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Highlights

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Budget 2022 – Proposed important changes in GST

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In the Budget Speech of Hon'ble Finance Minister, she has recognised that collections of GST in the month of January 2022, being about 1.4 Lakh Crores, which is the highest ever since GST was introduced. This calls for celebrations as January 2022 being the worst impacted month by the third wave of Covid, withstood the same and business activities were at an all time high. The robust collections are representative of a robust economy, greater compliance and sustained business activities. Let us understand the proposed changes in this year's budget w.r.t. GST:

1. **No change in tax rates –** There is no proposed change in the tax rates of GST. The rates for GST remains as it is. There were expectations that because of good collections in GST and to provide some relief to the businesses impacted by Covid in the last 2 years, rates of some goods or services may be reduced so as to fuel consumption. However the Government has decided not to tinker with the rates and has kept it as it is.

2. **Relief of extended date for availment of Input Tax Credit (ITC) and making amendments in outward supplies –** Presently the last date for availment of Input Tax Credit (ITC) in GSTR 3B and making amendments in outward supplies by amending invoices in GSTR 1 or by issuing debit or credit notes is return for the month of September of the next financial year. There have been demands by the industry that the period provided of 6 months is not enough and there are cases when one wants to make changes even after that. The Government has acceded to the demands of the industry and provided relief on this front, which is a very welcome step. The proposed date is now November 30 instead of return for the month of September of next year.

3. **Payment of interest on Input Tax Credit (ITC) only if it is wrongly availed and utilised –** There have been instances wherein Input Tax Credit (ITC) has been availed by the industry either wrongly or in case of a disputed matter, so as to save itself from time barring provisions, but has not been utilised the same. They have been facing notices for payment of interest on such Input Tax Credit (ITC) which has been wrongly availed but not utilised. This had although been clarified by the Government that interest on such Input Tax Credit (ITC) which has been wrongly availed and not utilised will not be payable, amendments in the Act is now proposed through the Finance Bill, 2022 w.r.e.f. July 1, 2017 itself. Further the rate of interest on such ITC wrongly availed and utilised has been prescribed at 18% p.a.

4. **Relief in interest rate from 24% to 18% -** The rate of interest for undue or excess claim of input tax credit or undue or excess reduction in output tax liability has been reduced from 24% to 18% w.r.e.f. July 1, 2017 itself, as was notified vide Notification No. 13/2017 – Central Tax, dated the 28th June, 2017. This is a welcome step of the Government as interest rate of 24% was quiet draconian.

5. **Removal of all reference to two**

way communication for matching of invoices – When GST was introduced, there was a concept of two way communication between suppliers and customers wherein one could accept/ reject or modify the invoices and communication could be established between the two parties. However the same could never be implemented on the GST portal. The Government has now proposed amendments to the GST Act, to permanently remove all such references of two way communication.

6. **Additional condition for availment of Input Tax Credit (ITC) –** The Government has proposed to add an additional condition for availment of Input Tax Credit (ITC) in section 16. The additional condition further restricts Input Tax Credit (ITC) to that which is shown as not available in GSTR 2B. So, now, for any invoice which in GSTR 2B is shown as ITC is not available, the assessee will not be eligible to avail ITC on the same.

7. **Reversal of Input Tax Credit (ITC) in case tax is not paid by the supplier –** There have been many instances wherein assessees have claimed that they have paid tax to the supplier and if the supplier has not paid the tax to the Government, they should not be made liable. The Government has now proposed an explicit amendment in the Act wherein it has mentioned that the credit of ITC availed the tax on which has not been paid by the supplier, shall be reversed along with applicable interest, by the assessee. The assessee shall be eligible to re-avail the amount of credit reversed by him, upon payment of the tax by the supplier and in such manner as may be prescribed. This change has also been proposed to take care of some judgements which had ruled in favour of the assessee. Thus this amendment in section 41 read with section 16(2)(c) now makes it amply clear that in case supplier has not paid the tax to the Government, ITC cannot be availed and has to be reversed.

8. **Registration liable to be cancelled –** The provisions related to registrations liable to be cancelled for non-filing of returns have been made stricter. The amendments propose that in cases of a composition dealer who has not furnished the return for a financial year beyond three months from the due date of furnishing of the said return, his registration shall be liable for cancellation, against the present provision of returns for three consecutive tax periods. Further in all other cases, registration shall be liable for cancellation if one has not furnished returns for such continuous tax period as may be prescribed, against the present provision of a continuous period of six months. This amendment will give legal backing to the action of the Government wherein they were doing suo-moto cancellation of registrations for non-filing of returns henceforth.

9. **Filing of GSTR 3B by Non Resident Taxable Persons (NRTP) –** The due date for filing of GST returns by a Non Resident Taxable Persons (NRTP) is proposed to be amended to 13th of the next month or within seven days after the last day of the period of registration, whichever is earlier against the present provision of 20th of the next month.

10. **Payment of tax while filing GSTR 3B based on either self-assessment basis or as may be prescribed –** We have all known that GST is based on a self-assessment basis. The tax that is paid by an assessee is based on self-assessment. However amendment is now being proposed in the Act, to say that the payment alongwith GSTR 3B shall be based on either the self-assessment basis or an amount that may be prescribed. We need to see the proposed changes in the Rules as to how the same shall be practically implemented and what is the meaning of the words “as may be prescribed”.

11. **Furnishing of GSTR 1 made mandatory for filing of GSTR 3B –** The Government has been linking the filing of GSTR 1 and GSTR 3B so that the two are filed in tandem. Presently a registered person is not allowed to furnish FORM GSTR-1, if he has not furnished the return in FORM GSTR-3B for the preceding month. Now in Budget 2022 it is proposed that a registered person shall not be allowed to furnish FORM GSTR-3B, if he has not furnished the return in FORM GSTR-1 for the same tax period. Thus, now GSTR 3B cannot be filed if GSTR 1 for the same period has not been filed and GSTR 1 cannot be filed if GSTR 3B has not been filed for the previous month. The sequence of GSTR 1, then GSTR 3B, then GSTR 1 and so on now needs to be followed strictly.

12. **GSTR 1 for a particular month cannot be filed if previous returns are not filed –** The proposed amendment now gives legal backing to the procedural issue of filing of GSTR 1 sequentially. The proposed amendment prescribes that an assessee shall not be allowed to file return for a tax period, if the return for any of the previous tax periods has not been furnished by him. This is however subject to certain relaxation as may be given by the Government.

13. **Levy of late fees on late filing of returns by TCS collectors –** The Budget proposes to extend the levy of late fees for late filing of returns u/s 52 by collectors

of Tax Collected at Source (TCS) e.g. e commerce operators. The fine is Rs. 200/- per day subject to a maximum of Rs. 10,000/- per return.

14. **Transfer of balance available in Electronic Cash Ledger between distinct persons –** In line with the decision of GST Council wherein it was decided that balance in Electronic Cash Ledger could be transferred between distinct persons, suitable amendment in the GST Act has been proposed. The amendment allows transfer of amount available in electronic cash ledger of a registered person to the electronic cash ledger of a distinct person (person with the same PAN). This is a welcome step as many a times assessees had balance in one registration but still they had to pay in some other registration, which was a huge hit on working capital. Now, this problem has been addressed to the relief of such assessees.

15. **Maximum proportion of output tax liability which may be discharged through the electronic credit ledger –** Presently Rule 86B restricts the utilisation of ITC upto 99% in certain cases. The same has now been brought in as a part of the Act wherein the maximum proportion of output tax liability which may be discharged through the electronic credit ledger is now proposed to be inserted.

16. **Refund of balance in Electronic Cash Ledger –** Refund of any balance in Electronic Cash Ledger can be demanded by the taxpayer anytime as per his wish. Now section 54 of the GST Act is being amended so as to explicitly provide that refund claim of any balance in the electronic cash ledger shall be made in such form and manner as may be prescribed. This is a welcome step as it will remove any arbitrariness which an Officer can exercise in providing such refund.

17. **Refund by UN and other agencies –** Present UN and other similar institutions can seek refund of ITC before the expiry of six months from the last day of the quarter in which such supply was received. This is now proposed to be amended by providing time limit of two years from the last day of the quarter in which the supply was received. This is being done to align the requirements with the time limit provided in all other cases of refund.

18. **Refund claim in respect of supplies made to a Special Economic Zone –** The proposed amendment has been done to provide clarity regarding the relevant date for filing refund claim in respect of supplies made to a Special Economic Zone developer or a Special Economic Zone unit. The "relevant date" shall mean to be the due date for furnishing of GSTR 3B in respect of such supplies.

19. **Designation of ww.gst.gov.in as the common portal – The GST Notification no. 9/2018 –** Central Tax, dated the 23rd January, 2018, is being amended so as to notify www.gst.gov.in, retrospectively, w.e.f. 22nd June, 2017, as the Common Goods and Services Tax Electronic Portal, for all functions provided under GST, other than those provided for e-way bill and for generation of e-invoices.

20. **Relief in specific tax rates -** The proposed amendment seeks to provide retrospective exemption from tax in respect of supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil, during the period from the 1st day of July, 2017 upto the 30th day of September, 2019 (both days inclusive). Further service by way of grant of alcoholic liquor license, against consideration in the form of license fee or application fee which has been declared as an activity or transaction which shall be treated neither as a supply of goods nor a supply of service shall be given retrospective effect from 01.07.2017. However no refund shall be made of the said tax which has already been collected.

These amendments will come into effect upon passing of the Finance Act and from a date to be notified, as far as possible, concurrently with the corresponding amendments to the similar Acts passed by the States & Union territories with legislature or on the date of its enactment, as may be applicable.

(Views expressed are personal.
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"Somewhere inside all of us is the power to change the world."

– Roald Dahl