

S&J Shah & Jhalawadia

Chartered Accountants



GST UPDATE

January and February 2019

**GST Amendment Act, 2018 along with
all the relevant Notifications and Circulars**

Updated up to 07th Feb, 2019

A large, 3D-style geometric graphic composed of several overlapping, semi-transparent colored planes in shades of blue, green, purple, and orange. The text 'YEAR 2019' is prominently displayed in the center of the graphic in a bold, black, sans-serif font.

YEAR 2019

GST Updates

(January and February 2019)

This presentation contains all the amendments and clarifications of CGST and IGST Amendment Act 2018 and all relevant notifications and circulars issued.

This presentation has been prepared topic wise and references of relevant notifications and circulars have been given at the end of each topic. As well it contains the comparison with the old provisions with our analysis and our comment wherever is necessary.

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1. Amendments in relation to Reverse Charge Mechanism

RCM on supply from un-registered person to registered person shall be only on notified goods or services and for notified classes of registered persons only

- Exemption on RCM for Supply by Un- registered supplier to registered person (recipient) is given in Notification 08/2017 Central Tax (Rate).
- Now this Notification is rescinded (withdrawn) by Notification No. 01/2019 Central Tax
- That means exemption on said RCM is removed
- But on the other side Section 9(4) of CGST Act and section 5(4) of IGST Act amended by Amendment Act 2018
- As per this amended sections RCM in the case supply by un- registered supplier to registered person (recipient) will be applicable only if such supply is of specified category and recipient is specified class of registered person. Such specification shall be made by issue of notification. **Therefore tax shall not be payable on such transactions until any notification specifying categories of goods or services or both come into force.**

[Notification 08/2017 Central Tax is rescinded by Notification 01/2019 Central Tax (Rate) dated 29.01.2019 Applicable from 01.02.2019]

[Section 9(4) of CGST Act and Section 5(4) of IGST Act amended by CGST (Amendment) Act 2018 and IGST (Amendment) Act 2018. Applicable from 01.02.2019]

2. Amendments in relation to Composition Scheme

A. Eligibility for composition scheme increased

- Maximum limit for composition levy has been increased to 1.50 cr from 1 cr
Note: Remember, only maximum limit has been enhanced. At present notified limit is Rs 1 cr and 75 lakhs new limit may be notified by government by issue of notification.

[Section 10(1) of CGST Act is amended by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

B. Composition tax payer can supply services also to the some extent

- Composition Tax Payer will be able to supply services of value not exceeding 10% of turnover in a state or Union Territory in preceding financial year or five lakh rupees, whichever is higher

[Proviso has been inserted Section 10(1) of CGST Act by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

C. Composition Rate prescribed for services also

- Before the amendment, only restaurant service was under composition scheme and composition rate is 5% {2.5% CGST+2.5% SGST}

- But now after the amendment as mentioned above, composition tax payer shall be eligible to supply of services also to the extent specified as above.
- Accordingly rule 7 of CGST Rules has been amended and 1% composition rate {0.5% CGST+0.5%SGST} prescribed for such services also

[Rue 7 of CGST Rules amended by Notification 03/2019 Central Tax dated 29.01.2019. Applicable from 01.02.2019]

D. Alignment of composition rates with Rule -7

- Notification 08/2017 Central Tax dated 27.06.2017 prescribes the turnover limit for the composition levy as well it gives rates of composition.
- Now this notification has been amended by eliminating list of rates of composition levy given there from and rates of composition levy has been aligned with the rates given in Rule 7 of CGST Rules, 2017

[Notification 08/2017 Central Tax is amended by Notification 05/2019 Central Tax dated 29.01.2019. Applicable from 01.02.2019]

3. Amendments in relation to Input Tax Credit

A. Supply of services to any other person on direction of registered person

- In order to avail ITC, one of the condition is that registered person has received goods or services.
- There was already explanation that the registered person is deemed to have received goods where goods are delivery to any other person on direction of such registered person.
- There was no such explanation for such kind of transactions in the case of service. But now this explanation has been substituted and as per substituted explanation, registered person shall be deemed to have received services where such services are provided by supplier to any other person on the direction of and on account of such registered person.

[Clause “b” of Section 16(2) of Central Tax is amended by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

Our comment.

Question is that whether this explanation should be taken retrospective or prospective. If it's taken prospective, then registered person shall not be entitled to take credit of ITC in such kind of transactions that have taken place before 01.02.2019

B. Apportionment of Input Tax Credit

- Explanation has been inserted in Section 17(3) of CGST Act
- As per this explanation “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.
- Let’s make analysis of the explanation
 - Schedule III is list of neither supply of goods nor supply of services. In that, Para 5 is land and building
 - Sale of land and building is already included in exempt supply in Section 17(3)
 - Exempt supply includes not-taxable supply but it does not include non supply.
 - That means non supply (neither supply of goods nor supply of services) except land and building are already not considered in exempt supply while apportionment of the credit.
 - So we are of the opinion that this explanation is only in the nature of clarification. It does not render any changes in the provisions of the act

[Explanation inserted in Section 17(3) of CGST Act by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

C. Input Tax Credit for Motor Vehicle

- Section 17(5) has been amended
- Section 17(5) gives list of block credits. Means ITC of these supply shall not be available
- Amendment in the said section made as under

Before Amendment	After Amendment
motor vehicles and other conveyances except when they are used— (i) for making the following taxable supplies, namely:- (A) further supply of such vehicles or conveyances ; or (B) transportation of passengers; or (C) imparting training on driving, flying, navigating such vehicles or conveyances; (ii) for transportation of goods;	motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:- (A) further supply of such motor vehicles; or (B) transportation of passengers; or (C) imparting training on driving such motor vehicles;

Analysis of Impact of this Amendment

- From the deep analysis of the above amendment, we can say that credit for the motor vehicles having any capacity of 13 persons or exceeding 13 persons will be available if it is used for further supply of such motor vehicles or for transportation of passengers or for training on driving
- That means 13 persons capacity has to be kept in mind only when such motor vehicle is used for the purpose other than above three purposes. Such other purposes will cover usage of vehicle by proprietor/partner/director/employee etc for their own transportation. Interesting matter is that more than 13 seats vehicles practically are not used for transportation in such other case. People prefer max 7 or 8 seat capacity when they use for own. According to our opinion, there will not be any major impact of this amendment.

- Another important observation in this amendment is that earlier it was possible to take credit if even passenger vehicle is used for transportation of goods (usage can be proved from records of e-way bill) e.g. One company A Ltd purchased Maruti van for transportation of goods for laboratory testing. Such goods can be easily accommodated in a small passenger car, then why one will purchase as special transport vehicle? Now, if this company A Ltd generates e-way bills for each transportation, then it can be proved that this Maruti Van car is used for transportation of goods. Input Tax credit in such kind of usage was available before amendment because in Section 17(5) only word **“motor vehicles”** was used. But now after this amendment the word **“motor vehicles for transportation of passengers”** is used. Therefore, now it is not possible to take Input Tax credit of passenger motor vehicle if it is used for transportation of goods.
- ITC on motor vehicle (**goods carriage or vehicle for transpiration of goods only**) for transportation of **goods** will be available.

[Section 17(5) of CGST Act by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

D. Input Tax Credit for vessels or aircraft

- Section 17(5) has been amended
- Section 17(5) gives list of block credits. Means ITC of these supply shall not be available
- Amendment in the said section made as under

Before Amendment	After Amendment
motor vehicles and other conveyances except when they are used— (i) for making the following taxable supplies, namely:- (A) further supply of such vehicles or conveyances ; or (B) transportation of passengers; or (C) imparting training on driving, flying, navigating such vehicles or conveyances; (ii) for transportation of goods;	vessels and aircraft except when they are used (i) for making the following taxable supplies, namely:- (A) further supply of such vessels or aircraft; or (B) transportation of passengers; or (C) imparting training on navigating such vessels; or (D) imparting training on flying such aircraft; (ii) for transportation of goods;
➤ From the analysis we can say that here is no any change in the case of ITC of vessels and aircraft	

[Section 17(5) of CGST Act by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

E. Input Tax Credit for expenses in relation to motor vehicles, vessels or aircraft

Position after amendment

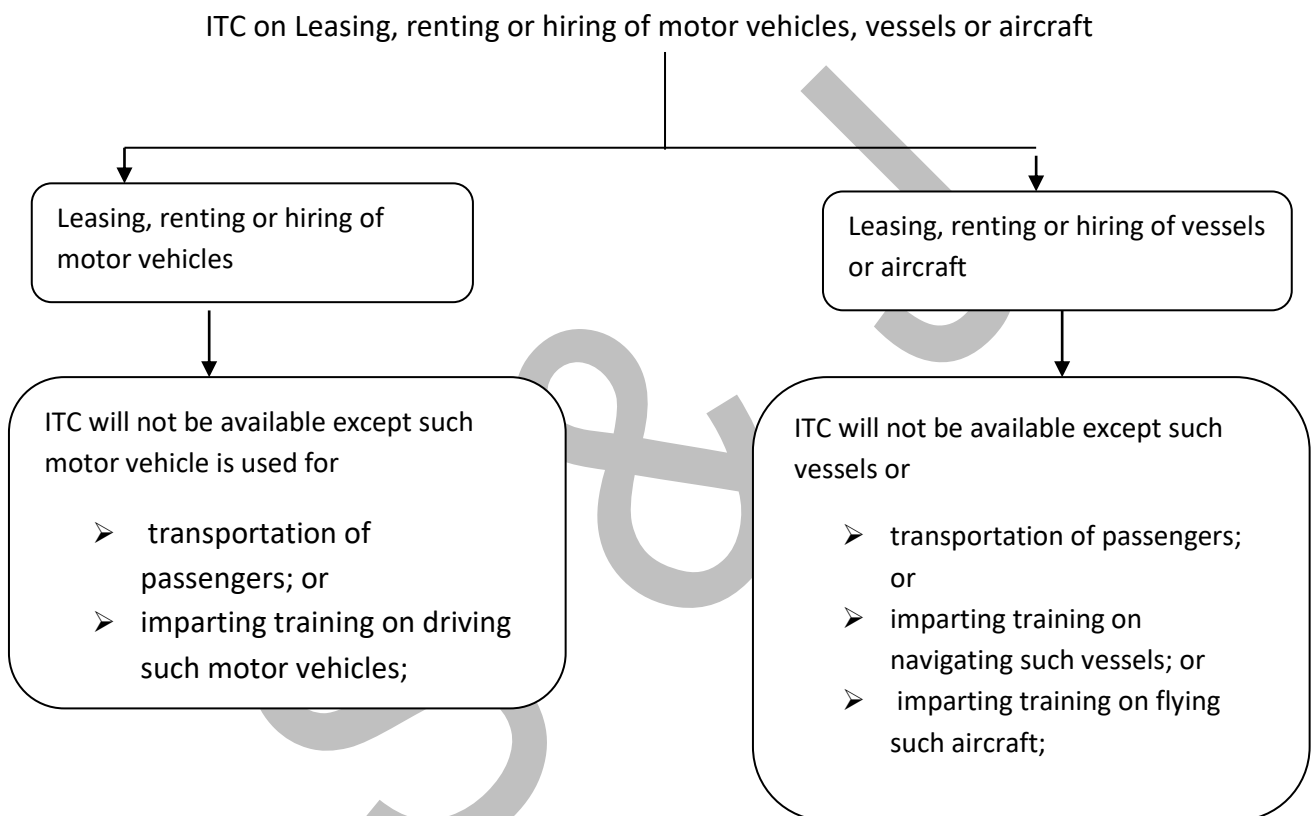
Credit of insurance, servicing, repairs and maintenance of motor vehicles, vessels or aircraft will not be available. However if such motor vehicle, vessels or aircraft are used for the purpose as specified in section 17(5), then credit will be available.

Position before amendment

Before amendment, there was no such separate wording for credit of said expenses in the list of block credit. However credit of these expenses were not available even before this amendment as ITC was not available **in relation** to motor vehicles and other conveyances except such vehicles/conveyances used for the purposes specified. We can observe that word “in relation to” can cover both purchase and repairs, maintenance, insurance etc.

[Section 17(5) of CGST Act by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

F. Input Tax Credit for Leasing, renting or hiring of motor vehicles, vessels or aircraft



However, the input tax credit in respect of such leasing/renting shall be available where an inward supply of such services is used by a registered person for making an outward taxable supply of the same category of services or goods or both or as an element of a taxable composite or mixed supply;

Before the amendment, ITC on these expenses were available

[Section 17(5) of CGST Act by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

G. Input Tax Credit of Leasing, renting or hiring of motor vehicles for transportation of goods

Credit of leasing, renting or hiring of motor vehicle for transportation of goods will be available as restrictions in amended section is given only in relation to motor vehicles, vessels or aircraft given in clause (a) or clause (aa) of Section 17(5). Clause (a) is for motor vehicle for transportation of passengers and clause (aa) is for vessels and aircraft

[Section 17(5) of CGST Act by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

H. Order and Manner of utilization of Input Tax Credit

➤ **Section 49** is for Payment of tax, interest, penalty and other amounts and its sub section 5, explains the manner of utilization of ITC.

Following proviso has been inserted

Provided that the input tax credit on account of State/Union territory tax shall be utilized towards payment of integrated tax only where the balance of the input tax credit on account of central tax is not available for payment of integrated tax;

➤ **New Section 49A** inserted. As per this section Input tax credit on account of central tax, State tax or Union territory tax shall be utilized towards payment of integrated tax, central tax, State tax or Union territory tax, as the case may be, only after the input tax credit available on account of integrated tax has first been utilized **fully** towards such payment.

➤ **New Section 49B** inserted. As per this section government may prescribe the manner and utilization of ITC by issue of notification

➤ **Analysis of combined reading of Section 49 and Section 49A gives new order and manner of utilization of ITC as under**

- 1st preference IGST to be used fully for IGST, CGST and SGST/UTGST
- 2nd preference CGST, SGST or UTGST to be used for IGST,CGST,SGST/UTGST
- SGST/UTGST cannot be used for CGST and CGST cannot be used for SGST/UTGST

[Section 49 of CGST Act amended by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

[New Section 49A and 49B inserted in CGST Act by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

Let's understand new order of utilization of ITC by the following example.

Say Supplier for January 2019 has following data for filing GST 3B:

Output Tax Liability	
IGST	Rs 200
CGST	Rs 200
SGST	Rs 200
Total	Rs 600

ITC Available	
IGST	Rs 300
CGST	Rs 200

SGST	Rs 100
Total	Rs 600

Before 01.02.2019, ITC can be set off as under: NO TAX IS PAYABLE.

Details	IGST	CGST	SGST
Gross Liabilities	200	200	200
Set Off :-			
IGST	200		100
CGST		200	
SGST			100
Net Liability	Nil	Nil	Nil
ITC Available	Nil (300-200-100)	Nil (200-200)	Nil (100-100)

NOTE: - IGST Credit 1st used against IGST and balance used for payment against SGST, hence NIL Liability is to be paid by the Supplier.

From 01.02.2019 ITC can be set off as under –

Details	IGST	CGST	SGST
Gross Liability	200	200	200
Set off :-			
IGST	200	100	
CGST		100	
SGST			100
Net Liability	Nil	Nil	100
ITC Available	Nil (300-200-100)	100 (200-100)	Nil (100-100)

You can see that, supplier will have to pay Rs 100 from his pocket despite of ITC available if we follow amended provisions

Note: - IGST Credit 1st used against IGST, and also IGST 1st needs to be set off against CGST and then only CGST credit can be set off against CGST.

I. Transfer of credit on obtaining separate registration

- Separate registration for multiple business within a State or Union territory is now allowed as per amendment in Section 25(2) CGST Amendment Act 2018
- Consequently new Rules 41A have been inserted.
- As per this new rule once registered person obtains separate registrations for multiple places of business within the State or Union territory, then Unutilized ITC in Electronic Credit Ledger can be transferred to new unit in the proportion of the value of the assets held by them as on date of registration.
- New form ITC-02A declared for the same

[New Rule 41A inserted in CGST Rules, 2017 by Notification 03/2019 Central Tax dated 29.01.2019 Applicable from 01.02.2019]

J. Reversal of ITC

- Rule 42 is for reversal of ITC when input/input services used partly for non business purpose /exempt supplies
- By the same way rule 43 is for capital goods
- For this purpose, explanation in the said rule has been given for Exempt supply and total turnover.
- Now this explanation has been substituted as under

Explanation before amendment	Explanation after amendment
For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule	For the purposes of this clause, it is hereby clarified that the aggregate value of exempt supplies and the total turnover shall exclude the amount of any duty or tax levied under entry 84 and entry 92A of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule;
Analysis of the amendment	
Now duty or tax levied under entry 92A of List I will also have to be excluded from the aggregate value of exempt supply and total turnover while reversal of ITC under Rule 42.	

[Explanation in Rule 42 (1) and 43(1) substituted by Notification 03/2019 Central Tax dated 29.01.2019 Applicable from 01.02.2019]

Let's even understand the items covered in these entries

Schedule	List	Entry	Details
Seventh	One	84	Duties of excise on the following goods manufactured or produced in India, namely:- (a) petroleum crude; (b) high speed diesel; (c) motor spirit (commonly known as petrol); (d) natural gas; (e) aviation turbine fuel; and (f) tobacco and tobacco products
Seventh	One	92A	Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce
Seventh	Two	51	Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:- (a) alcoholic liquors for human consumption; (b) opium, Indian hemp and other narcotic drugs and narcotics,

			but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry
Seventh	Two	54	<p>Taxes on the sale of</p> <ul style="list-style-type: none"> • petroleum crude, • high speed diesel, • motor spirit (commonly known as petrol), • natural gas, • aviation turbine fuel • and alcoholic liquor for human consumption, <p>But not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.</p>

K. Input Service Distributor

- Section 20 is for Manner of distribution of credit by Input Service Distributor.
- In order to distribute this credit, meaning of turnover for this purpose has been defined in explanation
- Now this meaning of turnover is amended as under

Before amendment	After amendment
"turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule	"turnover", in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entries 84 and 92A of List I of the Seventh Schedule to the Constitution and entries 51 and 54 of List II of the said Schedule.
<u>Analysis of the amendment</u>	
<p>Now duty or tax levied under entry 92A of List I will also have to be excluded from the "turnover" while distributing ITC in the case of registered person engaged in the supply of taxable goods as well as goods not taxable under this Act.</p> <p>For list of items covered in entry 84, 92A of list I and entry 51, 54 of List II of seventh schedule to the constitution please refer point number 3(J) in this presentation</p>	

[Section 20 of CGST Act amended by CGST (Amendment) Act, 2018 Applicable from 01.02.2019]

L. Clarification regarding Reversal of wrongly availed CENVAT

- As per the circular 58/32/2018 as an alternative method, taxpayers may reverse the wrongly availed CENVAT credit under the existing law an inadmissible transitional credit through Table 4(B)(2) of FORM GSTR-3B.

- Now this circular is revised and clarified that such liabilities of wrongly availed CENVAT may be discharged by the taxpayers, voluntarily in **FORM GST DRC-03** or may be recovered vide order uploaded in **FORM GST DRC-07**, and payment against the said order shall be made in **FORM GST DRC-03**
- It is further clarified that the alternative method of reversing the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B) (2) of FORM GSTR-3B would no longer be available to taxpayers.

[Circular 58/32/2018 is revised by Circular 88/07/2019 dated 01.02.2019. Applicable from 01.02.2019]

4. Amendments in relation to Registration

A. Special category states now can request to enhance threshold limit for registration

As per new proviso inserted in Section 22(1), a special category State on the recommendations of the Council can now request to enhance the threshold limit from Rs 10 lakhs up to Rs 20 lakhs subject to such conditions and limitations, as may be so notified

[Proviso inserted in Section 22(1) of CGST Act by CGST (Amendment) Act, 2018. Applicable from 01.02.2019]

B. Special category states for section 22 of registration

- Section 22 of CGST Act is for Persons liable for registration
- In the said section, expression 'special category states' has been explained.
- Now this explanation is amended as under

Before amendment	After amendment
the expression “special category States” shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution ¹ [except the State of Jammu and Kashmir	the expression “special category States” shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution ¹ [except the State of Jammu and Kashmir ³ [and States of Arunachal Pradesh, Assam, Himachal Pradesh, Meghalaya, Sikkim and Uttarakhand
<u>Analysis of the amendment</u>	
Based on interpretation of this amendment, we can say that now only Manipur, Mizoram, Nagaland and Tripura are “special category states” for the purpose of registration criteria and threshold limit for exemption of these state are Rs 10 lakhs and they can request to enhance their threshold limit for registration up to Rs 20 lakhs	

[Explanation-III of Section 22 of CGST Act amended by CGST (Amendment) Act, 2018. Applicable from 01.02.2019]

C. Registration in the case of Electronic Commerce Operator

- As per the amendment in Section 24, now Electronic Commerce Operator is liable for compulsory registration under GST only if such ECO required to collect TCS under Section 52
- Before amendment, such ECO were liable for compulsory registration under GST whether they are required to collect TCS or not

[Section 24 of CGST Act by CGST (Amendment) Act, 2018. Applicable from 01.02.2019]

D. Concept of business vertical for registration now removed

- Section 25 of CGST Act is for Procedure of Registration
- As per Section 25(2) a person seeking registration shall be granted only a single registration in a state/union territory. However as per the proviso in this section, person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.
- Now this proviso has been amended as under

Before amendment	After amendment
<p>A person seeking registration under this Act shall be granted a single registration in a State or Union territory:</p> <p>Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed</p>	<p>A person seeking registration under this Act shall be granted a single registration in a State or Union territory:</p> <p>Provided that a person having multiple places of business in a State or Union territory may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed</p>
<p>Analysis of the amendment</p> <p>Now if person has more than one place of business in the same state, then he can take a separate registration for each place of business.</p> <p>Before this amendment, this was not permitted. Person had option to take separate registration for the place of the business in the same state, only if such places of business are separate business verticals.</p>	

[Explanation in Section 25(2) of CGST Act substituted by CGST (Amendment) Act, 2018. Applicable from 01.02.2019]

E. No separate registration for SEZ now

- As per the Rule 8(1) of CGST Rules, 2017 SEZ unit or SEZ developer is required to obtain a separate registration as a business vertical distinct from his other unites located outside the SEZ area.

- As concept of separate registration for business verticals has been removed by amending Section 25(2) of CGST Act, consequent amendments made in rule 8(1) by omitting first explanation of the said rule.
- So now there is no requirement to have a separate registration for SEZ unit or SEZ developer

[First Explanation in Rule 8(1) of CGST Rules 2017 omitted by Notification 03/2019 Central Tax dated 29.01.2019. Applicable from 01.02.2019]

F. Suspension of the registration during pendency for cancellation of registration

- **Section 29** of CGST Act is for cancellation of registration
- As per the new proviso inserted in Section 29(2) the proper officer may suspend the registration for such period and in such manner as may be prescribed during pendency of the proceedings relating to cancellation of registration.
- As well as new **Rule 21A** inserted in CGST Rules, 2017. As per this rule once registered person makes application for cancellation, the registration shall be deemed to be suspended from the date of submission of the application.
- **Circular 69/43/2018** dated 26.10.18 is amended by **Circular 88/07/2019 dated 01.02.19** clarifying that the intent of the said amendment is to ensure that a taxpayer is freed from the routine compliances, including filing returns, under GST Act during the pendency of the proceedings related to cancellation. Accordingly, the field formations may not issue notices for non-filing of return for taxpayers who have already filed an application for cancellation of registration under section 29 of the CGST Act.

[Proviso inserted in Section 29(2) of CGST Act by CGST (Amendment) Act, 2018. Applicable from 01.02.2019]

[New Rule 21A inserted in CGST Rules, 2017 by Notification 03/2019 dated 29.01.2019. Applicable from 01.02.2019]

[Circular 69/43/2018 dated 26.10.2018 revised by Circular 88/07/2019 dated 01.02.2019. Applicable from 01.02.2019]

Our comment.

Tax Payer will have to ensure that once application is filed for cancellation, there should be order of suspension. Otherwise there shall be penalty for non-filing of compliances.

5. GST Audit not applicable to Government

- Section 35(5) of CGST Act read with Rule 80(3) is for audit by CA or Cost Accountant of those whose turnover exceeds Rs 2 cr.
- Now as per the new proviso inserted in said section, this audit shall not be applicable to Central Government or a State Government or a local authority
- This is because books of accounts of these governments are already subject to audit by CA&G

[Proviso inserted in Section 35(5) of CGST Act by CGST (Amendment) Act, 2018. Applicable from 01.02.2019]

[Rule 80(3) of CGST Rules, 2017 amended by Notification 03/2019 dated 29.01.2019. Applicable from 01.02.2019]

6. Amendment in relation to GST Refund

A. Declaration in the case of refund for supply to SEZ

- Rule 89 is application for refund of tax.
- Sub rule 2 of 89 is list of evidences required to be accompanied in form GST RFD-01
- Clause “f” of this rule has been amended as under

Before amendment	After amendment
a declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer;	a declaration to the effect that tax has not been collected from the Special Economic Zone unit or the Special Economic Zone developer, in a case where the refund is on account of supply of goods or services or both made to a Special Economic Zone unit or a Special Economic Zone developer

[Rule 89(2) of CGST Rules, 2017 amended by Notification 03/2019 dated 29.01.2019. Applicable from 01.02.2019]

B. Time limit for making application of refund revised

- Section 54 is for refund of tax
- In clause ‘e’ of explanation II of the said section, the expression “relevant date” has been amended and accordingly it effects to time limit for application for refund in certain case. The same has been revised as under.

Nature of refund	Time limit before amendment	Time limit after amendment	Our comment
Unutilized ITC in the case of zero rated supply	Within two years from the end of the financial year in which such claim for refund arises;"	Within two years from the date of payment	Due to change in clause (e) of explanation of the said section, meaning of relevant dates now falls in clause (h), in that case relevant date is date of payment. As this is refund in relation to accumulated ITC, this amendment does not seem to be realistic as per our opinion. More clarification may be required in this case.
Unutilized ITC due to inverted duty structure	Within two years from the end of the financial year in which such claim for refund arises;"	Within two years from the due date for furnishing of return under section 39 for the period in which such claim for refund arises;	Time limit for application of refund in this case has been reduced.

[Explanation II of Section 54 of CGST Act amended by CGST (Amendment) Act, 2018. Applicable from 01.02.2019]

7. Jurisdiction of Joint Commissioner (Appeals) is defined

- Notification 02/2017 Central Tax dated 19.06.2017 is for Jurisdiction of Central Tax Officers - CGST officers.
- In this Jurisdiction now, jurisdiction of Join Commissioner (Appeals) has also been defined

[Notification 02/2017 Central Tax amended by Notification 04/2019 dated 29.01.2019. Applicable from 01.02.2019]

8. Due date of filling GSTR-7 is extended

Nature of return	Form	Period	Old Due Date	Extended Due Date
Return for Tax Deducted at Source For registered persons who are required to pay tax TDS under Section 51	GSTR-7	October-18 to December -18	31.01.2019	28.02.2019

[Notification 66/2018 Central Tax amended by Notification 07/2019 dated 31.01.2019. Applicable from 01.02.2019]

9. Amendment in meaning of Export of services

- Section 2(6) of IGST Act is for meaning “export of services”.
- It has been amended as under

Before amendment	After amendment
<p>“export of services” means the supply of any service when,—</p> <p>(i) the supplier of service is located in India;</p> <p>(ii) the recipient of service is located outside India;</p> <p>(iii) the place of supply of service is outside India;</p> <p>(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange and</p> <p>(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;</p>	<p>“export of services” means the supply of any service when,—</p> <p>(i) the supplier of service is located in India;</p> <p>(ii) the recipient of service is located outside India;</p> <p>(iii) the place of supply of service is outside India;</p> <p>(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or <u>in Indian rupees wherever permitted by the Reserve Bank of India</u>; and</p> <p>(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;</p>
<p><u>Consequent amendment in clarification of circular 8/8/2017 dated 04.10.2017 by circular 88/7/2019 dated 01.02.2019.</u></p> <p>As per this amended circular it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.</p>	
<p><u>Analysis of the amendment</u></p> <p>In simple words, if payment is received in Indian currency which is permitted by RBI for supply of services outside India will be an “export of service” provided other conditions of export of services are satisfied. The same was clarified in circular 8/8/2017 even before it was revised. Therefore this should be taken as retrospective and does not render any change in treatment. It renders changes for supply to Nepal or Bhutan only which has been explained later in detailed.</p>	

[Section 2(6) of IGST Act amended by IGST (Amendment) Act, 2018. Applicable from 01.02.2019]

[Circular 8/8/2017 dated 04.10.2017 is revised by circular 88/7/2019 dated 01.02.2019. Applicable from 01.02.2019]

10. Supply of services to Nepal/Bhutan against Indian rupees

- In circular 8/8/2017 it was clarified that supply of services to Nepal or Bhutan will be deemed to be export of service only if the payment is received by supplier in convertible foreign exchange.
- Means if by supply to Nepal/Bhutan, payment is received in Indian rupees, this service was not export and same was clarified in circular 8/8/2017. Means such supply was taxable from the beginning and one cannot take the benefit of zero rated supply as it was not export.
- Thereafter exemption was given for supply to Nepal/Bhutan against payment in Indian Rupees w.e.f 27.10.2017 by amendment in Notification 09/2017 Integrated Tax..
- Now this exemption has been withdrawn as Notification 09/2017 Integrated Tax is amended by Notification 02/2019 Integrated Tax (Rate) dated 04.02.2019.
- But at the same time clarification “supply of services to Nepal or Bhutan will be deemed to be export of service only if the payment is received by supplier in convertible foreign exchange “ is removed now from the circular 8/8/2017 as amended by Circular 88/7/2019 dated 01.02.2019
- **Therefore now supply of services to Nepal or Bhutan will be export of services even if payment is received in Indian rupees provided it is permitted by RBI and other condition of export of services are satisfied**
- As such supply is export, there is no need to give exemption, and therefore this exemption has been withdrawn

[Notification 09/2017 Integrated Tax (Rate) is amended by Notification 02/2019 Integrated (Rate) dated 04.02.2019. Applicable from 04.02.2019]

[Circular 8/8/2017 dated 04.10.2017 is revised by circular 88/7/2019 dated 01.02.2019. Applicable from 01.02.2019]

11. Amendment and clarifications in relation to Job work

- A. **Time limit for bringing back/supply of input/capital goods from place of Job worker can be further extended now**
- Section 143 of CGST Act is for Job Work procedure
 - As per this section Principle will have to bring back or supply the input or capital goods within 1 year or 3 years respectively from the premises of the Job worker
 - Now as per the proviso inserted in Section 143 of CGTS Act, this time limit can be **further** extended by commissioner on sufficient cause for the period **not exceeding one year** in the case of inputs **and two years** in the case of capital goods.

[Section 143 of CGST Act amended by CGST (Amendment) Act 2018. Applicable from 04.02.2019]

[Due to change in Section 143, consequent changes made in Circular 38/12/2018 dated 26.03.2019 by Circular 88/07/2019 dated 01.02.2019. Applicable from 01.02.2019]

B. Clarification regarding registration of job worker

- It is clarified that a job worker is required to obtain registration only in cases where his aggregate turnover, to be computed on all India basis, in a financial year exceeds the threshold limit regardless of whether the principal and the job worker are located in the same State or in different States.

[Para 6.1 of Circular 38/12/2018 dated 26.03.2018 is revised by Circular 88/07/2019 dated 01.02.2019. As it's only clarification, applicable from 01.07.2017]

C. Clarification regarding value of moulds and dies, jigs and fixtures or tools

- It is clarified that the value of such moulds and dies, jigs and fixtures or tools may not be included in the value of job work services provided its value has been factored in the price for the supply of such services by the job worker.

[Para 9.4. (i) Of Circular 38/12/2018 dated 26.03.2018 is revised by Circular 88/07/2019 dated 01.02.2019. As it's only clarification, applicable from 01.07.2017]

12. Consolidated Debit/Credit Notes now can be issued

- Section 34 of CGST Act is for credit and debit notes.
- As per the amendment in this section, now tax payer can issue consolidated Debit/Credit not for issue of multiple tax invoices issued to same registered person.

[Section 34 of CGST Act amended by CGST (Amendment) Act 2018. Applicable from 01.02.2019]

13. Amendments in relation to Returns

- As per Section 39 registered person has to furnish a return on or before the 20th day of the month succeeding such calendar month or part thereof
- Now as per the amendment in this Section, government will issue notification prescribing the time limit within which return under said section will have to be filed .
- As well as, a proviso has been inserted in the said section mentioning that Government may, on the recommendations of the Council, notify certain classes of registered persons who shall furnish return **quarterly instead of monthly**.
- **This amended provisions not applicable at present. Relevant notifications shall be issued in this regard.**

[Section 39 of CGST Act amended by CGST (Amendment) Act 2018. Not applicable at present. Notifications shall be issued in this regard]

14. New procedure of furnishing return and availing Input Tax Credit

- New Section 43A prescribes the Procedure for furnishing return and availing input tax credit
- The following are import extracts of this new section
 - Procedure for availing of input tax credit by the recipient and verification thereof shall be such as may be prescribed
 - Procedure for furnishing the details of outward supplies by the supplier on the common portal for the purposes of availing input tax credit by the recipient shall be such as may be prescribed.
 - Procedure for availing input tax credit in respect of outward supplies not furnished may include the maximum amount of the input tax credit which can be so availed, not exceeding twenty per cent of the input tax credit available
 - Tax specified in the outward supplies furnished by supplier shall be deemed to be tax payable by supplier
 - Supplier and the recipient of a supply shall be jointly and severally liable to pay tax or to pay the input tax credit availed in relation to outward supplies furnished but return thereof has not been furnished
 - **This Section is not in force at present, its applicability date shall be notified**

[New Section 43A inserted in CGST Act by CGST (Amendment) Act, 2018. Not applicable at present. This Section is not in force at present. Its applicable date shall be notified]

15. Amendment in relation to pre-deposit for filling appeal

Maximum Pre-deposit for filling appeal specified

Nature of appeal	Pre-deposit amount before amendment	Pre-deposit amount after amendment
Appeal to Appellate Authority	10% the remaining amount of tax in dispute	10% the remaining amount of tax in dispute Or Rs 50 cr (CGST 25 cr + SGST 25 cr) } Whichever is less
Appeal to Tribunal	20% the remaining amount of tax in dispute (This amount to be paid is in-addition to amount paid while appeal to Appellate Authority)	20% the remaining amount of tax in dispute Or Rs 100 cr (CGST 50 cr +SGST 50 cr) } Whichever is less (This amount to be paid is in-addition to amount paid while appeal to Appellate Authority

[Section 107(6) of CGST Act amended by CGST (Amendment) Act, 2018, Applicable from 01.02.2019]

16. Time limit for making payment of tax and penalty imposed under Section 129(1)

- Section 129 of CGST Act is in relation Detention, seizure and release of goods and conveyances in transit
- As per Section 129(1) once goods and conveyance have been detained/seized, the same shall be realized only on payment of tax and penalty as mentioned in the said sub-section
- Section 129(6) says that if such payment of tax and penalty is not paid within 7 days of such detention or seizure, then proceeding for confiscation of such goods and conveyance shall be initiated as per Section 130
- **Now this time limit for making payment for tax and penalty has been increased from 7 days to 14 days**

[Section 129(6) of CGST Act amended by CGST (Amendment) Act, 2018, Applicable from 01.02.2019]

17. Clarification in relation to Transitional Credit

- Section 140 is for **Transitional arrangements for input tax credit.**
- Sub-Section 1 of Section 140 is in relation to transitional credit in relation to CENVAT credit carried forward in the return
- Now this sub-section has been amended as under

Before amendment	After amendment
<p>A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:</p>	<p>A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit of eligible duties carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed:</p> <p>this word eligible duties always be deemed to have been inserted</p>
<p>Besides above amendment, explanation-3 has been inserted in Section 140 as under</p> <p>For removal of doubts, it is hereby clarified that the expression “eligible duties and taxes” excludes any cess which has not been specified in Explanation 1 or Explanation 2 and any cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975)]</p>	

Analysis of this amendment

- We can observe that word “eligible duties” has been inserted
- As well it is said that this word always be deemed to have been inserted, we can say that it is having effect from 01/07/2017. So we can say that it’s more on clarification nature.
- Based on this we can say that Krishi Kalyan Cess, Education Cess, Cess which is collected as additional duty of customs under sub-section (1) of section 3 of the Customs Tariff Act, 1975 and any other cess not specified in Explanation 1 or 2 to Section 140 of CGST Act will not be eligible for carry forward for transitional credit.

[Section 140(1) of CGST Act amended by CGST (Amendment) Act, 2018, Applicable from 01.07.2017]

18. Amendment in the Schedules

Following amendments have been made to the Schedules of CGST Act by CGST (Amendment) Act 2018

Schedule No	Name of the Schedule	Amendments
Schedule-I	Activities to be treated as supply even if made without consideration	<p>Now Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business shall be treated as supply</p> <p>Before amendment it was treated as supply if it is imported by taxable person only</p> <p>Applicable from 01.02.2019</p>
Schedule-II	Activities or transactions to be treated as supply of goods or supply of services	<p>In heading of the schedule the word “transactions” has been inserted retrospectively</p> <p>Deemed to be applied from 01.07.2017</p>
Schedule-III	Activities or transactions which shall be treated neither as supply of goods nor supply of services	<p>Following activities inserted</p> <ul style="list-style-type: none"> ➤ 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. ➤ Supply of warehoused goods to any person before clearance for home consumption; ➤ 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 <p>Applicable from 01.02.2019</p>

[Schedule I, II and III amended by CGST (Amendment) Act, 2018]

19. Amendments in the meaning of non-taxable online recipient

- As per Section 2(16), “Non Taxable Online Recipient” includes “governmental authority”
- Now “governmental authority” for the purpose of this section shall include Panchayat under article 243G also w.e.f 01.02.2019

[Section 2(16) of IGST Act amended by IGST (Amendment) Act, 2018, Applicable from 01.02.2019]

20. Amendments in relation to Place of Supply

- Section 13 is for Place of supply of services where location of supplier or location of recipient is outside India
- Sub-Section 3 of the said section is in relation to place of supply based on actual performance.
- As per clause (a) of sub-section 3 when services are supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services place of supply shall be the place where it is actually performed. But now proviso has been inserted and mentioned that this clause (a) shall not be applicable in the case when goods are temporarily imported into India for repairs/ treatment /process and are exported after such repairs/treatment/r process without being put to any use in India, other than that which is required for such repairs or treatment or process.

[Section 13(3) of IGST Act amended by IGST (Amendment) Act, 2018, Applicable from 01.02.2019]

Our comment

- That means this will fall in general rule mentioned in Section 13(2) and therefore place of supply in this case shall be the location of service recipient
- If all other conditions for export of services are satisfied, then this service shall be export of service.

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