



1

Content for Recent changes & development in GST Law

- Changes in Act & Rules
- Clarifications by Circulars / Press Notes
- Changes in GST Rates on supply of goods / services
- Time of supply in case of change in tax rates
- Tax rate change vs. Price change vs. Anti-profiteering
- GST Statistics
- Way-forward

2

Amendments under CGST Act / Rules

- **Interest u/s 50(3) for claiming undue / excess ITC:** Principle that interest to be charged only in respect of net cash liability; So Section 50(3) of CGST Act to be amended retrospectively, w.e.f. 1 July 2017, to provide that interest is to be paid by a taxpayer on “**ineligible ITC availed and utilized**” and not on “ineligible ITC availed”. Even Interest will be charged @ 18% & Not @ 24%
- **Sec. 77(1): Refund of wrong CGST & SGST paid instead of IGST: Rule 89(1A) inserted vide Notfn # 35 of 2021 dt 24 Sept 2021, effective from 1 Oct 2021: “Subsequently held” covers “Subsequently found by Tax payer”;** Refund claim **may be filed within 2 yrs from the date of payment of correct tax; Sec. 19 of IGST Act is similar to Sec. 77 of CGST Act;** (Circular # 162/18/2021-GST dt 25 Sept 2021 issued by CBIC);
- **FORM GST ITC-04 u/r 45(3)** giving details of goods / capital goods sent to Job worker & received back: its Quarterly filing is relaxed **wef 1 Oct 2021** as under (CGST Rule 54(3) amended vide Notfn # 35/2021 CT dt 24 Sept 2021):
 - a. Half-yrly by Taxpayers whose annual aggregate turnover in preceding FY is above Rs. 5 crores;
 - b. Annually by Taxpayers whose annual aggregate turnover in preceding FY is upto Rs. 5 crores;
- **Unutilized balance in CGST & IGST Cash Ledger** allowed to be transferred between distinct persons (entities having same PAN but registered in different states), without going through the refund procedure, subject to certain safeguards

3

Amendments under CGST Act / Rules

Measures for streamlining compliances in GST (*effective from the date as may be notified):

- **Refund to be disbursed in the bank account**, which is linked with same PAN on which registration has been obtained under GST (CGST Rule 10A & 96C inserted* vide Notfn # 35/2021 CT dt 24 Sept 2021)
- Aadhaar authentication of registration made mandatory for being eligible for filing **refund claim and application for revocation of cancellation of registration** (CGST Rule 10B & 96(1)(c) inserted* vide Notfn # 35/2021 CT dt 24 Sept 2021)
- **ITC restriction u/Rule 36(4)** of CGST Rules, 2017 to be amended, once the proposed clause (aa) of section 16(2) of CGST Act, 2017 is notified, to restrict availment of ITC in respect of invoices/ debit notes, to the extent the details of such invoices/ debit notes are furnished by the supplier in **FORM GSTR-1/ IFF and are** communicated to the registered person in **FORM GSTR-2B**.
- **Furnishing GSTR-1 Return:** CGST Rule 59(6) amended **wef 1 Jan 2022** to provide that a registered person shall not be allowed to furnish **FORM GSTR-1**, if he has not furnished the return in **FORM GSTR-3B for the preceding month** (CGST Rule 59(6) amended vide Notfn # 35/2021 CT dt 24 Sept 2021 which was for preceding 2 mths)
- Late fee for delayed filing of **FORM GSTR-1** to be auto-populated and collected in next open return in **FORM GSTR-3B**.

4

Clarification regarding Scope of 'Intermediary': Circular # 159/15/2021-GST dt 20 Sept 2021 issued by CBIC

- To clear doubts & ambiguity in interpreting scope of 'Intermediary services' ('IS') u/s 2(13) of IGST Act
- To resolve difficulty faced by trade & industry
- To ensure uniformity in implementing provisions of the law across field formations
- Concept of Intermediary borrowed in GST from Service Tax Regime (PPS Rule 2(f)); broadly same;
- Primary requirements for 'IS': Minimum 3 Parties (2 for main supply & 1 for ancillary supply); 2 Distinct supplies (1 main & 1 ancillary); IS provider to have character of an agent, broker or similar person;
- 'Intermediary' does not include a person who supplies **such** goods / services on his own account; Where a person supplies main supply, either fully or partly, on P2P basis, the said supply cannot be covered under the scope of 'intermediary'
- Sub-contracting for a service, either fully or partly, is not an "Intermediary Service"
- Specific provision of POS of IS u/s 13 of IGST Act shall be invoked only when location of either supplier of IS or of recipient of IS, is outside India
- 4 Illustrations given as Indicative & not exhaustive; Terms of contract and facts of the case is important;
- **Trade Cir # 24T dt 28 Sept 2021 issued by Mah State Commr accepting to implement Cir 159 of CBIC**

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Recent Changes in GST
9 Dec 2021

5

5

Circular # 161/17/2021-GST dt 20 Sept 2021 & Circular # 160/16/2021-GST dt 20 Sept 2021 issued by CBIC

- **Clarification relating to interpretation of the term "merely establishment of distinct person" in condition (v) of the Section 2(6) of the IGST Act 2017 for export of services:**

A Company incorporated in India (ICO) & a Company / Person incorporated in Other country (FCO) are to be treated as **separate legal entities** which would not be barred by the condition (v) of Sec. 2(6) of IGST Act 2017 for considering a supply of service as export of services; **Branch/Agent of Company vs Subsidiary Company / Group Co;** (Circular # 161/17/2021-GST dt 20 Sept 2021 issued by CBIC);

- **Time limit to claim ITC on the basis of Debit Note: Wef 1 Jan 2021, the date of issuance of Debit Note (and not the date of underlying Invoice) shall determine the relevant FY for the purpose of claiming ITC u/s 16(4) of CGST Act, 2017; Any ITC availed till 31 Dec 2020 in respect of DN is governed by old provision;** (Circular # 160/16/2021-GST dt 20 Sept 2021 issued by CBIC);
- **Physical copy of Tax Invoice need not be carried in cases where e-invoice (QR Code has IRN) has been generated by the supplier in the manner prescribed under Rule 48(4) of the CGST Rules, 2017** (Circular # 160/16/2021-GST dt 20 Sept 2021 issued by CBIC);
- **No Refund of Un-utilized ITC on Goods exported which are subjected to export duty (Sec. 54(3): Only those goods which are actually subjected to export duty i.e., goods on which export duty is NIL, is Not covered under the restriction imposed under section 54(3) of CGST Act, 2017 for claiming refund** (Circular # 160/16/2021-GST dt 20 Sept 2021 issued by CBIC);

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Recent Changes in GST
9 Dec 2021

6

6

Clarification in relation to GST rate on Goods: Circular # 163/19/2021-GST dt 6 Oct 2021 issued by CBIC

- Diagnostic or Laboratory Reagents & all other goods falling under HSN 3822 attract GST @ 12%;
- All pharmaceutical goods falling under HSN 3006 attract GST @ 12% (& Not @ 18%); (CH 4, Note 4);
- Fresh/Chilled fruits/Nuts, GST @ NIL; Frozen/Dried/Processed fruits/Nuts, GST @ 5% or 12%; (CH 8, Note 3);
- Scented sweet supari (HSN 2106 9030), GST @ 18%; Illaichi (cardamom) (HSN 0908), GST @ 5%; Flavored & coated illaichi (HSN 2106 attract GST @ 18%
- Carbonated Fruit Beverages of Fruit Drink and Carbonated Beverages with Fruit Juice attract GST @ 28% + Cess @ 12%

7

Clarification in relation to GST rate on Goods: Circular # 163/19/2021-GST dt 6 Oct 2021 issued by CBIC

- **Fibre Drums:** Due to ambiguity in the applicable rate of GST, the supplies made at 12% GST, during 1 July 2017 to 30 Sep 2021 will be accepted; No recovery of further 6%; However, **No Refund, if GST @ 18%, already paid;** WEF 1 Oct 2021, all **packing materials** classifiable under HSN 4819 will attract uniform GST rate of 18%; i.e. Cartons, boxes, & cases of paper/ paper board, whether corrugated or non-corrugated, will attract GST @ 18%;
- **UPS/inverter** (HSN 8504), GST @ 18%, while **External batteries** (HSN 8507) sold along with UPS Systems/ Inverter attract GST rate applicable to batteries i.e. @ 28%; Supply of 2 distinctly identifiable items at different prices though in single invoice; Lithium-ion battery HSN 8507 6000, GST @ 18%;
- **Solar PV Power Projects** (Specified Renewable Energy Projects): **Deeming** Goods value @ 70% & Services value @ 30% ratio of Gross consideration charged, wef 1 Jan 2019 vide Notfn # 24/2018 CTR dt 31 Dec 2018: Same mechanism can be applied to pay GST during the period from 1 July 2017 to 31 Dec 2018; However, **No Refund, if higher GST already paid;**

8

Clarification in relation to GST rate on Services: Circular # 164/20/2021-GST dt 6 Oct 2021 issued by CBIC

- **Coaching services to students** provided by coaching institutions & NGOs under Central Sector Scheme of 'Scholarships for students with Disabilities' is covered by Entry 72 of Notfn # 12/2017-CTR dt 28 Jun 2017, hence exempt from GST;
- **Services by Cloud kitchens / Central kitchens** are covered under 'restaurant service', which attract GST @ 5%, without ITC (Explanatory Notes to classification of services state that takeaway services & door delivery services of food are considered as restaurant service);
- **Ice cream parlor selling ice-cream** which is already prepared/manufactured, attract GST @ 18%; Ice-cream parlors do not have a character of a restaurant (cooking during the course of providing service); Character as a supply of goods (a manufactured item) rather than as a service;
- **Alcoholic liquor for human consumption** is not food and food products for the purpose of the entry 26(1)(i)(f) of Notfn # 11/2017 prescribing 5% GST rate on **job work services** in relation to food and food products; So Job work services in relation to manufacture of alcoholic liquor for human consumption attracts GST @ 18%; Specific entry (ica) inserted at Sr # 26 in Notfn # 11/ 2017 vide Notfn # 6/2021-STR dt 14 Oct 2021;

9

Clarification in relation to GST rate on Services: Circular # 164/20/2021-GST dt 6 Oct 2021 issued by CBIC

Clarification in relation to GST rate on Services:

- **Overloading charges** collected at toll plaza are exempt from GST being akin to toll (Higher Toll); Toll for access to road / bridge is exempt under Entry 23 of Notfn # 12/2017-CTR dt 28 Jun 2017;
- **"Renting of" vehicle** by State Transport Undertakings & Local Authorities is covered by expression **"giving on hire"** for the purposes of GST exemption u/Entry 22 of Notfn # 12/2017-CTR dt 28 Jun 2017;
- **Services by way of grant of mineral exploration and mining rights**, attracts GST @ 18% w.e.f. 1 Jan 2019; However, for the period from 1 July 2017 to 31 Dec 2018, **divergent AAR & AAAR**; **Haryana & Chhattisgarh** ruled that GST at same rate of mined goods i.e. say under HSN 9973 @ 5%; **Odisha AAAR** ruled that there are no underlying goods in case of leasing of mining area, unlike leasing or renting of goods, so licensing services for right to use minerals including its exploration & evaluation is covered by HSN 997337 attracting GST @ 18%; Service Tax was levied @ 15.5%; Intention of GST Council in 14th Meeting on 19 May 2019 to tax residuary services @ 18% so upto 31 Dec 2018, GST @ 18% on such rights;
- **Admission to amusement parks** having joy rides, merry-go-rounds, go-carting and ballet (so long as no access is provided to a Casino/Race club) attracts GST @ 18% under Entry 34(iii) of Notfn # 11/2017-CTR dt 28 Jun 2017; Admission to a place having Casinos, race club, sporting event (like IPL) and the like, (even if it provides other activities) then GST @ 28% under Entry 34(iiiia) of said Notfn;

10

Clarification regarding Refund related issues: Circular # 166/22/2021-GST dt 17 Nov 2021 issued by CBIC

- To claim **Refund from Electronic Cash Ledger**, time period of 2 yrs as provided u/s 54(1) is not applicable;
- To claim **Refund from Electronic Cash Ledger**, Self Declaration / CA Certificate, that incidence of tax, etc has not been passed on to any other person, is not applicable;
- **TDS / TCS of GST** is credited to Electronic Cash Ledger; Un-utilized such amt can be claimed as refund in accordance with proviso to Sec. 54(1) r/w Sec. 49(6) of CGST Act;
- **Refund of tax paid on supplies regarded as deemed export** by recipient is to be determined as per Sec. 54(2)(b) of CGST Act. Whether the date of return filed by the supplier or filed by the recipient will be relevant for the purpose of determining "relevant date" for such refunds?

Reply: On perusal of Sec. 54(2)(b) of CGST Act, it is clear that the Act is applicable for determining "relevant date" in respect of refund of amount of tax paid on the supply of goods regarded as deemed exports, irrespective of the fact whether the refund claim is filed by the supplier or by the recipient;

Further, as the tax on the supply of goods, regarded as deemed export, would be paid by the supplier in his return, therefore, the "relevant date" for purpose of filing of refund claim for refund of tax paid on such supplies would be the date of filing of return, related to such supplies, **by the supplier.**

11

Some key changes by 45th meeting of GST on 17 Sept 2021

GST Rates reduced on supply of goods:

- Extension of existing concessional GST rates (currently valid till 30 Sept 2021) for certain Covid-19 treatment drugs, up to 31st Dec 2021
- GST rates reduced to 5% on certain Covid-19 treatment drugs, upto 31 Dec 2021
- GST rate on certain drugs to treat cancer, reduced from 12% to 5% wef 1 Oct 2021
- Biodiesel supplied to OMCs for blending with Diesel reduced from 12% to 5% wef 1 Oct 2021

GST Rates enhanced on supply of goods, from 1 Oct 2021:

- **Ores and concentrates of metals such as iron, copper, aluminum, zinc and few others 5% 18%**
- Cartons, boxes, bags, packing containers of paper etc. from 12% to 18%
- Waste and scrap of polyurethanes and other plastics from 5% to 18%
- All kinds of pens from 12% to 18%
- Misc goods of paper like cards, catalogue, printed material (Chapter 49 of tariff) from 12% to 18%

12

Some key changes by 45th meeting of GST on 17 Sept 2021

GST rate reduced on some services, wef 1 Oct 2021:

- GST exemption on transport of goods by vessel & air, from India to outside India, extended upto 30 Sept 2022
- Grant of National Permit to goods carriages (on payment of fee) from 18% to Nil
- Skill Training for which Govt bears 75% or more of the expenditure (presently exemption applies only if Govt funds 100%) from 18% to Nil

GST rate enhanced on some services, wef 1 Oct 2021:

- Licensing services/ the right to broadcast and show original films, sound recordings, Radio and Television programmes (to bring parity between distribution and licencing services) from 12% to 18%
- Printing and reproduction services of recorded media where content is supplied by the publisher (to bring it on parity with *Colour printing of images from film or digital media*) from 12% to 18%; Substituted entry 27(ii) in Notfn # 11/ 2017 vide Notfn # 6/2021-STR dt 14 Oct 2021;

E-Commerce Operators made liable to pay tax on following services provided through them:

- (i) transport of passengers, by any type of motor vehicles through it (wef 1 Jan 2022)
- (ii) restaurant services with some exceptions (wef 1 Jan 2022)

13

GST rate changes in Textile Sector to address inverted duty structure; Effective from 1 Jan 2022:

- **GST on Man Made Fibre (MMF), MMF Yarn and MMF Fabrics were 18%, 12% and 5%, respectively;**
- Such inverted tax structure resulted in piling up of ITC/Balance in Electronic Credit Ledger;
- Compliance burden & complications in refund claims;
- Blockage of crucial Working Capital & cascading effect;
- **Notified uniform GST rate of 12 % on MMF, MMF Yarn, MMF Fabrics & Apparels from 1 Jan 2022;**
- Removal of Inverted Tax Structure on MMF Textiles Value chain to bring relief to Textile sector;
- Uniform rate of 12% for entire value chain will reduce the compliance burden of the industry players;
- Job-work related to dyeing and printing services will benefit the industry to absorb & recover unutilised ITC;
- MMF textiles sector will benefit by saving in working capital requirement; Export becomes competitive;
- Effective from prospective date 1 Jan 2022, so that Organisation can plan its inventory & pricing policy;

14

Time of supply in case of change in GST Rates (Sec. 14 of CGST Act)

GST Rate change date	Supply date	Invoice date	Consideration Received date	GST Levied at which Rate?
1 Oct 2021	1 Sept 2021	10 Sept 2021	20 Sept 2021	Old Rate
1 Oct 2021	1 Sept 2021	10 Sept 2021	15 Oct 2021	Old Rate
1 Oct 2021	1 Sept 2021	15 Oct 2021	20 Sept 2021	Old Rate
1 Oct 2021	25 Oct 2021	10 Sept 2021	20 Sept 2021	Old Rate
1 Oct 2021	1 Sept 2021	15 Oct 2021	25 Oct 2021	New Rate
1 Oct 2021	10 Oct 2021	15 Oct 2021	20 Sept 2021	New Rate
1 Oct 2021	10 Oct 2021	25 Sept 2021	25 Oct 2021	New Rate
1 Oct 2021	10 Oct 2021	15 Oct 2021	20 Oct 2021	New Rate

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Recent Changes in GST
9 Dec 2021

22

Impact of change in GST Rates: Anti-profiteering u/s 171 CGST: To Pass on benefit of reduction in rate or benefit of ITC, else Penalty @ 10% of Profiteering & Regn cancellation u/r 21(c)

Net PP (a)	GST @ (b)	Total Cost (c)	GP @ (d)	Net SP (e = (a+d))	GST @ (f)	GST Rs. (g = e * f)	Total = MRP (h = e + g)	Gross GST (g)	ITC Rs. (b)	Net Liab (j = g - b)	GP Rs (k = h - c)	GST Liab (j)	Net GP (L = k - j)	Profiteering (m)	Penalty @ 10% of m
100	18%	118	20%	120	18%	21.6	141.6	21.6	18	3.6	23.6	3.6	20		
GST Rate reduced from 18% to 5%															
100	18%	118	20%	120	5%	6	126	6	18	-12	8	-12	20	0	0
100	18%	118	30%	130	5%	6.5	136.5	6.5	18	-11.5	18.5	-11.5	30	10	1
GST Rate reduced from 18% to NIL															
100	18%	118	20%	120	NIL	0	120	0	18	-18	2	-18	20	0	0
100	18%	118	30%	130	NIL	0	130	0	18	-18	12	-18	30	10	1

Conclusion: 1] Net SP remains same, yet MRP (Total SP) Reduction happens; 2] Increase in Net SP, results in Profiteering

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Recent Changes in GST
9 Dec 2021

28

GST Notification # 37 of 2021 CT dt 1 Dec 2021

▣ Tenure of Anti-Profitteering Authority extended from 4 years to 5 years

CGST Rule 137 amended from 30.11.2021: Thus, the Authority shall cease to exist after the expiry of 5 yrs from the date on which the Chairman enters upon his office unless the Council recommends otherwise.

▣ Amendments made in GST DRC-03:

New Heading of the Form: "Intimation of payment made voluntarily or made against the SCN or statement or intimation of tax ascertained through FORM GST DRC-01A"

- Item # 3: Causes of payment, in drop down, list expanded: "Audit, inspection or investigation, voluntary, SCN, annual return, reconciliation statement, scrutiny, intimation of tax ascertained through FORM GST DRC-01A, Mismatch (Form GSTR-1 and Form GSTR-3B), Mismatch (Form GSTR-2B and Form GSTR-3B), others (specify)"
- Item # 5: to provide the "details of SCN, if payment is made within 30 days of its issue" has been amended to further include "scrutiny, intimation of tax ascertained through Form GST DRC-01A, audit, inspection or investigation, others (specify)".
- Item # 7: Details of payments made: In Table, Separate column for 'Fee' has been inserted alongwith column for Tax, Interest, Penalty

29



Way Forward

30

GST Collection comparison during FY 20-21 & FY 21-22



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Recent Changes in GST
9 Dec 2021

31

31

Rise in GST Collection..... & Way forward....

- Higher GST revenues due to improved economy post covid-19 pandemic outbreak
- Result of various policy & administrative measures taken to improve compliance:
 - Enhancement of system capacity, auto-population of returns
 - Nudging non-filers after last date of filing of returns
 - Blocking of e-way bills
 - ITC restrictions due to non-filers of Returns; Purchase Reports provided based on Vendor Filings (Form GSTR-2A & Form GSTR-2B)
 - Fraud Detection (large tax evasion cases) by Central tax enforcement agencies along with the State counterparts; mainly relating to fake invoices, with the help of various IT tools developed by GSTN that use the return, invoice and e-way bill data to find suspicious taxpayers
 - Integration with Income-Tax and Customs
 - Digital India – 6 years of Digital India; Artificial Intelligence & Data Analysis
 - Faceless proceedings: Registration; Returns; Refunds; Adv Rulings; Adjudications; Appeals; etc

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Recent Changes in GST
9 Dec 2021

32

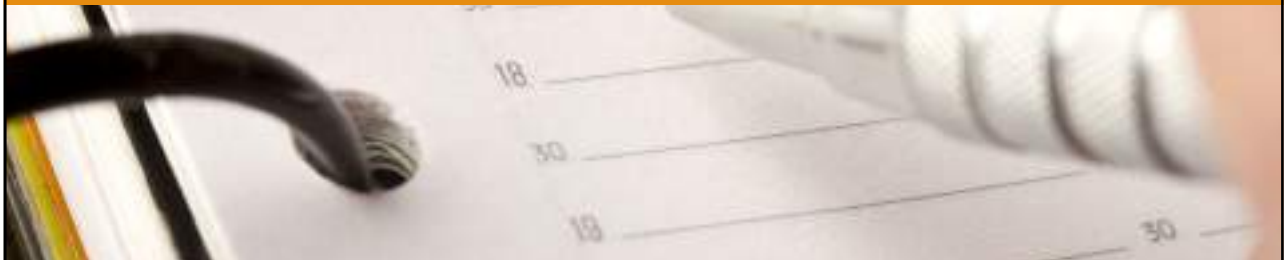
32

Questions



33

**** Thanks to All****
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34