

INDIRECT TAX

Weekly Digest

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GOODS & SERVICES TAX

LEGISLATIVE UPDATES

NOTIFICATION

Changes in Central Goods and Services Tax Rules, 2021 (CGST Rules)

- Central Board of Indirect Taxes and Customs (CBIC) has given effect to sub-rules to Rule 2 of CGST Rules, vide Eighth Amendment, that was introduced vide notification no:35/2021-(C.T.) dated 24 September 2021;
- The key changes to come into effect are as follows:
 - Mandatory Aadhaar authentication for obtaining refund in case of duty paid exports, has been incorporated in Rule 96;
 - Mandatory Aadhaar authentication for filing revocation application has been incorporated in Rule 23;
 - Mandatory Aadhaar authentication for filing refund application has been incorporated in Rule 89;
 - Rule 10B of CGST Rules shall be inserted w.e.f. 1 January 2022 which prescribes compulsory Aadhaar authentication for registered person in order to be eligible for following purposes:
 - Filing of revocation application under Rule 23;
 - Filing of refund application under Rule 89;
 - Refund under Rule 96 on IGST paid exports.

[Notification no:38/2021-Central Tax dated 21 December 2021]

Implementation of amendments proposed in Finance Act, 2021

- Retrospectively from 1 July 2017, section 7(1) (aa) has been inserted in CGST Act 2017 to widen the scope of

term 'Supply' to levy tax on activities or transactions by any person (other than individual) to its members and constituents or vice versa for cash, deferred payment, or other valuable consideration. The insertion of the aforesaid section is with intention to bring services provided by clubs to its members and vice versa under the purview of GST laws. Further by way of an explanation, it is clarified that the club and its members are two separate persons notwithstanding any judgement by any Court. The amendment is to overturn the decision of the Apex court in the case of the State of West Bengal v. Calcutta Club India¹, where it was held that clubs are not liable to pay Service tax on any service to its members. Consequently, entry at Paragraph 7 in Schedule II of the CGST, Act 2017 (which classifies the specific activities as supply of goods or services) is proposed to be omitted retrospectively w.e.f. 1 July 2017;

- Section 16 of the CGST Act 2017 is amended to impose another condition for availing ITC i.e., taxpayer shall avail the ITC on invoice or debit note only after the details of such invoice or debit note are furnished by the supplier in their statement of outward supplies and also, the same is communicated to the recipient (the apparent reference being GSTR-2A/2B). Further, the new clause might jeopardise the 5% tolerance limit provided in rule 36(4), since the newly inserted clause does not allow 'provisional credit' where the supplier has not furnished the invoice/debit note in the returns;
- The meaning of "self-assessed tax" has been amended by inserting an explanation to section 75(12) of CGST Act, 2017 to include tax payable on those outward taxable

supplies which have been declared in GSTR-1 but not included in GSTR-3B. The aforesaid clarification, enables the tax authorities to recover tax on supplies, which have been declared in returns such as GSTR-1 but the tax has not been paid in GSTR-3B. Earlier, the Government through notification no:94/2020 - Central Tax dated 22 December 2020 had also given powers to the tax authorities to proceed to suspend the registration in case of gross mismatch between GSTR 1 and GSTR 3B;

- Taxpayers cannot file GSTR-1 if GSTR-3B of the previous tax period is not filed.
- The scope of section 83 (Provisional attachment to protect revenue) of CGST Act, 2017 has been broadened to additionally include (i) provisional assessment under section 60 of CGST Act, 2017; (ii) scrutiny of returns under section 61 of CGST Act, 2017; (iii) inspection of goods in movement under section 68 of CGST Act, 2017; and (iv) summons under section 70 of CGST Act, 2017. Further, attachment would be permissible not only for the person committing the offence but also for a person who retains the benefit of the offence;
- Section 107(6) of CGST Act, 2017 has been amended to additionally provide that an appeal to the First Appellate Authority against a notice for seize goods can be filed only after payment of 25% of penalty. For other appeals, the pre-deposit criteria remain unchanged;
- Sub-section (6) has been amended to delink the proceedings under that section relating to detention, seizure and release of goods and conveyances in transit, from the proceedings under section 130 relating to confiscation of goods or conveyances and levy of penalty. Similar amendments have been brought in section 130 to accommodate the amendments in section 129. Now, powers have been given to tax authorities to sale/ dispose-off the seized goods where the penalty is not paid within 15 days from the date of receipt of order (lesser period may be prescribed for hazardous goods). Further, an option has been given to the transporter for release of goods by paying the penalty as determined or INR 1 lakh, whichever is less;
- Section 151 of the CGST Act 2017 is substituted to empower the jurisdictional Commissioner to call for information from any person relating to any matter dealt with in connection with the Act by way of an Order. The amendment simplifies the section by removing the current requirement of issuance of notification for such collection of statistics;
- Amended section 152 of CGST Act 2017 so as to provide that no information obtained by the jurisdictional Commissioner under specified sections including 151 shall be used for the purposes of any proceedings under the Act without giving an opportunity of being heard to the person concerned.

[Notification no:39/2021-Central Tax dated 21 December 2021]

GST rule amendments to align with sections notified under Finance Act, 2021

CBIC has notified the Central Goods and Services Tax (Tenth Amendment) Rules, 2021. The major amendments to come into effect are mentioned below:

- Rule 36(4) has been substituted to provide that ITC shall not be available to the registered person unless such

invoices/debit notes have been reflected in GSTR-2B of the said person;

- Due date for GSTR-9 as well as GSTR-9C for the F.Y 2020-21 has been extended from 31 December 2021 to 28 February 2022;
- Rule 95 has been amended to provide 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. The amendment deemed to have been inserted with effect from the 1 April 2021;
- To align with changes of section 129, rule 142 has been amended to provide for 7 days' time (instead of 14 days) for issuance of notice and further 7 days for issuance of order;
- A new rule for recovery of penalty by sale of goods or conveyance detained or seized in transit has been inserted as Rule 144A;
- Proper officer shall proceed for sale or disposal of goods or conveyance so detained, if the penalty u/s 129 is not paid within 15 days of date of receipt of order of detention;
- Also, such goods or conveyance shall be sold through a process of auction, including e-auction, for which a notice shall be issued in FORM GST DRC-10;
- Auction process shall be cancelled where the person transporting said goods or the owner of such goods pays the amount of penalty, including any expenses incurred in safe custody and handling of such goods or conveyance, after the time period of 15 days but before the issuance of notice for auction. Minimum of 15 days' notice to be given for auction;
- The proceedings for recovery of penalty by sale of goods or conveyance detained or seized in transit under this rule shall be deemed to be stayed, if an appeal has been filed by the person under the provisions of section 107(1) read with section 107(6);
- Rule 154 has been substituted to provide for disposal of proceeds of sale of goods or conveyance and movable or immovable property;
- As per amended rule 159, a copy of order of attachment in FORM DRC-22 shall also be sent to the person whose property is being attached under section 83;
- Further, it is notified that any objection to the order of provisional attachment of property is to be filed in FORM DRC-22A;
- Forms like DRC-10, DRC-11, DRC-12, DRC-22, DRC-23 and APL-01 have been changed to incorporate above changes as well as the changes brought vide previous notification no:39/2021-(C.T.) dated 21 December 2021.

All the amendments are effective from the 1 January 2022 except those amendments specifically mentioned.

[Notification no:40/2021-Central Tax dated 29 December 2021]

Changes in GST rate notifications to align with amendments to Harmonized System Nomenclature (HSN)

CBIC has made certain amendments in the below listed rate notifications, so as to align the tariff heading with the new (seventh) edition of the Harmonized System Nomenclature (HSN), w.e.f. from 01 January 2022:

- Notification no:1/2017-CT(R) dated 28 June 2017 - GST rate of goods;
- Notification no:2/2017-CT(R) dated 28 June 2017 - GST rate exemption of goods
- Notification no:21/2018-CT(R) dated 26 July 2018 - Prescribes concessional GST rate on specified handicraft items;
- Notification no:2/2021-Compensation Cess(R) dated 28 December 2017 - Prescribes Compensation cess rate on specified goods
[Notification no:18,19&20/2021-CT(R) & Notification no:2/2021-Compensation Cess (R) dated 28 December 2021]

JUDICIAL UPDATES

WRIT PETITION

GSTR-3B is a valid return: Hon'ble Supreme Court of India

Recently, Hon'ble Supreme Court has reversed the Judgment of High Court of Gujarat, where in it was held that GSTR-3B is not a return under GST Act.

Issue under consideration

Earlier, the moot question before the High Court was, whether the return in Form GSTR-3B is a return required to be filed under section 39 of the CGST Act/GGST Act?

Earlier ruling by High court on this

- Gujarat High Court has held that section 39(1) of the CGST/GGST Act provides that every taxpayer, except a few special categories of persons, shall furnish a monthly return in such form and manner as may be prescribed. Rule 61 of the CGST Rules/GGST Rules prescribes the form and manner of submission of monthly return. Sub-rule 1 of rule 61 of the CGST Rules/GGST Rules provides that the return required to be filed in terms of section 39(1) of the CGST/GGST Act is to be furnished in Form GSTR-3;
- High Court further held that it would be apposite to state that initially it was decided to have three returns in a month, i.e., return for outward supplies i.e., GSTR-1 in terms of Section 37, return for inward supplies in terms of Section 38, i.e., GSTR-2 and a combined return in Form GSTR-3. However, considering technical glitches in the GSTN portal as well as difficulty faced by the tax payers it was decided to keep filing of GSTR-2 and GSTR-3 in abeyance. Therefore, in order to ease the burden of the taxpayer for some time, it was decided in the 18th GST Council meeting to allow filing of a shorter return in Form GSTR-3B for initial period. It was not introduced as a return in lieu of return required to be filed in Form GSTR-3. The return in Form GSTR-3B is only a temporary stop gap arrangement till due date of filing the return in Form GSTR-3 is notified.
- The tax authority filed a Special Leave Petition before the Hon'ble Supreme Court, and a stay order was given against the above High court judgement.

Supreme court order

The Supreme Court in its decision turned down the High court judgement and held that GSTR-3B is a valid return.

[Union of India & Ors. Vs. Aap and Company [Civil Appeal No(s). 5978/2021 dated December 10, 2021]

CENTRAL EXCISE

NOTIFICATION

Changes in Central Excise rates notification to align with the new (seventh) edition of the Harmonized System Nomenclature (HSN)

CBIC has amended the notification no:03/2019-Central Excise dated 6 July 2019, so as to align with the new (seventh) edition of the Harmonized System Nomenclature (HSN), w.e.f. from 01 January 2022;

[Notification no:10/2021-Central Excise dated 29 December 2021]

CUSTOMS

NOTIFICATION

Reduction of BCD on Refined palm oil

- The CBIC has notified reduction of Basic Customs Duty (BCD) on refined palm oil and its fractions from 17.5% to 12.5% till 31 March 2022;
- The notification shall come into effect on 21 December 2021.
[Notification no:53/2021-Customs dated 20 December 2021]

Amendment to give effect of preferential tariff as per AITIGA

- CBIC has notified changes in concessional rate of import duty from Association of Southeast Asian Nations (ASEAN) countries to give effect to 13th tranche of preferential tariff as per ASEAN India Trade in Goods Agreement (AITIGA);
- The major changes notified, are as follows:
 - Reduction in concessional rate of duty from 52% to 48% on all goods under HSN 090111 & 090240 imported from Philippines into India and the same was reduced to 51% in case of goods under HSN 090411;
 - Similarly, on imports of goods under HSN 151110, the duty is reduced from 44% to 41%; Also, in case of HSN 151190, it was reduced from 54% to 51%.
- The notification shall come into effective from the 1 January 2022.
[Notification no:54/2021-Customs dated 24 December 2021]

Changes in HSN codes of Customs Tariff notifications to align with new (seventh) edition of the Harmonized System Nomenclature (HSN)

CBIC has made certain amendments in the below listed Customs Tariff notifications, so as to align with the new (seventh) edition of the Harmonized System Nomenclature (HSN), w.e.f. from 01 January 2022:

- Notification no:50/2017-Customs dated 30 June 2017 - Exemption on goods imported;
- Notification no:82/2017-Customs dated 27 October 2017 - Effective rate of duty under chapters 50 to 63 on textile products;
- Notification no:25/1998-Customs dated 2 June 1998, Notification no:25/1999-Customs dated 28 February 1999, Notification no:25/2002-Customs, dated 1 March 2002,

Notification no:24/2005- Customs, dated 1 March 2005,
 Notification no:25/2005-Customs dated 1 March 2005,
 Notification no:57/2017-Customs dated 30 June 2017 and
 Notification no:19/2019-Customs dated 6 July 2019 -
 Exemption to electronic and defense equipment;

- Notification no:11/2018-Customs dated 2 February 2018 - Exemption on specified goods from the whole of levy of Social Welfare Surcharge;
- Notification no:53/2017-Customs dated 30 June 2017 - levy SAD on the specified goods;
- All the Free Trade Agreements (FTA)/ Preferential Trade Area (PTA).

[Notification no:55, 56,57, 58, 59&60/2021-Customs dated 30 December 2021]

INSTRUCTION

Infrastructure available for testing of samples related to hazardous goods

- The CBIC has notified details of infrastructure available for testing of samples related to hazardous goods by revenue laboratories;
- The notification refers to instruction no:17/2020-Customs dated 10 August 2020 wherein CBIC had started a special drive on 11 August 2020 to dispose-off unclaimed/uncleared/seized/confiscated cargo with a special focus on expeditious disposal of goods that are of hazardous or explosive in nature to prevent any damage to life and property that may arise;
- Later, vide a letter, the field formations have also been addressed to undertake a targeted exercise with respect to disposal of pending hazardous cargo in 90 days;
- It is stated that CBIC is strictly monitoring the import and handling of hazardous goods which are subject to the provisions of Hazardous and Other wastes (Management & Transboundary Movement) Rules (HOWM), 2016;
- CBIC mentions that identification of hazardous goods is key to effective monitoring. Towards this objective, the annexure-I & annexure-II enclosed with the instruction provide details of infrastructure available in various CRCL laboratories for testing of samples as per schedule-III (List of Hazardous Wastes) and schedule II (List of waste constituents with their limits) of HOVM 2016;
- Further, to optimize the utilization of such infrastructure, the relevant custom house laboratories are mapped with different Ports, as per Annexure A and B attached with circular no:46/2020-Customs (AS) dated 15 October 2020. The DG Systems has also enabled a 'CRCL module', in ICES with the objective of automating paperwork related to sampling, forwarding of test memos to CRCL and other revenue laboratories, and electronic receipt of test reports, by the customs officers;
- In view of the above, CBIC has requested the officers, that their jurisdiction may be suitably sensitized with respect to the above facilities, as an aid in the proper monitoring of import of hazardous goods.

[Instruction no:29/2021-Customs dated 23 December 2021]

FOREIGN TRADE POLICY (FTP)

NOTIFICATION

Amendment in import policy

- Directorate General of Foreign Trade (DGFT) has notified amendment in import policy of items under HS Code 1511 90 of Chapter 15 of ITC (HS), 2017, Schedule-I (Import Policy);
- "Free" import policy of items under HS code 15119010, 15119020 and 15119090 is extended for a period up to 31 December 2022.

[Notification no:46/2015-20 dated 20 December 2021]

SCOMET Updates 2021

- DGFT has notified amendment in appendix 3 (SCOMET items) to schedule-2 of ITC (HS) Classification of Export and Import Items, 2018;
- Annual SCOMET update-2021 has been notified to amend the appendix 3 (SCOMET Items) to schedule-2 of ITC (HS) classification of Export and Import Items, 2018.

[Notification no:47/2015-20 dated 20 December 2021]

Extension of last date to submit application for claiming duty credit scrips under FTP Schemes

DGFT has extended the last date for submission of an Application under MEIS, SEIS, ROSCTL, ROSL, and 2% additional ad hoc incentive schemes vide Notification No. 48/2015-20 dated 31 December 2021.

The deadline for submission of MEIS Application for exports made from July 2018 to December 2020, SEIS Application for service exports from April 2018 to March 2020, ROSCTL Application for exports made from 07 March 2019 to December 2020, has been notified as 31 January 2022 and any application filed after that would be time-barred.

[Notification no:48/2015-20 dated 31 December 2021]

PUBLIC NOTICE

Corrigendum to previous Public Notice

DGFT has made a correction in Public Notice no:43/2015-20 issued on 16 December 2021 to read MEIS serial no:8145 as MEIS serial no:8147.

[Corrigendum dated 20 December 2021, to Public Notice no:43/2015-20 dated 16 December 2021]

NEWS FLASH

1. “GST Council defers hike in GST on textiles from 5% to 12%”
<https://www.moneycontrol.com/news/business/gst-council-defer-hike-in-gst-on-textiles-from-5-to-12-7885941.html>
[Source: Money Control, 31 December 2021]
2. “Food Ordering via Swiggy, Zomato May Become Costlier Due to New GST Norms Taking Effect on Jan 1”
<https://gadgets.ndtv.com/apps/news/food-ordering-swiggy-zomato-auto-bike-booking-uber-ola-rapido-gst-update-2680272>
[Source: Gadgets 360 NDTV, 30 December 2021]
3. “Deadline relief: Bank KYC to GST returns”
<https://timesofindia.indiatimes.com/business/india-business/deadline-relief-bank-kyc-to-gst-returns/articleshow/88603852.cms>
[Source: Times of India, 31 December 2021]
4. “Big update on GSTR Filing! Govt extends FY21 GST annual return filing deadline till February 28”
<https://zeenews.india.com/economy/big-update-on-gstr-filing-govt-extends-fy21-gst-annual-return-filing-deadline-till-february-28-2423864.html>
[Source: Zee News, 30 December 2021]
5. “Consumers told by TANGEDCO to pay pending GST bills”
<https://www.newindianexpress.com/states/tamil-nadu/2021/dec/26/consumers-told-by-tangedco-to-pay-pending-gstbills-2399808.html>
[Source: Indian Express, 26 December 2021]



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