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## INDIRECT TAX NEWSLETTER

January 2022 (updated till 31.12.2021)



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**RSA Legal Solutions wishes you and your family a very Happy  
New Year.**

## **REGULATORY UPDATES**

### **GST LAW**

#### **NOTIFICATIONS**

#### **INFORMATIVE SESSION BY RSA LEGAL SOLUTIONS:**

Draconian Provision in GST Law to be implemented from 01.01.2022.

<https://www.youtube.com/watch?v=9gXTdgDuan0>

The same can be accessed by clicking on the link mentioned above

- ❖ **Notification No. 38/2021 – Central Tax dated 21.12.2021**  
The CBIC has notified 01.01.2022 as the date for enforcing the provisions pertaining to Aadhar authentication. It will be mandatory for the registered person to undergo AADHAR authentication to be eligible for:
  - ✓ Filing an application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23;
  - ✓ Filing refund application in Form RFD-01 under Rule 89;
  - ✓ Refund under Rule 96 of the integrated tax paid on goods exported out of India.
- ❖ **Notification No 39/2021 – Central Tax dated 21.12.2021**  
Vide this notification, the CBIC has notified the following amendments w.e.f. 01.01.2022:
  - ✓ Section 7 of the Central Goods and Services Tax Act, 2017 (“CGST Act”) has been amended to insert a new clause with a retrospective effect from 01.07.2017, as per which activities or transactions between a person, other than an individual, and its members or constituents would be treated as “supply”, and the person and its members or constituents shall be considered as two separate persons.
  - ✓ A new condition for availment of input tax credit (“ITC”) has been inserted under section 16(2) w.e.f. 01.01.2022, which provides that ITC can be taken only if the details of

the invoice or debit note has been furnished by the supplier in its GSTR-1 and such details have been communicated to the recipient since the same should be reflected in GSTR-2B.

- ✓ An explanation has been inserted under Section 75 of the CGST Act to define the term “self-assessed tax” to include tax payable in respect of details of outward supplies furnished in Form GSTR-1 but not



furnished in GSTR-3B. Thus, if a registered person has furnished details of outward supplies in GSTR-1 but not discharged tax on the same through GSTR-3B, it would be considered as self-assessed tax.

- ✓ The scope of Section 83 of the CGST Act has been widened to empower the Commissioner to provisionally attach any property including bank account of the taxable person or any person specified in Section 122(1A) if he is of the opinion that it is necessary to do so in the interest of the revenue. Earlier the scope was limited to the pendency of proceedings under sections 62, 63, 64, 67, 73 and 74 only, however, vide this amendment the same has been increased to any proceedings initiated under Chapter XII, XIV or XV.
- ✓ A proviso has been inserted in sub-section (6) of section 107 of the CGST Act providing that the appeal against the order for detention of goods or conveyance issued by a proper officer will be filed only if the taxable person has deposited 25% of the penalty amount.
- ✓ Section 129 of the CGST Act, which pertains to detention, seizure, and release of goods and conveyance in transit, has been amended to provide for payment of penalty equivalent to 200% of the tax payable on goods instead of the existing 100%. Further, it has been specified that the proper office is required to issue a notice within 7 days of such detention or seizure. Additionally, the goods or conveyance detained shall be liable to be sold or disposed of in the prescribed manner in case the penalty is not paid within 15 days of the receipt of the order. However, it has been provided that the conveyance shall be released on payment of the penalty payable or one lakh rupees, whichever is less.
- ✓ Section 130 of the CGST Act has been amended to delink it with section 129 of the CGST Act and to provide for a penalty not less than 100% of the tax payable of such goods in lieu of confiscation of the goods or conveyance.
- ✓ A retrospective amendment w.e.f. 01.07.2017 has been made to Paragraph 7 of Schedule II of the CGST Act to exclude supply goods between unincorporated association or body of persons to its members from being treated as supply of goods.

#### ❖ Notification No 40/2021 – Central Tax dated 21.12.2021

Vide notification, The CBIC has notified the following amendments the w.e.f. 01.01.2022:

- ✓ With substitution in Rule 36(4), the recipient can avail the ITC of inward supplies only if the same is reflected in their respective GSTR-2B.
- ✓ In view of the difficulties faced by the taxpayer for filing GSTR-9/9C for the FY 2020-21 on or before the stipulated date, the CBIC has extended the due date from **31.12.2021 to 28.02.2022**. Further, the same shall come into force **w.e.f. 29.12.2021**.
- ✓ In terms of Rule 95(3), the refund of tax paid by the applicant shall be available on submitting the attested copy of the invoice by a UIN holder if the UIN is not mentioned therein. The same shall come into force with **retrospective effect from 01.04.2021**.
- ✓ The time limit stipulated in Rule 142(3), for payment of penalty of 200% in case of detention and seizure of goods in transit, has been substituted **from 14 days to 7 days ascertain** from the date of the notice.

#### ❖ Notification No 21/2021 – Central Tax (Rate) dated 31.12.2021

The CBIC has augmented the GST rate from 5% to 12%, for the footwear of sale value not exceeding Rs.1000 per pair, falls in HSN code 64.



However, it has been decided to roll back the increased rates after a much hue and cry by the industry.

## **CIRCULARS**

### ❖ **Circular No 167/23/2021 - GST dated 17.12.2021**

Vide this Circular, clarification has been issued in respect of GST on service supplied by restaurants through e-commerce operators (“ECO”) considering Notification No. 17/2021 dated 18.11.2021. The clarifications are enumerated below:

- ✓ Tax on restaurant service supplied through ECOs will be paid by the ECOs w.e.f. 01.01.2022. Accordingly, the ECOs will not be required to collect TCS and file GSTR 8 in respect of restaurant services on which it pays tax in terms of section 9(5). On other goods or services supplied through ECO, which are not notified u/s 9(5), ECOs will continue to pay TCS.
- ✓ There would be no mandatory requirement of taking separate registration by ECOs for payment of tax on restaurant service under section 9(5) of the CGST Act.
- ✓ ECO will be responsible for paying GST for restaurant service supplied to them including by an unregistered person.
- ✓ The aggregate turnover of the person supplying restaurant service through ECOs will be computed in terms of section 2(6) and will include the aggregate value of supplies made by the restaurant through ECOs. ECOs, not being the recipient of restaurant service supplied through them, are not input services to ECO. Thus, the same is not to be reported as inward supply.
- ✓ ECO will not be required to reverse ITC on account of restaurant services on which it pays GST. Further, on restaurant service, ECO is required to pay the entire GST liability in cash.
- ✓ The invoice in respect of restaurant service supplied through ECO will be issued by ECO.
- ✓ Registered persons supplying restaurant services through ECOs will report such supplies in Table 8 of GSTR-1 and Table 3.1 (c) of GSTR-3B, for the time being.

## **ADVISORY/INSTRUCTION**

### ❖ **Implementation of Rule-59(6), as amended, on GST Portal**

- ✓ As per Notification No. 35/2021 – Central Tax dated 24.09.2021, clause (a) of the sub-rule (6) of Rule 59 of CGST Rules, 2017 was amended. By way of this amendment, for the words “for preceding two months”, the words “for the preceding month” were substituted with effect from 01.01.2022. This means that from 01.01.2022 onwards, if a monthly filer has not filed the GSTR-3B for the preceding month, then such taxpayer will not be allowed to file the GSTR-1 for the subsequent month, till the GSTR-3B for the preceding month is filed.
- ✓ This functionality will be implemented on the GST Portal shortly, after which the system will check the filing of preceding GSTR-3B before permitting to file GSTR-1 for the subsequent month.

#### **Illustration:**

A taxpayer has not filed the monthly GSTR-3B for November 2021. Now, the taxpayer tries to file GSTR-1 for December 2021 on 10th January 2022. The system will not allow the filing of GSTR-1 for December 2021 and will allow the filing of GSTR-1 for December 2021 only after the filing of GSTR-3B for November 2021.



- ✓ The taxpayer should ensure timely filing of GSTR-1 and GSTR-3B in consonance with Rule 59 of CGST Rules, 2017 to avoid any inconvenience in this regard.

### ❖ **Reporting of supplies notified under section 9(5) / 5(5) by E-commerce Operator in GSTR-3B**

- ✓ As per the GST Council decision to notify "Restaurant Service" under section 9(5) of the CGST Act, 2017 along with other services notified earlier such as motor cabs, accommodation, and housekeeping services wherein the tax on such supplies would be paid by electronic commerce operator if such supplies are made through it, Notification No. 17/2021-Central Tax (Rate) and 17/2021-Integrated Tax (Rate) dated 18.11.2021 have been issued. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators shall be paid by the e-commerce operator with effect from 01.01.2022.
- ✓ Considering the above, an E-commerce operator and the registered person would report taxable supplies notified under section 9(5) of CGST Act, 2017 and similar provisions in IGST/SGST/UTGST Act in the following manner.

Supplies reported by	Reporting in Form GSTR-3B
Supplies under 9(5) reported by ECO	Table 3.1(a) of GSTR-3B
Registered person/Restaurant supplying through ECO	Table 3.1(c) along with the nil and exempted supply

## CUSTOMS

### NOTIFICATIONS

#### ❖ **Notification No. 55 to 59/2021-Customs all dated 29.12.2021**

The CBIC, vide above-captioned notifications, have amended the various HSN codes and the same will come into force w.e.f. 01.01.2022.

#### ❖ **Notification No. 60/2021-Customs dated 30.12.2021**

The CBIC, to align with the amended HSN Code (applicable w.e.f. 01.01.2022), has amended several notifications pertaining to the FTA/PTA.

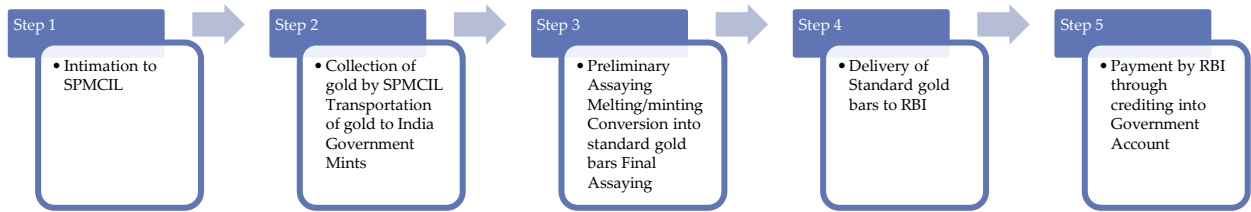
#### ❖ **Notification No. 61/2021-Customs dated 31.12.2021**

The CBIC has extended the exemption from customs duty, from 31.12.2021 to 30.06.2022, on the import of the COVID-19 vaccine.

## INSTRUCTIONS

#### ❖ **Instruction No. 27/2021-Customs dated 03.12.2021**

The CBIC has delineated the guidelines for the sale of seized/confiscated gold. The process flow for disposal is reproduced below:



❖ **Instruction No. 29/2021-Customs dated 23.12.2021**

The CBIC has delineated the details of infrastructure available for testing of samples related to hazardous goods by Revenue Laboratories

**FOREIGN TRADE POLICY**

**TRADE NOTICE**

❖ **Trade Notice No. 28/2021-22 dated 31.12.2021.**

The DGFT has allowed, only for the Advance Authorization issued prior to 01.12.2020, the manual filing and submission of physical documents pertaining to the EODC/closure of applications under the said scheme.

**NOTIFICATIONS**

❖ **Notification No. 48/2015-2020, dated 31.12.2021.**

The DGFT has extended the due date from 31.12.2021 to 31.01.2022 for submitting the applications pertaining to the following scrip-based schemes:

S. No.	Scheme	Period of Exports (LEO date in the period)/ Services rendered in the period	Late Cut (as %age of Entitlement under the Scheme)
1.	MEIS	FY 2018-19 (01.07.2018 to 31.03.2019)	10%
2.	MEIS	FY 2019-20 and FY 2020-21 (up to 31.12.2020)	Nil
3.	SEIS	FY 2018-19	5%
4.	SEIS	FY 2019-20	Nil
5.	ROSTCL	07.03.2019 to 31.12.2020	Nil
6.	ROSL	Up to 06.03.2019	Nil

It is pertinent to note that any application filed post the aforesaid date, will be considered as time-barred.

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**RATIO DECIDENDI**  
**GST LAW**

❖ **In re AIE Fiber Resource and Trading (India) Private Limited, Advance Ruling No. TSAAR Order No. 30/2021 – AAR Telangana**

The applicant sells the imported goods before goods cross the customs frontier of India i.e., prior to clearance of goods from the customs to pre-identified customers. The invoice will be raised by the applicant from the office located in the State of Telangana. In the present matter, the applicant has sought the advance ruling on the issue whether, in the facts and circumstances of the case, supply of imported goods on High Sea sale basis or supply of goods from FTWZ facilities by the Applicant to the Indian customers will be liable for GST. The Hon'ble Advance Ruling Authority held that no IGST payable on the supply of imported goods on a High Sea sale basis or supply of goods to Indian customers.

❖ **Ranjana Singh Vs Commissioner of State Tax, Writ Tax No. 1084 of 2021 – Allahabad High Court**

In the instant matter, the petitioner has submitted the application along with all the relevant documents/information for the GST registration before the competent GST Authority, as prescribed under the GST Act. At the time of inspection, all documents, as desired by the officer, were provided. Thereafter, the notice was issued and sought for the electricity bill or house bill or any other documents related to business, and all details, as demanded, were furnished by the petitioner, but the application was rejected on account of non-submission of electricity bill. The petitioner, aggrieved from the rejection, filed the writ petition before Hon'ble High Court of Allahabad and held that all documents are as per the GST Act and law as well as compliance to the show cause notice were furnished by the petitioner and without pointing out any defect or shortcoming therein, the application should not have been rejected and imposed the penalty on the GST Department on account of unnecessary harassment.

❖ **M/s Roppen Transportation Services Private Limited Vs. Union of India and 3 Others, WP 36254/2021 – Telangana High Court**

The petitioner has challenged the Notification No. 16&17/2021-Central Tax (Rate) dated 18.11.2021, which provides the GST exemption in respect of auto-rickshaw services which was withdrawn for services facilitated through E-Commerce operator even though the said exemption continued to remain applicable on auto-rickshaw rides booked in offline mode, on the grounds that the welfare objective in exempting public transport including transportation by auto-rickshaw stands frustrated on account of the said Notifications and discriminates between the services by auto-rickshaw drivers through the platform and the services provided in offline mode by the auto-rickshaw drivers. Further, the Notifications are violative of the doctrine of a level playing field and are prejudicial to the business interests of the e-commerce operators like Rapido. In this regard, the Hon'ble High Court issued the Notice to Govt on Rapido's Plea challenging Withdrawal of Exemption on Auto Rides through E-Commerce Operators.



## CUSTOMS

❖ **M/s. Adwyn Chemical Pvt Ltd Vs. Commissioner of Customs, ICD (Import), Tughlakabad, New Delhi; 2022-TIOL-21-CESTAT-DEL- CESTAT, New Delhi**

In the instant matter, the appellant filed the refund claim of Special Additional Duty (SAD) with respect to the eleven numbers of bills of entry before the Respondent and the same was rejected on the sole premise that it was hit by the period of limitation i.e. one year ascertains from the date of payment of such duty. In this regard, the Hon'ble CESTAT, New Delhi relying upon the judgment of Sony India Pvt. Ltd., vs. Commissioner of Customs-2014 (304) ELT 660 (Del.); 2014-TIOL-532-HC-DEL-CUS held that the appellant is entitled to the refund, as their right to claim a refund of duty (SAD) will accrue only when the sale took place post-import.

## NEWS NUGGETS

- ❖ GST probe may set precedent for crypto taxation<sup>1</sup>
- ❖ 'Scrapping inverted duty on footwear to lower prices'<sup>2</sup>
- ❖ Parliamentary panel for more subsidy, GST cut to up EV adoption<sup>3</sup>
- ❖ Trade Defence: On anti-dumping duty on Chinese goods<sup>4</sup>
- ❖ Hope to launch trade negotiations with Canada in 2-3 months: Piyush Goyal<sup>5</sup>
- ❖ Re-import of steel cylinders should be exempted from SIMS registration.<sup>6</sup>
- ❖ 'India-Australia interim FTA talks to close soon'<sup>7</sup>
- ❖ Customs duty on e-commerce: India's options at upcoming WTO ministerial conference.<sup>8</sup>

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<sup>1</sup> <https://economictimes.indiatimes.com/news/india/gst-probe-may-set-precedent-for-crypto-taxation/articleshow/88676925.cms>

<sup>2</sup> <https://timesofindia.indiatimes.com/business/india-business/scrapping-inverted-duty-on-footwear-to-lower-prices/articleshow/88677764.cms>

<sup>3</sup> <https://auto.economictimes.indiatimes.com/news/industry/parliamentary-panel-for-more-subsidy-gst-cut-to-up-ev-adoption/88136139>

<sup>4</sup> <https://www.thehindu.com/opinion/editorial/trade-defence-the-hindu-editorial-on-anti-dumping-duty-on-chinese-goods/article38058485.ece>

<sup>5</sup> [https://www.business-standard.com/article/economy-policy/hope-to-launch-trade-negotiations-with-canada-in-2-3-months-piyush-goyal-122010400028\\_1.html](https://www.business-standard.com/article/economy-policy/hope-to-launch-trade-negotiations-with-canada-in-2-3-months-piyush-goyal-122010400028_1.html)

<sup>6</sup> [https://www.business-standard.com/article/sme/re-import-of-steel-cylinders-should-be-exempted-from-sims-registration-121122800034\\_1.html](https://www.business-standard.com/article/sme/re-import-of-steel-cylinders-should-be-exempted-from-sims-registration-121122800034_1.html)

<sup>7</sup> <https://www.thehindu.com/business/Industry/india-australia-interim-fta-talks-to-close-soon/article38074561.ece>

<sup>8</sup> <https://www.thehindubusinessline.com/opinion/customs-duty-on-e-commerce-indias-options-at-upcoming-wto-ministerial-conference/article37897091.ece>





### ABOUT THE FIRM

**RSA Legal Solutions** is a top-tier Tax Law firm committed to providing world-class advisory, litigation, and compliance services to businesses, and singularly focused on serving the needs of business clients. The firm specializes in GST, Customs, Foreign Trade Policy, SEZ laws, FEMA, Income Tax, Corporate laws, and other allied laws.

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