

## Significant Notifications and Circulars issued in GST and FTP from 16<sup>th</sup> September, 2021 to 15<sup>th</sup> October, 2021

### GST

#### I. Notifications

##### 1. Amendments in CGST Rules

[Notification No. 35/2021 – Central Tax dated 24<sup>th</sup> September, 2021](#) has made the following amendments in the CGST Rules, 2017:

(i) **Rule 10A (Furnishing of Bank Account Details) – To be effective from a date to be notified**

The details of bank account furnished by the registered person after the grant of certificate of registration ought to be for the bank account which is in the name of the registered person and obtained on PAN of such registered person. In case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor.

(ii) **Insertion of Rule 10B (Aadhaar authentication for registered person) - To be effective from a date to be notified**

The registered person (other than the notified persons who are exempt from the requirement of Aadhaar authentication) shall be mandatorily required to undergo Aadhaar authentication of the persons mentioned in Table-1 below and of the authorized signatory in order to be eligible for-

- a) filing of application for revocation of cancellation of registration
- b) filing of refund application
- c) refund under rule 96 of the integrated tax paid on goods exported out of India

**Table-1**

S. No.	Entity	Authority
1.	Proprietorship Firm	Proprietor
2.	Partnership Firm	Any Partner
3.	HUF	Karta
4.	Company	Managing Director or any Whole Time Director
5.	Association of persons or Body of individuals or a Society	Any of the Members of the Managing Committee
6.	Trust	Trustee in the Board of Trustees

If Aadhaar number has not been assigned to the person required to undergo Aadhaar authentication, such person shall furnish the following identification documents, namely: –

- a. Her/his Aadhaar Enrolment ID slip; **and**
- b. Bank passbook with photograph, **or** Voter ID card issued by the Election Commission of India **or** Passport **or** Driving license issued by the Licensing Authority under the Motor Vehicles Act, 1988

Such person shall undergo the authentication of Aadhaar number within a period of **30 days** of the allotment of the Aadhaar number.

Consequential amendments have been made in rule 23 (Revocation of cancellation of registration), rule 89 (Application for refund of tax, interest, penalty, fees or any other amount) and rule 96 (Refund of integrated tax paid on goods or services exported out of India) to make Aadhaar authentication under rule 10B mandatory for filing application for revocation of cancellation of registration under rule 23, refund application under rule 89 and for refund under rule 96. Such amendments shall also be effective from a date to be notified subsequently.

(iii) **Insertion of Rule 96C (Bank Account for credit of refund) - To be effective from a date to be notified**

The bank account under the following provisions shall mean such bank account of the applicant which is in the name of applicant and obtained on his PAN:

Rule 91(3)	Grant of provisional refund and issuance of payment order in Form GST RFD-05
Rule 92(4)	Order sanctioning refund under section 54(8) of the CGST Act, 2017 and issuance of payment order
Rule 94	Order sanctioning interest on delayed refunds and issuance of payment order

In case of a proprietorship concern, the PAN of the proprietor shall also be linked with the Aadhaar number of the proprietor.

(iv) **Rule 45 (Conditions and restrictions in respect of inputs and capital goods sent to the job worker) – To be effective from 1<sup>st</sup> October, 2021**

In order to give effect to one of the recommendations of the 45<sup>th</sup> GST Council meeting, sub-rule (3) of rule 45 has been amended to specify the periodicity of furnishing Form ITC-04 as under:

S. No.	Particulars	Remark
(a)	Principal, whose annual aggregate turnover in immediately preceding financial year exceeds Rs. 5 crores	ITC-04 to be furnished <b>once in six months</b> (commencing on 1 <sup>st</sup> April and 1 <sup>st</sup> October)

(b)	In any other case	ITC-04 to be furnished annually
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(v) **Rule 59 (Form and manner of furnishing details of outward supplies) – To be effective from 1<sup>st</sup> January, 2022**

Earlier, the registered person was not allowed to file Form GSTR-1 if he has not furnished the return in Form GSTR-3B for preceding two months. Now, the said period of **two months** has been reduced to **one month**. Thus, the registered person shall not be able to file Form GSTR-1 if he has not filed the Form GSTR-3B for the previous month. Consequently, sub-clause (c) has been omitted.

(vi) **Rule 89 (Application for refund of tax, interest, penalty, fees or any other amount) – To be effective from 24<sup>th</sup> September, 2021**

A new sub-rule (1A) has been inserted in rule 89 to prescribe specific provisions for claiming refund of tax under section 77 of the CGST Act, 2017. The new sub-section lays down that any person, claiming refund under section 77 of any tax paid by him, in respect of a transaction considered by him to be an intra-State supply, which is subsequently held to be an inter-State supply, may, before the expiry of a period of two years from the date of payment of the tax on the inter-State supply, file an application electronically in FORM GST RFD-01 through the common portal, either directly or through a Facilitation Centre notified by the Commissioner.

The said application may, as regard to any payment of tax on inter-State supply before coming into force of this sub-rule, be filed before the expiry of a period of two years from the date on which this sub-rule comes into force.

**2. Amendment in Notification No. 03/2021 dated 23.02.2021**

[Notification No. 03/2021 dated 23<sup>rd</sup> February, 2021](#) specifies persons who are exempted from the requirement of Aadhaar authentication under section 25(6D) of the CGST Act, 2017. This notification has been amended to provide that in addition to provisions of Aadhaar authentication as provided under sub-sections (6B) or (6C) of section 25, provisions of sub-section (6A) shall also not apply to persons specified under the notification.

[Notification No 36/2021-Central Tax dated 24<sup>th</sup> September, 2021](#)

**3. Amendments in CGST rates for Services**

Following changes have been made in rate notification for services viz., [Notification No. 11/2017-Central Tax \(Rate\) dated 28<sup>th</sup> June, 2017](#) vide [Notification No. 06 /2021-Central Tax \(Rate\) dated 30<sup>th</sup> September, 2021](#):

- CGST rate of 6% is applicable on composite supply of works contract supplied by way of construction, repair etc., of a building used for carrying out the activities in relation to mid-day meal scheme sponsored by the Central/State Government, Union territory or local authorities if such building is owned by an entity registered under section 12AA of the Income Tax Act, 1961. Now the CGST rate of 6% would also be applicable if the building is owned by an entity registered under section 12AB of the Income Tax Act, 1961. This

amendment has been made consequent to the insertion of 12AB in the Income-tax Act, 1961 vide the Finance Act, 2020.

- Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property Right in respect of both IT software and goods other than IT software would be taxable at the rate of 9% [CGST]. Thus, the earlier bifurcation of IT software and goods other than IT software has been done away with.
- Services by way of job work in relation to manufacture of alcoholic liquor for human consumption would be taxable at the rate of 9% [CGST].
- Services by way of printing of all goods falling under Chapter 48 or 49, which attract CGST @ 6% or 2.5% or Nil, as the case may be, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer were taxable @ 6% [CGST]. This entry has been omitted. Now other manufacturing services; publishing, printing and reproduction services; material recovery services shall be taxable at the rate of 9% [CGST]. Thus, the bifurcation done earlier has been done away with.
- The rates relating to admission to amusement parks and casinos etc. has also been amended.

Equal rates of SGST would also be applicable in all the above cases. Parallel amendments have been made in IGST rate notification for services as well.

#### **4. Amendments in Exemption for Services**

Following changes have been made in exemption notification for services viz., [Notification No. 12/2017-Central Tax \(Rate\) dated 28<sup>th</sup> June, 2017](#) vide [Notification No. 7/2021-Central Tax \(Rate\) dated 30<sup>th</sup> September, 2021](#)

- Consequent to the insertion of section 12AB in the Income-Tax Act, 1961 vide the Finance Act, 2020, exemptions available to entities registered under section 12AA of the Income Tax Act, 1961 have been extended to entities registered under section 12AB as well.
- Exemption granted to services related to FIFA Women's World Cup, 2020 to be hosted in India shall continue to be exempted "whenever rescheduled".
- Exemption has been granted to services by way of right to admission to the events organized under AFC Women's Asia Cup, 2022 subject to fulfillment of specified condition.
- Exemption granted to services by way of transportation of goods by an aircraft/vessel from customs station of clearance in India to a place outside India has been extended to 30<sup>th</sup> September, 2022.
- Exemption granted to services of leasing of assets (rolling stock assets including wagons, coaches, locos) by the Indian Railways Finance Corporation to Indian Railways has been withdrawn.
- Exemption has been granted to services by way of granting National Permit to a goods carriage to operate through-out India / contiguous States.
- Exemption available to services provided to the Central Government, State Government, Union territory administration under any training programme for

which **total expenditure** is borne by the Central Government, State Government, Union territory administration would now be available if 75% or more of the total expenditure is borne by the Central/State Government or UT administration.

Parallel amendments have been made in IGST exemption notification for services as well.

## **5. Amendments in CGST rates for Goods**

Amendments have also been made in rate notification for goods to give effect to the decisions taken by the GST Council at its 45<sup>th</sup> Meeting held on 17.09.2021. For example, CGST rate on specified renewable energy devices and parts has been increased from 2.5% to 6%, CGST rate on waste and scrap of polyurethanes and other plastics has been increased from 2.5% to 9%, CGST rate on fortified rice kernels for schemes like ICDS etc. and medicine keytruda for treatment of cancer has been reduced from 9% to 2.5% and 6% to 2.5% respectively. Further, carbonated beverages of fruit drink or carbonated beverages with fruit juice shall now be charged to CGST at the rate of 14%. Equal rates of SGST would also be applicable in all the above cases.

It has been clarified that exemption available to seeds, fruit and spores, of a kind used for sowing will not cover seeds meant for any use other than sowing. Further, exemption available on certain specified COVID-19 medicines has been extended to 31<sup>st</sup> December, 2021.

Parallel amendments have been made in IGST rate notifications for goods as well.

[\[Notification No. 8/2021-Central Tax \(Rate\) dated 30<sup>th</sup> September, 2021, Notification No. 9/2021-Central Tax \(Rate\) dated 30<sup>th</sup> September, 2021, Notification No. 11/2021-Central Tax \(Rate\) dated 30<sup>th</sup> September 2021, Notification No. 12/2021-Central Tax \(Rate\) dated 30<sup>th</sup> September, 2021\]](#)

## **6. Amendment in reverse charge in respect of Goods**

The reverse charge notification for goods viz., [Notification No.4/2017-Central Tax \(Rate\) dated 28<sup>th</sup> June, 2017](#) has been amended vide [Notification No. 10/2021-Central tax \(Rate\) dated 30<sup>th</sup> September, 2021](#) to provide that tax on the following goods shall be payable by the *registered recipient of such goods under reverse charge when procured from an unregistered supplier*:

Essential oils other than those of citrus fruit namely: -

- a) Of peppermint (Menthapiperita);
- b) Of other mints: Spearmint oil (exmenthaspicata), Water mint-oil (exmentha aquatic), Horsemint oil (exmenthasylvestries), Bergament oil (ex-mentha citrate)

Parallel amendment has been made in IGST reverse charge notification as well.

## **II. Circulars**

### **1. Clarification on doubts related to scope of “intermediary”**

An intermediary is someone who arranges or facilitates the supplies of goods or services or securities between two or more persons wherein two of them transact in the supply of goods or services or securities (the main supply) and one in arranging or facilitating (the ancillary supply) the said main supply. There are two distinct supplies in case of

provision of intermediary services-main supply between the two principals and ancillary supply of facilitating or arranging the main supply and which is clearly identifiable and distinguished from the main supply. This ancillary supply is supply of intermediary service.

The definition of intermediary is exhaustive and not inclusive. The use of the expression “arranges or facilitates” in the definition of “intermediary” suggests a subsidiary/supportive role for the intermediary i.e., he must not be providing the main supply. In cases wherein, the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of “intermediary”. Sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.

The above position has been further clarified with the help of few illustrations in the circular itself.

**[Circular No. 159/15/2021-GST dated 20<sup>th</sup> September, 2021](#)**

## **2. Clarifications in respect of certain GST related issues**

- (i) W.e.f. 01.01.2021, in case of debit notes, the date of issuance of debit note (not the date of underlying invoice) shall determine the relevant financial year for the purpose of section 16(4) of the CGST Act, 2017.
- (ii) The availment of ITC on debit notes in respect of amended provision shall be applicable from 01.01.2021. Accordingly, for availment of ITC on or after 01.01.2021, in respect of debit notes issued either prior to or after 01.01.2021, the eligibility for availment of ITC will be governed by the amended provision of section 16(4) of the CGST Act, 2017, whereas any ITC availed prior to 01.01.2021, in respect of debit notes, shall be governed under the provisions of section 16(4), as it existed before the said amendment on 01.01.2021.
- (iii) There is no need to carry the physical copy of tax invoice in cases where e-invoice has been generated by the supplier under rule 48(4) of the CGST Rules, 2017 and production of the Quick Response (QR) code having an embedded Invoice Reference Number (IRN) electronically, for verification by the proper officer, would suffice.
- (iv) Only those goods which are actually subjected to export duty i.e., on which some export duty has to be paid at the time of export, will be covered under the restriction imposed under section 54(3) of the CGST Act, 2017 for availment of refund of accumulated ITC. Goods, which are not subject to any export duty and in respect of which either NIL rate is specified, or which are fully exempted from payment of export duty would not get covered by the said restriction.

**[Circular No. 160/16/2021-GST dated 20<sup>th</sup> September, 2021](#)**

## **3. Clarification relating to export of services-condition (v) of section 2(6) of the IGST Act, 2017**

It has been clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India (also referred to as foreign

company under Companies Act), are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as “merely establishments of a distinct person in accordance with Explanation 1 in section 8”. Therefore, supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would qualify as ‘export of services’, subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

[Circular No. 161/17/2021-GST dated 20<sup>th</sup> September, 2021](#)

**4. Clarification on certain doubts/issues in respect of refund of tax specified in section 77(1) of the CGST Act, 2017 and section 19(1) of the IGST Act, 2017**

**A. Meaning of the term “subsequently held”**

The term “**subsequently held**” given in section 77 of CGST Act and section 19 of IGST Act **covers both the cases** where the inter-State or intra-State supply made by a taxpayer, is either subsequently found by taxpayer himself as intra-State or inter-State respectively or where the inter-State or intra-State supply made by a taxpayer is subsequently found/ held as intra-State or inter-State respectively by the tax officer in any proceeding.

**B. The relevant date for claiming refund under section 77 of the CGST Act, 2017/ section 19 of the IGST Act, 2017**

Through the insertion of sub-rule (1A) in rule 89 vide aforementioned [Notification No. 35/2021-Central Tax dated 24.09.2021](#), it has been clarified that the refund under section 77 of CGST Act/ section 19 of IGST Act, 2017 can be claimed before the expiry of two years from the date of payment of tax under the correct head. However, in cases, where the taxpayer has made the payment in the correct head before the date of issuance of [Notification No.35/2021-Central Tax dated 24.09.2021](#), the refund application under section 77 of the CGST Act/ section 19 of the IGST Act can be filed before the expiry of two years from the date of issuance of the said notification. i.e., from 24.09.2021.

Rule 89 (1A) of the CGST Rules would be applicable for section 19 of the IGST Act also, where the taxpayer has initially paid IGST on a specific transaction which later on is held as intra-State supply and the taxpayer accordingly pays CGST and SGST on the said transaction. It is also clarified that any refund applications filed, whether pending or disposed off, before issuance of *Notification No. 35/2021-Central Tax, dated 24.09.2021*, would also be dealt in accordance with the provisions of rule 89(1A) of the CGST Rules.

**C. Tax adjustment through issuance of credit note**

Refund under section 77 of the CGST Act, 2017 / section 19 of the IGST Act, 2017 would not be available where the taxpayer has made tax adjustment through issuance of credit note under section 34 of the CGST Act, 2017 in respect of the said transaction.

[Circular No. 162/18/2021-GST dated 25<sup>th</sup> September, 2021](#)

## 5. Clarification on rate and classification for certain goods:

Some of the significant clarifications made in *Circular No. 163/19/2021 GST dated 06.10.2021* are:

- ❖ Exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST @ 5%/12% as specified in the respective rate Schedules.
- ❖ With effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e. including tamarind seeds), if not supplied as seed for sowing, would attract GST @ 5%.
- ❖ Pure henna powder and henna leaves, having no additives is classifiable under tariff item 1404 90 90 and shall attract GST @ 5%. Further, the GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall also be 5%.
- ❖ Flavored and coated *illaichi* is a value added product and falls under sub-heading 2106 and thus, attracts GST @ 18%.
- ❖ Exemption available to coconut, fresh or dried, whether or not shelled or peeled is not available to copra and it attracts GST @ 5% irrespective of use.
- ❖ Brewers' spent grain (BSG), dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST @ 5%.

For detailed clarifications on the above aspects and other issues clarified by the CBIC namely, GST rate on pharmaceutical goods falling under heading 3006, applicability of GST rate of 12% on all laboratory reagents and other goods falling under heading 3822, requirement of original/ import essentiality certificate issued by the DGH on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations, GST rates on external batteries sold along with UPS systems/ inverter, specified renewable energy projects, fiber drums, whether corrugated or non-corrugated, please refer [Circular No. 163/19/2021-GST dated 6<sup>th</sup> October, 2021.](#)

## 6. Clarification on rate and exemption for certain services:

The significant clarifications made in *Circular No. 164/20/2021 GST dated 06.10.2021* are:

- ❖ Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under “restaurant service” and attract GST rate of 5% (without ITC).
- ❖ Where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.
- ❖ Services provided by any institutions/ NGOs under the central scheme of “Scholarships for students with Disabilities” where total expenditure is borne by the Government is exempt under GST under entry no. 72 of *Notification No. 12/2017-CT(Rate)*.

- ❖ As the satellite launch services supplied by New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), are similar to those supplied by ANTRIX Corporation Ltd, *Circular No. 2/1/2017-IGST dated 27.09.2017*, issued in respect of ANTRIX Corporation Ltd. is applicable to NSIL as well.

*Circular No. 2/1/2017-IGST* has clarified that place of supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd. to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.

- ❖ Overloading charges at toll plazas would get the same treatment as given to toll charges.
- ❖ The expression “giving on hire” in Sl. No. 22 of the *Notification No. 12/2017-CT (Rate)* includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles.
- ❖ 28% rate [entry 34 (iia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry-go rounds, go-carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to entries 34(iii) and 34(iia) as they existed prior to their amendment w.e.f 01.10.2021.
- ❖ The expression “food and food products” in Sl. No. 26 [Item 1(i)f] of *Notification No. 11/2017-CT (R)* excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, services by way of job work in relation to manufacture of alcoholic liquor for human consumption are not eligible for the GST rate of 5% prescribed under the said entry. GST Council recommended that such job work would attract GST at the rate of 18%.
- ❖ Service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e., “licensing services for the right to use minerals including its exploration and evaluation” and the intention has always been to tax this activity / supply at standard rate of 18%.

For detailed clarifications on the above aspects, please refer [\*Circular No. 164/20/2021-GST dated 6<sup>th</sup> October, 2021.\*](#)

## **Foreign Trade Policy (FTP)**

### **Foreign Trade Policy 2015-2020 further extended till March 2022**

The DGFT vide [\*Notification No. 33/2015-2020 dated 28<sup>th</sup> September, 2021\*](#) has further extended the duration of Foreign Trade Policy 2015-2020 (FTP) till 31.03.2022. Further, imports against Advance Authorisation and capital goods imported under EPCG Authorisation for physical exports shall also remain exempted from IGST and Compensation Cess till 31.03.2022.

Furthermore, imports and/ or procurement from bonded warehouse in DTA or from international exhibition held in India, by an EOU/EHTP/STP/BTP would also remain exempted from IGST and Compensation Cess till 31.03.2022.