



**N M Jhanwar & Associates**

# **Decoding Indirect tax proposals of Budget 2021**

**flipcore**

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# Clarifying the applicability of GST on Societies/Clubs/Associations

*W.r.e.f. 1<sup>st</sup> July 2017 post enactment of Finance Bill, 2021*

Section	Proposed Change
Section 7(1)(aa)	<p>With retrospective effect from the 1st July 2017, a new clause (aa) has been inserted to fall under scope of ‘supply’ by way of deeming fiction :</p> <p>‘the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.’</p> <p>It has been further clarified by inserting an Explanation 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</p>

## *Comments*

- ❑ Defying the Principle of Mutuality and further firming Government’s stand to apply GST on transactions or activities by Clubs/Societies/Unincorporated associations to its members
- ❑ This intends to nullify the judgement of SC in the case of Calcutta Club Ltd. 2019 (29) G. S. T. L. 545 (SC) holding that club and members are one and the same person and principle of mutuality should apply and there should not be any tax on the transactions and activities carried by club to its members

# New Condition to avail ITC- Furnishing details by Suppliers in GSTR-1

Section	Proposed Change
Section 16(2)(aa)	<p>A new clause has been inserted which would be required to be fulfilled to avail Input tax credit.</p> <p>ITC can now be availed only if the details of the invoice or debit note have been furnished by the supplier in the statement of outward supplies and communication of such details to the recipient of such invoice or debit note for availing ITC</p>

- ❑ Government has inserted Rule 36(4) w.e.f. 9<sup>th</sup> October 2019 to restrict the availment of ITC till 105% (w.e.f. 1<sup>st</sup> January 2021, earlier 110%) of all supplies reported by the supplier in GSTR-1. However, this was not supported by any legal provision in CGST Act, 2017.
- ❑ Now, by this proposed amendment, this condition in a way provides legal sanctity to Rule 36(4) of CGST Rules, 2017. However, fulfillment of conditions of Rule 36(4) for the period prior to proposed change coming into effect is debatable on various grounds and already have witnessed series of writ petitions in High Courts.



# Removal of mandatory requirement of GST audit

Section	Existing Provision	Proposed Change
Section 35(5)	Mandatory requirement to get books of accounts audited and furnish GSTR-9C duly certified by CA/CMA	Relevant provision of GST Audit is proposed to be omitted completely.
Section 44(2)	Mandatory requirement for registered persons who are required to get their accounts audited under Section 35(5) to furnish GSTR-9C duly certified by CA/CMA alongwith GSTR-9	GSTR-9C – Reconciliation Statement is now not required to be certified by CA/CMA and will only require self-certification

- ❑ Professionals act as knowledge interface between businesses and Government and plays active role in payment of GST
- ❑ Removal of mandatory certification will certainly impact revenue of the Government as GSTR-9 & 9C is prepared in consonance of each other with the help of professionals

# No Interest on Payment of GST by ITC while filing GSTR-3B

Section	Existing Provision	Proposed Change
Proviso to Section 50(1)	Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made there under, but fails to pay the tax or any part thereof to the Government within the period prescribed time , shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest with prescribed rate.	Proviso to Section has been substituted retrospectively with effect from the 1st July, 2017, so as to pay interest on that portion of the tax which is paid by debiting the electronic cash ledger.

- ❑ Interest is payable only on GST payment in cash (not on payment through ITC) so long as supplies are declared in return & interest is arising out of late filing of return. This has been effective from retrospective date of 1st July 2017.
- ❑ It also means that if any payment of tax is made with delay other than by way of filing of return than this provision of not levy of interest on net cash liability is not applicable.

# Recovery of Self- Assessed tax to include difference between GSTR-1 and 3B

Section	Existing Provision	Proposed Change
Section 75(12)	Notwithstanding anything contained in section 73 or section 74, where any amount of <b>self assessed tax in accordance with a return furnished under section 39 remains unpaid</b> , 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.	An explanation to sub-section (12) has been inserted to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished under section 37, but not included in the return furnished under section 39.

- ❑ Now recovery under Section 79 can be initiated where supplies have been reported in GSTR-1 but not included in GSTR-3B.
- ❑ However, proposed Explanation is not in conformity with the principal section as Section refers to ‘Self assessed tax in accordance with a return furnished under Section 39’ which is GSTR-3B. Hence, explanation by covering GST reported in GSTR-1 under the purview of Self-assessed tax is beyond the scope of Section itself

# Wider Scope of Provisional attachment under Section 83

Section	Existing Provision	Proposed Change
Section 83	Provisional attachment can be done by Commissioner of only taxable person during pendency of proceedings only in specified cases under Section 62, 63, 64, 67, 73 or 74	Section has been amended to expand the scope of power of provisional attachment in any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder to taxable person or any specified person viz. beneficiary or mastermind.

## Provisional attachment can be invoked in following cases also:

- ☐ Provisional assessment
- ☐ Scrutiny of Return
- ☐ Inspection of goods in movement
- ☐ Summons
- ☐ Tax collected but not paid

It is imperative that CBIC issues comprehensive guidelines to exercise such power in a judicious manner to ensure its use in limited circumstances

# Significant changes in Section 129- Detention of goods in transit

Section	Existing Provision	Proposed Change
Section 129(1)(a) Where Owner Comes Forward	Applicable Tax and Equal Penalty in case of taxable goods	No Payment of Tax now. Payment of penalty equivalent to 200% of the applicable GST
Section 129(1)(b) Where Owner does not Come Forward	Applicable Tax and Penalty equal to 50% of value of goods	No Payment of Tax now. Payment of penalty equivalent to 200% of the applicable GST or Penalty equal to 50% of value of goods, whichever is higher
Section 129(2)	Applicability of provision of Section 67(6)	Omitted
Section 129(3)	No Time-lines prescribed for issuance of Notice and Order	Issue of notice within 7 days from the date of detention and passing of order within 7 days from the date of notice.
Section 107	Mandatory pre-deposit of 10% tax for filing appeal	Since, there is no payment of GST under Section 129, for filing appeals against Detention Orders passed under Section 129, 25% of penalty imposed is mandatory pre-deposit



# Significant changes in Section 129- Detention of goods in transit

Section	Existing Provision	Proposed Change
Section 129(6)	In case of non-payment of prescribed tax and penalty within 14 days of detention, proceedings are initiated under Section 130	<p>The proceedings under Section 129 have been delinked with Section 130 and in case of non-payment within 15 days from Order for payment of penalty, goods liable to be sold/disposed off</p> <p>Conveyance can be released on payment of penalty or Rs. 1 lac whichever is less</p> <p>In case of perishable or hazardous goods, the time period of 15 days can be reduced by proper Officer</p>
Section 130	Overriding Section	Substitution of the words “Notwithstanding anything contained in this Act, if” with the word “Where”. Amount of penalty has been defined equal to hundred per cent. of the tax payable on such goods.

# Significant changes in Section 129- Detention of goods in transit

## Key Implications

- ❑ Section 129 is now an independent code in itself and has been delinked with Section 73,74,67 & 130 and Consequent changes have been made in these Sections
- ❑ The payment of applicable tax has been replaced with 100% penalty. This means, there is no change in financial implications and the extent of payment is same as currently applicable
- ❑ It further clears the ambiguity of separate payment of GST while filing GSTR-3B which would be required to enable recipient to claim the credit
- ❑ Additional time has been given for issuance of Notice and Order. However, practically, Notices and Orders are issued on same day by Government Officials
- ❑ In case of non-payment of penalty, to release Conveyance, separate penalty prescribed upto a maximum of Rs. 1 lacs

# Restrictions in Zero-rated Supply on payment of GST and Other changes

Section	Existing Provision	Proposed Change
Section 16(1)(b) of IGST Act, 2017	Supply to SEZ Developer/SEZ Unit is treated as zero-rated supply without any other condition	Now it has been proposed that the supply should be for the authorized operations to treat the same as zero-rated supply
Section 16(3)	Two options to undertake zero-rated supplies and claim refund :  1. Refund of output IGST paid 2. Refund of unutilized ITC used in providing export supplies	The first option of zero-rated supplies on payment of GST has been removed and it will available only to notified supplies or notified taxpayers as recommended by GST Council.
Proviso to Section 16(3)	No condition of realization of export proceeds in case of goods in IGST Act, 2017, although condition inserted by Rule 96B of CGST Rules, 2017	Now it has been mandated in IGST Law itself that on failure to realize export proceeds within the time prescribed by RBI, refund so claimed shall be recovered back.

# Restrictions in Zero-rated Supply on payment of GST and Other changes

## Implications

- ❑ In case of SEZ Supplies, the benefit of zero-rating will be restricted to certain supplies which are treated as used for 'authorized operations' like earlier Service tax regime
- ❑ The withdrawal of option for zero-rated supplies on payment of GST is intended to restrict the misuse of this facility by unscrupulous taxpayers by encashing refund by utilizing fake ITC. However, this may also hamper working capital of genuine taxpayers as refund of unutilized ITC is time taking and tedious process This will restrict the quick disbursement of refunds by suppliers through automatic system of Refund by validation of data after filing Shipping Bill.
- ❑ Rule 96B contained the condition of recovery of refund claimed in case of failure to realized the export proceeds in case of export of goods. The same has now got legal backing by proposed amendment in IGST Act, 2017

# Other Changes in GST Law

## Implications

- ❑ 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 in connection with the Act
- ❑ Section 152 of the CGST Act is being amended so as to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned
- ❑ Section 168 of the CGST Act is being amended to enable the jurisdictional commissioner to exercise powers under section 151 to call for information



# Key Changes in Customs & Excise

- ❑ A definite period of 2 years, extendable by 1 year is being prescribed for completion of investigation
- ❑ Validity of all conditional exemptions shall be 2 years unless specifically provided otherwise. Two year would be counted from 31<sup>st</sup> March of F.Y. in which such Notification issued
- ❑ Rationalization of Customs Duty rates on various items
- ❑ Agriculture Infrastructure & Development Cess (AIDC) is being levied w.e.f. 2<sup>nd</sup> February 2021 on import of specified items viz. Further, Basic Customs Duty rates are also being reduced on items on which AIDC is applicable. AIDC is in the nature of additional duty and will apply on value of goods. Further, goods imported under customs duty exemptions available under FTA and EOU as well as under advance authorization schemes are being exempted from AIDC
- ❑ An agriculture Infrastructure and Development Cess (AIDC) of Rs 2.5 per litre has been imposed on petrol and Rs 4 per litre on diesel as an additional duty of excise
- ❑ Mandatory filing of Bill of Entry before end of the day preceeding the day of arrival of goods
- ❑ A new section 114AC to prescribe penalty upto a maximum of 5 times of refund claim of GST paid in case fake ITC utilized while paying GST

Thank you

