

Indirect Tax Updates

GST Provisions applicable from 1st October 2023

(With Detailed Impact Analysis)

Key Highlights:

- ✓ Valuation Mechanism for Online Gaming, casinos, etc.
- ✓ ITC ineligible on CSR expenses
- ✓ Changes in meaning of “value of exempt supplies” for ITC reversal u/r 42 & 43
- ✓ Certain taxpayers not eligible for refund of IGST paid on zero-rated supplies
- ✓ Discharge of Tax and Interest in case of ITC reversal when payment to supplier not made within 180 days

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Latest Notifications issued by CBIC

1. Valuation for online gaming, actionable claims in casinos

[Notification No 49/2023 – Central Tax dated 29th September 2023]

With this notification, in exercise with the powers under Section 15(5) of the CGST Act 2017, the CBIC, has notified certain services, the value of which is to be determined as may be prescribed by the Central Government. The notified supplies are as follows:

1. supply of online money gaming.
2. supply of online gaming, other than online money gaming; and
3. supply of actionable claims in casinos

HNA Comments:

With the enactment of the Central Goods and Services Tax (Amendment) Act, 2023, online gaming, online money gaming & specified actionable claims have been specifically defined under the CGST Act. It is to absorb the maximum revenue potential from these industries that the Government has vested itself with the power to prescribe special valuation provisions with respect to such supplies.

The provisions on this behalf have been introduced with the Central Goods and Services Tax (Third Amendment) Rules, 2023 vide Notification No. 51/2023 – Central Tax that is herein discussed in detail under the last heading.

It may be noted that Central govt has unilaterally passed the notification without getting consent from States or awaiting their action. This has created a confusion among the industry as to whether SGST of 14% to be charged or not. Further, over 15 states which are yet to issue any notification in this regard, may exercise their option of parallel legislation as per Mohit Minerals SC case which can destroy the image of GST being one nation one tax.

2. Levy of GST at the time of receipt of advance in case of supply of specified actionable claims

[Notification No. 50/2023-Central Tax dated 29th September 2023]

The Central Government vide Notification No. 66/2017-Central Tax curtailed the requirement of payment of tax on receipt of advance in relation to the supply of goods by the registered dealers (other than the composition dealers).

Now, the Government, vide Notification No. 50/2023 has amended the above notification to exclude the registered person making the supply of specified actionable claims from the benefit of the above

notification and intends to levy tax at the point of receipt of advance in case of the supply of specified actionable claims.

HNA Comments:

*With the introduction of Rules 31B & 31C of the CGST Rules 2017 (as discussed under heading 5), the Government intends to charge tax on the amount paid or payable or **deposited** with the supplier with non-availability of the benefit of reduction in tax liability on account of any amount returned. Such an amendment is the result of such a shift of the valuation from the platform fee to that of the total amount paid/deposited by the person.*

3. The Central Goods and Services Tax (Third Amendment) Rules, 2023

[Notification No. 51/2023-Central Tax dated 29th September 2023]

Amendment has been carried out in the CGST Rules 2017 vide Notification No 51/2023.

The summary of such amendments is as follows:

Rule No.	Description	Amendment
8 and 14	Application for registration	<ul style="list-style-type: none"> ➤ A person supplying online money gaming from a place outside India to a person in India is required to make an application for registration under GST under FORM GST REG – 10 instead of FORM GST REG-1. ➤ Suitable amendments have also been made in FORM GST REG -10 to give effect to the above requirement.
31B	Value of supply in case of online gaming including online money gaming	<ul style="list-style-type: none"> ➤ The value of such supply shall be the total amount paid or payable to or deposited with the supplier by way of money or money’s worth, including virtual digital assets, by or on behalf of the player. ➤ Furthermore, any amount returned or refunded by the supplier to the player shall not be deductible from the value of supply of online money gaming.
31C	Value of supply of actionable claims in case of casino	<ul style="list-style-type: none"> ➤ Value of such supply shall be the total amount paid or payable by or on behalf of the player for – <ul style="list-style-type: none"> • purchase of tokens, chips, coins or tickets, by whatever name called, for use in casino. • participating in any event, including game, scheme, competition or any other activity or process, in the casino, in cases where the token, chips, coins or tickets, by whatever name called, are not required.

		<ul style="list-style-type: none"> ➤ Furthermore, any amount returned or refunded by the casino to the player shall not be deductible from the value of supply of actionable claims in casino.
64	Form and manner for submission of return	<ul style="list-style-type: none"> ➤ The registered person providing online money gaming from a place outside India to a person in India is required to file return under FORM GSTR-5A. ➤ Suitable amendments have also been made in FORM GSTR-5A to give effect to the above requirement.

HNA Comments:

The provisions of Section 24 of the CGST Act 2017 have been amended vide the CGST Amendment Act (as discussed in heading 2 supra) to mandate every person supplying such online money gaming from a place outside India to take registration in India under the GST Act. It is in this furtherance that the rules have been amended to prescribe the manner of registration on this behalf.

Furthermore, vide Notification No 49/2023, the Government has vested itself with the power to prescribe special valuation provisions with respect to supplies of online gaming including online money gaming & actionable claims in the case of casinos. Vide this Notification Rule 31B & Rule 31C have been prescribed on this behalf, shifting the valuation from the platform fee to that of the total amount paid/deposited by the person in such cases.

Further, it may be noted that Central govt has unilaterally passed the notification without getting consent from States or awaiting their action. This has created a confusion among the industry as to whether SGST of 14% to be charged or not. Further, over 15 states which are yet to issue any notification in this regard, may exercise their option of parallel legislation as per Mohit Minerals SC case which can destroy the image of GST being one nation one tax.

4. Suppliers supplying through E-Commerce Operators (ECOs) can now opt for Composition Scheme

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Section 10(2) and section 10(2A) of the CGST Act, 2017 has been amended to allow composition taxpayers to make intra-state supplies of “goods” through E-commerce operators.

HNA Comments:

Small taxpayers (upto Rs. 1.5 Crores of aggregate turnover in a year) have an option to pay GST under composition Scheme at 1% instead of the normal rate subject to certain conditions. One such condition as mentioned in section 10(2)(d) is that the taxpayer should not be supplying goods through E-Commerce Operators (ECOs). This amendment relaxes this condition and the person opting to make the payment of

tax at composition rate may also supply goods through e-commerce operator. The restriction for supply of service through to ECOs continues.

The CBIC has also issued notification No. 36/2023 dt. 04-08-2023 prescribing the simplified procedures to be followed by ECOs in respect of the composition taxpayers willing to supply goods through ECOs. This would help the composition dealers of goods also to explore the sales through ECO's and this would also help the MSMEs to widen their scope of business.

5. Meaning of “zero-rated supply” amended to provide supplies to SEZ only for authorized operations

[Notification No. 27/2023–Central Tax dated 31st July, 2023]

Section 123 of the Finance Act, 2021, notified through this notification amends the meaning of “zero-rated supplies” as per Section 16(1) of the IGST Act to provide that supply of goods or services or both to SEZ developer or SEZ unit would be considered zero-rated only if made for “authorized operations”.

HNA Comments:

There was restriction in the GST rules for claiming refund of supplies to SEZ unit / developer. Refund was allowed only if supplied for authorised operations. The DTA suppliers are required to obtain endorsement from the jurisdictional officers of SEZ for the matter of “authorized operations” in case of supply of goods & services to SEZ through SEZ online portal (<https://sezonline-ndml.co.in/>). However, such restriction was not provided in parent act which is being amended to include the same. Supplier may not be knowing whether the SEZ Unit is purchasing the goods/ services only for authorized operations or not. To this extent, litigation on this issue would increase in the near future. For services, a “Uniform List of Services” is notified in the SEZ law vide Notification No. F. No. D.12/19/2013-SEZ dated 2nd January 2018, which specifies 66 services, which would be considered to be for authorized operations. However, on case-to-case basis, taxpayers providing services which are not covered in the Uniform List may approach the SEZ authority for considering it as service supplied for authorized operations.

Action Points for the Trade & Industry:

While making supplies to SEZ units or SEZ developers, it is to be ensured that such goods/services are used for “authorized operations”. Appropriate endorsements from SEZ officer would be considered more appropriate for claiming refunds for supplies to SEZ. For refunds prior to 01-10-2023, a view could be taken that even if such endorsements are not available, the DTA supplier is still eligible to claim a refund as such amendment is applicable only from 01-10-2023. However, before adopting such a stance, an expert opinion in this regard is suggested.

6. Amendment in Section 16 of IGST Act – Restriction for exports with payment of IGST; Refund where no realization made within FEMA time limits

[Notification No. 01/2023-Integrated Tax dated 31st July 2023]

[Notification No. 27/2023-Central Tax dated 31st July 2023]

The Government has notified Section 123 of the Finance Act, 2021 vide Notification No. 27/2023-Central Tax dated 31st July 2023. Accordingly, following amendments are made to Section 16 of IGST Act:

1. Refund option available for supplies of goods without payment of tax has been subjected to realisation of sale proceeds. Where sale proceeds are not received within the time frame prescribed in FEMA 1999, the assessee would be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50.
2. Supplies of goods and services with payment of taxes have been restricted based on notification issued which would specifying:
 - a. a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid
 - b. a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.
3. The class of goods and services on which refund of IGST paid is restricted is given in Annexure A to this document.

HNA Comments:

- a. *Receipt of sale proceeds on export of goods was restricted through Rule 96B notified vide Notification 16/2020 CT dated 23rd March 2020. However, the same was not supported by provisions in the CGST Act 2017. This amendment has provided an enabling power in the act for the same. The amendments would be effective from 01.10.2023.*
- b. *Previously, options were given to the suppliers making zero-rated supplies either to supply under without payment of tax (LUT) and claim refund of unutilized ITC or supply under payment of tax and claim refund of tax paid. Currently, restriction has been provided for export/zero rated supply of goods and services with payment of tax by giving power to government to notify class of persons along with goods and services.*
- c. *Export with payment of IGST (automatic, system driven processing & sanctioning the IGST Refunds based on shipping bill) no longer be available for few exporters. It is for the Government to give that option to specific person who is dealing with specific goods or services. In some cases, exporters claimed the ITC on basis of fake invoices, IGST was paid by using such ITC and Customs refunded such amounts to exporters.*
- d. *In some cases, vendors of exporters claimed the bogus credits and discharged their liability through such credit. Because of these reasons, Govt wants to restrict that IGST refund option only to few organized sectors.*
- e. *Further, the provision specifies for interest payable by the applicant as per Section 50 when refund is deposited back to Govt when proceeds not realized. However, it may be noted that the provision*

does not specify which sub-section of Section 50 would apply. Sub-section (1) applies for interest on “tax” payable but not paid. Sub-section (3) provides for interest in case of wrongful availment and utilization of ITC. However, in this case of refund deposited back to Govt, it does not seem to fit under any of the sub-sections in Section 50 as the refund rejected is not due to wrongful utilization of ITC, but due to non-realisation of export proceeds within FEMA time limits. Government clarifications regarding the same is awaited.

Action Points for the Trade & Industry:

It is suggested to all the exporters of the goods restricted for refund of IGST as per the notification (specified in Annexure A to this document) to make their shipments with payment of IGST within 30th September 2023 so that the existing ITC in the credit ledger (especially those pertaining to capital goods) may be liquidated in the form of automatic refunds.

Further, for exporters claiming refund of unutilized credit, it is to be ensured that realization for such exports proceeds are made within 9 months from date of export as per FEMA, 1999.

7. Value of exempt supply for ITC reversal include supply of warehoused goods before clearance for home consumption

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Explanation to Section 17(3) is amended to further include supply of warehoused goods before clearance for home consumption (i.e., before filing bill of entry for such goods) (Paragraph 8(a) of Schedule III) within the ambit of exempt supply for the purpose of reversal of ITC under Section 17(2) r/w Rule 42 and Rule 43 of the CGST Rules, 2017.

H N A Comments:

Section 17(2) of the CGST Act restricts the availability of ITC to the extent attributable to taxable supplies. Explanation to Section 17(3) provides that exempt supply for this purpose would exclude the value of activities or transactions specified in Schedule III (activities or transactions which are treated neither as supply of goods nor as supply of services). The activity of supply of the imported warehoused goods before clearance for home consumption (this is because the person filing the bill of entry i.e. the buyer would be paying IGST under the Customs Act, and would result in double payment if not excluded from supply) would be also part of the schedule. Now, the ITC of inputs, input services and capital goods attributable to such supply needs to be reversed.

Impact: The importer would be incurring various expenditure such as clearing and forwarding, CHA Charges, port charges, handling charges, freight etc. and GST would have been paid on the same. Hitherto to this amendment such supplier would have claimed exemption from tax on sale and would have also enjoyed the input tax credit. Now the input tax credit of the entire direct expenses pertaining to such sale and purchase along with proportionate common credit would be restricted. This particular amendment

would make the Hon'ble Bombay High Court Judgement in the case of M/s. Sandeep Patil and Kerala High Court Judgement in the case of M/s Cial Duty Free and Retail Services Ltd, redundant to this extent.

8. ITC restricted on goods and services in relation to CSR activities

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Clause (fa) is inserted under Section 17(5) of the CGST Act to restrict availability of ITC in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities of corporate social responsibility (CSR) as provided for under Section 135 of the Companies Act, 2013.

HNA Comments:

Section 17(5) provides the list of the blocked credit. Goods and service received for the CSR activities is added to this, thereby restricting the input tax credit. The expenditure related to business is eligible for the credit, CSR being a mandated activity as per the Companies Act could have been considered as business related expenses for the purpose of input tax credit. This was also ruled in some Advance Rulings. This amendment nullifies such ruling.

Action Points for the Trade & Industry:

The Trade and Industry are required to undertake/consider the following: The ITC cannot be availed for such goods and services used for fulfilling the CSR obligation henceforth. Credit for the past would be eligible, since the intention of law to restrict such credit has been expressed only with this amendment. Further any voluntary CSR other than mandated by Companies Act, 2013 shall be eligible for ITC.

9. Amendment in place of supply for transportation of goods outside India

[Notification No. 28/2023-Central Tax dated 31st July 2023]

The proviso to Section 12(8) of the IGST Act provides the place of supply on transportation of goods outside India be the destination of the goods. Now, it is amended to omit the proviso to sub-section (8) of section 12 so as to specify the place of supply, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.

HNA Comments:

Due to the effect of change, the place of supply even in case where the destination of goods is outside India would be similar to the case where the destination of goods was in India which is in case of supply to a registered person would be the location of such person and to an unregistered person would be the location where the goods were handed over to the transporter. This amendment would also resolve the ITC claim difficulties due to the use of 'Other Territory' as place of supply.

10. Place of supply in case of transportation of goods

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Subsection (9) of section 13 provides for the place of supply services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

Now it amended to omit this subsection.

H N A Comments:

Due to the effect of this change, the place of supply in these situations shall be the location of the recipient of service. Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services. This amendment brings parity between domestic and international vendors wherein services from international vendors would now bring in RCM liability by way of import of service.

11. Alignment of ITC reversal to the return filing system

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Second proviso to Section 16(2) of the CGST Act, 2017 has been amended to re-word from 'added to his output tax liability, along with interest thereon' to 'paid by him along with interest payable under section 50'. Further, the third proviso to Section 16(2) is amended to clarify that the recipient is entitled to re-avail the ITC on making of payment towards value of supply along with tax payable to the supplier.

H N A Comments:

The above proviso provides for the recipient to reverse the ITC availed by way of addition to the output tax liability along with interest where he fails to make payment to the supplier an amount towards the value of supply along with tax payable within 180 days from the date of issue of invoice. The amendment aligns the provisions of law with the mechanism available on the GST portal which provides for reversal of ITC in case such failure to make payment to the supplier within 180 days from the date of invoice under Table 4(B)(2) of GSTR-3B. The ITC so reversed can be subsequently re-availed in Table 4(A)(5) of GSTR-3B with corresponding disclosure in Table 4(D)(1) of GSTR-3B upon payment of value with taxes to the supplier.

The interest payable will be determined as per provisions of section 50(3) instead of section 50(1). Currently, the rate of interest under both the said sections is 18% p.a. However, the maximum rate of interest that is prescribed under section 50(3) is 24% p.a, which may change in the future if the Government thinks that it is necessary to do so.

Action Points for the Trade & Industry:

Going forward, the Revenue may issue notices demanding reversal of ITC and payment of an amount equal

to such ITC along with interest. Instead of paying an amount equal to such ITC, if the taxpayer adds such amount to his output tax liability, the Revenue may not accept the same post this amendment and may demand again for payment of such ITC, which leads to double payment. In order to avoid such litigation, it is suggestible to make payment of an amount equal to already availed ITC along with interest in cases of non-payment within 180 days.

12. Removal of time limit of 30 days for making revocation of cancellation

[Notification No. 28/2023-Central Tax dated 31st July 2023]

In section 30 related to revocation of cancellation of registration, the words "the prescribed manner within thirty days from the date of service of the cancellation order are omitted and the words "such manner, within such time and subject to such conditions and restrictions, as may be prescribed." are inserted.

Further proviso related to extension of this 30 days period by additional commissioner or joint commissioner by 30 days and then by the commissioner by more 30 days, on sufficient is now cause being shown, is also omitted.

HNA Comments:

Due to this change, 30 days period of revocation of cancellation application is omitted and 30 days revocation is prescribed through rules and regulations.

Action Points for the Trade & Industry:

The Trade and Industry are required to undertake/consider the following: For proper disclosure of reversal and re-availment of credit in the GSTR-3B is being made effective as there will be proper disclosure of re-availment of credit in Table-4(D)(1) along with availment of Credit in Table-4(D)(1). This is in line with current GSTR-3B return.

13. Time limit for filing GSTR-1

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Sub-section (5) to Section 37 of the CGST Act is inserted to restrict a registered person from filing return in Form GSTR-1 under Section 37 after the expiry of a period of 3 years from the due date. However, the power is conferred upon the Government, by way of a notification subject to such conditions and restrictions, to allow a registered person or a class of registered persons to furnish the return in Form GSTR-1 even after the expiry of the said period of three years.

H N A Comments:

GSTR-1 is a return for communicating the details of the outward supplies monthly, which needs to be filed before 11th of the subsequent month. This could have been filed along with late filing fee beyond the due date. With this amendment one cannot file the GSTR-1 after the expiry of a period of 3 years.

Action Points for the Trade & Industry:

Where GSTR-1 for a tax period is not furnished by the supplier, then the supplier is restricted from filing GSTR-3B for the said period as well as GSTR-1 for the subsequent tax periods. Further Section 29 of the CGST Act, confers powers on the proper officer to cancel the registration where the returns are not furnished for a continuous period of 6 months. Therefore, the practical implications of the said restriction would be required to be tested. Further, in case where cancellation of registration is subsequently revoked upon appeal by the assessee, subject to furnishing of pending returns, where the said time limit of 3 years has expired, then the operationality of this provision may come into question.

14. Time Limit for GSTR-3B

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Sub-section (11) to Section 39 of the CGST Act is inserted to restrict a registered person from filing return in Form GSTR-3B under Section 39 after the expiry of a period of 3 years from the due date of furnishing the return for the said tax period. However, the power is conferred upon the Government, by way of a notification subject to such conditions and restrictions, to allow a registered person or a class of registered persons to furnish the return in Form GSTR-3B even after the expiry of the said period of three years.

H N A Comments:

GSTR-3B is a return, which needs to be filed before 20th of the subsequent month. This could have been filed along with late filing fee beyond the due date. With this amendment one cannot file the GSTR-3B after the expiry of a period of 3 years.

Action Points for the Trade & Industry:

Where GSTR-3B for a tax period is not furnished by the supplier, then the supplier is restricted from filing GSTR-3B for the subsequent tax periods. Further Section 29 of the CGST Act, confers powers on the proper officer to cancel the registration where the returns are not furnished for a continuous period of 6 months. Therefore, the practical implications of the said restriction would be required to be tested. Further, in case where cancellation of registration is subsequently revoked upon appeal by the assessee, subject to furnishing of pending returns, where the said time limit of 3 years has expired, then the operationality of this provision may come into question.

15. Time Limit for GSTR-9

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Section 44 (2) of the CGST Act is inserted to restrict a registered person from filing return in Form GSTR-9 after the expiry of a period of 3 years from the due date of furnishing the return for the said tax period. However, the power is conferred upon the Government, by way of a notification subject to such conditions and restrictions, to allow a registered person or a class of registered persons to furnish the return in Form GSTR-9 even after the expiry of the said period of three years.

H N A Comments:

GSTR-9 is an annual return, which needs to be filed before 31st December of the next financial year. This could have been filed along with late filing fee beyond the due date. With this amendment one cannot file the GSTR-9 after the expiry of a period of 3 years.

16. Time Limit for GSTR-7

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Section 52 (15) of the CGST Act is inserted to restrict a registered person from filing return in Form GSTR-7 after the expiry of a period of 3 years from the due date of furnishing the return for the said tax period. However, the power is conferred upon the Government, by way of a notification subject to such conditions and restrictions, to allow a registered person or a class of registered persons to furnish the return in Form GSTR-7 even after the expiry of the said period of three years.

H N A Comments:

GSTR-7 is monthly return, which needs to be filed before 10th of the next month. This could have been filed along with late filing fee beyond the due date. With this amendment one cannot file the GSTR-7 after the expiry of a period of 3 years.

17. Time Limit filing GSTR 3B and GSTR 10 for withdrawal of Best Judgement order

[Notification No. 28/2023-Central Tax dated 31st July 2023]

In terms of sec. 62 of CGST Act, where a registered person fails to furnish the return under section 39 (GSTR-3B) or section 45 (GSTR-10), even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement. Now, the time period to furnish Form GSTR 3B or Form GSTR 10 has been increased from 30 days to 60 days for effecting deemed withdrawal of the best judgement order. Beyond 60 days, additional period of 60 days (61 to 120 days) has been extended on payment of additional late fee over and above the standard late fee.

HNA Comments:

GSTR 3B or GSTR 10 needs to be filed within 60 days from the date of communication of Best Judgement order. If not filed, additional 60 days are available to furnish such returns on payment of additional late fees over and above the normal late fees.

18. Penalty proposed for e-commerce operators

[Notification No. 28/2023-Central Tax dated 31st July 2023]

It is amended to insert a new sub-section, sub-section (1B) after sub-section (1A) in Section 122 of the Act so as to provide penal provisions applicable to E-commerce operators in case there is non-compliance of any of the provisions made in relation to supply of goods made through the said ECO by unregistered persons or composition taxpayers.

A penalty amounting to rupees ten thousand or an amount equivalent to the amount of tax involved had such supply been made by a registered person other than a person paying tax under section 10, whichever is higher, has been amended on the following offences –

- a) allows a supply of goods or services or both through it by an unregistered person other than a person exempted from registration by a notification issued under this Act to make such supply;
- b) allows an inter-State supply of goods or services or both through it by a person who is not eligible to make such inter-State supply; or
- c) fails to furnish the correct details in the statement to be furnished under sub-section (4) of section 52 of any outward supply of goods effected through it by a person exempted 99 from obtaining registration under this Act.

HNA Comments:

The above amendment has been done with a view to provide for a specific penalty in case the E-commerce operators are not ensuring compliance in terms of the provisions laid down under Section 52 of the Act. Further, due care to be taken by the ECO wherever any unregistered person has been allowed to make supplies through it in terms of specific exemptions from taking registration even if a person is making supplies through an e-commerce operator.

19. Retrospective applicability of changes made in Schedule III of CGST Act on 1.2.2019

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Through CGST (Amendment) Act, 2018 w.e.f 1.2.2019, the following entries were inserted in schedule III:

- 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.

The explanation 2, for the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962 (50 of 1962).

Now, it is provided that these provisions would have retrospective effect from 1.7.2017. However, it is clarified that the refund would not be granted in cases where the taxes are already paid to the government.

HNA Comments:

The amendment clarifies that supply of goods without such goods entering India, high seas sales and sale of warehoused goods before clearance for home consumption would not be taxable under GST from 1.07.2017 which would reduce the dispute from the department for demanding taxes for the period from 1.07.2017 to 31.1.2019 where there was uncertainty on taxability of these transaction. However, the government has clarified that refund would not be granted where the taxes were actually paid which can be contested in the court of law wherever already paid.

20. Changes in prosecution provisions

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Section 132 has been amended by deleting the following offences:

- (g) obstructs or prevents any officer in the discharge of his duties under this Act;
- (j) tampers with or destroys any material evidence or documents;
- (k) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information;

HNA Comments:

This is part of the de-criminalization activity which is not of very serious offence.

21. Changes in Compounding of offences

[Notification No. 28/2023-Central Tax dated 31st July 2023]

- The restriction for compounding of the offence in case where the assessee had been allowed to compound an offence committed under clause (h) of Sec 132 (i.e., concerns himself in any way with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules), or under clause (i)(i.e., receives or in any way concerned with supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the Rules) for the value more than Rs. 1 crore is now proposed to restrict the compounding of the offence irrespective of the value involved in the offence.
- If a person is accused of committing an offence under this act or any other act for the time being in force is prohibited from compounding of the offence is now proposed to impose such restriction only on the person who issues fake invoicing without supply.
- The corresponding effect of decriminalization of offences has been made under the provisions of compounding of the offences.
- The amount for compounding of the offences is minimum of not less than Rs.10,000 or 50% of tax whichever is higher and the maximum amount not less than Rs.30,000 or 150% of the tax involved whichever is higher. It is proposed to reduce the amount for compounding of the offences to minimum of 25% of the taxes and maximum of not less than 100% of the taxes.

HNA Comments:

The government has proposed to reduce the compounding fee in order to reduce the litigation and provide an opportunity for the taxpayer correct himself.

22. Power of government to share the information of the taxpayer

[Notification No. 28/2023-Central Tax dated 31st July 2023]

Sec 158A is inserted to enable the government to share the following information with prior consent of the supplier:

- (a) particulars details given for registration under section 25 or in the return filed under section 39 or under section 44;
- (b) the particulars uploaded on the common portal for preparation of invoice, the details of outward supplies furnished under section 37 and the particulars uploaded on the common portal for generation of documents under section 68;
- (c) such other details as may be prescribed;

Further the details as mentioned in point (b) and any other details which discloses the identity of the recipient would be shared on prior consent of the recipient.

It is also provided that the government or the common portal cannot be sued for any additional liability to the registered person due to sharing of the information and the liability of the taxpayer would not have any impact.

HNA Comments:

With this change, the government would have the power to share the information available like details provided at the time of registration, GSTR 3B, GSTR 9 and 9C, E-invoice, GSTR 1, E-way bill and any other details with consent as prescribed. Even the taxpayer would not have any power to sue the government for any liability arising out of such disclosure.

23. The Central Goods and Services Tax (Amendment) Act, 2023 to be effective from 1st October 2023 – w.r.t. online gaming, casinos, etc.

[Notification No 48/2023-Central Tax dated 29th September 2023]

The Central Goods and Services Tax (Amendment) Act, 2023 (30 of 2023) received the assent of the President on the 18th of August 2023. In furtherance of this, the Central Government vide Notification No. 48/2023 has appointed the 1st of October 2023 as the date on which the provisions of the said Act shall come into force.

A summary of the amendments carried out in the CGST Act is as follows:

a) Insertion of the new definitions w.r.t Online Gaming, specified actionable claim, virtual digital asset etc. (Section 2 of the CGST Act)

Clause No.	Word	Meaning
80A	online gaming	means offering of a game on the internet or an electronic network and includes online money gaming.
80B	online money gaming	means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and

		whether the same is permissible or otherwise under any other law for the time being in force.
102A	specified actionable claim	means the actionable claim involved in or by way of— (i) betting; (ii) casinos; (iii) gambling; (iv) horse racing; (v) lottery; or (vi) online money gaming;
Proviso to 105	Supplier	Provided that a person who organises or arranges, directly or indirectly, supply of specified actionable claims, including a person who owns, operates or manages digital or electronic platform for such supply, shall be deemed to be a supplier of such actionable claims, whether such actionable claims are supplied by him or through him and whether consideration in money or money's worth, including virtual digital assets, for supply of such actionable claims is paid or conveyed to him or through him or placed at his disposal in any manner; and all the provisions of this Act shall apply to such supplier of specified actionable claims, as if he is the supplier liable to pay the tax in relation to the supply of such actionable claims.
117	virtual digital asset	shall have the same meaning as assigned to it in clause (47A) of section 2 of the Income-tax Act, 1961.

b) Amendment in the provisions of Mandatory Registration under GST

For the effective levy & collection of GST from the **persons supplying online money gaming from a place outside India to a person in India**, the provisions of Section 24 of the CGST Act 2017 have been amended to mandate every person supplying such online money gaming from a place outside India to take registration in India under the GST Act.

c) Amendment under Schedule III to bring the specified actionable claims under the ambit of GST.

Para 6 of Schedule III which carves out actionable claim from the ambit of GST has been amended to bring the **specified actionable claims** (betting, casinos, gambling, horse racing, lottery, online money gaming) under the purview of GST.

H N A Comments:

The GST Council in the 50th meeting deliberated on the issue of taxability with respect to Casinos, Racecourses, and Online Gaming and recommended a levy of tax on Online gaming, actionable claims supplied in Casinos, and Horse racing. In order to review the indirect tax provisions in respect of the online gaming industry the 51st GST Council meeting has been carried out and the above amendments are the outcome of such meeting.

The main highlight of the amendment is the introduction of the definition of online gaming, online money gaming & specified actionable claims & corresponding amendment made in Schedule III thereto.

Disclaimer:

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