

GST amendments in finance act 2021

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The Finance Act, 2021 was passed by the parliament and received the assent of the President of India on March 28, 2021. This gives effect to the financial proposals of the Central Government for the year 2021-22. The Sections 108 to 123 of the Finance Act, 2021 deals with the amendments in the Central Goods and Services Tax (CGST) Act, 2017 and Integrated Goods and Services Tax (IGST) Act, 2017. These amendments shall come into force only on such date as the Central Government may, by notification in the official Gazette, appoint. As GST is a dual tax system, all States shall simultaneously pass similar provisions in their respective State GST Acts in order to make it operational. All proposals regarding GST in the Finance Act 2021(hereafter *mentioned as FA21*) are debated, discussed and approved by the GST council in its various meetings.

The objective of this article is to familiarise/update the readers (particularly the tax professionals, officials and academics) about the latest amendments in Central Goods and Services Tax Act 2017 (*hereafter mentioned as CGST Act*) and Integrated Goods and Services Tax Act 2017 (*hereafter mentioned as IGST Act*) and its rationale.

Sections 108 to 122 of FA21 deals with the amendments in CGST Act 2017.

1. Widening the scope of supply (Section 108)

Section 7 of the CGST Act 2017 explains the Scope of the 'Supply'. A new clause (aa) is inserted by the FA 21 in section 7 so as to widen the scope of the '**Supply**' with a retrospective effect from the introduction of GST i.e., 1st day of July, 2017.

The inserted clause is

"(aa) 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.

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;"*

The taxability of transactions carried out between the members and the association of persons/partnership firms / joint ventures was an area of legal dispute for more than a decade. The Hon'ble Supreme Court of India nailed this dispute in the case of Calcutta Club Ltd (Civil Appeal No. 4184 of 2009, dated 03.10.2019) recently. It was held that the club/association and its members are not distinct persons and that there would be no levability of service tax on any services provided by the club to its members based on the 'concept of mutuality'.

But this amendment [Section 7(aa)] in the CGST Act overrides all the existing law and judgement of any Court including Supreme Court. The amendment is far more powerful by effecting retrospectively (from 1-7-2017) in the CGST Act by providing that the person (other than an individual) and its members should be treated as two separate persons and the activities or transactions carried out between them for any consideration should be treated as a Supply and taxable under CGST Act 2017.

2. Conditionality in availing input tax credit by the recipient (Section 109)

Section 16 of the CGST Act deals with the eligibility and conditions for taking Input Tax Credit. After the section 16(2)(a) of the CGST Act a clause (aa) is inserted by FA21:

"(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".

Till the introduction of this amendment, conditions for availing input tax credit by the recipient was dependent on the supplier who actually pays the taxes to the government collected from the recipient. But in practice the condition of verification is not always

possible by the recipient particularly where the supplier has wrongly declared or not declared the details in his/her return - GSTR-3B.

On the other hand, there was no clear provision in CGST Act to deny input tax credit based on the matching of the details declared by the supplier in his/her outward supply return - GSTR-1 and actual input tax credit availed by the recipient. It means the input tax credit matching between GSTR 2A (the inward supply related auto-populated statement received by the recipient once GSTR-1 has been filed by the supplier) and GSTR-3B of the recipient in availing credit was not mandatory.

In order to fill this legal lacuna and strictly monitor the availment of input tax credit by the recipient, section 16 (2) (aa) is inserted. It proposes a condition that input tax credit on invoice or debit note can be availed by the recipient only when the details of such invoice or debit note have been furnished by the supplier in his/her GSTR-1 and it is communicated to the recipient through GSTR-2A / 2B.

3. Audit under GST by the chartered accountant or cost accountant not necessary (Section 110)

Section 35 (5) of the CGST Act deals with the provision of auditing the accounts by a chartered Accountant or Cost Accountant. It read as follows

"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 sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed:

Provided that nothing contained in this sub-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."

The above existing section of CGST Act has been omitted by FA21.

4. Self-certified reconciliation statement (Section 111)

Section 44 of the CGST Act deals with the annual return of GST.

This has been substituted by FA21 as follows:

"44. 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."

As mentioned earlier, section 35(5) of the CGST Act is omitted so as to remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by Chartered Accountants/ Cost Accountants. Similarly, Section 44 of the CGST Act is being substituted so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by Chartered Accountants/ Cost Accountants. The registered taxpayers have to file their annual return on a self-certification basis. Though removing the GST audit eases the compliance burden, it is indirectly imposing more responsibility solely on the registered taxpayers to finalise their accounts and returns error free.

5. Interest only on net cash liability on delayed payment of tax (Section 112)

Section 50 of the CGST Act deals with the interest on delayed payment of tax. The existing proviso after the section 50(1) of the CGST Act is substituted with effect from the 1st day of July, 2017 as follows:

"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."

The proviso of Section 50(1) of the CGST Act has been amended with effect from 1st July 2017 so as to charge interest on net cash liability instead of gross liability. The above amendment has been introduced to incorporate the recommendation of the 39th GST Council.

6. Separation of general penalty from levy of penalty on detention, seizure, confiscation of goods and conveyance (Section 113)

Section 74 of CGST Act deals with the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. In this section, Explanation 1, in clause (ii), for the words and figures "sections 122, 125, 129 and 130", the words and figures "sections 122 and 125" is substituted by the FA21.

This amendment is made so as retain the penalty for certain offences (section 122) and general Penalty (section 125) in section 74 and separate the detention, seizure and release of goods and conveyance in transit (Section 129) and Confiscation of goods or conveyances and levy of penalty (130) from recovery of tax

7. Clarity on self assessed tax (Section 114)

Section 75 of CGST Act deals with the general provisions relating to the determination of tax. After section 75(12) the following Explanation is inserted by the FA21.

'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'.

Through this amendment, it is clarified that Self Assessed Tax paid will include invoices declared in return - GSTR 1 (section 37) but tax on such invoices not paid in return - GSTR 3B (section 39)

8. Wide scope on provisional attachment (Section 115)

Section 83 of the CGST Act deals with the provisional attachment to protect revenue in certain cases. Section 83 (1) is substituted as follows:

"(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."

This amendment is made so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Assessment (*Chapter XII*), Inspection, Search and Seizure (*Chapter XIV*) or Demands and Recovery (*Chapter XV*) till the expiry of a period of one year from the date of order. Attachment includes attachment of bank accounts, 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 as well as any person specified in 122 (1A) which deals with penalty for certain offences.

9. Conditions for filing appeal (Section 116)

Section 107 of CGST Act deals with the Appeals to Appellate Authority. After section 107(6), the following proviso shall be inserted

"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."

This proviso has been inserted to provide that no appeal shall be filed against an order made under the provision of detaining, or seizing, goods or conveyances [under section 129(3)] unless a sum equal to twenty-five per cent of penalty has been paid by the appellant.

10. Segregation of penalty, time limit of issue of notice etc. (Section 117)

Section 129 of the CGST deals with the detention, seizure and release of goods and conveyances in transit

(i) The following clauses are substituted in the section 129 (1) (a) & (b) of the CGST Act

"(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;

(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;"

The above two amendments deal with the segregation of penalty based on whether or not the owner comes forward to claim goods detained or seized.

The substituted section 129(1)(a) says that a penalty of 100 percent of the tax payable is applicable in case of taxable goods, while the penalty will be equal to two percent of the value of goods or twenty-five thousand rupees, whichever is less, in case of exempted goods.

The substituted section 129(1) (b), where the penalty is levied when the owner does not claim goods, says that a penalty equal to fifty percent of the value of goods or two hundred percent of the tax payable, whichever is higher must be levied in case of taxable goods, and a penalty equal to five percent of the value of goods or twenty-five thousand rupees, whichever is less, to be applied in case of exempted goods.

(ii) The existing section 129(2) of CGST Act 2017 "The provisions of sub-section (6) of section 67 shall, *mutatis mutandis*, apply for detention and seizure of goods and conveyance" is omitted by the FA21.

Section 67(6) of CGST specifies the procedure of release of goods on provisional basis upon execution of bond and security. By omitting the section 129(2), this has been removed.

(iii) Section 129 (3) is substituted as

"(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)."

The existing provision under section 129(3) does not prescribe any time limit. Now after this substitution, the law prescribes a time limit for issuance of notice and passing the order of detention or seizure. The time limit of issuance of notice has been provided as 7 days of such detention or seizure and that of order is 7 days from the date of such notice

(iv) In Section 129 (4) for the words *"No tax, interest or penalty"*, the words *"No penalty"* is substituted. In the existing section equal opportunity of being heard is given to the person concerned in determining tax, interest or penalty. Now after the substitution it is given for only determining the penalty.

(v) Section 129(6) is substituted as *"(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)*

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

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."

Earlier the proceedings under section 129(6) were linked with the proceedings of confiscation of goods or conveyances as per section 130. After the substitution of section 129 (6) it is delinked from Section 130 and kept as an independent one.

11. Delinking of the proceedings of confiscation of goods or conveyance from the general penalty proceedings (Section 118)

Section 130 of the CGST Act deals with the confiscation of goods or conveyances and levy of penalty

(a) In section 130 (1) for the words *"Notwithstanding anything contained in this Act, if"*, the word *"Where"* is substituted.

(b) In section 130 (2), in the second proviso, for the words, brackets and figures *"amount of penalty leviable under sub-section (1) of section 129"*, the words *"penalty equal to hundred per cent. of the tax payable on such goods"* is substituted;

(c) Section 130 (3) is omitted

The overriding provision of section 130 no longer exist after the substitution. The proceedings of confiscation of goods or conveyance stands delinked with the penalty proceedings under section 129. The minimum aggregate fine and penalty has now been modified to provide the amount equal to hundred per cent of the tax payable on such goods. Moreover, the requirement to pay fine in addition to the tax, penalty and charges payable in respect of the goods has been omitted.

12. More power to collect statistics (Section 119)

Section 151 of CGST Act deals with the power to collect statistics. This has been substituted has follows:

"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."

Through this substitution the jurisdictional commissioner can call for information from any person relating to any matter dealt with in connection with the Act.

13. Disclosure of information (Section 120)

Section 152 of CGST deals with the bar on disclosure of information. (a) In section 152 (1) the words *"of any individual return or part thereof"* shall be omitted and (ii) after the words *"any proceedings under this Act"*, the words *"without giving an opportunity of being heard to the person concerned"* shall be inserted.

(b) Section 152 (2) shall be omitted

The amendment intended that information obtained under sections 150 and 151 shall not be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

14. More power to jurisdictional commissioner (Section 121)

Section 168 of CGST Act deals with the power to issue instructions or directions. (i) In section 168(2) the words, brackets and figures *"sub-section (1) of section 44"*, the word and figures *"section 44"* shall be substituted;(ii) In section 168(2) the words, brackets and figures *"sub-section (1) of section 151,"* shall be omitted.

The existing section provides for the powers which can be exercised only by the Commissioner or Joint Secretary posted in the Board. After the amendment the Jurisdictional Commissioner (and not the Board) is empowered to exercise powers under section 151 to call for information.

15. Limited inclusion of supply of goods between association and its members removed (Section 122)

Schedule II of the CGST Act 2017 list out the activities or transactions to be treated as supply of goods or supply or services. Paragraph 7 of the Schedule II is omitted with retrospective effect from the 1st day of July, 2017.

Paragraph 7 of the Schedule II *"supply of goods only by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration"* is covered within the broader explanation of inserted Section 7(1) (aa) of the CGST Act mentioned in the Section 108 of the FA21. Hence the Paragraph 7 has been omitted from Schedule II.

Integrated Goods and Services Tax Act 2017

16. Legal backing for authorised operations, refund in case of non-realization of sale proceed etc. (Section 123)

Section 16 of the IGST Act deals with the Zero-Rated Supply. (a) In Section 16(1)(b) after the words *"supply of goods or services or both"*, the words **"for authorised operations"** is inserted;

As per the existing section 16(1)(b), all supplies made to SEZ unit were covered under the definition of Zero-Rated Supply. As per the Rule 89(1) of the CGST Rules, 2017 refund can be claimed by a supplier only when such supplies have been admitted for 'authorized operations'. The present amendment is made in order to give a legal backing for this.

(b) Section 16(3) is substituted as *"(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.

The existing section 16(3) has no power for recovery of refund in case of non-realization of sale proceeds in case of export of goods, though it is mentioned under Rule 96B of CGST Rules 2017. This amendment fills the gap by providing the provision that the registered person making zero rated supplies is liable to deposit the refund received along with interest in case of non-realization of sale proceeds within the specified time.

A new section, 16 (4) has been inserted *"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."

This new section 16(4) is inserted so as to empower Government to notify certain class of persons or class of goods / services on which the benefit of claiming refund of export with payment of integrated tax will be allowed