



Important changes in GST notified vide Notification No. 39/2021 CT dated 21.12.2021

(Effective from 01.01.2022)

1. Scope of Supply widened:

New clause (aa) added in Subsection (1) of Section 7 of the CGST Act, 2017

“(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;”.

M & C View:

This provision was brought in to counter various court judgements which went against the department. Various courts have held that there is no service provided by the clubs / societies to its own members. This amendment is bringing in deeming provision to tax such activities.

2. New condition added to be eligible to avail input tax credit

A new clause (aa) is inserted in Section 16 sub section 2 of the CGST Act, 2017

“(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;”

M & C View:

In addition to the existing four conditions to avail input tax credit, this additional new condition is inserted, to again reduce litigation and allow input tax credit only if the supplier has filed his GSTR 1 and the eligible credit is appearing in recipient's GSTR 2A / GSTR 2B. The question is this provision is inserted with effect from 01.01.2022, so the eligible credits before that can it claimed? There are options which can be applied and credit taken.

3. Detained goods to file an appeal 25% of penalty to be paid

Section 107 (6) of the CGST Act 2017 is amended to add the following proviso:

“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.”.

M & C View:

When the vehicle is detained or goods seized by the proper officer under section 129(3), the taxpayer is forced to deposit 25% of the penalty amount if he goes for appeal. This will be used by the officers further to harass the tax payers and create fear. This are the provisions which bring mistrust between the taxpayers and the department.

4. Penalty increased when the goods are detained or seized

Section 129 sub section (1) clause (a) is amended as below:

“(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;”

M & C View:

Before this amendment the provision was the goods or conveyance shall be released on payment of applicable taxes and penalty equal to 100% of the tax payable. Now they have amended to remove the condition to pay the taxes and only penalty needs to be paid to the tune of 200% of the tax payable, again a draconian provision which will increase harassment and corruption.