

**GABHAWALLA & CO.**  
**CHARTERED ACCOUNTANTS**

# **UNION BUDGET 2023**

## ***GST HIGHLIGHTS***

Dear Readers,

Finance Minister Smt. Nirmala Sitharaman presented the Union Budget and introduced Finance Bill 2023 in Lok Sabha for FY 2023-24. The Budget lays down the vision for Amrit Kaal, i.e., journey from 75<sup>th</sup> year to 100<sup>th</sup> year of Independence. The expenditure outlay in Budget depicts the focus of Government on green energy, healthcare, agriculture and infrastructure.

Various GST related changes are proposed in the Finance Bill. We herewith present a summary of proposed changes along with our views.

1. Section 10 of the CGST Act, 2017 is proposed to be amended to permit composition option to registered persons engaged in supplying goods through electronic commerce operators if they are otherwise eligible. The provisions of TCS would continue to apply in such cases and the TCS Credit can be adjusted against the composition tax liability
2. Explanation to section 17(3) of the CGST Act is proposed to be amended so as to restrict availment of input tax credit in respect of supply of warehoused goods before clearance for home consumption by including the value of such transactions in the value of exempt supply for the purposes of reversal under Rules 42 and 43. It may be noted that in case of high seas sales and out-and-out transactions of supply of goods, the ITC Restriction and consequent reversal will not be applicable. In case of multi-locational enterprises, in our view, the ITC Restriction and consequent Reversal for supply of warehoused goods before clearance for home consumption will be triggered in the State where the warehouse is located.
3. Section 17(5) is proposed to be amended to block input tax credit in respect of goods or services 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. In the past, there was a controversy on the eligibility or otherwise of input tax credit related to such CSR Activities and the Advance Ruling Authorities have given contradictory rulings in this topic [2022-VIL-293-AAR and 2021-VIL-355-AAR]. In view of the specific prospective amendment, it can be argued that for earlier periods, the credit should be allowed.
4. Section 23 of the CGST Act provides for exemption from registration in case of entities engaged in exclusively supplying exempted goods or services or an agriculturist. However, there was a controversy whether such entities were required to register if they are listed under Section 24 requiring compulsory registration (like liability towards reverse charge mechanism and many others). Section 23 is now proposed to be retrospectively amended w.e.f. 01.07.2017 to provide that Section 23 relating to exemption from registration will override Section 24 requiring compulsory registration and hence such entities will no longer be required to register even if they are governed by the provisions of Section 24.
5. An outer time limit of filing the returns (like GSTR1, GSTR3B & GSTR9) is being proposed. Accordingly, such returns cannot be filed after a period of three years from the due date of the filing of the said returns. This amendment is significant since return filing obligations are the core of further steps like assessment by the Department. In the absence of returns filed, it is possible that the Department may invoke the provisions of Section 62 and pass an assessment order on best judgement basis. In such a situation, Section 62(2) provides for withdrawal of the assessment order if the taxpayer files a

return within 30 days of the service of the said order. It is not clear whether Section 62(2) resurrects the rights of the taxpayer to file a return, albeit delayed beyond three years or whether the said provision becomes redundant in such cases.

6. Penalties have been prescribed on Ecommerce Operators in case of contravention of provisions relating to supplies of goods made through Ecommerce Operators by unregistered persons or composition taxpayers.
7. Sub-section (1) of section 132 of the CGST Act is proposed to be amended so as to decriminalize certain offences (failure to provide information, obstructing Officer in discharging duties, tampering of evidence). Further, the monetary threshold for launching prosecution for the offences under the said Act is being increased 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
8. The exclusion provided for high seas sales, warehoused goods and out-and-out sales through Schedule III of the CGST Act, 2017 is given retrospective impact effective from 01.07.2017. However, it is clarified that if any tax is collected and paid, the refund will not be available. In the past, some advance rulings held such transactions to be taxable for periods before 01.02.2019. In such cases, if the taxpayer has paid the tax from his own pocket without collection, he would still be eligible to claim the refund.
9. The definition of 'non-taxable online recipient' for the triggering of supplier-based liability towards OIDAR Service is proposed to be amended to specify unregistered person receiving such services under the scope of the definition. Further, the requirement of the service to be essentially automated and requiring minimal human intervention has been dropped from the definition of OIDAR Service
10. The proviso to Section 12(8) is proposed to be dropped. Therefore, in case of transportation services, the place of supply will be determined based on the address of the recipient of service in case the recipient is registered.

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