

The logo for CGA Legal, featuring the text "CGA LEGAL" in a blue, sans-serif font. The text is centered between two curved, dark red lines that sweep upwards and outwards from the top and bottom, framing the text.

CGA LEGAL

Your GST Knowledge Partner

The background of the cover is a composite image. It shows a person's hands typing on a laptop keyboard. Overlaid on this are several semi-transparent icons: a pair of scales of justice, a magnifying glass, a document with a checklist, and a building with columns. The overall color palette is a mix of light blues, greys, and soft whites, giving it a professional and digital feel.

The GST Bulletin

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About The GST Bulletin

The GST Bulletin is a Weekly Newsletter from Team CGA Legal, a leading Indirect Tax Consultancy firm. The Newsletter is intending to keep its readers updated with all important legal and judicial updates in Goods & Services Tax and other Indirect Tax laws. The Newsletter also has a special column of GST Compliance Calendar for the month. Along with it, CGA Legal also sends various legal recommendations which have immense implications in improving the compliance of GST in your business.

All editions of our newsletters can be referred from below link below;

<https://www.cgalegal.co.in/home/newsletters.php>

Other Offerings from Team CGA Legal

- **CGA Legal GST Compliance Calendar:** Our Monthly Calendar detailing all GST related compliances for the month so that you never miss of any of the compliances.
- **CGA Legal Meet:** Our Monthly Webinar series discussing various trending GST legal and compliance issues

All the previous editions can be accessed on our website

www.cgalegal.co.in

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GST Updates - Notifications

Notification No.	Summary of Notifications
40/2021 – CT dated 29.12.2021	<p data-bbox="368 385 1039 422">Seeks to amend CGST Rules and Forms</p> <ul data-bbox="368 472 1300 1721" style="list-style-type: none"> <li data-bbox="368 472 1300 1100"> <p data-bbox="425 472 1300 692">• Rule 36(4) has been amended w.e.f. 01-01-2022 to provide that no input tax credit shall be availed by a registered person in respect of invoices or debit notes the details of which are required to be furnished under subsection (1) of section 37 unless,-</p> <p data-bbox="425 741 1248 913">(a) the details of such invoices or debit notes have been furnished by the supplier in the statement of outward supplies in FORM GSTR-1 or using the invoice furnishing facility; and</p> <p data-bbox="425 963 1243 1094">(b) the details of such invoices or debit notes have been communicated to the registered person in FORM GSTR-2B under sub-rule (7) of rule 60.</p> <li data-bbox="368 1141 1279 1313">• Sub-rule (1A) and (3A) has been inserted in Rule 80 to provide the extension of due date for furnishing annual return and self-certified reconciliation statement for FY 2020-21 till 28-02-2022. <li data-bbox="368 1363 1300 1721">• Proviso in Sub rule (3) to Rule 95 has been inserted w.e.f. 01-04-2022 to provide that where Unique Identity Number of the applicant is not mentioned in a tax invoice, the refund of tax paid by the applicant on such invoice shall be available only if the copy of the invoice, duly attested by the authorized representative of the applicant, is submitted along with the refund application in FORM GST RFD-10. <p data-bbox="368 1767 1279 1850">Note: The detailed analysis of the above changes can be viewed at:</p> <p data-bbox="368 1856 1219 1897">https://www.youtube.com/watch?v=dRee42ZuCWY</p>

GST Updates - Notifications

Notification No.	Summary of Notifications
40/2021 – CT dated 29.12.2021	<p>Seeks to amend CGST Rules and Forms</p> <ul style="list-style-type: none"> • Rule 142 has been amended w.e.f 01-01-2022 to provide that where the person concerned makes payment of the amount referred to in section 129(1) w.r.t. the penalty on detention of goods and vehicle, within seven days of the notice issued under Section 129(3) but before the issuance of order under the said section 129(3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and the proper officer shall issue an order in FORM GST DRC-05 concluding the proceedings in respect of the said notice. • Rule 144A has been inserted w.e.f 01-01-2022 specifying the provisions relating to recovery of penalty by sale of goods or conveyance detained or seized in transit. • Rule 154 has been amended w.e.f. 01-01-2022 providing the mechanism for disposal of proceeds of sale of goods or conveyance and movable or immovable property. • Form GST DRC-10 has been amended providing Notice for Auction under section 79 (1) (b) or section 129(6) of the Act. <p>Note: The detailed analysis of the above changes can be viewed at: https://www.youtube.com/watch?v=dRee42ZuCWY</p>

GST Updates - Notifications

Notification No.	Summary of Notifications
40/2021 – CT dated 29.12.2021	<p>Seeks to amend CGST Rules and Forms</p> <ul style="list-style-type: none"> Form GST DRC-22 has been specified for Commissioner to send a copy of the order of attachment to the concerned Revenue Authority or Transport Authority or any such Authority to place encumbrance on the said movable or immovable property, which shall be removed only on the written instructions from the Commissioner to that effect and a copy of such order shall also be sent to the person whose property is being attached under section 83. Form GST DRC-22A has been specified w.e.f. 01-01-2022 for filing objection by any person whose property is being attached as per the provisions of Rule 159.
22/2021 – Central Tax (Rate) dated 31-12-2021	<p>Seeks to make amendment in GST rate notification for services</p> <ul style="list-style-type: none"> Seeks to suspend Notification 15/2021-CT(R) dated 18-11-2021 and amending Notification 11/2017-CT(R) dated 28-06-2017 to provide the change in rate of tax and conditions relating thereto on certain services of composite supply of works contract services supplied to Union territory or a local authority.
21/2021 – Central Tax (Rate) dated 31-12-2021	<p>Seeks to amend rate of tax on goods</p> <ul style="list-style-type: none"> Seeks to suspend Notification No. 14/2021-CT(R) dated 18-11-2021 providing change in rate of tax on various textiles products and amending Notification No. 01/2017-CT(R) dated 28-06-2017 to provide the GST rate @ 12% on Footwear of sale value not exceeding Rs.1,000 per pair.

GST Updates - Notifications

Notification No.	Summary of Notifications
20/2021 – Central Tax (Rate) dated 28-12-2021	<p>Seeks to amend Notification No. 21/2018-CT(R) dated 26-07-2018</p> <ul style="list-style-type: none"> Seeks to amend HSN Code in Notification No. 21/2018-CT(R) dated 26-07-2018 providing concessional rate on Handicraft Goods in order to align with the new (seventh) edition of the Harmonized System (HS) nomenclature i.e., HS-2022, that has come into force from 01-01-2022.
19/2021 – Central Tax (Rate) dated 28-12-2021	<p>Seeks to amend Notification No. 02/2017-CT(R) dated 28-06-2017</p> <ul style="list-style-type: none"> Seeks to amend HSN Code in Notification No. 02/2017-CT(R) dated 28-06-2017 providing exemption on certain goods in order to align with the new (seventh) edition of the Harmonized System (HS) nomenclature i.e., HS-2022, that has come into force from 01-01-2022.
18/2021 – Central Tax (Rate) dated 28-12-2021	<p>Seeks to amend Notification No. 01/2017-CT(R) dated 28-06-2017</p> <ul style="list-style-type: none"> Seeks to amend HSN Code in Notification No. 01/2017-CT(R) dated 28-06-2017 providing rate of tax on goods in order to align with the new (seventh) edition of the Harmonized System (HS) nomenclature i.e., HS-2022, that has come into force from 01-01-2022.

GST Updates - GST Technical Updates

Implementation of Rule-59(6), as amended, on GST Portal

Dated 03-01-2022

As per Notification No. 35/2021 – Central Tax dated 24th September 2021, clause (a) of the sub-rule (6) of Rule 59 of CGST Rules, 2017 was amended. By way of this amendment, for the words “for preceding two months”, the words “for the preceding month” were substituted with effect from 1st January 2022. This means that from 1st January 2022 onwards, if a monthly filer has not filed the GSTR-3B for the preceding month, then such taxpayer will not be allowed to file the GSTR-1 for the subsequent month, till the GSTR-3B for the preceding month is filed.

This functionality will be implemented on the GST Portal shortly, after which the system will check the filing of preceding GSTR-3B before permitting to file GSTR-1 for the subsequent month.

Illustration:

A taxpayer has not filed the monthly GSTR-3B for November 2021. Now, the taxpayer tries to file GSTR-1 for December 2021 on 10th January 2022. The system will not allow filing of GSTR-1 for December 2021, and will allow filing of GSTR-1 for December 2021 only after the filing of GSTR-3B for November 2021.

Taxpayers may kindly ensure timely filing of GSTR-1 and GSTR-3B in consonance with Rule 59 of CGST Rules, 2017 to avoid any inconvenience in this regard.

GST Updates - GST Technical Updates

Reporting of supplies notified under section 9(5) / 5(5) by E-commerce Operator in GSTR-3B

Dated 04-01-2022

As per the GST Council decision to notify "Restaurant Service" under section 9(5) of the CGST Act, 2017 along with other services notified earlier such as motor cabs, accommodation and housekeeping services wherein the tax on such supplies would be paid by electronic commerce operator if such supplies made through it, Notification No. 17/2021-Central Tax (Rate) and 17/2021-Integrated Tax (Rate) dated 18.11.2021 have been issued. Accordingly, the tax on supplies of restaurant service supplied through e-commerce operators, shall be paid by the e-commerce operator with effect from the 1st January, 2022.

In light of the above, E-commerce operator and registered person would report taxable supplies notified under section 9(5) of CGST Act, 2017 and similar provisions in IGST/SGST/UTGST Act in the following manner.

Supplies reported by	Reporting in Form GSTR-3B
Supplies under 9(5) reported by ECO	Table 3.1(a) of GSTR-3B
Registered person/Restaurant supplying through ECO	Table 3.1(c) along-with nil and exempted supply

GST Updates - GST Technical Updates

Module wise new functionalities deployed on the GST Portal for taxpayers

Dated 05-01-2022

Various new functionalities are implemented on the GST Portal, from time to time, for GST stakeholders. These functionalities pertain to different modules such as Registration, Returns, Advance Ruling, Payment, Refund and other miscellaneous topics.

To view module wise functionalities deployed on the GST Portal, kindly follow the below link:

[https://tutorial.gst.gov.in/downloads/news/new %20functionalities compilation december 2021.pdf](https://tutorial.gst.gov.in/downloads/news/new_%20functionalities_compilation_december_2021.pdf)

Advisory on Revamped Search HSN Code Functionality

Dated 06-01-2022

A revamped & enhanced version of Search HSN Functionality has been launched on the GST Portal.

To view the detailed advisory, kindly follow the below link:

https://tutorial.gst.gov.in/downloads/news/advisory_on_search_hsn_code_functionality_final.pdf

GST Updates - GST Technical Updates

Upcoming functionality - Interest Calculator in GSTR-3B

Dated 08-01-2022

As a facilitation measure for taxpayers & for assisting the taxpayers in doing a correct self-assessment, a new functionality of interest calculator is being released in GSTR-3B. This functionality will arrive at the system computed interest on the basis of the tax liability values declared by the taxpayers. The interest applicable, if any, on the tax liability declared in the GSTR-3B of a particular tax-period will be computed after the filing of the said GSTR-3B. These system computed interest values will be auto-populated in the Table-5.1 of the GSTR-3B of the next tax-period. The facility would be similar to the collection of Late fees for GSTR-3B, filed after the Due date, posted in the next period's GSTR-3B.

This functionality has a user-friendly interface, which informs the taxpayers regarding the manner of system computation of interest values for each tax-head. This functionality also assists the taxpayers in doing correct computation of interest for the liability of any past period declared in the GSTR-3B for the current tax period, based on the details furnished by them on the portal.

This functionality will further improve ease of filing return under GST and is, therefore, in the direction of further reducing the compliance burden for taxpayers.

-For the detailed advisory regarding the interest calculator in GSTR-3B, kindly follow the below link

https://tutorial.gst.gov.in/downloads/news/interest_calculator_gstr3b.pdf

-For Annexure containing a sample computation with screenshots of the upcoming functionality, kindly follow the below link:

https://tutorial.gst.gov.in/downloads/news/interest_calculator_gstr3b_sample.pdf

GST Updates - GST News

Bring back provision for audit of GST annual returns: ICAI to Government

Dated 07-01-2022

Accounting rule maker Institute of Chartered Accountants of India (ICAI) has asked the government to bring back the audit and certification provisions relating to Goods and Services Tax (GST) annual returns, saying that doing away with audit will disrupt compliance.

For more details, kindly follow the below link:

<https://www.livemint.com/news/india/bring-back-provision-for-audit-of-gst-annual-returns-icai-to-govt-11641455916774.html>

CGA Legal GST Webinar

CGA Legal GST Webinar – January 2022

Dated 13-01-2022

CGA Legal organized a live webinar on 13th January 2022 for its January 2022 edition of its monthly webinar series on the topic **“Analysis of Major Changes in GST made applicable w.e.f. 1st January 2022”**.

The link to access the presentation of the webinar is provided below:

<https://www.cgalegal.co.in/superadmin/upload/article/1642666187.pdf>

Further, the recorded video of the live meet can be accessed with the following link:

<https://www.youtube.com/watch?v=dRee42ZuCWY>

GST – Judicial Precedents

1. Supply

Whether IGST is payable on High Sea Sales?

M/s AIE Fiber Resource and Trading (India) Private Limited [Telangana AAR]

Facts: Applicant is intending to supply imported goods to Indian customers on High Sea Sale (“HSS”) basis from Free Trade Warehousing Zone (“FTWZ”). The Applicant sells the imported goods before goods cross the customs frontier of India.

The applicant sought Advance Ruling whether the supplying of goods before clearance for home consumption is liable to IGST or not under Integrated Goods and Services Tax Act, 2017 (“the IGST Act”). If not, then whether proportionate ITC required to be reversed. Further, whether the Applicant is required to take registration at the FTWZ facilities.

Held: The transaction proposed to be made by applicant are covered in entry no 8 of Schedule III of Central Goods and Services Tax Act, 2017 which is not taxable under the CGST Act w.e.f. February, 01, 2019. Further, according to the explanation to Section 17(3) of CGST Act all transaction falling under Schedule III except entry no 5 will not be considered as value of exempted supply for purpose of reversal of ITC of common input services. Hence, no need of reversal of ITC.

Further, under Section 10(1)(a) of the IGST Act the place of supply shall be the location of goods at the time of which the movement of goods terminates for the delivery to the recipient – the Applicant i.e. supplier in this case is situated at Hyderabad, Telangana state whereas the goods are delivered in other states. That is the supplier of the goods and the place of supply of goods are in two different states. Therefore, it is an inter-state supply. Hence the Applicant need not obtain any registration in the other state in order to effect such inter-state transactions.

GST – Judicial Precedents

2. Registration

Whether non-submission of receipt of electricity bill is a ground of rejection of application for GST registration?

Ranjana Singh v. Commissioner of Service Tax [Allahabad High Court]

Facts: The Petitioner applied for grant of registration under the UPGST Act through online mode. On submission of the application, an inspection was made at the business premises of the Petitioner on September 15, 2021, and thereafter, show cause notice was issued for providing certain information and documents in support thereof. On submission of reply, by means of the order dated September 23, 2021, the application of the Petitioner was rejected for non-submission of receipt of electricity bill. However, petitioner submitted the house tax receipt in compliance with the show cause notice.

Held: The Petitioner had submitted the explanation regarding the nature or possession of the business premises as the owner and submitted the house tax receipt in compliance with the show cause notice.

The authorities without whispering any word or assigning any reason had rejected the application for non-specifying possession of the business premises and insisted for submission of electricity bill. The authorities have further erred in law in not pointing out any defect in submission of house tax receipt and insisted for submission of electricity bill whereas the notice dated September 15, 2021, gave an option for submission of recent electricity bill or house tax receipt.

It is clear from the records that all the documents as required under the UPGST Act and Rules made thereunder as well as in compliance to the show cause notice were furnished by the Petitioner and without pointing out any defect or short coming therein, the application should not have been rejected.

The Petitioner had every right to carry on her business lawfully and her right to do business cannot be confiscated in illegal and arbitrary manner.

GST – Judicial Precedents

3. Supply

Whether recovery made from employees on account of canteen facility, transportation facility and notice pay amounts to supply?

M/S. Emcure Pharmaceuticals Limited [AAR Maharashtra]

Facts: the applicant, seeking an advance ruling in respect of the following questions.

- a) Whether the GST would be payable on recoveries made from the employees towards providing canteen facility at subsidized rates in the factory and office?
- b) Whether the GST would be payable on the recoveries made from the employees towards providing bus transportation facility? If yes, whether the Applicant is exempted under Notification No. 12/2017 Central Tax (Rate)?
- c) Whether the GST would be payable on the notice pay recoveries made from the employees on account of not serving the full notice period?

Held: With respect to the canteen facility, the applicant is not supplying any canteen service to its employees in the instant case. Further, the said canteen facility services are also not the output service of the applicant since it is not in the business of providing canteen service. Rather, we find that, this canteen facility is provided to employees by the third party vendors and not by the applicant. Therefore, in the subject case, the applicant is not providing any canteen facility to its employees, in fact the applicant is a receiver of such services - Since the provision of canteen facility by the applicant to its employees is not a transaction made in the course or furtherance of business, and since in terms of Section 7 of the CGST Act, 2017, for a transaction to qualify as supply, it should essentially be made in the course or furtherance of business, it is found that the canteen services provided by the applicant to its employees cannot be considered as a “supply” under the relevant provisions of the CGST Act, 2017 and therefore the applicant is not liable to pay GST on the recoveries made from the employees towards providing canteen facility at subsidized rates.

GST – Judicial Precedents

3. Supply

Whether recovery made from employees on account of canteen facility, transportation facility and notice pay amounts to supply?

M/S. Emcure Pharmaceuticals Limited [AAR Maharashtra]

With respect to the recoveries made from the employees towards providing bus transportation facility, the applicant, arranging bus transportation facility for their employees is definitely not an activity which is incidental or ancillary to the activity of developing, manufacturing and marketing of pharmaceutical products, nor can it be called an activity done in the course of or in furtherance of developing, manufacturing and marketing of pharmaceutical products as it is not integrally connected to the business in such a way that without this, the business will not function. Hence, it is held that, GST would not be payable on the recoveries made from the employees towards providing bus transportation facility.

With respect to the notice pay recoveries made from the employees on account of not serving the full notice period, the recovery of notice pay from dues of employee / payment of notice pay by the employee who could not serve the notice for the period as per contractual agreement / appointment letter does not amount to supply and therefore as per Section 7 (1A) of the CGST Act, 2017, the provisions of Schedule II does not come into play - the notice pay recovered by the applicant from its employees is not liable to GST.

GST – Judicial Precedents

4. Appeals

Whether delay in filing manual appeal is acceptable when no order was uploaded online?

Jose Joseph, Vs Assistant Commissioner of Central Tax and Central Excise [Kerala High Court]

Facts: The issue involved in the appeals related to the claim for refund of unutilized input tax credit for the months of July, August, September and October, all of the year 2017. The assessing authority partly rejected the claim for refund by Ext.P1 order produced in each of the writ petitions dated 29.03.2019 and 03.04.2019.

The grievance of the writ petitioner arises from the allegation that Ext.P1 order was never uploaded in the web portal of the respondents and hence, the petitioner could not file appeals in the electronic form, which is mandated as per the present provisions of law. According to the petitioner, Ext.P1 order was communicated to him only on 10.04.2019 and instead of filing the appeals in the electronic form, petitioner preferred appeals in the physical form, but in so doing, a delay occurred. The 2nd respondent, as the Appellate Authority, rejected the appeals by Ext.P3 order, produced in each of the writ petitions, on the ground that the appeals are barred by limitation and that there is no provision for condoning the delay of more than 30 days.

Held: When admittedly there was a failure on the part of the respondents to upload the order in the original, petitioner cannot be mulcted with the responsibility of preferring appeals within the time period stipulated. The time period stipulated in the statute for filing an appeal is part of the same transaction that exists with the uploading of an order in the original - When the mode of appeal prescribed by Rules is only the electronic mode, the time limit of three months can start only when the assessee had the opportunity to file the appeal in the electronic mode. The assessee cannot be blamed if he waited for the order to be uploaded to the web portal, even if he had in the meantime received the physical copy of the order.

The petitioner is entitled to have his appeals that were filed manually, to be treated as having been filed within time - Petition allowed.

GST – Judicial Precedents

5. Detention of goods and vehicle

Merely the direction preferred by the petitioners for delivery of consignment to the place destined cannot lead to intention to evade payment of tax

M/s Karnataka Traders Versus State of Gujarat [Gujarat High Court]

Facts: : Respondent detained the goods and vehicle on the following grounds:

- i. Vehicle was intercepted while it was travelling to the different direction than the direction of destination or way to the destination. So it is clear that the goods was not moving to the place destined for. Hence it appears that the goods is being transported with intention to evade tax.
- ii. The value of goods being transported is shown which is low as compared to its Real Market Value.

Held: Merely the direction preferred by the petitioners for delivery of consignment to the place destined for, an inference cannot be drawn with regard to the intention of the petitioners to evade tax. - mere change of route without anything more would not necessarily be sufficient to draw an inference that the intention was to evade tax. Sometime, change of route may assume importance provided there is cogent material with the department to indicate that an attempt was sought to be made to dispose of the goods indirectly at a particular place. If such is the case, then probably, the authority may be justified in initiating appropriate proceedings, but mere change of route of the vehicle by itself is not sufficient.

Further, in relation with the goods being undervalued, the High Court held that the undervaluation cannot be a ground for seizure of goods in transit by the inspecting authority. The confiscation proceedings initiated by the respondents are hereby quashed and set aside.

GST – Judicial Precedents

6. Blocking of Electronic Credit Ledger

Blocking of Electronic Credit Ledger by Department would automatically get unblocked after a period of one year

Ambika Creation Vs Commissioner [Gujarat High Court]

Facts: : The writ-applicant has invoked the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India and has prayed for a direction to the respondent no. 3 to unblock the Electronic Credit Ledger, more particularly, when the period of one year as prescribed under sub-rule 3 of Rule 86A of the CGST/GGST Rules has elapsed from the date of order of blocking of the Electronic Credit Ledger.

Held: Sub-rule 3 of Rule 86A of the CGST Rules, 2017 and GGST Rules, 2017 itself has provided that the Electronic Credit Ledger can be blocked for a period of one year. On expiry of a period of one year, it would automatically get unblocked. In fact, it was the duty of the authority concerned to permit the assessee, i.e. the writ-applicant, to avail the input credit available in his ledger. Once the statutory period comes to an end, the authority has no further discretion in the matter, unless a fresh order is passed. In the case on hand, it is very unfortunate to note that despite the fact that the period of one year elapsed, the authority did not permit the writ-applicant to avail the credit available in his ledger. Even representation was filed in this regard but the authority thought fit not to pay heed to such representation.

We make it clear that next time if we come across such a case, then the concerned authority would be held personally liable for the loss which the assessee might have suffered during the interregnum period. With the aforesaid, this writ-application is disposed of.

GST – Judicial Precedents

7. Input Tax Credit

Whether recipient is required to reverse ITC on post supply discount provided by the supplier by way of commercial credit note?

M/s Rajesh Kumar Gupta of M/s. Mahveer Prasad Mohanlal [Madhya Pradesh AAR]

Facts:: The Applicant is having the dealership of famous rice brand name of India known as “India Gate Basmati Rice” since last more than 15 years. As a routine, supplier of the applicant dispatches the goods along with invoice. The supplier offers the incentive for early payment of invoice (bills) by offering a cash discount of 2% if payment is made within 2 days from the date of invoice. The supplier issues commercial credit note for the purpose of passing of discount to the applicant. Thus, the applicant sought advance ruling whether the applicant is required to reverse ITC on such discount provided by the supplier?

Held: The value of taxable supply is governed by the provisions of Section 15 of the CGST/SGST Act. The deduction of discounts from the value of taxable supply is subject to the conditions prescribed in sub-section (3) of Section 15 *ibid*. In the case of the applicant, the supplier of goods is issuing Commercial Credit Notes for cash discount for early payment and quantity discount after post supply without adjustment of GST - As the supplier of the goods is not reducing the original tax liability, the applicant will be eligible to avail the credit of the tax paid as per the invoice of the supplier subject to payment of the value of supply as reduced by the commercial credit notes plus the amount of original tax charged by the supplier. In other words, the applicant will not be required to reverse proportionate input tax credit.

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