

# Finance Act 2023

## GST Amendments

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### **15 AMENDMENTS IN CGST ACT**

Section	Amendments	Particulars	Effective date
137	Amendment of section 10.	Composition levy	Made effective from 01.10.2023
138	Amendment of section 16.	Input Tax Credit	Made effective from 01.10.2023
139	Amendment of section 17.	Input Tax Credit	Made effective from 01.10.2023
140	Substitution of new section for section 23(2).	Retrospective amendment	Made effective from 01.10.2023
141	Amendment of section 30	Revocation of cancellation of registration	Made effective from 01.10.2023
142	Amendment of section 37.	GSTR 1	Made effective from 01.10.2023
143	Amendment of section 39.	GSTR 3B	Made effective from 01.10.2023
144	Amendment of section 44.	GSTR 9	Made effective from 01.10.2023
145	Amendment of section 52.	GSTR 8	Made effective from 01.10.2023
146	Amendment of section 54.	Refund	Made effective from 01.10.2023
147	Amendment of section 56.	Interest on delayed Refund	Made effective from 01.10.2023
148	Amendment of section 62.	Best Judgement Assessment	Made effective from 01.10.2023
149 to 154	Setting up of GST AT		Made effective from 01.08.2023
155	Amendment of section 122.	Penalty	Made effective from 01.10.2023
156	Amendment of section 132.	Prosecution	Made effective from 01.10.2023
157	Amendment of section 138.	Compounding of offences	Made effective from 01.10.2023
158	Amendment of section 158A.	Bar on disclosure of information	Made effective from 01.10.2023
159	Retrospective exemption to certain activities and transactions in Schedule III to the CGST Act.	Retrospective amendment	Made effective from 01.10.2023

### **TWO AMENDMENTS IN IGST ACT**

Clauses	Amendments	Particulars	Effective date
160	Amendment of section 2(16) Amendment of section 2(17)	NTOR OIDAR	Made effective from 01.10.2023
161	Amendment of section 12(8).	Place of supply	Made effective from 01.10.2023
162	Amendment of Section 13	P O S o f transportation	Made effective from 01.10.2023
163	Compensation State	Rates	Not made effective

**SECTION 10. COMPOSITION LEVY**

- (2) The registered person shall be eligible to opt under section 10(1), if—
- (a) Save as provided in sub-section (1), he is not engaged in the supply of services.
  - (b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act.
  - (c) he is not engaged in making any inter-State outward supplies of goods or services.
  - (d) he is not engaged in making any supply of **goods or** services **through an electronic commerce operator** who is required to collect tax at source under section 52;
  - (e) he is not a **manufacturer** of such **goods** as may be notified by the Government on the recommendations of the Council.
  - (f) he is neither a casual taxable person nor a non-resident taxable person.
- (2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sections 9(3) and 9(4), a registered person, not eligible to opt to pay tax under section 10(1) and section 10(2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under section 9(1), an amount of tax calculated at such rate as may be prescribed, but not exceeding 3% of the turnover in State or turnover in Union territory, if he is not—
- (a) engaged in making any supply of goods or services which are not leviable to tax under this Act;
  - (b) engaged in making any inter-State outward supplies of goods or services;
  - (c) engaged in making any supply of **goods or** services through an electronic commerce operator who is required to collect tax at source under section 52;
  - (d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and
  - (e) a casual taxable person or a non-resident taxable person:

**Comments from Memorandum explaining Finance Bill:** Clause (d) of sub-section (2) and Clause (c) of sub-section (2A) in section 10 of the CGST Act is being amended so as to remove the restriction imposed on registered persons engaged in supplying goods through electronic commerce operators from opting to pay tax under the Composition Levy.

**Extract of 48th GST Council Meeting minutes****8.7 Agenda Item 7(vii): Supplies by unregistered person and composition dealers through e-commerce operators**

- 8.7.1 Principal Commissioner, GST Policy informed that the GST Council in its 47<sup>th</sup> meeting held on 28<sup>th</sup>-29<sup>th</sup> June had given in-principle approval for relaxation in the provisions for supplies by unregistered person and composition dealers making supplies through e-commerce Operators (ECOs), as detailed in the agenda. The Council had also mandated Law Committee to work out the details of the scheme.
- 8.7.2 The Law Committee deliberated on the requisite legal changes required to implement the recommendations of the Council. It recommended that for **unregistered persons, notification may be issued under Section 23(2) of the CGST Act, 2017 for exempting unregistered persons from obtaining mandatory registration for supplying goods through e-commerce operators, subject to certain conditions.** Further, two separate notifications needed to be issued under Section 148 of the CGST Act, 2017 for providing special procedure to be followed by the electronic commerce operators, one in respect of supplies of goods through them by unregistered persons and second, in respect of supplies of goods through them by composition taxpayers. Law Committee also recommended that **FORM GSTR-8 might be amended for capturing the information of supplies made by unregistered suppliers through e-commerce operators by insertion of two tables in FORM GSTR-8.** In addition, it also recommended that Rule 67(2) of CGST Rules, 2017 might be amended to clearly bring out that the details of TCS furnished by ECOs in FORM GSTR-8 shall be made available only to the registered suppliers, as the supplies by unregistered persons do not attract TCS. For composition taxpayers, to remove the condition restricting registered persons engaged in supplying through electronic commerce operators from opting for the Composition Levy, Law Committee recommended that clause (d) to sub-section (2) and clause (c) to sub-section

(2A) of Section 10 of CGST Act, 2017 might be amended. Law Committee further recommended insertion of sub-section (1B) in Section 122 of CGST Act, 2017 providing for penal provisions in cases of violation of compliances on part of the ecommerce operators in respect of the supplies made by unregistered persons and Composition taxpayers through them. Further, Law Committee also recommended that considering the time required for development of requisite functionality on the portal as well as preparedness by ECOs, **the implementation of scheme might be deferred to 01.10.2023.**

- 8.7.3 The Hon'ble Member from Haryana stated that there was requirement for a validation on the portal that an unregistered supplier should not be able to get enrolment on the portal from more than one State. Principal Commissioner, GST Policy Wing clarified that GSTN would be requested to put such a validation on the portal, so as to ensure that an unregistered person does not get enrolled in two or more States.

## **PROVISO TO SECTION 16**

<sup>2nd Proviso</sup> 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 180 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~~ **paid by him along with interest payable under section 50**, in such manner as may be prescribed:

<sup>3rd Proviso</sup> Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him ~~[to the supplier]~~ of the amount towards the value of supply of goods or services or both along with tax payable thereon.

**Comments from Memorandum explaining Finance Bill:** Second and third provisos to sub-section (2) of section 16 of the CGST Act are being amended to align the said sub-section with the return filing system provided in the said Act. Please read section 41 and Rule 37 also

## **EXPLANATION TO SECTION 17(3)**

**Special definition of exempted supplies** The value of exempt supply under section 17(2) shall be such as may be prescribed and shall include supplies on which the

# Recipient is liable to pay tax on reverse charge basis,

# Transactions in securities,

# sale of land and, subject to Schedule II(5)(b), sale of building.

**Explanation :** For the purposes of section 17(3), the expression “value of exempt supply” shall not include the value of activities or transactions specified in Schedule III, ~~except those specified in paragraph 5 of the said Schedule.~~

- (i) ~~the value of activities or transactions specified in paragraph 5 of the said Schedule; and~~  
 (ii) ~~the value of such activities or transactions as may be prescribed in respect of clause (a) of paragraph 8 of the said Schedule.~~ Bonded warehouse supply

## **Author Analysis**

Particulars	Whether part of exempt supply for the purpose of R 42/43?
Land and Building whose construction <i>has been completed</i>	Yes, Stamp Duty Value
Land and Building whose construction <i>has not been completed</i>	No, Taxable supply
Supply of goods from bonded customs warehouse	Yes
Other Schedule III supply other than Para 5 and Para 8(a)	No
Transaction in securities (No supply since neither goods nor services)	Yes, 1% of value of transaction

**SECTION 17(5). BLOCKED CREDIT**

(fa) goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his **obligations** under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

**Comments from Memorandum explaining Finance Bill:** Explanation to sub-section (3) of section 17 of the CGST Act is being amended so as to restrict availment of input tax credit in respect of certain transactions specified in para 8(a) of Schedule III of the said Act, as may be prescribed, by including the value of such transactions in the value of exempt supply.

Further, sub-section (5) of said section is also being amended so as to provide that input tax credit shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

**SECTION 23****Old**

Section 23. Persons not liable for registration.

(1) The following persons shall not be liable to registration, namely:-

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

**New- As per Finance Act 2023**

Section 23. Persons not liable for registration.

(1) The following persons shall not be liable to registration, namely:-

- (a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) ~~The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.~~ **Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24, the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act**

**New- As per Finance Bill 2023**

Section 23. Persons not liable for registration

**Notwithstanding anything to the contrary contained in sub-section (1) of section 22 or section 24,—**

(a) the following persons shall not be liable to registration, namely:—

- (i) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act, 2017;
- (ii) an agriculturist, to the extent of supply of produce out of cultivation of land;

(b) the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, specify the category of persons who may be exempted from obtaining registration under this Act.

**Comments from Memorandum explaining Finance Bill:** Sub-section (1) and sub-section (2) of section 23 of the CGST Act are being amended, with retrospective effect from 01st July, 2017, so as to provide that persons for compulsory registration in terms of sub section (1) of section and section 22 of the Act need not register if exempt under sub section (1) of section 23.

**Analysis**

S. No	Section 22	Section 23	Section 24	Registration
1.	Applicable	Not Applicable	Not Applicable	Yes as per section 22
2.	Applicable	Applicable	Not Applicable	No as per section 23
3.	Not Applicable	Not Applicable	Applicable	Yes as per section 24
4.	Not Applicable	Applicable	Applicable	No as per section 23 <b>Earlier there was confusion</b>
6	Not Applicable	Applicable	Not Applicable	Not required

**SECTION 30** read with Rule 23

- (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in ~~the prescribed manner within thirty days from the date of service of the cancellation order~~ **such manner, within such time and subject to such conditions and restrictions, as may be prescribed.**

~~[Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,=~~

- ~~(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;~~  
~~(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).~~

**SECTION 37** read with Rule 37A

- (5) A registered person shall not be allowed to furnish the details of outward supplies under sub-section (1) for a tax period after the expiry of a period of three years from the due date of furnishing the said details:

**Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the details of outward supplies for a tax period under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said details.**

**Comments from Memorandum explaining Finance Bill:** A new sub-section (5) in section 37 of the CGST Act is being inserted so as to provide a time limit upto which the details of outward supplies under sub-section (1) of the said section for a tax period can be furnished by a registered person. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

**SECTION 39** read with Rule 37A

- (11) A registered person shall not be allowed to furnish a return for a tax period after the expiry of a period of three years from the due date of furnishing the said return:

**Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish the return for a tax period, even after the expiry of the said period of three years from the due date of furnishing the said return.**

**Comments from Memorandum explaining Finance Bill:** A new sub-section (11) in section 39 of the CGST Act is being inserted so as to provide a time limit upto which the return for a tax period can be furnished by a registered person. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

**Extract of 48th GST Council Meeting Minutes**

**C. Amendments in CGST Act, 2017 to restrict filing of returns/statements after completion of specified time in view of data archival policy**

- 8.8.4 **Principal Commissioner, GST Policy mentioned that GST System has completed more than five years. GSTN has informed that the huge data size of all these years is putting an excessive load on**

the server and compromising performance. Keeping massive data available online slows down the GST system applications and impacts return filing, especially during peak filing days. Therefore, GSTN proposed a data archival policy for the smooth functioning of the GST Portal and also to provide superior experience to the taxpayers.

- 8.8.5 While deliberating on the proposed data archival policy for GST portal, the Law Committee recommended that the maximum time limit for filing returns/statements be fixed as three years beyond the due date of filing and accordingly, CGST Act, 2017 be amended by inserting sub-section (5) in Section 37 and sub-section (11) in Section 39 of the CGST Act, 2017. Law committee also recommended inserting sub-section (2) in Section 44 and sub-section (15) in Section 52 of the CGST Act, 2017.

#### **SECTION 44** read with Rule 37A

- (2) A registered person shall not be allowed to furnish an annual return under sub-section (1) for a financial year after the expiry of a period of three years from the due date of furnishing the said annual return: Provided that the Government may, on the recommendations of the Council, by notification, and subject to such conditions and restrictions as may be specified therein, allow a registered person or a class of registered persons to furnish an annual return for a financial year under sub-section (1), even after the expiry of the said period of three years from the due date of furnishing the said annual return.

**Comments from Memorandum explaining Finance Bill:** A new sub-section (2) in section 44 of the CGST Act is being inserted so as to provide a time limit upto which the annual return under sub-section (1) of the said section for a financial year can be furnished by a registered person. Further, it also seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for a registered person or a class of registered persons.

#### **SECTION 52** TCS shall be blocked

- (15) The operator shall not be allowed to furnish a statement under sub-section (4) after the expiry of a period of three years from the due date of furnishing the said statement: Provided that the Government may, on the recommendations of the Council, by notification, subject to such conditions and restrictions as may be specified therein, allow an operator or a class of operators to furnish a statement under sub-section (4), even after the expiry of the said period of three years from the due date of furnishing the said statement.

**Comments from Memorandum explaining Finance Bill:** A new sub-section (15) in section 52 of the CGST Act is being inserted so as to provide a time limit upto which the statement under sub-section (4) of the said section for a month can be furnished by an electronic commerce operator. Further, it seeks to provide an enabling provision for extension of the said time limit, subject to certain conditions and restrictions, for an electronic commerce operator or a class of electronic commerce operators.

### **Reasons for amendment made in Section 37, 39, 44 and 52**

#### **Rule 37A. Reversal of input tax credit in the case of non-payment of tax by the supplier and re-availment thereof.**

Where input tax credit has been availed by a registered person in the return in GSTR-3B for a tax period in respect of such invoice or debit note, the details of which have been furnished by the supplier in the statement of outward supplies in GSTR-1 or using the invoice furnishing facility, but the return in GSTR-3B for the tax period corresponding to the said statement of outward supplies has not been furnished by such supplier till the 30th day of September following the end of financial year in which the input tax credit in respect of such invoice or debit note has been availed, the said amount of input tax credit shall be reversed by the said registered person, while furnishing a return in GSTR-3B on or before the 30th day of November following the end of such financial year:

Provided that where the said amount of input tax credit is not reversed by the registered person in a return in GSTR-3B on or before the 30th day of November following the end of such financial year during which such input tax credit has been availed, such amount shall be payable by the said person along with interest thereon under section 50.

Provided further that where the said supplier subsequently furnishes the return in GSTR-3B for the said tax period, the said registered person may re-avail the amount of such credit in the return in GSTR-3B for a tax period thereafter

#### **SECTION 54. REFUND**

- (6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis, ninety per cent. of the total amount so claimed, ~~[excluding the amount of input tax credit provisionally accepted]~~, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

**Comments from Memorandum explaining Finance Bill:** Sub-section (6) of section 54 of the CGST Act is being amended so as to remove the reference to the provisionally accepted input tax credit to align the same with the present scheme of availment of self-assessed input tax credit as per sub-section (1) of section 41 of the said Act.

#### **SECTION 56. INTEREST ON DELAYED REFUNDS**

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent. as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund ~~[from the date immediately after the expiry of sixty days from the date of receipt of application under the said subsection till the date of refund of such tax]~~: **[for the period of delay beyond sixty days from the date of receipt of such application till the date of refund of such tax, to be computed in such manner and subject to such conditions and restrictions as may be prescribed.]**

**Comments from Memorandum explaining Finance Bill:** Section 56 of the CGST Act is being amended so as to provide for an enabling provision to prescribe manner of computation of period of delay for calculation of interest on delayed refunds.

#### **SECTION 62. ASSESSMENT OF NON-FILERS OF RETURN**

- 1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.
- (2) Where the registered person furnishes a valid return within ~~thirty~~ **sixty** days of the service of the assessment order under subsection (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

**“Provided that where the registered person fails to furnish a valid return within sixty days of the service of the assessment order under sub-section (1), he may furnish the same within a further period of sixty days on payment of an additional late fee of one hundred rupees for each day of delay beyond sixty days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest under sub-section (1) of section 50 or to pay late fee under section 47 shall continue.”**

#### **SECTION 122(1B)**

Any electronic commerce operator who—

- (i) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply; <sup>Section 24(ix)</sup>
- (ii) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply <sup>Composition Levy</sup>; or

(iii) fails to furnish the correct details in the statement to be furnished under section 52(4) <sup>GSTR 8</sup> of any outward supply of goods effected through it by a person exempted from obtaining registration under this Act,

shall be liable to pay a penalty of ten thousand rupees, or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher.

**Comments from Memorandum explaining Finance Bill:** A new sub-section (1B) in section 122 of the CGST Act is being inserted so as to provide for penal provisions applicable to Electronic Commerce Operators in case of contravention of provisions relating to supplies of goods made through them by unregistered persons or composition taxpayers.

## **SECTION 132. PUNISHMENT FOR CERTAIN OFFENCES**

(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences, namely:-

- (a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- (b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- (c) avails input tax credit using the invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;
- (d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
- (e) evades tax or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);
- (f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;
- ~~(g) obstructs or prevents any officer in the discharge of his duties under this Act;~~
- (h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;
- (i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

~~(j) tampers with or destroys any material evidence or documents;~~

~~(k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or~~

(l) attempts to commit, or abets the commission of any of the offences mentioned in ~~clauses (a) to (k)~~ **clauses (a) to (f) and clauses (h) and (i)** of this section, shall be punishable-

- (i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken **exceeds five hundred lakh rupees**, with imprisonment for a term which may **extend to five years** and with fine;
- (ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **two hundred lakh rupees but does not exceed five hundred lakh rupees**, with imprisonment for a term which may extend to **three years** and with fine;
- (iii) in the case of ~~any other offence~~ **an offence specified in clause (b)** where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds **one hundred lakh rupees** but does not exceed **two hundred lakh rupees**, with imprisonment for a term which may **extend to one year and with fine**;
- (iv) in cases where he commits or abets the commission of an offence specified in clause (f) ~~or~~

~~clause (g) or clause (j)~~, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

- (2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.
- (3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.
- (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non- cognizable and bailable.
- (5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.
- (6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation .- For the purposes of this section, the term “ tax “ shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

**Analysis: 9 offences ~~12-offence~~**

**Clause (a), ~~(b)~~, (c) and (d)**

Tax evasion	Punishment	Power to arrest
(i) Exceeds ₹ 5 Cr	upto 5 years + fine	Can be arrested u/s 69 before prosecution 132(5): <i>Cognizable</i> Arrest warrant by Commissioner u/s 69 <i>and Non-bailable</i> <i>Magistrate may grant bail</i>
(ii) Exceeds ₹ 2 Cr & upto ₹ 5 Cr	upto 3 years + fine	Can be arrested u/s 69 before prosecution 132(4): <i>Non Cognizable</i> Arrest warrant by Court <i>and Bailable</i> AC/DC may grant bail
(iii) Exceeds ₹ 1 Cr & upto ₹ 2 Cr	upto 1 year + fine	<del>Commissioner cannot arrest u/s 69 however FIR can be filed to Police for arrest even before prosecution</del> <del>132(4): Non Cognizable</del> Arrest warrant by Court <i>and Bailable</i> AC/DC may grant bail <b>No arrest No Prosecution</b>
Upto ₹ 1 Cr	-	No arrest No Prosecution

**Clause (b): Fake invoice**

Tax evasion	Punishment	Power to arrest
(i) Exceeds ₹ 5 Cr	upto 5 years + fine	Can be arrested u/s 69 before prosecution 132(5): <i>Cognizable</i> Arrest warrant by Commissioner u/s 69 <i>and Non-bailable</i> <i>Magistrate may grant bail</i>
(ii) Exceeds ₹ 2 Cr & upto ₹ 5 Cr	upto 3 years + fine	Can be arrested u/s 69 before prosecution 132(4): <i>Non Cognizable</i> Arrest warrant by Court <i>and Bailable</i> AC/DC may grant bail
(iii) Exceeds ₹ 1 Cr & upto ₹ 2 Cr	upto 1 year + fine	Commissioner cannot arrest u/s 69 however FIR can be filed to Police for arrest even before prosecution. 132(4): <i>Non Cognizable</i> Arrest warrant by Court <i>and Bailable</i> AC/DC may grant bail
Upto ₹ 1 Cr	-	No arrest No Prosecution

**Clause (e), (h), (i), (l)**

Tax evasion	Punishment	Power to arrest
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(i) Exceeds ₹ 5 Cr	upto 5 years + fine	Commissioner cannot arrest u/s 69 however FIR can be filed to Police for arrest even before prosecution <i>Non Cognizable</i> Arrest warrant by Court <i>and Bailable</i> AC/DC may grant bail
(ii) Exceeds ₹ 2 Cr and upto ₹ 5 Cr	upto 3 years + fine	
(iii) Exceeds ₹ 1 Cr and upto ₹ 2 Cr	upto 1 year + fine	<del>Commissioner cannot arrest u/s 69 however FIR can be filed to Police for arrest even before prosecution</del> <del><i>Non Cognizable</i> Arrest warrant by Court <i>and Bailable</i> AC/DC may grant bail</del> <b>No arrest No Prosecution</b>
Upto ₹ 2 Cr	-	No arrest No Prosecution

**Clause ~~(g), (j), (k);~~ (f)**

Tax evasion	Punishment	
(iv) Any amount	upto 6 months + fine	Commissioner cannot arrest u/s 69 however FIR can be filed to Police for arrest even before prosecution <i>Non Cognizable</i> Arrest warrant by Court <i>and Bailable</i> AC/DC may grant bail

**Comments from Memorandum explaining Finance Bill:** Sub-section (1) of section 132 of the CGST Act is being amended so as to decriminalize offences specified in clause (g), (j) and (k) of the said sub-section and to increase the monetary threshold for launching prosecution for the offences under the said Act from one hundred lakh rupees to two hundred lakh rupees, except for the offences related to issuance of invoices without supply of goods or services or both.

### **SECTION 138. COMPOUNDING OF OFFENCES**

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to-

(a) ~~a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (1) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;~~

a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) and (l) of sub-section (1) of section 132.

(b) ~~a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;~~

(c) ~~a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;~~

a person who has been accused of committing an offence under section 132(1)(b) *Fake Invoice no compounding.*

(d) a person who has been convicted for an offence under this Act by a court;

(e) ~~a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of subsection (1) of section 132;~~ and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ~~ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.~~ **25% of the tax involved and the maximum amount**

not being more than 100% of the tax involved.

- (3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

**Comments from Memorandum explaining Finance Bill:** First proviso to sub-section (1) of section 138 of the CGST Act is being amended so as to simplify the language of clause (a), to omit clause (b) and to substitute the clause (c) of said proviso so as to exclude the persons involved in offences relating to issuance of invoices without supply of goods or services or both from the option of compounding of the offences under the said Act. It further seeks to amend sub-section (2) so as to rationalize the amount for compounding of various offences by reducing the minimum as well as maximum amount for compounding.

### **SECTION 158A. CONSENT BASED SHARING OF INFORMATION FURNISHED BY TAXABLE PERSON.**

- (1) Notwithstanding anything contained in sections 133 <sup>liability of officers and certain other persons</sup>, 152 <sup>Bar on disclosure of information</sup> and 158 <sup>Disclosure of information by a public servant</sup>, the following details furnished by a registered person may, subject to the provisions of sub section (2) <sup>obtain consent either from supplier or recipient</sup>, and on the recommendations of the Council, be shared by the common portal with such other systems as may be notified by the Government, in such manner and subject to such conditions as may be prescribed, namely:—
- particulars furnished in the application for registration under section 25 or in the return filed under section 39 <sup>GSTR 3B, GSTR 4 to 8</sup> or under section 44 <sup>GSTR 9, 9A, 9B, 9C</sup>;
  - the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 <sup>GSTR 1</sup> and the particulars uploaded on the common portal for generation of documents under section 68 <sup>E Way Bill</sup>;
  - such other details as may be prescribed.
- (2) For the purposes of sharing details under sub-section (1), the **consent** shall be obtained, of —
- the **supplier**, in respect of details furnished under clauses (a), (b) and (c) of sub-section (1); and
  - the **recipient**, in respect of details furnished under clause (b) of sub-section (1), and under clause (c) of sub-section (1) **only where such details include identity information of the recipient**, in such form and manner as may be prescribed.
- (3) Notwithstanding anything contained in any law for the time being in force, no action shall lie against the Government or the common portal with respect to any liability arising consequent to information shared under this section and there shall be no impact on the liability to pay tax on the relevant supply or as per the relevant return.

### **Extract of 39th GST Council Meeting Minutes**

He further suggested, though not as a taxation but more of an economic issue, to enable GSTR-1 invoice data details as eligible data for lending by financial institutions to MSME. As per RBI report, the credit flow to MSME was the need of the hour since growth in MSME sector created jobs and GST data could be effectively used for making the easy credit flow possible. The Govt. certified invoices would reduce risk of lender as well as it would be a tool in the hands of the taxpayer to get access to credit / loan. Hence, it would make a small business more compliant due to the carrot in the form of proper filing of returns so as to be eligible to borrow hassle free and at the same time stick in the form of the tax to be paid on whatever was declared. In his view, enabling this facility would not be an add on but natural flow and incentive for MSME to be compliant leading to increased GSTR-1 filing. This required API based access of GSTN data to BHIM (lending platform) as well as the concurrence of tax payers to share his data for credit purposes to make it happen. However, the policy decision in this regard, would have to be taken by GSTC whether to proceed or not to proceed.

### **Extract of 47th GST Council Meeting Minutes**

7.62 Currently, the GST eco-system contains rich data about taxpayers that can be used to provide various services in a targeted fashion, e.g. making credit available to business entities, especially, the MSME. Various initiatives including flow based lending based on the invoices issued by the suppliers are in works, like Trade Receivables Discounting System (TReDS) under the Factoring Regulation Act. Currently, TReDS

accesses invoices through a complex process. With access to invoice based data, the business flow can be radically simplified for the taxpayers. Similar other initiatives like sharing data through the system of Account Aggregators brought in place by Reserve Bank of India for consent based sharing of financial data are in pipeline

7.63 The proposal of amending the GST Acts to allow sharing of supply data with the consent of the supplier and the recipient with these systems, was discussed by Law Committee and it suggested that the “Amendment to be done in CGST/SGST Act to this effect which will incorporate due safeguards for indemnity and non-liability of GSTN/GST authorities (without prejudice to any action under GST Law). The proposed amendment to ensure the provision for non-disclosure clause.”

### **CLAUSE 159 OF FINANCE ACT, 2023.**

- (1) In Schedule III to the Central Goods and Services Tax Act, paragraphs 7 and 8 and the Explanation 2 thereof (as inserted vide section 32 of Act 31 of 2018) shall be deemed to have been inserted therein with effect from the 1st day of July, 2017.
- (2) No refund shall be made of all the tax which has been collected, but which would not have been so collected, had subsection (1) been in force at all material times.

### **Schedule III. No Supply**

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.
8.
  - (a) Supply of warehoused goods to any person before clearance for home consumption;
  - (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Explanation 2. For the purposes of paragraph 8, the expression “warehoused goods” shall have the same meaning as assigned to it in the Customs Act, 1962.

Effective date proposed to be changed to 01.07.2017 from 01.02.2019.

## **IGST ACT, 2017**

### **SECTION 2(16). NON TAXABLE ONLINE RECIPIENT**

~~Non-taxable online recipient means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.~~

~~Explanation.—For the purposes of this clause, the expression governmental authority means an authority or a board or any other body,=~~

- ~~(i) set up by an Act of Parliament or a State Legislature; or~~
- ~~(ii) established by any Government,~~

~~with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted [to a Panchayat under article 243G or to a municipality under article 243W of the Constitution;~~

### **SECTION 2(16). NON TAXABLE ONLINE RECIPIENT**

Non-taxable online recipient means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation.—For the purposes of this clause, the expression “unregistered person” includes a person registered solely in terms of section 24(vi) <sup>TDS</sup> of the Central Goods and Services Tax Act, 2017.

**SECTION 2(17). OIDAR**

Online information and database access or retrieval services means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply ~~essentially automated and involving minimal human intervention~~ and impossible to ensure in the absence of information technology and includes electronic services such as,—

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;
- (v) online supplies of digital content (movies, television shows, music and the like);
- (vi) digital data storage; and
- (vii) online gaming;

**Services provided by OIDAR to NTOR is subjected to FCM**

**SECTION 12(8). POS OF GTA/VESSEL/AIRCRAFT + MAIL + COURIER**

The place of supply of services by way of transportation of goods, including by mail or courier to,—

- (a) a registered person, shall be the location of such person;
- (b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

~~Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.~~

**Example 1:**

LOS GTA etc	LOR Any person	Place of pick up of goods	Destination of goods	POS	Supply?	Claim of ITC?
MP	Registered Odisha	MP	Odisha M.P.	Odisha	Inter u/s 7(3)	Yes
MP	Registered MP	MP	Odisha	MP	Intra u/s 8(2)	Yes
MP	Unregistered Odisha	MP	Odisha	MP	Intra u/s 8(2)	No
MP	Registered Odisha	MP	<b>Singapore Odisha</b>	<b>Singapore Odisha</b>	Inter u/s 7(5)(a)	Yes* w.e.f. 01.10.2022 no exemption in S. No 20A and 20B

**S No 20A.** Services by way of transportation of **goods** by an **aircraft** from customs station of clearance in India to a place outside India. India to Outside India | Place of supply is outside India | Exemption not available w.e.f. 01.10.2022

**S No 20B.** Services by way of transportation of **goods** by a **vessel** from customs station of clearance in India to a place outside India. India to Outside India: by Indian vessel or Foreign vessel | Place of supply is outside India | Exemption not available w.e.f. 01.10.2022

**SECTION 13(9). PLACE OF SUPPLY OF SERVICES BY WAY OF TRANSPORTATION OF GOODS**

~~The place of supply of services of transportation of goods, other than by way of mail or courier<sup>S-13(3)(a)</sup>, shall be the place of destination of such goods.~~

~~After deletion of this clause place of supply shall be determined by section 13(2)~~

**Example 1:**

LOS	LOR	Place of pick up of goods	Destination of goods	POS	Supply?
India MP	Outside India	MP	Singapore	Singapore	Inter u/s 7(5)(a)
India MP	Registered Odisha	MP	Singapore	Singapore	Inter u/s 7(5)(a)

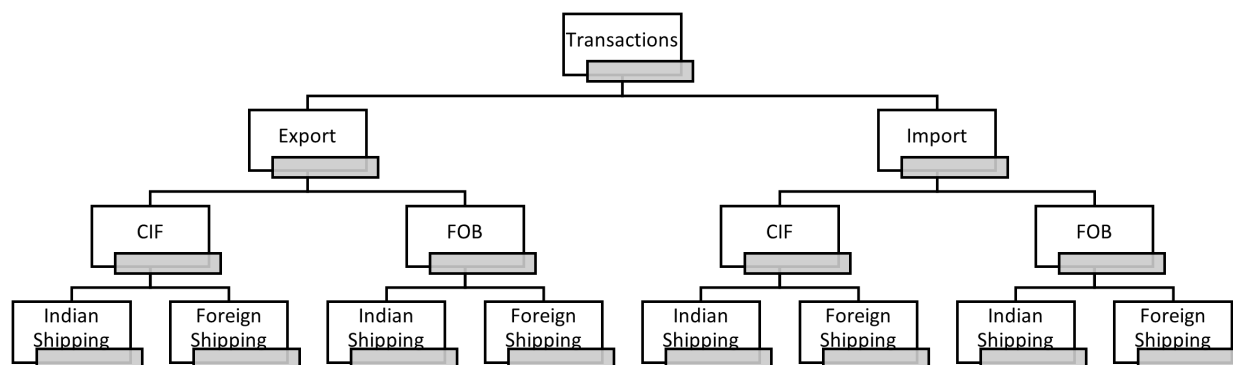
**SECTION 13(2). GENERAL**

The place of supply of services <sup>POS</sup> except the services specified in sections 13(3) to 13(13) shall be the location of the recipient of services <sup>LOR</sup>.

Provided that where the location of the recipient of services <sup>LOR</sup> is not available **in the ordinary course of business**, the place of supply shall be the location of the supplier of services <sup>LOS</sup>.

**Example 1:**

LOS	LOR	Place of pick up of goods	Destination of goods	POS	Supply?
India MP	Outside India	MP	Singapore	Outside India	Inter u/s 7(5)(a)
India MP	Registered Odisha	MP	Singapore	Registered Odisha	Inter u/s 7(5)(c)



S. No		LOS of Service	LOR of Service	Place of pick up of goods	Destination of goods	POS of Service		Supply?		Charge
1.	•Export •CIF •Indian Ship	Indian Shipping India MP	India MP	India MP	Outside India	Proviso to S 12(8)	Outside India	7(5)(a)	Inter	FCM*
						S 12(8)	India MP	8(2)	Intra	FCM
2.	•Export •CIF •Foreign Ship	Foreign Shipping Outside India	India MP	India MP	Outside India	S 13(9)	Outside India	-	-	No Levy
						S 13(2)	India MP	7(4)	Inter	RCM Import
3.	•Export •FOB •Indian Ship	Indian Shipping India MP	Outside India	India MP	Outside India	S 13(9)	Outside India	7(5)(a)	Inter	FCM**
						S 13(2)	Outside India	7(5)(a)	Inter	FCM**
4.	•Export •FOB •Foreign Ship	Foreign Shipping Outside India	Outside India	India MP	Outside India	S 13(9)	Outside India	-	-	No Levy
						S 13(2)	Outside India	-	-	No Levy
5.	•Import •CIF •Indian Ship	Indian Shipping India MP	Foreign Exporter Outside India	Outside India	India	S 13(9)	India	7(5)(c)	Inter	FCM**
						S 13(2)	Outside India	7(5)(a)	Inter	FCM*
6.	•Import •CIF •Foreign Ship	Foreign Shipping Outside India	Outside India	Outside India	India	S 13(9)	India	-	-	No Levy
						S 13(2)	Outside India	-	-	No Levy
7.	•Import •FOB •Indian Ship	Indian Shipping India MP	India MP	Outside India	India	S 12(8)	India	8(2)	Intra	FCM
						S 12(8)	India MP	8(2)	Intra	FCM
8.	•Import •FOB •Foreign Ship	Foreign Shipping Outside India	India MP	Outside India	India	S 13(9)	India	7(4)	Inter	RCM Import
						S 13(2)	India	7(4)	Inter	RCM Import

\* No Levy

\*\* Export of service if other conditions are satisfied