

# **ANALYSIS OF CHANGES IN GST ACT, 2017 UNDER BUDGET 2023-24**

## **MAIN GST CHANGES IN BUDGET 2023**

Here are 9 Legislative GST Changes that budget 2023-24 brings:

### **1. DECRIMINALISATION**

Section 132 and section 138 of CGST Act are being amended, inter alia, to –

- raise the minimum threshold of tax amount for launching prosecution under GST from Rs. one crore to Rs. two crores, except for the offence of issuance of invoices without supply of goods or services or both;
- reduce the compounding amount from the present range of 50 per cent to 150 per cent of tax amount to the range of 25 per cent to 100 per cent;
- decriminalize certain offences specified under clause (g), (j) and (k) of sub-section (1) of section 132 of CGST Act, 2017, viz.
  - i) obstruction or preventing any officer in discharge of his duties;
  - ii) deliberate tempering of material evidence;
  - iii) failure to supply the information.

#### **SECTION 132 OF CGST ACT, 2017 –**

*(1) Whoever commits, or causes to commit and retain the benefits arising out of, any of the following offences” namely:*

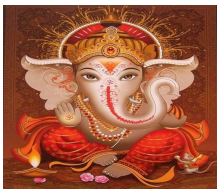
*(a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*

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*(b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*

~~*(c) avails input tax credit using such invoice or bill referred to in clause (b);*~~

*(c) “avails input tax credit using such invoice or bill referred to in clause (b) or fraudulently avails input tax credit without any invoice or bill;”*

*(d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*

~~*(e) evades tax, fraudulently avails input tax credit or fraudulently obtains refund*~~

*(e) evades tax, or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);*

*(f) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;*

*(g) obstructs or prevents any officer in the discharge of his duties under this Act;*

*(h) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;*

*(i) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;*

*(j) tampers with or destroys any material evidence or documents;*

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*(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; or*

*(l) attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section, shall be punishable--*

*(i) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;*

*(ii) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;*

*(iii) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine;*

*(iv) in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.*

*(2) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.*

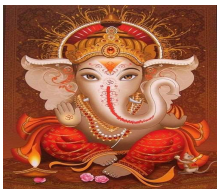
*(3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.*

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(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be noncognizable and bailable.

(5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.

(6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner. Explanation.— For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

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### **SECTION 138 OF CGST ACT, 2017**

(1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed: Provided that nothing contained in this section shall apply to—

(a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of the said sub-section;

(b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

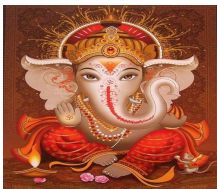
(c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

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*(d) a person who has been convicted for an offence under this Act by a court;*

*(e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and*

*(f) any other class of persons or offences as may be prescribed:*

*Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:*

*Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.*

*(2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent. of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.*

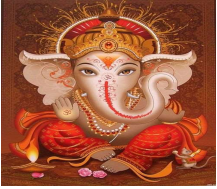
*(3) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.*

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## **2. FACILITATE E-COMMERCE FOR MICRO ENTERPRISES**

Amendments are being made in section 10 and section 122 of the CGST Act to enable unregistered suppliers and composition taxpayers to make intra-state supply of goods through ECommerce Operators (ECOs), subject to certain conditions.

### **SECTION 10 OF CGST ACT, 2017**

(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him “in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate) as may be prescribed,<sup>7</sup> but not exceeding,--

(a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,

(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph of Schedule II, and

(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore and fifty lakh rupees, as may be recommended by the Council.

**Provided Further That** a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher.

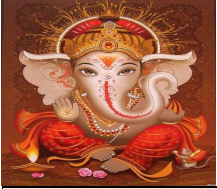
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**Explanation.**— For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory.

(2) The registered person shall be eligible to opt under sub-section (1), if:—

(a) save as provided in sub-section (1), he is not engaged in the supply of services;

(b) he is not engaged in making any supply of goods or services which are not leviable to tax under this Act;

(c) he is not engaged in making any inter-State outward supplies of goods or services;

(d) he is not engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52; ~~and~~

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the ~~Council~~; Council; and

(f) he is neither a casual taxable person nor a non-resident taxable person:

Provided that where more than one registered person are having the same Permanent Account Number (issued under the Income-tax Act, 1961(43 of 1961)], the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

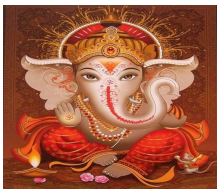
(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—

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(a) engaged in making any supply of goods or services which are not leviable to tax under this Act;

(b) engaged in making any inter-State outward supplies of goods or services;

(c) engaged in making any supply of goods or services through an electronic commerce operator who is required to collect tax at source under section 52;

(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and

(e) a casual taxable person or a non-resident taxable person:

*Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961 (43 of 1961), the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.”;*

(3) The option availed of by a registered person under sub-section (1) or sub-section (2A), as the case may be, shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1) or sub-section (2A), as the case may be,

(4) A taxable person to whom the provisions of sub-section (1) or, as the case may be, sub-section (2A) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

(5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

*Explanation 1 -- For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression “aggregate turnover” shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall*

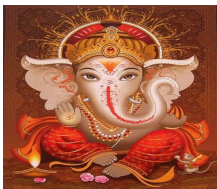
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not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

*Explanation 2.-- For the purposes of determining the tax payable by a person under this section, the expression “turnover in State or turnover in Union territory” shall not include the value of following supplies, namely:--*

*(i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and*

*(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.*

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## **SECTION 122 OF CGST ACT, 2017-OFFENCES AND PENALTIES**

*(1) Where a taxable person who--*

*(i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;*

*(ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act or the rules made thereunder;*

*(iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*

*(iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*

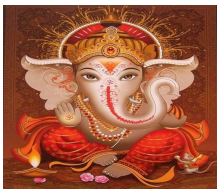
*(v) fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*

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*(vi) fails to collect tax in accordance with the provisions of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*

*(vii) takes or utilises input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act or the rules made thereunder;*

*(viii) fraudulently obtains refund of tax under this Act;*

*(ix) takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*

*(x) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*

*(xi) is liable to be registered under this Act but fails to obtain registration;*

*(xii) furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;*

*(xiii) obstructs or prevents any officer in discharge of his duties under this Act;*

*(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;*

*(xv) suppresses his turnover leading to evasion of tax under this Act;*

*(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;*

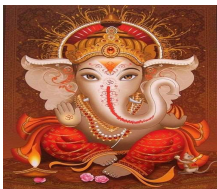
*(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;*

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*(xviii) supplies, transports or stores any goods which he has reasons to believe are liable to confiscation under this Act;*

*(xix) issues any invoice or document by using the registration number of another registered person;*

*(xx) tampers with, or destroys any material evidence or document;*

*(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act, he shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.*

*“(1A) Any person who retains the benefit of a transaction covered under clauses (i), (ii), (vii) or clause (ix) of sub-section (1) and at whose instance such transaction is conducted, shall be liable to a penalty of an amount equivalent to the tax evaded or input tax credit availed of or passed on.”*

*(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilised,—*

*(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten per cent. of the tax due from such person, whichever is higher;*

*(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty equal to ten thousand rupees or the tax due from such person, whichever is higher.*

*(3) Any person who—*

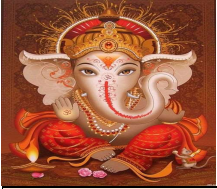
*(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);*

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*(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;*

*(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;*

*(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an inquiry;*

*(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.*

### **3. AMENDMENT TO SCHEDULE III OF CGST ACT, 2017**

*Paras 7, 8 (a) and 8 (b) were inserted in Schedule III of CGST Act, 2017 with effect from 01.02.2019 to keep certain transactions/ activities, such as supplies of goods from a place outside the taxable territory to another place outside the taxable territory, high sea sales and supply of warehoused goods before their home clearance, outside the purview of GST.*

*In order to remove the doubts and ambiguities regarding taxability of such transactions/ activities during the period 01.07.2017 to 31.01.2019, provisions are being incorporated to make the said paras effective from 01.07.2017. However, no refund of tax paid shall be available in cases where any tax has already been paid in respect of such transactions/ activities during the period 01.07.2017 to 31.01.2019.*

#### **SCHEDULE III OF THE CGST ACT, DEALS WITH THOSE AREAS WHICH CAN BE NEITHER TREATED AS SUPPLY OF GOODS NOR TREATED AS SUPPLY OF SERVICES.**

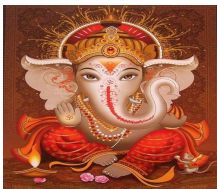
*This schedule deals with those goods/services other than that which has been kept constitutionally out of the ambit of GST being alcoholic liquor of human consumption and*

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*the items for which applicability of GST has been deferred (five items of petrol being petroleum crude, High Speed Diesel, Aviation Turbine Fuel, Motor Spirit and Natural Gas).*

*Let us see the cases where supply shall be neither supply of goods nor supply of services*

- i) **Services by employee to employer shall be regarded** as neither supply of goods nor supply of services. However, service by employer to employee shall be a taxable service, which shall be covered by Schedule I-Entry 2 read with Valuation rules.

*Hence, providing cafeteria, recreation, sports facilities to employees will attract GST.*

- ii) **Services provided by Court or Tribunal is included in Schedule III.** However, services provided by arbitral tribunal to a business entity shall be subject to RCM.

- iii) **Functions by MPs, MLAs, in discharging their duties by virtue of Constitutional authority is not a supply of service.** Providing of legal services by the same MPs/MLAs shall be a taxable service, to a business entity and will be an exempt service if provided to any other person.

- iv) **Sale of building along with sale of land,** if Completion certificate is not received and consideration is received shall be taxed. Sale of Building with entire consideration received after obtaining Completion certificate shall not be regarded as supply. Sale of Land is not a supply. However, developed land may be treated as supply with respect to developmental charges.

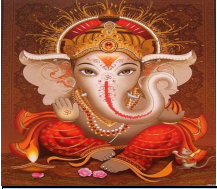
- v) **Goods includes actionable claims except money.** Actionable claims apart from Betting, Lottery and Gambling are not to be treated as supplies. Attention is warranted here where lottery is treated as supply of goods, betting and gambling related actionable claim is considered as services through the clarification given by the Department vide F. No. 354/107/2017-TRU dated 04.01.2018.

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- vi) **Supply of goods which does not enter India from a non-taxable territory to another non-taxable territory** has been regarded as neither supply of goods nor services. So, “entering India” is one of the conditions for taxing a supply from a non-taxable territory.
- vii) The point of taxation during a high-sea sales transactions is only at time of importation when the documents for customs clearance are filed. After including this entry, supplies before clearance of home consumption shall not fall within the ambit of supply.
- viii) The controversy pertaining to reversal of Input tax credit has been put to rest, as post-insertion of this entry there won't be any necessity for reversal.
- ix) **Pseudo-Schedule III Items-Inserted by way of Notification/Circular:**
  - a) Services provided by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution.
  - b) The inter-State movement of goods like movement of various modes of conveyance, between 'distinct persons' including trains, buses, trucks, tankers, trailers, vessels, containers & aircrafts, carrying goods or passengers or both, or for repairs and maintenance, would also not be regarded as supplies except in cases where such movement is for further supply of the same conveyance.
  - c) Inter-State movement of jigs, tools and spares, and all goods on wheels like cranes, except in cases where movement of such goods is for further supply of the same goods, would not be regarded as supplies.

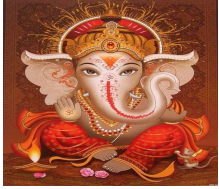
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#### **4. RETURN FILING UNDER GST**

Sections 37, 39, 44 and 52 of CGST Act, 2017 are being amended to restrict filing of returns/statements to a maximum period of three years from the due date of filing of the relevant return / statement.

#### **5. INPUT TAX CREDIT FOR EXPENDITURE RELATED TO CSR**

Section 17(5) of CGST Act is being amended to provide that input tax credit shall not be available in respect of goods or services or both received by a taxable person, which are used or intended to be used for activities relating to his obligations under corporate social responsibility referred to in section 135 of the Companies Act, 2013.

**ACCORDING TO SECTION 135 OF THE COMPANIES ACT**, a company with a specified net worth failed to incur a minimum of 2% of their net profit towards CSR, the same will attract penalty under Section 135(7) of the Companies Act, which may go up to Rs. 1 Crore. Thus, running of the business of a company will be substantially impaired if they do not incur said expenditure. Therefore, the expenditure incurred for CSR is an expenditure made in the furtherance of the business. Hence, the taxes paid to meet the obligation under Section 135 of the Companies Act, shall be eligible for ITC under the Central Goods and Services Taxes (“CGST”) and the State Goods and Services Taxes Acts (“SGST”).

#### **SECTION 16(1) OF THE CGST ACT, 2017**

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and, in the manner, specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.

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**SECTION 135 SUB-SEC (1) OF THE COMPANIES ACT, 2013**

*Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more in the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director”.*

**SECTION 135 SUB-SEC (5)** *The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial year, or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.*

**SECTION 135 SUB-SEC (6)** *Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.*

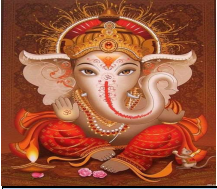
**SECTION 135 SUB-SEC (7)** *If a company is in default in complying with the provisions of sub-section (5) or sub section ( 6), the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or one crore rupees, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one-tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or two lakh rupees, whichever is less.*

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### **THE AAAR TELANGANA HELD THAT**

*The expenditure made towards corporate responsibility under section 135 of the Companies Act, 2013, is an expenditure made in the furtherance of the business. Hence the tax paid on purchases made to meet the obligations under corporate social responsibility will be eligible for input tax credit under CGST and SGST Acts.*

*The Government proposed to amend provisions of Section 17(5) of the CGST Act, 2017 by inserting a provision to deny ITC on CSR expenditure by companies liable to do CSR according to the provisions of the Companies Act, 2013.*

### **6. SHARING OF INFORMATION**

*A new section 158A in CGST Act is being inserted to enable sharing of the information furnished by the registered person in his return or application of registration or statement of outward supplies, or the details uploaded by him for generation of electronic invoice or E-way bill or any other details on the common portal, with other systems in a manner to be prescribed.*

### **SECTION 158 OF CGST ACT 2017 SHALL COME INTO FORCE ON 22.06.2017 VIDE NOTIFICATION NO. 1/2017-CENTRAL TAX, G.S.R. 605(E), DATED 19.06.2017**

**SECTION 158(1):** *All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.*

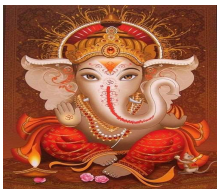
**SECTION 158(2):** *Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).*

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**SECTION 158(3):** Nothing contained in this section shall apply to the disclosure of, –

- (a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or
- (b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or
- (c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or
- (d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
- (e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or
- (f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or
- (g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
- (h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
- (i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising

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cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or

(j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

(k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or

(l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

## **7. AMENDMENTS IN SECTION 2 CLAUSE (16) OF IGST ACT, 2017**

Clause (16) of section 2 of IGST Act is amended to revise the definition of “non-taxable online recipient” by removing the condition of receipt of online information and database access or retrieval services for purposes other than commerce, industry or any other business or profession so as to provide for taxability of OIDAR service provided by any person located in non-taxable territory to an unregistered person receiving the said services and located in the taxable territory. Further, it also seeks to clarify that the persons registered solely in terms of clause (vi) of Section 24 of CGST Act shall be treated as unregistered person for the purpose of the said clause.

### **CLAUSE (16) OF SECTION 2 OF IGST ACT, 2017**

**Section 2(16):** “non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

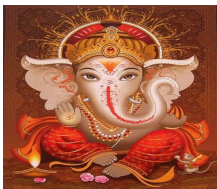
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*Explanation: The expression “governmental authority” means an authority or a board or any other body,- (i) set up by an Act of Parliament or a State Legislature; or (ii) established by any Government, with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution.*

*Amendments made vide Section 2 of the [IGST \(Amendment\) Act, 2018: GOI Notification dt. 30/08/2018](#), followed with CBIC Notification on commencement date of 01/02/2019 vide [Notification 1/2019 Integrated Tax dt. 29/01/2019](#)*

## **8. ONLINE INFORMATION AND DATABASE ACCESS OR RETRIEVAL SERVICES**

*Clause (17) of section 2 of IGST Act is being amended to revise the definition of “online information and database access or retrieval services” to remove the condition of rendering of the said supply being essentially automated and involving minimal human intervention.*

**Section 2(17) OIDAR Services:** *“online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as,-*

- (i) advertising on the internet;*
- (ii) providing cloud services;*
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;*
- (iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*
- (v) online supplies of digital content (movies, television shows, music and the like);*
- (vi) digital data storage; and (vii) online gaming.*

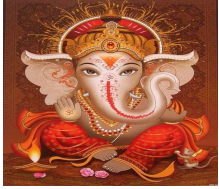
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9. **PLACE OF SUPPLY IN CERTAIN CASES** *Proviso to sub-section (8) of section 12 of the IGST Act is being omitted so as to specify the place of supply, irrespective of destination of the goods, in cases where the supplier of services and recipient of services are located in India.*

**SECTION 12 (8) OF IGST ACT, 2017**

*The place of supply of services by way of transportation of goods, including by mail or courier to,--*

*(a) a registered person, shall be the location of such person;*

*(b) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.*

*Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.*

**DISCLAIMER:** *the analysis presented here is only for sharing information and knowledge with the readers. The views are personal, shall not be considered as professionals' advice. In case of necessity do consult with tax professionals for more understanding and clarity on subject matter.*

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