

CBIC vide notification 38/2021-CT dated 21st December, 2021 has appointed 1st January, 2022 as day from which the Aadhar authentication is mandatory for proprietor or designated partner, managing director, trustee etc in case of revocation of cancellation of registration and refund application under Rule 89 & 96.

CBIC vide notification 39/2021-CT dated 21st December, 2021 has appointed 1st January, 2022 as day from which following section of Finance Act, 2021 shall come in force.

SECTION OF FINANCE ACT, 2021 – 108 & 122 (CORRESPONDING SECTION OF CGST ACT, 2017 – 7(1)(aa) & SR. NO. 7 OF SCHEDULE II OF CGST ACT)

- Section 7(1) of The CGST Act, 2017 is amended retrospectively w.e.f. 1st July, 2017 to insert clause (aa) along with explanation, which provides that “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

- Consequential amendment is made in Schedule II, so as to omit Entry 7 retrospectively w.e.f. 1st July, 2017 which is stated here under:

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.

- Explanation is inserted to the aforesaid Section 7(1) (aa) to clarify that the person and its members/constituents shall be deemed to be two separate persons.
- With this amendment, the transaction/activity between person (except Individual) defined in section 2(84) such as “AOP”, “BOI”, “Co-operative society” etc. & its member shall be covered in the definition of “Supply”. Therefore, GST shall be leviable on transaction involving supply of goods/services by any persons (other than individual) to its member/constituents or vice-versa for consideration.
- This amendment will nullify the effect of Mutuality principles laid down in transaction of supply of service in following decisions.
 - Hon’ble Supreme in case of M/s Calcutta Club Ltd – SC (2019-VIL- 34-SC)
 - Hon’ble Jharkhand High Court in case of Ranchi Club Ltd Vs. Chief Commissioner (2012) 26 STR 401

SECTION OF FINANCE ACT, 2021 – 109 (CORRESPONDING SECTION OF CGST ACT, 2017 – 16(2))

- In section 16(2) following sub clause (aa) is inserted namely

“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”

- Section 16(2) lays down criteria/condition for registered person for taking ITC. Hitherto there were conditions to be complied by registered person for availment of ITC. Henceforth after above amendment, the registered person shall be entitled to take ITC subject to compliance of 1 more condition that

- o ITC of invoice/debit note can be availed only when the details thereof have been furnished by respective supplier in his statement of outward supply (i.e. FORM GSTR 1 or IFF) and such details of ITC is communicated to recipient in his Form GSTR 2B.
- Government vide Notification No.49/2019-CT dated 9th October, 2019 as amended from time to time has laid condition for availment of ITC in CGST Rule 36(4). It was provided in said rule that ITC availed by registered person in respect of Invoice/debit note not appearing in GSTR 2A shall not exceed 5% of ITC on account of Invoice/debit note uploaded by supplier in his return of outward supply in FORM GSTR 1 & appearing in GSTR 2A.

SECTION OF FINANCE ACT, 2021 – 113 (CORRESPONDING SECTION OF CGST ACT, 2017 – 74)

- The section provides for issue of notice for determination & recovery of amount of tax, erroneous refund or wrong availment/utilization of ITC. The proper officer is required to issue notice within prescribe time for said proceeding.
- The Clause II of explanation I provides that where notice under the same proceeding is issued to main person liable to pay tax & some other person and such proceeding against main person have been concluded under section 73 or 74, the proceeding against all the other person liable for penalty under section 122, 125, 129 & 130 are deemed to be concluded.
- Section 122 lays down list of offences & penalty leviable thereon.
- Section 125 lays down general penalty for contravention of any provision for which no separate penalty is provided.
- Section 129 provides for detention, seizure & release of goods and conveyance in transit.
- Section 130 provides for confiscation of goods or conveyance and levy of penalty.
- The reference of section 129 & 130 is omitted from said explanation 1, thereby to make seizure & confiscation of goods & conveyance in transit, a separate proceeding from recovery of taxes.

SECTION OF FINANCE ACT, 2021 – 114 (CORRESPONDING SECTION OF CGST ACT, 2017 – 75)

- Sub-clause 12 of section 75 provides that where any amount of self-assessed tax in accordance to return furnished under section 39 remains unpaid wholly or partly or any amount of interest is payable on such unpaid tax, the same shall be recovered as per provision of section 79 as recovery of taxes as arrears of land revenue.
- The explanation is inserted to define expression "Self-Assessed Tax" to include tax payable in respect of details of outward supplies furnished under in GSTR 1 under section 37 but not included in GSTR 3B furnished under section 39.
- With this amendment, the Authorities can initiate recovery proceedings even in cases where the tax liability based on supply disclosed in GSTR-1 is more than tax liability declared in GSTR-3B.

SECTION OF FINANCE ACT, 2021 – 115 (CORRESPONDING SECTION OF CGST ACT, 2017 – 83)

- Presently, section 83 provides that commissioner for protecting the interest of revenue by order in writing attach provisionally any property including bank account belonging to taxable person during pendency of proceeding under following section
 - o Section 62 –Assessment of Non filer of returns
 - o Section 63 –Assessment of unregistered person
 - o Section 64- Summary assessment in certain special cases
 - o Section 67 –Cases related to inspection, search & seizure
 - o Section 73- Determination of Tax in case other than fraud etc.
 - o Section 74 – Determination of tax in cases involving fraud etc.
- The said section is amended by substituting the above section & replacing the same by proceeding covered under chapter XII, XIV & XV. As a result, the provisional attachment shall remain valid for entire period starting from initiation of any recovery proceeding under chapter XII, XIV & XV till expiry of 1 year from date of order made there under.

SECTION OF FINANCE ACT, 2021 – 116 (CORRESPONDING SECTION OF CGST ACT, 2017 – 107)

- Proviso to section 107(6) is inserted to provide that no appeal shall be filed against an order under section 129(3) unless 10% of duty demands plus 25% of Penalty has been paid by appellent.

- Section 129 provides for levy of penalty on any person who transport goods or stores goods while they are in transit in contravention of any provision of act.

SECTION OF FINANCE ACT, 2021 – 117 (CORRESPONDING SECTION OF CGST ACT, 2017 – 129)

- Currently, Section 117 provided for payment of Tax besides penalty for the contravention laid down in said section
- Section 129(1) of the CGST Act is amended to remove the tax portion and increase the penalty quantum, where any person transports/stores goods in contravention of the CGST Act while they are in transit and such goods/ conveyances are liable to detention or seizure. Penalty is as under:

Sr. No.	Scenario	Existing Penalty	Penalty
1	The owner of the goods comes forward for payment of such tax and penalty	<ul style="list-style-type: none"> Exempted goods: 2% of value of goods or Rs. 25,000 whichever is less Other Goods: tax and penalty equal to 100% of tax payable on such goods 	<ul style="list-style-type: none"> Exempted goods: 2% of value of goods or Rs. 25,000 whichever is less Other Goods: penalty equal to 200% of tax payable on such goods
2	The owner of the goods does not come forward for payment of tax and penalty	<ul style="list-style-type: none"> Exempted goods: 5% of value of goods or Rs. 25,000 whichever is less Other Goods: Tax and penalty equal to 50% of the value of goods reduced by tax paid thereon 	<ul style="list-style-type: none"> Exempted goods: 5% of value of goods or Rs. 25,000 whichever is less Other Goods: Penalty equal to 50% of the value of goods or 200% of tax payable on such goods

- Section 129(2) is omitted which permitted the assessee to release the seized goods under provisional basis upon execution of bond and furnishing of security. However, clause (c) of section 129 (1) is still in place, which provides for release of goods and conveyance on furnishing of security equivalent to amount payable stated herein in above table.
- Section 129(3) is amended to specify the duration of 7 days for issuance of notice for such detention and seizure and a duration of 7 days thereafter for passing an order.
- Section 129(6) of the CGST Act is amended wherein the powers have been given to the Authorities to sale/ dispose off the seized goods/ conveyances in the prescribed manner, where the penalty has not been paid within a period of 15 days from the date of receipt of order. An option has been given to the transporter to pay the penalty as determined above or INR 1 lakh, whichever is less, for release of conveyance.

SECTION OF FINANCE ACT, 2021 – 118 (CORRESPONDING SECTION OF CGST ACT, 2017 – 130)

- Section 130(1) is amended to delink the proceeding under this section relating to confiscation of goods or conveyance & levy of penalty from the proceedings under section 129 relating to detention, seizure & release of goods and conveyance in transit.

SECTION OF FINANCE ACT, 2021 – 119 (CORRESPONDING SECTION OF CGST ACT, 2017 – 151)

- Section 151 is amended to empower jurisdictional commissioner to call for any information from any person relating to any matter dealt with in connection to act. Hitherto, the commissioner was having power to collect statistics only if notification thereto being issued.

SECTION OF FINANCE ACT, 2021 – 120 (CORRESPONDING SECTION OF CGST ACT, 2017 – 152)

- Section 152 is amended to provide that no information obtained under section 150 (Information return) or 151 shall be used for purpose of any proceeding under this act without giving opportunity of being heard to concern person.

CBIC vide notification 40/2021-CT dated 29th December, 2021 has amended CGST Rule, 2017 to provide as follows:

- Rule 36(4) has been amended w.e.f. 1st Jan, 2022 to provide that no input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under sub-section (1) of section 37 unless, -
 - the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and

(b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.”

- In Rule 80, new sub rules have been inserted to extend the due-date for filing GSTR 9 & 9C for financial year 2020-21 till 28th Feb, 2022

- In Rule 95, after sub rule 3, following proviso shall be deemed to be inserted retrospectively w.e.f 1st April, 2021

Provided that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10

- Rule 142 has been amended to provide that where person concerned makes payment of the amount referred to in 129(1) within seven days of the notice issued under sub-section 129(3) but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice.

Before amendment person was given time limit of 14 days from date of detention or seizure of goods to make payment in form DRC-03 for concluding the proceeding in respect of 129(3).

- New Rule 144A for Recovery of penalty by sale of goods or conveyance detained or seized in transit has been inserted w.e.f. 1st January, 2022.
- Rule 154 relating to Disposal of proceeds of sale of goods or conveyance and movable or immovable property has been substituted with new rule w.e.f. 1st January, 2022
- Form GST DRC 10, Form GST DRC 11, FORM GST DRC 12, FORM GST DRC 22 & FORM GST DRC 23 & FORM APL 01 has been substituted with new form w.e.f 1st January, 2022
- Form GST DRC 22A (Application for filling objection against provisional attachment of property) has been inserted with new form w.e.f 1st January, 2022

CBIC through notification 18/2021-CT (Rate) dated 28th Dec,2021 and Notification 19/2021-CT (Rate) dated 28th Dec, 2021 has given effect of the 7th Edition of the Harmonized System (HS) nomenclature i.e., HS-2022, which will come into force from January 01, 2022. This edition has introduced significant changes to the Harmonized System with a total of 351 amendments at the six-digit level, covering a wide range of goods moving across borders. Accordingly, necessary amendment has been made in notification 1/2017-CT (Rate) dated 28th June, 2017 and notification 2/2017-CT (Rate) dated 28th June, 2017.

CBIC through notification 21/2021-CT (Rate) dated 31st Dec,2021 has superseded notification 14/2021-CT (Rate) dated 27th October, 2021 which prescribe CGST rate of 6% on certain Textile & textile products & garments falling under chapter 50,51,52, 53, 54, 55,56, 58, 59, 60, 63 & 64.

Further, notification 1/2017-CT (Rate) dated 28th June, 2017 has been amended to omitted entry no. 225 under schedule I which provided CGST rate of 2.5% on Footwear having a retail sale price not exceeding Rs.500 per pair, provided that such retail sale price is indelibly marked or embossed on the footwear itself.

Consequent to omission of entry 225, new Entry No. 171A1 has been inserted under schedule II which provided CGST Rate of 6% on Footwear of sale value not exceeding Rs.1000 per pair.

This notification shall come into force on the 1st day of January, 2022.

CBIC through notification 22/2021-CT (Rate) dated 31st Dec,2021 has Superseded notification 15/2021-CT (Rate) dated 18th November, 2021 and provide as follows:

The benefit of reduction of GST rate at 6% or 2.5%, as the case may be in case of composite supply of works contract service under serial number (iii), (vi),(vii), (ix) & (x) of Entry 3, supplied to a Governmental Authority or a Government Entity is omitted.

Further, condition that where the services are supplied to a Government Entity, they should have been procured by the said entity in relation to a work entrusted to it by the Central Government, State Government, Union territory or local authority, as the case may be under serial number (iii), (vi),(vii), (ix) & (x) of Entry 3 shall be omitted.

Thus, with this amendment, the composite supply of work contract service provided to governmental authority or Government entity will attract GST at rate of 9% w.e.f. 1st Jan, 2022

Entry 26(i)(b) which was amended vide notification 15/2021-CT (Rate) which provided job work service of dyeing or printing of textile or textile products will attract GST at rate of 6% is omitted & thereby GST rate on dyeing & printing of textile or textile product continue to attract GST at rate of 2.5%. w.e.f. 1st Jan, 2022

CBIC vide circular no. 167/23/2021-GST dated 17th Dec, 2021 has issued following clarification in respect of GST on service supplied by restaurants through e-commerce operators (ECO).

- As 'restaurant service' has been notified under section 9(5) of the CGST Act, 2017, the ECO shall be liable to pay GST on restaurant services provided, with effect from the 1st January, 2022, through ECO. Accordingly, the ECOs will no longer be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5).
- As ECOs are already registered in accordance with rule 8(in Form GST-REG 01) of the CGST Rules, 2017 (as a supplier of their own goods or services), there would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act, 2017.
- ECOs will be liable to pay GST on any restaurant service supplied through them including by an unregistered person.
- It is clarified that the aggregate turnover of person supplying restaurant service through ECOs shall be computed as defined in section 2(6) of the CGST Act, 2017 and shall include the aggregate value of supplies made by the restaurant through ECOs. Accordingly, for threshold consideration or any other purpose in the Act, the person providing restaurant service through ECO shall account such services in his aggregate turnover.
- The ITC is utilised by ECO for payment of GST on services provided by ECO on its own account (say, to a restaurant). The situation in this regard remains unchanged even after ECO is made liable to pay tax on restaurant service. ECO would be eligible to ITC as before. Accordingly, it is clarified that ECO shall not be required to reverse ITC on account of restaurant services on which it pays GST in terms of section 9(5) of the Act. It may also be noted that on restaurant service, ECO shall pay the entire GST liability in cash (No ITC could be utilised for payment of GST on restaurant service supplied through ECO)
- On any supply that is not notified under section 9(5), that is supplied by a person through ECO, the liability to pay GST continues on such supplier and ECO shall continue to pay TCS on such supplies
- The invoice in respect of restaurant service supplied through ECO under section 9(5) will be issued by ECO.
- The ECO may, on services notified under section 9 (5) including on restaurant service provided through ECO, may continue to pay GST by furnishing the details in GSTR 3B, reporting them as outward taxable supplies and also furnish said details in Table 7A(1) or Table 4A of GSTR-1 for the time being.
- Registered persons supplying restaurant services through ECOs will report such supplies in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

CBIC vide circular no. 168/24/2021-GST dated 30th Dec, 2021 has issued clarification in respect of Mechanism for filing of refund claim by the taxpayer registered in erstwhile union territory of Daman & Diu for period prior to merger with U.T. of Dadra & Nagar Haveli. The allotment of new GSTINs on account of merger of the UT of Dadra & Nagar Haveli and Daman & Diu turned out to be a hindrance in the refund claims pertaining to the period prior to such merger for all the taxpayers having GST registration in the UT of Daman & Diu. The clarifications are as under:

- The application for refund shall be filed under 'Any other' category on the GST portal using their new GSTIN. In the Remarks column of the application, the applicant needs to enter the category in which the refund application otherwise would have been filed. For example, if the applicant wants to claim refund of unutilised ITC on account of export of goods/services, in remarks column, he shall enter 'Refund of unutilised ITC on account of export of goods/services without payment of tax for the period prior to merger of Daman & Diu with Dadra & Nagar Haveli'. The application shall be accompanied by all the supporting documents which otherwise are required to be submitted with the refund claim.
- While filing such application, the applicant is not required to make any debit from the electronic credit ledger.

- On receipt of the claim, the proper officer shall calculate the admissible refund amount as per law. Further, upon scrutiny of the application for completeness and eligibility, if the proper officer is satisfied that the whole or any part of the amount claimed is payable as refund, he shall request the applicant, in writing, if required, to debit the said amount from the electronic credit ledger through FORM GST DRC-03. Once the proof of such debit is received by the proper officer, he shall proceed to issue the refund order in FORM GST RFD-06 and the payment order in FORM GST RFD-05.
- No refund claim, requiring debit from the electronic credit ledger or where the refund would result in re-credit of the amount sanctioned in the electronic credit ledger, shall be filed using old GSTIN.