Analysis of Amendments in GST Acts and Rules

w.e.f. 1.2.2019

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Analysis of Amendment in GST Acts and Compensation to States Act

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Introduction:

28th GST Council meeting dated 21st July 2018 had recommended various changes in the GST Law consequent to which certain amendments in the Act were proposed. The amendments were passed by the Parliament and State Legislative Assemblies and has been made effective w.e.f. 1.2.2019. Some of the amendments have been given to retrospective effect while other have been made effective prospectively. However, some amendments have still not been made effective and therefore the same would be effective from a further date to be notified in this regard.

Several Notifications and circulars have been issued between 29th January 2019 to 1st February 2019 in line with the amendments which are tabulated below for easy reference.

Number	Purpose
Notification 02/2019 – (CGST)	Seeks to bring into force certain amendments in the CGST (Amendment) Act, 2018
Notification 03/2019 – (CGST)	Seeks to amend the CGST Rules, 2017 consequent to amendment in the Act
Notification 04/2019 – (CGST)	Seeks to amend notification No. 2/2017-Central Tax dated 19.06.2017 so as to define jurisdiction of Joint Commissioner (Appeals)
Notification 05/2019 – (CGST)	Seeks to amend notification No. 8/2017-Central Tax dated 27.06.2017 so as to align the rates for Composition Scheme with CGST Rules, 2017
Notification 06/2019 – (CGST)	Seeks to amend notification No. 65/2017-Central Tax dated 15.11.2017 in view of bringing into effect the amendments (to align Special Category States with the explanation in section 22 of CGST Act, 2017) in the GST Acts

Notification 07/2019 – (CGST)	Seeks to extend the due date for furnishing of FORM GSTR – 7 for the months of October, 2018 to December, 2018 till 28.02.2019.
Notification 01/2019 (Rate) – CGST & IGST	Rescinding earlier Notification on RCM on registered person
Order-01/2019-GST	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117(1A) of the Central Goods and Service Tax Rules, 2017 in certain cases
Circular No. 88/2019	Seeks to make amendments in the earlier issued circulars in wake of amendments in the CGST Act, 2017
Notification 01/2019 (IGST)	Seeks to bring into force the IGST (Amendment) Act, 2018
Notification 02/2019 (IGST)	Seeks to amend notification No. 7/2017-Integrated Tax dated 14.09.2017 to align with the amended Annexure to Rule 138(14) of the CGST Rules, 2017.
Notification 03/2019 (IGST)	Seeks to amend notification No. 10/2017-Integrated Tax dated 13.10.2017 in view of bringing into effect the amendments (to align Special Category States with the explanation in section 22 of CGST Act, 2017) in the GST Acts
Notification 01/2019 (Compensation Cess)	Seeks to bring into force the GST (Compensation to States) Amendment Act, 2018

EXECUTIVE SUMMARY

Key Amendments	Ref No.
The following transactions to be treated as no supply (i.e. not liable to GST) under Schedule III: ▪ *Supply of goods from a place to another in the non-taxable territory to without entering into India;* ▪ *Supply of warehoused goods to any person before clearance for home consumption; and* ▪ *Supply of goods in case of high sea sales.*	*2*
A Composite Dealer (in goods) to be allowed to supply services (other than restaurant services)	*3*
Increase in turnover limit for composition scheme to Rs. 1.5 Cr	*4*
Levy of GST under RCM on account of inward supplies from URD to be restricted to notified persons only.	*6*
ITC now available on : ▪ *Motor Vehicles having capacity more than 13 persons* ▪ *Aircraft & vessels (subject to conditions)* ▪ *Goods/ services obligatory to provide to employees by the employers.* ▪ *General Insurance, R&M of motor vehicles, aircraft & vessels on which credit is available.*	*9*
Cross utilization of ITC of IGST with other taxes rationalized	*12*
Option to take multiple registrations within the same State/ Union Territory	*14*
Separate registration for SEZ unit in the same State/ Union Territory	*15*
Mandatory Registration only for E-com Operators having requirement of TCS	*17*
Registration status to remain suspended during the process of cancellation of registration	*18*
Closing balance of cesses i.e. Education cess, KKC etc. of erstwhile taxes not allowed to be carried forward in GST regime – Restriction placed retrospectively	*19*

Key Amendments	Ref No.
Commissioner to be empowered to extend the time limit for return of goods sent for job work	*27*
Payment received in INR shall also qualify as export of services, if RBI norms met	*35*

DETAILED DISCUSSION OF AMENDMENTS IN CGST ACT & SGST ACT

A. Scope of the term Supply

1. Section 7 of the Act which defines the term 'supply' has been amended to clarify the scope of supply *(To be effective from July 1, 2017)*

Schedule II of CGST Act provides list of certain transactions which shall be regarded either as supply of goods or supply of services. The reference of Schedule II was made earlier in section 7 (1) which was resulting in defining the meaning of "supply". Accordingly, certain transactions were coming within ambit of supply by virtue of reference of Schedule II in the definition of "supply". Hence a consequential amendment has been made here stating that certain activities or transactions, when constituting a supply in accordance with the provisions of sub-section (1), shall be treated either as supply of goods or supply of services as referred to in Schedule II.

H&A Comments: *The amendment has rectified the anomaly by providing that merely coverage of a transaction in Schedule II will not make it supply. First, it has to satisfy the test of 'supply' within clause (a) to (c) of section 7 (1). Having done so, reference would be made to Schedule II to determine as to whether it 'supply of goods' or 'supply of services'. The amendment would require reconsideration of tax position taken on many transactions especially on the activities which have been considered as taxable under the entry "agreeing to obligation to refrain from an act or to tolerate an act or a situation or to do an act".*

B. New Additions to Schedule III of the CGST Act

2. Transactions to be treated as no supply under Schedule III *(To be effective from Feb 1, 2019)*

The following transactions to be treated as no supply (no tax payable) under Schedule III:

a. 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;

b. Supply of warehoused goods to any person before clearance for home consumption; and

c. Supply of goods in case of high sea sales.

H&A Comments: *The recommendation is sought to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non-taxable territory.*

Further, in case of high sea sales and sale of warehoused goods, there was ambiguity as to levy of tax which was clarified by the circulars. Now it has been made as part of the Act itself by providing that such transaction shall be out of the Scope of Supply.

However, it is relevant to note that this is applicable only for goods and not for services. Though there is no specific mention as to the effective date of the amendment but in view of the circulars issued in the past where it has been held that such transactions are not exigible to GST, a view could be that the insertion in the entry is also retrospective.

C. Composition Scheme

3. Supply of services (other than restaurant services) to be allowed to Composition Scheme Dealers *(To be effective from Feb 1, 2019)*

Composition dealers to be allowed to supply services (other than restaurant services), for upto a value not exceeding 10% of turnover in the State in the preceding financial year or Rs. 5 lakhs, whichever is higher.

H&A Comments: *At present, registered persons engaged in the supply of services (other than restaurant services) are not eligible for composition scheme. As a result, manufacturers and traders supplying services were not able to opt for the scheme even if its percentage is very small as compared to the supplies of goods. With a view to enable these taxpayers to avail of the benefit of composition scheme, a new proviso is being added in order to allow them to be eligible for the scheme even if they supply services of value not exceeding 10% of the turnover in the preceding financial year in a State/Union territory or Rs. 5 lakhs, whichever is higher. This is a taxpayer-*

friendly measure and it is believed that small taxpayers would immensely benefit from this amendment. The limit is not applicable for restaurant services. However, the recipient of services from such dealers will face blockage of ITC credit which was available until now.

4. **Increase in turnover limit for composition scheme *(To be effective from Feb 1, 2019)***

   The upper limit of turnover for eligibility to opt for composition scheme is increased from Rs. 1 Crore to Rs. 1.5 Crore. Present limit of turnover can now be raised on the recommendations of the Council.

   H&A Comments: *The same was also recommended as per 23rd GST Council Meeting held on 10th Nov 2017, however no amendment to the act was done with respect to this recommendation of the council. By virtue of this amendment in the Act the power has been given to the Council to raise the threshold limit to Rs.1.5 Cr. However, it is important to note that the current threshold limit continues to remain at Rs.1 Cr to opt for the composition scheme. In the recent 32nd GST Council meet it has been recommended to increase such threshold limit to Rs.1.5 Cr w.e.f 1st April'19, however no notification to this effect has been issued by the Government.*

5. **Rate of tax for taxpayers registered under composition levy *(To be effective from Feb 1, 2019)***

   Notification No. 8/2017 has been amended to provide that the rates at which the taxpayer registered under composition scheme will be in accordance with Rule 7 of the CGST Rules, 2017. Further, vide Notification No. 3/2019 – central tax, Rule 7 of the CGST Rules have been amended to provide that the tax payable by supplier eligible for composition scheme shall be at the rate of 0.5 percent of the turnover of taxable supplies of goods and **services** in the state.

   H&A Comments: *The said changes have been made to bring the Rule 7 in line with the newly added proviso to section 10 which allows a composition dealer in goods to supply services up to a specified limit. Hence, while calculating the turnover for payment of tax, turnover of goods as well as services will have to be now considered.*

D. Reverse Charge

6. Levy of GST under RCM on account of inward supplies from URD to be restricted *(To be effective from Feb 1, 2019)*

Levy of GST on reverse charge mechanism on receipt of supplies from unregistered suppliers, to be applicable to only specified goods or services. Such goods or services would be notified based on the recommendations of the GST Council.

H&A Comments: *Reverse charge liability on the supply received from unregistered person has always been compliance nightmare for the registered persons..*

This amendment in the section to provide that not all inward supply from unregistered persons would be liable to RCM. It would be confined only to:

- *A class of registered persons (meaning thereby it would not be applicable to all registered persons but would be applicable only to specified class)*
- *Specified categories of goods or services (means all goods or services not covered. Only specified goods or services would be covered)*

The Government has already deferred the applicability of RCM till September 2019 However, this notification has also now been rescinded (vide notification no. 1/2019 – Central Tax (rate), since the relevance of reverse charge on unregistered purchases is no more applicable therefore the notification to defer reverse charge on the same becomes null. Hence, going forward reverse charge u/s 9(4) would be applicable only on those classes of registered persons as the Government would notify. Nothing has been notified in this regard till now.

Note: ***Similar amendment made under section 5(4) of the IGST Act and similar notifications under IGST Act has also been issued.***

E. Time of Supply

7. Determination of time of supply on the basis of tax invoice – scope of tax invoice expanded *(To be effective from Feb 1, 2019)*

Section 12 and 13 have been amended to provide that the date of issue of invoice by the supplier to be the last date on which he was required, under section 31, to issue invoice with respect of supply.

H&A Comments: *Earlier the provision was restrictive in so much so that the invoices issued under sub section (4) and (5) of section 31 for continuous supply of goods or services respectively was not linked to for the purpose in the scope of determination of time of supply. The anomaly has now been corrected.*

F. Input Tax Credit

8. Deeming provision extended to Services as well for "Bill To - Ship To" transactions *(To be effective from Feb 1, 2019)*

Explanation to Section 16(2) has been amended as follows:

For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services––

(i) Where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) Where the services are provided by the supplier to any person on the **direction of and on account of** such registered person.

H&A Comments: *One of the conditions for availing of credit by the registered person under the Act is the receipt of goods or services by him. In the case of "bill-to-ship-to" situations, for the purposes of availing of ITC on goods by the registered person, a deeming provision is present for goods. By virtue of this deeming provision, the registered person was deemed to have received the goods, even when the same were delivered to any other person.*

By virtue of this amendment, the above deeming fiction is now being provided for services as well. Hence, if the services are contractually agreed to by head office but services are physically rendered to the branch office, the vendor may be asked to raise invoice "bill to" head office and "hip to" branch office. The head office can take the ITC based on the such invoice.

9. Scope of eligibility of Input tax credit amended *(To be effective from Feb 1, 2019)*

Scope of input tax credit is being widened, and it would now be made available in respect of the following transactions:

❖ **Amendment related to <u>MOTOR VEHICLES:</u>**

Purpose	Specification	Conditions
Transportation of persons	Approved seating capacity **upto** 13 persons (incl. drivers)	Credit eligible only if the used for making following taxable supplies: • Further supply of such motor vehicles • Transportation of passengers • Imparting training for motor driving
Transportation of persons	Approved seating capacity **more than** 13 persons (incl. drivers)	Credit is admissible without any restriction
Transportation of persons or goods	Vessels and aircrafts	Credit eligible only if the used for making following taxable supplies: • Further supply of such vessels/aircrafts • Transportation of passengers • Imparting training on navigating such vessels • Imparting training on flying such aircrafts • Transportation of goods
Transportation of goods	Any type of goods transportation vehicle	Credit is admissible without any restriction

<u>H&A Comments:</u> *The scope of ITC has been expanded in case of motor vehicles having approved capacity of not more than 13 persons (including the driver) in case it is used for specified purposes. The amendment is sought to make it clear that input tax credit would now be available in respect of dumpers, work-trucks, fork-lift trucks and other special purpose motor vehicles. Now, input tax credit would be denied only in respect of motor vehicles for transport of persons having approved seating capacity of not more than 13 persons (including the driver), vessels and aircraft except when used in the similar line of business.*

An amendment is also being made to the effect that ITC will not be denied in respect of motor vehicles if they are used for transportation of money for or by a banking company or a financial institution.

- **Services of general insurance, repair and maintenance in respect of motor vehicles, vessels and aircraft on which credit is available *(To be effective from Feb 1, 2019)*:**

  Credit on above services **would be eligible** in below cases only:

  - Where availed in relation to the vehicles which fall within eligible category discussed as per above table.
  - Received by manufacturer of such motor vehicles, vessels or aircrafts
  - Received by a taxable person engaged in the supply of general insurance services in respect of such motor vehicles, vessels or aircrafts insured by him

  ITC on these services will not be available in all other cases.

  H&A Comments: *There were different interpretations on eligibility of input tax credit on these expenses, therefore by virtue of this amendment such disputes and differential interpretation is put to rest. However, considering this amendment department may raise disputes even on the credits taken for the period prior 01.02.2019 which could lead to unnecessary litigation.*

- **Leasing, renting or hiring of motor vehicles, vessels or aircraft *(To be effective from Feb 1, 2019)***

  ITC on leasing, renting or hiring of motor vehicles, vessels or aircraft would be admissible in following cases:

  - When used for the purpose specified in Table above
  - Where inward supply of such service is used by the registered person for making an outward taxable supply of same categories of goods or services
  - When inward supply of such service is used by the registered person for making as an element of a taxable composite or mixed supply
  - Where it is obligatory for an employer to provide such services to its employees under any other law time being in force

- Where such services are availed in respect of motor vehicles where credit on such vehicles are allowed without any restriction as mentioned in table above

H&A Comments: *Even in this case, there were different interpretations on eligibility of input tax credit on these expenses, therefore by virtue of this amendment such disputes and differential interpretation is put to rest. However, considering this amendment department may raise disputes on the credits taken for the period prior 01.02.2019 which could lead to unnecessary litigation.*

❖ **Employee welfare related goods or services or both *(To be effective from Feb 1, 2019)***

Credit on employee welfare related goods or services or both shall be available as per below:

Inward Supply of below nature	ITC is eligible when
• Food and beverages • Outdoor catering • Beauty treatment • Health services • Cosmetic and plastic surgery	• Used for making outward taxable supply of same category of goods or services • Used as an element of a taxable composite or mixed supply • It is obligatory for an employer to provide such services to its employees under any other law time being in force
• Membership of a club, health and fitness centre • Travel benefits extended to employees on vacation such as leave or home travel concession	• It is obligatory for an employer to provide such services to its employees under any other law time being in force

H&A Comments: *This is a taxpayer-friendly amendment. Presently, in accordance with the provisions of section 17(5)(b), ITC is not available in respect of food and beverages, health services, travel benefits to employees etc. This sub-section is being amended to allow ITC in respect of such goods or services or both where the*

provision of such goods or services or both is obligatory for an employer to provide to its employees under any law for the time being in force.

10. Input tax reversal not required on transactions covered in Schedule III *(To be effective from Feb 1, 2019)*

Explanation has been inserted in section 17 (3) to the GST Act to state that if a person is engaged in taxable supplies as well as transactions covered in Schedule III (not treated as supply), there is no need of reversal of input tax credits to the extent it pertains to transactions covered in Schedule III (high sea sale, international merchanting transactions, supply in bonded warehouse, transaction in actionable claim etc.). However, reversal would be required attributable to transaction covered in schedule III which are in the nature of sale of land or building (sold after occupation).

H&A Comments: *There were some advance ruling where it has been held that sale of goods under high sea sales are non taxable supply (covered under exempt supply) and hence there is need for reversal of common credits. However, that may not be intention of the law as these transactions are out of the scope of supply. Accordingly, the amendment has provided that there is no requirement of reversal of ITC on attributable to the turnover of these out of the scope of supply transactions.*

11. Amendment in determination of value of turnover for the purpose of distribution of ISD credit *(To be effective from Feb 1, 2019)*

Earlier, determination of "turnover" for the purpose of distribution of Input service by the Input service distributor did not include any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule. This explanation has been amended to exclude the amount of tax levied under entry 92A of List 1 also i.e. CST leviable on the goods which are outside the scope of GST.

Further, consequential amendment is also made in explanation to Rule 42(1)(i) and Rule 43 (1)(g) to provide for the same.

H&A Comments: *The impact of this amendment would be that all type of taxes (central excise duty, VAT or CST) levied on the goods which are outside the scope of*

GST i.e. petrol, diesel, liquor etc. would not be included in the computation of turnover for the purpose of distribution of credit by ISD.

12. Cross utilisation of ITC rationalised *(To be effective from Feb 1, 2019)*

The order of cross-utilization of input tax credit has been rationalized. It provides that the credit of State tax or Union territory tax can be utilised for payment of integrated tax only when the balance of ITC on account of central tax is not available for payment of integrated tax i.e. CGST balance needs to be fully exhausted for payment of IGST, only after that SGST balance can be utilized for payment of IGST.

Further a new section 49A has been inserted, which states that the balance of IGST to be first utilized against payment of IGST, CGST & SGST/UTGST only when the balance in IGST is fully exhausted only then can the balance in CGST & SGST can be utilized.

***H&A Comments**: This amendment is carried out to ease the process of settlement of taxes with the states since a portion of integrated tax is to be distributed to the respective State Government. However, the amendment could result in the credit accumulation. New utilization pattern could be understood with the help of following illustration:*

ILLUSTRATION:

Particulars	IGST	CGST	SGST
Output liability	1,00,000	1,00,000	1,00,000
Input Tax Credit	2,00,000	80,000	80,000
Tran credit c/f		50,000	

UTILISATION OF CREDIT FOR MAKING PAYMENT

A. Before Insertion Of Section 49A

Description	Payable	ITC Available	Paid through ITC			Additional Cash Required
			IGST	CGST	SGST	

IGST	1,00,000	2,00,000	1,00,000	-	-	-
CGST	1,00,000	1,30,000	-	1,00,000	-	-
SGST	1,00,000	80,000	20,000	-	80,000	-

- IGST ITC balance = `80,000/- (2,00,000 – 1,00,000 – 20,000)
- CGST ITC balance = `30,000/- (1,30,000 – 1,00,000)
- SGST ITC balance = NIL (80,000 – 80,000)

B. After Insertion Of Section 49A

Description	Payable	ITC Available	Paid through ITC			Additional Cash Required
			IGST	CGST	SGST	
IGST	1,00,000	2,00,000	1,00,000	-	-	-
CGST	1,00,000	1,30,000	1,00,000	-	-	-
SGST	1,00,000	80,000	-	-	80,000	20,000

- IGST ITC balance = NIL (2,00,000 – 1,00,000 – 1,00,000)
- CGST ITC balance = `1,30,000/- (1,30,000 - NIL)
- SGST ITC balance = NIL (80,000 – 80,000)
- Additional Cash Payable SGST - `20,000/-

13. Transfer of credit on separate registrations for multiple places of business within a State or Union territory ***(To be effective from Feb 1, 2019)***

Rule 41A has been inserted to provide that a registered person who has obtained separate registration for multiple places of business within the same state/ union territory and who **intends to transfer**, either wholly or partly, the unutilised input tax credit lying in his electronic credit ledger to any or all of the newly registered place of business, shall furnish, the details in FORM GST ITC-02A within a period of thirty days from obtaining such separate registrations.

The input tax credit shall be transferred to the newly registered entities in the ratio of the value of assets held by them at the time of registration.

Note: 'value of assets' means the value of the entire assets of the business whether or not input tax credit has been availed thereon.

The newly registered person (transferee) shall, on the common portal, accept the details so furnished by the registered person (transferor) and, upon such

acceptance, the unutilised input tax credit specified in FORM GST ITC-02A shall be credited to his electronic credit ledger.

H&A Comments: *Since taxpayer can now obtain multiple registrations within the state/ union territory. Therefore, this consequential amendment has been made whereby a taxpayer can transfer the ITC for new registrations within the state/ union territory. However, this benefit is available only for transfer of credits within the state/ union territory but the similar provision to transfer the credits is not allowed for separate registration taken in a different state.*

G. Registration:

14. Option to take multiple registrations within the same State *(To be effective from Feb 1, 2019)*

Taxpayers can now opt for multiple registrations within a State/Union territory in respect of multiple places of business located within the same State/Union territory.

Further, vide notification 3/2019 – Central Tax, Rule 11 has been completely amended to operationalise the said provisions. Now, a taxpayer can take separate registration by fulfilling the following conditions –

- such person has more than one place of business as defined in clause (85) of section 2;
- such person shall not pay tax under section 10 (composition scheme) for any of his places of business if he is paying tax under section 9 (regular) for any other place of business;
- all separately registered places of business of such person shall pay tax under the Act on supply of goods or services or both made to another registered place of business of such person and issue a tax invoice or a bill of supply, as the case may be, for such supply.

H&A Comments: *As per the current provisions of the Act, a person seeking registration under the Act shall be granted a single registration in a State. However, multiple registrations for different* ***business verticals*** *in the same State were available. However, now the concept of vertical wise registration has been done away and the premise wise registration may be taken. Impact could be understood with the help of following illustrations:*

- *A Company is engaged in sale of automobile goods and FMCG goods from same place of business. It had taken two separate vertical wise registration at the single premise. Now, after the amendment, multiple registrations may not be allowed at single place of business. Concept of vertical is not relevant.*
- *In the above example, if there were two place of businesses i.e. one used for the automobile and another for FMCG goods, the Company may continue to retain two separate registrations as there are two separate place of business.*
- *A company has five factories in a State all are engaged in making supply of automobile goods. Earlier the company was not allowed to take separate registrations as all such units fell within same vertical. However, now separate registration may be taken for each factory as these are located at different place of business.*
- *A Group of Companies has 10 companies which are registered at the same place of business. All such companies are different from each other and hence they may continue to have separate registrations at the same place of business.*

The new option may be to facilitate entities having presence across various locations in the same State and desires to have separate registration for each facility even if there is no separate vertical. This may be useful where only certain locations have exempted turnover and hence reversal of ITC can be restricted only to such location or in case of units located in areas where benefit of budgetary scheme may be claimed.

15. Mandatory separate registration for SEZ unit in the same State *(To be effective from Feb 1, 2019)*

A person having a unit in a SEZ or being a SEZ developer ***shall*** have to apply for a separate registration distinct from his place of business located outside the SEZ in the same State.

The requirement to apply for separate registration as given in first proviso to Rule 8(1) of the CGST Act has been removed.

H&A Comments: *Earlier, there was no specific provision in the Act to have separate registration for the SEZ unit. However, Rule 8 of CGST Rule provided that SEZ unit shall have to take registration separate from his place of business outside the SEZ area. Now the provision has been inserted in the Act itself by omitting the same from*

the Rules. However, the use of expression "shall be" could lead to an interpretation that it is mandatory for a person having multiple units in an SEZ to obtain separate registrations.

16. **Upper threshold limit for registration under GST may be raised for few notified states:** ***(To be effective from Feb 1, 2019)***

Now it has been provided in the Act that the threshold limit for registration under GST can be raised from Rs. 10 lacs to Rs. 20 lacs in case of special category States at the request of such State and on recommendation of the Council.

Consequently, threshold limit for registration under GST is raised from Rs. 10 lacs to Rs. 20 lacs in the States of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand.

H&A Comments: *However, the threshold limit for registration for other special category states as listed below still remains the same i.e. Rs. 10 lacs:*

- *Manipur;*
- *Mizoram;*
- *Nagaland;*
- *Tripura.*

Further, it is also important to note that in the recent 32nd Council meet basic exemption threshold limit for registration is proposed as under:

- supplier of Goods: Rs.20 lakhs or Rs. 40 lakhs as the states would decide;
- supplier of Services: Rs. 20 lakhs & 10 lakhs in case of special category states;

States would have an option to decide about one of the limits (i.e. between 40 lakhs or 20 lakhs) within a weeks' time. The Threshold for Registration for Service Providers would continue to be Rs 20 lakhs and in case of Special Category States at Rs 10 lakhs. This has created a differentiation between the Goods and services and some of the issues in past of whether a transaction is that of Goods or service may again crop up.

17. **Mandatory Registration only for certain E-com Operators** ***(To be effective from Feb 1, 2019)***

Mandatory registration is required for only those e-commerce operators who are required to collect tax at source under section 52.

H&A Comments: *Section 24 of the CGST Act makes it mandatory for every electronic commerce operator to obtain compulsory registration under GST. However, the above amendment makes registration mandatory only for those e-commerce operators who are liable to collect tax at source under section 52 of the Act. However, it is pertinent to note that the words used are 'liable to collect', which might create an ambiguity.*

18. Registration status to remain suspended during the process of cancellation of registration *(To be effective from Feb 1, 2019)*

Registration to remain temporarily suspended while cancellation of registration is under process, so that the taxpayer is relieved of continued compliance under the GST Law**.**

Consequently the following amendments have been made in the rules by inserting a new rule 21A:

- Sub-rule 1: Registration shall be deemed to have been **suspended** from the date of application under Rule 20 or the date from which cancellation is sought, whichever is later.
- Sub-rule 2: Where proper officer has reason to believe that the registration of a person is liable to be cancelled, he may **suspend** the registration of such person w.e.f. a date to be determined by him.

The registration shall remain in suspension till the time final cancellation is made under rule 22 of the Act.

- Sub-rule 3: Persons covered under sub-rule 1 & 2, cannot make any taxable supplies during period of suspension and need not file GST returns.
- Sub-rule 4: Where it is finally determined that the registration is not required to be cancelled under rule 22, the suspension of registration is also deemed to be revoked. Date of revocation would be effective date of suspension.

H&A Comments: *Normally, there is time gap between apply for surrender of registration and actual cancellation. There was ambiguity as to whether registered persons are required to make compliance of law in the intervening period. The amendment has done away requirement of making compliance in the intervening*

period by providing that the registration shall remain suspended in the intervening period.

H. Transitional Amendments

19. Cess not allowed to be carried forward in GST regime *(To be effective from July 1, 2017)*

Section 140 of the Act has been amended to clarify that transitional credit of eligible duties can only be carry forwarded to the GST regime.

H&A Comments: *There was confusion as to the carry forward of Education Cess, Secondary and Higher Education Cess, Krishi Kalyan Cess and similar other cesses from erstwhile Law to GST regime. The Transitional provisions did not have any explicit restriction to carry forward the credits of the same. However, the Rules issued thereunder had not allowed carry forward of credit of such cesses. This was resulting in Rules overriding the provisions of the Act and hence ultra vires.*

The Government, since beginning, seemed to have intent of not allowing carry forward of cesses which was clarified by them in FAQs as well as in Tweets and order issued therein. Now, to overcome the Rules overriding the Act has sought to overcome by explicitly providing in the Act that the credit of such cesses shall not be allowed to be transitioned to GST. All registered taxable persons who had carried forward the cesses balance may now have to reverse the same in GSTR-3B. The amendment is given retrospective effect w.e.f.01.7.2017.

I. Miscellaneous Amendments

20. Changes in the Definitions *(To be effective from Feb 1, 2019)*

a. Sub clause (h) of Section 2(17) i.e. the definition of the term 'business' has been amended w.r.t activities related to race club

H&A Comments: *Changes are made to ensure that all activities related to a race club are included in the definition of the term 'business'.*

b. Clarificatory explanation added to the definition of services

H&A Comments: *'Securities' has been excluded from the definition of 'goods' and 'services', however, it is now been clarified by way of an explanation that*

facilitating or arranging transactions in securities *is included in the definition of service and hence will be liable to GST.*

c. **Definition of Adjudicating authority has been amended**

The definition has been amended to include the authority formed for examining anti-profiteering under this head.

d. **Definition of Local Authority has been amended to cover certain backward districts**

Article 371J has been included in the definition of local authority. Special status has been granted by this article to 6 backward districts of Karnataka, Hyderabad region.

21. Consolidated Credit Note / Debit Note against multiple invoices *(To be effective from Feb 1, 2019)*

Registered persons can now issue consolidated credit/debit notes in respect of multiple invoices issued in a Financial Year and vice-versa**.** Consequently amendment has also been made in the rules by inserting a new rule 53(1A) to enumerate the contents of the consolidated debit/credit notes.

H&A Comments: *Earlier, separate debit note/credit note was required to be issued against each original tax invoice. Hence, if a registered person had issued 5000 invoices in a year and there is price revision in respect of each of the invoices, the registered person was required to raise 5000 debit note/credit note. With the amendment, the registered person may issue single debit/credit note against all such invoices. However, it is to be noted that the serial number and dates of original invoices are required to be mentioned on such debit note/credit note. Thus, amendment would simplify the compliance procedure reducing the need of raising of separate debit note/credit note for each of the invoice and vice-versa and separate reporting in the Return.*

22. Principle of Unjust Enrichment made applicable for SEZ refund cases *(To be effective from Feb 1, 2019)*

Section 54(8) has been amended to provide that the principle of unjust enrichment will be applicable to cases of refund arising out of supplies made to SEZ unit.

Consequent amendment has been made in the Rule 89(2) to provide that at the time of filing of refund for supplies made to SEZ, the supplier will now have to submit a declaration that tax has not been collected from the SEZ.

H&A Comments: *Section 54 (8) provides a list of situations where the principle of unjust enrichment does not apply for the purposes of payment of refund. One such situation is zero-rated supplies of goods or services.*

As the SEZ unit is allowed to take ITC and the supplier can recover the taxes from an SEZ unit, the said section has been amended in order to provide that the principle of unjust enrichment ***will apply*** *in case of a refund claim arising out of supplies of goods or services or both made to a SEZ developer or unit so that it should not happen both the supplier and recipient (i.e. SEZ) claiming refund of the taxes paid on the single supply. Hence, going forward SEZ's are not required to provide for declaration stating that ITC has not been availed.*

23. Relevant date for export of services amended *(To be effective from Feb 1, 2019)*

Explanation 2 to sec 54 explaining the definition of relevant date to calculate the period for filing of the refund claim in case of export of services has been amended to include the words "or in Indian rupees wherever permitted by the Reserve Bank of India".

H&A Comments: *It is proposed to allow receipt of consideration in Indian rupees in case of export of services where permitted by the Reserve Bank of India since particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations. In this respect the definition has been amended to consider the relevant date as the date on which payment in Indian rupees or convertible foreign exchange have been received and accordingly shall qualify as exports even if the payment for the services supplied is received in Indian rupees as per RBI regulations.*

24. Modification of relevant date in case of refund of unutilised credit *(To be effective from Feb 1, 2019)*

The relevant date for calculation of time period for refund of unutilised ITC has been amended to be the due date for furnishing the return under sec 39 for the period in which claim arises, so as to bring it in line with sec 54(3).

25. Non-applicability of GST Audit by CA/ CWA to departments of the Government *(To be effective from Feb 1, 2019)*

Mandatory GST audit by Chartered Accountant or Cost accountant for persons whose turnover exceeds prescribed limit under section 35(5) is not applicable to the departments of Central and State Government who are subject to audit by Comptroller and Auditor General of India or where an auditor appointed for auditing the accounts of local authorities under any law for the time being in force. Consequential amendments made in Rule 80 to exclude such Government Departments from the ambit of GST Audit.

26. Simplified return procedure and formats *(To be effective from July 1, 2019)*

Section 39 relating to "Furnishing of Returns" has been amended so as to prescribe the procedure for quarterly filing of returns with monthly payment of taxes. Also a new section 43A has been inserted for prescribing the procedure for furnishing return and availing input tax credit. The recipient is required to verify, validate, modify or delete the details entered by the supplier. Matching concept has been removed and a new procedure for ITC availment has been prescribed. Various other details in relation to filing of returns and availing ITC have been prescribed under this section.

H&A Comments: *The new amendment provides for simplification of return filing procedures as proposed by the Returns Committee and approved by GST Council. The broad proposal of the new returns format has been placed earlier in the public domain, however the detailed new formats and the mechanism of its operation is not yet made available. As per the recent GST council meeting, the new system of filing GST returns would be operational on voluntary basis w.e.f. April 2019 and on compulsory basis from* ***July 2019****.*

27. Commissioner to be empowered to extend the time limit for return of goods sent for job work *(To be effective from Feb 1, 2019)*

Presently there is time limit of receiving the inputs and capital goods back from the job worker within a time period of one year and three years respectively. Now the Commissioner has been empowered to extend the time limit for return of inputs and capital goods sent on job work for a further period, upto one year and two years, respectively for inputs and capital goods.

H&A Comments: *The same will be beneficial in cases where the activities undertaken by Job worker takes longer period of time so that there is no need of sending back the goods to principle and receiving back. It is to be noted that corresponding changes have been carried out in* ***Circular No.38/12/2018*** *dated 26.03.2018 to bring in the time lines as specified under section 143.*

28. Ceiling on Pre-deposit for Appeal Filing *(To be effective from Feb 1, 2019)*

Amount of pre-deposit payable for filing of appeal before the Appellate Authority and the Appellate Tribunal has been capped at Rs. 25 Crores and Rs. 50 Crores, respectively.

H&A Comments: *As per section 112(8) of the CGST Act, appellant is required to pay a sum equal to 20% of the tax in dispute, in addition to the amount paid under section 107(6), arising from the order of the Appellate Authority for filing an appeal before the Appellate Tribunal.*

This section is being amended to provide a ceiling of Rs. 25 Crores and Rs. 50 crores for filing an appeal before the Appellate Authority and Appellate Tribunal.

The said amendment is beneficial to the taxpayer especially in cases where the tax demand is of hundreds of crores of rupees.

29. Recovery from distinct person *(To be effective from Feb 1, 2019)*

Recovery can be made from distinct persons, even if present in different State/Union territories.

H&A Comments: *There is deeming provisions. The above amendment has been proposed in order to ensure recovery from other establishments of the registered person.*

30. Changes in Refund provisions *(To be effective from Feb 1, 2019)*

- Heading of Rule 96A changed to 'Export of goods or services under bond or letter of undertaking'
- New proviso have been inserted in Rule 91 & 92 providing where the refund orders/advice are required to be revalidated by proper officers. The same has been summarised below:

Rule	Order/Advice	Form	Revalidation requirement	Conditions
Rule 91 & 92	Order issued	Form GST RFD - 04 / 06	Revalidation not required	NA.
Rule 91 & 92	Payment Advice	Form GST RFD – 05	Revalidation required	Where refund not disbursed in same FY in which payment advice issued.

31. Change in provisions relating to GST practitioner *(To be effective from Feb 1, 2019)*

- The time limit for passing the examination has been increased from 18 months to 30 months
- The scope of the activities that can be undertaken by the GST practitioner has been widened to include the following:
  a. Furnish information for generation of e-way bill;
  b. Furnish details of challan in FORM GST ITC-04;
  c. Application for amendment or cancellation of enrolment under rule 58;
  d. Intimation/ withdrawal from the composition scheme.

32. Jurisdiction of Joint Commissioner created *(To be effective from Feb 1, 2019)*

The jurisdiction of Joint Commissioner and Joint Commissioner (Appeals) has been created and specific powers has been granted thereof.

33. Time limit for filing TDS Return in GSTR 7 is extended

Commissioner extends the time limit for furnishing the return by a registered person required to deduct tax at source under the provisions of section 51 of the said Act in FORM GSTR-7 for the months of October, 2018 to December, 2018 till the 28th day of February, 2019.

34. Recovery of arrears of wrongly availed CENVAT credit under the existing law and inadmissible transitional credit *(To be effective from Feb 1, 2019)*

Currently, as the functionality to record liability arising due to wrong availment of CENVAT credit or inadmissible transitional credit in the electronic liability register was not available on the common portal. Hence, via Circular No. 58/32/2018 dated 04.09.2018 it had been clarified that taxpayers may reverse the wrongly availed credit through Table 4(B)(2) of FORM GSTR-3B along with applicable interest and penalty.

However, now vide this Circular No. 88/07/2019-GST dated 01.02.2019 it has stated that all such liabilities may be discharged by the taxpayers, either voluntarily in FORM GST DRC-03 or may be recovered vide order uploaded in FORM GST DRC-07, and payment against the said order shall be made in FORM GST DRC-03. Further, the alternative method of reversing the credit through FORM GSTR-3B would no longer be available to taxpayers. The applicable interest and penalty shall also be paid in FORM GST DRC-03.

DETAILED DISCUSSION ON AMENDMENTS IN IGST ACT

J. Exports

35. Payment received in INR shall also qualify as export of services *(To be effective from Feb 1, 2019)*

Supply of services to qualify as exports, even if payment is received in Indian Rupees, where permitted by the RBI.

H&A Comments: *Section 2(6) of the IGST Act defines 'export of services'. One of the conditions in the said section provides that services shall qualify as exports when the payment for such service has been received in convertible foreign exchange.*

Currently, few exports of services where payment is being received in INR are falling outside the ambit of exports and all the benefits arising for exports are being denied

to such transactions, particularly in the case of exports to Nepal and Bhutan, the payment is received in Indian rupees as per RBI regulations.

Therefore, the above mentioned amendment is being proposed to avoid hardships to genuine exporters of services. However, the services would be considered as export of services only if the payment is permitted by RBI.

Further, corresponding changes have been made in the ***Circular No. 8/8/2017*** *dated 04.10.2017, so as to clarify that LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permitted irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.*

K. Place of Supply of goods transportation services

36. POS for goods transported outside India *(To be effective from Feb 1, 2019)*

Place of supply in case of transportation of goods by a supplier of service in India to a recipient of service in India when transported to a place outside India, the place of supply shall be the place of destination of such goods.

H&A Comments: *Under Service Tax Law, the place of provision of service of transportation of goods was the place of destination of goods. This was resulting in the place of supply of services outside India in relation to goods meant for transportation outside India and hence there was no service tax liability on such cases. However, under GST Law, the place of supply of service in such cases is the location of handing over of goods which is always in India and hence such services are always liable to GST.*

However, considering the problems being faced by exporter of goods, the amendment seems to have been made by inserting a proviso that in case where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods. This is also clear by the fact that the statement of objects and reasons placed before parliament states in this regard ***"to extend the export related benefits to certain specific supplies"*** *This is major relief to exporters of goods where place of supply of service would be outside India.*

However it is relevant to note that under GST the place of supply is only linked to determine the nature of supply and not to determine the levy of GST. Therefore there could be a view that though the place of supply of such services have been provided

as outside India, the services may not be qualified as export of services considering the fact that the service recipient located in India may not make payment in foreign currency which is one of the essential conditions for service to be covered within ambit of export of services.

On the other hand, there could be an argument that once the place of supply is outside India, the operation of IGST Act ceases and there is no liability of GST. The matter seems to be resolved at higher level of judiciary.

37. POS for goods temporarily imported for job work & exported without putting them to any use in India *(To be effective from Feb 1, 2019)*

Place of supply in case of job work of any treatment or process done on goods temporarily imported into India and then exported without putting them to any other use in India, to be outside India.

H&A Comments: *In case of supply of services supplied in respect of goods which are temporary imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs. With regard to the services in relation to goods discussed above, there was an exception to the cases where the goods are temporarily imported into India for repair.. In such cases the rule of performance would not be applicable, in which case depending upon other applicable provisions the place of supply of service has to be determined.*

The scope of this exception has been expanded vide amendment whereby not only repair services, but any other treatment or process which is required to be carried out in respect of such goods have also been included within the scope.

L. Miscellaneous Amendments

38. Ceiling on Pre-deposit for Appeal Filing *(To be effective from Feb 1, 2019)*

Amount of pre-deposit payable for filing of appeal before the Appellate Authority and the Appellate Tribunal to be capped at Rs. 50 Crores and Rs. 100 Crores, respectively.

H&A Comments: *Appellant is required to pay a sum equal to 20% of the tax in dispute for filing an appeal before the Appellate Authority or Appellate Tribunal.*

*The section 20 of the IGST Act is being amended to provide a **ceiling of Rs. 50 Crores** and **Rs. 100 crores** for filing an appeal before the Appellate Authority and Appellate*

Tribunal. The said amendment is beneficial to the taxpayer especially in cases where the tax demand is of hundreds of crores of rupees.

39. Apportionment of tax between Central & State Government *(To be effective from Feb 1, 2019)*

Amount to be apportioned between the Central and State Government at the rate of 50%.

H&A Comments: *Section 17 of the IGST Act has been amended to insert a new sub-section 2A, which states that the amount of tax which is not apportioned under sub-section (1) and (2) of section 17, the balance in the integrated tax account can be settled equally between the Central and the State Government.*

DETAILED DISCUSSION ON AMENDMENT IN COMPENSATION TO STATES ACT

40. Distribution of unutilised amount in the Fund *(To be effective from Feb 1, 2019)*

A new sub-section 3A under section 10, has been inserted to provide for distribution of unutilized amount of fund between the Centre and the State can be done at any point of time in a financial year.

H&A Comments: *Compensation to States Act, 2017 was enacted with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of GST.*

Section 10 of the Act provides for distribution of the amount remaining unutilised in Compensation Fund ***at the end of transition period*** *between Centre and the States. As the said section doesn't provide for distribution of amount remaining unutilised in Compensation Fund at any point of time in any financial year, the said section has been amended to insert a new sub-section (3A) in section 10 of the Act so as to provide that any amount remaining unutilised in the Compensation Fund may be distributed between Centre and the States* ***at any point of time in a financial year****; and*

It is also provided that in case there is a shortfall in the amount collected in the Fund vis-à-vis the compensation to be paid as per section 7 for any two months' period,

50% of the same, shall be recovered from the Centre and the balance 50% from the States in the ratio of their base year revenue determined in accordance with the provisions of section 5 of the Act but not exceeding the total amount transferred to the Centre and the States.

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