Summary of Important changes in GST law from 01.02.2019

Compiled by Swamy Associates

Various amendments made to the Central Goods and Service Tax Act, 2017, vide Goods and Service Tax (Amendment) Act, 2018 have been brought into force with effect from 01.02.2019, vide Notification 2/2019 Central Tax Dt. 29.01.2019. All State Governments are also expected to have made similar amendments in their respective SGST Acts (either by passing such amendments in the State legislatures or through the ordnance route) and made them effective from 01.02.2019. Similarly, the various amendments carried out to the Integrated Goods and Services Act, 2018, vide Integrated Goods and Services (Amendment) Act, 2018 have also been brought into force with effect from 01.02.2019, vide Notification 1/2019 Integrated Tax Dt. 29.01.2019.

In this article an attempt has been made to explain about certain important amendments to the CGST Act and IGST Act and various consequent notifications issued on 29.01.2019.

Changes relating to Reverse Charge Mechanism (RCM).

As per Section 9 (4) of the CGST Act, 2017, if any goods or services or both are supplied by an unregistered person to a registered person, the recipient of the supply shall pay tax under RCM. Vide Notification 8/2017 CT (Rate) Dt. 28.06.2017, an exemption has been provided, where, the per day expenditure on account of procurements from unregistered persons is for a value below Rs.5,000 no GST under RCM needs to be paid. As the exemption limit of RS.5,000 per day was too low, this has led to lot of complication where, for all and sundry supplies received from unregistered persons, the registered recipient has to pay GST under RCM.

Vide Notification 38/2017 C.T. (Rate) Dt. 13.10.2017 the exemption from payment of GST under RCM in case of procurements from unregistered suppliers has been extended without any limit (the limit of Rs.5,000 per day was removed) and this exemption was made applicable upto 31.03.2018, which was extended from time to time and the last extension having been granted upto 30.09.2019. Thus the applicability of RCM in case of procurements from unregistered suppliers was suspended till 30.09.2019.

Now, Section 9 (4) of the CGST Act has been amended, whereby the universal applicability of RCM to all supplies received from unregistered persons has been modified and it has been prescribed that the categories of registered recipients for whom such RCM would apply and the nature of goods and services for which such RCM would be applicable, is to be notified by the Government. But no such notification has so far been issued.

In as much as the erstwhile Section 9 (4) prescribing universal applicability of RCM to all supplies received from unregistered persons is no more in vogue from 01.02.2019, the exemption under Notification 8/2017 C.T. (Rate) has become redundant and hence Notification 8/2017 C.T. (Rate) Dt. 28.06.2017 has been rescinded vide Notification 1/2019 C.T. (Rate) Dt. 29.01.2019, with effect from 01.02.2019.

It is clarified that recession of Notification 8/2017 C.T. (Rate) does not lead to implementation of RCM to all supplies received from unregistered persons from 01.02.2019.

Similar reverse charge in respect of inter-state supplies was prescribed under Section 5 (4) of the IGST Act, which has been substituted by a new sub section (4) to Section 5 of the IGST Act. As a consequence, similar exemption vide Notification 32/2017 Integrated Tax (Rate) Dt. 13.10.2017 has been rescinded vide Notification 1/2019 Integrated Tax (Rate) Dt. 29.01.2019, with effect from 01.02.2019.

Changes relating to Composition scheme.

As per Section 10 (1) of the CGST Act, composition scheme is applicable to those registered persons, whose aggregate turnover in the preceding financial year was less than Rs.50 lakhs. The rate at which tax has to be paid for different categories of taxable persons has been mentioned in sub-clauses (a), (b) and (c) of Section 10 (1).

As per the proviso under Section 10 (1), the threshold limit for composition scheme can be extended upto Rs. 100 lakhs, by the Government, and in exercise of such powers, the limit for composition scheme was first extended upto Rs.75 lakhs (Notification 8/2017 C.T. Dt. 28.06.2017) and later extended upto Rs.100 lakhs (vide notification 46/2017 C.T. Dt. 16.10.2017). Now this proviso has been amended, enabling the Government to extend the threshold limit upto Rs.1.5 Crores. No notification has so far been issued by the Government, in exercise of such powers, which would be issued in future.

As per Section 10 (2) (a), a person engaged in supply of services (other than restaurant / outdoor catering services) are not entitled to opt for composition scheme.

Certain amendments have been made in Section 10, whereby a supplier of goods, who is also involved in supply of any services would also be entitled to opt for composition scheme, if the value of supply of services is less than 10 % of his total turnover or Rs.5 lakhs, whichever is higher. To explain a shopkeeper, who is also having rental income was earlier not at all entitled to opt for composition scheme. But, now he can opt for composition scheme, if his rental income is below 10 % of his total turnover or Rs.5 lakhs, whichever is higher, in the preceding financial year. To further explain,

His total turnover in the preceding financial year

(Including rental income)	:	Rs.90,00,000
Rental Income out of the above	:	Rs. 8,00,000
10 % of total turnover	:	Rs.9,00,000

As the income from rent is less than Rs.9,00,000 (10 % of total turnover or Rs.5 lakhs, whichever is higher) he is entitled to opt for composition scheme.

Changes relating to Input Tax Credit (ITC) entitlement.

Sub section (5) of Section 17 deals with the goods or services or both, for which ITC is not eligible and certain amendments have been made in the said sub section.

As per the unamended provisions, ITC is not eligible for **motor vehicles**, unless they are used (i) for further sale / rental / leasing of such vehicles; (ii) for transportation of passengers; (iii) by a driving school; or (iv) for transportation of goods. In other words, when a taxable person buys either a car, or a van or a bus, for transportation of its personnel, ITC cannot be availed.

This restriction has been amended to the effect that such restriction would apply only in case of passenger vehicles having a total seating capacity upto 13 passengers including driver. In other words, when a taxable person buys a van or a bus, having a seating capacity of more than 13, for transportation of its personnel, ITC can now be availed.

Under the unamended provisions, there was no restriction as to availment of ITC for insurance, repair and maintenance availed in respect of motor vehicles. Now, a restriction has been introduced to the effect that ITC in respect of insurance, repair and maintenance for those vehicles which are not entitled for ITC, is also not entitled. In other words, ITC for insurance, repair and maintenance services in repsect of motor vehicles is entitled for ITC, only in those cases, ITC for the motor vehicles themselves are entitled.

Under the unamended provisions, "rent-a-cab" service was not entitled for ITC, except when it is a statutory obligation for the employer to make available transport facility to its employees. In the absence of any definition for the word "cab" by borrowing the definition of the said term from Motor Vehicles Act, it was being argued that the above restriction is only for the vehicles having a seating capacity of more than 13 persons. Now, this legal position has been made clear and it has been provided renting or hiring of only those motor vehicles, which are otherwise not entitled for ITC, is prohibited. In other words, whether a taxable persons buys a bus himself or hires a bus, ITC would be entitled.

Under Bill to Ship to model, where the goods are supplied by A, invoiced to B but delivered directly to C, as per the directions of B, B is entitled to avail ITC, though the goods are not physically received by him as per the Explanation under Section 16 (2). Now this facility has been extended to services also, which would mean that in case of back to back sub contracting, the main contractor is entitled to avail ITC of GST charged by the sub contractor, though he has not received the services of sub contractor, which are directly provided to the customer.

Changes relating to Registration.

Under the unamended provisions, an entity shall obtain only a single registration for all its places of businesses in a State. If there are different business verticals for the same entity in the same State, they can opt to obtain separate registrations for such business verticals and the term "business vertical" has also been defined in the Act.

Now, it has been permitted that different places of business of an entity in the same State may also obtain separate registrations, without the requirement of being separate business vertical. Consequently, the definition of Business vertical has also been omitted. Now, multi locational units within a State may opt to obtain separate registration.

Once such separate registration is obtained, supply of goods or services or both between these units would attract GST (Rule 11 of the CGST Rules, 2017 as substituted).

If an entity opts to obtain separate registration for its units in a State as per the amended provisions (who are having a single registration as of now), the balance of ITC with the single registration may be distributed among all units for which separate registrations are being obtained, in the ratio of value of total assets of each of such units as on the date of seeking registration and declare the same in Form ITC – 02A within 30 days of such registration (Rule 41 A of CGST Rules, 2017).

Provisions for suspension of registration, prior to cancellation of registration have been introduced.

Changes relating to Debit Notes / Credit Notes

As per Section 34 of the CGST Act, in case of any upward revision of price, a Debit has to be issued and appropriate GST has to be paid and in case of any downward revision of price or return of goods or return of goods by the recipient, a Credit Note may be issued with appropriate reduction in GST already paid. Though the language of the section did not suggest that such debit notes / credit notes have to be issued individually for each of the invoices, the GST portal did not allow uploading of consolidated Debit Notes / Credit Notes.

Section 34 has been amended to enable issue of consolidated Debit Note / Credit Note for several invoices pertaining to a financial year.

ITC matching.

A new section 43 A has been introducing, enabling the Government to prescribe a new procedure for matching of credits. We have to await for the rules to be framed under this section, to understand it better.

Order of utilisation of ITC.

Sub section (5) of Section 49 prescribes, in which order the ITC has to be utilised. The following conditions are prescribed.

- ITC of IGST shall first be utilised to pay IGST and balance if any, shall be utilised to pay CGST, SGST and UTGST, in that order.
- ITC of CGST shall first be utilised to pay CGST and balance, if any, shall be utilised to pay IGST.
- ITC of SGST shall first be utilised to pay SGST and balance, if any, shall be utilised to pay IGST.
- ITC of UTGST shall first be utilised to pay UTGST and balance, if any, shall be utilised to pay IGST.
- ITC of CGST shall not be used to pay SGST or UTGST.
- ITC of SGST or UTGST shall not be used to pay CGST.

Now the following additional conditions have been added.

- ITC of SGST can be used to pay IGST, only after utilising the balance of CGST, if any, to pay IGST.
- ITC of UTGST can be used to pay IGST, only after utilising the balance of CGST, if any, to pay IGST.
- Before utilising ITC of CGST, SGST and UTGST for payment of IGST, the ITC of IGST shall first be utilised and exhausted for payment of IGST (new Section 49 A).
- In addition to the above, the Government can prescribe various other conditions also (new Section 49 B).

Changes relating to refunds.

- Refund of GST paid on supplies made to SEZ units is also subjected to unjust enrichment.
- Refund for export of services would be entitled even if the consideration is received in INR as permitted by the RBI.

Changes relating to transitional credit.

As per sub section (1) of Section 140, the balance of Cenvat Credit as per the last return filed under the old law, would be entitled to be carried forwarded into GST regime by following the procedures prescribed under Section 140 and Rule 117.

There was no express prohibition to carry forward the balance of cenvat credit, if any in respect of Education Cess, Secondary and Higher Education Cess and Krish Kalyan Cess and utilisation of such credit for payment of CGST or IGST. But the Government did not want to allow the same. For this purpose various amendments have been carried out.

Different sub sections of Section 140 deal with different situations where transitional credit is permitted. For the purpose of carrying forward eligible duties under sub sections (3), (4) and (6), the term "eligible duties" has been defined. Similarly for the purpose of carrying forward eligible duties and taxes under sub section (5) also, the term "eligible duties and taxes" has been defined. The above definitions of "eligible duties" and "eligible duties and taxes" have now been made applicable to transitional credit claimed under sub section (1) also.

It may be noted that sub sections (3), (4) and (6) deals with grant of transitional credit in respect of the duties paid on inputs lying in stock as on 01.07.2017 in various situations. Sub section (5) deals with transitional credit in respect of inputs and input services in transit, i.e. inputs and input services received on or after 01.07.2017, on which old taxes have been paid.

By making applicable the definition of "eligible duties" for the purposes of sub sections (3), (4) and (6) to sub section (1) also, an unintended anomaly has been created. As the term "eligible duties" for the purposes of sub sections (3), (4) and (6) would refer only to the quantum of credit attributable to the inputs lying in stock as on 01.07.2017, while carrying forward the balance of cenvat credit as on 01.07.2017, the same could be carried forwarded only to the extent of credit attributable to inputs lying in stock as on 01.07.2017. For example, if the balance of cenvat credit of Excise duty, CVD, SAD, paid on inputs, capital goods and service tax paid on input services was Rs.10,00,000 as on 30.06.2017. But let us assume that credit attributable to the stock of inputs lying as on 01.07.2017 is only Rs.1,00,000. As per the amended provisions, under sub section (1) of Section 140, out of the balance credit of Rs.10,00,000 only Rs.1,00,000 could be carried forwarded, which was not at all the intention. This anomalous situation is the result of making applicable the definition of "eligible duties" for the purposes of sub sections (3), (4) and (6) to sub section (1) also, instead of defining "eligible duties" for the purpose of sub section (1) of Section 140 separately.

It may also be noted that a new Explanation 3 has also been added in Section, which is reproduced below.

> *'Explanation 3.—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.'*

In fact, the above Explanation alone is sufficient to fulfil the intention of the Government for not allowing balance of any CESS credit to be carried forwarded.

This anomaly is sought to be overcome by not notifying the amendments made in the definition of "eligible duties" and "eligible duties and taxes" in the Explanations. This position has also been explained in CBIC's circular No. 87/6/2019 Dt. 02.01.2019.

But that is not the end of the story.

Reference is invited to sub section (2) of Section 1 of the CGST (Amendment) Act, 2018.

> *(2) Save as otherwise provided, the provisions of this Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.*

Hence, the Government can notify the date of effect to any of the amendments, only if no date of effect is prescribed in the Act itself.

Section 28 of the GST (Amendment) Act, through which Section 140 is being amended reads as,

> *28. In section 140 of the principal Act, with effect from the 1st day of July, 2017…….*

Hence all amendments made in Section 140 has already come into effect from 01.07.2017 and the Government has no scope to notify a different date for the amendments in Section 140 and hence the attempt of the Government to cover up its unintended lapse in proper drafting, by not notifying certain amendments in Section 140 is superfluous.

Anyway in view of Explanation 3 reproduced above and the Government's intention as exhibited from Circular No 87/6/2019, hopefully there would be no problem.

Changes relating to Schedule III.

Schedule III of the CGST Act lists out those activities which are treated neither as supply of goods nor as supply of services. In this schedule, the following activities have also been added now.

> *7. 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.*
>
> *8. (a) Supply of warehoused goods to any person before clearance for home consumption;*
>
> *(b) 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.*

Thus when an Indian person buys goods from a foreign country and the sells the same to a buyer in another foreign country, without bring the goods into India, there would be no GST applicability. Further, sale of goods when they are still in the Customs bonded warehouse would also not attract GST, as GST would be paid upon clearance of such goods by the buyer. High sea sale transactions also would not attract GST.

Further, an explanation has been added under section 17 (3) of the Act, whereby it is declared that activities mentioned in Schedule III (except sale of land or building) would not be treated as "exempt supply". As a consequence the liability of proportionate credit reversal under Rule 42 and 43 would not apply if any activities mentioned in Schedule III are carried out by any taxable person. For example, if a person is working as an employee and receives salary, the same is not a supply of any service as per S.No.1 of Schedule III and hence no GST is payable on salary income. If the same person also has any rental income from commercial building, he would be liable to pay GST thereon, subject to threshold exemption. He would also be availing ITC on various inputs, capital goods and input services. He is entitled to avail full ITC and there is no need for any proportionate reversal of such credit, in respect of the salary income.

It may also be noted that if a taxable person effects supply of any land or building, the proceeds received from such supply shall be treated as "exempt supply" and the provisions of Rule 42 and 43 would apply.

Place of supply for job work carried on imported goods.

As per section 13 (3) (a) of the IGST Act, where a person situated outside sends his goods for job work to India, the place of supply of such service shall be India, thereby attracting GST. But if goods are imported into India only for the purposes of repair and re-export no GST is payable. Now this concession has also been extended to job work.

Thus, if a person in India imports goods for job work and return to outside India, he is not liable to pay GST on his job charges.

Only important changes are covered in this write up and the relevant Amendment Acts and the Notifications may be referred to in case of any doubts.

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