

Research Paper on Central Tax

COVID-19 has affected the entire trade not only of our own country but the whole world. At this time when the trade is trying to restart and struggling for its survival, certain Notifications with regard to GST compliance have been issued which has brought the Morale of businessman very down. Already there was no business for last 9 months due to lock down and restrictions brought by the government from time to time, the entire business is gradually shifting to ecommerce under such circumstances, the businessman is so helpless as how to survive with so much compliance obligations. At this time when the trade was expecting some financial aid from the Government for which we have lost hope, the introduction of the following two Notifications has emerged as a shock:

Notification No. 01/2021 – Central Tax New Delhi, the 1 st January, 2021 & Notification No. 94 /2020 – Central Tax New Delhi, the 22 nd December, 2020:

The introduction of the above two Notifications have put clutches to the hands of honest tax payers as well. A businessman cannot be restricted from filing his returns for any reason nor can he be deprived of the ITC which he has already paid against its inward supplies and also his number cannot be suspended without providing him with an opportunity of hearing. He can be charged with interest and penalty, late fee for the delay which the government is already doing. If these new rules are not withdrawn the entire Trade cycle will fail and will affect tax collection adversely. The detailed discussion on these two Notifications is made in Annexure attached to this letter. Therefore, to encourage ease of doing business the above stated Notifications should be withdrawn from immediate effect.

The proposed changes vide budget in certain sections which are against the spirit of ease of doing business, the same may be removed from the bill.

1) 16(2)(aa) is against the basic structure and spirit of GST. How an assessee can be made dependent on the compliance of supplier. According to this section if the detail of such invoice or debit note has been not furnished by the supplier in GSTR-1 or using IFF / GSTR-2B the recipient will not get ITC. The proposed change may be withdrawn as the same will not be accepted by the trade.

2) Change in the definition of supply vide clause (aa) in sub-section (1) of Section 7 of the CGST Act bringing the services of Club and association to its members and vice-versa will act as a deterrent in registering more associations. If at all it cannot be done away with , then membership fee upto Rs. 5000/- may be exempted and also the ITC of the tax paid on such membership should be made eligible which at present is covered under section 17(5) and is ineligible.

3) Sub-section (5) of section 35 of the CGST Act is proposed to be omitted which would remove the mandatory requirement of getting annual accounts audited and reconciliation statement submitted by specified professional. This a welcome step, in line with it, we request you to kindly remove section 65 of the CGST ACT as well i.e audit by departmental officers. This was though prevalent under central Excise and service tax but the same was not there under VAT. When the provision of assessment by department is there why this additional burden on the trade.

4) Amendment section 129(1) (a) seeks to enhance penalty from 100% to 200% for releasing of detained or seized goods and conveyance and previously only tax and penalty. Tax could have been paid through electronic ledger but penalty has to be paid through cash ledger only. On the other hand an amendment is made in section 107 of the CGST which says that to file an appeal against the order under section 129 minimum penalty of 25% has to be paid which means till the appeal is not decided the goods will remain detained. The Goods seized shall not be released on provisional basis upon execution of a bond and furnishing security in such manner. This means the penalty have to be paid in cash by the taxpayer u/s 129(2) if he wants the goods to be released. This will hamper the business and the working capital of the assesses. Even though there is a provision for an opportunity of hearing where penalty is proposed on detention or seizure of goods or conveyance u/s 129(4), the same is a futile exercise as the orders are always passed against the assesses. The only remedy left is Appeals which too has proved to be of no effect as till date the Appellate tribunal has not been formed. For every small case an assesses has to knock the doors of the high court.

We propose that penalty to the extent of 25% may be charged on the spot but for the balance the same should be collected only if the assesses loses his case in the Appellate Tribunal. The above stated budget proposals before becoming an Act may be given due consideration as the same is against the spirit of ease of doing business and with which the GST was introduced. Since the introduction of GST more than 900 changes have been introduced from time to time due to which it has lost its sanctity. The trade is always with the government for bringing stringent provisions for persons who are following malpractices, but at the same time the burden of the same should not be shifted on the honest taxpayers by making compliances very complicated.