





# ANALYSIS OF AMENDMENTS IN GST APPLICABLE FROM 1<sup>ST</sup> JANUARY 2022





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# 1. CHANGES IN E - COMMERCE SECTOR

#### **RESTAURANT SERVICES**

Central Government vide NN 17/2021-Central Tax (Rate) has amended NN 17/2017-Central Tax(Rate) so as to include supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises under the ambit of Section 9(5) of the CGST Act, 2017, where specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.

This means e-commerce operators, such as Swiggy and Zomato, being made liable to collect and deposit GST with the government on restaurant services supplied through them from 1st January 2022, and they would also be required to issue Tax invoices in respect of such services.



After this amendment, e-commerce operators shall be liable to pay GST on supply of restaurant services made through them. For restaurant supplies made by restaurants located at specified premises, burden to pay GST will remain with restaurant.

To clarify modalities of compliance to the GST laws in respect of supply of restaurant service through e-commerce operators (ECO), Government has also issued Circular No. 167 / 23 /2021 – GST dated 17.12.2021.

#### TRANSPORTATION OF PASSENGERS

Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle are already covered under the ambit of section 9(5) of the CGST Act, 2017. W.e.f. 1st January, 2022 this entry will also include Services by way of transportation of passengers by an omnibus or any other motor vehicle.

#### Further, transportation of passenger by

- Non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire; and
- ii. Stage carriage other than airconditioned stage carriage
- iii. Metered cabs or auto rickshaws (including e-rickshaws



is exempt vide entry no. 15 of the NN 12/2017-Central Tax(Rate) however w.e.f. 1st January 2022 this exemption has been withdrawn in cases where these services are provided through e-commerce operators. Meaning thereby for transportation of passenger by non-airconditioned stage carriage through e-commerce operator, e-commerce operator shall be liable to collect and pay GST.

It should be noted that these provisions will not be applicable to local passenger transport services provided by auto-rickshaws/cab through offline/ manual mode, which attract no taxes.

## 2. CHANGE IN EFFECTIVE RATE OF TAX

#### **WORKS CONTRACT SERVICES: INCREASE IN RATE OF TAX FROM 12%/5% TO 18%**

Presently following works contract services provided to Governmental authority and Governmental entity qualify for concessional rate of tax (12% or 5%) however w.e.f. 1st January 2022 this benefit has been withdrawn:

- **a.** Construction erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of, (a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958); (b) canal, dam or other irrigation works; (c) pipeline, conduit or plant for (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal
- **b.** Construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of (a) a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017
- Works Contract Services involving predominantly earth work (that is, constituting more than 75per cent. of the value of the works contract)
- **d.** Works Contract Services provided by sub-contractor to main contractor providing services mentioned in point (a), (b) and (c).

Here it is worthwhile to note that benefit of concessional rate of tax will continue to be available for services provided to Central Government, State Government, Union territory and a local authority.

#### **GST EXEMPTION WITHDRAWN**

Presently following services provided to Governmental authority and Governmental entity are exempt from GST however w.e.f. 1st January 2022 exemption shall not be allowed:

- **a.** Pure services (excluding works contract service or other composite supplies involving supply of any goods) by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
- **b.** Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.
- **c.** Transportation of passenger by
  - a. non-air conditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire,
  - **b.** stage carriage other than airconditioned stage carriage, and
  - c. metered cabs or auto rickshaws (including e-rickshaws)

when supplied through an electronic commerce operator

Benefit of exemption will continue to be available when these services are provided through manual/offline mode.

### **TEXTILE SECTOR**

NN 14/2021-Central Tax (Rate) has proposed to increase GST rate on MMF, MMF yarn, fabrics and apparel from 5% to 12%. Also, NN 15/2021-Central Tax (Rate) has proposed to increase rate of GST, from 5% to 12%/18%, on services by way of dyeing or printing of the said textile and textile products.

Change in rate of tax was proposed to be applicable w.e.f. 1st January 2022 however GST Council in its 46th Council meeting dated 31.12.2021 has recommended to defer the earlier decision to Increase the rates in textiles sector recommended in the 45th GST Council meeting.

To implement 46<sup>th</sup> GST Council's decision, Government has issued NN 21/2021-Central Tax (Rate) and NN 22/2021-Central Tax (Rate) both dated 31.12.2021. Consequently, the existing rates in textile sector would continue beyond 1st January, 2022 till further announcement.

#### **FOOTWEAR SECTOR**

Rate of GST on footwear, sale value not exceeding INR 1,000/-, shall increase from 5% to 12%.

## 3. SCOPE OF SUPPLY

Finance Act, 2021 has proposed to widened the scope of supply. Clause (aa) and corresponding Explanation is proposed to be inserted with retrospective effect from 01 July 2017 in sub-section (1) of Section 7 of the CGST Act, 2017 containing the meaning of term 'supply'. The inserted text shall read 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 be taken place from one such person to another.

A corresponding amendment is proposed to be carried out in Schedule II of CGST Act, 2017 with retrospective effect from 01 July 2017 by way of omission of Paragraph 7 which reads as –

"7. Supply of Goods The following shall be treated as supply of goods, namely:— Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration."

Recently, Central Government vide NN 39/2021-Central Tax has appointed 1st January 2022 as the date on which these provisions shall come into force.

# 4. ELIGIBILITY TO CLAIM ITC

The pre-conditions listed in Section 16(2) of CGST Act, 2017 for availing Input Tax Credit (ITC) by any registered person have been proposed to be increased by way of inserting clause (aa) in sub-section (2) which provides for –

"(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;"

Recently, Central Government vide NN 39/2021-Central Tax has appointed 1st January 2022 as the date on which these provisions shall come into force.

Further vide NN 40/2021-Central Tax corresponding amendment has been made in rule 36(4). After this amendment no ITC shall be availed by a registered person unless invoice/debit note –

- a. furnished by the supplier in the statement of outward supplies in FORM GSTR-1
- **b.** Said details have been communicated to the registered person in **FORM GSTR-2B**

### 5. REFUND

The Central Board of Indirect Taxes and Customs (CBIC) has notified that rules related to Mandatory Aadhaar authentication for GST Refund are to be effective from 1 January 2022.

Further, relaxation has been provided to UIN holders where Unique Identity Number of the applicant is not mentioned in a tax invoice. The refund of tax paid by UIN on such invoice shall be available if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application.

## **6. RECOVERY PROCEEDINGS**

In section 83 of the Central Goods and Services Tax Act, for sub-section (1), the following sub-section shall be substituted, namely:-

"(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."

The powers of provisional attachment of property under Section 83 has been increased to include any proceedings under Chapter XII (Assessment), Chapter XIV (Inspection, Search, Seizure & Arrest) or Chapter XV(Demands & Recovery).

Corresponding amendments has been made in CGST Rules-

- **a.** Rule159(2) has been amended to provide that 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.
- **b.** Other changes in Rule 159 have been made to incorporate the changes made in Sec 83 providing for attachment of property of a person other than the taxable person i.e any person specified in sub-section (1A) of section 122.
- **c.** Any objection to the order of provisional attachment of property is to be filed in FORM DRC-22A whose format has also been notified now.

## 7. DETENTION AND SEIZURE

# AMENDMENT OF SECTION 129 ON DETENTION, SEIZURE AND RELEASE OF GOODS AND CONVEYANCES IN TRANSIT

Section 129 contains penalty for release of goods and conveyance which are detained or seized. Finance Act, 2021 proposed to amend tax and penalty payable under sub-section (1) of Section 129 in order to –

- a. Remove payment of tax so as to get the goods and conveyance released; and,
- **b.** Increase the amount of penalty leviable.

Recently, Central Government vide NN 39/2021-Central Tax has appointed 1st January 2022 as the date on which these provisions shall come into force.

With effect from 1st January 2022 revised payment of penalty under sub-section (1) is as follows:

- (i) In case owner of the goods comes forward for payment of such penalty
  - **a.** In case of taxable goods Applicable tax and penalty equal to 200% of tax payable; and.
  - **b.** In case of exempt goods Amount equal to 2% of the value of goods or Rs. 25,000, whichever is less
- (ii) In case owner of the goods does not come forward for payment of such penalty
  - **a.** In case of taxable goods Applicable tax and penalty equal to the 50% of the value of the goods reduced by the tax amount paid thereon or 200% of tax payable, whichever is higher; and,
  - **b.** In case of exempt goods Amount equal to 5% of the value of goods or Rs. 25,000, whichever is less.whichever is less

In addition, following amendments will also became applicable w.e.f. 1st January 2022

- **a.** Proper officer will have to issue the order specifying the penalty amount within 7 days of issue of notice.
- **b.** No penalty can be levied without granting the opportunity of personal hearing.
- **c.** The person on whom penalty is levied have to pay the amount within 15 days of the receipt of order otherwise sized goods will be disposed off for recovery of penalty amount.

However, seized conveyance can be released on payment of penalty of Rs. 1 Lac or the penalty which is specified above, whichever is lesser.

# NEW RULE 144A "RECOVERY OF PENALTY BY SALE OF GOODS OR CONVEYANCE DETAINED OR SEIZED IN TRANSIT" HAS BEEN INSERTED WITH EFFECT FROM THE 1 JAN, 2022-

- Where the penalty u/s 129 is not paid within 15 days from the date of receipt of order of detention, Proper officer shall proceed for sale or disposal of goods or conveyance so detained.
- The said 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.
- Atleast 15 days' notice to be given for auction.

**Provided** that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

- On payment of the full bid amount, the proper officer shall transfer the possession and ownership of the said goods or conveyance to the successful bidder and issue a certificate in **FORM GST DRC-12.**
- The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be non-competitive due to lack of adequate participation or due to low bids.
- Where an appeal has been filed by the person under the provisions of sub-section (1) read with sub-section (6) of section 107, 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.
- Provided that this sub-rule shall not be applicable in respect of goods of perishable or hazardous nature.

# RULE 154 HAS BEEN SUBSTITUTED TO PROVIDE FOR -"DISPOSAL OF PROCEEDS OF SALE OF GOODS OR CONVEYANCE AND MOVABLE OR IMMOVABLE PROPERTY".

The amounts so realized shall be appropriated against-

- **a.** Administrative cost of the recovery process.
- **b.** Amount to be recovered or to the payment of the penalty payable under section 129(3).
- **c.** Any other amount due from the defaulter under IGST,UTGST,SGST and rules thereunder.
- **d.** The balance, if any, shall be credited to-
- Registered person- electronic cash ledger
- Unregistered person Bank account of the person concerned

Where it is not possible to pay the balance of sale proceeds, as per clause (d) of sub-rule (1), to the person concerned within a period of six months from the date of sale of such goods or conveyance or such further period as the proper officer may allow, such balance of sale proceeds shall be deposited with the Fund.

### 8. CHANGES HAVE BEEN MADE IN VARIOUS FORM

Changes have been made in FORM DRC-10, DRC-11, DRC-12, DRC-22, DRC-23 and APL-01.

S.NO.	Form number	Name
1.	GST DRC-10	Notice for Auction of Goods under section 79 (1) (b) of the Act
2.	GST DRC-11	Notice to successful bidder
3.	GST DRC-12	Sale Certificate
4.	GST DRC-22	Provisional attachment of property under section83
5.	GST DRC-23	Restoration of provisionally attached property / bank account under section83
6.	GST APL-01	Appeal to Appellate Authority

# 9. MISCELLANEOUS

Changes have been made in FORM DRC-10, DRC-11, DRC-12, DRC-22, DRC-23 and APL-01.

#### **BLOCKING OF GSTR-1 FOR NON-FILING OF GSTR 3B**

From 1st January 2022, the GSTR-1 return filing facility will be blocked if you have not submitted the return in FORM GSTR-3B for the previous two return periods. For example, if a taxpayer has not filed GSTR-3B for October 2021 and November 2021, the GSTR-1 filing facility will be blocked from the 1st January 2022.

### AMENDMENT OF SECTION 107 ON APPEALS TO APPELLATE AUTHORITY

In section 107 of the Central Goods and Services Tax Act, in sub-section (6), the following proviso shall be inserted, namely:-

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. Hence, an appeal against an order Sec 129(3) shall be filed only when a sum equal to twenty-five per cent of the penalty has been paid by the appellant.

# EXPLANATION IN SUB-SECTION (12) TO SECTION 75 ON GENERAL PROVISIONS RELATING TO DETERMINATION OF TAX

**Explanation.**– For the purposes of this sub-section, the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished under section 37, but not included in the return furnished under section 39.

GSTR-1 is notified under Section 37 and GSTR-3B is notified under Section 39.