

**INSIGHTS ON**

**GOODS AND SERVICES  
TAX**

**PROPOSALS 2021**

**S K AGRAWAL AND CO  
CHARTERED ACCOUNTANTS LLP**

1. Transaction between a person (other than an individual) to its members for consideration to be treated as a supply.

**New Provision**

Section 7(1) (aa) of the CGST Act, 2017.

**Amendment**

This amendment aims to put a deeming fiction effective from 1st July 2017 within the law providing that the person (other than an individual) and its members should mandatorily be treated as two separate persons. Also, the activities or transactions carried out between such person and the members for consideration should mandatorily be treated as a supply leviable to tax under GST.

**Applicable from 1<sup>st</sup> July 2017**

2. Appearance of transaction in GSTR-2A/2B – a mandatory condition for availment of ITC

**New Provision**

Section 16(2) (aa) of the CGST Act, 2017.

**Amendment**

This amendment aims to introduction of 100% matching of input tax credit for forward charge transactions with GSTR-2A/2B for availment of ITC in GSTR 3B by recipient.

**Applicable date to be notified.**

3. Annual accounts to be audited by Specified professionals.

**Affected Provision**

Section 35(5) of the CGST Act, 2017

**Amendment**

The provision regarding mandatory requirement of getting the annual accounts audited by a Chartered Accountant/ Cost Accountant is proposed to be removed.

**Applicable date to be notified.**

4. Self-certification of reconciliation statement by the registered person

**Affected Provision**

Section 44 of the CGST Act, 2017.

**Amendment:**

The mandatory requirement of getting the reconciliation in GSTR-9C certified by a Chartered Accountant/ Cost Accountant is proposed to be removed. Any registered person would be able to furnish the annual return along with a self-certified reconciliation statement reconciling the values between annual return and financial statements.

**Applicable date to be notified.**

5. Interest on net tax liability to be retrospective.

**Affected Provision**

Proviso to Section 50(1).

**Amendment**

Interest due to late furnishing of GSTR-3B was made applicable on the net tax liability i.e., on the amount paid from the electronic cash ledger only through the Finance Act 2020. Now this relaxation has been given a retrospective effect from 1st July 2017 i.e., from the advent of GST.

**Applicable from 1<sup>st</sup> July 2017**

6. Detention and Seizure to be separate from the Demand / Recovery provisions

**Affected Provision**

Explanation 1(ii) of Section 74 of the CGST Act, 2017

**Amendment**

This amendment has been brought in to make the proceedings of the detention, seizure and confiscation of goods and conveyances in transit separate from the demand and recovery proceedings under Section 73 and 74 of the CGST Act 2017.

**Applicable date to be notified.**

**7. Direct recovery without SCN upon furnishing of details in GSTR-1 without tax payment in GSTR-3B**

**Affected Provision**

Section 75(12) of the CGST Act, 2017.

**Amendment**

If a supplier only provides outward supplies in GSTR-1 without including such supplies in GSTR-3B, then the government can directly opt for recovery of taxes under Section 79 without issuance of any show cause notice u/s 73 or 74.

**Applicable date to be notified.**

**8. Provisional Attachment upon initiation (and not pendency) of proceedings and increased coverage of beneficiaries or masterminds of fake invoicing**

**Affected Provision**

Section 83(1) of the CGST ACT,2017

**Amendment**

Earlier only upon pendency of certain proceedings of assessment, inspection, search and seizure and demand / recovery, the power to exercise provisional attachment of property could be exercised.

Now, Section 83 has been modified to allow provisional attachment of property wherever any proceedings of assessment, inspection, search and seizure and demand / recovery have been initiated. Such provisional attachment will remain valid from such initiation of proceedings till the expiry of one year from the date of order.

Also, the provisions of provisional attachment of the property have been extended to include those persons who are the beneficiaries or at whose instance the fake invoicing transactions are carried out as provided under Section 122(1A) of the CGST Act 2017.

**Applicable date to be notified.**

**9. Filing of appeal against detention order upon payment of 25% penalty**

**New Provision**

Proviso to Section 107(6) of the CGST Act, 2017

**Amendment**

Before this amendment, a person can file an appeal against a detention order passed u/s 129(3) of the CGST Act 2017 only upon payment of 10% of the tax in dispute. This was leading to mis-utilization of this provision by the taxpayers.

After the proposed amendment, against the adjudication order for detention or seizure of goods or conveyance u/s 129(3) of the CGST Act 2017, an appeal can now be filed only upon payment of 25% of the levied penalty under Section 129.

**Applicable date to be notified.**

**10. Payment of only penalty for release of goods and Increased penalty amount for detention and seizure proceedings****Affected Provision**

Section 129(1)(a) & (b) and 129(4) of the CGST Act, 2017.

**Amendment**

Upon detention and seizure of goods and conveyance u/s 129, one had to pay the tax along with the penalty to get the goods released. After this amendment, only the penalty amount needs to be paid to secure release of goods. Moreover, the penalty amount under this provision has been modified for non-exempted goods as follows:

<b>Situation</b>	<b>Earlier Penalty</b>	<b>Amended penalty</b>
Where owner comes forward for payment of penalty	100% of the tax payable	200% of the tax payable
Where owner does not come forward for penalty payment	50% of the value of goods less tax paid	Higher of: a) 50% of the value of goods b) 200% of the tax payable

**Applicable date to be notified.**

**11. Provisions of Section 67(6) no longer to apply for release of goods on security.****Affected Provision**

Section 129(2) of the CGST Act, 2017.

**Amendment**

The requirement of following the provisions of Section 67(6) for release of goods on provisional basis upon execution of bond and security as per the specified manner and quantum has been removed. However, the allowance of release of goods upon furnishing of security u/s 129(1)(c) still stands.

**Applicable date to be notified.**

**12. Time limit provided for issuance of notice and order u/s 129.**

**Affected Provision**

Section 129(3) of the CGST Act, 2017.

**Amendment**

The law now 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.

**Applicable date to be notified.**

**13. Direct disposal of goods upon non-payment of penalty for detention**

**Affected Provision**

Section 129(6) of the CGST Act, 2017.

**Amendment**

The proceedings of confiscation of goods u/s 130 have been made independent of the proceedings of detention and seizure as per Section 129(3) of the CGST Act 2017.

Earlier non-payment of tax and penalty within 14 days of detention and seizure u/s 129 led to introduction of confiscation proceedings u/s 130.

Now, upon non-payment of penalty within 15 days (or less for perishable/hazardous goods) of receipt of order copy of detention, the detained goods or conveyance can directly sell or disposed of in the prescribed time and manner. Further, the transporter has been given an option to get his conveyance released upon payment of applicable penalty or Rs. 1 lakh whichever is less.

**Applicable date to be notified.**

**14. Delinking of Detention and Confiscation proceedings**

**Affected Provision**

Section 130(1); 130(2) & 130(3) of the CGST Act, 2017.

**Amendment**

The confiscation provision no longer overrides any other provision of the Act. The proceedings of confiscation stand delinked with the penalty proceedings due to detention of goods.

Also, the minimum aggregate fine and penalty for confiscation was provided to be the penalty for detention under Section 129. This has now been modified to provide the amount to be equivalent to 100% of the tax payable on such goods.

Also, the requirement to pay fine in addition to the tax, penalty, and charges payable in respect of the goods has been omitted.

**Applicable date to be notified.**

**15. Empowerment of Commissioner to call for information.**

**Affected Provision**

Section 151 of the CGST Act, 2017

**Amendment**

The amendment has been provided to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

**Applicable date to be notified.**

**16. Opportunity of being heard before using the called for information in any proceedings.**

**Affected Provision**

Section 152(1) of the CGST Act, 2017

Section 152(2) of the CGST Act, 2017

**Amendment**

This amendment is 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.

**Applicable date to be notified.**

**17. Power under Section 150 to call for information transferred from the Board to the Jurisdictional Commissioner**

**Affected Provision**

Section 168(2) of the CGST Act, 2017.

**Amendment**

Section 168(2) of the CGST Act 2017 provides for the powers which can only be exercised by the Commissioner or Joint Secretary posted in the Board. This has been amended to enable the jurisdictional Commissioner (and not the Board) to exercise powers under section 151 to call for information.

**Applicable date to be notified.**

**18. Rationalization of entry of supply of goods by unincorporated association in light of the new insertion in the definition of supply**

**Affected Provision**

Paragraph 7 of Schedule II of the CGST Act, 2017

**Amendment**

Due to the retrospective insertion of Section 7(1)(aa) of the CGST Act 2017, the above entry providing for supply of goods only by any unincorporated association or body of persons loses its significance. This entry gets automatically covered within the main definition as per Section 7(1)(aa) of the CGST Act 2017. Thereby, this entry has been omitted from Schedule II of the CGST Act 2017.

**Applicable from 1<sup>st</sup> July 2017.**

**19. Supply to SEZ for authorized operations only to be treated as a zero-rated supply.**

**Affected Provision**

Section 16(1)(b) & (3) of the IGST Act, 2017

**New Provision**

Section 16(4) of the IGST Act, 2017

**Amendment**

Earlier all supplies made to SEZ unit were covered under the definition of Zero-Rated Supply. However, Rule 89(1) of the CGST Rules, 2017 provided that refund would be allowed to be claimed by a supplier only when such supplies have been admitted for authorized operations. The department in its circular use to take



reference of this rule to conclude that a supply to SEZ would be zero rated only when it is admitted for authorized operations. This conclusion however did not have any statutory backing. Thus, the aforesaid amendment was carried out to include only supply on account of authorized operations as zero-rated supplies.

**Applicable date to be notified.**

**20 Export with payment of tax to be allowed to notified persons or notified goods /services only.**

**Amendment**

Rule 96B provides for recovery of refund in case of non-realization of sale proceeds in case of export of goods. Till now, there was no empowering provision for this rule under the Act. Now, the Act itself provides that the registered person making zero rated supplies in case of non-realization of sale proceeds within the specified time is liable to deposit the refund received along with interest. The time limit provided is 30 days after the expiry of time limit prescribed under the FEMA Act 1999 for receipt of foreign exchange remittances.

**Applicable date to be notified.**

**21. Export with payment of tax to be allowed to notified persons or notified goods /services only.**

**New Provision**

Section 16(4) of the IGST Act, 2017

**Amendment**

It is proposed that the benefit of export with payment of tax would not be allowed in cases. The government has been empowered to notify 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.

**Applicable date to be notified.**

## THANK YOU

# S K AGRAWAL AND CO CHARTERED ACCOUNTANTS LLP

### Our Services areas are:



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The Chambers, Suite Nos - 606 - 608  
1865, Rajdanga Main Rd, East Kolkata Township,  
Opposite Gitanjali stadium, Kolkata – 700107  
Phone: +91 33 40089902/ 03/ 04  
Email: [updates@skagrawal.co.in](mailto:updates@skagrawal.co.in)  
Website: [www.skagrawal.co.in](http://www.skagrawal.co.in)