



Since 1957

# KARNATAKA STATE CHARTERED ACCOUNTANTS ASSOCIATION (R)



CA. Chandan Kumar Hegde A.  
President

CA. Sujatha G.  
Secretary

Date: 17<sup>th</sup> February, 2022

To,

Smt. Nirmala Sitharaman

Hon. Union Minister of Finance and Corporate Affairs

Government of India

Hon'ble Madam,

## **SUBJECT: MEMORANDUM SEEKING CHANGES IN UNION BUDGET 2022-23 PROPOSALS**

The Karnataka State Chartered Accountants Association (R) (in short 'KSCAA') is an association of Chartered Accountants, registered under the Karnataka Societies Registration Act, in the year 1957. KSCAA is primarily formed for the welfare of Chartered Accountants and represents before various regulatory authorities to resolve the professional problems faced by chartered accountants and business community.

At the outset, we congratulate and applaud sincere efforts of Union Government and your goods selves for undertaking and laying down a progressive, optimistic and growth-oriented Union Budget 2022-23, at a time when India is maneuvering its way out of third wave of Covid-19. As India is celebrating Azadi ka Amrit Mahotsav and has entered into Amrit Kaal, the 25-year-long leadup to India@100, the budget has all enablers to transform this vision into reality.

We here in, would like to bring to your kind notice, few of the issues which might be faced by taxpayers and Chartered accountants as regards certain specific proposals made in this Union Budget, 2022-2023. In the past, we have written to your good selves many a times populating various issues, challenges and hardships being faced by taxpayers and Chartered Accountants and suggested possible solutions on the same. Here in, we are presenting before your good selves for your kind consideration certain issues, challenges and hardships which the taxpayers and Chartered accountants might face on these proposals of this Union Budget 2022-23. For every issue, challenge or hardship highlighted, we have also suggested solutions to address them all.

**No. 67, 1st Floor, West of Chord Road, 2nd Stage, Mahalakshmpuram, Bangalore 560 086.**

**Phone : +91 80 2955 2155 | Email : [info@kscaa.com](mailto:info@kscaa.com) | Website : [www.kscaa.com](http://www.kscaa.com)**

**Recommended changes in Finance Bill 2022 - CGST Act, 2017**

**a. Amendment to Sec 16 & Sec 38 of the CGST Act**

Clause 99 & 103 to Finance Bill 2022	
<b>Relevant Extract from the Bill relating to Sec 16</b>	In Section 16 sub-section (2), after clause (b), the following clause shall be inserted, namely: “(ba) the details of input tax credit in respect of the said supply communicated to such registered person under section 38 has not been restricted;”;
<b>Relevant Extract from the Bill relating to Sec 38</b>	<p>“38. (1) The details of outward supplies furnished by the registered persons under sub-section (1) of section 37 and of such other supplies as may be prescribed, and an autogenerated statement containing the details of input tax credit shall be made available electronically to the recipients of such supplies in such form and manner, within such time, and subject to such conditions and restrictions as may be prescribed.</p> <p>(2) The auto-generated statement under sub-section (1) shall consist of--</p> <p>(a) details of inward supplies in respect of which credit of input tax may be available to the recipient; and</p> <p>(b) details of supplies in respect of which such credit cannot be availed, whether wholly or partly, by the recipient, on account of the details of the said supplies being furnished under sub-section (1) of section 37,--</p> <p>(i) by any registered person within such period of taking registration as may be prescribed; or</p> <p>(ii) by any registered person, who has defaulted in payment of tax and where such default has continued for such period as may be prescribed; or</p> <p>(iii) by any registered person, the output tax payable by whom in accordance with the statement of outward supplies furnished by him under the said subsection during such period, as may be prescribed, exceeds the output tax paid by him during the said period by such limit as may be prescribed; or</p> <p>(iv) by any registered person who, during such period as may be prescribed, has availed credit of input tax of an amount that exceeds the credit that can be availed by him in accordance with clause (a), by such limit as may be prescribed; or</p> <p>(v) by any registered person, who has defaulted in discharging his tax liability in accordance with the provisions of sub-section (12) of section 49 subject to such conditions and restrictions as may be prescribed;</p> <p>or</p> <p>(vi) by such other class of persons as may be prescribed.”.</p>



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<b>Proposal in the Bill</b>	<p>Combined Effect of Clause 99 &amp; 103 is as below:</p> <ol style="list-style-type: none"><li>i. An additional condition added in Sec 16 of the Act for claim of Input Tax Credit (ITC) requires that the ITC not to be restricted as per autogenerated statement made available under Sec 38.</li><li>ii. Such auto generated statement would be made available to recipient claiming ITC, based on GSTR 1 filed by his supplier, and the statement would give details of eligible and ineligible ITC.</li><li>iii. The clause specifies a few instances under which ITC can be made ineligible as per the auto generated statement.</li></ol>
<b>Our Observation on the Amendment - Impact on the trade</b>	<p>The said amendment undoubtedly intends to ensure that the ITC claim is mapped with the corresponding tax paid by the supplier. However, following are some of the major concerns we see if the provision is made applicable as is –</p> <ol style="list-style-type: none"><li>a. There is no opportunity for the recipient or the supplier concerned to prove his case and defend eligibility as the assessment of ITC into eligible and ineligible is system driven by way of an auto drafted statement.</li><li>b. Mechanism does not provide an option for shifting the ITC from ineligible to eligible once the issue in question is ratified with required correction as mentioned in point a above.</li><li>c. Restriction of credit from recipient and possibility of subsequent recovery from the supplier could lead to unjust enrichment. Law has not spelt out a mechanism for claiming back ITC once recovery is done from the supplier.</li><li>d. System based disallowance would defy the scheme of self-assessment and would lead to a controlled assessment.</li><li>e. This would defy the intent of free flow of credit as envisaged in GST implementation</li><li>f. Working capitals would hugely be impacted to the already crippling business scenario owing to Covid-19.</li><li>g. It casts an undue hardship on the registered person to follow the said provision, and time invested on compliance would go up exponentially leading to adverse impact on business.</li></ol> <p>While the general hardships faced due to the proposed amendment are as listed above, following are our observations on the reasons for specific ineligibilities for claiming ITC as stated in Clause 103:</p>



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	<p><b>a. Instance 1:</b> Till a prescribed period from the date of registration of supplier, ITC would be ineligible for receiver.</p> <ul style="list-style-type: none"><li>-Such ineligibility in case of newly registered supplier would hamper the ease of doing business.</li><li>-Given that our country encourages and supports start-ups through various schemes, instance 1 directly and adversely impacts such vision.</li></ul> <p><b>b. Instance 2:</b> Supplier has defaulted payment of tax for a prescribed continuous period;</p> <p><b>Instance 3:</b> Output Tax as per GSTR 1 exceeds by a prescribed limit compared to actual payment by supplier in GSTR 3B;</p> <p><b>Instance 4:</b> Supplier of Goods has availed ITC higher than prescribed limit eligible to him u/s 38;</p> <p><b>Instance 5:</b> Supplier being a specified class of persons and has not discharged the minimum amount of tax which he requires to do it through cash ledger as per Sec 49(12).</p> <ul style="list-style-type: none"><li>- Certain valid reasons could exist for the difference between GSTR 1 &amp; GSTR 3B, including the ones on account of error while filing GSTR 1, adjustment of previously excess paid taxes from current month's payment while filing GSTR 3B, among others. Law has not envisaged a way out in such instances. Blocking such ITC in <b>instance 3</b> would unduly affect the recipient.</li><li>- Supplier could have claimed excess ITC for various bonafide reasons including the case of non availment and subsequent availment within the prescribed allowed time. ITC restriction in <b>instance 4</b> would unduly hamper the person claiming ITC for reasons beyond his control.</li><li>- As a recipient, one may not be aware of applicability of Section 49(12) from his supplier's end. Such defaulting supplier would be the appropriate person to deal with than the bonafide recipient.</li><li>- Many courts have time and again held that for the fault of supplier, a bonafide recipient should not be burdened and have categorically held that revenue has to be recovered from defaulting supplier. Disallowance in <b>instances 2, 3, 4 &amp; 5</b> are against the well settled judicial position on this aspect.</li></ul>
<b>Our Recommendation</b>	<p>i. We recommend continuing the existing self-assessment-based mechanism in place of the proposed system based assessment.</p> <p>ii. Considering the existence and acquaintance to GSTR 2B/2A in its present form by trade and industry, Section 38 may be omitted or suitably amended to make 2A/2B as the basis to allow claim of ITC.</p>

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	<p>iii. It is reasonable and just that mistake from suppliers like excessive ITC claimed, short payment of taxes, non-payment of minimum amount through cash ledger etc., does not impact the recipient's entitlement to claim of ITC.</p> <p>iv. Provisions of Sec 38 appear to define a shift from 'burden of proof to claim ITC by recipient' to 'burden of recovering taxes to Government by such recipient.'</p>
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## b. Amendment to Sec 16(4)/34/37/39 of the CGST Act

Clause 99, 101, 102, 104 to Finance Bill 2022	
<b>Relevant Extract from the Bill</b>	<p>In Section 16 sub-section (4), for the words and figures "due date of furnishing of the return under section 39 for the month of September", the words "thirtieth day of November" shall be substituted.</p> <p>In section 34 of the Central Goods and Services Tax Act, in sub-section (2), for the word "September", the words "the thirtieth day of November" shall be substituted.</p> <p>In the first proviso to Section 37 sub section (3), for the words and figures "furnishing of the return under section 39 for the month of September", the words "the thirtieth day of November" shall be substituted.</p> <p>In the first proviso to Section 39 sub section (9), for the words "the due date for furnishing of return for the month of September or second quarter", the words "the thirtieth day of November" shall be substituted.</p>
<b>Proposal in the Bill</b>	<p>Time limit for the following has been extended to 30<sup>th</sup> November of the following year or date of filing Annual return whichever is earlier:</p> <ol style="list-style-type: none"><li>Claim of ITC</li><li>Issue of Credit Notes</li><li>Amendment in GSTR 1</li><li>Amendment in GSTR 3B</li></ol>
<b>Impact on the trade and suggestions</b>	<p>It was a much-needed relief to bring the due date of referred actions to 30<sup>th</sup> November of the next financial year in place of due date for filing September return of next financial year. However, there is an anomaly to be addressed:</p> <p>It is to be clarified whether 30<sup>th</sup> November should be considered as the date of claim of ITC by filing return/last date for issue of credit note/last date for amendments, as the case may be or</p>

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	<p>should be considered as the last date of period pertaining to which return containing amendments pertaining to its previous year can be filed in the subsequent month.</p> <p>To illustrate, GSTR 3B for the month of November is due by 20<sup>th</sup> December and cannot be filed by 30<sup>th</sup> November. Hence, the eligibility of ITC missed out be claimed by 30<sup>th</sup> November and subsequently claimed by 20<sup>th</sup> December of next financial year is to be ascertained. Similarly, eligibility of Credit note/amendments to be carried out by 30<sup>th</sup> November of next financial year is to be ascertained.</p>
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## c. Amendment to Sec 41 of the CGST Act

Clause 105 to Finance Bill 2022	
<b>Relevant Extract from the Bill relating to Sec 41</b>	<p>For section 41 of the Central Goods and Services Tax Act, the following section shall be substituted, namely:</p> <p>“41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited to his electronic credit ledger.</p> <p>(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the tax payable whereon has not been paid by the supplier, shall be reversed along with applicable interest, by the said person in such manner as may be prescribed:</p> <p>Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may re-avail the amount of credit reversed by him in such manner as may be prescribed.”.</p>
<b>Proposal in the Bill</b>	<p>Self-assessed Input Tax Credit, after passing the test of Sec 16, Sec 17, Sec 38 among others, needs to be reversed or paid along with applicable interest, if the supplier in question has not paid taxes subsequent to filing of returns.</p> <p>Upon subsequent payment by the defaulting supplier, recipient can re-avail such ITC.</p>
<b>Impact on the trade and suggestions</b>	<p>In case of re-availing of ITC, the Clause does not mention refund of interest which would have earlier been paid by recipient while reversing the ITC.</p> <p>Since the supplier is bound to pay the taxes with interest on account of delay, it is reasonable and just that the recipient be eligible for refund. Otherwise, this would lead to unjust enrichment to Government.</p>

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Hence, we recommend that the provision also includes interest on refund to the recipient of supply.

We are presenting before your good selves the above enumerated possible potential issues, challenges and hardships which may be faced by the trade, industry and professionals due to amendments stated in the budget and also recommendations for your kind consideration and we herewith earnestly request your good selves to kindly make appropriate changes in related proposals of the Finance Bill, 2022 to address various issues we have highlighted above.

Hence, we the members of Karnataka State Chartered Accountants Association, on behalf of the entire Chartered Accountants community and also on behalf of the trade and industry in the state of Karnataka appeal to your good selves to kindly consider our above recommendations on various issues populated as above and kindly urge you to make relevant changes in the Finance Bill, 2022 before it is promulgated as Statute.

Yours sincerely,

**For Karnataka State Chartered Accountants Association ®**

CA. Chandan Kumar Hegde  
President

CA. Sujatha Raghuraman  
Secretary

CA. Ganesh V Shandage  
Chairman  
Representation Committee

Cc to:

1. Shri. Pankaj Choudhary, Hon'ble Minister of State, Finance.
2. Shri. Tarun Bajaj, Hon'ble Revenue Secretary.
3. Shri. Vivek Johri, Hon'ble Chairman, Central Board of Indirect Taxes & Customs

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