

# Finance Bill 2021 & Recent Amendments

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# Coverage

- Changes proposed in Finance Bill 2021
  - GST
  - Customs
- Other Recent Changes in GST



**Budget 2021**

# Clubs and Associations

Clause 99 and 113

- With retrospective effect from 1<sup>st</sup> of July 2021
- Clause (aa) inserted to section 7(1) of the CGST Act
  - *(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
  - *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.*
- Effect?
  - Clubs did not pay GST – to pay along with interest
  - Clubs paid and sought refund – to pay back along with interest
  - Clubs paid and refund is pending – withdraw the application
- 7,500/- Exemption available? – Yes

# Input Tax Credit

## Clause 100

- Clause (aa) inserted in Section 16(2) of the CGST Act,2017
  - *(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*
- Section 43A : Procedure for furnishing return and availing the input tax credit not made effect
- Rule 36(4) : Input tax credit restricted to 105% of eligible input tax credit
- Fault of vendor can recipient be penalised?
  - Commissioner of Trade & Taxes, Delhi and others Vs. Arise India Limited and others [TS-2-SC-2018-VAT]
  - Kay Kay Industries (2013-TIOL-41-SC-CX). (2013-TIOL-41-SC-CX)
  - Bharti Telemedia Ltd. Vs. Union Of India & Ors. - [Appeal Number: W.P.(C) 6293/2019]
  - Sri Ranganathar Valves Pvt Ltd Vs Assistant Commissioner (CT) (FAC) 2020-TIOL-1611-HC-MAD-VAT
- Close monitoring of the vendor compliance is required
- Vendor Empanelment would be critical

- Section 35(5) which provides for GST Audit has been removed
- Section 44 amended to include the self –certified reconciliation
- Compliance remains as is but burden shifted to tax payer from auditor
- Why?
  - Representation from trade to reduce the compliance cost
  - A lot of negative feedback was received regarding filing of annual return and reconciliation statement for FY 2017-18. Most of the feedback is on working of the IT portal.
  - Due date for filing Annual Return and Reconciliation statement for 2017-18 was extended 7 times.
  - It has also been reported that the cost of compliance for filing of Annual Return and Reconciliation has been high especially for smaller taxpayers since this process requires engagement of a tax professional (Chartered Accountant or Cost Accountant) who reportedly insist that they should be engaged for the entire compliance management process throughout the year thus pushing the cost of compliance.
  - 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.
  - 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.

# Interest payable on net cash liability

## Clause 103

- Provision to Section 50(I) has been replaced with retrospective effect from 1<sup>st</sup> of July 2017
  - *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*
- Difference between the only and new provision “levied” Vs. “payable”
- Scenarios
  - Delay in filing of returns : Interest to be paid on net liability
  - Delay in filing of returns, department issued letter for filing of the returns : Interest to be paid on net liability
  - Delay in filing of returns, department issued SCN : Interest to be paid on Gross liability
  - Returns filed on time, but one of the invoice missed reporting and payment, paid in next month: Interest to be paid on Gross liability
  - Above case ITC available even in such case on Gross liability?
  - GST paid pursuant to Audit Memo : Gross Liability
- Interest paid earlier – can apply for refund ; Time limit?

# Connected liability to continue

Clause 104

- Section 74 : Provides conclusion of the proceedings against all the person liable to pay as under if proceeding against the main person is concluded
  - Section 122: Penalty for certain Offences
  - Section 125: General Penalty
  - Section 129: Detention, seizure and release of goods and conveyances in transit
  - Section 130: Confiscation of goods or conveyances and levy of penalty
- In this amendment the proceeding on other person will continue
  - Section 129: Detention, seizure and release of goods and conveyances in transit
  - Section 130: Confiscation of goods or conveyances and levy of penalty
- Other Person
  - Intermediary
  - Transporter



# Recovery of Tax

Clause 105

- Section 75 provides unpaid tax self-assessed in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, under the provisions of section 79 without issue of SCN
- Self-assessed tax shall also be amount disclosed in GSTR-1 but not disclosed in GSTR-3B

# Provisional Attachment

Clause 106

## Now

Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, 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 in such manner as may be prescribed.

## Proposed

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

# Penalty to 200% - Detention, Seizure

Clause 107 & 108

- Section 129 provides where any person
  - Transports any goods or
  - Stores any goods while they are in transit
  - in contravention of the provisions of this Act or the rules
- Then the following shall be liable to detention or seizure
  - Goods and
  - Conveyance used as a means of transport for carrying the said goods and
  - Documents relating to such goods and conveyance
- Goods can be removed subject to :

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	Yes	Tax + 50% of value off goods	50% of value of goods or 200% of tax as penalty, which ever is higher
Exempt	Yes	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

# Penalty to 200% - Detention, Seizure

Provision	Now	Proposed
Security (BG)	Available	Removed
Time Limit	Not prescribed	Notice 7 days from detention Order within 7days from servicing notice
Failure to Pay	Confiscation of goods or conveyance detained	Sale of goods or conveyance detained. If transporter pays penalty or IL (which ever is less)

- Appeal can be filed only on payment of 25% of penalty

# Confiscation

- Section 130 : Confiscation, overriding clause has been removed
  - Starting with “Notwithstanding” has been removed
- Option to pay fine in lieu of confiscation linked to 129 (1) to change to 100% of tax payable

Clause 109

# Power to collect statistics

Clause 110 & 111

Now	Proposed
<p>The Commissioner may, <b><u>if he considers that it is necessary</u></b> so to do, <b><u>by notification</u></b>, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.</p> <p><b><u>Upon such notification</u></b> being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the <b><u>concerned persons</u></b> to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected</p>	<p>The Commissioner or an officer authorised by him may, by an order, <b><u>direct any person</u></b> 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</p>
<p>Bar on Disclosure of Information was earlier restricted to any individual return or part thereof</p>	<p>Bar on all information</p>
<p>Opportunity not give prior to usage of the information</p>	<p>Opportunity of being heard provided</p>

# Zero Rated Supply

## Clause 114

- Supply of goods to SEZ would be considered as Zero Rated Supply on in case the same is for the authorised operation
- Export to be made under LUT without payment and ITC can be claimed as refund
  - On non-realisation of sale proceed within time limit of FEMA – refund to be deposited
- Refund with payment only for
  - Class of person notified
  - Class of goods and service

# Customs changes

- Introduction of new Common Customs Electronic Portal
- Providing sunset period of conditional exemptions (2 years) under the Customs Act
- Prescribing time limit for completion of proceedings by issuing SCN (2 years)
- Advancing the time frame for filing Bill of Entry (preceding day instead of next day of arrival)
- Broadening the scope of Amendment of documents (+ through common portal)
- Confiscation power where goods entered for exportation under wrongful claim of remission or refund
- Penalty for fraudulent utilisation of input tax credit for claiming refund – 5 times of duty
- Now communications through portal is recognized mode of service now
- Introduction of Agriculture Infrastructure and Development Cess (AIDC)
- Pre-trial disposal of seized gold, the Application shall lie before Jurisdictional Commissioner (Appeals) instead of Magistrate





**Recent Legal  
Changes**

# Other Important Changes w.e.f. 01-01-2021

## Quarterly Return Monthly Payment Scheme:

In terms of Notification No. 84/2020-CT dated 10-11-2020, a registered person who is required to furnish a return in **FORM GSTR-3B**, and who has **an aggregate turnover of up to 5 crore rupees in the preceding financial year**, is eligible for the QRMP Scheme. This scheme will be effective from 01-01-2021.

## E Invoicing for turnover More than 100 Cr:

W.e.f. 01-01-2021, every registered person other than Special Economic Zone Unit and those referred to in sub-rules (2), (3), (4) and (4A) of rule 54 of the said rules, whose aggregate turnover in a financial year exceeds one hundred crore rupees shall prepare E invoice , in terms of sub-rule (4) of rule 48 for the supply of goods or services or both to a registered person.

# Registration related GST Amendments

- Every application for registration must be followed by:
  - **Biometric based Aadhar Authentication** + Photos - If opted for Aadhar Authentication
  - Taking biometric information, photograph and verification of such other KYC documents, as notified - If not opted for Aadhar Authentication.
  - Verification of the original copy of the documents uploaded with the application in FORM GST REG-01 at one of the Facilitation Centres notified by the Commissioner.
- Increase in time limit for approval of registration [3 days to 7 days]
- Assistant Commissioner may physically visit the place of business and registration shall be granted within 30 days of submission of application, after physical verification of the place of business in the presence, in following cases:
  - A person fails to undergo authentication of Aadhaar number or does not opt for authentication of Aadhaar number;
  - the proper officer, with the approval of an officer authorised by the Commissioner not below the rank of Assistant Commissioner, **deems it fit** to carry out physical verification of places of business.

# *Suspension of registration*

- **Increase in discretionary powers to suspend [Rule 21]**
  - To suspend GST registration on account of reconciliation differences between
    - Outward supplies in GSTR 1 and Outward supplies declared in GSTR 3B
    - ITC availed in GSTR 3B and the corresponding credit reported by suppliers
    - Such other analysis as recommended by GST Council
  - Intimation being send over common portal or via email
- Opportunity of affording personal hearing deleted from the rule – ramifications
- Impact of suspension
  - RP will not be able to make taxable supplies i.e. it will not be eligible to issue tax invoices [R. 21A(3)]
  - The refunds shall not be granted [R. 21A(3A)]
- In case of reconciliation differences – the registration shall be suspended and a notice for cancellation in Form GSTR REG 31 to be issued
  - Time limit to response – 30 days
  - However, order can be issued within 30 days also

# Cancellation of registration

## New situations added in Rule 21 for registration cancellation:

Old provisions	New provisions
<p>Proper officer has reason to believe that registration is liable to be cancelled (u/s 29 or u/r 21) –</p> <ul style="list-style-type: none"><li>a) Does not conduct business from declared PoB</li><li>b) Issues tax invoice / bill of supply without supply of goods or services</li><li>c) Violates provisions u/s 171 or rules thereunder</li><li>d) Violates provisions of Rule 10A</li></ul>	<ul style="list-style-type: none"><li>e) Avails ITC in <b>violation of Section 16 or rules made thereunder [Compliance of 180 days rule, September time limit, payment not done by vendors]</b></li><li>f) Furnishes outwards supplies in GSTR-1 in excess of GSTR-3B for one or more tax periods</li><li>g) Violates 86B provisions [New rule]</li></ul> <p>Additional one – reconciliation difference leading to contravention of provisions of Act or rules</p>

# *Mandatory payment in Cash - Rule 86B*

- Applies to a registered person (GSTIN) where **taxable supplies (other than exempt, zero rated)** exceed 50 Lakhs in a month
- Max output tax liability which can be paid by ITC - 99% of **output tax liability**
- Pertinent questions
  - Self regulation, may not be fetched from GSTN portal – reason to believe
  - The tax liability to be seen on Gross basis
  - The applicability of threshold to be determined on GSTIN basis
  - The applicability of exception threshold depends upon GSTIN/ PAN basis
  - Reverse charge must not be considered

# *Mandatory payment in Cash - Rule 86B*

- Exceptions of in-applicability:
  - Said person or the proprietor or karta or the managing director or any of its two partners, whole-time Directors have paid more than **one lakh rupees as income tax for each of the last two FY's** for which the time limit to file return of income under subsection (1) of section 139 of the said Act has expired.
  - Have received **ITC refund of more than Rs. 1 lakhs in previous FY** on account of Zero Rated Supplies without payment of tax or inverted rate structure.
  - Year to Date – output tax liability is in **excess of 1%**
  - Government Departments, PSU, LA, Statutory body
  - Commissioner or authorized officer may remove such restriction based on such safeguards

## *Other Key Changes – Legislative*

- Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and **at whose instance such transaction is conducted**, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.” - 122 (1A)
- Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences - 132 (1) (i)



# Other Key Changes - Rules

- Rule 36 (4) – Reduction of ITC availment limit from 110% to 105%. The expression ‘uploaded’ changed with ‘furnished’ i.e. non filed returns values not to be considered; (94/2020 CT)
- GSTR 9& 9C: Extension of time limit for furnishing of the annual return specified under section 44 of CGST Act, 2017 for the financial year 2019-20 till 28.02.2021. (95/2020 CT)
- Blocking of GSTR 1:- (1/2021- CT)
  - GSTR-1 not allowed if GSTR 3B not filed for preceding 2 months;
  - Same goes for quarterly filers as well – not filed GSTR 3B in previous tax period;
  - The person who is restricted to use Electronic Credit ledger in excess of 99% of the tax liability under rule 86B shall not be allowed to furnish the details in FORM GSTR-1 or using the IFF, if he has not furnished return in 3B for previous tax period.

# Other Key Changes - Rules

- Mandatory requirement of HSN Code w.e.f. 01.02.2021:

Aggregate Turnover in the preceding FY	Number of Digits of (HSN Code)
Up to rupees five crores	4
More than rupees five crores	6

- RP with aggregate turnover up to Rs. 5 crores rupees in the previous financial year may not mention the number of digits of HSN as above in respect of B2C supplies.
- Distance wise validity of e-way Bill reduced from 100KM / day to 200KM / day.
- Rule 138E – Blocking of E-way bill if return is not filed by:
  - Composition RP for 2 consecutive quarters
  - Regular RP for 2 consecutive months

# *Communication channel b/w taxpayers*

- New communication channel enabled
- Can communicate with suppliers, recipients etc
- Upto 50 docs can be added in 1 communication
- Upto 100 notifications can be sent to a GSTIN in one tax period
- Counterparty would get email + sms + alert on dashboard
- Remark box – add upto 200 characters
- If recipient reported some document which was not shown by supplier in GSTR-1, supplier can directly add this document in their GSTR-1
- Upload / download facility will be made available soon

# *Communication channel b/w taxpayers*

- Action types:-
  - File missing document (supplier can automatically add in GSTR-1)
  - Rejected – amendment required
  - Rejected – wrongly sent to me
  - Re-upload document
  - Payment made (?)
  - Others
- Communication made once can be deleted – however, will not be deleted automatically from counterparty's communication.

# THANK YOU



*For any clarification  
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