

GST Alert 11/2020-21

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### Analysis of proposed amendments in GST law in Budget 2021

Honourable FM, Madam Nirmala Sitharaman delivered her 3<sup>rd</sup> Budget speech today, even though she didn't announce any change in GST in her speech, there are some very important and far reaching amendments proposed in the budget. **Please note, these proposed amendments will take time to see the light of the day, may take even a year or more to implement these as all states need to simultaneously adopt these amendments in their respective SGST laws and pass it in their legislative assemblies, hence these are just proposals as of now.** Gist of these changes and our views on them is as under:

#### 1. Taxability for Clubs and Member Societies recalibrated

GST Law is proposed to be amended retrospectively from 1.07.2017 for providing that Goods and Services supplied by Clubs or member societies will be taxable. Many Judgements from High Courts have come in support of these clubs, this amendment seeks to overrule them.

#### 2. One more condition to be fulfilled for availing ITC

For availing GST Credit, one more condition will have to be fulfilled, supplier will have to furnish the invoice or debit note in his outward supplies (GSTR 1), if he doesn't do that, ITC cannot be availed by the recipient.

This condition was considered mandatory vide various changes in rules and procedures, amending section 16 will now raise a serious question on whether we were required to follow it before this amendment is notified as this amendment is not retrospective in nature.

#### 3. GST Audits by professionals done away with

GST Audit which was required to be done by a CA or CWA will not be required now. Instead the taxpayer will be required to file a self-attested reconciliation statement

#### 4. Even if penalty as mandated in section 74 is paid, penal proceedings for violation of E-way bill provisions will continue



### 5. Interest on delayed payment of Tax

GST law was amended earlier to provide that Interest on delayed payment of GST will be payable only on tax which was paid in cash, in other words any delayed payment of tax through utilisation of ITC would not suffer interest. However, this amendment made earlier was prospective in nature, in this budget further amendment is proposed to give retrospective effect to this important change from 1.07.2017 itself. Please note Interest will be payable on net cash liability only in cases where the taxpayer pays the tax on his own volition. Any tax paid during any proceedings like assessment, audit, inspection or search initiated by department, interest will be paid on gross liability including which is paid by ITC.

### 6. Power to Attach Bank Accounts and other properties

Power to attach bank accounts and properties has been enhanced drastically, earlier officers could initiate attachment only in case of the person under investigation, now bank account and property of a beneficiary can also be attached. This power now can be used in case of any proceedings with respect to inspection of goods in movement.

### 7. Amendments in E-way bill appeals and penalties

- A. In case of e-way bill violations, appeal was allowed to be filed without any requirement of mandatory pre-deposit, now one will have to pay 25% of the Penalty amount as pre-deposit before filing appeal
- B. Penalties in E-way bill violations doubled
  - i. In case of any violation, if the taxpayer is willing to pay, penalty which was 100% of the tax is now increased to 200%. Currently the taxpayer is required to pay tax alongwith 100% penalty, however with this amendment he will not be required to pay tax for release of goods, but will have to pay only 200% penalty.
  - ii. in case where taxpayer doesn't pay the tax and penalty before the order is issued, penalty which was 50% of the value of goods is now increased to 50% of the value of goods OR penalty of 200% of the tax, WHICHEVER IS HIGHER



- C. In case a person whose goods are detained for E-way bill Violations fails to pay the penalty, department can sell the goods after 15 days of the Penalty order issued by the officer. So roughly after 30 days of detention of goods, department will get the right to sell the goods to recover the penalty
- D. Truck being detained alongwith goods will be released if the transporter pays penalty as discussed in point no. 7 above or Rs. 1 lac, whichever is less.

### 8. SEZ supplies

All supplies made to SEZ units or developer were treated as zero rated supplies and therefore were not taxed, now only Supplies made for **authorised operation** of an SEZ unit or developer will be treated as Zero Rated

### 9. Refund Mechanism

- A. Major change is made in Refund mechanism for Exporters, earlier they had 2 ways of getting refunds of GST ITC on inputs:
  - a. By exporting with payment of IGST, wherein refunds were granted through automatic mode, some exporters used to get refunds in a weeks' time of filing GSTR 3B
  - b. By exporting under LUT and claiming refund of Unutilised ITC. This used to take upto 2 months and there was a huge physical process required to be undertaken by the exporter

Now, government has proposed to do away with the automatic refund route whereby export with payment of IGST will not be allowed. Exporters will have to mandatorily seek refund of unutilised ITC by filing online refund applications and physical submissions of documents. Further, Government will now be empowered to notify class of exporters or goods or services who would still be allowed to export with payment of IGST and follow similar methodology as available currently, so earlier all exporters had this benefit but once this amendment comes into force only notified class of persons or goods / services will enjoy this route.



- B. Further, exporters will have to repay the refund of ITC received alongwith interest within 30 days after the expiry of the timelines specified in Foreign Exchange Management Act, 1999 for receipt of Export Sale proceeds.

### Conclusion:

This budget has come against a backdrop of a devastating pandemic which has affected world economy like no other event in human history. All major economies of the world are staring at a tough 2-3 years if not more. India has shown enough resilience and green shoots are visible in many corners of the economy, this budget seeks to keep up this resilience and hence has kept up government expenditure projections, rather it has increased it for almost all sectors, especially the infrastructure sector.

We have dealt with only GST in our alert above, most of the changes proposed are towards penalising the wrong doers but I have a strong reservation in giving unhindered discretion to the officers because it brings with it the issue of overuse and misuse. Refunds to exporters was one area which was praised by all because it provided much wanted working capital to them in a truly short turnaround time, doing away with the same is not in the right spirit. There was nothing on personal income tax rates or substantial reduction in compliances

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