

**THE INSTITUTE OF
CHARTERED ACCOUNTANTS OF INDIA**
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Issue No. 02

NEWSLETTER

**PUNE BRANCH
OF WIRC OF ICAI**

(Subscribers copy not for sale)



♦ AWARDS ♦

For the year 2021

ICAI National Level Awards to Pune Branch of WIRC of ICAI

2nd Prize

As Best Branch
of
Regional Council
(Mega Category)

2nd Prize

As Best Branch
of
Students' Association
(Mega Category)

ICAI Regional Level Awards to Pune Branch of WIRC of ICAI

2nd Prize

As Best Branch
of
Western Region
(Mega Category)

1st Prize

As Best Branch
of
WICASA
(Mega Category)

*Team Pune ICAI expresses gratitude to all the Members and Students of
Pune Branch of WIRC of ICAI for the Support*



**National Level Best Branch & Best Students Association (WICASA)
Award 2nd Prize FY. 2021-2022**



Best Branch



Best Students Association (WICASA)

**Regional Level Best Branch Award - 2nd Prize &
Best Students Association (WICASA) Award - 1st Prize FY. 2021-2022**



Best Branch



Best Students Association (WICASA)

Chairman's Communique

Dear Members,
Namaskar,

This is the last communiqué from my side as a chairman of Pune Branch of WIRC of ICAI. Since in the last week of this month the newly elected Managing Committee (2022-25) will take over the charge, the new chairman will communicate with us from the next month. Whenever I think about this, I remember that Amitabh Bacchan's song -

“मैं पल दो पल का शायर हूँ
पल दो पल मेरी कहानी है
पल दो पल मेरी हस्ती है”



CA. Sameer Ladda
Chairman
Pune Branch of WIRC of ICAI

I am happy; we had a yet another successful year at the branch. There are five positions in branch, the treasurer, the Secretary, the Vice-Chairman, the WICASA Chairman and the Chairman. I really feel proud that I could serve on all these five positions in my first term. **“It is itself a record in Pune Branch that one person worked on all positions in his first term only”**. I give my sincere regards to all members and the alma mater for giving me such opportunity and responsibilities.

We knew that recently the elections for new Managing Committee (2022-25) taken place. I give my sincere thanks to CA. Dinesh Gandhi and CA. Narendra Agarwal for conducting the elections very smoothly as a returning officer. I also extend my gratitude's towards all the **'voter-members'** for the same. I congratulate newly elected members and wish the best luck for their tenure.

The Pune ICAI has bagged four awards this year at National Level Best Branch Award & Best Student Association Award – 2nd Prize and at Regional Level Best Branch Award – 2nd Prize & Best Student Association Award – 1st Prize. We humbly dedicated this achievement to all members, students, faculties and speakers.

We have done lot of activities during the year but due to pandemic many things also remained to perform. I am sure the next managing committee will also give their best performance and will continue to match benchmarks which the branch has set in last 4 years.

I would like to thank CA. Nihar N. Jambusaria, Hon. President, CA. Debashis Mitra, Hon. Vice President, CA. C. V. Chitale sir our beloved Central Council Member from Pune, CA. Manish Gadia, Chairman WIRC, CA. Drushti Desai, Vice-Chairperson WIRC for their continuous support and guidance.

I would be falling in my duty if I do not thanks all my colleagues on the committee CA. Yashwant Kasar, CA. Anand Jakhotiya, CA. Arun Anandagiri, CA. Ruta Chitale, CA. Abhishek Dhamne, CA. Kashinath Pathare, CA. Rajesh Agrawal, CA. Amruta Kulkarni and CA. Abhishek Zaware. I also extend my sincere thanks to branch staff who are very hard working and great contributor for success of the branch.

Last but not the least, I cannot forget the support of my family members have extended during last three years while I was engrossed in institute' work. While working for the ICAI unknowingly if I have hurt someone, I request you to kindly excuse me for the same. I have much learning for me in this journey. I got immense respect from cross sections of the Society. I got the opportunity to interact with thousands of members and students. I thank each one of you for showering all the love.

Whenever I think that my tenure is completed my second mind tell me that, I can't stop serving this profession, our alma mater till the end of my life. I assure you that I will serve this profession and alma mater life time in whatever possible way irrespective of positions.

Hence here I remember Amitabh Bacchan's same song with different lyrics –

“मैं हर इक पल का शायर हूँ
हर इक पल मेरी कहानी है
हर इक पल मेरी हस्ती है”

Jay Hind, Jay ICAI

CA. Sameer Ladda
Chairman
Pune Branch of WIRC of ICAI



Testimonial for Seminar on “Analysis of Union Budget 2022”

Dear Shri CA Sameer Ladda,
Chairman, Pune Branch of WIRC,

Thank you very much for your mail and word of appreciation. I am thankful for sharing photographs of the programme.

As usual the entire Seminar on "Analysis of Union Budget 2022" was well thought of and was organized very well. The topics covered in the seminar were very relevant to comprehend the Union Budget presented by the Finance Minister in the Parliament.

I was particularly happy to note that since the State and Local administration unlocked the Covid-19 restrictions, your Branch took full advantage to organize this off line programme which was very well attended by students and professionals as well.

I also congratulate your and Team Pune Branch for bagging two national level awards, which is a proud moment for Pune City.

Wish you all the best and assure you full support and cooperation in the future too.

With warm regards,

Prof. Nandkumar Kakirde



Key Changes under GST in Union Budget 2022

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On 1st February 2022, Finance Minister has announced various changes in the GST Law under Budget 2022-23 which were based on the recommendations made by GST Council. The changes mainly focus on strengthening the revenue collections by tightening the system with stringent conditions more specifically revolving around the claim of Input Tax Credit. In this article, we would like to highlight major changes in the GST law along with the implication of same.

It is important to note that the amendments carried out under the GST laws vide Finance Bill, 2022 would come into force from a date to be notified. Generally, it takes atleast 6 months time for changes in GST law to be made effective since these amendments also needs to be passed in all the state legislative assemblies. However, certain amendments that are given retrospective effect, would come into force from the date of enactment of the Finance Act, 1994.

1. Claim of ITC is further tightened with additional condition u/s 16(2) read with Section 38:

As per Preamble of GST law Constitution 101st Amendment Act 2016, It was envisaged that there would be seamless flow of credit to the taxpayer but with the changes made in this budget Input Tax credit has been sealed/blocked with the stringent provisions for availing credit which do not leads to ease of business.

When the GST was introduced, there were only 4 conditions under Section 16(2) of CGST Act for availing the Input Tax credit but as on date two more conditions has been stipulated for availing the Input Tax credit. Out of these two conditions, 1st condition as per Section 16(2) (aa) of CGST Act i.e., Input Tax credit would be eligible only if the same has been communicated by the supplier to the recipient, which was proposed in the previous budget 2021-22 and made effective from 1st January 2022.

Now, in this budget, the government has introduced one more condition vide clause (ba) u/s 16(2) stating that the Input Tax credit which is reflected in Auto populated GSTR-2B would be restricted in case of certain situations provided u/s 38. This interalia means that the input tax credit can be further restricted even if it is reflected in GSTR 2B.

Section 38 was suitably amended to provide that the ITC reflected to the recipient would be available or restricted depending upon the supplier's tax compliance. Following situations have been prescribed wherein the recipients ITC would be restricted due to supplier's non-compliance:

- Supplier to be kept in a cooling period after taking registration meaning thereby, the invoices uploaded by the supplier would be available as ITC to be recipient only after certain period of taking registration. (Period to be prescribed)
- Supplier who has defaulted the payment of tax for continuous period (Period to be prescribed).
- Supplier who has paid tax in GSTR-3B < the tax payable in GSTR-1 subject to allowed limits. (Limit to be prescribed)

- Supplier who has availed ITC more than the ITC allowed as per this section i.e., if the supplier non-complies to the provisions of section 38.
- Supplier who has defaulted in complying mandatory payment of tax liability in cash (i.e., 1% of tax liability), if applicable as per rule 86B.
- Other class of Suppliers as may be prescribed in rules.

Certain aspects that are not clear and which can be a cause of concern for the assesses in the implementation of this provision are as under:

- Whether the above restrictions are transaction based on supplier based;
- Whether any opportunity of being heard would be given to the supplier before restricting the credits to their customers;
- What is the mechanism to remove the restrictions and how shall be the flow of communication subsequently to the recipient;
- What if the restriction is removed after the time-limit of availing credit (i.e., Nov 30 of the subsequent financial year as proposed) is expired.

In a nutshell, if these amendments are implemented, then even a remote non-compliance to the above requirements at the supplier's end can lead to denial of ITC to the recipient. In our view, this condition adds an additional burden on the recipient to have regular check on supplier's compliance for ITC availment. In fact, the recipient is being penalised for the non-compliances of the suppliers which in our view are not only practically difficult to comply but are also constitutionally not tenable.

2. ITC availment on a self-assessment basis (not on provisional basis):

The words "on the provisional basis" have been removed in sub-section (1) of Section 41 of CGST Act which leads to the removal of concept of provisional ITC and ITC availed in monthly returns would be considered as final.

This interalia means that if any Input tax credit is availed by the recipient and later if the same is to be reversed due to any non-compliance at the supplier's end, then the assessee would be required to pay interest if the ITC is availed and utilised. However, once the default is cured by the supplier, then the recipient can again re-avail the said input tax credit earlier reversed.

This amendment seems to be conflicting with the conditions of Section 16(2) and revised Section 38 and applicability of time limit u/s 16(4) for re-availment is not clear. In our view, it can be said that the time-limit for being entitled to credit as provided u/s 16(4) is not applicable for re-availment cases i.e., where the credit is originally availed within the time limit and later reversed and re-availed after the time limit. However, it is important that the CBIC clarifies on this matter.

3. Two-way matching concept is done away with:

Certain provisions of the law required a two way matching i.e., uploading of missing invoices by the recipient and its counter acceptance or otherwise by the supplier. This was the original structure of GST as was planned at the time of its implementation. However, with the volume of matching, issues arising therein and the non-readiness of the desired system to implement the same, therefore in this budget, section 42, 43 & 43A are proposed to be omitted and section 38 is completely substituted. Further, the provisions relating to filing of GSTR 2 & GSTR 3 are also removed. With this, it can be said that GSTR 2 and GSTR 3 would not see the light of day.

With failure in implementation of two-way matching system, Government is now experimenting with a one-way matching concept with all the onus being shifted on the recipient. With this, a new era of GST would begin.

In our view, the one way matching system with no transparency in the flow or information and payment of taxes between supplier and recipient can lead to double collection of taxes from both, which is not only legally incorrect but also unjust. This can lead to high working capital issues and costs at the recipient's end leading to a business sustainability risk.

1. Increase in time limits for adjustments/ ITC availment in monthly returns:

By virtue of amendment in various provisions, time-limit is increased for availing input tax credit, rectifying GSTR 1 & 3B and also adjustment of credit notes. The same is tabulated as under:

| Section | Particulars | Old Due Date | New due date | Ideal Due Date |
|------------------------|---|---------------------------------------|-----------------------------------|-----------------------------------|
| 16(4) | Due date for availment of ITC for F.Y. | 20 th October of next F.Y. | 30 th Nov of next F.Y. | 20 th Nov of next F.Y. |
| 34 | Time limit for issue of credit notes & adjustment of tax | Filing of Sept return of next F.Y. | 30 th Nov of next F.Y. | 11 th Nov of next F.Y. |
| First proviso of 37(3) | Rectification of errors or omissions in GSTR-1 for the F.Y. | 11 th Oct of next F.Y. | 30 th Nov of next F.Y. | 11 th Nov of next F.Y. |
| Proviso of 39(9) | Rectification of errors or omissions in GSTR-3B for the F. Y. | 20 th Oct of next F.Y. | 30 th Nov of next F.Y. | 20 th Nov of next F.Y. |
| 52 | Rectification of errors or omissions in GSTR-8 for the F. Y. | 10 th October of next F.Y. | 30 th Nov of next F.Y. | 10 th Nov of next F.Y. |

From the above, it can be noted that now the static date is kept at 30th November which means that assessee needs to carry out the rectification/availment of ITC/adjustment of tax liability in the return to be filed for the month of October of the subsequent financial year i.e., by 10th /11th /20th November of the subsequent month.

Ideally it must have been kept as the due date of for filing the GSTR-1/GSTR-3B/GSTR-8 of the November for the subsequent month. One may take a view that if the rectification is carried out in the books before 30th November and the effect of the same is given in the return filed for the month of November by 10th of December, then it must still be a sufficient compliance. However, this aspect is not clear as of now.

5. Change in return default period for cancellation of registration:

Amendments have been proposed reducing the period of return filing delays that can lead to cancellation of registration:

- Section 29(2)(b) has been amended to specify that for taxpayers under composition scheme registration would be cancelled if the return is not filed within 3 months from the due date of such annual return. Presently, the period was for almost 9 months.
- Section 29(2)(c) has been amended to provide for the default period for cancellation of registration for normal taxpayers if returns was not continuously filed. This period can be different for the different categories of taxpayer. Presently, registration would be cancelled if returns more than 6 months continuously was not filed.

This amendment can lead to chaos as the non-filing of returns for a continuous period of 3 months can empower the officer to cancel the registration. In our view, the act of cancelling GST registration can put a business at halt and therefore it must be used sparingly. However, once such empowerment is provided in the law and if the same is implemented as a matter of routine without cogent reasoning, then it can be lead to huge challenge for the businesses.

6. Conditions and restrictions in filing GSTR-1

Under section 37(1), the words "**shall furnish electronically**" has been substituted with the words "**subject to such conditions and restrictions and**". This amendment aims to provide legal backing for the condition specified in Rule 59(6) that GSTR-1 cannot be filed if previous month GSTR-3B has not been filed.

It can be concluded that existing restriction being already implemented by way of the rules is not sufficiently backed with a proper enabling provision in the act i.e., Section 37 and may run ultravires to the Act till this amendment is notified.

The words "**shall be communicated to the recipient of the said supplies within such time and in such manner as may be prescribed**", has been substituted with the words "**shall, subject to such conditions and restrictions, within such time and in such manner as may be prescribed, be communicated to the recipient of the said supplies**" in Section 37(1) of CGST Act.

With this substitution, the communication of details of Outward supplies shall be made subject to conditions and restriction as may be prescribed in the rules.

Further, an amendment has been proposed u/s 37(4) stating that the taxpayers cannot file GSTR-1 without filing GSTR-1 of previous months. Further, the Government can issue notification for relaxation of the said provision for specified class of persons. This restriction was already implemented in GST portal without any legal backing and this amendment is made to support the above restriction.

7. Various amendments in Return filing system

Certain amendments have been proposed in the return filing system u/s 39 as under:

- Section 39(5) has been amended to provide for the reduction in time limit for filing of GSTR-5 by a non-resident taxpayer from 20 days to 13 days.

- QRMP scheme which was already implemented by way of rules is now given a legal effect by amending section 39(7) of the act. In our view, the validity of QRMP scheme would come under question till the time this amendment is made effective.
- Section 39(10) has been amended to provide that GSTR-3B cannot be filed without filing GSTR-1 of such month & GSTR-3B of previous months. Before this amendment GSTR-3B cannot be filed only if the earlier months GSTR-3B was not filed. Once this amendment is implemented, then the filing of GSTR 3B would be dependent on the filing of GSTR 1. In other words, one cannot file GSTR 3B for a particular month, if GSTR 1 for that month is not filed.

8. Transfer of balance in Electronic Cash ledger within same PAN is allowed and legal backing provided for blocking of Electronic credit ledger & payment of 1% tax mandatorily in cash as per Rule 86A & 86B

Section 49(10) has been amended to provide that the taxpayer can transfer the balance of IGST and CGST in electronic cash ledger to any other GSTIN in the same PAN, subject to that there is no unpaid liability in the electronic liability ledger. In our view, this is a welcome amendment and can solve working capital issues.

Blocking of ITC under Rule 86A is now given a legal backing by inclusion of the authority in the act. This substantiates that any blocking of electronic credit ledger that is done prior to the effect of this amendment is illegal and without the authority in law.

Provisions has been inserted to provide legal backing for Rule 86B (1% of tax liability mandatory to be paid in cash by specified persons even though ITC is available). This also fortifies that Rule 86B as in vogue now is ultra vires to the Act.

9. No Interest if ITC availed but not utilised. Further, Interest rate clarified to be paid @ 18% - Effective retrospectively from July 1, 2017

Section 50(3) has been substituted to provide that Interest is liable only on wrong utilized ITC and not mere availment and this amendment has a retrospective effect i.e., w.e.f. from 1st July 2017 to avoid disputes for the past period.

Further the rate of Interest is clarified as 18% for wrongly utilized ITC not 24%. As the rate of 24% was mentioned for levy of Interest in case of undue or excess claim of ITC where the ITC was not matching based on auto-system based mis-match u/s 42 and 43 and since the mechanism of two-way system-based matching was itself never implemented therefore levy of 24% was not correct.

This would be of great relief for the taxpayers as it led to unnecessary litigation during departmental audits, scrutiny etc. Further, the taxpayers who have already paid tax @ 24% can consider claiming refund of the balance 6% interest paid extra.

10. Amendments in provisions relating to Refund of taxes:

Certain amendments have been proposed under the refund related provisions as under:

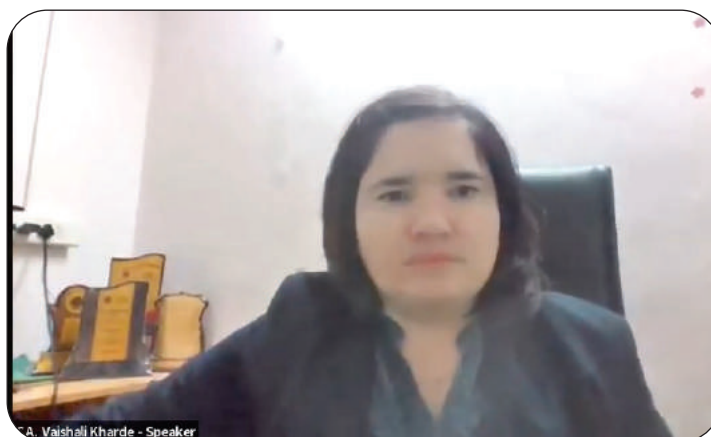
- Refund of balance from electronic cash ledger is delinked from GSTR 3 due to its non-implementation and such refund was granted through RFD-01 as a procedural convenience which is now legalized under Section 54. This can lead to refund applications for cash ledger also to go through the scrutiny of officers which will lead to unnecessary scrutiny, investigations, and harassment.
- Relevant date for claiming refund by UNO, foreign consulates & embassies is extended from 6 months to 2 years, which is in line with other refund claims. Benefit must also be eligible for past periods for applications filed after the amendment is made effective.
- Provision to withholding or deduction from unpaid tax from refund earlier only covered for refund of unutilized ITC on account of zero-rated supplies and inverted rate structure. The same is now extended to cover all the refund applications of Section 54. Hence, before claiming refund, it should be ensured there is no liability in electronic liability ledger and all pending ASMT-10, DRC-01A etc. have been addressed. Adverse impact in case of claiming refund of balance lying in the electronic cash ledger.
- Relevant date for zero rated supplies made to SEZ was unclear. Sub-clause (ba) is proposed to be added defining relevant date to clarify that the relevant date for refund w.r.t. supplies to SEZ with payment of tax would be 2 years from due date for furnishing of return in GSTR 3B in respect of such supplies.

11. Other miscellaneous amendments

- Late fee proposed for delay in filing of return in Form GSTR-08 by E-commerce operator .
- www.gst.gov.in is retrospectively notified w.e.f. 22nd June 2017 as the Common GST Electronic Portal for all functions other than those e-way bill and for generation of Invoices.
- Retrospective exemption granted for supply of unintended waste generated during the production of fish meal (falling under heading 2301), except for fish oil, during the period commencing from 1st July 2017 to 30th September 2019 (both days inclusive). Further, Grant of alcoholic liquor licence is clarified to be not a supply of goods or service during the period commencing from 1st July 2017 to 30th September 2019 (both days inclusive).
- No refund shall be made of all such tax that is already paid in the above two cases. In our view, the refund deniable is arbitrary. As GST paid on alcoholic licence was not an amount collected as tax. Hence no authority for the Government to collect GST on such amount.



VCM on "Recent Development under GST with New Challenges Ahead"



CA. Vaishali Kharde - Speaker

Flag Hoisting on the Occasion of Republic Day



VCM on "Major Issues in Tax Audit & Filing"



Speakers :- CA. Sharad Shah & CA. Rohit Tapadiya

Virtual Programme on "योग- कोरोनासाठी संरक्षक कवच" (Yoga - Protector Shield for Corona)



Shri. Madhav Aphale, Certified Yoga Teacher

Pune Branch of WIRC of ICAI

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