



SECTIONWISE ANALYSIS – GST AMENDMENTS (CHANGES FROM 01/01/2022)

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GST AMENDMENTS – HIGHLIGHTS AT A GLANCE

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1. Transaction between a person (other than an individual) to its members for consideration to be treated as a supply

Source

Section 108 of the Finance Act 2021

Effective Date

With effect from the 1st day of July, 2017.

New Provision

Section 7(1)(aa) of the CGST Act, 2017.

Amendment

The provision marked in green has been newly inserted:

7(1)(aa) - the activities or transactions, by a person, other than an individual, to its members or constituents or *vice-versa*, for cash, deferred payment or other valuable consideration.

Explanation. - For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions *inter se* shall be deemed to take place from one such person to another;”.

Effect of the Amendment

There had been an area of dispute regarding the taxability of transactions carried out between the members and the association of persons / partnership firms / joint ventures. This was particularly after the Hon'ble Supreme Court judgement in the case of Calcutta Club Ltd (Civil Appeal No. 4184 of 2009) recently. It was held that the club / association and its members are not distinct persons and that there would be no leviability of service tax on any services provided by the club to its persons following the concept of mutuality.

This amendment aims to put a deeming fiction effective from 1st July 2017 within the law providing that the person (other than an individual) and its members should mandatorily be treated as two separate persons. Also, the activities or transactions carried out between such person and the members for consideration should mandatorily be treated as a supply leviable to tax under GST.

The above position of the law is overriding all the provisions of GST and any other law and even the judgements of any Court, Tribunal or any other authority. The validity of such amendment in the eyes of Courts may have to withstand the test of time.

2. Appearance of transaction in GSTR-2A/2B – a mandatory condition for availment of ITC i.e. 100% matching of ITC between GSTR 2A/2B and 3B

Source

Section 109 of the Finance Act 2021

Effective Date

1st January 2022

New Provision

Section 16(2)(aa) of the CGST Act, 2017.

Amendment

The provision marked in green has been newly inserted:

16(2)(aa) - the details of the invoice or debit note referred to in clause (a) has been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient of such invoice or debit note in the manner specified under section 37;”.

Effect of the Amendment

Till now, the conditions for availment of input tax credit was only dependent on the supplier to the extent whether he has actually paid the taxes charged to the government. To a certain extent, this condition is not always possible to verify in the hands of the recipient particularly where the supplier has mis-declared or not declared the correct tax values in GSTR-3B.

On the other hand, there was no clause to deny input tax credit based on the matching of the details declared by the supplier in his GSTR-1 and actual input tax credit availed by the recipient. Thereby, the credit matching between GSTR-2A and 3B was not a pre-condition for availment of input tax credit under Section 16(2). In order to mandate availment of input tax credit based on GSTR-2A / 2B, the law now prescribes a pre-condition that input tax credit on invoice or debit note may be availed only when the details of such invoice or debit note have been furnished by the supplier in his GSTR-1 and it is communicated to the recipient in GSTR-2A / 2B.

From 1st January 2022, 100% matching of input tax credit for forward charge transactions would be applicable.

3. Detention and Seizure to be separate from the Demand / Recovery provisions

Source

Section 113 of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Explanation 1(ii) of Section 74 of the CGST Act, 2017

Provision before Amendment

Explanation 1.—For the purposes of section 73 and this section,—

(i) the expression all proceedings in respect of the said notice shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under ~~sections 122, 125, 129 and 130~~ are deemed to be concluded.

Provision after Amendment

Explanation 1.—For the purposes of section 73 and this section,—

(i) the expression all proceedings in respect of the said notice shall not include proceedings under section 132;

(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

Effect of the Amendment

This amendment has been brought in to make the proceedings of the detention, seizure and confiscation of goods and conveyances in transit separate from the demand and recovery proceedings under Section 73 and 74 of the CGST Act 2017.

4. Direct recovery without SCN upon furnishing of details in GSTR-1 without tax payment in GSTR-3B

Source

Section 114 of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 75(12) of the CGST Act, 2017.

Amendment

The provision marked in green has been inserted

Provision before Amendment

75(12) - Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

Provision after Amendment

75(12) - Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

‘Explanation. — For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.’

Effect of the Amendment

Section 75(12) provides that where any self-assessed tax remains unpaid, the same can be directly recovered without any issuance of showcause notice. Self-assessment provides for taxes declared in GSTR-3B as per Section 39. Thereby, only taxes declared in GSTR-3B but remaining unpaid through it (practical impossibility) could form the scope of this section 75(12).

Now, it has been provided that if a supplier only provides outward supplies in GSTR-1 without including such supplies in GSTR-3B, then the government can directly opt for recovery of taxes under Section 79 without issuance of any showcause notice u/s 73 or 74.

5. Provisional Attachment upon initiation (and not pendency) of proceedings and increased coverage of beneficiaries or masterminds of fake invoicing

Source

Section 115 of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 83(1) of the CGST ACT, 2017

Provision before amendment

~~83(1) - Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.~~

Provision after amendment

83(1) - "Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed."

Effect of the Amendment

Earlier only upon pendency of certain proceedings of assessment, inspection, search and seizure and demand / recovery, the power to exercise provisional attachment of property could be exercised.

Now, Section 83 has been modified to allow provisional attachment of property wherever any proceedings of assessment, inspection, search and seizure and demand / recovery have been initiated. Such provisional attachment will remain valid from such initiation of proceedings till the expiry of one year from the date of order.

Also, the provisions of provisional attachment of the property have been extended to include those persons who are the beneficiaries or at whose instance the fake invoicing transactions are carried out as provided under Section 122(1A) of the CGST Act 2017.

6. Filing of appeal against detention order upon payment of 25% penalty**Source**

Section 116 of the Finance Act, 2021.

Effective Date

1st January 2022

New Provision

Proviso to Section 107(6) of the CGST Act, 2017

Amendment

The proviso marked in green has been inserted

“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.”

Effect of the Amendment

Before this amendment, a person can file an appeal against a detention order passed u/s 129(3) of the CGST Act 2017 only upon payment of 10% of the tax in dispute. This was leading to mis-utilization of this provision by the tax payers.

After the proposed amendment, against the adjudication order for detention or seizure of goods or conveyance u/s 129(3) of the CGST Act 2017, an appeal can now be filed only upon payment of 25% of the levied penalty under Section 129.

7. Payment of only penalty for release of goods and Increased penalty amount for detention and seizure proceedings**Source**

Section 117 of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 129(1)(a) & (b) and 129(4) of the CGST Act, 2017.

Amendment

The provision marked in red has been omitted and the provision marked in green has been inserted:

Provision before amendment

~~129(1)(a) - on payment of the applicable tax and penalty equal to one 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 tax and penalty;~~

~~129(1)(b) - on payment of the applicable tax and penalty equal to the fifty per cent. of the value of the goods reduced by the tax amount paid thereon 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 tax and penalty;~~

~~129(4) - No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.~~

Provision after Amendment

129(1)(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;

129(1)(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

129(4) - No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

Effect of the Amendment

Upon detention and seizure of goods and conveyance u/s 129, one had to pay the tax along with the penalty in order to get the goods released. After this amendment, only the penalty amount needs to be paid in order to secure release of goods whereas the tax amount would continue to be paid through GSTR-3B of the relevant month. However, the penalty amount under this provision has been modified for non-exempted goods as follows:

Situation	Earlier Penalty	Amended penalty
Where owner comes forward for payment of penalty	100% of the tax payable	200% of the tax payable
Where owner does not come forward for penalty payment	50% of the value of goods less tax paid	Higher of: a) 50% of the value of goods b) 200% of the tax payable

8. Provisions of Section 67(6) no longer to apply for release of goods on security

Source

Section 117(ii) of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 129(2) of the CGST Act, 2017.

Amendment

The provision marked in red has been omitted and the provision marked in green has been inserted:

Provision before amendment

~~129(2) - The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.~~

Effect of the Amendment

The requirement of following the provisions of Section 67(6) for release of goods on provisional basis upon execution of bond and security as per the specified manner and quantum has been removed. However, the allowance of release of goods upon furnishing of security u/s 129(1)(c) still stands.

9. Time limit provided for issuance of notice and order u/s 129**Source**

Section 117(iii) of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 129(3) of the CGST Act, 2017.

Amendment

The provision marked in red has been omitted and the provision marked in green has been inserted:

Provision before amendment

~~129(3) - The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).~~

Provision after amendment

129(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).

10. Direct disposal of goods upon non-payment of penalty for detention

Source

Section 117(v) of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 129(6) of the CGST Act, 2017.

Amendment

The provision marked in red has been omitted and the provision marked in green has been inserted:

Provision before amendment

~~129(6) - Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as provided in sub-section (1) within [fourteen days] of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:~~

~~Provided 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 [fourteen days] may be reduced by the proper officer.~~

Provision after amendment

129(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.

Effect of the Amendment

The proceedings of confiscation of goods u/s 130 have been made independent of the proceedings of detention and seizure as per Section 129(3) of the CGST Act 2017.

Earlier non-payment of tax and penalty within 14 days of detention and seizure u/s 129 led to introduction of confiscation proceedings u/s 130.

Now, upon non-payment of penalty within 15 days (or less for perishable/hazardous goods) of receipt of order copy of detention, the detained goods or conveyance can directly sold or disposed of in the prescribed time and manner. Further, the transporter has been given an option to get his conveyance released upon payment of applicable penalty or Rs. 1 lakh whichever is less.

11. Delinking of Detention and Confiscation proceedings

Source

Section 118 of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 130(1); 130(2) & 130(3) of the CGST Act, 2017.

Provision before amendment

130(1) - ~~Notwithstanding anything contained in this Act, if~~ any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

Second proviso to Section 130(2) - Provided further that the aggregate of such fine and penalty leviable shall not be less than the ~~amount of penalty leviable under sub-section (1) of section 129:~~

~~130(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.~~

Provision after Amendment

130(1) - Where any person—

(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or

(v) uses any conveyance as a means of transport for carriage of goods in contravention of the provisions of this Act or the rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

Second proviso to Section 130(2) - 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.

Effect of the Amendment

The confiscation provision no longer overrides any other provision of the Act. The proceedings of confiscation stands delinked with the penalty proceedings due to detention of goods.

Also, the minimum aggregate fine and penalty for confiscation was provided to be the penalty for detention under Section 129. This has now been modified to provide the amount to be equivalent to 100% of the tax payable on such goods. Also, the requirement to pay fine in addition to the tax, penalty and charges payable in respect of the goods has been omitted.

12. Empowerment of Commissioner to call for information

Source

Section 119 of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 151 of the CGST Act, 2017

Provision before amendment

~~151(1) - The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.~~

~~151(2) - Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.~~

Provision after Amendment

151 - The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.

Effect of the Amendment

The amendment has been provided to empower the jurisdictional commissioner to call for information from any person relating to any matter dealt with in connection with the Act.

13. Opportunity of being heard before using the called for information in any proceedings**Source**

Section 120 of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 152(1) of the CGST Act, 2017

Section 152(2) of the CGST Act, 2017

Amendment

The provision marked in red has been omitted and the provision marked in green has been inserted:

Provision before amendment

152(1) - No information ~~of any individual return or part thereof~~ with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.

~~152(2) - Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.~~

Provision after Amendment

152(1) - No information with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act **without giving an opportunity of being heard to the person concerned.**

Effect of the Amendment

This amendment is to provide that no information obtained under sections 150 and 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

14. Power under Section 150 to call for information transferred from the Board to the Jurisdictional Commissioner

Source

Section 121 of the Finance Act, 2021.

Effective Date

1st January 2022

Affected Provision

Section 168(2) of the CGST Act, 2017.

Amendment

The provision marked in red has been omitted and the provision marked in green has been inserted:

Provision before amendment

168(2) - The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, [~~sub-section (1) of~~ section 44, sub-sections (4) and (5) of section 52], [sub-section (1) of section 143, except the second proviso thereof], ~~sub-section (1) of section 151~~, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

Provision after amendment

168(2) - The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, [section 44, sub-sections (4) and (5) of section 52], [sub-section (1) of section 143, except the second proviso thereof], clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

Effect of the Amendment

Section 168(2) of the CGST Act 2017 provides for the powers which can only be exercised by the Commissioner or Joint Secretary posted in the Board. This has been amended to enable the jurisdictional Commissioner (and not the Board) to exercise powers under section 151 to call for information.

15. Rationalization of entry of supply of goods by unincorporated association in light of the new insertion in the definition of supply**Source**

Section 122 of the Finance Act, 2021.

Effective Date

With effect from the 1st day of July, 2017.

Affected Provision

Paragraph 7 of Schedule II of the CGST Act, 2017

Amendment

The provision marked in red has been omitted

Provision before Amendment~~7. Supply of Goods~~

~~The following shall be treated as supply of goods, namely:—~~

~~Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.~~

Effect of the Amendment

Due to the retrospective insertion of Section 7(1)(aa) of the CGST Act 2017, the above entry providing for supply of goods only by any unincorporated association or body of persons loses its significance. This entry gets automatically covered within the main definition as per Section 7(1)(aa) of the CGST Act 2017. Thereby, this entry has been omitted from Schedule II of the CGST Act 2017.

16. Mandatory Aadhar authentication to be eligible for grant of refund and revocation of cancellation of registration**Source**

Notification no. 38/2021-Central Tax dated 21st December 2021

Effective Date

1st January 2021

Affected Provision

Rule 10B of the CGST Rules 2017

Effect of the Amendment

Every registered person apart from the following:

- not a citizen of India; or
- a department or establishment of Central Government or State Government; or
- a local authority; or
- a statutory body; or
- a PSU or

- Person registered under Section 25 (9) of the CGST Act, 2017

Is required to undergo Aadhar authentication of the following persons

- i. Proprietor in case of proprietorship firm or Karta in case of HUF or MD/ WTD in case of Company or Member of Managing Committee/ AOP/ BOI/ Society or Trustee in Board of Trustees and
- ii. Authorised Signatory

To be eligible for: -

Sl No	Purpose
1	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
2	For filing of refund application in FORM RFD-01 under rule 89
3	For refund under rule 96 of the integrated tax paid on goods exported out of India

In case Aadhaar has not been assigned to the above-mentioned persons, then such persons shall furnish the following:

- a. Aadhar Enrolment ID slip and
- b. (i) Bank passbook with photograph; or
(ii) Voter identity card issued by the Election Commission of India; or
(iii) Passport; or
(iv) Driving License issued by the Licensing Authority under Motor Vehicles Act, 1988

Provided further that such person shall undergo the authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number

17. GSTR-1 filing allowed only after filing preceding GSTR-3B

Source

Notification no. 35/2021-Central Tax dated 24th September 2021

Effective Date

1st January 2021

Affected Provision

Rule 59 of the CGST Rules 2017

Effect of the Amendment

- Earlier a registered person was not allowed to file GSTR-1 in case his GSTR-3B was not filed for preceding two months.
- However, Effective Date 1st January 2022 a registered taxpayer shall not allowed to file his GSTR-1 in case his GSTR-3B was not filed for preceding month

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