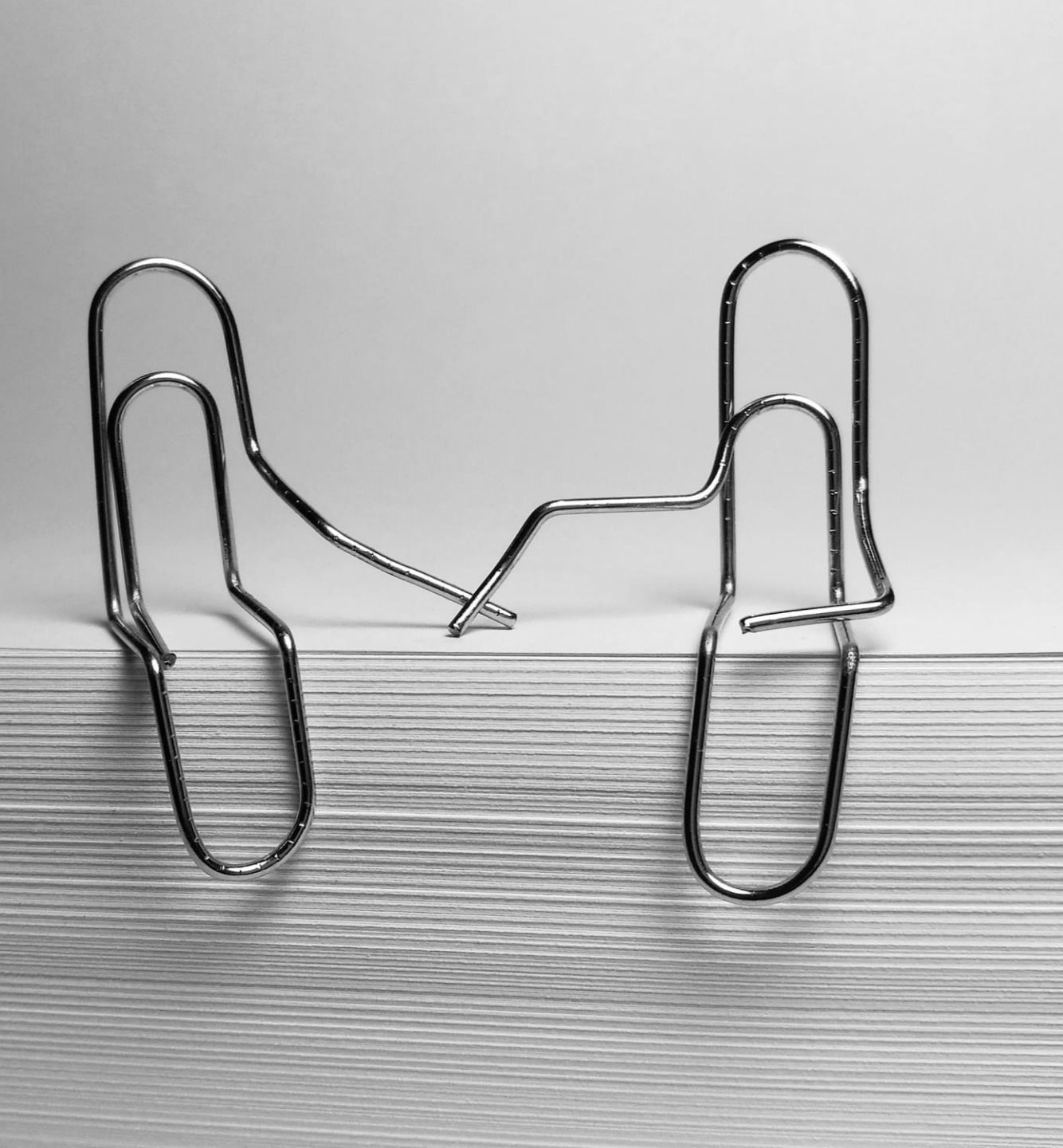




Between Fine Lines

GST Updates
January 2022 – Issue 1

Adv. (Dr.) Gaurav Gupta
B.Com (Hons)-SRCC, FCA, LL.M., ISA (ICAI)



PROVISIONS OF FINANCE
ACT, 2021 IN CGST ACT, 2017
COMING INTO FORCE FROM
1.1.2022

Provisions of Finance act, 2021 coming into force

1. Activities between association and members becoming taxable – retrospectively w.e.f. 1.7.2017

- Clause (aa) inserted in Section 7(1) to include the following as part of definition of supply:

“(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;”.
- Consequently, Entry 7 in schedule II has been omitted.
- Reference to decision of Hon’ble Supreme Court in State of West Bengal v Calcutta Club required in this context:
 - The doctrine of mutuality as applied to clubs is elaborately discussed in Bangalore Club v. CIT 350 ITR 509 (SC).
 - Halsbury's Laws of England, 4th Edn., Reissue, Vol. 23, Paras 222 and 224 (pp. 152 and 154) states:

"222.General features of mutual trading. — ... Where the trade or activity is mutual, the fact that as regards certain activities, certain members only of the association take advantage of the facilities which it offers does not affect the mutuality of the enterprise.
 - Since the members perform the activities of the club for themselves, the fact that they incorporate a legal entity to do it for them makes no difference. This judgment was also followed by this Court in ITO v. Venkatesh Premises Cooperative Society Ltd. [2018] 91 taxmann.com 137/254 Taxman 313/402 ITR 670 (SC).

Provisions of Finance act, 2021 coming into force

1. Activities between association and members becoming taxable – retrospectively w.e.f. 1.7.2017

• Our view:

- Transactions with persons who are not members of association has always been taxable. The current amendment is brought to tax transaction between members and associations.
- Concept of mutuality remains valid in GST also, even after this amendment
- While contributions remains outside the ambit of supply, transactions where consideration is taken shall become taxable
- Membership itself is no supply
- Notwithstanding the above views, Taxes may be paid by all associations for the period from 1.1.2022 and onwards on transactions with members.
- Retrospective operation of this amendment would surely be tested in courts as collection of GST for past period would be a challenge.
- If levy is retrospective, so would be the corresponding ITC against such supply – ITC for period from 1.7.2017 – 31.12.2021 should also be availed while paying such tax.
- Even if taxes are paid from a retrospective date, no interest is leviable on such amount (unless collected and not paid) since tax became first payable in the month of January 2022.

Provisions of Finance act, 2021 coming into force

2. ITC as reflecting in GSTR 2A is the only available ITC for the month

- Clause (aa) inserted in Section 16(1) to bring another restriction in the availability of ITC:
“(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.”
- Rule 36 has been amended to prescribe the procedure for the above provision:
 - (4) *No input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-*
 - (a) *the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and*
 - (b) *the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.*
- Our views:
 - Restriction is only in respect of tax invoices. No restriction applies on ITC relating to Bill of entry, ISD invoices, reverse charge self invoices is available without their reflection in GSTR 2B.
 - GSTR 2B finally becomes the form wherefrom available ITC should be examined by a taxpayer. No further reference is required from GSTR 2A.
 - ITC not reflecting in GSTR 2B cannot be availed in a month. However, ITC reflecting in any previous months can be availed as no such restriction has been provided for in the Rule.

Provisions of Finance act, 2021 coming into force

3. Department can recover any unpaid tax as declared in GSTR-1

- An Explanation has been inserted in Section 75(12) as under:

“(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.”

- Our views:

- The amendment allows department to initiate recovery for any amount which is reflected in GSTR1 but which is not so paid in GSTR 3B.
- It is however, to be seen that can an officer recover the same without show cause notice since there is no mechanism to determine as to whether tax paid in GSTR-1 is unpaid in GSTR 3B as there is no one to one mechanism in the return form. Such tax could have been paid in former or later period by the taxpayer.
- The explanation though fortifies the rule that no output tax can remain unpaid. This amendment is important for those who have filed their GSTR-1 without filing GSTR 3B or had filed GSTR 3B at nil or lower tax.
- Advisable that no difference should be present between GSTR-1 and GSTR 3B output tax and if there is any, suitable letter be filed with jurisdictional officer.
- The amendment shall apply to period post January 1, 2022. Retrospective application to prior periods is litigative.

Provisions of Finance act, 2021 coming into force

4. Widening of scope for Provisional Attachment by Commissioner

- Section 83 has been amended allowing provisional attachment of property after initiation of proceedings under Chapter XII (audit), Chapter XIV (investigation) or Chapter XV (demand or recovery), by Commissioner for the purpose of protecting the interest of the Government revenue. The order of provisional attachment shall remain effective upto 1 year.
- Our views:
 - The amendment allows department to provisionally attach properties once any proceedings have been initiated.
 - Properties of persons against whom proceedings are initiated or any person who retains the benefit of a transaction and at whose instance such transaction is conducted, as is liable for certain clauses of Section 122(1) can be attached.
 - The provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order. There is no separate order required for this.
 - The amendment has casted more responsibility on Commissioner as the order need to express his opinion as to why such attachment is necessary for the protection of revenue. The relevance of a speaking order is undisputed for a fair quasi judicial proceeding.

Provisions of Finance act, 2021 coming into force

5. Predeposit in cases of appeal against detention order prescribed

- Section 107(6) has been amended to provide for pre deposit requirement of 25% *of the penalty (earlier Section only provided for 10% of tax)* amount in cases where appeal has been preferred against a notice for detaining or seizing goods or conveyance issued under Section 129(3).
- Our views:
 - The amendment introduces provision for pre deposit in case of appeals against penalty imposed under Section 129 (detention, seizure of goods or conveyance)
 - Earlier pre deposit was prescribed only in relation to tax involved. Since the provision of Section 129 has been amended to provide only penalty and tax has been omitted from such section, the appeal shall now be made only on pre deposit of 25% of penalty amount.
 - Usually, the order for release is made after imposition of penalty and taxpayer has to pay such penalty for release. Accordingly, amounts deposited for release would squarely cover the amount of pre deposit and thus, in such cases, appeal can be made stating the deposit.
 - Taxpayers are advised to mention their intent of appeal in their submissions and when making tax deposit for release of goods / conveyance.

Provisions of Finance act, 2021 coming into force

6. Commissioner delegated with Power to call for Information

- Substitution of Section 151 – Power to call statistics replaced with power to call information. The new section reads as under:
Section 151 The Commissioner or an officer authorised by him may, by an order, direct any person to furnish information relating to any matter dealt with in connection with this Act, within such time, in such form, and in such manner, as may be specified therein.”.
- Our views:
 - Power has been given to Commissioner to call for information relating to this Act.
 - Earlier the Commissioner was given power to direct any officer to collect statistics regarding any matter and information regarding that statistics now his power has been enlarged.
 - The new power is very wide and give unrestricted powers to call information from any person in any manner relating to a matter being dealt with.
 - The power needs examination viz. a viz. Section 70 (power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry).
 - The amended Section while calling for information would not require physical presence of the person from whom such information is being called. Also, compared to Section 70, this calling of information has not been given grade of "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).
 - However, non submission of such information would occasion penalty on such person. However, imposition of penalty by a non jurisdictional officer would be a matter of litigation.

Provisions of Finance act, 2021 coming into force

7. Bar on publication of information relating to any person removed

- Section 152 has been amended to allow publication of information collected under Section 150 (information collected by way of return from specified persons) or 151 (information collected from any person), which was earlier not allowed except with the permission of the person whose information was being published.
- The only respite given is that such person whose information is being published is now given opportunity of being heard.
- Omission of sub section (2) of Section 152, which earlier reads as under:

"(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151."
- Our views:
 - Publication of information relating to any person in public domain is a sensitive issue. This should not be left in a subjective manner. Board should clarify the defaults and manner of deciding defaults which necessitates publication of information of any person. This is important since publication of every information may not be important in public domain like procedural defaults, rate and value errors, reverse charge defaults, delay in payment of tax, defaults in limitations, difference in opinion or manner of reading a particular statute, etc.



CHANGES IN COMPLIANCES

NOTIFICATION NO. 40/2021-CT, DT. 29.12.2021

CGST (TENTH AMENDMENT) RULES, 2021

Changes in Compliances

1. Extensions for Annual return for FY 2020-21

Insertion of sub rule (1A) to Rule 80

- The due date of filing of annual return for the FY 20-21 has been postponed to 28th day of February 2022 from 31.12.2021.

Insertion of sub rule (3A) to Rule 80

- The due date of filing of reconciliation statement for the FY 20-21 which is to be filed in GSTR 9C has been postponed to 28th Feb, 2022 from 31.12.2021.

2. Rule 142 changes in demand and recovery procedures

- Rule 142(3) earlier the period of 14 days was there for the payment of penalty from the detention or seizure of the goods and conveyance, but now the period of payment has been made Seven days from the date notice is issued under section 129(3) but before the issuance of order under Sub section (3).
- in sub-rule (5), for the words, —tax, interest and penalty payable by the person chargeable with tax, the words, —tax, interest and penalty, as the case may be, payable by the person concerned shall, be substituted;

Changes in Compliances

3. Insertion of Rule 144A Recovery of penalty by sale of goods or conveyance detained or seized in transit.-

- Proper officer shall proceed to dispose (sell) the goods or conveyance so detained if penalty amount is not received within 15 days of receipt of order u/s 129(3)
- For disposal, market value of goods or conveyance shall be estimated by the proper officer. This period of 15 days may be reduced in case of perishable goods.
- Above mentioned goods shall be sold by the process of auction. Owner shall have option of getting goods released till publication of notice for auction and not thereafter.
- Process of auction has also been prescribed.
- If appeal has been filed by the owner of the goods against order of detention, the proceeding of auction shall be stayed. However in case of perishable goods auction shall not be stayed.
- Our Views
 - Considering the powers given under the new provisions, Owner has no choice in case of Perishable goods but to get them released on payment of penalty and proceed with the appeal thereafter. In case of goods other than perishable, he has 15 days to take appropriate action.

Changes in Compliances

4. Substitution of New Rule 154 - disposal of amount received from sales of goods and movable and immovable property

The disposal of amount shall be In this order

- a. Administrative cost of recovery process
- b. Appropriated for Amount to be recovered or to the payment of penalty payable under section 129(3)
- c. Appropriated against any other amount due from the defaulter under the Act
- d. Balance if any shall be
 - di. credited to electronic cash ledger of owner of goods in case person is registered under the Act or
 - dii. if the person is not registered the amount shall be credited to the bank account of the person concerned.
 - diii. where not possible to return the balance sales proceed within a period of 6 months from the date of sale of goods or conveyance such amount shall be deposited in Consumer Welfare fund.



OTHER CHANGES



Other Changes

1. Important Rate changes w.e.f. 1.1.2022

- No rate change in textiles from 1.1.2022
- Rate Footwear of sale value not exceeding Rs.1000 per pair increased to 12%
- Oil cakes made from microbial fats @5%
- Benefit of concessional rate of 12% has been removed by Notification No. 15-2021-Central Tax (Rate), dated 18-11-2021, w.e.f. 1-1-2022. on the following **supplies when made to Governmental Entity and Governmental authority** :
 - by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,—
 - 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);
 - canal, dam or other irrigation works;
 - pipeline, conduit or plant for (i) water supply, (ii) water treatment, or (iii) sewerage treatment or disposal

Other Changes

1. Important Rate changes w.e.f. 1.1.2022

- by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of—
 - a civil structure or any other original works meant predominantly for use other than for commerce, industry, or any other business or profession;
 - a structure meant predominantly for use as (i) an educational, (ii) a clinical, or (iii) an art or cultural establishment; or
 - 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
- involving predominantly earth work (that is, constituting more than 75 per cent of the value of the works contract)
- Benefit of reduced rate of 12% as extended to sub contractor has also been constrained in case of supplies made by contractor to Governmental Entity and Governmental authority

Other Changes

1. Important Rate changes w.e.f. 1.1.2022

- **Exemption** is still available to the following supplies:
 - Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity 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.
 - 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 provided to the Central Government, State Government or Union territory or local authority a Governmental authority or a Government Entity 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.

Please Note: Exemption has been restricted by Notification No. 16-2021-Central Tax (Rate), dated 18-11-2021, w.e.f. 1-1-2022 on the above **supplies when made to Governmental Entity and Governmental authority.** Exemption to supplies made to Central Government, State Government or Union territory or local authority continues.

Other Changes

1. Important Rate changes w.e.f. 1.1.2022

S.no.	Particulars of construction work	Rate applicable post 1.1.2022
1.	Construction or repair work of Non commercial buildings / Infrastructure (see specific entries in slide above) for Government / Local authority	12%
2.	Construction or repair work for of Non commercial buildings / Infrastructure (see specific entries in slide above) Governmental entity / Governmental authority	18%
3.	Sub contractor to contractors working for Government / Local authority	12%
4.	Pure services / Works contract (goods constitutes not more than 25 per cent of the total value) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity in relation to any function entrusted under Article 243W or 243G	Nil
5.	Commercial Projects not specified specifically	18%
6.	Construction or repair of road projects to any person	12%
7.	Erection or repair of a pollution control or effluent treatment plant to any person	12%
8.	Construction, erection, commissioning, or installation of original works pertaining to railways provided to any person	12%

The above charts does not list residential project rates when provided to government / governmental authority etc.

Other Changes

Tax to be paid by E commerce operator where supplies of Restaurant are made through them [w.e.f. 1.1.2022]

Notification No. 17/2021-Central Tax (Rate)

- **E commerce operators** have been made liable for payment of taxes when supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises are made through them. Specified premises means premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7500 per unit per day.
- This shall not apply to any delivery from restaurants directly or restaurants located in specified premises.
- Such supplies shall be considered as exempt supplies in hands of Restaurants

S.no.	Type of Supply (from restaurant other than those located in Specified premises including cloud kitchens)	Person responsible for payment of GST
1.	Home delivery of restaurant food	E commerce operator
2.	Eating or take away at restaurant by customer directly	Restaurant
3.	Home delivery by restaurants directly when customer orders by phone, email, website or app of restaurant (like dominoes)	Restaurant
4.	Items other than restaurant food delivered by E Commerce companies from such establishment (like breads, namkeen packets etc)	Restaurant
5.	Catering or any other supply by such restaurant	Restaurant

Thank You

Adv. (Dr.) Gaurav Gupta

O : UGF, B-375, Lok Vihar, Pitampura, Delhi – 110034.

E : ggupta.adv@gmail.com

M: +91 98110 13940

Disclaimer

This presentation has been prepared for internal use. The contents of this document are solely for informational purpose. It does not constitute professional advice or a formal recommendation. The presentation is made with utmost professional caution but in no manner guarantees the content for use by any person. It is suggested to go through original statute / notification / circular / pronouncements before relying on the matter given. The presentation is meant for general guidance and no responsibility for loss arising to any person acting or refraining from acting as a result of any material contained in this presentation will be accepted by us. Professional advice recommended to be sought before any action or refrainment.

