



NITYA'S INSIGHT:

Key highlights of CGST (Amendment) and IGST (Amendment) Bills, 2018

August 20, 2018

Introduction

The GST Council in its 28th Meeting held on July 21, 2018 proposed significant amendments in GST law to make the law simpler and minimize the cascading effect on taxpayers. To give effect to this, the Central Goods and Services Tax (Amendment) Bill, 2018 ('CGST Bill') and the Integrated Goods and Services Tax (Amendment) Bill, 2018 ('IGST Bill') were introduced in the Lok Sabha during its monsoon session on August 7, 2018. Both the bills received their assent on August 9, 2018 in the Lok Sabha.

Notably, since these bills have been introduced as money bills, they shall be deemed to be passed in case Rajya Sabha does not return them within 14 days even if the Parliament is not in session. The amendments shall be incorporated in the original law post the Presidential assent.

The key amendments in CGST and IGST Bills and some important changes vis-à-vis proposals of GST Council are enlisted below:

A. Amendments in CGST Bill

1. Substantive Law

Supply

- Transactions of merchanting, in-bond sales and high seas sales excluded from the purview of supply and placed under Schedule III.

(NITYA comments: For these transactions, there were interpretational issues in the past. CBIC had to step-in and issue specific clarification in case of in-bond sales and high seas sales. The amendment settles the legal position on taxability of such transactions.)

- Schedule II to only determine categorization of activities (which otherwise qualify as supply) into goods and services, and not for deeming activities and transaction listed thereunder as a 'supply'. This amendment is retrospectively applicable from July 1, 2018.

Reverse charge

- GST on reverse charge on procurements from unregistered suppliers, to be applicable only on specified goods and services in case of notified class of registered persons.

Input Tax Credit

- The value of exempt supply for the purpose of reversal of credit not to include the activities mentioned in Schedule III of the CGST Act i.e. activities not treated as supply of goods or services (except sale of land and building).
- Scope of items on which input tax credit is not available [covered under Section 17(5)] amended to include / exclude credit on following:

- Credit available on motor vehicles for transportation of persons having a seating capacity of more than 13 passengers.

(NITYA comments: The amendments aim to expand the scope on input tax credit availability on motor vehicles having capacity of more than 13 passengers, dumpers, work-trucks, fork-lift trucks etc.)

- Credit on insurance, servicing, repair and maintenance of motor vehicles has been barred and will be available in the following situations:
 - o Where credit on motor vehicle itself is available
 - o To manufacturer of such motor vehicle
 - o To insurance company engaged in insuring motor vehicle
- Credit on leasing, renting or hiring of motor vehicles barred and available only in cases where credit on motor vehicle itself would have been available or used for making outward supply of same category
- Credit on food and beverages, outdoor catering, health services etc. remains barred except where such expenses are obligatory under law (like canteen facility provided to workers under the Factories Act, 1948)

(NITYA comments: The amendment shall bring relief on expenses incurred due to an obligation under any law.)

- Order of cross-utilization of Input Tax Credit:
 - SGST / UGST can be used for payment of IGST only when CGST balance exhausted
 - CGST / SGST / UGST can be used for IGST only if IGST balance exhausted
- Transitional provisions amended to bar credit of cess (such as education cess, secondary & higher education cess and krishi kalyan cess). The provision will be applicable retrospectively w.e.f. July 1, 2017.

(NITYA comments: This amendment will result in reversal of credits of cess validly carried forwarded by the taxpayers under GST. It is expected that the taxpayers will challenge the vires of this provision since it impacts their vested right of credit validly availed, which is being taken away by this retrospective amendment.)

Refund

- Unjust enrichment to apply for supplies to Special Economic Zones.

Composition Scheme

- Threshold for composition scheme to be increased from ₹ 1 Crore to ₹ 1.5 Crore.

- Composition dealers allowed to provide services up to 10 percent of its turnover in the preceding financial year or ₹ 5 Lakhs, whichever is higher.

Changes made in GST law which were not proposed by GST Council

- Credit on insurance, servicing, repair and maintenance of motor vehicles has been allowed to manufacturers of motor vehicles and insurance companies.
- Credit on leasing of motor vehicles has also been barred.

Changes proposed by GST Council which are not made in GST law

- Non-payment of interest (on amount of credit reversal) in case of failure to pay value of procurement and GST thereon to the supplier within 180 days.

2. Procedural Law

Compliances

- Consolidated credit / debit notes can be issued against multiple invoices in a financial year.
- Provisions introduced for revised return procedures, which along with draft return formats suggest that credit will be allowed only if supplier uploads details in portal by 10th of succeeding month.
- Mandatory registration for e-commerce operators who are required to collect tax at source.
- Option for taxpayers to obtain separate GSTIN for multiple place of business (other than business verticals) within the same State / Union Territory.
- Suspension of procedural compliances when the application for cancellation of registration under process.
- Threshold limit for registration in State of Assam, Arunachal Pradesh, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand increased to ₹ 20 Lakhs.

Refund

- Relevant date for refund of unutilised ITC to be from due date of furnishing of return.

Recovery

- Tax can be recovered from distinct persons in other States / Union Territories.

Litigation

- Cap of pre-deposit of ₹ 25 crores and ₹ 50 crores to apply before Commissioner (Appeals) and Tribunal respectively.

B. Amendments in IGST Bill

Exports

- Receipt of payment received in Indian Rupees (where permitted by RBI) for services supplied to foreign recipient to qualify as export of service.

(NITYA comments: This amendment comes as a relief to service providers particularly the ones providing services to clients in Nepal and Bhutan)

Place of supply

- Place of supply for transportation service for export goods where both supplier and recipient are in India shall be deemed to be the place of destination of goods.

(NITYA comments: This amendment was aimed to ensure tax is not levied on transportation service for export goods. However, since the condition of export of service that service receiver should be outside India is not satisfied, tax will be leviable on this transaction, making this amendment redundant.)

- Place of supply for services supplied in respect of goods temporarily imported to India for any treatment or process (job-work) to be the location of service recipient (outside India). Consequently, such services will be treated as export of services.

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Contact Us



CALL US

+91 11 4109 1200
+91 11 4109 1201



MAIL US

info@nityatax.com
www.nityatax.com



REACH US

NITYA TAX ASSOCIATES,
B-3/58, 3rd Floor,
Safdarjung Enclave,
New Delhi, 110029

