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Analysing developments impacting business

THE INTERIM BUDGET 2019 AND ROUND UP OF THE GST AMENDMENTS IN 2018-19

1 February 2019

The Interim Budget 2019 did not propose any changes with respect to Indirect Tax. After the rollout of Goods and Services Tax (GST) in July 2017, the Annual Budget has lost its relevance in as much as it relates to GST. Now it is relevant only for the purpose of Customs which is the exclusive domain of the Parliament and the Central Government. Being the Interim Budget, no major changes were proposed even for Customs.

In as much as GST is concerned, statutory, rate-related and procedural amendments are decided and announced by the GST Council in its monthly meetings. The GST Council consisting of representatives from the Centre as well as the States was established under Article 279A(4) of the Constitution.

We discuss below some important changes made concerning GST in the year 2018-19:

CGST Amendment Act, 2018

Key changes in the GST made effective from 1 February 2019 are summarised below:

- **Out-and-out sales and high sea sales outside the ambit of GST:** Transactions where goods are physically moved from a place outside India to another place outside India, without such goods entering the territory of India (known as out-and-out sales in trade parlance) have been declared neither as supply of goods nor supply of services under as Schedule III of the CGST Act. Transactions of high sea sales are also included under Schedule III.
- **Reverse charge on procurements from unregistered dealers:** Rather than a blanket levy of tax on procurements from unregistered dealers under reverse charge mechanism, Section 9(4) has been amended to levy tax only on procurements by notified assesseees. It remains to be seen which class of assesseees will be notified for this purpose
- **Ambit of input tax credit widened:** Section 17 of the CGST Act has been amended to expand the scope of input tax credit to include motor vehicles having a capacity of more than 13 persons. Credit on other motor cars is also available if they are used for the specified purposes. Further, credit on health insurance, outdoor catering, etc. will be available if such services are required to be provided to employees by the assessee in terms of any law for the time being in force (e.g. Factories Act, labour laws, etc.).

- **Multiple registration in one State:** Earlier, separate registrations could be obtained in one State only if the assessee had distinct 'business verticals' in that State. This concept has been done away with by amending Section 25 and now, assesseees may choose to obtain separate registrations in the same State irrespective of whether they qualify as distinct business verticals or not.
- **Flexibility in issuing debit/credit notes:** Earlier, the law as well as the GSTN portal accepted a single credit note or debit note against one invoice. However, assesseees faced practical difficulties since certain debit/credit notes were to be issued against thousands of invoices. Section 34 has been amended to permit issuance of a single debit/credit note against multiple invoices. This will obviate the difficulty faced by assesseees, especially in the cement, steel and automobile industries
- **Simplification of GST returns:** The GST Council approved putting in place system of filing a single monthly return in place of the existing 3 monthly returns. However, the existing system of filing GSTR-3B and GSTR-1 will remain in place till such a time the new monthly return is notified. Section 43A has been inserted in the CGST Act to carry out this change. However, this provision will not take effect from 1 February 2019, but will come into force only when the new system of returns is ready
- **Order of set-off:** Section 49 of the CGST Act, SGST input tax credit can be set off against IGST liability only if CGST input tax credit balance is insufficient for this purpose. Hence, the order of set-off of input tax credit is strictly laid down under the CGST Act itself. Further, SGST or CGST credit balance can be utilised against IGST liability only after IGST balance has been exhausted. Earlier, while the law was ambiguous on this point, the GSTN portal allowed set-off of SGST only after CGST balance was exhausted
- **Transitional credit to exclude cesses:** Section 140 of the CGST Act has been retrospectively amended to exclude cesses such as Krishi Kalyan Cess. This issue was hotly debated with the AAR denying benefit of such credit in *Re Kansai Nerolac Paints Ltd.* [2018-VIL-11-AAR]
- **Amendment in place of supply provisions:** The place of supply of transactions of transportation of goods to a place outside India will be the destination of goods in terms of the amendment made to Section 13 of the Integrated Goods and Services Tax Act, 2017 (the IGST Act). Consequently, Indian logistics firm will be able to take advantage of this provision to claim export benefits. Further, the place of supply in case of job work services has been excluded from the performance-based rule. Hence, job workers based in India will be able to claim export benefits

Other Key Amendments:

- **E-way bill [April 2018]:** Generation of e-way bills on inter-State movement of goods became mandatory from 1 April 2018. With respect to intra-State movement of goods, each State was given the prerogative of determining the date from which e-way bills should be made mandatory.

[Notification No. 15/2018-Central Tax, dated 23 March 2018]

- **Tax collection at source [October 2018]:** The rate of TCS under the GST law has been notified @ 1% of the value of supplies. Further, this provision has been brought into force from 1 October 2018.

[Notification No. 51/2018-Central Tax, dated 13 September 2018]

- **Tax deduction at source** [October 2018]: The provision pertaining to TDS has been brought into force from 1 October 2018. Further, supplies between PSUs or the Government(s) *inter se* have been excluded from the ambit of this provision.

[Notification No. 50/2018-Central Tax, dated 13 September 2018]

- **Extension of due date for filing annual return** [December 2018]: In terms of Section 44 of the CGST Act, the annual return of GST capturing details of turnover and credit taken during the financial year is to be filed by 31 December of the subsequent financial year. Considering the difficulties faced by a lot of assesseees, the due date has been extended till 30 June 2019.

[Order No. 3/2018-Central Tax, dated 31 December 2018]

- **Extension of due date for availing input tax credit** [December 2018]: In terms of Section 16 of the CGST Act, the due date for availing input tax credit on invoices and debit notes for any financial year is the due date of furnishing the return for the month of September of the subsequent financial year or the date of filing the annual return, whichever is earlier. Considering difficulties faced by a lot of assesseees, the due date for invoices and debit notes pertaining to 2017-18 has been extended to the due date of filing the return for the month of March 2019.

[Order No. 2/2018-Central Tax, dated 31 December 2018]

- **Extension in due date for filing job work return in ITC-04** [December 2018]: In terms of Rule 45 of the CGST Rules, every assessee who sends goods on job work basis is required to file a job work return in the prescribed format ITC-04 for each quarter. The time limit for such return is 25th of the month succeeding the end of the relevant quarter. Considering difficulties faced by a lot of assesseees, the due date for filing such return has been extended to 31 March 2019 for all quarters during the period July 2017 to December 2018.

[Notification No. 78/2018-Central Tax, dated 31 December 2018]

- **Removal of pre-import condition for the advance authorisation** [January 2019]: With respect to duty-free imports under the advance authorisation scheme, the onerous pre-import condition was done away with. This amendment is with prospective effect and hence, the issue for the interim period till January 2019 remains. The pre-import condition had earlier caused great dismay in the industry leading to filing of a plethora of writ petitions throughout High Courts in the country

[Notification No. 1/2019-Cus, dated 10 January 2019]

- **Labelling, repacking, etc. in bonded warehouses:** Section 65 of the Customs Act, 1962 provides that any operation on warehoused goods can be carried out only with the prior permission of the customs authorities. Earlier, Circular No. 38/2018-Cus, dated 18 October 2018 had laid down detailed procedures with respect to obtaining such permission. However, under this circular, the activities to fulfil statutory obligations such as labelling, repacking, etc. could be undertaken only in a private bonded warehouse, and not in a public bonded warehouse. The Government has relaxed this restriction to permit such activities in all warehouses (whether public or private), without any prior permission from the customs authorities

[Circular No. 3/2019-Cus, dated 31 January 2019]

Over the past year, the Authority for Advance Rulings (AAR) and the Appellate AAR have delivered scores of decisions on wide-ranging topics such as taxability, valuation,

input tax credit, etc. AARs in different States have taken divergent views in certain cases (e.g. levy of GST on solar power contracts). Considering the confusion on account of such rulings, a centralised Appellate AAR is mooted which will determine questions on which divergent views have been taken.

Coming to the contentious anti-profiteering provision under the GST law, the National Anti-profiteering Authority has passed around 30 orders in anti-profiteering matters as of January 2019. The investigations have been on diverse sectors such as real estate, food and restaurants, FMCG. A perusal of the orders passed reveals that a uniform approach has not been adopted by the DGAP or the NAA during the course of proceedings. This aspect is likely to come up before the High Courts where writ petitions have been filed against some of the orders.

- KCO Indirect Tax Team

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