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AMENDMENT TO CGST ACT, NOTIFIED.

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Vide Notification 39/2021 Central Taxes Dt. 21.12.2021, the following sections of the Finance Act, 2021 have been notified to take effect from 01.01.2021.

108. Amendment of section 7. – In the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereinafter referred as the Central Goods and Services Tax Act), in section 7, in sub-section (1), after clause (a), the following clause shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 2017, namely :–

“(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;”.

(Retrospective amendment to overcome the effect of SC judgement in Calcutta Club case)

109. Amendment of section 16. – In section 16 of the Central Goods and Services Tax Act, in sub section (2), after clause (a), the following clause shall be inserted, namely :–

“(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;”.

(Amendment to make GSTR 2 A mandatory to avail ITC)

113. Amendment of section 74. – In section 74 of the Central Goods and Services Tax Act, in Explanation 1, in clause (ii), for the words and figures “sections 122, 125, 129 and 130”, the words and figures “sections 122 and 125” shall be substituted.

(Deemed conclusion of proceedings will not apply to Section 129 and 130)

114. Amendment of section 75. – In section 75 of the Central Goods and Services Tax Act, in sub section (12), the following Explanation shall be inserted, namely :–

‘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.’.

(Tax declared in GSTR 1 can directly be recovered without issue of any SCN)

115. Amendment of section 83. – In section 83 of the Central Goods and Services Tax Act, for sub section (1), the following sub-section shall be substituted, namely :–

“(1) Where, after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary so to do, he may, by order in writing, attach provisionally, any property, including bank account, belonging to the taxable person or any person specified in sub-section (1A) of section 122, in such manner as may be prescribed.”.

(Applicability of Section 83 extended)

116. Amendment of section 107. – In section 107 of the Central Goods and Services Tax Act, in sub-section (6), the following proviso shall be inserted, namely :–

“Provided that no appeal shall be filed against an order under sub-section (3) of section 129, unless a sum equal to twenty-five per cent of the penalty has been paid by the appellant.”.

(For appeals against orders passed under Section 125, 25 % of the penalty shall be paid as pre deposit. 129 deals with detention and seizure)

117. Amendment of section 129. – In section 129 of the Central Goods and Services Tax Act, –

(i) in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely :–

“(a) on payment of penalty equal to two hundred per cent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two per cent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such penalty;

(b) on payment of penalty equal to fifty per cent of the value of the goods or two hundred per cent of the tax payable on such goods, whichever is higher, and in case of exempted goods, on payment of an amount equal to five per cent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such penalty;”:

(ii) sub-section (2) shall be omitted;

(iii) for sub-section (3), the following sub-section shall be substituted, namely :–

“(3) The proper officer detaining or seizing goods or conveyance shall issue a notice within seven days of such detention or seizure, specifying the penalty payable, and thereafter, pass an order within a period of seven days from the date of service of such notice, for payment of penalty under clause (a) or clause (b) of sub-section (1).”;

(iv) in sub-section (4), for the words “No tax, interest or penalty”, the words “No penalty” shall be substituted;

(v) for sub-section (6), the following sub-section shall be substituted, namely :
–

“(6) Where the person transporting any goods or the owner of such goods fails to pay the amount of penalty under sub-section (1) within fifteen days from the date of receipt of the copy of the order passed under sub-section (3), 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 payable under sub-section (3) :

Provided that the conveyance shall be released on payment by the transporter of penalty under sub section (3) or one lakh rupees, whichever is less :

Provided further that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of fifteen days may be reduced by the proper officer.

(Various changes in the procedures relating to detention and seizure of goods and conveyances)

118. Amendment of section 130. – In section 130 of the Central Goods and Services Tax Act, –

(a) in sub-section (1), for the words “Notwithstanding anything contained in this Act, if “, the word “Where” shall be substituted;

(b) in sub-section (2), in the second proviso, for the words, brackets and figures “amount of penalty leviable under sub-section (1) of section 129”, the words “penalty equal to hundred per cent of the tax payable on such goods” shall be substituted;

(c) sub-section (3) shall be omitted.

(Various changes in the procedures relating to confiscation and levy of penalties)

119. Substitution of new section for section 151. – For section 151 of the Central Goods and Services Tax Act, the following section shall be substituted, namely : –

“151. Power to call for information. – 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.”.

(Scope of the power to call for information widened)

120. Amendment of section 152. – In section 152 of the Central Goods and Services Tax Act, –

(a) in sub-section (1), –

(i) the words “of any individual return or part thereof” shall be omitted;

(ii) after the words “any proceedings under this Act”, the words “without giving an opportunity of being heard to the person concerned” shall be inserted;

(b) sub-section (2) shall be omitted.

(Procedural changes in the provisions relating to bar on disclosure of information)

121. Amendment of section 168. – In section 168 of the Central Goods and Services Tax Act, in sub-section (2), –

(i) for the words, brackets and figures “sub-section (1) of section 44”, the word and figures “section 44” shall be substituted;

(ii) the words, brackets and figures “sub-section (1) of section 151,” shall be omitted.

(Consequential amendments relating to Power to issue instructions or directions)

122. Amendment to Schedule II. – In Schedule II of the Central Goods and Services Tax Act, paragraph 7 shall be omitted and shall be deemed to have been omitted with effect from the 1st day of July, 2017.

(In view of the retrospective amendment in Sec. 7, this provision is not required and hence deleted)

Section 110 and 111 of the Finance Act, 2021 deals with taking away the requirement of obtaining Chartered Accountant Certification for Annual returns. These have already been notified to take effect from 01.08.2021 vide Notification 29/2021 Central Tax Dt. 30.07.2021.

Section 112 of the Finance Act, 2021 has introduced a proviso in Section 50 of the CGST Act, to provide that interest for delayed payment of tax shall be applicable only on the net tax liability paid in cash. This amendment has already been notified to take effect from 01.06.2021 vide Notification 16/2021 Central Tax Dt. 01.06.2021.

Amendment to CGST Rules, notified.

Vide Notification 35/2021 Central Tax Dt. 24.09.2021 various amendments have been made in CGST Rules. Some of these amendments will take effect only from the date to be notified. Now, vide Notification 38/2021 Central Tax Dt. 21.12.2021, the following amendments have been notified to take effect from 01.01.2022.

(2) After rule 10A of the said rules, with effect from the date as may be notified, the following rule shall be inserted, namely :-

“10B. Aadhaar authentication for registered person. - The registered person, other than a person notified under sub-section (6D) of section 25, who has been issued a certificate of registration under rule 10 shall, undergo authentication of the Aadhaar number 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, in order to be eligible for the purposes as specified in column (2) of the Table below :

S. No.	Purpose
(1)	(2)
1	For filing of application for revocation of cancellation of registration in FORM GST REG-21 under Rule 23
2	For filing of refund application in FORM RFD-01 under rule 89
3	For refund under rule 96 of the integrated tax paid on goods exported out of India

Provided that if Aadhaar number has not been assigned to the person required to undergo authentication of the Aadhaar number, such person shall furnish the following identification documents, namely :-

(a) her/his Aadhaar Enrolment ID slip; and

(b) (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 authentication of Aadhaar number within a period of thirty days of the allotment of the Aadhaar number.”;

(3) In rule 23 of the said rules, in sub-rule (1), with effect from the date as may be notified, after the words “on his own motion, may”, the words, figures and letter “, subject to the provisions of rule 10B,” shall be inserted;

(6) In rule 89 of the said rules, -

(i) in sub-rule (1), with effect from the date as may be notified, after the words “may file”, the words “, subject to the provisions of rule 10B,” shall be inserted;

(7) In rule 96 of the said rules, in sub-rule (1), after clause (b), with effect from the date as may be notified, the following clause shall be inserted, namely :-

(c) the applicant has undergone Aadhaar authentication in the manner provided in rule 10B.

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