

PRE-BUDGET MEMORANDUM

ON

**INDIRECT TAXES
(Goods & Services Tax)**

**UNION BUDGET 2021-22
(Issues & Justification)**

DIRECT TAXES PROFESSIONAL'S ASSOCIATION

**3, GOVERNMENT PLACE (WEST)
INCOME TAX BUILDING
KOLKATA-700001
Ph: 033-22420638
email: dtpakolkata@gmail.com**

DIRECT TAXES PROFESSIONALS' ASSOCIATION

Income Tax Building, 3, Govt. Place West, Ground Floor, Kolkata 700001 Ph 033-22420638

Email : dtpakolkata@gmail.com

8th November, 2020

To,
The Hon'ble Finance Minister,
Govt. of India,
North Block
New Delhi-110001

Sub: HUMBLE SUGGESTIONS ON GST LAW FOR PRE-BUDGET MEMORANDUM

1. ITC availment Restriction limit

Rule 36(4) of CGST Rules, 2017 specifies that Input tax credit to be availed by a registered person in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37, shall not exceed 10 per cent of the eligible credit available in respect of invoices or debit notes the details of which have been uploaded by the suppliers under sub-section (1) of section 37.

Issue: There are several reasons due to which it is practically difficult to reconcile the ITC claimed vis-a-vis that appearing in GSTR 2A like:

- The recipient is filing monthly return but the supplier is filing quarterly return;
- It is a very cumbersome process to always reconcile the GSTR2A especially in cases where the supplier uploads its GSTR 1 with delays.
- This rule is creating huge working capital blockage for tax payers who are not being able to claim ITC due to the fault of the supplier in spite of the fact that in many cases such tax payer has already paid to his supplier.

Suggestion: This Rule imposing restrictions limiting input credit at 10% of ITC appearing in GSTR 2A should be dispensed with.

2. Input Tax Credit

Section 17(5) of the CGST/SGST Act provides that 'Input tax credit shall not be available in respect of the:

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(c) works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course or furtherance of business.

Issue - Input Tax Credit on works contract and construction services are not allowable except in case where similar service provided. This can cause a genuine hardship to the persons who shall be using such goods/services for construction of their factory, or those persons who shall be constructing a property for letting it out. In such cases the rentals would be charged with full rate of GST, but there won't be any allowability of credit of GST paid on construction services/goods.

Suggestion – *It is suggested that credit of goods/services acquired in the construction of immovable property should be allowed without any restrictions, in one go or in staggered manner.*

3. GST Rates

There are multiple GST rates on various goods and services at present leading to complexities and ambiguities. Moreover classification issues are also prevalent in many sectors.

Suggestion

The number of GST Rate slabs should be reduced and brought down to two rates only, with separate rate for demerit goods.

4. Invoicing

Issue – Section 31(3)(g) of CGAT Act, 2017 requires issuance of payment vouchers at the time of making payments to such vendors.

These compliances create huge burden on the registered person.

Suggestion - Issuance of payment voucher should be done away with.

Delivery Challan

Issue - Rule 55 of CGST Rules require issuance of delivery challan for transport of goods without issue of invoice. The prescribed particulars to be

mentioned on such delivery challan include *taxable value*. However, it is practically difficult in most of the cases to provide the taxable value of goods being transported for reasons other than supply such as job work, etc.

Suggestion - Mentioning of taxable value should not be mandatory on delivery challan (for all registered persons or for those having aggregate turnover below a specified threshold) and the relevant rules should be modified accordingly.

Alternatively, a specific valuation mechanism should be specified in the valuation rules for the taxable value to be mentioned in case of delivery challan for goods sent to job worker.

5. Section 9(3) of CGST Act, 2017

The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Issue:

An unregistered recipient of specified categories of goods or services or both, shall be liable to pay tax on such goods and services, as if he is the person liable to pay tax. For the purpose of paying the tax, he shall be liable to get registered under the Act. And once he gets registered under the Act, he shall be liable to comply all the provisions of the Act, which are applicable to a registered person:

- a) File all the periodical returns from time to time
- b) Pay tax on reverse charge basis under section 9(4) - at present suspended till 31st March,2017

Suggestion:

Up to a certain threshold of tax liability (say 50,000/- in a year), the recipient should be given a facility of paying tax through a challan cum return mode as is available to a deductee under the Income Tax Act, 1961. Whenever a person purchases an immovable property exceeding Rs. 50 lakhs, he is liable to deduct 1% of the total consideration paid to the seller under section 194-IA of the Income Tax Act. After deducting the tax, he has to pay the tax to the credit of the Central Government. Without taking registration under the

provisions of TDS, he is given the facility of paying the tax through Challan cum Statement of Deduction of Tax in Form 26QB of Income Tax Rules.

Similar facility can be provided in the GST law, so that any person liable to pay tax under section 9(3) of the Act, can do the same without being liable to comply with several provisions of the Act which have been mentioned above.

6. Place of Supply

Section 12 of IGST Act, 2017 prescribes the determination of place of supply of services where both service provider and service recipient are located within India.

Issue - It has been observed that in many cases such as Accommodation services in Hotels, the place of supply has been specified to be the location of such hotel. Hence the service provider is charging CGST and SGST in such cases. However there are situations where the service recipient is registered in some other state outside the state where such hotel is located and hence such recipient is not getting the credit of such tax paid.

Suggestion – It is suggested that place of supply of services covered under Section 12 of IGST Act, 2017, should be specified to be the place of registration of the service recipient in case of registered persons and address on record in case of unregistered persons, and where no address is available for such unregistered recipients, then place of supply can be deemed to be location of service provider.

7. Refund in case of accumulated Credit where input tax credit amount is higher than tax liability.

Sec 54(3)(ii) of CGST Act provides that no refund of unutilised input tax credit shall be allowed in cases other than where the credit has accumulated on account of **rate of tax on inputs** being higher than the rate of tax on **output supplies** (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

Issue:

A manufacturer or a service provider may have accumulated credit balances for the reason that he is availing input services which attract at higher rate of GST (say, 18% or 28%) whereas the final product or output

service attracts GST rate of 18% or 28%. However, this provision allows refund benefits only if the input is subject to higher rate of GST and not in case where the input service attracts higher rate of GST. If a strict interpretation is taken that refund would be allowed only if the GST rate of input is higher without considering the rate of input service, then the very object of the provision would stand defeated.

Suggestion

It is suggested that the word 'inputs' be replaced with the phrase 'inputs or input services'

Also, the word 'Output Supply' be replaced with the word 'Outward Supply'.

8. Filing of fresh refund application consequent upon issue of deficiency memo

Section 54(1) of the CGST Act, 2017 provides that any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, **may make an application before the expiry of two years from the relevant date** in such form and manner as may be prescribed.

Rule 90(3) of the CGST Rules, 2017 provides that where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in **FORM GST RFD-03** through the common portal electronically, requiring him to file a **fresh refund application** after rectification of such deficiencies.

Issue: When a deficiency memo is issued and applicant is asked to file a fresh refund claim, two years of time limit from relevant date would be considered for fresh application though the original application was filed within the time limit mentioned in the [section 54](#) of the act. Now, there may be a situation where original application for the refund was filed within the last week of the due date and a deficiency memo was issued against the same requiring filing of fresh application. This would invariably result in filing of fresh refund application after the due date. In such a scenario, there is a high probability that refund claim could be treated as time-barred application by the department.

Suggestion: *It is suggested that suitable amendment be made in the rules whereby same application should be moved forward once reply is submitted by the applicant rectifying the deficiency or alternatively, fresh application should be deemed to be filed within two years' time limit if original application has been filed within the said period.*

9. GST payable under RCM

Notification No. 07/2019 -CT(RATE) dated 29.03.2019 was issued specifying that the promoters are required to pay GST under Reverse Charge Mechanism (RCM) in respect of shortfall from the minimum threshold of 80% of value of goods or services or both required to be purchased for construction of project from registered suppliers.

For calculating this threshold, the value of services by way of grant of development rights, long term lease of land, floor space index, or the value of electricity, high speed diesel, motor spirit and natural gas used in construction of residential apartments in a project shall be excluded.

Issue: As per the above mentioned notification and the FAQ issued by the Government in this regard on 14th May 2019, Inward supplies of exempted goods / services shall be included in the value of supplies from unregistered persons while calculating 80% threshold. However there are expenditures like interest paid on loans which can also be classified as exempt supplies, and taking such supplies for calculation purposes would lead to payment of taxes on such exempt supplies which otherwise do not attract any GST

Suggestion: Suitable clarification should be issued or notification to be amended to exclude exempt inward supplies for the purpose of computing the minimum 80% threshold.

10. Levy of IGST on Ocean Freight

Sl. No. 10 of N. No. 10/12017- Integrated tax (Rate) dated 28.06.2017 provides that an importer located in the taxable territory shall be liable to pay integrated tax under reverse charge in respect of 'services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Rate thereof is provided in Sl. No. 9(ii) of N. No. 08/2017-Integrated Tax (Rate) dated 28.06.2017.

Issue: In case of import of goods on CIF (i.e. cost, insurance, freight) basis, the contract is for supply of goods delivered at the Indian port. The transportation of goods in a vessel is the obligation of the foreign exporter and he enters into

contract with the shipping line for this purpose. The obligation to pay consideration is also of the foreign exporter.

The importer neither avail the services of transportation of goods in a vessel nor is he liable to pay the consideration for such service. Hence, the importer is not the 'recipient' of the transportation of goods in a vessel service as per Section 2(93) of the CGST Act.

The supply of service of transportation of goods by a person in a non-taxable territory to another person in a non-taxable territory from a place outside India upto the customs station of clearance in India, is neither an inter-state supply nor an intra-state supply. Thus, no tax can be levied and collected from the importer.

Suggestion: *In view of the judgement of the Hon'ble Gujarat High Court in the case of **MOHIT MINERALS PVT LTD [2020 (1) TMI 974] dated 23.01.2020** and of Hon'ble Calcutta High court in the case of **MCPI PRIVATE LIMITED 2020 (3) TMI 725]dated 12.03.2020**, declaring Notification No.8/2017 – Integrated Tax (Rate) dated 28th June 2017 and the Entry 10 of the N/N.10/2017 – Integrated Tax (Rate) dated 28th June 2017 as ultra vires the IGST Act, 2017 as they lack legislative competency, levy of IGST on ocean freight should be abolished.*

11. Availment of input tax credit on Advance Payments

Issue: Section 12 of CGST Act, 2017 provides for payment of GST on advance payments received by the supplier of services. However, the availment of credits is restricted the time of receipt of services/invoice, which would be at a later date as mandated under Section 16(2)(b). This restriction causes operational difficulties to taxpayers on account of projects with a long gestation period involving advance payments.

Suggestion: The liability of making payment of GST on advances received for supply of services may be removed as in line with the payment of GST on advance received for supply of goods.

12. Payment of GST on collection basis for Not for Profit Associations, MSME enterprises and professionals

Issue: Under the GST regime, the liability to pay tax generally arises / determined at the date of issuance of invoice or receipt of payment whichever is earlier.

Since GST is required to be discharged after issuance of invoice, i.e. even before receipt of consideration in most of the cases, this results into blockage of working capital. Considering that the general rate of GST is 18%, it become a huge chunk of working capital, for not for profit Associations and MSMEs especially the professional services firms like Architects, Engineers, Chartered Accountants, Company Secretaries, management consultants, etc. are facing this issue of working capital blockage. Under service tax regime also there was an option to pay service tax on receipt basis for small service providers.

Suggestion: It is suggested that the time of supply in case of “not for profit Associations” and taxpayers below a certain threshold of aggregate turnover be specified to be on receipt of consideration.

13. Valuation of land

As per Notification no. 11/2017-Central Tax (rate), the value of land has been prescribed to be 1/3rd of the total amount charged

Issue – The value of land may have huge variations from one place to the other. In certain areas of the metro cities, the value of land may run upto 80% of the total amount charged while in the smaller developing areas, it can be as low as 15% of the total amount charged. So, there can be a huge under or overvaluation of the amount to be charged as GST.

Suggestion – A reasonable basis to determine the value of land should be prescribed. Land values may be prescribed by state authorities on the basis of pin code, area etc. and the same can be considered as a reliable measure of the same.

14. Tax liability on TDR, FSI (additional FSI), long term lease (Notification No. 4/2019, 5/2019, 6/2019 of Central tax (Rate):

Issue - Applicability of tax payable under RCM by promoter on unbooked flats will indirectly lead to levy of tax on sale of such flats post issuance of completion certificate (C/C). **This in effect nullifies the fact that there is no GST on sale of flats post C/C (Schedule III activity).**

Moreover such tax on transfer of development right, if applicable earlier, was a credit to promoters, but now the same has become cost to the extent of unsold flats.

In case of an RREP, even if the rate of tax for commercial apartment would be at 5%, the promoter would have to pay tax on RCM basis to the extent of proportion of commercial area. This has a big cost implication for

commercial apartments and effectively would mean double taxation on commercial apartment in an RREP.

Suggestion – GST payable by Developers under RCM pertaining to unsold flats should be removed

The GST exemption on supply of development rights be extended to the commercial apartments in RREP, since they have been treated at par with residential apartments.

15. GST on Leasehold units (Commercial)

Issue - In several cases, Developer constructs a commercial building on a leasehold land (say for 999 years) and transfers units to the buyers with leasehold right in land. As per Explanation (b) to para 2 of Notification no.11/2017 – Central Tax (Rate) dated 28th June 2017, 1/3rd of the total amount charged shall be available as deduction for transfer of such leasehold land before obtaining completion certificate.

Deduction of 1/3rd value from the total amount charged is available on supply of leasehold land involved in construction services before obtaining completion certificate, deeming it as a sale of land and effective rate is 12%. **When the constructed units on such leasehold land are transferred after Completion certificate, how can the same be taxable considering it as a leasing activity at full rate of 18%.**

Suggestion – Transfer of Constructed units on Leasehold land (on long term lease) after completion certificate is obtained where appropriate stamp duty is paid, should be included in Schedule II to CGST Act i.e. activities which are neither supply of goods nor supply of services.

Kindly consider the above suggestions and we shall be grateful for the same.

Yours faithfully,

For DIRECT TAXES PROFESSIONALS' ASSOCIATION

CA N.K. Goyal
President

Adv Narayan Jain
Chairman
Representation Committee

CA Vikash Parakh
Advisor
GST Sub Committee

C C To:

1 Sri Anurag Singh Thakur

The Hon'ble Minister of State for Finance

North Block

New Delhi-110001

2 Shri M. Ajit Kumar

Chairman

Central Board of Indirect Taxes & Customs

North Block

New Delhi-110001

chmn-cbec@nic.in

ajit.m@gov.in

3 Shri Ajay Bhushan Pandey

Revenue Secretary and Ex-Officio Secretary to GST Council

GST Council,

5th Floor, Tower II, Jeevan Bharti Building, Janpath Road,

Connaught Place, New Delhi-110 001

gstc.secretariat@gov.in

contact.gstcouncil@gov.in