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Analysing developments impacting business

KEY CHANGES IN GST LAW EFFECTIVE FROM 1 OCTOBER 2023

4 October 2023

This ERGO intends to incapsulate key amendments in Goods and Services Tax (GST) law that have become effective from 1 October 2023; most of these were introduced during the Union Budget 2023 *vide* Finance Act, 2023.

Amendment	Comments
Export of goods and / or services and supplies to SEZ	<p data-bbox="722 1037 1541 1160">Effective 1 October 2023, there have been significant amendments to the provisions concerning zero-rated supply under Section 16 of the Integrated Goods and Services Tax Act, 2017 (IGST Act). The revised Section 16 introduces several key changes:</p> <ul style="list-style-type: none"> <li data-bbox="722 1196 1541 1384">a) Supply of goods and services under a LUT is the 'thumb rule' now: Unlike earlier, now the 'thumb rule' is that suppliers engaged in zero-rated supplies of goods / services can claim a refund of unutilised ITC when exporting / supplying to SEZ units / developers without payment of GST, under Bond / Letter of Undertaking (LUT). <li data-bbox="722 1420 1541 1861">b) The option of paying GST on exports / supplies to SEZ and claiming refund thereof is now contingent upon a specific notification allowing the same: The option to export goods by paying tax and subsequently claiming a refund for the tax paid is now restricted to specific classes of goods as notified. Accordingly, Notification No 1/2023-IT dated 31 July 2023 was issued, notifying all goods and services as a special category eligible for this benefit, except for a few items such as pan masala, unmanufactured tobacco, hookah, smoking mixtures, and chewing tobacco, among others. However, this list may be pruned down in the future. Also, no such enabling notification seems to have been issued for supplies to SEZ units / developers and accordingly, this option may no longer be available for such suppliers. <li data-bbox="722 1897 1541 2114">c) Non-Realisation of Export Payments: If consideration for the export of goods is not received, the supplier is obligated to deposit the refund received within 30 days after the expiration of the time limit specified under the Foreign Exchange Management Act, 1999 for the receipt of foreign exchange remittances. Although a similar provision exists under Rule 96B of the Central Goods and Services Tax Rules,

2017 (CGST Rules), the amendment has been carried out to incorporate the condition of realisation of export proceeds in the IGST Act itself.

Place of supply in case of transportation of goods

Section 12(8) of the IGST Act now stands amended. The effect of the amendment is that for services by way of transporting goods to a place outside India where both the service provider and recipient are located in India, the determination of the place of supply now hinges on the recipient's location (for registered recipients) or the consignment handover point (for unregistered recipients), rather than the destination of the goods.

Similarly, Section 13 of the IGST Act has also been amended vis a vis transportation of goods (other than by way of mail / courier) in cases where either the service provider or the recipient is located outside India - place of supply would now be determined based on the default rule i.e., based on the location of the recipient of services.

E-commerce Operator (ECO)

Amendment to Section 10 of the CGST Act have been made effective from 1 October 2023. According to the amendment, the previous restriction preventing registered individuals engaged in supplying goods through ECO from opting for the composition scheme has been removed. Now, composition dealers are allowed to supply goods through ECO (but not services).

Additionally, ECO entities are mandated to adhere to a specific procedure for supplies made through them by composition or unregistered taxpayers:

Registration status of supplier	Procedure to be followed by ECO
Composition supplier	<ul style="list-style-type: none"> No inter-state supply of goods to be undertaken by such supplier. ECO to collect tax at source. Mandatory furnishing details of supply in Form GSTR-08.
Unregistered supplier	<ul style="list-style-type: none"> No inter-state supply of goods to be undertaken by such supplier. ECO not to collect tax at source. Mandatory furnishing details of supply in Form GSTR-08. Ensure that such supplier has obtained an enrolment number.

Penalties have been outlined for ECO entities in the event of any violations of the regulations pertaining to supplies of goods facilitated by them from unregistered individuals or composition taxpayers.

Furthermore, online sellers of goods are exempt from GST registration if their aggregate turnover in both the previous and current financial years does not exceed the specified threshold out of intra-state supplies made by it.

Input Tax Credit (ITC)	<ul style="list-style-type: none"> ▪ Reversal of ITC is mandatory for the supply of warehoused goods to any person before clearance for home consumption (i.e., 'in-bond sales'). ▪ ITC cannot be claimed for goods or services intended for corporate social responsibility activities. ▪ Section 54 of the CGST Act has been amended to remove references to provisional accepted ITC, aligning it with the current scheme of self-assessment for ITC under Section 41 of the CGST Act. ▪ Recipients must pay back ITC availed on invoices if the payment has not been made within 180 days, along with applicable interest.
Activities which are neither as a supply of goods nor a supply of services	<p>The following transactions have been added to Schedule III of CGST Act 2017 (<i>activities / transactions which are neither as a supply of goods nor a supply of services</i>) with retrospective effect from 1 July 2017:</p> <ul style="list-style-type: none"> a) Supply of goods from one location in a non-taxable territory to another location in the non-taxable territory, without the goods entering India. b) Supply of warehoused goods to any individual before clearance for home consumption. c) Supply of goods by the consignee to another person through the 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.
Filing of returns	<p>Filing of returns and statements under GST (i.e., GSTR 1, GSTR 3B, GSTR 9, GSTR 8) will not be allowed after three years from the relevant due dates.</p> <p>Non-filers of GST returns have a window of 60 days (earlier it was 30 days) from the date of ASMT-13 to file their returns and get their ASMT-13 withdrawn.</p> <p>Further, the returns can be filed beyond 60 days within a further period of 60 days subject to payment of an additional late fee of one hundred rupees for each day of delay beyond sixty days and the ASMT 13 shall be withdrawn.</p>
Revocation of registration cancellation	<p>The time period to submit an application for revocation of cancellation of GST registration has been extended from 30 days to 90 days from the date of order of cancellation. Further, this time period can be extended for a further period of 180 days by the designated officer.</p>
Interest on delayed refund	<p>If there is a delay of 60 days or more from the date of receiving a refund application, in granting refund, interest will be provided to the applicant as compensation.</p> <p>The following periods will be excluded when calculating the delay:</p> <ul style="list-style-type: none"> a) Any period beyond 15 days from the receipt of notice in FORM GST RFD-08 during which the applicant takes to provide a

response in FORM GST RFD-09, submit additional documents, or reply.

- b) The time taken by the applicant for furnishing or validating correct bank details, where the refund amount sanctioned could not be credited to the bank account furnished by the applicant.

- Changes in OILDAR landscape
- The definition of a non-taxable online recipient has been streamlined by eliminating the requirement of receiving Online Information and Database Access or Retrieval (OIDAR) services for purposes other than commerce, industry, or any business or profession.
 - The criterion of minimal human intervention has been omitted from the definition of 'Online Information and Database Access or Retrieval Services.'
 - Form GSTR 5A has been revised to incorporate information about services provided by OIDAR operators to non-taxable online recipients or registered individuals in India as well as by foreign online gaming platforms.

Changes in monetary limits for prosecution and compounding

Except in cases involving fake invoicing, the prosecution threshold has been amended from Rs 1 crore to 2 Crore.

Also, the prescribed fees for compounding of GST offences have been reduced to the range of 25% to 100% of the tax amount involved (as opposed to the earlier 50 to 150%). However, option of compounding has been taken away for cases of fake invoicing.

GST rate on 'Online Gaming'

GST rate of 28% on the value of initial deposits staked / chips purchased by players with online real money gaming platforms / casinos will be implemented from 1 October 2023.

GST Council will review the implementation of this new 28% GST regime on online gaming and casinos after six months.

GST liability on ocean freight under reverse charge mechanism (RCM)

In light of the decision of Hon. Supreme Court in the case of Union of India & Anr. v M/s Mohit Minerals Pvt. Ltd. (*Civil Appeal No. 1390 of 2022*), wherein it was held that imposition of GST on ocean freight in case of CIF imports is ultra-vires the GST law, *Notification 10/2017-IT(R) dated 28 June 2017* has been amended to eliminate GST on such transactions.

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