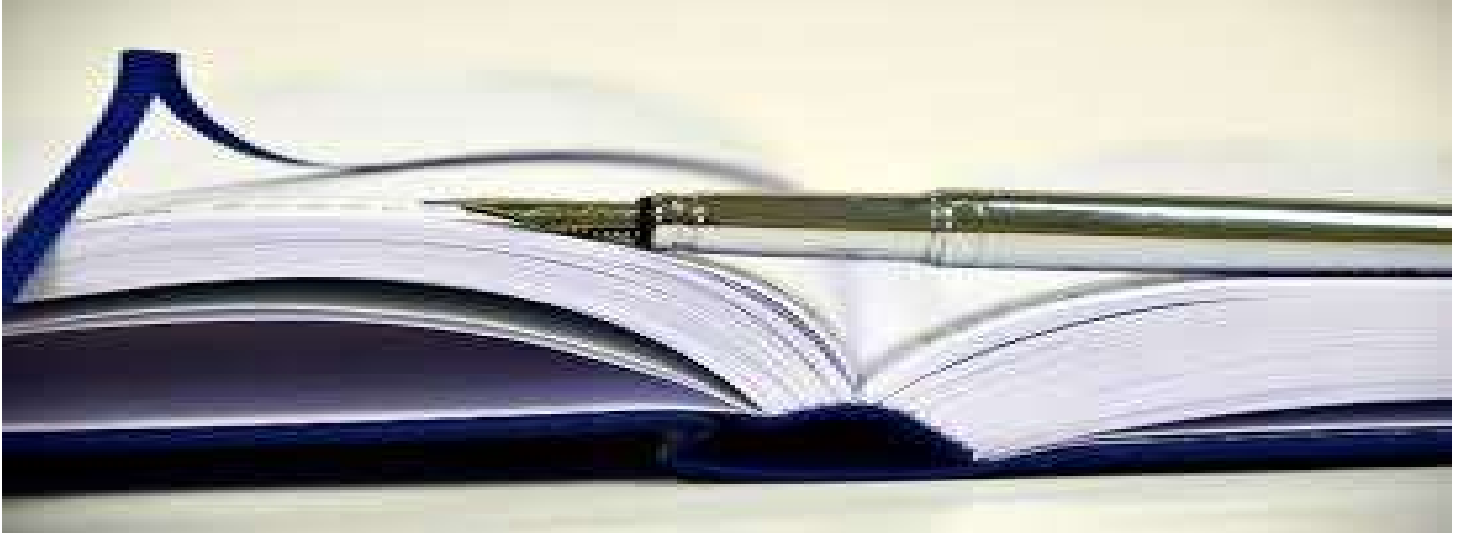




**GST in 2022: Important Amendments
Effective from 1st Jan, 2022**

Recent Amendments in GST Act, 2017



Amendments in CGST Rules 2017 by way of Central Goods and Services Tax (Ninth Amendment) Rules, 2021 vide Notification No. 37/2021- Central Tax dated 1st December 2021

1. Rule 137 of central goods and service tax (CGST) Rules, 2017 prescribe that the tenure of National Anti-profiteering Authority cease to exist after the expiry of Five years (instead of four years).
2. Heading of FORM GST DRC-03 has been amended – intimation of payment made voluntarily or made against the show cause notice (SCN) or statement “inserted” Intimation tax ascertained as being payable under section 73(5)/74(5).
3. In GST DRC-03 Column 3 which specifies cause of payment – “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)” shall be substituted.
4. In GST DRC-03 Column 5 which specifies Details of show cause notice, if payment is made within 30 days of its issue inserted scrutiny, intimation of tax ascertained through Form GST DRC[1]01A, audit, inspection or investigation, others (specify)”.
5. In GST DRC-03 Serial Number 7 Fee column also added so now taxpayers can pay Fee using DRC 03.

The CBIC has made mandatory for the registered person to undergo Aadhaar authentication for the below purposes vide Notification No. 38/2021- Central Tax dated 21st December, 2021

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

If Aadhaar number not assigned to the concerned person, such person may undergo e-KYC verification by furnishing the following:

- She/he will feed Aadhaar Enrolment ID and upload the acknowledgement; and
- 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 (59 of 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 may be completed by navigating to "Dashboard > My Profile > Aadhaar Authentication Status"

The Central Government vide Notification No. 39/2021 dated 21st December, 2021 has made effective the provisions of sections 108, 109 and 113 to 122 of Finance Act, 2021 from 01.01.2022 which are summarized as under:

1. Section 7: Section 7 of the CGST Act will be revised from 1st July 2017 to tax supplies amid the corporation along with the members.

2. Section 16(2) (aa): Section 16(2) (aa) is engaged to furnish ITC shall be available when the information of the invoice or debit note have filed through the supplier in the statement of the outward supplies and this information has recipient communicated for invoice or debit note as per under section 37.

3. Section 1 to 74: Elaboration of 1 to Section 74 has been revised to delink the provisions of penalty beneath Sec 129 & Sec 130 from Sec 74.

4. Section 75: The elaboration towards section 75 will be engaged that mentioned with the self-assessed tax will specify the tax subject to the information of the outward supplies filed beneath section 37 however the same does not come in the return filed beneath section 39.

5. Section 83: The powers of provisional attachment of property beneath Section 83 has been surged to engage any proceedings beneath Chapter XII (Assessment), Chapter XIV (Inspection, Search, Seizure & Arrest) or Chapter XV (Demands & Recovery).

6. Section 107: Section 107 has been changed to furnish the appeal with respect to an order Sec 129(3) will get furnished when a sum equivalent to 25% of the penalty has been furnished via the appellant.

7. Section 129: Section 129 of CGST act concerning Detention, seizure, and goods release and conveyances in transit gets revised. A 200% penalty of tax will be liable to pay rather than 100%. Inside the section, the time limit is provided to issue the notice and order through the proper officer.

8. Section 130: Section 130 has been revised to eliminate the non-obstante clause from sub-section (1). Sub-section (3) has been missed from the articulated section.

9. Section 151: Section 151 would be interchanged to widen the scope of that. The commissioner's power to obtain the statistics has been interchanged within the power to ask for the details.

10. Section 152: Section 152 has changed to permit the details obtained beneath sec 150 or sec 151 to be practised towards the intention of any proceedings beneath the act only post providing the opportunity of being listened to the engaged individual.

11. Para 7: Para 7 of Schedule II to the CGST Act supply of goods deemed by an unincorporated association or body of persons to members has been omitted retrospectively w.e.f 1st July 2017.

Two major updates have been announced vide Notification No. 40/2021- Central Tax dated 29th December, 2021

1. The due dates to file GSTR 9 & 9C for FY20-21 has been extended to February 28, 2022 from December 31, 2021.

2. The latest change in this regard states that taxpayers can claim ITC only if the same invoice/debit note is reflected in GSTR 2B.

3. If a taxpayer has an invoice in the purchase register and the same is not uploaded by their vendor in their GSTR 1, then the taxpayer cannot claim Input Tax Credit from 1st January 2022.

All other changes are related to detention of vehicles/e-auction and other procedural change.

Various clarifications regarding GST on service supplied by restaurants through e-commerce operator's registration related issues were issued via Circular No. 167/23/2021-GST dated 17th December, 2021

E-commerce operators (ECOs) such as Swiggy and Zomato shall be subjected to furnish 5% GST upon the restaurant services supplied from 1st January may be heckling with the generation of invoices on their own excluding the restaurants and third parties.

In September 2021 it was circulated that the tax liability shall be on ECOs for the restaurant services furnished through them. But the concern towards the procedure such as GST invoicing and the other compliances would be transparent through the notice furnished via revenue dept dated 17th Dec. As per the notification, the invoicing of the mentioned services would build the duty of ECOs.

Since the same provides ECOs only 2 weeks to execute, from 1st Jan 2022 an extension of time would be provided to them to execute the specific amendments in their GST invoicing software.

Various additional hardships in compliance and the restaurants via these apps would furnish the services of the restaurants along with the supply of the goods, for instance, people who purchase the Pizza and coke in their combo orders. Pizza is the restaurant service upon which the same apps shall need to file 5% GST and comply with the 1% Tax collected at source (TCS) norm upon coke. The coke draws 28% GST and is furnished through the restaurant. The same items in the same order shall need two invoices first through the app on Pizza and on Coke via restaurant, which would have prevented surging the TCS rate to 5%.

“Considering the above, if the government could clarify that ECO is only responsible for paying the tax and restaurants can continue to do the invoicing the way they are doing currently, it would make compliance of the above smoother. It would also fulfil

the objective of the government which is that ECOs discharge the above tax liability, commented Rastogi.”

Drawing the food delivery apps under the compliance of restaurant services and make them enabled to file the tax rendered towards transferring the responsibility from the restaurants to apps to build the compliance at a brief and simpler despite the action shall seem to marginally raise the tax incidence upon small restaurants if not it gets exempt from GST whose yearly turnover is lower with respect to Rs 20 lakh.

As per the FAQs furnished through the Central Board of Indirect Taxes and Customs (CBIC), e-commerce operators shall file the GST liability towards the restaurant service in cash excluding any ITC. CBIC mentioned that the online food delivery apps shall carry on to avail the ITC prior to the taxes furnished on the expenses like advertisements and rents.

The new year shall start with a 5% GST imposed on the supplies furnished through the delivery apps like Zomato and Swiggy. FM Nirmala Sitharaman has circulated the decision. Food delivery apps shall be subjected to come under the same compliance as the restaurants come i.e a 5% GST would be imposed on the supplies they make from 1st Jan 2022.

The apps shall accumulate a 5% GST from the customers rather than from the restaurants as per the amended rule. The union govt has been engaged in making the rule to restrict the revenue leakage through the unregistered restaurants because of the lack of mandatory registration checks of restaurants through the apps.

The same is not effective news for the customers as the rule amended does not add the extra tax load on the customers in ordering the meals from the GST enrolled restaurants. The same decision shall draw the unenrolled restaurants under the GST slab. Hence the food delivery does not seem to get costlier. Though the customers might file more for food if these apps seem the way to pass the tax load on to the customers. The customer is the only one who gets pointed out with respect to the amended rule commented by the Finance Ministry. Food apps were registered as Tax Collected at Source under GST

records till now. GST was imposed on the restaurants that filed the same with the tax collector. But from the revised rule the tax shall be accumulated from the customers and furnished through the apps to the council. The tax was being furnished through the restaurant owners till now but the aggregator would indeed need to file that w.e.f. 2022.

During the announcement for the change in the rule in September month, the loss was made to the exchequer from the alleged under-reporting by food delivery aggregators of Rs 2,000 crores in the former 2 years.

Recent Court Judgements under GST

Court: High Court of Meghalaya at Shillong

Petitioner: Jud Cements Ltd. & Anr.

Respondent: The Commissioner of Central Goods, Service Tax & Central Excise

Date of Judgement: 07th December, 2021

Judgement:

1. At the behest of the Court, the parties have agreed in principle to the form of the order, but have left the modalities to be worked out by the Court.

2. The appellants accept the figures indicated in the letter dated December 3, 2021 issued by the Assistant Commissioner, CGST, Shillong, Division – II to the Assistant Commissioner (LAW), CGST, Shillong Commissionerate. However, the appellants submit that the figures indicated are subject to adjustment upon the conclusion of the appeals now pending for the period of 2017-18.

3. It is also submitted on behalf of the appellants that the input tax credit due to the appellant assessee has been overlooked on account of non-payment of the tax due. It is accepted on the part of the CGST authorities that upon the payment of the tax due, the assessee may be entitled to input tax credit. The parties agree that such credit may be adjusted with the last installment of payments in terms of this order, subject to the assessee establishing its entitlement in accordance with law.

4. The total amount due as per the said letter of December 3, 2021 comes to a staggering Rs. 43,49,50,071/- and the appellants seek to pay off such amount, subject to the adjustment on account of the appeals and ITC, in 24 monthly installments.

5. The entire amount of Rs. 43,49,50,071/- should be paid off by the appellants in 24 equal or nearly equal monthly installments beginning December 15, 2021 and payable by the 15th day of the 23 succeeding months.

6. The adjustment on account of the orders passed in the appeals referred to above and on account of ITC, if any, will be only against the last installment.

7. In default of payment of any installment within the time permitted, the balance amount then due will become automatically payable and it will be open to the CGST authorities to proceed for realization thereof in accordance with law.

8. The appellant assessee will also be liable to pay interest on reducing balance basis on the tax due component of the amount of Rs. 43,49,50,071/-, less any adjustment on account of appellate orders or ITC. Such amount will be calculated after the completion of payment of last installment in terms of this order and the entire interest component will be payable within 60 days of the last scheduled date for payment of installments in terms of this order.

9. It is made clear that the interest that is required to be paid by this order and after the completion of the installments payment in terms of this order will be calculated on reducing balance basis in respect of the tax due component and not in any respect of the penalty or interest already added into the figure of Rs. 43,49,50,071/-.

10. It is made clear that the appellant assessee will continue to pay the current GST dues without seeking any concession on account of the payment in terms of this order.

11. Immediately upon the first installment payment being made in terms of this order, the order cancelling the GST registration of the appellant assessee dated February 10, 2021 will stand annulled and the respondent authorities should immediately

restore the assessee's access to the relevant portal and all other facilities as in any normal case. However, it will be open to the respondent authorities to cancel the registration within 15 days of any default in payment in terms of this order and also deny access to the portal within seven days of any such default, unless rectified before the relevant measure is taken.

12. Let a copy of the letter dated December 3, 2021 be retained in the records.

13. WP (C) No. 344 of 2021 is disposed of as above.

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