

# GST - Decoding of Amendments of Budget 2021

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## About Document / How to read

- GST has completed almost four years. In these four years, taxpayers are struggling with maze of amendments and clarification by way of Notifications, Circulars, Order along with several litigation.
- In addition to real time update now it's 3<sup>rd</sup> amendment which is proposed for GST Act.
- Thus, it's becoming difficult to understand whether GST is heading towards simplification or further complications and how to handle this 4-year child which will now move to 5<sup>th</sup> year.
- In this document we had covered detailed analysis of the Amendment Proposed by the Finance Bill, 2021 [FB, 2021].
- 'Red' colour is used to highlight the section wise amendments of Finance Bill, 2021.
- Earlier amendments made for respective sections are covered by way of foot note.

## Overview about Indian GST

The GST has enacted from 01.07.2017 which subsumes central taxes like Central Excise Duty, Additional Duties of Customs (commonly known as CVD), Special Additional Duty of Customs (SAD), Service Tax etc and State taxes like State VAT, Central Sales Tax, Luxury Tax, Entry Tax, Taxes on advertisements etc. The key objective of enactment of GST was one nation one tax and seamless flow of credit, however after implementation question arises that really the objective of GST is achieved?

As far as one nation one tax is concern under GST law the State Authorities are empowered to have separate provisions. As per 101<sup>st</sup> Constitutional Amendment Act, Article 246A was introduced for implementation of GST. As per Article 246A of the Constitution of India, *“Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.”*

Article 246A formed a unique body GST Council with Cooperative Federalism where the Centre and the State can take decision. Earlier apex court<sup>1</sup> had held that within the sphere allotted to them, States are supreme.

Thus, even GST council is a body where decisions are taken together by Central and State it is observe that certain state has different provisions with respect to applicability, exemptions etc like threshold limit for E-way bill, exemptions etc Even recently Maharashtra State Government has issued a Trade Circular<sup>2</sup> notifying that it shall not adopt circulars issued by central instead will issue a separate GST circular. Thus, it's diluting the objective of GST 'One Nation One Tax' as future of GST in towards State Governments formulating a different law also an different legal interpretation instead adopting the same as laid down by the Central Government.

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<sup>1</sup> S.R. Bommai v. Union of India [(1994) 2 SCR 644]

<sup>2</sup> No. 01T of 2021

## Deliberation of Economic Survey 2020-21 from GST Perspective!

Year 2020-21 was with full of challenges for everyone. Almost all planning, prediction, visions etc changed rapidly as COVID-19 developed. Likewise, even from tax perspective changes are made keeping in mind pandemic situation of India.

The initial stringent lockdown was critical for all business, however as per Economic Survey 2020-21 (ES 2021) the V-shaped economic recovery has demonstrated in GDP. The shortfall in indirect taxes during April to November 2020 was led by shortfall in customs and GST collections for the Centre.

As per ES 2021, the recovery from GST perspective has started from November 20 and revenue for the month of December 20 stood at 1.15 lakh crore.

Additionally, ES highlighted that this has been the highest monthly GST collection since introduction of GST and has been due to the combined effect of

- The rapid economic recovery of business post pandemic and
- The nation-wide drive against GST evaders and fake bills
- Many systemic changes introduced recently which have led to improved compliance. This change includes E-way bill blocking, Implementation of E-invoicing etc.

ES 2021 further highlighted certain Notifications which were issued in order to provide relief to taxpayers due to COVID-19 Like increased time limit for filing of appeal, furnishing of return, or any other compliance under the GST Act etc

As per ES 2021, improved compliance is one of the reasons for GST Collection.

To mitigate the risk of fake invoicing and fake firm it is necessary that compliance should be streamlined. However, while strengthening the compliance an eye on genuine taxpayer is most important. Many of such taxpayers are getting affected on account of provisions or restrictions announced under GST. To save such genuine taxpayer it is essential to provide compliance rating as prescribed u/s 149 of the CGST Act, 2017 which is applicable mutatis mutandis under IGST, UTGST Act and SGST laws. Thus, every registered person shall be assigned a compliance rating based on the record of compliance and as per said rating action like blocking of E-way bill, cancellation of GST registration etc which negatively affect the smooth functioning of business operations can be taken.

## Budget 2021 - The Finance Bill 2021

In the Budget Speech FM has discussed shortly about GST as given hereunder

*174. Before I come to my Indirect Tax proposals, I would like to appraise the House on GST. The GST is now four years old, and we have taken several measures to further simplify it. Some of the measures include:*

- i. nil return through SMS,*
- ii. quarterly return and monthly payment for small taxpayers,*
- iii. electronic invoice system,*
- iv. validated input tax statement,*
- v. pre-filled editable GST return, and*
- vi. staggering of returns filing.*

*The capacity of GSTN system has also been enhanced. We have also deployed deep analytics and Artificial Intelligence to identify tax evaders and fake billers and launched special drives against them.*

*175. The results speak for themselves. We have made record collections in the last few months.*

*176. The GST Council has painstakingly thrashed out thorny issues. As Chairperson of the Council, I want to assure the House that we shall take*

*every possible measure to smoothen the GST further, and remove anomalies such as the inverted duty structure*

Thus, Budget Speech of Hon’ble FM is only about 3 paras with respect to GST. However fine print issued was shocking for all and covering almost 15 amendments with respect to GST Act. We hereby analysed each amendment along with rational wherever possible and our view thereon.

### **Section Wise Analysis of Amendments made in Budget 2021.**

The Finance Bill 2021 (FB Bill, 2021) has proposed to amend Fifteen sections of the GST Act and one section of IGST Act. The brief analysis of the same is as under

<u>Clause of FB,</u>	<u>Section of GST Act</u>	<u>Amendment Proposed</u>
<b><u>2001</u></b>		
<b>Proposed to be applicable retrospective from 1<sup>st</sup> July 2017</b>		
Clause 99	Section 7 of the CGST Act – Amended	Amended so that to ensure GST on supply by society to its members or constituents or vice-versa, for cash, deferred

		payment or other valuable consideration. Accordingly, amendments are also proposed in Schedule II.
Clause 103	Section 50 of the CGST Act – Amended	Proposed to be amended so as to charge interest on net cash liability with effect from the 1st July, 2017
Clause 113	Schedule -II of CGST Act	Amended in consent with amendment proposed u/s 7 of the CGST Act
Applicable from the date to be Notified		
Clause 100	Section 16 of the CGST Act– Amended	Proposed to be amended so that to allow Input tax credit (ITC) on invoice or debit note only when the details of such invoice or debit note have been furnished by the supplier in their GSTR-1
Clause 101	Section 35 of CSGT Act	Proposed to be amended so that
Clause 102	-- Amended	annual accounts audited, and

	Section 44 of CGST Act -Substituted	reconciliation statement can be self-certified instead by professional.
Clause 104	Section 74 of the CGST Act – Amended	Seizure and Confiscation of goods and conveyances in transit is proposed to be separated from recovery of tax.
Clause 105	Section 75 of the CGST Act – Amended	Section 75 is proposed to amend so that “self-assessed tax” shall include the tax payable in respect of difference between GSTR-1 and GSTR-3B.
Clause 106	Section 83 of the CGST Act – Amended	Proposed amendment empower the officer to attach bank or property in case of proceeding under any sections of Chapter XII, Chapter XIV or Chapter XV.
Clause 107	Section 107 of the CGST Act – Amended	Amount equal to 25% of the penalty has required to be paid by the appellant for filing of

		appeal against an order made under sub-section (3) of section 129[detention/seizure]
Clause 108	Section 129 of the CGST Act – Amended	Delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from section 130 relating to confiscation of goods or conveyances and levy of penalty.
Clause 109	Section 130 of the CGST Act – Amended	Delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit

Clause 110	Section 151 of the CGST Act – Amended	Empower the jurisdictional commissioner to call for information from any person relating to any matters dealt with in connection with the Act.
Clause 111	Section 152 of the CGST Act – Amended	Information obtained under sections 150 and 151 shall not be used for the purposes of any proceedings under the Act without giving an opportunity of being heard.
Clause 112	Section 168 of the CGST Act – Amended	Enable the jurisdictional commissioner to exercise powers under section 151 to call for information
Clause 114	Section 16 of IGST Act	Only specified persons or goods or services will be able to claim refund of IGST paid in case of export with payment of GST.

		Realisation of fund within prescribed period will be mandatory else refund received will be liable to be pay to Government Exchequer with interest as applicable;
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## CGST Act – Decoding of Amendments Proposed.

<b>1. Section 7</b> <ul style="list-style-type: none"><li>• Scope of supply.</li></ul>	<b>2. Section 16</b> <ul style="list-style-type: none"><li>• Eligibility and conditions for taking input tax credit.</li></ul>	<b>3. Section 35</b> <ul style="list-style-type: none"><li>• Accounts and other records</li></ul>
<b>4. Section 44</b> <ul style="list-style-type: none"><li>• Annual return.</li></ul>	<b>5. Section 50</b> <ul style="list-style-type: none"><li>• Interest on delayed payment of tax.</li></ul>	<b>6. Section 74</b> <ul style="list-style-type: none"><li>• Determination of tax not paid or short paid etc</li></ul>
<b>7. Section 75</b> <ul style="list-style-type: none"><li>• General provisions relating to determination of tax</li></ul>	<b>8. Section 83</b> <ul style="list-style-type: none"><li>• Provisional attachment to protect revenue in certain cases.</li></ul>	<b>9. Section 107</b> <ul style="list-style-type: none"><li>• Appeals to Appellate Authority.</li></ul>
<b>10. Section 129</b> <ul style="list-style-type: none"><li>• Detention, seizure and release of goods and conveyances in transit.</li></ul>	<b>11. Section 130</b> <ul style="list-style-type: none"><li>• Confiscation of goods or conveyances and levy of penalty</li></ul>	<b>12. Section 151</b> <ul style="list-style-type: none"><li>• Power to collect statistics.</li></ul>
<b>13. Section 152</b> <ul style="list-style-type: none"><li>• Bar on disclosure of information</li></ul>	<b>14. Section 168</b> <ul style="list-style-type: none"><li>• Power to issue instructions or directions.</li></ul>	<b>15. Schedule II</b> <ul style="list-style-type: none"><li>• Classification in to Goods and Services</li></ul>

## 1. Section 7 - Scope of supply.

### Contents in FB, 2021 – Clause 99

99. *In the Central Goods and Services Tax Act, 2017 (hereinafter referred as the Central Goods and Services Tax Act), in **section 7**, in sub-section (1), after clause (a), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017, namely:—*

*“(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or viceversa, for cash, deferred payment or other valuable consideration. Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;”.*

### Earlier Provision

7. *Scope of supply.*

*(1) For the purposes of this Act, the expression — Supply includes—*

- a. *all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;*
- b. *import of services for a consideration whether or not in the course or furtherance of business;[and]<sup>3</sup>*
- c. *the activities specified in Schedule I, made or agreed to be made without a consideration;[\*\*\*\*]<sup>4</sup>*
- d. *(d) [\*\*\*\*\*]<sup>5</sup>.*

*[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]<sup>6</sup>*

*(2) Notwithstanding anything contained in sub-section (1),—*

- a. *activities or transactions specified in Schedule III; or*
- b. *such activities or transactions undertaken by the Central Government, a State Government or any local authority in*

<sup>3</sup> Inserted w.e.f 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

<sup>4</sup> Omitted —and|| w.e.f 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

<sup>5</sup> Omitted —(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.|| w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

<sup>6</sup> Inserted w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

*which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*

- (3)** *Subject to the provisions of [sub-sections (1), (1A) and (2)]<sup>7</sup>, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—*
- a. a supply of goods and not as a supply of services; or*
  - b. a supply of services and not as a supply of goods*

#### **Amended Provision**

- (1) For the purposes of this Act, the expression — Supply includes—*
- a. all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.*
- (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or viceversa, for cash, deferred payment or other valuable consideration.*

<sup>7</sup> Substituted for —sub-sections (1) and (2)|| w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019

*Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;”.*

- b. import of services for a consideration whether or not in the course or furtherance of business;[and]<sup>8</sup>*
- c. the activities specified in Schedule I, made or agreed to be made without a consideration;[\*\*\*\*]<sup>9</sup>*
- d. [\*\*\*\*\*]<sup>10</sup>.*

*[(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.]<sup>11</sup>*

<sup>8</sup> Inserted w.e.f 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

<sup>9</sup> Omitted —and|| w.e.f 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

<sup>10</sup> Omitted —(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.|| w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

<sup>11</sup> Inserted w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019.

*(2) Notwithstanding anything contained in sub-section (1),—*

*a. activities or transactions specified in Schedule III; or*

*b. such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.*

**(3)** *Subject to the provisions of [sub-sections (1), (1A) and (2)]<sup>12</sup>, the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—*

*a. a supply of goods and not as a supply of services; or a supply of services and not as a supply of goods*

### Our Comment

Section 7 which gives 'Scope of Supply' has proposed to be amended by the FB, 2021 so that to levy GST on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa.

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<sup>12</sup> Substituted for —sub-sections (1) and (2)] w.e.f. 01st July, 2017 by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force on 01st February, 2019

As per 'Notes on Clauses' of the FB 2021' the amendment is explained as given hereunder,

*Clause 99 of the Bill seeks to amend section 7 of the Central Goods and Services Tax Act, 2017, **with retrospective effect from the 1st July, 2017,** by inserting a new clause (aa) in sub-section (1) thereof, so as to ensure levy of tax on activities or transactions involving supply of goods or services by any person, **other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.***

*It is also proposed to insert an Explanation therein, to clarify that the person or 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 person to another.*

Given the aforesaid it seems that amendment has been proposed so that to end the dispute/litigation with respect to levy of GST in case of Society and Members.

Earlier, GST said to be payable on all supply made for consideration.

Further, the term business is defined u/s 2 (17) which specifically includes provision by association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members. Thus, as per one school of thought amounts charged to members or society contribution can be said to be liable to GST.

However, there was Chaos on applicability of GST because, in erstwhile regime in the case of Matunga Gymkhana Tahnee Heights Co-op Hou Soc Ltd [2015-TIOL-108-CESTAT-MUM, CESTAT] held that services to members of club or cooperative housing society is not service by one to another thus not chargeable to service tax. Additionally, reference to Calcutta Club (2019-TIOL-449-SC-ST-LB) can be taken wherein Apex Court has confirmed the concept of mutuality. Thus, as per another school of thought, it can be construed that GST is not applicable on basis of principle of mutuality.

Even, the taxpayers had approached to Advance Ruling Authority to get clarification. Accordingly, in one of the cases<sup>13</sup> of Appellate Advance

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<sup>13</sup> Apsara Co-Operative Housing Society Ltd [2020-TIOL-65-AAAR-GST]

Ruling authorities has confirmed the decision of advance ruling authority that GST is applicable on the monthly subscription/contribution charged by the society from its members and concept of mutuality is not applicable.

Given the aforesaid, now amendment seems to be proposed to specifically include levy of GST in case of member and society by deeming them as separate persons.

Consequent to this amendment of section 7, paragraph 7 of Schedule II as given under has also been proposed to be omitted retrospectively, w.e.f. July 1, 2017.

*7. Supply of Goods- The following shall be treated as supply of goods, namely:—*

*Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.*

Further, this amendment is proposed to be applicable, with retrospective effect from the 1st of July, 2017. Now the question

remains same about validity of retrospective amendment where could result in to additional liability.

## 2. Section 16 - Eligibility and conditions for taking input tax credit.

<b>Contents in FB, 2021 – Clause 100</b>
<p><i>100. In section 16 of the Central Goods and Services Tax Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:—</i></p> <p><i>“(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;”.</i></p>
<b>Earlier Provision</b>
<p><b>Section 16 Eligibility and conditions for taking input tax credit.</b></p> <p><i>(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.</i></p>

*(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —*

*(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*

*(b) he has received the goods or services or both.*

**[Explanation. —** *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.<sup>14]</sup>*

*(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in*

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<sup>14</sup> Substituted for —Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods 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;|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 201

*cash or through utilization of input tax credit admissible in respect of the said supply; and*

*(d) he has furnished the return under section 39 :*

***Provided*** *that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :*

***Provided*** *further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :*

***Provided*** *also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.*

*(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.*

(4) *A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [...]<sup>15</sup>-debit note pertains or furnishing of the relevant annual return, whichever is earlier :*

*[Provided that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]*

#### **Amended Provision**

#### **Section 16 Eligibility and conditions for taking input tax credit.**

(1) *Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to*

<sup>15</sup>Omitted — invoice relating to such|| by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

*him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*

*(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, —*

*(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*

*(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;”.*

*(b) he has received the goods or services or both.*

**[Explanation.** — *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.<sup>16]</sup>*

*(c) subject to the provisions of [section 41 or section 43A], the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and*

*(d) he has furnished the return under section 39 :*

***Provided*** that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment :

***Provided*** further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable

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<sup>16</sup> Substituted for —Explanation.—For the purposes of this clause, it shall be deemed that the registered person has received the goods 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;|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 201

*thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed :*

***Provided*** also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

*(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income-tax Act, 1961 (43 of 1961), the input tax credit on the said tax component shall not be allowed.*

*(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or [...]<sup>17</sup>-debit note pertains or furnishing of the relevant annual return, whichever is earlier :*

***[Provided*** that the registered person shall be entitled to take input tax credit after the due date of furnishing of the return under section 39 for the month

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<sup>17</sup>Omitted — invoice relating to such|| by The Finance Act, 2020 (No. 12 of 2020) – Brought into force w.e.f. 01st January, 2021.

*of September, 2018 till the due date of furnishing of the return under the said section for the month of March, 2019 in respect of any invoice or invoice relating to such debit note for supply of goods or services or both made during the financial year 2017-18, the details of which have been uploaded by the supplier under sub-section (1) of section 37 till the due date for furnishing the details under sub-section (1) of said section for the month of March, 2019.]*

### Our Comment

Section 16 (2) of the CGST Act is proposed to be amended so that to prescribe one more condition for eligibility of ITC. In this regard 'Notes to Clauses' of the FB, 2021 read as

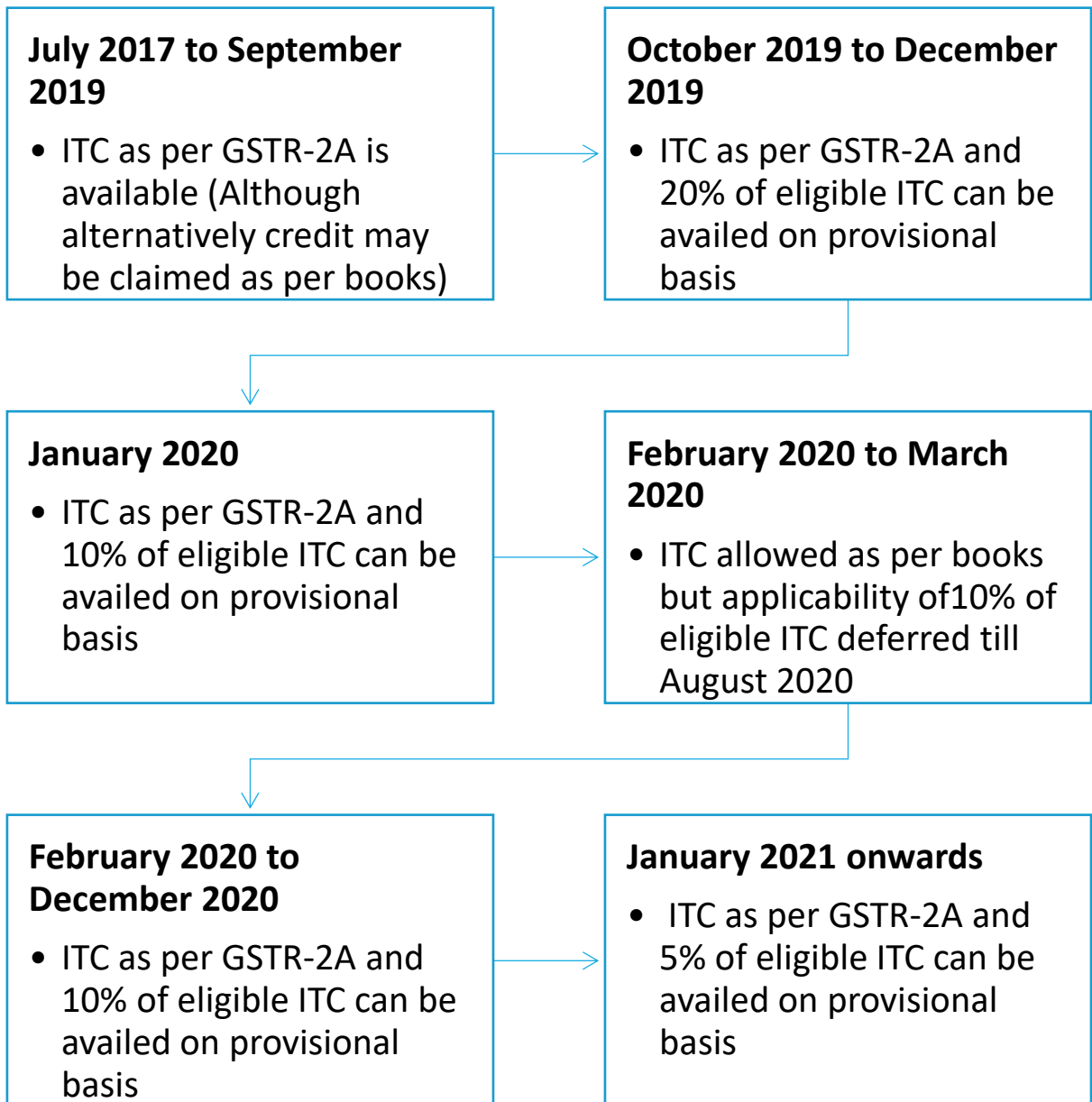
*Clause 100 of the Bill seeks to amend section 16 of the Central Goods and Services Tax Act by inserting a new clause (aa) in sub-section (2) thereof, so as to provide that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note.*

Earlier, as per Section 16 (2) of the Act conditions given below are required to be complied with

- A tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed should be available.
- Goods or Services or both should be received.
- Tax Charged in respect to such supply has been actually paid to the Government.
- Furnished the return under section 39:

Now in addition to aforesaid it is proposed that taxpayer must comply with one more condition that respective details of invoice or debit note has been furnished by the supplier in the statement of outward supply and such details have been communicated to the recipient.

Given the aforesaid it can be said that, to overcome the lacuna in the law a provision is proposed in the law in line with Rule 36(4) of the CGST Act which restrict the avaiment of ITC to the extent of prescribed percentage with respect to invoices which are not uploaded by the Supplier. Below are the amendments made time to time under Rule 36 (4) of the CGST Act.



### 3. Section 35 - Accounts and other records

#### Contents in FB, 2021 – Clause 101

*101. In section 35 of the Central Goods and Services Tax Act, sub-section (5) shall be omitted.*

## **Earlier Provision**

*SECTION 35. Accounts and other records. —*

*(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of —*

- (a) production or manufacture of goods;*
- (b) inward and outward supply of goods or services or both;*
- (c) stock of goods;*
- (d) input tax credit availed;*
- (e) output tax payable and paid; and*
- (f) such other particulars as may be prescribed :*

*Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.*

*(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.*

*(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.*

*(4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.*

*(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed :*

*[Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and*

*Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.]*

*(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.*

#### **Amended Provision**

#### **SECTION 35. Accounts and other records. —**

*(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of —*

- (a) production or manufacture of goods;*
- (b) inward and outward supply of goods or services or both;*
- (c) stock of goods;*
- (d) input tax credit availed;*

*(e) output tax payable and paid; and*

*(f) such other particulars as may be prescribed :*

*Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business :*

*Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.*

*(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.*

*(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.*

*(4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.*

~~*(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed:*~~

~~*[Provided that nothing contained in this sub-section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.]<sup>18</sup>*~~

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<sup>18</sup> Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019.

*(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.*

Section 35 (5) of the CGST Act has omitted. 'Notes to Clauses related to said section read as under,

Clause 101 of the Bill seeks to omit sub-section (5) of section 35 of the *Central Goods and Services Tax Act so as to remove the mandatory requirement of getting annual accounts audited and the reconciliation statement submitted by specified professional.*

Accordingly, now it is proposed that there will not be a requirement to get accounts audited from professional. There was always a debate that whether professionals are liable to the extent of reconciliation statement as prescribed or has a huge responsibility as defined u/s 2(13) of the CGST Act. However, amending such section to include self-certification by taxpayer will now cast a responsibility on taxpayer.

#### 4. Section 44 - Annual return.

##### Contents in FB, 2021 – Clause 102

*102. For section 44 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:—*

*“44. Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may **include a self certified reconciliation statement**, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:*

*Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:*

*Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and*

*Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”.*

### **Earlier Provision**

*SECTION 44. Annual return.*

1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year :

**[Provided** that the Commissioner may, on the recommendations of the Council and for reasons to be recorded in writing, by notification, extend the time limit for furnishing the annual return for such class of registered persons as may be specified therein :

**Provided** further that any extension of time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]

(2) Every registered person who is required to get his accounts audited in

accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

[ **Explanation.** - For the purposes of this section, it is hereby declared that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the [31st January, 2020] and the annual return for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or before the 31st March, 2020.]

#### ***Amended Provision***

#### ***SECTION 44. Annual return.***

***Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person shall furnish an annual return which may include a self certified reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year, with the audited annual***

*financial statement for every financial year electronically, within such time and in such form and in such manner as may be prescribed:*

*Provided that the Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section:*

*Provided further that nothing contained in this section shall apply to any department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force.”.*

### Our Comment

In tune with Section 35 (5) of the CGST Act Section 44 of the CGST Act substituted to prescribe self-certification in case of GSTR-9C. ‘Notes to Clauses’ of said section read as under

*‘Clause 102 of the Bill seeks to substitute a new section for section 44 of the Central Goods and Services Tax Act so as to remove the mandatory requirement of furnishing a reconciliation statement duly audited by specified professional and to provide for filing of the annual return on self-*

*certification basis. It further empowers the Commissioner to exempt a class of taxpayers from the requirement of filing the annual return.'*

Accordingly, now it is proposed that there will not be a requirement to certify reconciliation statement by professionals. However, amending such section to include self-certification by taxpayer will now cast a huge responsibility on taxpayer.

#### **5. Section 50 - Interest on delayed payment of tax.**

##### **Contents in FB, 2021 – Clause 103**

*103. In section 50 of the Central Goods and Services Tax Act, in sub-section (1), for the proviso, the following proviso shall be substituted and shall be deemed to have been substituted with effect from the 1st day of July, 2017, namely:—*

*“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.”.*

## Earlier Provision

*SECTION 50. Interest on delayed payment of tax. —*

*(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council :*

*[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 levied on that portion of the tax that is paid by debiting the electronic cash ledger.]<sup>19</sup>*

*(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*

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<sup>19</sup> Inserted by The Finance (No. 2) Act, 2019 (No. 23 of 2019) – Brought into force w.e.f. 01st September, 2020.

*(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.*

#### **Amended Provision**

**SECTION 50.** *Interest on delayed payment of tax. —*

*(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council :*

*“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.”<sup>20</sup>*

<sup>20</sup> Applicable w.e.f 1<sup>st</sup> July 2017

*(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which such tax was due to be paid.*

*(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty-four per cent., as may be notified by the Government on the recommendations of the Council.*

### **Our Comment**

Section 50 is proposed to be amended retrospectively w.e.f 01.07.2017 to so that interest on tax is payable on net value (i.e Tax Payable in cash after adjustment of ITC) . ‘Notes to clause’ with respect to said amendment read as

*‘Clause 103 of the Bill seeks to amend section 50 of the Central Goods and Services Tax Act to substitute the proviso to sub-section (1) so as to charge interest on net cash liability retrospectively with effect from the 1st July, 2017’*

This is one of the most awaited amendment.

## 6. Section 74 – Determination of tax not paid or short paid etc

<b>Contents in FB, 2021 – Clause 104</b>
<i>104. In section 74 of the Central Goods and Services Tax Act, in Explanation 1, in clause (ii), for the words and figures “sections 122, 125, 129 and 130”, the words and figures “sections 122 and 125” shall be substituted.</i>
<b>Earlier Provision</b>
<p><b><i>SECTION 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. —</i></b></p> <p><i>(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he</i></p>

*should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

*(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*

*(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.*

*(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*

*(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*

*(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.*

*(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.*

*Explanation 1. — For the purposes of section 73 and this section, —*

*(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;*

*(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.*

*Explanation 2. — For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer*

#### **Amended Provision**

**SECTION 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts. —**

*(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, he shall serve notice on the person*

*chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.*

*(2) The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.*

*(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.*

*(4) The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful misstatement or suppression of facts to evade tax, for*

*periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*

*(5) The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*

*(6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*

*(7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*

*(8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent*

*to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.*

*(9) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*

*(10) The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.*

*(11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.*

*Explanation 1. — For the purposes of section 73 and this section, —*

*(i) the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;*

*(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty ~~under sections 122, 125, 129 and 130~~ Section 122 and Section 125 are deemed to be concluded.*

*Explanation 2. — For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer*

### [Our Comment](#)

Section 74 is proposed to be amended so as to make Seizure and Confiscation of goods and conveyances in transit separate from recovery of tax.

*Clause 104 of the Bill seeks to amend section 74 of the Central Goods and Services Tax Act so as to make seizure and confiscation of goods and conveyances in transit a separate proceeding from the recovery of tax.*

This means conclusion of proceedings will now lead to conclusion of proceedings under section 73 or 74 and proceedings under section 122 and 125, however will not lead to conclusion of proceedings under section 129 and 130 of the CGST Act.

## **7. Section 75 - General provisions relating to determination of tax**

<b>Content in FB, 2021 – Clause 105</b>
<p><i>105. In section 75 of the Central Goods and Services Tax Act, in sub-section (12), the following Explanation shall be inserted, namely:—</i></p> <p><i>‘Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.’</i></p>
<b>Earlier Provision</b>

**SECTION 75. General provisions relating to determination of tax. —**

*(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.*

*(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.*

*(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.*

*(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*

*(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing :*

*Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.*

*(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.*

*(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.*

*(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.*

*(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.*

*(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.*

*(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.*

*(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.*

*(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.*

#### **Amended Provision**

#### **SECTION 75. General provisions relating to determination of tax. —**

*(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.*

*(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful misstatement or*

*suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.*

*(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.*

*(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*

*(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing :*

*Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.*

- (6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.*
- (7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.*
- (8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.*
- (9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.*
- (10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.*

*(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.*

*(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.*

*Explanation.—For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.'*

*(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.*

### Our Comment

Section 75 of the CGST Act proposed to be amended so that self-assessed tax will also include the outward supplies shown as per the statement of outward supplies u/s. 37 i.e outward supplies as per GSTR-1 is higher than GSTR-3B.

Notes to clause with respect to this clause read as

*Clause 105 of the Bill seeks to amend section 75 of the Central Goods and Services Tax Act so as to insert an Explanation in sub-section (12) to clarify that "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.*

## 8. Section 83 - Provisional attachment to protect revenue in certain cases.

### Contents in FB, 2021 – Clause 106

*106. In section 83 of the Central Goods and Services Tax Act, for sub-section (1), the following sub-section shall be substituted, namely:—*

*“(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.*

### Earlier Provision

***SECTION 83. Provisional attachment to protect revenue in certain cases. —***

*(1) 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.*

*(2) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under subsection (1).*

**Amended Provision**

**SECTION 83. Provisional attachment to protect revenue in certain cases. —**

~~*(1) 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.*~~

*“(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in subsection (1A) of section 122, in such manner as may be prescribed*

*(2)Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).*

Subsection (1) of Section 83 is substituted within the ambit of provisional attachment by way of substitution of section by chapters of the CGST Act.

In this regard, notes to clauses read as,

*Clause 106 of the Bill seeks to substitute sub-section (1) of section 83 of the Central Goods and Services Tax Act so as to provide that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV till the expiry of a period of one year from the date of order made thereunder.*

Thus, earlier only in case of prescribed section authorities can provisionally attach bank account. However, now proposed amendment empower the officer to attach bank or property in case of proceeding under any sections of Chapter XII, Chapter XIV or Chapter XV. At present also, we observed that bank accounts are getting attached even for genuine cases and Authorities are misusing said powers. Going forward, using this power could get increased.

## 9. Section 107 - Appeals to Appellate Authority

### Content in FB, 2021 – Clause 107

*107. In section 107 of the Central Goods and Services Tax Act, in sub-section (6), the following proviso shall be inserted, namely: –*

*“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.*

### Earlier Provision

#### **SECTION 107. Appeals to Appellate Authority. —**

*(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*

*(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for*

*and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.*

*(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.*

*(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid*

*period of three months or six months, as the case may be, allow it to be presented within a further period of one month.*

*(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.*

*(6) No appeal shall be filed under sub-section (1), unless the appellant has paid —*

*(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and*

*(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,]<sup>21</sup> in relation to which the appeal has been filed.*

*(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.*

*(8) The Appellate Authority shall give an opportunity to the appellant of being heard.*

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<sup>21</sup>Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019

*(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :*

*Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.*

*(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.*

*(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order :*

*Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :*

*Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.*

*(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.*

*(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed :*

*Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.*

*(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.*

*(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.*

*(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.*

***Amended Provision***

***SECTION 107. Appeals to Appellate Authority. —***

*(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services*

*Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.*

*(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.*

*(3) Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer*

*were an appellant and the provisions of this Act relating to appeals shall apply to such application.*

*(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.*

*(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.*

*(6) No appeal shall be filed under sub-section (1), unless the appellant has paid —*

*(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and*

*(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, [subject to a maximum of twenty-five crore rupees,]<sup>22</sup> in relation to which the appeal has been filed.*

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<sup>22</sup> 0 Inserted by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019

*“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.*

*(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.*

*(8) The Appellate Authority shall give an opportunity to the appellant of being heard.*

*(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing :*

*Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.*

*(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of*

*appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.*

*(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order :*

*Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order :*

*Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.*

*(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.*

*(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed :*

*Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.*

*(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.*

*(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.*

*(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties.*

Section 107(6) inserted so that to revise pre-deposit for filling appeal before first appellate authority @ 25% of the penalty imposed. Notes to clauses mention that,

*Clause 107 of the Bill seeks to insert a new proviso in sub-section (6) of section 107 of the Central Goods and Services Tax Act so as to provide that no appeal shall be filed against an order made under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.*

Before this amendment, the pre-deposit was only to the extent of 10% of Tax Liability in case of dispute which is now proposed to be 25% of the penalty amount in case of detention and seizure of conveyance and goods during transit.

**10. Section 129 - Detention, seizure and release of goods and conveyances  
in transit**

**Contents in FB, 2021 – Clause 108**

*108. In section 129 of the Central Goods and Services Tax Act, —*

*(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—*

*“(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;*

*(b) on payment of penalty equal to fifty per cent. Of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;”;*

*(ii) sub-section (2) shall be omitted;*

*(iii) for sub-section (3), the following sub-section shall be substituted,*

*namely:—*

*“(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;*

*(iv) in sub-section (4), for the words “No tax, interest or penalty”, the words*

*“No penalty” shall be substituted;*

*(v) for sub-section (6), the following sub-section shall be substituted, namely:—*

*—*

*“(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or*

*disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):*

*Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:*

*Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”.*

#### **Earlier Provision**

**SECTION 129. Detention, seizure and release of goods and conveyances in transit. —**

*(1)Notwithstanding anything contained in this Act, 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 made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —*

*(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-*

*five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;*

*(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;*

*(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed :  
Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.*

*(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.*

*(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).*

*(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

*(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.*

*(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days]<sup>23</sup> of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130 :*

*Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of [fourteen days] may be reduced by the proper officer.*

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<sup>23</sup> Substituted for —seven days|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019

**Amended Provision**

**SECTION 129. Detention, seizure and release of goods and conveyances in transit. —**

*(1 ) Notwithstanding anything contained in this Act, 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 made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released, —*

~~*(a) on payment of the applicable tax and penalty equal to one hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;*~~

~~*“(a) on payment of penalty equal to two hundred per cent. of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees,*~~

*whichever is less, where the owner of the goods comes forward for payment of such penalty;*

~~*(b) on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon and, in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty;*~~

*(b) on payment of penalty equal to fifty per cent. Of the value of the goods or two hundred per cent. of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;”;*

*(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed :*

*Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.*

~~*(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.*~~

~~*(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).*~~

~~*“(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;*~~

~~(4) No tax, interest or penalty~~ *No Penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

*(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.*

~~(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days]<sup>24</sup> of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:~~

~~Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of [fourteen days] may be reduced by the proper officer.~~

~~“(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days~~

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<sup>24</sup> Substituted for —seven days|| by The Central Goods and Services Tax (Amendment) Act, 2018 (No. 31 of 2018) – Brought into force w.e.f. 01st February, 2019

*from the date of receipt of the copy of the order passed under sub-section (3), the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):*

*Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:*

*Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”.*

#### Section 129 of the CGST Act proposed to be amended

1. to remove word Tax and Interest. It means now for release of conveyance only penalty is required to be paid. However, Penalty is increased to 200% from 100%.
2. Subsection (2) is omitted. Thus, now conveyance and goods detained cannot be released on merely on execution of bond and bank guarantee as security.

3. Subsection 3 is substituted so that to prescribe time frame. The proper officer detaining or seizing goods or conveyance is now required to issue a notice within seven days of such detention and thereafter, pass an order within a period of seven days from the date of service of such notice.
  
4. Subsection 6 has been substituted. As per new subsection the goods or conveyance detained or seized shall become liable to be sold or disposed off if payment of imposed penalty is not made within 15 days from the date of receipt of copy of the order imposing such penalty.

In this regard, notes to clauses mention that,

*Clause 108 of the Bill seeks to amend section 129 of the Central Goods and Services Tax Act so as to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty.*

Thus, it seems that Section 129 is further strengthened. Even it seems that tax and interest is not required to be paid for real ease of conveyance, however penalty is increased to 200%. Also, now merely execution of bond and bank guarantee as security will not lead to release of goods detained.

#### **11. Section 130 - Confiscation of goods or conveyances and levy of penalty.**

##### **Contents in FB, 2021 – Clause 109**

*109. In section 130 of the Central Goods and Services Tax Act,—*

*(a) in sub-section (1), for the words “Notwithstanding anything contained in this Act, if ”, the word “Where” shall be substituted;*

*(b) in sub-section (2), in the second proviso, for the words, brackets and figures “amount of penalty leviable under sub-section (1) of section 129”, the words “penalty equal to hundred per cent. of the tax payable on such goods” shall be substituted; (c) sub-section (3) shall be omitted.*

**Earlier Provision**

**SECTION 130. Confiscation of goods or conveyances and levy of penalty.**

(1) *Notwithstanding anything contained in this Act, if any person —*

(i) *supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax;*

*or*

(ii) *does not account for any goods on which he is liable to pay tax under this Act; or*

(iii) *supplies any goods liable to tax under this Act without having applied for registration; or*

(iv) *contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*

(v) *uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the*

*person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.*

*(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit :*

*Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon :*

*Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129 :*

*Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.*

*(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.*

*(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.*

*(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.*

*(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.*

*(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.*

**Amended Provision**

**SECTION 130. Confiscation of goods or conveyances and levy of penalty.**

(1) ~~Notwithstanding anything contained in this Act,~~ Where if any person —

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax;

or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the

*person in charge of the conveyance, then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.*

*(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit :*

*Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon :*

*Provided further that the aggregate of such fine and penalty leviable shall not be less than the ~~amount of penalty leviable under sub-section (1) of section 129~~: **penalty equal to hundred per cent of the tax payable on such goods***

*Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.*

~~(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.~~

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person an opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession.

(7) The proper officer may, after satisfying himself that the confiscated goods or conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose of such goods or conveyance and deposit the sale proceeds thereof with the Government.

## Section 130 amended

1. to substitute the word “*Notwithstanding anything contained in this Act, if*”, with word “*Where*”. Thus, now this section does not have any overriding impact.
2. Section 130 (3) (c) is omitted. Thus, now there will not be any additional tax, penalty and charges in respect of such goods or conveyance

Notes to clauses prescribe that,

*Clause 109 of the Bill seeks to amend section 130 of the Central Goods and Services Tax Act, so as to delink the proceedings under that section relating to confiscation of goods or conveyances and levy of penalty from the proceedings under section 129 relating to detention, seizure and release of goods and conveyances in transit.*

## 12. Section 151 - Power to collect statistics

<b>Contents in FB, 2021 – Clause 110</b>
<b><i>110. For section 151 of the Central Goods and Services Tax Act, the following section shall be substituted, namely: —</i></b>

*“151. The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.”*

#### **Earlier Provision**

#### **SECTION 151. Power to collect statistics. —**

*(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.*

*(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons 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.*

#### **Amended Provision**

#### **SECTION 151. Power to collect statistics. —**

~~*(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.*~~

~~(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons 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.~~

*“151. The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.”.*

Section 151 of the CGST Act amended grant wide powers to the concerned jurisdictional commissioner. Notes to clauses prescribe as *Clause 110 of the Bill seeks to substitute section 151 of the Central Goods and Services Tax Act so as to empower the jurisdictional commissioner to call for information from any person relating to any matters dealt with in connection with the Act.*

### 13. Section 152 - Bar on disclosure of information

#### Contents in FB, 2021 – Clause 111

#### **111. In section 152 of the Central Goods and Services Tax**

**Act,—**

*(a) in sub-section (1),—*

*(i) the words “of any individual return or part thereof” shall be omitted;*

*(ii) after the words “any proceedings under this Act”, the words “without giving an opportunity of being heard to the person concerned” shall be inserted;*

*(b) sub-section (2) shall be omitted*

#### **Earlier Provision**

#### **SECTION 152. Bar on disclosure of information. —**

*(1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.*

*(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.*

*(3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.*

#### **Amended Provision**

#### **SECTION 152. Bar on disclosure of information. —**

*(1) No information ~~of any individual return or part thereof~~ with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act “~~without giving an opportunity of being heard to the person concerned~~”.*

~~(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.~~

(3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

Section 152 has proposed to be amended to include personal hearing, Thus, this section is amended in consensus with section 51. Now as per proposed section information received shall not be permitted to be used for the purpose of any proceedings under this Act without giving an opportunity of being heard.

#### **14. Section 168 - Power to issue instructions or directions**

## **Contents in FB, 2021 – Clause 112**

*112. In section 168 of the Central Goods and Services Tax Act, in sub-section (2),—*

*(i) for the words, brackets and figures “sub-section (1) of section 44”, the word and figures “section 44” shall be substituted;*

*(ii) the words, brackets and figures “sub-section (1) of section 151,” shall be omitted*

## **Earlier Provision**

### **Section 168 Power to issue instructions or directions**

*(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.*

*(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-*

*section (6) of section 39, [sub-section (1) of section 44, sub-sections (4) and (5) of section 52,] sub-section (5) of section 66, sub-section (1) of section 143 sub-section (1) of section 143, except the second proviso thereof” , sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.—*

#### **Amended Provision**

#### **Section 168 Power to issue instructions or directions**

*(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.*

*(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, ~~sub-section (1) of section 44~~, **Section 44** sub-*

sections (4) and (5) of section 52,] sub-section (5) of section 66, sub-section (1) of section 143 sub-section (1) of section 143, except the second proviso thereof” , ~~sub-section (1) of section 151~~, clause (I) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.—

## 15. Schedule II of the CGST Act

<b>Contents in FB, 2021 – Clause 113</b>
<p>113. In Schedule II of the Central Goods and Services Tax Act, paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017.</p>
<p style="text-align: center;"><i>SCHEDULE II</i></p> <p style="text-align: center;"><i>[See Section 7]</i></p> <p style="text-align: center;"><i>ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR</i></p> <p style="text-align: center;"><i>SUPPLY OF SERVICES</i></p>

## *1. Transfer*

*(a) any transfer of the title in goods is a supply of goods;*

*(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;*

*(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.*

## *2. Land and Building*

*(a) any lease, tenancy, easement, licence to occupy land is a supply of services;*

*(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.*

## *3. Treatment or process*

*Any treatment or process which is applied to another person's goods is a supply of services.*

## *4. Transfer of business assets*

- (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;*
- (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;*
- (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless —*
- (i) the business is transferred as a going concern to another person; or*
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.*

#### *5. Supply of services*

*The following shall be treated as supply of services, namely :—*

- (a) renting of immovable property;*

*(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

*Explanation. — For the purposes of this clause —*

*(1) the expression “competent authority” means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :—*

*(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or*

*(ii) a chartered engineer registered with the Institution of Engineers (India);  
or*

*(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;*

*(2) the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure;*

*(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;*

*(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;*

*(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and*

*(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.*

#### *6. Composite supply*

*The following composite supplies shall be treated as a supply of services, namely :—*

*(a) works contract as defined in clause (119) of section 2; and*

*(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.*

*7. Supply of Goods*

*The following shall be treated as supply of goods, namely :—*

*Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.*

**Amended Provision**

*SCHEDULE II*

*[See Section 7]*

*ACTIVITIES [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR  
SUPPLY OF SERVICES*

*1. Transfer*

*(a) any transfer of the title in goods is a supply of goods;*

*(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;*

*(c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.*

*2. Land and Building*

*(a) any lease, tenancy, easement, licence to occupy land is a supply of services;*

*(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.*

### *3. Treatment or process*

*Any treatment or process which is applied to another person's goods is a supply of services.*

### *4. Transfer of business assets*

*(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;*

*(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;*

*(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless —*

*(i) the business is transferred as a going concern to another person; or*

*(ii) the business is carried on by a personal representative who is deemed to be a taxable person.*

#### *5. Supply of services*

*The following shall be treated as supply of services, namely :—*

*(a) renting of immovable property;*

*(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.*

*Explanation. — For the purposes of this clause —*

*(1) the expression “competent authority” means the Government or any authority authorised to issue completion certificate under any law for the*

*time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely :—*

*(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972 (20 of 1972); or*

*(ii) a chartered engineer registered with the Institution of Engineers (India);*

*or*

*(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;*

*(2) the expression “construction” includes additions, alterations, replacements or remodelling of any existing civil structure;*

*(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;*

*(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;*

*(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and*

*(f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.*

*6. Composite supply*

*The following composite supplies shall be treated as a supply of services, namely :—*

*(a) works contract as defined in clause (119) of section 2; and*

*(b) supply, by way of or as part of any service or in any other manner*

*whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.*

~~*7.—Supply of Goods*~~

~~*The following shall be treated as supply of goods, namely :—*~~

~~*Supply of goods by any unincorporated association or body of persons to a*~~

~~*member thereof for cash, deferred payment or other valuable consideration.*~~

## IGST Act - Decoding of Amendment Proposed

### Content in FB, 2021 – Clause 113

*114. In the Integrated Goods and Services Tax Act, 2017, in section 16, —*

*(a) in sub-section (1), in clause (b), after the words “supply of goods or services or both”, the words “for authorised operations” shall be inserted;*

*(b) for sub-section (3), the following sub-sections shall be substituted, namely:—*

*“(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:*

*Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after*

*the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.*

*(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—*

*(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;*

*(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”.*

#### **Earlier Provision**

#### **SECTION 16. Zero rated supply. —**

*(1) “zero rated supply” means any of the following supplies of goods or services or both, namely :-*

*(a) export of goods or services or both; or*

*(b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*

*(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.*

*(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely :-*

*(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or*

*(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,*

*in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.*

**Amended Provision**

**SECTION 16. Zero rated supply. —**

(1) “zero rated supply” means any of the following supplies of goods or services or both, namely :-

(a) export of goods or services or both; or

(b) supply of goods or services or both ~~“for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.~~

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

~~(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely :-~~

~~(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or~~

~~(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.~~

~~“(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:~~

~~Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so~~

*received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.*

*(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—*

*(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid;*

*(ii) a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”.*

### Our Comment

‘Notes on clauses’ with respect to amendment of section 16 of the IGST Act read as

*Clause 114 of the Bill seeks to amend section 16 of the Integrated Goods and Services Tax Act, 2017 so as to make provisions for restricting the*

*zero rated supply on payment of integrated tax only to specified class of taxpayers or specified supplies of goods or services. It further provides to link the foreign exchange remittance in case of export of goods with refund and further restricting zero rating of supplies made to special economic zone only when such supplies are for authorised operations.*

Sub section (1) (b) of section 16 is proposed to amend so that to restrict the enjoyment of benefit to the supplies to SEZ developer or SEZ Unit which are for authorised operations.

Further subsection (3) is substituted. As per proposed amendment only notified class of taxpayer or goods or services will be eligible for claiming refund in case the export with payment of tax.

Alternatively, it can be said that now the taxpayers will have to export without payment of tax and claim refund of the accumulated ITC. Also, subsection (3) now mandates the realisation of sales proceeds otherwise the refund claimed will be liable to be deposited back in the treasury of the government along with the interest u/s. 50.

## About CA Vaishali Kharde



- CA Vaishali Kharde is a Founder of Vaishali B Kharde and Company having more than 10 years' experience in the field of Indirect Taxation [Goods and Services Tax (GST), Service Tax, Excise, Export Benefits and VAT]
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- Vaishali has Authored a book named, 'Handbook on E-way Bill', GST Audit and Annual Return, A Guide on 'Vivad -Se -Vishwas,
- Vaishali is a regular writer of articles at various web portal like Tax-India Online, Tax-On Go, Tax sutra etc.
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