

GOODS AND SERVICES ACT 2017

Amendments carried out through the Finance Bill, 2021 come into effect on the date of its enactment, unless otherwise specified.

I. AMENDMENTS IN THE CGST ACT, 2017:

No	Amendment
1	<p>Scope of Supply u/s 7(1) enlarged by way of Retrospective amendments</p> <ul style="list-style-type: none">- all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business; <p>A new clause (aa) in sub-section (1) of Section 7 of the CGST Act is being inserted, retrospectively with effect from the 1st July, 2017, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.</p> <p>Consequent to the amendment in section 7 of the CGST Act paragraph 7 of Schedule II to the CGST Act is being omitted <u>retrospectively, with effect from the 1st July, 2017.</u></p> <p>Our Comment</p> <p>Intention of above amendment to provide for overriding the Impact</p>

	<p>of SC Calcutta Club Judgement emphasizing on Principle of Mutuality and to cover all AOP and BOI and the same is included in 2(84) definition of person. To amend the law for the benefits of Sovereign is quite common enough precedents in public domain.</p> <p>Such retrospective amendment would be the subject matter of litigation. In my humble opinion, it should have proposed prospectively only so that all stakeholders can plan their affairs.</p>
2	<p><u>Amendment of Section 16</u></p> <p>A new clause (aa) to sub-section (2) of the section 16 of the CGST Act is being inserted to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have 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.</p> <p>Our Comment</p> <p>ITC can be availed only if the same is reflected and reported in GSTR 1 by the supplier which would be auto populated in GSTR 2A and GSTR 2B invariably on real time basis. Intention is to ensure enforcement of Rule 36(4) and but will it plug the menace of Fake Invoicing or frauds???? Can such conditions be complied? Will such amendment may create litigations as such burden can't be imposed on TPs?</p>

	<p>Ideally, they should have done away with stipulation which provides that ITC can be claimed by Recipient only if the Supplier has filed the returns and paid the taxes, filing is still controllable but payment of taxes by the supplier is not controllable because of many reasons.</p>
3	<p>Abolition of GST Audit u/s 35(5) & Self Assessed Reconciliation Statement u/s 44</p> <p>Sub-section (5) of section 35 of the CGST Act is being omitted so as to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional.</p> <p>Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self- certification basis. It further provides for the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.</p> <p>Our Comment</p> <ul style="list-style-type: none">• Filing of GSTR 9 and GSTR 9A would continue as before and

even customized reconciliation statements would be implemented;

- TP need to prepare reconciliation statement (will they not need our help Food for thought?)
- Stressful time limits may be reduced for some time as I anticipate such audit to be reintroduced in future (????? But when and how it can't be predicted now);
- GST Audits as existed in the earlier regime under Excise and Service Tax would be conducted again and again at the premises of RTP on selection basis or opportunity to be appointed for special audits u/s 65 for all the Professionals;
- It may be faceless GST Audit mechanism too by the Department as Faceless is flavour of the season;
- TAR reporting and/or ITR reporting would synchronize the GST audit reporting as part of reporting exercise;
- Knowledge gained over past 4 years by studying the law, would help during the representation proceedings if litigation arises.
- Opportunities will open for all the stakeholders be it SME, MSME, TP and or Big Firms to get involved in the process of synchronized and integrated reporting to ensure sustainability;
- I agree it is loss of professional opportunity for all but it would open up another arena of opportunities for all but we need to work around such situation which is in our control and not the other way round.....always after death there is new life

4	<p>Retrospective amendment to Section 50 - Interest on GST liability</p> <p>Section 50 of the CGST Act is being amended, retrospectively, to substitute the proviso to sub-section (1) so as to charge interest on net cash liability with effect from the 1st July, 2017.</p> <p>Our Comment</p> <p>Above amendment has been introduced to incorporate the recommendation of 39Th GST Council. Beneficial retrospective amendment. If notices for recovery on Gross Liability then it can be defended by all. Famous judgement Refex by Madras High court.</p>
5	<p>Amendment to Section 74 (Fraud, Suppression and Misstatement etc.) by introducing new clause (ii) explanation 1 to section 74</p> <p>Section 74 of the CGST Act is being amended so as make seizure and confiscation of goods and conveyances in transit a <i>separate proceeding</i> from recovery of tax.</p> <p>Section 129 of the CGST Act is being amended to delink the proceedings under that section relating to <i>detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.</i></p> <p>Section 130 of the CGST Act is being amended to delink the proceedings under that section relating to confiscation of goods or conveyances and <i>levy of penalty from the proceedings under section</i></p>

129 relating to detention, seizure and release of goods and conveyances in transit.

Our Comment

Above would trigger only in the following situations: -

- **Supply without payment of Tax;**
- **Post seizure TP who caused the movement of supply would be liable for recovery of Tax u/s 74**
- **Penalty has been increased from 100% of Tax payable to 200% of Tax payable when owner comes forward and if owner of the goods doesn't come forward then 50% of value of supply or 200% of tax payable whichever is higher? (is it fair? can such dandnitti enforce discipline? Is it really in the direction of ease of doing business or simplify law compliance?)**
- **Provision of Releasing goods on provisional basis is done away????? (earlier it was permitted)**
- **Can such penalty be imposed on Transporter of Rs.1 Lakhs when Original matter is settled for release of conveyance – conclusion????**
- **Notice time limits - 7 days of detention and Order within 15 days of Service of Notice; (earlier there were no such time limits)**
- **Search and Seizure Proceedings are always independent proceedings under other laws also.**

6 Clarification on Self Assessed Tax paid u/s 75 by way of amendment

An *explanation* to sub-section (12) of section 75 of the CGST Act is being inserted to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been

	<p>furnished under section 37 (GSTR 1), but not included in the return furnished under section 39 (GSTR 3B).</p> <p>Our Comment</p> <p>It has been clarified that Self Assessed Tax paid to include invoices declared in GSTR 1 but tax on such invoices not paid in GSTR 3B</p>
7	<p>Amendment to Section 83</p> <p>Section 83 of the CGST Act is being amended so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII(Assessment), Chapter XIV (Inspection, Search and Seizure) or Chapter XV (Demands and Recovery) till the expiry of a period of one year from the date of order made thereunder</p> <p>Our Comment</p> <p>Amendment has been intended to provide for attachment of bank accounts as well as property to safeguard and protect the interest of revenue in the cases of provisional assessments, scrutiny of returns, inspection of goods during movement, tax collected but not paid to the Govt. of TP as well as specified persons u/s 122(1A) – persons who retains the benefits of certain transactions (?????)</p> <p>We hope such amendment is implemented with utmost care by the POs by following principles of natural justice and by considering all corroborative evidences on records.</p>

8	<p>Introduction of Proviso to Section 107(6)</p> <p>A proviso to sub-section (6) of section 107 of the CGST Act is being inserted to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of penalty has been paid by the appellant.</p> <p>Our Comment</p> <p>Such insertion of proviso is derogatory in the initiatives of ease of doing business in India as there can be ample situations where because of genuine reasons TP may not have funds to pay towards pre- deposit monies, would that mean justice desired by such person by seeking appeal is denied even when situations faced is genuine? (Earlier pre-deposit was 10% of tax payable up to maximum of 25 Crores)</p>
9	<p>Substitution/ Amendments to Section 151/152/168</p> <p>Section 151 of the CGST Act is being substituted to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with <i>in connection with the Act.</i></p> <p>Section 152 of the CGST Act is being amended so as to provide that <u>no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act <u>without giving an opportunity of being heard</u> to the person concerned.</u></p> <p>Section 168 of the CGST Act is being amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for the information</p> <p>Our Comment - Roadmap for use of information collected under the provisions of the Law by giving proper opportunity of being heard to the affected person by following principles of natural justice is getting synchronized with fundamental rights provided under the articles of constitutions.</p>

II. AMENDMENTS IN THE IGST ACT, 2017:

No	Amendment
1	<p>Section 16 of the IGST Act is being amended so as to:</p> <p>(i) zero rate the supply of goods or services to a Special Economic Zone developer or a Special Economic Zone unit only when the said supply is for authorised operations;</p> <p>(ii) restrict the zero-rated supply on payment of integrated tax only to a notified class of taxpayers or notified supplies of goods or services; and</p> <p>(iii) link the foreign exchange remittance in case of export of goods with refund.</p> <p>Our Comment</p> <ul style="list-style-type: none">- Existing Supplies under LUT and Bond can still be continued- Refund of unutilised ITC is still allowed.- Refund of GST is now linked to realisation of exports proceeds.- Notified class of Taxpayers and notified supplies of goods or services is to be notified by Govt.- Supplies to SEZ to qualify as Zero-Rated Supply only if they are meant for Authorised Operations else such benefit is not available.

CUSTOMS

Note: (a) “Basic Customs Duty” means the customs duty levied under the Customs Act, 1962.

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III. AMENDMENTS IN THE CUSTOMS ACT, 1962:

No	Amendment
1	<p>In Section 2, a new clause 7(B) is being introduced defining a “common portal” (Common Customs Electronic Portal) concept similar GSTN Portal</p> <p>Amendment to Section 149- so as to-</p> <p>a) introduce a second proviso which would allow amendments to be done through the customs automated system on the basis of risk evaluation through appropriate selection criteria.</p> <p>b) introduce a third proviso so that <u>certain amendments</u>, as may be specified by the Board, may be done by the importer or exporter on the common portal.</p> <p>Amendment to Section 153</p> <p>Section 153 is being amended so as to insert a new clause(ca) under sub section (1) thereof so as to enable service of order, summons, notice, etc. by making it available on the common portal.</p> <p>Insertion of New Section 154C – to provide for stipulations and conditions under Chapter XVII is being amended so as to insert a new section 154C for notification of a common portal for facilitating registration, filing of bills of entry, shipping bills, any other document or form prescribed under this act or under any other law for the time being in force or the rules and regulations made thereunder,</p>

	<p>payment of duty and for carrying out such other functions and for such purposes as may be specified.</p>
2	<p>Additional Empowerment to Commissioner (Appeals)</p> <p>Sub-section (3) to section 5 of Customs Act is being amended to empower Commissioner (Appeals) to carry out functions specified under Chapter XV, Section 108 and the new sub-section (1D) of Section 110 of Customs Act</p>
3	<p>Amendment to Section 25</p> <p>Section 25 of the Customs Act is being amended to prescribe that all conditional exemptions, unless otherwise specified or varied or rescinded, given under Customs Act shall come to an end on 31st March falling immediately two years after the date of such grant or variation.</p> <p>All existing conditional exemptions in force as on the date on which the Finance Bill 2021 receives the assent of the President unless having a prescribed end date, shall come to an end on 31st March, 2023 (if not specifically extended/ rescinded earlier) on review.</p> <p>Our Comment</p> <p>Clear cut time lines defined so that all stakeholders can plan their affairs accordingly considering conditional exemptions.</p>
4	<p>Insertion of New Section 28BB</p> <p>A new section 28BB is being introduced <u>prescribing a two-year time- limit, further extendable by one year</u> by the Commissioner, for completion of any proceedings under this act which would culminate in issuance of a notice under section 28 of the Customs Act, 1962.</p>
5	<p>Procedural change - Advance Filing of BoE before arrival of goods</p> <p>Sub section (3) of section 46 is being amended so as to-</p>

	<p>a) mandate filing of bill of entry before the end of the day preceding the day (including holidays) of arrival of goods.</p> <p>b) A new proviso is being introduced therein, to enable the Board to notify the time period for presenting bill of entry in certain cases as it may deem fit.</p>
6	<p>Amendment of Section 110 – Revised Procedures for Seized Gold</p> <p>Section 110 of the Customs Act is being amended so as to revise the procedure for pre-trial disposal of seized gold, in any form as notified. Commissioner (Appeals) having jurisdiction, to certify the correctness of inventory of the seized goods and carry out other procedures as prescribed, before the disposal of the gold in a manner as may be determined by the Central Government. Other consequential amendments to give effect to this provision are also being carried out.;</p>
7	<p>Insertion of New sub clause (ja) to Section 113 – confiscation of any goods for exportation under claim of remission or refund of any duty or tax or levy (similar to seizure of goods provisions under GST)</p> <p>Sub-section (ja) is being added to section 113 to provide for the confiscation of any goods entered for exportation under claim of remission or refund of any duty or tax or levy, so as to make a wrongful claim in contravention of the provisions of the Customs Act, 1962 or any other law for the time being in force.</p>
8	<p>Insertion of New Section 114AC – Penalty provisions</p> <p>A new section 114AC is being inserted in Customs Act to prescribe penalty in specific case where any person has obtained any invoice by fraud, collusion, willful misstatement or suppression of facts to utilize Input Tax Credit on the basis of such invoice for discharging any duty or tax on goods that are entered for exportation under claim of refund of any duty or tax.</p>

9	<p>Amendment of Explanation to Section 139 – evidence value of documents</p> <p>Explanation to section 139 of Customs Act is being amended so as to include inventories, photographs and lists certified by the Commissioner (Appeals) under the new sub-section (1D) to the documents within the meaning of that section to give evidentiary value to such documents.</p>
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IV. AMENDMENTS IN THE CUSTOMS TARIFF ACT, 1975:

No	Amendment
1	<p>Amendment of Section 9 – Welcome change – up to 5 years</p> <p>Section 9 of the Customs Tariff Act is being amended to <i>include provisions for anti-absorption, retrospective levy</i> from the date of initiation of investigation in anti-circumvention cases, aligning countervailing duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area, stipulating that when countervailing duty is revoked temporarily, such <u>revocation shall be for a period not exceeding one year at a time</u> and <u>to provide for imposing Countervailing duty on review for period not exceeding 5 years at a time</u>, instead of the 5 years at present</p>
2	<p>Amendment of Section 9A – Welcome up to 5 years</p> <p>Section 9A of the Customs Tariff Act is being amended to include provisions for <i>anti-absorption, retrospective levy</i> in anti-circumvention cases, aligning anti-dumping duty provisions with those in safeguard measures in respect of levy on goods cleared from EOU and SEZ into Domestic Tariff Area, stipulating that when anti-dumping duty is revoked temporarily, such revocation shall be for a period not exceeding one year at a time and to provide for imposing ADD (Anti-Dumping Duty) on review for period not exceeding 5 years at a time, instead of the 5 years at present.</p>

V. AMENDMENTS IN IN THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975

No	Amendment
1	<p style="text-align: center;">Alignment with International Cross Border Trade</p> <p style="text-align: center;">Harmonizing the Customs Tariff Act 1975 with the HSN 2022</p> <p>a) Changes to the first schedule to the Customs Tariff Act are being proposed that are to come into effect from 01.01.2022. This is in accordance with HSN 2022, which proposes 351 amendments to the existing harmonized nomenclature, covering a wide range of goods moving across borders.</p> <p>b) The amendments are necessary to adapt to the current trade through the recognition of new product streams, the changing nature of commodities being traded, advent of new technologies and addressing the environmental and social issues of global concern- all with a prime focus on the larger goal of ease of doing business and trade facilitation.</p>

VII. CHANGES IN CUSTOMS RULES

No	Amendment - Trade Facilitation- Amendment to IGCR rules, 2017
1	<p>Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017 [IGCR Rules] are being amended to provide the following facilities:</p> <ul style="list-style-type: none">a. to allow job-work of the materials (except gold and Jewellery and other precious metals) imported under concessional rate of dutyb. to allow 100% out-sourcing for manufacture of goods on job-workc. to allow imported capital goods that have been used for the specified purpose to be cleared on payment of differential duty, along with interest, on the depreciated value. The depreciation norms would be the same as applied to EOUs, as per Foreign Trade Policy.

VIII. AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS

No	New Cess
1	An Agriculture Infrastructure and Development Cess (AIDC) has been proposed on import of specified goods
2	To ensure that imposition of cess does not lead to additional burden in most of these items on the consumer, the BCD rates has been lowered
3	This cess shall be used to finance the improvement of agriculture infrastructure and other development expenditure

EXCISE

Note: (a) “Basic Excise Duty” means the excise duty set forth in the Fourth Schedule to the Central Excise Act, 1944.

(b) “Road and Infrastructure Cess” means the additional duty of central excise levied under section 112 of the Finance Act, 2018.

(c) “Special Additional Excise Duty” means a duty of excise levied under section 147 of the Finance Act, 2002.

(d) “NCCD” means National Calamity Contingency Duty levied under Finance Act, 2001, as a duty of excise on specified goods at rates specified in seventh schedule to Finance Act, 2001

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IMPOSITION OF AGRICULTURE INFRASTRUCTURE AND DEVELOPMENT CESS (AIDC) ON PETROL AND DIESEL

An Agriculture Infrastructure and Development Cess (AIDC) as an additional duty of excise has been proposed on Petrol and High-speed diesel vide Clause [116] of the Finance Bill, 2021. This cess shall be used to finance the improvement of agriculture infrastructure and other development expenditure. The details of the cess are as under:

S. No.	Commodity	Rate of AIDC [Clause [116] of the Finance Bill]
1	Motor spirit commonly known as	Rs. 2.5 per litre
2	High speed diesel	Rs. 4 per litre

*Will come into effect immediately owing to a declaration under the Provisional Collection of Taxes Act, 1931.

CHANGE IN EFFECTIVE RATE OF BASIC EXCISE DUTY AND SPECIAL ADDITIONAL EXCISE DUTY ON PETROL AND DIESEL [to be effective from 02.02.2021]

Consequent to imposition of AIDC, the Basic Excise Duty (BED) and Special Additional Excise Duty (SAED) on Petrol and High-speed diesel is being reduced so that consumer does not have to bear any additional burden on account of Imposition of AIDC. The revised duty structure on petrol and HSD shall be as follows.

A	Item	BED (Rs/Ltr)	SAED (Rs/Ltr)	AIDC (Rs/Ltr)
1	Petrol (unbranded)	1.4	11	2.5
2	Petrol (branded)	2.6	11	2.5
3	High speed diesel (unbranded)	1.8	8	4
4	High speed diesel (branded)	4.2	8	4

EXEMPTIONS FOR M-15, E-20 AND OTHER BLENDED FUELS

S. No.	Amendment to central excise notifications
1.	Exemptions from cesses and surcharges on the lines of other blended fuels (like E- 5 and E-10) if these blended fuels are made of duty paid inputs

Amendments in the Schedule VII of the Finance Act 2001 (NCCD Schedule)

1.	New tariff items [2404 11 00] and [2404 19 00] inserted in accordance with upcoming HS 2022 Nomenclature and prescribe NCCD of 25% on these tariff items with effect from 01.01.2022
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