

## GST Charcha on Union Budget 2021:

### **Amendments proposed in Section 129 and 130 of the CGST Act, 2017**

The Hon'ble Finance Minister, in Budget 2021-22, hailed as a 'development-oriented' and 'visionary' budget amid the pandemic-induced disruptions, *inter alia*, announced multiple changes to the Goods and Services Tax ("GST") framework. The changes have been proposed vide the Finance Bill, 2021, that amends the Central Goods and Services Tax Act, 2017 ("CGST Act") and the Integrated Goods and Services Tax Act, 2017 ("IGST Act"), in order to ease doing of business, curb input credit frauds, safeguard Government revenues and to provide statutory backing to debated Rules.

This GST Charcha deciphers into recent changes in GST Laws made vide Clause No. 108 and 109 of the Finance Bill, 2021 with respect to amendments in Section 129 and 130 of the CGST Act.

#### **Relevant provisions:**

Following amendments have been proposed in various sub-sections of Section 129 of the CGST Act:

*"Detention, seizure and release of goods and conveyances in transit*

*129. (1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,—*

*(a) on payment of penalty equal to **two hundred per cent.** of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;*

*(b) on payment of penalty equal to fifty per cent. of the value of the goods or **two hundred per cent.** of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent. of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;*

*(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:*

*Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.*

~~***(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.***~~

*“(3) The proper officer detaining or seizing goods or conveyance shall issue a notice **within seven days of such detention or seizure, specifying the penalty payable,** and thereafter, pass an order **within a period of seven days from the date of service of such notice,** for payment of penalty under clause (a) or clause (b) of sub-section (1).*

*(4) **No penalty** shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*

*(5) On payment of amount referred in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.*

*(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) **within fifteen days from the date of receipt of the copy of the order passed under sub-section (3),** the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty payable under sub-section (3):*

***Provided that the conveyance shall be released on payment by the transporter of penalty under sub-section (3) or one lakh rupees, whichever is less:***

*Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.”*

Following amendments have been proposed in sub-section (1), (2) & (3) of Section 130 of the CGST Act:

*“130. Confiscation of goods or conveyances and levy of penalty.*

*(1) **Where**, if any person-*

*....*

*(2) Whenever confiscation of any goods or conveyance is authorised by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation, such fine as the said officer thinks fit:*

*Provided that such fine leviable shall not exceed the market value of the goods confiscated, less the tax chargeable thereon:*

*Provided further that the aggregate of such fine and penalty leviable shall not be less than the **penalty equal to hundred per cent. of the tax payable on such goods:***

*Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.*

~~*(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.”*~~

#### Discussion and Comments:

#### **Amendments in Section 129 and 130 of the CGST Act:**

Section 129 of the CGST Act, which deals with the detention, seizure and release of goods and conveyances in transit, has been proposed to be amended in a following manner:

- **Enhanced penalty (previously penalty and tax) under Section 129(1)(a) & (b):**

Existing provision	Proposed amendment
<b>When owner comes forward [Sec 129(1)(a)]:</b>	
<ul style="list-style-type: none"> <li>• Taxable goods- <b>Tax + penalty</b> equal to <b>100%</b> of tax payable</li> <li>• Exempted goods – Lowest of 2% of the value of goods or Rs. 25,000/-</li> </ul>	<ul style="list-style-type: none"> <li>• Taxable goods – <b>Penalty</b> equal to <b>200%</b> of tax payable</li> <li>• Exempted goods – Lowest of 2% of the value of goods or Rs. 25,000/-</li> </ul>
<b>When owner does not come forward [Sec 129(1)(b)]:</b>	
<ul style="list-style-type: none"> <li>• Taxable goods – <b>Tax + penalty</b> equal to 50% of value of goods <b>reduced by tax paid.</b></li> <li>• Exempted goods – Lowest of 5% of the value of goods or Rs. 25,000/-</li> </ul>	<ul style="list-style-type: none"> <li>• Taxable goods – <b>Penalty</b> equal to higher of 50% of value of goods <b>or 200% of the tax payable on such goods.</b></li> <li>• Exempted goods – Lowest of 5% of the value of goods or Rs. 25,000/-</li> </ul>

- **Section 129(2) has been omitted:** That means, the goods seized shall not be released on provisional basis upon execution of a bond and furnishing security and the penalty imposed by the officer will have to be paid in cash by the taxpayer.
- **Period of issuance of notice and passing of order under Section 129(3) of the CGST Act:** The proper officer detaining/seizing the goods, have to issue a notice (MOV-07) within 7 days specifying the penalty payable and pass an order (MOV-09) within next 7 days after service of such notice, whereas earlier there was no such time limit.
- **Determination of penalty:** In a proposed amendment to Section 129(4) of the CGST Act, no penalty shall be determined without giving opportunity of hearing, where penalty is payable on detention or seizure of goods or conveyance.

It is to be noted that **tax and interest shall not be demanded after the amendment in law for release of goods and conveyance.**

- **Delinking Section 129 from Section 130:** Proposed amendment in Section 129(6) of the CGST Act delinks the proceedings under Section 129 of the CGST Act relating to 'detention, seizure and release of goods and conveyances in transit', from the proceedings under Section 130 of the CGST Act relating to 'confiscation of goods or conveyances and levy of penalty'.

Earlier the provision was if person does not pay tax and penalty within 14 days of seizure, the conveyance and goods detained were liable for confiscation as per Section 130 *ibid*. But, after this amendment, the goods or conveyance detained or seized shall become liable to be sold or disposed off in the manner prescribed in case the payment of imposed penalty is not made **within 15 days** from the date of receipt of copy of the order imposing such penalty.

Further, conveyance used for transportation of the goods may be released on payment of penalty or INR 1 Lakh whichever is less.

Corresponding changes for delinking Section 129 and 130 of the CGST Act are also proposed in Section 130 of the CGST Act.

**Note:** Amendments carried out in the Finance Bill, 2021 will come into effect from the date when the same will be notified and when the said clause also gets concurrently notified with the corresponding amendments passed by the respective States and Union territories in respective SGST/ UTGST Act.

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