

The Institute of Chartered Accountants of India

(Setup by an Act of Parliament)



HYDERABAD BRANCH OF SIRC

E-NEWSLETTER

FEBRUARY-2021

UNION  **N** 
BUDGET 2021



Chairman Writes.... 

Dear Professional Colleagues,

This is my last communication with you in the capacity of Chairman of Hyderabad Branch of SIRC. It has always been my endeavour to discharge my duties with passion and dedication, and I hope I have lived up to your expectations from me.

On hindsight, this period has been very eventful, and it has helped all of us, individually as well as professionally, evolve into more adaptable, more tech-friendly, more solution oriented and more positive versions of ourselves. When we took over, we never knew that so many surprises were in store for us. As the deadly Covid-19 struck the entire world, all our planned activities came to a standstill. At the same time, it also opened for us a plethora of opportunities. It is indeed satisfying to see that the Branch Activities continued seamlessly and a lot of initiatives were taken up, despite the challenges of the lock-down. We could not only cater to the requirements of members and students amidst the lockdown crisis, we also contributed our bit towards the fight against the virus. I am happy to share that

- We conducted 119 Programmes (CPE & NON CPE) wherein we had Resource persons from across the length & breadth of the country addressing our members on diverse topics of relevance from an academic and practice point of view. We had an average participation of 200 delegates per programme and almost all our programmes were also streamed live.
- Hyderabad Branch of SIRC also started off with Virtual Classes for Advanced ITT, ITT, Orientation and MCS Courses wherein we had student participation from across the country. During the year, we also conducted many virtual classes for the benefit of student community. A total of 70 batches covering 3599 students were organized by the Branch, for which the entire credit must go to our diligent and service oriented staff, which worked tirelessly from their homes.



- It was a historic moment for Team Hyderabad Branch of SIRC when we conducted the first Virtual AGM of Hyderabad Branch of SIRC on July 31, 2020. The Virtual AGM had a decent participation of members and we were able to conduct it in a smooth manner.
- The November examinations were conducted without any disturbance to students in spite of the GHMC elections being announced and conducted in the middle of the examinations.
- The Branch Staff continued to serve the members and students virtually and every query received from them was attended to.
- Infrastructure at Branch was improved to ensure that we have a dedicated Study Circles meeting room and the lectures at Brahmayya Hall will be more enjoyable.

Union Budget 2021:

Unprecedented times calls for Extra-ordinary measures. Budget 2021, presented by our Honourable Finance Minister Mrs. Nirmala Sitharaman, clearly intended to provide impetus to all important levers of economic growth of our nation, consciously taking on a higher fiscal deficit. The Hyderabad Branch of SIRC has conducted a virtual Panel Discussion on Union Budget-2021 covering the Economic and Taxation angles of the budget. The sessions were handled by CA. M R Vikram, CA. Gururaj Acharya & CA. V S Sudhir and the session was well attended.

Post Budget Memorandum: Hyderabad Branch of SIRC has always contributed towards achieving the objectives of national and state governments by submitting a Post Budget Memorandum based on suggestions received by our learned members. Members are requested to send in their suggestions on the Union Budget 2021 to **hyderabad@icai.org** before 15 February 2021 so that the office could compile and submit our Post Budget Memorandum as soon as possible.

On behalf of Hyderabad Branch of SIRC of ICAI I congratulate all students who have qualified Final at November 2020. Team Hyderabad Branch of SIRC of ICAI also conveys its best wishes to IPCC and Foundation students



February, 2021

The last twelve months in office as the Chairman of one of the largest branches of ICAI has given me an opportunity to serve our members and our profession, for which I shall be ever grateful. As I sign off as Chairman, I cannot help but acknowledge the guidance, support and encouragement of Members at large, ICAI President CA. Atul Kumar Gupta, ICAI Vice President CA. Nihar Niranjana Jambusaria, Central Council Member CA. Dayaniwas Sharma, Regional Council Members CA Chengal Reddy R, CA China Masthan Talakayala and CA Naresh Gelli. I shall always cherish the cooperation and guidance of Immediate Past chairman CA Y V Bhanu Narayan Rao. I am thankful to Vice Chairman CA Machar Rao Meenavalli, Secretary CA Deepak Ladda and Treasurer CA A C S Reddy for their continuous support and appreciate the efforts of CA Rajambal M S, Chairperson SICASA and CA Satish Kumar Mylavarapu Co Chairperson SICASA. I also thank the staff of Hyderabad Branch of SIRC of ICAI as well as COE Hyderabad for their help in smooth conduct of activities of Hyderabad Branch.

I would also like to Thank all the Speakers & Programme Directors of various seminars and programmes, Faculties of MCS, Adv ITT, ITT and orientation as well as regular coaching classes for keeping the activity on. I also thank for sponsors of Events conducted by branch and am sure of their cooperation in the years to come.

I sign off being satisfied that this Committee worked as a TEAM. It is a known fact that Team Work never fails. I wish the incoming Team a fruitful tenure and also assure them all support from my end for a fulfilling term.

Signing off with a quote:

“The future depends on what you do today.”

CA Pankaj Kumar Trivedi
Chairman
chairman.hyd@icai.in

**February 2021 Virtual CPE Program Sheet**

Date & Day	Timing	Topice	Speaker	CPE	Delegate Fee
Wednesday 03 Feb, 2021	4PM to 8PM	Analysis of Finance Bill 2021	CA. MR Vikram. CA. Gururaj Acharya & CA. VS Sudhir	3	Free
Sunday 07 Feb, 2021	9AM to 2PM	Seminar Udaan 2021 & Betond	Eminent Speaker	4	Rs 600/- Plus GST

Seminar on Udaan 2021 & Beyond
Organised by: Hyderabad Branch of SIRC of ICAI
Date & Day: Sunday 07th February, 2021
Venue: The Park Hotel, Somajiguda, Hyderabad
Delegate Fee: For Members: 600 Plus GST
CPE: 04 Hours

Timing	Topic	Resource Person
9.00 am – 9.30 am	Networking	
09.30 am – 10.30 am	Inaugural Session Navigating through 2020 and Emerging New Age Profession	Chief Guest CA. Atul Kumar Gupta President, ICAI
10.30 am -11.00 am	Tea Break	
11.00 am – 12.00 Noon	Search & Seizure under GST	CA. Satish Saraf Hyderabad
12.00 Noon – 2.00 PM	Direct Taxes- Clause by Clause Analysis of Finance Bill 2021	CA. PVSS Prasad Hyderabad

- Participation Restricted to 200 members only First Come First serve basis.



Recent Changes in GST - are we heading in right direction?

- CA Satish Saraf & CA Vekata Prasad. P

The Finance Bill 2021 has proposed certain changes in GST which are mainly aimed at curbing the frauds or evasions. The proposed changes are explained below along with its impact and effect of these proposed amendments.

1. Amendment in Section 7:

Retrospective amendment with effect from 01-07-2017 to validate the levy of GST on the Clubs/associations:

Pre Proposed amendment position

- The existing provisions are not empowered to levy GST on clubs/associations on the amounts received from its members due to the principle of mutuality (i.e. clubs/associations and its members are one & the same).
- Hon'ble SC in the case of **State of West Bengal v. Calcutta Club Limited 2019 (29) G.S.T.L. 545 (S.C.)** upheld the principle of mutuality and held that, no VAT/service tax is liable in absence of the legal fiction to deem clubs/associations & its members as separate Persons.
- The above SC decision is applicable to GST and hence clubs/associations are not liable to GST.

Proposed amendment

- Clause (aa) inserted in sub-section 1 of section 7 which state that activities/transactions between members or constituents is supply.
- An explanation is inserted to create a legal fiction to deem clubs/associations & its members are separate persons.

Impact & comments

- The amendment is to nullify the Hon'ble SC decision in re. *Calcutta Club ltd.*



- The Meaning of 'constituents' is unclear and may lead to disputes. Hence, clarification from the government would avoid the ambiguity.
- Presence of the consideration is not done away with.
- The legal validity of retrospective amendment needs to be tested in the courts.
- The clubs/associations not paid GST on amounts received from its members, so far, it is advisable to collect & pay GST on the contribution more than Rs. 7,500/- per month per member.

2. Amendment of section 16(2):

Reflection in GSTR-2A is condition now U/S. 16(2):

Pre proposed amendment position

- Sections 43 & 43A of CGST Act, 2017, dealing with input invoices matching (i.e., data uploaded by the Supplier in his GSTR-1, the same to be appeared in GSTR-2A of the recipient) is not implemented yet.
- W.e.f. 09.10.2019 Rule 36(4) of CGST Rules, 2017 was introduced to restrict the ITC upto 105% (earlier 110% before 01.01.2021) of ITC reflected in GSTR-2A. The legal validity was questioned mainly on the ground that there is no statutory provisions that enables the Government to put such restriction to avail the ITC.

Proposed

- Clause (aa) inserted in sub-section 2 of section 16 to prescribe reflection in GSTR-2A as one of the main conditions to avail ITC.
- It would be given prospective effect (to be notified).

Impact & comments

- The amendment is to overcome the legal lacuna & validate the Rule 36(4).
- The rule gives more ITC (105%) than the proposed amendment of this section.
- Prior to the effective date of amendment, it fortifies that Rule 36(4) was not having legal backup and can be questioned.
- The legal validity of the matching requirement is still questionable. The past decisions under VAT regime categorically held default of supplier cannot be a ground to deny the



ITC. Few of them are Commissioner Vs. Arise India Limited and others [TS-2-SC-2018-VAT]; Quest Merchandising India Pvt Ltd Vs Government of NCT of Delhi 2017-TIOI-2251-HC-DEL-VAT; ONXY Designs vs. The Asst. Commr of Commercial Tax Bangalore 2019(6) TMI 941 etc.,

3. Amendment in section 35 & 44:

Audit by CA/CMA is omitted:

Pre proposed amendment position

- Tax payer files annual return u/s. 44 in GSTR-9.
- Section 35(5) requires the audit by CA/CMA & furnish reconciliation statement in Form GSTR-9C in case the Aggregate Turnover is more than Rs 5.00 crores.

Proposed

- Audit by CA/CMA is not required after the date of notification of this amendment.
- The self certified reconciliation statement by the tax payer would be sufficient to comply with the amended section.
- It would have prospective effect (to be notified).

Impact & comments

- Compliance Under sections 44 & 35(5) is not done away with, but the burden is shifted to tax payer from CA/CMA.
- GST Annual Turnover Audit will be continued till the effective date of this amendment as may be notified by the Government.
- This amendment is proposed may be as per the representation from the trade and industry to reduce the compliance cost.
- It is seen that additional tax of about Rs. 3176 Crores (Rs. 2079 Cr. in cash) additional tax and Rs. 575.76 Cr. interest thereon got collected from Annual Return GSTR-9. Whereas additional revenue from GSTR-9C based on the Auditor's recommendations has been relatively low at Rs. 392 Cr. (Rs. 261 Cr. in cash) and Rs. 81.16 as interest. This was mainly



due to practice of paying pending dues at the time of GSTR-9 instead separate disclosure by the auditor in his report.

4. Retrospective amendment in section 50:

Interest on Net Liability:

Pre Proposed amendment position

- Sec 50 requires payment of interest on the delayed payment of GST. Question was raised whether interest shall be liable to be paid on Gross GST Liability (i.e., before ITC set-off) or Net GST liability (i.e., after ITC set-off).
- Telangana HC in the case of Megha Engineering & Infrastructures Ltd. v. Commissioner 2019 (26) G.S.T.L. 183 (Telangana) held interest is on Gross GST Liability .
- Amendment is proposed to say that interest under Section 50 is on Net GST liability but made prospective effect.
- Madras HC in Refex Industries Ltd. v. Assistant Commissioner – [2020 \(34\) G.S.T.L. 588](#) (Mad.) held, that the earlier amendment operates retrospective from 01-07-2017.

Proposed amendment

- The proposed amendment is to give retrospective effect from 01.07.2017.
- However, if tax is paid under sec 73/74 (adjudication of short/non-payment of GST by department authorities), interest shall be paid on Gross GST Liability.

Impact & comments

- Conceptually, interest is only on the net liability as GST is on value addition.
- It can be argued that payment of interest in pursuance of Sec 73/74 will also be liable on Net GST liability.
- Refund of past payments, if any paid on Gross GST Liability, the possibility to be explored.

5. Amendment of section 75:

Direct recovery of self assessed tax, if the invoices declared in GSTR-1 and tax remain unpaid:

Pre proposed amendment position



- Sec 75(12) provides for direct recovery of self assessed tax that remains unpaid.
- Sometimes, it may happen that GSTR-1 return is filed but tax was not paid through GSTR-3B return. In such cases, the short payment or non payment of tax, shall be assessed through Sec. 73/74 which takes long time to recover the unpaid tax.

Proposed amendment

- The supplies declared in GSTR-1 return and remain unpaid is self-assessed tax & liable for direct recovery.
- Prospective effect (to be notified).

Impact & comments

- The objective is to catch the tax evaders/defaulters.
- However, clerical mistakes or unknown omissions may lead to direct recovery without notice/orders.

6. Amendment of section 83:

Provisional attachment:

Pre proposed amendment position

- Sec. 83 provides for provisional attachment of taxpayer property during the pendency of proceedings under Sec. 62, 63, 67, 73 & 74 of CGST Act, 2017.
- Various HC's held, that if proceedings are completed & further proceedings are not moving or initiated, then provisional attachment shall be removed.

Proposed amendment

- *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.*
- Prospective effect (to be notified).



Impact & comments

- ‘Initiation’ is enough to make provisional attachment instead of earlier position of ‘pendency’.
- Property of the intermediary in case of Fraud/serious evasion can also be attached now.
- The returns scrutiny, arrest cases etc., also now can be subjected to provisional attachment.
- The criteria laid down by Hon’ble HC in case of Valerius Industries v. Union of India – 2019 (30) G.S.T.L. 15 (Guj.) worth noting which would be relevant after the proposed amendment also. The criteria is that:
 - It is very drastic and has far reaching power.
 - It must be exercised with extreme care and caution. Not to harass the tax payers or cause detrimental effect on business.
 - It shall be exercised as last resort/measure and not as means of regular recovery.
 - It shall be done based on some credible materials & supervening factor and not on casual evidence.

7. Amendment of section 129 & 130:

Changes w.r.t detention, seizure & confiscation:

- Section 129 provides for detention & seizure of the goods/conveyance if the goods are transported in contravention of Act/rules (E-way bill compliance).
- For release of those goods, there was prescribed payments shall be made. Now the proposed amendment makes certain changes in the amounts to be paid for release of the goods and procedure to deal with such cases. The comparison is tabulated here:

Type of Goods	Volunteer	Now	Proposed
Taxable	Yes	Tax + 100% of tax as penalty.	200% of Tax as penalty.
Exempt	Yes	Amount equal to 2% of the value of goods or Rs.25,000, whichever is less.	Amount equal to 2% of the value of goods or Rs.25,000, whichever is less.



Taxable	No	Tax + 50% of value of goods.	50% of value of goods or 200% of tax as penalty, which ever is higher.
Exempt	No	Amount equal to 5% of the value of goods or Rs.25,000, whichever is less.	Amount equal to 5% of the value of goods or Rs.25,000, whichever is less.
	Failure to Pay	Confiscation of goods or conveyance detained.	Sale of goods or conveyance detained. If transporter pays penalty or Rs. 1 Lakh (which ever is less), conveyance would be released.
	Time limits	Prescribed in circulars.	In CGST Act, 2017.

- Further specific pre-deposit of 25% of tax due is prescribed now to file an appeal against penalty order in case of goods seized/ detained as compared to 10% earlier.
- Section 130 is amended to delink and make Sec. 129 & Sec. 130 mutually exclusive. The observation made by Hon'ble HC in Synergy Fertichem Pvt. Ltd. v. State of Gujarat – 2020 (33) G.S.T.L. 513 (Guj.) was given effect.
- Sec 74 is proposed to amend to see that Co-notice proceedings u/s. 129 & 130 (Seizure/confiscation) will be continued even if the Sec. 73/74 proceedings are completed on other persons.

8. Amendment of section 16 of IGST Act 2017:

Amendment w.r.t zero rated supplies-

Pre proposed amendment position

- Sec 16 of IGST Act, 2017 allows 2 options for refund in case of Zero rated supplies.
- Rules require the realisation of export proceeds of goods for refund while Act is silent on this aspect.
- Rules requires the SEZ to procure for authorised operations whereas Act is silent in this aspect.

Proposed amendment

- Sec 16 is proposed to amend to make refund of unutilised ITC as default option (popularly known as 'LUT' option).



- Option of making Zero rated supplies with payment of tax and claiming refund is restricted to specific categories and not for all.
- Corresponding changes are brought to validate the rules requiring the SEZ to procure for authorised operations and similarly the realisation of exports proceeds.

Impact & comments

- Capital goods ITC is not refundable under LUT option and hence GST paid on the Capital Goods may become a cost if the other option is not allowed.
- Refund option with LUT delays the receipt of the refund compared to the other option of making exports with payment of IGST.
- Lot of paper work & verification is involved in the refund under LUT option.
- Partial or full rejections are possible for frivolous reasons viz., lack of nexus, deficiencies in the documents etc.,

Conclusion remarks:

The recent amendments in GST though aimed at punishing the culprits but unnecessarily causing burden to the genuine tax payers, which runs contrary to the above long standing belief system. Further, the discretionary powers given to the officers & physical interaction tends to misuse and causes unnecessary burden on the businessman which kills the stated objective of Government to 'ease of business'.

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