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## **RETURN FILING AMENDMENTS APPLICABLE WITH EFFECT FROM 1<sup>ST</sup> JANUARY 2022: CBIC**

The Central Board of Indirect Taxes and Customs (**‘Board’**), *vide Notification No. 39/2021-Central Tax<sup>1</sup>* has notified that Section 108, 109, 115, 116 and 120 of the Finance Act, 2021 (**“the Act”**), which seeks to amend various provisions of the Central Goods and Services Act, 2017 (**“CGST Act”**). These provisions will come into force from 1<sup>st</sup> January, 2022.

### **1. Section 108 of the Act**

#### **Background:**

- In the Supreme Court case of *State of West Bengal v. Calcutta Club Limited<sup>2</sup>*, it was held that service tax is not applicable on transactions between incorporated clubs/ associations and its members owing to the principle of mutuality.
- Vide Section 108 of the Act, clause (aa) is to be inserted after section 7(1)(a) of the CGST Act which says that “(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.”

#### **Overview:**

This change would subject the clubs to service tax on transactions with their members. Further, the provision would retrospectively be effective from 1<sup>st</sup> July 2017 i.e., before the commencement of the CGST Act.

### **2. Section 109 of the Act**

#### **Background:**

- Section 16 (2) of the CGST Act lays down the basic conditions to seek input tax credit (**“ITC”**) by a registered taxpayer.
- Section 109 of the Act inserts a clause after Section 16(2)(a), 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”.

#### **Overview:**

Rule 36(4) of the CGST Rules, 2017 specifies the conditions for registered persons to claim ITC beyond 5% of the amount reflected in GSTR 2A/2B to file returns pertaining to outward taxable supplies in FORM GSTR-1. FORM GSTR-2B is a system-generated (auto-populated) statement

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<sup>1</sup> F.No. CBIC-20006/26/2021-GST dated 21 December, 2021

<sup>2</sup> 2019 (29) GSTL 545 (S.C.)

reflecting ITC details. Rule 36(4) of the CGST Rules has been amended to provide that the recipient would not be able to take any ITC if the same is not appearing in his GSTR-2B.

The above-mentioned amendment makes it compulsory to file the GSTR-1 form to claim any ITC from 1<sup>st</sup> January, 2022 onwards. This amendment could have the effect of nullifying Rule 36(4) of the CGST Rules since it is contradicting the same.

### **3. 115 of the Act**

#### **Background:**

- As per section 83 of the CGST Act, the Commissioner in Board can undertake provisional attachments only during the pendency of the stipulated proceedings.
- *Vide* the amendment, w.e.f. from 1<sup>st</sup> January 2022, Section 83 (1) of the Act is substituted with “(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.”

#### **Overview:**

Hon’ble Supreme Court in case of **Radha Krishan Industries vs. State of Himachal Pradesh**<sup>3</sup> interpreted the term “necessary so to do for protecting public revenue” to mean that the interests of the government revenue cannot be protected without ordering a provisional assessment. The court also specified the limitation of the powers of the Commissioner granted under Section 83 of the CGST Act to prescribe that the commissioner cannot exercise the discretion to afford the assessee an opportunity of being heard. *Vide* this amendment, the Commissioner’s powers are expanded in view of undertaking provisional attachment as soon as the proceedings are initiated, thereby reversing the Supreme Court ruling in the abovementioned Judgment.

### **4. 116 of the Act**

#### **Background:**

- As per Section 107 (6) of the CGST Act, a pre-deposit of 10% of the disputed tax amount is to be paid for filing of the first appeal.

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<sup>3</sup> 2021 (48) GSTL 113 (S.C.)

- *Vide* Section 116 of the Act, in cases where orders are passed under section 129 (3) of the CGST Act, where penalty has been levied for e-way bill violations, the pre-deposit would be equal to 25% of the penalty ordered to be paid by the appellant.

**Overview:**

For filing second appeals in cases of orders passed under Section 129(3) of the Act, there is no such pre-deposit which is to be paid.

## **5. Section 120 of the Act**

**Background:**

- Currently, as per Section 152 (2) of the CGST Act no information with respect to any individual return or any part thereof which was received under Section 150 or Section 151 can be published that identifies the specific person without the consent of the said person. Further, such information cannot be used in any other proceedings.
- Through the amendment vide Section 120 of the Act, the specified embargo will apply with respect to any information obtained under sections 150 or 151 *w.e.f.* 1<sup>st</sup> January, 2022. It will not be limited to the information with respect to the individual return or part thereof. Furthermore, such information could be used for any proceedings under the law but with the fulfilment of the pre-requisite of providing an opportunity to be heard to such person.

**Overview:**

The above-mentioned amendment shall leave Section 152 (2) of the Act, redundant. The said provision allows that for accessing information for the purposes of prosecution and hence, with the amendment under section 152 (1), the same is omitted.

## **6. Rule 59(6) of the Central Goods and Services Tax Rules, 2017**

**Background:**

- Under section 39 of the CGST Act, a registered taxpayer is supposed to furnish details pertaining to the tax paid and ITC claimed under FORM GSTR-3B for a particular month, and as per the erstwhile Rule 59(6) of the Central Goods and Service Tax Rules, 2017 (“**Rules**”), a registered taxpayer was restricted from filing details pertaining to outward taxable supplies if the details under FORM GSTR-3B are not furnished for two months consecutively.
- The Board, *vide* notification no. 35/2021-Central Tax dated 24<sup>th</sup> September, 2021 has mandated the filing of returns by a taxpayer under FORM GSTR-3B, in order to enable the taxpayer to file returns under FORM GSTR-1 for the succeeding month.

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**VA Comments:**

The amendments introduced *vide* the above notification have made the compliance stricter for the taxpayers. Specifically, introduction of Section 16(2)(aa) has a wide ramification upon the interest of the taxpayers as it restricts the availment of Input Tax Credit to the extent of amount reflecting in GSTR 2A/2B.

Furthermore, after four years of introduction of Goods and Service Tax, the Board has introduced stricter compliance with respect to filing the returns under FORM GSTR-3B which may have wide ramifications over small taxpayers for claiming their ITC.

**For any further information/ clarification, please feel free to write to:**

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