

Remaining Few Sections of Finance Act 2021 notified on 21.12.2021

108. Amendment of section 7. — In the Central Goods and Services Tax Act, 2017 (12 of 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 vice versa, 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;”.

109. Amendment of section 16. — 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 :—

“(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;”.

113. Amendment of section 74. — 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.

114. Amendment of section 75. — In section 75 of the Central Goods and Services Tax Act, in sub-section (12), the following Explanation shall be inserted, namely :— ‘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.’.

115. Amendment of section 83. — 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.”.

116. Amendment of section 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.”.

117. Amendment of section 129. — 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.”.

118. Amendment of section 130. — 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.

119. Substitution of new section for section 151. — For section 151 of the Central Goods and Services Tax Act, the following section shall be substituted, namely : — “151. Power to call for information. — 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.”.

120. Amendment of section 152. — 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.

121. Amendment of section 168. — 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.

122. Amendment to Schedule II. — 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.

Gist of Amendments

A. Rule 36(4) of CGST Rules, 2017 to be amended, once the proposed clause (aa) of section 16(2) of CGST Act, 2017 is notified, to restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in FORM GSTR-1/ IFF and are communicated to the registered person in FORM GSTR-2B. As per Press Release dated 17.09.2021 after the 45th Gst Council Meeting in Lucknow, the following was inserted as per point no. J(5).

B. For the purpose of refund claim, Bank Account must be in name of the registered person and it must be obtained on Permanent Account Number of the registered person.

C. Further, Aadhaar authentication is must for filing of refund application and application for revocation of cancellation of registration. Also Read Notification no 35 dated 24.09.2021

D. The amendment is doing away with the principle of mutuality and has unsettled the settled jurisprudence (with specific overriding effect over judgments) with retrospective date to ensure the levy of GST on supply of goods and services by clubs or association to its members irrespective of whether or not the entity is incorporated.

E. A welcome amendment in section 50 wherein Interest is payable on net cash liability and not in the liability portion discharged through ITC. Another retrospective amendment applicable from 01-07-2017.

F. Self assessed tax shall also include supplies and tax declared in GSTR-1 as well. Another malpractice to pass on ITC through declaring in GSTR-1 but not paying tax in GSTR-3B would be curbed through this explanation added in Section 75(12).

G. Increase in the penalty provision from 100% to 200% in Section 129 and increase in pre-deposit under Section 107 have been notified. Also delinking of Section 129 & 130 and changes in both section notified.

H. Restriction on Zero rated supply with payment of tax in specified cases has not yet been made effective.