seizure

Earlier	Proposed
<p>(4) No tax, interest or penalty shall be determined under sub section (3) without giving the person concerned an opportunity of being heard.</p>	<p>(4) No tax, interest or penalty shall be determined under sub section (3) without giving the person concerned an opportunity of being heard.</p>

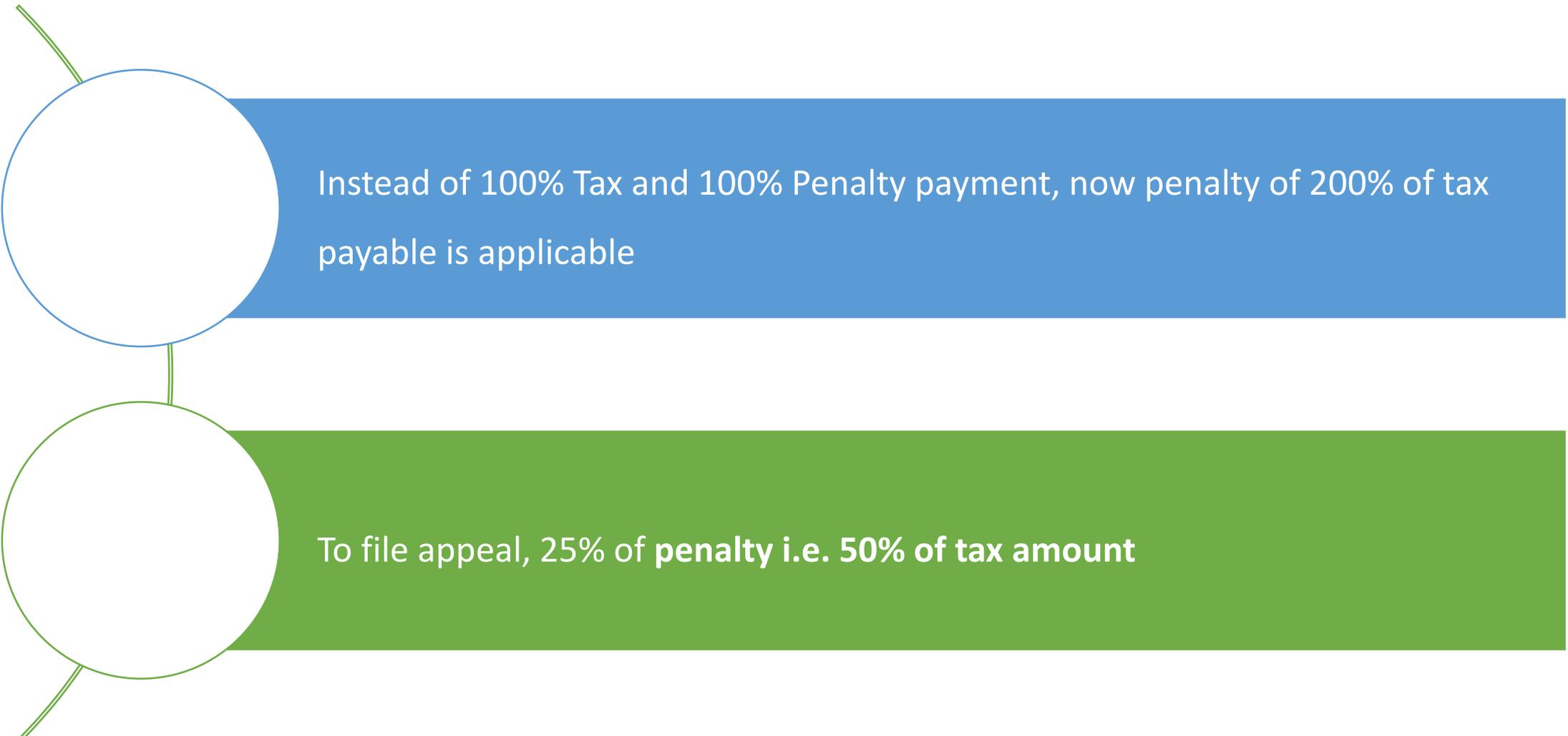
Section 129. Detention and Seizure

Earlier	Proposed
<p>(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:</p>	<p>“(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):</p>

Section 129. Detention and Seizure

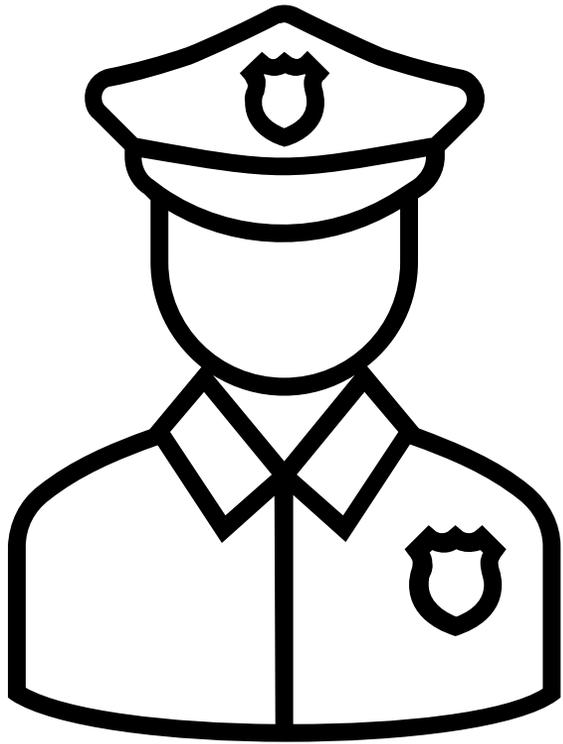
Earlier	Proposed
<p>Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of [fourteen days] may be reduced by the proper officer.</p>	<p>Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:</p> <p>Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.</p>

Analysis of the change



Instead of 100% Tax and 100% Penalty payment, now penalty of 200% of tax payable is applicable

To file appeal, 25% of **penalty** i.e. **50% of tax amount**



Confiscation of Goods Section 130

Section 130. Confiscation of goods / conveyance

(1) ~~Notwithstanding anything contained in this Act, if~~ **Where** any person —

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

...

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

Section 130. Confiscation of goods / conveyance

(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit :

Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon :

*Provided further that the aggregate of such fine and penalty leviable shall not be less than the ~~amount of penalty leviable under sub-section (1) of section 129~~ penalty equal to **hundred per cent.** of the tax payable on such goods.*

Section 130. Confiscation of goods / conveyance

~~(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.~~

Analysis of the change

Section 130 proceedings delinked from Section 129



Penalty of 100% of tax payable is applicable



Section 151

Statistics vs Any Information

Section 151. Power to collect statistics

~~151. Power to collect statistics.—~~

~~(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.~~

~~(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.~~

Section 151. Power to collect information

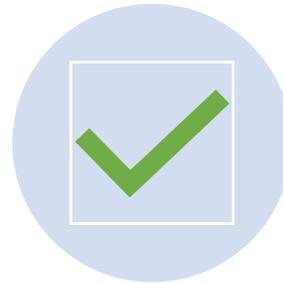
“151. Power to call for information:

The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.”.

Analysis of the change



The Commissioner can call for any **information** (instead of statistics as mentioned earlier) from any person relating to any matter dealt with in connection with this Act.



As per Section 152, such information shall not be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.



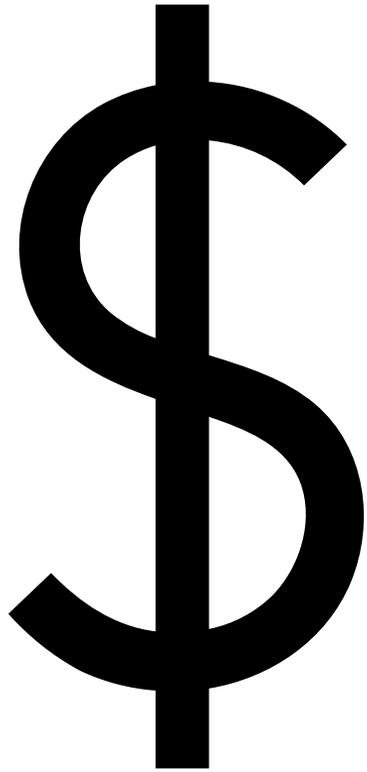
IGST Act

Amendments in IGST Act

Section 16 (1)(b)

Section 16(3)

Section 16(4)



Zero-rated Supplies
Section 16

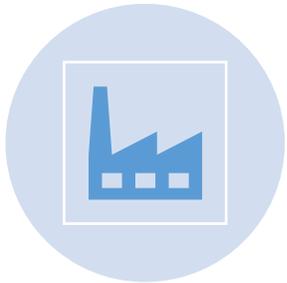
Section 16 (1) – Zero rated supply

(1) “zero rated supply” means any of the following supplies of goods or services or both, namely :-

(a) export of goods or services or both; or

*(b) supply of goods or services or both **for authorised operations** to a Special Economic Zone developer or a Special Economic Zone unit.*

Analysis of the change



This change would
impact SEZs across the
country



Authorised vs Other
operations?

Section 16 (3) – Zero rated supply

~~(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely :-~~

~~(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or~~

~~(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,~~

~~in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.~~

Section 16 (3) – Zero rated supply

(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

*Provided that the registered person making zero rated supply of goods shall, in case of **non-realisation** of sale proceeds, be liable to deposit the **refund** so received under this sub-section along with the applicable **interest** under section 50 of the Central Goods and Services Tax Act **within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999** for receipt of foreign exchange remittances, in such manner as may be prescribed.*

Analysis of the change



Critical to receive money
within prescribed time
limit



Non-compliance would
lead to pay back of
refund along with
interest

Section 16 (4) – Zero rated supply

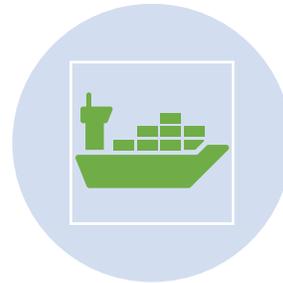
*(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, **by notification, specify—***

- (i) a **class of persons** who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;*
- (ii) a **class of goods or services** which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.*

Analysis of the change



Who will be the notified persons?



What will be the notified goods/ services?

6 mins out of
2 hours in
Budget
Speech



However, 16
changes in
GST Act



Short does not always mean
simple!

Thank You

We would love to hear your suggestions or queries!

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