

UPDATE

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Key amendments under GST Law, vide Finance Act 2021, applicable from 01 January 2022

A. Background

Significant amendments under the Central Goods and Services Tax Act, 2017 (the “Act”) read with Central Goods and Services Tax Rules, 2017 (the “Rules”) were made vide the Finance Act, 2021 (“FA 2021”) however the same were not notified at the time of receiving the presidential assent. The said amendments are contained from S 108 to S 123 of FA 2021.

S 1(2) (b) of the Finance Act permits the Government to appoint a specified date, by way of notification, on which such amendments shall come into force. While certain amendments have already been notified and are in force, now, vide Notification No. 35/2021 – CT dated 24-09-2021, Notification No. 38/2021 – CT and Notification No. 39/2021 – CT dated 21-12-2021 along with the rate notifications¹ (collectively referred as “Notifications”), further amendments are brought into effect from 01-01-2022 while some amendments have been made effective from 01-07-2017.

In this update, we have covered such key amendments that are made applicable from 01-01-2022 along with retrospective amendment made effective from 01-07-2017.

B. Key amendments

1. Insertion of clause (aa) of sub-section (1) of S 7 of the Act (retrospective w.e.f. 01-07-2017)

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 henceforth shall be treated as a supply.

Paragraph 7 of Schedule II of the Act specifying supply (of goods) by any unincorporated association or body of persons to a member as supply of goods accordingly has been omitted retrospectively due to inclusion of the same in S 7 of the Act. The decision of the Apex Court in the Calcutta Club case² is thereby overruled.

¹ Notification Nos. 14/2021 – CTR to 17/2021 – CTR dated 18-11-2021

² State of West Bengal v. Calcutta Club Limited (2017) 5 SCC 356

2. Insertion of clause (aa) of sub-section (2) of S 16 of the Act (w.e.f. 01-01-2022)

Input Tax Credit regarding invoices and debit notes shall be available only to the extent they are furnished in GSTR-1 by the vendors and thus appear in GSTR-2A / 2B of the recipient.

A margin of 5% (five *per cent*) will no longer be available.

3. Substitution in Explanation 1, clause (ii) of S 74 of the Act (w.e.f. 01-01-2022)

The proceedings initiated under S 129 and S 130 of the Act for e-way bill violations, i.e., detention, seizure and confiscation of goods or conveyances shall be independent proceedings and closure of parallel proceedings under S 73 or S 74 of the Act (in respect of any person including the subject person) shall not result in the deemed closure of the proceedings initiated under S 129 & S 130 of the Act.

This means, where proceedings against the main person liable to pay tax have been concluded under S 74 of the Act, proceedings against co-noticee are also deemed to be concluded as provided under Explanation 1 (ii) to S 74 of the Act. However, now, such benefit will not be available to co-noticee for proceedings initiated to impose penalties for violation of E-way bill.

4. Insertion of Explanation in sub-section (12) of S 75 of the Act (w.e.f. 01-01-2022)

An explanation has been inserted to clarify that 'self-assessed tax' shall include only the amount of tax payable regarding details of outward supplies furnished in GSTR-1, but not included in GSTR-3B, and hence not paid.

By way of this amendment, the department officials will be empowered to initiate recovery proceedings based on the supply shown in the GSTR 1 without issuing a show-cause notice, provided the corresponding month's GSTR 3B is not appropriately filed, i.e., tax in whole or in part is not discharged.

5. Substitution of sub-section (1) of S 83 of the Act (w.e.f. 01-01-2022)

Powers of provisional attachment have been extended to proceeding under Chapter XII (Assessment), XIV (Inspection, Search, Seizure, and Arrest) or XV (Demands and Recovery) for attachment of property including bank account belonging to the taxable person or person who has retained benefits of offences under S 122(1A) of the Act.

Due to this amendment, the Commissioner has been empowered to initiate provisional attachment proceedings even during the assessment, investigation, etc., if he feels that provisional attachment is necessary to protect the revenue. However, for the time being, the rule is that for initiating the provisional attachment proceedings, it is necessary to determine the liability and give reasonable time to discharge the obligation.

Not only suppliers and recipients but assets of the beneficiaries of bogus billing can also be provisionally attached.

6. Insertion of proviso in sub-section (16) of S 107 of the Act (w.e.f. 01-01-2022)

In the context of filing the first appeals (Commissioner), presently, S 107(6) of the Act, 2017 provides a pre-deposit of 10% (ten *per cent*) of the disputed tax amount for filing the appeal

and staying the recovery. However, an amendment has been made in the context of the orders passed levying penalty under S 129(3) of the Act for e-way bill violations to provide that the quantum of the pre-deposit in such cases shall be equal to 25% (twenty-five *per cent*) of the penalty ordered to be paid.

7. Amendment of S 129 of the Act (w.e.f. 01-01-2022)

Clause (a) and (b) of S 129(1) of the Act has been amended to provide for the following payments w.e.f. 01-01-2022 to seek release of the conveyance/goods that have been detained on account of e-way bill violations:

Clause	Payment before 01-01-2022	Payment w.e.f. 01-01-2022
a. where the owner comes forward	<p>Taxable goods: Applicable tax + penalty equal to the tax payable</p> <p>Exempted goods: An amount of 2% (two <i>per cent</i>) of the value of goods or Rs. 25,000/- (Indian Rupees Twenty-five Thousand only); whichever is less</p>	<p>Taxable goods: Penalty equal to 200% (two hundred <i>per cent</i>) of the tax payable</p> <p>Exempted goods: An amount of 2% (two <i>per cent</i>) of the value of goods or Rs. 25,000/- (Indian Rupees Twenty-five Thousand only); whichever is less</p>
b. where the owner does not come forward	<p>Taxable goods: Applicable tax + penalty equal to 50% (fifty <i>per cent</i>) of the value of goods less tax paid thereon</p> <p>Exempted goods: An amount of 5% (five <i>per cent</i>) of the value of goods or Rs. 25,000/- (Indian Rupees Twenty-five Thousand only); whichever is less</p>	<p>Taxable goods: Penalty equal to 50% (fifty <i>per cent</i>) of the value of goods or 200% (two hundred <i>per cent</i>) of the tax payable; whichever is higher</p> <p>Exempted goods: An amount of 5% (five <i>per cent</i>) of the value of goods or Rs. 25,000/- (Indian Rupees Twenty-five Thousand only); whichever is less</p>

Presently S 129(2) of the Act provides for applying the provisions related to seizure and release of the goods given under S 67(6) of the Act in the context of detention and seizure under S 129 of the Act. Hence the same often results in officers seeking another payment of tax/penalty in addition to the amounts provided under S 129(1) of the Act. The said anomaly has been corrected by way of omitting the said sub-section (2) w.e.f. 01-01-2022. Consequential amendments have been made under S 129(3) and S 129(4) of the Act to grant power to the officer to pass the order imposing the penalty mentioned in the above table and also grant a hearing to the concerned person before passing the order.

Presently S 129(6) of the Act provides that if neither the owner of the goods nor the transporter pays the amounts referred in the above table within 14 days (period can be further reduced if the goods are perishable/hazardous) of detention or seizure, then further proceedings for confiscation of goods/conveyance will be initiated under S 130 of the Act. The amendment provides that the goods/conveyance shall be sold/disposed of if the owner or the transporter does not pay the penalty (as specified in the above table) within 15 days (period can be further reduced if the goods are perishable/hazardous) from the receipt of the order. However, the transporter can now seek release of the conveyance by making the payment of the penalty mentioned in the aforesaid table or Rs. 1,00,000 (Indian Rupees One Lakh only), whichever is less.

The aforementioned amendment under S 129(6) of the Act therefore completely de-links the detention/seizure provisions under S 129 of the Act with confiscation provisions under S 130 of the Act. Further, the entire quantum to be paid under S 129 of the Act is in the nature of penalty as the applicable tax will stand collected under S 73 or S 74 of the Act, if not paid. Also, the transporter is now given an option to seek release of conveyance on making the payment wherein the maximum amount shall be Rs. 1,00,000/- (Indian Rupees One lakh only) (parallel payment also to be made under SGST or double the amount specified in the above table under IGST).

8. Substitution in S 151 of the Act (w.e.f. 01-01-2022)

At present, the Commissioner has the right to demand the Statistics only by issuing a notification. But from 01-01-2022, he will be empowered to direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and such manner, as may be specified therein. And the person in front will be obliged to give that information.

9. Amendment in S 152 of the Act (w.e.f. 01-01-2022)

The amendment to S 152(1) of the Act clarifies that no information obtained under S 150 of the Act and S 151 of the Act, shall be used by the commissioner or any officer authorized by him, for any proceedings under the Act, without giving an opportunity of being heard to the person concerned.

10. Amendment in R 59(6) of the Rules (w.e.f. 01-01-2022)

R 59(6) of the Rules to be amended with effect from 01-01-2022 to provide that a registered person shall not be allowed to furnish GSTR-1 if he has not furnished the return in GSTR-3B for the preceding month.

C. Other amendments

1. **Inclusion of food delivery apps under sub-section (5) of S 9 of the Act**

Restaurant Service has been notified under S 9(5) of the Act. Accordingly, the tax on supplies of restaurant services supplied through e-commerce operators shall be paid by the e-commerce operator (“E-coms”). As ‘restaurant service’ has been notified under S 9(5) of the Act the E-coms shall be liable to pay tax on restaurant services provided, with effect from 01-01-2022, through E-coms. Accordingly, the E-coms 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 S 9(5) of the Act. It is thus clarified that E-coms will be liable to pay tax on any restaurant service supplied through them including by an unregistered person.

In simpler words, food tech companies like Zomato, Swiggy, Uber Eats, etc., will be required to pay tax on the supply of restaurant services through their platform as if they are the supplier of such restaurant services. In such cases, restaurants are not required to levy tax.

Exception: The above provision is not applicable for the restaurant services provided by restaurants, eating joints, etc. located at the premises providing hotel accommodation services having declared tariff of any unit of accommodation above Rs. 7,500/- (Indian Rupees Seven Thousand Five Hundred only) per unit per day or equivalent.

Rate of tax: The rate of tax applicable for the supply of restaurant service is 5% (five per cent) without input tax credit.

With regard to cloud kitchens, this will give complete relief to the cloud kitchens which operate exclusively through e-commerce platforms. Cloud kitchens will not be required to obtain registration under the Act even if their turnover crosses the minimum threshold limit.

2. **Levy of tax at the rate of 5% (five per cent) on notified auto-rickshaw services**

The Government withdrew the exemption available, under the Act, to auto-rickshaws providing passenger transport services through e-commerce platforms. While the passenger transport services provided by auto-rickshaw drivers through offline/ manual mode would continue to be exempt, such services when provided through any e-commerce platform would become taxable at 5% (five per cent) on and from 01-01-2022.

3. **Levy of tax at the rate of 18% (eighteen per cent) on notified services to a government authority or government entities removed**

Pure services and composite supply of goods and services where goods constitute not more than 25% (twenty-five per cent) value, provided to a Government Entity or Government Authority has been removed and made taxable at the rate of 18% (eighteen per cent).

4. **Rules prescribed for Aadhaar authentication**

The requirement of Aadhaar authentication for a registered person was inserted wherein Authentication of Aadhaar shall be mandatory for the following:

- a. Filing of application for revocation of cancellation of registration in FORM GST REG21 under R 23 of the Rules;
- b. Filing of refund application in FORM RFD-01 under R 89 of the Rules;
- c. Refund of the integrated tax paid on goods exported out of India under R 96 of the Rules.

D. Amendments in tariff

The Central Board of Indirect Taxes and Customs (“CBIC”) in an attempt to do away with the inverted duty rate structure in textiles, apparel and footwear has altered the rates to bring the tariff to a uniform rate of 12% (twelve per cent) which shall be effective from 01-01-2022. The amendments, so made, in the tariff rates have been given in the table below:

HSN	Description	Old rate	New rate
5007	Woven fabrics of silk or of silk waste	5%	12%
5111	Woven fabrics of carded wool or of carded fine animal hair.	5%	12%
5112	Woven fabrics of combed wool or of combed fine animal hair.	5%	12%
5113	Woven fabrics of coarse animal hair or of horsehair.	5%	12%
5208	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing not more than 200g/m ² .	5%	12%
5209	Woven fabrics of cotton, containing 85% or more by weight of cotton, weighing more than 200g/m ²	5%	12%

HSN	Description	Old rate	New rate
5210	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing not more than 200g/m2.	5%	12%
5211	Woven fabrics of cotton, containing less than 85% by weight of cotton, mixed mainly or solely with man-made fibres, weighing more than 200g/m2.	5%	12%
5212	Other woven fabrics of cotton	5%	12%
5309	Woven fabrics of flax.	5%	12%
5310	Woven fabrics of jute or of other textile bast fibres of heading 5303.	5%	12%
5311	Woven fabrics of other vegetable textile fibres; woven fabrics of paper yarn	5%	12%
5402	Synthetic filament yarn (other than sewing thread), not put up for retail sale, including synthetic monofilament of less than 67 decitex.	12% / 18%	12%
5403	Artificial filament yarn (other than sewing thread), not put up for retail sale, including artificial monofilament of less than 67 decitex.	12% / 18%	12%
5404	Synthetic monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of synthetic textile materials of an apparent width not exceeding 5 mm.	12% / 18%	12%
5405	Artificial monofilament of 67 decitex or more and of which no cross-sectional dimension exceeds 1 mm; strip and the like (for example, artificial straw) of artificial textile materials of an apparent width not exceeding 5 mm.	12% / 18%	12%
5406	Man-made filament yarn (other than sewing thread), put up for retail sale.	12% / 18%	12%
5407	Woven fabrics of synthetic filament yarn, including woven fabrics obtained from materials of heading 5404.	5%	12%
5408	Woven fabrics of artificial filament yarn, including woven fabrics obtained from materials of heading 5405	5%	12%
5501	Synthetic filament tow.	18%	12%
5502	Artificial filament tow	18%	12%
5503	Synthetic staple fibres, not carded, combed or otherwise processed for spinning.	18%	12%
5504	Artificial staple fibres, not carded, combed or otherwise processed for spinning	18%	12%
5505	Waste (including noils, yarn waste and garnetted stock) of man-made fibres	18%	12%
5506	Synthetic staple fibres, carded, combed or otherwise processed for spinning.	18%	12%
5507	Artificial staple fibres, carded, combed or otherwise processed for spinning	18%	12%
5512	Woven fabrics of synthetic staple fibres, containing 85% or more by weight of synthetic staple fibres.	5%	12%

HSN	Description	Old rate	New rate
5513	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight, not exceeding 170 g/m ² .	5%	12%
5514	Woven fabrics of synthetic staple fibres, containing less than 85% by weight of such fibres, mixed mainly or solely with cotton, of a weight exceeding 170 g/m ²	5%	12%
5515	Other woven fabrics of synthetic staple fibres	5%	12%
5516	Woven fabrics of artificial staple fibres	5%	12%
5607	Jute twine, coir cordage or ropes	5%	12%
5608	Knotted netting of twine, cordage or rope; made up fishing nets and other made-up nets, of textile materials	5%	12%
5806	Narrow woven fabrics, other than goods of heading 5807; narrow fabrics consisting of warp without weft assembled by means of an adhesive (bolducs)	5%	12%
5808	Saree fall	5%	12%
5809, 5810	Embroidery or zari articles, that is to say, - imi, zari, kasab, salma, dabka, chumki, gota, sitara, naqsi, kora, glass beads, badla, gizai	5%	12%
6001	Pile fabrics, including —long pile fabrics and terry fabrics, knitted or crocheted	5%	12%
6002	Knitted or crocheted fabrics of a width not exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 6001	5%	12%
6003	Knitted or crocheted fabrics of a width not exceeding 30 cm, other than those of heading 6001 or 6002	5%	12%
6004	Knitted or crocheted fabrics of a width exceeding 30 cm, containing by weight 5% or more of elastomeric yarn or rubber thread, other than those of heading 6001	5%	12%
6005	Warp knit fabrics (including those made on galloon knitting machines), other than those of headings 6001 to 6004.	5%	12%
6006	Other knitted or crocheted fabrics	5%	12%
61	Articles of apparel and clothing accessories, knitted or crocheted, of sale value not exceeding Rs. 1000 per piece	5%	12%
62	Articles of apparel and clothing accessories, not knitted or crocheted, of sale value not exceeding Rs. 1000 per piece	5%	12%
6301	Blankets and travelling rugs not exceeding Rs. 1000 per piece	5%	12%
6302	Bed linen, table linen, toilet linen and kitchen linen not exceeding Rs. 1000 per piece	5%	12%
6303	Curtains (including drapes) and interior blinds; curtain or bed valances not exceeding Rs. 1000 per piece	5%	12%
6304	Other furnishing articles, excluding those of heading 9404 not exceeding Rs. 1000 per piece	5%	12%
6305	Sacks and bags, of a kind used for the packing of goods not exceeding Rs. 1000 per piece	5%	12%
6306	Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods not exceeding Rs. 1000 per piece	5%	12%

HSN	Description	Old rate	New rate
6307	Other made up articles, including dress patterns not exceeding Rs. 1000 per piece	5%	12%
6308	Sets, consisting of woven fabric and yarn, whether or not with accessories, for making up into rugs, tapestries, embroidered table cloths or serviettes, or similar textile articles, put up in packings for retail sale not exceeding Rs. 1000 per piece	5%	12%
6309	Worn clothing and other worn articles; rags	5%	12%
6310	Used or new rags, scrap, twine, cordage, rope and cables and worn out articles of twine, cordage, rope or cables, of textile materials not exceeding Rs. 1000 per piece	5%	12%

SAC	Description	Old rate	New rate
9988	Job Work by way of Dyeing and Printing of Textile and Textile Products for registered principal	5%	12%

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