

# Finance Bill 2023 passed in Lok Sabha - Amendments done



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## Sec 23 – RCM Taxpayers may require to take registration even if supplying fully exempt goods

Sec 23 - In Finance Bill 2023 Section 23(1) of the CGST Act was being amended, with retrospective effect from 1st July, 2017, to provide that persons for compulsory registration in terms of section 22(1) and Sec 24 of the Act need not register if exempt under section 23(1) (wholly supplying exempt goods)

Now only Section 23(2) of the CGST Act is being amended, to provide that persons requiring compulsory registration in terms of section 22(1) and Sec 24 need not register if notified

**Comments** - Hence It is understood that there is no intention to provide that taxpayers who are under RCM will not be required to be compulsorily registered even in case wholly supplying exempt goods.

## Time period for application of Revocation of Cancellation may be made flexible

Sec 30. (1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in ~~[the prescribed manner within thirty days from the date of service of the cancellation order]~~ **[such manner and within such time and such conditions as may be prescribed]**.

~~2[Provided that such period may, on sufficient cause being shown, and for reasons to be recorded in writing, be extended,~~

~~(a) by the Additional Commissioner or the Joint Commissioner, as the case may be, for a period not exceeding thirty days;~~

~~(b) by the Commissioner, for a further period not exceeding thirty days, beyond the period specified in clause (a).]~~

**Comments** - All High Courts have held that incase even after 30 days the taxpayer wishes to do business and revive its GSTIN it must be allowed. The process of revocation and time limit for revocation may be prescribed and may be made flexible.

Sec 62 (2) Where the registered person furnishes a valid return within ~~thirty~~ **sixty** days of the **service of the assessment order** under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

**Provided that where RTP files even after 60 days with late fees of Rs.100 per day, the Order will be withdrawn but liability to pay interest u/s 50 or late fees u/s 47**

**Comment** – However this interest u/s 50 will be on the BJ amt or the self assessed amount is not clarified

## **Sec 13(9) of IGST Act deleted**

Sec 13(9) of IGST Act Omitted – “The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.”

Hence place of supply by foreign vessel/aircraft/transporter will not be out of India now but ‘place of recipient’ and hence ITC shall be available after payment under reverse charge

This comes after recommendation of deletion of provisio to Sec 12(8)

1. Expected New Sec. 109 of CGST Act proposes replacing existing Section 109 dealing with Constitution of Appellate Tribunal and Benches thereof;
2. Proposes amendments to provide that the powers of Appellate Tribunal (AT) shall be exercisable by the Principal Bench and States Benches
3. Principal Bench of AT shall be situated at New Delhi and be presided over by the President and shall consist of Judicial Member **(Centre/State not specified)**, one Technical Member (Centre) and one Technical Member (State);
4. Government shall, on the recommendations of the Council, by notification, constitute such number of States Benches as may be required which shall consist of 2 Judicial Members **(Centre/State not specified)**, one Technical Member (Centre) and one Technical Member (State);
5. Cases where one of the issues involved relates to the place of supply (PoS) shall be heard **only** by the Principal Bench;

**Other cases can be heard by Principal or state benches**

**6. President shall distribute business of AT and transfer cases from one bench to another**

7. Senior most **Judicial member** within the State benches shall act as Vice President for State Benches and shall exercise powers of the President.. **But shall also act as member**

**Hence the VP can transfer cases, choose which case to allot to which bench as well as take up matters himself**

109(8). Appeals where tax or ITC or penalty, fees, or involved does not exceed Rs. 50 lacs which does not involve question of law may be heard by single member while in all other cases, may be heard by one Judicial member and one Technical member;

**Hence “Interest” matters would be heard by ONLY larger bench. Further as all matters will have interest thus this clause becomes almost defunct. It seems that ‘interest’ has been missed.**

**9. Incase views differ the matter may be transferred to another bench within the state or another state and majority view will be upheld.**

10. Centre Members may be transferred by President In different states but state members may not be transferred outside the state.

**11. No Act of GSTAT will be void on vacancy or ‘defect’ in formation of GSTAT**

### ... What to do for recoveries post 1<sup>st</sup> stage rejection?

1. The period till GSTAT will be formed shall not be counted in period of Limitation
2. Admitted tax, interest, penalty, etc is required to be deposited
3. Recoveries of disputed interest, penalty, etc cannot be done
4. Incase recovery of disputed tax is done, the same may be stayed by payment of 20% as predeposit (in addition to 10% paid earlier) - **Surat District Co-operative Milk Producers Union Ltd. V/s. Chief Commissioner of CGST and Central Excise and Ors. (BOM)**



## What Industry represented but still stays

1. ITC on CSR expenditure shall continue to be blocked u/s 17(5)(fa)
2. Transfer of goods in bond shall be treated as exempted supplies u/s 17(3) and proportionate ITC reversal would be required from 1<sup>st</sup> July 2017
3. Amendment to Section 194R of IT Act explaining that 194R will also be applicable on 'cash benefits/ perquisites' prevail

# THANK YOU



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