

Indirect Taxes

GST ITC available when reflected in GSTR 2A/ 2B w.e.f. January 01, 2022

The CBIC notified the below mentioned amendments made vide Section 109 of the Finance Act, 2021 w.e.f. January 01, 2022:

After clause (a), in sub-section (2) of Section 16, the following clause shall be inserted:

“(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.”

Hence, w.e.f. January 01, 2022, following conditions need to be satisfied under Section 16(2) of the CGST Act for availing GST ITC on inward supplies of goods or services or both:

- The recipient is in possession of tax invoice or debit note issued by a supplier;
- The details of the above-mentioned invoice or debit note have been furnished by the supplier in the statement of outward supplies and such details have been communicated to the recipient in the manner specified under Section 37 of the CGST Act;
- The recipient has received the goods or services or both;
- The tax charged in respect of such supply has been actually paid to the Government and
- The recipient has furnished the return under Section 39 of the CGST Act.

Source: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-39-central-tax-english-2021.pdf>

Widened the scope of Section 83 of the CGST Act (Provisional Attachment of Property/ Bank Account) w.e.f. January 01, 2022

The CBIC notified the below mentioned amendments made vide Section 115 of the Finance Act, 2021 w.e.f. January 01, 2022:

“(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.”

Source: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-39-central-tax-english-2021.pdf>

Notified clarification w.r.t recovery of self-assessed tax w.e.f. January 01, 2022

The CBIC notified the below mentioned amendments made vide Section 114 of the Finance Act, 2021 w.e.f. January 01, 2022:

Insertion of New Explanation in Section 75(12) – General provisions relating to determination of tax

“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.”

An explanation has been inserted to Section 75(12) of the CGST Act to clarify that “self-assessed tax” shall include the tax payable in respect of outward supplies, the details of which have been furnished in Form GSTR-1 under Section 37 of the CGST Act, but not included in the return furnished in Form GSTR-3B under Section 39 of the CGST Act.

Source: <https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-39-central-tax-english-2021.pdf>

Amendments in Section 129 and 130 of the CGST Act, 2017 notified w.e.f. January 01, 2022

The CBIC notified the below mentioned amendments made vide Section 117 and 118 of the Finance Act, 2021 w.e.f. January 01, 2022:

Substitutions of clauses in Section 129 – Detention, seizure and release of goods and conveyances in transit

- **Section 129(1)(a):**

“(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.”

- **Section 129(1)(b):**

“(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;”

- **Section 129(2) shall be omitted**

“The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.”

- **Section 129 (3):**

“(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)”

- **Section 129(4):**

“No penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.”

- **Section 129(6):**

“(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.”

Amendment in Section 130 – Confiscation of goods or conveyances and levy of penalty

- **Section 130**

*“(1) Where, if any person-
.....”*

- **Second Proviso to Section 130(2)**

“Provided further that the aggregate of such fine and penalty leviable shall not be less than

the penalty equal to hundred per cent. of the tax payable on such goods”

- **Sub-section (3) of Section 130 shall be omitted.**
“Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.”

Source:<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-39-central-tax-english-2021.pdf>

Notified the amendments proposed in Section 74, 107, 151, 152 and 168 of the CGST Act, 2017 w.e.f. January 01, 2022

The CBIC notified the below mentioned amendments made vide Section 113, 116, 119, 120 and 121 of the Finance Act, 2021 w.e.f. January 01, 2022:

Amendment in Explanation 1(ii) to Section 74 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful-misstatement or suppression of facts

“(ii) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.”

Proviso to be inserted in Section 107(6) – Appeals to Appellate Authority

“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”

Substitution of Section 151 – Power to collect statistics

“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.”

Amendment of Section 152 – Bar on disclosure of information

“(1) No information with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act without giving an opportunity of being heard to the person concerned.”

Amendment in Section 168(2) – Power to issue instructions or directions

“The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, section 44, sub-sections (4) and (5) of section 52, sub-section (1) of section 143, except the second proviso thereof, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.”

Source:<https://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-39-central-tax-english-2021.pdf>

CONTACT DETAILS:

Head Office

3rd floor, MJ Tower, 55, Rajpur Road, Dehradun

T+91.135.2743283, 2747084, 2742026

F +91.135.2740186

Einfo@vkalra.com

Wwww.vkalra.com

Branch Office

80/28 Malviya Nagar, New Delhi

Einfo@vkalra.com

Wwww.vkalra.com

For any further assistance contact our team
at kmt@vkalra.com

© 2021 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.