

# THE CHAMBER OF TAX CONSULTANTS INDIRECT TAX COMMITTEE ORGANISED BY WORKSHO ON GST AMENDMENT BILL, 2018

**DATE** : 1<sup>ST</sup> SEPTEMBER 2018

**VENUE** : WALCHAND HIRACHAND HALL, CHURCHGATE

**TOPIC** : ANALYSIS OF GST AMENDMENT BILL, 2018

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# **1. SUPPLY**

**i)** Section 7(1) and 7(2) of GST Act read as follows

*(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, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- b) import of services for a consideration whether or not in the course or furtherance of business;*
- c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*
- d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

*(2) Notwithstanding anything contained in sub-section (1),—*

- a) activities or transactions specified in Schedule III; or*
- b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,*

*shall be treated neither as a supply of goods nor a supply of services.*

ii) The definition of supply given in Section 7(1) read with the Schedules have been amended. The amendment has following impact –

- a) Schedule-I specifies the transaction which are considered as supply even when there is no consideration. The clause (4) of Schedule I has been amended by deleting the word “taxable”. The amended clause reads as follows -

*“4. Import of services by a ~~taxable~~ person from a related person or from any of his other establishments outside India, in the course of furtherance of business.”*

b) The following activities have been specified in Schedule III as not amounting to supply of services or goods

*7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.*

*8. (a) Supply of warehoused goods to any person before clearance for home consumption.*

*(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.*

*Explanation 2. - For the purposes of this paragraph, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962 (52 of 1962).*



c) Sub-section (1A) in section 7 of the GST Act has been inserted wherein it is clarified that activity specified in Schedule II are only for the purpose of considering the supply as goods or services. It does not expand the meaning of supply.

## **2. AMENDMENT FOR REVERSAL OF CREDIT**

- Further, Section 17(3) has been amended and it is now provided that these activities narrated above will not be considered as exempted supply. Therefore, proportionate credit is not required to be reversed.

*“Explanation – For the purposes of this sub-section, the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, except those specified in paragraph 5 of the said schedule.”*

### **3. COMPOSITION SCHEME**

i) Section 10(2) of GST Act read as follows –

*(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 which are not leviable to tax under this Act;*
- c) he is not engaged in making any inter-State outward supplies of goods;*

*d) he is not engaged in making any supply of goods 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:*

***Provided*** *that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.*



ii) Prior to amendment the benefit of composition scheme is not available to the supplier of goods when he has supplied any amount of services. Thus, say if aggregate turnover of Rs. 1 Crore consist of Rs. 1 Lakh of service and Rs. 99 Lacs consist of goods then the benefit of the composition scheme was denied to such dealer. The following amendment have been made in composition scheme –

- a) The Government is empowered to specify the maximum limit up to Rs. 1.5 Crore for availing the benefit of composition scheme.
- b) The registered person can avail of the benefit of the composition scheme, if the value of services in aggregate turnover does not exceed 10% of aggregate turnover of State or of union territory or Rs. 5 Lacs whichever is higher.

c) The special provision providing benefit of composition scheme to the supply specified in clause 6(b) of Schedule II has been deleted. The provisions of clause 6(b) of Schedule II is reproduced below –

*(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.'*

## 4. CREDIT

The clause (a), (aa), (ab) and (b) of Section 17(5) after the amendment will read as follows-

- a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies,*
  - (A) further supply of such motor vehicles; or*
  - (B) transportation of passengers; or*
  - (C) imparting training on driving, such motor vehicles*

*(aa) vessels and aircraft except when they are used –*

*(i) for making the following taxable supplies, namely; -*

*(A) further supply of such vessels or aircraft; or*

*(B) transportation of passengers; or*

*(C) imparting training on navigating such vessels; or*

*(D) Imparting training on flying such aircraft;*

*(ii) for transportation of goods;*



**(ab)** *services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa).*

*Provided that the input tax credit in respect of such services shall be available---*

*(i) Where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;*

*(ii) Where received by a taxable person engaged---*

*(I) In the manufacture of such motor vehicles, vessels or aircraft; or*

*(II) In the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;*

*(b) the following supply of goods or services or both----*

*(i) food and beverages, outdoor catering beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles or aircraft referred to in clause (a) or clause (aa), except when used for the purposes specified therein, life insurance and health insurance.*

*Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of taxable composite or mixed supply;*

*(ii) membership of a club, health and fitness centre, and;*

*(iii) travel benefits extended to employees on vacation such as leave or home travel concession;*

***Provided*** *that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory or an employer to provide to its employees under any law for the time being in force.*

## **5. REGISTRATION**

- a) A person carrying out the business in special category state other than Jammu & Kashmir is required to be obtained registration when the aggregate turnover exceed Rs.10 Lacs. These states were –
- i. Arunachal Pradesh
  - ii. Assam
  - iii. Manipur
  - iv. Meghalaya
  - v. Mizorma
  - vi. Nagaland
  - vii. Sikkim
  - viii. Tripura
  - ix. Himachal Pradesh
  - x. Uttarakhand



After the amendment a person having, office in place of business in States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand are required to obtain registration only when the aggregate turnover exceeds Rs. 20 Lacs for previous financial year.

- b) The following proviso has been added in section 25(1) to specify that SEZ will be required to obtain separate registration

*“**Provided** further that a person having a unit, as defined in the Special Economic Zone Act, 2005, in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union Territory.”*

c) Further the provision relating to separate registration business for business verticals has been deleted. Instead following proviso has been added –

*“Provided that a person having multiple places of business in a State or Union Territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.”*

d) Cancellation of registration –

It is now specified that after the application for cancellation of registration has been made the registration of said person will temporarily gets suspended so that person need not file the nil returns.

## 6. CREDIT NOTE

The credit note shall not mention invoice number. The single credit note can be issued for multiple invoices. It is not clear, how verification of credit reversed by recipient will be verified

## **7. UTILIZATION OF CREDIT**

- The section 49(A) and 49(B) has been inserted to provides that –

*“49(A) Notwithstanding anything contained in Section 49, the input tax credit on account of central tax, state tax or Union territory tax shall be utilised towards payment of integrated tax, central tax, state tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilised fully towards such payment.*

*49(B) Notwithstanding anything contained in this chapter and subject to the provisions of clause (e) and clause (f) or sub-section (5) of section 49, the Government may, on the recommendations of the Council, prescribe the order and manner of utilisation of the input tax credit on account of integrated tax, central tax, state tax or Union territory tax, as the case may be, towards payment of any such tax.”*



## 8. REFUND

- a) The provision of Section 54(8) has been amended by which the words 'zero-rated supply' has been changed to 'export'. This section provides that the principal of unjust enrichment is not required to be complied with for claiming refund. Now after the amendment, principal of unjust enrichment will have to be complied with for refund of supplies to SEZ.
  
- b) The refund date for making application for accumulated credit is now tax period as compared to earlier provisions of the end of the financial year.

## 9. PRE-DEPOSIT OF AMOUNT

- The pre-deposit amount maximum has been specified as Rs. 25 Crore for Appellate Authority and Rs. 50 Crore for Tribunal. The provisions relating to pre-deposit are in Section 107(6) read as follows –

*“(6) No appeal shall be filed under sub-section (1), unless the appellant has paid—*

- a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and*
- b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.”*

## **10. TRANSITIONA CREDIT**

- The following explanation specified as follows –

*Explanation 3. – For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excels any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of Section 3 of the customs Tariff Act, 1975.”*

The credit will not be available for Education Cess, KKC etc.



# **11. NEW SYSTEM OF RETURN**

- The provisions of section 43A read as follows –

*“43A. (1) Notwithstanding anything contained in sub-section (2) of section 16, Section 37 or section 38, every registered person shall in the returns furnished under sub-section (1) of section 39 verify, validate, modify or delete the details of supplies furnished by the suppliers.*

*(2) Notwithstanding anything contained in section 41, section 42, or section 43 the procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed.*

*(3) The procedure for furnishing the details of outward supplies by the supplier on the common portal, for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.*



*(4) the procedure for availing input tax credit in respect of outward supplies not furnished under Sub-section (3) shall be such as may be prescribed, and such procedure may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty percent of the input tax credit available, on the basis of details furnished by the suppliers under the said sub-section.*

*(5) The amount of tax specified in the outward supplies for which the details have been furnished by the supplier under sub-section (3) shall be deemed to be the tax payable by him under the provisions of the Act.*

*(6) The supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed, as the case may be, in relation to outward supplies for which the details have been furnished under sub-section (3) or sub-section (4) but return thereof has not been furnished.*

*(7) For the purposes of sub-section (6), the recovery shall be made in such manner as may be prescribed and such procedure may provide for non-recovery of an amount of tax or input tax credit wrongly availed not exceeding one thousand rupees.*

*(8) The procedure, safeguards and threshold of the tax amount in relating to outward supplies, the details of which can be furnished under sub-section (3) by a registered person, -*

- (i) within six months of taking registration;*
- (ii) who has defaulted in payment of tax and where such default has continued for more than two months from the due date of payment of such defaulted amount;*

*Shall be such as may be prescribed.”*

# **THANK YOU**

*BALANCED VIEW*

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