

# TAX INFO

*Dated 25/12/2021*

**Latest update on GST Law: Information regarding Notification No. 39/2021 Dated 21.12.2021 wherein earlier notified Sections of Finance Act, 2021 are brought into force w.e.f 01.01.2022.**

We expressly disclaim liability to any person in respect of anything done in reliance of the contents of this publication

The following amendments are brought into force **from 01.01.2022**.

## **Sec. 108 of the FA, 2021 / Sec.7(1)(aa) of the CGST Act, 2017**

The activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for consideration shall be included in the scope of supply and hence shall be leviable to tax.

An Explanation has also been added to introduce a deeming fiction to provide that such person (Clubs & Associations) 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.

This amendment has been made applicableright from the inception of GST (i.e. w.e.f. 01.07.2017) i.e. it is retrospective in nature.

## **Sec. 109 of the FA, 2021 / Sec.16(2)(aa) of the CGST Act, 2017**

The ITC shall be eligible only if the details of the invoice or debit note has been furnished by the supplier in their GSTR 1 and the same have been communicated to the recipient.

The said amendment is a prospective amendment and hence shall come into effect from 01.01.2022.

This new condition mandating the furnishing of the details in GSTR 1 in order to be eligible for ITC may lead to the removal of even the 5% limit that is presently available under the Rule 36(4).

## **Sec. 113 of the FA, 2021 / Sec.73 & 74 of the CGST Act, 2017**

The amendment provides that the penalty imposed for E-way bill violations u/s 129 and 130 shall not be deemed to be concluded under the proceedings initiated u/s 73 or 74.

Therefore, w.e.f. 01.01.2022 the proceedings initiated u/s 129 & 130 for E- way bill violations shall be independent proceedings and closure of parallel proceedings u/s 73 or 74 (in respect of any person including the subject person) shall not result in the deemed closure of the proceedings initiated u/s 129 & 130.

## **Sec. 114 of the FA, 2021 / Sec.75 of the CGST Act, 2017**

The term “self-assessed tax” under Explanation to Sec. 75 of the CGST Act, 2017 shall include the tax payable on supplies in respect of which the details have been furnished by the taxpayer in GSTR-1 but the same has not been included in the GSTR-3B and hence not paid.

This will allow the department to directly initiate the recovery action as regards the said self-assessed liability.

**Sec. 115 of the FA, 2021 / Sec.83 of the CGST Act, 2017**

Provisional attachment u/s 83 of the CGST Act, 2017 can be undertaken by the department only during the pendency of the stipulated proceedings.

The provisional attachment can be undertaken after the initiation of any proceeding under Chapter XII, Chapter XIV or Chapter XV if the Commissioner is of the opinion that the same is necessary to protect the revenue.

**Sec. 116 of the FA, 2021 / Sec.107 of the CGST Act, 2017**

In the context of filing of the first appeals (Commissioner) against the orders passed levying penalty u/s 129(3) for E-way bill violations, the quantum of the pre-deposit in such cases shall be equal to 25% of the penalty ordered to be paid.

**Sec. 117 of the FA, 2021 / Sec.129 of the CGST Act, 2017**

The following payments needs to be made to seek release of the conveyance/goods that have been detained on account of E-way bill violations:

a – where the owner comes forward	Taxable goods: Penalty equal to 200% of the tax payable
	Exempted goods: An amount of 2% of the value of goods or Rs. 25,000/-; whichever is less
a – where the owner does not comes forward	Taxable goods: Penalty equal to 50% of the value of goods or 200% of the tax payable; whichever is higher
	Exempted goods: An amount of 5% of the value of goods or Rs. 25,000/-; whichever is less

**Sec. 118 of the FA, 2021 / Sec. 130 of the CGST Act, 2017**

Sec. 130 dealing with the confiscation of goods/conveyance shall be completely de-linked from the provisions related to detention/seizure contained u/s 129. Hence confiscation can be made only if the ingredients specified u/s 130(1) is satisfied independent of Sec.129(1).

An amendment has been made u/s 130(2) to provide that the amount of fine payable by the person in lieu of confiscation shall be as the officer thinks fit but shall not be less than the penalty that is equal to the tax payable on the given goods. However such fine shall not exceed the market value of the goods less the tax chargeable thereon.

**Sec. 119 of the FA, 2021 / Sec. 151 of the CGST Act, 2017**

A general power to the Commissioner to issue an order and direct any person to furnish information relating to any matter connected with GST within such time, in such form, and in such manner, as may be specified therein.

**Sec. 120 of the FA, 2021 / Sec.152 of the CGST Act, 2017**

Any information gathered u/s 150 or 151 can now be used for any proceedings under the law but only after giving an opportunity of being heard to the concerned person.

**Suresh Aggarwal, Advocate**

**Compliance & Litigation under GST**

**Address: House No. 54, Pocket A-3, Sector-5, Rohini- 110085**

**Phone: 91-9810032846; 011 - 45131427**

**Email: sureshagg@gmail.com**

**Website: <http://www.sureshtaxation.com>**