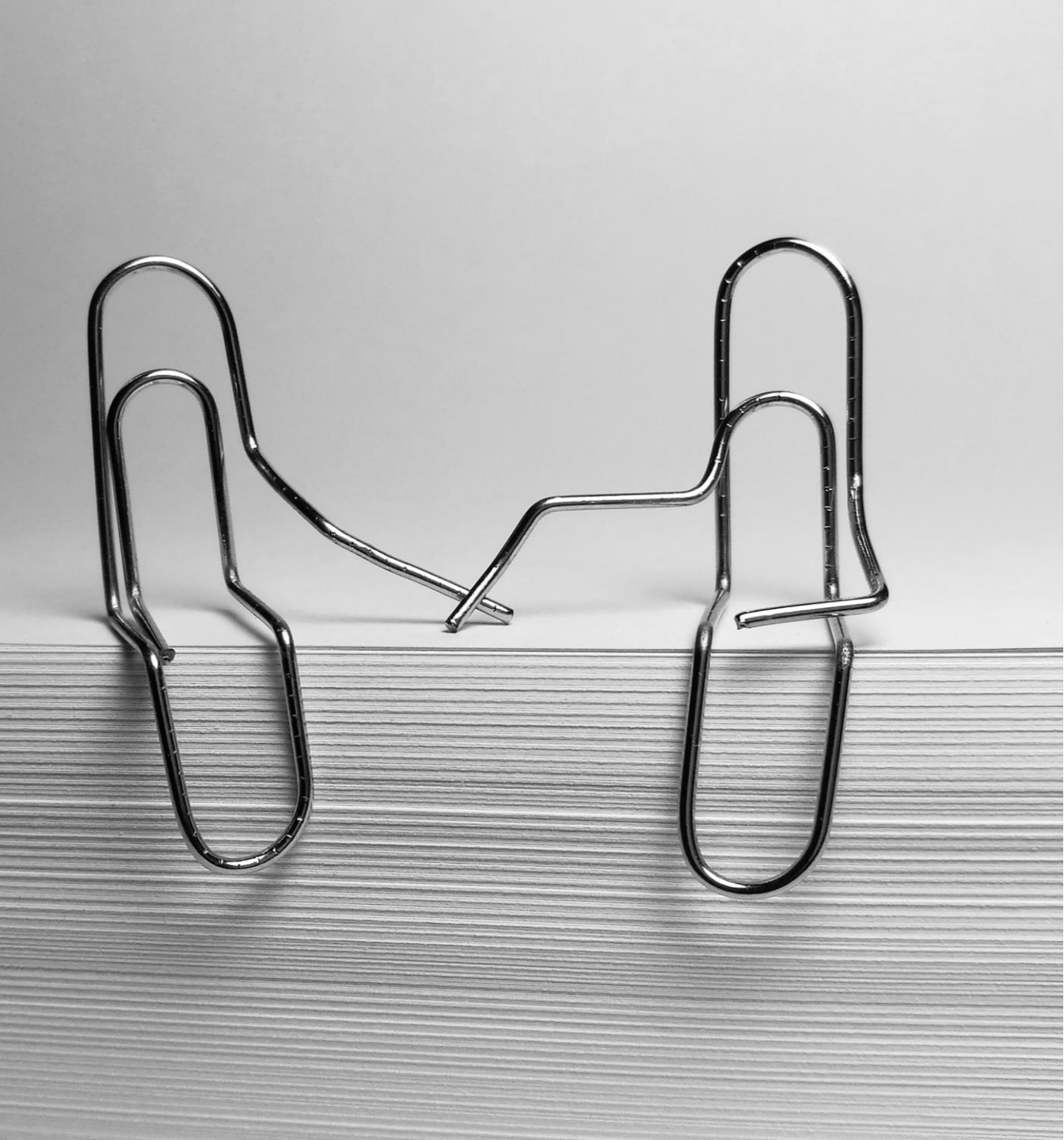




Between Fine Lines

GST Updates
Finance Bill 2022

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PROPOSED CHANGES IN
CENTRAL GOODS AND
SERVICE TAX ACT

Provision of Finance Bill 2022-Proposed Amendments

1. More Restriction on Input Tax Credit

Section 38 has been substituted and the new provision provides for communication of details of inward supplies and input tax credit to the registered person (recipient) divided into two buckets viz:

- a. Category I: Input tax credit which may be available to the recipient (subject to conditions and restrictions laid down under section 16 and section 17 read with relevant rules).
- b. Category II: Input tax credit which shall be restricted in certain prescribed conditions (as per amended Section). The prescribed suppliers where the credit on purchases made from such suppliers will not be available to the recipient are as under:
 - i. Certain Newly registered suppliers: Certain classes of suppliers who are newly registered for specified transaction / time. Such conditions shall be prescribed in CGST Rules in due course of time.
 - ii. Tax defaulters: Suppliers who defaults in payment of taxes for a specified time (may be two months). The default can happen where supplier does not file his GSTR 3B or when supplier does not pay taxes at all and files NIL GSTR 3B. There is ambiguity as to whether the present provision would cover cases where the supplier evades GST and such evasion is surfaced by an antievasion proceedings. All such conditions would be clarified in rules to be notified.
 - iii. Short payment of tax: In cases of suppliers who have paid less output tax during the period below a certain limit (as may be prescribed in due course of time in the rules), the credit of all his output tax which is paid also shall not be available to all his recipient for such tax period. *For e.g.,* Mr X filed his GSTR - 1 with output tax liabilities of Rs. 100 but filed his GSTR 3B with an amount of output tax of Rs.80 (government prescribes limit of 10%). In this case the recipient of goods from Mr X will see Input Tax Credit on supplies purchased from him in ineligible bucket)

Provisions of Finance bill 2022-Proposed Amendments

- iv. Suppliers availing ineligible Input Tax Credit: Suppliers who have availed ITC of an amount that exceeds the amount of ITC which is available in the auto generated statement for a tax period by a notified limit. *For e.g.* in the month of May 2022, the available ITC in the auto generated statement of Mr. X. is Rs.2 lakhs, however, he avails the ITC of an amount of Rs.4 lakhs. Let's presume notified limit of tolerance is 10%. Accordingly, while Mr. X. could have taken Rs.20,000 more (as per presumed limit), he had availed more than that and thus, the ITC from Mr. X will be shown in the ineligible ITC to his recipients.
- v. Suppliers defaulting in discharging tax under Section 49(12): In case of a registered person who has defaulted in discharging his tax liability under Section 49(12). A Section 49(12) is proposed to be introduced to provide for restriction on Payment of output tax liability through electronic credit ledger in case of certain registered person or class of registered persons. *For e.g.* Mr X is a registered person in whose case the limit to discharge the output tax liability using the ITC has been prescribed as 90%. However, he discharges his output tax liability to the extent of 100% using his electronic credit ledger. The ITC of Mr. X shall be reflected in the ineligible bucket in the auto generated statement of input tax credit of his recipients
- vi. Other categories may be notified by Government later: The last clause provides for such class of persons whom government will prescribe and thus, such list of persons where ITC would be available purchases made from them may see rise in future.

Consequently, Section 16(2)(ba) is proposed to be introduced which provides that ITC shall not be available when such ITC has been restricted in the communication sent to the Registered person in the auto generated statement under section 38(1).

Provisions of Finance Bill 2022-Proposed Amendments

2. Extension of Date for taking Input Tax Credit of the previous year.

Section 16(4) has been amended to allow the availment of input tax credit up to 30th day of November subsequent to the financial year to which such invoice for debit note relates to. It is important to note that the date is not the date of return for the month of November and thus, the time limit for availing such credit should not be seen as the due date of filing such return for the month of November. It is an absolute date and ITC for previous financial year can be availed in any return which is filed up to the date of 30th November. For e.g. ITC for FY 2021-22 can be availed in any GSTR 3B which is filed on or before November 30, 2022.

Provisions of Finance bill 2022-Proposed Amendments

3. **Time limit for Rectification of details in GSTR 3B**

Section 39 which provides for filing of returns (GSTR3B) has also been Amended and has been made independent of the mechanisms of section 37 and 38. Sub-Section (9) of the said section has been amended and reference to section 37 and 38 has been deleted from such a particular sub-Section. The amended section provides that in case of any discovery of omission or incorrect particulars, the registered person shall rectify such omission or incorrect particulars and pay interest on such a real mission. The subsection also amends the last date till which such amendment can take place and now the limit has been prescribed as 30th day of November following the end of financial year to which such details pertain.

4. **Restriction in filing of GSTR 3B**

Sub-Section (10) of section 39 has also been amended to expand the restriction imposed on filing of the Return GSTR 3B. As per the proposed amendment, a registered person will not be allowed to file his return if he fails to furnish either his return or detail of outward supplies for the said tax period in GSTR1. Thus, the return can now only be furnished if the person has filed his details of outward supplies. *For e.g.,* If Mr. X fails to file his GSTR 1 for the month of August 2022, as per the proposed amendment, he will also not be allowed to file his GSTR 3B for the month of August 2022.

Provisions of Finance bill 2022-Proposed Amendments

5. **ITC availment – provision acceptance of ITC removed**

Section 41 of the CGST Act, 2017 which provided for claim of ITC and provisional acceptance thereof has been amended and substituted by a new section which provides for availment of ITC. The provisional acceptance of the ITC has been omitted and the proposed substitution provides that the ITC can be availed by a registered person *as self assessed* in his return and such amount as he claims shall be credited in his electronic credit ledger.

Recovery of ITC when tax is not paid by supplier

The proposed amendment also provides ITC shall be payable with interest by the recipient when corresponding GST has not been paid by the supplier. It is further proposed that in case supplier makes a payment of such tax, the recipient may re avail the ITC as reversed earlier. It is interesting to note that the reversal clause does not provide for refund of interest to the recipient.

There seems to be an error as interest for the same non-payment cannot be recovered twice - once from the buyer and then from the supplier. The section further fails to specify the mechanism by which the details of tax as not paid by the supplier shall be communicated to the recipient. It seems that the communication as made under Section 38 shall be used for this purpose also.

Consequential amendments have been made in Section 47, Section 48 and Section 49 by deleting the references of Section 38 and Section 40(3A) where ever they were appearing. Certain incidental insertions have also been made like section 52 in late fees or restrictions in Section 49(4).

Provisions of Finance Bill 2022-Proposed Amendments

6. Electronic Cash ledger and Electronic credit ledger

- a. Section 49(10) which provides for transfer of any amount appearing under a particular head in cash ledger to another head has been expanded by allowing the taxpayer to transfer any amount of tax, interest, penalty, fee or any other amount available in his electronic cash ledger to electronic cash ledger of a distinct person Viz any other GSTN under the same pan.

However this particular amendment is limited to Central tax or integrated tax transfer only and such amount cannot be converted into any status of a distinct person. However, we may not find similar relief or power to transfer under the state act. The subsection has also been amended to provide that in case any unpaid liability exists in his electronic liability register, says a transfer of an amount to another GSTIN of a distinct person will not be allowed

7. Restriction on payment from Electronic credit ledger in certain cases

A new Sub-Section (12) has been introduced in section 49 to provide for power to government to notify the maximum proportion of output liability which may be discharge by debiting the electronic credit ledger by a registered person or a class of registered person as may be prescribed by the government. The provision has been introduced to provide for the enabling provision for Rule 86B which was being criticised and challenged for imposing restriction when the statute never provided for prescribing any such power or restriction on the Utilisation of input tax credit. The rule was also being challenged before various High Courts but now with introduction of this subsection, the rule has now been fortified by enabling provision in the act.

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7. Interest on wrong availment of Input tax credit

Section 50(3) has been amended retrospectively from first of July 2017 to provide that where the ITC has been wrongly availed and utilised, the registered person shall pay interest on such wrongly availed *and* utilised ITC at the rate and manner as prescribed by the government. It is a welcome amendment as it has deleted the references to section 42 and 43 which provided for matching mechanism of the ITC. Now the entire liability of correct availment and utilisation is on the shoulders of the registered person availing the ITC. The registered person will only be penalised with interest if he has wrongly availed and also wrongly utilised the input tax credit. Thus, mere wrong availment will not call for interest on the registered person. However, Government is still to provide the mechanism of computation of interest. It is also to be noted that it is a retrospective amendment where the reference of the matching mechanism has been deleted since Inception of the GST statute.

In the humble view of the author, the levy of the interest will not be retrospective as such provision for levy of interest never existed prior to enactment of this amendment.

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8. Entire Tax computation is now made on self assessment mechanism

The sections relating to matching reversal and reclaim of input tax credit or of reduction in output liability has been deleted. Section 42, 43 and 40(3A) has been deleted and now there is no matching which shall be provided to the recipient as envisaged in the original scheme of returns in the act. The entire mechanism shall post enactment of Finance Bill 2022 shall be self assessment mechanism and the registered person shall be responsible to comply with all conditions and restrictions.

It is also important to note that in all cases, recipient has been Penalised and deprived of his eligible ITC in cases where supplier defaults in one or more manners as may be prescribed either in Section 16(2) or Section 38. The provisions of law seems to be draconian from the perspective of a recipient because he has now to bear every default of person who is supplier of goods and services to him.

Provisions of Finance Bill 2022-Proposed Amendments

9. Section 54 has been amended to provide that refund of cash balance in electronic cash ledger shall be applied in the form prescribed rather than the provision written under section 39. This is a corrective amendment as there is no column of refund in the written furnish under section 39.
10. Time limit for applying Refund by United Nations organisation or any multilateral financial institution and organisation, consulate or embassy or any other notified person has been increased from six months to 2 years from the end of the quarter in which supply on which Refund is being sought was received.
11. Restriction in form of power to with hold payment of refund due in cases where a person has defaulted in furnishing of return or a person who is required to pay any tax interest of penalty has been widened to All cases of refunds which was earlier limited to cases of inverted duty structure or refunds where zero rated supplies have been made without payment of tax.
12. The definition of relevant date has been amended to introduce a new provision in respect of supplies made to SEZ developer or unit providing that relevant date in such cases shall be the due date for furnishing of return under section 39 in respect of supplies in respect of which the refund is being sought.

Thank You

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