



**Gist of notifications issued to make GST provisions more stringent going forward.**

**Major changes are as below:**

- ITC can be availed only of ITC reflected in GSTR-2A/ GSTR-2B, thereby withdrawing the limit of 5% as mentioned in Rule 36(4).
- Aadhar Authentication has been mandated for filing application for revocation of cancellation of registration and refund application.
- Section 129 has been amended to increase the quantum of penalty to 200% in certain cases.
- Various other sections of Finance Act have been notified.

**Elaborated discussion on aforesaid is given hereunder**

**CBIC vide Notification No. 38/2021 – Central Tax dated 21st December 2021 has notified 1st January 2022 as the effective date from which below mentioned provisions shall come into force.**

Rule 10B prescribing compulsory aadhaar authentication of the proprietor, in the case of proprietorship firm, or of any partner, in the case of a partnership firm, or of the karta, in the case of a Hindu undivided family, or of the Managing Director or any whole time Director, in the case of a company, or of any of the Members of the Managing Committee of an Association of persons or body of individuals or a Society, or of the Trustee in the Board of Trustees, in the case of a Trust and of the authorized signatory for below mentioned purposes:-

- Filing of Application for revocation of cancellation of registration under Rule 23;
- Filing of Refund Application under Rule 89;
- Refund under Rule 96 on IGST paid exports.

And as a consequence of above-mentioned rule, corresponding amendments in following rule shall come into effect from aforesaid date: -

- Rule 23 to incorporate mandatory Aadhaar authentication for filing revocation application;
- Rule 89 to incorporate mandatory Aadhaar authentication for filing refund application;
- Rule 96 to incorporate mandatory Aadhaar authentication for obtaining refund in case of duty paid exports.

**CBIC vide Notification No. 39/2021 – Central Tax dated 21st December 2021 has notified 1st January 2022 as the effective date from which below mentioned provisions of Finance Act 2021 shall come into force:**

- Sec 7 of CGST Act 2017 shall be amended retrospectively w.e.f. 1st July 2017 to insert clause (aa) thereby bringing activities and transactions between an association and its members under the purview of definition of supply.  
An explanation has also been inserted in Section 7 to provide that the person and its members or constituents shall be deemed to be treated as 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 amendment provided that it would have an overriding effect over the other statues, any judgement, decree or order of any Court, Tribunal or Authority.
- Sec 16 of CGST Act 2017 shall be amended to insert clause (aa) in sub-section 2, providing that ITC would be available only when the details of the invoice or debit note 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.
- Clause (ii) of Explanation 1 of sec 74 shall be amended to delink the provisions of penalty under sec 129 and 130 from sec 74. As a result, now, when a proceeding under sec 73 or 74 is initiated against “any other person” and the proceeding has

been concluded against main person, the aforesaid “any other person” shall be deemed to be discharged from all proceedings under sec 122 and 125 only and not sec 129 and 130.

- Explanation shall be inserted under sec 75(12), thereby clarifying that "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. Consequently, now, such “self-assessed tax” can also be recovered through the modes as specified under the provisions of sec 79 including the modes like deducting from the amount payable to the person, detaining or selling the goods under the possession of the proper officer, etc.
- Sec 83(1) shall be substituted thereby extending the powers of provisional attachment to proceedings under Chapter XII (Assessment), XIV (Inspection, Search, Seizure & Arrest) or XV (Demands & Recovery) for attachment of property including bank account belonging to taxable person or person on whose instance such transactions has been conducted and who has retained benefits of offences under 122(1A).
- Proviso shall be inserted to Sec 107(6) thereby providing that an appeal against an order of detention or seizure of goods or conveyance under sec 129(3) can be filed only after 25 percent of the amount of penalty has been paid by the appellant.
- Sec 129 shall be amended to prescribe new provisions regarding penalty viz.
  - 200% of the tax payable (taxable goods) or 2% of the value of the goods or INR 25000/- whichever is less (exempt goods), where the owner comes forward for payment of such penalty.

- 50% of the value of goods or 200% of the tax payable, whichever is higher (taxable goods) or 5% of the value of the good or INR 25000/-whichever is less (exempt goods), where the owner of the goods does not come forward for payment of such penalty.

Sub sec 3 has been substituted prescribing time limit for issue of SCN within 7 days from detention or seizure specifying the penalty payable, and thereafter passing an order within a period of 7 days from the date of service of such notice, for payment of penalty. Further it has been provided that where the person transporting the goods fails to pay the aforesaid amount of penalty within 15 days from the date of receipt of order, the goods or conveyance so detained or seized shall be liable to be sold or disposed of otherwise, in such manner and within such time as may be prescribed, to recover the penalty.

- Section 130 shall be amended to remove the non-obstante clause from sub-section (1)
- Section 151 shall be substituted to enlarge the scope of the same. The power of the Commissioner has been extended to call for any information relating to any matter in connection with the GST Acts and the Rules.
- Section 152 shall be 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.
- Section 168 shall be amended to remove references to the omitted sub-section in Section 44 and 151.
- Para 7 of Schedule II to the CGST Act deeming the supply of goods by an unincorporated association or body of persons to members shall be omitted retrospectively w.e.f. 1st July, 2017.

**Disclaimer:** - The information contained herein is in summary form based on interpretation of Notification no. 38/2021 & 39/2021- Central Tax. While the information is believed to be accurate to the best of our knowledge, we do not make any representations or warranties, express or implied, as to the accuracy or completeness of this information. Readers should conduct and rely upon their own examination and analysis and are advised to seek their own professional advice. This note is not an offer, invitation, advice or solicitation of any kind. We accept no responsibility for any errors it may contain, whether caused by negligence or otherwise or for any loss, howsoever caused or sustained, by the person who relies upon it.