

Synopsis of the Notifications issued on 21 December 2021

1. Notification No 38/2021 - Mandatory Aadhaar authentication for registered person

The Central Government vide Notification No. 38/ 2021-CT dated 21.12.2021 has notified **January 1, 2022** as the **implementation** date for Rule 10B of CGST Rules, 2017.

In the said rule, it is **mandatory** for the registered person to undergo **Aadhaar authentication** for the below purposes,

- i. Filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23 of CGST Rules, 2017
- ii. Filing of refund application in FORM RFD-01 under Rule 89 of CGST Rules, 2017
- iii. Refund of the GST paid on goods exported out of India under Rule 96 of CGST Rules, 2017.

The taxable persons, who have not yet authenticated their Aadhaar, may like to go through this authentication process before filing the above two applications and enabling GST system to validate and transmit the GST refund data from GST system to ICEGATE system.

If Aadhaar number has not been assigned to the concern person for Aadhaar authentication as specified above, such person may undergo e-KYC verification by furnishing the following:

- a. She/he will feed Aadhaar Enrolment ID and upload the acknowledgement; and
- b. She/he shall also upload any one of the following documents:
 - 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 the Motor Vehicles Act, 1988

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

Aadhaar authentication or e-KYC verification before filing of refund may be completed by navigating to "Dashboard > My Profile > Aadhaar Authentication Status

1. **Notification No 39/2021 –**

It seeks to bring into force certain clauses of Finance Act, 2021 with effect from **January 1, 2022.**

The highlights of the same are as follows:

I. **GST is leviable on services provided by Club or Association to its members retrospectively w.e.f. July 01, 2017 –**

This notification seeks to expand the scope of 'supply' to levy GST on supplies between the club/association and its members, to overcome the principle of mutuality. Consequently a sub-clause (aa) has been inserted in Section 7 of the CGST Act 2017 which reads as –

"(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;"

The said insertion in Section 7 is introduced to capture the transactions/activities between clubs, associations, societies, RWA, etc. (whether incorporated or unincorporated) and their members under the net of GST i.e. any activities or transactions between such clubs and members are **subject to GST**.

Further an explanation was added to clarify that the said amendment shall be applicable irrespective of any other law, any judgment, decree or order of any Court, tribunal or authority.

Consequently, 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.

II. **Input Tax Credit availment conditions made more stringent –**

This notification seeks to insert an additional condition in Section 16 of the CGST Act for availing the input tax credit.

A new clause (aa) has been inserted after clause (a) in Section 16 which reads as –

"(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.”

In simpler words,

- i. Input Tax Credit on any invoice or debit note can be availed **only when** details of such invoice/debit note have been **furnished** by the supplier in his outward supplies (GSTR-1) and such details have been **communicated** to the recipient of such invoice or debit note.
- ii. Input Tax credit in respect of invoices **not appearing in GSTR-2A/2B** of the taxpayer **cannot** be availed while filing the GSTR-3B.

Hence, w.e.f. January 1,2022, following conditions need to be satisfied under Section 16(2) of the CGST Act for availing GST ITC on inward supplies of goods or services or both:

- ✓ The recipient is in possession of tax invoice or debit note issued by a supplier;
- ✓ The details of the above-mentioned invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient in the manner specified under Section 37 of the CGST Act (GSTR-1 along with GSTR-2A/2B);
- ✓ The recipient has received the goods or services or both;
- ✓ The tax charged in respect of such supply has been actually paid to the Government and
- ✓ The recipient has furnished the return under Section 39 of the CGST Act (GSTR-3B).

There is no change in the conditions for claiming input tax credit in respect of Imports. ITC relating to import of goods can be availed on basis of Bill of entry in possession without the need to match with GSTR2A/2B.

III. Clarification w.r.t recovery of self-assessed tax

An explanation has been inserted to Section 75(12) of the CGST Act to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the **details of which have been furnished in GSTR-1** under Section 37 of the CGST Act, **but not included in the return furnished in GSTR-3B** under Section 39 of the CGST Act.

The ambit of the term “self-assessed tax” is being widened to include taxes declared in GSTR-1 but not in GSTR-3B.

Further, the **recovery proceedings**, in respect of ‘self-assessed tax’ on outward supplies which have been declared in GSTR-1 but not included in GSTR-3B, can be **initiated straightaway** under Section 79 (i.e. through various modes like detaining/selling goods belonging to defaulter which

are under control of the department, garnishee proceedings, distaining and selling of movable or immovable property belonging to the defaulting person, etc.) without even resorting to proceedings under Section 73 or Section 74 of the CGST Act.

IV. **Provisional Attachment of Property/ Bank Account)**

1. Section 83(1) of the CGST Act that deals with provisional attachment of any property to protect revenue, has been amended in a manner, to widen the scope of the power to provisionally attach any property in case of any action being initiated by authorities pertaining to assessment, inspection, search, seizure & arrest and demand & recovery.
2. Whereas, earlier, the attachment could only be made while during the pendency of any proceedings under specified Sections viz., Section 62 (assessment of non-filers of returns) or Section 63 (assessment of unregistered persons) or Section 64 (summary assessment in certain special cases) or Section 67 (power of inspection, search and seizure) or Section 73 (determination of tax in non-fraud cases) or Section 74 (determination of tax in fraud cases).
3. Also, it is provided that provisional attachment shall remain valid for the entire period starting from the initiation of any proceeding under Chapter XII (assessment), Chapter XIV (inspection, search, seizure and arrest) or Chapter XV (Demands and Recovery) till the expiry of a period of one year from the date of order made thereunder.
4. 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.

V. **Stringent provisions for detention & seizure of goods & conveyance - Section 129 and 130 of the CGST Act**

Section 129 of the CGST Act, which deals with the detention, seizure and release of goods and conveyances in transit, has been amended in a following manner:

1. Enhanced penalty (previously penalty and tax) u/s 129(1)(a) & (b):

Existing provision	Notified amendment
When owner comes forward [Sec 129(1)(a)]:	
Taxable goods- Tax + penalty equal to 100% of tax payable	Taxable goods – Penalty equal to 200% of tax payable
Exempted goods – Lowest of 2% of the value of goods or Rs. 25,000/-	Exempted goods – Lowest of 2% of the value of goods or Rs. 25,000/-
When owner does not come forward [Sec 129(1)(b)]:	

Taxable goods – Tax + penalty equal to 50% of value of goods reduced by tax paid.	Taxable goods – Penalty equal to higher of 50% of value of goods or 200% of the tax payable on such goods.
Exempted goods – Lowest of 5% of the value of goods or Rs. 25,000/-	Exempted goods – Lowest of 5% of the value of goods or Rs. 25,000/-

2. Omission of Section 129(2) which implies that the goods seized shall not 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.
3. Period of issuance of notice and passing of order under Section 129(3) of the CGST Act: 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.
4. Determination of penalty: In the amendment to Section 129(4) of the CGST Act, no penalty shall be determined without giving opportunity of hearing, where penalty is payable on detention or seizure of goods or conveyance.
5. Delinking Section 129 from Section 130:
 - a. Amendment in Section 129(6) of the CGST Act delinks the proceedings under Section 129 of the CGST Act relating to 'detention, seizure and release of goods and conveyances in transit', from the proceedings under Section 130 of the CGST Act relating to 'confiscation of goods or conveyances and levy of penalty'.
 - b. 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 off 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.**
 - c. Further, conveyance used for transportation of the goods may be released on payment of penalty or INR 1 Lakh whichever is less.

VI. Amendment in Explanation 1(ii) to Section 74

1. This amendment has been effected so as to make Seizure (Section 129 of the CGST Act) and Confiscation of goods and conveyances in transit (Section 130 of the CGST Act) a separate proceeding from recovery of tax under Section 73 (determination of tax in

non-fraud cases) or Section 74 (determination of tax in fraud cases) of the CGST Act.

2. Further, with this amendment conclusion of proceedings under Section 73 or 74 of the CGST Act against the main noticee will now mean conclusion of proceedings under Section 122 and 125 of the CGST Act (i.e., penalties) but not the proceedings against co-noticees under Section 129 and 130 of the CGST Act even if the main person liable to pay tax has discharged his liability and proceedings against him have been concluded.

VII. Pre-deposit for Appeal before Appellate Authority

1. In order to file an Appeal against an order passed under Section 129(3) of the CGST Act in Form MOV-09, a proviso has been inserted in Section 107(6) of the Act vide this notification which requires a pre-deposit of 25% of the penalty amount for filing an appeal in case of detention and seizure of conveyance and goods during transit.
2. Earlier, there was a requirement to deposit 10% of the disputed tax liability as pre-deposit for filing the appeal.

VIII. Other Amendments

1. Section 151 (Power to collect Statistics) has been substituted with new provisions (Power to call information) which empower the jurisdictional commissioners 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.
2. Section 152 (Bar on disclosure of information) has been amended so as to prevent use of any information obtained under Section 150 and 151 for the purpose of proceedings under the Act without giving the concerned person an opportunity of being heard.