

DA TAX UPDATE INDIRECT TAX

An E-Tax update from
Darda Advisors LLP

Impact of Key GST Amendments
w.e.f. 1 January 2022



ITC reflected in GSTR2A/2B only can be availed

Aspect	Details
<p>Amendment</p>	<p>The CBIC vide notification no 39/2021 - Central Tax dated 21 December 2021 notified the amendment made vide Section 109 of the Finance Act, 2021 w.e.f 01 January, 2022 to insert the new clause in Section 16(2) of the CGST Act, 2017 (Central Goods and Service Tax Act, 2017) which reads as:</p> <p><i>‘(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”</i></p>
<p>Impact</p>	<p>Prior to notification of the relevant amendment, Section 16 (2) of CGST Act, 2017 used to provide four conditions for availment of ITC (Input Tax Credit).</p> <p>Earlier, as per Rule 36(4) of the CGST Rules, 2017, the provisional tax credit (without invoices on GSTR-2A/2B) can be claimed in the GSTR-3B to the extent of 5% of eligible ITC reflected in the GSTR-2B.</p> <p>W.e.f. 01 January 2022, a 5th condition is added to the effect that ITC would be available only when the tax invoice is reflected in GSTR 2B/2A.</p>

ITC reflected in GSTR2A/2B only can be availed

DA Comments:

With the said change:

- All the **cases** pending at various courts challenging Rule 36(4) of CGST Rules, 2017 will not have relevance,
- **Avail ITC only** when it appears in GSTR 2B/2A rather than on the basis of books of account as provisional ITC
- **To reconcile and follow regularly** with vendors to file their respective GSTR-1 returns

Recovery without issuance of SCN/Notice if GSTR-1 and GSTR-3B are not matching

Aspect	Details
<p>Amendment</p>	<p>The CBIC vide notification no 39/2021 - Central Tax dated 21 December 2021 notified the amendment made vide Section 114 of the Finance Act, 2021 w.e.f 01 January, 2022 to insert an explanation to Section 75(12) of the CGST Act, 2017 to clarify that</p> <p><i>“self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished in Form GSTR 1 under Section 37 of the CGST Act, 2017 but not included in the return furnished in Form GSTR 3 B under Section 39 of the CGST Act, 2017.</i></p>
<p>Impact</p>	<p>With this amendment, the adjudicating authority will be empowered to initiate recovery action directly based on the supply shown in the GSTR-1 Return provided that corresponding GSTR 3B Return not appropriately filed, i.e., tax in whole or in part not discharged.</p> <p>Further, he will not even need to issue notice.</p>

Recovery without issuance of SCN/Notice if GSTR-1 and GSTR-3B are not matching

DA Comments:

With the said change:

- The registered supplier has to ensure that the tax has been paid under GSTR-3B on output reflected in GSTR-1 to avoid door step recovery by the adjudicating authority. In other words, correct filing of return is essential now.
- The menace of fake billing whereby sellers would show higher sales in GSTR-1 to enable purchasers to claim input tax credit (ITC), but report suppressed sales in GSTR-3B to lower GST liability will be curbed.

E-way bill violation proceedings and other proceedings shall be independently adjudicated

Aspect	Details
<p>Amendment</p>	<p>The CBIC vide notification no 39/2021 - Central Tax dated 21 December 2021 notified the amendment made vide Section 113 of the Finance Act, 2021 w.e.f 01 January, 2022 In section 74 of the CGST Act, 2017 in Explanation 1, in clause (ii), for the words and figures “sections 122, 125, 129 and 130”, the words and figures “sections 122 and 125” shall be substituted.</p>
<p>Impact</p>	<p>The proceedings-initiated under section 129 (<i>Detention, seizure and release of goods and conveyances in Transit</i>) and 130 (<i>Confiscation of goods and conveyances and levy of penalty</i>) for E-way bill violations, i.e., detention, seizure and confiscation of goods or conveyances shall be independent proceedings and any closure of parallel proceedings under 73 or 74 (in respect of any person including the subject person) shall not result in the deemed closure of the proceedings initiated under section 129 and 130.</p>

E-way bill violation proceedings and other proceedings shall be independently adjudicated

DA Comments:

With the said change, the register person needs to respond parallelly on such proceedings even when the both proceedings leads to same outcome.

The same would lead to increase in litigations.

Pre deposit for filing appeal against e-way bills violations increased to 25%

Aspect	Details
Amendment	<p>The CBIC vide notification no 39/2021-Central Tax dated 21 December 2021 notified the amendment made vide Section 116 of the Finance Act, 2021 w.e.f 01 January 2022 to insert a proviso to Section 107 (6) of the CGST Act, 2017 to provide that:</p> <p><i>“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.”.</i></p>
Impact	<p>There is a requirement to pre deposit 10% of the disputed tax liability as pre-deposit in case of first appeal, which is now increased to 25% of the penalty amount in case of detention and seizure of conveyance and goods during transit.</p>

DA Comments:

Higher amount of pre deposit will lead to certain such proceedings move to Honorable High Courts through Writ Petitions and lead to higher litigations.

Penalty provisions under section 129 and 130 of CGST Act, 2017 amended

Aspect	Details
<p>Amendment</p>	<p>The CBIC vide notification no 39/2021-Central Tax dated 21 December, 2021 notified the amendments made vide Section 117 and 118 of the Finance Act, 2021 w e f January 01 2022 in Section 129 and 130 of the CGST Act, 2017</p> <ul style="list-style-type: none"> • Enhanced penalty (previously penalty and tax) under Section 129(1)(a) & (b) of the CGST Act, 2017 • Section 129 (2) has been omitted • Specified period of issuance of notice and passing of order under Section 129 (3) of the CGST Act, 2017 • No penalty shall be determined without giving opportunity of hearing as per amended Section 129 (4) of the CGST Act, 2017 • Delinking Section 129 from Section 130 of the CGST Act, 2017 • Specified time limit for selling/ disposing seized goods or conveyance under Section 129 (6) of the CGST Act, 2017
<p>Impact</p>	<p>With these amendments, there will be: Enhanced penalty (previously penalty and tax) under Section 129(1)(a) & (b), The goods seized shall not to 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,</p> <p>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.</p>

Penalty provisions under section 129 and 130 of CGST Act, 2017 amended

Aspect	Details
<p>Impact</p>	<p>No penalty shall be determined without giving opportunity of hearing, where penalty is payable on detention or seizure of goods or conveyance.</p> <p>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. Corresponding changes for delinking Section 129 and 130 of the CGST Act are also made in Section 130 of the CGST Act.</p> <p>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 of 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.</p> <p>Further, conveyance used for transportation of the goods may be released on payment of penalty or INR 1 Lakh whichever is less.</p>

DA Comments:

There are multiple changes under section 129 and section 130 of CGST Act, 2017, out of which, the changes related to no demand for tax and interest for release of goods and conveyance is a welcome move.

Liability of GST on transactions between members and its association/club retrospectively w.e.f 1 July 2017

Aspect	Details
Amendment	<p>The CBIC vide notification no 39/2021 - Central Tax dated 21 December 2021 notified the amendment made vide Section 108 of the Finance Act, 2021 w.e.f 01 July 2017 in section 7(1) of the CGST Act, 2017 in the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1 July, 2017, namely:—</p> <p><i>“(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.”</i></p> <p>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;”.</p> <p>In Schedule II of the CGST Act, 2017 paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the 1 July 2017.</p>

Liability of GST on transactions between members and its association/club retrospectively w.e.f 1 July 2017

Aspect	Details
Impact	<p>With this retrospective amendment, the supply of activities or transactions inter se between a person and its members or constituents shall be deemed to take place from one such person to another and thus shall be treated as a supply.</p> <p>Paragraph 7 of Schedule II specifying supply (of goods) by any unincorporated association or body of persons to a member as a supply of goods accordingly has been omitted retrospectively due to inclusion of the same in Section 7 of CGST Act, 2017.</p>

DA Comments:

The transactions between association/club and its members for the taxable supply would be liable to GST retrospectively and will have severe impact on associations/club who did not discharge GST till now.

Authority can collect data from any person under GST

Aspect	Details
<p>Amendment</p>	<p>The CBIC vide Notification No. 39/2021 - Central Tax dated 21 December 2021 notified the amendment made vide Section 119 of the Finance Act, 2021 w.e.f 01 January 2022, the section 151 of CGST Act, 2017 shall be substituted:</p> <p><i>“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.”</i></p> <p>Correspondingly, vide section 120 of Finance Act, 2021 in section 152 of the CGST Act, 2021,</p> <p><i>(a) in sub-section (1),</i></p> <p><i>(i) the words “of any individual return or part thereof” shall be omitted;</i></p> <p><i>(ii) after the words “any proceedings under this Act”, the words “without giving an opportunity of being heard to the person concerned” shall be inserted;</i></p> <p><i>(b) sub-section (2) shall be omitted.</i></p>

Authority can collect data from any person under GST

Aspect	Details
<p>Impact</p>	<p>With this amendment, the jurisdictional commissioners is empowered to call for information from any person relating to any matter dealt with in connection with the CGST Act, within such time, in such form, and in such manner, as may be specified therein.</p> <p>Further, the amendment to section 152(1) of CGST Act, 2017 clarifies that no information obtained under Sections 150 of the CGST Act and Section 151 of the CGST Act, shall be used by the commissioner or any officer authorized by him, for the purposes of any proceedings under CGST Act, without giving an opportunity of being heard to the person concerned.</p>

DA Comments:

It is a welcome move by which any information of any registered taxpayer cannot be shared or used for any other proceedings by commissioner without giving an opportunity of being heard.

Scope of Provisional Attachment of Property extended

Aspect	Details
<p>Amendment</p>	<p>The CBIC vide notification no 39/2021 - Central Tax dated 21 December 2021 notified the amendment made vide Section 115 of the Finance Act, 2021 w.e.f 01 January 2022 in section 83 (1) of the CGST Act, 2017, the following sub-section shall be substituted, namely:—</p> <p><i>“(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.”.</i></p>
<p>Impact</p>	<p>Powers of provisional attachment have been extended to proceeding under:</p> <ul style="list-style-type: none"> • Chapter XII (Assessment), • Chapter XIV (Inspection, Search, Seizure and Arrest) or • Chapter XV (Demands and Recovery) <p>for attachment of property including bank account belonging to the taxable person or person who has retained benefits of offences under 122(1A) of CGST Act, 2017.</p>

Scope of Provisional Attachment of Property extended

DA Comments:

Due to this amendment, the Commissioner has been empowered to initiate provisional attachment proceedings even during the assessment, investigation etc., when the officer is of the opinion that provisional attachment is necessary to protect the revenue. In addition, the Commissioner is now empowered to provisionally attach, property belonging to any persons who retain the benefits arising out of an offence or at whose instance the offence is committed i.e., fake invoice, supplies without invoice, avail ITC without supplies, avail or distribute ITC in contravention of section 20 of CGST Act, 2017.

In our view, such wide powers can increase the misuse of this provision, when normal exercise of powers under Section 83 of CGST Act, 2017 is still under scrutiny of various Honorable High Courts which have time and again held in plethora of judgments that an order of provisional attachment cannot be as a matter of course.

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In our view, such wide powers can increase the misuse of this provision, when normal exercise of powers under Section 83 of CGST Act, 2017 is still under scrutiny of various Honorable High Courts which have time and again held in plethora of judgments that an order of provisional attachment cannot be as a matter of course.

Aadhaar authentication mandatory for refund and registration related

Aspect	Details
Amendment	<p>The CBIC vide Notification No 38 2021 Central Tax dated December 21 2021 has notified the amendments with respect to Rule 10B, Rule 23(1), Rule 89(1) Rule 96(1)(b) of the CGST Rules, 2017 made vide Notification No 35/2021-Central Tax dated 24 September 24 2021 for mandatory aadhaar authentication of registration for being eligible for filing refund claim and application for revocation of cancellation of registration under GST w.e.f 01 January 2022 as recommended in GST Council's 45th meeting held on 17 September 2021.</p>
Impact	<p>Aadhaar authentication is mandatory for filing of refund application and application for revocation of cancellation of registration.</p>

DA Comments:

For the Companies, the Aadhaar number of authorised signatory should also be allowed.

Tax Rate Changes w.e.f 1 January 2022

GST rate increased on textile, footwear, etc from 5% to 12%

The CBIC vide notification No.14/2021- Central Tax – (Rate) dated 18 November 2021 amended Notification No. 1/2017- Central Tax (Rate) dated 28 June 2017 w.e.f 1 January 2022 to mitigate inverted duty structure as recommended in GST Council's 45th meeting held on 17 September 2021. Similar notifications were issued under IGST Act, 2017 and UTGST Act, 2017.

Job work for dyeing/printing of textile and textile products taxable at the rate of 12% to registered persons and 18 to unregistered persons.

The CBIC vide Notification No. 15/2021- Central Tax (Rate) dated 18 November 18 2021 has further amended the S.No 26 of the Notification No. 11/2017- Central Tax (Rate) dated 28 June 2017 ("GST Service Rate Notification"). Thus, Job work services with respect to dyeing or printing of textile and textile products falling under Chapter 50 to 63 in the First Schedule to the Customs Tariff Act, 1975 provided to:

- Registered persons shall be taxable at the rate of 12%, and
- Unregistered persons shall be taxable at the rate of 18% as the scope of 'job work' is restricted to only those processes undertaken on goods belonging to another registered person.

Similar notifications issued under IGST Act, 2017 and UTGST Act, 2017.

Tax Rate Changes w.e.f 1 January 2022

Composite supply of works contract services to Governmental Authority or Government Entity taxable at the rate of 18%

The CBIC vide notification no. 15/2021- Central Tax (Rate) dated 18 November 2021 has been further amended for the S.No 03 of the GST Services Rate Notification in order to make composite supply of works contract services supplied to Governmental Authority or Government Entity to be taxable at the rate of 18%.

Similar changes have been made in serial No. 3 (i.e., pure services) and 3A (i.e., Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 of the value of the said composite supply) of the notification No.12/2017-Central Tax (Rate) dated 28 June 2017 (“GST Services Exemption Notification”) vide Notification No. 16/2021- Central Tax (Rate) dated 18 November 2021 to exclude Governmental authority and Government Entity.

Thus, the services mentioned in serial no. 3 and 3 A provided to Governmental authority and Government Entity shall no longer be exempt from 01 January 2022 and shall attract GST as applicable under Services Rate Notification. Similar notifications issued under IGST Act, 2017 and UTGST Act, 2017.

Food delivery apps brought within the restaurant services ambit and liable to pay GST at the rate of 5% without ITC

The CBIC vide Notification No. 17/2021-Central Tax (Rate) dated 18 November 2021 amended Notification No.17/2017- Central Tax (Rate) dated 28 June 2017 to bring food delivery apps like Uber Eats, Zomato Swiggy and others brought within the restaurant services as recommended in GST Council’s 45th meeting held on 17 September 2021.

Accordingly, CBIC vide Notification No. 16/2021 Central Tax (Rate) dated 18 November 2021 amended Services Exemption Notification to insert proviso in S.No 15 and 16.

Similar notifications were issued under IGST Act, 2017 and UTGST Act, 2017.

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