LAW & POLICY UPDATE

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Key Changes to the GST regime proposed in the Union Budget 2023-24

Union Budget 2023-24, unveiled by India's Finance Minister Nirmala Sitharaman on February 1, 2023, has brought about several changes to India's GST regime. A brief summation of the important changes is as follows:

- **Insertion of Section 158A of CGST Act, 2017:** Clause 141 of the Finance Bill 2023 proposes inserting a new Section 158A in the CGST Act, 2017 to provide for the manner and conditions for sharing of the information furnished by the registered person in his application for registration, in the return filed, or in the statement of outward supplies, or the details uploaded for generation of electronic invoice or E-way bill, or any other details as may be provided by CGST Rules on the common portal with such other systems as may be notified. This information may be as declared in the returns filed under GSTR-1/GSTR-3B or GSTR-9, the application of registration, through E-invoices or E-way bills, or any other details. Once this is notified and made functional, it will lead to true digitization of data and allow enterprises to seek credit and other opportunities simply via sharing of data with due consent.
- **Amendments to Sections 10(2)(d) and 10(2A)(c) of CGST Act, 2017:** Clause 128 of the Finance Bill 2023 proposes to amend Sections 10(2)(d) and 10(2A)(c) of the CGST Act, 2017 to remove the restriction on registered persons supplying goods through electronic commerce operators (**ECOs**) from opting to pay tax under the composition levy.
- **Amendments to Section 16 of CGST Act, 2017:** Amendment was made to Section 16 governing Input Tax Credit (**ITC**) claims. In cases where a recipient taxpayer fails to pay their supplier for an invoice (including the GST value) within 180 days from the date of issue of the invoice, they must pay to the government an amount equal to the ITC claimed with interest. The Budget 2023 has imposed a new penalty comprising an amount equivalent to the amount of tax involved or INR 10,000, whichever is higher, on e-commerce operators who:
  - Allow an unregistered person to supply goods/services through them, except in cases where such a person has been exempted from GST registration.
  - Allow any registered person from making inter-state supplies of goods/services where they are ineligible to do so.
  - Do not furnish accurate details in their Form GSTR-8 of any sale of goods made through them by a person who is exempted from obtaining GST registration.
- **New provisions for compounding of offences:** With regard to the compounding of offences, the government proposed to impose new limits comprising 25% of the tax involved up to a maximum amount of 100% of the tax involved. The previous limits used to be 50% to 150% of the tax involved, capped at a minimum of INR 10,000 and INR 30,000, respectively.
- **Amendments to Section 17(5) of CGST Act, 2017:** In a significant amendment proposed under Section 17(5) of the CGST Act, Clause 130 of the Finance Bill 2023 proposes to amend Explanation to Section 17(3) of the CGST Act, 2017 so as to limit or restrict availment of ITC in respect of certain transactions specified in Clause (a) of Paragraph 8 of Schedule III of the

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Viewpoint

Some of the amendments are helpful for streamlining the process of payment and availment of ITC. However, the changes regarding restriction in the availment of ITC in respect of certain transactions pertaining to CSR activity may restrict the scope of CSR activities and could prove a deterrent.

said Act, as may be provided by rules, by including the value of such transactions in the value of exempt supply. Further, it proposes to amend Section 17(5) so as to provide that ITC 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.

The admissibility of ITC on inputs/input services incurred in relation to CSR expenditure has always been a contentious issue with contradictory decisions by the Authority for Advanced Rulings (AARs). In the case of Dwarikesh Sugar Industries Limited (UP AAR) & The Rambagh Palace Hotels Pvt Ltd (RAJ AAR), AAR held that ITC will not be available to the extent of capitalization of building material/GST on labor supply. The AAR observed that: 'From the above discussion we are of the opinion that the Section 17 (5) (c) & (d) of the CGST Act, 2017 has specifically restricted the ITC on construction /work contract service to the extent of capitalization. Accordingly, we observe that the ITC of goods and services used for construction of school building will not be available to the applicant to the extent of capitalization'. However, in the same Dwarikesh Sugar Industries Limited (UP AAR), reliance was placed on the decision of Mumbai Tribunal of Essel Propack Ltd and ITC on CSR expenditure was allowed, as being furtherance of business (exception was, of course, to the capitalization of building material/GST on labor supply). The same Ruling also discussed the premise of ITC on CSR expenditure being denied since the same is to be treated as given on a free of cost basis. This contention was also upheld in Polycab Wires Private (Kerala AAR).

The present amendment seems off, since the corporate sector is mandated to spend on CSR but the ITC of the same is denied, which will consequently increase costs. The said proposition is also contrary to certain other ITC restrictions, where an exception to statutory obligations has been given in case of food & beverages, travel, and health related expenses.