

Budget: Expectations v/s Reality!!



CA Deepali Mishra

Deputy Manager I Taxmann I Indirect Taxation I Research & Advisory

INTRODUCTION

As Indian Economy is still struggling to recover from the aftermath of pandemic, all eyes were set on 'Union Budget 2021'. Expecting this budget as the 'The Budget never before', individuals and corporates hoped some special reliefs in the form of extension of deadly timelines which never accounted for after the pandemic, reduction of compliance/tax burden, polite approach towards statutory restrictions and so on. Now, once the Budget is presented on 1st February 2021, let's understand in detail how the same has live up to the expectations of Public at large.

1. Extension of Time line to avail ITC under Section 16(4) of CGST Act 2017

The registered taxable person is entitled to claim the credit of inputs, input services, or capital goods upon the fulfilment of conditions and restrictions specified in the GST law. The following conditions must be fulfilled by the registered person to claim the credit of input tax:

- a) He must have tax paying document
- b) He should have received goods or services or both
- c) The tax must be paid on such goods and services
- d) The return must be filed by the taxpayer

However, the above stated credit could be claimed only up to the time line specified by the law. The time limit for claiming ITC by the registered person, at the expiry of which

he shall not be entitled to take the credit in respect of any invoice or debit note for supply of goods and/or services shall be earlier of:

- a) The due date of furnishing the periodical return¹ for the month of September following the end of financial year to which such invoice/debit note pertains
- b) Furnishing of the relevant Annual Return

As the entire nation was under lockdown since March 2020, and from individual to corporates were working from home to turn their financial wheels, the condition and the restriction so imposed by the GST law was very difficult to comply with. Many either failed to obtain the proof of Tax paying document such as invoices/debit issued by supplier, bill of entry or similar document prescribed under Customs legislation or failed to determine the exact figure of ITC that was required to be claimed up to the time line. The continuous revision of due date's added woes to this issue. Despite receiving several representations from various councils no news was ever heard for extension of timelines for claiming the credit under section 16(4) of CGST Act 2017, as a result of which many taxpayers suffered huge losses.

Now when the Finance Bill 2021 has been presented in the Parliament, no such recommendation has been considered by the government. Moreover, additional condition has been inserted for availment of Input tax credit. Now, input tax credit on invoice or debit note can be availed only when the details of such invoices/debit notes has been furnished by the supplier in his statement of outward supplies. Thus, unless invoices/debit notes are uploaded by the supplier in his GSTR 1 and the same are reflected in GSTR 2A of the recipient, the recipient shall not be liable to avail ITC in his return.

2. Refund related issues

2.1 Refund of ITC on inverted duty structure

Presently, ITC refund relating to input services is not allowed while claiming refund of inverted duty structure as the formula prescribed under the CGST Rule 2017 excludes input services from its computation. Hence, ITC of input services become cost to the taxpayer. Thus, various recommendations have been made so that Input services should be included in net ITC for claiming refund of inverted duty structure. It is further suggested to introduce similar provision like section 54(6) of the CGST Act, to grant provisional refund in respect of refund claims received against inverted tax rate structure

¹ Section 39 of the CGST Act 2017

to the extent of ninety percent of the total claim within seven days of filing such refund claims. This would also require incorporating necessary changes in Rule 91(1) & (2).

2.2 Undue delay in processing refund

Presently, tax authorities are taking considerable time in processing refund i.e. beyond sixty days of maximum time limit specified in section 54(7) of CGST Act, 2017. Delay in receipt of refund is severely impacting the working capital management of the taxpayers. Moreover, even after receiving late refund by the department no interest is being received to compensate the loss. Thus, it was recommended to fasten the process so that issues relating to late receipt of refund could be eased out along with the payment of interest.

Even after receiving several recommendations, the amendment proposed in the Finance Bill 2021 in respect of refund states that supplies of goods or services to SEZ developer/unit would be treated as zero rated supply only if those are towards the authorized operations. It even proposed that goods/services can only be exported under Bond/LUT. Now, as per the proposed bill realization of sale proceeds for export of goods have been made mandatory under the CGST Act. In case of non-realization of sale proceeds, the supplier would be liable to deposit the refund so received along with interest.

The general option of making zero rated supply under payment of IGST and claiming refund has been done away with and only notified class of persons and notified class of goods or services would be allowed to make zero rated supply with payment of IGST.

3. Mechanism/ rules for determining the quantum of benefits to be passed on under anti-profiteering provisions

Till date there are no clear guidelines / mechanism prescribed for determining the benefits to be passed under anti-profiteering provisions. More than 50 petitions have been filed challenging the constitutional validity of anti-profiteering regulations. The companies that challenged the department over anti-profiteering provisions under GST are Hindustan Unilever, Jubilant Foodworks, Abbott, Nestle, Whirlpool, IFB, etc.

As per Section 171 of the CGST Act 2017, suppliers of goods and services should pass the benefit of any reduction in the rate of tax or the benefit of input tax credit to the recipients by way of commensurate reduction in prices. The petitioners have raised multiple issues related to the anti-profiteering. They also challenged the methodology or procedure adopted by NAA as it lacks economic base.

However, no such proposal has been made till date in the Finance Bill. Thus, confusions pertaining to determination of benefits required to be passed on to the recipients by way of commensurate reduction in prices still persists.

4. IGST on ocean freight

The provisions of IGST Act applies only on the supplies made in the taxable territory. In case of ocean freight since both, the service provider i.e. shipping line as well as the service recipient i.e. exporter are located outside India, IGST cannot be levied. Currently, GST @ 5% is liable to be paid on ocean freight as a supply of service (as per sr. no. 9(ii) of IGST Notification No. 8/2017). In addition to it, Indian importer is also liable to pay IGST on reverse charge basis (as per sr. no. 10 of IGST Notification No. 10/2017).

As per the meaningful reading of Section 5 of IGST Act, 2017, the person who is neither the supplier nor the recipient of services, he cannot be made liable to pay tax under the IGST Act. Thus, when person imports goods on CIF basis the transportation of goods in a vessel is the obligation of the foreign exporter. The person is not at all concerned with how the foreign exporter delivers the goods at the Indian port or whether the consideration of the shipping line is paid by the foreign exporter or not. Thus, the person could be said to have neither availed the services of transportation of goods in a vessel nor he is liable to pay consideration for such services, hence he is not the 'recipient' of the transportation of goods in a vessel service. Hence person cannot be taxed on some supposed theory that the importer is directly or indirectly receiving some services.

Recently Gujarat High Court set aside² levy of IGST on ocean freight in case of import of goods on CIF basis stating it as ultra vires of the provisions of the Integrated Goods and Services Tax Act, 2017.

However, till date no such relief has been proposed under the Finance Bill 2021. Therefore, issue of double taxation on ocean freight, once by way of levy of IGST as element of Customs duty and another by way of IGST on import of services still endures in the market.

5. Simplifications of Annual Returns and GST Audit

Annual return (GSTR 9) and GST Audit (GSTR 9C) remained under the spot light ever since its FORMS were released by the department. The prime reason for constant request of extension of due dates has been its format seeking data of outward and inward supplies. With frequent changes in GST law it was almost impossible to file of GSTR 9 and 9C as per the timelines specified under the statute.

² [2020] 120 taxmann.com 301 (Gujarat), Bharat Oman Refineries Ltd. v. UOI

Considering the complexities in the FORM, press release were issued by the department, mentioning clarifications and justifications of the data sought under these statements.

However, now when the bill has been presented in the Parliament, it has been proposed by the government to scrap the requirement of getting the annual accounts audited and furnishing of reconciliation statement. The provisions relating to filing of Annual Return (i.e. Form GSTR 9) have also been amended to provide that the registered person would be required to furnish annual return in the Form GSTR-9 which may include a self-certified reconciliation statement. Bill even propose to empower the Commissioner to exempt a class of taxpayers from the requirement of filing of Form GSTR-9. It has also been provided that the department of the Central Government or a State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor General ('CAG') of India or an auditor appointed for auditing the accounts of local authorities would not be require to comply with the above requirement.

6. Clarification on provisional attachment of property including bank account

As per the provisions of Section 83 of the CGST Act, property including the bank account of registered person could be attached provisionally by the commissioner only if he is of the opinion that it is necessary for protecting the interest of Revenue.

The attachment can be made only when the proceedings are pending in the below cases:

- (a) For assessment of non-filers of returns under Section 62
- (b) Assessment of unregistered persons under Section 63
- (c) Summary assessments under Section 64
- (d) Power of inspection, search and seizure under Section 67
- (e) Determination of tax not paid or erroneously availed input tax credit due to fraud or willful misstatement as dealt under section 74 or any other reason as dealt under section 73

However, with constant litigations challenging this provision proves how viciously government is exercising its power. Thus, every registered person was under the dire need of clarifications on this aspect in GST.

Considering the recent judicial pronouncements Finance Bill proposed to widen the scope of provisions relating to attachment of the property including bank accounts for the purpose of protecting the interest of the Revenue. Under this proposal Commissioner has been empowered to attach the property under various provisions of the CGST Act from the initiation of the proceedings under Chapter XII- Assessment, Chapter XIV- Inspection, Search, Seizure and Arrest or Chapter XV- Demand & Recovery of the CGST Act.

Further, the Commissioner other than the taxable person, may attach the property belonging to any person specified in sub-section (1A) of section 122 of CGST Act,2017 i.e., any person who assist the taxable person for conducting transaction like receives any goods or services without issue of invoice, issue any invoice without supply of goods or services, etc.

CONCLUSION

Considering, the current scenario of fake invoicing and bogus firms and the proposals made under the Finance Bill 2021, it is very clear that government is under no impression to ease out rules and regulations in GST. However, the author is of firm belief that where the issues raised by the taxpayers were genuine and the provisions seeks to be too harsh the government considering the pandemic should have brought out some relief package to the taxpayers.